

Agri-Seeds, Inc. and Jose Padron and Truck Drivers, Warehousemen & Helpers, Local No. 148, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Independent. Cases 19-CA-8124, 19-CA-8202, 19-CA-8395, and 19-RC-7761

August 25, 1978

DECISION, ORDER, AND DIRECTION

BY CHAIRMAN FANNING AND MEMBERS JENKINS
AND MURPHY

On April 18, 1978, Administrative Law Judge Bernard J. Seff issued the attached Decision in this proceeding. Thereafter, the General Counsel and Truck Drivers, Warehousemen & Helpers, Local No. 148, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Independent, hereafter called the Union,¹ filed limited exceptions and supporting briefs. The Respondent did not file 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 the briefs and has decided to affirm the rulings, findings, and conclusions² of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

In the absence of exceptions we adopt the findings of the Administrative Law Judge that the Respondent violated Section 8(a)(1) of the Act by interrogation and a threat to close the plant because of union activities, and violated Section 8(a)(3) of the Act by the discharge of four employees; that the Respondent interfered with the representation election which was conducted on December 5, 1975;³ and that the challenges to the ballots of Jose Padron and Brian Lynch should be overruled and the challenges to the ballots of Earl Parks and J. Roy Snelson should be sustained.⁴

However, we do not adopt the Administrative Law Judge's recommendation that the election of Decem-

ber 5, 1975, should be set aside at this time and a new election conducted. We find merit to the arguments of the General Counsel and the Union, set forth in their exceptions and briefs, that the election should not be set aside before the ballots of Padron and Lynch are opened. The opening of these ballots may result in an election determination favorable to the Union, in which case a second election will be unnecessary. Accordingly, we shall direct the Regional Director to open and count the ballots of Padron and Lynch and to prepare a revised tally of ballots and issue a certification of representative if such tally shows that the Union won the election. However, in the event the revised tally of ballots shows that the Union did not receive a majority of the valid votes cast in the election of December 5, 1975, then that election should be set aside and another election conducted under the direction and supervision of the Regional Director at a time he deems appropriate.

CONCLUSIONS OF LAW

1. Respondent, Agri-Seeds, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Truck Drivers, Warehousemen and Helpers, Local No. 148, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent interfered with, coerced, and restrained employees in the exercise of rights guaranteed in Section 7 of the Act, thereby engaging in unfair labor practices prohibited by Section 8(a)(1) of the Act, by interrogation and a threat to close the plant because of union activity.

4. Respondent discriminated with respect to employees' hire and tenure of employment, thereby discouraging membership in a labor organization and engaging in unfair labor practices prohibited by Section 8(a)(3) and (1) of the Act, by discharging Craig Murray on October 16, 1975, discharging Jose Padron on October 18, 1975, by constructively discharging and/or discharging Vern Little on November 10, 1975, and by discharging Brian Lynch on February 24, 1976, and by failing to reinstate any of them thereafter.

5. The above-described unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Re-

¹ The Union is the Charging Party in two of the complaint cases involved in this consolidated proceeding and the Petitioner in the representation case.

² As the Conclusions of Law in the attached Decision are incomplete, we substitute the Conclusions of Law herein.

³ We note that the petition in the representation case was filed on October 20, 1975.

⁴ The tally of ballots for the election of December 5, 1975, shows that two votes were cast for, and three against, the Union, and that four ballots were challenged.

lations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Agri-Seeds, Inc., Quincy, Washington, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following sentence for the first sentence of paragraph 2(c) of the recommended Order:

“Post at its plant at Quincy, Washington, copies of the attached notice marked ‘Appendix.’⁴”

2. Delete paragraph 2(e) from the recommended Order.

DIRECTION

It is hereby directed with regard to the election held on December 5, 1975, that the Regional Director for Region 19 shall, pursuant to the Board's Rules and Regulations, within 10 days from the date of this Direction, open and count the ballots of Jose Padron and Brian Lynch and, thereafter, prepare and cause to be served on the parties a revised tally of ballots, including therein the count of the above ballots. If the results according to the revised tally indicate that the Petitioner has received a majority of the total ballots cast, including the above challenged ballots, the Regional Director shall certify the Petitioner as the exclusive representative for collective-bargaining purposes in the appropriate unit.

