

**Westinghouse Electric Corporation and International
Union of Electrical, Radio and Machine Workers,
Local 601, AFL-CIO. Case 6-CA-10695**

July 3, 1979

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS,
PENELLO, AND TRUESDALE

On September 20, 1978, Administrative Law Judge Lowell Goerlich issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel and Charging Party filed cross-exceptions and supporting briefs.

The Board has considered the record and the attached Decision¹ in light of the exceptions and briefs and has decided to affirm the rulings, findings,² and conclusions,³ of the Administrative Law Judge and to adopt his recommended Order.

¹ The following inadvertent errors in the Administrative Law Judge's Decision are hereby corrected: The name "Caputa" is changed to "Caputo" and the name "Gibson" is changed to "Gilson."

² Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

Also, as did the Administrative Law Judge, we make no finding regarding whether Respondent's refusal to permit the division steward to attend the disciplinary meeting constituted an independent violation of Sec. 8(a)(1). Accordingly, we do not adopt the Administrative Law Judge's comments in fn. 9 of his Decision.

³ We agree with the Administrative Law Judge that, applying the rationale of *Precision Castings Company, Division of Aurora Corporation, a wholly owned subsidiary of Allied Products Corporation*, 233 NLRB 183 (1977), the more severe penalties imposed on the six discriminatees violated Sec. 8(a)(3) of the Act. See also *Gould Corporation*, 237 NLRB 881 (1978). Moreover, we note that the Administrative Law Judge correctly found that the discriminatees received harsher penalties solely because they held the position of steward. (One discriminatee stated that at the time of the work stoppage he was no longer a steward, but he received the harsher punishment because Respondent believed he was a steward.) In light of its having meted out more severe discipline to stewards who were not even present at the plant during the work stoppage, Respondent cannot legitimately contend that its disciplining of stewards was based on any alleged failure by the stewards to urge other employees to return to work. Accordingly, it is clear that Respondent violated Sec. 8(a)(3) by imposing harsher discipline on six employees solely because they held, or were believed to have held, the position of union steward. See also *Pontiac Motors Division, General Motors Corporation*, 132 NLRB 413 (1961).

Members Penello and Truesdale, who dissented in *Gould Corp.* and indicated therein their disagreement with the Board's decision in *Precision Castings*, would adopt the Administrative Law Judge's finding that the more severe penalties imposed by Respondent on the six union stewards violated Sec. 8(a)(3) of the Act only because it is clear that: (1) Steward Slonaker, Pierce, and Kurta made a good-faith effort to get the striking employees to return to work and did not voluntarily participate in the strike; (2) Steward Shaver was working on a "road job" rather than at the plant on the day of the strike and, upon being informed of the strike, he continued working; (3) Steward Caputo was legitimately absent from work on the day of the strike and never participated in, nor lent his support to, the strike; and (4) Steward Piccini had ceased to be a steward prior to the day of the strike, and the sole

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Westinghouse Electric Corporation, Glassport, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

MEMBER JENKINS, concurring in part and dissenting in part:

I agree with my colleagues that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to permit Union Steward Howard Slonaker to be present when employee Philomena Smarra received notice of a disciplinary action, and by denying Slonaker time off so that he might write up Smarra's grievance. I also agree with the majority view as expressed in its footnote 3 that the six discriminatees received 2 additional days of disciplinary layoff beyond the 1 day imposed on all other employees solely because they were, or were believed to be, union stewards. However, I would go further than my colleagues and find that the entire 3 days of discipline borne by the stewards were imposed in violation of Section 8(a)(3) of the Act.

The record shows that the Administrative Law Judge, on several occasions during the hearing, asked the General Counsel if he wished to place the legality of the November 4 work stoppage in issue. The General Counsel refused to do so. In fact, he is willing to concede, for the purposes of this case, that the strike was illegal, presumably on the theory that it occurred in violation of the contractual no-strike clause. The Administrative Law Judge declined to rule on the strike's legality specifically because of the General Counsel's posture on the issue. However, he noted in his Decision that the strike was a spontaneous response to Respondent's unfair labor practices with respect to Steward Slonaker and therefore could not be deemed to be illegal.

I agree with the Administrative Law Judge's characterization of the strike. I do not believe that the Board is precluded by even a general counsel's concession from making a finding on a material matter which was of necessity fully litigated and where an exception was filed, here by the Charging Party. The facts as detailed in the Administrative Law Judge's Decision and then evaluated in his footnote 31 lead directly to the conclusion that Respondent's employees staged a brief work stoppage to protest unfair labor practices.

reason that he was more severely disciplined was because Respondent thought he was still a steward.

