STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

| | |
|---|---|
| LOCAL 391, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, Complainant, vs. WEBSTER ELECTRIC COMPANY, INC., Respondent. | Case XI<br>No. 28887 Ce-1937<br>Decision No. 19215-A |

Appearances:

Mr. Jack Rice, International Representative, Region No. 10, UAW, 7435 South Howell Avenue, Oak Creek, Wisconsin 53154, appearing on behalf of the Complainant.

Foley & Lardner, by Mr. Stanley S. Jaspan, First Wisconsin Center, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, appearing on behalf of the Respondent.

## FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

A complaint of unfair labor practices having been filed with the Wisconsin Employment Relations Commission in the above-entitled matter; and the Commission having appointed Edmond J. Bielarczyk, Jr., a member of the Commission's staff, to act as Examiner and to make and issue Findings of Fact, Conclusion of Law and Order as provided in Section 111.06(1)(f) of the Wisconsin Employment Peace Act; and hearing on said complaint having been held at Racine, Wisconsin on January 29, 1982; and a stenographic transcript of the proceedings having been prepared; and the parties having filed post-hearing arguments by April 2, 1982; and the Examiner having considered the evidence and arguments 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 International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Local Union No. 391, hereinafter referred to as the Complainant, is a labor organization having its office located at 7435 South Howell Avenue, Oak Creek, Wisconsin.

2. That Webster Electric Company, Inc., hereinafter referred to as the Respondent, is an employer engaged in manufacturing, with its offices located at 1900 Clark Street, Racine, Wisconsin.

3. That at all times material hereto the Complainant and the Respondent have been parties to a collective bargaining agreement which contains among its provisions the following that is material hereto:

ARTICLE 12
Management

> 1. The management of the business and the direction of the working forces, including, but not limited to, the right to plan, direct and control operations; to hire, promote and transfer; to suspend, discipline or discharge for cause, or to

relieve employees because of lack of work or for other legitimate reasons; to make and enforce rules and regulations; to introduce new and improved methods, materials or facilities, or to change existing methods, materials or facilities; and to manage the plant in the traditional manner is vested exclusively in the Company; provided, however, that such rights shall not be applied in any manner violative of any of the specific provisions of this Agreement.;

and that said collective bargaining agreement contains a grievance procedure which does not culminate in final and binding arbitration.

4. That at all relevant times Respondent has had in effect the following disciplinary procedure:

DISCIPLINARY PROCEDURE

The following progressive disciplinary procedure will be applicable as a means to correct and not to fire. Steps one through four will be imposed progressively except where violations merit immediate discharge or the violation is of such severity where any one of the steps may be applied up to and including discharge.

| Step | Discipline |
|---|---|
| 1st Step | Verbal warning |
| 2nd Step | Written warning |
| 3rd Step | 1-3 day suspension |
| 4th Step | Discharge |

An employee will have the opportunity to clear his or her record in that if a clear record is maintained for a six (6) month period, the last disciplinary action issued will be dropped from the employee's record and not considered in future disciplinary actions.

5. That in April, 1981, the Respondent re-issued Rules and Regulations to employes and that among specific offenses warranting discipline are the following:

. . .

10. Repeated violation of tardiness and absenteeism policy.

. . .

18. Poor or careless work performance causing rejected material. 1/

. . .

6. That in 1976 the Respondent discharged David Krupp for running scrap; that prior to being discharged Krupp had received two warnings for absenteeism and a three-day disciplinary layoff for tardiness; that in 1980 the Respondent discharged Steve Brezney for running scrap; that prior to being discharged Brezney had received two warnings for absenteeism, a written warning for failure to perform at expected standards, and a three-day disciplinary layoff for running scrap; that in 1980 the Respondent discharged David Nevoraski for running scrap; that prior to being discharged Nevoraski had received a verbal and a written

---

1/ Producing work which must be rejected is termed running scrap by the Respondent.

warning for running scrap and a three-day disciplinary layoff for making parts not to printed specifications; that on December 7, 1981, the Respondent discharged Anton Vogt for running scrap; and, that prior to being discharged Vogt had received a verbal warning for producing non-conforming material and a one-day disciplinary layoff for running scrap. 2/

7. That Eddie Carter, hereinafter referred to as the grievant, has been employed by the Respondent for seventeen and one-half years; that on June 15, 1981 the grievant began the duties of a machine operator on a gear hobber machine; that machine operators, after they have set up a machine to produce a part in accordance with a blueprint and specifications, have the first part they produce inspected by a Floor Inspector; that the Floor Inspector is to assist in verification of the part's correctness, but, that it is the machine operator's responsibility to produce a quality part; and, that machine operators are aware that the responsibility of producing a quality part, regardless of the part's inspection by the Floor Inspector, rests with the machine operator.

8. That on August 17, 1981, the grievant received an oral warning for parking in an unauthorized parking area; that on August 18, 1981, the grievant received a written warning for tardiness; that on September 10, 1981, the grievant received a three-day suspension for running scrap; that the grievant did not grieve the oral warning, written warning or the three-day disciplinary layoff; that upon return from the three-day disciplinary layoff the grievant was counseled by his supervisor, James Leverton, in the presence of his Shop Steward, Paul Dosemagen; and, that during said counseling the grievant was informed by his supervisor that if he had any questions concerning the gear hob machine or needed any assistance he could request it of his supervisor, and the grievant was also informed that if he ran scrap again he would be terminated.

9. That on September 30, 1981, the grievant ran 38 pieces of scrap and the cost of running 38 pieces of scrap was $349.86 in materials; that the first piece run by the grievant on September 30, 1981 was inspected by a Floor Inspector; that Respondent disciplined said Floor Inspector in accordance with its disciplinary procedure for his failure to properly check the grievant's first piece; and, that as this was the grievant's fourth step in the disciplinary procedure, Respondent discharged the grievant on October 1, 1981.

