STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GENERAL DRIVERS & DAIRY EMPLOYEES UNION LOCAL NO. 563 a/w INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, Complainant, vs. APPLETON WIRE WORKS CORPORATION, Respondent.	Case IV No. 16979 Ce-1497 Decision No. 12041-A

Appearances:
Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Gerry M. Miller, for the Complainant.
Quarles, Herriott, Clemons, Teschner & Noelke, Attorneys at Law, by Mr. Laurence Gooding, 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 authorized Robert M. McCormick, a member of its staff, to act as Examiner 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 a hearing on such complaint having been conducted at the Outagamie County Courthouse, Appleton, Wisconsin on August 9, 1973 before the Examiner; and the parties having filed written briefs on August 21, 1973; and the Examiner having considered the evidence, arguments, and briefs of counsel and being fully advised in the premises makes and files the following Findings of Fact, Conclusions of Law and Order, with Memorandum Acccompanying Findings, Conclusions and Order to follow.

FINDINGS OF FACT

1. General Drivers & Dairy Employees Union Local No. 563 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, hereinafter referred to as the Complainant, is a labor organization with a mailing address at 1366 Appleton Road, Menasha, Wisconsin 54952.

2. That Appleton Wire Works Corporation, hereinafter referred to as the Respondent, is a corporation engaged in the manufacture of fourdrinier wire and has its offices and plant facilities at 714 Hancock Street, Appleton, Wisconsin.

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 at least since 1964 have been parties to cpllective bargaining agreements concerning wages, hours, and conditions of employment for certain employes, employed as journeymen weavers, loom operators, and warpers; that the most current collective bargaining agreement became effective July 1, 1971 and is to remain in effect at least until June 30, 1975; that said collective bargaining agreement includes a grievance procedure, but does not provide for final and binding arbitration of grievances.

4. That the aforesaid collective bargaining agreement contains among its provisions the following material herein:

"ARTICLE VII

Seniority

7.01 Seniority shall begin from the time an employee begins his employment in the bargaining unit covered by this Agreement, provided, however, that no seniority rights shall be acquired until an employee has completed a probationary period of sixty (60) days in the bargaining unit. This probationary period shall apply to new employees, rehired employees or employees transferred from other bargaining units in the Appleton shop. This probationary period may be extended for any individual employee by mutual agreement between the Company and the Union.

7.02 The Company shall distribute the work and place the men on looms in a manner which takes into consideration both, ability and seniority. Where ability to perform the available work is relatively equal, seniority shall prevail.

7.03 Seniority shall be lost by any one of the following specific acts:

(a) A discharge for just cause and not subsequently reinstated to employment.

(b) When an employee voluntarily quits.

(c) After having been laid off the employee does not report for work within a six day period after a registered mail, return receipt written notice is mailed to the employee at the address on the Company's records and copy of notice of the call in writing having been delivered to the Local Union.

(d) Failure of the employee to report to work at the expiration of his leave of absence unless he presents an explanation acceptable to the Company.

(e) An employee who has been on layoff for a period equal to his length of service prior to the initial date of layoff or five (5) years, whichever is less.

7.04 Layoffs shall be on the basis of seniority. Employees on layoff from their jobs shall be recalled thereto in order of seniority and in inverse order at layoff.

7.05 An employee assigned or promoted with his consent to a position with the Employer for which the Union is not the bargaining agent, who is subsequently reassigned to work for which the Union is the bargaining agent, provided he returns within one (1) year, shall not lose seniority as the result of such transfer or promotion, but shall accumulate seniority during the period thereof. If an employee returns to work with the bargaining unit after the aforementioned one (1) year period he shall forfeit all accrued seniority.

7.06 Inability to work because of proven sickness or injury shall not result in the loss of seniority rights.

ARTICLE VIII

Vacations

. . .

8.03 The vacation period of each qualified employee shall be set with due regard to the seniority and preference of the employees, consistent with the efficient operation of the Employer's business.

. . .

ARTICLE IX

Wages

9.01 The day rate for journeymen weavers shall be $4.00 effective December 4, 1972; $4.50 effective July 1, 1974.

The hourly rate for loom operators and warpers shall be:

. . .

