

Ward Products Corporation and Local 56, Amalgamated Food and Allied Workers Union, United Food and Commercial Workers International Union, AFL-CIO.¹ Case 22-CA-8057

July 10, 1979

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS
AND PENELLO

On February 28, 1979, Administrative Law Judge Max Rosenberg issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

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

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, as modified below, and hereby orders that Respondent, Ward Products Corporation, South Amboy, New Jersey, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 2(a):

“(a) Offer Eileen Coman, Mary Verchick, and Michael Masterson immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previ-

¹ The name of the Union, formerly Local 56, Amalgamated Food and Allied Workers Union, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, is amended to reflect the change resulting from the merging of Retail Clerks International Union with Amalgamated Meatcutters and Butcher Workmen of North America on June 7, 1979.

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 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.

³ We have modified the Administrative Law Judge's recommended Order to include the full reinstatement language traditionally provided by the Board. We shall also modify the proposed notice to conform to the provisions of the recommended Order.

ously enjoyed, and make them whole for any loss of pay they may have suffered as a result of the discrimination practiced against them, in the manner set forth in the section of this Decision entitled 'The Remedy.'”

2. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

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

WE WILL NOT assign more arduous and onerous and less agreeable work tasks to our employees in order to dissuade them from joining or supporting Local 56, Amalgamated Food and Allied Workers Union, United Food and Commercial Workers International Union, AFL-CIO, or any other labor organization, or to penalize them for having testified in any proceeding before the National Labor Relations Board.

WE WILL NOT discharge our employees, thereby discriminating in regard to their hire and tenure of employment, in order to discourage their engagement in activities on behalf of the above-named Union or any other labor organization.

WE WILL NOT discharge our employees for exercising their right to give testimony under the National Labor Relations Act, as amended.

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

WE WILL offer Eileen Coman, Mary Verchick, and Michael Masterson immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and we will make them whole for any loss of pay which they may have suffered as a result of our discrimination practiced against them, with interest.

All our employees are free to become, remain, or refrain from becoming or remaining members of any labor organization.

WARD PRODUCTS CORPORATION

DECISION

MAX ROSENBERG, Administrative Law Judge: With all parties represented, this proceeding was heard before me on

June 5 and 6¹ and November 20 and 21, 1978, in Newark, New Jersey, upon a complaint filed by the General Counsel of the National Labor Relations Board and an answer interposed thereto by Ward Products Corporation, herein called Respondent.² At issue is whether Respondent violated Section 8(a)(1), (3), and (4) of the National Labor Relations Act, as amended, by certain conduct to be detailed hereinafter. Briefs have been received from the General Counsel and Respondent which have been duly considered.

Upon the entire record made in this proceeding, including my observation of the witnesses as they testified on the stand, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS

I. THE BUSINESS OF RESPONDENT

Respondent, a New York corporation, maintains its principal office and place of business in Somerset, New Jersey, and various other plants in the States of New Jersey, New York, and Michigan and in the Province of Ontario, Dominion of Canada, including the South Amboy, New Jersey, plant here involved, where it is engaged in the manufacture, sale, and distribution of automobile radio antennas and related products. During the annual period material to this proceeding, Respondent purchased, transferred, and delivered to its various plants goods and materials valued in excess of \$50,000, of which goods valued in excess of \$50,000 were transported to the various plants in interstate commerce directly from States of the United States other than the States in which the plants are located, and in foreign commerce directly from foreign countries. The complaint alleges, the answer admits, and I find that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Local 56, Amalgamated Food and Allied Workers Union, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

The complaint alleges that Respondent violated Section 8(a)(1) of the Act by assigning more arduous and onerous and less agreeable job tasks to Eileen Coman and Michael Masterson on October 17 and 20, 1977,³ respectively, be-

cause they joined or assisted the Union in an organizational campaign at Respondent's South Amboy plant and gave testimony under the Act which ran counter to Respondent's interests. The complaint further alleges that Respondent offended the provisions of Section 8(a)(3) and (4) of the Act by discharging Coman on October 21, Masterson on October 27, and Mary Verchick on October 21 because of their Union activities and because they rendered testimony under the Act. Respondent denies the commission of any labor practices banned by the controlling legislation.

