STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DISTRICT 10, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, Complainant, and JOANN CHRISTIAN, Intervenor-Complainant, vs. BRANDT, INC., Respondent.	:	Case 13 No. 40785 Ce-2071 Decision No. 26144-H

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, by Mr. Matthew R. Robbins, 1555 North Rivercenter Drive, Suite 202, Milwaukee, Wisconsin 53212, for the Complainant.

Quarles and Brady, Attorneys at Law, by Mr. David B. Kern, 411 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, for the Respondent.

Kelly and Haus, Attorneys at Law, by Mr. William Haus, 121 East Wilson Street, Madison, Wisconsin 53703-3422, for Intervenor-Complainant.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

District 10, International Association of Machinists and Aerospace Workers, herein, the Union, on June 24, 1988, filed a complaint with the Wisconsin Employment Relations Commission alleging that Brandt, Inc., herein the Company, had discharged JoAnn Christian without just cause and had thereby violated the

collective bargaining agreement and committed unfair labor practices within the meaning of Secs. 111.06(1) (a) (d) and (f), Stats. Hearing was held in abeyance pending settlement discussions between the parties. The Union, on August 30, 1989, advised Examiner Jane B. Buffett, a member of the Commission's staff, in writing, that it requested withdrawal with prejudice of the charge. On August 31, 1989, the Examiner received a Motion for Intervention filed on behalf of JoAnn Christian. On September 6, 1989, the Examiner issued an Order Dismissing Complaint based on the conclusion that the Motion For Intervention was precluded by the prior request for withdrawal. 9/ On September 12, 1989, Christian filed a petition for Commission review of the Examiner's Order. On December 21, 1989, the Commission found the Motion for Intervention timely, set aside the Examiner's Order, and remanded the matter to the Examiner. 10/ On January 30, 1990, the Examiner granted the Motion for Intervention. 11/ On February 13, 1990, the Union renewed its request for withdrawal. On February 20, 1990, the Employer filed a Motion for Summary Judgment. The parties agreed that no evidentiary hearing was necessary, and they were given opportunity to submit briefs and reply briefs on both the request for withdrawal and the Motion for Summary Judgment. On September 4, 1990, the Examiner denied the Union's Motion to Withdraw the complaint, but did not rule on the Motion for Summary Judgment. 12/ On September 21, 1990 the Union filed a petition for review of the Examiner's Order Denying the Motion to Withdraw. On November 28, 1990, the Commission issued an Order dismissing the Petition for Review. 13/

1/ Dec. No. 26144.

2/ Dec. No. 26144-A.

3/ Dec. No. 26144-C.

4/ Dec. No. 26144-D.

5/ Dec. No. 26144-E.

On April 22, 1991, the Examiner denied the Motion for Summary Judgment, finding that the parties disputed a material fact, whether a valid settlement existed. 14/ Hearing on that question was scheduled for July 9, 1991. At the commencement of the hearing the Intervenor-Complainant moved that the Union attorney be disqualified for an alleged conflict of interest. Hearing was recessed and the parties were given opportunity to brief the question of disqualification. On September 30, 1991 the Examiner issued an Order 15/ denying the Motion to Disqualify and setting the matter for hearing. Hearing on the question of the settlement and the underlying alleged violation of contract was held on November 19, 1991, and February 13, & 14, 1992.

A transcript was prepared, the last volume of which was received March 16, 1992. All parties were given opportunity to file briefs and reply briefs, the last of which was received June 15, 1992. On July 16 the Examiner advised the parties the record would be closed and the reply briefs would be exchanged by July 13, 1992.

The Examiner, having considered the arguments of the parties and being fully advised in the premises, issues the following

FINDINGS OF FACT

1. District 10, International Association of Machinists and Aerospace Workers (herein, the Union), is a labor organization with offices at 624 North 24th Street, Milwaukee, Wisconsin 53233.

2. JoAnn Christian (herein, the Intervenor or Christian) is an individual formerly employed with the Company and a member of the bargaining unit represented by the Union.

3. Brandt, Inc. (herein, the Company) is an employer with offices at Watertown, Wisconsin.

4. The Union represents employes of the Company for purposes of collective bargaining. The Union and the Company are parties to a succession of collective bargaining agreements. The

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6/ Decision No. 26144-F.

