

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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GRAPHIC ARTS INTERNATIONAL UNION, LOCAL 254,	:	
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Complainant,	:	Case III
	:	No. 19125 Ce-1610
vs.	:	Decision No. 13639-A
	:	
DOYLE HANDYMARK CORPORATION,	:	
	:	
Respondent.	:	
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Appearances:  
Mr. Cornelius Kloet, President, Local 254, Graphic Arts International Union, appearing on behalf of the Complainant.  
 Brigden, Petajan, Lindner and Honzik, Attorneys at Law, by Mr. Roger Walsh, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

A complaint of unfair labor practices having been filed with the Wisconsin Employment Relations Commission in the above-entitled matter; and the Commission having appointed Thomas L. Yaeger, a member of the Commission's staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5) of the Wisconsin Employment Peace Act; and hearing on said complaint having been held at Racine, Wisconsin on June 16, 1975 before the Examiner; and the parties having filed briefs by October 7, 1975; 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 Local 254, Graphic Arts International Union, herein Complainant, is a labor organization having its principal office at 2100 Layard Avenue, Racine, Wisconsin.
2. That Doyle Handymark Corporation, herein Respondent, is a corporation having manufacturing facilities in Racine, Wisconsin.
3. That at all times material hereto the Union and Company have been parties to a collective bargaining agreement which contains among its provisions the following that are material hereto:

"ARTICLE 10. LAYOFF AND DISCHARGE

. . .

Section 2.

No employee may be disciplined or discharged except for just cause. Before the discipline or discharge of a shop delegate, the Company must notify the Union of its intention and shall give the Union a reasonable opportunity to confer with the Company. In the event of a discharge of an employee, the Company shall simultaneously furnish reason for discharge in writing." 1/

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1/ The contract does not contain a grievance procedure.  
 No. 13639-A

4. That P was employed by Respondent on May 2, 1966 and has held the classification of Silk Screen Make Ready since being employed; and, that said position is a key position and one upon which continuity of production depends.

5. That on Wednesday, November 20, 1974, P asked H, Plant Superintendent, if she could have off as vacation the Friday afternoon of November 22, 1974, in order to go deer hunting with her husband; that H said it was all right with him, but that he would have to have it approved; that H intended to have it approved by D, Company President, when D returned to the plant from a business trip; and, that in July of the same year D had advised P that any vacation time must have his authorization.

6. That on Friday, November 22, 1974 at about 9:00 a.m. P asked H if it was okay for her to take the afternoon off; that H said he had not yet checked with P, but did so at that time; that D advised H that P could not have the afternoon off; that D's reason for refusing P's request was an agreement reached with the Union in a meeting some weeks earlier dealing with another employe's request for time off during the deer season whereby said other employe was granted the time off conditioned upon no other employe's being granted similar requests; and, that H advised P that her request had been denied and that anyone taking off that day would forfeit one week's pay. 2/

7. That at approximately 11:50 a.m. on the same day P asked H if she could meet with D; that H called D to see if he (D) could talk with P; that D said he was too busy to meet with P and H relayed said message to P; and, that after talking with H, D asked J, the accountant, to tell both P and H that he had customers waiting to see him and that he would be unable to meet with P.

8. That P, after being told that she would not be able to see D, advised both H and J that she did not feel good and was going home and that she would have her doctor verify her illness 3/; that P then left for home; and, that shortly after P had left, H advised D that she had gone home sick.

9. When P got home her husband was already at home preparing to leave for northern Wisconsin to go deer hunting; that P accompanied her husband on said trip and left home at about 2:00 p.m.; and, that said trip took about 3 1/2 to 4 hours.

10. That later in the day on Friday, D decided to call and verify that P was in fact home ill; that at about 4:30 p.m. he made a telephone call to P's home; that P's daughter answered the phone and advised D that her mother had gone to northern Wisconsin with her father at about 1:30 p.m.; that subsequent to said conversation D decided he should call again and tape the conversation; that at about 7:30 p.m. he again called P's home for the aforesaid purpose and again P's daughter answered and repeated her understanding with respect to P's whereabouts.

