

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DISTRICT 10 INTERNATIONAL ASSOCIATION :
OF MACHINISTS & AEROSPACE WORKERS, :
AFL-CIO, :
Complainant, : Case II
vs. : No. 22939 Ce-1775
THE PRIME MANUFACTURING CORPORATION, : Decision No. 16342-A
Respondent. :

Appearances:

Goldberg, Previant & Uelmen, S.C., Attorneys at Law, by Mr.
Robert E. Gratz, for Complainant.
Foley & Lardner, Attorneys at Law, by Mr. Jere W. Wiedenman, for
Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

District 10 International Association of Machinists & Aerospace Workers, AFL-CIO, herein referred to as Complainant, having filed a complaint of unfair labor practices with the Wisconsin Employment Relations Commission; and the Commission having appointed Stanley H. Michelstetter II, a member of its staff, to act as Examiner and to make and issue findings and orders as provided in Section 111.07(5), Wis. Stats.; and hearing having been conducted on May 31, 1978 before the examiner in Milwaukee, Wisconsin; and the examiner having considered the evidence and arguments of the parties and being fully advised in the premises makes and files the following

FINDINGS OF FACT

1. That Complainant District 10 International Association of Machinists & Aerospace Workers, AFL-CIO is a labor organization with its principal offices at 624 North 24th Street, Milwaukee, Wisconsin.
2. That Respondent The Prime Manufacturing Corporation is an employer engaged in the manufacture of parts for railroad locomotives with principal offices located at 7730 South 6th Street, Milwaukee, Wisconsin.
3. That at all relevant times Respondent has recognized Complainant as the exclusive representative of certain of its employees

including at the relevant times Dorothy ("Susie") Buschke; that at all relevant times Complainant and Respondent have been party to a collective bargaining agreement with respect to said bargaining unit which contains a grievance procedure for the resolution of disputes not culminating in a procedure for their final disposition and which agreement states in relevant part:

"ARTICLE I

. . .

Section 5 - Management Responsibility

The Company retains the sole right to manage its business, including the rights . . . to maintain order and efficiency in its plants and operations; [and] to hire, layoff, assign, transfer, demote, promote [sic] discipline and discharge employees for cause . . . ; subject only to such regulations and restrictions, governing the exercise of these rights as are expressly provided in this Agreement.

. . .

ARTICLE II

. . .

Section 7 - Disciplinary Layoffs and Discharges

(A) An employee subject to disciplinary layoff or discharge will be notified of such action by his foreman in the presence of his shop committeeman.

(B) Should the shop committeeman decide after the hearing mentioned above, to protest the action of a disciplinary layoff or discharge, the shop committeeman and the shop chairman, together with the Superintendent of manufacturing [sic] and foreman will be called into a hearing with the employee before the employee is required to leave the plant.

(C) When the hearing has been completed and provided it is management's position that the disciplinary layoff or discharge is still in effect, the employee involved will, at that time be required to leave the plant.

. . ."

4. That at all relevant times prior to her discharge in January 3, 1978, Respondent employed Buschke in its stockroom.

5. That in November, 1974, Respondent instituted a program of direct supervision of its stockroom with Complainant's permission for the purposes of improving the efficiency of the operation thereof and achieving better inventory control; that in November, 1974, Janice Duford became Respondent's first stockroom supervisor and in said capacity was Buschke's immediate supervisor; that in the period following, Respondent codified the then existing stockroom procedures and on or about August 1, 1975, presented and explained said procedures to all of its stockroom employees including Buschke; and that at all relevant times thereafter Buschke fully understood and was fully capable of complying with such procedures.

6. That on an average of once a week in the period from November, 1974 to November, 1975 Duford verbally reprimanded Buschke for not properly reporting the existence of situations in which Duford should have decided the appropriate quantity of parts to supply in accordance with said procedures; that during this period Duford often had to verbally reprimand Buschke for distributing parts without making the proper notations; that throughout this period Duford had to constantly remind Buschke to inform her when she developed problems in performing her work.

7. That at all relevant times Buschke knew Duford regularly gave individual stockroom employees a numbered list of work assignments,

the first listed item of which the employe was to perform before doing any other numbered item, unless excused therefrom by the stockroom supervisor; that on or shortly before February 7, 1975, Buschke failed to perform the first numbered assignment on such a list without requesting permission from her supervisor to skip the item; that on February 7, 1975, Duford verbally reprimanded Buschke for said conduct and confirmed said verbal reprimand in writing, giving a copy thereof to Buschke.

