

Allstate Specialties Company, Inc. and Michigan State Council of Lathers, District Local 349, The Wood, Wire and Metal Lathers International Union, AFL-CIO. Case 30-CA-4508

February 28, 1979

DECISION AND ORDER

BY MEMBERS PENELLO, MURPHY, AND TRUESDALE

On September 28, 1978, Administrative Law Judge Robert W. Leiner issued the attached Decision in this proceeding. Thereafter, the General Counsel 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, and conclusions¹ of the Administrative Law Judge and to adopt his recommended Order, 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 the Respondent, Allstate Specialties Company, Inc., Shawano, Wisconsin, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

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

“(a) Offer Donald C. Yuhasey immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.”

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

¹ In view of our agreement with the Administrative Law Judge's finding that Respondent's refusal to reinstate or reemploy Donald C. Yuhasey was violative of Sec. 8(a)(1) of the Act, we also agree with his finding that it is unnecessary, in these circumstances, to determine whether Respondent's described conduct also violated Sec. 8(a)(3) of the Act. We reach this conclusion because we believe that the injured party, Yuhasey, can be made whole and the policies of the Act can be fully effectuated by the remedies which we impose for the Sec. 8(a)(1) violation.

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 parties had the opportunity to present evidence and arguments, it has been decided that we have violated the National Labor Relations Act, as amended. We have therefore been ordered to post this notice and to comply with its provisions.

WE WILL NOT threaten our employees that they will not be reinstated or rehired because of their activities in seeking benefits under the provisions of a collective-bargaining agreement.

WE WILL NOT refuse to reinstate or reemploy employees for seeking benefits under the provisions of a collective-bargaining agreement.

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 Act.

WE WILL offer Donald C. Yuhasey immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Donald C. Yuhasey whole for any loss of pay he may have suffered as a result of our unlawful discrimination against him, with interest.

ALLSTATE SPECIALTIES COMPANY, INC.

DECISION

STATEMENT OF THE CASE

ROBERT W. LEINER, Administrative Law Judge: This case was heard in Marinette, Wisconsin, on August 16, 1977, pursuant to a charge duly filed and served on January 18, 1978, and upon the subsequent complaint together with notice of hearing, dated March 9, 1978. Respondent's timely answer was filed March 17, 1978. The issues presented by the pleadings were whether Respondent violated Section 8(a)(1) of the National Labor Relations Act by making coercive statements with regard to the reinstatement or rehire of employees and whether Respondent violated Section 8(a)(3) and (1) of the Act in failing and refusing to reinstate or rehire Donald C. Yuhasey to his former position of employment as a journeyman lather. In its answer,¹ Respondent admitted certain facts with respect to the juris-

¹ Respondent's answer was filed by an attorney. At the hearing, B. C. Continued

dictional aspects of the case as well as the Union's status as a labor organization and B. C. Barnes' status as a supervisor and agent of Respondent within the meaning of Section 2(11) of the Act. At the hearing, B. C. Barnes also admitted that his foreman, Ron Theisfeldt, was also possessed of supervisory powers and I conclude that he was a supervisor within the meaning of the Act. Respondent denied the commission of unfair labor practices.

At the hearing, the General Counsel and B. C. Barnes were given full opportunity to present evidence, make argument, and call, examine, and cross-examine witnesses. At the conclusion of the hearing, the parties waived oral argument and, subsequent to the close of the hearing, the General Counsel submitted a brief.

Upon the entire record in the case, including the General Counsel's brief, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

The complaint alleges, Respondent's answer admits, and I find that Allstate Specialties Co., Inc., herein called Respondent, a Wisconsin corporation, is engaged in the construction industry as a lathing subcontractor, engaged in various plastering functions and constructing acoustical ceilings, maintaining its principal office in Shawano, Wisconsin. During the past year, a representative period, Respondent performed services valued in excess of \$50,000 for enterprises located outside the state of Wisconsin. I conclude 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

The complaint alleges, Respondent admits, and I find that at all material times Michigan State Council of Lathers, District Local 349, the Wood, Wire and Metal Lathers International Union, 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

A. *The Facts*

The Respondent, Allstate Specialties Co., Inc. (of which B. C. Barnes is the president, a stockholder, and its chief operating officer), in existence for about 7 years, successfully bid for the lathing subcontract on the Lloyd Hospital project in Menominee, Michigan, in or about March 1977. The general contractor which awarded the job to Respondent was Alfredson Brothers of Menominee.