11. That P was not scheduled to work on Monday, November 25, 1974, because employes were working a 4 day week on account of diminished production and Monday was P's day off; that D called P at home on said

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2/ The reason P's request was denied was not communicated to her.

3/ She was allegedly experiencing incapacitating menstrual problems.

day to inquire of her whereabouts on Friday afternoon; that P advised D that she had been "home" sick in bed; that D advised P what her daughter had said concerning her whereabouts; and, that P said her daughter lies and that what she had told D was untrue and that if D did not believe her (P) that he could ask her husband.

12. That after talking with P, D did contact P's husband and inquired of P's whereabouts on said Friday afternoon; and, that P's husband told D that P had accompanied him to northern Wisconsin and that they had left at about 1:30 p.m.

13. That after talking with P's husband, D called K, Complainant's President, and advised him on said matter and suggested that a meeting be held the following morning with P and others to discuss the matter; that K agreed to said meeting; and, that thereafter D called P and advised her of the meeting and instructed her to report for work the following day.

14. That on Tuesday, November 26, 1974 at 9:30 a.m. the aforesaid meeting began and present were P, K, one of Complainant's stewards, D, H, and N, a Respondent Vice-President; that K began the meeting by asking P where she was on said Friday afternoon; that P answered she had been at home; that D then questioned P concerning her whereabouts on said afternoon and P continued to insist she had been home sick in bed; that D reviewed the information he had gotten from both P's husband and daughter and P characterized same as lies; that near the end of said meeting D told P all he wanted was the truth and said he would drop the whole matter; that P continued to insist she had been home sick in bed on said afternoon; that said meeting lasted approximately 2 hours; that P, during said meeting, never admitted to accompanying her husband to northern Wisconsin on said afternoon; and, that at the end of said meeting D instructed P to go back to work for the remainder of the day and that he would attempt to advise her by the end of said day of his decision concerning disciplinary action.

15. That approximately 1/2 hour after the aforesaid meeting ended, D called P into his office and said to her:

"Ruth, all I wanted was the truth. Maybe I should have phrased it differently. Maybe I should have said to you, 'did you go up to your mother's house up north.' I found out from Mr. N, the Vice-President of our Company, that your mother lived up north." 4/;

that P responded that she had gone to northern Wisconsin on said afternoon; that D then asked P why she has denied it for 2 hours in the meeting; and, that P said she denied it because she liked her work and characterized her behavior as a little white lie.

16. That at the end of the day on Tuesday, November 26, 1974, D gave P a letter wherein he advised her that he was still reviewing her case, and advised her further that she would be notified in "a few days" of his decision, but until such time she was "dismissed of all duties".

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4/ During the aforesaid meeting D's questions concerning P's whereabouts were inquiries as to whether she had gone up north deer hunting with her husband and P insisted and continues to insist she did not go deer hunting.

17. That on Wednesday, November 27, 1974 D sent P a special delivery letter wherein he advised her that she was discharged; and, that said discharge was based upon her misrepresentations concerning her whereabouts on the afternoon of November 22, 1974 and her prior record.

18. That on May 15, 1974, P had received a written warning for failing to notify the Respondent of an impending absence; and that on November 11, 1974 P received a one day disciplinary layoff for refusing to run a press.

19. That P intentionally misrepresented her whereabouts on the afternoon of Friday, November 22, 1974 in furtherance of her plans to take said afternoon off notwithstanding D's express refusal to grant her request for said time off; and that P's prior disciplinary record and her conduct in dispute herein provides a basis for finding that the Respondent had just cause to discharge P.

On the basis of the above and foregoing Findings of Fact, the Examiner makes the following

CONCLUSION OF LAW

That Doyle Handymark Corporation, by its discharge of P for just cause, did not violate the terms and conditions of the collective bargaining agreement subsisting between it and Local 254, Graphic Arts International Union and, therefore, has not committed and is not committing an unfair labor practice within the meaning of Section 111.06(1)(f) of the Wisconsin Employment Peace Act.

