

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LOCAL 391, INTERNATIONAL UNION,
UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW),

Complainant,

vs.

WEBSTER ELECTRIC CO., INC.,

Respondent.

Case XIII
No. 33056 Ce-1998
Decision No. 21672-A

Appearances:

Mr. Ralph P. Amerling, International Representative, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), 7435 South Howell Avenue, Oak Creek, Wisconsin 53154, appearing on behalf of the Union.

Matkov, Griffin, Parsons, Salzman & Madoff, Attorneys at Law, by Mr. Larry Hall, Suite 1500, 100 West Monroe Street, Chicago, Illinois 60603, appearing on behalf of the Company.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) having, on March 13, 1984, filed a complaint of unfair labor practices with the Wisconsin Employment Relations Commission, hereinafter the Commission, alleging that Webster Electric Co., Inc., committed unfair labor practices within the meaning of 111.06 of the Wisconsin Employment Peace Act; and the Commission having, on May 8, 1984, appointed Andrew M. Roberts, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Sec. 111.07(5), Stats.; and hearing on said complaint having been held before the Examiner in Racine, Wisconsin, on June 6, 1984; and briefs having been filed by August 20, 1984; and the Examiner having considered the evidence, briefs and arguments of the parties and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Local 391, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), hereinafter referred to as the Union, is a labor organization with its offices located at 7435 South Howell Avenue, Oak Creek, Wisconsin 53154.

2. That Webster Electric Co., Inc., hereinafter referred to as the Company, is a private employer with its principal offices located at 1900 Clark Street, Racine, Wisconsin 53403.

3. That the Union and the Company were at all times material herein parties to a collective bargaining agreement which included a grievance procedure for the resolution of disputes arising thereunder, but none of which provide for arbitration or any other means of binding resolution of such disputes; and that said collective bargaining agreement provides in relevant part as follows:

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.

4. That pursuant to Article 12, the Company enacted the following Plant Rules:

. . .

In order to provide a better understanding, the rules are defined in two categories; those of a serious nature where immediate discharge could take place and those of a less serious nature where any one of the disciplinary steps could apply.

The below listed plant rules are considered of a less serious nature. Violation of any rule will be sufficient grounds for disciplinary action ranging from verbal warning to immediate discharge depending on the severity in the judgment of the company.

Disciplinary Action

. . .

18. Poor or careless work performance causing rejected material.

. . .

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.

<u>Step</u>	<u>Discipline</u>
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 the Company produces gears and that it does so by first "roughing" a bar of steel, which removes one and one-quarter inches of metal off the journal, or stem, protruding from the gear; that the journal is then ground which removes an additional one sixty-fourth inch of metal; that the journal is then polished by a brush which removes approximately one to two ten-thousandths of an inch of metal; and that in polishing the journal, the operator may vary the pressure on the brush and if excessive pressure is applied undersized journals will result.

6. That Carrol Lamb has been employed by the Company for thirty-three years and has worked at various jobs; that in approximately July 1983 Lamb began working on a Landis External Grinder, a machine that polishes the journal, and was instructed on how to perform the task at that time; that the operators of said machine are to have every eighth journal inspected for finish at the Inspection Department; and that the Roving Floor Inspector inspects the journals for size.

7. That on December 21 and 22, 1983, and January 4 and 5, 1984, journals were polished by the Landis Grinder; that during said days, Lamb worked on the day shift on said machine while Larry Servi worked on the night shift on that machine; that no other employee worked on that machine during that period; that on December 22, 1983, and January 4 and 5, 1984, Lamb polished 126, 79 and 34 journals respectively, while on December 21 and 22, 1983, and January 4, 1984, Servi polished 16, 125, and 125 journals respectively; that in the mid-morning of January 5, 1984, the Roving Floor Inspector, Elsie Showalter, discovered that there were undersized journals; that at that time approximately 419 journals were then checked and 249 were found to be undersized by two ten-thousandths to eighteen ten-thousandths of an inch; that said undersized journals had to be scrapped; and that as a result of investigating the matter, Servi then informed the Company that the pressure on the grinder was set too high when he started his shifts.

8. That shortly thereafter Company representatives then met with Union representatives, along with Lamb, and informed Lamb that he was to be suspended for five days for producing undersized journals; that on January 12, 1984, Lamb informed the Company that there were another 132 journals which should be checked; that the Company then inspected the additional journals and determined that 117 were undersized and were scrapped; that the value of all scrapped journals polished between December 21, 1983, and January 5, 1984, was \$2939.84; that the Company then reviewed the total number of journals polished by Lamb and Servi since December 21, 1983, as compared to the number that were scrapped and determined that Lamb and Servi shared in the responsibility; and that Lamb's five-day suspension was reduced to three days and Servi also then received a three-day suspension.

