Wright, Schuchart, Harbor/Boecon/Bovee, Crail/GERI, A Joint Venture *and* Andrew S. Dixon. Case 19-CA-9472

June 7, 1978

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND PENELLO

On February 24, 1978, Administrative Law Judge James T. Rasbury issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and counsel for the General Counsel filed a brief in response to Respondent's exceptions.

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

The Board has considered the record and the attached Decision in light of the exceptions [1] and brief and has decided to affirm the rulings, findings,[2] and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge as modified below and hereby orders that the Respondent, Wright, Schuchart, Harbor/Boecon/Bovee, Crail/GERI, A Joint Venture, Richland, 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 for paragraph 2(a):

"(a) Offer to Andrew S. Dixon immediate and full reinstatement to his former position or, if that job no longer exists, to a substantially equivalent position without prejudice to his seniority or other rights and privileges and make him whole plus interest for any loss of earnings or other monetary losses suffered by him, in the manner set forth in the section entitled 'The Remedy.' "

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

[1] On April 21, 1978, Charging Party moved to strike Respondent's exceptions based on the alleged failure of Respondent to make proper service on all parties in accordance with Sec. 102.46(j) of the Board's Rules and Regulations. We are unable on this record to determine the merit of Charging Party's contention. However, in view of our disposition of this case, we find that our acceptance and consideration of Respondent's exceptions has not prejudiced the Charging Party's position. We shall therefore deny the motion.

In its exceptions Respondent contends its liability for the unfair labor practices alleged in the complaint was adjudicated without affording it full opportunity, after adequate notice, to present evidence on the question whether it is a successor employer responsible for remedying Bovee & Crail/GERI's unlawful conduct. In support of its position Respondent relies, *inter alia*, on *Perma Vinyl Corporation, Dade Plastics Co., et al.*, 164 NLRB 968 (1967).

We find no merit in the exceptions. Thus, the record indicates that on or about October 1, 1977, Bovee & Crail/GERI, A Joint Venture, named as respondent in the original charge and complaint, added Wright, Schuchart, Harbor/Boecon as partners in the joint venture. At the commencement of the unfair labor practice hearing on November 1, 1977, Respondent's counsel stipulated to the addition of Wright, Schuchart, Harbor/Boecon as new partners in the joint venture and further stipulated "to the continuity of operations and employee complement." Under these circumstances Respondent's reliance on *Perma Vinyl Corporation* and similar cases involving the liability of a successor employer for the unremedied unfair labor practices of its predecessor is plainly misplaced. It is, of course, well settled that service upon any partner constitutes service on the partnership. See, generally, rule 4(d)(3), Fed. R. Civ. P.; *Leonard Carp and Edward Carp d/b/a Edward's Super Market and Elm Farm Foods Co.*, 133 NLRB 1633, 1648 (1961). Moreover, it appears uncontroverted that counsel for the General Counsel served actual notice of the then pending unfair labor practice proceeding on Wright, Schuchart, Harbor/Boecon on or about August 31, 1977.

[2] In the absence of exceptions thereto, we adopt *pro forma* the Administrative Law Judge's findings that Respondent did not commit certain other violations of Sec. 8(a)(1) of the Act as set forth in sec. III,B, of the Decision.

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 participating parties had a chance to give evidence and introduce testimony, the National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post this notice.

The Act gives all employees these rights:

To engage in self-organization
To form, join, or help unions
To bargain collectively through a representative of their own choosing
To act together for collective bargaining or other mutual aid or protection
To refrain from any or all of these things except to the extent that membership in a union may be required pursuant to a lawful union security clause.

WE WILL NOT interrogate our employees in order to find out their interest or activity on behalf of a union or other efforts of employees to engage in concerted activity.

WE WILL NOT threaten to discharge employees for engaging in rights given to them by the Act. Specifically, WE WILL NOT threaten discharge to

employees for filing unfair labor practices with the National Labor Relations Board.

WE WILL NOT discharge or otherwise discriminate against any employee for engaging in activities on behalf of any union.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees with respect to rights guaranteed them in Section 7 of the Act.