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

ORDER

IT IS ORDERED that the complaint in the instant matter be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin this *30th* day of March, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Thomas L. Yaeger*  
Thomas L. Yaeger, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSION OF LAW AND ORDER

On May 5, 1975, the Union filed a complaint alleging that Doyle Handymark Corporation's discharge of P was too severe and requested that she be reinstated with backpay. In its answer filed on June 9, 1975, the Respondent denies that said discharge was too severe a penalty and asserts that it has not committed any unfair labor practices within the meaning of Section 111.06 of the WEPA. Hearing was held in said matter on June 16, 1975 at Racine, Wisconsin. Final briefs were submitted by October 7, 1975.

In resolving the issues raised herein the undersigned has been presented with conflicting testimony regarding certain material facts. Accordingly, it has been necessary to make credibility findings, based in part on such factors as the demeanor of the witnesses, material inconsistencies, and inherent probability of testimony, as well as the totality of the evidence. In this regard, it should be noted that any failure to completely detail all conflicts in the evidence does not mean that such conflicting evidence has not been considered: it has.

POSITIONS OF THE PARTIES:

The Complainant claims that P was told that any employee taking Friday afternoon off would forfeit their holiday pay but that nothing was said about discharge. Furthermore, that P left the plant on Friday because she was feeling ill and unable to continue working and notwithstanding that she accompanied her husband on a hunting trip that same afternoon it was relaxing and helpful in the treatment of her disabling condition. Furthermore, that P's discharge was too severe in view of the circumstances and should be overturned.

The Respondent, on the other hand, contends that it had a reasonable basis for disciplining P and that in light of the severity of her actions and prior record, it had just cause to discharge her.

JUST CAUSE FOR DISCHARGE:

The whereabouts of P on Friday afternoon, November 22, 1974 is not in dispute, however, the reason for her absence from work on said date is. P claims to have been suffering from disabling menstrual problems and as a result was unable to continue working. Furthermore, she claimed to have advised H upon reporting for work on said day that she was having physical difficulties. H denies this, contending the first he knew that P was encountering difficulty was just before she left the plant.

The undersigned's review of the record persuades him that P's claim of disability and advance notice to H concerning same cannot be credited. This testimony has been discredited for the following reasons: (1) The record is clear that P was saying one thing and doing another, i.e., she claimed to have been home sick in bed and unable to work, while instead she embarked on a 3 1/2 to 4 hour drive to northern Wisconsin, and (2) thereafter, she was persistent in discrediting others who had no reason to distort the truth.

Obviously, disturbed by D's denial of her request for time-off, P took matters into her own hands and concocted a scheme to absent herself from the plant for ostensibly legitimate reasons. However, P's absence on Friday afternoon was clearly unauthorized inasmuch as her request for vacation for said afternoon had been denied, and the facts establish she was not disabled. Her conduct, therefore was insubordinate.

It is a universally accepted principal that when an employe believes a directive he has received has violated the contract he must nonetheless obey the directive and grieve rather than engage in self-help to remedy the matter. 5/ This principle has been somewhat diluted herein inasmuch as the subject collective bargaining agreement does not contain a grievance procedure and P could not, therefore, avail herself of an expeditious procedure to seek redress of D's denial of her request for time off. Notwithstanding, however, the manner in which P took matters into her own hands was deceitful and contributed to making matters worse for herself.

On the other hand, D acted as any employer would upon becoming suspicious of the actions of one of his employes. He attempted to verify that P was in fact sick at home as she had claimed. Upon being told that she had accompanied her husband on a deer hunting trip he had no alternative but to confront her and seek an explanation. This he did on the following Monday. P, however, rather than offer an explanation of her behavior sought to discredit those who had advised D that she had not been home ill. Her persistence in attempting to discredit others as well as her refusal to explain what had actually occurred is what led to her undoing.

A review of P's prior disciplinary record that was relied upon by D in his decision to discharge, discloses that the subject incident was not the first wherein P engaged in insubordinate behavior. Only eleven days earlier P had been given a one day disciplinary suspension for insubordinate behavior.

Thus, in view of the record herein, the undersigned is persuaded that P's egregious conduct herein measured against her prior disciplinary record supports a finding that D acted with just cause in discharging P.

Dated at Madison, Wisconsin this 30th day of March, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas L. Yaeger  
Thomas L. Yaeger, Examiner

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5/ An exception is made where obedience would endanger an employe's health or safety. Other exceptions have also been recognized.