

Waterbeds 'N' Stuff, Inc. and Gerald M. Smith, Jr.
Case 9-CA-11950

September 29, 1978

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS
AND PENELLO

On July 10, 1978, Administrative Law Judge Robert Cohn issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the Charging Party filed an answering brief to Respondent's exceptions.

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 briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Waterbeds 'N' Stuff, Inc., Columbus, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

DECISION

STATEMENT OF THE CASE

ROBERT COHN, Administrative Law Judge: This proceeding, held pursuant to Section 10(b) of the National Labor Relations Act, as amended (herein the Act), was heard at Columbus, Ohio, on March 3, 1978, pursuant to due notice. The principal issue raised by the pleadings,¹ is whether Waterbeds 'N' Stuff, Inc. (herein the Company or Respondent), unlawfully terminated three of its employees in violation of Section 8(a)(1) of the Act because they complained in a group to the Respondent's president concerning their wages, hours, and other terms and conditions of employment. The Respondent, while agreeing that the employees complained in a group concerning their working conditions, contends that such was not the reason for the discharges; rather said discharges were a consequence of the employees' derelictions in their work performances.

¹ The original charge was filed November 21, 1977; the complaint and notice of hearing issued January 12, 1978.

At the hearing, at the close of the General Counsel's case-in-chief, I granted a motion by the Respondent to dismiss the complaint insofar as it alleges a violation of Section 8(a)(3) of the Act, on the grounds of insubstantial evidence.² At the close of the hearing, oral argument was waived; however, helpful, posthearing briefs, which have been duly considered, have been received from counsel for all parties.

Upon the entire record in the case, including my observation of the demeanor of the witnesses,³ I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent, an Ohio corporation, is engaged in the wholesale and retail sale of waterbeds and related merchandise at its Columbus, Ohio, facilities. During the past 12 months, a representative period, Respondent purchased and received goods and materials, valued in excess of \$50,000, which were shipped to its Columbus, Ohio, facilities directly from points outside the State of Ohio. During the same period of time, Respondent's gross volume of business was valued in excess of \$500,000.

I find, as the Respondent admits, that it is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Facts

During the summer of 1977,⁴ the approximate half-dozen employees of Respondent's warehouse were discussing among themselves complaints regarding the working conditions there. Such dissatisfactions included wages, overcrowding of the warehouse, lack of a timeclock, and the manner of assigning overtime.⁵ In late July, the employees had a meeting with Warehouse Manager David McWilliams to express their complaints. Apparently McWilliams was generally sympathetic with at least some of the grievances, and promised, for example, with respect to the overtime complaint, that employees would be notified at least prior to noon of the workday if they were expected to work overtime that day. However, Respondent did nothing with respect to alleviating the employees' complaints, and in August the employees commenced discussing the formation or joining of a labor organization which they felt might be helpful in securing better working conditions. They implemented their concerns and desires by, among other things, making homemade signs and stickers which they posted

² An error in the transcript of the proceedings has been noted and corrected.

³ Cf. *Bishop and Malco, Inc., d/b/a Walker's*, 159 NLRB 1159, 1161 (1966).

⁴ All dates hereinafter are 1977, unless otherwise indicated.

⁵ It appears that the employees were not notified that they would be requested to work overtime on any given work day until late in the afternoon of such work day.

around the Respondent's premises calling themselves the "United Basement Workers of America."⁶

The failure of the Respondent to take any significant steps to remedy the employees' grievances by September resulted in the continued festering of the deteriorating relationship between management and the employees. It erupted into a confrontation between President Spero and the employees on Monday, September 12.⁷

Prior to the commencement of work that day, at the Respondent's premises, the employees continued to discuss their complaints concerning the working conditions at the warehouse. When the warehouse opened, some of the employees began unloading a truck of merchandise and apparently continued their discussions with the truckdriver who was a member of the Teamsters Union. The truckdriver gave one of the employees, Timothy Ryan, the telephone number of the Teamsters office in the event the employees wished to contact that union for organizational purposes.⁸

President Spero apparently became aware of the employees' discussions during the morning work hours. He came into the warehouse around noon and asked the employees what was the matter. They responded that they wished to discuss their problems with him as a group. He countered that he would not engage in any group discussions, and suggested that they appoint the Charging Party (Gerald Smith) and Foreman Terry Elzey as their representatives.⁹ The employees declined Spero's selections, and chose employees Ryan and Smith to represent them. Accordingly, Ryan and Smith met with Spero in the latter's office in which they discussed the employees' above-enumerated complaints about the working conditions in the warehouse. This conversation was interrupted by a long-distance telephone call from Warehouse Manager McWilliams who had left the preceding Friday for a vacation in Atlanta, Georgia. Spero told McWilliams over the telephone about the employees' activities that day, stating to McWilliams that "we have a little problem here."¹⁰

