

**Welco Industries, Inc., a subsidiary of E.A.C. Industries and Mary Workman.** Case 9 CA-11112

August 7, 1978

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS  
AND MURPHY

On October 5, 1977, Administrative Law Judge Platonia P. Kirkwood issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief.

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

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge, to modify her remedy,<sup>1</sup> and to adopt her recommended Order, as modified herein.<sup>2</sup>

Contrary to the view of our dissenting colleague, we believe the record provides substantial support for the Administrative Law Judge's determination that Workman's filing of grievances constituted protected activity and that her discharge for filing grievances violated Section 8(a)(1). We are unable to accept the sweeping contention that the terms of the collective-bargaining agreement are so manifestly clear that they preclude serious argument over the Respondent's right to disregard seniority in making its assignment of overtime. As noted by the Administrative Law Judge, one of the grievances filed by the Charging Party was taken to arbitration (with another apparently scheduled for arbitration subsequent to the hearing), and most of the others were processed through the second or third step of the arbitration procedure. Thus, it is apparent that the Union viewed Workman's grievances as raising reasonable issues concerning the interpretation of the contract. Moreover, our dissenting colleague misconstrues the

<sup>1</sup> The Administrative Law Judge inadvertently specified interest to be paid at 7 percent; however, interest will be calculated according to the "adjusted prime rate" used by the U.S. Internal Revenue Service for interest on tax payments. *Florida Steel Corporation*, 231 NLRB 651 (1977).

<sup>2</sup> In her recommended Order the Administrative Law Judge uses the narrow cease-and-desist language, "in any like or related manner." The discharge of employee Mary Workman for engaging in protected concerted activities is an unfair labor practice which goes to the very heart of the Act. We shall, therefore, modify the Administrative Law Judge's recommended Order to require the Respondent to cease and desist from in any other manner infringing upon the rights guaranteed to its employees by Sec. 7 of the Act and conform the notice accordingly. *N.L.R.B. v. Intestite Mfg. Co.*, 120 F.2d 532, 536 (C.A. 4, 1941).

significance given by the Administrative Law Judge to the Respondent's failure to inform the Charging Party, prior to February 10, 1977, that the Company was not obligated to assign overtime in accordance with seniority. Although Respondent may have had no obligation to provide this information, nonetheless, the lack of such explanation clearly supports the Administrative Law Judge's finding that the grievances were filed in good faith.

In view of the foregoing, our colleague's characterization of Workman's filing of grievances as "inconsistent," "groundless," "incongruous," or "harassment" amounts to little more than the substitution of his judgment or opinion for those of not only Workman but the Union in order to conclude that Workman was harassing the Respondent. In our opinion, our colleague's view is mere speculation, with little factual support.

It is also clear, as the Administrative Law Judge found and as our colleague concedes, that Workman was fired for filing grievances and not for overextending her coffeebreaks, allowing a substantial number of defective parts past her inspection, low production, inefficiency, or incompetence. Thus, she was warned 2 weeks prior to her discharge not to file additional grievances and was told upon termination that the discharge was for her persistent filing of grievances. Yet our colleague, apparently to bolster his position, repeats all of Workman's alleged derelictions. The Respondent could have lawfully fired Workman for incompetence or dereliction of duty; it did not. The alleged dereliction of duty is therefore irrelevant.

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, Welco Industries, Inc., a subsidiary of E.A.C. Industries, Cincinnati, Ohio, its officers, agents, successors, and assigns, shall take the action set out in the said recommended Order, as so modified:

1. In paragraph I(b), substitute the word "other" for "like or related."

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

MEMBER JENKINS, dissenting:

Unlike my colleagues, I am unable to find that the Respondent was obligated to endure without end either Workman's persistent filing of grievances which had no proper basis under the collective-bargaining agreement, or her adverse work attitude.

Workman worked for the Respondent for some 9 months as a receiving inspector, during which time she filed a series of grievances, most of which were bottomed on her claims of discrimination and for overtime work; many of which were repetitively and markedly inconsistent with provisions of the collective-bargaining agreement; and all of which were denied at various stages of the contractual grievance-arbitration procedure.

