STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RONALD WIEDEMAN, Complainant, vs. ST. REGIS PAPER COMPANY AND UNITED PAPER MAKERS AND PAPER WORKERS LOCAL 91, AFL-CIO, CLC, Respondents.	Case V No. 19935 Ce-1652 Decision No. 14207-A

Appearances:

Mr. Ronald Wiedeman, Complainant, appearing on his own behalf.
Mr. Bruce Boerner, Regional Industrial Relations Manager, appearing for Respondent Employer.
Mr. Mike Hudzinski, International Representative, appearing for Respondent Union.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Complaint of unfair labor practices having been filed with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, in the above-entitled matter; and the Commission having appointed Dennis P. McGilligan, a member of its 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 a hearing on such complaint having been held at Rhinelander, Wisconsin, on April 22, 1976, before the Examiner; 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.

FINDINGS OF FACT

1. That Ronald Wiedeman, hereinafter referred to as the Complainant, is an individual residing at Route 4, Rhinelander, Wisconsin.

2. That St. Regis Paper Company, hereinafter referred to as the Respondent Employer, is a company engaged in the business of the manufacture and sale of paper products, with facilities located at Rhinelander, Wisconsin.

3. That at all times material herein, the Respondent Employer has recognized Local No. 91 of the United Paperworkers International Union, hereinafter referred to as the Respondent Union, as the exclusive bargaining representative of certain of its employes including the Complainant herein who was a member of the Respondent Union at all times material herein.

4. That at all times material herein, the Respondent Employer and the Respondent Union have been signators to a collective bargaining agreement effective from 1973 to 1975, covering wages, hours and working conditions of said employes and, among other provisions, provides:

"Section XX--Grievance and Arbitration

A. The unions, parties to this agreement, shall establish standing committees and the names of the members of the committees shall be furnished the company.

B. For the purpose of this agreement, the term 'grievance' means a dispute between the company and the union concerning interpretation, application or violation of this agreement.

C. If an employee shall feel aggrieved, he shall present the matter in accordance with the following procedure, and it shall be handled by the parties to this agreement in the following steps until a settlement is reached:

Step 1. Between the aggrieved employee and the foreman of the department or at the option of the aggrieved employee between him, one member of the standing committee, the steward, and the foreman of the department. If no satisfactory settlement is reached, it shall be taken within three (3) days to

Step 2. The Department Superintendent and the Standing Committee. The foremen, the shop steward in the department, and the aggrieved employee shall have the right to be present at this meeting. If no satisfactory settlement is reached, it shall be taken within three (3) days to

Step 3. The Mill Management and the Standing Committee. The superintendent, the foreman the shop steward and the aggrieved employee shall have the right to be present at this meeting. No grievance or complaint shall be handled at this stage unless it has been presented in writing, but the subject of discussion may extend to related matters not specifically set forth in the written statement. If no satisfactory settlement is reached, it shall be taken within five (5) days to

Step 4. The Resident Manager of the Company or his Representative and the President of the International Union or his Representative. Both persons shall have the right to bring such persons to the conference as they deem appropriate. If, within ten (10) days after the grievance has been referred to the highest officials of the company and the union, the matter has not been settled on a mutually satisfactory basis, it shall be taken to

Step 5. Federal Mediation and Conciliation Service. The parties will request the Federal Mediation and Conciliation Service to submit a panel of five (5) arbitrators from which one will be selected. Upon receipt of such list of arbitrators, the parties shall meet and upon failure to agree on the arbitrator, the parties shall alternately strike two (2) names from the list. The person whose name remains on the list after four have been stricken shall be the arbitrator. The Director of the Federal Mediation and Conciliation Service shall be advised on the choice of the parties, and request that such arbitrator be assigned to the matter. The arbitrator will convene to render a decision within fifteen (15) days to be final and binding upon both parties.

The company and the unions shall share equally the payments of the fees and expenses of the arbitrator.

D. Any employee who claims injustice over disciplinary action shall file a grievance or complaint within forty-eight (48) hours. The forty-eight (48) hour period shall begin from the time the employee received notice by registered mail of the disciplinary action and shall not include Sunday or holiday hours.

E. Adjustments such as changing of hourly rates, hours of work, working conditions and matters of like nature affecting the agreement shall meet the approval of all parties of this agreement."

5. That the Complainant worked for Respondent Employer as a millwright at all times material herein; that on June 24, 1975, the Complainant along with five other millwrights submitted a grievance to the Respondent Employer as follows:

"We the undersigned are being discriminated against by NOT being given equal opportunity to work the same amount of call time as our fellow Millwrights. We want to do away with the rotating call list as it deprives us of this opportunity.";

and that on June 27, 1975, a representative of the Respondent Employer rejected the grievance at the first step of the grievance procedure for the following reasons:

"1. This is not really a grievance.

2. The present procedure was agreed on by the majority of the Millwrights and Management. The majority of the Millwrights and Management still want the present system. Therefore, the present system stands."

