

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

No. 13869-A

**"ARTICLE VII  
Grievance Procedure**

**Section 1.        Definition**

The term 'grievance' as used herein shall mean a complaint subject to interpretation or application to this Agreement. Grievances of a general nature, and involving matters which are outside the jurisdiction of the foreman, will be known as policy grievances and may be presented in Step 3. Any settlement of a policy grievance shall be reduced to writing and signed by both parties.

**Section 2.        Grievance Steps**

An employee desiring to have the Union take up his grievance may contact his steward and the grievance will then be processed in the following manner:

- STEP 1:**    If the grievance is such that the foreman cannot settle it satisfactorily at the time of presentation it shall be reduced to writing on forms provided for his purpose by the Company and presented to the foreman. This written grievance shall be signed by the aggrieved employee (if he is available) and the steward of the department. The foreman will give his answer to such grievance, in writing, by the end of two (2) working days from the receipt of the written grievance. In the event the foreman does not give his answer by the end of the two (2) working days, as specified above, the grievance will automatically be passed on to the next step.
- STEP 2:**    The foreman's decision will be considered final, unless within five (5) working days of the foreman's answer the grievance is presented by the bargaining committeeman (who may be accompanied by the steward of the aggrieved), to the superintendent of the division in which the grievance originated, or his designated representative. Said superintendent will submit his written answer to the grievance within five (5) working days after the date of presentation to him. In the event the superintendent does not submit his answer within five (5) working days, the grievance will automatically be passed on to the next step.
- STEP 3:**    The decision of the superintendent will be considered final unless within five (5) working days of the superintendent's answer the grievance is presented in writing to the Industrial Relations Department with a request that it be placed on the agenda for the next regular meeting between the bargaining committee and the Company, at which meeting a further effort will be made to settle the grievance. The Company will advise the Union of its disposition of the grievance within five (5) working days of said meeting.

**Section 3.        Arbitration**

A.    The Company's answer provided in Step 3 shall be considered final unless, within ten (10) working days after receipt of the Company's final answer, the matter is appealed in writing by the chairman of the Local Union Bargaining Committee. This written appeal shall be submitted to the Industrial Relations Manager, with copies to the U.A.W. - J.I. Case Department and to the Corporate Director of Industrial Relations.

B. Any grievance matter appealed pursuant to Section A, above shall be reviewed by the Union's U.A.W. - J.I. Case Department. The Company's answer provided in Step 3 (under Section 2) shall be considered final, unless within thirty (30) days after a grievance has been appealed under A above, the U.A.W. - J.I. Case Department requests in writing that the grievance be submitted to an impartial arbitrator in accordance with paragraphs C and D below. Such a request shall be submitted to the Corporate Director of Industrial Relations. At any mutually, convenient time within the thirty (30) day period, the representatives from the U.A.W. - J. I. Case Department may request to meet with the Vice President of Corporate Relations, or his representative, to discuss a possible settlement of the grievance. If such a meeting is requested by the Union, it shall be scheduled to take place within the said thirty (30) day period, and it shall not serve to modify the thirty (30) day limitation on requests for grievances to be submitted to arbitration.

C. The parties have, upon the execution of this Agreement (in a separate Letter of Understanding), agreed upon a panel of five (5) permanent arbitrators who shall have referred to them any grievances appealed to arbitration. The Union, at the time it gives its written request to arbitrate under B above, shall suggest the name of one (1) of the five (5) permanent arbitrators, and if the Company does not oppose the suggestion within twenty-four (24) hours, then the named arbitrator shall be selected. If the Company does oppose, then it shall name two (2) of the five (5) arbitrators who would be acceptable to it within the above-noted time. Then the Union, within twenty-four (24) hours, shall pick one (1) arbitrator from the two (2) thus named; the arbitrator picked by the Union shall be considered selected.

D. The arbitrator selected shall be immediately notified so that a hearing date may be set for the earliest possible time. Every effort must be made by the parties to act in an expeditious fashion to process an arbitration appeal. If the arbitrator selected is not available to schedule a prompt hearing date, then the selection procedure, under C above, shall be repeated immediately and a new arbitrator selected.

E. The Company and the Union shall each bear one-half (1/2) the cost of the fees and expenses of the impartial arbitrator.

F. The functions and jurisdiction of the impartial arbitrator shall be fixed and limited by this Agreement, and he shall have no power to change, add to, or delete from its terms. He shall have jurisdiction only to determine issues involving the interpretation or application of this Agreement; and any matter coming before the impartial arbitrator which is not within his jurisdiction as herein defined shall be returned to the parties without decision or recommendation. In the event any disciplinary action (including reprimands) taken by the Company is made the subject of an arbitration proceeding, the arbitrator's authority shall, in addition to the limitation set forth herein, be limited to the determination of the question of whether the employee involved had been disciplined for proper cause, except that if the arbitrator finds that the penalty assessed by the Company is inappropriate for the offense or offenses committed, he may modify that penalty.

G. If an insurance issue involving medical findings is not resolved in the insurance review under ARTICLE XIV, Section 4,B, and is appealed to arbitration, any conflict of written medical opinion between the Company's physician and the employee's

physician may be submitted to a 3rd physician for his opinion. The parties will mutually agree to a 3rd physician for a referral examination of fact, tests, and consultation as he may feel necessary. The 3rd physician will send a written report as to his findings to the parties, and this report will be provided the arbitrator for his information. The expenses of the 3rd physician, including tests, etc. will be shared equally by the parties.

H. The decision of the arbitrator shall be final and binding on the Company, the Union, and the employee or employees involved.

