STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

AIW-AFL-CIO, LOCAL UNION NO. 465, Complainant, vs. HANDCRAFT COMPANY, INC., Respondent.	Case III No. 19010 Ce-1602 Decision No. 13510-A

Appearances:
Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Peter D. Goldberg, appearing on behalf of the Complainant.
Mr. Maxwell H. Manzer, Attorney at Law, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Allied Industrial Workers, AFL-CIO, Local Union No. 465, having filed a complaint with the Wisconsin Employment Relations Commission, hereinafter the Commission, alleging that Handcraft Company, Inc. has committed a prohibited practice within the meaning of Section 111.06(1)(f) of the Wisconsin Employment Peace Act (WEPA); and the Commission having appointed Sherwood Malamud, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Orders, pursuant to Section 111.07(5) of WEPA; and hearing on said complaint having been held at Green Lake, Wisconsin, on May 9, 1975 and the period for filing briefs having expired on September 5, 1975; and the Examiner having considered the evidence and arguments of the parties, 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 Allied Industrial Workers, AFL-CIO, Local Union No. 465, hereinafter Complainant, is a labor organization, and was certified as the exclusive bargaining representative of all production and maintenance employes of Respondent located at its Princeton, Wisconsin plant by the National Labor Relations Board on October 22, 1965; and that Complainant maintains its offices at 3815 North Teutonia Avenue, Milwaukee, Wisconsin.

2. That Handcraft Company, Inc., hereinafter Respondent, is an employer "in commerce" and maintains its offices at its plant in Princeton Wisconsin.

3. That at all times material herein, Complainant and Respondent have been parties to a collective bargaining agreement effective from June 4, 1973 through June 1, 1976 covering the wages, hours and conditions

"ARTICLE II - GRIEVANCE PROCEDURE

Section 2.01. Grievance Procedure. In the event of any controversy concerning the meaning or application of any provision of this Agreement, there shall be no suspension of work, but such controversy shall be treated as a grievance and shall be settled, if possible, by the employees and the Company in the following manner:

(a) A grievance must specify the contract provisions involved and also specify the particular action requested on behalf of the grievant.

When an employee grievance exists, an employee or a group of employees affected, may verbally discuss the grievance with his or their foreman either with or without a steward present. If the grievance is not settled in the course of such discussion, it may be reduced to writing with one (1) copy each for the Company, the Union, and the grievant, in which event the procedure will be as follows:

. . ."

and that said agreement contains further the following provisions material hereto:

"Section 3.12. Incentive Standards. Notwithstanding any incentive system used by the Company in establishing or maintaining an incentive standard, said incentive standard shall be established so that an average employee working at an average day work pace under normal conditions will produce at a rate of 100% of standard which will yield him incentive base rate, and that he will receive 1% increase in pay for every 1% of increased performance above standard.

It is hereby agreed that before any grievance related to whether an incentive standard is proper is submitted to arbitration, the Union will have its Timestudy Representative from the Allied Industrial Workers Industrial Engineering Department study the standard or standards grieved and meet with a Company Representative and discuss his findings. It is understood that this will be accomplished within not more than seven (7) days after the Union Timestudy Representative gives the Company notice of his request to study the standard or standards in dispute.

Section 3.13. No piecework or incentive rates shall be voided without prior written notice, on a form provided by the Company, given to the steward of the department. Said notice is to contain the reason for voiding the established rate.

Section 3.14. Piecework or incentive rates shall be revised as necessary to reflect changes in methods, product, equipment, materials, design, quality requirements, services provided, layout of work areas, machine speeds and feeds, or other production conditions so that the physical effort required to perform operations shall be accurately measured at all times."

4. That on January 13, 1975 and February 12, 1975 1/ Jnaack, an employe of Respondent and member of Complainant, submitted a grievance to Plant Superintendent Marquardt concerning the establishment of different

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1/ Unless otherwise specified, all dates refer to 1975.

incentive rates for the new Mark IV Sens-A-Trol machines installed by Respondent.

5. That Respondent rejected both grievances on said dates and refused to process said grievances through the grievance procedure.

6. That the dispute between Complainant and Respondent concerns the establishment of new incentive rates on a new machine installed by Respondent for its toe seaming operation for its hosiery line, and it arises out of a claim, which on its face, is governed by the terms of the collective bargaining agreement existing between the parties.

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

CONCLUSION OF LAW

That the dispute between Complainant and Respondent pertaining to the January 13 and February 12 grievances concerning the establishment of new incentive rates on the new Sens-A-Trol machines, arises out of a claim, which on its face is governed by the terms of the parties' collective bargaining agreement and that by Respondent's refusal to process said grievances through the grievance and arbitration procedure, it has committed and is committing an unfair labor practice within the meaning of Section 111.06(1)(f) of the Wisconsin Statutes.

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

ORDER

IT IS ORDERED that Handcraft Company, Inc., its officers and agents, shall immediately:

(1) Cease and desist from refusing to submit the January 13 and February 12 grievances to arbitration.

(2) Take the following action which the Examiner finds will effectuate the policies established by the Wisconsin Employment Peace Act:

(a) Comply with the grievance and arbitration provisions of the June 4, 1973-June 1, 1976 collective bargaining agreement with respect to the January 13 and February 12 grievances.

(b) Notify AIW-AFL-CIO, Local Union No. 465 that it will, upon request, proceed to arbitration on the January 13 and February 12 grievances and participate in the selection of an arbitrator.