6. That on July 29, 1975, a representative of the Respondent Employer denied the grievance at the second step of the grievance procedure as follows:

"Apparently the majority of the Millwrights want this procedure to stay as is."

7. That thereafter the Standing Committee of the Respondent Union and representatives of the Respondent Employer met and discussed the grievance which was subsequently denied by said representatives of the Respondent Employer according to step three of the grievance procedure.

8. That on November 20, 1975, Harley Savage, President of Respondent Union, rejected said grievance as improper at Step 4 of the grievance procedure for the reason that he had negotiated the new rotating call list with the Respondent Employer based on a request by a majority of the millwrights for a change in the call procedure.

9. That on October 22, 1975, the Respondent Union filed a second grievance over the change in the aforementioned call time procedure as follows:

"Local #91 - request that St. Regis Paper Company follows the call time procedure as was set up on January 1, 1972.";

that on November 3, 1975, a representative of the Respondent Employer rejected said grievance according to Step 1 of the grievance procedure as follows:

"This is not a violation of the contract. The present call time procedure was agreed upon between the union and company."

10. That the above grievance was rejected by the Respondent Employer according to Step 2 of the grievance procedure; that on November 18, 1975, R.N. Fischer, Personnel Manager for the Respondent Employer, rejected said grievance according to Step 3 of the grievance procedure as follows:

> "The current maintenance call-in procedure is working very well in all maintenance crafts with the exception of the Millwrights.
>
> The company does not want to change this system because it is fair for all employees; however, if the Millwrights feel that a change is necessary, it should be up to the Millwrights to come up with a fair and equitable method to change the call-in procedure.
>
> Unless the Millwrights come up with a workable procedure, we see no reason for change.";

that thereafter Harley Savage rejected said grievance at Step 4 of the grievance procedure on the basis of the Respondent Employer's denial letter dated November 18, 1975.

11. That there is no evidence that Respondent Union in processing Complainant's grievance 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 conduct of Respondent, United Paper Workers International Union, Local No. 91, in processing Complainant Ronald Wiedeman's grievance over the rotating call list was not arbitrary, discriminatory, or in bad faith; and Respondent Union, therefore, did not violate its duty to fairly represent Complainant; and, therefore, is not in violation of Section 111.06(2)(a) and (c) of the Wisconsin Employment Peace Act.

2. That because United Paperworkers International Union, Local No. 91, did not violate its duty to fairly represent Complainant Ronald Wiedeman by not representing the Complainant and because of the total absence of conduct by the Union of an arbitrary, discriminatory or bad faith nature with regard to Complainant, the Examiner refuses to assert the jurisdiction of the Wisconsin Employment Relations Commission for the purpose of determining whether Respondent Employer, St. Regis Paper Company, breached its collective bargaining agreement with Respondent Union, thereby violating Section 111.06(f) of the Wisconsin Employment Peace Act.

NOW, THEREFORE, it is

ORDERED

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

Dated at Madison, Wisconsin this 4th day of August, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Dennis P. McGilligan
Dennis P. McGilligan, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Complainant, in his complaint, alleged that the Respondent Employer and Respondent Union violated a collective bargaining agreement between said parties. By letter dated February 5, 1976, the Respondent Employer denied commitment of any unfair labor practice in regard to Ronald Wiedeman as alleged in the above complaint. The Examiner held a hearing on April 22, 1976, on the threshold issue of whether the Respondent Union denied the Complainant fair representation in processing his grievance. At the beginning of the hearing the Respondent Union denied the allegations contained within the complaint and asserted that the grievance was handled properly and that the new call procedure was fair and supported by a majority of the men. At the close of the hearing, the Respondent Employer moved to dismiss the complaint on the grounds that the Respondent Union had fairly and properly represented the Complainant. Likewise, at the end of the hearing, the Respondent Union moved to dismiss the complaint on the grounds that it had represented the Complainant fairly and to the best of its ability when processing his grievance. The parties did not file briefs on the matter.

Upon reviewing the entire record, and for the following reasons, the Examiner hereby dismisses the complaint.

DISCUSSION:

Before the Examiner will reach the merits of the Complainant's claim that the Respondent Employer violated a collective bargaining agreement between the Respondents in violation of Section 111.06(1)(f) of the Wisconsin Employment Peace Act, the Complainant must show that he attempted to exhaust the collective bargaining agreement's grievance procedure and that such attempt was frustrated by the Respondent Union's breach of its duty of fair representation. 1/

Exhaustion of Grievance Procedure:

This Commission has required that individual complainants bringing such contract violation actions against employers conform to the requirement stated by the U.S. Supreme Court in Republic Steel vs. Maddox (U.S. Sup. Ct., 1965, 58 LRRM 2193) that such complainants "must attempt use of the contract grievance procedure." 2/ The Examiner concludes that the Complainant has met this requirement.

