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 VII No. 18816 Ce-1587 Decision No. 13365-A

Appearances:
Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Kenneth R. Loebel, appearing on behalf of the Complainant-Union.
Michael, Best & Friedrich, Attorneys at Law, by Mr. John R. Sapp, appearing on behalf of the Respondent-Company.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Local 386, Allied Industrial Workers of America, AFL-CIO, having filed a complaint of unfair labor practices on February 10, 1975, with the Wisconsin Employment Relations Commission alleging that Stolper Industries, Inc., has committed certain unfair labor practices within the meaning of the Wisconsin Employment Peace Act, (WEPA); and on February 19, 1975, the Commission having appointed Robert M. McCormick, a member of its staff, to act as Examiner and make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5) of WEPA; and hearings on said complaint having been held at Milwaukee, Wisconsin, on March 11, and 20, 1975, before the Examiner, and on the latter date, the parties having settled the Engeleiter grievance, recited in the second count of said complaint; and the parties having thereafter filed briefs by July 2, 1975; and the Examiner having considered the evidence and arguments of counsel, 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 Local 386, Allied Industrial Workers of America, AFL-CIO, hereinafter referred to as the Union, is a labor organization having its principal offices at 3815 North Teutonia Avenue, Milwaukee, Wisconsin.

2. That Stolper Industries, Inc., hereinafter the Company, is a corporation engaged in manufacturing and has offices and plant facilities at W156 N9073 Stolper Drive, P.O. Box 190, Menomonee Falls, Wisconsin.

3. That at all times material herein the Company has recognized the Union as the exclusive bargaining representative of certain of its production employes; that in said relationship the Company and the Union have been at all times material herein, parties to a collective bargaining agreement covering the wages, hours and conditions of employment of such employes, which agreement became effective June 1, 1972, and in full force and effect at least to May 31, 1975 1/; that said agreement includes a

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1/ All dates hereinafter, refer to the year 1974, unless otherwise specified.

grievance procedure, but does not include a provision for final and binding arbitration of grievances.

4. That the aforesaid collective bargaining agreement contains among its provisions the following:

"ARTICLE I

RECOGNITION--MUTUAL SECURITY

. . .

MANAGEMENT CLAUSE

Paragraph 105 Except as otherwise herein provided, the direction of the working force, including the right to hire, transfer, suspend or discharge, or discipline for proper cause, and right to relieve employees from duty because of lack of work or for other legitimate reasons, is vested exclusively in the Company, provided that the Company will not use such rights for the purpose of discriminating against the Union or its members.

. . .

ARTICLE III

SENIORITY

. . .

LOSS OF SENIORITY

Paragraph 305 An employee shall lose his seniority for the following reasons:

. . .

Paragraph 305.2 When he shall have been discharged for cause.

. . .

Paragraph 309 Any employee who has become unable to satisfactorily and safely perform his regular work shall be given preference for whatever suitable work he is qualified to perform.

. . .

DISCIPLINARY LAYOFFS

Paragraph 310 The Company agrees to notify the Union of all discharges before they become effective. The Company also agrees to notify the Union of all disciplinary layoffs in writing following the decision to take such action. Any differences in this area shall be referred to the grievance procedure. Disciplinary layoffs will become effective the next regular work shift of the employee so disciplined. Vacation and holiday time may not be applied against disciplinary layoff time."

5. That the Company had in full force and effect, since 1969, a set of work rules with an attending system of written warnings and progressive discipline applicable to the infraction thereof, which reads in material part as follows:

"WORK RULE GUIDELINES

INTRODUCTION

These rules are intended to serve you as a guide of things 'not to do' as well as a procedure to follow indiscriminately in case a rule is broken.

. . .

Shop 'discipline' or work rules are only to spell out the necessary requirements of working, cooperating and behaving in a normal way so that each employee knows what is expected of him. Some rules are more serious than others. We have divided them into these categories, 'A,' 'B' and 'C'.

Shop rules are intended as a remedy to prevent trouble. If knowing the 'trouble' spots are not enough to prevent violation, then the disciplinary aspect must of course apply.

. . .

