

**Woodings Verona Tool Works and Raymond A. Colaianni.<sup>1</sup> Case 6-CA-11014**

July 13, 1979

**ORDER**

On June 1, 1979, the National Labor Relations Board issued the attached Proposed Decision and Order in the above-entitled proceeding, finding that Respondent has engaged in and was engaging in certain unfair labor practices in violation of Section 8(a)(1) of the National Labor Relations Act, as amended, and ordering that Respondent cease and desist therefrom and take certain affirmative action to remedy such unfair labor practices.

No statement of exceptions having been filed with the Board, and the time allowed for such filing having expired,

Pursuant to Section 10(c) of the National Labor Relations Act, and Section 102.48 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Board adopts as its final Order herein the said Proposed Decision and Order.

By direction of the Board: George A. Leet, Associate Executive Secretary

**PROPOSED DECISION AND ORDER**

BY MEMBERS PENELLO, MURPHY, AND TRUESDALE

On March 2, 1978, Raymond A. Colaianni, an individual, filed the charge in this proceeding. A complaint was issued on April 17, 1978, alleging that the Respondent, Woodings Verona Tool Works, has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the National Labor Relations Act, as amended. Respondent filed an answer to the complaint denying the commission of the alleged unfair labor practices. Thereafter, Respondent moved that the instant proceeding be deferred pending an arbitrator's decision involving a grievance raising related matters under its collective-bargaining agreement with the United Steelworkers of America, AFL-CIO-CLC (herein called the Union).<sup>2</sup>

Pursuant to due notice, a hearing was held before Administrative Law Judge John F. Corbley in Pittsburgh, Pennsylvania, on September 6, 1978. The General Counsel and Respondent were represented

<sup>1</sup> The name of the Charging Party appears as amended at the hearing.

<sup>2</sup> Counsel for the General Counsel filed a motion in opposition to Respondent's motion. Thereafter, Administrative Law Judge Arthur Leff, by order dated May 9, 1978, denied Respondent's motion, with leave to renew its motion should it appear that the grievance had been processed to arbitration prior to the hearing herein. Respondent has not sought to renew its motion.

by counsel. All parties were afforded full opportunity to be heard, to present oral and written evidence, and to examine and cross-examine witnesses. Thereafter, Respondent and counsel for the General Counsel submitted briefs to the Administrative Law Judge.

On December 8, 1978, the Chief Administrative Law Judge informed the parties that Administrative Law Judge Corbley died on November 7, 1978, without having issued a Decision within the meaning of Section 102.36 of the Board's Rules and Regulations, Series 8, as amended. Respondent and counsel for the General Counsel subsequently requested that the case be transferred to the Board for issuance of a Proposed Decision and Order based on the record as made, as provided in Section 554(d) of the Administrative Procedure Act, and Section 102.36 of the Board's Rules and Regulations.<sup>3</sup> On February 5, 1979, the case was transferred to the Board for the purpose of making findings of fact and conclusions of law, and for the issuance of a Proposed Decision and Order.

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.

Upon the entire record in this proceeding, and after consideration of the briefs of the Administrative Law Judge, the Board makes the following:

**FINDINGS OF FACT****I. BUSINESS OF RESPONDENT**

Respondent, a Pennsylvania corporation with its principal offices located in Verona, Pennsylvania, is engaged in the manufacture and nonretail sale of heavy hand tools and railroad track appliances. During a representative 12-month period preceding the hearing, Respondent shipped goods and materials valued in excess of \$50,000 from its Verona, Pennsylvania, facility, directly to points located outside the Commonwealth of Pennsylvania. Respondent admits, and we find, that Woodings Verona Tool Works is now, and at all times material herein has been, an employer engaged in commerce and in operations affecting commerce within the meaning of Section 2(6) and (7) of the Act.

**II. THE LABOR ORGANIZATION INVOLVED**

The parties stipulated, and we find, that United Steelworkers of America, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.

<sup>3</sup> The Charging Party made no response concerning the disposition of the instant proceeding.

## III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Posture of the Case*

In brief, employee Raymond A. Colaianni refused to perform work assigned to him; namely, grinding five sets of wood chopping maul dies.<sup>4</sup> Respondent sent Colaianni home for the remainder of his shift and, upon his return to work the following day, suspended him for 3 days for insubordination. The General Counsel contends that Colaianni was suspended and disciplined for asserting rights under the "safety clause" of the contract between Respondent and the Union, and that Respondent thereby violated Section 8(a)(1) of the Act.