8. That on June 3, 1975, Duford gave Grievant another list pursuant to the practice specified in Finding of Fact 7, above, and that Buschke again failed to complete the first numbered item thereon or to request permission from her supervisor to not do so; that thereafter, on the same day, Duford verbally reprimanded her for having not done so and confirmed said reprimand in writing, with a copy to Buschke.

9. That on June 4, 1975, Buschke refused and/or failed to engage in the dialogue with Duford which Buschke knew was necessary for the efficient operation of the stockroom; that when Duford verbally corrected her for this conduct, Buschke became irritable and left the stockroom without explanation for a period of 30 minutes in excess of her authorized break; that thereafter, but on the same day, Duford verbally reprimanded her for said unexcused absence and confirmed said reprimand in writing, with a copy to Buschke.

10. That in the afternoon of June 5, 1975, Buschke again was absent from the stockroom ten minutes in excess of her authorized break; that thereafter, but still on the same day, Duford attempted to verbally reprimand Grievant therefor, but she walked away prior to the completion of the reprimand; that thereafter, but still on the same day, Duford issued a written confirmation of that reprimand, with a copy to Buschke.

11. That on June 17, 1975, Duford assigned Grievant to perform a certain job, but that Buschke discontinued performing the job without notifying Duford; that thereafter, but on the same day, Duford verbally reprimanded Buschke for this conduct and confirmed said reprimand in writing, with a copy to Buschke.

12. That on June 17, 1975, Plant Superintendent George Legath, in the presence of Duford, informed Buschke, among other things, that she had theretofore received five verbal warnings and that if she received one more verbal warning and three written warnings she could be discharged.

13. That on the afternoon of July 9, 1975, Buschke commenced a work assignment which should have been completed in thirty minutes; that at 10:00 a.m. on the following day Duford questioned Buschke as to why the assignment had not been completed; that in response thereto Buschke became loud and left the stockroom; that when she returned, Duford effectively directed her to complete the assignment; that instead of completing the assignment, Buschke left the stockroom and wasted 35 minutes of work time; when she returned she took approximately two hours to complete the assignment; that thereafter, but on July 10, 1975, Duford verbally reprimanded Buschke for the foregoing conduct and confirmed said reprimand in writing, with a copy to Buschke.

14. That in November, 1975, Randolph Nawotka succeeded Duford as stockroom supervisor; that shortly thereafter, but before the occurrences stated in Finding of Fact 15, below, Buschke was informed that it would be Nawotka's practice to provide stockroom employees with a numerical list of work assignments which the employee was required to perform in numerical sequence unless deviation was authorized by Nawotka.

15. That on various occasions after Nawotka became her supervisor but prior to December 5, 1975, Buschke left the stockroom without first notifying her supervisor thereof, and spent an excessive amount of work time often in non work-related discussions or unnecessary activities in other areas of the plant; that on various other occasions in the same period she refused to rely on information supplied by her supervisor although she knew she was responsible for doing so and, instead, attempted to verify it by her own research; that on at least two occasions after Nawotka became her supervisor prior to December 5, 1975, Buschke did not perform listed work assignments which she knew were made under the practice listed in Finding of Fact 14, above, in the order specified therein without informing Nawotka, and deliberately delayed the performance of these assignments for several days; that on December 5, 1975, Nawotka verbally reprimanded Buschke for the aforementioned conduct and confirmed said warning in writing, giving a copy to Buschke.

16. That on or immediately prior to December 9, 1975, Buschke failed to check with her supervisor and, instead, attempted to obtain from other sources work information she knew was of a type normally provided by her supervisor; that thereafter, but on December 9, 1975, Nawotka verbally reprimanded Buschke therefor and confirmed said reprimand in writing, giving her a copy.

17. That during the period December, 1975 to August, 1976, Nawotka verbally corrected Buschke on a number of occasions.

18. That on various occasions on or prior to August 30, 1975, Buschke would fail to perform work assigned in accordance with the practice specified in Finding of Fact 14, above, in numerical sequence without obtaining permission from her supervisor to vary therefrom; that her purpose in so doing was to avoid specific types of work; that on some of those occasions Nawotka effectively directly instructed her to perform the assigned tasks and, thereafter, she still failed and refused to perform the assignments; that when Nawotka made such directions Buschke would not listen and, instead, would walk away; that on August 30, 1975 Nawotka issued a written reprimand for such conduct and gave a copy to Buschke.

19. That in October, 1976, Jeffery E. Linski succeeded Nawotka as Buschke's immediate supervisor and acted in that capacity at all relevant times thereafter.