In July 1977, Respondent, by B. C. Barnes, executed a collective-bargaining agreement with the Charging Party,

Barnes stated that he had a full opportunity to consult counsel and nevertheless was appearing on behalf of Respondent without counsel.

herein called the Union, recognizing the Union as the collective-bargaining representative of all journeymen, lathers, and apprentices with regard to wages, hours, and working conditions (G.C. Exh. 3, p. 1) wherein Respondent undertook, *inter alia*, to pay the Union, on behalf of its journeymen and apprentice employees, certain "fringe benefits." Among the fringe benefits were funds contributed for employee insurance, pension fund, apprentice plan, vacation, and other employee benefits. The collective-bargaining agreement provides (1) that the fringe benefits shall be separately remitted by separate check to the Union each month (art. VIII); and (2) that (G.C. Exh. 3, art. 3, sec. 2) the employer employ on each job within the Union's jurisdiction at least 50 percent of the journeymen and apprentices who are members of the local absent an inability of the Union to refer such employees from its hiring hall. It is undisputed that on or about October 4, 1977, Respondent hired the alleged discriminatee Donald C. Yuhasey, and his brother Guy Yuhasey, as journeymen lathers. Barnes testified that Donald Yuhasey² was an excellent lather, but performed only so much work as would live up to the requirements of the job. Barnes testified with some force that Donald Yuhasey never worked hard enough so that Barnes made a profit out of Donald Yuhasey's labor. Also hired at this time was Donald Yuhasey's son, Tim Yuhasey, as an apprentice. There is no dispute that Tim Yuhasey was not an experienced lather.

Before hiring the Yuhaseys, Respondent hired three other persons from outside the jurisdiction of Escanaba Local 349, of Menominee, Michigan. These three persons, members of the Lathers Union from Greenbay, Wisconsin Local 388³ were Ron Theisfeldt, a journeyman, who was hired as Respondent's foreman and two apprentices, John Algair and Fred Stover.

Although the testimony was in dispute, I credit the testimony of Frank Smith, the business agent of the Charging Party, who testified, contrary to Barnes, that pursuant to the collective-bargaining agreement and the Union's practice, lathing contractors were obligated to remit to the Michigan State Council (on behalf of the Charging Party) all fringe benefits derived from the employment of all lathers on the job, not only of Michigan-based lathers, but those from outside the jurisdiction including those employed who were members of Greenbay Local 388. I further credit Smith's testimony insofar as he testified that the moneys so collected because of the employment of Greenbay lathers was thereafter remitted to the Greenbay local by the Charging Party.

In mid-October, with the above six lathers on the job, the three Yuhaseys were laid off because of a lack of materials but were all reemployed the following week except for Guy Yuhasey, who had found another job. Therefore, commencing mid-October 1977, there were five employees on the job: Donald Yuhasey, Tim Yuhasey, the two apprentices, Algair and Stover, and the foreman, Theisfeldt.

² Respondent knew, at the time it hired him that Donald Yuhasey was business agent of Local 349.

³ Art. III, sec. 1, of the collective-bargaining agreement requires employees to afford the local at least 48 hours to provide journeymen lathers before hiring journeymen from other locals. By hiring Theisfeldt before the Local 349 journeymen, Respondent violated its obligation.

By early December 1977, Respondent also employed Jim Felix as a journeyman lather. Felix was business agent for Greenbay Local 388.

There is ultimately no dispute in the testimony of Barnes and Union Agent Frank Smith that on December 15, 1977, the Union, because Respondent failed to pay the Union the accrued fringe benefits, caused the job to lose the services of all journeymen and apprentices except for Foreman Theisfeldt who was permitted to remain on the job. It is also undisputed that three meetings between the parties took place pursuant to an attempt to adjust the cessation of work which lasted from December 15, 1977, through January 9, 1978. These meetings occurred on December 27 and 28, 1977, and January 6, 1978. It is also undisputed that work recommenced on January 9, 1978, with lathers other than members of Local 349, and that Donald Yuhasey was not rehired. It is also undisputed that Tim Yuhasey was laid off because of lack of work and was not rehired because of his inexperience.