Ryan and Smith left Spero's office during the telephone conversation. However, a little later in the day in Spero's office, Elzey had a conversation with Spero, which was subsequently enlarged into a meeting between Spero and all of the warehouse employees. This second meeting, which was a continuation of the discussion concerning the employees' grievances, was spirited. However, there is no evidence of threats of violence with the possible caveat that the discussion ended with the statement by Elzey that he was glad that Spero had talked to the employees because if he had not done so, Elzey would have taken him outside and punched him in the nose.¹¹

⁶ There is, however, no substantial evidence that the employees ever formally organized a labor organization within the meaning of the Act.

⁷ Some of the witnesses placed the confrontation meetings on September 13 rather than September 12. However, I am convinced from all of the evidence in the record that the meetings actually occurred on the 12th.

⁸ Timothy Ryan actually telephoned the Teamsters Union that morning. However, there is no evidence that the Respondent became aware of such contact prior to the terminations here involved.

⁹ The record reflects that the Respondent considered Elzey a supervisor of the warehouse employees; McWilliams testified that Elzey had the authority to hire and fire.

¹⁰ Credited testimony of Smith.

¹¹ There is some disagreement in the record between witnesses for the General Counsel and witnesses for the Respondent as to the state of excite-

The following day, Tuesday, September 13, the employees worked a regular workday, but McWilliams aborted his vacation and returned to Columbus, reaching that city that evening. McWilliams testified that he spoke briefly with Spero that evening concerning their trip to see a location for a new warehouse the following morning, but that they did not discuss the employees at that time. However, the following morning, Wednesday, September 14, McWilliams testified that, following a discussion with Spero concerning employee complaints, he (McWilliams) spoke with the following employees: Terry Elzey, Lee Starkey, Craig Kerns, Michael Vernon, Ray Imperial, and Berry Lang.¹² Of the named employees, only Starkey, Lang, and Vernon testified at the hearing.

Starkey, who I consider a credible witness, stated that McWilliams called her aside on September 14 and inquired as to her personal complaints. She responded that she considered the grievances more of a group than an individual nature, but that her principal complaint had to do with wages and the manner of assigning overtime, described above. McWilliams inquired what she would do if he fired some or all of the rest of the crew that worked in the basement. She responded that she saw no need to fire anyone because all the employees were congenial and cared for the company; that she was uncertain as to her course of action should he discharge the remainder of the group. McWilliams responded that if the employees "expected to get anything accomplished with Mr. Spero, that [they] would have to forget any ideas of trying to organize or form a union."¹³

Vernon, a newly hired employee who commenced work on the previous Monday, testified that his conversation with McWilliams on Wednesday had to do with the latter's questioning him as to whether he had observed other employees drinking on the job. Vernon responded by showing McWilliams where some beer had been hidden underneath the receiving table.

Lang, an accounting department employee, testified that he had observed Smith, Ryan and Conzola drinking beer on a very hot day in late August, but did not report it to anyone at that time. However, he did report the incident to McWilliams when the latter queried him in the middle of September.

When the employees returned from lunch on Wednesday, September 14, McWilliams indicated to them that Conzola, Ryan and Elzey need not bother going back to work, but that Starkey and Craig Kerns had the option of remaining if they so desired.¹⁴

ment and tone of voices of the employees at the meetings. Spero contended that some of the employees were quite excited, and were shouting and screaming at various times during the discussion. The employees testified that the meetings were more subdued and that the only threat uttered during the whole period of time was that stated by Elzey, set forth above, and even this threat was made in a rather jocular tone.

In any event, the Respondent does not contend that the concerted activities of the employees on this date, which were otherwise protected by Sec. 7 of the Act, became unprotected because of any violent, abusive, or threatening conduct of the employees.

¹² McWilliams also testified that he spoke with employees Tim Ryan and Ed Conzola, but only to advise them that they were fired. Gerald Smith was not present at work that day, having been excused to attend a funeral on Wednesday and Thursday of that week.

¹³ Credited testimony of Starkey.

¹⁴ Starkey took the position that if other employees were fired, she was fired too, and left. Kerns, who did not testify at the hearing, remained in the Respondent's employ.