WE WILL offer immediate and full reinstatement to Andrew S. Dixon to his former job or, if it no longer exists, to a substantially equivalent position, with backpay plus interest from the date of his unlawful discharge.

WRIGHT, SCHUCHART, HARBOR/BOECON/BOVEE, CRAIL/GERI, A JOINT VENTURE

DECISION

STATEMENT OF THE CASE

JAMES T. RASBURY, Administrative Law Judge: This case was heard before me in Richland, Washington, on November 10 and 11, 1977. The charge was filed by Dixon on May 10 and served on Respondent [1] by registered mail on or about that same date. The complaint issued on August 8, alleging Respondent to have wrongfully discharged Andrew S. Dixon because of his activities on behalf of the Union in violation of Section 8(a)(3) of the National Labor Relations Act, as amended (herein called the Act) and several independent acts of interference and coercion alleged to be violative of Section 8(a)(1) of the Act. The complaint and notice of hearing was served on Respondent on or about August 9. Respondent filed its answer on August 24 in which it admitted certain jurisdictional aspects of the complaint, admitted the termination of Andrew S. Dixon on or about February 3, 1977,[2] but denied the commission of any unfair labor practices.

Upon the entire record, including my observation of the demeanor of the witnesses, and after giving due consideration to the briefs filed by the General Counsel and Respondent's counsel, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Bovee and Crail is and at all times material hereto has been, a California corporation and wholly owned subsidiary of General Energy Resources, Inc. (herein called GERI), a Delaware corporation. They are engaged as a joint venture in the mechanical construction and installation of equipment in a nuclear power plant at the Hanford Reservation, project 2, near Richland, Washington. On October 1, the joint venture was expanded to include two additional partners: Wright, Schuchart, and Harbor, and Boecon. So far as can be determined from this record the entry of the two additional partners in the joint venture did not alter the operations and/or employee complement. (Hereinafter all partners in the joint venture shall be referred to as Respondent.) During the past 12 months, which period is representative of all times material herein, Respondent has engaged in construction of a nuclear power plant pursuant to a contract with the United States Government valued in excess of $50,000. During this same period of time Respondent in the course and conduct of its business operations, purchased and caused to be transferred and delivered to the Hanford project site, goods and materials valued in excess of $50,000 which were transported to said site directly from States other than the State of Washington. On the basis of these admitted facts, I herewith find Respondent to be, and at all times material herein to have been, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Office and Professional Employees International Union, Local 100, AFL-CIO, (herein called Union), is and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issues*

1. The first issue concerns a resolution of the job status ("employee" *vis-a-vis* "supervisor") of the position held by Dixon, the Charging Party, from on or about January 3 until his termination on February 3.

2. Depending on the resolution to the first issue raised, it becomes significant to determine the motivation of Respondent in discharging Dixon.

B. *The Evidence*

Andrew Dixon was first employed by Respondent on August 4, 1975, and worked in three separate capacities, each bearing the same title—field clerk—until December 31, 1976. During this period of time the jobs he held were included under the collective-bargaining agreement between Respondent and the Union (G.C. Exh. 2). From September through December 30, 1976, Dixon served without incident as a shop steward for the Union.

A union-security deauthorization vote had been held in June 1976 which eliminated any mandatory union-security requirements. As a consequence, union membership waned and Dixon was spending considerable time contacting and talking to employees in order for the Union to have a fairly strong position when negotiations for a new contract were started in the spring of 1977. One such contact was made by Dixon with Gail Blanchard, who was a senior clerk

[1] The name of Respondent has been corrected from Bovee & Crail General Energy Resources, Inc., a joint venture, to conform with the stipulation submitted by the parties at the hearing.

[2] Most of the relevant and significant dates herein occurred during the year 1977 and, unless otherwise specified, all dates hereinafter shall refer to the year 1977.

working for an admitted supervisor, John Nelson. According to the testimony of Dixon, Nelson saw him talking to Gail Blanchard and said to him (Dixon), "If I had any union-affiliated business to conduct to do it on my lunch hour and not to interrupt his office proceedings."