Barnes testified that he knew that Donald Yuhasey was the business agent of Escanaba Local 349 at the time he hired him.

On or about November 8, 1977, Donald Yuhasey telephoned Smith and told him that there were two apprentices (Algaire and Stover) on the job who were not properly registered with the Union and were being paid under scale. When Smith checked the records immediately after Yuhasey's telephone call, he discovered that Barnes, on behalf of Respondent, had not remitted to the Union any fringe benefits for any of the Wisconsin or Michigan lathers. Smith then called Barnes and asked for payment of the fringe benefits. In response, Barnes, in partial payment for only the Michigan lathers (the Yuhaseys) made payment around the first of December 1977. Around December 5, 1977, because of this late and partial remittance to the Union, Smith telephoned Barnes and asked him to pay up all the fringe benefits for both the Wisconsin and Michigan lathers. Barnes refused and told Smith that he did not owe any fringe benefits.

On December 15, Respondent laid off Donald and Tim Yuhasey and also Jim Felix. The foreman, Theisfeldt, told them they were laid off but that Donald Yuhasey could return to work. The two apprentices, Stover and Algaire, were not laid off. On the same day, Thursday, December 15, Donald Yuhasey telephoned Smith again, told him of the layoff and the fact that two unindentured and unregistered⁴ apprentices, Stover and Algaire, were still on the payroll. He asked Smith if Respondent had paid the fringe benefits for the Michigan and Wisconsin lathers and Smith told him that Respondent had not paid. When Yuhasey told him that he had been laid off, he asked for instructions to be given to him with regard to the job. Smith told him he would first call Barnes to straighten out the fringe benefits situation and would call him back. Smith then called

Barnes, told him of the fact that he still had unindentured and unregistered apprentices on the job and had not paid the fringe benefits for the Wisconsin and Michigan lathers. Smith told him if the fringes were not paid, Smith would close down the job. Barnes refused to pay the fringe benefits. With that, Smith called Donald Yuhasey and told him that on the following workday⁵ (Monday, December 19), he was to tell the lathers, both journeymen and apprentices, that they would have to leave the job. On December 15, with these instructions from Smith, Donald Yuhasey told the two apprentices, Algaire and Stover, of the union action in closing down the job and warned them if they did not leave the job, they would be fined by the Union. Smith called Donald Yuhasey the next day and told him that no journeymen except for foremen could work on the Lloyd Hospital job until Barnes paid up the fringe benefits. Thus, there is no dispute, that the job was closed down from the end of December 15 until work started again on January 9, 1978. As above noted, the job was restarted pursuant to the three meetings held between the parties.

The Meeting of December 27, 1977

Union Agent Smith arranged a December 27, 1977, meeting on December 17 after having called Barnes on the telephone. Smith brought in Robert Welty, the Union's international representative. The parties, including representatives of the hospital, the architect, Alfredson Brothers (the general contractor), Barnes, Smith, and Donald Yuhasey, met at the Lloyd Hospital jobsite building of Alfredson Brothers. The Union asked Barnes to pay the unpaid fringe benefits for the Michigan and Wisconsin lathers and Barnes refused. In particular, Barnes refused to pay any fringe benefits on behalf of the Wisconsin lathers. When Barnes became profane in his responses to the Union's request for payment of the fringe benefits, the Union closed the meeting. That night, Smith telephoned Alfredson Brothers in an attempt to further settle the problem and the parties agreed to meet at 9:30 a.m. on the next day.

The Meeting of December 28, 1977

The parties met again on December 28. Donald Yuhasey was not present. At that second meeting, Barnes agreed to pay the unpaid fringe benefits and the Union accepted the Alfredson Brothers' agreement to go on the performance bond on behalf of Barnes.⁶

When the Union complained that Respondent was employing unregistered apprentices, Barnes said he wanted to keep them in employment notwithstanding that Smith said that he had local registered apprentices ready and willing to work. Smith then asked Barnes to reemploy Donald and

⁴ The lather workweek is 40 hours in length, 10 hours per day, Monday through Thursday. Payday is each Thursday, December 15, 1977, being a Thursday. Therefore the next workday would have been Monday, December 19.