This case stems from an earlier proceeding involving the same parties which was conducted before Administrative Law Judge Walter H. Maloney, Jr., whose Decision in that matter was rendered on November 8, 1977. The complaint in that proceeding charged Respondent with the commission of a series of violations of Section 8(a)(1) of the Act which interfered with, restrained, and coerced its employees in the exercise of their right to collective representation by the Union and also alleged that Respondent violated Section 8(a)(3) of the Act by laying off in excess of 20 employees, including Masterson, Coman, and Verchick, to punish them for joining and assisting the Union. Respondent failed to file timely exceptions to Administrative Law Judge Maloney's decision, in consequence of which his findings, conclusions, and Order were adopted by the Board as its own on January 9, 1978.

As reported in that opinion, Respondent operates plants in the United States and Canada where it manufactures automobile radio antennas, windshield wipers, and related products. Headquartered in Somerset, New Jersey, it opened a new plant in South Amboy, the facility here involved, in the summer of 1974, where it fabricated cable and antenna assemblies for large retail outlets. In December 1976 Respondent was forced to close its plant in New Brunswick, New Jersey, the employees at which were represented for collective-bargaining purposes by Local 262, Retail Clerks International Union, AFL-CIO, herein called Local 262. With the closure, Respondent laid off all of its work force and transferred its manufacturing operations and machinery to South Amboy in January.

Respondent's owner and president is Joseph B. Cejka, who maintains direct and daily operating control over all of its facilities. At the times material herein, Cejka's supervisory hierarchy at South Amboy consisted of Donald Schamback, the general manager, William Simms, the general supervisor, and Robert Daye, supervisor.

Commencing in January, Respondent began to hire unskilled and semiskilled employees at South Amboy until, in April, it attained a work complement of 88 production workers. In March the Union embarked upon an organizational campaign at that location under the aegis of Jean Mancini, a newly hired employee whose brother was an organizer for the Union. After conducting several meetings of employees at local restaurants, at which it distributed blank authorization cards, the Union managed to enlist the membership of 46 of the 88 employees by April 14. At this juncture, the Union decided to go public and disclose the existence of its campaign, whereupon it circulated a pamphlet in the plant parking lot that day which urged other employees to join.

¹ On June 6, 1978, over the objection of the General Counsel, Respondent and the Charging Party entered into a private agreement settling the issues giving rise to this proceeding. Thereafter, the General Counsel specially appealed to the Board my ruling accepting said settlement agreement. On September 26, 1978, the Board, without offering any explanatory reasons therefor, granted the appeal, vacated the settlement agreement, and remanded the proceeding for further hearing. On November 20 and 21 a hearing was held on the issues raised by the complaint.

² The complaint, which issued on January 11, 1978, is based upon a charge filed on November 21, 1977, and served on November 22, 1977.

³ Unless otherwise indicated, all dates herein fall in 1977.

As Administrative Law Judge Maloney heretofore found, a large group of employees assembled in Respondent's parking lot during the lunch break on April 14 to listen to speeches by three of their coworkers, including alleged discriminatee Michael Masterson. In their remarks the speakers announced that they were attempting to bring the Union into the plant as their bargaining representative, that the Union intended to file a representation petition with the Board to obtain an election, and that the employees should be alert not to sign authorization cards on behalf of Local 262, because Cejka was anxious to impose "his union," namely, Local 262, upon them. Cejka, who had already received a union leaflet, was present in the South Amboy plant that day and stood on the loading dock, in company with Supervisors Robert Daye and William Simms, where he monitored the happenings with these officials.

When the lunch period ended, Simms instructed all employees to pull their timecards and go to the cafeteria for a meeting. When they arrived, Cejka launched into a lengthy review of his industrial history and credos. Holding a union leaflet in his hand, which contained the assurance that "Uncle Sam protects your right to organize," Cejka remarked that, as an American, he would be ashamed to hide behind the Government for protection and labeled anyone who did so as a coward and stupid idiot, and he reminded them that it was "Uncle Joe [Cejka]," and not Uncle Sam, who paid them. Cejka continued to say that when he opened the South Amboy plant, he asked the employees whether they desired union representation, and, upon learning that they did not, he informed Local 262 to leave them alone. However, Cejka noted that he had signed a contract with that organization containing an accretion clause which gave it the right to represent employees at any plant which Respondent opened within the vicinity of the abandoned New Brunswick plant. He then stated that he had promised to notify Local 262 if any intrusive union activities were discovered at South Amboy, in which event he would honor his commitment. Cejka added that if the employees wanted a union, it would be "my union," referring to Local 262.

