

Wells Fargo Armored Service Corporation of Puerto Rico and Rafael Rosado Soler, Ignacio Otero Rivera, William Martinez, and Jesus A. Duprey. Cases 24-CA-3839(1), 24-CA-3839(2), 24-CA-3839(3), and 24-CA-3839(4)

August 16, 1978

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS
AND PENELLO

On May 8, 1978, Administrative Law Judge Max Rosenberg issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

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

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,¹ and conclusions of the Administrative Law Judge, to modify his remedy,² 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, Wells Fargo Armored Service Corporation of Puerto Rico, Rio Piedras, Commonwealth of Puerto Rico, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

¹ Although the Administrative Law Judge issued an erratum substituting the date "April 6, 1977" for "April 6, 1976" as the date on which Respondent unlawfully refused to reinstate the Charging Parties, he inadvertently failed to correct the notice as well. Accordingly, we shall correct said notice. We also leave to the compliance stage of this proceeding the determination of when Jesus A. Duprey would have been reinstated, inasmuch as it appears that no individual with less seniority than Duprey was reinstated prior to May 6, 1977.

² 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.

APPENDIX

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

WE WILL NOT refuse to recall Rafael Rosado Soler, Ignacio Otero Rivera, William Martinez, and Jesus A. Duprey to work with full seniority and other rights and privileges.

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

WE WILL offer Rafael Rosado Soler, Ignacio Otero Rivera, William Martinez, and Jesus A. Duprey immediate and full reinstatement to their former jobs or, if those positions no longer exist, to substantially equivalent employment, without prejudice to their seniority or other rights and privileges, dismissing, if necessary, any employees who were newly hired on and after April 6, 1977, and, if necessary, any former strikers who were reemployed on and after that date who possessed less seniority than the discriminatees herein as reflected by Respondent's August 1976 seniority list, and make them whole for any loss of pay which they may have suffered as a result of the discrimination practiced against them, plus interest.

WELLS FARGO ARMORED SERVICE

DECISION

MAX ROSENBERG, Administrative Law Judge: With all parties represented, this proceeding was heard before me in Hato Rey, Puerto Rico, on August 22, 23, 24, and 25, 1977, upon a complaint filed by the General Counsel of the National Labor Relations Board and an answer interposed thereto by Wells Fargo Armored Service Corporation of Puerto Rico, herein called the Respondent.¹ The sole issue raised by the pleadings relates to whether Respondent violated Section 8(a)(3) of the National Labor Relations Act, as amended, by failing to reinstate Charging Parties Rafael Rosado Soler, Ignacio Otero Rivera, William Martinez, and Jesus A. Duprey following their engagement in an economic strike against Respondent. Briefs have been received from the General Counsel and the Respondent which have been duly considered.

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

¹ The complaint, issued on July 21, 1977, is based upon charges filed and served in Case 24-CA-3839(1-3) on May 2, 1977, and upon charges filed and served in Case 24-CA-3839(4) on May 18, 1977.

FINDINGS OF FACT AND CONCLUSIONS

I. THE BUSINESS OF RESPONDENT

Respondent, a corporation duly organized under the laws of the State of Tennessee and authorized to do business in the Commonwealth of Puerto Rico, has, at all material times herein, maintained its principal office and place of business in the city of Rio Piedras, Commonwealth of Puerto Rico, where it engages in the transportation of moneys and valuables by means of armored vehicles. During the annual period material herein, Respondent performed services valued in excess of \$50,000 to banks and other clients which are in turn directly engaged in interstate commerce. The complaint alleges, the answer admits, and I find that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It is undisputed and I find that Union Independiente de Guardianes de Seguridad y Transporte Valores, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

The complaint alleges that Respondent violated Section 8(a)(3) of the Act when, on or about April 6, 1977, it failed to recall Rafael Rosado Soler, Ignacio Otero Rivera, William Martinez, and Jesus A. Duprey to work following their abandonment of an economic strike against Respondent, despite the fact that vacancies existed which they were qualified to fill and that their seniority status entitled them to reinstatement. For its part, Respondent denies the commission of any labor practices proscribed by the controlling statute.