In mid-December, Dixon was called to the office of McSparrin, project manager, and, in the presence of Al Haboush, the then project control division manager, was advised of a position in scheduling with Bob Squires as a cost engineer. A short time later, the position was offered to him but he did not accept it. Later that month the personnel manager, Margaret Weiland, told him of another position that would be available in the material control department under John Nelson. A short time later, Dixon talked directly to Nelson who advised him that the position would be working with progress reporting and billing reporting; a position which required cooperation with the field offices. It was a salaried job paying $225 a week. At that time Dixon explained that the position Nelson was offering was something less than that which Al Haboush had previously offered and that it was within a few dollars of what he would be making on his current job when the scheduled pay raise occurred on February 1.

On or about December 23, 1976, Nelson called Dixon to his office and told him that he was prepared to offer Dixon the position which had been discussed at a salary rate of $250 a week. According to Dixon he was advised that his new job was not covered by the union contract and that he would be receiving most of his training from the senior clerk, Gail Blanchard. Dixon accepted the new position and on December 27, 1976, wrote an interoffice memo to Margaret Weiland (at that time Margaret Gerdes), the personnel director, with carbon copies to the union officials, advising that effective December 31, 1976, he was terminating his employment as a field clerk to accept a nonunion job as office engineer II in material control, beginning Monday, January 3. In that memo he stated his intent to resign as steward for the Union and also his position on the executive board of the Union representing Respondent's employees (G.C. Exh. 3).

On December 30, 1976—the last day Dixon worked in his field clerk's job—he was involved in a conversation with Jan Massey, Patty Dutton, Helen Birkholz, and Gail Blanchard. During this conversation Blanchard expressed her interest in applying for the field clerk's position which Dixon was leaving. It was suggested that she immediately call Margaret Weiland. This was done, but Blanchard was told by Margaret Weiland that the position had already been filled by the timekeeper, Jim Wade. Blanchard stated to the group her desire to file a grievance. Andrew Dixon offered to help her write the grievance letter. Later that same day Dixon had a brief conversation with Margaret Weiland, during which he told her that he understood Blanchard had applied for his old position and had not been considered. Dixon went on to tell Weiland that the Company might have a discrimination grievance on its hands.

On January 5, after Dixon had assumed his new role as office engineer II in material control, he received a telephone call from Joan Clifford, a business agent for the Union. During this telephone conversation Clifford asked Dixon if he would resume his job as steward for the Union. Nelson overheard the telephone conversation and commented to Dixon "Has this now become your new union headquarters?" Dixon testified that he then related to Nelson the entire conversation that he had had with Clifford.

On the following day he received another phone call from Clifford in which Clifford advised Dixon that she had informed Margaret Weiland of Dixon's willingness to continue as a union steward and that Margaret Weiland had expressed her elation.

On January 7, Dixon advised Nelson that the Union was going to be filing a grievance on behalf of Blanchard because Respondent had not considered her application, or bid, to fill the job vacated by Dixon as a field clerk. According to Dixon, Nelson expressed some words of unhappiness because Blanchard was trying to leave his department and said, "I hope she gets her little toes stepped on." At that time Nelson said that he was going to be out of the office on the following Monday, January 10, and asked if the filing of the grievance could be delayed until January 11, when he got back. Dixon agreed to do this.

On the morning of January 11, when Nelson asked if anything exciting had happened during his absence, Dixon replied that nothing exciting had happened, but that the Union was going to go ahead and file its grievance on behalf of Blanchard and would be discussing it at a union meeting that night.

Later in the afternoon Nelson called Dixon into his office and advised him that he (Nelson) and Al Haboush had been discussing his (Dixon's) attitude and affiliation with the Union and they had come to the conclusion that Dixon was walking a dangerously thin line. At that time Nelson questioned Dixon as to his aspirations, how he felt about unions in general, how he felt about strikes, and what the Union had ever done for him. Nelson also inquired as to Dixon's union participation during the period of the pipefitters' strike. According to Dixon, at that time Nelson told him that he and Al Haboush wanted Dixon to declare allegiance one way or the other—either to the Union or to management.

