

Implement Workers of America and its Local Union No. 180 as the exclusive bargaining representative of certain of its employes including the Complainant herein.

5. That at all times material hereto Respondents have been signatories to a collective bargaining agreement effective from July 11, 1977 through June 30, 1980, covering wages, hours and working conditions of said employes, including Complainant; and that said agreement contains among its provisions the following that are material hereto.

ARTICLE VII

GRIEVANCE PROCEDURE

Section 1. Definition.

The term "grievance" as used herein shall mean a complaint subject to interpretation or application to this Agreement. Grievances of a general nature, and involving matters which are outside the jurisdiction of the foreman, will be known as policy grievances and may be presented in Step 3. Any settlement of a policy grievance shall be reduced to writing and signed by both parties.

Section 2. Grievance Steps.

An employee desiring to have the Union take up his grievance may contact his steward and the grievance will then be processed in the following manner:

STEP 1: If the grievance is such that the foreman cannot settle it satisfactorily at the time of presentation it shall be reduced to writing on forms provided for this purpose by the Company and presented to the foreman. This written grievance shall be signed by the aggrieved employee (if he is available) and the steward of the department. The foreman will give his answer to such grievance, in writing, by the end of two (2) working days from the receipt of the written grievance. In the event the foreman does not give his answer by the end of the two (2) working days, as specified above, the grievance will automatically be passed on to the next step.

STEP 2: The foreman's decision will be considered final, unless within five (5) working days of the foreman's answer the grievance is presented by the bargaining committee man (who may be accompanied by the steward of the aggrieved), to the superintendent of the division in which the grievance originated, or his designated representative. Said superintendent will submit his written answer to the grievance within five (5) working days after the date of presentation to him. In the event the superintendent does not submit his answer within five (5) working days, the grievance will automatically be passed on to the next step.

STEP 3: The decision of the superintendent will be considered final unless within five (5) working days of the superintendent's answer

the grievance is presented in writing to the Industrial Relations Department with a request that it be placed on the agenda for the next regular meeting between the bargaining committee and the Company, at which meeting a further effort will be made to settle the grievance. The Company will advise the Union of its disposition of the grievance with five (5) working days of said meeting.

Section 3. Arbitration.

- A. The Company's answer provided in Step 3 shall be considered final unless within ten (10) working days after receipt of the Company's final answer the chairman of the local Union bargaining committee requests in writing that the grievance be submitted to an impartial arbitrator in accordance with paragraphs C and D below. Such a request shall be submitted to the Corporate Director of Industrial Relations. At any mutually convenient time within a fifteen (15) to thirty (30) day period, the representative from the UAW - J.I. Case Department will meet at the plant location with the Vice President of Corporate Relations or his representative to discuss a possible settlement of the grievance. Those grievances settled will be answered in writing by the Company. Those grievances remaining unsettled will be placed on the arbitration docket.
- B. The arbitration docket agreed to in the meeting of this Section 3. A will be the basis for the Corporate Director of Industrial Relations and the UAW - J.I. Case Department to select and schedule arbitrators and arbitration dates in accordance with paragraphs C and D below within the next ten (10) day period following the meeting. This procedure also applies to grievances involving individual discharge cases which may be processed under the provisions of ARTICLE VII, Section 8 - Special Discharge Arbitration. Those grievances not assigned to arbitration at this meeting will be considered settled on the basis of the Company's last answer.
- C. The parties have, upon the execution of this Agreement (in a separate Letter of Understanding), agreed upon a panel of five (5) permanent arbitrators who shall have referred to them any grievances appealed to arbitration. The Union, at the time it gives it written request to arbitrate under B above, shall suggest the name of one (1) of the five (5) permanent arbitrators, and if the Company does not oppose the suggestion within twenty-four (24) hours, then the named arbitrator shall be selected. If the Company does oppose, then it shall name two (2) of the five (5) arbitrators who would be acceptable to it within the above noted time. Then the Union, within twenty-four (24) hours, shall pick one (1) arbitrator from the two (2) thus named; the arbitrator picked by the Union shall be considered selected.

