

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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INTERNATIONAL FEDERATION OF	:	
PROFESSIONAL AND TECHNICAL	:	
ENGINEERS, LOCAL 92, AFL-CIO,	:	
	:	Case 53
Complainant,	:	No. 36467 Ce-2035
	:	Decision No. 23390-A
vs.	:	
	:	
LADISH CO. INC., TRI-CLOVER	:	
DIVISION, a wholly owned subsidiary	:	
of OWENS CORNING FIBERGLASS,	:	
	:	
Respondent.	:	

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Appearances:

Mr. Lawrence C. Hammond, Esq., 9201 Wilmot Rd., Kenosha, Wisconsin, 53141, appeared on behalf of the Respondent.  
Habush, Habush & Davis, S.C. by Mr. Kenneth Loebel, Esq., 777 East Wisconsin Avenue, Milwaukee, Wisconsin, 53202, appeared on behalf of the Complainant.

FINDINGS OF FACT  
CONCLUSIONS OF LAW AND ORDER

The above-named complainant having, on February 3, 1986, filed a complaint with the Wisconsin Employment Relations Commission, wherein it is alleged that the above-named Respondent has committed an unfair labor practice within the meaning of the Wisconsin Employment Peace Act; and the Commission, on March 18, 1986, having appointed William C. Houlihan, a member of its staff, to act as Examiner to make and issue Findings of Fact, Conclusions of Law and Order as provided in Sec. 111.07(5) Stats.; a hearing on said complaint was conducted in Kenosha, Wisconsin on May 7, 1986 before the Examiner; a transcript of the proceedings was provided to the parties and Examiner on June 24, 1986; briefs were submitted by July 9, 1986, the Examiner having considered the evidence and arguments and being fully advised in the premises makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The International Federation of Professional and Technical Engineers, Local 92, AFL-CIO, hereinafter the Union, is an organization, organized and existing, at least in part, for the purpose of representing employes and engaging in collective bargaining over wages, hours and conditions of employment and whose offices are 4801 South Packard Avenue, Cudahy, Wisconsin.
2. Ladish Co., Inc., Tri-Clover Division, is an organization which engages the services of employes, and whose place of business is 9201 Wilmot Road, Kenosha, Wisconsin.
3. The Union and Company, at all material times were signatories to a collective bargaining agreement which contained the following provisions:

ARTICLE II  
MANAGEMENT

The Management of the plant shall exercise the usual functions, duties and responsibilities of management, without interference or hindrance by the Union, except as abridged by the terms of this Agreement.

ARTICLE VI - SENIORITY

. . .

7. Termination of Seniority: An employee's seniority and his employment with the Company shall terminate if:

- (a) He quits, resigns or retires.
- (b) He is discharged for just cause.
- (c) He fails to return to work after layoff within seven (7) calendar days after being notified by registered mail (return receipt requested) sent to his last known address appearing on the Company's records. This time shall be extended for justifiable cause, such as illness or injury, if the employee is unable to report for work and so advises the Company within five (5) work days after receipt of said notice. It is the employee's responsibility to keep the Company informed of his current address and telephone number.
- (d) He has thirty-six (36) consecutive months of unemployment with the Company, except in the case of illness or injury of which the Company is advised.
- (e) He, having been granted a leave of absence, engages in any gainful employment elsewhere during said leave of absence, unless special provision shall have been made therefor by agreement between Company and the Bargaining Committee, or an employee fails to report for work at the expiration of such leave granted by the Company as stated in Article VIII of this Labor Agreement.
- (f) He is absent from work for three (3) consecutive working days without notifying the Company, except in cases where the employee is unable to notify the Company due to circumstances beyond his control.

#### ARTICLE XXII TARDINESS PROGRAM

##### Detailed Features:

- (a) The program will be based upon a one (1) year period beginning with the first time an employee is tardy and such employee's record will be reduced to zero (1) at the end of that one (1) year period and begin again with the first time tardy.
- (b) Employees will be allowed a maximum of twenty-two (22) times tardy per year and receive disciplinary action upon the 23rd time tardy.
- (c) For each calendar month an employee is not tardy, his record of total times tardy will be reduced by two (2) times tardy. For each month during which an employee is tardy only once, his record will not change. At no time shall an employee's tardiness record be a negative number.

##### ACTION TO BE TAKEN:

- (a) Letter sent to tardy employee advising him when he has been tardy for a total of ten (10) times during his/her year.
- (b) A reminder slip sent to tardy employee for 15th, 17th and 19th times tardy.
- (c) Upon his 20th time tardy the employee to receive a letter advising him that upon his 23rd time tardy he will receive a disciplinary layoff of three (3) days. At the request of the employee a meeting can be held in the Personnel Office including union representatives, management representatives and the employee to review the employee's record.
- (d) Upon the 23rd time tardy a meeting between management, union representatives and the employee to be held in the Personnel Office and a disciplinary layoff of three (3) days administered at this time.

