

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DISTRICT 10 INTERNATIONAL ASSOCIATION  
OF MACHINISTS & AEROSPACE WORKERS,  
AFL-CIO,

Complainant,

vs.

THE PRIME MANUFACTURING CORPORATION,

Respondent.

Case II  
No. 22939 Ce-1775  
Decision No. 16342-B

ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT,  
AFFIRMING IN PART AND REVERSING IN PART  
EXAMINER'S CONCLUSIONS OF LAW AND ORDER

Examiner Stanley H. Michelstetter having, on February 28, 1979 issued Findings of Fact, Conclusions of Law and Order in the above entitled matter, wherein said Examiner concluded that the above named Employer committed an unfair labor practice in violation of Sec. 111.06(1)(f) of the Wisconsin Employment Peace Act by violating a provision of the collective bargaining agreement existing between said Employer and the above named Union relating to the procedure surrounding the discharge of employe Dorothy Buschke, and that, however, said Employer did not violate said collective bargaining agreement with regard to the actual discharge of said employe; and the Examiner having ordered the Employer to cease and desist from violating the contractual procedural requirements affecting discharges, and to post notices with regard thereto; and the Union and Employer having timely filed petitions with the Wisconsin Employment Relations Commission, pursuant to Sec. 111.07(5) of the Wisconsin Employment Peace Act, requesting the Commission to review the Examiner's decision, the Union having urged the Commission to conclude that, under the circumstances, the discharge of said employe was not for cause, and the Employer having urged the Commission to dismiss the complaint in its entirety; and the Commission, having reviewed the entire record, the Examiner's decision, the petitions for review, and the briefs filed in support thereof, makes and issues the following

ORDER

IT IS HEREBY ORDERED

1. That the Examiner's Findings of Fact be, and the same hereby are, affirmed.
2. That paragraph 1 of the Examiner's Conclusions of Law be, and the same hereby is, reversed, and that the following be substituted therefore:
  1. That Respondent, The Prime Manufacturing Corporation, in the manner in which it discharged Dorothy Buschke, substantially complied with Article II, Section 7 of the collective bargaining agreement in effect at all relevant times, and therefore, in said

regard, has not committed, and is not committing, any unfair labor practice within the meaning of Section 111.06(1)(f), or any other provision, of the Wisconsin Employment Peace Act.

3. That paragraph 2 of the Examiner's Conclusions of Law be, and the same hereby is, affirmed.
4. That the Examiner's Order be, and the same hereby is, reversed, and that the following be substituted therefore:

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

Given under our hands and seal at the City of Madison, Wisconsin this 8th day of June, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*  
Morris Slavney, Chairman

*Herman Torosian*  
Herman Torosian, Commissioner

*Gary L. Covelli*  
Gary L. Covelli, Commissioner

MEMORANDUM ACCOMPANYING ORDER AFFIRMING EXAMINER'S  
FINDINGS OF FACT, AFFIRMING IN PART AND REVERSING IN PART  
EXAMINER'S CONCLUSIONS OF LAW AND ORDER

In its complaint initiating the instant proceeding the Union alleged that the Employer had committed unfair labor practices within the meaning of the Wisconsin Employment Peace Act by violating the terms of a collective bargaining agreement existing between it and the Union by discharging an employe without just cause, and, further, by failing to comply with contractual procedural requirements prior to effectuating said discharge.

The Examiner's Decision

The Examiner concluded that the Employer did not comply with the contractual procedural requirement in terminating the employe not in the presence of a shop committeeman, and that in said regard the Employer committed an unfair labor practice within the meaning of Section 111.06(1)(f) of the Wisconsin Employment Peace Act (WEPA). The Examiner ordered the Employer to cease and desist from violating such procedural requirement and to post a notice with regard thereto. The Examiner also concluded that the Employer committed no unfair labor practice with respect to the discharge since the Employer had just cause to do so.

The Petition for Review

The Union excepts to the Examiner's conclusion that the Employer action in discharging the employe was for cause, especially in light of the fact that the Examiner had concluded that the Employer had violated the collective bargaining agreement between the parties by not complying with the contractual procedural requirements relating to employe terminations.

The Employer, in response to the Union's petition for review, argues that the Employer substantially complied with the contractual procedure at the time of the discharge, and in that regard urges the Commission to reverse the conclusion of the Examiner that the Employer violated the collective bargaining agreement by not complying with such procedure.

Discussion

The collective bargaining agreement between the Union and the Employer permits the Employer to discharge employes for "cause." Article II of the agreement, in material part, contains the following provisions:

Section 7 - Disciplinary Layoffs and Discharges

(A) An employe 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 employe before the employe 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.

The facts surrounding the Employer's activity in notifying the Union's shop committeemen of employe Buschke's discharge, initiated by her foreman, Linski, and the participation therein by Plant Superintendent Legath, as found by the Examiner are not in dispute, and they were, as found by the Examiner, as follows:

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 termination; that Linski answered that he didn't know to both questions; that immediately thereafter Linski proceeded to Legath's office and gave Legath a copy; that after receiving the notice Buschke wandered around Respondent's plant, went to see Linski and then stayed in the women's wash room until 3:30 p.m. when she left for her home; that at 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; . . .