When Smith returned to work on Friday, September 16, he was aware of the occurrences of the previous Wednesday. He had a conversation with McWilliams in the latter's office on Friday morning wherein McWilliams advised that Smith was one of the employees who was discharged, and verbally gave Smith two reasons: (1) Smith's personal life was interfering with his ability to do the job, and (2) Smith had made shipping and receiving errors.¹⁵

Following his oral notification of termination by McWilliams in the afternoon of Wednesday, September 14, Conzola along with some of the other employees (Ryan, Elzey, Starkey, and Kerns) spoke with McWilliams as to the reasons for the termination. As to Conzola, McWilliams stated that the reasons were because of his inability to accept criticism and because of his drinking on the job.¹⁶ Conzola testified that McWilliams had never raised those complaints with him prior to that date, and that in the previous July he had received a written evaluation from McWilliams which stated that he was a good worker, and the only complaint was that he read the newspaper in the morning at work. Moreover, the evaluation advised that he would be receiving a raise in his next paycheck, and he did in fact receive his first raise from \$2.60 per hour to \$2.75 per hour. McWilliams, in his testimony, acknowledged that "drinking on the job" was not a primary reason for the discharge of Conzola but was "a small part of it."

Timothy Ryan was given no verbal reason for his termination at the time of discharge. As in the case of the other two alleged discriminatees, he received, about 2 weeks later, a handwritten paper which listed written reasons for the discharge, as follows: (1) poor appearance and bad attitude, (2) excessive lateness, (3) questionable use of company time, and (4) drinking on the job. Ryan testified that the only admonition with respect to these complaints which he had received prior to the discharge was with respect to the lateness charge in response to which Ryan stated that he would "try to straighten up and not be late anymore, which [he] did." McWilliams testified that Ryan was "dismissed primarily because of complaints that I had received from Terry Elzey, although, through my own observation, also, specifically for lateness, for misuse of company time, and, again, partially for drinking on the job."¹⁷ McWilliams explained that misuse of company time had to do with wasting time on deliveries. In that connection he testified that he received a complaint from one of the Respondent's customers, Rhonda Burke Boutique, about a week prior to McWilliams leaving on vacation. However, he did not terminate

Ryan at that time because, as McWilliams explained, the Company was faced with a huge backlog and it had not been able to obtain new personnel. Nevertheless, as far as the record shows, this particular complaint was never mentioned to Ryan prior to the decision to terminate him.

B. Respondent's Defenses, and Concluding Findings

In its brief, Respondent concedes that the Charging Party and other individuals named in the complaint engaged in concerted activity within the meaning of the Act when they made group complaints to Mr. Spero concerning their working conditions. Respondent also recognizes that the terminations of the alleged discriminatees so closely following their complaints "perhaps raises some inference of cause and effect which Respondent must overcome." The brief then proceeds to point out the Respondent's principal defense that the employees were, in fact, discharged for cause (inventory accumulation caused by dilatoriness of the employees), and that the decision to make such terminations was made by management at a time prior to the group complaints to Mr. Spero. While the record establishes, and I am satisfied, that cause may have existed for the termination of some of the employees in the warehouse, I am unpersuaded that Respondent met its burden that it was "motivated by legitimate objectives"¹⁸ in effectuating the discharges which are at issue here. Rather, I am convinced and therefore find that the Respondent was motivated, at least in part, by a desire to squelch the concerted activities of its employees.¹⁹

The record establishes that, commencing in August, Respondent's inventory of goods and materials began to mount. It is further established that at least a reason for this condition was the growing time lag between the checking in of the merchandise and its being checked out to the Respondent's customers.²⁰ Both Spero and McWilliams testified that they became aware of this mounting inventory, and that they also determined the identity of the employees who were primarily responsible for the situation. It was further concluded that it would be a mistake to discharge the individuals prior to securing their replacements and therefore the employees were not notified of such decision pending McWilliams' return from his vacation.

In support of the foregoing contention, Respondent introduced into the record a log which purported to show the time lag in receiving and processing shipments described above. However, such exhibit shows that during the critical period in August when the time lag was expanding, the individuals who initialed the log as purportedly being the

¹⁵ Subsequently about a week or two later when Smith went to the company to pick up his last paycheck, he received a document which listed three reasons for his discharge: The two above mentioned, plus the assertion that Smith had participated in a work slowdown. According to the credited testimony of Smith, McWilliams had never mentioned either of the foregoing reasons to him prior to his termination. Indeed, McWilliams admitted complementing Smith concerning the manner in which he performed his job as late as August 1977.

¹⁶ Subsequently, about 2 weeks later as in the case of Smith, Conzola received a handwritten document from the company listing five reasons for the termination: (1) drinking on the job, (2) talking too much with fellow employees, (3) misuse of company time and supplies (Conzola could not remember the remaining two reasons: the document referred to was not offered into evidence at the hearing).