- D. The arbitrator selected shall be immediately notified so that a hearing date may be set for the earliest possible time. Every effort must be made by the parties to act in an expeditious fashion to process an arbitration appeal. If the arbitrator selected is not available to schedule a prompt hearing date then the selection procedure, under C above, shall be repeated immediately and a new arbitrator selected.
- E. The Company and the Union shall each bear one-half (1/2) the cost of fees and expenses of the impartial arbitrator.
- F. The functions and jurisdiction of the impartial arbitrator shall be fixed and limited by this Agreement, and he shall have no power to change, add to, or delete from its terms. He shall have jurisdiction only to determine issues involving the interpretation or application of this Agreement; and any matter coming before the impartial arbitrator which is not within his jurisdiction as herein defined shall be returned to the parties without decision or recommendation. In the event any disciplinary action (including reprimands) taken by the Company is made the subject of an arbitration proceeding the arbitrator's authority shall, in addition to the limitation set forth herein, be limited to the determination of the question(s) of whether the employee involved had been disciplined for proper cause, except that if the arbitrator finds that the penalty assessed by the Company is inappropriate for the offense or offenses committed, he may modify that penalty.

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- H. The decision of the arbitrator shall be final and binding on the Company, the Union, and the employee or employees involved.

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ARTICLE IX - SENIORITY

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Section 4. Termination of Seniority.

An employee's seniority shall be terminated for any one of the following reasons:

. . .

- (3) If he is absent for more than three (3) consecutive working days without properly notifying the Company, unless circumstances make it impossible to so do.

6. That Respondent Union's By Laws which were in effect at all times material herein contain among its provisions the following;

. . .

ARTICLE XIII - APPEALS

Section 1: Any member dissatisfied with the action or decision of the Executive Board, Bargaining Committee or Steward, shall take his or her appeal or complaint to the Local Union Recording Secretary within sixty (60) days as permitted by the International Constitution with the following provisions:

(A) The Executive Board shall refer the matter to the Bargaining Committee if it involves collective bargaining; otherwise, the Executive Board shall consider the matter itself.

(B) Whichever of these bodies the matter is referred to shall consult with the grievant, permit him full opportunity to be heard, and shall reach a decision.

(C) Within thirty (30) days of receiving a notice of such a decision, the grievant, if wishing to appeal further, shall submit his appeal to the Recording Secretary in writing for consideration by the earliest possible membership meeting. ;

and, that the International Union's Constitution which was in effect at all times material herein contains among its provisions the following:

ARTICLE 33

Appeals

Section 1. All subordinate bodies of the International Union, and members thereof, shall be entitled to the right of appeal. In all cases, however, the decision of the lower tribunal must be complied with before the right to appeal can be accepted by the next tribunal in authority, and shall remain in effect until reversed or modified. The International President may, upon written application by an appellant waive in whole or in part requirements of such compliance, where unusual circumstances would warrant such waiver.

Section 2. Any member of any Local Union or unit of an Amalgamated Local Union who wishes to challenge any action, decision or penalty of that body or of any official or representative of that body must, in all cases and procedures where no other time limit is specifically set forth by this Constitution, initiate the challenge before the appropriate body of such Local Union or unit within sixty (60) days of the time the challenger first becomes aware or reasonably should have become aware of the alleged action, decision, or penalty of that body.

Section 3. Any member of an Amalgamated Local Union wishing to appeal from any action, decision or penalty of his unit shall first appeal such action, decision, or penalty to the Amalgamated Local Union's

delegate body, where such exists, or the general membership meeting, where no delegate body exists. This appeal shall be taken by submitting a written notice of appeal to the Amalgamated Local Union's Recording Secretary within thirty (30) days of the unit's action, decision, or penalty being appealed from. The Amalgamated Local Union shall review the appeal, with the aid of an investigating committee or otherwise, and shall determine the appeal, but if a Unit Trial Committee is involved in the proceedings, it shall not select its own Trial Committee to retry the case. An appeal from the decision of the Amalgamated Local Union shall be carried to the International Executive Board.

Section 4. Any member or subordinate body appealing from any action, decision or penalty of any subordinate body, shall be permitted representation before any reviewing body by counsel of his own choice. The appellant and/or counsel shall be afforded full opportunity to present to any reviewing body the appellant's position on all matters bearing upon the action, decision or penalty under review; providing that this right to appear shall be limited to an appearance before a committee or panel of any reviewing body where the reviewing body has established the committee or panel to conduct a hearing and submit recommendations to the full reviewing body.