The starting rate for loom operators and warpers shall be forty cents (40¢) per hour less than the hourly rate and shall be increased to the hourly rate within six (6) months after said employees commence work in said classification. During said six (6) month period said employees shall be considered probationary employees and during said period the Company shall have the right to determine whether said employees shall be retained as permanent employees within the classification. The Company's determination in this respect shall not be subject to the grievance procedure.

. . .

ARTICLE X

Apprentices

10.01 The period of apprenticeship shall be four (4) years.

Apprentices shall be selected by the Company after consultation with the shop committee.

. . .

ARTICLE XI

Shop Rules

11.01 The shop rules for employees as shown on Exhibit A which is attached hereto and made a part hereof, are mutually adopted by the Company and the Union. In order to accomplish the best results in our work and to preserve at the same time a spirit of fairness and justice it shall be the duty of both parties to see that such rules are enforced.

. . .

ARTICLE XIII

Grievance Procedure

. . .

13.03 In the event of any dispute which has not been resolved by the foregoing procedure and which involves, (a) a claimed violation of the terms of this Agreement shall be submitted to the

Wisconsin Employment Relations Commission as provided under the provisions of Sections 111.06 and 111.07 of the Wisconsin Statutes; . . ."

5. That the Shop Rules referred to in Article XI of the aforementioned agreement contain the following provisions material herein:

"1. VACATION REGULATIONS

. . .

If a man forfeits a week vacation for sickness or any other reason, the week must be posted and filled by seniority. (1)

. . .

12. THIRD SHIFT REGULATIONS

. . .

(2) When a loom is scheduled to go on three shifts, seniority will prevail as to who is eligible for the job as well as the choice of shifts. This rule will also apply when a loom discontinues the third shift. (Also see list rule #4)

. . .

13. LIST RULES

. . .

(2) On a two shift job the week is split between Wed. and Thurs. with the senior man having his choice of days on Mon., Tues. and Wed. or days on Thurs. and Fri.

. . .

(8) Any man scheduled on the third shift must work that shift as long as his job runs. If his job is shut down on the third shift, he will move down to the second shift (unless his job is shut down to cover absenteeism on another third shift job) and fall in line in his seniority on the float list. . ."

6. That prior to the execution of the existing agreement, and after a nine-year hiatus period from 1955 to 1964, throughout which no collective bargaining agreement existed covering the weavers and apprentices working for the Respondent, Complainant was designated as the exclusive representative for certain employes of the Respondent previously represented by American Wire Weavers Protective Association; that the Complainant and Respondent executed an initial collective bargaining agreement in 1966 made retroactive to 1964; that the seniority provisions contained in the existing agreement are substantially the same as the seniority provisions contained in the initial agreement except for a change in Section 7.05 of Article VII which is not material herein.

7. That prior to 1956, the Respondent and the Wire Weavers were parties to successive collective bargaining agreements covering at least a decade, the last of said agreements having been effective from 1954 to 1956 and which contained the following seniority provisions:

"SENIORITY

1.1 Seniority rights of an employee as a Journeyman shall begin from the time he becomes a Journeyman in the employ of the Company, except that the existing seniority rights as a Journeyman of an Appprentice whose apprenticeship was suspended by reasons of military service shall be preserved. Seniority rights of an employee as an Apprentice shall begin from the time he becomes an Appprentice in the employ of the Company.

1.2 A Journeyman or an Apprentice will not forfeit his seniority if he is absent from the employ of the Company on sick leave, leave of absence, or lay off.

DISTRIBUTION OF AVAILABLE WORK

2.1 Journeymen shall be given preference over Apprentices on looms available. In the event of work shortage in weaver's work Journeymen and Apprentices shall be rotated.

2.2 The Company shall distribute the work and place the men on looms in a manner which takes into consideration both ability and seniority."