While the meeting was in progress, Supervisor Daye handed Cejka a telegram which was sent by the Union. Cejka opened the message and read its contents to the assemblage. In it the Union claimed majority status, demanded recognition, and stated that it would petition the Board for an election. When he finished, Cejka announced that he would not recognize that labor organization and that he would tighten the work regimen at the plant. In this connection, he stated that he was aware that employees were soliciting signed Union authorization cards in the ladies' room, and he cautioned that if anyone was caught doing so, the offender would be discharged. Cejka further warned his listeners that he could close the facility if he so desired and remarked that there was a cancer in the plant which he intended to eradicate and that he knew the identities of the troublemakers.

During the session various employees broke into Cejka's monolog and spoke up. Alleged discriminatee Michael Masterson interjected and proclaimed to Cejka that the former favored the Union and knew what the cost of collective representation would be. Masterson suggested that Cejka attend a union meeting and learn what was being discussed and assured Cejka that he, personally, would not hesitate to

make his thoughts on the subject known to Respondent's president. As the meeting concluded, Cejka pointed to a group of the more active union proponents who had sat near him during the session and stated that he knew who the union supporters were.

In mid-April a number of employees engaged in conversations with their supervisors concerning the union campaign, as found by Judge Maloney in his earlier decision. In one such dialog Foreman Joe Brazenia asked Masterson if he planned to attend a union gathering scheduled for that evening. Masterson replied in the affirmative, adding that the Union "was buying" and that he was going to have a drink on the house.

On April 18 Respondent posted a notice on the South Amboy plant bulletin board which recited, "Because of a serious part shortage, we are forced to lay off some employees." During that week, 22 employees were furloughed, including Masterson. In the same week, the Union conducted another meeting, at which it distributed additional buttons to those of its adherents who were still at work in the plant. Several employees thereafter wore these emblems in the plant. On May 3 alleged discriminatee Mary Verchick was laid off, and on May 20 Eileen Coman was furloughed. Both wore union buttons in the plant prior to their separation.

In mid-June three of the laid-off employees were recalled, and in July a few more were reinstated. Following a proceeding under Section 10(j) of the Act instituted in the United States District Court for the District of New Jersey on July 25, the district judge ordered Respondent to offer reinstatement to all of the discriminatees who had not yet returned to work. Thereafter, pursuant to charges filed by the Union in Cases 22-CA-7589 and 22-CA-7616, a hearing was conducted before Administrative Law Judge Maloney on September 13-16. Masterson, Coman, and Verchick gave testimony in that proceeding which was antithetical to Respondent's interests. As noted above, in his decision of November 8, Administrative Law Judge Maloney found, *inter alia*, that Masterson, Coman, and Verchick had been laid off because of their activities on behalf of the Union, in violation of Section 8(a)(3) of the Act.

Michael Masterson was employed by Respondent in November 1976 at its New Brunswick plant, and when that facility was closed in December 1976, he was transferred to South Amboy. Masterson worked at the latter plant until April, when he was discriminatorily laid off. Pursuant to the order of the district court, Masterson was reinstated on August 15. During the hearing held by Administrative Law Judge Maloney between September 13 and 16, Masterson was summoned to give testimony on behalf of the General Counsel. On September 30 the Board's Regional Office conducted an election among Respondent's South Amboy employees upon a petition filed by the Union, and Masterson served as the Union's observer.⁴

Masterson testified without contradiction, and I find, that on September 28, 2 days before the election, Supervisor William Simms summoned all employees to hear a speech by President Cejka in the lunchroom. When the work force arrived, Cejka announced that he would not entertain any

⁴The Union was unsuccessful in the balloting.

questions from the assemblage and that he intended to do all the talking. At this point Masterson, whose prouion sentiments were well known to Cejka, spoke up and complained that it was unfair to muzzle the employees and forbid them to ask questions, whereupon Cejka retorted, "I'm the one that's doing the talking and if you don't like it you can get out."

