

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

UNITED ELECTRICAL, RADIO AND MACHINE :
WORKERS OF AMERICA (UE) LOCAL 1172, :

Complainant, :

vs. :

EVERBRITE ELECTRIC SIGNS, INC., :

Respondent. :

Case X
No. 18380 Ce-1566
Decision No. 13091-A

Appearances:

Podell & Ugent, Attorneys at Law, by Mr. Alvin R. Ugent, for
Complainant.

Bernstein, Wessell & Lewis, Attorneys at Law, by Mr. John H.
Wessell, for Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

United Electrical, Radio and Machine Workers of America (UE) Local 1172, herein referred to as Complainant, having filed a complaint on October 9, 1974 with the Wisconsin Employment Relations Commission wherein it alleged that Everbrite Electric Signs, 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 the Complainant having amended its complaint on October 31, 1974 without objection by Respondent; and, pursuant to notice, a hearing having been scheduled in the matter at Milwaukee, Wisconsin on November 20, 1974, and prior thereto the parties having appeared before the Examiner and having stipulated to the relevant facts and evidence and having waived hearing in the matter; and the Examiner having considered the evidence and arguments and being fully advised in the premises makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Complainant, United Electrical, Radio and Machine Workers of America (UE) Local 1172, is a labor organization with offices at

at 939 South Second Street, Milwaukee, Wisconsin.

2. That Respondent, Everbrite Electric Signs, Inc., is a corporation with its principal offices located at 315 Marion Avenue, South Milwaukee, Wisconsin; and that 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 Ruth Przbelski 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 XXII

GRIEVANCE PROCEDURE

. . .

Section 3. When an employee has a dispute or difference with the company and wishes to be represented by the union, the matter shall be handled in the following manner: (designated time limits can be extended by mutual consent)

Step 1. Between the employee's department steward and the department foreman. The employee may also be present. If no satisfactory settlement is reached within twenty-four (24) hours, the grievance shall be reduced to writing and referred to,

Step 2. Department steward and chief steward, on the one hand, and the department foreman and general foreman on the other. If no satisfactory settlement is reached within forty-eight (48) hours, the matter shall be referred to,

Step 3. The union representative and the grievance committee on one hand and the company representative on the other. If no satisfactory settlement is reached within seventy-two (72) hours, the union will notify the company of its decision to either (a) arbitrate the grievance or (b) withdraw the grievance without prejudice or (c) accept answer to grievance without establishing a precedent.

Section 4. Within five (5) work days after the decision in Step 3, either party may request the Wisconsin Employment Relations Commission to designate one of its members as an arbitrator. In the event that WERC is not able to furnish one of its members as such arbitrator, said commission shall be requested to submit the names of five (5) persons as qualified arbitrator and the parties shall strike two (2) names and the remaining name shall become the arbitrator. The party requesting arbitration shall strike first on such list. The name remaining is the selected arbitrator and he shall be notified of his selection with request to set a time for the hearing.

Section 5. The function of the arbitrator shall be to interpret and apply this agreement. He shall have no power to add to, modify or change it. Issues which are not within the arbitrator's jurisdiction shall be returned by him without decision or recommendation.

Section 6. Decision of the arbitrator shall be final and binding upon the parties and employees involved provided that the decision is within the jurisdiction of the arbitrator. The expense of the arbitrator shall be borne equally between the company and the union. However, if the company has initiated the request for arbitration, the company shall bear the full cost of the arbitration."

4. That on or about August 1, 1974 Ruth Przbelski filed a grievance, herein referred to as the grievance, alleging that Respondent had violated the aforementioned collective bargaining agreement and seeking a remedy for such violation.

5. That the grievance was processed through all steps of the grievance procedure of the aforementioned collective bargaining agreement without resolution thereof.

6. That Complainant on or about August 7, 1974 notified Respondent of its decision to submit the grievance to arbitration pursuant to the aforementioned collective bargaining agreement.

7. That Complainant by letter dated August 12, 1974 addressed to the Wisconsin Employment Relations Commission, a copy of which was mailed to Respondent's Attorney herein, requested that the Wisconsin Employment Relations Commission designate one of its members as an arbitrator to determine the grievance; and that the aforementioned letter was received by the Wisconsin Employment Relations Commission on or about August 13, 1974.

8. That Respondent's Attorney herein by letter mailed August 13, 1974 to, and received August 14, 1974 by, the Wisconsin Employment Relations Commission, stated:

"I acknowledge receipt of a copy of a letter addressed to your office concerning an appointment on an arbitration in the above entitled matter.

Please be advised that I will object to having an employee of WERC being appointed as an arbitrator. The contract provides also that your office can submit the names of 5 persons and the parties then will select one as the ultimate arbitrator.

I have found that your staff people are entirely too busy to act as arbitrators. When I have a hearing held in April of 1974 and the decision is not rendered until August 6, 1974 it is obvious that your staff people are

not equipped to render services as arbitrators. Would you kindly submit the names of 5 persons not connected with your staff so that the parties can select the arbitrator."