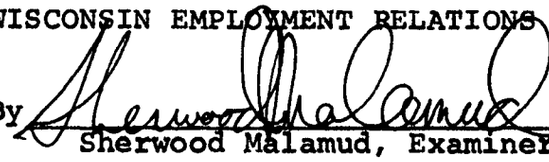
(c) Participate in the processing of the January 13 and February 12 grievances through the grievance procedure if so directed by the arbitrator selected.

(d) Participate in the arbitration proceeding on the January 13 and February 12 grievances and on all issues related thereto before the arbitrator selected.

(e) Notify the Wisconsin Employment Relations Commission, in writing within twenty (20) days of the date of this Order as to what action has been taken to comply herewith.

Dated at Madison, Wisconsin this 4th day of December, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Sherwood Malamud, Examiner

HANDCRAFT COMPANY, INC., III, Decision No. 13510-A

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Introduction and Positions of the Parties:

In its complaint, Complainant alleges that the operators of the Mark IV Sens-A-Trol machine which was installed and rates established on June 3, 1974, have been unable to achieve "base rate" of pay. Complainant further alleges that two grievances were filed concerning said rates, which grievances Respondent refused to accept and process through the grievance procedure. During the course of the hearing, the Complainant amended its complaint to state that the Sens-A-Trol machines were installed on August 19, 1974. It also modified the relief sought from a Commission decision on the merits to a Commission directive to the parties to process the grievances through the contractually established grievance and arbitration procedure.

Respondent on the other hand, alleges: that employes assigned to the new Sens-A-Trol machine are making in excess of base rate; and that Respondent is under no contractual obligation to divulge to Complainant the methods employed in establishing its rate. Finally, Respondent denies that it violated the collective bargaining agreement.

Jurisdiction of the Commission:

Respondent is a "commerce" employer subject to the prescriptions of the Labor Management Relations Act, as amended (LMRA). 2/ Complainant's complaint sounds in contract, and the LMRA at Section 301(a) provides that "suits for violation of contracts . . . may be brought in any district court of the United States." This federal right to sue for violation of contract was held to be within the jurisdiction of state courts in Charles Dowd Box Co. v. Courtney, 368 U.S. 502, 49 LRRM 2619 (1962). Under WEPA, violation of a collective bargaining agreement was established as an unfair labor practice (111.06(1)(f)) and the Commission was provided with jurisdiction to hear charges of unfair labor practices. Thus, the Commission's jurisdiction in cases such as the one at issue is clearly established. However, in its application of the law to such "301" cases, the Commission is constrained to apply federal substantive law. 3/

When the violation of contract alleged is a refusal to proceed to arbitration, federal substantive law in that area was well established in what is now commonly referred to as the Steelworkers Trilogy. 4/ The Supreme Court in American Mfg. Co., supra, delineated the parameters of inquiry for a "301" court or agency in enforcing contractually established grievance and arbitration provisions as follows:

> "The function of the court is very limited when the parties have agreed to submit all questions of contract interpretation to the arbitrator. It is then confined to ascertaining whether the party seeking arbitration is making a claim which on its face

is governed by the contract. Whether the moving party is right or wrong is a question of contract interpretation for the arbitrator." 5/

Here, a grievance is defined in the parties' contract at Article II, Section 2.01 as:

". . . any controversy concerning the meaning or application of any provision of this agreement . . ."

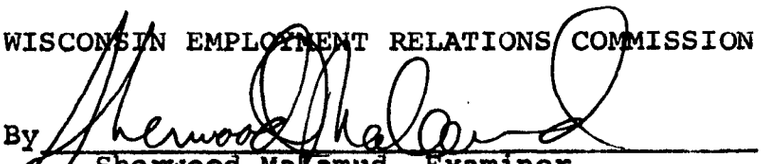
The dispute between Complainant and Respondent centers about the application of at least Sections 3.12 through 3.14 of the agreement to rates established by Respondent for the new Sens-A-Trol equipment. Thus, it is clear that the dispute states a claim which, on its face, is governed by the terms of the collective bargaining agreement, and accordingly the Examiner has directed Respondent to arbitrate the January 13 and February 12 grievances.

One defense raised by Respondent to proceeding to arbitration is that the January 13 and February 12 grievances were not timely filed. This procedural defense as well as all other procedural defenses are for the arbitrator's determination. 6/

Neither the January 13 nor the February 12 grievances have been processed through the grievance procedure. Complainant, during the hearing, requested the Examiner, if Complainant should prevail, to direct the parties to proceed through the grievance procedure before proceeding to arbitration. However, the Examiner has ordered Respondent, upon Complainant's request, to participate in the selection of an arbitrator. The Examiner has directed the parties to arbitration because there are important issues between the parties concerning information to be furnished Complainant and its ability to have an expert study the new rates. Therefore, the Examiner has permitted the arbitrator to direct the parties to proceed through the grievance procedure if he finds it necessary or advisable, and the arbitrator will also have an opportunity to resolve disputes concerning Complainant's access to information, etc., before the parties commence the grievance process. This will permit an expeditious processing of the January 13 and February 12 grievances.

Dated at Madison, Wisconsin this 4th day of December, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Sherwood Malamud, Examiner

5/ 46 LRRM 2415.

6/ John Wiley & Sons v. Livingston, 376 U.S. 543, 55 LRRM 2769 (1964).