If, however, the revised tally of ballots shows that the Petitioner has not received a majority of the total ballots, the following direction will be applicable:

IT IS FURTHER DIRECTED that the election held December 5, 1975, in Case 19-RC-7761 will be set aside, and that Case 19-RC-7761 will be severed and remanded to the Regional Director for Region 19 for the purpose of conducting a second election among the employees in the unit found appropriate, at such time as the Regional Director deems that the circumstances permit the free choice of a bargaining representative.

[Direction of Second Election and *Excelsior* footnote omitted from publication.]

DECISION

STATEMENT OF THE CASE

BERNARD J. SEFF, Administrative Law Judge: This case came on for a hearing before me on February 22, 1978, at Wenatchee, Washington.¹ The charge in Case 19-CA-8124

was filed on October 29; the charge in Case 19-CA-8202 was filed on December 1. The case was delayed so long because the Respondent's counsel filed a case in the United States District Court under the Freedom of Information Act requesting information concerning the names of the alleged 8(a)(3)'s and also other particulars which the Regional Office did not produce. Before the issues raised by Respondent in the United States District Court were resolved, a substantial period of time elapsed. The complaint alleges that the Respondent engaged in acts of interrogation, threats to close the plant and accusations directed against an employee for having instigated union organization, and furthermore, discharged employees Craig Murray, Joseph P. Padron, and Vernon Little. All the allegations encompass alleged violations of Section 8(a)(1) and (3) of the Act. The cases were consolidated for a hearing on the complaint which issued December 18, 1975.

Upon the entire record, including my observation of the demeanor of the witnesses, and giving due consideration to the briefs filed by the parties, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent is a Washington corporation with an office and place of business located at Quincy, Washington. It is engaged in the business of cleaning and selling seed.

Respondent, during the past 12 months sold and shipped from its Quincy plant, finished products valued in excess of \$50,000 to points outside the State of Washington. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

I further find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

Respondent obtains its products, including cereal grains, field seeds, and vegetable seeds, from various local farmers during the harvesting season. After cleaning and sacking the seed, the seed is stored in Respondent's warehouse until sold to various customers. In the fall of 1975, Carl H. Guthrie was part owner, general manager and president of Respondent. Bob Faw and Harold Faw occupied the positions of treasurer and secretary, respectively.

In early October Respondent employed eight employees and a plant foreman in the plant and warehouse. Don Stoops was classified as the plant engineer.

In the latter part of September or early October, Brian Lynch, an employee with the longest tenure at the plant spoke to other employees including Harold Slininger, Craig Murray, Vern Little, and Jose Padron concerning the subject of joining the Union. After speaking with the employees, Lynch made a number of telephone calls concerning the possibility of union representation. On October 7,

¹ All dates occurred in 1975 unless otherwise stated.

Lynch reached Dick Thomas, the union official in Wenatchee, and requested that he attend a meeting of the employees in order to explain to them the possible advantages of joining the Teamsters Union. During the week of October 7, Lynch had additional conversations with employees and determined that the employees were interested in a meeting. On October 14, Lynch arranged for a meeting to take place at Lynch's house and at that time a union meeting was held, attended by all the individuals then employed by the Respondent, with the exception of Johnny Hernandez, Don Stoops, Plant Foreman Roy Snelson, and the office staff. At the meeting, in addition to generally discussing the benefits of union representation, Thomas handed out authorization cards to all the employees with the instructions that the employees sign and return the cards to Brian Lynch. Padron picked up an extra authorization card for Hernandez, who signed the card and gave it to Padron.