TYPE 'C' RULES

1. No smoking in restricted areas as posted.

2. Insubordination - refusal to carry out supervisory assignments.

3. Refusal to use safety equipment or conform to safe practices causing an unsafe condition or hazard.

4. Stealing or willful misuse or destruction of company property or that of others.

5. Disorderly conduct on company property including the threat to do bodily harm.

6. Any unlawful act on company property.

7. Starting fights or fighting on company property.

8. Carrying or in possession or control of any weapon on company premises without authorization.

9. Sleeping on job during working hours.

10. Punching or recording another's time record without authorization.

PROCEDURE OF DISCIPLINE IF YOU INSIST
ON NOT CONFORMING TO ABOVE
STIPULATED RULES.

VIOLATION OF 'A' RULES

1a. One written warning for the first violation of an 'A' rule.

1b. A second written warning for the next different 'A' violation.

2. A one day layoff.

3. A two day layoff.

4. Discharge.

VIOLATION OF 'B' RULES

1. One written warning for violation of a 'B' rule.

2. A three day layoff for any following 'B' rule violation.

3. Discharge.

VIOLATION OF 'C' RULES

1. Discharge for first violation of any 'C' rule. (Disciplinary action may be instituted in lieu of discharge depending upon conditions and severity of consequences involved by management discretion.)"

6. That Robert Schmer, hereinafter referred to as the grievant, was first employed by the Company in February 1974 and for all time material herein, he worked as a spot-seam welder on the second shift; that grievant worked initially under the direction of two foremen, Bob Stockdale and Matt Goodman, the latter remained as grievant's foreman until December; that on and after December 3, Hollis Shorette functioned as second shift foreman with immediate supervisory authority over grievant.

7. That on July 9 grievant was suspended by the Company for making a statement to foreman Stockdale to the effect that he wanted Stockdale to step outside and made a threat to "kick the _____ out of him."; that the foreman immediately suspended the grievant after which the grievant proceeded to the office of the general foreman, Tom Osberg, who was meeting on another matter with the Union's president, Bailey Dandridge; that grievant stated to Osberg that "if he did not do something about Stockdale, he (grievant) was going to take him outside and settle the matter once and for all by "kicking the _____ out of him."; that Dandridge took grievant aside and counseled with him after which the Union president succeeded in persuading Osberg to lift the suspension, on the basis of Dandridge's assurance that grievant, thereafter, would conduct himself in a proper manner.

8. That on October 10, three months later, the Company suspended grievant for one day for a violation of the C-4 rule (willful misuse of company property) because of grievant's act of beating on the head of a tank with a hammer and kicking said piece of equipment, thereby causing it to roll off a table; that the grievant and the Union steward declined to sign the suspension and reprimand notice issued by the Company on or near October 15; and that no grievance was ever filed by the Union or grievant to challenge said suspension.

9. That the ordinary operation of the spot welder equipment entails a certain amount of "sparking" which condition is guarded against by the Company making available protective sleeves and rubber-waist-aprons which protect the body from chest to knees; that the first shift personnel made general use of such equipment.

10. That in the course of second shift operations on December 4, the grievant operated the spot welder without utilizing available protective equipment which hung close to each welding machine; that grievant complained that the spot-welds did not hold and the machine was sparking slightly; that Foreman Shorette called in the maintenance electrician who adjusted the machine and his inspection cleared the machine for operation; that grievant thereafter resumed welding, but did not wear an apron or sleeves; that the machine again sparked occasionally, prompting the grievant to again complain to Shorette that the machine was not working properly; that Cain, the electrician, replaced some tubes and installed a switch; that grievant resumed welding and after some twenty-five spots, the machine threw some sparks which caused

some scorching of his well frayed shirt; that the manager of tank production, Ron Marshal, had observed the operation which exhibited normal sparking and told grievant to wear a protective apron; that grievant replied that "it would hold him back"; that grievant sometime after the completion of Cain's repair of the machine, reported a burned shirt to the nurse; that grievant thereafter declined to work any longer that night on the machine and Shorette assigned grievant to another job on the test tanks.

