

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

AMALGAMATED MEAT CUTTERS AND BUTCHER	:	
WORKMEN OF NORTH AMERICA, AFL-CIO,	:	
LOCAL #P-119,	:	
	:	
Complainant,	:	
	:	Case II
vs.	:	No. 18157 Ce-1553
	:	Decision No. 12900-B
LINK BROTHERS PACKING, a DIVISION	:	
OF LINK BROTHERS, INC., a Wisconsin	:	
Corporation,	:	
	:	
Respondent.	:	
	:	

Appearances:

Adler, LaFave and Johnson, Attoreny's at Law, by Mr. William A. Adler, appearing on behalf of the Complainant.
Powell, Gee & Hendricks, Attorneys at Law, by Mr. John H. Hendricks, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Complaint of unfair labor practices having been filed with the Wisconsin Employment Relations Commission in the above-entitled matter; and the Commission having appointed George R. Fleischli, a member of its staff, to act as Examiner and make and issue Findings of Fact, Conclusions of Law and Orders as provided in Section 111.07(5) of the Wisconsin Statutes; and a hearing on said complaint having been held at Shell Lake, Wisconsin on September 17, 1974 before the Examiner; and the Examiner having considered the evidence and arguments and being fully advised in the premises makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That, Complainant, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, Local #P-119, hereinafter referred to as the Complainant or Union, is a labor organization and the representative of all production workers employed by Link Brothers Packing, a Division of Link Brothers, Inc., at its Minong Packing plant excluding office clerical employes, supervisors and guards as defined in the National Labor Relations Act as amended.

2. That, Respondent, Link Brothers Packing, a Division of Link Brothers, Inc., hereinafter referred to as the Respondent Company or Employer, is a Wisconsin corporation and an employer within the meaning of Section 111.02(2) of the Wisconsin Employment Peace Act (WEPA).

3. That at all times material herein, the Complainant and Respondent have been parties to a collective bargaining agreement which contains the following provisions relevant herein:

"ARTICLE III.

MANAGEMENT

(a) The management of the plant and the direction of the working force, including the right to hire, suspend or discharge

for proper cause, and the right to relieve employees from duty because of lack of work or for other legitimate reasons, are vested exclusively in the Company; provided, however, that it will not be used for the purpose of discrimination against any employee or to avoid any of the provisions of this Agreement.

. . .

ARTICLE IX.

ABSENTEEISM OR INSUBORDINATION

(a) The Employer agrees that in case of absenteeism, insubordination or leaving without permission, except for legitimate illness or legitimate personal reasons with prior permission, employees will be given a warning notice in writing. In the event of a second occurrence of any prohibited activity, a second warning notice will be given in writing which will subject the employee to three (3) days disciplinary layoff without pay. A third occurrence of a prohibited activity shall subject the employee to discharge. The Union shall receive copies of all written warning notices.

(b) If an employee who has received a written warning notice or suspension does not receive any additional written warning notices for a period of one year, then none of the previous warning notices shall be used in any future disciplinary action."

4. That on the afternoon of Friday, February 15, 1974, at approximately 4:50 p.m., Ernest Kolb, Foreman of the "kill floor" in the Respondent's packing plant was standing behind a protective screen next to the "head table" where an employe named Gordon Zeien was boning heads; that Kolb was standing behind said screen for the purpose of observing the work of the employes on the kill floor and Zeien was aware of his presence and purpose; that at the time the employes working on the kill floor were finishing the initial processing of 198 head of cattle that had been killed that day, which number constituted a record number; that Zeien, who was acting Union Steward had observed Kolb while he was standing behind the screen and when Kolb emerged and began walking quickly towards the other end of the kill floor, Zeien correctly assumed that Kolb was preparing to verbally reprimand an employe by the name of James Barber who was working at the "drop section" of the rail carrying beeves which is located at the other end of the kill floor approximately 50 feet away; that while Kolb was reprimanding Barber for "goofing off" Zeien, who was aware that Kolb had been critical of Barber before because Barber had complained to Zeien about such incidents in the past, proceeded across the kill floor towards Barber's work station for the purpose of intervening on behalf of Barber in Zeien's capacity as acting Union Steward; that after Kolb had verbally reprimanded Barber, Barber, in Kolb's words "got mad and kicked the gut cart into the cooler door"; that by the time Zeien arrived at Barber's work station Kolb had left the kill floor through a door which is located a few feet away from Barber's work station for the purpose, in part, of advising Wilfred Link, President and part owner of the Respondent Company, of Barber's conduct; that Zeien was aware of the fact that Kolb had probably left the kill floor for the purpose of reporting to Link because Kolb had advised Zeien of his intention to do so the next time he had a problem with Barber; that Zeien may have talked to Barber for a few minutes before returning to his work station at the other end of the kill floor.