I would grant the Charging Party's cross-exception. Since the work stoppage was protected, the entire disciplinary layoff imposed on the six union stewards, including the first day shared with the rank-and-file employees, was violative of Section 8(a)(3). The Board's Order should therefore provide for 3 days' backpay for the stewards rather than the 2 days' reimbursement provided for in the Administrative Law Judge's recommended Order adopted by the majority.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board has found that we have violated the law and has ordered us to post this notice.

WE WILL NOT unlawfully exclude the division steward, presently Howard Slonaker, from being present when an employee is given a notice of a disciplinary action at our Glassport plant.

WE WILL NOT unlawfully deny the division steward, presently Howard Slonaker, or any steward, time off to leave his job for the purpose of conducting union business as prescribed by our collective-bargaining agreement with the Union at our Glassport plant.

WE WILL NOT unlawfully suspend shop stewards who engage in strikes or other concerted activity for a greater length of time than rank-and-file employees or for any length of time solely because they hold positions as shop stewards.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL make whole Ronald Shaver, Hugh Joseph Piccini, Nicola Caputa, Charles Kurta, Howard Slonaker, and Clyde Pierce for any losses they may have suffered as a result of our unlawfully suspending them on November 4, 1977, plus interest, and rescind their unlawful suspensions.

WESTINGHOUSE ELECTRIC CORPORATION

DECISION

STATEMENT OF THE CASE

LOWELL GOERLICH, Administrative Law Judge: The charge filed by International Union of Electrical, Radio

and Machine Workers, Local 601, AFL-CIO, herein called the local Union, on November 7, 1977, was duly served by registered mail on Westinghouse Electric Corporation, Respondent herein, on November 7, 1977. A complaint and notice of hearing was issued on December 30, 1977. The complaint charged that Respondent violated Section 8(a)(5) of the National Labor Relations Act, as amended, herein called the Act, in that on November 3, 1977, Respondent refused to permit Division Steward Howard Slonaker to be present while an employee was receiving notice of a disciplinary action; and on November 4, 1977, Respondent denied Division Steward Slonaker time off to leave his job for the purpose of conducting union business. Additionally, it was averred that Respondent violated Section 8(a)(3) of the Act by unlawfully suspending five union stewards and one former steward as an outgrowth of a work stoppage which occurred on November 4, 1977.

Respondent filed a timely answer, denying that it had engaged in any of the unfair labor practices alleged.

The case came on for hearing at Pittsburgh, Pennsylvania, on March 29, 30, and 31; May 30 and 31; and June 1, 1978. Each party was afforded full opportunity to be heard, to examine and cross-examine witnesses, to argue orally on the record, to submit proposed findings of fact and conclusions, and to file briefs. All briefs have been carefully considered.¹

FINDINGS OF FACT,² CONCLUSIONS, AND REASONS THEREFOR

I. THE BUSINESS OF RESPONDENT

Respondent, a Pennsylvania corporation with its principal office located in Pittsburgh, Pennsylvania, is engaged in the manufacture, sale, and distribution of electrical appliances and products in various States. One facility of Respondent is its Pittsburgh Apparatus Repair Plant located in Glassport, Pennsylvania. During the 12-month period immediately preceding the issuance of the complaint and notice of hearing, Respondent has shipped goods and materials valued in excess of \$50,000 from its Pennsylvania plants directly to points located outside the Commonwealth of Pennsylvania. During the same period, Respondent has purchased and received goods and materials valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania for use at its Glassport, Pennsylvania, facility.

Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

¹ There being no opposition thereto the General Counsel's motion to correct the transcript is granted and the transcript is corrected accordingly.

² The facts found herein are based on the record as a whole and the observation of the witnesses. The credibility resolutions herein have been derived from a review of the entire testimonial record and exhibits, with due regard for the logic of probability, the demeanor of the witnesses, and the teachings of *N.L.R.B. v. Walton Manufacturing Co., et al.*, 369 U.S. 404, 408 (1962). As to those witnesses testifying in contradiction to the findings herein, their testimony has been discredited either as having been in conflict with the testimony of credible witnesses or because it was in and of itself incredible and unworthy of belief. All testimony has been reviewed and weighed in light of the entire record. No testimony has been pretermitted.