7/ Decision No. 26144-G

agreement covering the relevant period contains the following provisions:

ARTICLE 2
Management

2.01. Except as otherwise expressly provided in this Agreement, the rights of management of the plant and the direction of the working forces and of the general affairs of the Company shall be vested entirely and exclusively in the Company. These rights shall include, but not be limited to:

A. The right to hire, transfer, suspend and discharge for cause, or layoff due to lack of work.

. . .

ARTICLE 8
Seniority

. . .

8.03. An employee shall cease to have seniority if he:

. . .

(b) is discharged by the Company for just cause;

. . .

ARTICLE 12
Grievance Procedure

12.01. Initially, an attempt shall be made to settle grievances between the employee and the employee's supervisor. At the employee's request, a Union Committeeman may be present at this stage. Any grievances not settled at this stage shall be presented in writing by the Union Committee to the appropriate designated management personnel. If not settled by the end of the second working day from receipt of the grievance by the aforesaid Company representative, then the Union Committee and the Company Committee shall meet within four (4) days from the date of presentation of the grievance as aforesaid for further discussion of the grievance.

All grievances and answers thereto shall be presented in writing. Failure to appeal grievances to the next step of the Grievance Procedures within one week of receipt of written answer shall cause that grievance to be deemed satisfactorily settled.

12.02. The parties agree that there shall be no strike or lockout during the term of this Agreement except that if any grievance has not been settled at the conclusion of the Grievance Procedure, it shall not be a violation of this Agreement for the Union to authorize a strike if the grievance is one concerning the effect, interpretation, application or claim of breach or violation of this Agreement. Such strike authorization shall be in writing and delivered to the Company at least twenty-four (24) hours prior to the commencement of the

> strike. In the event of such an authorized strike, the Company shall not discipline any employee for lawful participation therein.

The agreement does not provide for arbitration.

5. On September 18, 1987 the Company terminated Christian's employment.

6. After Christian's termination, Union Business Representative Gene Hooser had conversations with Christian regarding possible settlements. On September 25, 1987, the Union grieved the discharge. The grievance was processed through the contractual grievance procedure. After the third and final step in the grievance procedure, the grievance remained unresolved and on October 20, 1987, Company Director of Human Resources John Johnson wrote to Hooser to confirm that the Company's position remained unchanged.

7. On June 24, 1988 the Union filed a Complaint of Unfair Labor Practices, alleging that the Company violated Sec. 111.06(1)(a), (d) and (f), Stats. by violating the contract by discharging Christian without just cause.

8. In mid-November, 1988, Hooser and Johnson engaged in conversations regarding settlement of the grievance. On November 14, 1988, Hooser wrote to Johnson outlining the following settlement possibilities:

> Pursuant to our phone conversation on November 14, 1988, I am proposing the following alternatives to settle the Jo Ann (sic) Christian matter.
>
> 1) Return Jo Ann to work with full seniority and without back pay.
>
> 2) Pay Jo Ann one (1) year salary as termination pay.
>
> 3) Proceed to hearing before the W.E.R.C.
>
> Please advise.

The Company did not respond favorably to the proposals.

9. On January 24, 1989 Johnson wrote to Hooser in response to Hooser's request for documents regarding the case. Johnson's letter also offered to continue settlement discussions. Subsequent to the January 24, 1989 letter, Hooser and Johnson engaged in two or three telephone conversations regarding settlement. Johnson offered $10,000 in settlement. Hooser contacted Christian who agreed to the $10,000; Hooser and Christian did not mention any other term of the agreement. On some date between January 24 and February 14, 1989, Hooser then telephoned Johnson and Hooser and Johnson agreed that the Company would pay Christian $10,000 and the matter would be resolved. Both Johnson and Hooser believed they had entered into an oral agreement at the time. Hooser continued to communicate with Christian because he wanted her to be comfortable with the terms of the settlement.

10. A document memorializing the settlement was drafted by the Company's attorney, David Kern and transmitted to Johnson and Union Attorney Matthew Robbins and Hooser on February 14, 1989. After reviewing the document, Hooser requested minor changes in the language of the document. An example of the requested change is the insertion of the phrase "to the extent permitted by law" into the following sentence:

> In consideration of the promises contained herein, Christian and the Union, to the extent permitted by law, have released and forever discharged,....