8. That pursuant to the arrangement for separate seniority for journeymen weavers and apprentices provided for in the Wire Weavers' agreement, the Wire Weavers and Respondent developed a practice in administering such seniority provisions which resulted in the placing of the names of journeymen weavers hired from the outside on seniority lists ahead of apprentices who otherwise may have commenced working for the Respondent prior to certain journeymen; that on the occasion when each apprentice would have completed his apprenticeship and had become a journeyman weaver, the Respondent and the Wire Weavers did place the new journeyman's name in seniority rank below the youngest journeyman weaver and credit him with weaver's seniority from the date he entered journeyman status; that as a result of said practice under labor agreements with the Wire Weavers, the 1953 Wire Weavers' seniority list reflected the following rankings between certain employes whose names appear on subsequent seniority lists from 1964 to 1973, a material part of such seniority-order reads as follows:

"Name	Date Employed	Date on Loom
(31) 1/ Roy Pointer	7-15-46	7-12-48
Arthur D. Scott, Jr.	11-25-52	11-25-52
(32) Wm D. Bain	11-25-52	11-25-52
Wilfred A. Ruel	11-25-52	11-25-52
(33) Floyd H. Wadel*	2-19-47	10-25-48
. . .		
(40) Wm. F. Errington*	3-22-48	10-13-50
(53) Gordon Timmers*	10-30-50	10-15-51

1/ The numbers prefixed to the names reflect later seniority rankings ascribed to weavers on a "pick list" administered by Respondent and Complainant and prepared sometime in 1972.

(54) Howard Horn*	11-13-50	12-15-52
(55) Richard M. Cate*	11-20-50	3-16-53
(57) Joe Van Muland*	3-26-51	4-19-53
(58) Charles Gosha*	6-11-51	12-28-55
(59) John Kraft*	6-14-51	1-3-56

* (Served as apprentices sometime in the period 1952-60)"

That Scott, Bain and Ruel were hired from the outside in 1952 as journeyman-weavers, all having been previously employed with another weaving company; that at time of hire their names were placed on the seniority list below the youngest journeyman weaver and ahead of apprentices then employed with Respondent.

9. That the Wire Weavers' labor agreements did not contain a layoff provision; that the Respondent and the Wire Weavers did apply the principle of seniority pursuant to which journeymen weavers were ranked in the order of hire and/or order of entry to journeyman status followed by apprentices, for purposes of distributing loom work, selection of shifts, vacations and certain other benefits; that the Wire Weavers engaged in a protracted strike over part of 1956 and 1957, which proved unsuccessful and which was precipitated at least in part by Wire Weavers insistence on maintaining separate seniority for apprentices and the quota-hiring of apprentices vis-a-vis weavers.

10. That from 1956 to 1964, at a time when no labor agreement existed covering the weavers and supporting personnel, the Respondent continued to apply the principle of seniority for purposes of distributing loom work and for the selection of certain other benefits and conditions substantially in accord with the seniority principle existing under the Wire Weavers' last agreement; that Respondent made no layoff of weavers over the period from 1953 to 1966.

11. That in the course of negotiations leading to the initial Teamster agreement made retroactive to 1964, Respondent and Complainant made no provision for the quota system of hiring of apprentices as did appear in the Wire Weavers' agreements; that though the initial and succeeding Teamster agreements contained an apprentice-rate schedule, the Respondent hired no apprentices after 1956, including the period when Teamster agreements were in effect from 1964 to date; that in the course of the aforementioned negotiations leading to the initial Teamster agreement, the parties made provision for a layoff procedure to be governed by seniority, which constituted the first precise layoff procedure applicable to weavers, operators and warpers; that in the course of said negotiations the parties agreed in principle that employes with prior Company service, who would be hired from other bargaining units of the Respondent, would have their seniority commence as of date of hire in the Teamsters' unit.

12. That Respondent and Complainant in their initial negotiations adopted one seniority list made up of weavers, operators and warpers with no distinction by classifications as to their ranking on a seniority list; that the parties also adopted a standard in said negotiations and succeeding agreements which was to govern the conditions under which seniority would be determinative by providing in Article VII, Seniority - 7.01: ". . . where ability to perform the available work is relatively equal, seniority shall prevail."