11. That grievant visited the nurse's office at least three times on the night of December 4, the first such occasion occurring at 6:30 p.m. when grievant received treatment for a cold sore which was followed by a revisit for the same complaint; that grievant next appeared at First Aid at 7:10 p.m. for treatment of a laceration to the little finger; that sometime between 7:10 p.m. and 10:40 p.m. grievant reported to First Aid and advised the nurse that the shirt he was wearing had caught fire while operating a welder; that said burn-hole on grievant's shirt was located at a spot which a protective apron, if worn, would have covered; that grievant at the time had not reported a burn to his body nor did the nurse treat him for any burn but that she did ask the grievant why he had not worn the protective apron; that the nurse called Osberg, the general foreman, after telling grievant that she could do nothing about his shirt; that Osberg advised grievant that he should wear a protective apron; that at 10:40 p.m. grievant reported to First Aid and was treated for an acid burn to his right arm which affliction had no connection with the burned shirt previously reported.

12. That on the following day, December 5, the day shift foreman and Marshal both checked out the operation of the same machine with the day shift operator and determined that the machine exhibited no problems and had functioned normally during the day shift run; that prior to the second shift starting time, Shorette inquired of the day foreman as to the day shift experience on said machine and was advised of its normal operation; that at 4:15 p.m. on December 5 grievant reported for work and received a routing sheet of that night's production work from Shorette; that grievant flatly refused to take the routing for that night's production on the same machine he had operated on the previous night, that grievant told the foreman that the machine was not safe to operate; that Shorette directed grievant to try at least one weld with the machine and that if he (grievant) found the operation to be faulty, he would be assigned to another job; that grievant refused to try welding one piece and ultimately refused three separate orders of the foreman to operate the machine, after he had been advised by Shorette that the machine had functioned normally, without problems, on the first shift.

13. That Shorette, in the presence of Marshal, thereupon suspended grievant and advised him to pick up his tools and leave the plant; that Osberg came upon Marshal and learned of said suspension just as grievant approached Osberg and asked him whether he (Osberg) intended to let the foreman's action stand; that Shorette thereupon approached Osberg and explained that grievant had been suspended for insubordination; that Osberg then advised the grievant that the suspension would stand; that grievant then started to walk away from the group, and thereupon turned and uttered a disparaging remark directed at Shorette, which was overheard by Marshal and Osberg; that Marshal and Osberg interpreted grievant's remark as a threat of bodily harm directed at Shorette; that neither Shorette nor any bargaining unit employe overheard grievant's remark.

14. That the spot welder, which grievant had declined to operate on the night of December 5, was not placed in operation by any employe

or supervisor for the remaining seven and one-half hours of the second shift on December 5; that on the morning of December 6, management instructed Bob Wiebe, the welding engineer, to inspect the same welding machine to determine whether it may have exhibited excessive sparking; that at a time before said welder had again been placed in production, Wiebe completely checked the electrical system and air pressure system and determined that said machine was mechanically sound; that Wiebe next observed the day shift operator make six (6) welds on said machine without experiencing any sparking; that Wiebe reported to supervision that said welder was perfectly safe to operate.

15. That on December 6, grievant filed a grievance challenging the Company's suspension action and alleged therein that the spot welding machine sparked excessively and that he had been afraid to operate it on December 5 because of its unsafe condition.

16. That on December 8, grievant filed a complaint with OSHA, the federal agency which administers the Occupational Safety and Health Act, alleging therein that the Company discharged him for refusing to operate an unsafe welder; that OSHA dismissed said complaint after an investigation in mid-December; that the Company received no complaints from any other operators that said spot welder was considered unsafe.

17. That on or near December 9, Mr. Clarence Seybold, Director of Industrial Relations for the Company, conferred with supervisor Marshal and foremen Shorette and Brumm, concerning the operation of said spot welder and with regard to grievant's conduct on December 4 and 5; that Seybold also received the nurse's reports on grievant's first aid records including his visits for treatment on the night of December 4.

18. That on December 10, the Company representatives, including Seybold, met with grievant and Union representatives in a grievance meeting to review the facts surrounding said suspension; that at the conclusion of said meeting, Seybold composed an answer to the grievance advising the Union that grievant's suspension had been converted to a discharge, which answer reads in material part as follows:

> "In view of Mr. Schmer's past record including previous disciplinary actions the Company has concluded that the employee does not possess the emotional maturity and safe work habits to hold his job. His insubordinate act was not warranted. Therefore, the suspension is changed to a discharge and the employee has been so notified."

That on December 11, Seybold sent the grievant a letter containing much of the aforementioned verbiage and further stated therein that his suspension had been changed to a discharge.