As heretofore chronicled, Respondent is engaged in the business of transporting moneys and valuables by means of armored vehicles in Puerto Rico. To accomplish this task, Respondent employs approximately 75 armed guards to insure security. It is undisputed and I find that, in early 1975, the Union filed a petition with the Board's Regional Office for a representation election among these guards and, on April 16, 1975, the Regional Director ordered that a vote be taken. At the conclusion of the balloting, the Union won the election and was certified as the bargaining agent for the guards in July 1975. A collective-bargaining colloquy ensued between the parties until November 20, 1975, when an impasse was reached and, on that date, the Union and the unit personnel embarked upon a work stoppage which was concededly economic in character. On April 6, 1976, the Union terminated the strike and, concurrently, made an unconditional offer to Respondent on behalf of all strikers to return to work.

It is uncontroverted and I find that, during the course of the strike, new employees were hired, some strikers returned to their jobs, while other strikers were permanently

replaced. In early August 1976, Respondent drafted a seniority list on which it appended the names of all permanently replaced strikers in order of their seniority. On August 4 and October 11, 1976, and January 13, 1977, Respondent mailed identical letters to all of the replaced personnel, including alleged discriminatees Rafael Rosado Soler, Ignacio Otero Rivera, William Martinez, and Jesus A. Duprey, informing them that their names had been logged on a seniority roster and that they would be recalled, in order of seniority, in the event that vacancies or new positions became available. Accompanying the letters were questionnaires on which the recipients were asked to signify their availability and their interim employment status. In completing their questionnaires, Rosado, Otero, Martinez and Duprey indicated their desire to return to their jobs with Respondent and reported that they had been unemployed since the inception of the strike on November 20, 1975.

It is undenied and I find that, during March 1977, Respondent's business volume increased to such an extent that it decided to enlarge the work complement by hiring additional guards. To further this aim, Respondent's Vice President and General Manager Bernard Meyer dispatched letters and followup telegrams to Rosado, Otero, and Martinez and others similarly situated on March 1, 1977, requesting that they visit Respondent's offices for an interview preparatory to being recalled to work, and such notifications were also sent to Duprey on March 24, 1977.

On March 7, 1977, Rosado, Otero, and Martinez were interviewed by Meyer, and Duprey received an interview on March 28, 1977. Despite the fact that these former strikers ranked second, third, fourth, and fourteenth on Respondent's seniority list, which contained 17 names in order of seniority, Meyer notified each of them that they would not be recalled to duty, although they possessed greater seniority than the others on the list who were summoned back to work, because they had lied to or misled the issuing authority when they obtained their most recently renewed gun permits.

The legal precepts governing this litigation may be simply stated. In *The Laidlaw Corporation*,² the Board held that:

Economic strikers who unconditionally apply for reinstatement at a time when their positions are filled by permanent replacements: (1) remain employees; and (2) are entitled to full reinstatement upon the departure of replacements unless they have in the meantime acquired regular and substantially equivalent employment, or the employer can sustain his burden of proof that the failure to offer full reinstatement was for legitimate and substantial business reasons.³

In fashioning this rule, the Board drew upon the teachings of the United States Supreme Court in *N.L.R.B. v. Fleetwood Trailer Company, Inc.*⁴ Thus, the Board noted that:

In *Fleetwood*, the employer was held to have violated the Act by failing to reinstate strikers and by hiring new employees for jobs which were reestablished

² 171 NLRB 1366, 1369-70 (1968).

³ *Id.* at 1370.

⁴ 389 U.S. 375.

when the employer resumed full production some 2 months after the strikers applied for reinstatement. In so finding, the Court pointed out that by virtue of Section 2(3) of the Act, an individual whose work ceases due to a labor dispute remains an employee if he has not obtained other regular or substantially equivalent employment, and that an employer refusing to reinstate strikers must show that the action was due to legitimate and substantial business justification. The Court further held that the burden of proving such justification was on the employer and also pointed out that the primary responsibility for striking a proper balance between the asserted business justifications and the invasion of employee rights rests with the Board rather than the courts. The Court also noted that an act so destructive of employee rights, without legitimate business justification, is an unfair labor practice without reference to intent or improper motivation.⁵