- (e) Upon the 24th time tardy a letter sent to the employee advising him that upon his 26th time tardy he/she will receive a disciplinary layoff of two (2) weeks. At the request of the employee a meeting can be held including union representatives, management representatives and the employee in order to discuss the employee's tardiness record.
- (f) Upon the 26th time tardy the employee, his union representative and management representatives to meet in the Personnel Department and a two (2) week disciplinary layoff to be administered.
- (e) Upon the 24th time tardy a letter sent to the employee advising him that upon his 26th time tardy he/she will receive a disciplinary layoff of two (2) weeks. At the request of the employee a meeting can be held including union representatives, management representatives and the employee in order to discuss the employee's tardiness record.
- (f) Upon the 26th time tardy the employee, his union representatives and management representatives to meet in the Personnel Department and a two (2) week disciplinary layoff to be administered.
- (g) Upon the 27th time tardy a letter to be sent to the employee advising him that upon his 30th time tardy his employment will be terminated. At the request of the employee a meeting can be held including union representatives, management representatives and the employee to discuss the employee's tardiness record.
- (h) Upon the 30th time tardy a meeting to be held in the Personnel Department including union representatives, management representatives and the employee and such employee to be terminated.

#### EXCUSED TARDINESS

Employees will be excused for tardiness only in the event that they have written confirmation of one of the below listed reasons for being late. Such written confirmation must be submitted on the tardy day in question in order to be accepted.

- (a) Medical or dental appointments.
- (b) Appointments for the purpose of seeing an attorney or involved in litigation in the court of law.
- (c) On days of severe weather conditions where 25% of the hourly employees of the shift who are scheduled for work are tardy. On such days, all employees so affected will be excused on an across-the-board basis.
- (d) In the event of circumstances which prevent an employee from starting work at the regular time and the department head or his designated assistant can agree to a temporary adjustment of starting time for no less than a period of one (1) week and not more than four (4) consecutive weeks such late starts will not be considered tardy.

NOTE: Tardiness is defined as punching in within 2 1/2 hours of the employee's starting time. Employees punching in after 2 1/2 hours from their starting time will be charged with one-half day of absence.

3. The collective bargaining agreement has no provision for final and binding arbitration and the parties have exhausted the contractual grievance procedure.

4. David Gonzalez was hired by the Company on July 24, 1979 as a Drafter. The position Gonzalez occupied was a part of the collective bargaining unit represented by the Union and covered by the terms and conditions of the collective bargaining agreement in effect between the Union and the Company.

5. Gonzalez regularly worked in the Fittings and Automatic Area working on valves, fittings, Clean in Place Units (C.I.P.'s), and flowverters.

6. Prior to his discharge on September 19, 1985, Gonzalez had been subjected to increasingly more severe disciplinary measures and had received a series of performance evaluations on an annual basis.

7. In a performance evaluation dated July 24, 1983, Gonzalez was rated between "needs improvement", the lowest categorical evaluation, and "average" relative to the standardized performance criteria. The following narrative remarks appear on the evaluation: "not a self starter", "has little self initiative", "seems bored with his job", "frequently occupied by other matters such as reading books & papers not related to work", "he takes much too long to complete jobs", "errors might be a result of his lack of interest in what he is doing", "must be pushed to get information from other areas", "Dave has the ability to do good work but just doesn't care".

8. In an annual interview with Gonzalez, on April 19, 1984 Tom Getschman, Chief Drafter and Laurence Santilli, Assistant Chief Engineer, electrical, both supervisors of Gonzalez advised the man that his work record was poor, he spent too much time on the telephone, too much time reading newspapers, lacked interest in his job, had poor attendance but had improved since being placed on probation, that his ability was better than his performance, that they would work with him to improve and that a big improvement in work performance was expected.

9. In an annual performance appraisal performed on July 24, 1984 using a scale from 0 (marginal) to 10 (superior) Gonzalez was given 1 "0", 3 "1"s, 3 "2"s, and 2 "3"s, with an overall "2" rating; the appraisal is filled with negative remarks relative to Gonzalez lack of creativity, slowness, wasting time, poor performance, and bad attitude.

10. On, or about February 14, 1984 Gonzalez was issued the following memo:

TO: D. Gonzales (sic)

cc: T. Getschman - L. Hammond - L. Santilli - IFPTE

SUBJECT: Disciplinary Warning

Meeting held 2/13/84; present were T. Getschman - K. Deden - D. Gonzales (sic) V. Ruffolo.

The writer began the meeting by indicating that your attendance record as a Tri-Clover employee is not acceptable. Further it was pointed out that currently you had been reporting to work between 10:00 - 10:30 A.M. instead of your regular scheduled starting time of 7:30 A.M. Secondly, you failed to notify your supervisor whenever you were going to report late for work. The writer pointed out that according to your supervisor, T. Getschman, whenever you are absent or tardy and you fail to notify him of your absence or tardiness it causes a disturbance in your department. Further, the writer stated that a couple of months ago the writer and your supervisor had spoken to you concerning the above matter.