¹⁷ Testimony of McWilliams; Elzey did not testify at the hearing.

¹⁸ *N.L.R.B. v. Great Dane Trailers, Inc.*, 388 U.S. 26 (1967).

¹⁹ As the court stated in *N.L.R.B. v. Symons Manufacturing Co.*, 328 F.2d 835, 837 (C.A. 7, 1964):

The mere existence of valid grounds for a discharge is no defense to a charge that the discharge was unlawful, unless the discharge was predicated solely on those grounds, and not by a desire to discourage union activity.

See also *N.L.R.B. v. Hanes Hosiery Division, Hanes Corporation*, 413 F.2d 457, 458 (C.A. 4, 1969):

And if a desire to stifle protected activity is a factor in the employer's decision [to discharge], the discharge is discriminatory.

²⁰ The time lag grew from approximately 3 days "in-processing time" to approximately 10-14 days.

ones who were responsible for checking in the shipments were not the three discriminatees named herein but rather were Rodney Reaves (who initialed the log as "Rod") and Craig Kerns (who initialed the log as "C. K."). The record reflects that Reaves voluntarily quit his employment with Respondent in late August, and, as set forth above, Craig was not discharged along with the other employees on September 14. Under all circumstances, I am not persuaded that the Respondent's exhibit supports the testimony of McWilliams and Spero that they made the determination to terminate the alleged discriminatees herein for creating the backlog in inventory in August.²¹

Moreover, the testimony of Karen Starkey and Michael Vernon confirms that the concerted activities of the employees played a substantial part in the decision to discharge. Thus, as previously set forth, Starkey credibly testified that McWilliams told her that if the employees expected to get anything accomplished with Spero, they would have to forget any ideas of trying to organize a union. Vernon, a witness for the Respondent, testified that on Tuesday, September 13, Spero took him aside and asked him who the ring leaders were who were "heading this mess." Vernon replied that while he could not put a finger on anyone that was spearheading the movement, the employees who were most vocal were Ryan, Conzola, Starkey and Smith. Such evidence clearly indicates, in my view, that Spero was keenly interested in determining the leaders of the employees' concerted activities; the fact that three of them were terminated almost immediately thereafter creates an inference of causal relationship which is quite powerful in its impact.²²

I note as a further factor indicating a discriminatory motive the circumstance that at no time prior to the terminations did any representative of management ever warn or caution either of the discriminatees that the continuation of their asserted dilatoriousness or poor "attitude" or other reason might lead to dismissal. As the Administrative Law Judge pointed out in *Air Products and Chemicals, Inc.*, 227 NLRB 1281, 1286 (1977) [citing *E. Anthony & Sons v. N.L.R.B.*, 163 F.2d 22, 26-27 (C.A.D.C., 1947)] "such action on the part of an employer is not natural."²³ I further note that the decisions to discharge were made without any opportunity being given to the discriminatees to explain their versions of the asserted reasons proffered.²⁴ This is not to overlook the circumstance that the reasons given to some of the discriminatees at the time of discharge were not wholly consistent with those given several weeks later.

Based upon all of the foregoing, I find that the reasons given the discriminatees at the time of termination were

²¹ Compare *Bendix-Westinghouse Automotive Air Brake Co.*, 161 NLRB 789, 796-797 (1966).

²² See, e.g., *Hambre Hambre Enterprises, Inc., d/b/a Panchito's*, 228 NLRB 136 (1977), where the Board noted that the timing of the discharge was "most telling"; see also *Bendix-Westinghouse Automotive Air Brake Co.*, *supra* at 795, and cases cited.

²³ The decision of the Administrative Law Judge in that case was adopted by the Board.

²⁴ See, e.g., *United States Rubber Company v. N.L.R.B.* 384 F.2d 660, 662, 663 (C.A. 5, 1967), where the court stated:

Perhaps most damning is the fact that both [employees] were summarily discharged after reports of their misconduct . . . without being given any opportunity to explain or give their versions of the incidents.

pretextuous, and that the real reason was because of their concerted activities.²⁵

Accordingly, I am convinced and therefore find that the terminations of Ryan and Conzola on September 14, and of Smith on September 16, were because they engaged in concerted activities protected by Section 7 of the Act.²⁶ Such conduct of the Respondent was therefore violative of Section 8(a)(1) of the Act.

III. THE EFFECT OF UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section II, above, occurring in connection with its interstate operations, 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.

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

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of the Act.