The bargaining agreement defines a grievance as a "reasonable claim." It also provides that "The Company will make every reasonable effort to distribute overtime equally among employees in their respective departments according to job classification." During June 1976, Workman filed three grievances. One grievance, which was denied after arbitration, alleged violations of the contractual antidiscrimination and seniority provisions because of the Respondent's award of a particular job to a less senior, but qualified, employee. Workman filed this grievance notwithstanding her admissions that she neither bid on nor was qualified for the job. A second grievance alleged violation of the equal overtime provision, and the third again improperly asserted that the Respondent violated the equal overtime provision because it failed to grant overtime work to her on the basis of her seniority. Shortly after filing these inconsistent grievances, Workman, on successive days, overextended her coffeekbreak time and left her work area without permission, for which she was verbally reprimanded.

Workman was laid off from June 20 to August 19, 1976, because of lack of work. During this period, she filed charges with the Ohio Civil Rights Commission, alleging sex discrimination with regard to overtime work and that she was improperly laid off. The Commission dismissed all charges because of "no probable cause."

On September 11, 1976, Workman allowed a substantial number of defective parts past her inspection and was issued a warning notice therefor. Five days later, she filed another grievance, again charging a failure to distribute overtime work equally because the Respondent granted such work to a less senior employee.

Throughout this period, it had been the Respondent's practice to permit employees to work such overtime as was necessary to complete their work. On January 31, 1977, primarily because of the above-average number of overtime hours worked by Workman, the Respondent changed its practice and authorized overtime only when required by the foreman. This prompted Workman to file two February 4 grievances, one of which protested the change, which was not shown to be unauthorized or unlaw-

ful, and the other again alleged unequal overtime distribution because of a grant thereof to a less senior employee.

On February 10, Workman filed still another groundless and incongruous grievance, complaining that by granting overtime to three male employees, one of whom had less seniority than she, the Respondent discriminated against her because of her sex and also violated the contractual equal overtime provision.

The Respondent replied to the February 4 grievances by way of a February 10<sup>3</sup> warning notice to Workman which stated that her attitude was the basis for the warning, noted that she had no reasonable claim for filing those grievances, and cited her for violation of a company rule concerning "Minor offenses occurring frequently enough to become major problems." In presenting her with the warning, her foreman stated that he was trying to stop her grievance filing.

On February 11, 1977, pursuant to figures showing that Workman was less than one-third as productive as a fellow inspector, and because her foreman believed that she was working slowly in order to get more overtime, the foreman issued another warning notice to her on the grounds of inefficiency, and told her that she was affecting production and to improve immediately. Workman replied that she could not and, therefore, would not work faster. During the conversation, based perhaps on past experience and future expectations, her foreman noted that she was filing an excessive number of grievances and also stated that "we're not sure we want to keep you as an employee."

Three days later, on February 14, Workman filed two more grievances, one of which protested her February 10 warning notice and her foreman's statement as a discriminatory and coercive attempt to deter her from filing grievances "to right a wrong they have committed." The other asserted that her foreman's February 11 statement violated the contract's article 19, which is captioned "Leave of Absence," and provides, *inter alia*, that "Anytime Federal or State law is contrary to any portion of this contract, the Federal or State law will prevail."

On February 18, 1977, Workman again passed on a substantial number of defective parts, for which she was given another warning notice and a 1-day suspension. Workman responded to these disciplinary measures 6 days later by filing another grievance wherein she protested her February 11 and February 18 warning notices, asserting that the warnings

<sup>3</sup> Inasmuch as all of Workman's grievances, with the possible exception of one, went to at least the second step of the grievance-arbitration procedure, a certain time lag was inevitable.

were issued improperly because her foreman should have, but did not, discuss her errors with her before issuing the notices and, therefore, failed to follow proper procedure. The record shows, however, that her foreman did attempt to discuss her shortcomings with her, and that Workman's response was "so." The grievance also asserted with regard to the February 11 inefficiency warning that "I have been trying to go faster and I see that it is just causing more problems so I'll have to go back to my former work pace." Workman was discharged on the following day because of her "poor attitude, continuous harassment, chronic griper, cannot get along with fellow workers."