5. That either before Zeien had returned to his work station or shortly thereafter, he observed Kolb shortly after he re-entered the kill floor through the same door accompanied by Gaylord Barth, an office employe, and Wilfred Link, President of the Respondent Company; that

immediately after coming onto the kill floor, Link walked up to Barber and asked him "what his problem was" and Barber replied "Ernie Kolb"; that Link told Barber "well, if you don't want to work, go home", and Barber went back to work; that immediately thereafter, Link and Kolb proceeded towards the other end of the kill floor; that Zeien, began walking quickly toward Link for the purpose of protesting what he considered to be unfair criticism of Barber's work on that day.

6. That Zeien, who is required as part of his duties to carry buckets of meat into the cooler, customarily hung his knife scabbard on a water pipe above his work station so that his knives would not be knocked out of his scabbard and contaminated; that Zeien, like other employes on the kill floor, frequently carried his knife in his hand when he left his work station to talk to someone; that on this occasion, Zeien was carrying a knife in his right hand and may have been carrying a sharpening steel in his left hand on which he wore a metal mesh glove for protection; that Zeien interrupted Link at a point on the kill floor either one-half or three-fourths the distance between his work station and Barber's work station; that Zeien, who was agitated, spoke first and in a loud voice said words to the effect that "you can't browbeat a man when we have attained a record kill"; that Link probably responded with words to the effect that "you can't tell me what to do" and a short verbal exchange followed; that during this conversation which only lasted a few seconds, Zeien had his knife in his hand and may have unconsciously shook it in a non-threatening gesture with the blade turned away from Link's person to emphasize the statements that he was making, but he did not at any time make any threatening statement or gesture toward Link; that near the end of this conversation Link told Zeien to "put that knife down" and Zeien replied to the effect that "I don't have to put the (damn) (goddamn) knife down"; that the reason that Zeien refused to put the knife down was because he wanted to finish his conversation with Link and not because he was using the knife to threaten Link or intended to use the knife to threaten Link; that by his refusal to put the knife down when requested to do so by Link, Zeien behaved in a manner that was insubordinate and not privileged by reason of his position as acting Union Steward; that almost immediately after refusing to put the knife down, Zeien ended his conversation with Link and turned and went back to his work station and resumed his work.

7. That within a few minutes after Zeien returned to his work station, Link passed by Zeien's work station on his way out to the cattle pens and said "you can't swear at me" and Zeien "I didn't swear at you"; that Link thereafter proceeded to the cattle pens and entered into a discussion with Kolb, Barth and Larry W. Haus, Cattle Buyer, with regard to whether they should stop killing cattle for the day and return the remaining cattle to the farm.

8. That on the following Monday, February 18, 1974, Zeien reported to work at 7:15 a.m. which was his normal reporting time; that upon arriving at work, Zeien was told to report to Charles Patrick, Personnel Manager, in his office; that Patrick advised Zeien that he was going to be discharged because of his behavior towards Link on the prior Friday and Zeien indicated his intent to contact the appropriate Union officials and file a grievance; that after a grievance meeting wherein Link contended that Zeien had threatened him with a knife and Zeien contended that he had not done so, Zeien was advised that he was discharged for threatening Wilfred Link with a knife and a letter of discharge to that effect was received by him via certified mail on the following day.

Based on the above and foregoing Findings of Fact, the Examiner makes and enters the following

CONCLUSION OF LAW

That by discharging Gordon Zeien on February 18, 1974, for his conduct on February 15, 1974, the Respondent violated Articles III and IX of the collective bargaining agreement and committed an unfair labor practice within the meaning of Section 111.06(1)f of the WEPA.

Based on the above and foregoing Findings of Fact and Conclusion of Law, the Examiner makes and enters the following

ORDER


IT IS ORDERED that Respondent Link Brothers Packing, a Division of Link Brothers, Inc., shall take the following affirmative action which the Examiner finds will effectuate the policies of the Wisconsin Employment Peace Act:

1. Immediately offer Gordon Zeien reinstatement to his previous position or a substantially identical position without loss of seniority or other benefits and make him whole by paying him a sum of money equal to that which he would have earned if he had not been discharged less any amount of money he earned or received while discharged that he otherwise would not have earned or received.
2. Notify the Wisconsin Employment Relations Commission in writing within twenty (20) days from the date of this Order regarding what steps it has taken to comply with this Order.

