

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL UNION OF OPERATING :
ENGINEERS LOCAL UNION NO. 139, :
Complainant, : Case I
vs. : No. 21614 Ce-1729
M. J. ELECTRIC, INC., : Decision No. 15493-A
Respondent. :

Appearances:

Mr. Russell R. Retzack, Financial Secretary, International Union of Operating Engineers Local No. 139, appearing on behalf of the Complainant.
Mr. William Nagy, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The above-named Complainant having on May 2, 1977, filed a complaint with the Wisconsin Employment Relations Commission alleging that the above-named Respondent had committed a prohibited practice within the meaning of the Wisconsin Employment Peace Act (WEPA); 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, Conclusions of Law and Order as provided in Section 111.07(5) of the Wisconsin Statutes; and a hearing on said complaint having been held before the Examiner in Superior, Wisconsin, on June 15, 1977; and the Examiner having considered the evidence and arguments of counsel makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That the International Union of Operating Engineers Local Union No. 139, herein Complainant, is a labor organization functioning as the exclusive collective bargaining representative of certain individuals employed by M. J. Electric, Inc.
2. That M. J. Electric, Inc., herein Respondent, is an Employer.
3. That at all times material herein Complainant and Respondent were parties to a collective bargaining agreement covering the wages, hours, and conditions of employment of employees represented by Complainant which contained the following provisions:

"ARTICLE I

. . .

Section 1.3 ASSIGNMENT OF WORK: The Contractor hereby assigns all work that is to be performed in the categories described in Article VI to employees in the bargaining unit covered by this Agreement.

. . .

Section 1.5 SCOPE OF AGREEMENT: This Agreement shall apply to all on-site building construction work including operations incidental thereto. Building construction work shall include the construction, erection, dismantling, wrecking, modification, addition to or improvement of building structures; the construction, erection, modification of industrial plants, commercial buildings, residential structures, steam and nuclear power plants; snow removal; flood control; prestressed concrete erection; the driving of sheet piling and piling, caisson work; foundation work; atomic reactors, ordinance plants; the construction and dewatering of all underground utilities; such as, sewer and water mains, gas lines, tunnels, and conduit; and all street work public and private, such as excavating, grading, landscaping, paving and any other work directly related to the aforementioned operation. This Agreement excludes all marine work on the Great Lakes (Michigan-Superior) as well as all work let by the Wisconsin Department of Transportation.

. . .

ARTICLE VI

JURISDICTION

Section 6.1 EQUIPMENT ASSIGNMENT: The Contractor hereby agrees to assign any equipment within the jurisdiction as described below to bargaining unit employees. The operation of all hoisting and portable engines on building and construction work where operated by steam, electricity, diesel, gasoline, hydraulic or compressed air, butane, propane or other gases and nuclear or atomic power, limited to the following:

Pumps, siphons, pulsometers, concrete mixers (14S and over) and concrete pumps, street rollers, power shovels, trench hoes, pile driving rigs, cranes, clamshells, draglines, powered derricks, track or rubber sidebooms, cableways, mounted or towed compactors, drills (track or wagon type), hoists, tuggers, forklifts, endloaders, dinky locomotives, mucking machines, concrete finishers (self propelled), asphalt plants and pavers, power jacks (slip form work), boilers, heaters, boring machines (horizontal), concrete breakers, and tampers (self propelled), manhoists, generators, shouldering machines, trenchers, bulldozers, scrapers, motor patrols, well points, screeds (power propelled), welding machines, tower cranes, rotary drills (except hand drills and/or jackhammer), dredges, barges, tug boats, safety boats, work boats, floating equipment (marine), overhead cranes, conveyors and augers (concrete), chippers (brush and stump), winch trucks, A-Frames, loading machines (powered or self propelled), power brooms and sweepers (tractor mounted or towed), prestress machines, locomotives, winches (powered), and all equipment specified in Article XI.

. . .

ARTICLE VIII

JURISDICTIONAL DISPUTES

Section 8.1. It is agreed by the parties hereto that in the event they are unable to settle jurisdictional disputes on a local level, they will submit the same to the Impartial Jurisdictional Disputes Board and abide by the decision of said Board.

Section 8.2 ACCEPTANCE OF DECISION: The Contractor agrees to make all work assignments in accordance with the terms of this Agreement and to maintain such assignments until and unless said assignment is reversed by a final decision of the Impartial Board.

ARTICLE IX

ENFORCEMENT

Section 9.1 ARBITRATOR: All grievances, disputes or complaints of violations of any provisions of this Agreement shall be submitted to final and binding arbitration by an arbitrator appointed by the Wisconsin Employment Relations Commission. The arbitrator shall be a member or staff member of the WERC. The arbitrator shall have sole and exclusive jurisdiction to determine the arbitrability of such a dispute as well as the merits thereof. Written notice by registered return receipt letter of a demand for arbitration shall be given to the Contractor and Association or as applicable to the Union at its Milwaukee headquarters. The Contractor and Association as the case may be shall agree in writing within seven (7) calendar days to arbitrate the dispute."

