STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

CARL W. RADY,

Petitioner, Case No. 143-316

vs.

STATE OF WISCONSIN PERSONNEL BOARD,

MEMORANDUM DECISION

Respondent.

BEFORE: HON. GEORGE R. CURRIE, Reserve Circuit Judge

This is a proceeding under ch. 227, Stats., to review a decision of respondent board dated June 29, 1974 which sustained the action of the Secretary of the Department of Transportation with respect to a three day suspension of the petitioner Rady for the days of May 8, 9 and 10, 1973, and the discharge of petitioner on June 25, 1973.

In November 1969 petitioner commenced his employment in the District 2 office of the Division of Highways, Department of Transportation, in the City of Waukesha. On April 26, 1973, he was transferred to the design unit supervised by Frederick J. Smith, an engineer who had been with the Division of Highways since 1951. Petitioner's classification was that of Engineering Technician II. An altercation took place between petitioner and Smith on the afternoon of May 2, 1973, growing out of petitioner having left the design unit without first obtaining Smith's permission and it was petitioner's conduct in this altercation for which he received the three day suspension. On May 22, 1973, at petitioner's request he was granted a leave of absence to work out some personal problems, which leave of absence consumed the major portion of the time between then and the events of June 25, 1973.

On the morning of June 25, 1973, petitioner walked off the job and left the place of his employment after first having written a letter to Robert T. Huber, Chairman of the Highway Commission, explaining his reasons for so doing, a copy of which petitioner placed in channels in the District 2 office so it reached T. R. Kinsey, District Engineer, who was in charge of such district, shortly after petitioner had left the premises. Kinsey discharged petitioner that same day after first contacting Garry F. Hausen, president of Local 1737, State Employees Union District, such Union being the collective bargaining agent which had negotiated the collective bargaining contract which then existed between the State and the Union covering the employees of the Department of Transportation.

Petitioner appealed his discharge to the State of Wisconsin Personnel Board. A hearing was held on such appeal on November 14 and 15, 1973, before Chairman Ahrens and Member Brecher sitting as hearing officers, the transcript of which hearing is 273 pages in length. In addition to the testimony of witnesses set forth therein, numerous exhibits are attached which were received in evidence.

After the respondent board's decision sustaining petitioner's suspension and discharge the petitioner timely instituted the instant review proceeding in this court.

THE ISSUES TO BE RESOLVED

The following issues have been raised by petitioner in its brief and at the hearing before the Court:

(1) The board's decision is unsupported by substantial evidence in view of the entire record as submitted.

(2) The board's decision was arbitrary and capricious.

(3) The petitioner was denied a fair hearing.

(4) The board failed to comply with the procedural requirements of secs. 227.12 and 227.13, Stats.

The Court will not pass on the issue of whether the board failed to comply with the procedural requirements of secs. 227.12 and 227.13, Stats., because such issue is not raised by any of the allegations of the petition for review. If there was any failure to comply with such statutes it did not rise to a denial of due process.

The certificate of the reporter attached to the transcript shows that the testimony had been transcribed by December 18, 1973, so presumably the transcript was available to be read by the five members of the board for a period of six months preceding the date of its decision. There is a presumption of regularity that attaches to decisions of administrative agencies. Wright v. Industrial Comm. (1960), 10 Wis. 2d 653, 662. Under this presumption it will be presumed that the board members who did not attend the hearing performed their duty and read the transcript.

The decision of the board contains findings of fact which are adequate to meet any requirement of due process although not set forth in any formalized format.

WHETHER BOARD'S DECISION IS SUPPORTED BY CREDIBLE EVIDENCE IN VIEW OF THE ENTIRE RECORD AS SUBMITTED

Sec. 16.28(1), Stats., provides that an employee such as petitioner may be removed or suspended without pay for "just cause".

With respect to petitioner's conduct on May 2, 1973, which led to his three day suspension, there was a sharp conflict between petitioner's and Smith's testimony as to what had occurred in several material areas although petitioner admitted he did call Smith a "big mouth." Smith wrote a "Memorandum to the File" (Respondent's Exhibit #1) wherein he set forth what had occurred. The board in its decision specifically found the assertions contained in this memorandum to be true. Smith's memorandum reads as follows:

"On May 2nd, 1973, Mr. Carl Rady, who is assigned to my supervision, noticed that I keep a personal diary. He asked me if I record the coming and going of all employees. I told him that I didn't feel obliged to answer that question. He then asked if he could use company time to write a record of his own. I told him that I expected 8 hours of effort from him (exclusive of two 15-minute coffee breaks) and that, when on his own time, he could write all the books he wanted to.