Respondent contends, first, that in invoking the safety clause of the contract Colaianni acted as an individual and was not engaged in protected concerted activity, because the alleged unhealthy condition affected only Colaianni; second, that Colaianni did not follow the procedures outlined in the contract for raising a safety claim or raise safety as an issue until after his suspension; and, finally, that Colaianni's claim that the work was unsafe or unhealthy was frivolous and not made in good faith.

B. *The Facts*<sup>5</sup>

Colaianni has been employed as a diemaker for approximately 20 years, the last 10 of which have been at Respondent's Verona, Pennsylvania, facility. As a diemaker, Colaianni's job description calls for him to perform various functions, including maintaining and repairing dies, and to use various machine tools, including grinders. Colaianni testified that his primary duty is to operate a machine known as a shaper, although he also uses other machines as required.

On Monday, February 27, 1978,<sup>6</sup> Colaianni was assigned the job of grinding five sets of wood chopping maul dies by his supervisor, Paul Klingensmith.<sup>7</sup> Co-

laianni had performed the same work on Thursday and Friday of the preceding week, and on other occasions in the past. Colaianni refused to perform the assigned task, although the reasons given for that refusal are in dispute.

According to Colaianni, he informed Klingensmith that he had performed the same task the preceding Thursday and Friday and that he could not tolerate any more dust.<sup>8</sup> Colaianni also testified that he complained that the surface grinder had a worn spindle and was a safety hazard, and that the flexible shaft grinder needed a guard on the wheel. He further testified that he told Klingensmith that he had been to see a doctor concerning his eyes,<sup>9</sup> and that he was told by the doctor that he had an "abrasive eyelid," probably caused by pollution in the air.

According to Klingensmith, Colaianni declined to perform the work, initially because he was a diemaker rather than a grinder, and then with the general statement that the work was hazardous to his health. Upon Colaianni's refusal to perform the task, Klingensmith summoned Plant Engineer Allen Harrington.<sup>10</sup> Upon Harrington's arrival, Klingensmith again requested that Colaianni perform the work assigned to him.

According to Colaianni, he again stated that the job was hazardous to his health and asked whether he should obtain a doctor's excuse. Upon Klingensmith's insistence that he perform the work or go home, Colaianni testified that he informed Klingensmith that his health was more important, and thereupon Colaianni went home.

Employee Daniel Stangrecki testified that he was able to overhear the second conversation testified to by the other witnesses—that between Colaianni, Klingensmith, and Harrington—but not the initial conversation between Colaianni and Klingensmith.<sup>11</sup> He testified that Colaianni complained about the dust and about having had problems with his eyes, and that Colaianni offered to get a doctor's excuse.

<sup>4</sup> From the record, it appears that the dies involved are steel sections used in the process of producing wood choppers, a type of axe. These dies become misshapen in the production process and must be "dressed" periodically to return them to their original form. This process involves the use of two machines: a surface grinder, to level the ends of the dies, and a flexible shaft grinder, to contour the sides of the dies to their original concave surface. To complete this work on the five sets involved would take a single individual approximately a week; there was testimony that this work must be performed on one to two sets of such dies per day. This work is part of a diemaker's job, and had been performed by Colaianni on previous occasions.

<sup>5</sup> There are some conflicts in the testimony concerning the nature of complaints voiced by Colaianni at the time he refused to perform the task assigned to him. Those conflicts are set forth herein. There are no other major conflicts in the testimony pertinent to the issues presented herein.

<sup>6</sup> Respondent in its brief states that the events in question occurred on February 28. However, the testimony at the hearing and the written reprimand issued by Respondent both place the events on February 27.

<sup>7</sup> The parties stipulated, and we find, that Klingensmith is a supervisor within the meaning of Sec. 2(11) of the Act.

<sup>8</sup> From Colaianni's testimony, it appears that particles of sand, grit, stone, and steel are released into the air, both during the grinding process and while the grinding wheel is being "dressed" to remove metal particles which accumulate during the grinding process.

<sup>9</sup> Colaianni testified that he complained about his eyes to another supervisor, Louis Kern, who told him to consult Dr. Ferguson, the company doctor. At the hearing, a prescription vial was identified bearing a label indicating it had contained a prescription for Colaianni from a Dr. Ferguson. Colaianni testified that the bottle had contained eyedrops prescribed by Ferguson for his eye discomfort in November 1977.

