STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LOCAL 1263, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,		
Complainant,	:	Case XXX No. 18582 Ce-1574
vs.	:	Decision No. 13214-A
UOP NORPLEX DIVISION OF THE UNIVERSAL OIL PRODUCTS COMPANY,		
Respondent.		

Appearances:
Mr. Donald Yolton, International Representative, for the Complainant-Union.
Johns, Flaherty & Gillette, S.C., Attorneys at Law, by Mr. Gerard O'Flaherty, for Respondent-Company.

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 Robert M. McCormick, a member of the Commission's staff, to act as Examiner and 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 hearing on said complaint having been held at LaCrosse, Wisconsin, on January 9, 1975 before the Examiner; and the parties having filed briefs and reply briefs by April 10, 1975; and the Examiner having considered the evidence, arguments and briefs 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 Local 1263, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, hereinafter referred to as the Union, is a labor organization having its principal office at 624 Gillette Street, LaCrosse, Wisconsin and represents for purposes of collective bargaining the production and maintenance employes of UOP Norplex Division of the Universal Oil Products Company.

2. That UOP Norplex Division of the Universal Oil Products Company, hereinafter referred to as the Company, is a corporation having manufacturing facilities located in LaCrosse, Wisconsin.

3. That at all times material herein the Union and the Company have been parties to a collective bargaining agreement which contains among its provisions the following material herein:

"ARTICLE V

GRIEVANCE PROCEDURE

Section 5.1 -- Grievances

When differences arise between the Company and an Employee concerning the interpretation and application of the terms of this Agreement, earnest efforts shall be made by the Company and the Union to settle such differences promptly and in the following manner.

Section 5.2 -- Procedure

5.2 - Step One -- No grievance shall be in existence until an Employee's request to his Foreman on a matter concerning the interpretation and application of the terms of this Agreement has been denied or ignored. An Employee who has such a difference must first discuss the matter with his respective Foreman within one (1) working day of the incident from which the difference arose.

. . .

5.22 - Step Two -- If the answer given by the Foreman in Step One is not satisfactory, the grievance shall be reduced to writing and submitted to the Chief Shop Steward for further grieving. It is understood and agreed the written grievance shall state all facts pertinent to the incident, namely: identification of all clauses of this Agreement which have allegedly been violated; how they were violated;

. . .

Section 5.3 -- Arbitration

. . .

5.32 -- The arbitrator shall render a decision in writing to both parties as promptly as possible after the close of the hearing. There shall be no appeal from the arbitrator's decision which shall be final and binding upon the Company, the Union, and the Employees.

. . .

5.33 -- The function of the arbitrator shall be limited to determining controversies involving the interpretation, application or alleged violation of this Agreement and he shall have no jurisdiction or power to add to, subtract from, or modify any of the terms of this Agreement or any other terms made supplemental hereto, or to arbitrate any matter not specifically provided for by this Agreement.

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ARTICLE VII

OVERTIME

Section 7.1 -- Overtime

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It is understood and agreed, acceptance of overtime assignments is not mandatory except as is provided for in Section 7.63 of this Article VII.

. . .

Section 7.6 -- Overtime Scheduling

7.61 -- It is the intent of the Company to give as much notice of overtime work as possible. Saturday and Sunday overtime will be offered on Thursday or before. It is understood and agreed Employees will accept or reject the assignment when it is offered. Both parties recognize that the nature of the business involves certain emergencies for which little or no advance notice is possible. It is understood and agreed that when Saturday or Sunday overtime is not offered on Thursday or before, any Employee who then refuses will not have that overtime charged to his overtime record as provided for in Section 7.73 of this Article VII.

. . .

7.63 -- In instances when the Company has been unable to obtain a sufficient number of Employees capable of performing the work from within the department on the shift on which the Company desires the overtime work to be performed, the Company may require a sufficient number of Employees from within the same department on the shift who are immediately capable of performing such overtime work in inverse seniority order to report for and perform such work.

. . .

ARTICLE XV

GENERAL

. . .

Section 15.52 -- An Employee will not be scheduled to work alone on any job which is hazardous or dangerous, as defined by the Wisconsin Department of Labor, Industry and Human Relations.

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ARTICLE XVI

STRIKES, STOPPAGES, AND LOCKOUTS

. . .

Section 16.1

The Union will not condone (which when used in this Article shall also mean authorize, ratify, cause, encourage, permit or support in any way), nor will any employee employed within the Bargaining Unit take part in, any work stoppage (which when used in this Article shall mean strike, slowdown, sitdown, stayin, walkout, picketing, and any other type of curtailment or work, restriction or production, or interference with the operations of the Company).