The revised document read as follows:

> **SETTLEMENT AGREEMENT AND RELEASE**
>
> WHEREAS, JoAnn Christian ("Christian") was discharged by Brandt, Inc. ("the Company") on or about September 18, 1987; and
>
> WHEREAS, Christian thereafter filed a grievance under the collective bargaining agreement in effect between the Company and her collective bargaining representative, District No. 10, I.A.M.A.W. ("the Union"),

and

WHEREAS, the grievance remained unresolved and the Union, on behalf of Christian, filed an unfair labor practice complaint with the Wisconsin Employment Relations Commission on June 24, 1988, Case #13, No. 040785, Ce-2071, alleging that the Company breached the collective bargaining agreement by terminating Christian without just cause, and

WHEREAS, the Company has denied and does deny that it breached the collective bargaining agreement or in any other manner violated the rights of Christian under the aforementioned collective bargaining agreement; and

WHEREAS, recovery by Christian and the Union is uncertain, and it is the desire of Christian, the Union, and the Company to fully and completely settle all of these matters in their entirety;

NOW, THEREFORE, Christian, the Union, and the Company do hereby finally, fully and completely settle all of these matters as follows:

1. Neither the Company's signing of this Agreement nor any actions taken by the Company toward compliance with the terms of this Agreement constitute an admission by the Company that it has breached the collective bargaining agreement or in any other manner violated the rights of Christian or any other employee.

2. Upon execution of this Agreement, Christian and the Union will immediately request withdrawal and dismissal with prejudice of the unfair labor practice complaint presently pending before the

Wisconsin Employment Relations Commission, Case #13, No. 040785, Ce-2071, said request for withdrawal to be executed at the time of execution of this Agreement and attached hereto and made a part hereof as Exhibit A.

3. Upon execution of the aforementioned request for withdrawal with prejudice, the Company will pay to Christian back wages in the amount of Ten Thousand Dollars ($10,000.00), less deductions required by law.

4. In consideration of the promises contained herein, Christian and the Union, to the extent permitted by law, have released and forever discharged, and by these presents, for themselves, Christian's spouse, heirs, successors and assigns, executors, attorneys and representatives of any kind, do hereby release and forever discharge the Company, its employees and former employees, its associates, affiliates, parents, subsidiaries, and its representatives, officers, agents, successors and assigns and each of them, of and from any and all claims, demands, rights, liabilities, grievances, and causes of action of whatsoever kind or nature, known or unknown, foreseen or unforeseen, arising, having arisen, or hereinafter arising out of, or by virtue of, or in connection with, Christian's employment with the Company prior to the date of this Agreement. Christian, in further consideration of the promises contained herein, agrees and consents to the dismissal with prejudice of the unfair labor practice charge currently pending against the Company with the Wisconsin Employment Relations Commission, Case #13, No. 040785, Ce-2071 and with respect to her employment by the Company prior to the date of this Agreement, agrees not to pursue or file any further charges or claims or grievances or to commence any

actions of any kind against the Company.

5. Considering the voluntary nature of this settlement, Christian and the Union further agree that the existence and terms of this settlement are and shall remain confidential.

6. Christian hereby waives any claim to or right of reinstatement with the Company.

7. Christian hereby acknowledges that she has read the foregoing document, understands its contents, and agrees to its terms and conditions of her own free will. She acknowledges that she has made an independent investigation of the facts and does not rely on any statements or representations by the Company, its agents, or representatives, other than those explicitly set forth above, in entering into this Settlement Agreement and Release. She understands that this Settlement Agreement includes a final general release (as permitted by law) and that she can make no further claim against the Company, its officers, or its employees, for any claims having connection with the events covered herein.

She wants no further claim.

Date	JoAnn Christian DISTRICT NO. 10, I.A.M.A.W.
Date	Gary Hooser Authorized Representative
Date	Matthew R. Robbins Attorney for District No. 10, I. A. M. A. W. BRANDT, INC.
Date	Authorized Representative DAVID B. KERN
Date	Quarles & Brady Attorneys for Brandt, Inc.