2. By terminating its employees Gerald M. Smith, Jr., Ed Conzola, and Timothy Ryan because they had engaged in protected concerted activities, Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act, thereby violating Section 8(a)(1) of the Act.

3. By warning employees that they must abandon the idea of engaging in concerted activities in order to improve their working conditions, Respondent has interfered with, restrained, and coerced employees in violation of Section 8(a)(1) of the Act.

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

²⁵ The case of *Rowen & Blair Electric Company*, 200 NLRB 639 (1972), relied upon by Respondent, is factually distinguishable. There, the Administrative Law Judge found that management regarded the employee complaints "as a cover up for their lack of diligence, rather than being put forward as meritorious in themselves." (*Id.* at 642). Here, as Respondent notes in its brief, management recognized the legitimacy of some of the employees' complaints and shared their concern. Moreover, in the instant case, there is independent evidence of illegal motivation not present in the cited case.

²⁶ Respondent argues that a violation should not be found because two of the five complaining employees were not fired. This particularly where "Spero testified that one of these nonfired employees, Mr. Kerns, was found by Mr. Spero to be the most objectionable of all of the employees in the meeting."

One may conjecture as to the real reason Kerns was retained in view of the evidence, set forth above, as to his responsibility for the inventory build up. However, the short answer to Respondent's argument was given by the Court of Appeals for the Seventh Circuit in *Nachman Corporation v. N.L.R.B.*, 337 F.2d 421 (1964):

Petitioner urges that the fact it retained Elsie Brotherton, the number 1 union adherent, and certain other union sympathizers, dissipates any unlawful motive in connection with the discharge of Joyce Burton. However, it is established that a discriminatory motive, otherwise established, is not disproved by an employer's proof that it did not weed out all union adherents.

THE REMEDY

Having found that the Respondent has engaged in unfair labor practices, I will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent unlawfully discharged its employees Gerald M. Smith, Jr., Ed Conzola, and Timothy Ryan, it is recommended that Respondent offer said employees immediate and full reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings that they may have suffered as a result of the discrimination against them. Any backpay found to be due shall be computed in accordance with the formula set forth in *F. W. Woolworth Company* 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).²⁷

As the unfair labor practices committed by Respondent strike at the very heart of employee rights guaranteed by the Act, I shall recommend that Respondent be placed under a broad Order to cease and desist from in any manner infringing on the rights of the employees guaranteed in Section 7 of the Act.²⁸

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

ORDER²⁹

The Respondent, Waterbeds 'N' Stuff, Inc., Columbus, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interfering with, restraining, or coercing employees in the exercise of their rights to engage in concerted activities for their mutual aid or protection by discriminating in regard to their hire, tenure of employment, or any term or condition of employment.

(b) Warning employees that they must abandon their engagement in concerted activities in order to obtain better working conditions.

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

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

(a) Offer Gerald M. Smith, Jr., Ed Conzola, and Timothy Scott Ryan immediate and full reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings they may have suffered by

²⁷ See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).
²⁸ *N.L.R.B. v. Entwistle Manufacturing Company*, 120 F.2d 532, 536 (C.A. 4, 1941).

²⁹ 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.

reason of the discrimination 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 payments records, timecards, personnel records and reports, and all other records relevant and necessary to a determination of compliance with paragraph (a) above.

(c) Post at its Columbus, Ohio, warehouse copies of the attached notice marked "Appendix."³⁰ Copies of said notice of forms provided by the Regional Director for Region 9, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that said notices are not altered, defaced, or covered by any other material.

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

³⁰ 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."

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 both sides had the opportunity to present their evidence, the National Labor Relations Board has found that we violated the law and has ordered us to post this notice and we intend to abide by the following:

WE WILL NOT interfere with, restrain, or coerce employees in the exercise of their right to engage in concerted activities for their mutual aid and protection, by discriminating in regard to their hire, tenure of employment, or any term or condition of employment.

WE WILL NOT warn employees not to engage in concerted activities in order to achieve better working conditions.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of their right to engage in, or refrain from engaging in, any or all the activities specified in Section 7 of the Act.

Section 7 of the Act gives all employees these rights:

- To organize themselves
- To form, join, or help unions
- To act together for collective bargaining or other mutual aid or protection
- To bargain collectively through representatives of their own choosing
- To refuse to do any or all of these things.

WE WILL offer to Gerald M. Smith, Jr., Ed Conzola, and Timothy Scott Ryan immediate and full reinstatement

ment to their former positions or, if such positions no longer exists, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earn-

ings they may have suffered by reason of the discrimination against them, plus interest.

WATERBEDS 'N' STUFF, INC.