The Administrative Law Judge found that Workman's grievance filing was protected concerted activity with which the Respondent unlawfully interfered by its verbal and written warnings to refrain therefrom, and by discharging her because she did not. The Administrative Law Judge sought to buttress this position by (1) finding that Workman's unfounded accusations of overtime disparity were not unreasonable, i.e., groundless, because the contractual language covering overtime was less than plain; (2) finding, in substance, that there was no impropriety or pattern of impropriety in Workman's endless stream of grievances because "each [grievance] arose from a different situation," and (3) concluding therefrom that Workman neither was acting in bad faith nor attempting to harass the Respondent.

In my view, the contractual language is clear, the establishment of a pattern of conduct is self-evident, and the legitimacy of that conduct certainly cannot be established either by Workman's repeated groundless accusations of misconduct or by warnings directed to those unfounded accusations and discharge because of Workman's continued harassment. Moreover, in view of Workman's conduct, it is as plausible to infer that her foreman's statements were directed solely to her persistent filing of unfounded grievances as to infer any other reason, and I so infer.

In further treating the bad-faith issue, the Administrative Law Judge noted that the Respondent did not clearly inform Workman that seniority had no bearing on overtime until it so stated in its February 10 rejection of Workman's February 4 grievance. This, of course, implicitly places on the Respondent a nonexistent duty and charges it with a breach thereof about which it now may not complain, and thereby inferentially excuses Workman's conduct. I cannot make such inferences any more than I can assume that Workman could not read plain contractual language, or that the Union, which participated in every grievance but one, never discussed, or informed Workman of, the correct overtime provisions

either during the processing of her grievances or after rejection thereof, or at any time.

In view of the foregoing, and in the absence of any evidence of prior animus against the Union or against any filing of grievances, I cannot infer that the Respondent warned and discharged Workman to prevent the filing of legitimate grievances.

Workman's attitude in general, her February 24 grievance, which protested her February 11 inefficiency warning by asserting that she intended to go back to her inefficient work habits, and her abrupt and monosyllabic dismissal of her foreman's efforts to discuss her shortcomings with her, sufficiently discloses Workman's unconcern for the merits of her grievances or her performance.

The filing of grievances under a collective-bargaining agreement is protected by the Act, but this protection does not extend to repetitive, multiple, and inconsistent grievances on an issue as to which the grievances plainly lack any rational ground, and this deficiency has been communicated to the employee by prior denials and explanation. At some point in such abuse of the grievance process the statutory protection is lost, and Workman went beyond that point. Accordingly, I would dismiss the complaint.

## APPENDIX

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

After a hearing at which all sides had an opportunity to present their evidence, the National Labor Relations Board has found that Mary Workman was reprimanded and discharged because she initiated a number of grievances pursuant to the collective-bargaining agreement between this Company and the Union representing our employees, conduct which is protected by the National Labor Relations Act, and that therefore her discharge violated said Act. In compliance with the Board's Order, we hereby notify you that:

WE WILL NOT discharge, reprimand or in any other manner discriminate against any employee for engaging in concerted activities protected by Section 7 of the National Labor Relations Act.

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

WE WILL, in compliance with the Board's Order, offer Mary Workman her old job back or, if that job no longer exists, a substantially similar job, with full seniority, and WE WILL make up to

her the pay she lost, with interest, and we will remove from our files all reference to the fact that she was reprimanded by us for filing grievances and notify her that we have done so.

WELCO INDUSTRIES, INC. A SUBSIDIARY OF  
EAC INDUSTRIES

## DECISION

### STATEMENT OF THE CASE

PLATONIA P. KIRKWOOD, Administrative Law Judge: This matter was tried before me at Cincinnati, Ohio, on July 19.<sup>1</sup> The complaint<sup>2</sup> alleges, in substance, that in violation of Section 8(a)(1) and (3) of the Act, Welco Industries, Inc., a subsidiary of E.A.C. Industries, Inc. (herein Respondent or Company), issued a written reprimand to the Charging Party, Mary Workman, and then discharged her because she invoked the contractually established grievance procedure and/or because of her sympathy for and activities on behalf of District 34, International Association of Machinists and Aerospace Workers, AFL CIO (herein Union). Respondent's answer denies the commission of any unlawful conduct.

At the hearing all parties were afforded full opportunity to adduce relevant and material evidence, to examine and cross-examine witnesses, to argue orally on the record, and to submit briefs. Limited oral argument as included in the transcript of the record and post-hearing briefs submitted by General Counsel and Respondent, respectively, have been duly considered.