II. THE LABOR ORGANIZATION INVOLVED

The Local Union is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

International Union of Electrical, Radio and Machine Workers, AFL-CIO, herein called International Union, of which the Local Union is a constituent local, is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

First: At all times material herein Howard Slonaker was the division steward, first shift; Nicola Caputa, the subdivision steward, second shift;³ Charles Kurta and Clyde Pierce, the section stewards, first shift; and Ronald Shaver, section steward, second shift.⁴ As division steward, Slonaker was the highest union representative located at the Glassport Plant.⁵

Sometime prior to November 3, 1977, Philomena Smarra, a 36-year employee, had been charged by Supervisor Charles F. Readal with having improperly wound an armature. Smarra's steward, Pierce, had insisted on a cold strip test which disclosed a defect. Whereupon Readal gave Smarra a verbal warning, although he told Pierce he could have given her 3 days off. Around November 3, 1977, a similar incident was alleged to have occurred. On the morning of November 3, 1977, Readal told Pierce that he was going to take some disciplinary action against Smarra for poor workmanship, but did not know yet what it would be. Readal said that he would let Pierce know later in the day. In the meantime, Slonaker had heard a rumor that Smarra had "fouled up" a job and her foreman was planning to discipline her. Slonaker contacted her foreman, Readal, who responded that he had not "made up his mind." Later, Slonaker approached Glassport Plant Manager Louis M. Venters and said that he felt something was wrong with respect to Smarra and that "maybe we should hold a meeting and try to resolve it." Venters responded that he did not have time for a meeting.⁶ After lunch, Slonaker again asked Readal what he expected to do about Smarra. Readal again replied that "he hadn't made up his mind." Slonaker asked, "[W]ould you be so kind as to let me know what you are planning?"

Around 3:55 p.m., Readal instructed Pierce to bring Smarra to the office. On the way to the office Smarra told "a fellow" that she "wanted Howard Slonaker and Nick Caputa in." When Pierce and Smarra arrived at the office, Readal handed a letter to Pierce and Smarra in which Smarra had been given a 3-day suspension. As Pierce began

³ The first shift commenced at 7:30 a.m. and ended at 4 p.m.; the second shift ran from 4 p.m. until 1 a.m. One-half hour was allowed for a lunch break.

⁴ There is a dispute as to whether Hugh Joseph Picinni, the sixth alleged discriminatee, was a section steward at the time the incidents herein occurred.

⁵ Local Supplement No. 7 between the Local Union and Respondent defines division steward: "A division steward is the official representative of the employes [sic] of the Pittsburgh Mfg. & Repair Plant (Glassport)."

⁶ Readal had conferred with Venters concerning the disciplinary action to be taken against Smarra.

to read the letter, Slonaker and Caputa appeared (the door was slightly ajar). Slonaker asked Readal "what was going on." Readal said he was giving "this girl 3 days off disciplinary action." Smarra handed the letter to Slonaker who, after having read the letter, asked Readal what he meant by the second paragraph. Readal replied, "I don't think it's none of your business." Readal further declared that Smarra was represented by a section steward and that Slonaker and Caputa should leave ("get the hell out of here").⁷ Smarra, at no time, had addressed a specific request to Readal for Slonaker's presence although she did pass the letter to Slonaker which she had received from Readal when Slonaker entered the office.

Slonaker testified that "it had been the past practice at the Glassport Plant, any time there is a disciplinary action, that the division steward more or less will take an interest in and seeing what he can do to resolve the problem." Slonaker had previously been invited into a disciplinary meeting with Readal in which Readal was considering suspending an employee for a day. A steward was present. Readal agreed that Slonaker had been present at other disciplinary meetings, along with union stewards. Former division stewards testified credibly that they had participated in disciplinary meetings comparable to the one from which Slonaker was excluded and that it had been past practice for them to attend.⁸

Moreover, the agreement between Respondent and the local Union provides that a grievance involving a suspension shall start at the third step of the grievance procedure in which step the division steward is clearly a participant. Indeed, prior to November 3, 1977, neither Slonaker nor the local Union had received any notification from Respondent that the practice which Slonaker sought to follow had been changed or that the division steward could no longer attend disciplinary meetings. Prior to November 3, 1977, there had been no incident where a division steward had been refused permission to attend a disciplinary meeting or had been expelled from such a meeting. Additionally no business reason existed for Slonaker's expulsion. Neither Slonaker nor Caputa was on company time.

Respondent presented no credible evidence that past practice as well as the contract did not permit the division steward to attend a disciplinary occurrence such as the one to which Smarra was subjected. Hence, the General Counsel, as alleged in the complaint, has established that, unilaterally and without prior notice to or consultation with the local Union, Respondent refused to permit division Steward Slonaker to be present while an employee was being administered disciplinary action despite a past practice of permitting the division steward to be present on such occasions. Such conduct on the part of the employer was a uni-

⁷ Venters testified that he had received information that "Readal had felt that Slonaker had no business really being there then."

