

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration :  
of a Dispute Between : Case 26  
 : No. 49963  
 : A-5138  
LABORERS' INTERNATIONAL UNION OF :  
NORTH AMERICA, LOCAL UNION NO. 140 : Case 27  
 : No. 49964  
 and : A-5139  
 :  
SPARTA MANUFACTURING COMPANY :  
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Appearances:

Mr. Kevin D. Lee, Business Manager, Laborers' International Union of North America, Local Union No. 140, appearing on behalf of the Union.

Gleiss, Locante & Gleiss, Attorneys at Law, by Ms. Shari LePage Locante, appearing on behalf of the Company.

ARBITRATION AWARD

Laborers' International Union of North America, Local Union No. 140, hereinafter referred to as the Union, and Sparta Manufacturing Company, hereinafter referred to as the Company, are parties to a collective bargaining agreement which provides for the final and binding arbitration of disputes arising thereunder. The Union made a request, with the concurrence of the Company, that the Wisconsin Employment Relations Commission designate a member of its staff to act as an arbitrator to hear and decide a grievance over the meaning and application of the terms of the agreement. The undersigned was so designated. Hearing was held in Sparta, Wisconsin, on November 17, 1993. The hearing was not transcribed and the parties filed post-hearing briefs which were exchanged on December 2, 1993.

BACKGROUND:

On June 7, 1993, two grievances were filed, one by Nathaniel Bergh and the other by Donald Roetter, over the failure of the Company to offer them overtime according to seniority. A third grievance was also filed involving a grievant named Charlie Vian.

The grievance procedure provides that the Shift Steward presents the grievance to the grievant's immediate supervisor and if the grievance is not resolved, the grievance goes to the Shop Steward who attempts to resolve it. The record is unclear with respect to the actions of the Shift Steward on the instant grievances; however, the Shop Steward Norm Dearman met and discussed the grievances with the Plant Superintendent Greg Herold. Herold made an offer of settlement that Bergh and Roetter could make up the overtime lost and Dearman told Herold to the effect that he (Dearman) would take care of it. Herold apparently agreed to pay Vian and that resolved that grievance. Herold testified that he heard nothing further until the Company received the request for arbitration. Herold also testified that prior to his meeting with Dearman, he met with Business Manager Kevin Lee, Shop Steward Norm Dearman and Shift Steward Charles McLendon in the Company's lunch room and discussed the three grievances indicating that the seniority list for overtime was posted and it was up to the Union to bring it to his attention if someone was skipped.

Shop Steward Dearman testified to a different sequence of meetings. He testified that he met with Herold who made the offer to settle and Dearman took the offer to the grievants who refused the offer to work the make-up overtime.

After this first meeting and the rejection of the settlement, a second meeting took place in the lunch room according to the grievance procedure and the Business Manager was present and at this time Herold told them he would pay Vian but not Roetter and Bergh and when this was not agreed to, Herold told them he would not pay Vian and that the Company's General Manager Aaron Gesicki had said that the Union would have to proceed to arbitration. Herold denied making any representation of Mr. Gesicki's position. Charles McLendon's testimony was similar to Dearman's. After this meeting, Vian was paid and his grievance was dropped. Also, Dearman spoke to Mr. Gesicki's secretary and said he wanted to meet with Mr. Gesicki but did not specify the purpose of the meeting. Dearman was told that Mr. Gesicki was unavailable to meet then and he would get back to Dearman but never did. Mr. Gesicki testified that the first notice of these grievances that he received was the request for arbitration, and he received no request to discuss the Bergh or Roetter grievances and never discussed them with Dearman and never gave Herold any direction as to the Company's position.

After the meeting in the lunch room and after Dearman heard nothing from Mr. Gesicki, the Bergh and Roetter grievances were appealed to arbitration. The Company objected to the arbitrability of the grievances asserting that the Union had failed to comply with the terms of the contractual grievance procedure.

ISSUE:

The parties stipulated to the following:

Whether the grievance procedure was followed with respect to the Bergh and Roetter grievances.

PERTINENT CONTRACTUAL PROVISIONS:

**ARTICLE III**

UNION REPRESENTATIVES

. . .

Section 3.

The purpose of a shop steward and shift steward is to promote a better understanding between the Company and the employees and to make every effort to settle grievances quickly and amicably with the least amount of friction.

. . .

(c) If the Company or any of the employees or group of employees has a grievance, the following procedure shall be used;

1. If the Company has a grievance, it may take it up with the employee or employees involved in the presence of their respective steward or directly with the shop steward of the Union, or directly with the Business Manager of the Union.

2. Any aggrieved employee must first

present his grievance to his shift steward. The shift steward will report the grievance to the employee's immediate supervisor. If not resolved, then to the shop steward. If the shop steward cannot resolve the grievance, it must be reported to the Business Manager of the Local Union, who shall determine if it shall be processed further.

3. If the grievance is not settled satisfactorily, it shall be the duty of the Business Manager along with the Bargaining Committee to present the grievance to the management in writing. The aggrieved employee or employees shift steward and shop steward may be present when grievance is presented.

4. If the grievance is not settled satisfactorily upon meeting with the Company, either the Company or the Business Manager may file for arbitration.

5. The Union and the Company agree the Wisconsin Employment Relations Board shall appoint an arbitrator from their commission to arbitrate such grievances. The decision of the arbitrator shall be final and binding upon both parties.

