

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LOCAL 232, INTERNATIONAL UNION, ALLIED :
INDUSTRIAL WORKERS OF AMERICA, AFL-CIO, :

Complainant, :

vs. :

BRIGGS & STRATTON CORPORATION, :

Respondent. :

Case XI
No. 13570 Ce-1292
Decision No. 9530-B

ORDER AFFIRMING EXAMINER'S
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Examiner John T. Coughlin having on July 30, 1971, issued his Findings of Fact, Conclusions of Law and Order in the above entitled matter, and the above named Complainant having, pursuant to Section 111.07, Wisconsin Employment Peace Act, timely filed exceptions with the Wisconsin Employment Relations Commission to the Examiner's Findings of Fact, Conclusions of Law and Order and a brief in support thereof; and the above named Respondent having opposed said exceptions and a brief in support thereof; and the Commission having reviewed said Findings of Fact, Conclusions of Law and Order, the entire record, the exceptions in opposition thereto and the briefs accompanying same, and being satisfied that the Findings of Fact, Conclusions of Law and Order issued by the Examiner should be affirmed;

NOW, THEREFORE, it is

ORDERED

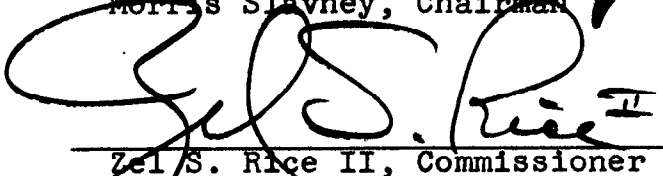
That, pursuant to Section 111.07(5) of the Wisconsin Employment Peace Act, the Wisconsin Employment Relations Commission hereby adopts the Examiner's Findings of Fact, Conclusions of Law and Order issued in the above entitled matter as its Findings of Fact, Conclusions of Law and Order.

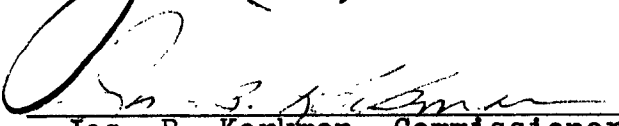
Given under our hands and seal at the
City of Madison, Wisconsin, this 29th
day of December, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

No. 9530-B

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MEMORANDUM ACCOMPANYING
ORDER AFFIRMING EXAMINER'S
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The complaint initiating the instant proceeding filed by the Union alleged that the Employer had violated the collective bargaining agreement existing between the parties by discharging employees involved in violation of said collective bargaining agreement and therefore committed prohibited practices within the meaning of Section 111.06(1)(f) of the Wisconsin Employment Peace Act. In its answer to the complaint the Employer denied the Commission of any unfair labor practices with respect to the matters alleged in the complaint.

The Examiner found that the two employees involved were discharged by the Employer for falsifying their production and work record and, therefore, constituted cause for discharge under the collective bargaining agreement and as a result dismissed the complaint.

The Union timely filed exceptions to the Examiner's decision. Thereafter, the Employer filed objections to the exceptions filed by the Union. In its exceptions the Union took exceptions to paragraphs 6, 9, 10, 11, 14, 15, 17 and 18 of the Examiner's Findings of Fact, and further, to his Conclusion of Law that the collective bargaining agreement was not violated and to his Order dismissing the complaint. The specific Findings of Fact to which the Union took exceptions are as follows:

"6. That the Employer had a well established shop rule which provided that, 'Employees must be ready and at their proper places at the time set for the beginning of work. They must remain at their work until closing time except during authorized lunch or rest periods.'"

. . .

"9. That sometime prior to October 30, 1969, certain unnamed employees complained to Landowski's foreman, Verne Scheel, that said Landowski was not turning in an accurate count as to pieces completed; that foreman Scheel then requested that the Internal Audit Department conduct an investigation into the aforesaid complaints."

. . .

"10. That the Internal Audit Department conducted a check on Landowski's count on October 30, 31 and November 3, 1969; that the aforesaid department made a determination that Landowski falsely claimed that she mounted 6,525 springs on October 30 and 31, respectively, and that she falsely reported that she mounted 6,325 springs on November 3, 1969."