During the course of Masterson's employment, he was assigned exclusively to maintenance duties, which included setting up production machines and tables which had been received from the defunct New Brunswick plant, painting, cutting grass, and running pipe. Masterson testified that, when hired, he was informed that he would perform only maintenance work, and I so find in view of General Supervisor William Simms' testimonial acknowledgement that Masterson had never been delegated to perform production work until the week leading up to his discharge. On October 19, in preparation for painting the exterior overhead doors, Masterson sanded and brushed them. On October 20, because of rain, he abandoned this chore and filled in his time performing odd maintenance jobs. When Masterson was in need of work, he normally would report to Supervisor Robert Daye, who would make necessary assignments. However, on this day Simms approached Masterson and reported that President Cejka had issued orders that Masterson was to operate the spot welder, a production job, although Simms could not explain why Cejka had selected Masterson for this duty. In this connection it is uncontroverted and I find that under normal circumstances employee George Bongiorno handled this work. Masterson asked what had happened to Bongiorno, and Simms replied that Bongiorno was engaged in other chores. Believing that the job would only last for the remainder of the afternoon, Masterson undertook the assignment. Later in the day, Simms inspected Masterson's production and commented that the latter should increase his output because he was expected to turn out 1,500 plates.

It is undisputed and I find that the next day, October 21, Masterson reported for duty, and, observing that the rain had ceased, he returned to his painting duties. While he was mixing paint, Simms walked over and stated, "Mike, I hate to disappoint you, but Cejka wants you to weld plates." When Masterson complained, "I thought that was only for yesterday," Simms replied, "[N]o, Mr. Cejka wants you to do that, that's your job now," whereupon Masterson proceeded to weld the plates. Later that day Simms approached his machine and again urged the employee to work faster. Masterson responded that he disliked sitting all day because this work posture hurt his back, and he also complained that the sparks caused by the welding torch hurt his eyes. Simms' reply was, "Well, there's nothing I can do about that, do the best you can."

Simms testified that he reported Masterson's production to Cejka that evening and was instructed by the president that if Masterson's productive performance "didn't improve enormously," Simms was to issue a warning notice to Masterson. Despite the fact that Masterson had only worked at spot welding for slightly over a day, Simms nevertheless typed a warning notice on October 21 which recited:

You were spoken to on several occasions in regard to work performance. This notice will serve as a written

warning. Further infraction will result in more severe disciplinary action, to and including discharge.

October 22 and 23 fell on a weekend, and the plant did not operate. On October 24 Masterson fell ill with the flu and called the plant secretary, Carol Miller, to report that he would be out sick that day. In his testimony, Simms confessed that he learned of the call, but could not remember if Cejka questioned him about Masterson's illness.

It is uncontroverted and I find that on October 25 Masterson reported for duty and, after a half-hour of spot-welding, he informed plant secretary Miller that his illness still persisted and that he planned to go home. Miller's only comment was "[F]ine," and he left the plant. According to the testimony of Simms, Masterson initially complained when he came to work that morning about his spot-welding duties. Simms then recalled that a short time later, Masterson asked Simms for permission to go home due to illness, and Simms simply answered, "Fine, go ahead." However, when Simms informed Cejka that Masterson had left the plant, the president directed his general supervisor to issue another warning notice to Masterson. This document, dated October 25, read:

Today you reported to work for a total of 37 minutes. When you were advised to return to your job of welding plates, you reported ill. This is to serve as a final warning notice that unless you return immediately and perform the job that has been assigned to you, your employment will be terminated.

Masterson came to work on October 26, and when he reported, Simms handed him the warning notices dated October 21 and October 25 which Cejka had instructed him to prepare. During the work break on October 26, Simms approached Masterson and again told the employee that he was not working productively. Masterson testified that, in an ensuing exchange, Simms stated, "I can't see why you're having such a hard time with this job." Masterson replied: "Sitting here makes my back hurt, it's making my eyes burn. . . . I think this job is a little bit demeaning. I think you are trying to harass me. I think you are trying to get rid of me." Simms answered "Well, there's nothing I can do about that . . . do the best you can." In his testimony, Simms claimed that Masterson never complained that the sparks from the welding machine hurt his eyes and that no other employee had ever registered that complaint. However, he did admit that Masterson objected to the spot-welding job as a demeaning assignment which was made to harass him, and Simms did not deny that he commented that the matter was out of his hands. At the day's end Simms handed Masterson a third and final warning letter, with the comment, "Cejka wants you to read this carefully" Despite the fact that plant secretary Carol Miller, General Supervisor Simms, and Cejka himself knew that Masterson had absented himself on October 24 due to illness, this notice, dated October 26, accused Masterson of refusing to work on the welding machine on October 24. Although the notice was signed by Simms, it recited, "If there is anything at all that is unfair in the assignment you have, we suggest you speak with Mr. Simms tomorrow October 27, 1977 at 8:00 a.m." Masterson's testimony is undenied, and I find, that when he asked Simms who was

responsible for the warnings which he had received, Simms replied that it was President Cejka.