"Mr. Rady took exception to my attitude and followed me from my office to the rear of my room and exclaimed rather loudly that I was a wise guy and had a big mouth. Several employees heard him. I told him to return to his desk. He informed me that it was the coffee-break period (2:40 P.M.). It is to be noted that Mr. Rady was absent from his desk without my permission since approximately 2:15 P.M. I told him that, in my opinion, he had already used up his coffee break. While making an obscene gesture with his finger, he said to me, 'Screw you'.

"I have never been addressed in this manner by an employee under my supervision since being appointed a supervisor in 1958. I cannot accept this type of abuse, because it will seriously undermine my control and discipline of the 28 men assigned to me at this time. I consider this to be an act of gross insubordination by Mr. Rady.

"I hereby submit that I will not tolerate this type of emotional outburst from Mr. Rady. Should he verbally abuse me again in the presence of my other employees, I will discharge him.

"Mr. Rady insisted that he be given permission immediately to see his union steward to further discuss this situation. It was now 2:45 P.M. (end of coffee break). I felt that there had already been sufficient discussion of this matter and suggested to Mr. Rady that it was his prerogative to prepare and submit a written statement which I would then process in the usual manner.

"I suggest that Mr. Rady receive a copy of this memo."

The facts stated in the above quoted memorandum are sufficient to support the board's finding that the action in suspending petitioner for three days "was for just cause". The credibility of Smith and petitioner was for the board to determine. Outside of the testimony of these two witnesses there were no other facts brought out in evidence which would have required an opposite finding by the board.

Turning to the discharge, the evidence is that petitioner walked off the job early on the morning of June 25, 1973, without permission

of any supervisor and without informing his supervisors. His explanation for this conduct is set forth in his letter of June 24, 1973, to Huber, a copy of which reached Kinsey shortly after petitioner left the employment premises that morning. This letter (Appellant's Exhibit #4) reads as follows:

"June 24, 1973

"State of Wisconsin
Dept. of Transportation
Hill Farms State Office Bldg.
Madison, Wis. 53702

Attention: Mr. Robert T. Huber, Chairman, Highway Comm.

Dear Mr. Huber:

I, Carl W. Rady, employee of the Department of Transportation, Division of Highways, District 2, Waukesha, shall and will leave my work station on the A.M. of Monday, June 25, 1973, deliberately and with full intent to challenge the management of the Division of Highways, District 2, and their superiors for their lack of maintaining the INTEGRITY, the DIGNITY, the DECORUM, and RESPONSIBILITY, their neglectful treatment of our state citizens, and in their failure in the keeping of public trust.

I shall return to my work station only under the following conditions:

1. That your office will assure me that deliberate, positive and immediate steps to investigate in depth the charges made; and that the investigation be made by a person or persons unattached and unbiased to the actions of the Division of Highways. (To request Mr. Roslak and Mr. Kane to look into the matter is like asking two hungry cats to babysit for a plump, fat mouse.)

2. By a direct written order from the proper agency that I must return to my work station, with the full understanding that immediate investigation of this matter will be made.

3. By a direct written order from the Wisconsin State Employee's Union per Article XIII -- Section 1 -- Item 119, with the full understanding that immediate investigation of this matter will be made.

This is not a voluntary termination. This is a deliberate and positive move on my part to challenge the management of District 2 and its superiors for their failings to perform their functions properly with dignity, integrity and trust.

Very truly yours,

"Carl W. Rady

cc: Rep. John Alberts
G. Hausen
J. Roslak
T. R. Kinsey"

The three people in addition to Kinsey indicated as having been sent copies were the member of the State Assembly in whose district petitioner resided, the president of the State Employees Union Local, and the Director of Personnel Management for the Department of Transportation. The Mr. Kane referred to in the letter is Ralph Kane, then Chief of Employment Relations for the Department of Transportation.

The testimony brought out that there were two areas of policy pursued or lack of action taken thereon by his superiors in District 2 which particularly disturbed petitioner. One had to do with an environmental problem and the other related to the taping of meetings held with citizen groups to discuss highway problems.