The evidence clearly establishes that the Complainant filed a grievance on June 24, 1975. Thereafter, he followed his grievance through Step 4 of the grievance procedure, at which time Harley Savage, on behalf of the Respondent Union, rejected said grievance. Likewise, the Respondent Union filed a grievance on the matter on October 22, 1975, and processed it through the steps of the grievance procedure where at Step 4 Harley Savage again denied the grievant's claim. The record indicates that the Complainant was unsatisfied with the results of his grievance, and that Respondent Union understood Complainant's desire to

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1/ Vaca vs. Sipes 386 U.S. 171, 64 LRRM 2369 (1967); American Motors Corporation (7988-B) 10/68.

2/ American Motors Corp., 7488 (1966); American Motors Corp., 7798 (1966).

proceed through the grievance procedure until he got a change in the call procedure; but, nevertheless, Harley Savage, on behalf of the Respondent Union, refused to process the grievance past the fourth step (to arbitration as provided in Step 5) of the grievance procedure for the reasons stated in the Findings of Fact section of this decision.

Violation of the Duty of Fair Representation:

The law concerning a union's obligation of fair representation is quite clear. The U.S. Supreme Court in Vaca vs. Sipes 3/ stated:

> "A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory or in bad faith."

In addition, the U.S. Supreme Court in Ford Motor Co. vs. Huffman 4/ stated:

> "A wide range of reasonableness must be allowed a statutory bargaining representative in serving the Union it represents, subject always to complete good faith and honesty in purpose in the exercise of its discretion."

The Complainant bears the burden of proving the Union's failure to fulfill its duty of fair representation by a clear and satisfactory preponderance of the evidence. 5/ This burden of proof is coupled with the fact that the Union is given a wide range of reasonableness in serving the individuals it represents.

It should be pointed out that the Union's duty of fair representation does not necessarily require that it carry any given grievance through all the steps of a contractual grievance procedure. Instead, the Union must investigate and prosecute each grievance in a manner that is untainted by arbitrary, discriminatory, or bad faith motives. However, the duty of fair representation is more than an absence of bad faith or hostile motivation. 6/ It confers upon the Union an affirmative responsibility with regard to the allocation of benefits the Union has secured for the employes in a collective bargaining agreement. 7/ This affirmative responsibility gives the employe a "right to fair and impartial treatment from his statutory representative." 8/

Vaca provides that suit may be brought subsequent to an arbitrary, discriminatory or bad faith refusal to arbitrate by the union. Vaca also requires the union, in good faith and in a non-arbitrary manner, to make decision as to the merits of each grievance. The Wisconsin Supreme Court seems to support the idea of the duty of fair representation

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3/ Supra, note 1.

4/ 345 U.S. 330, 338 (1953).

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

6/ See Retana vs. Apartment, Motel, Hotel and Elevator Operators Union, Local No. 14, AFL-CIO, 453 F. 2d 1018, 1023, 79 LRRM 2272, (C.A. 0 1972:; Griffin v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, 469 f. 2d 181, 183, 81 LRRM 2485 (C.W. 4, 1972).

7/ See Teamsters, Local 317 (Rhodes & Jamieson, Ltd.) 89 LRRM 1049, 1051, April 30, 1975.

8/ Miranda Fuel Co., Inc., 140 MLRD 181, 188, 51 LRRM 1584 (1962).

as an affirmative responsibility when it suggest that at least the union must in good faith weight the relevant factors before making a determination whether a grievance should go to arbitration. 9/

In the instant case, two grievances (one by the Complainant, and the second by the Respondent Union) were filed on the matter of the new (rotating) call procedure. Both grievances were processed through the grievance procedure where they were rejected at Step 4 of the grievance procedure by Harley Savage on behalf of Respondent Union. Harley Savage refused to process said grievances further (to arbitration) because he had negotiated the new call procedure with the Respondent Employer in response to a request by a majority of the millwrights. Although some millwrights (including the Complainant) objected to said procedure, the Complainant failed to show that said decision was arrived at improperly or that the decision was unfair. Absent evidence to the contrary, the undersigned Examiner concludes that the above decision by Harley Savage not to process the grievances to arbitration was reasonable and therefore that the method by the Respondent Union in processing Complainant's grievance did meet the minimum statutory standard of fairness.

As noted previously, the Complainant bears the burden of proving the Union's failure to fulfill its duty of fair representation by a clear and satisfactory preponderance of the evidence. Based on the aforementioned, the Examiner finds that the Complainant did attempt to exhaust the collective bargaining agreement's grievance procedure, but did not prove that the Respondent Union's conduct toward him was arbitrary, discriminatory or in bad faith, and therefore, the Complainant did not meet his burden of proof concerning the alleged failure of the Respondent Union to fulfill its duty of fair representation.

Therefore, the Examiner will not assert the jurisdiction of the Wisconsin Employment Relations Commission for the purpose of determining whether the Respondent Employer breached a collective bargaining agreement with the Respondent Union in violation of Section 111.06(1)(f) of the Wisconsin Employment Peace Act.

Dated at Madison, Wisconsin this 4th day of August, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Dennis P. McGilligan
Dennis P. McGilligan, Examiner

9/ Mahnke vs. Wisconsin Employment Relations Commission, 66 Wis. 2d 524 (1975).