. . .

Section 16.3

Any employee who instigates, participates in, or gives leadership to such work stoppage will be subject to discipline, including

discharge; and any such disciplinary measures, including discharge, shall not be subject to the grievance procedure and arbitration.

. . .

ARTICLE XVII

RULES AND REGULATIONS

17.1 -- The Company has the right to discipline and discharge for just cause, subject to the grievance procedure."

4. That as of November 7, 1974, the Company employed four (4) bargaining unit personnel in its maintenance department third shift, identified in inverse order of seniority as Matthew Greeno, Ray Dickson, Gordon Bateman, and Leon Fanta, hereinafter the grievants; that on Thursday evening, November 7, 1974 their shift foreman, Robert Cerpinsky contacted the grievants in inverse seniority-rank for the purpose of securing one (1) maintenance mechanic to work four (4) hours overtime on Saturday, November 9, to prepare and cool down the hydrotherm tank in advance of installation and welding work to be performed by an outside contractor; that Cerpinsky made an effort to secure a mechanic for voluntary overtime within the meaning of the labor agreement; that all four (4) employes declined to accept the voluntary overtime assignment to the hydrotherm tank with at least one employe, Greeno, advising Cerpinsky that an assignment of one (1) man to the job was unsafe.

5. That later on November 7, in a meeting attended by Greeno, Bateman and Harold Craig, the maintenance superintendent, Bateman advised Craig that the work was unsafe when only one (1) man was assigned and further represented to Craig that he was spokesman for the other third-shift mechanics and that they would not work such overtime on the hydrotherm unless two (2) unit employes were assigned; that Bateman further advised Craig that a one-man assignment to the hydrotherm job would constitute a violation of Section 15.52 of the labor agreement as a "schedule to work alone on . . .[a] job which is hazardous or dangerous."; that Craig advised said two (2) grievants that a foreman would be present at times when the mechanic would be working on the hydrotherm which constituted management compliance with Section 15.52; that Bateman restated his contention that two (2) unit mechanics were required for said assignment; that in the course of the week between November 7 and 14, Bateman did not contact any higher Union official to ascertain the accepted construction of Section 15.52.

6. That foreman Cerpinsky and supervision made no further contact with the grievants or with any other maintenance employes on November 7 to secure a mandatory overtime assignment for November 9, and thereafter the Company postponed the planned welding and installation work for said date.

7. That in cases where the Company required employes to perform overtime production or maintenance work in the past under the existing labor agreement, at levels less than on a department-wide basis, Company foremen would contact employes on a shift basis, in inverse seniority order, to secure voluntary overtime commitments in sufficient numbers for a job; that the foreman would record employe declinations and move up the seniority list of shift employes; that there is evidence in the record relating to contract administration of Sections 7.61 and 7.63, which indicates that in cases where Company supervisors were unable to secure "sufficient number of employes . . . to perform the (overtime) work", foremen did occasionally canvass shift employes beyond the number of employes required for a job in inverse order of seniority, to secure mandatory overtime assignments.

8. That on November 14, pursuant to instructions from Craig, Cerpinsky again contacted the four (4) grievants on the third shift, in inverse seniority order to secure a voluntary overtime commitment from one (1) mechanic to work four (4) hours on November 16 to prepare the hydrotherm for the welding installation job of the outside contractor; that the grievants all declined in the course of Cerpinsky's first canvass; that the foreman then canvassed the grievants a second time to secure one mechanic for a mandatory overtime assignment; that each of the grievants declined the second canvass of overtime made by Cerpinsky and advised said foreman that the hydrotherm job for one man was unsafe; that Batemen wrote on the canvass-list that a one-man assignment was violative of 15.52; that Cerpinsky in the course of his second canvass never personally advised any of the grievants that either of them was required to perform said assignment; that the grievants all understood that Cerpinsky made his second canvass on November 14 in order to secure a mechanic for mandatory overtime; that Bateman's opinion that 15.52 required a two (2) man assignment to hydrotherm maintenance was a matter of common knowledge with the grievants.