13. That Respondent and Complainant adopted shop rules, incorporated by reference into their labor agreement, which codified the previously

existing practice in Respondent's Weaving Department of using such seniority rankings of weavers, for purposes of selecting premium loom work, shifts and certain other benefits; 2/ that a seniority list reflecting such relative ranking of weavers and operators for determining said selections is hereinafter referred to as the "pick list."

14. That Respondent and Complainant maintained one seniority list from 1964 to 1973 which reflected substantially the same seniority rankings of the weavers, as their relative positions on the seniority list appeared from 1953 to 1964 except for changes caused by entry to journeyman status, terminations or as a result of amendments to journeymen entry dates of returning ex-servicemen; that for the period of the existing Teamster agreements from 1964 to June of 1973, the Respondent made no layoffs of weavers; that in January of 1972 the parties maintained the relative order of seniority ranking between Messrs. Pointer, William D. Bain, William F. Errington and Gordon Timmers as that order of seniority was reflected in prior seniority lists existing after 1953. 3/

15. That on June 29, 1973, the Respondent effectuated a layoff of some fifteen (15) employes including the first layoff of journeyman weavers ever experienced since World War II; that said layoff of weavers was based upon the recorded employment dates of weavers in the bargaining unit, which term Respondent equated with the term, "date employed"; that as a result of said layoff Respondent retained Gordon Timmers (date employed - 10/13/50) and placed on layoff, William Bain (date employed - 11/25/52); that over the years from 1953 to 1964, Respondent had carried Bain's name on seniority lists ahead of that of Timmers and that Respondent and Complainant similarly placed Bains and Timmers in said order on a 1972 seniority list and on the aforementioned "pick list", on the basis of Bain's earlier entry to journeyman status.

16. That on or near June 20, 1973 William Bain filed a grievance alleging the aforementioned layoff as being violative of Seniority - Article VII, of the existing labor agreement; that Respondent in its initial and subsequent answers to the grievance contended that its layoff was in accord with Article VII, Section 7.01 and 7.04 of the existing agreement in that the seniority of the employes in question was determinative of their order of layoff based upon each employe's beginning date of employment in the bargaining unit.

17. That no employe ever protested the order of seniority rankings reflected in the Seniority lists or the "pick list", published by Respondent from 1964 to 1973.

18. That Respondent and Complainant applied the "pick list" and applied the relative seniority ranking of its weavers, as reflected in seniority lists from 1964 to June 1973, solely for purposes of "distributing work, placing men on looms" and for purposes of selection of benefits pursuant to Article VII, Seniority - 7.02 and Article XI, Shop Rules, including the Weaving Department Work Rules; that Respondent and Complainant at no time in the course of their bargaining-table conduct leading to the adoption of 7.01 and 7.04 of Article VII, ever indicated that any different effect should be given to the same pre-1964 practice of utilizing the relative seniority ranking of weavers only for purposes of selecting certain benefits.

2/ See Findings of Fact #5, supra, p. 4.
3/ See Findings of Fact #8, supra, p. 5.

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

CONCLUSIONS OF LAW

1. That there is no evidence of bargaining-table conduct of the Complainant and Respondent, out of their negotiations leading to the initial and succeeding Teamster labor agreements, which can alter the otherwise plain meaning of the words contained in Article VII, Seniority - 7.01 and 7.04 of the existing collective bargaining agreement; that there is no evidence of contract administration on the part of Complainant and Respondent, in applying Article VII, VIII and XI (including Shop Rules of the Weaving Department), which can change the otherwise plain meaning of Article VII, Seniority - 7.01 and 7.04 of the existing collective bargaining agreement.

2. That the Respondent and Complainant, by their adoption of 7.01, 7.02 and 7.04 of Seniority - Article VII of their existing collective bargaining agreement did intend that the seniority, which would be determinative in effectuating the order of layoff and recall, would be based upon the seniority of an employe "from the time. . . (he) begins his employment in the bargaining unit covered by . . . (the) Agreement," namely, the "date employed," as reflected in seniority lists issued by Respondent since at least 1964.