<sup>10</sup> The parties stipulated, and we find, that Harrington is a supervisor within the meaning of Sec. 2(11) of the Act.

<sup>11</sup> At the hearing herein, Respondent adduced certain testimony concerning the proximity of Stangrecki's work station to the location at which the conversation involving Colaianni, Harrington, and Klingensmith occurred. In its brief, Respondent does not assert that Stangrecki was not in a position to overhear the conversation, but rather cites certain of Stangrecki's testimony in support of some of its contentions. In light of this, it appears that there is no dispute concerning Stangrecki's testimony that he was able to overhear the conversation in question, and we therefore credit that testimony.

According to Klingensmith and Harrington, Colaianni complained about his nose, rather than his eyes, when he was again requested to perform the work. Colaianni was then given the choice of doing the work or going home, and chose to go home.

Prior to leaving the plant, Colaianni encountered Vince Zakowski, the vice president and then-acting chairman of the safety committee for the Union. Colaianni informed Zakowski that he was being sent home because of his refusal to perform the work and, according to Colaianni, because of the dust and his refusal to work the surface grinder. Zakowski told Colaianni that they would look into the matter upon Colaianni's return to work the next day.<sup>12</sup>

Colaianni returned to work the following morning and was immediately asked to report to the "front office" to discuss the events of the preceding day. There, he was given a letter informing him that a 3-day suspension was being imposed because of his "in-subordination," to be served from February 28 to March 3.<sup>13</sup> Colaianni then left the plant and returned to work on March 3.

Upon his return to work on March 3, Colaianni was assigned to grind five sets of wood chopping maul dies. He thereupon sought out Zakowski and requested that Zakowski secure "some protection" for Colaianni. Zakowski initially sought to have Respondent secure a guard for the flexible shaft grinder and a dust collector. Upon learning that neither was available, Zakowski then requested that Colaianni be assigned another job under the contract; this request was denied. Eventually, Zakowski arranged for Respondent to furnish Colaianni with a respirator and a face mask, which Colaianni wore while he worked on the dies.

In late March or early April, at a meeting of Respondent's safety committee, Zakowski suggested, *inter alia*, that Respondent acquire a booth to collect dust in the machine shop area. Thereafter, on May 10, Zakowski filed a grievance on behalf of the Union seeking "[a]nswer on question for dust collectors and guards for hand grinders in machine shop." Respondent's answer indicated that it was investigating portable dust collectors and that a purchase order would issue at a later date; Respondent also stated that the guards sought in the grievance were not commercially available.<sup>14</sup>

<sup>12</sup> Colaianni and Zakowski did not, in fact, discuss the matter on the following day, due to Colaianni's suspension immediately upon his return to work.

<sup>13</sup> On March 8, Colaianni filed a grievance concerning this suspension, asserting that "I was told to work on unsafe and unhealthy [sic] equipment." This grievance was withdrawn by the Union approximately 3 or 4 weeks later.

<sup>14</sup> Colaianni, upon learning of Respondent's assertion that guards were not available for the grinder, wrote to the manufacturer on May 15 to inquire into their availability. In response, the manufacturer sent Colaianni a bro-

chure describing both the grinder and wheel guards which were available for 5- and 6-inch wheels. Respondent uses 4-inch wheels with its flexible shaft grinder. Inasmuch as a determination of the feasibility of using a guard for the grinder would not be dispositive of Colaianni's claim that the grinder was unsafe, we make no finding concerning the availability of an appropriate guard for the grinder as used by Respondent.

One or two weeks after Colaianni's suspension, Zakowski requested that Respondent have the surface grinder checked for a possible safety defect. Kasnot and Harrington investigated the grinder, discovered that the hub was worn, and had the machine disassembled so that a new hub could be made. Harrington testified that the extent of wear exhibited by the hub would take "a considerable length of time" to develop.

The collective-bargaining agreement between Respondent and the Union contains a provision for the resolution of safety disputes, which reads as follows:

#### Section XIV—SAFETY AND HEALTH

(A) The Company shall continue to make reasonable provisions for the safety and health of its employees at the plants during the hours of their employment. Protective devices and other equipment necessary to properly protect employees from injury shall be provided by the Company in accordance with the practice now prevailing in the plants.

(B) An employee or group of employees who believe that they are being required to work under conditions which are unsafe or unhealthy beyond the normal hazard inherent in the operation in question shall have the right to: (1) file a grievance in the second step of the grievance procedure for preferred handling in such procedure and arbitration; or (2) relief from the job or jobs, without loss to their right to return to such job or jobs, and at Management's discretion, assignment to such other employment as may be available in the plant; provided, however, that no employee, other than communicating the facts relating to the safety of the job, shall take any steps to prevent another employee from working on the job.