⁶ Smith testified that the general contractor, Alfredson Brothers, agreed to go on the \$5,000 performance bond on behalf of Respondent. Article 7 of the collective-bargaining agreement, which Respondent executed in July 1977, effective June 1, 1977, provides that the performance bond amount was changed to \$7,500. The performance bond (art. 7, sec. 2, G.C. Exh. 3) covers payment of the fringe benefits.

⁴ The General Counsel contends that the international constitution of the Union requires registration in and work permits issued from either the Michigan State Council of Lathers or Local 349 for out-of-jurisdiction lathers. No authority for this proposition is in the record. Barnes admitted that the apprentices were not indentured in Michigan, but asserted they were instituted in Wisconsin.

Tim Yuhasey. Barnes told him that Tim Yuhasey did not do enough work to earn his money and, with regard to Donald Yuhasey, he was a "troublemaker" who, although not laid off, was not going to be taken back. When the Union insisted on the reemployment of Donald Yuhasey, the various papers with regard to the payment of fringe benefits and the performance bond not having actually then been signed, Barnes told Smith to "shove it" and told him that he refused to sign anything. Barnes then left the meeting.

The Meeting of January 6, 1978

The parties arranged for a further meeting on January 6, 1978, at 9:30 a.m. in the Alfredson Brothers' main office. The parties worked out an agreement whereby Respondent agreed to pay the fringe benefits on both the Wisconsin and Michigan lathers through funds provided by Alfredson Brothers, the general contractor, who would then withhold payment in these sums in its ordinary contract payments to Respondent. It was further agreed that the general contractor would "go on" the performance bond, and that the Union would provide six to eight lathers to permit a start of work on or about January 9. When Smith requested that Respondent reemploy Donald Yuhasey, Barnes refused and said that Donald Yuhasey was still a troublemaker and if it were not for Yuhasey, Respondent would not be in his present situation. Thereafter, Smith provided Respondent with seven lathers, all from Michigan locals other than Local 349. Local 349 has only six members: the three Yuhaseys, two members by the name of Peterson, and Green. The two Petersons and Green were working on other jobs and could not be sent.

The Testimony of B. C. Barnes

Barnes testified that sometime prior to December 15, 1977, Frank Smith called him and demanded payment for the fringe benefits. He also admits that on December 15, 1977, Frank Smith threatened to shut down the job unless Barnes paid the fringe benefits. As above noted, it is also uncontested that in the period December 15 through January 9, no lathers were working on the job except the foreman.

With regard to the December 27 and 28 meetings, Barnes testified that when Smith told him that he had been told that unregistered apprentices were not being paid the contract wage scale, Barnes told them that he was paying them over the contract scale. He also testified that he told Smith that he indeed had already paid the Wisconsin lathers' fringe benefits, but had paid them directly in the employees' checks. I credit Smith's testimony that Smith then asked for proof of such payment and that Barnes refused. Barnes never testified to the contrary.

Although Barnes did not recollect exactly at which meeting he said it, he admits (he was particular that it did not occur on December 28) that he told Smith that he would not reemploy Donald Yuhasey because "if it wasn't for him, he would not be in all this trouble." With regard to the phrase, "all this trouble," Barnes testified that he meant by that the obligation to pay fringe benefits of \$3,000 to the

Michigan Lather State Council plus the fact that Yuhasey was the principal cause of tying up and closing down the job from December 15 through January 9. Barnes also admitted that after the January 6 meeting he told Smith, when Smith asked him to reemploy Donald Yuhasey and his son Tim, that he would not reemploy Donald Yuhasey until "hell freezes over."

Barnes' original testimony was that Donald Yuhasey was not rehired or reemployed for three reasons: The first was that he had caused the Union to close down his job; the second was that he had been instrumental in forcing Respondent to pay \$3,000 in fringe benefits on behalf of the Wisconsin Lathers to the Michigan Council; and the third, which according to Barnes' original testimony was the principle reason, was that Donald Yuhasey had *quit* work (because of the layoff of his son) in or about a period 3 weeks before the job was closed down on December 15.