Upon due consideration of the evidence, including my observation of the demeanor of the witnesses while testifying, and the entire record in the case, I make the following:

### FINDINGS OF FACT<sup>3</sup>

#### I. BACKGROUND INFORMATION; THE COMPLAINT'S SETTING

The plant involved in this proceeding is located at Cincinnati, Ohio. The Respondent is there engaged in the manufacture and sale of electrical motors, polished slip rings, and air conditioner control panels. The Respondent and the Union have had a long and amiable history of collective bargaining for a unit composed of Respondent's production and maintenance employees. The current collective-bargaining agreement between them became effective June 1, 1975. Its terms run to May 31, 1978, and continue thereafter until either party gives the other notice of intention to terminate.

Of relevance here, as a background matter, are certain of the contract provisions which, *inter alia*, forbid discrimination because of union membership; require Respondent to

make every reasonable effort to distribute overtime equally among employees in the respective departments according to job classifications; define seniority, as "the right of preference as to layoff, recall to work, promotion, demotion, transfer, vacation and shift preference"; and establish a four-step grievance procedure culminating in arbitration.<sup>4</sup>

Mary Workman, the Charging Party, was a member of the unit covered by the above bargaining contract throughout the 11-month period of her employment, which began March, 1976, and ended with her discharge on February 25.<sup>5</sup> As set forth in more detail below, she filed a large number of separate grievances during the course of her employment, each of which variously accused the Company of violating contract rights accorded her as a unit employee under one or more of the substantive contract provisions I have summarized above. One of these grievances went to arbitration and a number of others were processed through step 2 or 3 of the grievance procedure, but none of those grievances were resolved in her favor.<sup>6</sup>

The question posed by the complaint and its litigation is whether Respondent fired Workman because it objected to her repeated use of the grievance procedure and, if so, whether its objections to her grievance-filing activity were valid in fact or in law. The merits of the issues so posed turn in part on the evidentiary facts next recited.

#### II. THE EVIDENCE BEARING ON THE MOTIVATION ISSUE

Workman filed her first grievance on or about June 21, 1976, about 3 months after she was hired (Grievance No. 4151), complaining that her contractual rights about overtime distribution had been violated; and on June 25 she filed a related grievance requesting payment of a "bonus" as a remedy. The Union processed these grievances through steps 3 and 2, respectively. On July 12, the Company "disallowed" the overtime grievance on grounds that Workman was the only employee in her job classification and had gotten some overtime hours. It also rejected the

<sup>4</sup> The contract defines a grievance as "a reasonable claim between the parties or between the Company and employees covered by this Agreement, that there has been a violation or failure to perform some express provision of this contract."

With respect to the presentation of grievances, the contract obligates any employee having a grievance to first present it to his foreman, and if the matter is not satisfactorily resolved at that point, the grievance can then go through the formal grievance steps. At step (1) the grievance is taken up with the foreman by the union steward and the aggrieved employee. Assuming no settlement, then, at step (2) the grievance is reduced to writing, is investigated by the Union's shop committee and is then discussed by said committee with the Company's personnel director. If still unsettled, then at step (3) the grievance is submitted to discussion with a group composed of members of a management committee, the aggrieved employee, and members of a union committee, one of which is the union business representative. If the grievance still remains unsettled to the satisfaction of the parties, either the Company or the Union may invoke arbitration (the final step).

<sup>5</sup> She suffered a temporary layoff during an economic reduction in force between June 18 and August 19, 1976.

<sup>6</sup> Workman filed an additional grievance after her discharge claiming that her termination was, *inter alia*, a violation of the contractual proscription against discrimination. As of the date of the hearing, the grievance had been resolved against her up through step 3 and was pending for arbitration at the Union's request.

She also filed, during her employment, a charge with the Ohio Civil Rights Commission accusing the Company of discrimination against her on account of her sex.

<sup>1</sup> This and all dates hereafter mentioned are for 1977, unless otherwise indicated.

<sup>2</sup> Issued April 13, on a charge filed February 28 and served March 2.

<sup>3</sup> No issue of commerce or labor organization is presented. The complaint alleges and the answer admits facts which establish those elements. I find those facts to be as pleaded.

"bonus" request on the ground that it had no applicability to the situation described by the grievance.