3. That the Respondent, Appleton Wire Works Corporation, did not violate Article VII, Seniority of the collective bargaining agreement, by its layoff of William Bain and its retention of Gordon Timmers and other employes on June 29, 1973, and therefore Respondent did not commit, and is not committing, any unfair labor practice within the meaning of Section 111.06(1)(f) of the Wisconsin Employment Peace Act.

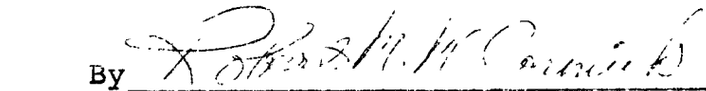
Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes the following

ORDER

IT IS ORDERED that the complaint filed in the instant proceeding be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin this 3rd day of December, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Robert M. McCormick, Examiner

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GENERAL DRIVERS & DAIRY EMPLOYEES UNION LOCAL NO. 563 a/w INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, Complainant, vs. APPLETON WIRE WORKS CORPORATION, Respondent.	Case IV No. 16979 Ce-1497 Decision No. 12041-A

Appearances:
Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Gerry M. Miller, for the Complainant.
Quarles, Herriott, Clemons, Teschner & Noelke, Attorneys at Law, by Mr. Laurence Gooding, for the Respondent.

The Examiner having, on December 3, 1973, issued Findings of Fact, Conclusions of Law and Order pursuant to Section 111.07(5) of the Wisconsin Employment Peace Act, wherein a complaint of unfair labor practice filed by Complainant-Union was dismissed; and the Examiner having considered the evidence and written arguments of counsel and being fully advised in the premises, makes and files in support of such Findings of Fact, Conclusion of Law and Order, the following

MEMORANDUM ANNEXED TO FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

PLEADINGS:

The Complainant-Union on July 16, 1973 filed a complaint alleging that Respondent-Employer had committed an unfair labor practice within the meaning of Section 111.06(1)(f) of the Wisconsin Employment Peace Act by placing William D. Bain on layoff on June 29, 1973, while retaining junior employes in active employment, an act in breach of Respondent's contractual commitment to layoff on the basis of seniority. Complainant requested that the Examiner issue an order compelling Respondent to reinstate William Bain without loss of seniority or other rights and make him whole for all wages and benefits lost, with interest at 6%, by reason of the violative layoff.

Respondent, in its answer, denies making such an improper layoff, admits placing Bain on layoff on June 29, 1973 and asserts that said layoff was in accordance with Article VII of the existing labor agreement.

FACTS:

There is no dispute of substance between the parties involving the underlying facts relating to contract administration of the seniority provisions since 1964. The dispute involves the significance of such

facts and of other bargaining-table conduct.

The "pick list" referred to in Findings of Fact, paragraphs #8 and #13, reflects the relative ranking of the weavers throughout the period 1953 to 1972 (under both Wire Weavers' and Teamster agreements) by the use of each weaver's hiring date as a journeyman weaver, or based upon each weaver's entry-date to journeyman status after having completed his apprenticeship.

The "date on loom" appearing after the names of a substantial number of the weavers on several seniority lists over the same period indicates the starting date of an employe's apprenticeship, which the record indicates to be a period of some four (4) years. The record makes clear that at least from 1953 to 1960 each apprentice, upon completion of his training-period, had been placed in seniority-rank on the journeyman-weaver roster immediately after the then lowest ranking journeyman weaver, irrespective of each new weaver's hiring date. The record further discloses that over three (3) different periods of time, namely, under the Wire Weavers' contract, the nine (9) year hiatus period, and under Teamster agreements, the relative order of journeymen weavers constructed from various seniority lists into a defacto or actual "pick list" governed the priority claim and selections of competing weavers to the assignment of certain loom work, shifts, and the distribution of overtime and other fringe benefits.

The evidence is uncontroverted that prior to 1964, Respondent applied no specific policy as to how layoff and recall would be determined; and similarly, under Respondent-Wire Weavers' contracts, no provision was made in contract or through practice for the determination of the order for a prospective layoff or recall of weavers, save for a contractual provision under Weavers' agreements for the distribution of available work during salck periods on a rotating basis to weavers and apprentices then employed. The record further discloses that Respondent never placed any weavers on layoff prior to June 1973.