On January 12, a grievance was filed with Margaret Weiland regarding Respondent's failure to consider Blanchard for the position formerly held by Dixon. The grievance was signed not only by Gail Blanchard, but also by Andrew Dixon and Robin Otey, as union stewards (see G.C. Exh. 4).

On January 14, Dixon was called to the office of Al Haboush. Haboush and Bud Mayne, the construction division manager under whom Dixon had formerly worked, talked to him regarding the fact that he had resumed his role as a steward for the Union and questioned whether or not he should be serving the Union in his new job classification.

Following this conversation, Dixon went immediately to the office of Bob Mies, Respondent's financial manager, who was scheduled to take Al Haboush's place as project control manager within the next few days. Dixon expressed his opinion as to the propriety of his serving as a union steward and specifically his interest in Blanchard's grievance. During this conversation it was made clear that Weiland and McSparrin had approved his serving as steward,

but Dixon agreed to resign upon the completion of the grievance regarding Blanchard. According to Dixon, during this conversation Mies stated that John Nelson was very upset because Dixon had resumed his role as a union steward.

On January 14, a grievance meeting was held in the conference room of Respondent's main office building which was attended by Margaret Weiland, Joan Clifford, Gail Blanchard, Robin Otey, Jim Wade, and Andrew Dixon. The meeting was concerned with the Gail Blanchard grievance.

On January 17, Dixon met again with Bob Mies and Margaret Weiland during which Mies and Weiland expressed some concern and lack of understanding as to how Dixon could serve as a union steward while filling a job in a management capacity. Again, all three parties came to an agreement that Dixon would resign his job as union steward as soon as the Blanchard grievance was completed. Dixon was never asked, or told, to resign immediately.

On January 18, Dixon received another telephone call from the union business agent during work. The conversation concerned the status of Gail Blanchard's grievance and was overheard by John Nelson. Dixon testified that immediately following the conversation he was called into Nelson's office and there Nelson informed him he was not to conduct any more union business whatsoever from the company telephones. There were no company rules restricting the use of telephones to company business. Following this telephone incident, there was another conference between Bob Mies, Nelson, and Dixon, during which nothing particularly was accomplished except that Nelson was again advised that Dixon had agreed to resign his job as union steward upon the completion of Gail Blanchard's grievance.

On January 24, Nelson asked Dixon to do some overtime work and, when Dixon explained that it would not be possible because he had a meeting downtown at 5:15, Nelson then inquired as to whether or not it was a union meeting. When Dixon advised that it was a union-affiliated meeting, Nelson replied that he was going to talk to Bob Mies again.

That evening at approximately 7 p.m. Dixon decided that it was time for him to talk to Don McSparrin, the project manager. During this conversation Nelson attempted to explain some of the difficulties that he was having with Nelson and particularly complained about Nelson's effort to inquire as to what Dixon was doing on his own time after work. During this conversation Nelson advised McSparrin that he had filed unfair labor practices against the Company and that he intended to let it stand. McSparrin advised Dixon that they had never had anyone continue working for the Company who had filed unfair labor practice charges. McSparrin was called to testify and confirmed that Dixon had called at his home one evening and discussed the job situation in the material control department but *did not deny, or comment, on Dixon's testimony concerning McSparrin's statement regarding the treatment toward employees who file unfair labor practice charges.*

On January 26, there was a board of adjustment meeting (pursuant to the contract as set forth in the language of sec. 2, p. 10, of G.C. Exh. 2). The board of adjustment consisted of Harry Muehlman and Jan Massey for the Union, and John Herrig and Rod Meadows for the Company. Scott Malroy, Margaret Weiland, Jim Wade, Gail Blanchard, Joan Clifford, Robin Otey, and Dixon attended as witnesses or individuals necessary to be questioned in reference to a settlement of the Gail Blanchard grievance by the board of adjustment. The grievance was not resolved at that meeting.