To support its contention that the denial of employment to Rosado, Otero, Martinez, and Duprey was legally privileged, Respondent's Vice President Meyer testified that, inasmuch as its armed guards transport millions of dollars in currency and other valuables under their control, Respondent demands and expects that their personal integrity, veracity, and honesty be beyond reproach. Meyer further testified that, because Martinez, Otero, Rosado, and Duprey had falsely claimed that they had either been employed by a security firm known as the Universal Patrol Security Service or other security enterprises prior to the March 1977 interviews with him, in order to obtain gun permits from the Superior Court of Puerto Rico, or had perjurally represented that they had been on Respondent's payroll when they made their applications to that court, these serious fabrications rendered them unworthy of trust and debarred them from reinstatement under Respondent's established operating rules. In Meyer's words, he gleaned from "the personal interviews [of these four men] with me, their employment records, the gun permit records, all other data that they supplied to me during the interview, . . . that these four had misled the Court in obtaining their gun carrying permits. The distinguishing factor was that all four said that they were driving armored trucks and carrying or transporting valuables in armored trucks and, two or three of them—I hate to use the word but the lies were so obvious. . . ." He added that the four men were not rehired because "They stated that they were driving armored trucks for Wells Fargo or somebody else when they were not."

Rafael Rosado Soler testified and I find that he commenced working for Respondent as a security guard in January 1958, joined the work stoppage at its inception on November 20, 1975, and unconditionally offered to abandon the strike and return to work on April 6, 1976. On the August 1976 seniority list which Respondent had compiled,

⁵ At the hearing and in his brief, the General Counsel announced that he was relying solely upon the principles set forth in *Lanflow* and *Fleetwood* in support of his advocative pleadings, and that Respondent's intent or motivation in refusing to recall Rosado, Otero, Martinez, and Duprey was not an issue in this proceeding.

Rosado ranked second in order. On August 4 and October 11, 1976, and January 13, 1977, he received questionnaires which were sent to him by Respondent relating to his employment status and availability for work and which he returned to Respondent indicating thereon that he had not been engaged in any gainful employment. It is uncontroverted and I find that, sometime in November 1976, Rosado was contacted by Antonio Rivera, a former security guard with Respondent, who had established a guard service firm on the Island known as the Universal Patrol Security Service. Rivera informed Rosado that the former might find a job for Rosado with his company if Rosado possessed a valid gun permit.⁶ In consequence of this conversation, and also being aware that such a permit was necessary if he were to obtain future reinstatement with Respondent, Rosado filed a petition with the Superior Court of Puerto Rico on December 20, 1976, for authorization to carry a firearm. In this petition, Rosado averred that "his work mainly consists of security guard and operator of armored vehicles." On January 12, 1977, the court, after noting that the applicant was "employed as a security guard . . . and that by reason his work being the custodian of properties of great value and transporting large sums of money both during the day as well as at night throughout the entire Island of Puerto Rico in armored trucks," granted the request and awarded Rosado a gun permit.

On March 7, 1977, Rosado was summoned to Respondent's Vice President Meyer's office for a preemployment interview. During the session, Rosado proffered to Meyer his recently acquired gun permit, with the supporting papers. On April 6, 1977, Respondent hired replaced strikers from its August 1976 seniority list who had lesser seniority than Rosado, and declined to recall him to work on that date, solely on the ground that, while he had indicated on Respondent's status questionnaire that he had been unemployed at all times following the inception of the strike on November 20, 1975, and had so informed Meyer verbally at the interview, he had falsely represented to the superior court on his application for a gun permit that he was employed as a "security guard and operator of armored vehicles."

Ignacio Otero Rivera was employed by Respondent in June 1959 and worked as an operator of armored vehicles. He joined the strike on November 20, 1975, and unconditionally offered to return to work on April 6, 1976. Otero received availability questionnaires from Respondent on which he reported that he had been unemployed and that he desired to return to work with Respondent. On March 7, 1977, he was invited to a preemployment interview with Vice President Meyer. In the course of their discussion, Otero turned over to Meyer his current gun permit. In this connection, the record discloses and I find that, on September 16, 1976, Otero applied to the Superior Court of Puerto Rico for a license to carry a weapon. On his application, Otero recited that he "works on his own as a security guard for different companies and enterprises in the metropolitan areas, that in the performance of his duties

⁶ Under the laws of the Commonwealth of Puerto Rico, these permits must be renewed annually. In order to obtain such a license under those laws, an individual must actually be employed in a qualifying industry at the time of application.