9. That Craig learned in the early morning of November 15 that the third-shift maintenance employes had declined mandatory overtime and requested the second-shift foreman, Murphy, to secure a maintenance employe from second shift; that Murphy contacted mechanic, Jim Wittenberg, who volunteered to perform the November 16th overtime on the hydrotherm; that Wittenberg later advised supervision on Friday, November 15, that he did not desire to work the overtime; that supervision thereafter canvassed the second shift maintenance personnel, and all declined to work the overtime; that Wittenberg advised Craig on November 15, that he was concerned that if he accepted the hydrotherm assignment, he might have problems working in harmony with Bateman, which concern Wittenberg explained, caused him not to perform the work; that Craig met with Chief Steward Anderson and John Holt, Union President, on the afternoon of November 15, in the course of which Craig advised that the hydrotherm job was safe and further requested Anderson to so inform Wittenberg and secure a response from Wittenberg and convey same to Craig as to whether he would perform the work; that as of early Friday evening, Craig was advised that Wittenberg's response was negative.

10. That on said Friday evening, after having been advised by Craig and the plant manager of the void in the overtime assignment, David Barkey, Director of Industrial Relations, contacted Holt and subsequently toured the job site with Holt and Wittenberg; that Wittenberg advised Holt and Barkey that he was convinced that the one-man assignment on the hydrotherm was safe, and thereafter performed the four (4) hours maintenance work on November 16, 1974.

11. That prior to Barkey's conference and tour with Holt, management representatives, Craig, Don Poe, and Barkey did conclude that third and second shift maintenance employes had employed concerted efforts, through overtime refusals, to force the Company to use two (2) men on the hydrotherm-overtime assignment; that neither Bateman nor any other Union official ordered or coerced Wittenberg or any of the grievants, to refuse overtime on the hydrotherm.

12. That shortly after November 16, Bateman filed a grievance over the Company's assignment of one man (Wittenberg) to cool and drain the hydrotherm, alleging therein that the assignment was violative of the safety provision, Section 15.52 of the contract; that the Union dropped the grievance in the first step of the grievance procedure; that on or near November 20, the Union leadership advised Bateman that the Union agreed with the Company that under 15.52 an employe was considered to be "not scheduled to work alone" if a guard or foreman were present on the shift.

13. That on November 20, 1974, Craig, on behalf of the Company, discharged Bateman and imposed disciplinary one-week suspensions on the remaining grievants on the basis that all had violated Article 16.3 for instigating and/or participating in a work stoppage as defined in 16.1 of the contract; that grievants and the Union filed grievances challenging the Company's discipline as violative of Section 17.1 as "discipline or discharge not for just cause" under the labor agreement; that the Company declined to process or recognize grievant's claims as grievnaces under the labor agreement, citing that "under the provisions of Article 16.3, disciplinary action of this type is not subject to the grievance procedure."

14. That the instant record reveals a conflict in both the evidence and in the positions of the parties as to whether the Company may effectuate any type of discipline under the labor agreement because of employe declinations of Section 7.63 - overtime, without first restricting its mandatory overtime canvass to only the least senior employe(s) on the shift in the numbers required to perform the work; and upon making the second canvass, whether the Company may only order a sufficient number of less senior employes to work the mandatory overtime; that the instant record further indicates a conflict in the evidence and in the positions of the parties as to whether the grievants acted in concert within the meaning of Article XVI, supra, for purposes of constraining the Company to assign two (2) employes to work overtime on the hydrotherm tank.

15. That the Company by its communicated answer to the aforesaid grievance, namely, by its position not to process the filed grievances of the grievants as a grievance within the meaning of Article V of the labor agreement on the basis of its asserted Article XVI defense, has thereby constructively declined to proceed to arbitration of said grievances under the procedures provided in Sections 5.24 and 5.3 of the labor agreement; that the Company refuses and continues to refuse to proceed to arbitration of the aforementioned grievances filed on November 22, 1974, in accordance with the provisions of Article V and Article XVII, supra, alleging that such procedures are not applicable to employe conduct covered by Article XVI of the labor agreement.

16. That the dispute between the parties as to whether the grievances filed on November 22, 1974, involving the challenges to the Company's discharge of Bateman and discipline of Dickson, Greeno and Fanta, as to whether such grievances should be determined by an arbitrator pursuant to Articles V and XVII, or whether such grievances are covered solely by Article XVI constitutes a dispute between the parties concerning the interpretation, application or alleged violation of the terms of the existing collective bargaining agreement.

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

CONCLUSIONS OF LAW

1. That the dispute between UOP Norplex Division of the Universal Oil Products Company and Local 1263, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, concerning the grievances filed by the Union and Gordon Bateman, Matthew Greeno, Ray Dickson and Leon Fanta on November 22, 1974, which challenged the Company's discharge of Bateman and discipline of the remaining grievants, arises out of a claim which on its face is covered by the terms of the parties' existing collective bargaining agreement.