In response to Barnes' testimony with regard to this last point, the General Counsel called Donald Yuhasey. Yuhasey testified credibly that he, his son, and Jim Felix were all employed up to and through the end of business on Thursday, December 15, 1977, and had been laid off by Respondent's foreman, Theisfeldt, at that time. Barnes strongly contested this fact and asserted that Donald Yuhasey had quit 3 weeks before December 15. At this point, a recess was called in order for Barnes to bring payroll and other records to prove not that Donald Yuhasey had ceased employment about 3 weeks before December 15, but to establish, by that fact, that Yuhasey had *quit* over the layoff of his son.⁷ When Barnes brought the records in, he admitted that they showed that Donald Yuhasey and Tim Yuhasey had been employed up to and through December 15, 1977. The evidence therefore discloses, contrary to Barnes' extensive testimony, that his recollection was clearly mistaken that Donald Yuhasey had quit his employment in November 1977, while work was in progress, thereby causing Respondent great difficulty in continuing with the job. Rather, the testimony clearly showed, according to Respondent's own records, that Donald Yuhasey and Tim Yuhasey were on the job through December 15. Therefore Respondent's defense that its principal reason for not rehiring Donald Yuhasey was that he had quit, left the job, and caused Respondent a great deal of trouble was proven to be incorrect. Barnes made no further explanation.

Discussion and Conclusions

The complaint (par. 5, as amended at the hearing) alleges that after January 6, 1978, meeting among the various parties, Barnes unlawfully threatened to refuse to reinstate or rehire Donald Yuhasey because of his activities on behalf of the Union. The complaint also alleges (par. 6) that on or about December 27, 1977, Respondent, by Barnes, refused to reinstate or rehire Donald C. Yuhasey because of his union activities.

1. Smith testified, and Barnes did not deny, that at the December 28, 1977, and January 6, 1978, meetings of the

⁷ Yuhasey testified that Foreman Theisfeldt had laid him off in the morning of December 15, *supra*.

general contractor, the Union, and architect, he told the assembled persons (including Donald Yuhasey at the January 6 meeting) that he would not reemploy or rehire Donald Yuhasey because he was a "troublemaker" and that the reason he would not hire him was that Donald Yuhasey had put him in this particular situation. Whether or not such a statement amounts to a "threat" within the meaning of Section 8(a)(1) of the Act, it is clearly a statement designed to be heard by Donald Yuhasey and, it seems to me, clearly interfered with his protected rights under Section 7 to be free of such a coercive statement. In determining the violation of Section 7 rights, the issue is whether the language interferes with the free exercise of statutory rights rather than the intent or effect of the language. *El Rancho Market*, 235 NLRB 468 (1978), 603 F.2d 223 (9th Cir. 1979). Thus, Barnes told Yuhasey that he would not reinstate or rehire him because he was a "troublemaker" and caused Barnes to be in his present predicament. This obviously was in reference, as Barnes admitted, to Yuhasey causing Respondent to pay the \$3,000 fringe benefits on behalf of the Wisconsin lathers to the Michigan union and that Yuhasey was prominent in causing the Union to close down the job. Such a statement is unlawfully coercive and, as alleged, violates Section 8(a)(1) of the Act.