The writer concluded the meeting by indicating that your overall attendance record must improve and whenever you are tardy or absent you must notify your supervisor at the beginning of your scheduled shift so he can plan his manpower accordingly. In the event you fail to comply with the above, you will be subject to disciplinary layoff.

11. On or about March 26, 1984 Gonzalez was again subjected to discipline per the following:

TO: D. Gonzales (sic)

cc: R. Zimmerly - L. Santilli - L. Hammond - T. Getschman - IFPTE

SUBJECT: Disciplinary Warning Pending 3 Day Disciplinary Layoff

Meeting held 3/21/84. Present at the meeting were L. Santilli Jim Goudie, K. Deden and the writer.

At the meeting the writer pointed out that you continue to demonstrate an unacceptable work record. Your supervisor informed the writer that when you are absent from work you fail to notify him of your status. This type of attitude causes a hardship on your fellow employees and the company. The writer further stated that you were spoken to several times concerning the above. In addition, you received a letter on 2/14/84 informing you that this type of careless behavior that you are demonstrating is not acceptable.

It was the intention of the company to administer a three (3) day disciplinary layoff at this time. An agreement between your union representative and the company was reached to extend to you a 90 calendar day probationary period in order for you to extremely improve your attendance record beginning 3/22/84 through 6/22/84.

It was again explained to you that whenever you are absent or report late for work you must notify your supervisor of your status at the beginning of your regular starting shift. In the event you fail to do so at any time during the course of this 90-day probationary period, you will immediately receive a three (3) day disciplinary layoff which could lead to the termination of your employment.

V. Ruffolo /s/  
V. Ruffolo

12. Discipline was administered subsequent to a May 7, 1984 meeting per the following:

TO: David A. Gonzalez  
cc: R. Zimmerly, J. Scheibl, L. Santilli, L. Hammond,  
T. Getschman, IFPTE

SUBJECT: Three-Day Disciplinary Lay-Off

Meeting held May 7, 1984, present were Tom Getschman, Jim Goudie, Kathy Deden, David Gonzalez and the writer.

Dear David:

At the meeting the writer pointed out that on May 2, 1984 you had failed to properly notify the company of your status for that day. Therefore, in accordance with the 3-26-84 memo that you received, at this time, a three-day disciplinary lay-off will be administered beginning May 8, 1984 through May 10, 1984. You are expected to return to work at the start of your regularly scheduled shift on Friday, May 11, 1984.

You were again reminded that when you are unavailable for work, you must notify the company of your status at the start of your regularly scheduled shift. Failure to do so will result in a two-week disciplinary lay-off. If thereafter you continue to demonstrate such careless attitude towards your job, your employment will be terminated.

A copy of this letter will be placed in the appropriate personnel file for disciplinary action.

Vince Ruffolo /s/  
Vince Ruffolo  
Assistant Employee Relations Manager

13. Later in 1984 more severe discipline was imposed by the following memo:

TO: D. Gonzales (sic)  
cc: R. Zimmerly, J. Scheibl, L. Santilli, L. Hammond,  
T. Getschman, IFPTE  
FROM: T. Harvey  
SUBJECT: Ten-Day Disciplinary Lay-Off

At the meeting of May 7, 1984, you were given a three day disciplinary lay-off for failing to properly notify the company of your status on May 2, 1984. You have been repeatedly warned and counseled on your attendance and the expectations of the company in this regard.

Since this disciplinary lay-off, you have called in after the start of your regularly scheduled shift 9 times. Three other days you failed to notify the company of your status at all. The company cannot effectively assign the workload when employees whereabouts are unknown and uncertain at the beginning (sic) of a shift.

Further, a review of your attendance record shows that you have had twenty-four (24) half days of absence, two additional days were taken for personal business, and three times you took early outs. This amount of absences is unacceptable (see attached attendance record).

During your last performance review, conducted in July, you were denied any merit raise due to below average competency on your job. There is no evidence that you have improved your job performance level since that time. On 10-19-84 you were assigned the drafting duties for the Teltech CIP (47-324) unit, which you completed on 10-31-84, nine (9) full working days later. The maximum time this job should have taken was four (4) days. Again on 11-5-84 you were assigned a priority job of the Ayert Lab Flow Verter 64-581 which had a deadline of 11-12-84. On 11-7-84 you failed to call in or notify the company of your whereabouts and you failed to show up for work that day resulting in the company having to reassign the work in order to meet the deadline and very little had been accomplished in the two days you had worked on the assignment. The company cannot afford to jeopardize its reputation in the marketplace by breaking delivery dates and promises to customers because of unreliable and incompetent employees.

