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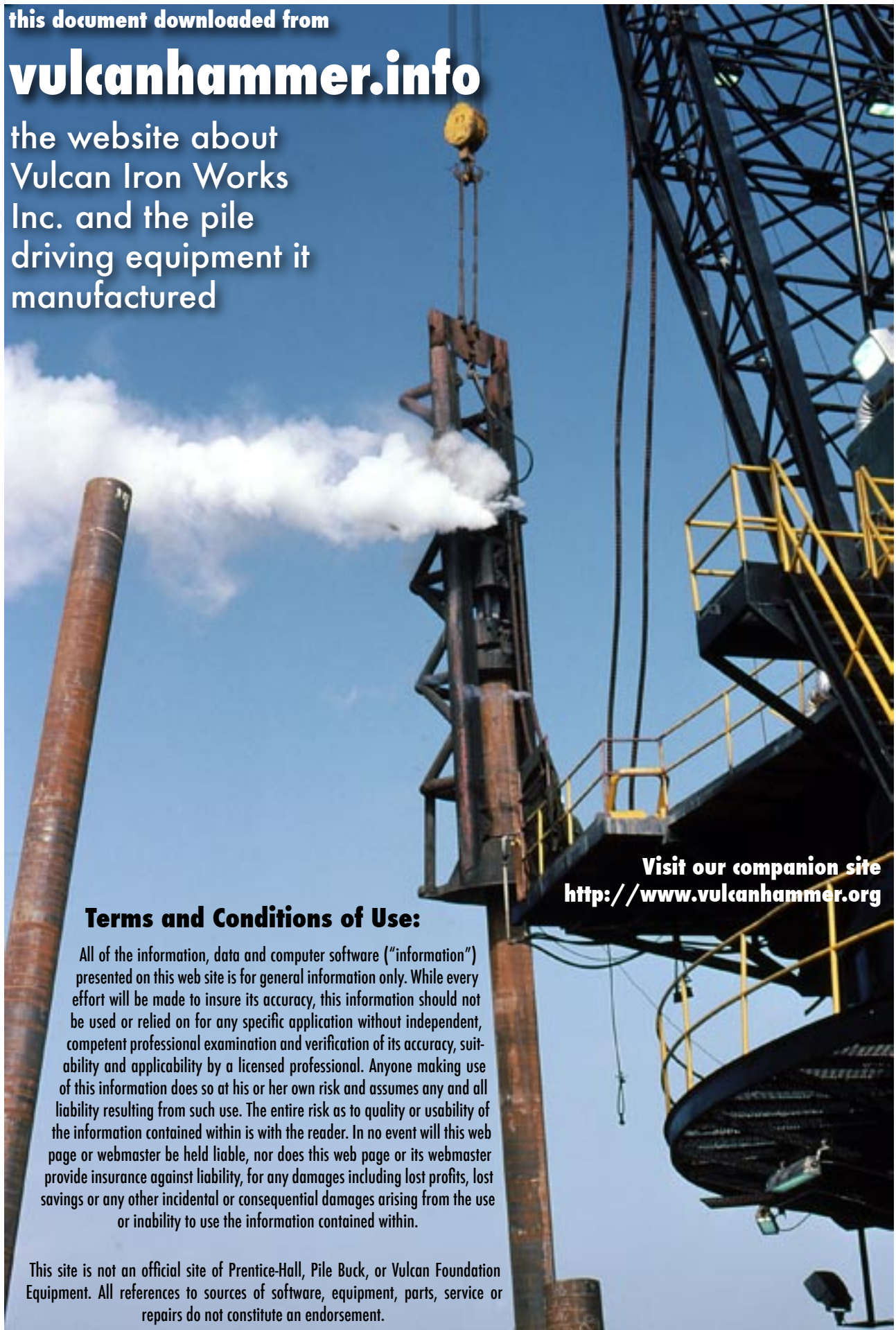
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FMCS Arbn. No. 82K-05094
Grievance No. 2-81
(Thanksgiving turkeys)

In the arbitration matter between)
VULCAN IRON WORKS, INC.,) Opinion and Award
 Chattanooga, Tennessee,) of Arbitrator
 and) Ralph Roger Williams
INTL. ASSOCIATION OF MACHINISTS)
AND AEROSPACE WORKERS, AFL-CIO,)
Success Lodge No. 56,) July 30, 1982
 Chattanooga, Tennessee)

APPEARANCES:

For the Company: Bernard J. Echlin,
Attorney; Donald C. Warrington,
President; Steve Pala, Treasurer;
Bill Born, Production Manager.

For the Union: Edward Pierce, Directing
Business Representative; Rex Nunley,
Committee Chairman; Jim Sanders, Shop
Steward; George Turner and Ray Morrison,
Previous Committeemen.