⁸ In respect to these meetings, Respondent concedes in its brief (p. 7):

On some occasions, the division steward or the sub-division steward has attended. On others he has not.

On many occasions, for one reason or another, the Company has invited or requested that the division steward or the sub-division steward attend employee discipline sessions.

The evidence reveals several occasions when a division steward, section stewards, and other employees were present at meetings with Company representatives.

lateral change in the employer's policy and working conditions and constituted a violation of Section 8(a)(5) and (1) of the Act. *Tufts Brothers Incorporated*, 235 NLRB 808 (1978).⁹ See also *Alfred M. Lewis, Inc.*, 229 NLRB 757, 758 (1977).

Second: Under section XIV—Settlement of Disputes, the contract between the International Union and Respondent provides: "Before leaving work to conduct union business, the Local officer or steward will report to his foreman or supervisor and request permission to leave his job, which will be granted unless his departure would cause *serious interference with operations*. In such cases the foreman or supervisor will make arrangements for the Local officer or steward to leave his job as promptly as possible." [Emphasis supplied.]

Respondent claimed that prior to the commencement of work on the morning of November 4, 1977, it had received a request from U.S. Steel Clariton Mill to put three 908 motor frames being repaired by Respondent "in an emergency breakdown basis because they had burned up the last spare and they needed those motors back as quickly as possible."¹⁰ However, Respondent's records for the three jobs, F-106, F-110, and F-103, reveal that job F-103 was changed to emergency breakdown basis on October 30, 1977, and that job F-110 was never put on emergency breakdown status. In respect to job F-110, the records indicate that it was marked "EB" (emergency breakdown status) on October 31 and November 1 and 2, 1977. Respondent's records further indicate that Slonaker worked 3 hours on job F-110 on November 3, 1977. On the same date he was allowed time for union business at the end of the day. Neither Slonaker nor Kozar and Keches, the other two welders, worked overtime on November 2 or 3.

Venters testified that it would have taken about 20 hours of welding "to get them out of trouble where they would have enough to keep running."¹¹ At the time, the Glassport plant employed three welders—two on the first shift and one on the night shift. Slonaker and George Keches were assigned to the first shift.¹²

On November 4, 1977, Slonaker and Keches were assigned by Readal to weld on the frames. However, Slonaker asked for time off¹³ to write the Smarra grievance. According to Readal he replied, "I can't let you have union busi-

ness this morning. I want you to work on one of 908 motor frames for Clariton Mill and George will work on the other one. I said as far as filing a grievance, the section steward should be able to handle that." Slonaker asked that a replacement be obtained for him as soon as possible. Readal replied, "you've got to stay on your job . . . I'll replace you when I see fit." Slonaker then asked to make a phone call. Readal responded, "I'll tell you when you can take union business and I'll also tell you when you can use the telephone." Nevertheless, after Readal left the weld shop, Slonaker used the phone and called the local Union. He was advised by the union business agent "to write the grievance as quick as possible and to get back to [his] work station." The phone call occurred around 8 o'clock.

In the meantime, Readal met Plant Manager Venters and informed him of the situation. Venters instructed Readal to make sure Kurta and Pierce be given permission to be excused for union business.

After receiving the advice from the union business agent, Slonaker went to the lunchroom where, together with Pierce and Kurta, he commenced to write up the Smarra grievance. About 8:15 p.m., Readal noticed Slonaker in the lunchroom. He entered and asked Slonaker whether he was returning to his job. Slonaker replied that he would go back to his job as soon as he wrote up the grievance. After informing Venters of the situation, Readal returned to the lunchroom and again asked Slonaker if he was going to return to the job. Slonaker replied that he would return as soon as he finished writing the Smarra grievance. Whereupon Readal asked Slonaker if he was refusing to return to the job. He answered, according to Kurta, whom I credit, "I just got done telling you, I have union time, I called the local, and they told me to take union time, to write this grievance up, and as soon as I am done, I'm going back to work." At this time, Readal also mentioned that the job was an emergency job and that the frames were needed.

After again conferring with Venters, Readal escorted Slonaker to Venters' office where Slonaker was told that if he did not return to his job, he would be suspended indefinitely. Slonaker returned to his job. Neither Readal nor Venters suggested any alternatives which would have afforded Slonaker an opportunity to have participated in the grievance writing.

