## STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DAVID J. BUTLER,

Complainant,

vs.

HARNISCHFEGER CORPORATION and SHOPMEN'S LOCAL 814 of the INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS,

Respondents.

Case XIX No, 20785 Ce-1688 Decision No. 14898-D

## ORDER MODIFYING FINDINGS OF FACT AND CONCLUSION OF LAW

The examiner having heretofore and on September 29, 1977 entered Findings of Fact, Conclusion of Law and Order in the above-entitled matter; and the examiner having subsequently determined that Finding of Fact 6 contains clerical errors and Finding of Fact 7 contains a clerical error and should be restated and the Conclusion of Law should be restated and that all other Findings of Fact and the Order should remain unchanged;

NOW, THEREFORE, it is

## ORDERED

That pursuant to Section 111.07(5), Wis. Stats., the examiner hereby

1. Modifies Finding of Fact 6 to read:

That thereafter on January 22, 1976, Complainant requested Respondent-Union's assistance in processing a grievance concerning the instant discharge; that in response thereto Respondent-Union processed said grievance through all of the steps of the applicable grievance and arbitration procedure short of arbitration in a genuine and substantial effort to obtain a satisfactory resolution thereof; that during the course of processing said grievance Respondent-Union learned all of the facts relevant to its determination as to whether to process said grievance further; that during the course of processing said grievance Respondent-Union provided Complainant with an adequate opportunity to submit whatever information he deemed material; that thereafter, upon detailed, good-faith consideration of the relevant agreement providions and the facts known to it, Respondent-Union concluded the instant grievance was without

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any merit whatsoever; that Respondent-Union's processing of the instant grievance, including, but not limited to, its decision not to seek arbitration thereof, was not arbitrary, discriminatory or in bad faith.

2. Modifies Finding of Fact 7 to read:

That Complainant's attempt to exhaust all applicable grievance and arbitration procedures with respect to his discharge of January 22, 1976 was frustrated by Respondent-Union's refusal to seek arbitration with respect thereto.

3. Modifies Conclusion of Law to read:

That since Respondent-Union, Shopmen's Local 814 of the International Association of Bridge, Structural and Ornamental Iron Workers, did not violate its duty of fair representation with respect to its refusal to process Complainant's, David J. Butler's, grievance concerning his discharge to arbitration, the examiner refuses to assert the jurisdiction of the Wisconsin Employment Relations Commission to determine the merits of his complaint.

Dated at Milwaukee, Wisconsin, this 12th day of October, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Janley H. Michelstetter It

Examiner

HARNISCHFEGER CORPORATION, XIX, Decision No. 14898-D

## MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW

Corrections were made with respect to inadvertent clerical errors involving dates and omitted material. In addition, I have restated Finding of Fact 7 and the Conclusion of Law to more accurately state the findings and conclusions reached in the original decision.

Dated at Milwaukee, Wisconsin, this 12th day of October, 1977. WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Stanley H. Michelstetter II

Examiner