Therefore, a ten (10) day disciplinary lay-off will be administered beginning November 30, 1984 through December 13, 1984. You are expected to return to work at the start of your regularly scheduled shift on Friday, December 14, 1984. If you continue to demonstrate an unsatisfactory attendance record, continued failure to notify the company of your availability for work status and lack of satisfactory work performance, your employment will be terminated.

A copy of this letter will be placed in the appropriate personnel file for disciplinary action.

Thomas L. Harvey /s/  
Thomas L. Harvey  
Assistant Human Resources Manager

14. Following the disciplinary lay off the Company put Gonzalez on notice of the following:

1-10-85

TO: J. Scheibl, L. Hammond

cc: L. Santilli, T. Getschman, K. Deden, D. Gonzales (sic) I.F.P.T.E.

FROM: T. Harvey

SUBJECT: Clarification of D. Gonzale's (sic) Disciplinary Letter Dated 11-29-84

A meeting was called with the following people present: L. Santilli, T. Getschman, K. Deden, D. Gonzales (sic) and T. Harvey.

I explained to D. Gonzales (sic) that if he has three occurrences of absences and/or tardiness without calling in prior to the beginning of the shift (before 7:30 A.M.) within the next sixty calendar days (beginning 1-2-84) he will be terminated.

After six months, during the month of July, I will review D. Gonzales's (sic) attendance record. If at that time, sufficient progress has been made, D. Gonzales (sic) will go back one step in the disciplinary procedure, which is a two week layoff. In January of 1986, the attendance record will be reviewed and if it is determined to be satisfactory, the disciplinary letter of 11-29-84 will be revoked for purposes of the disciplinary procedure.

Further, while being at work on time is important to the company, it is just as important that once here the employee works at his job assignment. D. Gonzales (sic) was told to ask questions of his supervisors if he did not understand how to complete job assignments. D. Gonzales (sic) is also to inform his supervisor immediately if he is not going to be able to complete a job within the supervisor's (sic) reasonable expectation. I told D. Gonzales (sic) that the company expected that he should be progressing as a drafter with additional experience. I expected that his next performance review would show dramatic improvement, especially in regard to his work attitude.

I concluded the meeting by asking D. Gonzales (sic) if he understood what the company's expectations are for him and did he have any questions. D. Gonzales (sic) indicated that he understood and did not have any questions. I asked his union representative if she had any questions or comments. She said she understood.

Thomas L. Harvey /s/  
Thomas L. Harvey  
Asst. Human Resources Manager

15. Following issuance of the January 10, 1985 memorandum, Company officials reviewed the timeliness with which Gonzalez completed projects, his work habits, his attendance and punctuality and it was determined that Gonzalez was to be terminated.

16. On or about July 11, 1985 a meeting was convened involving Company and Union officials and Gonzalez for the purpose of suspending him with intent to terminate. At that meeting Gonzalez advised the Company that he was an alcoholic, whereupon the termination proceedings were suspended.

17. Gonzalez filed the following grievance relative to the pending disciplinary action:

Employee's statement I feel that the disciplinary action taken against me by the Company in the past and present are acts of discrimination and harassment.

1. No other employee has received any time off for not calling in before their shift.
2. There are other employees with worse records than mine, who are not getting harassed or any disciplinary action taken against them.
3. There is nothing in the contract that states anything about calling in late procedures.
4. The Company is expecting performance from me that they do not expect from the other employee's (sic) in the plant. I feel that this threat of termination is unjustified and unwarranted and that I should be reimbursed for any lost wages due too (sic) these acts of discrimination and harassment by management.

Employee's signature David A. Gonzalez /s/ Date 7/11/85

18. Gonzalez was permitted to return to work per the following memo:

TO: D. Gonzalez

cc: R. Zimmerly, L. Santilli, L. Hammond,  
T. Getschman, T. Harvey, I.F.P.T.E.

FROM: J. Scheibl

SUBJECT: Return to Work From Suspension Under Article V,  
Paragraph 13

On July 11, 1985, you were advised by T. Harvey of the Personnel Department that you were suspended with the intent to terminate under the provisions of Article V, Paragraph 13 of the Labor Management Agreement. Based upon an understanding which has been reached with you and your representatives from the I.F.P.T.E. Bargaining committee, you will be permitted to return to work under the terms and conditions spelled out below.

The disciplinary action taken by the company follows a series of progressive disciplinary measures which have been taken beginning on 2-13-84, and resulting in disciplinary layoff of three days on May 7, 1984, and ten days on Novemembr 29, 1984. As noted in the ten-day disciplinary layoff notice, you have had an unsatisfactory attendance record, have continuously failed to notify the company of you availability for work, and have had an unsatisfactory work performance. You have stated at the meeting on July 11, 1985, that these deficiencies were a result of an alcohol problem.