The environmental problem had principally to do with injury to a fish spawning bed or beds on Salsich Creek as a result of United States District Judge Doyle having ordered construction work to stop on Highway 16. In March, 1973, petitioner had taken this matter up with Representative Alberts and had written Huber with regard to it. Huber immediately investigated the matter and ordered corrective measures to be taken. This would indicate that there must have been merit to petitioner's complaint.

The evidence with respect to taping and recording meetings of citizens with representatives of District 2 was that this was done by having the microphone in view where it could be seen, but no announcement was made of such taping and recording being done. Petitioner deemed this was unethical in that the citizens were not told that what they said was being recorded. Petitioner referred to two incidents when this

occurred. One occurred back in 1970 and the other apparently had occurred in 1973.

It was petitioner's position at the hearing before Chairman Ahrens and Member Brecher that his supervisors resented his protests with respect to the environmental matter and the taping of meetings and had conspired to get rid of him. He attributed his frequent transfers and being sent out on a field assignment in spite of the fact that he had a heart condition to this alleged conspiracy to force him out of his job. On this review it is claimed that this is what underlay his prompt discharge upon him engaging in his one man "wild-cat strike" on June 25, 1973. No direct evidence was adduced that such a conspiracy existed so any proof thereof rests on inferences drawn from other evidence. The board in its findings in its decision rejected that this was the motive which prompted Kinsey in discharging petitioner and pointed to the action of Kinsey in granting petitioner's recent request for a fairly long leave of absence as being inconsistent with any cabal of his superiors to terminate his employment.

Petitioner's counsel brought out at the hearing that the department prior to petitioner's discharge had not notified the Union by certified mail that petitioner was engaged in "strike activity" as provided in paragraph 119 of Section 1, Article XIII, of the collective bargaining agreement (Respondent's Exhibit #10) which provides:

> "When the Employer notifies the Union by certified mail that any of its members are engaged in any such strike activity, the Union shall immediately, in writing, order such employees to return to work, provide the Employer with a copy of such order by certified mail within 24 hours of receipt of the notification from the Employer, and a responsible officer of the Union shall publicly order the striking employees to discontinue such conduct through the medium of local newspapers and/or local radio. Failure of the Union to take such action shall be considered in determining whether or not the Union caused or authorized, directly or indirectly, the strike. This clause is not subject to the arbitration provisions of this Agreement but shall be enforced by the ordinary processes of law."

Petitioner contends that it was mandatory that the department have given the Union the notice specified in the above quoted paragraph of the collective bargaining agreement. There is no merit to such contention. As worded, it was entirely optional with the department whether to give such certified mail notice to the Union. The second sentence of the paragraph makes it clear that the notice was not intended for the benefit of striking employees but in order to place responsibility upon the Union for the unauthorized strike if, after receiving the notice, it did not order the striking employees back to work. This was corroborated by the testimony of Kane. Kinsey prior to the discharge did call in Hausen, president of the Union local, and inform him of the facts and Hausen telephoned petitioner and advised him to return to work.

Paragraph 118 of Section 1, Article XIII, of the collective bargaining agreement provides that the department has the right to deal with any unauthorized strike by imposing discipline including discharge or suspension without pay of any employee participating in any unauthorized strike.

The Court determines that the board's decision sustaining petitioner's discharge is supported by credible evidence in view of the entire record as submitted.

WHETHER THE BOARD'S DECISION WAS ARBITRARY AND CAPRICIOUS AND WHETHER PETITIONER WAS DENIED A FAIR HEARING

The argument presented by petitioner's counsel on the issue of whether the board's decision was arbitrary or capricious was so intertwined with the issue of a denial of a fair hearing that the two issues will be considered together.

In Sailer v. Wisconsin R. E. Broker's Board (1958), 5 Wis. 2d 344, 350-351, it was held that, where there was no attempt to establish that the discipline imposed was a more severe penalty than was being

exacted by the respondent board for similar offenses, such discipline was not arbitrary or capricious within the meaning of sec. 227.20 (1)(e), Stats. However, in the later case of Lewis Realty v. Wisconsin R. E. Broker's Board (1959), 6 Wis. 2d 99, 125, this holding was modified with respect to the statutory word "arbitrary", and it was held that "penalties which are imposed by administrative agencies that are so harsh as to shock the conscience of the court, constitute 'arbitrary' action within the meaning of such statute [sec. 227.20(1)(e)]." Thus while the meaning of the word "arbitrary" was newly defined in the Lewis Realty decision, the word "capricious" still retains the meaning in discipline cases ascribed to it in the Sailer case, viz., that the discipline imposed on the petitioner was harsher than imposed on others for similar infractions.

