

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondent.

No. 14909-C

- (a) Proffer immediate reinstatement to Jeff Kent, Roger Kotleski and Larry Brown, with full seniority and back pay from April 4, 1977, to the date on which said Respondent Employer offers said three individuals full reinstatement to active employment, and make them whole for any loss of pay or benefits they may have suffered by reason of their discharge, by payment to them the sums of money equal to the sums of money they would have received from April 4, 1977, to the date of an unconditional offer of reinstatement, less any earnings they received during said period that they would not have received but for the discharge, and less the amount of unemployment compensation, if any, received by them during said period, and in the event that they received unemployment compensation benefits, reimburse the Unemployment Compensation Division of the Department of Industry, Labor and Human Relations in such amounts.
- (b) Notify the Wisconsin Employment Relations Commission in writing within ten (10) days of the date of this Order as to what steps it has taken to comply therewith.

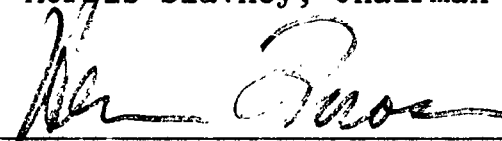
Given under our hands and seal at the City of Madison, Wisconsin, this 10th day of January, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

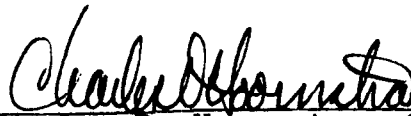
By



Morris Slavney, Chairman



Herman Torosian, Commissioner



Charles D. Hoornstra, Commissioner

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

The Examiner's Decision:

The Examiner concluded that the Employer violated the collective bargaining agreement existing between it and the Union by discharging employees Kent, Kotleski and Brown on June 26, 1976, without just cause, and thereby committed an unfair labor practice within the meaning of Section 111.06(1)(f) of the Wisconsin Employment Peace Act. The Examiner ordered the Employer, among other things, to offer said individuals reinstatement as of the date of his decision, March 31, 1977, without back pay, but with no loss of seniority.

The Examiner found that the three employees involved had violated an established Employer rule, that of "drinking alcoholic beverages on company property during working hours." However, the Examiner also found that there were previous violations of said rules by other employees in the past, where such employees were only given suspensions of three days for reporting to work intoxicated or who possessed alcoholic beverages on the job. ^{1/} The Examiner supported his Order that the employees be reinstated without back pay on the following rationale:

"In light of the serious nature of the misconduct, the development of drinking problems within the plant, and the fact that the misconduct involved herein is somewhat distinguishable from past violations of Rule 23, the Examiner concludes that the Respondent had just cause to impose discipline which was more severe than the three day suspensions of the past. Indeed, but for the presence of said suspensions, the Respondent would have had just cause to discharge Kent, Kotleski, and Brown. However, the misconduct of Kent, Kotleski and Brown and the severity thereof is not sufficiently distinct from the past incidents and the ensuing disciplinary responses to warrant discharge under the 'just cause' standard and the 'fair and uniform' proclamation contained in the Rules and Regulations. Thus, in light of the inconsistent imposition of discipline, the Examiner has ordered that Kent, Kotleski and Brown be reinstated with no back pay."

The Petition for Review and the Response Thereto:

On April 20, 1977, the Employer timely filed a petition requesting the Commission to review the Examiner's decision, wherein the Employer contended, in general, that the Examiner erred in ordering that the three individuals be reinstated, contending that the plant rule involved grants the Employer the right to immediately discharge employees who violate same. In its brief the Employer argues that the Examiner erroneously based his Conclusion of Law on statements extraneous to the collective bargaining agreement, and on facts unrelated to the matter involved, and, further, that the Examiner does not have the authority to modify the penalty of discharge. The Employer contends that the previous discipline meted out to other employees - three days' suspension - resulted from rule infractions of a different nature. The Employer

^{1/} The rule provided: "Reporting for work under the influence of alcohol or drinking or possession of alcoholic beverages within the plant."

contends that it did not violate the collective bargaining agreement since it had just cause to discharge the employees involved because of their blatant violation of the aforementioned rule.

The Union filed a brief in opposition to the petition for review, and it summarized its position by stating that the Examiner's decision was firmly based on the provisions in the collective bargaining agreement and prior incidents involving the application of the rule. The Union requests the Commission to order the Employer to make the three individuals whole from March 31, 1977, the date of the Examiner's Order.

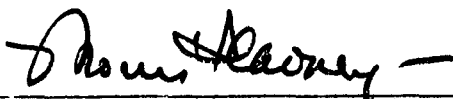
Discussion:

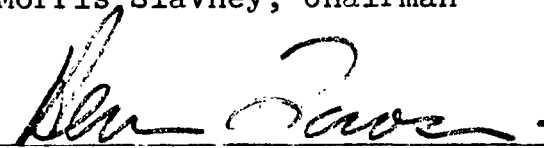
We have reviewed the entire record and the arguments of counsel, and we are satisfied that the Examiner's decision should be affirmed in all respects, including the rationale expressed in the Examiner's Memorandum, which, in our opinion, is responsive to the Employer's arguments contained in its brief accompanying its petition for review.

Since the Employer has not complied with the Examiner's Order requiring that the three individuals involved be reinstated as of the date of his Order, we have enlarged the Order to require the Employer to make the employees whole from April 4, 1977, 2/ to the date on which the Employer offers the three employees involved full reinstatement to active employment.

Dated at Madison, Wisconsin, this 10th day of January, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Herman Torosian, Commissioner


Charles D. Hoornstra, Commissioner

2/ Monday, April 4, 1977, was the Monday immediately following March 31, 1977, on which date the Examiner's Order was mailed to the Employer, and the earliest date on which the Employer might reasonably have been expected to comply with said Order.