UNION'S POSITION:

The Union contends that the grievance procedure was followed according to Article III, Section 3(c), paragraphs 1. through 5. It points out that Mr. Herold admitted that he made copies of the grievances, and it was his responsibility to give said copies to Mr. Gesicki. It submits that the proper sequence of the grievance procedure was followed and Mr. Herold offered a settlement and if this was unacceptable, then according to Mr. Gesicki, the Union could take it to arbitration. It notes that Dearman tried to meet Mr. Gesicki for one last opportunity to try to settle the matter but Mr. Gesicki for some unknown reason refused to meet. The Union insists that it was left with no alternative but to appeal to arbitration because of Herold's statement

that the Company wished to do so. It claims that it followed the grievance procedure in every way, shape and form. It argues that the Company is testing the grievance procedure because the grievances have merit.

COMPANY'S POSITION:

The Company does not dispute the substance of the claims over which the Bergh and Roetter grievances were filed. Rather, it objects to the grievances on the grounds that the Union did not follow the grievance procedure for either grievance. It asserts that no written grievance was presented to management upon the failure to settle the grievances in the preliminary steps.

The Company's practice, referring to Herold's testimony, is that the written grievance is brought to Herold's attention and he retains the original and provides a copy to Aaron Gesicki. It observes that circumstantial evidence supports its position that no written grievance was presented to management after the unsuccessful settlement. It points out the Company did not have the original or a copy of the grievance. It notes Dearman attempted to schedule a meeting with Mr. Gesicki but had the grievance procedure been followed as alleged by the Union, this meeting was unnecessary. The Company asserts that the purpose of Article III, Section 3 is to settle grievances quickly and amicably and when the grievance procedure is not followed, this purpose is not met. The Company maintains that Article III, Section (3)(c) 3 was not followed. It notes that a meeting was held between Herold, Dearman, Lee and McLendon, but after this meeting, a settlement was reached between Herold and Dearman and the written grievances were withdrawn. It submits that the first meeting did not comply with the procedural requirements and the last contact left the message that the grievances were resolved. According to the Company, to request arbitration thereafter without further opportunity to appraise the Company that no settlement had been reached, promotes neither quick nor amicable grievance settlement. It takes the position that Dearman's request to meet Mr. Gesicki without a stated purpose for meeting is a pro forma attempt at compliance but is not compliance. This request by Dearman, posits the Company, clearly indicates that the procedure prior to arbitration had not yet been completed.

The Company asserts that the manner in which the grievances were handled by the Union failed to comply with the contract and it asks that the grievances be denied.

DISCUSSION:

There is a dispute over the sequence of events with respect to the grievances in this matter. Plant Superintendent Herold recalled that he met with Lee, Dearman and McLendon in the lunch room and then later met with Dearman and understood the grievances were settled.

On the other hand, Dearman testified that the meeting in the lunch room occurred after his meeting with Herold where the offer of settlement was made and later rejected.

Herold indicated he had no copies of the grievances and his practice was to make copies and send one to Mr. Gesicki. Herold later recalled that he had made copies but thought he gave the original and all copies back to Dearman. Herold denied that he stated in the lunch room meeting that if the settlement wasn't accepted by the Union Mr. Gesicki says take it or go to arbitration. Both Dearman and McLendon recalled that Herold made the statement. Although this confusion could have been cleared up had Gesicki and Dearman met, for whatever reason, no meeting occurred.

With respect to the conflict in the sequence of meetings, the undersigned credits Dearman and McLendon. Herold initially didn't recall certain events including the making of copies of the grievances but later recalled that he did so. It does not seem logical that he would meet with the Business Manager, Shop Steward and Shift Steward, which is a later step in the grievance procedure, on this same grievance before meeting with the Shop Steward at the earlier step of the grievance procedure. Thus, the testimony of Herold is not consistent nor persuasive. The sequence as put forth by Dearman is consistent with the grievance procedure and is more logical and Dearman's testimony was not only clearer but was corroborated in part by McLendon.

Therefore, it is concluded that the Union followed the steps of the grievance procedure and were told by Herold that Mr. Gesicki was sending the message to accept the proposal or go to arbitration. When Dearman tried to meet with Gesicki, no meeting occurred. It seems logical that the Union could conclude that what Herold told them was what Mr. Gesicki wanted, that is, to accept the settlement or go to arbitration. It follows that going to arbitration was in accordance with Herold's statement.

Having concluded that the sequence of events was that the grievance was first discussed by Dearman and Herold, Article III, Section 3(c) 2 was complied with. When Herold later discussed it with Lee, Dearman and McLendon in the lunch room and they were told they could go to arbitration, Section 3(c) 3 was complied with. The request for arbitration was proper under Section 3(c) 4. Therefore, the grievance procedure was followed with respect to the Bergh and Roetter grievances.

Based on the above and foregoing, the record as a whole and the arguments of the parties, the undersigned issues the following

AWARD

The Bergh and Roetter grievances were processed in accordance with the contractual grievance procedure and are therefore properly before the Arbitrator. The Company shall grant the grievances on their merits and pay the grievants for the overtime for which they were skipped over.

Dated at Madison, Wisconsin, this 6th day of December, 1993.

By Lionel L. Crowley /s/  
Lionel L. Crowley, Arbitrator