STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GENERAL DRIVERS & DAIRY EMPLOYEES UNION LOCAL NO. 563, Complainant, vs. STOKELY-VAN CAMP, INC., Respondent.	Case V No. 14430 Ce-1339 Decision No. 10349

Appearances:
Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Gerry M. Miller, appearing on behalf of the Complainant.
Mr. Nicholas T. Jordan, Attorney at Law, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

General Drivers & Dairy Employees Union Local No. 563 having on February 1, 1971, filed a complaint with the Wisconsin Employment Relations Commission, wherein it alleged that Stokely-Van Camp, Inc., had committed unfair labor practices within the meaning of the Wisconsin Employment Peace Act; and the Commission having appointed Marvin L. Schurke, a member of the Commission's staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order, as provided in Section 111.07(5) of the Wisconsin Employment Peace Act; and pursuant to notice issued by the Examiner on February 23, 1971, hearing on said complaint having been held at Appleton, Wisconsin, on March 11, 1971 before the Examiner; and the Examiner having considered the evidence, arguments and being fully advised in the premises, makes and files the following Findings of Fact, Conclusion of Law and Order:

FINDINGS OF FACT

1. That General Drivers & Dairy Employees Union Local No. 563, hereinafter referred to as the Complainant, is a labor organization having its principal offices at 1366 Appleton Road, Menasha, Wisconsin.

2. That Stokely-Van Camp, Inc., hereinafter referred to as the Respondent, is a corporation having its principal offices at 941 North Meridian Street, Indianapolis, Indiana and manufacturing facilities at 1820 West 8th Street, Appleton, Wisconsin, and is engaged in a business affecting interstate commerce within the meaning of the Labor Management Relations Act as amended.

3. That at all times pertinent hereto the Respondent has recognized the Complainant as the exclusive collective bargaining representative of certain of its employes employed in its plant located at Appleton, Wisconsin; and that the Complainant and Respondent are parties to a collective bargaining agreement entered into on June 3, 1970, and effective for the period from March 1, 1970 through and including February 28, 1973.

4. That the collective bargaining agreement in effect between the parties contains the following provisions material herein:

"ARTICLE VI - GRIEVANCE PROCEDURE

6.1 A grievance is defined as any matter involving the interpretation or application of the specific terms and provisions of this Agreement. A grievance shall be processed in the following procedure:

STEP 1: An employee having a grievance shall within ten (10) working days from the date of action first giving cause to the grievance, present and discuss such grievance with his Foreman. The Steward and Shop Committeeman of the employee may be present.

STEP 2: If a satisfactory settlement is not reached in STEP 1, the grievance shall be reduced to writing by the employee or the Shop Steward or Committeeman and shall be submitted to the Plant Manager within two (2) working days after the STEP 1 meeting.

STEP 3: If a satisfactory settlement is not reached in STEP 2, the grievance shall be referred to the District Manager within fifteen (15) working days. The aggrieved employee, the Committeeman and the Business Representative may be present.

STEP 4: If the grievance is not satisfactorily settled in STEP 3, the grievance shall then be referred to the Director of Employee Relations, within fifteen (15) working days.

STEP 5: If the grievance is not settled in STEP 4, then the grievance may be submitted to arbitration provided that written notice of such intention is given by the Union to the Company within ten (10) working days after receipt of the decision of the Director of Employee Relations. The decision of the Arbitrator shall be final and binding on the parties.

6.2 The Arbitrator will be selected from a panel of five (5) nominees to be selected by the Federal Mediation and Conciliation Service. A request for the selection of a panel of nominees shall be submitted jointly to the Federal Mediation and Conciliation Service within five (5) days after the Company has received notice from the Union. If the Company and the Union are unable to agree upon which one of the five (5) nominees shall serve as the Arbitrator, then within five (5) days the Union shall strike one (1) name from the list and after the Union has struck one (1) name, the Company shall strike one (1) name. The Union and the Company shall alternately strike names until only one name remains. The name remaining after the others have been so removed shall be the Arbitrator.

. . .

ARTICLE IX - HOURS, OVERTIME AND HOLIDAYS

. . .

9.7 Each Regular employee covered by this Agreement will be paid for eight (8) hours at his regular straight time hourly rate, for the following holidays:

New Year's Day	Labor Day
Good Friday	Thanksgiving Day
Memorial Day	Day after Thanksgiving Day
Independence Day	Christmas Day

When no work is performed thereon, provided:

(a) The employee must report to work on his next scheduled work day prior to the holiday and his first scheduled work day after the holiday unless excused by management.