2. That UOP Norplex Division of the Universal Oil Products Company, by its refusal to proceed to arbitration in the matter of the

grievances filed by Complainant-Union on November 22, 1974, which challenged the discharge and/or discipline of grievants, Bateman, Greeno, Dickson and Fanta, as not being for "just cause" under Article XVII of the collective bargaining agreement, has violated and is violating the terms of the collective bargaining agreement existing between it and Local 1263, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and by such refusal 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 Examiner makes the following

ORDER

IT IS ORDERED that UOP Norplex Division of the Universal Oil Products Company, its officers and agents, shall immediately:

1. Cease and desist from refusing to submit the grievances filed on November 22, 1974, concerning the Union's challenge to the Company's discharge of Gordon Bateman, and disciplinary layoffs of Matthew Greeno, Ray Dickson and Leon Fanta, 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 provision of the collective bargaining agreement existing between it and Local 1263, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, with respect to the grievances filed on November 22, 1974, challenging its discharge of Gordon Bateman and disciplinary layoffs of Matthew Greeno, Ray Dickson and Leon Fanta.

(b) Notify the Local 1263, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America that it will proceed to such arbitration on said grievances and the issues concerning same.

(c) Participate with Local 1263, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America in the selection of the arbitrator to hear said grievances and the issues concerning same, according to the selection process set forth in Article V (Grievance Procedure) of the parties' 1973-1976 collective bargaining agreement.

(d) Participate in the arbitration proceeding before the arbitrator so selected, on the grievances, and the 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 steps it has taken to comply herewith.

Dated at Madison, Wisconsin this 18th day of November, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Robert M. McCormick
Robert M. McCormick, Examiner

UOP NORPLEX DIVISION OF THE UNIVERSAL OIL PRODUCTS COMPANY, XXX, Decision No. 13214-A

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

PLEADINGS, REMEDY AND POSITIONS:

The Union alleged inter alia in its complaint that its existing collective bargaining agreement contains a grievance arbitration provision; that the Company discharged one employe and gave a one-week disciplinary layoff to three employes; that the Company refused to process the grievances filed by the four (4) employes and advised the Union that it would not agree to arbitrate said grievances; that the Company had violated the contract by such conduct thereby committing an unfair labor practice; and in its prayer for relief, the Union asks that the Commission make the employes whole (ostensibly a remedy addressed to the merits of the discipline-discharge grievances).

The Company, in its answer, denies that it violated any provision of the labor agreement or that it engaged in an unfair labor practice; and for an affirmative defense alleges that said four (4) employes were disciplined for their having violated Article XVI of the contract; and that Article XVI, by its terms, provides that discipline or discharge, made pursuant to its terms, is not subject to the grievance or arbitration provisions of the contract.

At outset of hearing, the Union amended its complaint to seek an alternate remedy, namely, that the Examiner direct the Company to arbitrate the grievances of the four (4) grievants as to whether the discharge and disciplinary layoffs were made for just cause under the agreement. However, the Union restated at hearing and in briefs that the Examiner should determine the propriety of the discipline given, on the merits, and make whole the grievants.

The Company's position set forth in pleadings, stated at hearing and argued in brief, contends that the grievants' conduct and the Company's disciplinary action is outside of the coverage of the arbitration provision.

The Examiner will not dispose of the contested discipline and discharge on the merits, but shall only determine from the evidence and the parties' positions, including the Company's defense under Article XVI, as to whether the Company committed an unfair labor practice by refusing to arbitrate the grievances which challenge the Company's discharge and discipline of the four (4) grievants. If the Union proves that such was the case, the Examiner may only order the Company to proceed to arbitration by force of the Commission's decisions. The controlling case law, in the event the Union prevails on the issue joined herein, prevents the Examiner from determining that the Company's discipline lacked just cause, and prevents imposition of make-whole remedy in view of the state of the record here. The record discloses no evidence of the Company having deliberately ignored the arbitration procedure or having rejected the grievance-arbitration process to the point where it would not effectuate the policies of the Act to order the matter to arbitration. 1/ Therefore the Examiner would not determine whether the aforementioned discharge and disciplinary layoffs were made for just cause.

