

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LOCAL 150, SERVICE AND HOSPITAL EMPLOYEES	:	
INTERNATIONAL UNION, AFL-CIO,	:	
	:	
Complainant,	:	
	:	Case I
vs.	:	No. 20551 Ce-1672
	:	Decision No. 14700-A
B.L.S.S. SUBSIDIARY CORPORATION ^{1/}	:	
	:	
Respondent.	:	
	:	

Appearances:

Mr. William Knudsen, Business Representative, on behalf of
Complainant.

Mr. James Abram, Area Supervisor, on behalf of Respondent.

FINDINGS OF FACT, CONCLUSIONS 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 Stanley H. Michelstetter II, a member of its staff, to act as Examiner and to make and issue findings of fact, conclusions of law and orders as provided in Section 111.07 (5), Stats., and pursuant to notice, a hearing on said complaint having been held at Milwaukee, Wisconsin, on September 7, 1976^{2/} before the examiner, and the examiner having considered the evidence and the 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 150, Service and Hospital Employees International Union, AFL-CIO, herein referred to as Complainant, is a labor organization with offices at 6427 West Capitol Drive, Milwaukee, Wisconsin.

2. That B.L.S.S. Subsidiary Corporation, herein referred to as Respondent is an employer within the meaning of the Wisconsin Employment Peace Act and operates commercial rental properties.

^{1/} During the course of the hearing the parties stipulated to the correct name of Respondent.

^{2/} All dates are in 1976 unless otherwise noted.

3. That at all relevant times Respondent recognized Complainant as the representative of certain of its employees including at the relevant times Frederick J. Scheuerell, herein referred to as Grievant and that in that regard Respondent and Complainant have been party to a collective bargaining agreement, in effect at all relevant times, which provides for final and binding arbitration of disputes with respect to said agreement and which also provides in relevant part:

" . . .

ARTICLE I

. . .

Section 2. All present employees covered by this Agreement who are members of the Union on the effective date of this provision shall remain members in good standing as a condition of employment. All present employees who are not members of the Union on the effective date of this provision and all employees who are hired hereafter shall become and remain members of the Union in good standing as a condition of employment on and after the thirty-first day following the beginning of their employment or on and after the thirty-first day following the effective date of this provision, whichever is later.

. . .

ARTICLE VI Seniority

In case the Employer reduces his force, the last employee hired in each classification shall be the first laid off. When increasing the force, the last employee laid off in each classification shall be the first recalled, if possible.

. . .

ARTICLE XV

The management, direction, and control of the operation are and shall remain within the sole and exclusive direction of the Company. This shall include but not be limited to the assignment of work, determination of the size of the working force, the need for work or layoff; the determination of the products to be used, the amount thereof and the methods and equipment to be used, the promulgation of reasonable work standards, work rules and other facilities; the hiring, promotion and the termination of employees for just cause, the curtailment of all or a part of the Employer's operation and all other functions normally the proper function of the Employer except as limited by the specific clause of this written Agreement. All rights, functions, and powers of the Employer not expressly granted to the Union by this written Agreement are hereby reserved to the Employer.

. . . "

That said agreement does not expressly provide for a period in which newly hired employees are subject to discharge on a basis different from the basis for discharge for other employees.

4. That commencing March 1, 1976 until April 8, 1976 Respondent employed Grievant as a janitor; that on April 5, 1976 Respondent notified Grievant that his employment would be terminated effective April 8, 1976; that at all relevant times Grievant knew Frank Muccio to be his immediate supervisor and knew James Abram to be Muccio's supervisor; that at all relevant times Grievant's position required him to perform unskilled work substantially independently of immediate supervision, in part, consisting of daily cleaning the basement; cleaning the main floor, cleaning the elevators, turning off building lights and performing other tasks as assigned.

5. That on March 1, 1976 during Grievant's work hours, Muccio observed him using Respondent's telephone and told him employees were not allowed to use Respondent's telephones; that on at least one occasion thereafter during Grievant's work hours Abram observed Grievant using its telephone and told him he was not allowed to do so; that despite the foregoing warnings Grievant continued to regularly use Respondent's telephones, without permission therefor, during working hours and lunch breaks primarily for the purpose of wasting time.

