STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LOCAL NO. 1406 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, Complainant, vs. WISCONSIN PORCELAIN COMPANY, Respondent.	Case XXIII No. 22311 Ce-1758 Decision No. 15986-B

Appearances:
Kelly and Haus, Attorneys at Law, by Mr. William Haus, appearing on behalf of Complainant.
Mr. Russ Mueller, Attorney at Law, appearing on behalf of Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Local No. 1406 of the International Association of Machinists and Aerospace Workers, AFL-CIO, having filed a complaint on December 1, 1977 1/ with the Wisconsin Employment Relations Commission alleging that Wisconsin Porcelain Company had committed certain unfair labor practices within the meaning of Sections 111.06(1)(a)(c)(f) and (g) of the Wisconsin Employment Peace Act; and the Commission having appointed Stephen Schoenfeld, 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 hearing on said complaint having been held at Madison, Wisconsin on April 5, 1978 and August 3, 1978 before the Examiner, and briefs having been filed by both parties with the Examiner, the last of which was received on November 22, 1978; and the Examiner having considered the arguments, evidence and briefs 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 Local No. 1406 of the International Association of Machinists and Aerospace Workers, AFL-CIO, hereinafter referred to as Complainant, is a labor organization having its offices at 2021 Atwood Avenue, Madison, Wisconsin, 53704; and at all times material herein was the certified exclusive collective bargaining representative of production and maintenance employes of Wisconsin Porcelain Company.

2. That Wisconsin Porcelain Company, hereinafter referred to as Respondent, is an employer within the meaning of the Wisconsin Employment Peace Act and is engaged in the business of manufacturing

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1/ Complainant filed a supplemental complaint on January 30, 1978.

porcelain products with its principal offices located at Sun Prairie, Wisconsin.

3. That at all times material hereto, Complainant and Respondent were parties to a collective bargaining agreement which, among its provisions, contained the following which are material herein:

ARTICLE VI
Overtime

6.6. Employees are expected to work scheduled overtime, but the Company will accept reasonable employee excuses when unable to work overtime.

. . .

ARTICLE X
Holidays

10.1. All employees covered by this Agreement shall receive holiday pay for each of the designated holidays not worked as hereinafter provided irrespective of the day of the week on which the holiday may fall.

New Year's Day
One-half Day on Good Friday
Memorial Day
Independence Day
Labor Day
Floating Day
Thanksgiving Day
One-half Day on Dec. 24th
Christmas Day
Employee's Birthday
Employee's Anniversary Date of Employment

. . .

10.3. To be eligible for the grant of paid holidays employees must have completed their probationary period prior to the holiday and must have worked at least seventy-five (75%) percent of the regular scheduled hours during the preceding sixty (60) days.

10.4.

A. Job incurred accident or illness, vacation and time spent by Shop Committee members as permitted in Article XVII and Article XVIII, Section 4 of this Agreement shall be counted as time worked for the purposes of computing holiday pay.

. . .

ARTICLE XVII
Shop Committee

17.1. The Company recognizes and will deal with all of the accredited members of the shop committee in matters relating to grievances, interpretations of the Agreement or in any manner which affects, or may affect the relationship between the Company and the Union.

17.2 A written list of the Shop Committee members shall be furnished to the Company immediately after their

designation and the Union shall notify the Company promptly of any change in the membership of the Shop Committee.

17.3. The Company will agree to such arrangements as may be necessary for the Shop Committee to properly and expeditiously carry out their union duties. Such arrangements shall include permission for committeemen to go to any department, etc. within the bargaining unit to bring about a proper and expeditious disposition of a grievance or complaint.

17.4. The Company agrees to provide the Union with a list of supervisory employees by title, department and shift, who are authorized to handle grievances under the grievance procedure. The Company shall notify the Union immediately of any changes in this list.

17.5. It is mutually agreed between the Company and the Union that the Company shall pay for the lost time for five (5) union members for time spent in negotiations up to a total of thirty-two (32) hours for each member but not to exceed a total of one hundred and sixty (160) hours.

ARTICLE XVIII
Complaints and Grievance Procedure

18.1. For the purpose of this Agreement, the term "grievance" means any dispute between the Company and the Union, or between the Company and any employee concerning the effect, interpretation, application, claim or breach or violation of this Agreement.