1/ See Levi Mews d/b/a Mews Redi Mix Corp. (WERC #6683, 3/64), aff'd Milw. Co. Cir. Ct., 5/64; Robert Harrison d/b/a Bob Harrison Trucking, (WERC #9051-A & B, 4/70).

The Union argues that the same facts were presented to the Unemployment Compensation - Appeal Tribunal as to the validity of the discharge and disciplinary layoffs; that said examiner found that no work stoppage occurred from the transactions surrounding Bateman's conduct; and that he was not discharged for misconduct connected with his employment under Section 108.04 (5) of the Wisconsin Statutes; and that such determination should control in this complaint proceeding.

The Union contends that under 7.63 of the contract the Company could only directly order one employe, the youngest in seniority on the third shift to work the hydrotherm overtime; that only one employe was needed and the foreman failed to tell Matt Greeno, the junior maintenance mechanic on the shift, that he had to work the mandatory overtime.

The Union points out that there was no work stoppage and that the required work was done at the scheduled time and by a skilled employe who had previously performed the work in a satisfactory manner. The Union urges that the Company cannot contractually invoke Article XVI so as to put an entire shift or department under threat of discipline when its supervision failed to properly apply the mandatory overtime provision of the agreement; and then frustrate the "just cause" provisions of Article XVII by creating a fictional work stoppage or interruption of services. The Union requests that the grievants be reinstated and made whole, or at least, that the Company be ordered to arbitrate the question as to whether the imposed discipline and discharge were for just cause under Article XVII.

The Company contends that the testimony of the witnesses at the hearing clearly establish that the deliberate and continuous work refusal by the third shift maintenance personnel falls within the definition of "work stoppage" set forth in 16.1. The facts indicate that on November 7 Bateman signaled his strident opposition to a one man assignment to the hydrotherm through his outbursts to the foremen; Batemen told supervision that 15.52 required two (2) men on a so called hazardous job; the third shift was made aware of Bateman'a position; Bateman stated he was spokesman for third shift; Greeno and Bateman were told by Craig that the job was safe and that the presence of a foreman negated Bateman's contention that 15.52 applied; the Company points out that all the third shift mechanics turned down the November 9th overtime.

The Company argues that in the following week, all of the grievants again refused the overtime even on the mandatory canvass; Bateman injected the contrived 15.52 saftey excuse without having checked with Union officials as to the correct application of 15.52; that Wittenberg first agreed to work the overtime, than deferred to talk to Bateman, and then along with the entire second shift, declined to work the job.

The Company urges that the language of Article XVI is broad and that 16.3 is clear and unambiguous. The grievants caused the Company to cancel a vitally needed replacement by an outside contractor, and attempted by mass declinations of overtime to force the Company to utilize two (2) Union men contrary to the accepted construction of 15.52. It contends that the Union does not dispute the fact that the grievants were not disciplined for conduct other than the work refusal, which is clearly covered by 16.3.

The Company contends that a finding against the application of Article XVI is required before an arbitration order can issue. Before the Examiner may conclude that the dispute here on its face is covered by the contract, and subject to arbitration, there must be a finding that the discipline imposed by the Company was not done pursuant to Article XVI. However, in fact, the contract specifically exempts

Article XVI disputes from grievance-arbitration and therefore, given the state of the record, the Company urges that the Union has failed to establish by a clear and satisfactory preponderance of the evidence that the Company's discipline was not within the reasonable scope of Article XVI of the contract. It therefore requests that the instant complaint be dismissed.

ULTIMATE FACTS, ANALYSIS AND CONCLUSIONS:

The Company does not deny that it refused to proceed to arbitration. It asserts that the evidence is unrefutable and the language of the contract, Article XVI, is clear, namely, that the discipline was effectuated for proven employe conduct in concert covered by said "work stoppage" provision and that 16.3 removes the challenges to the Company's attending discipline from the grievance-arbitration procedures.

The Union asserts that the "linch pin" to the chain of employe declinations of overtime and the subsequent Company discipline under the guise of a 16.3 work stoppage, is the Company's failure to follow the clear and unambiguous language of 7.63, namely, that only the youngest man, Greeno, should have been directed by the foreman to work the mandatory overtime on November 16.

The Company, in brief, urges that "there is no claim made by the Union either in its grievances, complaint or testimony at hearing, that the discipline was given to the employes for any conduct other than the work refusal".