Here there was no attempt made to show that the discipline imposed against petitioner was more severe than that imposed upon other department employees for similar infractions. Furthermore, the imposition of the discipline of suspension and then discharge of petitioner does not shock the conscience of the Court. In stating this, the Court does not question the sincerity of petitioner in going on his "wildcat" strike in an attempt to secure consideration of what he considered to be legitimate grievances. However, what he did was a serious breach of his duties as an employee. It is the conclusion of the Court that the board's decision was neither arbitrary nor capricious.

A denial of a fair hearing would constitute a denial of due process. State ex rel. Bell v. McPhee (1959), 6 Wis. 2d 190, 199; State ex rel. Madison Airport Co. v. Wrabetz (1939), 231 Wis. 147, 153. The Court has carefully read the 273 pages of the transcript and finds no merit to the contention that petitioner was denied a fair hearing. Chairman Ahrens's rulings on evidence were judicious and on the whole as favorable

to the petitioner as to the employer.

At the hearing before this Court counsel for petitioner cited statements and rulings of Chairman Ahrens set forth at particular pages of the transcript as showing the unfairness of which petitioner complains. These transcript page references were to pages 17, 87, 187, 194-195, 225-226, 243-244, and 248. They will be considered seriatim as follows:

At page 17

Smith was the witness on the stand and counsel for the department offered in evidence Smith's "Memorandum to the File" (Respondent's Exhibit #1). Counsel for petitioner stated ". . . I would request the Board to reserve it until I have had an opportunity to cross-examine. Well, we'll waive any objection to its entry into evidence but reserve the right to cross examine on it." Then this transpired:

> "CHAIRMAN AHRENS: All right, it will be received in evidence.
>
> (Respondent's Exhibit No. 1 received into evidence)
>
> CHAIRMAN AHRENS: This is an administrative body. We're going to be much more informal than a court.
>
> MR. CAHILL: I realize that.
>
> CHAIRMAN AHRENS: And we may admit things subject to objection because the Board really has to determine the probative value of these things, and you can sit here arguing a half an hour and the Board can read the thing and determine whether it has any value in just a moment.
>
> So, we're a little more inclined to accept things into the record because, subject to the objection, and decide for ourselves because---And we can do that because we're an administrative body."

The Court can perceive nothing unfair in these statements by Chairman Ahrens, nor did they constitute the commission of error.

At page 87

The questioning of Smith as a witness had ended and counsel for the department stated he would like to proceed to the discharge, and

certain facts brought out in Smith's testimony "were not factors in any way in the discharge." Then this transpired:

> "CHAIRMAN AHRENS: Is that referred to in the letter of discharge?
>
> MR. THIEL: In the June 25th letter of discharge the only reference is made to Paragraph 2, item 3 of the Department of Transportation Work Rules, and that amounts to leaving the place of duty during a work shift without permission. That was the only factor that resulted in the discharge, and the only factor referred to in the letter of discharge.
>
> CHAIRMAN AHRENS: So we have had some testimony here on matters which are not really related to the case.
>
> MR. THIEL: True.
>
> CHAIRMAN AHRENS: The Board will have to bear this in mind.
>
> MR. CAHILL. I'd like to make a statement in that connection also.
>
> CHAIRMAN AHRENS: Please do."

Counsel for petitioner than made a long statement which occupies more than a page of the transcript explaining why he thought there was other evidence which he outlined that was relevant in addition to the mere fact that petitioner had walked off the job on the morning of June 25th. At the conclusion of this statement Chairman Ahrens remarked (Tr. 89): "And we haven't even heard about that. We have only heard about the fact that he walked off the job. We have heard no more."

This last statement by Ahrens is to be reasonably interpreted that petitioner's counsel would be permitted to put in testimony along the lines outlined in his statement, and he was.

