STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

UPHOLSTERERS' INTERNATIONAL UNION LOCAL NO. 143, Complainant, vs. OZITE CORPORATION, Respondent.	Case I No. 14621 Ce-1356 Decision No. 10298-C

ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER AND MODIFYING MEMORANDUM ACCOMPANYING SAME

Examiner John T. Coughlin having on November 19, 1971, issued his Findings of Fact, Conclusions of Law and Order, with accompanying Memorandum, in the above entitled matter; and on December 8, 1971, the Commission having issued a Notice of Review wherein it notified the parties that it was engaged in reviewing the entire record in the matter and the Examiner's decision, that the Examiner's decision shall not be considered as the Commission's decision, as would otherwise result pursuant to Section 111.07(5) of the Wisconsin Employment Peace Act, and, further, that said review of the Commission was for the purpose of determining whether it would either affirm, set aside, modify or change the Examiner's Findings of Fact, Conclusions of Law and Order and/or Memorandum accompanying same; and the Commission having reviewed the entire record and said Examiner's decision and being satisfied that the Examiner's Findings of Fact, Conclusions of Law and Order be affirmed, but that, however, his Memorandum accompanying same be modified;

NOW, THEREFORE, it is

ORDERED

That the Findings of Fact, Conclusions of Law and Order as issued by the Examiner on November 19, 1971, be, and the same hereby is, adopted by the Commission, but that, however, the Memorandum accompanying same is modified as reflected in the Memorandum accompanying this Order.

Given under our hands and seal at the City of Madison, Wisconsin, this 17th day of February, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

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Zel S. Rice II, Commissioner

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Jos. B. Kerkman, Commissioner

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MEMORANDUM ACCOMPANYING ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER AND MODIFYING MEMORANDUM ACCOMPANYING SAME

The primary issue in this proceeding is whether the Employer was obligated to proceed to arbitration as requested by the Complainant with respect to grievances involving the disciplinary layoff of two employes. The positions of the respective parties were set forth in the Examiner's Memorandum.

The Examiner, in his Memorandum, discusses the Union's argument that the grievance was not settled because of the absence of the two employes involved. In that regard the Examiner indicates that the employes were not in the plant on the day of the alleged settlement of the grievance and that the Union produced no evidence that the Union made any demand that the grievants be present or that the Employer refused to allow their presence. The fact that the employes were not in the plant is immaterial. The contractual provision which grants the right of the employes to be present during the process of the grievances is for the benefit of the Union and the employes. Since the Union chose to process the grievance in the absence of the employes involved, the mere fact that the employes were not present, for any reason, does not, in this matter, affect the processing of the grievance.

Furthermore, the Examiner, in his Memorandum, discussed the authority of Wagner "to resurrect the grievance," and in that regard, the Examiner determined that Wagner, since he was no longer an officer or representative of the Union, had no authority to represent the employes nor the Union, and that, therefore, "Respondent could properly ignore said request considering it to be a request by Wagner acting as an individual without Union approval vis a vis an officially sanctioned request by the Union."

Assuming that the grievance had not been settled, on the basis of the record we do not believe that the Commission would have authority to determine Wagner's authority, and if the grievance was arbitrable, this would be a matter properly within the jurisdiction of the arbitrator, since the action was initiated by the Union as a party to the collective bargaining agreement involved.

The primary issue here is to determine whether the grievance involved is subject to arbitration pursuant to the agreement. If the grievance is arbitrable, the merits of the defenses available to the Employer are to be considered in the arbitration proceedings. Generally, arbitration will be ordered unless the Commission is positively satisfied that the dispute in question is not arbitrable. The record establishes that the grievance was settled on its merits in the grievance procedure through mutual discussion between representatives of the Union and the Employer. Thereafter, there was no further grievance, and there was nothing to arbitrate. Under such circumstances the Commission will not order the Employer to proceed to arbitration. To hold otherwise would not effectuate the policy of the Wisconsin Employment Peace Act to promote the peaceful resolution of labor disputes by means of collective bargaining, not only in negotiations leading to a new collective bargaining agreement, but also with respect to negotiations involving grievances arising under existing collective bargaining agreements. Resolution of grievances by mutual discussions of the parties to the agreement, in conformance with the grievance procedure, should be recognized as binding on the parties. To conclude otherwise would destroy the effectiveness of those provisions in grievance procedures which provide for the resolution of the grievances prior to third party determination.

Dated at Madison, Wisconsin, this 17th day of February, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

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Zel S. Rice II, Commissioner

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Jos. B. Kerkman, Commissioner