. . ."

5. That on or about November 30, 1970, the Respondent issued warning notices to Otto Vollstedt, Michael Douglas and Eugene Salm, employes within the bargaining unit covered by the aforementioned collective bargaining agreement; that on December 3, 1970, said employes filed grievances protesting the disciplinary notices; that on December 4, 1970, the Respondent acknowledged receipt of the grievances filed by the said employes; that on December 7, 1970, the grievances were discussed in Step 2 of the grievance procedure; that during said Step 2 an issue arose as to whether any or all of said employes were entitled to holiday pay for Thanksgiving Day, 1970 and/or the day after Thanksgiving 1970; that the parties failed to agree on the disposition of the grievances and the Complainant thereupon requested that the grievances be heard in Step 3 of the grievance procedure; that on December 9, 1970, the grievances were discussed in Step 3 of the grievance procedure; that during said step the parties failed to agree on the disposition of the grievances; that at the conclusion of said Step 3 meeting, William O. Cureton, District Manager of the Respondent offered to consult with the Assistant Director of Employee Relations of the Respondent; that on December 10, 1970, William O. Cureton advised the Complainant that the Assistant Director of Employee Relations concurred in the position taken by the District Manager denying the grievances; that an issue arose as to whether or not the Complainant has complied with Step 4 of the grievance procedure; that on January 2, 1971, the Complainant notified the Respondent of its intent to proceed to arbitration; that by a letter dated January 18, 1971, the Respondent notified the Complainant that it was refusing to proceed to arbitration; and, that all times subsequent to January 18, 1971, the Respondent has refused and continues to refuse to arbitrate any issues arising out of or in connection with the grievances filed on December 3, 1970.

6. That the dispute between the Complainant and Respondent as to whether the employes involved were properly given warning notices appears on its face to constitute a dispute concerning the application and interpretation of said collective bargaining agreement; that the dispute between the Complainant and Respondent as to whether said employes are entitled to receive holiday pay for Thanksgiving Day, 1970, and/or the day after Thanksgiving 1970, appears on its face to constitute a dispute between the parties concerning the application and interpretation of said collective bargaining agreement; and that the dispute between the Complainant and Respondent as to whether the Complainant has complied with the time limitations with respect to the arbitration of said grievances appears on its face to constitute a dispute concerning the application and interpretation of said collective bargaining agreement.

Upon the basis of the above and foregoing Findings of Fact, the Examiner makes the following

CONCLUSION OF LAW

1. That Stokely-Van Camp, Inc., by refusing to join with Complainant, General Drivers & Dairy Employees, Union Local No. 563, in the selection of an arbitrator and proceeding to arbitration on the issues arising out of and in connection with the grievances filed on December 3, 1970 has violated and continues to violate the terms of the collective bargaining agreement between it and General Drivers & Dairy Employees Union Local No. 563, and by such violations Stokely-Van Camp, Inc., has committed and is committing unfair labor practices within the meaning of Section 111.06 (1)(f) of the Wisconsin Employment Peace Act.

Upon the basis of the above and foregoing Findings of Fact, Conclusion of Law, the Examiner makes the following

ORDER

1. That Stokely-Van Camp, Inc., immediately cease and desist from refusing to submit the grievances filed on December 3, 1970 to arbitration.

2. That Stokely-Van Camp, Inc. take the following affirmative action which will effectuate the policies of the Wisconsin Employment Peace Act.

a. Join with General Drivers & Dairy Employees Union Local No. 563 in a request to the Federal Mediation and Conciliation Service for the appointment of a panel of nominees to serve as arbitrator to hear and determine the issues existing between the parties arising out of and in connection with the grievances filed on December 3, 1970, and proceed to arbitration on such grievances.

b. Notify the Wisconsin Employment Relations Commission in writing within twenty (20) days after receipt of a copy of this Order as to what steps it has taken to comply herewith.

Dated at Madison, Wisconsin, this 3rd day of June, 1971.

