

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondent.

No. 11287

## "ARTICLE XII

### Adjustment of Grievances

12.1 Should any difference or dispute arise between the Company and any employee, or should any employee subject to the terms of this agreement believe he has been unjustly dealt with, or discharged, or any provisions of this agreement have been violated, the case shall be taken to the foreman or shop superintendent, in their respective order, by the duly authorized steward who shall represent the local committee. If the decision is favorable to any employee who has been discharged, he shall be reimbursed for all time lost.

Any dispute or grievance not satisfactorily adjusted in accordance with the provisions as set out above, shall be referred to higher representatives of the Company and the Union for consideration. In the event that a dispute of grievance is not satisfactorily adjusted within seven (7) working days, it is agreed that such dispute or grievance will be submitted to an arbitrator designated by the Director of Conciliation, U. S. Department of Labor, and the decision of such arbitrator shall be binding upon both parties of this agreement."

## "ARTICLE XXIII

### General Provisions

23.1 Employees who are not members of the bargaining unit shall not perform work which is normally done by bargaining unit employees except for the purpose of experimentation, instructions, training, safety correction or demonstraion (sic) for customers. . . ."

4. That on April 3, 1972, Walter Zettelmeier, an employe in the unit covered by the aforementioned collective bargaining agreement, filed the following grievance with the Employer:

"That the company is in direct violation of the contract - by having a supervisor (sic) do work which is the job of men in the bargaining unit.

Under general provisions artical (sic) XXIII -  
23.1.

The employee feels that he should have been called in to do this work and should get pay due him for this day - which was the 31st day of march (sic) 1972."

5. That representatives of the Complainant and the Respondent processed such grievance through the grievance procedure set forth in Article XII, including an attempt to resolve same through the "higher representatives of the Company and the Union"; that, however, said grievance was not satisfactorily adjusted; that thereafter on May 8, 1972, the Complainant, by letter, executed by its Business Representative, requested the Respondent to proceed to final and binding arbitration with regard to said grievance; that on May 11, 1972, the Secretary of the Respondent, by letter, advised such

Business Representative that, in the opinion of the Respondent, the matter involved in the grievance was not subject to the collective bargaining agreement and, therefore, not subject to the arbitration provision thereof; that pursuant to a written request of said Business Representative the Federal Mediation and Conciliation Service, on May 23, 1972, in writing, furnished the parties with a panel of five arbitrators from which they could select a single arbitrator to resolve the grievance involved; and that, however, the Respondent refused, and continues to refuse, to proceed to arbitration with respect to the grievance involved.

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

#### CONCLUSIONS OF LAW

1. That the grievance involved in the instant matter concerns a claim, which on its face, is covered by the terms of the collective bargaining agreement existing between District No. 10, International Association of Machinists and Aerospace Workers, AFL-CIO, and Baush Machine Tool Company.

2. That Baush Machine Tool Company, by its refusal to proceed to arbitration on the grievance involved, has violated, and is violating, the terms of the collective bargaining agreement existing between it and District No. 10, International Association of Machinists and Aerospace Workers, AFL-CIO, and by such refusal Baush Machine Tool Company has committed, and is committing, an unfair labor practice 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 and Conclusions of Law, the Commission makes the following

#### ORDER

IT IS ORDERED that Baush Machine Tool Company, its officers and agents, shall immediately:

- (1) Cease and desist from refusing to proceed to arbitration on the grievance involved in the instant matter.
- (2) Take the following affirmative action which the Commission finds will effectuate the policies of the Wisconsin Employment Peace Act:
  - (a) Comply with Article XII of the collective bargaining agreement existing between it and District No. 10, International Association of Machinists and Aerospace Workers, AFL-CIO, with respect to the grievance involved by
    - (1) Notifying District No. 10, International Association of Machinists and Aerospace Workers, AFL-CIO, that it is ready to proceed to arbitration on said grievance.
    - (2) Participating with District No. 10, International Association of Machinists and Aerospace Workers, AFL-CIO, in the selection of the arbitrator from the panel furnished by the Federal Mediation and Conciliation Service.


- (3) Participating in the arbitration proceeding before the arbitrator so selected on the grievance involved.
- (b) Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days from the receipt of a copy of this Order as to what steps it has taken to comply herewith.

Given under our hands and seal at the City of Madison, Wisconsin, this 13th day of September, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slawney, Chairman

  
Zel S. Rice II, Commissioner

  
Jos. B. Kerkman, Commissioner

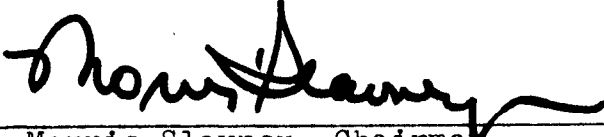
MEMORANDUM ACCOMPANYING  
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER


The Employer herein has refused to proceed to arbitration on the grievance involved for the reason, that in its opinion, the grievance is not arbitrable under the collective bargaining agreement. An examination of Article XII entitled "Adjustment of Grievances" provides, in part, "any dispute or grievance not satisfactorily adjusted" may be submitted to arbitration. The grievance, on its face, alleges a violation of the collective bargaining agreement. Such a conclusion is apparent since Article XII provides for the arbitration of not only disputes as to whether any provision of the collective bargaining agreement has been violated, but also with respect to any difference or dispute arising between any employee and the Employer. The grievance alleges that the Employer violated a specific provision of the agreement. Thus, in accordance with established precedent,<sup>1/</sup> the Employer is obligated to proceed to arbitration. The issue as to whether the contract has been violated will be determined by the arbitrator.

Dated at Madison, Wisconsin, this 13th day of September, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slayney, Chairman

  
Zel S. Rice II, Commissioner

  
Jos. B. Kerkman, Commissioner

<sup>1/</sup> Rodman Industries, Inc. (9650-A, 9650-B), 11/70.