11. On February 27, 1989 Hooser signed the agreement and shortly thereafter transmitted it to Christian. When Christian reported that she had not received it, he sent an additional copy on March 15, 1989 with the following cover letter:

> Enclosed are two copies of a release which must be signed in order to finalize the Settlement with Brandt. As soon as you sign and return them to me, I will forward them to the company's attorney and Brandt will then issue a check for the settlement.
>
> If you have any questions, please give

me a call.

In oral communication, Hooser suggested to Christian that she might want to review the document with counsel.

12. On July 10, 1989 Hooser sent additional copies of the settlement document to Christian with the following cover letter:

> Enclosed are the documents you requested by telephone on June 30th, 1989.
>
> Sorry about the delay, I was off work the week of the 4th of July.
>
> Please be advised that based upon your authorized settlement proposal to the Company and their acceptance of same, the Union plans no further action in this matter.

13. On July 25, 1989 Hooser sent Christian the following letter:

> Please advise as to what you intend to do with the settlement agreement I sent you. It is necessary that I have your reply so that I can report the outcome of this case to the Wisconsin Employment Relations Commission.

14. Christian never signed the "Settlement and Release" referenced in Finding 11, above. She objected to being held to confidentiality and she wanted to prove she was not guilty. The Company's representative did not sign the settlement. Christian did not receive the $10,000 provided for by the settlement.

15. On August 28, 1989 the Union wrote to the Commission requesting to withdraw the complaint referenced in Finding 7, above. On August 29, 1989, Hooser sent a copy of the withdrawal to Johnson's successor, Ed Opperud with the following cover letter:

> Enclosed is a copy of a withdrawal of the charge with the WERC in the JoAnn Christian case.
>
> If you have any questions, please do not hesitate to contact me.

16. On October 1, 1990, Intervenor adopted the Complaint and moved to amend to add the following paragraph:

> #. Joann Christian, Intervenor-Complainant,

was, at all times material hereto, an employee of the Employer and a member of the bargaining unit covered by the collective bargaining agreement described in paragraph 3 of the Complaint. Her address is North 336 Dewey Lane, Watertown, Wisconsin 53094.

CONCLUSION OF LAW

The Union and the Company reached a legally binding settlement of the dispute involving the alleged breach of contract in mid-February, 1987, thereby resolving the subject of the Complaint of Unfair Labor Practices filed June 24, 1988.

ORDER 8/

The Complaint should be, and hereby is, dismissed.

Dated at Madison, Wisconsin this 16th day of October, 1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Jane B. Buffett /s/
Jane B. Buffett, Examiner

8/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.

(5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the

commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify

8/ (Continued)

such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

BRANDT, INC.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

BACKGROUND

This case has an extensive procedural history which is recited in detail in the jurisdictional preface, above.

At this point in the proceedings, the Union, which originally filed the complaint alleging the Company had violated the collective bargaining agreement by discharging JoAnn Christian 16/, has sought and been denied the right to withdraw the complaint. JoAnn Christian has been granted Intervenor-Complainant status. The Intervenor has adopted the Union's complaint, moving to amend by only the addition of Christian's name, address and membership in the bargaining unit. 17/ The Company and the Union argue there is no issue because the

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9/ The complaint cited violations of Secs. 111.06(1)(a), (d) and (f), Stats., Although Sec. 111.06(1)(d) Stats., prohibits the refusal to bargain, the gravamen of the complaint stated in the pleadings and referred to in the arguments of the parties is that the Employer violated the collective bargaining agreement by discharging the grievant without just cause, and no factual allegations were made regarding any refusal to bargain. Section 111.06(1)(a) Stats., prohibits employers from interfering, restraining or coercing employes in the exercise of protected rights, independently, or in conjunction with other prohibited acts; no allegations of actions independent of the alleged breach of contract that would violate Sec. 111.06(1)(a) Stats., were made in the complaint. Accordingly, the instant complaint is concluded to be an allegation of a violation of Sec. 111.06(1)(f).