[he] engages in the guarding of buildings and companies and also operates armored vehicles for the transportation of money, valuable objects, jewels, documents and all kinds of valuables. That in the performance of his work he continuously travels through the Island of Puerto Rico, day and night, transporting and carrying with him big sums of money as well as jewels and valuables." Pursuant to this application, Otero was accorded a gun permit by the court which noted that he "is a Security Guard, wherefore he transports funds throughout different towns of the Island."

Otero testified that, during his interview with Meyer on March 7, 1977, Otero informed Meyer that he had been promised a job as a security guard with Universal Patrol Security Service by its owner, Antonio Rivera. Otero also acknowledged that he had received a letter dated May 7, 1976, on the letterhead of Universal Patrol Security Service and signed by Rivera, which stated:

By this means I am notifying that [Mr. Ignacio Otero Rivera] works for Universal Patrol Security Service.

In his employment he has the custody of money and transports the same to the bank as well as valuable documents. These services are performed by night and day.

According to Otero, he informed Meyer that he had submitted this letter to the court in support of his application for a weapons' permit, although he had never worked for that firm.

On April 6, 1977, Otero was denied reinstatement by Respondent, although he possessed greater seniority than other replaced strikers who were recalled on that date. According to Respondent, its failure to reemploy Otero was bottomed solely on the circumstance that he had untruthfully represented to the court in obtaining his gun permit that he was "employed as a security guard" who transported "properties of great value and transporting large sums of money . . . throughout the entire Island of Puerto Rico in armored trucks," and that he had utilized Rivera's letter to obtain his license in order to bear a weapon.

William Martinez testified that he was hired by Respondent in January 1958 as a security guard, joined the strike on November 20, 1975, and unconditionally offered to return to work on April 6, 1976. He, too, received questionnaires from Respondent late in 1976 and early January 1977 requesting information concerning his job status and availability for work and, on each of them, he indicated that he had been unemployed. On March 30, 1976, while still on strike against Respondent, Martinez filed an application with the Superior Court of Puerto Rico for a gun permit. In that document, Martinez averred that he "is an operator of armored vehicles belonging to Wells Fargo Armored Service Corporation of Puerto Rico and as such travels continually, by day and by night, to different towns on the Island of Puerto Rico transporting and guarding heavy sums of money. . . ." In granting the permit on May 3, 1976, the Court noted that Martinez was "an operator armored vehicles of Wells Fargo Armored Service Corp. [who] continually makes trips to different towns of the Island being the custodian of large sums of money."

During his preemployment interview with Vice President Meyer on March 7, 1977, Martinez handed over his renewed gun permit with the supporting documents. In their ensuing dialogue, Martinez informed Meyer that, when he applied for the permit, "the Court had not granted me the permit because we were on strike but [I stated] that I had an offer for a job for the very near future with Universal Patrol." Upon learning of the job possibility with that concern, the court requested proof of such a tender, whereupon Martinez submitted the above-mentioned letter signed by Antonio Rivera.⁷ On April 6, 1977, Martinez was not recalled to work, despite his greater seniority than the men who were reinstated, because, according to Respondent, he had falsely claimed that he had been employed by Respondent to support his application for a gun license, and because he had also utilized Rivera's letter when, in fact and in truth, he had neither worked for the Universal Patrol Security Service firm nor Respondent during the material times.