On October 27, in conformity with Cejka's instructions, Masterson sought out Simms and again complained that he believed he had been assigned to the job of spot welding in order to harass him. Simms made no reply. During the day the general superintendent checked Masterson's production figures, and, according to Simms, he noted that Masterson had finished only 88 pieces in a 4-hour span. Masterson continued to work and finished his shift on October 27. As he prepared to leave work he received a final notice from Simms. This document informed the employee that because of substandard production, his employment was terminated, effective immediately.

In my opinion Masterson was assigned to the job of spot welding by Cejka on October 20, a job which he concededly had never previously performed, not because Respondent had need for his services in this capacity, but rather to set him up for discharge in order to rid itself of one of the most active and vocal union proponents. As heretofore chronicled, Cejka learned as early as April 14 that Masterson favored the Union and was actively supporting its organizational campaign. In his Decision, Administrative Law Judge Maloney found that Cejka had furloughed Masterson and other employees in April not out of legitimate business considerations, but solely because of their union activities. On August 15 Cejka was compelled to reinstate Masterson by court order. In mid-September Masterson appeared as a witness on behalf of the General Counsel in the proceeding before the Board and testified against Respondent's interests. On September 28, 2 days before the Board-conducted election, Cejka summoned his employees to a meeting at which he expressed his opposition to the Union's attempt to entrench itself in the plant. During the meeting Masterson criticized Cejka for denying to the assembled employees their right to speak out in favor of that labor entity. Any doubt which Cejka might have harbored concerning Masterson's allegiances was effectively dispelled when the latter appeared at the election on September 30 in the role of a union observer.

Within 3 weeks following the Union's loss at the polls, Cejka instructed his general supervisor, William Simms, to assign Masterson to the production job of spot welding, a task which was regularly performed by George Bongiorno. Despite Masterson's constant complaints about his new job, complaints which Cejka himself encouraged in the warning notice which the employee received on October 26, Respondent made no effort to transfer Bongiorno back to his regular job, although he was still in Respondent's employ, and no cogent reason for Cejka's failure to do so was advanced on the record.⁵

Cejka's motive in assigning Masterson to the welding job and then discharging him for poor productivity becomes even more suspect when Simms' testimony regarding this issue is examined. Thus, Simms related that upon Masterson's termination, Mildred Fraykor was hired to take his place. After her first day of work, Simms typed up a report of her production statistics, which he obtained from a me-

chanical counter on the welding machine. Simms then confessed that he normally does not engage in such a survey. When asked why he did so in the case of Fraykor, Simms responded: "[U]sually, when a new person comes into the shop to work, I like to watch them, particularly in the beginning to see if [they are] suitable for that job based on their performance. If she wasn't up to performance on that particular machine she would have been taken off of it." Although Masterson was "taken off" the machine after having worked on it for only 3 days, Simms made the surprising revelation that he gave new welders at least a week before he assesses their productivity. Finally, while Simms was able to provide the counter figures for Fraykor's production, he did not produce Masterson's production records to demonstrate any shortfall or the records of Bongiorno to show the acceptability of his efforts, although such records seemingly were available.

In sum, I am persuaded and find that Respondent assigned Masterson to the more arduous, onerous, and less agreeable job of spot welding on October 20, and discharged him on October 27, not because he failed to satisfy established production standards, but solely to remove from its midst an employee who actively championed the Union's cause in the South Amboy plant and who had given testimony against Respondent in a Board proceeding. By this conduct, I conclude that Respondent violated Section 8(a)(1), (3), and (4) of the Act.

Eileen Coman was hired by Respondent on February 28 and worked on a Jeep line where she assembled antennas, cut wire, and did a variety of other jobs which required very little physical effort. With the commencement of the union organizational campaign in March, she attended the union meetings and, in her words, was "just as active as the others" in supporting the Union's cause. As Administrative Law Judge Maloney found in his decision, Coman was the last employee who was discriminatorily laid off, on May 20, in violation of Section 8(a)(3) of the Act. Thereafter, she was called to testify on behalf of the Government in the Federal district court proceeding conducted in late July and was recalled by Respondent on August 22 pursuant to the district court order. Subsequently, she testified at the Board hearing in mid-September before Administrative Law Judge Maloney. As the last employee to be laid off on May 20, Coman was uniquely able to render testimony at both hearings to rebut Respondent's contention that the layoffs which it triggered in April were not designed illegally to thwart the Union's organizational efforts, but rather were intended to accomplish a legitimate reduction in force due to lack of production parts.