Within a day or two following Workman's filing of the above grievances, her supervisor, Foreman Roth, placed two written "reprimands" in Workman's personnel file, neither of which was shown to Workman. The first reprimand, dated June 21, stated that Roth had observed her carrying a cup of coffee in the work area about 3 minutes after the morning break and that he had pointed this out to Chief (Union) Steward Rogers.<sup>7</sup> The second, dated June 22, stated that Roth had observed her talking to Union Steward Rogers; that she had no permission to do so; and that he (Roth) told her that she must stay in her work area.

On June 23, Workman was notified that she would be temporarily laid off for lack of work. Her layoff commenced on June 25. Because a male employee recently hired as an inspector had been retained, Workman grieved her layoff as being both a discriminatory selection based on sex and a violation of the contractual seniority provisions. The Union processed this grievance through all steps, including arbitration. The arbitrator ruled in favor of the Company on findings that the junior employee had inspection skills more varied than Workman's and that the contract permitted the company to give him preference accordingly. The arbitrator issued that decision on September 28, 1976.

On July 6, 1976, while Workman's layoff grievance was still in process under the contractual procedures, Workman filed a charge with the Ohio Civil Rights Commission alleging that the company paid her less than male employees doing the same work; gave her less overtime than it gave to male employees; denied her training it made available to male employees; and laid her off while less senior male employees were retained. The Commission issued its decision, finding "no probable cause" to process the charges further, on March 8, 1977, sometime after Workman had been fired.

On August 19, 1976, Workman was recalled from layoff; and on September 22, 1976, the Company issued a warning notice to her for "passing parts" which did not conform to specifications. She was advised to use proper measuring tools, and to be more careful in the future.

On November 29, 1976, Workman filed a grievance alleging, in the main, that the Company, in violation of the contract, had assigned overtime work to a junior employee, rather than to the grievant, Workman, who was more senior. The grievance requested payment of a monetary sum to her equal to pay given for the overtime hours worked by the junior employee. The grievance was processed to step 2 and was denied at that step on December 17, 1976. The company noted, in its reply, that on December 17, Workman had "told her supervisor she would not work overtime unless she received a pay raise."

On February 4, Workman filed two separate grievances.

<sup>7</sup> According to Workman, Roth advised her "almost every time she gave him a grievance" that she "shouldn't write it," that she was "going to get the name of a troublemaker." I need not and do not rely on her testimony about these statements, and I make no credibility findings with respect to that testimony. Roth, I note, died in August 1976, shortly before or after Workman was recalled from her June 25 layoff. After Roth's death, Paul White became Workman's foreman.

In one she alleged that, on January 31, her foreman (then Paul White) had told her she could not work overtime unless he asked her to and that the foreman then proceeded to do unit work after hours. She requested reimbursement for the hours worked by the foreman. In the second grievance, Workman complained that on February 1 and 2, the foreman had asked a junior employee to perform overtime work and had not asked her to do so. She claimed a violation under the contract's equal overtime distribution clause and requested pay for the overtime worked by the junior employee. The Company denied the first grievance on February 21 with the comment that the foreman's work was due to an "emergency"; and it denied the second grievance on February 24 with the comment that the contract's overtime clause referred to by the grievance made "no reference to senior employees."

Under date of February 10, and while the above two grievances were still in process, the company issued two warning notices to Workman. The first cites her under Company Rule 20 on the grounds that there was no reasonable warrant for the filing of the February 4 grievances. Under the legend "Nature of Violation" there is a check mark in a block opposite the word "attitude."<sup>8</sup> When White handed her this notice, he also told her, according to her uncontradicted testimony, which I credit, "I had to stop you from writing these grievances." The second states that Foreman White ran a check that day on the length of time it took Workman to do certain work, as compared to employee Fultz; that she was taking too long, thereby affecting production; and that he wanted immediate improvement.<sup>9</sup>

On February 10,<sup>10</sup> Workman filed grievance alleging that she had been discriminated against because of her sex by the Company's assignment of overtime work to three male employees on February 5, one of whom was junior to her in seniority, and that the work assignment also violated the contract's equal overtime distribution clauses. She requested reimbursement for the hours worked by the junior employee, and that overtime be shared thereafter. The record does not show whether the Company took on this grievance before Workman was dismissed.