At page 187

Roslak, Director of Personnel Management for the department, was on the stand and being questioned by counsel for petitioner on cross-examination. Roslak was asked about the recording of a "Mothers of 83" meeting back in 1970. He testified that the first he heard of

this incident was when about three weeks prior to the instant hearing petitioner had testified at an unemployment compensation hearing that his wife had been requested to record this meeting. Petitioner's counsel continued to question Roslak about this "Mothers of 83" meeting and its connection with the Highway 16 project. Finally Chairman Ahrens interrupted the questioning as follows:

> "CHAIRMAN AHRENS: Well, I just don't think that this witness can give us any information on whether any complaint made by the Appellant relative to his being required to so-call bug meetings actually existed or not. Am I correct? You can give us no help?
>
> WITNESS: I can give you no help.
>
> CHAIRMAN AHRENS: So I think we ought to go to something else. I'm not so sure how significant this whole bugging thing is going to be any way."

Petitioner attacks the Chairman's remark "I'm not so sure how significant this whole bugging thing is going to be any way." At that point in the hearing petitioner had not testified and it was then difficult to perceive the relevance of evidence relating to the taping of meetings between citizens and representatives of the District 2 on the issue of whether petitioner had been discharged for just cause.

At pages 194-195

On the re-direct examination of Roslak counsel for the department questioned him about a statement made by petitioner about his prior employment in his 1969 application for employment by the department in an attempt to show it was not true, and stated, "I'm just impeaching the Appellant's character." (Tr. 191). Counsel for petitioner objected, and Chairman Ahrens made this ruling (Tr. 191-192):

> "I'm going to permit this. I think here if the Respondent wishes to bring out the point of credibility of statements and so on made by the Appellant, I think this will sort of even things out. But I do think we should do it briefly because I don't think it has any heavy weight on this case. Go ahead."

Petitioner's counsel then proceeded to question Roslak about the facts relating to the 1969 application and counsel for petitioner cross-

examined with respect to the same. Roslak was excused as a witness and then Chairman Ahrens made the statement to which petitioner objects, which was:

> "I'd like to remind all the parties here that this discharge took place because the Appellant walked off the job, and I hope that we can pretty well stick close to that rather than trying to discredit this party and all that sort of stuff.
>
> "It maybe (sic) related but I think we ought to talk about whether or not this walking off the job was a proper action, and whether both management and the Appellant behaved properly and in accordance with the union contract under these conditions which are really the reasons for discharge.
>
> "Now, I'm going to warn both parties that we're going to cut this discussion off when it doesn't relate to the reasons for this discharge. We're just going way, way off. We have been I think trying to discredit that and that, in other words, criticize the system rather than to weigh the facts in this case. So let's remember that the suspension took place because of the improper conduct allegedly of the Appellant in the office of his supervisor and ended in discharge because the Appellant walked off the job.
>
> "Now, let's pretty well stick to these two points.
>
> "And I warn you in advance that I'm going to cut off any further testimony that takes any significant amount of time that has to do with credibility of this and that. I have had enough credibility and I know that the other member of the Board has had enough of that. Let's get to how the parties behaved in the situations that were actually the basis for discharge.
>
> "Next witness." (Tr. 194-195)

It would seem to the Court if anybody should have taken umbrage to this statement of the Chairman it was counsel for the department. In any event there was nothing unfair in this statement which prejudiced petitioner.

At pages 225-226

The witness Solberg, a civil engineer in the employment of the department, and who at times had been petitioner's supervisor, was on the stand. He testified that petitioner's work was acceptable. Then this transpired:

> "Q Did you on any occasion assist him in qualifying him for promotion from Draftsmen 1 to Tech. 1?
>
> A Yes, my opinion was asked.

"CHAIRMAN AHRENS: No, this is related to his walking off the job on that date, right?

MR. CAHILL: To the extent that we are, since a lot of evidence has come in about his work record and his attendance and various other things.

CHAIRMAN AHRENS: I don't think that his work record and things like that are going to be given too much weight. I think the Board is going to consider whether he did right in walking off the job on that day, and that's why I'm trying to keep this hearing within the matters that are significant.

MR. CAHILL: Excepting, Mr. Ahrens, the fact is that work evaluation sheets which were derogatory have been entered in the record in 1973 and this is evidence----

CHAIRMAN AHRENS: We're not going to be particularly---- You mean merit rating forms from '67?

MR. CAHILL: I mean from '73, it might be material.

CHAIRMAN AHRENS: All right, if the quality of his work is on trial at all. I just don't think that's an issue. I don't think that there's any allegation that his work was so poor that he was discharged because of poor work. He was discharged for walking off the job.