10. That the Respondent's discharge of the grievant was for cause. 3/

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

## CONCLUSION OF LAW

That Webster Electric Company, Inc., by its discharge of Eddie Carter for cause, did not violate the terms and provisons of the collective bargaining agreement between it and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Local Union No. 391, and, therefore, has not committed and is not committing an unfair labor practice within the meaning of Section 111.07(5) of the Wisconsin Employment Peace Act.

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

---

2/ The Complainant has grieved the discharge of Anton Vogt.

3/ Although the Complainant contends the discharge was not for "just cause", the contractual standard in the parties' agreement is for "cause".

## ORDER

IT IS ORDERED that the Complaint in the instant matter be, and the same hereby is, dismissed. 4/

Dated at Madison, Wisconsin this 26th day of May, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Edmond J. Bielarczyk, Jr.
Edmond J. Bielarczyk, Jr., Examiner

---

4/ 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.

(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, CONCLUSION OF LAW AND ORDER

On November 30, 1981, the Complainant filed the instant complaint alleging that Respondent's discharge of grievant Eddie Carter was not for "just cause". In its answer filed on January 12, 1982, Respondent denied that said discharge was not for "just cause" and alleged that said discharge was due to the grievant's running scrap and prior disciplinary record and asserted that it has not committed any unfair labor pratices within the meaning of Section 111.06(1)f of the Wisconsin Employment Peace Act (WEPA). Hearing was held in the matter on January 29, 1982, at Racine, Wisconsin. Final briefs were submitted by April 8, 1982.

### Position of the Parties

The Complainant claims that although the Respondent may have a right to be provoked at the grievant for making scrap, his actions are not of the type which justify discharge. The Complainant contends that other employes have run scrap and have not been disciplined, and argues that the gear hob machine is not functioning properly and, therefore, that the Respondent did not have just cause in discharging the grievant, who was simply relying on the findings of the Floor Inspector that the machine was properly set up and had run the pieces properly. The Complainant further argues that the grievant's error was due to inadequate training and a reliance on the Respondent's quality control system. A more appropriate action for the Respondent to take would be to have the grievant subjected to more intense training on the gear hob machine and that if the grievant should prove himself unable to operate it, he should be removed from the gear hob machine.

The Respondent contends that pursuant to Article 12 of the parties' agreement it has established rules and regulations and a progressive disciplinary procedure, imposed progressively whenever there was a rule violation, except that when an employe has maintained a clear record for six months the last step would be repeated. Respondent argues its actions in discharging the grievant were totally in accord with the parties' collective bargaining agreement, plant rules, past practice, and is not a violation of WEPA. The Respondent contends that neither the parties' agreement, plant rules nor WEPA require the Respondent to tolerate continued unsatisfactory performance of an employe, even one who has been employed for a substantial period of time.

### Discussion

The record in the instant matter demonstrates that the grievant did not grieve his oral warning, written warning, and three-day disciplinary layoff. Here, the Complainant contends that the undersigned should review said disciplinary actions to determine if they were, in fact, warranted. However, the grievant does not dispute that he parked in an unauthorized area, for which he received the oral warning, that he was tardy, for which he received the written warning, and he does not dispute that he ran scrap, for which he received the three-day disciplinary layoff. Furthermore, the grievant was aware of the Respondent's discipline and did not grieve them at any time following the levying of said discipline. Therefore the grievant waived any review of said disciplinary actions and the undersigned will not address them.

The Complainant also argues in its brief that employes have run scrap and have not been disciplined by the Respondent. Although the record demonstrates that other employes have run scrap, the record is void of any evidence which would indicate that the Respondent has not disciplined employes who ran scrap, with one exception. Said exception is distinguishable from the instant matter and invovles two machine operators who set up a machine improperly and ran scrap. One of the employes involved was at the discharge step of the corrective disciplinary procedure. The Respondent was unable to determine exactly which machine operator was at fault in improperly setting up the machine. At that time, the Complainant and Respondent agreed that because the fault of the improper set-up could not be fully placed on either employe involved, the employe who was at the discharge step of corrective disciplinary procedure, rather than being discharged, would be given a

warning. Said warning being that if he ran scrap within six months of the incident he would be discharged. Thus, the record demonstrates the Respondent has consistently applied its corrective disciplinary procedure when employes have violated its rules and regulations, except in the instance where the Respondent was unable to determine the machine operator who was at fault in running scrap.

Complainant's contention that the grievant's reliance on the Respondent's quality control system mitigates the circumstances surrounding the grievant's discharge is also unpersuasive. Here, it is undisputed that employes are aware that regardless of first piece inspection by Floor Inspectors, the employes are responsible for their output. 5/ Further, the grievant was recently counseled concerning running scrap, for which he had received a three-day disciplinary warning. At that time the grievant was warned that further running of scrap would result in his discharge. Herein, the grievant does not dispute that he ran scrap again.

The instant record demonstrates that the grievant had been put on notice by the Respondent, by disciplinary actions of increasing severity, that his conduct was not being condoned. Thus, the undersigned is persuaded, in view of the record herein, that the Respondent's action of discharging the grievant, measured with the grievant's recent disciplinary record, was for cause.

Dated at Madison, Wisconsin this 26th day of May, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Edmond J. Bielarczyk Jr.
Edmond J. Bielarczyk, Jr., Examiner

---

5/ The Floor Inspector involved was also disciplined by the Respondent in accordance with its corrective discipline system.