

LOCAL UNION NO. 147, UNITED TEXTILE
WORKERS OF AMERICA, ARTHUR STEIN,
TOM WEBER AND OTHERS,

Complainants,

vs.

WIGWAM MILLS, INC.,

Respondent.

Case II
No. 18070 Ce-1546
Decision No. 12838-A

Hopp, Hodson & Powell, Attorneys at Law, by Mr. Eugene F. Hodson,
for Complainants.
Federer, Grote, Rohde, Neuses & Dales, Attorneys at Law, by Mr.
Robert L. Rohde, for Respondent.

Local Union No. 147, United Textile Workers of America, herein referred to as Complainant, and Arthur Stein and Tom Weber, herein collectively referred to as Grievants, having filed a complaint on June 20, 1974 with the Wisconsin Employment Relations Commission wherein they alleged that Wigwam Mills, Inc., herein referred to as Respondent, has committed unfair labor practices within the meaning of the Wisconsin Employment Peace Act; and the Commission having appointed Stanley H. Michelstetter II, 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 Statutes, and, pursuant to notice, a hearing having been held in the matter at Sheboygan, Wisconsin, whereat Complainant and Respondent appeared and consented to the determination of the merits of the instant dispute; and the Examiner having considered the evidence and arguments and being fully advised in the premises makes and files the following Findings of Fact, Conclusions of Law and Order.

1. That Complainant, Local Union No. 147, United Textile Workers of America, is a labor organization with offices at 1104 Wisconsin Avenue, Sheboygan, Wisconsin.

2. That Respondent, Wigwam Mills, Inc., is a corporation with its principal place of business at all relevant times hereto at 1321 North 14th Street, Sheboygan, Wisconsin, and has since moved such to 3402 Crocker Avenue, Sheboygan, Wisconsin, and that at all relevant times hereto Respondent is an employer within the meaning of the Labor Management Relations Act, as amended.

3. That Complainant at all relevant times hereto is, and has been, the exclusive representative for purposes of collective bargaining of certain of the Respondent's employees including Grievants Arthur Stein and Tom Weber and in that regard Complainant and Respondent have been parties to a collective bargaining agreement at all relevant times which provides in relevant part:

"ARTICLE I

RECOGNITION

Section 1.1 - Bargaining Unit. The Company recognizes the Union as the sole collective bargaining agent for all its maintenance and production employees, as defined in the NLRB Certification dated January 31, 1966, located at its 1321 North 14th Street, 1336 Kentucky Avenue and 3402 Crocker Avenue plants in Sheboygan, Wisconsin, as to rate of pay, hours of work and other terms and conditions of employment.

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ARTICLE III

GRIEVANCE AND ARBITRATION

Section 3.1 - Definition. A grievance or dispute for the purpose herein shall be applicable only to difference between the Company and the Union or any employee with respect to the interpretation, application or violation of any of the provisions of this Agreement.

Section 3.2 - Steps. Should any differences arise between the Company and the Union or any employee, an earnest effort shall be made to settle such differences promptly in the following manner:

. . . .

Step 3. If a satisfactory adjustment is not reached at Step 2, the written grievance shall be submitted to the Plant Superintendent or his duly authorized representative. Within three (3) working days of the receipt of the grievance, a meeting shall be arranged with representatives of the Union, which shall include the President of the Union, the Steward involved, the Chief Steward, one of the members of the bargaining committee and an International Representative. The Plant Superintendent shall give his decision within five (5) working days of such meeting and shall endorse the same in writing on the back of the

written grievance and shall return a copy to the Union. A grievance shall be considered resolved in Step 3, unless within five (5) working days after said answer either party requests that the grievance be submitted to an arbitrator. Such request shall be in writing and shall state the issue to be arbitrated.

Section 3.2 - Selection and Payment of Arbitrator. The arbitrator shall be selected by the Wisconsin Employment Relations Commission. Any cost of the arbitrator shall be borne equally by the parties.

Section 3.4 - Arbitrator's Authority. The function and jurisdiction of the arbitrator shall be fixed and limited by this Agreement acting in a judicial and not in a legislative capacity. He shall have no power to alter, add to or delete from the terms of this Agreement, or to change methods or means of manufacturing, or the working rules of the Company which are not inconsistent with this Agreement. The written decision of the Arbitrator, in conformity with his jurisdiction as defined herein, shall be final and binding on both parties during the term of this Agreement and until changed by agreement between the Company and the Union.

Section 3.5 - Matters Subject to Arbitration. The parties understand and agree that in making this contract they have resolved for its term all bargaining issues which were or could have been made subjects of discussion. The arbitral forum here established is intended to resolve disputes between the parties only over the interpretation or application of the matters which are specifically covered in this contract and which are not excluded from arbitration.

Section 3.6 - Matters Excluded From Arbitration. Excluded from arbitration are unadjusted grievances which question the exercise of rights set forth in the Article of this Agreement entitled Management Clause, or which question the use or application of any right over which the Company is given unilateral discretion in this Agreement.

