

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LOCAL 386, ALLIED INDUSTRIAL WORKERS
OF AMERICA, AFL-CIO,

Complainant,

vs.

STOLPER INDUSTRIES, INC.,

Respondent.

Case V
No. 17823 Ce-1535
Decision No. 12626-B

ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT, CONCLUSION OF
LAW AND ORDER AND MODIFYING EXAMINER'S
MEMORANDUM ACCOMPANYING SAME

Examiner Stanley H. Michelstetter II having on October 7, 1974, issued Findings of Fact, Conclusion of Law and Order, with Accompanying Memorandum, in the above entitled matter, wherein the Examiner dismissed the complaint filed herein, finding that the above named Respondent had not violated the collective bargaining agreement existing between the parties with respect to the discharge of one Alton Richardson; and the Complainant, pursuant to Section 111.07(5) of the Wisconsin Statutes, having timely filed a petition requesting the Commission to review the Examiner's decision, and wherein the Complainant contended that the Respondent did not, by a clear and satisfactory preponderance of the evidence, establish that Richardson had been discharged for cause under said collective bargaining agreement; and the Commission, having reviewed the entire record, the petition for review, the brief filed in support thereof, as well as the brief filed in opposition thereto, being satisfied that the Findings of Fact, Conclusion of Law and Order of the Examiner should be affirmed, but that, however, the Memorandum accompanying same be modified;

NOW, THEREFORE, it is

ORDERED

That, pursuant to Section 111.07(5) of the Wisconsin Statutes, the Wisconsin Employment Relations Commission hereby adopts the Examiner's Findings of Fact, Conclusion of Law and Order issued in the above entitled matter as its Findings of Fact, Conclusion of Law and Order; but that the Memorandum accompanying same be modified as set forth in the Memorandum attached hereto.

Given under our hands and seal at the
City of Madison, Wisconsin, this 8th
day of October, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

Herman Torosian
Herman Torosian, Commissioner

No. 12626-B

MEMORANDUM ACCOMPANYING
ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT, CONCLUSION OF
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At the outset of the hearing before the Examiner, the Examiner determined, with the Respondent's consent, that the Respondent had the burden of proceeding with the evidence in the matter. As noted in the Findings of Fact, the Examiner found that the employee involved, Alton Richardson, engaged in such conduct which constituted just cause for discharge and that, therefore, the Respondent did not violate the collective bargaining agreement in terminating Richardson's employment.

The Complainant, in its petition for review, took exception with certain of the Examiner's findings, specifically those contained in Paragraphs 10 and 12 of the Findings of Fact. The Complainant contends that such facts were not established by a clear and satisfactory preponderance of the evidence as required in Section 111.07(3) of the Wisconsin Employment Peace Act.

The Commission has reviewed the record and is satisfied that, based upon the credibility findings of the Examiner, the record reflects by a clear and satisfactory preponderance of the evidence, that the Respondent had just cause to discharge Richardson. We have, therefore, affirmed the Examiner's Findings of Fact, Conclusion of Law and Order.


The Commission adopts that portion of the Examiner's Memorandum relating to "Evidence." While at the outset of the hearing Respondent agreed to proceed with the evidence and, apparently, to assume the burden of establishing that the discharge was for cause, the Examiner devotes a portion of his Memorandum to a discussion as to which party bears the burden of proof where there is an allegation that an employee has been discharged in violation of a collective bargaining agreement, where such collective bargaining agreement permits an employer to discharge an employee for "just cause." We do not agree with that portion of the Examiner's "Burden of Proof" discussion wherein he stated that "Respondent by adopting a proper cause standard for discharge has expressly agreed to bear the burden of proof concerning discharges under the instant agreement and therefore must establish such as an affirmative defense." We, therefore, modify that portion of the Examiner's Memorandum to read as follows:


In an unfair labor practice complaint alleging that an employer has violated a collective bargaining agreement by taking action against an employee, e.g. discipline, suspension, discharge, etc., where the employer, in defense thereto, alleges that the "just cause" provision in the collective bargaining agreement permits such action by the employer, the employer has the burden of establishing, by a clear and satisfactory preponderance of the evidence, that there was just cause for its action, provided the Complainant first establishes a prima facie violation of the collective bargaining agreement involved.

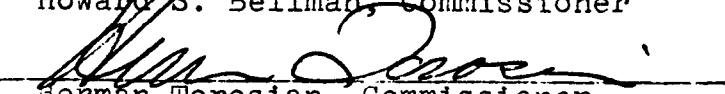
Dated at Madison, Wisconsin, this 8th day of October, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Howard S. Bellman, Commissioner


Herman Torosian, Commissioner