20. That on October 12, 1976, Linski specifically directed Buschke to put aside the work she was doing and perform certain other work; that Buschke intentionally failed to perform the work and returned to what she had previously been doing; that Linski effectively verbally reprimanded her for this conduct and made a written record of the nature of the conduct, a copy of which was not given to her.

21. That as a result of complaints from other stockroom employees to the effect Buschke was not performing her fair share of the work, Linski held a discussion on January 6, 1977, with all of the stockroom employees including Grievant for the purpose of exhorting Buschke to perform her fair share of work; that the discussion was not conducted in a manner in which Buschke could properly infer she was being disciplined.

22. That on November 4, 1977, Linski held an open discussion with Buschke, all other employees of the stockroom and Legath, the purpose of which was to effectively reprimand Buschke for her many morale disrupting statements in the period from October, 1976 to November 4, 1977; that thereafter Linski prepared a written memorandum of that discussion, a copy of which was signed by Buschke.

23. That on November 8, 1977, Buschke deliberately performed a work assignment in the slowest possible manner; that thereafter, but on November 8, 1977, Linski gave her a written reprimand for such conduct.

24. On numerous occasions during Linski's tenure as supervisor Buschke would leave the stockroom, occasionally without informing Linski of her departure, and waste an excessive amount of work time for which Linski verbally corrected her a number of times; on a number of occasions during his tenure as her supervisor Linski discovered that Buschke had not made proper notations in accordance with stockroom procedures, and at least once a week during his tenure he re-instructed her with respect to complying with said procedures; that although Linski had instructed her to consult him about locating necessary parts in other areas of the plant, Buschke at times would not do so, but, instead, would attempt to locate them on her own; that at various times during Linski's tenure, Buschke for the purpose of avoiding work she thought undesirable would not perform work in the order of priority in which she knew it was to be performed; that after the purchase of a new scale, Buschke persisted in using the old scale after having been directed to use the new scale; that most of the aforementioned conduct continued during the period from November 8, 1977 until her discharge on January 3, 1978; that Linski, on January 3, 1978, reprimanded Buschke for said conduct, and gave a copy of said reprimand to Buschke; that throughout the period November, 1974 to her discharge, Buschke deliberately performed her work poorly and intentionally disregarded the directions of her supervisors.

25. That Buschke's regular shift hours were from 7:00 a.m. to 3:30 p.m. That at or about 3:00 p.m. on January 3, 1978 Linski approached Buschke, handed her a written notice of termination and told her that she was being terminated for the reason stated in said notice, and stated that he was giving a copy, inter alia, to her union representative and that if she had any questions she should see her union steward; he immediately thereupon walked 15 to 20 feet to committeeman Rudolph Janda's work station, gave him a copy of said written notice of termination and told him it was the termination papers for Dorothy Buschke with the reasons stated thereon; Linski then walked toward Legath's office which was twenty feet from Janda's work station and met committeeman Stephen St. Louis and gave him a copy of said termination notice and informed him of its contents; that in response to receiving the notice, St. Louis asked where Buschke was and asked if there was going to be a meeting with respect to the

no time until the filing of the instant grievance did Complainant ever request a meeting of the type specified in Article II, Section 7(B) of the parties' agreement; that after January 3, 1978 Complainant filed a grievance in Buschke's name concerning her discharge and processed same through all of the steps of the instant grievance procedure without there having been a final resolution thereof.

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

CONCLUSIONS OF LAW

1. That Respondent, The Prime Manufacturing Corporation, by having discharged Dorothy Buschke without having done so in the presence of her shop committeeman, violated Article II, Section 7 of the collective bargaining agreement in effect at all relevant times and thereby has committed and is committing an unfair labor practice within the meaning of Section 111.06(1)(f) of the Wisconsin Employment Peace Act.

2. That since Respondent discharged Buschke for cause within the meaning of the collective bargaining agreement in effect at the relevant times, Respondent has not committed and is not thereby committing an unfair labor practice within the meaning of Section 111.06(1)(f) of the Wisconsin Employment Peace Act.

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

ORDER

IT IS ORDERED that Respondent, The Prime Manufacturing Corporation, by its officers and agents, shall immediately:

1. Cease and desist from violating Article II, Section 7 (A) of its collective bargaining agreement in effect with District 10 International Association of Machinists & Aerospace Workers, AFL-CIO.
2. Take the following affirmative action which the Examiner finds will effectuate the policies of the Wisconsin Employment Peace Act:
 - (a) Notify all of its employees by posting in conspicuous places on its premises, where notices to all its employees are usually posted, a copy of the notice attached hereto and marked "Appendix A". Such copies shall be signed by its President and shall be posted

immediately upon receipt of a copy of this Order, and shall remain posted for thirty (30) days thereafter. Reasonable steps shall be taken by The Prime Manufacturing Corporation to insure that said notice is not altered, defaced, or covered by other material.

