

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS "GENERAL" LOCAL NO. 200,

Complainant,

vs.

MARIGOLD FOODS, INC.,

Respondent.

Case 1

No. 48101 Ce-2131

Decision No. 27536-A

Appearances:

Previant, Goldberg, Uelman, Gratz, Miller & Brueggeman, S.C. by Mr. John J. Brennan, Attorney at Law, appearing on behalf of the Complainant, Teamsters "General" Local No. 200.

Michael, Best & Friedrich, Attorneys at Law, 100 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-4108 by Mr. Scott C. Beightol, Attorney at Law, appearing on behalf of the Respondent, Marigold Foods, Inc.

ORDER DENYING MOTION TO DISMISS

Daniel Nielsen, Examiner: Teamsters "General" Local No. 200 (hereinafter referred to as either the Union or the Complainant) filed a complaint of unfair labor practices with the Wisconsin Employment Relations Commission (Commission) on September 22, 1992, alleging, that Marigold Foods, Inc. (hereinafter referred to as either the Company or the Respondent) had committed unfair labor practices within the meaning of §111.06(1)(f) of the Wisconsin Employment Peace Act (WEPA) by failing to compensate chiropractic coverage for bargaining unit employees from the first dollar up to \$600.00 or 15 visits per person per calendar year pursuant to the Union's interpretation of a grievance settlement agreement. The Commission appointed Daniel Nielsen of its staff to serve as the hearings examiner, and to conduct a hearing, and make and issue findings of fact, conclusions of law and orders. On October 27, 1992, the Company filed a Motion to Dismiss, with an accompany memorandum, asserting that the collective bargaining agreement between the parties requires submission of such disputes to grievance arbitration, that the Union had failed to submit the dispute to the grievance and arbitration procedure of the contract, and that the Commission therefore lacked jurisdiction to hear the case. The Union submitted a responsive

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memorandum in opposition to the Motion on February 17, 1993, asserting that the grievance procedure had been exhausted in the process of arriving at the settlement agreement, that the settlement agreement had the same standing as a final award from an arbitrator, and that the Company's refusal to accept the settlement agreement was tantamount to refusal to accept an arbitration award. Now, having considered the arguments of the parties and the exhibitry attached to the Complaint and the Motion to Dismiss, and being fully advised in the premises, the Examiner makes the following

ORDER 1/

The Motion to Dismiss is denied.

Signed this 19th day of April, 1993 at Racine, Wisconsin:

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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1/ Any party may file a petition for review with the Commission by following the procedures set forth in section 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 orders 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 in 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 such findings or order, in whole or in part, or direct the taking of new 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 an exceptional delay in receipt of a copy of any findings or order it may extend the time for another 20 days for filing a petition with the commission.

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By Daniel Nielsen /s/  
Daniel Nielsen, Examiner

MEMORANDUM ACCOMPANYING ORDER DENYING  
MOTION TO DISMISS

The complaint alleges that the Company has failed to adhere to a grievance settlement agreement. The Company denies that it has violated the agreement, asserting instead that the parties have a dispute over the meaning of the settlement agreement and that the dispute should properly be resolved through the grievance and arbitration machinery established by the parties' contract. In response, the Union contends that it already exhausted the grievance procedure in reaching the settlement agreement, and that the agreement should have the same standing as an arbitrator's award.

The Examiner has reviewed the cases cited by the parties, as well as other Commission precedents in this area of the law. There are no Commission cases which are precisely on point. While it is clear that settlement agreements are entitled to the same status as collective bargaining agreements under §111.06(1)(f), WEPA, 2/ the Examiner has found no Commission case directly discussing and identifying the proper forum for resolving disputes over the meaning of a settlement agreement where the employer has offered to submit the question to the grievance procedure. In the bulk of the cases reviewed, where the Commission has enforced a settlement agreement the respondent had made no citation to the grievance procedure or has not objected to the Commission's assertion of Jurisdiction in a timely fashion.

There is nothing in the pleadings or attachments that indicates the intent of the parties with respect to the means of enforcing the settlement agreement. The Examiner notes that the grievance procedure provides for arbitration of disputes concerning the "...interpretation of this Agreement of (sic) the Addenda..." where the dispute "...has not been settled under the foregoing procedure..." [Respondent's Exhibit No. 2, MASTER DAIRY AGREEMENT, §7.9, at page 13]. The pleadings make it clear that the dispute over chiropractic payments has already "been settled under the [grievance] procedure." The language of the contract limiting arbitrable issues raises a question about the Respondent's contention that the matter is properly a subject for the arbitration procedures of the contract. 3/ This is a question of fact, since it turns on past practice, bargaining history and other evidence of intent.

Given the uncertain state of the law and the apparent questions of fact related to the whether

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- 2/ Packerland Packing Co., Inc., Dec. No. 7414-B (WERC, 5/66); Fugarino Excavating, Dec. No. 11846-A (Michelstetter, 6/73); Del Kraus, Inc., Dec. No. 16520-A (Rothstein, 9/79); Checker Taxi Company, Inc., Dec. No. 16752-A (Hawks, 10/79).
- 3/ Where the language of the grievance procedure will not allow an interpretation that brings violation of a settlement agreement within the definition of a grievance, the Commission will assert its jurisdiction to hear the matter as a complaint. See the discussion in State of Wisconsin, Dec. No. 25281-B (Burns, 10/88) at pages 6-7.

the Commission should exercise its discretion to defer to arbitration, the Examiner is satisfied that the Motion to Dismiss should be denied at this time, and that a full evidentiary hearing should be scheduled. In so ruling, the Examiner is not foreclosing the Respondent from renewing its Motion at the hearing, or from submitting additional citations and arguments in its post-hearing brief.

Signed this 19th day of April, 1993 at Racine, Wisconsin:

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Daniel Nielsen /s/  
Daniel Nielsen, Examiner