B. The Discharge of Craig Murray

Murray was initially hired by the Respondent in April to be a liaison person between the office and the plant and who had worked regularly as a mill operator on mill lines one and two since mid-August.

On the evening of October 16, at or about 10 p.m., Craig Murray was working alone in the plant cleaning wet seed. Guthrie approached Murray and after a brief discussion regarding how work was going Guthrie stated, "I heard from a farmer that you were the instigator of bringing the Union in," and he asked Murray if this were true. Murray admitted that this was correct and informed Guthrie that the employees discussed grievances with a union man. At this point Murray testified that Guthrie said, "Well, we might as well close the place down, and you go home." Murray decided not to leave the plant because he stated he had to finish the seed or it would be ruined. After this comment was made, Guthrie also stated that, "He could just close the whole place down, and that would be the end of the whole deal." Larry responded that due to Guthrie's commitments to the companies he had contracted seed to and the growers who had produced the seeds, it would not be feasible to shut the plant down. Murray continued to work until approximately 3 a.m., but Guthrie left the plant after the comments described above.

At or about 5:45 p.m. on October 16, Murray was called by Guthrie to his office. A conversation then took place in which Guthrie told Murray that while he hated to do it, he had to lay Murray off. When asked why this action had to be taken, Guthrie told him that it was either among Murray or Don Stoops and Ray Snelson. At this point in the conversation, Murray told Guthrie that his facts were mixed up and that he was not the instigator who brought the Union into the plant. He said that Brian Lynch was the instigator for the Union. Guthrie then gave Murray his paychecks which consisted of a regular paycheck, 2 weeks' severance pay and he also told Murray that he would give him recommendations to other plants. During the course of this conversation, Guthrie accused Murray of failing to tell him that he had a shoulder problem before he began his employment. However, the testimony of Murray, which I credit, was to the effect that on the day before he began

his employment he had a meeting at a local restaurant called "The Turf," at which time he told Guthrie that he had had reconstructive bone surgery on both shoulders and that he had a weight limitation of 25 pounds per lift and a thousand pounds per day. Guthrie agreed that there would be no heavy lifting to be done on the job. Murray thereupon reiterated his disability during another pre-employment interview attended by Guthrie, Bob, and Harold Faw at Galafono's Restaurant in Euphrata. In this conversation both Guthrie and the Faws agreed that there would not be any heavy lifting for Murray to do on the job. When the General Counsel asked Guthrie the basis for Murray's termination, Guthrie initially claimed that, "It didn't seem that he had the knowledge of cleaning seeds, small seeds, that I thought he had when we hired him." Guthrie also said that production in general is very low. The General Counsel points out in her brief that neither documentation nor corroborating witnesses were produced to support Guthrie's position that production was below normal that season.

Guthrie then claimed that Murray was discharged for his low productivity due to his inability to lift sacks in excess of a stated number of pounds. Guthrie also claimed that Murray failed to make him aware of his shoulder operation and the resulting weight-lifting restrictions until sometime in mid-August when Murray started to work on the mill lines. Guthrie's testimony on this point seems to be without foundation in fact, principally because during the time that Murray worked on the line he had an assistant, Rick Agripino, whose job it was to help Murray sew, bag, and lift the sacks of seeds, and as a consequence, Murray was not involved with any lifting to do.

There's a conflict in the testimony with respect to Murray's health problem. Murray testified that he informed Guthrie and Harold and Bob Faw of his recent shoulder operation and inability to lift an excess of 25 pounds at a time. This conversation, as testified to by Murray, took place prior to his employment. Guthrie testified that Murray did not discuss his shoulder problems before commencing his employment. I credit the testimony of Murray and do not believe that Guthrie's denial of knowledge of his health condition was the basis for his discharge. Guthrie's testimony was vague and not corroborated. Guthrie also said that Murray's production was very low. However, there was no documentation or corroborating witnesses to support Guthrie's position that production was below normal that season. It should be borne in mind that Guthrie's testimony to the effect that he knew nothing about Murray's shoulder problem at the time the employment commenced, but this was not corroborated, and the Faw brothers were not present at the hearing. It can be inferred that the failure to produce the Faw brothers gives rise to the inference that if they had been produced, their testimony would have been adverse to that of Guthrie.