Arrangements have been made for you to meet with a staff member from the Drug and Alcohol Council. You will be expected to follow the program which is prescribed by the Council. In addition, upon your return to work, you will be expected to exhibit an exemplary attendance record, to notify the company by the beginning of the shift if you must be tardy or absent and the reasons therefore, and to improve your work performance and attitude to a satisfactory level. Should you fail to comply with the program which is set forth by the Drug and Alcohol Council or to comply with the requirements with



reference to your attendance and work performance, your employment will be terminated.

A copy of this letter will be placed in the appropriate Personnel file.

J. Scheibl /s/  
J. Scheibl  
Director of Human Resources

19. Lawrence Hammond, Labor Counsel for the Company confirmed Gonzalez' status by the following memos issued July 24, 1985:

TO: I.F.P.T.E.

cc: H. Mayer, J. Scheibl, R. Zimmerly, L. Santilli,  
T. Getschman, T. Harvey

SUBJECT: Grievance filed 7-11-85 by D. Gonzalez - Re:  
Disciplinary Action

RESPONSE: The grievant's status with the company has been settled through an understanding between the grievant, the I.F.P.T.E. Bargaining Committee, and the company at a meeting held Thursday, July 18, 1985. In addition, it is agreed that the grievant's supervisor will review his work record to identify specific deficiencies and clarify expectations for the grievant's future work performance.

20. James Goudie, Chairman of the Union bargaining committee, responded to Hammond's memo with the following:

Aug. 5, 1985

TO: J. Scheibl, L. Hammond

cc: L. Santilli, T. Getschman, T. Harvey

SUBJECT: Non-acceptance of Management's third step grievance

RESPONSE: Although the grievant's status with the Company may have been settled, and his supervisor has reviewed his work record, identified specific deficiencies, and clarified expectations of the grievant's future work performance, Management has not addressed the 4 points brought forward in the grievance.

21. The grievance was not pursued further.

22. Gonzalez actually returned to work on July 19, 1985. On July 24 he met with Getschman and Santilli relative to his work performance and expectations the Company had. Beginning Thursday, July 25, and every Thursday through the date of his discharge Gonzalez was released early to attend, and did attend, meetings of the Alcohol and Drug Council.

23. In early August, 1985 the Company received a drafting job involving a Clean In Place (CIP) unit from the Upjohn Company, a large and important customer. Thomas Getschman was on vacation from August 8-17. In Getschman's absence, Larry Santilli assigned the Upjohn project to senior draftsman Bob Woods. Woods was given the assignment on or about August 12. Woods was not particularly experienced with C.I.P. units but was an experienced and senior draftsman. Santilli directed Woods to complete the assignment by August 28.

24. Shortly after Labor day Getschman became aware of the fact that the Upjohn C.I.P unit was not complete. On September 10 Getschman took the unit from Woods and discovered that it was drawn improperly.

25. On Tuesday, September 10 Getschman reassigned the C.I.P. unit to Gonzalez, told Gonzalez that the unit was a priority job and was needed by Friday, September 13. Getschman assigned the unit to Gonzalez because Gonzalez had done more C.I.P units than anyone else. Gonzalez advised Getschman that he could not complete the project by Friday.

26. Woods had drawn the C.I.P. unit backward and had removed and/or disposed of the information necessary to draw the unit. Woods was "talked to", or given an oral reprimand by Getschman for his work performance on the unit.

27. Gonzalez talked with Jan Tackett, the Engineer in charge of the project and asked about proceeding on the project; Tackett expressed a preference for a new drawing as opposed to attempts to rehabilitate the Woods' drawing.

28. Gonzalez met with Paula Deeder, a senior draftsman who spent 1/2 day assisting Gonzalez in gathering the background information necessary to begin work on the unit. This information had previously been supplied to Woods but was no longer with the drawing.

29. Gonzalez drew a series of sketches on scrap paper and began to draft the C.I.P. unit. He met with Tackett on either September 11 or 12 and advised her that he was not going to make it. She replied "well, do the best with the job. To get it, something presentable; and just get it done as soon as I could."

30. Gonzalez left work early on Thursday, September 12 to attend the weekly meeting of the Alcohol and Drug Council. He played poker that night and following the game experienced difficulty going to sleep. The next morning, Friday, September 13 he overslept.

31. When he awoke on Friday morning Gonzalez contacted Jim Goudie, who advised him to promptly call his supervisor. Gonzalez called in at 10:25 a.m. and talked with Getschman. Gonzalez advised Getschman that he had overslept and that he had not been drinking. Gonzalez asked for a floating holiday which request Getschman denied. Gonzalez arrived at work at 10:52 A.M. The men did not discuss the Upjohn job.

32. At 9:15 A.M. on the morning of Friday, September 13 Getschman went to Gonzalez work area. He took the unfinished blueprint off Gonzalez desk and photocopied it.

33. Gonzalez finished the Upjohn C.I.P. on Monday, September 16 or Tuesday, September 17. Prior to the time of his discharge no one indicated that he would be subject to discipline for his conduct of September 13.

