STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

AMALGAMATED MEAT CUTTERS & TANNERY WORKERS, LOCAL 73, AFL-CIO, Complainant, vs. FRED RUEPING LEATHER COMPANY, Respondent.	Case VII No. 15463 Ce-1417 Decision No. 10986

Appearances:
Mr. Gordon E. Loehr, Business Representative, for the Complainant.
Quarles, Herriott, Clemons, Teschner & Noelke, Attorneys at Law, by Mr. Laurence E. Gooding, Jr., for the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The above entitled matter having come on for hearing before the Wisconsin Employment Relations Commission on April 21, 1972, at Fond du Lac, Wisconsin, before Chairman Morris Slavney and Commissioner Zel S. Rice II; and the Commission having considered the evidence and arguments of Counsel, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Amalgamated Meat Cutters & Tannery Workers, Local 73, AFL-CIO, hereinafter referred to as the Complainant, is a labor organization having its offices at 50 East Bank Street, Fond du Lac, Wisconsin.

2. That Fred Rueping Leather Company, hereinafter referred to as the Respondent, has its place of business at 96 Doty Street, Fond du Lac, Wisconsin.

3. That at all times material herein the Complainant has represented production and maintenance employes in the employ of the Respondent, and in that regard the Complainant and the Respondent are parties to a collective bargaining agreement in effect at all times material herein; that said agreement contains among its provisions the following with respect to grievances:

"ARTICLE VII - GRIEVANCE PROCEDURE AND ARBITRATION

7.01 First Step: Any employee having a complaint shall present the complaint to his foreman in the presence of his steward. The foreman shall render a verbal answer to the employee and the steward within twenty-four (24) hours.

Second Step: If the complaint is not satisfactorily adjusted, the complaint shall be reduced to writing and filed in triplicate with the foreman, specifying the alleged contract violation. The foreman shall affix his answer in writing within five (5) working days of receipt of the grievance and return one copy to the steward, one copy to the Industrial Relations Department, and retain one copy. The grievance shall be deemed settled according to the Second-Step answer unless appealed to Step Three within five (5) working days of the date of answer by the foreman.

Third Step: If appealed, the business representative of the Union with a five (5) member shop committee and a representative (s) of the Company shall meet and discuss the grievance within five (5) working days of the date of appeal. The Company will furnish its answer in writing within five (5) working days of the aforementioned meeting. The grievance shall be deemed settled according to the Third-Step answer unless written notice of appeal to arbitration is filed with the Company within five (5) working days of the date of the answer in Step Three.

7.02 Any grievance concerning standards of production established or changed by management shall be handled according to the regular grievance procedure. Any grievance relating to production standards processed through Step Three shall be deemed settled according to the Third-Step answer unless written notice of appeal is filed with the Company within five (5) working days of the answer in Step Three. In the event of appeal, the Company will permit a Union Industrial Time Study Engineer to study the job in dispute. The Union Time Study Engineer will submit his findings in writing to the Company and the Union. Within five (5) working days of the receipt of the Union Industrial Time Study Engineer's report, the five (5) member shop committee, business representative of the Union, and representative (s) of the Company shall meet to rediscuss these findings. The final Company answer shall be given in writing to the Union within five (5) working days of this meeting.

7.03 The arbitrator's decision must be based upon an interpretation of the provisions of this Agreement. The arbitrator shall have no power to add to, take from, amend, modify or alter this Agreement. The arbitrator shall have no power to rule upon any grievance or dispute concerning the establishment of wages, rates of pay, standards of production established or changed by management. Any case appealed to the arbitrator over which he has no power to rule shall be referred back to the parties without decision. The arbitrator's deceision shall be final and binding on the Company, the Union and the employee or employees involved.

7.04 The arbitrator's fee shall be divided equally between the Company and the Union.

7.05 There shall be no strikes (including stoppages and slow downs of work) by the Union or lockouts by the Company over matters that are subject to arbitration during the term of this Agreement. In the event of an unauthorized strike, as herein defined, the Union shall immediately make efforts to return the striking employees to work, or if unable to do so, shall publicly disavow the strike, and thereupon, the employees who continue with such unauthorized strike, stoppage, or slowdown of work shall be subject to immediate dismissal with the forfeiture of all seniority and other rights now provided for under the Contract. The Union shall further discipline or expel all such employees who participate in an unauthorized stoppage or slow down and refuse to immediately return to work. Should a work stoppage or a strike occur either during the term of this Agreement or upon expiration of this Agreement all perishable stocks in process shall be worked into an unperishable state, which by agreement of the parties, means working the stock into crust. Necessary care shall be given the skins to prevent spoilage, and maintenance requirements for the proper operation of the plant are hereby guaranteed.