After the effective date of the initial agreement between Complainant and Respondent in 1964, and thereafter to 1973, Respondent and Complainant continued to utilize the "pick list," and applied the relative seniority rankings of the weavers, for purposes of distributing premium loom-work and to determine the selectees for certain benefits and favorable conditions.

The record discloses that the parties in 1964 or 1965, as part of their initial agreement, placed on the seniority list the names of several operators and warpers who were hired by Respondent into the weaving department (Teamsters) from other Company bargaining units. The relative seniority ranking among said operators and warpers, assuming they completed a 60-day probation period, was determined by their original hiring dates with the Company in other non-Teamster units. However, the record discloses that said accomodation did not change their unit-seniority vis-a-vis the seniority ranking of other unit employes as governed by Sections 7.01 and 7.04 of the agreement. The several operators and warpers were placed at the bottom of the then existing seniority list. The parties stipulated at hearing that under said arrangement the operators and warpers acquired Teamster-unit seniority as of 1965 or later, irrespective of their original hiring dates with Respondent.

POSITIONS:

The Complainant argues that the Examiner should construe the terms of Section 7.01 and 7.04, in light of certain surrounding circumstances.

It is not enough to view said provisions in a vacuum, and simply label the verbiage "clear and unambiguous". The Union urges that the Examiner, as with the case of arbitrators, should avoid a "first blush" interpretation of the phrase in 7.01, ". . . seniority . . . begins from the time . . . (one) begins . . . employment in the bargaining unit . . .". Rather 7.01 should be examined in the light of the parties' practice of giving priority to weavers such as Bain, who had achieved journeyman status before other weavers had achieved same (including Gordon Timmers), though twenty (20) other weavers may have started with the Company at earlier dates, but otherwise became journeymen after Bain.

The Complainant also contends that the Examiner should consider the verbiage of 7.01 in light of the parties' conduct in 1964-65 bargaining. That bargaining-table conduct manifests an intent to leave undisturbed Respondent's practice under Weavers' agreements, namely, that the relative order of seniority rankings of journeyman weavers (including Bain's priority over 20 others) was controlling in the application of the seniority principle whatever its dimensions prior to, or after, 1964.

Complainant contends that Seniority-Article VII essentially provides for one kind of seniority, both for purposes of selecting which employes enjoy certain benefits and conditions, and for the determination of the order of layoff and recall. The Complainant urges that Section 7.01 specifically defines seniority and that there is nothing in the language of 7.04 to indicate that the parties intended a different seniority principle to apply to layoffs than that which governs the other aspects of "competitive-status" seniority under 7.02, 8.03, and the Shop Rules. The Complainant points out that neither management nor any employe protested the relative seniority order of weavers published in seniority lists since 1964.

The Complainant urges that the Examiner should resort to the extrinsics, of contract administration and bargaining-table conduct in construing the words, ". . . begins his employment in the bargaining unit . . ."; and further examine 7.01 and 7.04 in light of the usage in 8.03 and of the practice under the Shop Rules, in order to discern the real intent of the parties as to their usage in Article VII-Seniority. The Complainant urges that, given the usage in 7.01 and 7.04 after the many years of Respondent's acceptance of the relative seniority order reflected on Weavers' lists, compels resort to "Date on Loom" and requires honoring such relative ranking of weavers rather than adopting "date employed" with the Company.

The Complainant requests that Respondent be directed to reinstate the grievant and make him whole for wages and benefits lost because of such wrongful layoff.

The Respondent conceeds that the practice under Weaver agreements and during the hiatus period after 1955, consisted of a "pick-list" application, wherein the relative seniority-order of journeymen weavers determined the distribution of favorable conditions and benefits. Respondent contends that the Weavers' agreements contained no specific language governing layoff. This contrasts with the overt steps taken by Complainant and Respondent in their initial 1964 agreement, namely, for the first time adopting a layoff procedure in 7.04, and defining "seniority" in 7.01 of the Teamsters agreement. The Respondent points out that under the Weavers' agreements, the record discloses that Bain and other journeymen weavers were placed on the seniority list ahead of a number of employes who began work in the unit prior to Bain for the reason that the latter employes were apprentices at a time when Bain and certain other journeymen were hired in 1952. The Respondent agrees that the seniority lists were maintained according to the Weaver agreements.