The grievance writing was finished at or about 10 a.m. According to Kurta, it took about an hour, actually, to write the grievance. Slonaker laid the written grievance on Venters' desk at noon.

The foregoing resume, as well as the record as a whole, indicates that Readal had no intention of complying with that part of the contract which required him under the circumstances here to "make arrangements" for Slonaker "to leave his job as promptly as possible." In fact, he rebuffed Slonaker's request for a replacement. Nor did he suggest any alternatives whereby Slonaker could have remained on the job until the emergency was accommodated and yet have had an opportunity to participate in the writing of the grievance. Readal's approach to Slonaker's request was, in essence, a continuation of his disposition to place Slonaker in a position where his effectiveness as a union steward would be depreciated and the representative status of the local Union undermined and downgraded. His desire to

⁹ While it is my opinion that this incident involved an independent violation of Sec. 8(a)(1), I have made no such finding since the General Counsel has not requested it. The figurative slap in the face ("get the hell out of here") delivered by Readal was calculated to bring the Local Union in ill repute, weaken its effectiveness, undermine its representation of employees, promote discord and strife, and discourage employees from acting as union agents and from continuing their union affection in violation of the rights guaranteed by Sec. 7 of the Act.

¹⁰ Readal explained that "[e]mergency breakdown means the customer is in dire need of that motor job . . . and he is willing to withstand whatever expense is needed in order to get that back."

¹¹ Job F-103 was completed on November 15, 1977; F-110, on December 5, 1977; and F-106 on April 4, 1978. Respondent's records indicate that Respondent worked its employees only a few hours a day on these jobs.

¹² The 20 hours of work anticipated would have required the full time of Slonaker and Keches on the first shift and 4 hours of the welders' time on the second shift. Thus, normally, the welding job would have been completed at 8 p.m. on November 4, 1978.

¹³ Under the contract Respondent would not have been charged for the time Slonaker spent writing the grievance. The time was chargeable to the Local Union.

flaunt his prerogatives for these purposes outweighed his spurious concern for the emergency at hand, which was no emergency at all in terms of welding requirements. Indeed, had he released Slonaker he would have lost perhaps an hour in welding production. This would have meant, in order to have met the apparent target of 8 p.m., either Slonaker or Keches would have worked an hour overtime (which was chargeable against the customer) or the second-shift welder could have finished the job at 9 p.m. instead of 8 p.m. Obviously, this is not the kind of a situation contemplated under the contract which would "cause serious interference with operations," nor has Respondent shown otherwise with credible proof.¹⁴ It follows, therefore, that Readal's action violated the contract and the General Counsel's claim must be deemed well taken. Respondent's misconduct resulted in an unlawful midterm modification of the contract, and a repudiation of the Union as statutory bargaining representative in violation of Section 8(a)(5) and (1) of the Act. See *Nedco Construction Corp.*, 206 NLRB 150 (1973), *Oak Cliff-Golman Baking Company*, 207 NLRB 1063, 1064 (1973); *Fairfield Nursing Home*, 228 NLRB 1208 (1977). Cf. *Columbus Foundries, Inc.*, 229 NLRB 34 (1977).

Third: On November 13, 1977, Thomas K. Phares, director of corporate communications,¹⁵ in respect to an inquiry from the Pittsburgh Press, informed the paper as published in the November 13, 1977, edition of the Pittsburgh Press: "Our position is that elected union officers have a responsibility under the contract to assume leadership roles and take aggressive steps to prevent illegal work stoppages.¹⁶ When the stewards twice refused to do so, they were given 3-days disciplinary furloughs, a practice which has precedence in previous arbitration and court cases." (G.C. Exh. 7.) This position statement was in reference to a work stoppage or strike which occurred at the Glassport plant on November 4, 1977, immediately after the lunch break at 12 noon.

During the morning of November 4, 1977, rumors circulated throughout the plant regarding Smarra's suspension, Slonaker's expulsion from Readal's office, and Readal's denial of union time for Slonaker to write the Smarra grievance.

In response to these rumors, the employees gathered on the parking lot during the lunch break for an explanation of what had occurred. Slonaker and other employees had encouraged such a meeting, which he attended together with Pierce and Kurta. Slonaker, amid many vocal interferences, described the events covering the Smarra incident, his exclusion from Readal's office, and his denial of union time to write the Smarra grievance. After he had completed his explanation the employees were of a disposition not to return to work. Nevertheless, he announced that the stewards were returning to the plant and he, Pierce, and Kurta re-

¹⁴ Respondent showed no sense of urgency until Slonaker requested time off to write the Smarra grievance.