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This grievance charges the Company with discontinuing
a long-standing practice and custom of giving all Machinist
employees a turkey for Thanksgiving. It requests that all
Machinist employees be made whole for their losses, and that
the Company cease this unilateral action.

The Company denied the grievance, stating in its answer to the grievance:

This is in response to the grievance dated November 20, 1981 in which the Union alleges a violation of Article 1.1 and other provisions of the agreements between the Company and Union because the Company this year has not provided employees a turkey for Thanksgiving.

Section 15.1 provides that the parties' written agreement "constitutes the entire agreement between the parties." Thus, if there were a commitment on the part of the Company to provide employees with a turkey every Thanksgiving such commitment would have to be found in the written agreement. Neither Article 1.1 nor any other provisions of the agreement contain such a commitment.

The grievance describes the Company's action in not providing a turkey as "unilateral action" and as having taken place "without negotiations with the Union." Under the express provisions of Section 15.1, the Company had no duty to bargain with the Union with respect to the matter. Nonetheless, despite the provisions of Section 15.1 and long before the Thanksgiving holiday, the Company discussed its intentions with the Union Committee. Thereafter, still long before Thanksgiving the matter was discussed at the Union Committee's request with Union Business Agent, Edward Pierce. Thus, even if there were an obligation to bargain with the Union with respect to the matter, the Company satisfied such obligation.

The Company posted the following notice on November 16, 1981:

ALL PRODUCTION AND MAINTENANCE EMPLOYEES

Years ago during a financially successful period, the Company, wishing to share such success with employees, decided to give employees a turkey at Thanksgiving and a ham at Christmas. The Company has continued this practice each year since that time.

Unfortunately, this year has not been a particularly successful year. As a consequence, we regret to inform you that this year we will not provide a turkey at Thanksgiving. We will, however, give employees a ham at Christmas.

This grievance resulted. The Union also filed unfair labor practice charges with the National Labor Relations Board. The charges were administratively deferred for arbitration, by letter from the NLRB's Regional Director dated March 22, 1982. The undersigned was duly selected as Arbitrator, and the matter was heard on June 8, 1982, at Chattanooga, Tennessee. The parties filed post-hearing briefs with the Arbitrator on June 26, 1982.

The issue is whether the Company violated the Agreement, or any binding past practice, or the National Labor Relations Act, when it failed to give Machinist bargaining unit employees a turkey for Thanksgiving 1981; and, if so, what shall be the remedy.

Production and maintenance employees have been represented by the Union for many years. The plant was located in Chicago, Illinois, before 1960, where these employees were represented by the Union's District 8. The plant was moved to Chattanooga, Tennessee, in 1960, and since 1962 has been represented by the Union's Success Lodge 56.

Employees have been given Thanksgiving turkeys by the Company since its re-location in Chattanooga, and probably prior thereto while the plant was in Chicago. The exact year when turkeys were first given to employees at Thanksgiving is unknown. The parties stipulated that they have been given annually at least since 1960, until Thanksgiving 1981.

The Agreement is silent with respect to employees receiving Thanksgiving turkeys, and the matter has not been raised at contract negotiations.

The Union contends the Company failed to notify the Union--or negotiate with it--concerning the Company's intention to discontinue giving Thanksgiving turkeys to bargaining unit employees, until the November 16, 1981, notice was posted. Machinist George Turner testified that he first became aware of the discontinuance of this practice when he read the November 16 notice on the bulletin board.

He testified that he then asked Supervisor Kenneth Woods about it, that Woods told him, "It came from higher up," and that he then reported the matter to Union Business Representative Edward Pierce on November 17, 1981. Turner testified that there had been no Company-Union meeting on the matter on November 16, that there had been a meeting on that date, but that Thanksgiving turkeys were not discussed.

The Company contends that discontinuance of the Thanksgiving turkeys had been discussed with the Union. Plant Manager Bill Born testified that, before the notice was posted, he and Supervisor Woods met with the Union committee on November 16, 1981, to discuss the fact that the Company intended to discontinue giving turkeys to employees at Thanksgiving. Born testified that the Union committee objected to the discontinuance, and stated that another meeting would be necessary. Born testified that he took this to mean that the Union intended to file a grievance over the matter. Born's minutes of the meeting were placed in evidence by the Company; they stated:

DATE: November 16, 1981 (3:15 P.M.)

PRESENT:

Bill Born
Kenneth Woods
George Turner
Noel Underwood
Bill Cox

I gave each union committeeman a
copy of Company notice of not giving

employees a turkey for Thanksgiving this year. Mr. Underwood said we could not do this as he knew, because he had talked to some Federal men recently about similar situation.

Committee wanted to know how the Company could put in new sprinkler systems and buy new cars, if they couldn't afford to buy shop turkeys for Thanksgiving.