The Respondent urges that with the advent of the Teamsters, the initial and present agreement did away with the bifurcated seniority structure of journeymen over apprentices and the parties for the first time established seniority protection against layoff based upon length-of-service in the bargaining unit.

The Respondent argues that the language of 7.01 and 7.04 is plain and unambiguous and that therefore the layoff of Bain was proper under the terms of the labor agreement. Respondent requests that the grievance be denied and that the complaint be dismissed.

ANALYSIS AND CONCLUSION

The Complainant in, well-reasoned argument set forth in its brief, has correctly stated an axiom of contract interpretation, namely, that an arbitrator or the trier-of-fact in a 301 forum should not merely look for the intent of the parties "under the plain-meaning rock" to the exclusion of surrounding circumstances. An examiner's role in contract interpretation in Section 111.06(1)(f)-actions is essentially that of an arbitrator's. The arbitrator's source for discerning the applicable standard is not confined to the express provisions of the contract, "as . . . the practice of the industry and the shop is equally a part of the collective bargaining agreement although not expressed in it."3/ In deciding what the parties may have intended by their usage in Article VII of the contract, the Examiner would examine 7.01 and 7.04 in the light of the bargaining-table conduct, the practice (Weaver's and Teamster's) and the prior contractual provisions of the Weavers' agreements.

Complainant, in argument on the record, suggests that Bain should have been retained on June 29, 1973 and "employes junior to him in loom date laid off in his place", one being Gordon Timmers having a loom-date-10/15/51. However, Bain's date-on-loom-11/25/52, represented the day he was first employed by Respondent as a journeyman. The Examiner treats the loom-date as the date an employe started his apprenticeship. With regard to those named employes on the seniority lists with a loom-date different from date of employment, the testimony of William Errington makes clear that weaver apprentices completed their indenture leading to journeyman weaver some four (4) years after loom date and were thereupon placed on the weaver roster ahead of the secondary roster of apprentices. Therefore, the Examiner will deal solely with Complainant's contention, that the parties intended to preserve the pre-existing ranking of journeymen weavers under the Weaver agreements when they adopted 7.01, 7.02, and 7.04, since mere reliance upon "dates on loom" as a yard stick for determining the correct order of layoff as of June 29, 1973, would indicate no apparent violation in Respondent's retaining Timmers with a loom-date in 1951 and placing Bain, with a 1952 loom-date, on layoff.

The Complainant places great weight on the fact that no layoff of weavers was effectuated prior to 1973. In addition, the Complainant would have the Examiner reject Respondent's contention that significance should attach to the lack of a layoff clause in the Weaver agreements when compared to Sections 7.01 and 7.04 of the present agreement. Complainant urges that the parties here, as well as the Weavers, consistently applied the relative seniority ranking of journeymen from the "pick list" for purposes of awarding favorable conditions and benefits according to the widest dimensions of the seniority principle then existing. (emphasis supplied)

3/ Steelworkers v. Warrior & Gulf Navigation Co., 46LRRM2416, 2419(1960); Cutler Hammer, Inc. v. Industrial Commission 13 Wis. 2d 618,625 (1956); McCormick on Evidence, Section 219(1954-ed.)

