

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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INTERNATIONAL ASSOCIATION OF	:	
MACHINISTS AND AEROSPACE WORKERS,	:	
LODGE 34,	:	Case II
	:	No. 22987 Ce-1776
Complainant,	:	Decision No. 16381-A
	:	
vs.	:	
	:	
FRANK L. WELLS COMPANY,	:	
	:	
Respondent.	:	
	:	

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Appearances:

Ms. Marjorie Foster, Grand Lodge Representative, appearing on behalf of the Complainant.  
Mr. William Graumann, Plant Superintendent, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The International Association of Machinists and Aerospace Workers, Lodge 34, having filed a complaint with the Wisconsin Employment Relations Commission, alleging that the Frank L. Wells Company has committed certain unfair labor practices; and the Commission having appointed Douglas V. Knudson, a member of the Commission's staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5) of the Wisconsin Employment Peace Act; and hearing in said complaint having been held at Kenosha, Wisconsin, on June 19, 1978 before the Examiner; and the parties thereafter having filed briefs which were received by July 26, 1978; and the Examiner having considered the evidence and arguments, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The International Association of Machinists and Aerospace Workers, Lodge 34, herein Complainant, is a labor organization, which at all times material hereto has been the exclusive collective bargaining representative of certain employes of Respondent Employer, including Thomas Jensen at the time of his discharge. Robert Brandalise is Complainant's shop steward.
2. The Frank L. Wells Company, herein Respondent, is an Employer with manufacturing facilities in Kenosha, Wisconsin. William Graumann is Respondent's Plant Superintendent and LeRoy Kozak is a Supervisor for Respondent.
3. Complainant and Respondent are parties to a collective bargaining agreement effective from November 28, 1977 through October 31, 1980, which agreement contains a grievance procedure culminating in a meeting between the representatives of Respondent and Complainant and does not provide for binding arbitration. Said grievance procedure contains the following language:

"Section 1. The parties agree to the following procedure for the handling of grievances:

(A) If any employee has a complaint, he shall first take the matter up direct with his foreman."

4. Thomas Jensen, herein Jensen, commenced his employment with Respondent on December 18, 1976. Prior to April 14, 1978 Jensen had received the following disciplinary actions: (1) on August 24, 1977 a verbal warning for failing to work all of his scheduled overtime; (2) on August 26, 1977 a three day suspension without pay for failing to notify his supervisor that he would be absent; (3) on January 19, 1978 a one week suspension for leaving work without permission (Respondent waived the suspension, but left stand the warning that the next such incident would result in discharge); and, (4) on March 15, 1978 a verbal warning for writing improper language on his daily time sheet.

5. On April 13, 1978 Jensen wrote a notation on his daily time sheet, which notation used improper language. On April 14, 1978, Jensen accompanied by Brandalise, went to Graumann's office for the purpose of receiving a verbal reprimand because of the notation on his time sheet from the previous day. During said meeting, Graumann asked Jensen, several times, the following: "This tells me you don't want to work here anymore, Tom. Is that what you want?" Jensen replied "Why should I be subjected to your stupidity, when". Graumann then discharged Jensen alleging insubordination, and the use of improper and abusive language.

6. Respondent has adopted certain plant rules including the following:

- "5. Fighting with anyone or the use of abusive or threatening language to anyone while on Company property.
- 10. Insubordination, or the refusal to comply with the request of the foreman."

Also appearing on the list of plant rules is the following statement:

"Any employee who feels he has been unjustly penalized by the Company may file a grievance protesting the action through the regular grievance procedure."

7. Respondent's post-hearing brief clearly states that "the Company accepts a just cause dismissal standard".

8. Respondent has followed the concept of corrective, or progressive, discipline in dealing with rule infractions of a similar nature.

Upon the basis of the above and foregoing Findings of Fact, the Examiner makes and enters the following

#### CONCLUSIONS OF LAW

1. Jensen's discharge must be judged by the standard of just cause.

2. Jensen did use improper language to a supervisor on April 14, 1978, and therefore, Respondent had just cause to discipline him. However, discharge was too severe a form of discipline. Thus, by discharging Jensen, Respondent violated the just cause standard for discipline and thereby committed an unfair labor practice within the meaning of Section 111.06(1)f of the WEPA.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes and enters the following

#### ORDER

IT IS ORDERED that Respondent, Frank L. Wells Company, its officers and agents, shall:

1. Immediately offer Thomas Jensen reinstatement to his previous, or a substantially identical position without any loss of seniority, but without backpay.
2. Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith.