#### C. Discussion

Respondent asserts that, at most, Colaianni complained about dust at the time he refused to perform the assigned task, and that he voiced none of the other safety complaints alluded to until some time after his suspension. This assertion, based largely on the observation that no witness other than Colaianni could recall hearing Colaianni mention any hazards connected with the use of the surface grinder or flexible shaft grinder, underlies much of Respondent's defense. Respondent notes that Colaianni and other die-

chore describing both the grinder and wheel guards which were available for 5- and 6-inch wheels. Respondent uses 4-inch wheels with its flexible shaft grinder. Inasmuch as a determination of the feasibility of using a guard for the grinder would not be dispositive of Colaianni's claim that the grinder was unsafe, we make no finding concerning the availability of an appropriate guard for the grinder as used by Respondent.

makers had performed the same work under the same conditions in the past without complaint. Thus, any unusual hazard to Colaianne on the date in question was, according to Respondent, the result of Colaianne's special susceptibility to dust (because of his "abrasive eyelid") rather than any safety hazard, and that his complaint therefore was not made in furtherance of any collective interests. Respondent further asserts that Colaianne's performance of the same job previously belies any good-faith belief that the job was hazardous. Respondent also asserts that the alleged safety claim was an afterthought, pointing to the fact that Colaianne did not seek assignment to another job or other relief under the contractual health and safety clause at the time he refused to perform the assigned task. Finally, Respondent denies that the job was inordinately hazardous in the absence of a special health condition such as Colaianne's "abrasive eyelid."

Although it is not possible for us to evaluate the testimony in this proceeding from direct observation of the witnesses, the record is clear that, at a minimum, Colaianne brought up a problem concerning dust when he was assigned the task of grinding the dies. Thus, Stangrecki's testimony corroborates Colaianne's testimony concerning the complaints made in Colaianne's second confrontation with management officials prior to his suspension. While Respondent's witnesses did not testify to any specific health complaints raised by Colaianne other than an asserted problem with his nose, Klingensmith testified that Colaianne stated in their first conversation that grinding the dies was hazardous to his health, clearly raising a health-related issue. We are, therefore, persuaded that Colaianne relied on a claim that dust from the grinders constituted a health hazard, at the time that he refused to perform the work assigned to him.

There is also some evidence in the record which suggests that Colaianne was also troubled by the alleged safety problems to which he testified at the hearing herein. Thus, upon his return to work following his suspension, his complaints prompted Zakowski to request a dust collector and a guard for the flexible shaft grinder. When that request was denied, Zakowski was able to obtain a respirator and face shield for Colaianne, and Colaianne was apparently sufficiently satisfied by these items to perform the work. Zakowski's request for a guard and, subsequently, for a face shield, are consistent with a concern for the safety of the flexible shaft grinder.<sup>15</sup> Za-

<sup>15</sup> While the record does not indicate the role which the face shield was intended to play with regard to Colaianne's complaints, it is clear that such shields would safeguard employees from flying debris from the flexible shaft grinder. Thus, employee John Payne testified that, on May 2, the 4-inch

grinder also sought and obtained an inspection of the surface grinder, with the result that within 1 or 2 weeks after Colaianne's suspension the hub was replaced. However, it is not necessary for us to determine whether Colaianne voiced these additional concerns at the time he refused to perform the work assigned to him, inasmuch as we are persuaded that Colaianne's complaints about dust were sufficient to raise an issue concerning safety under the contractual health and safety provision.

We find unpersuasive Respondent's assertion that Colaianne's complaint concerning dust was not protected concerted activity. It is well established that an attempt to enforce what the employee believes to be a provision of the collective-bargaining agreement constitutes protected concerted activity, even if other employees are unconcerned by the asserted contract violations.<sup>16</sup> The possibility that Colaianne may have been incorrect in his belief that the dust was a sufficient reason for him to refuse to perform the job under the contract similarly is irrelevant, for "the merit of the employee's complaint is irrelevant to the issue of whether the employee is engaged in protected concerted activity."<sup>17</sup> Finally, the fact that Colaianne did not specifically refer to the contractual health and safety provision in declining to perform the assigned work does not render unprotected his actions, inasmuch as the nature of his objection to performing the work is clearly related to his rights under the health and safety provisions of the contract.<sup>18</sup> Respondent had the option, at the time of his refusal, of giving Colaianne relief from the job and assigning him to other work if such other work was available; it chose instead to discipline him for seeking to enforce his right not to work in what he believed to be unhealthy conditions. The Union's subsequent attempts to alleviate the dust problems, by seeking respirators and dust collectors, indicate that Colaianne's belief was shared by responsible union officials, and thus renders unpersuasive Respondent's assertion that the health claims raised by Colaianne were frivolous or in bad faith.