There is also testimony in the record to the effect that Guthrie told Snelson that he believed Murray was involved with "the union pledge cards." Based on the testimony of the record I find that the explanations given by Guthrie as the reason for his discharging Murray were pretextual and that Murray's discharge constitutes a violation of Section 8(a)(1) of the Act. I so find.

The Permanent Layoff of Jose Padron

Some days after the union meeting, but before October 17, Chuck Jewell, business agent for the Union, picked up the union authorization cards at Lynch's residence. Jewell went alone to Respondent's plant in order to deliver a letter to Guthrie stating that the Union represented the majority of the Respondent's employees and to request a bargaining session. Jewell was unfamiliar with Respondent's plant and he stopped to obtain directions to the office from Padron. Padron directed Jewell to the office. Upon arriving at the office at approximately 5 p.m., Jewell encountered several men and a woman, none of whom were identified as Carl Guthrie. After being told that Guthrie was absent, Jewell handed the demand letter to Don Stoops, and as he did so, indicated the time and date of the presentation on the face of the letter.

On the following morning at approximately 10 a.m., Padron was abruptly called away from his work duties to report to the office where he met Guthrie as well as Harold and Bob Faw. At that time, Guthrie, without any explanation, told Padron that Respondent would not need him any more. At this point Padron protested that he had purchased furniture with the assurance that his job would be permanent. In the face of this contention by Padron, Guthrie, with the agreement of the Faw brothers, simply stated that, "Well, it's just one of those things."

Guthrie, by way of explanation, defended Padron's layoff by the simple statement that Padron's job of cleaning boxes and lining boxes had "ran out." It should be remarked that Guthrie failed to explain what caused him to suddenly lay off Padron in the beginning of the shift without prior warning to anyone, including the plant foreman, Snelson. Guthrie also failed to explain why other employees hired after Padron were not considered for layoff. The facts, as brought out at the hearing, prove that rather than laying off workers Respondent was actually suffering from a shortage of employees by October 18.

An employee, Steve Michelson, who was hired on September 29, was being trained to run a mill line when he voluntarily quit on October 17. Respondent never claimed that Padron was incapable of learning to run a mill and consequently, Respondent would have transferred Padron to this position. Johnny Hernandez, who also voluntarily quit on October 18, was also learning to run a mill. From all of the above, it is clear that Respondent's lack of work defense was discredited.

In addition, there is further evidence produced by Snelson which goes to prove that the layoff of Padron was unlawfully motivated. Shortly before Padron's layoff, Guthrie asked Snelson if he knew of anybody who would be willing to work for the Company "because we were in need of help." Snelson contacted Jim Crouch, who was hired on October 22 as a mill operator's helper. Crouch had no previous experience in the seed-cleaning industry. In addition to Crouch, Guthrie hired five more employees during the latter part of October and during the month of November. Thus it can be seen that Guthrie's explanation that he had to lay off Padron because his job had run out is belied by the above uncontradicted facts. Since the reason given by Guthrie was untrue, this gives rise to the rea-

sonable inference that he had another reason for getting rid of Padron. Against the background of the Union's organizational efforts, which were very active at this time, I conclude that Padron was terminated because of his known union identification.