I told committee that this was top management's decision and that I had no comment on Company's finances, as I was only Production Manager.

After some discussion, committee said we would have to meet on this again. I told them this would be fine with me, and that this notice would be posted on Bulletin Board.

Job tickets show that the Union committee members attended a meeting on November 16, 1981.

Born also testified that he discussed the turkey matter with Union Business Agent Pierce on three occasions prior to Thanksgiving 1981, stating those discussions to have been in person on November 18, later on the 18th via telephone, and on November 20 via telephone.

OPINION

The grievance alleges a violation of Article 1.1 of the Agreement, the Union recognition clause. I find no violation of this provision of the contract, nor of any other specific contractual provisions.

Other cited provisions of the Agreement are Section 7.1 and 15.1. They state as follows:

17.1 Adjustment of Differences
. The Arbitrator selected shall have authority only to interpret and apply the provisions of this Agreement to the extent necessary to decide the submitted dispute, and shall not have jurisdiction or authority to add to, subtract from, or alter in any way the provisions of the Agreement.

15.1 Further Bargaining. This Agreement constitutes the entire agreement between the parties and, subject to the provisions of Section 15.2, concludes all collective bargaining negotiations on any subject, whether specifically mentioned or not in this Agreement, for the term thereof. Any modifications of this Agreement shall be in writing and executed by both parties hereto. Neither party, however, is under any duty or obligation to bargain with respect to any changes, modifications or additions to the Agreement to take effect during its term.

Section 15.1 of the Agreement makes the Agreement the entire contract between the parties. This prevented the turkey bonus practice from becoming binding, and the Company was free to discontinue it. No past practice can bar the application of clear and unequivocal contractual provisions. The Arbitrator has no authority to engraft this practice upon the Agreement.

I find that the parties did not discuss the upcoming discontinuance of the practice of giving Thanksgiving

turkeys to employees, prior to the time the Company made its decision. If the meeting was held on the 16th prior to the posting of the discontinuance notice, and if the Thanksgiving turkey gift discontinuance was discussed (as the Company contends, but the Union contends the matter of the turkeys was not discussed at that meeting), the evidence is that the Company had already made up its mind to post the discontinuance notice, and consequently no meaningful discussions or negotiations were possible. But the Company had the right to unilaterally discontinue the practice, so neither discussion nor prior notice was necessary.

This case is distinguishable on its facts from Jacobsen Mfg. Co. and Machinists, 81-1 ARB §8236, wherein Christmas cash bonuses to employees had been treated as income, with social security and income taxes withheld, and not as gratuities, and had therefore become an implied term of the wage agreement not subject to modification without consent of both parties.

The Union cited the Board's decision in Aeronca, Inc., 253 NLRB 261 (November 12, 1980), wherein the Board held that an employer acted unlawfully when it discontinued a practice of giving employees a turkey at Christmas, without first consulting the Union. The Board held in that case that the Union had not waived the right to bargain over

the discontinuance of a Christmas turkey bonus, even though there was a zipper clause in the collective-bargaining agreement between the parties. The NLRB's decision in the Aeronca case, however, was overturned by the U. S. Court of Appeals for the Fourth Circuit, Aeronca, Inc., vs. NLRB, 650 Fed 2d. 501 (1981), which held that the union had contractually waived its right to bargain concerning the Christmas turkey bonus.

The fact that the Company gave Thanksgiving turkeys to office and salaried employees in 1981, while failing to give them to bargaining unit employees, did not constitute discrimination against the bargaining unit employees, because the Company treated all bargaining unit employees equally. Whether or not it gave Thanksgiving turkeys to office and salaried employees is outside the purview of the Agreement.

The purpose and intent of the Agreement do not require the Company to continue to give Thanksgiving turkeys to bargaining unit employees. Such gifts may be discontinued by the Company at any time, without notice to or negotiation with the Union. The turkeys were gifts, and not wages; their value was not listed on employees' W-2 tax forms, and the employees did not report the value of the turkeys as income. The Company, therefore, violated neither the Agreement nor any binding past practice or custom when it failed to give employees Thanksgiving turkeys in 1981.

Whether the Company violated the National Labor Relations Act was not an issue raised by the grievance. The parties failed to agree to a statement of the issue. But both parties, at the arbitration hearing and in their post-hearing briefs, stated their versions of the issue to include whether the Company had violated the Act. I therefore consider that they submitted that issue to the Arbitrator, and I find that the Company did not violate the National Labor Relations Act by unilaterally discontinuing the practice of giving bargaining unit employees a turkey for Thanksgiving.

AWARD

The grievance is denied.

/s/ Ralph Roger Williams

Ralph Roger Williams
Arbitrator