For the reasons set forth above, we conclude that Colaianne was suspended and reprimanded for attempting in good faith to enforce his rights under the health and safety provision of the contract, and that Respondent thereby violated Section 8(a)(1) of the Act.

wheel of the flexible shaft grinder exploded while he was using it. At the time, Payne was wearing a face shield. A piece of the wheel hit the face shield near Payne's cheek, scratching the shield; the remainder of the wheel struck a wall 10 or 15 feet away.

<sup>16</sup> *Interboro Contractors, Inc.*, 157 NLRB 1295, 1298 (1966); *N.L.R.B. v. Interboro Contractors, Inc.*, 388 F.2d 495, 500 (2d Cir. 1967); *H. C. Smith Construction Co.*, 174 NLRB 1173, 1174 (1969).

<sup>17</sup> *ARO, Inc.*, 227 NLRB 243 (1976).

<sup>18</sup> *Youngstown Sheet and Tube Company*, 235 NLRB 572, 573 (1978); *Roadway Express, Inc.*, 217 NLRB 278, 279 (1975).

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES  
UPON COMMERCE

The activities of Woodings Verona Tool Works set forth in section III, above, occurring in connection with operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action which we find necessary to effectuate the policies of the Act.

We have found that Respondent unlawfully suspended and disciplined Raymond A. Colaianni on February 27, 1978. We shall, therefore, order Respondent to make whole Raymond A. Colaianni for the time lost as a result of his suspension, to be computed in accordance with *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest computed in accordance with *Florida Steel Corporation*, 231 NLRB 651 (1977), enforcement denied on other grounds 586 F.2d 436 (5th Cir. 1978); see generally *Isis Plumbing & Heating Co.*, 139 NLRB 716 (1962), enforcement denied on different grounds 322 F.2d 913 (9th Cir. 1963). We shall also order Respondent to rescind and expunge from its records the letter given to Colaianni on February 28, 1978, informing him of his suspension for insubordination.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

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

2. United Steelworkers of America, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. By suspending and disciplining employee Raymond A. Colaianni on February 27, 1978, because he attempted to invoke his rights under the health and safety provision of the contract between Respondent and the Union, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

Upon the foregoing findings of fact, conclusions of

law, and the entire record, and pursuant to Section 10(c) of the Act, the Board hereby issues the following proposed:

ORDER<sup>19</sup>

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Woodings Verona Tool Works, Verona, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Suspending and disciplining employees because they have attempted to invoke their rights under the health and safety provision of the contract between Respondent and the Union.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under the National Labor Relations Act.

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

(a) Make whole Raymond A. Colaianni in the manner set forth herein in the section entitled "The Remedy."

(b) Rescind and expunge from all personnel files and other records of Raymond A. Colaianni the letter given to him on February 28, 1978, informing him of his suspension for insubordination.

(c) 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 Order.

(d) Post at its place of business in Verona, Pennsylvania, copies of the attached notice marked "Appendix."<sup>20</sup> Copies of said notice, on forms provided by the Regional Director for Region 6, after being duly signed by Respondent's representative, shall be posted by Respondent 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

<sup>19</sup> Any party may, within 20 days from the date hereof, file with the Board in Washington, D.C., eight copies of a statement setting forth exceptions to this Proposed Decision and Order, together with eight copies of a brief in support of said exceptions and, immediately upon such filing, serve copies thereof on each of the other parties.

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.

<sup>20</sup> 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."

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

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

APPENDIX

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

WE WILL NOT suspend or discipline employees because they attempted to invoke their rights un-

der the health and safety provision of our contract with United Steelworkers of America, AFL-CIO-CLC.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights guaranteed by the National Labor Relations Act, as amended.

WE WILL pay Raymond A. Colaianni for losses he suffered as a result of our having suspended him in February 1978.

WE WILL expunge from his record the suspension given to Raymond A. Colaianni in February 1978.

WOODINGS VERONA TOOL WORKS