Snelson, as plant foreman, became concerned as a result of the shortage of employees by October 18. On October 20, he called the unemployment office and placed an order for a mill operator. That afternoon, or the following day, Guthrie reprimanded Snelson for calling the unemployment office. According to Snelson's uncontradicted testimony, Guthrie "told me I had made a mistake in making the call; that due to union activities, the hiring of personnel coming into the plant had to be extremely calculated and that I should not have made that call." It would appear that from the evidence in the record and the uncontradicted testimony of Snelson that the reason given for the discharge of Padron was pretextual. It appears to be clear that Padron was discharged because of his identification with the organizing attempt of the Union.

The Constructive Discharge of Vern Little

Vern Little was hired September 6 and worked both as a mill operator and as an assistant to a mill operator during the course of his employment.

An incident occurred on November 10, sometime before lunch. Lynch, who was working on the loading dock, called out to Little that seed was blowing off his lines on the roof. Little immediately climbed to the roof and, failing to see any loose seeds, came back downstairs, informed Lynch that there was no seed blowing off the roof, and returned to his mill. When he returned, Little encountered Guthrie standing by his machine. Guthrie asked Little why the gravity machine was not running and Little responded that the bin had emptied through Earl Parks' failure to open the mill wide enough. Guthrie then stated that he had been timing Little for 5 minutes while he was absent from his machine. At this point Guthrie, for the first time, claimed that Parks had the authority to hire and fire individuals and further, that Parks had complained to Guthrie about Little's tendency to chat with employees and neglect his work. Guthrie ended this conversation by declaring that if Little was not going to stay by his machine, he could quit. Little, taken by surprise by this outburst of hostility, agreed "to quit."

At that point Little returned to the lab room and encountered Parks. He related the discussion between Guthrie and himself concerning Parks' alleged complaints, at which point Parks denied that he had made any complaints to Guthrie. Little suggested, and Parks agreed, to see Guthrie and straighten the matter out. According to Little's uncontradicted testimony, Guthrie then changed his story in the following manner:

Guthrie said that he had told me that I was not running my machine right, that I had been on them for 2 weeks, and that I should know how to do everything; that I was wandering around too much, always talking to other employees and he said that if I

could not stay at my machine constantly, that he was going to have to let me go.

Guthrie denied at the hearing that he either received complaints about Little's work performance from Parks or empowered Parks to hire or fire individuals, but these denials were directly contradicted by Snelson. According to Snelson, the day after Little was terminated, Guthrie informed Snelson that Parks had fired Little because "he couldn't do his job." It should be noted that the record shows that prior to November 10, Little received no criticism from either Parks or Guthrie.

Guthrie's Vow to Replace the Prounion Work Force

It is not contradicted that Guthrie obtained knowledge of his employees' union activities and suspected that most or all of them were involved at least several days before Murray's discharge. Guthrie vaguely claimed that his first news concerning union activity in the plant came from gossip heard at the local restaurant sometime before Murray was fired. It is not denied that several days before Murray's discharge, Guthrie informed Snelson and Stoops in the meeting that he "had become aware that most of the employees had signed union pledge cards."

After Murray was discharged, Guthrie and Snelson had a discussion near the front loading dock at the plant. Snelson expressed dissatisfaction over "the situation," and Guthrie assured him that "when things calmed down that there would be a work force developed that would be in full harmony with me and the plant."

While this initial conversation could be construed as being ambiguous, Guthrie's second conversation in this vein left no doubt as to his intentions of replacing the work force gradually until all the "dissidents" were weeded out. Shortly before the elections, Snelson again told Guthrie that he was nervous about the situation. Guthrie again assured him that "a work force would be developed and that people would be replaced, as necessary, in order to have a harmonious plant operation."

By the time of the election on December 5, five new employees had been hired since October 16, three employees had been terminated and three employees had voluntarily quit.

Respondent's Sale of his Plant to the Successor, Tom Carnevalli, and the Discharge of Brian Lynch

The sale of Respondent's plant to Carnevalli was completed on January 20, 1976. The sale included a transfer of the land leases, sale of all the equipment, and assets of the plant. Guthrie was retained by Carnevalli as an assistant manager. With the exception of new ownership, the operation of the plant and the composition and identity of the work force remained the same.