On October 17 William Dugas, a supervisor, assigned Coman to work on a lathe, a job which she had never previously handled. According to Supervisor Robert Daye, a man who stands 6 feet tall and weighs 200 pounds, he normally operated the lathe without difficulty, but because of the volume of work, he requested Dugas or Supervisor William Simms to provide some help. That afternoon Coman was selected to perform the chore by Dugas, and Daye instructed her in the operation of the machine. Coman continued to work the machine on October 18. On the morning of October 19, she experienced extreme pain in her legs, arms, and shoulders due to the strenuous nature of her

⁵ Cejka was not called as a witness in this proceeding.

lathe duties. On October 20 Coman returned to work and operated the lathe until she ran out of parts, at which point Dugas instructed her to find some other task to fill out the day. She thereupon joined employee Judy Smyles and worked with the latter at some unidentified job. On October 21 Coman rejoined Smyles. Shortly thereafter, Dugas approached and informed her that Daye had directed that she return to the lathe. Coman demurred, claiming that "I really don't feel good . . . everything hurts . . . that job is too hard for me . . . it's a man's job . . ." Dugas replied that Coman should register her complaint with Supervisor William Simms. Coman did so, but Simms simply stated: "[I]t's not my decision. It's [Daye's]."

Coman remained at her post with Smyles and soon received a visit from Daye. According to Coman, Daye angrily asked, "When do you decide which job you're going to put yourself on, and where you're not going to go?" Coman answered that she had not unilaterally selected her own work assignment and repeated what she had earlier told Dugas about her physical discomfort. Daye, who admitted in his testimony that Coman had reported her physical problems as the reason for desiring to forego lathe work, then told her, "[I]f you don't like it, then you can just take your time card and just punch out." Coman complied with Daye's directive and left the plant, never to return.

On the record taken as a whole, I am not entirely convinced that Coman's selection to work on the lathe by Daye was prompted by normal business considerations. Daye testified that prior to Coman's assignment to that machine, a male supervisor named Joe Brazenia assisted Daye when the workload made it necessary.⁶ He further testified that immediately following Coman's discharge, he personally requested that employee Betty Anderson be transferred to the operation. After first denying that any employee at the plant was paid on a more remunerative piece rate basis, Daye grudgingly brought himself to admit that Anderson was the only employee in the entire operation to receive that more attractive emolument, when she transferred to the lathe. Moreover, General Manager Donald Shamback conceded on the stand that the lathe "may be" more difficult to operate than the other pieces of equipment at the plant, and Daye confessed that even Anderson complained that "she was a little sore" when she first started to operate the lathe.

In view of Coman's uncontradicted testimony that she embroiled herself in the Union's organizational activities at their inception with the same intensity as the other active supporters of that organization; in light of President Cejka's statement at the meeting of employees which he conducted on April 14 that there was a cancer in the plant which he intended to eliminate and that he knew the identity of the troublemakers, a reference to the Union adherents; and in consequence of Coman's testimony before the Federal district judge as well as Administrative Law Judge Maloney which put the lie to Respondent's legal claim that the reduction in its work complement in April was due to a shortage of parts, which testimony was in large measure respon-

sible for the judges' orders directing the reinstatement of the furloughed employees and the award of backpay to them, I am convinced and find that Respondent transferred Coman to the more arduous and onerous job of operating the lathe on October 17, and discharged her on October 21, because of her union propensities and because she gave testimony damaging to Respondent's cause before Administrative Law Judge Maloney. I conclude that by so doing, Respondent violated Section 8(a)(1), (3), and (4) of the Act.

I next turn to a consideration of the treatment which Respondent accorded to alleged discriminatee Mary Verchick. It is undisputed and I find that she was hired by Respondent in January and was laid off on May 3. During the initial stages of the Union's organizational drive, she attended meetings, signed a union designation card, and actively supported that organization. Pursuant to court order, she was recalled to work in August and was discharged by Respondent on October 21, allegedly because she frequently absented herself from her work station to visit the ladies' room.

Verchick testified without contradiction, and I find, that when she returned to her job in August, she attended all the union meetings which were held until the election of September 30. On September 28, while she was seated near Cejka during his preelection speech to the assembled employees, she drew the president's wrath by laughingly interrupting his monolog in which he berated and disparaged the Union. In addition, Verchick also was summoned by the General Counsel to give testimony against Respondent in the hearing before Administrative Law Judge Maloney in mid-September.