Finally, Jesus A. Duprey testified and I find that he was hired by Respondent in 1963 on a part-time basis as a security guard and, in 1965, became a permanent employee. Duprey also joined the strike on November 20, 1975, and unconditionally offered to abandon the work stoppage on April 6, 1976. As in the case of Rosado, Otero, and Martinez, Duprey received questionnaires from Respondent regarding his employment status and availability for work on which he responded that he had been unemployed. On March 28, 1977, Duprey was interviewed by Meyer as a precedent to his recall to duty. During their discussion, Duprey gave Meyer his renewed gun permit. When Meyer inquired as to how Duprey had managed to obtain a renewal of his license, inasmuch as his questionnaires had indicated that he had been unemployed, Duprey replied that "I had been to three different companies, to the Puerto Rico Armored Cars, Universal Armored Cars and the Universal Security Patrol. At the Armored Cars Company, they offered me if trucks came in and if my gun permit was in effect, then they would give me employment." In connection with this permit, the record discloses and I find that, on June 2, 1976, Duprey filed an application with the Superior Court of Puerto Rico for a license renewal in which he stated that "the petitioner works as security guard for different companies including Universal Patrol Security Service, that in the performance of his job the petitioner engages in the guarding of buildings and companies and also operates armored vehicles for the transportation of money, valuable objects, jewels, documents and all kinds of valuables." On June 4, 1976, the court awarded the license, noting that Duprey "devotes himself to being a security guard for different firms and companies, including Universal Patrol Security Service. . . ." At his March 28, 1977, interview with Meyer, Duprey revealed that he had utilized the letter from Antonio Rivera referred to elsewhere herein to obtain his permit from the court. Although Duprey's name was ranked fourteenth on Respondent's seniority list, replaced strikers who

⁷ Antonio Rivera testified without contradiction and I find that Martinez worked for the Universal Patrol Security Service for a 2-week period sometime in 1976.

had less seniority were recalled by Respondent on April 6, 1977, in lieu of Duprey. Respondent justifies this personnel action on the ground that, when Duprey applied for his gun permit, he falsely swore that he had worked "for different companies including Universal Patrol Security Service."

Viewing the testimony of Rosado, Otero, Martinez, and Duprey in isolation, I would have little hesitancy in concluding that Respondent has adequately shouldered the burden of proof imposed by the *Fleetwood* and *Laidlaw* Decisions that its refusal to recall them to work was justified by legitimate and substantial business considerations. As chronicled above, Respondent engages in the transportation of large sums of moneys and other valuables, and utilizes armed guards to insure their safe delivery. In employing and retaining personnel to perform these sensitive chores, Vice President Meyer testimonially claimed that Respondent demands and expects of its men absolute honesty and truthfulness in their conduct and deportment. In his application to the Superior Court of Puerto Rico for a license to carry a weapon, Rosado swore that he was employed as a security guard and an operator of armored vehicles when, in fact, he was unemployed at the time. Otero, Martinez, and Duprey obtained their renewed gun permits from that tribunal on representations that they were working either for Respondent, Universal Patrol Security Service, or other security firms, and actually submitted letters to the court attesting to their employment with Universal Patrol Security Service, when, in truth, they had not worked for any of those companies at the time of their application. Such fabrications would, in my opinion, amply justify the disqualification of these men from reemployment under Respondent's operating rules.

However, the testimony of these four men does not stand in isolation. When summoned as a witness by the General Counsel, Miguel Flores, who ranked first on Respondent's August 1976 seniority list, testified that he was interviewed by Respondent's Vice President Meyer on March 7, 1977, during which he stated that he had not been employed since the date of the strike. Flores then proffered his current gun permit to Meyer which was issued on July 7, 1976. The record establishes and I find that, in late June or early July 1976, Flores petitioned the Superior Court of Puerto Rico for the renewal of his expired gun permit. In that petition, he swore that he was employed as "a Security Agent" who "travels throughout the entire Island transporting funds. . . ." Despite the fact that Flores had represented to the Court that he was employed as a "Security Agent" on the date of his license application when in truth he was not, and although Meyer was fully apprised of this circumstance when he interviewed Flores on March 7, 1977, this fabrication was completely disregarded by Meyer when he made his decision to recall Flores on April 6, 1977.

Ismael Rodriguez Vasquez, a replaced striker who ranked eighth on Respondent's seniority list, was summoned in mid-March 1977 for a preemployment interview with Meyer. During the session, Rodriguez completed an application for employment in which he reported that he had been out of work since the strike. Rodriguez then presented his gun permit to Meyer which was dated Septem-

ber 8, 1976. To obtain the license, Rodriguez assured the court that "he is a security guard." In response to Meyer's inquiry as to how he had obtained the permit in view of his record of unemployment, Rodriguez answered that "since the license that I had as an employee of [Respondent] had expired, I got in touch with the lady Lawyer and I told her that I wanted to renew the gun permit on my own as security guard because since that is my job, that is what I know how to do, for many years; that I had been replaced at [Respondent] but I was still the father of a family and I had to obtain employment someplace and since I own a revolver in my name and that is my work equipment, I want to apply at any other company that does the same kind of business and any other company of security guards. And, if one has a gun permit, one is paid better for it, because they put one to work in banks or as custodian of funds and I explained this to him [Meyer]. . . ." Notwithstanding these revelations of falsity to Meyer, Rodriguez was recalled to work by Respondent on April 6, 1977, although he possessed less seniority than either Rosado, Martinez, or Otero.