On February 3, at approximately 10 a.m., Dixon was called to the office of Bob Mies. McSparrin was in Mies' office. At that time Mies advised Dixon that the situation in material control was out of control and that it was irreversible and they were going to have to do something about it. Dixon was offered the opportunity to voluntarily resign from his job as engineer II in the material control department, or to accept another position in the firm which would have been a field clerk's job included within the bargaining unit, or that he would be discharged.[3]

Dixon advised Mies and McSparrin that he would like some time to think over their offer and within an hour returned to the office and spoke to them in the company of Robert Otey, the other union steward. Dixon advised them that he would not voluntarily resign and that if they were going to discharge him, they would have to escort him off the premises and take his badge. This was done by Mies. At the time of his discharge, Dixon refused to accept a written notice of termination, but this was later mailed to him by certified or registered mail and appears in the record as Respondent's Exhibit 1.

The testimony of Joan Clifford added little essential evidence to the record except that she did confirm the two telephone conversations with Dixon during office hours and testified that she had obtained clearance, or approval, for Dixon to serve as union steward from Margaret Weiland.

Margaret Weiland testified and confirmed that she had obtained approval from McSparrin for Dixon to continue to serve as union steward and that she advised Dixon that McSparrin had approved his serving as steward. Weiland further testified, "When it became evident that Andrew [Dixon] remaining on as steward was causing friction with his supervisor, at that time Mies questioned whether this should be allowed to continue." Weiland added that she and Mies talked to Dixon, at which time they told him that his stewardship "was causing a lot of problems with his supervisor and that we would prefer if he were not the shop steward." As a result of that meeting, Mies and Weiland agreed that Dixon could continue until the Gail Blanchard grievance was completed. Weiland acknowledged that she advised the union business agent, Clifford, that McSparrin had approved Dixon continuing to serve as a union steward.

John Nelson's testimony was not too illuminating. He testified that Dixon's work progress was unsatisfactory be-

[3] There is a serious question as to whether or not either Mies or McSparrin could have guaranteed Dixon the bargaining unit job. The job that was suggested was a field clerk's job for which Dixon might have been well qualified, but there were several other employees who may also have been qualified that had more seniority than did Dixon. Moreover, the job suggested paid less money than Dixon had been receiving.

cause he continued to make the same errors, but acknowledged that he was not a party to the decision to discharge Dixon and, of course, incompetence or unsatisfactory workmanship is not listed as a reason for the discharge of Dixon (see Resp. Exh. 1). His testimony confirmed the fact that the department was somewhat behind in their work and that he was doing substantial overtime. He also acknowledged having questioned Dixon concerning whether or not he was going to a union meeting on one occasion when Dixon advised him that he would be unable to work overtime. The sum of Nelson's testimony was that he complained because Dixon was not producing as much work as he had expected. As Nelson said, "I needed someone in the position that could do the work that I needed done." Nelson also admitted having been upset because Dixon had gone around him to McSparrin. Nelson acknowledged that he never sat down and talked to Dixon and explained to him that unless there was a change that he (Dixon) would be released from his position. Nelson did not deny Dixon's testimony that he (Dixon) had been questioned extensively about his union activities.

Don McSparrin testified that after he had heard Dixon's side of the story he talked to John Nelson. McSparrin testified that Nelson's story, "was essentially that Dixon was not getting the work out in time for his monthly reports, and with that, John had to be working many hours of overtime with very little assistance from his department." When McSparrin was shown the termination letter given to Andrew Dixon and questioned as to why there was a reference to a conflict of interest between management and Dixon's union activities as a reason for his discharge, McSparrin replied:

> A. Well, in my opinion, Sir, the reason it was placed there was because it was taking time away from his—the daily routine that he could—they should have been devoting to the computer input that John Nelson was asking him to do, and thereby also, it was interfering with any requests that John Nelson had for him to work overtime, and, on one instance, it interfered with the overtime because of a union or an affiliated meeting.
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> Q. Now, don't let me put words in you mouth, but I understand you're saying you listed that as a reason, because you learned from Mr. Nelson that it was this loss of time away from his regular duties in which he was working as a union steward, that was really causing the friction between the two of them?
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> A. I think that is a true statement.

Conclusions

Respondent contends (1) that Dixon's employment with Respondent was not terminated because of his union activities; and, in the alternative, (2) regardless of why Dixon was terminated, he was a "supervisor" within the meaning of the Act and thus should not be afforded the protection of the Act.