19. That over the period, 1973 to 1975, the Company had discharged five (5) employes for violations of "C" rules, including two discharges for insubordination; that over the same period of time the Company has issued written warnings and some suspensions of one to four days to at least eight other employes pursuant to its discretion set forth in Work Rule Guidelines, Violation of "C" rules; that Company representatives have based their past decisions to suspend or discharge violators of "C" rules upon several factors, namely, the prior record of the employe, the nature and severity of the offense and the seniority of the employe involved.

20. That after December 5, the Company did not further advise either the grievant or the Union, that grievant's suspension and/or subsequent discharge was also based upon a claimed separate rule "C-5"

violation because of grievant's remark, which was directed at Foreman Shorette on December 5, and which Company representatives Osberg and Marshal had interpreted as a threat by grievant to do bodily harm to Shorette; that rule "C-5" specifically sets forth that a "threat to do bodily harm" constitutes a separate "Type C Rule" violation.

21. That the spot welding machine, normally operated by grievant on the second shift, was in fact in a safe condition at the start of the second shift on December 5, 1974.

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

CONCLUSION OF LAW

That, since the discharge of grievant, Robert Schmer, was for proper cause in accordance with Articles I and III of the collective bargaining agreement existing between Complainant, Local 386, Allied Industrial Workers of America, AFL-CIO, and Respondent, Stolper Industries, Inc., Respondent has committed no unfair labor practice within the meaning of Section 111.06(1)(f) of the Wisconsin Employment Peace Act with respect to said discharge.

Upon the foregoing Findings of Fact and Conclusion of Law, the Examiner makes the following

ORDER

IT IS ORDERED that the complaint filed in the instant matter be, and the same hereby is, dismissed in its entirety, including the count covering the allegations surrounding the Engeleiter termination.

Dated at Madison, Wisconsin this 31st day of December, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Robert M. McCormick
Robert M. McCormick, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

PLEADINGS AND POSITIONS:

The Complainant-Union alleged in its complaint that the Respondent-Company committed an unfair labor practice within the meaning of sec. 111.06(1)(f), Stats., by discharging Robert Schmer on December 5, 1974, in violation of the "proper cause" provision contained in the collective bargaining agreement existing between the parties. The Company in its answer denied that it had violated either the labor agreement or said statute and affirmatively alleged that its discharge of the grievant, Schmer, was one for "proper cause."

The Union also alleged in its complaint that the Company had wrongfully terminated Stephen Engeleiter contrary to the provisions of the labor agreement. At the outset of the second day of hearing on March 20, 1975, the Union moved on the record that its allegation with regard to the Engeleiter grievance be dismissed based upon a prior settlement between the parties. No record was made regarding the Engeleiter matter and the Examiner's Order, supra reflects such a dismissal.

The Company contends that grievant refused three (3) times to obey his foreman's orders to perform his normal job duties on December 5, and operate the spot welder. The Company points out that grievant admitted in the course of cross examination that Shorette had advised him at the outset of the December 5 second shift that the machine had operated normally on the day shift; that he admitted refusing to try even one weld on a tank; and that he had so refused three directives of the foreman to operate said welder.

The Company argues that grievant's adamant refusal to operate the welder constituted unmitigated insubordination which was violative of the Company's longstanding "C-2" rule. The work rules state that the penalty for a first violation of any C rule is discharge unless reduced at "management's discretion."

The Company argues that grievant's only explanation for his persistent refusal to operate the welder is his claim that the machine was not safe. However, the record indicates that sparking was a normal condition in the operation of spot welders and that it presents no special hazard to operators.

The Company contends that the record discloses that a bargaining unit maintenance electrician repaired the machine on December 4, and reported later to OSHA that the sparks presented no hazard. Two foremen testified that the day shift operated the welder on December 5 without experiencing any difficulties and that the welding inspector thoroughly checked out grievant's machine on December 6, before it was operated by others following grievant's refusals on the 5th, and found the welder to be in good working order. The Company urges that grievant has completely failed to show that the spot welder was unsafe and that his own testimony establishes that the wearing of a protective apron on December 4, would have prevented the burn to his shirt. The evidence establishes that grievant on several occasions declined management's and Nurse's suggestions to wear the aprons, always responding that an apron "held him back." (i.e., interfered with his production on incentive.)