MR. CAHILL: But I think he----

CHAIRMAN AHRENS: So we don't want to spend a great deal of time on merit ratings and things of that kind. I don't think that they are the things that the Board---The Board may also consider the issues as agreed on as issues and the issue in the discharge is that he walked off the job."

However, petitioner's counsel was permitted to put the further question to the witness as to whether Solberg had been interviewed when the evaluation of petitioner's work made for 1971, 1972, and 1973. Later petitioner's counsel did introduce in evidence evaluations of petitioner's work which were favorable to petitioner.

At pages 243-244

Petitioner was on the stand and had been asked whether persons had been contacted about a particular evaluation made of his work and he answered, "No." Then this transpired:

"MR. THIEL: I object. That's something the witness has no personal knowledge of, whether they were contacted or not. He's not qualified to testify to that of his personal knowledge.

"CHAIRMAN AHRENS: He's already answered. Sustained. He's already answered for the record. I just want to remind you, Mr. Cahill, that this discharge did not take place because of the Appellant's good or poor work. This discharge took place because the Appellant walked off the job which the Department believes is the wrong thing to do, is illegal and what have you. So let's keep constantly in mind the issue in connection with the discharge, please."

The Court is in agreement with the statement made by Ahrens that petitioner's discharge did not take place because of his good or bad work. When this remark was made the evidence was nearly completed. Apparently counsel for petitioner think the remainder of the statement too narrowly defined the issue with respect to the discharge as barring evidence of extenuating circumstances which counsel contend justified petitioner walking off the job. The Court doubts if that was the Chairman's intention. Furthermore, petitioner was permitted to present such evidence.

At page 248

Petitioner was still on the stand and Attorney Thiel, counsel for the department, again reverted to petitioner's 1969 application for employment and asked whether petitioner had mentioned therein that he had had a heart attack. After this subject had been pursued briefly this transpired:

"CHAIRMAN AHRENS: I don't know that this coronary is a factor any way in the discharge.

MR. THIEL: I don't accept that. It seems to be brought in all the time.

CHAIRMAN AHRENS: I hope we brought it in for the last time because I don't think that the Board is going to give a great deal of weight to it because the Board is going to have to decide whether walking off the job was right, legal and everything else, thing to do."

Again, the Court can perceive of no unfairness in the Chairman's statement.

The petitioner also cites conduct of Member Brecher as further evidence of a denial of a fair hearing. Ralph Kane, then Chief of Employment Relations of the department, was on the stand when the criticized incident occurred. Kane was being questioned about "wildcat" strikes in connection with the provisions of paragraph 119, Section 1, Article XIII of the collective bargaining agreement when this transpired (Tr. 263):

> "MR. BRECHER: Ralph, in all your experience even in industry and with men, did you ever hear of a one-man wildcat strike?
>
> WITNESS: Not really.
>
> MR. BRECHER: That's right, that's all."

The Court does not approve of hearing officers who are conducting an administrative hearing addressing a witness by his first name. The reason that it is objectionable is that it is likely to create in the mind of the party opposing the party who called the witness the impression that an intimacy exists between the hearing officer and the witness which will be prejudical to him. In other words it detracts from the appearance of fairness which it is essential be maintained in all administrative hearings. However, it in itself does not rise to a denial of due process.

The other basis upon which petitioner objects to this incident is that it indicates Member Brecher had made up his mind that there could not be a one man "wildcat" strike which view is legally erroneous. However, the only reason petitioner was endeavoring to qualify his walking off the job as a one-man "wildcat" strike was so as to make applicable the provisions of paragraph 119 of Section 1, Article XIII, of the collective bargaining agreement which he interpreted as requiring the department to give the notice to the Union by certified mail specified therein. The Court has determined that the giving of such notice was optional

and not mandatory on the part of the department. Therefore, it was wholly immaterial whether or not petitioner's walking off the job was technically a strike or not. Thus petitioner was not prejudiced by Brecher's expressed erroneous view that there could not be a one man strike. If it were a strike, it was unauthorized and subject to discipline under paragraph 118, Section 1, Article XIII, of the collective bargaining agreement as well as under the department's work rules.

The Court determines that there was no denial of a fair hearing and no denial of due process.

Let judgment be entered affirming the respondent board's decision here under review.

Dated this 27th day of January, 1975.

By the Court:

Reserve Circuit Judge