Section 5. Any member feeling himself aggrieved by any action, decision or penalty of his subordinate body shall be entitled to appeal that action, decision or penalty to the International Executive Board only when it has been passed upon by the Local Union membership or delegate body shall be specifically permitted by another Article of this Constitution. An appeal to the Local Union may be made at a meeting or in writing to the Recording Secretary. An appeal to the International Executive Board may be made without action by the membership or delegate body if the membership or delegate body does not meet and act on the appeal within forty-five (45) days following the appeal to the Local Union. When no membership or delegate body meeting is held during this forty-five (45) day period the Local Union Executive Board may consider and pass on the appeal.

Section 6. Any member wishing to appeal from the action, decision or penalty of his subordinate body shall do so in writing within thirty (30) days after the aforesaid action, decision or penalty. He shall send such appeal to the International Union President and should send a copy of the appeal to the Recording Secretary of the subordinate body. The appeal should set forth the action, decision or penalty being appealed and should include any and all information available in support of the appeal. The International President shall secure from the subordinate body a complete statement of the matters in issue, including copies of all charges, and any records, minutes, transcripts of testimony and other material relating to the appeal.

Section 7. (a) The International Executive Board shall appoint a two (2) member committee to

consider the appeal and make recommendations. This two (2) member committee shall be composed of members of the International Executive Board, but shall not include the Regional Director of the region from which the appeal originates. The appeal and any information secured by the International President, pursuant to Section 6 of this Article, shall be forwarded to the committee. After a review of the appeal the committee may hold a hearing, before either the full committee, or in its discretion, one of its members, unless the committee concludes that no useful purpose would be served by a hearing, in which event the committee, in its discretion may make recommendations on the appeal without a hearing. If a hearing is held, it shall be held as close to the locality from which the appeal originates as is possible in order to minimize expense and inconvenience to the appellant. The appellant and appellee (or their representatives) shall be required to appear before the Appeals Committee, with such counsel and witnesses as they may choose, and shall answer fully and truthfully all questions put to them by members of the Appeals Committee. The extent and scope of the hearing shall be such as in the discretion of the committee shall bring to light all facts and issues involved. The appellant and/or appellee shall each be entitled to submit any briefs or any other written statements of position that either of them may wish. The committee shall consider the files and records of the case, and such briefs as may be submitted by either side. Based upon this consideration, the Appeals Committee shall make a recommendation which, together with all of the aforesaid documents, shall be submitted to a nine (9) member committee of the International Executive Board, of which five (5) members shall constitute a quorum. The nine (9) member committee of the International Executive Board shall consider said documents, together with the Appeals Committee recommendation, and shall make a decision on the appeal.

(b) The International President may decide an appeal, rather than submitting it to a two (2) member committee of the International Executive Board, if he concludes that such procedure is appropriate. In such case, the International President may designate a representative to conduct any investigation or hearing deemed necessary, in accordance with the procedures set forth in subsection (a) hereof. The International President shall base his decision on the files and records of the case, and such briefs as may be submitted by either side.

(c) Both where the appeal has been decided by the nine (9) member committee of the International Executive Board and where it has been decided by the International President, copies of the decision shall be sent to all members of the International Executive Board and the decision shall become the decision of the International Executive Board, unless within ten (10) days, one or more members of the International Executive Board shall raise an objection to the decision, in which case the appeal shall be referred, for decision, to the International Executive Board at its next regular meeting. The International President shall promptly notify all

Parties concerned of the decision of the International Executive Board. The International Executive Board shall use its best efforts to render its decision within sixty (60) days of receipt of the appeal by the International President.

Section 8. Any subordinate body or member thereof wishing to appeal from any decision of the International Executive Board or an International Trial Committee may, in all cases, take such appeal to the Constitution Conventional Appeals Committee of the International Union. The Convention Appeals Committee shall have the authority to consider and decide all appeals submitted to it from decisions of the International Executive Board and International Trial Committees under this Section. All decisions of the Committee shall be final and binding.

The Constitution Convention Appeals Committee shall consist of a member and a first and second alternate from each region to be selected by lot from the delegates, when they elect their Regional Director. To provide continuity, members of the Convention Appeals Committee shall be selected from one-half of the regions at each Convention. Such members selected shall serve for two (2) Convention terms. In the event a vacancy occurs on the Committee, it shall be filled by the ranking alternate from that region. All remaining vacancies shall be filled by lot at the next Constitutional Convention.