¹⁵ Phares described his job as follows: "My responsibility is basically to help establish policies for the corporations public relations and other communications activity and to handle day-to-day contacts with the media in various parts of the world."

¹⁶ The contract between the international and Respondent provides: "[T]he Union and the locals will not cause or officially sanction their members to cause or take part in any strike (including setdowns, stay-ins, show-downs, or any other stoppage of work) during the life of this agreement."

turned to the plant. The assembled employees¹⁷ vociferously protested with expletives.¹⁸

Upon their return, the stewards met Alan Anderson, who inquired as to what was occurring. He was informed that the stewards did not think that the employees were coming back in the plant. Kurta told him that the stewards "would like to get a meeting with management to resolve this problem, and get the people back in the building." Anderson left and returned stating: "Lou Venters would not hold no meeting until the people came back to work."

In the meantime, Venters had been informed by his supervisors concerning the situation among the first-shift employees. He instructed them to "go out and inform the union stewards that they have a responsibility to get the people back to work."¹⁹ Supervisors Gibson, Readal, and Robert C. Rugh, following Venters' instructions, informed the three stewards (Slonaker, Pierce, and Kurta) that they were involved in an illegal work stoppage and that they had "a responsibility to get the people back to work." The supervisors returned to Venters' office with their report after which Venters instructed the supervisors to return and tell the stewards, "if they don't go back to work the stewards don't go back to work, tell them to vacate the building."²⁰ Rugh and Gibson returned to the plant. Gibson asked Slonaker whether he had done "any good getting the people back to work." Slonaker replied that he "tried" but, he "was unable to do so." Gibson continued, "if you don't intend to go back to work, vacate the building." The stewards left the plant.²¹

Gibson reported to Venters that he had "told Howard Slonaker to try to get the people back again, that he had asked the three stewards to go back to work, they had refused and then he had asked them to leave the plant per Mr. Venters' instructions previously."²² Venters was also informed that Slonaker told Gibson that he had "tried to get the employees back to work," but they wouldn't come in. Rugh reported to Venters that he did not know who the instigators of the strike were; Gibson reported that he thought the instigators were Slonaker, Hutzler, and Murelli.²³ Venters received no information as to what had occurred in the parking lot, either from his supervisors or from the rank-and-file.

Such was Venters' information when he considered what was to be done. He resolved to give all first-shift employees a day's suspension, and the three stewards a 3-day suspension.²⁴ He phoned his "industrial relations person," Henry

¹⁷ There were about 40 employees on the first shift.

¹⁸ Readal's conduct was prone to excite, inflame, and anger employees (a fact which must have been known to him if he were a knowledgeable supervisor), for in essence he was ejecting the division steward from the grievance system. A self-respecting union would no more permit this conduct than would an employer whose representative the union sought to oust.

¹⁹ Gibson's testimony.

²⁰ Gibson's testimony.

²¹ Gibson also said:

[I]f you can't handle your men, that I think you need another steward structure in the building, in Glassport here.

²² Rugh's testimony.

²³ Hutzler and Murelli were not stewards. Significantly, they were not given a 3-day furlough.

²⁴ This was the first Glassport strike in which stewards had been given more days off than the rank-and-file employees. Strikes for which employees had been given a 1-day layoff had occurred on August 9, 1977, and September 8, 1977.

Bunting, "to see if he concurred with the penalty [he] had decided upon." Bunting agreed.²⁵ The conversation occurred shortly after 12 o'clock. Immediately thereafter, Venters commenced sending mailgrams to "[a]ll employees who were actively employed on the day light shift." Venters' decision for the second shift was "Wait and see."

At the same time, five of the Glassport employees were on "a road job," at Shelocta, Pennsylvania, about 50 miles from Glassport. Steward Shaver was among the employees. On the afternoon of November 4, 1977, about 2:30 p.m., John Biggins, the employees' supervisor, informed Shaver of the walkout at Glassport. The employees met in Biggins' presence and decided to stay on the job and finish the shift. Thereafter, when Shaver returned to his home after work, Biggins informed him by phone that he had "the following Monday off for participating in an illegal work stoppage, and that he should return on Tuesday morning." On Monday, Shaver was informed by phone that he was given a 3-day suspension.²⁶

According to Venters, at or about 2 p.m., he decided to impose the same penalty on the "on the road" employees although they had engaged in no strike. In this regard, Venters testified that Biggins reported to him that the "on the road employees" had "decided that they would finish the shift, that there was no possible way they could work Monday if the other people were on strike, so they weren't working either."²⁷ Venters heard nothing specifically concerning Shaver's position or attitude. Shaver was singled out, nevertheless, according to Venters because "his actions" did not indicate that he would report to work or that he wanted his people to report back to work on Monday morning.