18.2. Any such grievance shall be settled in accordance with the following grievance procedure:

Step 1. The aggrieved employee shall orally present his grievance, either personally or with a Shop Committee member, directly with the Supervisor, who shall render his decision within one (1) working day.

Grievances not satisfactorily adjusted in Step 1 may be investigated or further investigated by the Shop Committee. If the Shop Committee determines that such grievance merits further processing, it shall be reduced to writing on the Union's grievance form within three (3) work days following the receipt of the Company's supervisor Step 1 answer, with the written grievance being given to the representative of the Company authorized to meet, discuss and adjust grievances at the Step 2 level of grievance procedures. The Union's business representative shall likewise be provided a copy of the grievance. The Union's business representative and the Company's authorized representative shall communicate with one another for the purpose of establishing a mutually agreeable time, date and place to discuss and attempt to adjust the grievance in Step 2.

Step 2. The Union's Shop Committee, if necessary, the grievant(s) and the Union's business representative shall meet, discuss and attempt to adjust grievance at this meeting. The Company shall place in writing on the grievance form the nature of the settlement or offer for settlement or denial with reasoning

therefor, not more than three (3) work days following the Step 2 meeting. Any alleged contract violation where no specific employee is aggrieved may be presented directly at this step. Such grievance must be in writing.

Step 3. In the event the grievance or dispute is not settled in the manner outlined above, then such grievance or dispute may be submitted to arbitration in the manner hereinafter provided.

18.3. Either party to this Agreement shall be permitted to call employee witnesses at each and every step of the grievance procedure. The Company, on demand, will produce production and payroll records for the purpose of substantiating the contentions or claims of the parties, well in advance of the formal proceedings of the grievance procedure.

18.4. The Company will pay members of the Shop Committee and aggrieved employees at their regular hourly rate, or average hourly earning, whichever is greater, for time spent in processing grievances in accordance with the provisions of this Agreement, but not to exceed one (1) hour for each grievance. Any time consumed in excess of such hour shall be borne equally by all parties.

ARTICLE XIX
Arbitration

19.1. In the event a dispute is submitted to arbitration, the arbitrator shall be selected according to and shall be governed by, the following procedure:

If the parties do not make an agreement on the selection of an arbitrator, then it is the obligation of the grieving party to request from the Federal Mediation and Conciliation Service the submission of a list of five (5) arbitrators. This request must be made within thirty (30) work days after the request has been made to submit the grievance to arbitration, whether or not the Company and Union have met or otherwise communicated relative to an attempt to mutually agree upon the selection of an arbitrator.

When the arbitration panel is received from the Federal Mediation and Conciliation Service, each party, beginning with the Union shall eliminate two (2) names from the list and the name of the individual remaining on the list shall be designated the arbitrator.

19.2. In determining any such dispute, the arbitrator shall interpret and enforce the provisions of this Agreement. In no event shall they depart from, add to, subtract from or vary the terms of this Agreement.

19.3. The decision of the arbitrator shall be final and binding upon the parties to this Agreement and shall be complied with within five (5) working days after the decision is rendered.

19.4. The expense and fee of the arbitrator, if any, shall be borne equally between the parties. The expense for witnesses for either side shall be paid by the party producing the witnesses.

If a stenographic record is made, either party may order a transcript thereof and the full cost shall be paid by the party ordering same. The arbitrator shall advise both parties of his fee, if any, prior to their final determination as to the choice of arbitrator.

19.5. Wages, generally, shall not be arbitrable.

4. That Complainant and Respondent were unable to successfully negotiate a successor labor agreement to the agreement which expired on October 1, 1975. Consequently, Complainant engaged in a concerted strike activity against Respondent. During the latter part of November, 1975 Complainant and Respondent agreed upon the terms of a successor collective bargaining agreement and also entered into a strike settlement agreement. 2/ Attached to the settlement agreement was a list of employes who were on strike. Said list indicated the times the employes were to report to work on Monday, November 24, 1978. The employes represented by Complainant offered to return to work on November 20, 1978, however, said offer was unacceptable to Respondent. 3/ Respondent included the "workday" hours of November 20th, 21st, and 22nd, 1975 as part of the "regular scheduled hours" for purposes of computing an employe's eligibility for those holidays for which November 20th, 21st and 22nd fell within the sixty-day period proceeding said holidays. As a consequence of computing the "work day" hours on November 20th, 21st and 22nd, 1975, some employes did not qualify for holiday pay for Thanksgiving, Christmas Eve, Christmas Day and New Year's Day. A number of grievances were filed; said grievances read as follows:

A. FACTS OF THE CASE

The Company denied payment of Thanksgiving Day (Nov. 27, 1975) holiday pay to several bargaining unit employees who participated in the Nov 7 - 20, 1975 strike on basis they didn't work 75% of the scheduled work hours during the 60 day period prior to the Thanksgiving Day holiday.

Remedy Sought

Payment of Thanksgiving Day (Nov. 27, 1975) holiday pay.

B. FACTS OF THE CASE

The Company denied payment of December 24th (1/2 day), 1975 (Christmas Eve Day) holiday pay to several bargaining unit employees on the basis they didn't work 75% of the scheduled work hours during the 60 day period prior to the Christmas Eve 1/2 day (December 24, 1975) holiday.

2/ The strike was terminated when Complainant accepted the "last final offer" of Respondent and the parties agreed to a new labor contract. Said agreement became effective as of October 1, 1975 and remained in effect until September 30, 1978.

3/ Respondent rejected Complainant's offer on the grounds that it would take some time to arrange the workload and to efficiently utilize the strikers upon their return to work.

Remedy Sought

Payment of Christmas Eve (1/2 day) December 24, 1975 holiday pay.

C. FACTS OF THE CASE

The Company denied payment of Christmas Day (December 25th,) holiday pay to several bargaining unit employees on the basis they didn't work 75% of the scheduled work hours during the 60 day period prior to the Christmas Day (December 25, 1975) holiday.

Remedy Sought

Payment of Christmas Day (December 25, 1975) holiday pay.

D. FACTS OF THE CASE

The Company denied payment of New Year's Day (January 1, 1976) holiday pay to several bargaining unit employees on the basis they didn't work 75% of the scheduled work hours during the 60 day period prior to the New Year's Day (January 1, 1976) holiday.

Remedy Sought

Payment of New Year's Day (January 1, 1976) holiday pay.

5. That said grievances were not resolved by the parties and accordingly were processed through final and binding arbitration under the terms of the collective bargaining agreement. The following issues were submitted to Arbitrator Neil M. Gundermann by stipulation of the parties.

STIPULATED ISSUES

First Issue--Should Thursday (P.M.) Friday, and Saturday (where applicable), Nov. 20, 21, and 22, 1975 respectively be included as "regular scheduled hours" in the determination of entitlement to "the grant of paid holidays" in application of Article X, paragraph 10.3 for any holidays for which Nov. 20, 21 and 22 would fall within the 60 day period preceding such holiday?

Second Issue--What hours are to be regarded as "regular scheduled hours" under the Collective Bargaining Agreement?

6. That the parties also stipulated that:

That the Arbitrator retain jurisdiction in regard to any and all disagreements that may arise between the parties as to the implementation of the Arbitrator's Award in any of the matters heard July 16, 1976.

7. That Arbitrator Gundermann heard the aforementioned grievances on July 16, 1976 and issued a written award on November 24, 1976 wherein he found, in material part, "That Thursday (P.M.), Friday and Saturday (where applicable), November 20, 21, and 22,

1975, respectively, should not be included as" regular scheduled hours" in the determination of entitlement to "the grant of paid holidays" in the application of Article X, paragraph 10.3 for any holidays for which the sixty-day period preceding such holiday for those employes who were on strike." That Arbitrator Gundermann also found "That hours are to be regarded as "regular scheduled hours' under the collective bargaining [sic] if they are part of the normal workday or work week or are scheduled overtime hours pursuant to Article VI, Section 6.6."