Verchick testimonially related that between the date of her hire in January until her layoff in April, she visited the ladies' room approximately four times a day, which was par for the course for other female employees, and Verchick's testimony in this regard gains corroborative support from Eileen Coman. In March Verchick felt ill while at work. During the day, she encountered Supervisor Joe Brazenia in the lunchroom and reported her condition to him. In an ensuing conversation she expressed her concern that if she left work because of her illness, she might be fired. Brazenia replied, "You don't have to worry about being fired, you just have to watch going to the bathroom." As heretofore chronicled, President Cejka delivered a speech to his employees on April 14 after the Union had openly manifested its organizational designs. In that address Cejka remarked that he was aware that certain employees had been soliciting signed union authorization cards in the ladies' room, and he warned that if anyone were caught doing so, she would be terminated.

Verchick further testified that, after she returned from her layoff in August, she was on her way to the bathroom when she was accosted by Supervisor Robert Daye. Daye remarked, "Oh, you're going to the bathroom again," and Verchick stated, "I have a problem." Thereupon, Daye suggested that she have the medical problem attended to, and Verchick replied, "I don't have the money to get it fixed." The matter was then dropped. Some time thereafter, while Verchick was working on the assembly line, plant engineer Charles Dill came to her work station and stated that Cejka required a doctor's note certifying the reason for Verchick's visits to the ladies' room. Verchick replied, "I'll see what I

⁶ Daye also recalled that Maria Ruiz had toiled on the lathe at some time in the distant past. However, he acknowledged that Ruiz worked at this chore only sporadically and was never permanently assigned to the machine.

can do." A few days later Dill again approached her in the cafeteria and repeated that President Cejka demanded a doctor's certificate. When she replied, "I can't afford it," Dill warned, "[I]f you don't get it, . . . your job's at stake." On a later date, while Verchick was working, Supervisor Robert Daye passed by, and she asked, "Bob, do you still want a note?" and Daye responded, "Yeah, Mr. Cejka wants it." When Verchick inquired whether she would be discharged if she failed to comply, Daye responded that Cejka "doesn't have intentions of chucking anybody out." Verchick then asked, "How come I'm the only one that gets hassled about having to have a note when other employees go to the bathroom just as much as I do?" and Daye answered, "Well, it's more noticeable when you go," but he refused to explain the purport of his comment. The conversation turned to the Union's organizational efforts and then concluded.

On October 19 Verchick visited her physician for an examination because, in her words, "they kept on hassling me, and telling me that I was going to get fired, so, I figured, if I brought a note in, they would get off my back." On the note the doctor mentioned that Verchick suffered from "[F]requent urination." Verchick returned to the plant and handed the note to coworker Dolly Gonzalez for delivery to Carol Miller, the plant secretary. On October 21 Verchick received a notice of termination from Supervisor William Simms which recited:

Your recent employment record indicates you are unable to perform a full day's service on a continuing basis. Your absences from your work station have been brought to your attention on numerous occasions.

Accordingly, your employment is terminated effective today, October 21, 1977.

When your medical condition has been remedied, we would be pleased to consider your application for re-employment.

On my review of the record made herein, I am not convinced that Respondent singled out Verchick for discharge on October 21 because she failed to perform a full day's work due to any urological problems. Verchick's testimony is uncontroverted, and I have heretofore found, that her urinary difficulties were well known to Respondent at the inception of her employment, when Supervisor Brazenia learned from her in March that she suffered from this ailment. I am persuaded that Brazenia warned her at this time, "[Y]ou just have to watch going to the bathroom," because, as President Cejka was to tell his employees a month later, Cejka knew that certain female employees had been previously discovered soliciting on behalf of the Union in the ladies' room, and he threatened to discharge them if they were caught doing so. Despite the fact that Respondent was aware of her allegedly frequent trips to that location, these aberrations were tolerated until Verchick was discriminatorily laid off in early May. Upon her recall in August, I am persuaded that Respondent once again sought to ride herd on this known or suspected Union solicitor by insisting that she obtain a doctor's note explaining the reason for her visits to the ladies' room, although it knew that she could not immediately afford to do so. After learning from plant engineer Dill that Cejka demanded medical evi-

dence and Dills statement, "[I]f you don't get it, . . . your job's at stake," and after being told by Supervisor Daye that her trips "were more noticeable when you go," Verchick finally consulted a doctor and received a note which stated that she simply was a victim of frequent urination. Despite this notation, Respondent's Vice President Milazzo, who received the document, inexplicably concluded that the physician's explanation was unsatisfactory and, after pouring over Verchick's personnel records, decided to terminate the employee.