The Examiner believes that the mere fact that the parties to this action and the parties to prior agreements never placed a weaver on layoff does not overcome the fact that the Respondent's pre-1964 practice and the Weaver agreements afforded no protection against layoff under the seniority clause. The Complainant and Respondent established a layoff provision effective in 1964. The record discloses that the parties to both the Weaver and Teamsters' agreements relied upon the relative order of weaver-seniority (ala a defacto pick-list) to determine the apportionment of benefits and conditions short of layoff determination. Under the Weaver agreements, the parties took special pains to provide for the sharing of a reduced work load, presumably in lieu of a layoff clause, under a less comprehensive form of seniority. Therefore, the Examiner cannot accept the Complainant's argument that Respondent and Teamster negotiatiors were negotiating a seniority provision in 1964-65 in the context of previous practices and Weaver contractual provisions which called for a "pick list" order-of-seniority in the distribution and apportionment of benefits. Said practice and the pre-1964 contracts did not constitute an application of the seniority principle in its widest dimensions. The evidence at most supports the proposition that the parties intended by 7.02 that the "Company would distribute the work and place the men on looms . . .", after considering ability, according to the "pick list" application of the relative seniority ranking of Weavers existing before 1964. This resulted in Bain's name being placed above some twenty (20) other weavers for purposes of distributing such limited benefits and conditions. For purposes of the issue joined herein it may very well be that the parties adopted two kinds of seniority when they adopted 7.02 and 7.04

Complainant would point to Teamster-Negotiator, Schlieve's testimony as reflecting bargaining-table conduct, an evidentiary matter important to construction of the parties' usage in 7.01 and 7.04. That testimony in material part reads as follows:

Miller "Q Okay, would you tell us please what the discussion was with reference to the seniority provisions to be negotiated?"

Schlieve A. (Tr. Page 14--Schlieve, in direct examination, describes the accord as to the details of bringing warpers and operators across from other units; he represents that 7.01 was tailored to accomodate that move by establishing the starting point for their seniority; and he describes the provision for a probationary period to apply to said warpers and operators as well as future hirees.)

". . . Now that was the only discussion we had with respect to the application of seniority. There was never any discussion, I can honestly say, because presumably there was no need for it on the seniority of the journeymen weavers . . .

. . . I am sure if Mr. Kamps were here, he would agree that there was never any discussion with respect to the application of this language as to its affect on any problems that would be created under the administration of seniority with the existing wire weaving unit." 4/

4/ Transcript - pages 14 and 15.

In essence the Union argues that the fact of the parties' silence at the table covering any possible desire to change the relative order of seniority affecting journeymen weavers on previous seniority lists, supports its proposition that the parties adopted one form of seniority in 7.01, 7.02, and 7.04, namely, that the "pick-list" seniority of weavers existing prior to 1964 continued to be viable for all purposes. However, the evidence of such silence at the 1964-64 bargaining table is overcome by the overt acts of the parties in the same negotiations, which resulted in the elimination of the bifurcated seniority system of journeymen weavers separated from apprentices and the initial adoption of a layoff clause.

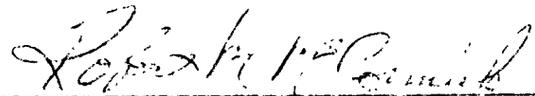
The Examiner believes in the alternative, under a theory that the language of 7.02 is ambiguous when examined in the context of 7.01 and 7.04 as well as the pre-1964 Weaver experience of "pick-list" application, that the full thrust of the evidence manifests the parties' intent to honor the pre-1964 relative priorities of journeymen weavers for purposes of distributing loom work under 7.02, and for the apportionment of other benefits and conditions pursuant to Article VIII and XI.

The Examiner has concluded that an examination of 7.01 and 7.04, together with the remaining provisions of Article VII, considered in the context of the pre-1964 practice, the seniority clauses of the Weaver agreements and the parties' bargaining-table conduct, reveals that Sections 7.01 and 7.04 establish a different standard of seniority application for layoff and recall.

On the basis of the foregoing reasons the Examiner did previously find, in the Findings, Conclusions of Law and Order issued on December 3, 1973, that an employe's seniority for purposes of layoff "begins . . . (with) his employment in the bargaining unit" under 7.01 and that therefore that Respondent did not violate the collective bargaining agreement when it utilized the seniority-list dates on which William Bain and Gordon Timmers were first employed, when it layed off Bain in June of 1973. The complaint filed herein accordingly, has been previously dismissed.

Dated at Madison, Wisconsin this 25th day of March, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Robert M. McCormick, Examiner