

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LODGE NO. 437, INTERNATIONAL
ASSOCIATION OF MACHINISTS AND
AEROSPACE WORKERS, AFL-CIO,

Complainant,

vs.

ANDIS CLIPPER COMPANY,

Respondent.

Case VII
No. 15056 Ce-1379
Decision No. 10634-B

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

Examiner Herman Torosian having, on November 2, 1972, issued his Findings of Fact, Conclusion of Law and Order, with Accompanying Memorandum, in the above entitled proceeding, wherein the above named Respondent was found to have committed, and was committing, unfair labor practices within the meaning of the Wisconsin Employment Peace Act, and wherein the Respondent was ordered to take certain affirmative action with respect thereto; and a Petition for Review having been timely filed by Counsel for the Respondent; and the Commission having reviewed the entire record in the matter, the Examiner's Findings of Fact, Conclusion of Law and Order, with Accompanying Memorandum, and the Petition for Review and the Respondent's Brief in support of its Petition for Review, and being satisfied that the Findings of Fact, Conclusion of Law and Order, with Accompanying Memorandum, issued by the Examiner should be affirmed;

NOW, THEREFORE, it is

ORDERED

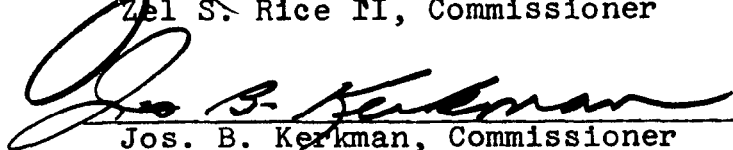
That, pursuant to Section 111.07(5) of the Wisconsin Employment Peace Act, the Wisconsin Employment Relations Commission hereby adopts the Examiner's Findings of Fact, Conclusion of Law and Order, with Accompanying Memorandum, issued in the above entitled matter as its Findings of Fact, Conclusion of Law and Order, with Accompanying Memorandum, and, therefore, the Respondent, Andis Clipper Company, shall notify the Wisconsin Employment Relations Commission within ten (10) days of the receipt of a copy of this Order as to what steps it has taken to comply therewith.

Given under our hands and seal at the
City of Madison, Wisconsin, this 4th
day of February, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 

Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

No. 10634-B

MEMORANDUM OF DISSENT

The undersigned dissents from the Order of his fellow Commissioners affirming the Examiner's Findings of Fact, Conclusion of Law and Order and their adoption of the Examiner's rationale in the Examiner's Memorandum. While Article IV, Section 10(e) of the collective bargaining agreement provides that no employee shall lose his seniority when his failure to report for work is caused by sickness or accident, the undersigned is of the opinion that such provision does not contemplate continued and repeated absences as a result of illness, as was experienced by the employee involved. In the undersigned's opinion the provision would apply to employees who are occasionally absent because of a genuine illness. No employer could successfully operate its plant if it were under a mandatory duty to retain employees indefinitely regardless of their attendance records because of frequent illnesses.

As interpreted by the Examiner and the two Commissioners, the provision involved would grant employees, who are unable to perform their jobs because of recurring or frequent illnesses, a perpetual right to such jobs. It is unfortunate that the employee involved had, and is presumed to continue to have, health difficulties which interferes with her attendance at work, but the employee cannot expect her job to be held available for her when she is only physically able to perform her duties, when there is a long past record of her inability to attend her employment. The Employer cannot operate its plant without the assurance that its employees will come to work as scheduled. The absentee record of the employee no doubt caused the necessity of temporarily replacing the employee during her absence, or at least interfering with production. Furthermore, it is not fair to other employees who work regularly and who maintain a good attendance record.

Other provisions in the collective bargaining agreement contemplate that the Employer expects employees to work regularly, as reflected in Article XI providing that leaves of absence "may be granted if it does not interfere with the production schedule of the Company" and further, with respect to pregnancy leave, a leave of absence is granted to the expectant mother during the seventh month of the pregnancy and to extend for "two months after the birth of the child." The undersigned would have dismissed the complaint on the basis that the provision set forth in Article IV, Section 10(e) does not contemplate an excessive intermittent absentee record resulting from illnesses.

Dated at Madison, Wisconsin, this 9th day of February, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman