

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

UNITED FURNITURE WORKERS OF AMERICA,
LOCAL 800, AFL-CIO,

Complainant,

vs.

RICHARDSON BROTHERS COMPANY,

Respondent.

Case I
No. 22866 Ce-1774
Decision No. 16311-A

Appearances:

Meyers, Rothstein and Leon, Attorneys at Law, by Mr. Herbert D. Adams, appearing on behalf of the Complainant.

Ropella & Soukue, Attorneys at Law, by Mr. Kevin J. Sjostrom and Mr. Willis Ferebee, appearing on behalf of the Respondent. 1/

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

A complaint of unfair labor practices having been filed with the Wisconsin Employment Relations Commission in the above-entitled matter; and the Commission having appointed James D. Lynch, a member of the Commission's 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 Sheboygan, Wisconsin on May 24, 1978, before the Examiner; and the parties having filed post hearing briefs by August 23, 1978; and the Examiner having considered the evidence, arguments of counsel, and being fully advised in the premises, makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That United Furniture Workers of America, Local 800, AFL-CIO, hereinafter referred to as the Complainant, is a labor organization with offices at 1104 Wisconsin Avenue, Sheboygan, Wisconsin.
2. That Richardson Brothers Company, hereinafter referred to as Respondent, is a Company located at Post Office Box 157, Sheboygan Falls, Wisconsin, with manufacturing facilities located in Sheboygan Falls, Wisconsin.
3. That at all times material hereto, the Complainant has been the exclusive bargaining representative of certain employes of Respondent; that the Complainant and Respondent are signatories to a collective bargaining agreement with an effective term of October 1, 1977 to September 30, 1978.
4. That said collective bargaining agreement contains, inter alia, the following relevant provisions:

1/ Subsequent to the hearing conducted in this matter, Respondent retained new Counsel. Post hearing briefs were filed on Respondent's behalf by Di Renzo and Bomier by Howard T. Healey.

"ARTICLE XI.

GRIEVANCE PROCEDURE

11.01 A grievance is defined as any controversy between an employee and the Company as to any matter involving the interpretation, violation or application of any provision of this Agreement.

. . .

11.02 The steps in the procedure for handling of grievances shall be as follows:

. . .

Fourth Arbitration - If a grievance is not satisfactorily adjusted in Step Three, then it may be referred by the Union, but within twenty (20) calendar days of the written answer in the Third Step, to arbitration. If the matter is not referred to arbitration within the aforementioned twenty (20) calendar days it is deemed resolved.

Within five (5) working days from the date of submission to arbitration, the designated company representative and a union official designated by the Union shall endeavor to select an arbitrator mutually agreed upon by them. If, within seven (7) working days from the date of the submission to arbitration the Company and the Union are unable to agree on an arbitrator, then the selection of the arbitrator shall be made in accordance with the rules and procedures of the Federal Mediation and Conciliation Service.

The arbitrator shall have jurisdiction and authority only to interpret the provisions of this Agreement and shall not add to, subtract from or amend any of the provisions of this Agreement, nor shall he have the authority to entertain or make awards relative to grievances concerning rates of pay except as to incentive rates and pay.

The decision of the arbitrator shall be final and binding upon both parties.

The cost of the services of the arbitrator shall be borne equally by the parties thereto.

11.03 Discharge: All grievances concerning discharges shall be presented in writing within five (5) working days from the date of discharge. A copy of the discharge slip will be furnished immediately to the Union at the time of discharge. Such grievances shall be filed directly with the Company Representative and upon request, a meeting will be held immediately between the Company Representative and the employee accompanied by the Union Representative. If sufficient evidence shows that the employee was unjustly dealt with, he shall be reinstated and reimbursed for all wages lost.

. . .

ARTICLE XX.

DURATION AND RENEWAL

The Labor Agreement shall take effect as of October 1, 1977, and shall continue in full force and effect for a one

(1) year period ending at 12:00 p.m., September 30, 1978, and shall be automatically renewed for further periods of one (1) year each, unless sixty (60) days prior to the date of the expiration either party shall notify the other in writing by certified mail, return receipt requested, of a desire to amend, change, or terminate this Agreement."