On February 11, Foreman White had a conversation with Workman in which, according to testimony by her which I credit, White told her, "Mary, you put in too many grievances, and we're not sure we want to keep you as an employee."

<sup>8</sup> The Company has promulgated and maintains "Regulations of Personnel Conduct for All Employees." In the preliminary statement, the rules state that the penalty for a first offense is a written reprimand; for the second, a written reprimand plus a 1-day suspension; and for the third offense, discharge. Paragraph 20 thereof refers to "Minor offenses occurring frequently enough to become a major problem."

<sup>9</sup> Respondent's executive vice president, Derek Howard, testified that he directed the foreman to conduct a "survey" of Workman's job performance when he was considering the question of reprimanding her (as management did on February 10) for the above-mentioned grievances. White's comparative study of Workman's work speed was apparently made in response to that direction.

<sup>10</sup> The record does not show whether this grievance was filed before issuance of the above warning notices dated the same day. I assume that its complaint was orally discussed with the foreman before February 10, since the contract provides for a written statement of a grievance only after oral discussion has not resulted in satisfactory resolution.

On February 14, and while Workman's February 4 and 10 grievances were still in the processing stages, Workman filed 2 more grievances. One refers to the warning given her on February 10 for filing the grievances of February 4; and it asserts that the "warning notice violated the contract's antidiscrimination clauses" and was an attempt to "coerce" her in her use of the "Union privilege of filing grievances." The grievance is marked "denied" at step 2 on February 21. The other grievance referred to the warning of discharge orally addressed to her by White on February 11, *supra*, if she continued filing grievances. It asserts, *inter alia*, that this warning was in violation of Federal law. The grievance is marked "Denied" under date of February 21.

On February 18, the Company issued another "warning notice" to Workman. This one refers to Company Rule 17, and states that Workman's work was "Inferior and Negligent." Under the heading "Nature of Violation," there appear check marks in the blocks opposite the words "Defective Work" and "Carelessness."<sup>11</sup> Based on this warning, the Company suspended Workman for 1 day on February 21.

On February 24, Workman filed a grievance about the February 18 warning and the subsequent 1 day suspension. The grievance states, *inter alia*, that the company action was unjust because the foreman had not followed "proper procedure" where work errors were attributed to employees—this because, so she asserted, he was supposed to discuss her errors with her and give her a chance to correct them before taking disciplinary action. She requested the removal of the reprimand from her files and pay for the day she was suspended. The Company denied the grievance on February 25 (the day that she was fired).

On February 25, Workman was discharged. The assigned reasons on the termination notice were "Poor attitude, continuous harassment, chronic griper, can not get along with fellow workers."<sup>12</sup>

In fuller explanation of its termination decision, Respondent, at the hearing, called a number of its management agents or supervisors, Foreman Paul White among them, to report on the factual basis for the reprimands which it gave Workman and the reasons stated on the termination notice for discharging her. I find that their reports on this matter indicate that, although management reviewed aspects of Workman's job history other than her grievance-filing activity when it decided to fire her,<sup>13</sup> it gave heavy and substantial weight to her grievance-filing activity in reaching its decision. It did this because it regarded Workman's repeated charges of discrimination against her because of her sex, and her repeated complaints about

<sup>11</sup> Respondent's Company Rule 17 refers to "Negligence or inferior work resulting in excessive scrap, breakage of tools, or wasting of materials or supplies."

<sup>12</sup> On February 28, Workman protested her discharge both by presenting a grievance and by filing the charge initiating this proceeding. Each variously alleges that her discharge was an act of discrimination against her, first under the contract and next under the Act. As of the date of this hearing, the Union had processed the grievance up to the arbitration stage and had invoked arbitration in support.

<sup>13</sup> The other factors reportedly reviewed by management included the quality of Workman's work performance overall, reports allegedly made to White by other employees that Workman was "hard to get along with," and her presentation of sex discrimination charges (still pending on investigation when she was discharged) to the Ohio Civil Rights Commission.

overtime distribution as violations of her seniority rights when earlier ones had been rejected as being nonmeritorious, to be unwarranted "harassment" of the Company and valid cause, accordingly, for firing her.

