

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GERALD O. WEILAND,

Complainant,

vs.

MERCURY MARINE DIVISION OF
BRUNSWICK CORPORATION and
LODGE NO.1947, INTERNATIONAL
ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS,
AFL-CIO,

Respondents.

Case II
No. 25738 Ce-1851
Decision No. 17607-A

Appearances:

Gerald O. Weiland, Route 1, Cambellsport, WI, 53010 as the Complainant and on his own behalf.

Goldberg, Previant, Uelmen, Gratz, Miller, Levy & Brueggeman, S.C., Attorneys at Law, 788 North Jefferson Street, Room 600, P.O. Box 92099, Milwaukee, WI 53202, by Robert Gratz, for the Union.

Foley & Lardner, Attorneys at Law, 777 East Wisconsin Avenue, Milwaukee, WI 53202, by Mark Zaiger, for the Company.

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

Gerald O. Weiland having filed a complaint with the Wisconsin Employment Relations Commission on February 6, 1980 alleging that Lodge No. 1947, International Association of Machinists and Aerospace Workers, AFL-CIO and Mercury Marine Division of Brunswick Corporation had committed unfair labor practices within the meaning of the Wisconsin Employment Peace Act (WEPA); and the Commission on February 20, 1980 having appointed Thomas L. Yaeger, a member of its staff, to act as Examiner and to make Findings of Fact, Conclusions of Law and Order pursuant to Section 111.70(5), Stats.; and hearing on said complaint having been scheduled for March 18, 1980 and then postponed indefinitely on March 11, 1980; and subsequently, because of the unavailability of Thomas L. Yaeger, the Commission having vacated his designation as Examiner and having appointed Douglas V. Knudson as the Examiner; and hearing on the complaint having been held before the Examiner in Fond du Lac, Wisconsin on March 22, 1982; and a transcript of the hearing having been prepared and received on April 6, 1982; and the Examiner, having considered the evidence and the arguments of the parties, makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Complainant Gerald O. Weiland, herein Weiland, resides at Route 1, Campbellsport, WI; and, that until approximately March 6, 1978 Weiland was employed by Mercury Marine Division of Brunswick Corporation and was a member of Lodge No. 1947, International Association of Machinists and Aerospace Workers, AFL-CIO.

2. That Respondent Mercury Marine Division of Brunswick Corporation, herein the Company, is an employer and operates a manufacturing facility in Fond du Lac, Wisconsin.

3. That Respondent Lodge No. 1947, International Association of Machinists and Aerospace Workers, AFL-CIO, herein the Union, is a labor organization with offices at 50 East Bank Street, Fond du Lac, Wisconsin.

4. That at all times material hereto, the Union and the Company were parties to a collective bargaining agreement which contained a grievance procedure culminating in final and binding arbitration.

5. That on August 9, 1977, concurrent with a reduction of the workforce by the Company, Weiland was transferred involuntarily from the Die Cast Set Up classification to the Die Cast Operator classification; that on or about March 1, 1978 Weiland filed a grievance with the Company contending that on August 9, 1977 he should have been given a choice between the transfer to the Die Cast Operator classification, or, a voluntary layoff; that, when Weiland filed said grievance, representatives of the Union advised him that he should continue to work in the Die Cast Operator classification while his grievance was being processed; that, on March 6, 1978, after Weiland refused to continue operating the Die Cast machine because of his personal opinion that said work was harmful to his health, both the Company and the Union warned Weiland that if he continued to refuse to operate the Die Cast machine he would be discharged; that after receiving said warnings Weiland continued to refuse to operate the Die Cast machine, whereupon he was discharged; that Weiland grieved his discharge; that the Company and the Union agreed to hold said grievance in abeyance pending the outcome of the arbitration hearing on Weiland's grievance over his transfer on August 9, 1977; that on July 23, 1979 an arbitrator dismissed Weiland's transfer grievance for being both untimely filed and without merit; that, confronted with said arbitration decision and in light of Weiland's behavior on March 6, 1978, the Union refused to continue to process Weiland's grievance over his discharge on the basis that further prosecution of said grievance could not be successful; that Weiland filed an unfair labor practice charge with the National Labor Relations Board alleging that the Union had failed to provide him with fair representation; and that said complaint was dismissed on April 29, 1980.

6. That on February 6, 1980 Weiland filed the instant complaint alleging both that the Company had harassed him, and, that the Union had breached the collective bargaining agreement, apparently by failing to fairly represent him.

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

CONCLUSIONS OF LAW

1. That Lodge No. 1947, International Association of Machinists and Aerospace Workers, AFL-CIO, and its representatives, did not wrongfully refuse to proceed to arbitration on the grievance filed by Weiland over his discharge; that the record does not support a finding that Respondent Union's representation of Weiland in other matters was arbitrary, discriminatory or in bad faith; and, that Respondent Union did not violate its duty to fairly represent Complainant Weiland, and therefore, it did not violate Sec. 111.06(2) of the Wisconsin Employment Peace Act.

2. That since Respondent Union did not violate its duty to fairly represent Complainant Weiland with respect to his grievances, the Examiner will not assert the jurisdiction of the Wisconsin Employment Relations Commission for the purpose of determining whether Respondent Company violated the collective bargaining agreement in violation of Sec. 111.06(1)(f) of the Wisconsin Employment Peace Act by its discharge of Complainant Weiland.

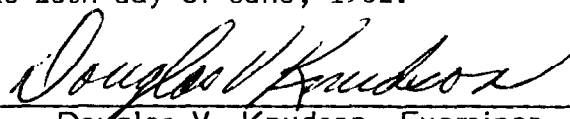
Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes the following

ORDER

IT IS ORDERED that the complaint filed in the instant matter be, and the same hereby is, dismissed. 1/

Dated at Madison, Wisconsin this 28th day of June, 1982.

By


Douglas V. Knudson, Examiner

1/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.
(continued on page 3)

(continuation of Footnote 1)

(5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The Union's duty of fair representation does not require that all grievances must be processed through all steps of the grievance procedure, including arbitration. A Union has considerable flexibility in deciding whether to pursue a grievance:

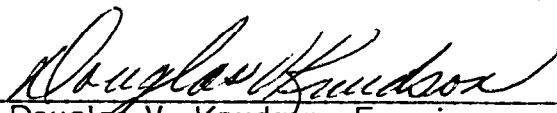
. . . Just as a union must be free to sift out wholly frivolous grievances which would only clog the grievance process, so it must be free to take a position on the not so frivolous disputes. . . . 2/

In the instant matter the Union did process Weiland's grievance, concerning his transfer in August 1977, to arbitration. Said grievance was denied by the arbitrator. In light of said denial and of Weiland's refusal to continue operating the Die Cast machine on March 6, 1978, which refusal the Union believed to constitute insubordination, the Union reasonably concluded that Weiland's discharge would be sustained by an arbitrator. Consequently, the Union decided to not to continue processing the discharge grievance. The record convinces the Examiner that such a decision by the Union was not arbitrary, discriminatory or in bad faith. Accordingly, the Examiner concludes that Complainant Weiland failed to sustain his burden of proof by a clear and satisfactory preponderance of the evidence that the Union failed to fairly represent him in the matter of his discharge.

Dated at Madison, Wisconsin this 28th day of June, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BY


Douglas V. Knudson, Examiner

2/ Humphrey v. Moore, 375 U.S. 335 (1964).