10/ On September 4, 1990, Decision No. 26144-D the Examiner directed the Intervenor to either adopt the original complaint or move to amend it. Intervenor's motion to amend related solely to the addition of the paragraph noted above and set is forth at Finding 16. That motion was granted at the July 9, 1991 hearing, TR. 5.

grievance was resolved by a valid settlement agreement. That fact was disputed by Intervenor in her briefs on the Motion for Summary Judgment. Subsequently hearing was held on the question of the existence of a valid settlement agreement as well as the facts related to the underlying allegation that the Company violated the collective bargaining agreement by terminating Christian without just cause.

POSITIONS OF THE PARTIES

The Union

The Union asserts the alleged unfair labor practice was in fact an alleged breach of the contract, which the Union can settle without authorization from any individual employe. The Union asserts that absent a breach of the duty of fair representation, an individual employe cannot pursue an action against an employer for breach of contract.

In its brief following hearing, the Union reasserted its position regarding the Union's right to settle grievances and further argues that the instant grievance was settled during the telephone call in which the business representative and the employer's representative reached oral agreement. Christian's signature was required as a release as a condition upon which she would receive the agreed upon money settlement, but the requirement of a signature did not give her the authority to overrule the agreement.

The Intervenor-Complainant

The Intervenor argues the filing of the original unfair labor practice complaint indicated the exhaustion of the grievance procedure and changed the nature of the proceeding to give the individual employe an independent role under Sec. 111.07, Stats. Having been granted Intervenor-Complainant status, the Intervenor-Complainant asserts it cannot be treated as if it had a second class role by now being dismissed.

In its brief following hearing, the Intervenor asserts there was no final and binding settlement of the dispute. By its terms, the agreement became effective upon its execution; the Union's obligation to withdraw the unfair labor practice complaint and the Company's obligation to pay Intervenor the $10,000 did not arise until the agreement was executed. Furthermore, Business Agent Gene Hooser wrote Christian to ask her whether she intended to sign the agreement so that he could withdraw the related complaint pending before the Commission. Intervenor argues that Hooser's letter to the Commission withdrawing the complaint on August 29, 1989 and his letter to the Company's counsel of the same date indicate the matter had not been settled as of February 14, 1989. Finally, Intervenor contends that an agreement could not be

binding since it did not obligate the Company to pay Intervenor the settlement unless she signed the document.

In the reply brief, Intervenor relies upon Sec. 111.07(2)(a) to argue that the Commission has jurisdiction over this dispute and that Christian has an independent right to assert a claim separate from the grievance procedure, insisting that where there is no

contractual provision for arbitration, an employe can proceed through Unfair Labor Practice proceedings to enforce the contract.

As to the existence of a binding settlement, Intervenor argues that she never authorized the settlement because she never agreed to the confidentiality provision. Moreover, the fact that the settlement was not implemented for lack of Intervenor's signature indicates that the settlement was not binding without Intervenor's signature. Finally the Intervenor asserts the Company did not show the necessary quantum of proof necessary to show there was just cause for discharge.

The Respondent

The Company argues that the Commission has no jurisdiction to decide this matter because the complaining party has withdrawn the complaint pursuant to a binding settlement agreement. The Company relies on law that vests in the collective bargaining agent the authority to settle grievances unless the union has breached its duty of fair representation, which is not alleged in this case. Additionally, Christian authorized the Union to negotiate a settlement of this case. Brandt also asserts that Christian's action is untimely. Finally, the Company asserts that even if the Commission were found to have jurisdiction over the matter there was just cause for discharge.

DISCUSSION

The Union and the Company assert the instant matter should be dismissed because the dispute between them had been resolved by a settlement agreement which binds all parties and therefore nothing remains to be litigated. They point to the settlement that took place between them bi-laterally and assert the Union had full independent authority to settle the grievance.

Long-established case law supports this proposition. 18/

11/ This case, arising under the Wisconsin Employment Peace Act, and therefore involving a private sector employer, is governed by federal substantive law. Textile Workers v. Lincoln Mills, 353 U.S. 448, 40 LRRM 2113 (1957); Local 174, Teamsters v. Lucas Flour Co., 369 U.S. 95, 49 LRRM 2717 (1962); American Motors Corp. v. Wisconsin Employment Relations Board, 32 Wis. 2d 237 (1966).