7.06 Stewards and Union personnel shall be given time off without pay as may be required to process grievances or to attend emergency meetings with the Company.

7.07 No employee or Union representative shall engage in Union activity during working hours, except as provided for in paragraph 7.06."

4. That on or about March 17, 1972, a complaint in accordance with the first step of the grievance procedure was discussed with the foreman when said complaint arose; however, that said complaint was not adjusted in such discussion; that on March 17, 1972, at a shop committee meeting, a representative of the Complainant submitted the following written grievance of the Respondent with respect to the complaint noted above:

"The Union protests the removal of three employees in the above-named Department."

5. That upon submission of said written statement of the grievance the representative of the Respondent refused to accept the grievance, indicating that the grievance failed to state the specific article of the collective bargaining agreement which was alleged to have been violated by the Respondent; and that the Respondent has refused and continues to refuse to process the grievance, which has never set forth the contractual provision involved.

On the basis of the above and foregoing Findings of Fact, the Commission makes the following

CONCLUSION OF LAW

That, since the grievance procedure existing in the collective bargaining agreement between Complainant Amalgamated Meat Cutters & Tannery Workers, Local 73, AFL-CIO, and the Respondent Fred Rueping Leather Company requires that when reduced to writing a grievance shall set forth the provision of the collective bargaining agreement alleged to be violated, and, further, since the final step of the grievance procedure, namely, arbitration, limits the arbitrator's decision to an interpretation of the provisions of said agreement, the Respondent Fred Rueping Leather Company did not violate the collective bargaining agreement existing between the parties by failing to proceed through the grievance procedure on the "grievance" involved.

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

ORDER

That the complaint filed in the instant matter be, and the same hereby is, dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 8th day of May, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

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Zel S. Rice II, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

In its complaint the Union alleged that the Employer refused to comply with the grievance procedure in the contract by failing to accept a written grievance and proceed through the grievance procedure, possibly through arbitration, of a "grievance" regarding the removal of three employes from one of the Employer's departments.

The collective bargaining agreement contains a grievance and arbitration provision and requires that when the grievance is reduced to writing it should set forth the provision which the Employer is alleged to have violated. The grievance procedure anticipates arbitration. However, the arbitrator's jurisdiction is limited to the interpretation and application of the provisions of the agreement. Since the Union did not set forth any provision of the agreement which was alleged to have been violated, the Employer refused to process the grievance beyond the first step.

The collective bargaining agreement contains no "past practice" provision. However, the Union contends that in the past the Employer has voluntarily proceeded through the grievance procedure, and at least in one case, to arbitration, over a grievance which was not specifically covered by the collective bargaining agreement, and in such instances the written grievances involved did not make reference to any of the provisions of the collective bargaining agreement. The Union contends that the Employer has thus established a past practice and therefore is obligated to process the grievance and proceed to arbitration if the grievance is not resolved by the parties. The Union contends that the failure of the Employer to process the grievance constitutes a violation of the collective bargaining agreement, and, therefore, an unfair labor practice within the meaning of Section 111.06(1)(f) of the Wisconsin Employment Peace Act.

The Employer argues that the mere fact that in the past it has applied the grievance procedure on certain occasions with respect to a "grievance" wherein there was no reference to a contractual provision involved, does not contractually obligate the Employer to do so, and, therefore, that the Employer did not violate the collective bargaining agreement as alleged by the Union.

Since the Union has not complied with the grievance procedure by failing to specifically specify the provision in the contract which is alleged to have been violated, the Employer has no duty to process the grievance. The fact that the Employer may have voluntarily done so in the past, and the fact that it may have voluntarily proceeded to arbitration on matters which were not covered by the collective bargaining agreement, does not create a legal obligation to do so under the terms of the present agreement. Therefore, the Commission is today dismissing the complaint.

Dated at Madison, Wisconsin, this 8th day of May, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

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Zel S. Rice II, Commissioner