2. The evidence pursuant to Frank Smith's testimony discloses, and Barnes does not deny, that he refused to rehire or reemploy Donald Yuhasey because he was a "troublemaker," because he had caused the Union to shut down the job, and had caused Respondent to pay \$3,000 in fringe benefits pursuant to the contract. Nothing in the evidence showed that anything that Donald Yuhasey did pursuant to the contract was unlawful. The most that can be said is that he caused Respondent a great deal of trouble by insisting that Respondent perform in accordance with the terms and conditions of its collective-bargaining agreement with the Union. Nothing that Local 349 business agent Donald Yuhasey did, on this record, was outside of an insistence on implementing the terms of the collective-bargaining agreement covering his own employment. This is a clearly protected "concerted" activity under Board rule. Compare: *Merlyn and Clarence Bunney, d/b/a Bunney Bros. Construction Co.*, 139 NLRB 1516, 1519 (1962) with *Self-Cycle and Marine Distributor Co., Inc.*, 237 NLRB 75 (1978). Barnes' refusal to reinstate or reemploy Donald Yuhasey because of such activities is therefore interference with activities protected by Section 8(a)(1) of the Act.⁸ Barnes' statement that Yuhasey had quit, and therefore Respondent was under no obligation to reemploy him, is a meretricious position. On this record, it is immaterial whether Yuhasey had been laid off or had quit. If he had been laid off, Respondent was under an obligation not to unlawfully refuse to reinstate him; if Yuhasey had quit, Barnes was under an obligation to refrain from not reemploying him on the basis of the fact that Yuhasey had caused Respondent to pay \$3,000 in fringe benefits and to otherwise abide by the terms and conditions of the collective-bargaining agreement. Thus, whether Yuhasey quit or was laid off is immaterial. Moreover, in

⁸ I need not rule whether the same conduct also violates Sec. 8(a)(3) of the Act since the remedy is essentially the same.

any case, Respondent's defense that Yuhasey had suddenly quit and left him in the lurch by leaving the job in November was disproven according to Respondent's own work records. The "quit" defense turned out to be unproven and thus failed even to rise to the level of a pretext. The main reasons for the failure to rehire Donald Yuhasey were that he caused Respondent to abide by the collective-bargaining agreement and pay the \$3,000 in fringe benefits on behalf of the Wisconsin lathers and caused the December 15 strike by the Union.

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, 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 thereof.

V. THE REMEDY

Having found that Respondent has violated Section 8(a)(1) of the Act, in the failure to reinstate or reemploy Donald C. Yuhasey, and also independently violated Section 8(a)(1) of the Act in making a coercive statement to him, I shall order that Respondent be required to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Further, it will be recommended that Respondent be ordered to make whole Donald C. Yuhasey by reason of Respondent's unlawful action against him commencing with its refusal on December 27, 1977, to reinstate or reemploy him until such time as Yuhasey's services cease or Respondent makes an unconditional offer to reinstate or reemploy Yuhasey to his former position of employment with Respondent as a journeyman lather, whichever first occurs. It will be further recommended that any loss of earnings be computed in accordance with the methods prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).⁹

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 telling Donald C. Yuhasey, on December 27 and 28, 1977, and January 6, 1978, that it would not reinstate or rehire him because of his activities in causing Respondent to perform in accordance with the collective-bargaining agreement between Respondent and the Union and because Yuhasey caused a lawful strike against Respondent, and by refusing on or about December 27, 1977, to rehire or reinstate him for the same reasons, Respondent unlaw-

⁹ See generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

fully interfered with, restrained, and coerced employees in the exercise of rights guaranteed in Section 7 of the Act thereby violating Section 8(1)(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 herein, including the General Counsel's timely submitted brief, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, I hereby issue the following recommended:

ORDER ¹⁰

The Respondent, Allstate Specialties Co., Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees that they will not be reinstated or rehired because of their activities in seeking benefits under the provisions of a collective-bargaining agreement.

(b) Refusing to reinstate or reemploy employees for seeking benefits under the provisions of a collective-bargaining agreement.

(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 is deemed

¹⁰ 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.

necessary to effectuate the policies of the Act:

(a) Offer to Donald C. Yuhasey immediate and full reinstatement or reemployment to his former job as a journeyman lather or to a substantially equivalent position, without prejudice to his seniority or other rights within the terms and conditions in the section of this Decision entitled "The Remedy."

(b) Make whole Donald C. Yuhasey for any loss of wages he may have suffered by reason of Respondent's unlawful discrimination against him pursuant to the terms and conditions as specified under "The Remedy," *supra*.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all records, reports, work lists, and other documents necessary to analyze the amount of backpay due under the terms of this Decision.

(d) Post at all places where notices to employees and applicants for employment are posted, copies of the attached notice marked "Appendix."¹¹ Copies of said notice, on forms provided by the Regional Director for Region 30, after being duly signed by an authorized representative of Respondent, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days, 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.

(e) Notify the Regional Director for Region 30, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

¹¹ In the event that this Order is enforced by a Judgment of the 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."