The Examiner concludes that the Company's latter contention is not borne out by the record. The grievance of Bateman (Complainant's Exhibit #2) indicates that the Company violated 17.1 of Article 17, which provides: "The Company has the right to discipline and discharge for just cause, subject to the grievance procedure." The record discloses that in both grievances, it is stated by the Union that the (grievants) did not violate Article 16 . . ." and that ". . . the Company violated Article 17." There is some evidence that Bateman communicated his opinion to at least the grievants with regard to this belief (later proved mistaken) that the saftey provision 15.52 required the assignment of two (2) unit mechanics to the cooling of the hydrotherm. However, there certainly is other credible evidence that neither Bateman nor any other Union official ordered the grievants, or second-shift personnel, to deline a one-man overtime assignment to the hydrotherm. The Examiner further concludes that the evidence in the record, including the language of 7.63 covering mandatory overtime, may support a plausible inference that the grievants declined the foreman's solicitations of overtime on November 14, and did not work it, because management did not direct the youngest shift employe to perform the November 16th assignment as mandatory overtime under 7.63. Neither does the evidence necessarily compel the inference that Bateman, or grievants in concert, caused Wittenberg or other second shift employes, to vacillate on, or decline, the assignment in question.

The question here for the Examiner, in deciding whether the Company has violated the collective bargaining agreement (and if so, also Section 111.06(1)(f)) by refusing to arbitrate the grievances in question, is whether the Union is making a claim which, on its face, is governed by the collective bargaining agreement. 2/

2/ Seaman-Andwall Corp., (WERC #5910, 1/62); Rodman Industries Inc., (Brown Co. Cir. Ct., 2/72, aff'd WERC Decision No. 9650-B) Grunau Company, Inc., (WERC #10937-B, 11/73).

The Wisconsin Employment Relations Commission in Seaman-Andwall, supra, adopted what has come to be the "black-letter law" of the "trilogy" cases 3/ wherein the U.S. Supreme Court stated that grievance-arbitration provisions in labor agreements are to be given their fullest meaning and that the function of the Courts (and other 301 forums) in cases where one party seeks to enforce an arbitration provision in an agreement is to ascertain whether the party seeking arbitration is making a claim, which on its face, is governed by the labor agreement. This Commission has consistently applied said policy in numerous cases since its "bell-cow" case. 4/

The grievance-arbitration provision herein, Article V, provides in material part:

"Section 5.1 - Grievances

When differences arise between the Company and an employee concerning the interpretation and application of the terms of this Agreement . . . efforts shall be made . . . to settle such differences promptly.

. . .

Section 5.33 - Arbitration

. . .

The function of the arbitrator shall be limited to determining controversies involving the interpretation, application or alleged violation of this Agreement."

The evidence here in the record is in conflict as to whether the grievants' conduct, and the Company's attending conduct in reaction thereto, is covered by the overtime provision; Section 7.63 and the "just cause" provision in Article XVII; or whether such total conduct is covered by Sections 16.1 and 16.3, applicable to concerted efforts of employes which "interfere with operations or cause curtailment of work."

Given the state of the record here, where both the evidence with respect to the grievants' and Company's conduct and the positions of the parties as to which contractual standards should apply, are in conflict, the Examiner may not adopt one plausible construction of the contractual terms over that of another. 5/

The Examiner concludes that the Complainant-Union's grievances filed on November 22, 1974 involving its challenge to the Company's discipline levied against grievants Bateman, Greeno, Dickson and Fanta on November 20, 1974 represent "claims which on their face are governed by the collective bargaining agreement". Such grievances therefore are arbitrable under the terms of the labor agreement.

In arriving at my decision that the Union has prevailed by a clear and satisfactory preponderance of the evidence on the question of "substantive arbitrability of the grievances in question, the Examiner

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3/ Steelworkers v. American Mfg. Co., 363 U.S. 564 (1960); Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960).

4/ See cases in Sec. 1573.1.3 in Digest of Decisions, WERC.

5/ Ibid - See Rodman Industries v. WERC, fn. #2; United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 4 L. Ed 2d 1409, 805 Ct. 1347 (1960).

has given no weight to the decision of the Unemployment Compensation Appeal Tribunal attached to the Union's brief. Such decision deals with a different statutory standard in determining "employe misconduct" under Section 108.04(5), than does this Commission in administering the Peace Act. 6/

Dated at Madison, Wisconsin this 18th day of November, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Robert M. McCormick
Robert M. McCormick, Examiner

6/ Briggs & Stratton Corp., (WERC #9530-A, B, 12/71) -- where Commission held that UC determination as to whether dischargee was entitled to UC benefits not admissable in a 111.06(1)(f) complaint proceeding.