34. Thomas Harvey is an Assistant Human Resources Manager for the Company. Harvey investigated the facts underlying the Gonzalez' discharge. Harvey first became aware of the incident on Friday morning. He called Jim Goudie and advised Goudie that he was going to investigate Gonzalez' failure to call in. As a part of his investigation Harvey talked with Getschman, who was not available on Monday, September 16. He also talked with Tackett, who was unavailable on either Monday, September 16 or Tuesday, September 17. Harvey did not talk with Gonzalez during his investigation. Upon completion of his investigation Harvey reviewed his findings with Jim Scheibl and set a meeting for Thursday, September 19.

35. On Thursday, September 19 Harvey presided over a meeting involving Goudie, Deden, Getschman, and himself where Gonzalez was suspended pending termination. Harvey summarized the meeting by the following memo:

9-19-85

TO: L. Hammond/ J. Scheibl

cc: Getschman

FROM: T. Harvey

SUBJECT: Disciplinary meeting on D. Gonzales (sic) 9-19-85

A meeting was held on 9-19-85 with D. Gonzales (sic), J. Goudie, P. Deden, T. Getschman, and the writer in the Personnel Conference Room.

At this meeting I asked D. Gonzales (sic) why he did not notify the company of his whereabouts until 10:25 A.M. on 9-13-85. D. Gonzales (sic) stated that he had overslept and called when he awoke. He also mentioned that he had been playing cards the night before, but he was not drinking.

I again pointed out to D. Gonzales (sic) that he has been previously warned about his attendance and poor workmanship. Also that he was currently under a disciplinary letter for the same thing. At the conclusion of the meeting, I suspended him for 5 days pending discharge.

Thomas L. Harvey/s/  
Thomas L. Harvey

36. The Company has promulgated a policy requiring employes who will be absent or tardy to call in prior to the start of the work shift involved. The Union objected to that policy, and the parties had no negotiated absenteeism and early out program.

In light of the foregoing Findings of Fact, the Examiner makes and issues the following Conclusions of Law.

#### CONCLUSIONS OF LAW

1. The International Federation of Professional and Technical Engineers, Local 92, AFL-CIO is a representative within the meaning of Sec. 111.02(11) Wis. Stats.

2. Ladish Company, Inc., Tri-Clover Division, is an employer within the meaning of Sec. 111.02(7), Wis. Stats.

3. That by terminating David Gonzalez the Employer did not breach the terms of the collective bargaining agreement between the parties and therefore did not violate Sec. 111.06(1)(f) Wis. Stats.

Based upon the foregoing Findings of Fact, and Conclusions of Law, the Examiner makes and issues the following

#### ORDER 1/

That the complaint is dismissed.

Dated at Madison, Wisconsin this 23rd day of July, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By William C. Houlihan  
William C. Houlihan, 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

(Footnote 1 continued on Page 12)

(Footnote 1 continued)

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.

LADISH CO. INC., TRI-CLOVER DIVISION

MEMORANDUM ACCOMPANYING  
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

POSITIONS OF THE PARTIES

Complainant Union believes that Gonzalez has been made the scapegoat for the Company's failure to properly handle the Upjob job. The Union notes that Woods had the project for a month, made a mess of it, and that an alarmed management then sought to have Gonzalez do the same job in three and one-half days. The Union contends that the only incident which occurred between Gonzalez July reinstatement and his termination was the single occasion when he overslept and reported late. The Union points out that there is no agreed upon requirement that an employe who will be tardy call in, and further that an employe who oversleeps is unable to call in prior to the start of his shift.

Complainant Union contends that the single tardiness, by itself, is an inadequate basis for the discharge. Complainant Union points to the attendance records of two other employes (Engdahl and Johnson) and alleges that they have similar attendance records and have not been subjected to discipline. Discriminatory treatment is alleged.

The Union contends that Gonzalez prior work record was attributable to alcoholism. The man has stopped drinking and did what he was asked to do relative to counseling. The Union regards his termination at this point as totally unjust.

Finally, the Union argues that the discharge procedure itself was so flawed as to require reinstatement, Gonzalez was allowed to work for several days after Friday the 13th. No one advised him that he was being subjected to discipline. No one told him about the fact that Getschman had photocopied his blueprint and was considering it as evidence that Gonzalez had done little or no work immediately prior to Friday. The Union contends that Gonzalez was denied an opportunity to meaningfully point to other sketches that demonstrated work having been performed as well as an explanation of what work was required to get to the blueprint.

It is the view of Respondent Company that it followed a deliberate, gradual, and progressive disciplinary procedure. The Company points to the Complainant's disciplinary record and argues that this is not a case where the Company has acted precipitously. The Company regards comparisons between Woods and Gonzalez as inappropriate because it regards Gonzalez conduct as more serious. The drawing, and amount of effort put forth by the grievant, were discussed at the September 19 meeting. The Company points to a number of instances of work rule infractions and slow production and says that its tolerance has been exhausted. Much was overlooked until the Company believed it had to act.

