

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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| HOTEL, RESTAURANT EMPLOYEES & BARTENDERS LOCAL 414, AFL-CIO, | : | |
| | : | |
| Complainant, | : | |
| | : | |
| vs. | : | Case I |
| | : | No. 16851 Ce-1489 |
| LABOR TEMPLE BAR, INC., | : | Decision No. 11943-A |
| | : | |
| Respondent. | : | |
| | : | |

Appearances:

Mr. Allan J. Graskamp, International Representative, Hotel, Restaurant Employees & Bartenders Local 414, AFL-CIO, for the Complainant.
Block & Seymour, Attorneys at Law, by Mr. Joel A. Seymour, for the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Complaint of unfair labor practices having been filed with the Wisconsin Employment Relations Commission in the above entitled matter; and the Commission having appointed Sherwood Malamud, a member of the Commission's staff, to act as Examiner and to make and issue findings of fact, conclusions of law and orders as provided in Section 111.07(5) of the Wisconsin Employment Peace Act; and a hearing on such complaint having been held at Neenah, Wisconsin, on June 29, 1973, before the Examiner, and the Examiner having considered the evidence, arguments of counsel and being fully advised in the premises, makes and files the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. That Hotel, Restaurant Employees & Bartenders International Union, AFL-CIO, Local #414, hereinafter referred to as the Complainant, is a labor organization having offices at 201 West 16th Avenue, Oshkosh, Wisconsin.
2. That Labor Temple Bar, Inc., hereinafter referred to as the Respondent, is a corporation engaged in the operation of a bar under the auspices of the Labor Temple Cooperative Association.
3. That at all times material herein, the Respondent has recognized the Complainant as the exclusive bargaining representative of certain of its employes; that in said relationship the Respondent and the Complainant have been parties to a collective bargaining agreement covering the wages, hours and working conditions of such employes, which agreement is dated May 2, 1972 and was in effect at all times material herein; that Articles III and IV of said agreement provide as follows:

"ARTICLE III - SENIORITY

Section 1. It is agreed that the Employer shall and does hereby recognize seniority rights in all aspects of working conditions including layoffs and recalls. Layoffs are to be made by seniority; the employee with the least amount of seniority be laid off first. Recall of laid off employees shall be in reverse order of layoff.

ARTICLE IV - GRIEVANCE & ARBITRATION PROCEDURE

In case a grievance or complaint arises, the following steps set forth herein shall be followed:

1. A grievance or complaint shall be reduced in writing and presented to the local manager; the grievance may be represented by a Union Steward.
2. The Local Union Committee and the Officers of the Labor Temple Bar, Inc. shall meet to discuss the grievance or complaint.
3. Should the dispute not be settled within five (5) days after receiving same in step one, the grievance may be placed in step four.
4. A representative of the Local Union Office shall be called in to assist in settling such difficulty. The Employer shall be represented by Officers of the Labor Temple Cooperative Assc.
5. Should no agreement (sic) be reached in step four, the grievance may be placed in Arbitration through the Wisconsin Employment Relations Commission. Such referral shall be within ten (10) days after no agreement is reached in step four."

4. That on April 1, 1973, Romana Sewell and Barbara Brodzinski, both of whom are related to directors of the Labor Temple Cooperative Association ceased employment for Respondent, and from that date they did not work for the Respondent.

5. That on March 18, 1973 a letter under the signature of the secretary of Local 414, Lorraine A. Steinfort, was delivered to Rufin Skiba, the manager of the Labor Temple Bar, Inc.; and on April 25 another letter was delivered to Skiba; and that one or both of said letters purported to be grievances disputing the discharge of Romana Sewell and Barbara Brodzinski, hereinafter referred to as the grievants.

6. That on April 5, 1973 and May 6, 1973, Lorraine A. Steinfort, secretary of Local 414 requested that Respondent proceed to arbitration on the discharge of the grievants.

7. On April 13, 1973, Jack Callaway, President of the Labor Temple Cooperative Association rejected Complainant's demand to proceed to arbitration on the grounds that the demand to arbitrate was not timely; on May 22, 1973 Rufin Skiba again rejected Complainant's demand to proceed to arbitration.

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

CONCLUSION OF LAW

That the Respondent, Labor Temple Bar, Inc., by refusing to proceed to arbitration upon the request of the Complainant, with respect to the "grievance" over the cessation of employment of Romana Sewell and Barbara Brodzinski, has violated the arbitration provisions of the aforesaid collective bargaining agreement existing between it and the Complainant and therefore in that regard Respondent committed and is committing an unfair labor practice within the meaning of 111.06(1)(f) of the Wisconsin Employment Peace Act.

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

ORDER

IT IS ORDERED that Labor Temple Bar, Inc., its officers and agents shall immediately:

1. Cease and desist from refusing to submit the "grievance" over the cessation of employment of Romana Sewell and Barbara Brodzinski, and the procedural issues concerning same, to arbitration.

2. Take the following affirmative action which the Examiner finds will effectuate the policies of the Wisconsin Employment Peace Act.

- a. Comply with the arbitration provisions of the collective bargaining agreement existing between it and the Complainant with respect to the grievances over the cessation of employment of Romana Sewell and Barbara Brodzinski, and all issues concerning same.
- b. Notify the Complainant that it will proceed to arbitration on said "grievances", and all issues concerning same.
- c. Participate with the Complainant in the selection of an arbitrator to determine a dispute over said "grievances", and all issues concerning same.
- d. Participate in the arbitration proceeding, before the arbitrator so selected, and on the said grievances and procedural issues and all other issues concerning same.
- e. Notify the Wisconsin Employment Relations Commission in writing within twenty (20) days from receipt of a copy of this Order as to what action is has taken to comply herewith.

Dated at Madison, Wisconsin, this 8th day of October, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Sherwood Malamud, Examiner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The Union contends that the Employer's failure to proceed to arbitration is a violation of the collective bargaining agreement and therefore is an unfair labor practice within the meaning of Section 111.06(1)(f) of the Wisconsin Employment Peace Act. The Employer contends that it has two valid procedural defenses which frees the Employer from the obligation of participating in the arbitration process. These are that the Union has failed to comply with the time limitations provided in paragraph 5 of Article IV of the collective bargaining agreement, and that the Union's attempt to resubmit the grievance at the first step of the grievance procedure was justifiably rejected by the Employer.

The Wisconsin Employment Relations Commission, in actions to enforce agreements to arbitrate, proceeds in accordance with the oft cited policy below:

. . . we shall give arbitration provisions in collective bargaining agreements their fullest meaning, and we shall confine our function in such cases to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract. We will resolve doubts in favor of coverage. Seaman-Andwall Corporation, (5910) 1/62 at p. 19. 1/

Accordingly, the procedural defenses which the Employer raised at the hearing must be resolved by the Arbitrator. 2/

Dated at Madison, Wisconsin, this 8th day of October, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Sherwood Malamud
Sherwood Malamud, Examiner

1/ For a concise review and citation of the principle cases on point see Racine Motor Hotel, Inc., (10751-A) 5/72.

2/ Allen-Bradley Co. (Dec. No. 6285) 3/63; St. Mary's Hospital (Dec. No. 8675) 12/68. Federal as well as State Law provide for deferral of procedural defenses to the arbitrator. See John Wiley & Sons vs. Livingston, 376 U.S. 543 (1964).