5. That on March 14, 1978, a grievance was filed by Complainant on Barbara Krueger's behalf by Mando Schuh, Shop Foreman for Respondent's employes, alleging that Krueger had been discharged in violation of the collective bargaining agreement by Respondent on or about March 14, 1978.

6. That shortly thereafter Donald Seymour, Respondent's Personnel Director, returned the grievance to Schuh stating that he would "not accept this grievance".

7. That subsequent thereto, Complainant, by its business agent Harold E. Kober, requested of Mr. Joseph Richardson that the grievance be submitted to arbitration; that Richardson, alleging that the grievance was not timely filed, refused to process the grievance to arbitration.

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

CONCLUSION OF LAW

That Respondent, Richardson Brothers Company, has violated, and continues to violate, the terms of the collective bargaining agreement existing between it and the Complainant, United Furniture Workers of America, Local 800, AFL-CIO by refusing to submit the grievance relating to Barbara Krueger's discharge to arbitration and, by refusing to arbitrate said grievance has committed, and is committing, unfair labor practices within the meaning of 111.06(1)(f) of the Wisconsin Employment Peace Act.

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

ORDER

That Respondent, Richardson Brothers Company, and its agents, shall immediately:

1. Cease and desist from refusing to submit the aforesaid grievance and issues related thereto to arbitration.
2. Take the following affirmative action which the Examiner finds will effectuate the purposes of Section 111.06(1)(f) of the Wisconsin Employment Peace Act:
 - a. Comply with the arbitration provisions of the collective bargaining agreement existing between Respondent and United Furniture Workers of America, Local 800, AFL-CIO, with respect to the subject Krueger grievance.
 - b. Notify the United Furniture Workers of America, Local 800, AFL-CIO that Respondent will proceed to arbitration on said grievance and the issues concerning same.
 - c. Participate with United Furniture Workers of America, Local 800, AFL-CIO, in the arbitration proceedings before the arbitrator to resolve the grievance.

- d. Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days from the date of this Order as to what steps it has taken to comply herewith.

Dated at Madison, Wisconsin this 18th day of September, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James D. Lynch
James D. Lynch, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

The complaint filed herein alleges that the Complainant and Respondent were at all times material hereto parties to a collective bargaining agreement which contained a grievance procedure culminating in an arbitration step. It alleges further that on or about March 14, 1978, Respondent discharged Barbara Krueger in violation of said agreement and refused to accept and process a grievance challenging the propriety of said discharge.

Although Respondent denied these allegations in its answer, the testimony at hearing establishes that Respondent refused to accept or process said grievance to arbitration. However, the Employer by way of defense alleges that at the time Barbara Krueger was discharged there was no collective bargaining agreement governing the relationship between the parties and thus it had no duty to arbitrate Barbara Krueger's discharge. Specifically, Respondent contends that Barbara Krueger was discharged on October 21, 1977 (not on March 14, 1978 as alleged) and that although the collective bargaining agreement recites that it was effective October 1, 1977, the Examiner should consider parol evidence which Respondent contends would establish that the contract did not become effective until December 22, 1977. Respondent argues that the Examiner must make a factual determination both as to the effective date of the collective bargaining agreement and the actual date of Barbara Krueger's discharge.

Respondent misunderstands the nature of this proceeding. The law is well settled that the scope of the Commission's power is limited to determining whether the grievance states a claim which on its face is governed by the collective bargaining agreement. 2/ The collective bargaining agreement recites that its duration is from October 1, 1977 through September 30, 1978. The testimony at hearing established that Complainant filed a grievance alleging that Respondent wrongfully discharged Barbara Krueger on or about March 14, 1978. Thus, the grievance is prima facie substantively arbitrable. However, this does not mean that Respondent will not have the opportunity to contest certain factual allegations urged herein, only that such factual allegations are to be made by the Arbitrator and not the Commission.

Therefore, in light of the foregoing, the Examiner has found that Respondent has violated Section 111.06(1)(f) of the Wisconsin Employment Peace Act by refusing to process the Barbara Krueger discharge grievance to arbitration.

Dated at Madison, Wisconsin this 18th day of September, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James D. Lynch
James D. Lynch, Examiner

2/ Seaman Andwall Corp., (5910) 1/62; Wisconsin Porcelain Company, (10215-A, B) 7/71.