A clearer picture of the facts surrounding the notice of discharge, the reasons set forth therefore, and a possible reason why the Union committeemen did not ask for a "hearing with the employee," can best be garnered from the contents of the notice, consisting of two pages as follows:

January 3, 1978

Subject: Termination  
To: Dorothy Bushke  
From: Jeffrey Linski

On this date January 3, 1978 I here by give in writing, notice of termination to Dorothy Bushke.

REASON: Poor Attitude, 1) Dorothy Does not keep her mind on the work which is assigned to her.  
2) She doesn't like the procedure in which the stockroom is operated.

- 3) She demoralizes the stockroom.
- 4) She hinders the operation of the stockroom.

Insubordination 1) Dorothy does not follow up on every item she receives, she is instructed to do so.

- 2) She does not use the new scale, which is accurate and faster when counting various items. I have told her to use it a number of times, but she insists on going back to the old scale.
- 3) She stops people in and out of the stockroom and complains to them about various things pertaining to work and outside events.
- 4) She wastes time by wandering about the plant, when she should be following her schedule for the day.
- 5) At times she complains about counting parts which are small in size. She will often leave them sit, even after I have told her to do the job
- 6) Failure to report to her supervisor when problems are occurring. [sic] She takes it upon herself to correct said problem without my knowledge.
- 7) When discussing a problem pertaining [sic] to Dorothy, she at times has walked away from me, or has started yelling at me.
- 8) She lacks the willingness to communicate [sic] with me on matters relating to memos or other information when needed.

January 3, 1978

D. Buschke

The following is a write up pertaining to Dorothy Buschke. The Following problems exist.

Dorothy has a bad habit of receiving stock from the assembly floor, writing it on the parts rec'd list and the bin card, but doesn't put item away or check for a customer order.

Dorothy is slow in pulling parts for memos. She complains she is disturbed by other people. These people are from other areas in the plant. They are requesting parts. It is Dorothy's duty as well as the other people in the stockroom to help these people. I have made an effort to give Dorothy the easier jobs. This in turn, is not fair to the other people in the stockroom.

She complains when receiving stock, She has said, she has to write out new bin cards, things are dirty in the stockroom. She complains about receiving little items in size, they are too hard for her to count. Dorothy insists on using the old scale for larger parts, when the new one is more accurate and faster. This is wasting time.

Dorothy has a number of times handed out parts with deductions made on the bin cards but no indication made on the memos. With this procedure, follow-up

at a later date has to be done, which is time consuming.

Dorothy is working slowly. There is a schedule to meet each day, without cooperation from her this is impossible. Each person has their own duties to perform and Dorothy does not do her fair share.

I continuously [sic] ask her if there is a problem existing, or if she needs help. She responds with "I don't want to bother anyone." Instead of Dorothy coming to her supervisor for advice, she complains to some other person in the shop. Dorothy is a person who gets side tracked very easy. She talks to herself and stops other people from working and discusses her problems.

In the past fourteen Months the problems mentioned above have existed, plus many more. I believe I have done everything I can to correct this problem.

I have written Dorothy up only four times, hoping that her problem would correct itself, but it hasn't. George Legath, has spoken to her a few times in my behalf. The other people in the stockroom have told her they want to help, but she hasn't accepted it. I have had open discussions with Dorothy and all people involved in hopes to solve her problem.

My efforts with Dorothy have been exhausted. She is bringing down the moral [sic] in the stockroom. I feel she is not an asset. But rather a hinderance to the company. I strongly believe her dismissal is now in order!

It is apparent to the Commission that the detailed notice of termination was delivered to Buschke, the proper Union representatives and the Plant Superintendent prior to Buschke's leaving the plant after being notified of her termination. Instead of informing the grievant of her discharge in the presence of her shop committeeman, Linski first gave the grievant a written notice of her discharge and reasons therefor and then immediately gave same to her shop committeeman, Janda, who was standing just fifteen to twenty feet away from the grievant and to Shop Committeeman St. Louis, who was standing about twenty feet from Janda's work station. Given the close proximity of Linski, the grievant, Janda, and St. Louis, there was ample opportunity for the four of them to promptly discuss the matter right then and there. Neither the grievant nor the two shop committeemen requested a meeting. Undeniably Linski did not comply with the literal requirements of Section 7(a), but nevertheless, in the opinion of the Commission, Linski's conduct as described above did not undermine the purpose of said language of providing notice of discharge in the presence of the affected employe's shop committeeman and of providing the opportunity for an immediate discussion of the matter involved. Therefore, the Commission concludes that there was substantial compliance with the pertinent contractual provision, and, accordingly, we have reversed the Examiner's Conclusion of Law with respect to the matter.

Further, after having reviewed the record, Complainant's arguments, and the Examiner's decision concerning the merits of the grievant's discharge, we conclude that the record supports


the Examiner's Findings of Fact and Conclusions of Law and Order concerning same, wherein he concluded that the discharge was for cause.

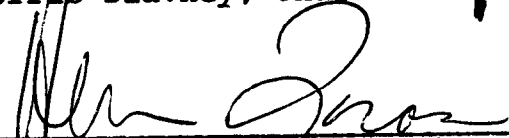
Based on all of the above, we have dismissed the complaint in its entirety.


Dated at Madison, Wisconsin this 8th day of June, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Herman Torosian, Commissioner

  
Gary L. Covelli, Commissioner