The Convention Appeals Committee shall meet semi-annually, at International Union Headquarters, to act upon all appeals that have been submitted under this Section at least thirty (30) days prior to the date established for their meeting. The administrative procedures for the Convention Appeals Committee shall be established by the International Executive Board, subject to review by subsequent regular Constitutional Conventions.

The appellant shall, however, have the alternative of appealing such decision of the International Executive Board or an International Trial Committee to the Public Review Board established in Article 32 of this Constitution in the following cases:

- (a) Any cases arising under the procedure set forth in Article 10 (Section 13), Article 12 (Sections 2 and 3), Articles 30 and 31, Article 33 (Sections 9 and 12), Article 36 (Sections 9 and 10), Article 38 (Sections 11 and 12), Article 48 (Sections 5 and 6) of this Constitution, or
- (b) Those cases decided by an administrative arm of the International Executive Board, pursuant to Article 12, Section 17, or by the International Executive Board, which concern action or inaction relative to the processing of a grievance, in which the appellant has alleged before the administrative arm or the International Executive Board that the grievance was improperly handled because of fraud, discrimination, or collusion with management.

- (c) In any other case in which the International Executive Board has passed upon an appeal from the action of a subordinate body.

Section 9. Regardless of which alternative the appellant decides to utilize, he must take the appeal within thirty (30) days of notification of the International Executive Board's decision, (unless such time is extended by the International Union President, where, in his opinion, justice will be served by such an extension), by serving a notice of appeal upon and filing a written statement of his reasons for appeal with the International President.

Section 10. If the appellant elects to appeal to the Public Review Board, the appeal shall be considered by the Board or a panel thereof. The International President shall forward to the chairman of the Public Review Board all documents and records in the case. After studying said documents and records, the Board or the panel shall hold a hearing; provided that where the Board or panel concludes after preliminary consideration and/or investigation that the appeal is insubstantial or that no useful purpose would be served by a hearing, the Board may, in its discretion, decide or dismiss the appeal without a hearing. The extend and scope of the hearing, as well as other matters of procedure and timing, shall be controlled by the rules of procedure which shall be established for such hearings by the full Board pursuant to Article 32, Section 6.

Section 11. The Board or panel thereof shall, upon due consideration, issue its decision which shall be final and binding upon all parties. In cases coming within Section 8 of this Article, with the exception of cases concerning the processing of grievances, the Board or panel shall decide and dispose of all matters raised by the appeal. In cases that do involve the processing of grievances, the Board or panel shall first determine whether the specific allegation upon which the appellant claims the Board's or panel's jurisdiction to be based is, or is not, true. If such allegation is found to be true, the Board or panel shall proceed to dispose of all facets of the appeal; provided that in no event shall the Public Review Board have the jurisdiction to review in any way an official collective bargaining policy of the International Union. If the Board or the panel shall decide that such jurisdictional allegation is not true, it shall dismiss the appeal in which event the appellant shall, within thirty (30) days of notification of such dismissal, be entitled to appeal the matter to the Constitutional Convention of the International Union; provided that in such appeal, the appellant may not again raise any issue which the Board or the panel negated in its decision dismissing for lack of jurisdiction.

Section 12. It shall be the duty of any member or subordinate body who feels aggrieved by any action, decision, or penalty imposed upon him or it, to exhaust his or its remedy and all appeals

therefrom under the laws of this International Union prior to appealing to a civil court or governmental agency for redress.

7. That Complainant was hired by Respondent Employer on September 20, 1972; and that, effective September 15, 1978, Complainant's employment with Respondent Employer was terminated for failing to report his absence for three (3) consecutive working days.

8. That in response to Complainant's termination, Respondent Union filed a grievance on behalf of Complainant with Respondent Employer; that Respondent Employer denied the grievance throughout the contractual grievance procedure; that after processing the grievance through Steps 1, 2 and 3 of the grievance procedure set forth in the collective bargaining agreement between the parties, Respondent Union decided to withdraw said grievance from the grievance procedure; that Complainant was notified in writing by a representative of Respondent Union that Respondent Union declined to process his grievance to arbitration; that it was also subsequently explained to Complainant by a representative of Respondent Union why his grievance was withdrawn and that if he was not satisfied, he could appeal said decision through the Respondent Union's internal appeals procedures.

