

- (a) Reimburse all of its employees 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 27th day of May, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

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 employees 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 record 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 employees in question. The Respondent cannot escape its obligation in this regard by laying off all of its employees 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 employees who were affected by the improper layoff the Commission has modified the Examiner's Findings of Fact and Order to reflect with greater particularity the computation of backpay due and owing to said employees. All employees 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

By


Morris Slavney, Chairman


Herman Torosian, Commissioner