The Company denies that it has acted in a discriminatory fashion. Engdahl is an employe of long and distinguished service with the Company who has experienced personal problems as he approaches retirement. The Company has warned him twice about calling in but feels that he is owed some deference due to his lengthy service and approaching retirement. With respect to Johnson the Company proceeded to discipline him pursuant to the agreement for his tardiness. Johnson had failed to call in on a number of occasions but his tardiness occurrences were all less than 5 minutes.

The Company believes that its rule that an employe must call in if tardy is reasonable despite the objection of the Union. The fact that Gonzalez had an alcohol problem does not, in the view of the Company insulate him from discipline. He was not disciplined for his drinking problems.

DISCUSSION

The heart of this dispute centers on the parties opposing views as to Gonzalez' status following his July reinstatement. The Company viewed the man as a marginal employe whose performance warranted termination in July. In the Company's eyes the man was given one last chance and failed. In the eyes of the

Union this case involves a man whose troubled work history was a by-product of his alcohol abuse. Except for the single incident of September 13 Gonzalez was the exemplary employe he was asked to be. To the Union the non-drinking Gonzalez was in essence, a new man who was terminated for a single tardiness. I don't believe the other contentions raised to be determinative.

The Union has alleged that Gonzalez is the victim of disparate and/or discriminatory treatment when compared to others. Specifically, Woods, Johnson and Engdahl are held up as examples of employes who were treated far more leniently for their transgressions than was Gonzalez. Woods took far too long to complete the project and evidently drew the unit backwards. It also appears that he discarded resource material but the Company was unaware of that fact. Woods was given an oral reprimand. There is nothing in the record to suggest that Woods had a prior disciplinary record. At the time Woods was given the assignment it was not regarded as an urgent job. It is the very fact that Woods was unable to do the job that created the emergency condition. There are a number of record references to assignments that took Gonzalez much longer than projected to perform with no indication that he was seriously disciplined for exceeding the projected completion period.

Woods also did the job wrong. The C.I.P. unit was an area that Woods was not experienced in. However, he was expected to be capable of handling that type of job and was given a reprimand for his handling of the unit. As previously noted the Company has a progressive discipline system and it is not uncommon for initial forms of discipline to come in the form of reprimand.

It appears that Engdahl had a tardiness record that parallels Gonzalez. Engdahl was not suspended. Engdahl was an employe who had lengthy service with the Company and was near retirement. It appears that the company has foregone attempts to discipline Engdahl in a way that would lead to lost wages or termination. The Company explains its actions by pointing to Engdahl's years of service and approaching retirement and conceded a degree of deference. It seems to me that the purpose of progressively more severe applications of discipline is to pressure the employe in question to modify the undesirable behavior. That fundamental purpose is lost when directed at an employe who is about to retire. Similarly, terminating an employe of long service shortly before he is to retire seems to me to be an enormously draconian measure warranted only by extreme facts. I do not think that Gonzalez and Engdahl can be equated.

Johnson was disciplined pursuant to Article XXII for his tardiness. Johnson did not call in prior to his tardy days but the majority of his tardinesses were for periods under five minutes. Gonzalez was 3 1/2 hours late on September 13.

I do not believe that the record supports a finding of disparate treatment.

I think it is accurate to conclude that as of July 16, 1985 Gonzalez had a totally unsatisfactory work record going back at least two years. His annual evaluations of July 1983, April, 1984, and July, 1984 are poor. Beginning in February of 1984 and continuing through July of 1985, Gonzalez was disciplined repeatedly and given lengthy suspensions. Memos accompanying the suspensions point to the same deficiencies repeatedly. Gonzalez was warned that he would be discharged. The evaluations and disciplinary history paint a picture of a grossly inadequate employe. Neither the evaluations nor the discipline was grieved. No explanation for the failure of Gonzalez to grieve these measures is offered. I believe the only logical inference to be drawn is that Gonzalez and the Union believed the evaluations and discipline were warranted.

Gonzalez did initiate a grievance following the July discipline. He wanted the matter pursued but ultimately it was not pursued. Scheibl's July 16 letter reinstating Gonzalez employment sets forth the Company's position on Gonzalez' status. It specifically warns him that he will be terminated if he fails to follow the program of the Alcohol and Drug Council, fails to exhibit an exemplary attendance record, to notify the Company if he will be absent or tardy, fails to improve his work performance and attitude. Hammond's confirming memo to the Union describes Gonzalez' status as "settled through an understanding between the grievant, the I.F.P.T.E. Bargaining Committee, and the Company . . ." Goudie's responsive memo of August 5 rejects Hammonds memo but acknowledges that Gonzalez' status with the Company has been settled. It makes reference to Gonzalez' grievance but denies nothing in Scheibl's memo. Gonzalez' grievance was not pursued.

