

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondent.

No. 16926-A

Further, seniority shall be applied in the scheduling of interviews for promotions, so that applicants and candidates with the most seniority shall be interviewed first.

Article X - Complaints and Grievances

Section 1

. . .

Step 2. If this does not satisfy the employee and he desires the Union to present the grievance to the Office Committee, the Union, within 10 working days after the employee has received the notice from his department head, may notify the Secretary of the Office Committee in writing that the Union desires to meet with the Office Committee.

. . .

Unless the grievance involves the interpretation or application of the terms of this Agreement or relates to a discharged regular employee, the action of the Office Committee shall be final. Such action applies specifically to such matters as the determination of promotions and merit increases for individual employees and classification of jobs, except as otherwise agreed upon by the Company and the Union.

Step 3. If the Grievance involves the interpretation or application of the terms of this Agreement or relates to a discharged regular employee, the Union within 10 working days after receiving the notice specified in Step 2 may notify the Secretary of the Office Committee in writing that it desires to have the matter heard by a grievance panel. Thereafter, within 10 working days, the Union and the Company shall each designate a representative for the grievance panel, and shall notify each other in writing of their selection. The failure of either party to designate a representative for the grievance panel within this period shall result in a forfeiture of its right to name a representative on said panel.

Within the same 10 working day period, the Union and the Company shall decide upon the selection of an Impartial Chairman. If the parties, within the 10 working day period and 5 additional working days, are unable to decide upon an Impartial Chairman, the party desiring arbitration shall notify the Federal Mediation and Conciliation Service, which shall submit a panel containing 5 names. Each party shall alternately strike one name until one name remains.

The person whose name remains shall serve as the Impartial Chairman. The Impartial Chairman shall preside over the grievance panel and shall counsel with and assist the panel in reaching a decision. The Union and the Company shall share equally the expense of the Impartial Chairman.

A majority vote of the panel shall decide any controversy submitted to it under this section. Any decision of the panel shall be in writing and shall be binding upon the employee, the Company, and the Union, to each of whom a copy shall be given.

Except for its powers in discharge cases, the grievance panel shall only have power to interpret and apply the terms of this Agreement. The panel shall have no power to extend the duration of this Agreement, to add any terms or provisions, or to enlarge its jurisdiction, except by mutual consent of the Company and the Union.

4. That on July 17, 1978, Complainant filed a grievance, on behalf of Arlene Kubiak, an employee of Respondent, contending that Respondent had violated the provisions of the agreement when it promoted an employee with less seniority than Kubiak possessed; that said grievance was processed by the parties to the Office Committee which denied the grievance; that on February 26, 1979, Complainant requested that the aforesaid grievance be moved to arbitration; and, that on March 2, 1979, Respondent informed Complainant that it would not proceed to arbitration on the Kubiak grievance.

CONCLUSIONS OF LAW

1. That the grievance regarding the denial of a promotion to Arlene Kubiak raises a claim which, on its face, is covered by the terms of the parties' collective bargaining agreement.

2. That the Northwestern Mutual Life Insurance Company has violated, and continues to violate, the terms of Article X of the collective bargaining agreement existing between it and the Office and Professional Employees International Union, Local 35, by refusing to arbitrate the Arlene Kubiak 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 the Northwestern Mutual Life Insurance Company, and its agents, shall immediately:

1. Cease and desist from refusing to submit the Kubiak 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 provision of the collective bargaining agreement existing between it and the Office and Professional Employees International Union, Local 35, with respect to the Kubiak grievance.

(b) Notify the Office and Professional Employees International Union, Local 35, that it will proceed to arbitration on the Kubiak grievance.

(c) Participate with the Office and Professional Employees International Union, Local 35, in the arbitration proceedings before the arbitrator with respect to the Kubiak 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 5th day of December, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Douglas M. Knudson, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The grievance at issue herein contends that the Respondent violated Article VII, Section 2 of the parties' agreement by promoting an employee with less seniority than the grievant possessed.

Respondent's refusal to arbitrate said grievance is premised upon its belief that the agreement excludes disputes concerning promotions, such as the Kubiak grievance, from arbitration.

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)." The Commission has held for years that if the grievance states a claim which, on its face, is governed by the collective bargaining agreement, it is prima facie substantively arbitrable. 1/

According to the Trilogy cases, 2/ though a party may be held to arbitrate only those disputes contracted to be arbitrated, a very strong presumption exists in favor of the arbitrability of a disagreement over the meaning of a labor contract. A grievance or dispute must be regarded as arbitrable "unless it may be said with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." 3/ Under such a directive, a contractual clause, which excludes certain issues from arbitration, must be clear and unambiguous to be effective.

Inasmuch as Article VII deals with promotions, a plausible argument can be made that the first sentence of the second paragraph of Article X, Section 1, Step 2, precludes the decision of the Office Committee from being final with respect to grievances involving promotions, as does the Kubiak grievance. Accordingly, in keeping with the Commission's policy of giving arbitration provisions in collective bargaining agreements "their fullest meaning," 4/ the Examiner concludes that the instant grievance states a claim which on its face is arbitrable. The question of whether in fact the grievance is substantively arbitrable is for the arbitrator to ultimately determine, based on the evidence and arguments presented at the arbitration hearing. Therefore, Respondent has a duty to arbitrate any grievance stating a claim, which on its face is covered by the collective bargaining agreement, even if the arbitrator finds the grievance not to be substantively arbitrable.

1/ Spooner Joint School District No. 1, (14416-A) 9/76; UOP Norplex, (13214-A,B) 1/76; Seaman Andwall Corp., (5910) 1/62.

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

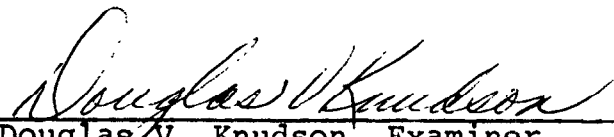
3/ Warrior and Gulf Navigation Co., 363 U.S. 574 (1960).

4/ Oostburg Joint School District No. 14, (11196-A,B) 12/72; Seaman Andwall Corp., (5910) 1/62.

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

Dated at Madison, Wisconsin this 5th day of December, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Douglas V. Knudson, Examiner

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case II
No. 24291 Ce-1816
Decision No. 16926-A

No. 16926-A

Further, seniority shall be applied in the scheduling of interviews for promotions, so that applicants and candidates with the most seniority shall be interviewed first.

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