Section 2(11) of the Act provides, in relevant part, that:

> The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibilty to direct them . . . or effectively to recommend such action . . . .

The courts have long held that the elements of supervision, as enumerated in the foregoing section, must be considered in the disjunctive.[4]

Dixon testified that, upon assuming his new job as office engineer II, he began filing drawings and sketches for piping and hangers as they were received from the document control department. He reviewed the foreman's daily reports which came in from the field, verifying the data that was contained thereon for accuracy before creating formats for that data for entry into the computer which was used to compile the progress reports and the monthly billing reports.

When asked if the essential function of the material control department was to keep track of the work in progress and to transmit data to the general contractor so the general contractor could then pay Respondent for the completed work, Dixon replied, "Yes, and also to verify it with the field." Most of Dixon's instruction and training was received from Gail Blanchard, a senior clerk in the material control department. Dixon supervised no one and he certainly did not participate in hiring or firing employees. His formal education extended only through 2 years of junior college, majoring in social sciences.

Respondent offered no effective evidence to refute General Counsel's contention that Dixon's job as engineer II was, despite its professional or managerial-sounding title, nothing more than a rank-and-file employee job. The job requirements for office engineer I and office engineer II as set forth in Respondent's Exhibit 2, which admittedly at one time was read to Dixon, fall short of proving anything to the contrary. Weiland acknowledged that although this material was read to Dixon it was not an accurate description of his actual job duties and only provided broad guidelines. Moreover, Dixon was totally lacking in the requirements to become an office engineer I as set forth in the language of Respondent's Exhibit 1. Dixon did not have a "degree in a related field of engineering or construction, or the equivalent in other training plus experience." The only other evidence offered by Respondent was some nebulous and irrelevant indications of what work a former employee in the material control department had performed.[5] The tests of "supervision" must be measured against the actual job duties and *not* job title or some vague speculative plans for the future. (There are trainee "supervisors," but they have the potential to be a "supervisor." Dixon did not have the training or experience to be an office engineer.)

After careful analysis and study of all of the evidence presented, I am convinced there was nothing in the makeup of the job performed by Dixon that meets any of the

[4] *N.L.R.B. v. Edward G. Budd Manufacturing Company*, 169 F.2d 571 (C.A. 6, 1948), cert. denied 335 U.S. 908.

[5] There is uncontradicted evidence in the record that after Dixon was discharged the material control department was manned by one office engineer and two clerks—both of the clerk's jobs being covered by the bargaining unit.

criteria of a "supervisor" as delineated in the Act. Nor was there anything about the job to place it in the category of a supervisor-trainee position. The cases cited by Respondent's counsel are *not* apposite. In my opinion, Dixon's job was nothing more than a high-level clerical job which Respondent elected to classify as an exempt position under the provisions of the Fair Labor Standards Act, 29 U.S.C.A. Dixon was at all times an "employee" under the Act.[6]

There is *no conflict* in the evidence regarding the consent by top managerial people of Respondent in granting Dixon the right to serve as a union steward after he was promoted to work under John Nelson. I am also convinced after a careful review of all of the evidence that Nelson was unhappy with Dixon because Dixon apparently exhibited a lack of interest in the new job and failed to devote as much time and energy at the job as Nelson would have liked for him to do. However, invariably the complaints filed by Nelson with his superiors related to the *time* that Dixon was devoting to his job as a union steward. Thus, it was Dixon's union activity--which he had been authorized to carry out by not only the personnel manager but the project manager—that was detracting from Dixon devoting more time to his job. The conclusion is inescapable that it was Dixon's union activity that caused his discharge. As a matter of fact, Respondent acknowledges in the termination letter given to Dixon (Resp. Exh. 2) that it was his union activities that provoked the discharge. If words attributed to those authorized to speak for management are credited as having been said their form, content, and context eliminate all doubt of motive. *N.L.R.B.* v. *Ferguson, L. C. and E. F. Von Seggern d/b/a Shovel Supply Company*, 257 F.2d 88, 90 (C.A. 5, 1958). Accord: *N.L.R.B.* v. *Shawnee Industries, subsidiary of Thiokol Chemical Corp.*, 333 F.2d 221, 224 (C.A. 10, 1964). This is a violation of Section 8(a)(3) of the Act.