6. That during Grievant's working hours on March 2, 1976 Muccio observed him talking to the security guard, not Respondent's employee, at the guard's station on the main floor lobby and told Grievant not to talk to the guard; that thereafter on two separate occasions Abram observed Grievant during Grievant's working hours talking to the guard and reprimanded him on both occasions therefor; that despite the foregoing warnings Grievant on almost every day he was employed by Respondent spent a substantial portion of his work time engaged in lengthy social conversations with the guard for the purpose of wasting time.

7. That when Grievant first commenced his employment he was instructed to regularly turn out certain lights at the close of each work day and further instructed as to the location of the light switches, the distinction between the two sets of markings thereon and which markings to follow; that Muccio reprimanded Grievant in the early part of his period of employment for not properly turning off all lights; that on at least one other occasion Muccio noted Grievant did not turn off the lights properly.

8. That on at least one occasion Muccio informed Grievant he was not properly cleaning the elevators and on one other occasion

thereafter Abram told Grievant that he should clean the entire elevator and Grievant professed not to know he should have been cleaning the entire elevator.

9. That Grievant had to be reprimanded on at least one occasion about not cleaning the basement and main floors properly; that without direction to do so, Grievant disposed of repairable trash containers.

10. That on or about March 15, 1976, Abram directed Grievant to clean the wallpaper on the fourth floor when he had a chance to do so; that Grievant knew or should have known Abram intended him to commence the assigned work in the same evening and use available work time after completion of regularly assigned duties to complete the assigned task; that despite Abram's inquiry in the following week and Grievant's assurance that he would start the work, Grievant never started said assignment; that during this period Grievant continued to waste time.

11. That on or about March 20, 1976, Abram directed Grievant to take whatever time was necessary to clean the windows and window frames of a particular suite being prepared for a new tenant; that although Grievant spent a substantial amount of time doing so, Respondent thereafter found it necessary to assign another employee to do the work over and clean the work area; that at the time Grievant performed said work he knew he was performing it inadequately.

12. That by the foregoing and his entire course of conduct Grievant has demonstrated he will not perform assigned duties without constant direct supervision.

CONCLUSION OF LAW

That since Respondent B.L.S.S. Subsidiary Corporation has established by a clear and satisfactory preponderance of the evidence that it had just cause to discharge Grievant Frederick J. Scheuerell within the meaning of a collective bargaining agreement then in effect between it and Complainant Local 150, Service and Hospital Employees International Union, AFL-CIO, Respondent is not committing an unfair labor practice within the meaning of Section 111.06 (1)(f) of the Wisconsin Employment Peace Act by refusing to continue to employ Grievant.

ORDER

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

Dated at Milwaukee, Wisconsin, this 1st day of February, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stanley H. Michelstetter II
Stanley H. Michelstetter II
Examiner

forgotten, the evidence is still clear he failed to ask what he was supposed to do, but merely waited until supervisors noticed he wasn't doing the work properly.

6. Lights

There is substantial conflict as to when Muccio corrected Grievant about turning out the lights properly and whether or not Grievant thereafter did turn out the lights properly. It is essential to note only that Grievant must have been originally instructed as to how to turn off the lights and which set of clearly distinct markings to follow. If, as has been implied, he may have become confused as to which of the clearly different set of markings to use or became aware a particular marking was missing, the examiner is satisfied that Grievant did not act to find out what was the proper set of markings or get someone to replace the marker.

7. Other Items

In addition to the foregoing, Grievant had to be told to mop the main floor and basement lobbies as per his regular directions. Grievant also threw out permanent trash liners without authorization therefor.

8. Conclusion

The record clearly demonstrates Grievant wasted time while not doing assigned work and while failing to properly perform other work. Grievant knowingly defied Respondent's instructions to not use its telephone and to not talk to the guard. Grievant failed to exercise sufficient initiative to determine what he was supposed to do, or to get assistance to do it right. In each of the above-listed circumstances, Grievant effectively refused to work without constant supervision. Respondent therefore, had just cause for the instant discharge within the meaning of this agreement.

Dated at Milwaukee, Wisconsin, this 1st day of February, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stanley H. Michelstetter II
Stanley H. Michelstetter II
Examiner