- (b) Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days of the date of this Order what steps it has taken to comply herewith.

Dated at Milwaukee, Wisconsin this 28th day of February, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

Appendix A

NOTICE TO ALL EMPLOYEES

Pursuant to an Order of an Examiner appointed by the Wisconsin Employment Relations Commission and in order to effectuate the policies of the Wisconsin Employment Peace Act, we hereby notify our employees that:

WE WILL comply with the provisions of Article II, Section 7(A) of our current collective bargaining agreement with District 10 International Association of Machinists & Aerospace Workers, AFL-CIO with

The Prime Manufacturing Corporation

By _____
President

Dated this _____ day of _____, 1979

THIS NOTICE MUST REMAIN POSTED FOR THIRTY (30) DAYS FROM THE DATE
HEREOF AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY OTHER MATERIAL.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The instant complaint alleges that Respondent violated the collective bargaining agreement by discharging Dorothy Buschke, herein "Grievant," and, independently, by discharging her without having afforded her certain contractual procedural safeguards therein. Respondent stipulated to the basis elements of Complainant's substantive case, and hearing was held with respect to Respondent's defense of cause and Complainant's procedural allegations. The facts are for the most part undisputed and are stated in the Findings of Fact.

Respondent concedes the instant agreement implicitly requires "cause" for discharge and contends it did have cause to discharge Grievant for:

1. repeated and continuing insubordination,
2. failure to perform work as assigned,
3. direct refusal of work and
4. chronic absence from her work station.

In response to Complainant's position, it contends it substantially complied with the purposes of Article II, Section 7 in that the notice of discharge was contemporaneously served on Complainant. In any event it alleges Complainant waived the effect of any violation by failing to request an Article II, Section 7(B) hearing to protest it. It alleges that it complied with its policy of providing six verbal warnings and three written warnings before discharge in that it contends it gave Grievant far more than nine warnings in total and gave her written warnings on August 30, 1976, November 8, 1977 and January 3, 1978.

It is Complainant's position that the discharge was made in violation of the procedural requirements of Article II, Section 7 because the notice of discharge was given without the presence of Grievant's shop committeeman. It contends the failure to have a committeeman present effectively frustrated its opportunity to substitute reasoned discussion for Grievant's immediate supervisor's impulsive actions. In addition, it contends this violation effectively prevented it from requesting the hearing specified in Article II, Section 7(B). It

its stated disciplinary policy, six verbal warnings followed by three written warnings, prior to discharge. Although it concedes Grievant received more than six verbal warnings it contends Respondent did not give her three written warnings. It concedes she was given one written warning August 30, 1976, but denies that the November 8, 1977 "write-up" was even sufficiently identified as discipline to be considered even a verbal warning, let alone a written warning. It also denies the January 3, 1978 "write-up" accompanying the discharge notice does not constitute a written or other warning in that it does not relate to any specific act or deficiency occurring after the previous warning. Alternatively, it contends that the discharge is an inappropriate penalty because: 1. Respondent did not use a disciplinary suspension, 2. foundation discipline occurred over a long period of time with substantial periods of apparently adequate performance, 3. Respondent did not consider her prior record before discharge and 4. the new procedures and the recent succession of inexperienced supervisors were the cause of the problem.

DISCUSSION

Notice of Discharge

Article II, Section 7(A) requires that an employe's foreman give the notice of discharge in the presence of the employe's shop committeeman. It is undisputed that Respondent did not comply therewith in this case in that notice was given to the employe and immediately thereafter delivered to the employe's committeeman (Finding of Fact 25). This violation of the agreement frustrated some of the purposes of Article II, Section 7(A), most notably denying the shop committeeman an opportunity to attempt to convince the foreman, Linski, to rescind the discharge before the matter came to the attention of Plant Superintendent Legath.

Complainant's requested remedy for this violation, voiding the discharge, is inappropriate under the circumstances. Two of Complainant's shop committeemen were provided a copy of the discharge notice within seconds after the discharge and told what the document they received was. The document itself expressed the reasons for the discharge. Consequently, much of the purpose of Section 7(A) was fulfilled and the shop committeemen were in possession of sufficient facts to request a Section 7(B) hearing to protest at least the aforementioned contract violation. This they did not do and, thus, no protest was made of the aforementioned contract violation until the instant

Grievance was filed, when Grievant had been off for some time. This action frustrated a purpose of the Section 7(B) hearing, to permit a remedy of such procedural issues before the Employer's position was fixed and known, and before any back pay would be necessary therefor. Because no thought was given to complying with Article II, Section 7(A), I find the appropriate remedy is the cease and desist and posting order entered today, even though not requested by Complainant.