ARTICLE V

MANAGEMENT CLAUSE

The management of the Company and the direction of the working forces, including, but not limited to, the products to be manufactured, the locations of the plants, the schedules of production, the methods, processes and means of manufacturing, the establishing of Company rules of conduct and rules of safety practice, the authorization of Leaves of Absences, the scheduling of hours and shifts, and the right to hire, promote, demote, transfer, discharge or discipline for just cause, and to lay off employees, are the sole and exclusive responsibility of the Company. The functions of management shall also include, but not be limited to, the rights of the Company, in its discretion, in whole or in part, to increase or diminish operations, increase or change productive equipment, establish shop rules, and to sub-contract work. The Company shall retain the above and all other rights and privileges except as specifically modified or abridged by this Agreement.

ARTICLE VI

SENIORITY

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Section 6.6 - Other Temporary Transfers. Transfers of a temporary nature, not exceeding forty-five (45) days, may be made at the Company's discretion and will have no effect on the employee's seniority status. On temporary transfers from a day work job to another day work job, the employee will receive the rate of his present job or the rate of the job to which he is transferred, whichever is higher. On temporary transfers from incentive work to a different job on day work, the employee will receive a rate based on his second week's previous incentive earnings but not to exceed the base rate of his present job, or the day rate of the job to which he is transferred, whichever is higher.

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ARTICLE VII

LEAVES OF ABSENCE

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ARTICLE XII

MISCELLANEOUS

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Section 12.2 - Work Performed by Other Employees. Employees not within the bargaining unit shall not perform work on the jobs covered by this Agreement except in the following types of situations:

- A. When a regular employee is not immediately available;
- B. In the instruction or training of employees, including the training of Foremen, in the use of equipment;
- C. In the performance of experimental work;
- D. Technicians and laboratory employees may perform work covered by this Agreement when it is necessary for experimental or instructional purposes.

Section 12.3 - Joint Cooperation. The Company and the Union agree to cooperate to reduce absenteeism, enforce safety and health measures, prevent waste, improve production and quality, maintain efficiency and enforce this Agreement.

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Section 12.10 - Break Periods. Ten (10) minute break periods are provided in the morning, afternoon and evenings. All employees must observe the break periods scheduled for their department.

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ARTICLE XX

TOTAL AGREEMENT

The parties have negotiated and agreed upon all clauses set forth in this contract; and both parties waive the right to bring up for negotiations or bargaining during the contract term any items, subjects or matters, whether included herein or not, and agree that during the contract term no items shall be open for bargaining, except as provided in Article XXI.

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APPENDIX A - WAGE RATE PROGRESSION SCHEDULE

DAY WORK RATES

	Start	3 mos.	6 mos.	9 mos.	12 mos.
Knitting Department					
Mechanic I	3.77		3.86		3.95
Mechanic II	3.56		3.64		3.71
Mechanic III	3.20	3.28	3.36	3.44	3.51
Mechanic IV	2.76	2.86	2.96	3.06	3.17
Utility Worker	2.41	2.51	2.62		
Knitting Inspector	1.95	2.10	2.26		
Knitting Instructor	2.40				
Knitter	1.90	2.07	2.25"		

4. That at all relevant times Respondent employed Knitters on three six-hour shifts, 6:00 a.m. to 12:00 noon, 12:00 p.m. to 6:00 p.m. and 6:00 p.m. to 12:00 a.m.; that each Knitter is assigned to run a particular group of machines and is responsible for the production therefrom.

5. That at all relevant times Respondent employed Mechanics I, II, III and IV who all repair, adjust and maintain the aforementioned machines; that all such Mechanics are assigned to one of two consecutive ten-hour shifts; and that at all times previous to March 25, 1974 Mechanics did not perform production work.

6. That at all relevant times previous to March 25, 1974 Respondent provided a ten-minute break in each of the Knitters' shifts wherein all knitting machines were stopped; and that all Knitters and Mechanics present stopped work at the same time.

7. That on or before March 22, 1974 the Employer unilaterally determined that it would change the aforementioned break on each shift in that Knitters would be divided into two groups, and each group would take its ten-minute break at a different time, while Mechanics, spare

Mechanics or other spare personnel would tend the knitting machines of those Knitters on break; and that Mechanics and others would receive their ten-minute break at a third time.

8. That on March 22, 1974 Respondent, by its agents, announced to all employees present at 9:30 a.m., 1:00 p.m. and again at 6:00 p.m. that it intended to make the aforementioned change effective Monday, March 25, 1974.

9. That at 5:00 p.m. on the same day Respondent by its Personnel Manager, Thomas V. LaFleur, by telephone informed Complainant's International Vice President, Eugene Herr, that the aforementioned change had been made effective Monday, March 25, 1974; and that Herr responded that he took no position with respect thereto although there might be trouble Monday.

10. That on March 25, 1974 Respondent posted a schedule for the aforementioned change and ordered employees to conform therewith; that at all times thereafter the change has remained in effect; and that Mechanics received their wage rate for such work and were not required to work additional hours.