I also find Nelson's admitted questioning of Dixon regarding his participation in union activities on the occasion of Dixon's refusal to work overtime, as an act of interfering with Dixon's Section 7 rights and, thus, a violation of Section 8(a)(1) of the Act. Dixon also credibly testified to one other occasion when Nelson called him into his office and interrogated him concerning his participation in union activities, strikes, and the Union's role during the pipefitters' strike. Although Nelson testified on behalf of Respondent, these assertions by Dixon were not denied. McSparrin was called to testify by Respondent, but he did not deny that he (McSparrin) had, during the conversation with Dixon in McSparrin's home, threatened dismissal of any employee that filed an unfair labor practice charge with the Board. These three instances of interrogation, interference, and threats I find to be violative of Section 8(a)(1) of the Act. All other allegations of interference, I recommend be dismissed, because in my opinion they did not interfere with, restrain, or coerce employees and could not reasonably be calculated to violate the Act. It is not unlawful to curtail union activity during "working time" when it is disruptive of work.

[6] See *Crest Chemical Company*, 213 NLRB 885 (1974), and cases cited therein.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent, set forth 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 of commerce.

V. THE REMEDY

Having found that Respondent engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and that it take certain affirmative action necessary to effectuate the policies of the Act. Respondent shall be required to reinstate Andrew S. Dixon to his former position without loss of seniority or other employee benefits which he would have accrued had he not been wrongfully discharged. In the event there has been a substantial change in personnel or reorganization of Respondent's operation, or any part thereof, which prevents the reinstatement of Dixon to his former position, then he shall be reinstated to a substantially equivalent position, but with due regard for the terms of the labor management agreement with reference to the bidding system and the seniority and qualification requirements. Respondent shall also be required to make Dixon whole for any loss of earnings from the time of his discharge until he is offered reinstatement in accordance with the terms of this Order and at 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).[7] Since the violations of Section 8(a)(1) which have been found herein were repeated and the case involves a discriminatory discharge, I shall recommend the issuance of a broad 8(a)(1) order designed to suppress any and all violations of that section. *Adam and Eve Cosmetics, Inc.*, 218 NLRB 1317 (1975); *Thermo Electric Co., Inc.*, 222 NLRB 358 (1976).

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(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 discharging Andrew S. Dixon because of his participation in authorized union activities, Respondent has violated Section 8(a)(3) of the Act.
4. By interrogating Andrew S. Dixon regarding his union activities Respondent has interfered with, restrained, and coerced an employee in the exercise of his rights as guaranteed in Section 7 of the Act thereby violating Section 8(a)(1) of the Act.
5. By informing Dixon that Respondent would discharge any employee who filed unfair labor practice charges with the Board, Respondent has wrongfully interfered with, restrained, and coerced an employee in the ex-

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

ercise of rights guaranteed by Section 7 of the Act in violation of Section 8(a)(1) of the Act.

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

ORDER [8]

The Respondent, Wright, Schuchart, Harbor/Boecon/Bovee, Crail/GERI, A Joint Venture, Richland, Washington, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating employees in an effort to ascertain their interest or activity on behalf of a union, or other efforts of the employees to engage in concerted activity.

(b) Threatening to discharge or otherwise discriminate against any employee because he has filed charges with the National Labor Relations Board.

(c) Discharging or otherwise discriminating against any employee because of the employee's union activity.

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

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

(a) Offer to Andrew S. Dixon immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges, and make him whole for any loss of earnings or other monetary losses suffered by him, 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 payment records, timecards, personnel records, and all other records necessary for determination of the amount of backpay due and the right of reinstatement under the terms of this Order.

(c) Post at its principal office in the city of Richland, Washington, or such other places as the usual notices to employees are posted, copies of the attached notice marked "Appendix." [9] Copies of said notice, on forms provided by the Regional Director for Region 19, after being signed by an authorized representative of Respondent, shall be posted by Respondent 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 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.

[8] 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.

[9] 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."