8. That subsequent to the issuance of Arbitrator Gundermann's arbitration award, the parties again disagreed over the interpretation and application of the term "regular scheduled hours." Specifically, issues arose concerning; (a) whether the hours employes spent in collective bargaining in excess of those hours which the employer paid compensation should be treated as "regular scheduled hours" when computing holiday pay benefits; (b) whether layoff time for lack of work constitutes "regular scheduled hours" when computing holiday pay benefits under the collective bargaining agreement; and (c) whether Respondent did or did not separate regular scheduled time from casual overtime when computing holiday pay benefits for a number of employes. 4/

9. That the matters identified in Paragraph 8 as (a) and (b) were not submitted to Arbitrator Gundermann for his determination and therefore the Respondent's practices of computing the time an employe is on layoff status as "regular scheduled hours" and of only recognizing negotiation time it pays for as hours worked for purposes of computing holiday pay eligibility do not constitute a violation of Arbitrator Gundermann's arbitration award.

10. That since the matters identified in Paragraph 8 as (a) and (b) were not submitted to Arbitrator Gundermann, and inasmuch as Gundermann did not have jurisdiction over said issues, Respondent's

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4/ Both parties stipulated that the Examiner need not make any findings with respect to the issue identified in this paragraph as (c) since the parties agreed on the record to submit said issue to Arbitrator Gundermann on the basis that said issue falls within the submission originally made to Gundermann. Complainant does, however, aver that Respondent refused to count the hours spent at the collective bargaining table by union bargaining committee members towards holiday eligibility if such hours were paid by the union and that Respondent did count towards holiday eligibility those hours spent in collective bargaining for which Respondent paid for said time. Furthermore, Complainant contends that Respondent counted layoff for lack of work as regularly scheduled hours to deny holiday benefits to employes laid off part of the time during the 60 day period prior to the holiday involved. Complainant alleges that Respondent's conduct in this regard is violative of Gundermann's award. On the other hand, Respondent maintains that its recognition of the time an employe is laid off as regularly scheduled hours within the meaning of the holiday pay eligibility provision is consistent with its past interpretation and application of said provision. Also, Respondent contends that it is a well established practice to only recognize paid negotiation time as hours worked for purposes of computing holiday pay eligibility.

failure to submit to Gundermann said issues pursuant to the retained jurisdiction stipulated to by the parties (see Finding of Fact Number 6), did not constitute a violation of said stipulation or the arbitration award.

11. That Respondent's decision to only recognize negotiation time it pays for as regularly scheduled hours for purposes of computing holiday pay eligibility was not motivated by any anti-union animus or by a desire to discourage or retaliate against employes who served on the Complainant's Shop Committee (bargaining team) for exercising their rights under the Wisconsin Employment Peace Act.

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

CONCLUSIONS OF LAW

1. That Respondent, by its practice of construing the time its employes are on layoff status as constituting "regular scheduled hours" within the meaning of the contractual provision concerning holiday pay eligibility and by its practice of only recognizing negotiation time it has paid for as hours worked for purposes of computing holiday pay eligibility has not failed to comply with Arbitrator Gundermann's November 24, 1976 arbitration award; that Respondent, by its refusal to submit to Arbitrator Gundermann the matters identified in Finding of Fact 8 as (a) and (b), has not failed to comply with either Arbitrator Gundermann's award or the stipulation conferring jurisdiction upon Gundermann concerning matters heard on July 16, 1976; that said conduct does not constitute an unfair labor practice within the meaning of Sec. 111.06(1) (f) or (g) of the Wisconsin Employment Peace Act.

2. That Respondent, by its decision to only recognize negotiation time it has paid for as "regularly scheduled hours" for purposes of computing holiday pay eligibility, did not discriminate against Shop Committee members because the exercise of their lawful, protected rights under Sec. 111.04 of the Wisconsin Employment Peace Act, and did not commit an unfair labor practice within the meaning of Sec. 111.06(1)(a) or (c) of the Wisconsin Employment Peace Act.

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

ORDER

IT IS ORDERED that the complaint of unfair labor practices filed herein be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin this 10th day of April, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Discussion Concerning First Cause of Action

Subsequent to Arbitrator Gundermann issuing his November 24, 1976 arbitration award, Complainant claimed that Respondent had not properly complied with said award and took exception with the manner Respondent had implemented the award. The Union's allegations of non-compliance were set forth in a letter dated March 24, 1977 from Complainant's counsel to Respondent's counsel. The crux of the Union's complaints were as follows:

1. The Company did not separate regular scheduled time from casual overtime in its computation of holiday pay. They used the same identical work sheets they used originally that precipitated the holiday pay grievances.