Replaced strikers Daniel Torres Velez, Angel Navarro Baez, and Jose Castro Davila, who ranked thirteenth, twelfth, and seventh on Respondent's seniority list, were interviewed for reemployment by Vice President Meyer in March 1977 and, on their applications, they revealed that they had acquired no gainful employment at any time since the strike began on November 20, 1975. In their respective petitions to the Superior Court of Puerto Rico for licenses to bear arms, however, each swore that "he is a security guard for *different firms and companies*, that in the performance of his job the petitioner is in custody of and transports large sums of money, valuable objects, jewelry and documents and as such he continually makes trips both during the day as well as at night through different towns of the Island of Puerto Rico."⁸ (Emphasis supplied.) Although Meyer was apprised that these men claimed before the court that they had been employed by various security companies when in fact they had not, Meyer ignored this intelligence, passed over Rosado, Otero, and Martinez, and recalled them on May 6, 1977, April 6, 1977, and April 6, 1977, respectively, notwithstanding that they possessed less seniority than their three counterparts.

Finally, Pablo Rivera Berrios, another replaced striker who occupied the sixth spot on the seniority list, was invited to an interview with Meyer on March 14, 1977, and produced a current gun permit for Meyer's inspection. Although Rivera's reemployment application stated that he had never been employed since the strike, his permit, which bore the date of May 18, 1976, recited that he was "a security guard for different firms and companies, including Borinquen Armored Car Co., Inc." While a witness, Meyer stated that he had not investigated whether Rivera had in fact worked for Borinquen, claiming that the firm had gone out of business in June or July 1976. However, Meyer acknowledged that Rivera's reemployment application plainly revealed that the latter had never actually

⁸ The gun permits of Daniel Torres Velez, Angel Navarro Baez, and Jose Castro Davila bear the renewal dates of November 5, 1976, October 27, 1976, and December 28, 1976, respectively.

been employed by anyone since November 20, 1975. Nevertheless, Rivera was rehired by Respondent on April 6, 1977, in spite of this falsification.

In my opinion, Respondent's decision not to recall Rosado, Otero, Martinez, and Duprey in preference to other replaced strikers with lesser seniority has not been adequately justified on this record by any cogent or justifiable business considerations, in light of the evidence relating to the falsehoods in which Flores, Rodriguez, Torres, Navarro, Castro, and Rivera had indulged. While Vice President Meyer steadfastly maintained that honesty and truthfulness were the benchmarks for reemployment by Respondent, the standards which he utilized to recall the replaced strikers hardly satisfied those strictures. Thus, Rosado represented to the court in obtaining his gun permit that he was a "security guard and operator of armored vehicles" which is precisely the same representations which Flores and Rodriguez made to the same tribunal, and yet Meyers selected Rodriguez for reemployment over the more senior Rosado and failed to disqualify Flores for reinstatement. On their petitions to the court for a gun license, Otero, Martinez, and Duprey noted that they had either worked as armed guards for Respondent, Universal Patrol Security Service, or other firms, and all confessed that they had buttressed their petitions with letters from Antonio Rivera claiming that they had been employed by his company when in truth they had not. Yet, Torres, Navarro, and Castro also claimed before the court that they had worked for "different firms and companies" as security guards, and Rivera Berrios swore to the tribunal that he had been employed by Borinquen Armored Car Co., Inc., when their reemployment applications filed with Meyer clearly demonstrated that they had not worked anywhere at any time for anyone since the strike.

