BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

DAVID L TRIPP

Claimant,

and

P & K ORTHOTICS LAB INC

Employer.

HEARING NUMBER: 08B-UI-01640

EMPLOYMENT APPEAL BOARD
DECISION

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-a

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The employer appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED**.

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Elizabeth L. Seiser

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John A. Peno

RRA/fnv

CONCURRING OPINION OF JOHN A. PENO:

I write separately to emphasize the long-standing rule that discussion of wages is protected collective action under the National Labor Relations Act. It is an unfair labor practice to have a rule banning the discussion of wages even for non-union shops. See e.g. Jeannette Corp. v. N.L.R.B., 532 F.2d 916 (3d Cir.1976); Waco, Inc., 273 N.L.R.B. 746, 118 L.R.R.M. 1163, 1166, 1984 WL 37122 (1984); Heck's, Inc., 293 NLRB 1111 (1989); NLRB v. Vanguard Tours, Inc., 981 F.2d 62 (2d Cir. 1992); Wilson Trophy Co. v. NLRB, 989 F.2d 1502 (8th Cir. 1993); Handicabs, Inc. v. N.L.R.B., 95 F.3d 681 (8th Cir. 1996); Flamingo Hilton-Laughlin, 330 NLRB 287 (1999); N.L.R.B. v. Main Street Terrace Care Center, 218 F.3d 531 (6th Cir. 2000); IRIS, U.S.A. Inc., 336 NLRB 1013, 1013 (2001); Freund Baking Co., 336 NLRB No.75 (October, 1, 2001); Brockton Hosp. v. NLRB, 294 F.3d 100, 106-07 (D.C. Cir. 2002), cert, denied, 537 U.S. 1105 (2003); Cintas Corp., 244 N.L.R.B. No. 118 (June 30, 2005); Double Eagle Hotel & Casino v. N.L.R.B, 414 F.3d 1249 (10th Cir. 2005). In my view it is also an unfair labor practice to discipline an employee for violation of such an illegal rule. E.g. Double Eagle Hotel & Casino v. N.L.R.B, 414 F.3d 1249, 1259 (10th Cir. 2005)("we hold that a disciplinary action for violating an unlawful rule is itself a violation of the NLRA"). Obviously, then, it cannot be misconduct to violate such a rule. I make this observation in addition to the findings and conclusions we have adopted today. Even if I were not to take into account the NLRA I would still reach the same conclusion based on the reasons set out by the Administrative Law Judge.

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John A. Peno

RRA/fnv