2. The Company counted layoff for lack of work time as regularly scheduled hours to deny holiday pay to employees laid off part of the time during the 60 day period prior to the holidays involved.

3. The Company is refusing to count the hours spent at the collective bargaining table by bargaining committee members towards holiday eligibility if such hours were paid for by the Union. The Company is counting towards holiday eligibility those hours spent in collective bargaining for which the Company paid the lost time. There is absolutely no rationale or justification for this.

As indicated earlier, the parties agree that the "casual overtime" issue may be re-submitted to Arbitrator Gundermann for further deliberation and consequently the Examiner need not make any findings with respect to same. Complainant asserts that the other two issues must be re-submitted to the Arbitrator because they came within the ambit of the Arbitrator's retained jurisdiction. Complainant argues that because the parties were unable to resolve their differences over the definition of "regularly scheduled hours," it was determined that the parties would specifically develop and articulate a broad issue to Arbitrator Gundermann that would treat any other problem that might arise concerning the definition of the term "regular scheduled hours" when applying said term to the holiday pay benefits provision of the parties' contract. Complainant contends that the parties have specifically given jurisdiction to the Arbitrator to determine what the term "regularly scheduled hours" means within the issues framed by this litigation and within the context of the parties' collective bargaining agreement and that Respondent also agreed to specifically allow the Arbitrator to retain jurisdiction so as to be able to resolve any and all disputes that arise relative to the implementation of his award. On the other hand, the Respondent maintains that it does not have any obligation to submit the issues relating to "layoff" and "negotiation time" to the Arbitrator inasmuch as the subject matters of these claims were not and are not within the scope of the submission presented to the Arbitrator for his determination.

The issue in this proceeding, with respect to the Complainant's claim of Respondent's non-compliance with Gundermann's award, is

whether the subject matters of "layoff" and "negotiating time," fall within the ambit of Gundermann's jurisdiction. Specifically, are the issues Complainant seeks to resubmit to Gundermann (do periods of layoff and hours spent in collective bargaining by shop committee members, which are not compensated by the Employer, constitute regularly scheduled hours within the meaning of the parties' labor agreement?) within the scope of the issues framed by the parties in their stipulated submission to the Arbitrator. It is the Examiner's judgment that said issues were not within the scope of submission presented to the Arbitrator. The gravamen of the first issue presented to Gundermann concerned whether three particular days should be included as "regularly scheduled hours" in the determination of certain employes' entitlement to paid holidays under the parties' collective bargaining agreement. Specifically, the first issue dealt with holiday benefits and the impact of the strike on the employes' eligibility for said benefits. Clearly, that factual submission has nothing whatsoever to do with the questions concerning whether the periods of time an employe is on layoff status or the period of time an employe serves on the shop committee and negotiates on behalf of other employes and is not paid for said time by the Employer constitutes "regularly scheduled hours." 5/

With respect to the second pertinent issue submitted to Gundermann, 6/ it is the Examiner's judgment that said issue does not encompass the questions Complainant raises in this proceeding concerning whether periods of layoff and hours spent in collective bargaining, that are not compensated for by the Employer, are "regularly scheduled hours" within the meaning of the parties' collective bargaining agreement. The crux of the dispute submitted to Gundermann concerning this issue involved "whether or not overtime hours should be included within the definition of 'regular scheduled hours.'" (See p. 16 of award). Clearly, the issues concerning whether the time an employe is on layoff status or whether the time an employe serves on the shop committee while negotiating and is not paid for said time by the Employer constitute "regular scheduled hours" were not before Arbitrator Gundermann. The issues related to layoff time and negotiation time do not fall within the issue concerning whether or not overtime hours should be included within the definition of "regular scheduled hours." The record evidence and arguments submitted to Gundermann on the second issue concerning "regular scheduled hours" relates to overtime hours, not to layoff time or negotiating time. The parties agreed that Gundermann was to retain jurisdiction with respect to any and all disagreements that may arise between the parties as to the implementation of the Arbitrator's award in any of the matters heard on July 16, 1976. Since nothing was specifically submitted to the Arbitrator concerning the issues relating to layoff and negotiation time, it cannot be said that Gundermann "heard" said issues or that Respondent has breached the award concerning those issues or that it has improperly refused to re-submit said matters to Gundermann.