On February 19, Lynch phoned Stoops early in the morning to inform him that he was ill. Later that day, Lynch again phoned the plant and stated he felt better and he came to the plant and went to work for the rest of the day. By Saturday, February 21, Lynch again felt ill but reported to work anyway. Although he spent the morning

working with employee Don Anderson loading sacks onto a handtruck, by noon Lynch reported to Parks that he was feeling ill. Parks agreed that Lynch should go home.

On the following Monday, Lynch was approached by Carnevalli and questioned about his absence on Saturday and his alleged failure to report his absence to anybody. Lynch explained his communication to Parks and that was the end of this conversation. Carnevalli then informed Lynch that he was told that Lynch had shut down the mill line for one-half hour and left a man idle. Lynch agreed that this was so and stated that a customer had come in and, at Parks' request, he had gone to assist him. Carnevalli replied that he had heard a different version of these events, but he did not elaborate. On February 24, about 5 p.m., Lynch stopped into the office to pick up his paycheck. The following conversation then took place in Carnevalli's office:

Okay he said, "What it boils down to is you're not cooperating." He says, you didn't tell anybody that you were leaving Saturday and I said yes I did. I told Mr. Parks. He said well, that doesn't matter anyway."

Then he said even before I came to this company you refused to wear a hard hat and I said, no, I had not refused to wear a hard hat, I had refused to sign for a hard hat because we were told at the time that the hard hat program was instituted that we had to sign a receipt for the hard hat, and that we would be responsible if these hard hats became damaged.

I also told him that I had discussed this with Mr. Guthrie. Mr. Guthrie said it was not necessary to wear a hard hat in the operation of the forklift, but that he would appreciate us wearing a hard hat when we were working around the mills.

Carnevalli then told me that the mill lines were running out of seed because I wasn't moving the seed bins, but that the seed wasn't available for the mill operators because I wasn't putting it in there. I told them this was not true and that the seed was there. It was just the matter of a mill operator getting onto the forklift, and putting the seed into where it had to be dumped so that it could be run through the lines, that they were not doing that as they had been instructed to do if I was busy somewhere else.

Q. By whom?

A. By Mr. Stoops and Mr. Guthrie.

He said, you're the couple of the people, at least everybody in the plant's mad at you. He said if you'd like, I can call in a couple of people here to explain or tell you what they told me and I said well that would probably be a good idea. Maybe we could clear this thing up, because it's easy to talk behind someone's back.

He said "No, I don't wish to do that at this time." He then proceeded to tell me that "he thought I was an intelligent person, that I probably knew more about the complete operation of the plant than anybody there, but I was going to have to decide what I was going to do with my life, and I interceded at this time and told him that I thought he was an intelligent person but I wasn't sure any more, and that in any

case I didn't want to work there any more and walked out."

The General Counsel's brief states that Carnevalli's testimony with regard to the termination conversation was flippant and generalized and revealed a clear lack of personal knowledge as to Lynch's alleged misdeeds. Carnevalli claimed Lynch announced to employees on February 21 that he was going to play sick, but Carnevalli never identified the employees who made these statements or produced them as witnesses. Carnevalli also claimed that Lynch had been at the dentist on February 19, but again he failed to support this assertion with concrete evidence.

Guthrie's Conversation With Murray on October 15 Violated Section 8(a)(1)

Guthrie did not deny that he interrogated Murray about the union meeting or threatened to shut the plant down in the event the Union succeeded. The General Counsel's brief states that it's well settled law that interrogation as to the union sympathies and affiliations is violative of Section 8(a)(1) because of its natural tendency to instill in the minds of the employees fear of discrimination on the basis of the information the employer was seeking. It is equally well established that the illegal status of such inquiries is not cured by the casual nature of the conversation or the personal relationships of the parties, nor by employees' rejection of such interrogations. I find, based on the above information, that the Respondent violated Section 8(a)(1) of the Act.