Hugh Joseph Piccini had been a steward on the third shift, which had been discontinued prior to November 4, 1977. He claimed that his job as steward ceased along with the shift, but the record is unclear as to whether Respondent was informed that such may have been the case. Nevertheless, he was given a 3-day suspension, as were the other stewards.²⁸

On November 4, 1974, at or about 2 o'clock, Piccini, who had visited a doctor, passed the plant and noticed no parked automobiles. He stopped and inquired of Readal as to what happened. Readal replied that the men had walked out and he did not know why. According to a report to Venters, Piccini was quoted as saying, "those crazy bastards" and left. Piccini returned to the plant for the second shift, to which he was assigned. None of the second shift,

²⁵ According to Venters, he told Bunting that the stewards should be given 3 days off because "they instigated and condoned the strike."

²⁶ A mailgram dispatched to Shaver at 8:59 a.m., November 7, 1977, read: "In view of this act that you participated in an illegal work stoppage at Westinghouse Glassport Plant at 12 noon on 11/4/77 this is to advise you of the imposition of a disciplinary furlough of the rest of your normal shifts on 11/7, 11/8, and 11/9. You will be expected to report for work on 11/10/77 at your regularly scheduled time."

²⁷ It would seem that Venters' response by way of leveling a penalty in this instance was premature, anticipatory, and without substantial support.

²⁸ Respondent first sent Piccini a telegram at 4:22 p.m. on November 4, 1977, which informed him that he was disciplined for Monday, November 7, 1977. This was superseded by a second mailgram, sent 5 minutes later, telling Piccini he was suspended for 3 days.

including Piccini, went to work.²⁹ Piccini was given 3 days' penalty because, according to Readal, "I felt that he was condoning and going along with the strike." Piccini asked Readal why he was given a 3-day suspension. Readal replied that, "all the stewards got them." Piccini further advised Readal that he was not a steward. Readal said that he would take it up with Venters. Later, Supervisor Cal Verzinski reported to Piccini that he had told Venters that Piccini was not a steward, but, "he just wouldn't listen."

On November 4, 1977, prior to the time he had learned of the strike, Steward Nicola Caputa informed Respondent that he had contracted the flu. On November 3, 1977, he had made arrangements with his supervisor to remain at home on November 4, 1977, and since he was becoming ill, to allot the time off as a vacation day. In this regard, Venters knew that Caputa had called in sick around 1 o'clock and knew that Caputa had scheduled November 4, 1977, as a vacation day. Nevertheless, Venters said that he considered Caputa's phone call as "further condoning, instigating and carrying on the strike."³⁰ When the second shift failed to report on November 4, 1977, Venters caused mailgrams to be sent to them imposing the same penalty given to the first shift.

Rugh testified that the stewards were disciplined because they "had failed to try and keep the people from walking out or did not try to bring them back in." Venters said that he differed from the Phares' newspaper position because he "felt the stewards instigated and condoned the strike" although he did say that he had "partly" in mind the motivating factor appearing in the Pittsburgh Press article mentioned above; i.e., that the stewards did not "assume leadership roles and take aggressive steps to prevent illegal work stoppages."

The General Counsel maintains that the reason for Respondent selecting six alleged discriminatees for additional disciplinary penalty was because each held the position of shop steward, Piccini excepted. This assertion is well taken. Obviously, Venters did not move against the instigators as such. His information on this subject gained from Gibson named Slonaker, Hutzler, and Murelli as instigators. Moreover, as to Slonaker, he had received information that he had tried to induce the employees' return to work but was unsuccessful. Only Slonaker was given the extra time. Thus, it is clear Slonaker was not discharged because he was an instigator or a condoner, since, according to Venter's information, he had tried to abort the strike. Moreover, other alleged instigators who were not stewards were not given the extra penalty. Slonaker was penalized because he held the position as steward. Indeed, the claim of condonation of the strike as a basis for its disciplinary action against the stewards is illusory, for Shaver was disciplined before it could have been ascertained that he would support the strike and, although Caputa had received vacation time for illness before the strike occurred, he was penalized, although neither by act nor deed did he, as a sick man, do anything that could be judged condonation. Thus, it is obvious that the alleged discriminatees were singled out as stewards for which sole reason they were given additional days

²⁹ There were around 24 employees on second shift. A majority appeared for work.