The Company contends that the common axiom, "obey now - grieve later," required the grievant to perform the welding tasks because the

sparking conditions were incidental to normal operation of the welders and not a serious hazard. The authorities support the proposition that an employe cannot at his whim and caprice refuse to follow a foreman's order to perform his normal job duties on the basis of a mere assertion that the job presents a hazard, as the Union would suggest. The test is whether the grievant's refusal was in fact justified on the basis that one could reasonably find from the evidence that a special hazard was in fact present. There is no evidence to support such a finding here. In fact, no other employe ever complained that the spot welder was unsafe.

The Company contends that management's later discharge on December 10 was further supported by grievant's compounding his insubordinate act on December 5, by making an abusive and vulgar threat to Shorette. The record discloses that this was not the first time that grievant had threatened a foreman.

The Company contends that the evidence clearly supports that a "proper cause" discharge was imposed and requests that the complaint be dismissed.

The Union contends that grievant's refusal to accept the spot welder assignment on December 5, was not an insubordinate act, because after his experiences with the serious machine sparking on December 4, grievant believed in good faith that it would be unsafe to operate the welder. The Company has the burden of proving a "proper cause discharge", and in that context grievant did not violate the C-2 rule.

The Union urges that the evidence indicates that on the night of December 4, grievant's shirt ignited from a spark thrown off from the spot welder. When he came to work on December 5, grievant had every reason to believe the machine was unsafe. The Union argues that neither Shorette nor Marshal actually stepped in to operate the welder to demonstrate to grievant that it was then safe to operate. Just as on the previous night, management had other work it could have assigned to grievant, and the irony is that said spot welder was not operated for the remaining hours on December 5.

The Union urges that the only reason stated by grievant for not operating the spot welder was his good faith belief that it was unsafe. In that context, the Union would rely upon Section 502 of the Labor Management Relations Act, 29 USC. Sec. 143, as justification for grievant not accepting a job assignment which exhibited "abnormally dangerous conditions at the place of employment."

The Union argues that there is sufficient evidence to support the proposition that Shorette and Osberg were intent on getting grievant in a position at the outset of the shift on December 5, which would present the opportunity for discharge. There was other work for grievant and the welder was not placed in production that night. The Union points out that Winkelman, a temporary foreman at the time, testified that he overheard Shorette talking to Osberg earlier in the day to the effect that the welder had been fixed, and that if grievant again refused to run it he (Shorette) planned to suspend him, and that one of said conversants stated that Marshal should be present when Shorette spoke to grievant.

The Union further argues that management reached for an additional charge of insubordination to buttress an apparently weak C-2 violation, by relying upon Osberg's claim that he heard grievant make a threatening statement to Shorette, to the effect, "I'm going to hit you, you mother _____." Shorette did not hear the remark and management said nothing at the time about the remark. The discipline slip made no reference to the alleged threat as to a C-5 violation, yet the C rules provide a separate rule proscribing threats to do bodily harm. The

Union urges that the Company's answer to the grievance on December 10 alludes to an insubordinate act (singular). Based upon the entire record, the Company cannot properly expand its basis for discharge to include the alleged threat which grievant denies making on December 5, after the suspension.

The Union also points to the disparate application of C rule violations by the Company in its imposition of slight penalties to several violators for more serious misconduct than that attributed to grievant. The Union contends that the Company has not proven proper cause for the instant discharge, and that therefore it be found to have violated the contract and sec. 111.06(1)(f), Stats., and that grievant be ordered reinstated with a make-whole remedy.

ULTIMATE FACTS AND CONCLUSIONS

Evidence and the Alleged Vulgar Remark and Threat of Bodily Harm

There is little dispute over the facts surrounding grievant's previous work record and as to the events of December 4 and 5, up to the point where Shorette advised grievant that he was suspended. The evidence clearly preponderates for the proposition that grievant was given progressive discipline for prior C rule violations, i.e., warned in July for having threatened a foreman, and in October placed on disciplinary layoff for reckless use of tools and material. There was no subsequent successful challenge by either grievant or the Union, which otherwise might purge the Company's recorded discipline for grievant's conduct.