By Marvin L. Schurke
Marvin L. Schurke, Examiner

STATE OF WISCONSIN

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MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Pleadings and Preliminary Motion

On February 11, 1971 the Union filed a complaint with the Commission alleging that Stokely-Van Camp, Inc., committed unfair labor practices within the meaning of Section 111.06(1) of the Wisconsin Statutes by refusing to proceed to arbitration pursuant to an arbitration provision contained in a collective bargaining agreement existing between the parties. The Complainant further requested that the Commission fix a time for hearing on the complaint on the merits of the grievances on the basis that the Company had refused to arbitrate the underlying grievances. The Respondent filed an answer including copies of all correspondence between the parties concerning the instant case. Hearing was held in said matter on March 11, 1971, in Appleton, Wisconsin, at which time the Union called Frank V. Krasniewski, Business Representative, as a witness, and the Company called William O. Cureton, District Manager, as a witness. The hearing was closed on the same date. No briefs were submitted. At the opening of the hearing the Union moved to amend the prayer for relief contained in the complaint, so as to delete the request for a decision on the merits of the grievances and to request instead that the Company be ordered to proceed to arbitration of the dispute as set forth and required in the labor agreement. The Respondent raised no objection to such amendment, and the Examiner permitted the amendment of the Complainant.

Positions of the Parties

The Union takes the position that the Company is obligated by the collective bargaining agreement to arbitrate all of the claims involved here before the same arbitrator in one proceeding. The Union cites Seaman-Andwall Corporation, (Dec. No. 5901) 1/62, wherein the Commission ordered an employer to proceed to arbitration on procedural issues arising in connection with a grievance filed under a collective bargaining agreement. The Union also cites the U. S. Supreme Court case John Wiley & Sons Inc. v. Livingston, 376 U.S. 543, 83 S. Ct. 909, 11 L.Ed.2d 989 (1964), going to the proposition that procedural matters of the kind raised by the Company here are not sufficient to excuse a refusal to arbitrate under the contract language involved here.

The Company takes the position that the labor agreement is all inclusive and that the Union cannot go outside the framework of "law" establish by the labor agreement to seek remedies available to it under the labor

agreement. The Company urges that the Union has failed to comply with the conditions precedent for arbitration while the Company has followed all the provisions in the grievance procedure and has lived up to its duties under the contract.

Discussion

It is clear by a long line of decisions that this Commission has consistently refused to assert its jurisdiction to decide complaints that one party violated the terms of a collective bargaining agreement where the agreement provides for a final disposition of such questions. 1/ This policy is consistent with the body of law which has been applied in the Federal courts under Section 301 of the Labor Management Relations Act. 2/ The amendments to the complaint made by the Complainant at the opening of the hearing appear to be consistent with the established precedents. The only defenses raised by the Respondent for its refusal to proceed to arbitration go to questions of procedural arbitrability. Two procedural issues are present, one with respect to the time limit on filing of the grievances concerning holiday pay for Thanksgiving Day, 1970 and the day after Thanksgiving, 1970 and the other the obligation of the Union to proce formally to Step 4 of the grievance procedure before proceeding to arbitration. In John Wiley and Sons, Inc. v. Livingston cited by the Union, the United States Supreme Court declared as federal labor policy, "once it is determined . . . that the parties are obligated to submit the subject matter of a dispute to arbitration, procedural questions which grow out of the dispute and bear on its final disposition should be left to the arbitrator." The Examiner has found that the dispute between these parties as to the issues raised by and in connection with the grievances filed on December 3, 1970 appear to be arbitrable subjects within the meaning of the collective bargaining agreement. The Company in essence requests the Commission to deviate from the policy expressed in the Seaman-Andwall case to determine these procedural issues on the merits. It should be clear that any attempt to determine the procedural questions which are raised by the Company as its defense to arbitration would invade the authority and jurisdiction of the arbitrator as established by both state and federal labor policy. The Union is entitled to an order requiring the Employer to proceed to arbitration. The Union has already made a unilateral request to the Federal Mediation and Conciliation Service for arbitration, and the Employer cannot be permitted to frustrate the arbitration process by refusing to join in a request for a panel of arbitrators. The Respondent is therefore ordered both to join in the request for the panel of arbitrators and then to submit its defenses to the arbitrator selected pursuant to the contractual procedure.

Dated at Madison, Wisconsin, this 3rd day of June, 1971.

By Marvin L. Schurke
Marvin L. Schurke, Examiner

1/ River Falls Coop Creamery (2311) 1/50; Hurlburt Co. (4121) 12/55; Pierce Auto Body Works (6635) 2/64; American Motors Corp. (7488) 2/66; Allen Bradley Co. (7659) 7/66; Rodman Industries (9650-A) 9/70.

2/ Cf. Drake Bakeries Inc. v. Local 50 American Bakery & Confectionary Workers 50 LRRM 2440 (U.S. Sup. Ct. 1962).