### III. DISCUSSION OF THE ISSUES AND CONCLUDING FINDINGS

Reviewing the above facts, in light of the contentions of the parties, the questions here to be resolved are: (1) in advancing the grievances which the record shows that Workman presented, was Workman engaged in concerted activity protected by Section 7 of the Act; and (2) if so, was her discharge motivated, in whole or in substantial part, by the fact that she engaged in that protected activity. It is to those questions that I now turn.

As to the first question, there is a large body of Board law which defines the reach of Section 7's protection to employees who choose to invoke contractual grievance procedures to press complaints about their employment conditions or job rights. It is plain from a reading of the pertinent cases that the invocation by an employee, either individually or in concert with others, of a contractual grievance procedure to implement what he believes to be the job benefits or rights accorded him by the collective-bargaining agreement is a protected concerted activity within the meaning of Section 7 of the Act. See, e.g., *Walls Manufacturing Company, Inc.*, 137 NLRB 1317, 1319 (1962); *Mushroom Transportation Co., Inc.*, 142 NLRB 1150, 1157-58 (1963); *Socony Mobil Oil Company, Inc.*, 153 NLRB 1244, 1247 (1965); *H.C. Smith Construction Co.*, 174 NLRB 1173, 1174 (1969). Moreover, the cases hold that the protection accorded employees under this concept is not forfeited because the grievant's complaints are resolved against him; and its extension to an alleged grievant-discriminatee does not depend on the employer's or the Board's appraisal of the grievant's justification for the complaints. See, *inter alia*, the *Socony Mobil* and *H. C. Smith* cases, *supra*. See also *E.E.E. Co., Inc.*, 171 NLRB 982 (1968); *Johnson Motor Lines*, 228 NLRB 393, fn. 14 (1977).

To be sure, the sanctions afforded under the above concepts for employer conduct which discriminates against a grieving employee or which otherwise operates as a restraint on or coercion of his grievance-filing activity are withheld where it is proved that the employee knowingly and persistently filed groundless grievances so as to harass his employer. See *Northern Motor Carriers, Inc.*, 130 NLRB 261 (1960). But, contrary to Respondent's claim, I do not find that to be the situation reflected by the record in this case. True it is that all 11 grievances filed by Workman over the course of her 1-year employment with Respondent were ultimately rejected; that a number of these grievances dealt with complaints about the Company's failure to assign her a share of overtime work it had assigned to others;<sup>14</sup> and that most of these overtime complaints stated the grounds for grieving in terms of violations of 1 or more of the contract's equal overtime distribution, seniority, and

<sup>14</sup> Including one of the two grievances referred to by the Company in the written reprimand it issued to Workman on February 10 to warn her that it regarded her filing of the nonmeritorious grievances to be a violation of its rules.

no-discrimination provisions. But, as appears from a reading of all her grievances, each arose from a different factual situation. And, although each of them was ultimately rejected, the reasons assigned by the Company for denying each were not identical. Furthermore, and to the extent that the Company points to the contract's language to support its challenge of Workman's "good faith" in grounding claims to overtime on the contract's seniority clauses, I cannot, from a reading of the contract as a whole, say that the Company's right to disregard seniority in overtime assignments is so plainly evident from the contract's language as to justify a judgment that Workman accused the Company of violations of her contractual seniority rights in bad faith and without any reasonable warrant whatsoever.<sup>15</sup>

Turning now to the factual issue of motivation, I have no difficulty in concluding that the Respondent's decision to terminate Workman, as it did, on February 25, was sparked by its resentment for her grievance-filing activities, as a whole, and by her insistence on pursuing such activity, as she did just before she was discharged, in disregard of the Company's written and verbal admonitions to her to refrain from grieving. Those admonitions were addressed to her, I note, on or about February 10. She filed a grievance based on those admonitions on February 14, and a further grievance on February 24, about the propriety of the Company's disciplinary suspension of her for 1 day (on February 18) for defective work; and she was fired on February 25.

In thus resolving the issue of motivation against Respondent I have taken into account the evidence showing that the Company had criticized and disciplined Workman but 2 weeks before she was fired for failing to perform her duties in a competent and efficient manner and that this was not the first time it had criticized her work performance. But her deficiencies as an employee were not among the reasons stated on the dismissal notice Respondent gave to Workman.<sup>16</sup> In any event, as has been indicated by the Board, discrimination charges such as those here involved may properly be sustained, even if it be shown that the alleged discriminatee's protected concerted activity was not the only reason for the disciplinary action, but was in fact a motivating reason, at least in substantial

<sup>15</sup> Cf. *H. C. Smith Construction Co.*, *supra*, 174 NLRB at 1174, where the Board found protected an employee's filing of a grievance grounded on his own interpretation of the bargaining contract, even though there was no showing that any other employees agreed to or acquiesced in his interpretation.