The Terminations of Murray, Padron, and Little Were Violative of Section 8(a)(3)

It is uncontradicted that Guthrie became aware of and believed that most of the employees were involved with the union movement at least several days before Murray's discharge.

The General Counsel contends that a preponderance of the evidence indicates that Murray was discharged solely for his union and suspected union activity. From this conclusion, the General Counsel argues that Guthrie's knowledge, animus, and the timing of the discharges for proven pretextual reasons represent a sound basis for finding the discharges to be violative of the Act.

The abrupt and selective manner in which Guthrie picked out Padron for "permanent layoff" was obviously prompted by information passed to Guthrie that Padron had spoken to the union representative. Coupling this information with the labor shortage that occurred at the time of the layoff, the inherently suspicious timing of the layoff, previous assurance of a permanent job, together with Guthrie's stated suspicion that Padron's involvement with the Union near the time of his layoff support a finding that Padron was discharged in violation of Section 8(a)(3) of the Act. I so find.

Guthrie spoke to Snelson in confidence shortly after Murray was discharged and again before the election regarding his plans to "replace the existing work force" with a more harmonious group. Because of the fact that these

major topic of conversation, the inference is irresistible that Guthrie intended to eliminate most of the work force over a period of time due to his belief that union activities and harmony were irreconcilable beliefs.

It would appear that Guthrie intended to and did cause Little to believe that Parks recommended his discharge. At first, Little, apparently accepting Guthrie's information as correct, acquiesced and quit. Shortly thereafter, however, upon Parks' denials, Little clearly indicated an intention to clear the air and possibly go back to work as evidenced by his arrival at Guthrie's office with Parks. Therefore, what began as a constructive discharge was turned around when Guthrie said that the complaints received about Little's work caused them to decide to let Little go. It is therefore clear that, when Guthrie stated that Little would have to be let go, in effect Little was discharged. In conclusion, I find that the Respondent violated Section 8(a)(3) of the Act by constructively discharging and/or discharging Little.

The Discharge of Brian Lynch

Prior to Carnevalli's takeover of the operations, Guthrie mentioned to Snelson that "any discharge of Brian would have to be carefully planned and calculated because of the fact that he was involved in the process at the time during which the Union would be coming in and voting." From this conversation it is clear that Respondent decided to discharge Lynch because of his activities on behalf of the Union.

It should be noted that earlier, when Murray was interrogated by Guthrie and accused by him of being the instigator of the Union, Murray told Guthrie he was mistaken. Murray told Guthrie that Lynch was the instigator. Thus, Guthrie had knowledge of Lynch's union proclivities. This information, taken together with Guthrie's statement to Snelson that "when things calmed down there would be a work force developed that would be in full harmony with me and the plant" makes it glaringly clear that Lynch was discharged because he was the spark plug for the Union.

I therefore find that by discharging Lynch Respondent violated Section 8(a)(3) of the Act.

Credibility and Independent 8(a)(1) Violations

I find that based on the entire evidence in the record and their demeanor that neither Guthrie nor Carnevalli persuaded me by their demeanor on the stand and by their uncorroborated testimony that their testimony should not be credited. On the other hand, I find that Padron, Murray, and Snelson testified credibly, and I credit their testimony. I have also found that Guthrie violated Section 8(a)(1) by his interrogation and by his statement that he would close the plant down, committed independent violations of Section 8(a)(1). Based on these findings, sufficient basis has been found that the employer interfered with the election and that it should be set aside. A new election should be scheduled when the Regional Director determines that a fair election can be held.

The Objections to the Election and the Challenged
Ballots—Case 19-RC-7761

The report on the objections to the election of the challenged ballots shows that two votes were cast for the labor union and three against, but there were four challenged ballots which are determinative of the results of the election.