11. That at various times during the day of March 25, 1974, Complainant's representatives informally objected to the aforementioned change, but did not request that Respondent negotiate with respect thereto.

12. That on March 30, 1974 Grievants filed two grievances, the first alleging that under the instant agreement Respondent must stop "the new break set up in knitting" pending mutual negotiation thereof and the second alleging a violation of Article I, Section 1.1 by the instant change without compensation therefor.

13. That such grievances have been denied at all relevant times, but that after the third-step meeting, April 15, 1974, Respondent met with Complainant's bargaining committee on April 19, 1974 and negotiated to impasse with respect to the aforementioned change.

14. That by letter mailed April 24, 1974, Complainant requested arbitration of such grievances; and that by letter dated May 8, 1974 and all relevant times thereafter Respondent refused to consent to such arbitration.

Upon the basis of the foregoing Findings of Fact, the Examiner

makes and files the following

CONCLUSIONS OF LAW

1. That since Respondent, Wigwam Mills, Inc., is an "employer" within the meaning of the Labor Management Relations Act, as amended, and since the alleged violation of Section 111.06 (1)(d), Wisconsin Statutes, if proved, would also constitute a violation of Section 8 (a)(5), Labor Management Relations Act, as amended, the Examiner refuses to assert the jurisdiction of the Wisconsin Employment Relations Commission to determine the merits of such allegation.

2. That since Respondent assigned its Mechanics, Knitters' duties while such Knitters were on break in accordance with the instant collective bargaining agreement, Respondent has not and is not violating Section 111.06 (1)(f) with respect thereto.

3. That although Respondent refused to arbitrate the grievance of Arthur Stein filed March 30, 1974 and the grievance of Tom Weber et al. filed March 30, 1974 and that such may be a violation of Section 111.06 (1)(f), Wisconsin Statutes, the Examiner finds no remedy appropriate under the circumstances of the instant matter.

On the basis of the foregoing Findings of Fact and Conclusions of Law, the Examiner makes and files the following

ORDER

That the complaint filed by Local Union No. 147, United Textile Workers of America, Arthur Stein, Tom Weber et al. be, and the same hereby is, dismissed.

Dated at Milwaukee, Wisconsin, this 10th day of October, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stanley H. Michelstetter II
Stanley H. Michelstetter II
Examiner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Complainant has alleged that Respondent unilaterally assigned unit Mechanics unit Knitters' work while the Knitters were on break. Respondent has taken the position that the instant agreement gave it unilateral authority to make such change.

Section 111.06 (1)(d)

Complainant's claim is based in part upon Respondent's duty to bargain under Section 111.06 (1)(d). ^{1/} However, both parties stipulated that Respondent meets the jurisdictional standards applied pursuant to the Labor Management Relations Act, as amended, and Article I of the instant agreement recites that the National Labor Relations Board has exercised jurisdiction over Respondent. The matters complained of, if proved, would also constitute a violation of Section 8 (a)5 of the Labor Management Relations Act, as amended. In view of the foregoing, the Examiner refuses to assert the jurisdiction of the Wisconsin Employment Relations Commission to determine such allegation. ^{2/}

Violation of Collective Bargaining Agreement

Complainant's alternative, and primary, contention is that Article I, Recognition, implies that Respondent has a duty to bargain with Respondent either consistent with Section 8 (a)5 of the Labor Management Relations Act, as amended, or sufficient to require notice and good faith bargaining upon demand before the instant change. However, Article I is an ordinary recognition clause, not specifically expressing such duty. In view of the overall provisions of the agreement, including but not limited to Section 3.5, Article XX and Article V, it is clear that Article I was never intended to require that Respondent engage in collective bargaining during the term of the instant agreement over the instant assignments. Since Complainant has not asserted that Respondent otherwise lacks authority to make the instant change and since Article V among other provisions clearly reserves authority to make such to Respondent, the Examiner concludes that Respondent acted properly under the instant agreement.

^{1/} All references are to Wis. Rev. Stat. (1971) unless otherwise noted.

^{2/} River Falls Cooperative Creamery (2311) 2/50.

Refusal to Arbitrate

Respondent admittedly refused to arbitrate the instant grievances. Article III, Sections 3.4, 3.5 and 3.6 narrowly define the jurisdiction of the arbitrator. Respondent appeared before the Examiner and stipulated to the determination of the merits of the instant dispute. Nonetheless, Complainant seeks a determination that Respondent violated Section 111.06 (1)(f), Wisconsin Statutes, when it refused to arbitrate the instant grievance and seeks as the remedy for such an order requiring the status quo that existed with the Mechanics on or before March 22, 1974 and such other relief as the Commission may determine is equitable. In view of the foregoing, the Examiner deems it inappropriate to further remedy Respondent's violation, if any, of Section 111.06 (1)(f), Wisconsin Statutes.

Accordingly, the Examiner concludes that the complaint should be dismissed.

Dated at Milwaukee, Wisconsin, this 10th day of October, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stanley H. Michelstetter II
Stanley H. Michelstetter II
Examiner