To support its disparate treatment of Rosado, Otero, Martinez, and Duprey, as contrasted with the treatment accorded to Flores, Rodriguez, Navarro, Castro, and Rivera Berrios, Respondent claims that the "lies" uttered by the former group were more "obvious" than those spoken by the latter. As I interpret this claim, Respondent maintains that the proffer of the letter from Antonio Rivera to the court by Otero, Martinez, and Duprey constituted a total fabrication, while the falsehoods which Flores, Rodriguez, Navarro, Castro, and Rivera Berrios played upon the court were less heinous. If I understand its position correctly, Respondent seeks to moralize the propriety of its business judgment by condoning a half-lie while condemning a whole one. However, a half-lie is also a half-truth. In view of Respondent's insistence upon total veracity and honesty as a prerequisite to employment, it would seem to this observer that a half-truth should be no less "obvious" than no truth at all.

In sum, I am not convinced that Respondent has sustained its burden of proof that the refusal to recall Rosado, Otero, Martinez, and Duprey to work on April 6, 1977, was justified by legitimate and substantial business considerations. Accordingly, I conclude that, by declining to reinstate these men on the date in question, Respondent thereby violated Section 8(a)(3) of the Act.⁹

⁹ In his complaint, the General Counsel alleged that the failure to recall

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 engaged in certain unfair labor practices within the ambit of the Statute, I will order that Respondent cease and desist therefrom and take certain affirmative action which I deem necessary to effectuate the policies of that legislation.

I have found that Respondent refused to recall Rafael Rosado Soler, Ignacio Otero Rivera, William Martinez, and Jesus A. Duprey to work on April 6, 1977, for reasons prohibited by the National Labor Relations Act, as amended. I shall therefore order that Respondent offer to them immediate and full reinstatement to their former jobs or, if they no longer exist, to substantially equivalent employment, without prejudice to their seniority or other rights and privileges, dismissing, if necessary, any employees who were newly hired on and after April 6, 1977, and, if necessary, any former strikers who were reemployed on and after that date who possessed lesser seniority than the discriminatees as reflected on Respondent's August 1976 seniority list. I shall also order that Respondent make Rosado, Otero, Martinez, and Duprey whole for any loss of pay which they may have suffered from April 6, 1977, to the date on which they are offered reemployment. The backpay provided for herein shall be computed in accordance with the Board's formula set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest thereon at the rate of 7 percent per annum in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).¹⁰

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

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By refusing to recall Rafael Rosado Soler, Ignacio Otero Rivera, William Martinez, and Jesus A. Duprey to work when vacancies arose after their unconditional re-

Rosado, Otero, Martinez, and Duprey occurred on April 6, 1977. At the hearing, Respondent maintained that the refusal took place on April 29, 1977, with respect to Rosado, Otero, and Martinez, and either May 8 or 9, 1977, regarding Duprey. Inasmuch as I have found that these claimants met all the prerequisites for reemployment on April 6, 1977, when other, less senior replaced strikers were hired in their stead, I conclude that Respondent's unlawful refusal to recall the four men stemmed from April 6, 1977.

¹⁰ See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

quests for reinstatement following their engagement in an economic strike. Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

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

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

ORDER ¹¹

The Respondent, Wells Fargo Armored Service Corporation of Puerto Rico, Rio Piedras, Commonwealth of Puerto Rico, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to recall Rafael Rosado Soler, Ignacio Otero Rivera, William Martinez, and Jesus A. Duprey to work, with full seniority and other rights and privileges.

(b) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act, as amended.

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

(a) Offer to Rafael Rosado Soler, Ignacio Otero Rivera, William Martinez, and Jesus A. Duprey immediate and full

reinstatement to their former jobs or, if they no longer exist, to substantially equivalent employment, without prejudice to their seniority or other rights and privileges, dismissing, if necessary, any employees who were newly hired on and after April 6, 1977, and, if necessary, any former strikers who were reemployed on and after that date who possessed less seniority than the discriminatees as reflected by Respondent's August 1976 seniority list, and make them whole for any loss of pay which they may have suffered as a result of the discrimination practiced against them in the manner set forth in the section of this Decision entitled "The Remedy."

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

(c) Post at its facilities in Rio Piedras, Commonwealth of Puerto Rico, in both English and Spanish, copies of the attached notice marked "Appendix."¹² Copies of said notice, on forms to be provided by the Regional Director for Region 24, after being duly signed by Respondent's authorized representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 24, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

¹² 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."

¹¹ In the event no exceptions are filed as provided in 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.