STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DANIEL L. SCAIFE, Complainant, vs. J. I. CASE COMPANY and UNITED AUTO WORKERS LOCAL 180, Respondents.	:	Case XVII No. 27178 Ce-1887 Decision No. 18324-A

Appearances:

Mr. Theodore Harris, Attorney at Law, 1633 Racine Street, Racine, WI 53403, appearing on behalf of the Complainant.

Brown, Black, Riegelman & Kreul, Attorneys at Law, by Mr. Richard J. Kruel, On The Lake at Eleventh, Racine, WI 53403, appearing on behalf of the J. I. Case Company.

Mr. Jack Rice, International Representative, Region No. 10, 7435 South Howell, Oak Creek, WI 53154, appearing on behalf of United Auto Workers of America, Local 180.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Complaint of unfair labor practices having been filed with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, in the above-entitled matter, and the Commission having appointed Stephen Pieroni, 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), Stats., and hearings on said complaint having been held at Racine, Wisconsin on January 30, 1981, February 6, 1981 and March 5, 1981; the parties waived the filing of briefs; the transcript was completed on March 23, 1981; 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. Complainant, Dannie L. Scaife, referred to herein as Scaife or Complainant, is an individual residing at 1124 Lockwood, Racine, Wisconsin 53403. Prior to his discharge on May 22, 1980, Complainant was an employe of Respondent, J. I. Case Company.

2. Respondent, J. I. Case Company, referred herein as Respondent Employer, is a corporation engaged in the manufacture of agricultural equipment with facilities in Racine, Wisconsin.

3. Respondent, UAW, Local 180, referred to herein as Respondent Union, is a labor organization.

4. At all times herein Respondent Employer has recognized Respondent Union as the exclusive collective bargaining representative of certain of its employes, including the Complainant herein.

5. 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 said agreement contained among its provisions Article VII, Grievance Procedure, which sets forth that final and binding arbitration is the last step (step four) of the grievance procedure; and Article VIII Discipline and Discharge, establishes that an employe may not be discharged except for "good cause". (Joint Exhibit #1)

6. Respondent Union's International Constitution & By-laws were in effect at all times material herein; and said Constitution and By-laws granted a bargaining unit employe the right to appeal a decision of the bargaining committee to drop a grievance prior to the arbitration step, pursuant to an internal union appeal procedure. It is unnecessary for the purposes of this decision, to delineate the specific steps of said appeal procedure.

7. Complainant was hired by Respondent Employer on September 15, 1975 and that effective May 22, 1980, Complainant's employment with Respondent Employer was terminated for allegedly refusing to comply with a direct order from his foreman.

8. 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 the steps of the aforementioned grievance procedure, Respondent Union decided to withdraw said grievance at the step immediately prior to the step requiring final and binding arbitration.

9. The decision of the 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; Respondent Union, in arriving at said decision, considred the applicable contract language, the particular factual setting of Complainant's case, the Complainant's version of the facts; the foreman's version of the facts and the Complainant's previous employment record with the Respondent Employer as well as the advise of its International Respresentative who had experience evaluating the merits of discharge cases.

10. At the time of the instant hearing, Complainant had failed to exhaust the internal appeal procedures contained in Respondent Union's Constitution and By-laws which provided Complainant with the opportunity to appeal Respondent Union's decision to withdraw his grievance.

11. There is insufficient evidence that Respondent Union or any of its representatives 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. Complainant's failure to exhaust the internal union procedures available to him does not foreclose him from processing his complaint herein.

2. Respondent, UAW, 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 aribtrary, discriminatory, or in bad faith; and Respondent Union, therefore did not violate its duty to fairly represent Complainant.

3. Since Respondent UAW, Local 180 did not violate its duty to fairly represent Complainant with respect to his grievance, the Examiner will not involve the jurisdiction of the Wisconsin Employment Relations Commission for the purpose of determining whether Respondent Employer breached the collective bargaining agreement with Respondent Union in violation 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 complaint of Complainant Dannie L. Scaife be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin this 20th day of November, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSIONN

By Stephen Pieroni
Stephen Pieroni, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Complainant contends that Respondent Emloyer 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 employment when it withdrew his grievance from the contractual grievance procedure, thereby failing to prosecute same to final and binding arbitration.

Respondent Employer denies that Complainant was discharged in violation of the collective bargaining agreement and maintains that it satisfied the requisite contractual standards in discharging Complainant. 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. Thus the charges against Respondent Union and Respondent Employer should be dismissed. Furthermore, Respondent Union claims that the Commission should not invoke its jurisdiction in this matter because Complainant did not exhaust the internal Union appeal procedures which were available to him as a means of resolving his claim that the Union failed to fairly represent him.

The question concerning whether an employe must exhaust the internal union procedures available to him in cases such as this was exhaustively treated in J. I. Case Company Dec. Nos. 16992-A, 16993-A (2/80); enf'd Cir. Ct. Racine County case 80-CV-0483 (6/81). See also Clayton vs. Auto Workers US Sup. Ct. 1981, 107LRRM2385. Since the internal union procedures cannot reactivate the grievance or give the employe the complete relief he seeks under the law, there is no exhaustion requirement with respect to either claim against Respondent Union or Respondent Employer. Hence, whether or not Complainant exhausted the internal union procedures is immaterial to the issue of whether by failing to process Complainant's grievance to final and binding arbitration, Respondent Union violated its duty to fairly represent Complainant.