In her testimony plant secretary Carol Miller related that she observed Verchick go to the ladies' room "much more than other employees" and that on each occasion Verchick "was there for quite awhile." Notwithstanding that Miller was not a supervisor, her observations were studiously passed along to her interested supervisors. Although Miller admitted that she was aware that the Union was seeking to represent Respondent's employees at the time and that an election was scheduled for September 30 and acknowledged that she had observed Verchick talking to other employees in the restroom, she maintained that she never overheard what the subject of Verchick's conversation with these employees was. I do not credit Miller's testimony that Verchick visited the ladies' room more frequently than other female employees, because I deem it to be implausible. Thus, by her own admission, Miller's office was located outside the plant, and she confessed that she did not, as a rule, count the numbers of times that employees journeyed to that room.

In short, I am persuaded that Respondent discharged Verchick on October 21 because it knew or believed that she was instrumental in soliciting the membership of employees on behalf of the Union during her visits to the restroom and because she had given testimony in a prior Board proceeding against Respondent, and not because her bathroom jaunts interfered with her productivity. I conclude that by the foregoing conduct, Respondent violated Section 8(a)(3) and (4) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with Respondent's operations described in section I, above, have a close and intimate relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening commerce and the free flow thereof.

V. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices within the ambit of the Act, I shall order that Respondent cease and desist therefrom and take certain affirmative action which I deem is necessary to effectuate the policies of the Act.

I have found that Respondent discharged Eileen Coman and Mary Verchick on October 21, 1977, and terminated Michael Masterson on October 27, 1977, because they joined and assisted the Union in its organizational campaign at Respondent's plant and because they gave testi-

mony inimical to its interests in a Board proceeding, in violation of Section 8(a)(3) and (4) of the Act. To remedy these violations I shall recommend that Respondent offer immediate and full reinstatement to them in their former jobs or, if they no longer exist, to substantially equivalent employment and make them whole for any loss of pay which they may have suffered as a result of the discrimination practiced against them. The backpay provided for herein shall be computed in accordance with the Board's formula set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest thereon as prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).⁷

Upon the basis of the foregoing findings of fact and conclusions, and upon the entire record made herein, I hereby make the following:

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of rights guaranteed to them under Section 7 of the Act, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. By discharging Eileen Coman, Mary Verchick, and Michael Masterson, thereby discriminating in regard to their hire and tenure of employment, in order to discourage their adherence to and activities on behalf of the Union and to inhibit their right to give testimony under the Act, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (4) of the Act.

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

Upon the foregoing findings of fact and conclusions of law and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, I hereby issue the following recommended:

⁷ In his brief, the General Counsel has requested that a remedial interest rate of 9 percent per annum be imposed on the backpay for which Respondent is liable due to the violations found herein, a percentage which is at variance with the Board's current policy of calculating interest according to the "adjusted prime rate" utilized by the Internal Revenue Service for interest on tax payments. See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). Requests similar to the one which the General Counsel has made herein are currently pending before the Board. Until that tribunal has spoken on the issue, I deem myself bound by the Board's current formula. I shall therefore deny the General Counsel's remedial plea.

ORDER⁸

The Respondent, Ward Products Corporation, Somerset, New Jersey, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Assigning more arduous and onerous and less agreeable work tasks to its employees in order to dissuade them from joining or supporting the Union or to penalize them for having given testimony under the Act.

(b) Discharging employees, thereby discriminating in regard to their hire and tenure of employment, in order to discourage their engagement in union activities or to interfere with their right to give testimony under the National Labor Relations Act, as amended.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which I deem necessary to effectuate the policies of the Act:

(a) Offer to Eileen Coman, Mary Verchick, and Michael Masterson immediate and full reinstatement to their former jobs or, if they no longer exist, to substantially equivalent employment, and make them whole for any loss of pay which they may have suffered as a result of the discrimination practiced against them, in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security records and reports, and all other records necessary to analyze the amounts of backpay due herein.

(c) Post at its plant in South Amboy, New Jersey, copies of the attached notice marked "Appendix."⁹ Copies of said notice, on forms to be provided by the Regional Director for Region 22, after being duly signed by Respondent's authorized 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 to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 22, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

⁸ 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.

⁹ 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."