Dated at Madison, Wisconsin this 11th day of February, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


George R. Fleischli, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

The Complainant contends that, at most, Zeien was guilty of insubordination and that Zeien's discharge was, therefore, in violation of Article IX of the collective bargaining agreement and Section 111.06(1)(f) of the Wisconsin Employment Peace Act because Zeien was discharged rather than given a written warning notice. The Respondent admits that Zeien had never been given any warning notice prior to his discharge but contends that he threatened Wilfred Link with a knife which constituted "proper cause" for discharge without prior warning under the provisions of Article III of the agreement.

There is little doubt that, if in fact Zeien threatened Wilfred Link with a knife, such conduct was far more serious than mere insubordination and would constitute proper cause for his discharge. On the other hand, if his conduct towards Link was no more than insubordinate, the Respondent had no right to impose any discipline in excess of that provided for in Article IX of the agreement, that being a written warning notice for the first offense, and it did not have proper cause to discharge him under Article III of the agreement.

While there are numerous differences in the testimony of the various witnesses who were present when the incident occurred, it is clearly established that Zeien sought out Link shortly after he entered the kill floor for the purpose of protesting the fact that employe Barber was being "browbeaten" (Zeien's term) by Kolb for "goofing off" (Kolb's term) even though the men on the kill floor were in the process of completing a record kill. Zeien, who was acting Union Steward, was upset and was carrying his knife in his hand. However, the credible evidence of record establishes that he was not carrying his knife in his hand for the purpose of using it as a weapon and he held it (and probably shook it) in a manner that was not intended to be threatening. He made no statement which could reasonably be construed to be a threat and his gestures were consistent with his apparent purpose which was to lodge a strong verbal protest regarding management's criticism of Barber, which Zeien deemed to be unfair under the circumstances.

The testimony indicates that nearly all of the employes on the kill floor have a knife in their hands most of the day while working on meat and at other times as well. Zeien's claim that he had forgotten that he had his knife in his hand and was unaware of the fact that he may have shaken it until Link told him to put it down is credible in the context of the work situation and the particular facts which preceded his discussion with Link. Zeien, who was otherwise preoccupied with his work at the head boning table, was also attempting to observe the movements and interaction between Kolb, Barber and Link. When Link came in, Zeien was either on his way back to his work station or at his work station waiting for Kolb to re-enter with Link. In either event he hurried over to Link and could easily have forgotten that he still had his knife in his hand until Link told him to put it down.

There was, of course, no excuse for Zeien's insubordinate refusal to follow Link's reasonable instruction that he put the knife down. The whole transaction took less than a minute and the testimony indicates that Zeien said little or nothing after refusing to put the knife down. If, indeed, Zeien intended to use the knife to threaten or harm Link, he would not have turned away from Link and gone back to his work station at that point. The more compelling inference is that he realized his conduct was subject to misinterpretation and he withdrew.

Even more significantly, if Link was as "scared" as he testified he was, why would he have walked past Zeien immediately thereafter and, according to Zeien, had a further discussion with him. It might also be asked why Link, who had just been threatened with a knife by one of his employes, proceeded to enter into a discussion about a production problem. Link's testimony was characterized throughout by selective recollection, exaggeration, internal inconsistencies and incredible claims. Link's behavior, as described by others, was generally consistent with the Complainant's version of the facts and consequently Link's testimony has been largely disregarded as unreliable. 1/

If it were not for the provisions of Article IX which establish the appropriate discipline in cases of insubordination, a serious question would be presented as to whether the disciplinary penalty invoked (discharge) was appropriate for Zeien's insubordinate conduct towards Link. Insubordination takes many forms and can be a serious form of misconduct often justifying a greater disciplinary penalty than the parties have agreed to herein. However, the provisions of Article IX are quite specific and clearly modify the general right of the Respondent to otherwise suspend or discharge employes for proper cause pursuant to Article III.

For the above and foregoing reasons, and on the record as a whole, the undersigned concludes that Zeien did not threaten Link with a knife but behaved in a manner that was insubordinate by refusing to put the knife down when directed to do so and that the Respondent, therefore, violated Article IX and Article III and committed an unfair labor practice within the meaning of Section 111.06(1)(f) of the WEPA when it discharged him.

Dated at Madison, Wisconsin this 11th day of February, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By George R. Fleischli
George R. Fleischli, Examiner

1/ The Examiner's credibility finding in this regard is not based in whole or in part on the Complainant's claim that Link had threatened to "fire" Zeien during a negotiations meeting during the summer of 1973. The Complainant did not allege that the discharge was discriminatorily motivated in violation of Section 111.06(1)(c) and the record clearly establishes that Zeien was fired for his conduct on February 15, 1974 which, in the Examiner's view, was insubordinate but not criminal. What little evidence there was with regard to the alleged threat made during negotiations indicates that Link may have made a remark during a heated discussion which could easily be construed to be a threat to do that which an employer has a legal right to do when faced with an economic strike - hire replacements.