Dated at Madison, Wisconsin this 27th day of October, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Douglas V. Knudson*  
Douglas V. Knudson, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

Complainant alleges Respondent failed to meet its burden of proof to show that it had cause to discharge Jensen, and therefore, Jensen's discharge violated the contract. In support thereof, Complainant argues that Jensen was not guilty of insubordination, and, even if he was, Respondent has never previously discharged an employe for insubordination. Complainant asserts that Jensen's act of writing abusive language on his time sheet warranted only a verbal warning.

In its post-hearing brief, Respondent "accepts" a just cause dismissal standard, but contends that Complainant failed to meet its burden of proof by a clear and satisfactory preponderance of the evidence. Additionally, Respondent claims that the discharge of Jensen was not arbitrary, capricious, or, discriminatory. Respondent further argues that, based on Jensen's record of previous corrective discipline, discharge was the proper discipline in this matter.

At page 5 of its post-hearing brief, Respondent accepted a just cause dismissal standard. Even in the absence of such an acceptance, it would appear that such a contractual standard exists, based on the language of the work rules which allows unjust penalties to be grieved, in combination with the comprehensive nature of the word "complaint" in the grievance procedure. Accordingly, Jensen's discharge must be judged by the standard of just cause.

On April 14, 1978, Graumann told Brandalise to bring Jensen into his office, because Jensen was going to receive a verbal reprimand for the notation on his time sheet of the previous day. When Brandalise and Jensen arrived, Graumann repeated the following statement several times: "This tells me you don't want to work here anymore, Tom. Is that what you want?" Jensen testified that he then gave the following response: "Why should I be subjected to your stupidity, when". Graumann testified that he did not hear the word "when" as part of Jensen's statement. Graumann then told Jensen he was fired. Whether or not the word "when" was part of Jensen's statement is immaterial, since the statement was disrespectful in either form. However, said statement did not constitute overt insubordination, in the sense that Jensen wilfully disregarded an order or physically threatened Graumann. While Jensen's conduct warranted discipline, the penalty of discharge was excessive. The discharge clearly was an emotional response to Jensen's statement at the meeting on April 14, since the original purpose of said meeting was to give Jensen merely a verbal reprimand for the notation on his daily time sheet of April 13, 1978. Inasmuch as Respondent viewed both the time sheet notation and the oral remark as similar offenses, a form of discipline less than discharge would have been appropriate, even in light of Jensen's past work record. Apparently a verbal warning was appropriate discipline, in Respondent's judgment, for the time card notation. Therefore a written warning or a suspension would logically follow for the next similar offense, i.e., Jensen's remark on April 14, 1978. It is true that Jensen's work record already included a three day suspension without pay, and, a warning that the next occasion of unauthorized lost time would result in discharge. However, more recently than said two incidents, Jensen had received a verbal warning for using improper language on his daily time sheet. Obviously, Respondent has utilized the concept of corrective discipline by penalizing subsequent offenses of a similar nature with progressively more severe penalties than it has given for the first instance in which such offenses have occurred. But, when subsequent rule infractions were dissimilar in nature, it is clear that Respondent has given less severe discipline than would have occurred in a purely cumulative discipline program, irrespective of the similarity of the offenses. Accordingly, Jensen's conduct on April 14, which deserving of discipline, did not warrant discharge. Said conduct was similar in nature to the conduct for which Jensen was receiving a second reprimand. In accordance with the concept of cor-

rective, or progressive, discipline, Jensen should have been given either a written warning or a suspension. Therefore, Respondent immediately shall offer Jensen reinstatement to his previous, or a substantial comparable, position. Because of the frequency of Jensen's misconduct, i.e. three similar acts within the space of one month, the reinstatement shall be without backpay, and accordingly, no backpay will be owed to Jensen if he receives an offer of unconditional reinstatement immediately upon receipt of this Order. However, Jensen's seniority shall not be interrupted by the period of time during which he was off work as a result of, the incident on April 14, 1978, but rather, it should continue to date back to his original date of hire.

Dated at Madison, Wisconsin this 27th day of October, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Douglas V. Knudson*  
Douglas V. Knudson, Examiner

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