4. That in February 1977 the Respondent was performing certain work on the Reese coal dock project in Allouez, Wisconsin; that Respondent was utilizing an overhead crane on the project which was being operated by an employe who was represented by the International Brotherhood of Electrical Workers, Local Union 276; that on February 28, 1977, Jack Parr, Business Representative for Respondent, filed a grievance which alleged that the Respondent was violating Article I, Section 1.3., Section 1.5; Article VI, Section 6.1; and Article XIII of the parties' bargaining agreement by having a "Non-bargaining unit employe operating overhead crane"; that on March 24, 1977 and April 12, 1977, the Respondent denied the grievance by asserting that the work in dispute was claimed by Local Union 276; and that Respondent has refused Complainant's demand that the grievance be arbitrated inasmuch as it believes that the instant grievance involves a jurisdictional dispute between Complainant and Local Union 276.

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

CONCLUSIONS OF LAW

1. That the February 28, 1977 grievance regarding the assignment of the operation of an overhead crane on the Reese coal dock project raises a claim which on its face is covered by the terms of the parties' collective bargaining agreement.

2. That M. J. Electric, Inc., has violated and continues to violate Article IX of the collective bargaining agreement existing between it and the International Union of Operating Engineers Local Union No. 139 by refusing to arbitrate the crane assignment grievance, and thus has committed and continues to commit an unfair labor practice within the meaning of Section 111.06(1)(f) of the Wisconsin Employment Peace Act.

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

ORDER

That M. J. Electric, Inc., shall immediately:

1. Cease and desist from refusing to submit the crane assignment grievance to arbitration.
2. Take the following affirmative action which the Examiner finds will effectuate the policies of the Wisconsin Employment Peace Act.
 - (a) Comply with the arbitration provisions of the collective bargaining agreement existing between it and the International Union of Operating Engineers Local Union No. 139 with respect to the crane assignment grievance.
 - (b) Notify the International Union of Operating Engineers Local Union No. 139 that it will proceed to arbitration of the crane assignment grievance.
 - (c) Participate with the International Union of Operating Engineers Local Union No. 139 in arbitration proceedings before an arbitrator with respect to the crane assignment grievance.
 - (d) Notify the Wisconsin Employment Relations Commission in writing within twenty (20) days from the date of this Order as to what steps have been taken to comply herewith.

Dated at Madison, Wisconsin this 24th day of August, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Peter G. Davis, Examiner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Section 111.06(1)(f) of the Wisconsin Employment Peace Act makes it an unfair labor practice for an employer to "violate the terms of a collective bargaining agreement (including an agreement to accept an arbitration award)". In the instant complaint, the Complainant has alleged that the Respondent violated Article IX of the parties' bargaining agreement by refusing to arbitrate a crane assignment grievance. Respondent has answered this allegation by asserting that the question of crane assignment is in essence a jurisdictional dispute which should be resolved through the provisions of Article VIII instead of Article IX.

When interpreting Section 111.06(1)(f) with respect to questions of procedural and substantive arbitrability, the Commission has followed the federal substantive law set forth in the Trilogy cases 1/ and John Wiley and Sons, Inc. vs. Livingston, 376 U.S. 543, 55 LRRM 2769 (1964). Thus in actions seeking enforcement of arbitration provisions contained in collective bargaining agreements, the Commission will give such clauses their fullest meaning and restrict itself to a determination of whether the party seeking arbitration makes a claim which, on its face, is covered by the bargaining agreement. 2/ Therefore the issue before the Examiner is limited to a determination of whether the crane assignment grievance is arbitrable under the parties' bargaining agreement.

Article IX, Section 9.1 indicates that "All grievances, disputes or complaints of violations of any provisions of this Agreement shall be submitted to final and binding arbitration . . ." The instant grievance alleges that the Respondent violated numerous portions of the bargaining agreement by assigning the operation of the overhead crane to non-bargaining unit employees. Given the broad contractual language contained in Section 9.1 and the fact that the instant grievance does allege numerous contractual violations, the Examiner can only conclude that the crane assignment grievance states a claim which on its face is covered by the bargaining agreement and thus that it is arbitrable under the parties' bargaining agreement. The issue of whether the grievance is in fact a jurisdictional dispute to be resolved under the provisions of Article VIII will be decided by the arbitrator. It should thus be clear that this decision does not constitute any determination with respect to the merits of the instant grievance. The instant decision merely indicates that the Respondent has a duty to arbitrate any grievance stating a claim which on its face is covered by the bargain-

1/ Steelworkers vs. American Mfg. Co., 353 U.S. 564 (1960); Steelworkers vs. Warrior and Gulf Navigation Co., 353 U.S. 574 (1970); Steelworkers vs. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960).

2/ Oostburg Jt. School Dist., (11196-A) 11/72; Monona Grove Jt. School Dist., (11614-A) 7/73; Weyerhaeuser Jt. School Dist., (12984) 8/74; Portage Jt. School Dist. No. 1, (14372-A) 8/76; Spooner Jt. School Dist. No. 1, (14416-A) 9/76.

ing agreement even if it believes that the grievance is lacking in merit or should be resolved in another forum.

Dated at Madison, Wisconsin this 24th day of August, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Peter G. Davis, Examiner