Discharge

i. Cause

It is undisputed the instant agreement requires Respondent to prove "cause" for discharge.^{1/} Although Complainant has not denied Respondent has "cause" for discipline, it is worthwhile to review the record to establish the nature of the offense. The disciplinary history reveals that over the period from November, 1975 to January, 1978, Grievant often disregarded Respondent's stockroom procedures although she was fully aware of them and capable of abiding by them. (Findings of Fact 6, 24.) She had often failed to perform work assignments, performed them very slowly or out of the sequence she had been instructed to perform them in. (Findings of Fact 7, 8, 11, 13, 15, 18, 20.) She has regularly failed to engage in the dialogue with her immediate supervisors which is dialogue she knew she was responsible to have for the greater efficiency of the stockroom. (Findings of Fact 6, 9, 15, 16.) She has often absented herself from her assigned work area, often without informing supervisors she was leaving (as required). (Findings of Fact 9, 10, 13, 15, 24.) Although this conduct would be grounds for discipline even if it weren't intentional, the record amply demonstrates Grievant's unwavering determination to ignore her supervisors' disciplinary directions. First, many offenses were repeated immediately after discipline for similar conduct. Second, in view of Grievant's long experience in this position, the remaining offenses for the most part are best explained by intentional motivation rather than error. Third, although many varying reasons exist for it, Grievant's practice of walking away in the midst of reprimands demonstrates an intent to "turn off" the discipline and shut it out of her mind. Finally, at pages 179-180 of the transcript the following exchange took place during direct examination:

^{1/} Tr. p. 185.

"Q Now, did you receive copies of all of these written and verbal warnings? Do you recall that?

A I don't know if I received all of the copies, but I didn't pay much attention to them because ---" [Prompt interruption by Complainant's counsel]

The aforementioned factual context and Grievant's tone and manner in making this statement leave no doubt that she was intentionally ignoring the discipline. On the basis of the foregoing, and the record as a whole, I conclude that the aforementioned conduct constitutes intentionally poor performance and deliberate refusal to accept the directions of her supervisors (insubordination). Moreover, on the basis of Grievant's testimony quoted above, the testimony of all of her supervisors who each suggested related misconduct occurred regularly; the actions of fellow employees in protesting Grievant's conduct, and the difficult-to-detect nature of individual instances of this type of intentional conduct, I conclude the better inference is that over the period from November, 1974 to her discharge, Grievant has engaged in a continuing pattern of such poor performance and insubordination. On the basis of the above, and the record as a whole, I conclude Respondent has "cause" to discipline her within the meaning of the agreement.

ii. Compliance with Stated Progressive Disciplinary Policy

It is undisputed Respondent informed Grievant that if she received six verbal warnings followed by three written warnings she might be discharged. Respondent undisputedly issued Grievant far more than nine warnings, which included one written warning, prior to the November 8, 1977 and January 3, 1978 disputed warnings.

Both the November 8, 1977 and January 3, 1978 warnings were, in fact, discipline equivalent to at least verbal warnings. The former arose out of a specific instance of misconduct and was presented under circumstances implying discipline, and contained threat of further discipline if the specified corrections in behavior were not made. The latter occurred with respect to misconduct which continued in the period from November, 1977 to Grievant's discharge.

However, it is possible neither constitutes a written warning because they were ambiguously titled. Thus, it is possible Respondent did not technically comply with its stated policy. Even if this is the case, I am satisfied that the disciplinary penalty should not be reduced because of the intentional and aggravated nature of the conduct involved. Instead, this noncompliance, if any, is considered as a

factor to be weighed with others in determining the reduction of the penalty.

iii. Reduction of Penalty

Complainant has made a number of arguments in favor of reducing the instant penalty essentially based on the policy of progressive, corrective discipline. However, on the basis of Grievant's exceedingly sorry performance since November, 1974 and her above-quoted testimony, which unequivocally establishes that the attitude underlying her conduct has continued through her period of unemployment after discharge, I am satisfied that in this case further attempts at reformation would be a waste of effort. Accordingly, I find Respondent has properly discharged Grievant within the meaning of the agreement.

Dated at Milwaukee, Wisconsin this 28th day of February, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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