It is without doubt that the Union was contesting the right of the Company to require an employe to call in prior to being absent or tardy. It went on record as being dissatisfied with the Company's answer to the grievance. However, by not pursuing the matter further, the clear and foreseeable outcome was to have Gonzalez under scrutiny to perform at an acceptable level. Scheibl's memo makes it graphically clear that that is the understanding of the Company. From the Company's point of view, that status is understandable in light of Gonzalez' work history.

I believe Scheibl's memo also reflects the Union's understanding of the July 18 meeting. If it was an inaccurate summary of the understandings reached someone should have pointed out the errors or misunderstandings. Instead the Union memo uses "settled" to describe Gonzalez' status. Gonzalez suffered yet another suspension. Had the Union regarded the suspension as having violated the agreement it could have pursued the matter further. The fact that it did not do so is further evidence that Scheibl's memo reflects an "agreement" between all involved.

The record reflects that Gonzalez stopped drinking after the incident and regularly attended the Thursday meetings of the Alcohol and Drug Council. He was provided early release from work to attend those meetings. The record further reflects that Gonzalez came to work promptly from July 19 to the September 13 incident. He had evidently regained sufficient control over his life that he was able to get to work as expected.

Gonzalez was given a short period of time to produce the CIP unit drawing. The Company, through testimony of Getschman, claims he had an adequate amount of time. The Union, through the testimony of Gonzalez and Deeden, claims the allocated time was simply inadequate. From this record there is no way for me to determine whether Gonzalez had enough time or not.

From the testimony of Gonzalez and Deeden it appears that Gonzalez applied himself to the assigned work, gathering materials and information, drawing sketches and doing calculations, and beginning his blueprint. Getschman photocopied the blueprint on Friday morning and regarded it as the product of no more than two hours work. Getschman relied upon his 25 years experience to arrive at his conclusion in this regard. He did not speak with Gonzalez. I am sure that Getschman's experience is such that he has a functional knowledge as to what goes into a blueprint. However, as the Union points out, had he or someone else gone to Gonzalez prior to the decision to discharge and confronted the man with the blueprint it is possible that Gonzalez would have explained what he had done. Whether that explanation would have proven satisfactory is speculative.

I believe that the Company regarded the incident of Friday, September 13 as the final straw. The background and circumstances of the incident served to exacerbate the matter. From the point of view of the Company, Gonzalez had been disciplined and warned numerous times. He had been given a last minute reprieve from termination in July and directed to straighten out his attendance and work habits upon pain of termination. Gonzalez was then given a job that everyone understood to be both important and urgent. Against this backdrop the man overslept, called in three hours late, asked for the day off, and ultimately arrived 3 1/2 hours late.

The Union regards the two month period preceding discharge as a transition period during which Gonzalez had successfully cleansed himself of his alcohol induced past. This view is of a new Gonzalez who has been terminated for a single incident. I don't argue with this view. Gonzalez had a terrible work record

for a man whose job was in jeopardy partly because of his repeated tardiness. When he awoke, Gonzalez knew he was in trouble. His first call was to Goudie. Goudie confirmed that he was in trouble and directed him to immediately call his supervisor. This is consistent with my view that all parties understood that Gonzalez' status was tenuous. When Gonzalez talked with Getschman he asked for the day off. While this may have been done in an effort to avoid an absence or tardiness, it was done on the deadline day of an important order which Gonzalez knew was sitting incompleated on his desk.

The Company decided it would tolerate Gonzalez no longer. While this decision to terminate came on the heels of a 60 day period in which Gonzalez had been faithfully punctual it was occasioned by a 3 1/2 hour tardiness (absence) at a critical time. It was the Company's view that the man would never straighten out and I believe that under the circumstances the Company was entitled to make that decision.

The Union attacks the discharge procedurally. It claims that Getschman should have permitted Gonzalez an opportunity to explain why there was only 2 hours worth of work reflected on the blueprint. I agree with that and this decision is not predicated on the quantity of work performed by Gonzalez between Tuesday and Friday. The Union complains that Gonzalez was allowed to work Friday and Monday - Wednesday of the following week without being told he would be disciplined. I agree that he should have been told that he might be subject to discipline. However, I do not believe he suffered any adverse consequence by not being so advised. The Company explains the delay by outlining the investigation conducted which required the input of various people. It took a number of days to talk with those people. While it is unfortunate that it required several days to do the investigation the Union would have been far more incensed by a discharge meted out without an investigation.

In summary, I believe the Company was in a position to terminate Gonzalez in July. By exercising forbearance it did not expunge Gonzalez prior work record. While I believe that Gonzalez' status may have changed as time passed that was not the case after 60 days.

Dated at Madison, Wisconsin this 23rd day of July, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSISON

By William C. Houlihan  
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