Where, as here, the parties' contract provides a grievance procedure and provides no alternative for the resolution of disputes regarding the administration and interpretation of the contract, the union controls grievances as long as it does not act arbitrarily, discriminatorily or in bad faith. The Courts have given this authority to the unions in order to promote the goals of

the National Labor Relations Act. As the Supreme Court stated in Republic Steel Corp. v. Maddox 19/:

> . . .Congress has expressly approved contract grievance procedures as a preferred method for settling disputes and stabilizing the "common law" of the plant. LMRA ss. 203(d), 29 U.S.C. ss. 173(d); ss. 201(c), 29 U.S.C. ss. 171(c). Union interest in prosecuting employee grievances is clear. Such activity complements the union's status as exclusive bargaining representative by permitting it to participate actively in the continuing administration of the contract. In addition, conscientious handling of grievance claims will enhance the union's prestige with employees. Employer interests, for their part, are served by limiting the choice of remedies available to aggrieved employees. And it cannot be said, in the normal situation, that contract grievance procedures are inadequate to protect the interests of an aggrieved employee until the employee has attempted to implement the procedures and found them so.
>
> A contrary rule which would permit an additional employee to completely sidestep available grievance procedures in favor of a law suit has little to commend it. In addition to cutting across the interests already mentioned, it would deprive employer and union of the ability to establish a uniform and exclusive method for orderly settlement of employee grievances. If a grievance procedure cannot be made exclusive, it loses much of its desirability as a method of settlement. A rule creating such a situation "would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements." Teamsters Local v. Lucas Flour

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12/ 379 U.S. 650 (1965), 58 LRRM 2193 at 2194.

> Co., 369 U.S. 95, 103, 49 LRRM 2717. [Footnotes omitted]

Absent a showing that the Union breached its duty to fairly represent the employe, an allegation not present here, a union has the authority to decline to pursue grievances 20/ or to settle them against the wishes of the grievant 21/. A court has even found that where there was no other evidence of union failure to fairly represent the grievant, the Union's settlement of a grievance after negligently misrepresenting the Company's settlement offer did not breach its duty. 22/ A union's control over grievances has been found to extend even beyond the issuance of an arbitration award. In G & H Products, 23/ the Commission found an individual employe did not have standing to seek enforcement of an arbitration award. In the instant case, the contract did not provide for arbitration, but by filing a complaint of unfair labor practices with the Commission, the Union retained its exclusive control over the grievance.

Turning to an examination of the record regarding the alleged settlement, the Examiner finds there is no dispute that Union Business Representative Gene Hooser and John Johnson, who at the relevant period was Director of Human Resources for the Company, believed they had reached an oral agreement when their telephone calls of January and February, 1989 culminated in a conversation 24/ in mid-February, in which they agreed the grievance would be resolved by a $10,000 settlement to Christian.

13/ Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967).

14/ Shane v. Greyhound Lines, 130 LRRM 2825 (9th Cir., 1989).

15/ Scott v. Machinists District Lodge, 126 LRRM 2367 (9th Cir., 1987).

16/ Dec. No. 17630-B (WERC, 1/82).

17/ The record does not indicate the exact date of the conversation in which the agreement was reached, but only that it had to have been prior to February 14, 1989 when the draft of a document created as a result of these conversations was transmitted. For purposes of this discussion, this conversation is referred to as the "mid-February" conversation.

The question presented is whether that oral agreement constituted a legally binding agreement which resolved the instant dispute. A oral agreement to settle an action will be binding on the parties if it included the terms of the agreement 25/ and did not contain a condition that it will not be binding until it is executed. 26/ Courts have upheld such oral agreements even after one party sought to rescind it prior to implementation. 27/ In this case, the oral agreement was stated in general terms: the Grievant would be paid a certain amount and the grievance would be dropped. Additional details were spelled out in the final Settlement and Release document, including the confidentiality clause later objected to by Christian, but those details were not objected to by Hooser who made only minor changes. The fact that Hooser made only minor changes after reviewing the document indicates that the details in the written document complied with his assumptions about a settlement document memorializing a severance pay settlement. Additionally, there is no indication that the parties understood the agreement would not be binding until there was a written instrument. Given these facts, the mid-February conversation between Hooser and Johnson is found to be a binding agreement.