9. That the Wisconsin Employment Relations Commission, by letter dated August 16, 1974, addressed to Respondent and also mailed to Complainant's Attorney, responded:

"Enclosed please find copies of letters received by the Commission in reference to your requests in the captioned matter.

The Commission's policy, as you know, is to appoint Commissioners or staff members as arbitrators only in the event the parties agree to such appointments. Therefore, we will take no further action in the matter unless, of course, there is a change in the employer's position."

10. That at no time has the Wisconsin Employment Relations Commission appointed an arbitrator to determine the dispute raised by the grievance.

11. That in a previous grievance arbitration proceeding between Complainant and Respondent, the Wisconsin Employment Relations Commission appointed a member of its staff to act as arbitrator to determine such dispute on March 13, 1974; that such arbitrator completed hearing therein on April 4, 1974; that the last brief therein was filed May 3, 1974; and that such arbitrator issued his decision therein on August 6, 1974, which decision was received by Respondent August 8, 1974.

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

CONCLUSION OF LAW

That Respondent, by having refused to agree to the appointment of a member of the staff of the Wisconsin Employment Relations Commission as an arbitrator to determine the grievance of Ruth Przbelski, has violated, and is violating, the aforementioned collective bargaining agreement existing between it and Complainant United Electrical Workers of America (UEA) Local 1172 and, in that regard, Respondent has committed, and is committing, an unfair labor practice within the meaning

ORDER

IT IS ORDERED that Everbrite Electric Signs, Inc., its officers and agents, shall immediately:

1. Cease and desist from refusing to agree to the appointment of a member of the staff of the Wisconsin Employment Relations Commission as an arbitrator to determine the issues arising under the grievance filed by Ruth Przbelski or otherwise refusing to submit the grievance filed by Ruth Przbelski, and the 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 Complainant with respect to the selection of a member of the staff of the Wisconsin Employment Relations Commission to act as arbitrator with respect to the Ruth Przbelski grievance and the arbitration of all issues concerning same.
 - b. Notify the Complainant that it will proceed to arbitration on said grievance, and all issues concerning same.
 - c. Notify the Wisconsin Employment Relations Commission that it will agree to the appointment of a member of the staff of the Wisconsin Employment Relations Commission as an arbitrator to determine the aforementioned grievance and all issues concerning same, and otherwise participate with the Complainant in the selection of an arbitrator to determine the dispute concerning said grievance, and all issues concerning same.
 - d. Participate in the arbitration proceeding, before the arbitrator so selected, on the aforementioned grievance, and all issues concerning same.

- e. Notify the Wisconsin Employment Relations Commission in writing within twenty (20) days from the receipt of a copy of this Order as to what action it has taken to comply herewith.

Dated at Milwaukee, Wisconsin, this 26th day of November, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Stanley H. Michelstetter II

Stanley H. Michelstetter II
Examiner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Prior to hearing the parties agreed in the presence of the Examiner that the allegations of the amended complaint be determined on the basis of those factual allegations admitted in Respondent's answer and certain other agreed-upon evidence. The parties thereupon waived hearing in the instant proceedings. The above Findings of Fact reflect this undisputed factual basis for determination.

Respondent's sole contention in this matter is that the Wisconsin Employment Relations Commission, herein Commission, is "not able to furnish one" of the members of its staff to act as arbitrator within the meaning of Art. XXII, Sec. 4 of the parties' agreement and that, therefore, pursuant to the same provision, the arbitration should be conducted by a person selected from a panel of five arbitrators designated by the Commission. Respondent has argued that the Commission is "not able to furnish" a member of its staff because Respondent believes that a member of the staff in a past arbitration (Findings of Fact Number 11) issued an arbitration award long after it should have been issued. Respondent's basis for further asserting that this is likely to occur with all staff members acting as arbitrators is that they all perform other functions pursuant to Subchapters I, IV and V of Ch. 111. ^{1/}

Even assuming the correctness of Respondent's generalization from its interpretation of the isolated and self-serving statistic it selected, its position must fail. Article XXII, Sec. 4 requires that the Examiner decide whether the Commission is "able to furnish" one of its staff members. The word "furnish" must be given its common meaning of "provide" or "supply". ^{2/} However, Respondent has not denied that the Commission is not willing to provide a staff member who will act as arbitrator. Instead, Respondent has asserted that the provided arbitrator might not perform to its unilateral expectations because of his other duties.

The instant agreement was effective November 2, 1973. Since the parties were aware of Sec. 111.10 and the Commission's practice of

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

^{2/} The American College Dictionary, Random House, Inc. (New York, 1957), p. 493.

appointing its staff as arbitrators pursuant thereto, Respondent must have been aware of the other duties that those staff members perform pursuant to Ch. 111, Subchapters I, IV and V. If so, Respondent must have agreed to the use of the Commission's staff in spite of those other duties. The Examiner finds no reason to permit Respondent to unilaterally rescind its agreement on the method of selection of an arbitrator.

Dated at Milwaukee, Wisconsin, this 26th day of November, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Stanley H. Michelstetter II

Stanley H. Michelstetter II
Examiner