A. *The Challenges*

1. Jose Padron

I have found that Padron was discriminatorily discharged by Respondent and consequently the challenge to his vote is hereby overruled. I order that Padron's ballot should be opened and counted when a new election is held.

2. Brian Lynch

The employer challenged Lynch's ballot on the ground that he is the supervisor. Respondent did not adduce credible evidence to support its allegation that he is a supervisor. I find he is not a supervisor, was discharged discriminatorily and I order that the challenge to his vote be overruled. Lynch's ballot should be opened and counted when a new election is held.

3. The ballots of Earl Parks and J. Roy Snelson were challenged on the ground that they are supervisors

According to the testimony adduced at the hearing, both Parks and Snelson are hereby found to be supervisors. The record shows that Parks discharged an employee. Snelson, too, exercised supervisory authority by directing the work of the men who worked under him. His decisions concerning his men were implemented by Respondent. His employees regarded him as their boss and they followed his instructions. Acting as a supervisor, Snelson ordered the Employment Commission to find employees to fill vacancies in the mill. His order for additional employees was not countermanded by Respondent.

Under these circumstances, I hereby find that Snelson and Parks are supervisors and the challenges to their ballots should be sustained and not counted.

IV. THE REMEDY

Having found that Agri-Seeds, Inc., has committed certain unfair labor practices in violation of Section 8(a)(1) and (3) of the Act, I shall order that they take certain affirmative action designed to effectuate the policies of the Act.

CONCLUSIONS OF LAW

1. Respondent Agri-Seeds, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Truckdrivers, Warehousemen and Helpers, Local 148, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent is a labor organization within the meaning of Section 2(5) of the Act.

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

ORDER ²

The Respondent, Agri-Seeds, Inc., Quincy, Washington, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in the aforesaid labor organization or any any other such labor organization of its employees by terminating the employment of, and refusing to reinstate, any of its employees or by discriminating in any other manner in regard to their hire and tenure of employment or any other term or condition of employment.

(b) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights to self-organization, to form, join, or assist the above-named labor organization or any other organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

(c) Interrogating any of its employees as to their activities on behalf of the labor organization.

(d) Threatening to close the plant because of the employees' union or concerted activities.

2. Take the following affirmative action which it is found, will effectuate the policies of the Act:

(a) Offer to Jose Padron, Craig Murray, Vern Little, and Brian Lynch immediate and full reinstatement to their former positions, or if those positions are no longer available to substantially equivalent positions without prejudice to their seniority or other rights and privileges and in accordance with the other conditions set forth in the section of the Decision above entitled "The Remedy." Make the above-named employees whole for any loss of earnings they may have suffered as a result of the discrimination

² 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.

against them with interest thereon to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).³

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its plant in Wenatchee, Washington, copies of the attached notice marked "Appendix."⁴ Copies of said notice on forms provided by the Regional Director for Region 19, after being duly signed by Respondent's representatives, 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 by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 19, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER RECOMMENDED that the election which took place be set aside and a new election be scheduled at a time deemed appropriate by the Regional Director.

³ See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

⁴ 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."

APPENDIX

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

After a full hearing at which all sides had the opportunity to present their evidence, the National Labor Relations Board has found that we violated the National Labor Relations Act, and has ordered us to post this notice. We intend to carry out the Order of the Board and abide by the following:

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 refuse to do any or all of these things.

WE WILL NOT do anything to interfere with you in the exercise of these rights.

WE WILL NOT coercively interrogate you as to whether you have signed a union card or are otherwise assisting or supporting a union.

WE WILL NOT threaten to close the plant because of your union activities.

As it has been found we violated the law when we fired Jose Padron, Craig Murray, Vern Little, and Brian Lynch, WE WILL offer them their own jobs back if the same still exists, and if not, a substantially equivalent job and WE WILL make up the pay they lost, together with interest.

AGRI-SEEDS, INC.