9. That the decision of Respondent Union to withdraw the grievance relating to Complainant's termination was predicated upon its belief that the Complainant's termination would be sustained if submitted to an arbitrator; and that Respondent Union, in arriving at said decision, considered the applicable contractual language, the particular factual setting of Complainant's case, an arbitration award involving Respondent Employer and one of its employes in which the arbitrator sustained the termination of said employe for failing to report his absence for three consecutive working days, and the advise of its International Representative who had considerable experience arguing arbitration cases.

10. That Complainant did not initiate the internal Respondent Union procedures available to him for appealing Respondent Union's decision to withdraw his grievance.

11. That there is insufficient evidence that Respondent Union or any of its representative acted arbitrarily, discriminatorily or in bad faith in deciding to withdraw Complainant's grievance; and that the record reflects that representatives of Respondent Union provided Complainant with fair representation when handling the grievance relating to his discharge.

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

CONCLUSIONS OF LAW

1. That Complainant's failure to exhaust the internal Union procedures available to him does not foreclose him from processing his complaint herein.

2. That United Automobile, Aerospace and Agricultural Implement Workers of America, Local 180, and its representatives, did not wrongfully refuse to proceed to arbitration in the grievance of Complainant and, therefore, the conduct of Respondent Union and its representatives in processing Complainant's grievance protesting his discharge and in withdrawing said grievance was not arbitrary, discriminatory, or in bad faith; and Respondent Union, therefore, did not violate its duty to fairly represent Complainant.

3. That since United Automobile, Aerospace and Agricultural Implement Workers of America, Local 180 did not violate its duty to

fairly represent Complainant with respect to his grievance, the Examiner will not invoke the jurisdiction of the Wisconsin Employment Relations Commission for the purpose of determining the merits of said grievance inasmuch as under the circumstances, the Commission has no jurisdiction to determine the merits of Respondent Employer's alleged breach of the collective bargaining agreement in violation of Sec. 111.06(1)(f), Wis. Stats.

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

ORDER

IT IS ORDERED that the complaints filed in the instant matter be, and the same hereby are, dismissed.

Dated at Madison, Wisconsin this 11th day of February, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF
FACT, CONCLUSIONS OF LAW AND ORDER

Complainant avers that Respondent Employer discharged him in violation of the existing contract between Respondent Union and Respondent Employer. Complainant also maintains that Respondent Union breached its duty to fairly represent him in protecting his job rights when it withdrew his grievance from the contractual grievance procedure and failed to prosecute same to arbitration.

Respondent Employer denies that McNeil was discharged in violation of the collective bargaining agreement and maintains that it satisfied the requisite contractual standards in discharging Complainant and that therefore its discharge of Complainant was justified under the labor contract. Both Respondent Employer and Respondent Union argue that Complainant failed to demonstrate that Respondent Union violated its duty of fair representation and as a result, the Commission has no jurisdiction to entertain the merits of Complainant's charges against the Respondent Employer and that the charges against Respondent Union should also be dismissed. Furthermore, both Respondent Union and Respondent Employer insist that the Commission should not invoke its jurisdiction in this matter inasmuch as Complainant did not exhaust the internal Union remedies available to him in disposing of his claimed unfair representation by the Union.

The question concerning whether Complainant should have exhausted the internal Union procedures available to him is irrelevant to the proper disposition of the questions before the Examiner, which are whether the Respondent Employer and/or Respondent Union violated Complainant's rights under the Wisconsin Employment Peace Act (WEPA). Even if Complainant were to exhaust the internal Union procedures available to him, regardless of the outcome of same, it would not alter the conduct of Respondent Union in the first instance where it refused to process Complainant's grievance through the grievance procedure to arbitration. Therefore, the proper issue before the Examiner is whether the Respondent Union's conduct in the first instance, where it refused to process the grievance past step three of the grievance procedure, constitutes a violation of Complainant's rights under the WEPA. Furthermore, by exhausting the internal Union remedies, the wrong of which Complainant alleges may not be ameliorated. There is nothing in the internal remedies available to Complainant that would assure him that he would be made whole if it were found that Respondent Union breached its responsibilities by not processing the grievance to arbitration. The reinstatement of Complainant's job with no loss of wages, fringe benefits or seniority is not the kind of relief available through the Union's internal remedies. Even if Complainant were to prevail under the internal Union procedures available to him, Respondent Employer is not contractually obligated to reinstate Complainant upon the request of Respondent Union. If it were demonstrated that Respondent Union violated its duty to fairly represent Complainant so that the Commission could entertain the merits of Complainant's grievance and if Complainant's grievance were sustained, it is the authority of the Commission under the WEPA to issue remedial orders and not any authority found in the Union's internal machinery, that could make Complainant whole. Based upon the aforesaid, it is the Examiner's judgment that Complainant should not be prohibited from attempting to prove Respondent Union breached its duty to fairly represent him because the Complainant did not attempt to utilize the internal procedures provided by the Local and International Union's Constitution and By-Laws.

