

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION LOCAL #336,

Complainant,

vs.

LADISH CO., TRI-CLOVER DIVISION,

Respondent.

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Case XXXIV No. 18600 Ce-1577 Decision No. 13226-B

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

Examiner Stanley H. Michelstetter II, having on November 26, 1975, issued Findings of Fact, Conclusion of Law and Order with Accompanying Memorandum in the above entitled matter, wherein he found that the above named Respondent, in failing to give 72 hours' notice prior to laying off employes represented by the Complainant violated the collective bargaining agreement and therefore committed an unfair labor practice within the meaning of Section 111.06(1)(f) of the Wisconsin Employment Peace Act, and wherein the Respondent was ordered to make said employes whole for the earnings that they would have received had they received the full 72 hours' notice of the decision to lay them off as required by the collective bargaining agreement; and thereafter the Respondent having timely filed a Petition requesting the Commission to review the decision of the Examiner; and the Commission having reviewed the entire record, the Petition for Review and the Respondent's brief filed in support thereof, and being fully advised in the premises and being satisfied that the Examiner's Findings of Fact be modified, the Examiner's Conclusion of Law be affirmed and the Examiner's Order be modified;

NOW, THEREFORE, it is

ORDERED

1. That the Examiner's Finding of Fact number 15 be modified to read as follows:

"15. That Respondent permitted the second shift of employes represented by Complainant to report at the close of the first shift on March 27, 1974; that Respondent directed its supervisors and management personnel to report for their assigned shifts on March 28 and 29, 1974; that the normal complement of 15 supervisors per shift reported without incident on those dates; that employes represented by the Respondent were on March 27, 1974 directed not to report to work, and were not permitted to work on March 28 and 29, 1974."

2. That the Examiner's Conclusion of Law be, and the same hereby is, affirmed.

3. That the Examiner's Order be modified to read as follows:

"ORDER

IT IS ORDERED that Respondent Ladish Co., Tri-Clover Division, take the following affirmative action which the Commission has determined will effectuate the policies of the Wisconsin Employment Peace Act:

- (a) Reimburse all of its employes represented by Complainant for all earnings they would have received had they not been laid off from active employment on March 28 and 29, 1974 in violation of Article XII, Section 2 of the parties' collective bargaining agreement then in effect;
- (b) Notify the Wisconsin Employment Relations Commission in writing within ten (10) days of this Order as to what steps it has taken to comply herewith."

Given under our hands and seal at the City of Madison, Wisconsin this $Q^{n_{\rm H}}$. day of May, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

an hon By_ Morris Slavney, Chairman Commissioner Herman Torosian,

LADISH CO., TRI-CLOVER DIVISION, XXXIV, Decision No. 13226-B

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

In its Petition for Review, the Respondent raises two grounds for review of the Examiner's decision:

- (1) The conclusion that the Respondent should be mulcted in damages because of an illegal, admitted and violent breach of the peace by a labor organization raises a substantial question of law and administrative policy.
- (2) The conclusion that, under the circumstances, the Respondent was obligated to give prior notice of the layoff as required by its collective bargaining agreement is erroneous as a matter of law. Respondent's performance of this aspect of the labor agreement was made impossible because of the emergency created by the Union picket line violence.

The first question raised by the Respondent is based on an improper characterization of the Examiner's decision. The Complainant was not on strike at the time and was not engaging in any illegal acts or acts of violence. The only claimed illegal conduct that was occurring involved members of the Machinists union who were on strike and who were attempting to prevent supervisory and managerial employes from removing the Respondent's product from the plant in their personal autos for the purpose of shipping. Those acts are detailed in the Examiner's findings, which are not challenged on review.

The Respondent's arguments with regard to its claim that an emergency existed which made it "impossible" to comply with the notice requirement was an issue raised before the Examiner and dealt with in his Memorandum. The Commission, in adopting the Examiner's Conclusion of Law, also adopts his rationale in that regard. The evidence of xecord indicates that the layoff was not due to impossibility of performance but was dictated largely by economic considerations including the difficulty the Respondent was experiencing in shipping its product. In the absence of language making an exception for emergencies such as exists in the Respondent's agreement with the Technical Engineers or in other provisions of its agreement with the Complainant, the Respondent was required to give the Complainant 72 hours' notice of its intent to lay off the employes in question. The Respondent cannot @seape its obligation in this regard by laying off all of its employes in the bargaining unit at one time.

In an effort to avoid further dispute over the question of how much backpay is due and owing to the employes who were affected by the improper layoff the Commission has modified the Examiner's Findings of Fact and Order to refluct with greater particularity the computation of backpay due and owing to said employes. All employes who were available for work on the two days in question (i.e. not on sick leave or vacation), are entitled to pay regardless of whether they reported for work.

Dated at Madison, Wisconsin this 27th day of May, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION lauren home By_ Slavney, Chairman Morr Can Herman Torosian, Commissioner

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