The record discloses that on the night of December 4, grievant did visit the First Aid on four occasions, one of which being the burned shirt report to the nurse which she did not record as a treatment visit. The nurse testified that both she and Osberg (who had been summoned to the aid station) had asked grievant why he had not worn a protective apron. Grievant denied that either person had posed such question on December 4, as well as having denied that he made the four trips to First Aid on December 4. The Examiner finds that the documentary evidence supports the nurse on the latter point; and further credits Nurse Wiesner and Osberg concerning their admonitions about protective aprons.

Grievant admitted in cross examination that he had been advised by Shorette on December 5 that the day shift had experienced normal operation of the spot welder that day; and that he had refused three directives of the foreman to operate the machine and one more "to try at least one piece."

There was not a scintilla of evidence produced by the Union to suggest that the machine was unsafe, save the fact of a burn hole on grievant's shirt which the Examiner accepts as having occurred on the night shift December 4. The question of the safety of the machine and grievant's state of mind in regard thereto, shall be dealt with in discussion to follow.

The major conflict in the evidence involves the testimony of Osberg and Marshal vis a'vis that of grievant with respect to the vulgar and threatening remark which the former claims grievant directed at Shorette on December 5, immediately after the suspension. All agree that Shorette had his back turned at the time and so did not hear the remark and no fellow employe heard grievant's statement. Grievant testified that he merely said, "I am going to get your (Shorette's) ass." Supervision's version is that he stated, "I am going to hit that (Shorette) mother _ _ _ _ _."

The Examiner is not compelled to resolve such conflict in testimony because Shorette did not hear the remark, nor did any employe. I further conclude that the Company cannot blanket such conduct of the grievant under the one act of insubordination covering the refusal to operate the welder, which was mentioned in the Company's notice of suspension and the reason for discharge on December 10. Under its own C rule, the Company has proscribed a separate C-5 rule to cover "threats to do bodily harm". The record discloses that the Company has previously disciplined employes for C-5 threats to do bodily harm and that it has not treated same as overall acts of insubordination when issuing prior discipline. The record discloses that the Company did not advise grievant or the Union, when stating its reasons for the discharge, that it was also grounding its action on the separate alleged vulgar remark and threat. Therefore, the Examiner concludes that said conduct cannot be considered part of the charged act of insubordination which gave rise to grievant's suspension on December 5, which was converted to a discharge on December 10.

Question of the Safety of the Spot Welder and Grievant's Good Faith Belief

The Union urges that Section 502 of the LMRA establishes the underlying standard for evaluating grievant's refusal to operate the welder on December 5, since the sparking, which caused the burned shirt on December 4, caused grievant to have a good faith belief that the welder operation exhibited "abnormally dangerous conditions for work." The Examiner rejects that contention. The question here is not whether an employe or employes in concert, engaged in protective activity by quitting, to avoid working in abnormally dangerous conditions for work at the place of employment. Rather it is, whether the facts indicate that grievant was justified in refusing to operate an unsafe machine under hazardous conditions so as to render a discharge violative of a contractually imposed "proper cause" standard.

The Examiner agrees with the Company's argument made in its brief that shear chaos in the shop would follow if arbitrators or 301 forums were to expand the exception to the "obey now - grieve later" doctrine to the point where employes could decline assignments based upon each's subjective evaluation as to what constitutes a hazardous condition.

The record here is clear that sparking was a normal condition in spot welder operations. Grievant had the opportunity to wear protective equipment to guard against burns to fabric and skin and declined to utilize them. The record is uncontroverted that all other safety checks and OSHA investigations revealed that the spot welder was in working order and not unsafe.

The labor agreement and practice reflects the Company's longstanding application of Work Rules, including a proscription against insubordination, which it may resort to in effectuating discipline and discharges under the proper cause standard of the labor agreement. The Examiner finds that the discharge of Schmer was for proper cause.

There is no convincing evidence here that the Company made any disparate application of discipline for C rule violations which is not otherwise supported by its reserved discretion under the contract and the published rules. I further reject the Union's contention that grievant was "set-up" by supervision for a predicted refusal on December 5.

For the foregoing facts and conclusion the Union's complaint of unfair labor practice has been dismissed in the attached Order.

Dated at Madison, Wisconsin this 31st day of December, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Robert M. McCormick
Robert M. McCormick, Examiner