"11. That based upon the aforementioned determination that Landowski falsified her count on the aforesaid days Respondent terminated her on November 6, 1969 for cheating; that at all times material herein the Employer did follow the contractually provided for grievance and discharge procedure concerning Landowski."

. . .

"14. That on Monday, November 17, 1969, Gorski pulled Willis' November 14, 1969 production card and noted that the "down time" (time when the machine is not running" claimed by Willis on said card did not coincide with his personal observations of Willis on November 14, 1969; that Gorski then reported his findings to Ken Heller, head of the Internal Audit Department; that based on Gorski's observations Respondent determined that the November 14, 1969 production card turned in by Willis did not accurately reflect the amount of time that his machine was not operating and that Willis was away from his machine at unauthorized times on the aforementioned date."

"15. That as a consequence of the report filed by Gorski, John Tarantino, another member of the Internal Audit Department, observed Willis while he was working on November 19, 1969; that said Tarantino concluded that Willis falsely represented on his November 19, 1969 production card the amount of time his machine was "down" and that on the same date he was absent from his machine at unauthorized times."

. . .

"17. That on November 20, 1969, Respondent discharged Willis for falsifying his daily time records, for not performing his work as expected, for doubling up on day work and piece work and for not operating his machine for the required amount of time."

"18. That Margaret Landowski did in fact falsify her piece rate counts on her October 30, 31 and November 3, 1969 daily time records; that Othell Willis did in fact falsify on his November 14 and 19, 1969 daily time records the amount of time his machine was not running and that said Willis was absent from his machine at unauthorized times on the aforementioned dates."

The Union did not set forth any facts to support its exception pertaining to the findings noted above.

In its objections to the exceptions the Employer contended that the exceptions do not comply with rule ERB 12.09(2) in that the exceptions

fails to "briefly state the grounds of dissatisfaction with the Findings of Fact, Conclusions of Law and Order," and, therefore, that the exceptions should be dismissed for non-compliance of said rule. 1/

With respect to paragraph 6 of the Examiner's Findings of Fact we are satisfied that the record establishes such rule. The Union in the exceptions did not point out any evidence in the record to the contrary.

With respect to paragraph 9 of the Examiner's Findings of Fact the record establishes, through the testimony of Ken Heller the Head of the Internal Audit Department, that certain unnamed employees did make such a complaint to the foreman involved.


It appears to the Commission that the exceptions to the remaining paragraphs in the Examiner's Findings of Fact refer to the findings characterizing the falsification of records by the two employees involved and the resultant discharge of said employees for such falsification.

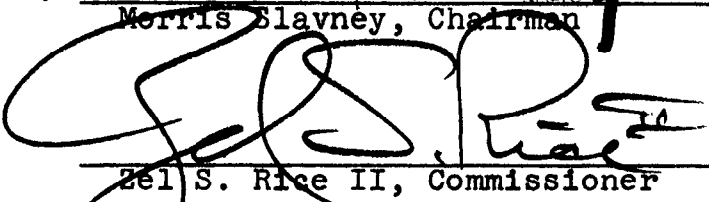
The arguments contained in the exceptions were, for the most part, included in the original brief filed by the Union with the Examiner prior to the issuance of his decision. The Memorandum accompanying the Examiner's decision sets forth the basis for his decision, and we concur and adopt his Findings of Fact, Conclusions of Law and Order and the memorandum accompanying same.

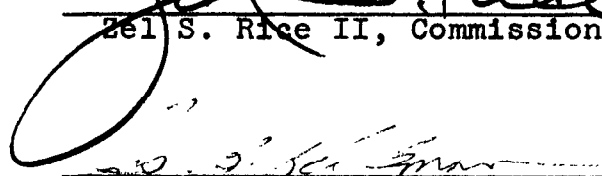
Dated at Madison, Wisconsin, this 20th day of December, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

1/ We deem the Union's exceptions to be in substantial compliance with the rule.