Turning to the merits of the instant dispute, the Complainant must prove by a clear and satisfactory preponderance of the evidence 1/ that he attempted to exhaust the collective bargaining agreement's grievance procedure and that he was frustrated in his attempt by Respondent Union's violation of its duty of fair representation. It is clear that Complainant attempted to exhaust the grievance procedure and that the Respondent Union precluded Complainant from taking his grievance to arbitration. However, it is incumbent upon Complainant to demonstrate that such refusal to arbitrate was arbitrary, discriminatory or made in bad faith. 2/ Absent such conduct, Respondent Union cannot be held to have breached its duty of fair representation and consequently the Commission will not 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) Stats. 3/

In determining whether a union has breached its duty of fair representation, a union is given a wide range of reasonableness when exercising its discretion in deciding whether to process a grievance. 4/ Thus, 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. However, the Union must, at least, weigh the relevent factors before rejecting a grievance as unmeritorous. 5/

1/ Mahnke vs. WERC 66 Wis. 2d 524 (1975); Sec. 111.07(3) Wis. Stats.

2/ Vaca vs Sipes 386 U.S. 171, 64 LRRM 2369 (1967); Mahnke supra.

3/ Mahnke supra.

4/ Ford Motor Co. v. Huffman 345 U.S. 330, 31 LRRM 2548 (1953).

5/ Mahnke supra.

The evidence in the instant case reveals that Steward J. Wadlington was present at the time Complainant was given his disciplinary notice. Wadlington heard the versions of both Complainant and foreman Brown shortly after the incident which led up to the discharge. Wadlington discovered that there were no witnesses to the incident and initially concluded that it was a case of Brown's word against that of Scaife. Brown stated that Scaife displayed an antagonistic attitude toward Brown by doing a "jive dance and snapping his fingers" and then refused a direct order to return to work by shutting off the conveyor belt, thereby breaking the belt and causing a two day shutdown of the department. Scaife, on the other hand, initially denied that he turned the line off and denied that he refused to work. (TR. 388, 406, 105-107, Jt. Exhibit 4C2)

The day after the incident Scaife and his bargaining committee met with the management team to discuss the disposition of the disciplinary action. Scaife told his side of the story to the two committees. Brown did likewise. Present on behalf of Scaife was Wadlington; Smith (Chairman of the Bargaining Committee); and Jackson (Committeeman). The meeting lasted between 1 1/2 to 2 hours. (TR 55` At that time the union representatives urged the Company to allow Scaife to keep his job. The Company declined.

Thereafter, the grievance was moved to the 3 1/2 step. At that meeting, Scaife was not present but he was represented by his local Committeemen as well as International Representative, Cabreros, from the Detroit headquarters. Again Scaife's representatives urged the Company to return him to work but the Company refused. Scaife's previous work record was discussed and the Company contended that nothing contained therein warranted mitigation. After that meeting, Cabreros and the Committeemen reviewed all of the available evidence and concluded that Scaife's was a "no win" case and therefore decided not to move the case to arbitration. (TR 196, 197)

Based upon the record evidence, it is clear that the Union representatives were apprised of the underlying facts and reasons for the Employer's action. They had an opportunity to hear Brown's version versus Scaife's version and thereby make a determination of who would appear to be the more credible witness, should the grievance be arbitrated. On the basis of the record evidence, there is no reasonable basis for concluding that the Union's determination that Complainant's grievance lacked merit was not the product of a reasoned decision. Indeed, the record reveals no animosity between Scaife and the Union, no slighting of Complainant's interests, no complete disregard in assessing the merits of his grievance, or any other showing of bad faith or arbitrary conduct.

It should be mentioned that Scaife also contended that the Union demonstrated bad faith toward him by failing to arbitrate a grievance concerning harrassment by his foreman. (Jt. Exhibit 2). Scaife also contends that the Union failed to process a grievance concerning his transfer from his Crib Keeper job. As to the "harrassment" grievance, the evidence is overwhelming that the Union had good reason not to process same. (Jt. Exhibit 2A; testimony of Petrucci & DaRonco) With respect to the transfer issue, there is no persuasive evidence that Scaife filed a grievance, either written or oral. Even assuming that Scaife filed an oral grievance, the Union had good reason to believe that Scaife did not wish to pursue same when he elected to take a transfer. (Jt. Exhibit 2A, testimony of Ivan Israel 477, 478; Exhibit 12 tape recording) Thus, the Examiner concludes that there is a total absence of conduct of an arbitrary, discriminatorey or bad faith nature by Respondent Union.

Inasmuch as Complainant's failure to exhaust the contractual grievance and arbitration procedure was not the result of Respondent Union's breach of its duty to fairly represent Complainant, the Examiner will not determine the merits of the grievance and, as a result, the undersigned has dismissed the complaint against Respondent Employer.

Dated at Madison, Wisconsin this 20th day of November, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Stephen Pieroni, Examiner