9. That prior to December 21, 1983, other employees besides Lamb and Servi polished journals; that from August through most of December, 1983, 30,790 journals were polished of which only fifty-four were scrapped; that in the past other employees have been disciplined for producing scrap; that generally employees have received a verbal warning for scrapping materials when there was no other discipline imposed on that employee for the prior six months; however, when the Company has deemed such an offense as being more severe, then either a written warning or suspension has been issued without first following the initial steps of discipline as set forth in the Company's Plant Rules.

10. That Lamb and Servi timely filed grievances on their respective three-day suspensions and processed them through the contractual grievance procedure.

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

CONCLUSIONS OF LAW

1. That Lamb and Servi exhausted the grievance procedure set forth in the parties' collective bargaining agreement, and thus the jurisdiction of the Wisconsin Employment Relations Commission may be invoked to determine the merits of the grievances.

2. That the three-day suspensions for Lamb and Servi respectively were for cause within the meaning of Article 12 of the parties' collective bargaining agreement, and therefore were not violative of Sec. 111.06(1)(f), Stats.

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

ORDER 1/

IT IS ORDERED that the complaint filed herein be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin this 13th day of September, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Andrew Roberts
Andrew Roberts, Examiner

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- 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.

(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 issue raised by the complaint is whether the Company had cause for its discipline of Lamb and Servi. 2/

Union's Position:

The Union contends the Company failed to demonstrate that Lamb and Servi are responsible for the scrap parts; rather, the Union argues they performed the operation as instructed by the supervisor. Moreover, when Lamb asked his supervisor whether he should check the pieces for size, he was told he was not to become involved in the inspection process. Under the Company's rules, discipline should be meted out progressively as a means of correction; therefore, if cause is found then a verbal warning was appropriate, particularly for Lamb who had thirty-three years of outstanding service with the Company.

Company's Position:

The Company argues the Union failed to prove the Company violated the collective bargaining agreement when it issued the three-day suspensions to Lamb and Servi. The record reflects that Lamb and Servi engaged in poor and careless work performance causing rejected material which justified the imposed discipline. Moreover, the three-day suspensions were not arbitrary, unreasonable, or discriminatory. The Company cites similar disciplinary actions imposed on other employees who scrapped materials and further cites arbitral authority to support its position.

Discussion:

The record demonstrates that the polishing job which was run on December 21 and 22, 1983, and January 4 and 5, 1984, was responsible for the scrap. Over those four work days, Lamb polished 239 journals and Servi polished 266 journals; no one else polished the journals on those days. Because 364 of the journals polished during that period were scrapped then both Lamb and Servi each polished a portion of the bad journals. Over a number of months prior to those four days, thousands of other journals were polished by Lamb and Servi, as well as other employees, but only a small percentage of those were scrapped; therefore, it follows that Lamb and Servi had the ability to polish the journals properly. There was no demonstration that during the days in question the machine had caused the problem. 3/ Accordingly, Lamb and Servi were responsible for producing the scrapped journals.

Under the Company's Plant Rules an employee may be disciplined for "poor or careless work performance causing rejected material," as occurred here. The disciplinary procedure is generally progressive, beginning with a verbal warning, if there have been no previous disciplinary actions within the past six months. However, the Plant Rules further state that steps may be skipped "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." In the past the Company has skipped earlier disciplinary steps for scrapping materials and has imposed written warnings or suspensions in those instances.

2/ The complaint alleges a violation of "Section 111.06(1)(f)," Stats.; however, the Wisconsin Employment Peace Act does not include such a provision. Section 111.06(1)(f), Stats., is the provision relating to the violation of a collective bargaining agreement. Through evidence and argument of both parties, it is apparent that Sec. 111.06(1)(f), Stats., was the section that was intended by the Union to be allegedly violated. The pleadings therefore will be amended to allege a violation of Sec. 111.06(1)(f), Stats., in order to conform with the proof. Appleton Electric Co., Dec. No. 9651-A (Moberly, 11/70).

3/ Company Exhibit No. 1 and Tr. 144.

Therefore, because Lamb and Servi were responsible for producing the scrap journals and because the Company has previously imposed suspensions on other employees as the initial disciplinary step for such an act, then the Company had cause to suspend both Lamb and Servi for three days. Accordingly, the complaint has been dismissed in all respects.

Dated at Madison, Wisconsin this 13th day of September, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Andrew Roberts
Andrew Roberts, Examiner