

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MARTIN JOSEPH KRITZCKI,

Complainant,

vs.

Case IX

No. 21113 Ce-1784

Decision No. 15119-A

BELLE CITY LODGE #437, INTERNATIONAL
ASSOCIATION OF MACHINISTS AND
AEROSPACE WORKERS AND E. C. STYBERG
ENGINEERING, COMPANY, INCORPORATED, 1/

Respondents.

Appearances:

Mr. Martin Joseph Kritzcki, appearing on his own behalf.
Quarles & Brady, Attorneys at Law, by Mr. David E. Jarvis,
appearing for Respondent-Employer.

Mr. Ray Marhefke, Business Representative, appearing for
Respondent-Union.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Martin Joseph Kritzcki, herein referred to as Complainant, having filed a complaint of unfair labor practices with the Wisconsin Employment Relations Commission, alleging that Belle City Lodge #437, International Association of Machinists and Aerospace Workers, herein referred to as Respondent-Union, and E. C. Styberg Engineering, Company, Incorporated, herein referred to as Respondent-Employer, have committed unfair labor practices within the meaning of the Wisconsin Employment Peace Act; and the Commission having appointed Stanley H. Michelstetter II, a member of its staff, to act as examiner 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 January 27, 1977, at Racine, Wisconsin before the examiner, and the examiner having considered the evidence and the arguments of the parties 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 Complainant, Martin Joseph Kritzcki, is an individual residing at 1916 Gould Street, Racine, Wisconsin.

2. That Respondent-Employer, E. C. Styberg Engineering Company, Incorporated, is an employer over which the National Labor Relations Board would exercise jurisdiction pursuant to its self-imposed standards therefor, with main offices at 1602 Gould Street, Racine, Wisconsin.

1/ The parties stipulated during the hearing to the correct name of Respondent Employer.

3. That Respondent-Union, Belle City Lodge #437, International Association of Machinists and Aerospace Workers, is a labor organization with offices at 1840 Sycamore Avenue, Racine, Wisconsin.

4. That at all relevant times Respondent-Employer has recognized Respondent-Union as the representative of certain of its employees including Complainant and that in that regard Respondent-Employer and Respondent-Union were party to a collective bargaining agreement in effect at all relevant times which provides in relevant part:

"ARTICLE II
GRIEVANCE PROCEDURE

Section 2.01. The parties agree to the following procedure for the prompt settling of grievances:

- (a) if an employee has a complaint, he shall first take the matter up with his foreman. He may immediately request the foreman to send for the department committeeman for the purpose of assisting in settling the complaint.
- (b) If such issue is not settled with the foreman, it shall then be considered a grievance, and within one (1) working day the same shall be reduced to writing and signed by the employee and the department committeeman, whereupon the foreman shall write his decision of the issue and sign the same within one (1) working day.
- (c) Such decision is final, unless within two (2) working days of the date of the decision, a request is made to the Superintendent for review.
- (d) If such request is made, a date for meeting will be set within two (2) working days for a disposition of the issue by the Superintendent and a member of the Bargaining Committee. Disciplinary action that involves time off or discharge will be delayed until the Superintendent has made his disposition.
- (e) The decision of the Superintendent shall be final, unless within two (2) working days of the date of the decision, a request is made to the Management for review. Thereupon, the matter will be disposed of at a meeting between the Management and the Bargaining Committee, in which either party may be assisted by their respective duly authorized representatives.
- (f) All written grievances shall be in quadruplicate; one (1) copy for the Management, one (1) copy for the foreman, one (1) copy for the employee, and one (1) copy for the Bargaining Committee.

Section 2.02 In the event a matter cannot be settled by any of the steps of the grievance procedure, it may be submitted to arbitration by either party under the following rules and regulations:

. . .

Section 2.07.

. . .

Both parties agree that all disputes which are within the scope of the grievance procedure set forth herein shall be adjusted through such procedure.

. . .

ARTICLE V.
SENIORITY

Section 5.12. An employee ceases to have seniority for the following reasons:

(b) If he is discharged for just cause."

5. That on November 8, 1976 Respondent-Employer discharged Complainant.

6. That although at all relevant times Complainant was fully aware of his right to individually file and process a grievance, he did not file a grievance with respect to the instant discharge because Respondent-Union informed him of its good faith belief that his grievance was without merit.

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

CONCLUSION OF LAW

That since Complainant Martin Joseph Kritzcki failed to sufficiently attempt use of the relevant grievance and arbitration procedure, the examiner refuses to assert the jurisdiction of the Wisconsin Employment Relations Commission with respect to the instant complaint.

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

ORDER

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

Dated at Milwaukee, Wisconsin, this 13th day of June, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

Complainant filed his complaint December 16, 1976 alleging Respondent-Employer violated the applicable collective bargaining agreement by discharging him on November 8, 1976. For the purpose of this decision, the examiner assumes he has alleged Respondent-Union violated its duty of fair representation in a relevant manner. Respondents both affirmatively defend on the basis Complainant failed to file a grievance concerning the instant discharges. Respondent-Employer additionally defended on the basis Respondent-Union had not breached its duty of fair representation.

DISCUSSION:

Complainant testified he failed to file a grievance with respect to his discharge because his business representative told him there was nothing Respondent-Union could do for him and because he did not know he could have filed a grievance in spite of the foregoing and process same himself in the early part of the grievance procedure. However, his later testimony clearly establishes he was intimately familiar with the relevant stages of the grievance process. Further, he admitted he knew full well that he could process a grievance concerning the instant discharge despite his business representative's position at all relevant times. The examiner credits the former testimony and discredits the latter (first sentence).

Other evidence establishes Complainant then understood Respondent-Union's aforementioned position to mean it believed his discharge to be proper within the meaning of the instant agreement. Complainant also admits the foregoing was, in fact, Respondent-Union's belief. 2/ The examiner finds Complainant failed to file a grievance solely because Respondent-Union informed him of its good faith position that the instant discharge was proper under the instant agreement. The examiner concludes Complainant failed to sufficiently attempt use of the contractual grievance machinery. Therefore, the examiner has declined to assert the jurisdiction of the Commission to determine the merits of Complainant's underlying allegations.

Dated at Milwaukee, Wisconsin, this 13th day of June, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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