5/ Gundermann, at page 10 of the award, indicates that the parties have submitted cases in support of their respective positions and points out that one of the cases dealt with holiday eligibility while an employe is on layoff status following a strike settlement prior to recall. Gundermann, himself, points out, however, that none of the cases cited deals with the precise issue involved in the dispute submitted to him.

6/ "What hours are to be regarded as 'regular scheduled hours' under the collective bargaining agreement?"

If the Examiner were to embrace the Complainant's position that Gundermann has jurisdiction to decide every dispute that may arise concerning the interpretation of what constitutes "regular scheduled hours," it is conceivable that Gundermann would retain jurisdiction forever. Whenever the parties disagree over what constitutes "regular scheduled hours," according to the Complainant's position, Respondent is obligated to submit said dispute to Gundermann. It is inconceivable that the Respondent would ever agree to such a commitment and it is reasonable to infer that that is precisely why it agreed to limit Gundermann's retained jurisdiction to matters heard on July 16, 1976. The factual matters heard on July 16, 1976 concerned whether November 20, 21 and 22, 1975 should be included as "regular scheduled hours" and whether or not overtime hours should be included within the definition of "regular scheduled hours." Matters unrelated to such factual disputes, (i.e., the issue concerning whether the time an employe is laid off constitutes "regularly scheduled hours" or the issue concerning whether the time an employe serves on the shop committee and is not paid for same by the Employer constitutes "regularly scheduled hours"), are beyond the scope of submission and retained jurisdiction of the Arbitrator; however, if the contract language remains the same, and if subsequent grievances arise concerning the issues articulated by Complainant herein, Gundermann's award may be instructive in resolving said issues.

Based on the aforesaid, the Examiner has dismissed Complainant's First Cause of Action.

Discussion Concerning Second Cause of Action

Complainant claims that Respondent has denied holiday pay to shop committee members and that Respondent's conduct in this regard discriminated against its employes on said committee because of their engaging in protected concerted activity. Complainant contends that Respondent developed an animus against the individuals who participated in the strike and that such animus carried over after the employes returned to work by the way in which the Respondent dealt with the holiday pay issue. Complainant argues that Respondent denied holiday benefits to the Union leadership in the plant as a punitive measure for the hostilities that occurred during the strike.

Respondent maintains that it did not possess any anti-union animus when it computed holiday pay entitlement as it related to the employe bargaining committee members. Respondent argues that its interpretation and application of said negotiation time as it relates to the computation of holiday pay entitlement was the same for the strike situation in 1975 as it was in prior years and that a claim of discriminatory motive is therefore eliminated.

The Complainant has failed to prove by a clear and satisfactory preponderance of the evidence that Respondent's action toward shop committee members was based at least in part, on anti-union considerations. 7/ Complainant failed to offer persuasive proof that Respondent's decision to only recognize negotiation time it has paid for as "regularly scheduled hours" for purposes of computing holiday pay eligibility was predicated upon any animus Respondent harbored against

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7/ St. Joseph's Hospital (8787-A, B) 10/69, 12/69; Earl Wetenkamp d/b/a Wetenkamp Transfer and Storage (9781-A, B, C) 3/71, 4/71, 7/71; and AC Trucking Co., Inc. (11731-A) 11/73.

shop committee members for engaging in protected activities. The Complainant would have the Examiner infer animus based on an alleged contract violation. Even if it was assumed, arguendo, that Respondent violated the collective bargaining agreement or Gundermann's arbitration award, the evidence taken in its entirety, will not support a finding of animus. The record simply does not support a finding that Respondent possessed any anti-union animus against shop committee members or that its decision to only recognize negotiation time it has paid for as "regularly scheduled hours" for purposes of computing holiday pay benefits was based in part upon such animus. Therefore, the Examiner has dismissed Complainant's Second Cause of Action.

Dated at Madison, Wisconsin this 10th day of April, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Examiner