³⁰ Caputa lived in Verona, Pennsylvania, about 17 miles from Glassport.

off. By reason of their selection as stewards, as a matter of law, they do not have imposed upon them the affirmative duty to assume leadership roles and take aggressive steps to prevent a work stoppage even assuming, *arguendo*, that the work stoppage is illegal.³¹ See *Precision Castings Company, etc.*, 233 NLRB 183 (1978). Based upon this case, the finding must be for the General Counsel.³² Accordingly, Respondent is guilty of violating Section 8(a)(3) of the Act.³³

CONCLUSIONS OF LAW

1. The Union is a labor organization within the meaning of the Act.

2. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and it will effectuate the policies of the Act for jurisdiction to be exercised herein.

3. By suspending for 2 days more than rank-and-file employees Ronald Shaver, Hugh Joseph Piccini, Nicola Caputa, Charles Kurta, Howard Slonaker, and Clyde Pierce for allegedly participating in the November 4, 1977, walk-out, on the sole basis that each held the position of union steward, or was believed to have held such position, Respondent violated Section 8(a)(3) and (1) of the Act.

4. By unilaterally refusing to permit Division Steward Slonaker on November 3, 1977, to be present while an employee was receiving notice of a disciplinary action, in contradiction of a past practice permitting the division steward to be present on such occasions, and by denying Division Steward Slonaker on November 4, 1977, time off to leave his job for the purpose of conducting union business as prescribed by the collective-bargaining agreement between Respondent and the International and Local Union, Respondent violated Section 8(a)(5) and (1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

It having been found that Respondent engaged in certain unfair labor practices, it is recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Since it has been found that Respondent violated Section 8(a)(3) of the Act by suspending Stewards Ronald Shaver, Hugh Joseph Piccini,³⁴ Nicola Caputa, Charles Kurta,

³¹ Since the General Counsel has not put in issue whether the strike was legal or illegal, I have made no finding in that regard. However, it is clear that the strike, a spontaneous response to Respondent's unfair labor practices, was caused by Respondent's unfair labor practices and therefore may not be deemed an illegal strike. Cf. *Medo Photo Supply Corporation v. N.L.R.B.*, 321 U.S. 678 (1944).

³² In *Precision Castings Company, supra*, the Board opined, "However, discrimination directed against an employee on the basis of his or her holding union office is contrary to the plain meaning of Section 8(a)(3) and would frustrate the policies of the Act." The instant case may not be distinguished from *Precision Castings Company, supra*.

³³ Respondents' claim that this matter be deferred to arbitration is denied. *General American Transportation Corp.*, 228 NLRB 808 (1977).

³⁴ Because the remedy would have been the same, I have deemed it unnecessary to determine whether Piccini was an acting steward on November 4, 1977.

Howard Slonaker, and Clyde Pierce, each for a period of 2 days more than the rank-and-file employees, it is recommended that Respondent be ordered to cease and desist therefrom, and to make the employees whole for any loss of earnings they may have suffered as the result of the additional suspensions, with interest thereon to be computed in the manner set forth in *Florida Steel Corporation*, 231 NLRB 651 (1977).³⁵

Accordingly, upon the basis of the foregoing findings of fact, conclusions of law, and the entire record in this proceeding, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER³⁶

The Respondent, Westinghouse Electric Corporation, Glassport, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Unlawfully excluding the division steward from being present when an employee is given a notice of a disciplinary action at Respondent's Glassport plant.

(b) Unlawfully denying the division steward or any steward time off to leave his job for the purpose of conducting union business as prescribed by the collective-bargaining agreement between Respondent and the International and Local Union.

(c) Unlawfully suspending shop stewards who engage in strikes or any other concerted activity for a greater length of time than rank-and-file employees or for any length of time solely because they hold positions as stewards.

(d) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Make whole employees Ronald Shaver, Hugh Joseph Piccini, Nicola Caputa, Charles Kurta, Howard Slonaker, and Clyde Pierce for any loss of earnings they may have suffered as the result of Respondent's unlawfully suspending them in the manner set forth in the section of this Decision entitled "The Remedy" and rescind their unlawful suspensions.

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this recommended Order.

(c) Post at its plant in Glassport, Pennsylvania, copies of the attached notice marked "Appendix."³⁷ Copies of said notice, on forms provided by the Regional Director for Re-

³⁵ See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

³⁶ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

³⁷ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

gion 6, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall

be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 6, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.