

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondents .

Decision No. 14688-A

Mr. Royal Cluberton, International Representative, United Paperworkers International Union, appearing on behalf of the Complainant and on behalf of the Respondent Union.

The above named Complainant having on May 21, 1976, filed an unfair labor practice complaint with the Wisconsin Employment Relations Commission alleging that the above-named Respondent Employer committed an unfair labor practice within the meaning of the Wisconsin Employment Peace Act; and the Commission having appointed Peter G. Davis, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusion of Law and Order as provided in Section 111.07(5) of the Wisconsin Employment Peace Act; and a hearing on said complaint having been held in Neenah, Wisconsin on August 5, 1976 before the Examiner; and the Examiner having considered the evidence and arguments of counsel makes and files the following Findings of Fact, Conclusion of Law and Order.

4. That at all times material herein Respondent Union and Respondent Employer were parties to a collective bargaining agreement effective from May 1, 1973 to April 30, 1976, covering wages, hours and working conditions of said employees including the Complainant; and said agreement contains provisions for final and binding arbitration of all unresolved grievances.

5. That on November 11, 1975 the Complainant filed a grievance alleging that he was improperly denied the position of Journeyman Welder; that the grievance has been processed through the first four steps of the grievance procedure and is pending before the Respondent Union's Grievance Committee which is awaiting the outcome of the instant proceeding before determining whether to request that the grievance be submitted to arbitration for resolution.

6. That there is no evidence that the Respondent Union or any of its representatives have acted arbitrarily, discriminatorily or in bad faith while processing Complainant's grievance.

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

CONCLUSION OF LAW

That inasmuch as the available contractual arbitration procedure has not yet been exhausted by the Complainant with respect to his allegations that American Can Company violated Section 111.06 (1)(f) of the Wisconsin Employment Peace Act; and as the United Paperworkers International Union, AFL-CIO, Local 148 has not violated its duty to fairly represent Complainant in the processing of his grievance; the Commission will refuse to assert its jurisdiction to consider the merits of Complainant's allegations.

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

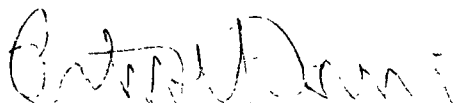
ORDER

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

Dated at Madison, Wisconsin this *29th* day of September, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Peter G. Davis, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

Complainant has alleged that Respondent Employer violated the collective bargaining agreement between the Respondent Employer and Respondent Union by denying him a position as Journeyman Welder. Respondent Employer filed an answer which substantially denied Complainant's allegations and asserted that Complainant had waived any right he may have had to the position by failing to answer the original job posting. Respondent also alleged that Complainant was unqualified for the position. At the hearing Respondent Employer amended its answer to allege that the Complainant had not exhausted the grievance procedure set forth in the applicable collective bargaining unit and moved that the complaint be dismissed. Respondent Employer also moved that United Paperworkers International Union, AFL-CIO, Local 148, be joined as a party Respondent and Respondent Union voluntarily agreed to be so joined.

Before the Wisconsin Employment Relations Commission will exercise its jurisdiction to determine the merits of Complainant's allegation that Respondent Employer breached the collective bargaining agreement 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 he was frustrated in his attempt by the Union's violation of its duty of fair representation. ^{1/}The record reveals that Complainant's grievance is pending before the Respondent Union's Grievance Committee which is awaiting the outcome of the instant proceeding before determining whether said grievance should be taken to arbitration. There is no indication that its current status is a result of any arbitrary or discriminatory action by the Respondent Union nor has the Complainant made any such allegation. Therefore the Examiner concludes that the Complainant has not exhausted the collective bargaining agreement's grievance procedure, that this failure to exhaust said procedure has not been caused by any breach of Respondent Union's duty of fair representation, and thus that the Commission presently lacks jurisdiction to determine the merits of Complainant's allegations. At the close of the hearing, based upon the foregoing rationale, the Examiner granted Respondent's motion to dismiss the complaint and hereby reaffirms said dismissal.

Dated at Madison, Wisconsin this *29th* day of September, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Peter G. Davis, Examiner

^{1/} Vaca v. Sipes U.S. 171, 1967; F. Dohmen Co. (8419-A, B) 9/68 (Aff'.
Dane Co. Cir. Ct., 6/70); Ozite Corp. (10298-A,B) 2/72; Neillsville
Co-op Transport, 14404-A, 8/76.