It bears noting in the instant case that, under the contract, an employee may initiate a grievance on his own only at the first step. At the second and subsequent steps, the grievance is under the control of the Union. The evidence shows that, with one possible exception, all of the grievances filed by or on behalf of Workman went at least to step 2 in the course of processing.

It also bears noting that only on one single form, dated on or about February 10, is there clearly stated as a reason for rejecting Workman's overtime complaint (one of a number earlier filed) that "seniority" has no bearing as a factor in overtime assignments.

<sup>16</sup> I also note that White's testimony reports his having received complaints from time to time from other employees that they found Workman "hard to get along with." But, as none of these complaints were ever mentioned to Workman, I am not persuaded that, if justified, those complaints were viewed as serious enough to warrant any disciplinary action on Respondent's part.

part. See, e.g., *Socony-Mobil*, *supra*. See also *Johnson Motor Lines, Inc.*, 228 NLRB 393 (1977). I so find here.

From all the above, it follows that by reprimanding Workman on or about February 10 and then terminating her on February 25 because of her grievance-filing activities, Respondent engaged in conduct violative of Section 8(a)(1) of the Act.<sup>17</sup> I so conclude.

#### THE REMEDY

The recommended order shall include, in addition to the conventional cease and desist and notice posting provisions, a requirement that Respondent offer Workman forthwith full and unconditional reinstatement to her former job or, if that job is no longer available, to a substantially equivalent one, without prejudice to her seniority or other rights, privileges, or working conditions, and make her whole for any loss of earnings suffered by reason of her discharge, by paying to her a sum of money equal to the amount she would have earned as wages from February 25, 1977, the date of her discharge, to the date of the reinstatement offer as provided herein. Backpay with interest at the rate of 7 percent per annum shall be computed in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).<sup>18</sup> I shall also recommend that Respondent be required to remove and expunge from its records all references to the fact that Workman was reprimanded for filing grievances.

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

#### ORDER<sup>19</sup>

The Respondent, Welco Industries, Inc., a subsidiary of E.A.C. Industries, Cincinnati, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging, reprimanding, or in any other manner discriminating against any employee for engaging in concerted activities protected by Section 7 of the National Labor Relations Act.

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

2. Take the following affirmative action designed and found necessary to effectuate the policies of the Act:

<sup>17</sup> The General Counsel contends that Workman's discharge violated not only Sec. 8(a)(1) of the Act, but Sec. 8(a)(3) as well. I find it unnecessary to decide this issue as its determination would neither add to nor detract from the remedy for the violations found. See *N.L.R.B. v. Burnup and Sims, Inc.*, 379 U.S. 21 (1964).

<sup>18</sup> The General Counsel filed with me a supplemental brief requesting that the rate of interest on backpay awarded be increased from 6 to 9 percent. As the Board recently expressed its views on the subject in *Florida Steel*, *supra*, I have, in accordance with that Decision, provided the 7 percent rate.

<sup>19</sup> 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.

(a) Offer Mary Workman immediate, full, and unconditional reinstatement to her former job or, if that job no longer exists, to a substantially equivalent one, without prejudice to her seniority or other rights, privileges, or working conditions, and make her whole for any loss of earnings suffered, in the manner set forth in the section hereof entitled "The Remedy."

(b) Remove and expunge from its personnel records all references to the fact that Mary Workman was reprimanded for filing grievances pursuant to the collective bargaining agreement and notify Mary Workman, in writing, that it has done so.

(c) Preserve and, upon request, make available to authorized agents of the National Labor Relations Board, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary or useful in determining compliance with this Order, or in computing the amount of backpay due.

(d) Post at its Cincinnati, Ohio, plant, copies of the notice attached marked "Appendix."<sup>20</sup> Copies of said notice on forms provided by the Regional Director for Region 9, shall, after being signed by an authorized representative, be posted immediately upon receipt thereof and maintained by it for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

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

<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."