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#### ARTICLE VIII

##### Discipline and Discharge

A. An employee will not be suspended or discharged except for good cause. In such cases an employee will have his steward made available to him before he leaves the plant, and the foreman will, if requested, immediately discuss the matter involved with the steward and the employee. In the absence of the steward and the alternate steward, the employee's committeeman will be made available.

B. If a grievance is filed on a suspension or discharge, it may be handled as an emergency matter in a special meeting to be held within two working days after the filing of such grievance.

C. Copies of written reprimands including disciplinary action will be given to the employee at the time of such reprimand or discipline with a copy to the steward. A copy will also be sent to the Union.

D. In imposing discipline on a current charge, the Company will not take into account any reprimand which was issued more than two (2) years previously."

5. That on December 2, 1974, Complainant was discharged for excessive absenteeism by Respondent Employer; that Complainant grieved said discharge; that said grievance was processed by Respondent Union through the contractual grievance procedure culminating with an arbitration hearing on April 9, 1975 before arbitrator Richard Mittenthal; and that on May 30, 1975 said arbitrator issued a binding award wherein he concluded that William's discharge was for "good cause" and denied the grievance.

6. That at the arbitration hearing held before arbitrator Mittenthal Respondent Union introduced into evidence as Union Exhibit No. 5 a return to work slip from William's physician; that said slip indicated Williams had "been under doctor's care 10-4 through 10-28"; and that said physician's statement contained information which Complainant alleges was not presented to the arbitrator by Respondent Union.

7. That there is no evidence that Respondent Union in processing Complainant's grievance, including the presentation before arbitrator Mittenthal, acted arbitrarily, capriciously or in bad faith.

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

CONCLUSIONS OF LAW

1. That the Union did not violate its duty to fairly represent Complainant, Booker Williams, in its processing of his grievance through final and binding arbitration.

2. That the Commission will not exercise its jurisdiction to review the merits of Respondent Employer's alleged breach of the collective bargaining agreement in violation of Section 111.06(1)(f) of the Wisconsin Statutes.

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 in the instant matter be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin this 22<sup>nd</sup> day of June, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Thomas L. Yaeger, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

Complainant alleges that Respondent Employer discharged him in violation of the collective bargaining agreement subsisting between it and Respondent Union. 1/ Complainant also contends that Respondent Union failed to provide him with "adequate representation in protecting his job rights". During the hearing on the instant complaint, Complainant specifically alleged that Respondent Union, at the time of the arbitration hearing, did not present the arbitrator with a doctor's statement Complainant later obtained which verified that he was under the care of his physician from October 10, 1974 through October 28, 1974, the period of absence that brought about his discharge.

Respondent Employer's answer to the instant complaint denies Complainant was discharged in violation of the collective bargaining agreement and contends affirmatively that complainant was discharged for good cause. Respondent Union did not answer the complaint.

The Complainant herein seeks to have the Commission exercise its jurisdiction to review the merits of his discharge under the provisions of 111.06(1)(f) of the Wisconsin Peace Act. However, where there has been a final and binding arbitration decision on the alleged violation of contract this Commission will not exercise its jurisdiction to hear the merits of the alleged breach de novo, absent a showing that the Union breached its duty to fairly represent Complainant in processing his grievance. 2/ To conclude otherwise would impair the finality and ultimate viability of the arbitrable process.

However, if it can be proven by a clear and satisfactory preponderance of the evidence 3/ that (1) the Union acted arbitrarily, capriciously or in bad faith, or in other words failed to provide Complainant with fair representation in the grievance and arbitration process 4/, and (2) that said breach of duty materially affected the arbitrator's decision, said decision is not binding and the Commission will review the merits of the alleged violation of contract.

Complainant contends that Respondent Union did not present the arbitrator with a doctor's excuse covering the period of absence that set in motion the events culminating in his discharge. Union Exhibit No. 5, which was received in evidence by the arbitrator, is a note from Complainant's physician stating Williams had been under the physician's care from October 4, 1974 through October 28, 1974. It is this period of absence that triggered Complainant's discharge and for which the Respondent Union allegedly failed to provide the arbitrator with an explanation. Because Respondent Union did provide the arbitrator with a doctor's certificate covering said period, contrary to Complainant's

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1/ Although Complainant did not specify which section of the Wisconsin Employment Peace Act was violated, it may be fairly read to allege a violation of Section 111.06(1)(f) of said statute.

2/ Inasmuch as Complainant herein has exhausted the contractual grievance and arbitration procedures no issue is presented in this regard and Respondent Employer is absolved from pleading Complainant's failure to exhaust same. (Manke v. WERC 66 Wis 2d 524 (1975)).

3/ Section 111.07(3) of the Wisconsin Peace Act.

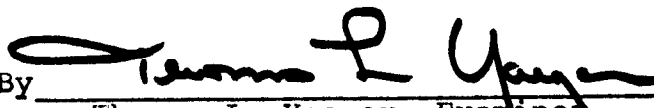
4/ Vaca v. Sipes, 386 U.S. 171 (1967); Holodnak v. Avco Corp. 87 LRRM 2337 (1974), aff'd 514 F2d 285 (CA2, 1975).

assertion, the undersigned finds the allegation is not supported by the evidence.

Further, after having considered all of the evidence adduced herein, including the transcript and exhibits from the arbitration hearing, the undersigned is convinced that Respondent Union fairly represented Complainant in the processing of his grievance and did not act arbitrarily, capriciously or in bad faith toward Complainant. Therefore, the arbitrator's decision is binding and the Commission will not exercise its jurisdiction to review the merits of the alleged breach of contract.

Dated at Madison, Wisconsin this 22<sup>nd</sup> day of June, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Thomas L. Yaeger, Examiner