Before the Commission will exercise its jurisdiction to determine the merits of Complainant's allegation that Respondent Employer breached the collective bargaining agreement in violation of Section 111.06(1)(f) of the WEPA, the Complainant must prove by a clear and satisfactory preponderance of the evidence 1/ that he attempted to exhaust the collec-

1/ See Sec. 111.07(3) of the WEPA.

tive bargaining agreement's grievance procedure 2/ and that he was frustrated in his attempt by Respondent's violation of its duty of fair representation. 3/

The Complainant claims that the Respondent Employer violated the collective bargaining agreement when it discharged him and is dissatisfied that Respondent Union refused to process his grievance to arbitration. The Complainant must establish that the Respondent Union violated its duty to fairly represent him in order for the Commission to determine his grievance on the merits.

While it is inequitable to allow an employe's grievance to go without remedy because of the Union's wrongful refusal to process it, the U.S. Supreme Court, in Vaca v. Sipes, made it clear that a "wrongful refusal" occurs only when the Union breaches its duty of fair representation and that:

A breach of the statutory duty of fair representation occurs only when the union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith. 4/

A union has considerable flexibility in deciding whether to pursue a grievance.

...Just as a union must be free to sift out wholly frivolous grievances which could only clog the grievance process, so it must be free to take a position on the not so frivolous disputes.... 5/

The Union's duty of fair representation does not necessarily require it to carry any grievance through all steps of the grievance procedure, including prosecuting same to arbitration, especially if the Union concludes after investigation that there is little likelihood of success. The evidence in the case at bar indicates that the Respondent Union examined the relevant contractual language and the particular factual setting surrounding Complainant's grievance, including the ability of Complainant to contact his Employer during the absence in question. Furthermore, Respondent Union analyzed an arbitration decision involving the identical contract language which the Respondent Employer had also previously utilized as a basis for discharging another of its employes. 6/ After taking these factors into account and after consulting with its International Representative who had experience in arbitrations involving similar matters, the Respondent Union reached the conclusion that McNeil's discharge would probably be sustained by an arbitrator and consequently decided to withdraw the grievance after processing same to Step three.

2/ The parties stipulated that the grievance procedures, including arbitration, had not been exhausted and the record indicates that this requirement was satisfied inasmuch as the Respondent Union indicated that it was withdrawing his grievance from the grievance procedure and refused to process said grievance to arbitration.

3/ VACA v. Sipes 386 U.S. 171, 1967; F. Dohmen Co. (8419-A, B) 9/68 (aff. Dane Co. Cir. Ct. 6/70); Ozite Corp. (10298-A, B) 2/72.

4/ Supra, at page 190.

5/ Humphrey v. Moore (1964) 375 U.S. 335, 349, 84 Sup. Ct. 363, 11 L. Ed. 2d 370; also see Ford Motor Co. v. Huffman (1953), 345 U.S. 330, 338.

6/ The arbitrator sustained the discharge in said case.

The Complainant has failed to sustain its burden of proof that the Respondent Union failed to fairly represent him. The record convinces the Examiner that Respondent Union investigated and processed the grievance in a manner that was untainted by arbitrariness, discrimination, or bad motives. Inasmuch as Complainant's failure to exhaust the contract grievance and arbitration machinery was not the result of Respondent Union's breach of its duty to fairly represent Complainant, the Commission will not determine the merits of the grievance and, as a result, the Examiner has dismissed the complaint against the Respondent Employer. Furthermore, because the Examiner has found that the Respondent Union did not violate its duty to fairly represent Complainant, the Examiner has also dismissed McNeil's complaint against Respondent Union.

Dated at Madison, Wisconsin this ^D 11 day of February, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Examiner