Intervenor argues that the settlement agreement is not binding because it was not signed by either her and or a Company representative. Where an agreement exists, the written agreement does not have to be signed to be binding. 28/ In the instant case, it was not necessary for the Union and Company to sign the document to be bound by the agreement. The document memorialized the agreement and would have various legal purposes; that is, it was not superfluous. Nevertheless, the execution of the document was not the agreement itself. The agreement had already been reached, and, if the Company refused to execute the document, the Union could pursue legal recourse.

18/ Jungsdorf v. Town of Little Rice, 156 Wis. 466 145 N.W. 1092 (1914).

19/ Taylor v. Gordon Flesch, 793 F.2d 858, at 862. (1986)

20/ Ibid.

21/ Consolidated Papers v. Dorr-Oliver, Inc., 153 Wis. 2d 589 at 599, (1989) (Ct. App. 1989).

As to Christian's signature, review of the "Settlement Agreement and Release" indicates there is no evidence that the original agreement was conditioned upon Christian's assent. In Hooser's and Johnson's final phone call before the drafting of the document, the parties agreed that the grievance would be dropped and Christian would be paid $10,000. There was no understanding that such would be the agreement only if Christian agreed. The Examiner concludes that the parties did not intend that their agreement was conditioned upon Christian's approval.

The Examiner reaches this conclusion notwithstanding the evidence that Hooser had consulted with Christian several times after her termination while he was engaged in settlement discussions with the Company. He made the earlier settlement proposals of either reinstatement or $20,000 based on Christian's wishes, and when the Company offered $10,000, he sought her approval before agreeing to the settlement. After the document was drafted, he discussed it with her and suggested she might want to have it reviewed by her lawyer. These actions clearly indicate that Hooser was concerned that the settlement be acceptable to Christian and that she be satisfied. Nevertheless, this concern for her satisfaction does not indicate that he considered her agreement an indispensable element of the agreement with the Company. His letter of July 10, 1989 indicates that his desire to get her approval of the settlement co-existed with his understanding that the Union had already exercised its right to settle the matter regardless of her wishes:

> Please be advised that based upon your authorized settlement proposal to the Company and their acceptance of same, the Union plans no further action in this matter. 29/

Presumably, the letter's reference to "your authorized settlement proposal" was a reminder that she had previously agreed to the settlement, and was Hooser's final effort to get her to accept the agreement on her behalf, while the clause, "the Union plans no further action in this matter" was a blunt statement that the agreement had been concluded with the Company regardless of her ultimate position in the matter. Hooser's attempts to, in the

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22/ See Finding 12.

words of his testimony, "make her as comfortable as possible with any kind of an agreement" 30/ did not act to waive the Union's right to enter into a binding settlement without her agreement.

Given the Union's legal right to settle the dispute without Christian's agreement, and the conclusion that the Union intended to do so, the provision of a signature line for Christian constituted a release. By withholding her signature, she was withholding her agreement to release the Company, but she was not thereby nullifying the agreement between the Union and the Company for the simple reason that she did not have the power to nullify an agreement entered into by two parties who had sufficient authority to do so.

The Union and the Company agreed that the Union would drop the grievance in return for the Company's offer of $10,000 to Christian. The Company's conditioning its payment of the $10,000 upon Christian's signing of the release was consistent with this agreement. The record indicates Christian has not signed the release and the Company has not paid her the $10,000. However, the Company's agreement with the Union continues to bind it, and the Company must pay her $10,000 if and when she signs the release.

Having found that in February, 1989 the Union and the Company resolved the instant grievance, the Examiner concludes that the

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23/ Hearing November 19, 1991, Tr. 127.

dispute over the Company's alleged breach of contract has been resolved, the complaint must be dismissed. 31/

Dated at Madison, Wisconsin this 16th day of October, 1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Jane B. Buffett /s/

Jane B. Buffett, Examiner

24/ Assuming, arguendo, that no settlement agreement existed, the Intervenor would still be barred from pursuing this action. The ruling to grant Intervenor status to Christian does not alter the substantive law that requires an individual employe to show the Union breached its duty to fairly represent employes in order to proceed against an employer in a breach of contract allegation. Intervenor offers no legal precedent to support the assertion that the case law is changed when the contract provides a grievance procedure but no arbitration procedure.