Bedford Cut Stone Co., Inc. *and* Machine Stone Workers, Local 93, Tile, Marble, Terrazzo Finishers and Shopmen's International Union, AFL–CIO. Cases 25–CA–8358 and 25–CA–8358–2

April 3, 1978

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND MURPHY

On November 2, 1977, Administrative Law Judge Marion C. Ladwig issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief,[1] and the General Counsel filed cross-exceptions and a reply 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 briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge, except as modified herein.

The General Counsel has excepted to the Administrative Law Judge's failure to find that the Respondent violated Section 8(a)(5) by failing to give the Union notice,[2] or an opportunity to bargain over the effects, of the plant closure and that the Respondent's temporary shutdown and its discharge of employees Charles Turpin and Willard Brown violated Section 8(a)(3) of the Act. We find merit in the General Counsel's exceptions.

The facts, as more fully set out in the Decision of the Administrative Law Judge, may be summarized as follows. Since 1973, the Union has represented the millworkers, including Turpin and Brown, at the Respondent's facility, and the Stonecutters has had jurisdiction over the stonecutters. On or about October 8, 1973, the Respondent signed an area contract with the Union and the Stonecutters.

Subsequent to that time, the Respondent became delinquent in paying the contractual insurance and pension benefits, as well as contributions to the promotional trust fund, and the Union pressed it to make these payments required by the contract. In October or November 1975, Turpin and Brown filed grievances against the Respondent which resulted in a grievance meeting during which the Respondent's president, Dolph Becker, became so angry that he threatened to shut down the plant and/or discharge employees Turpin and Brown. When he finally made the delinquent payments, Becker referred to them as "severance pay" for Turpin and Brown.

On April 2, 1976, the Union notified the Respondent that it wanted to open negotiations for a new contract to replace the one expiring on June 30, 1976. Thereafter, on or about May 26, 1976, the Respondent closed its facility and remained closed until September 1976.

Contrary to the Administrative Law Judge, we find that the record clearly indicates that the representatives of the Union and the Stonecutters did not meet with Becker until mid-June 1976, after the plant closure, rather than in mid-May, prior to the plant closure. Both Union Representative Robert Mosier and Stonecutters Representative George White testified that the first meeting with the Respondent took place in mid-June, after the plant had closed.[3] Becker did not deny that the meeting occurred in mid-June. In light of the aforementioned evidence, Mosier's testimony, at one point, that Becker stated that "the Company was going to shut down" does not establish that the meeting occurred prior to the plant closure and does not show that the Union had prior notice of the Respondent's plans. Rather, the record establishes that the Respondent closed its facility on May 26, 1976, without giving notice to the Union and without affording the Union an opportunity to bargain about the effects of the closure. Accordingly, we conclude that the Respondent's course of conduct in May 1976 violated Section 8(a)(5) and (1) of the Act.[4]

Further, in situations involving a temporary shutdown or a runaway shop, such as we have here, the General Counsel can establish a *prima facie* case of a violation of Section 8(a)(3) by proving facts from which we can infer that a respondent's actions were in response to the union activities of its employees. Then, a respondent has the burden of establishing that its actions were a result of legitimate business considerations.

Here, the General Counsel clearly established a *prima facie* case that the temporary shutdown of the Respondent's business was motivated by antiunion considerations. During the dispute over unpaid insurance and pension benefits, Respondent President Becker displayed his animus towards the Union and the employees' attempts to enforce their rights under the union contract. Becker, in response to the efforts of the Union and employees Turpin and

[1] We hereby deny the General Counsel's motion to strike the Respondent's exceptions or, in the alternative, to strike portions thereof.

[2] The Union herein is the Machine Stone Workers, Local 93, Tile, Marble, Terrazzo Finishers and Shopmen's International Union, AFL–CIO. Also involved in this case, but not as a party, is the Journeymen Stonecutters Association of Indiana, hereinafter Stonecutters.

[3] Additionally, Homer Chase, a business agent for the Union who attended the first meeting with Becker, testified that the plant had closed prior to his receiving any notice from the Respondent of the closure.

[4] Inasmuch as the General Counsel does not allege that the Respondent had any obligation to bargain about its decision to close, we need not decide whether any such obligation existed here.

Brown, threatened to shut the plant and/or fire Turpin and Brown. After the Union (as well as the Stonecutters) requested bargaining for a new contract in April 1976, the Respondent made good on its threat to close the plant. In June and July 1976, President Becker refused to engage in any meaningful discussion with the Union and the Stonecutters while also refusing to supply the Union with a statement indicating it had gone out of business. The Respondent maintained its shutdown during a period of area negotiations between the Union and an employer association and then reopened after the area negotiations were completed. Upon reopening, the Respondent did not recall Turpin and Brown, the employees most active in seeking to enforce their rights under the union contract. Instead, the Respondent, as found by the Administrative Law Judge, started up again with an admitted intention to operate "nonunion." Therefore, in light of the timing of the shutdown (and its temporary nature) and the Respondent's knowledge of and substantial animus towards the Union's actions and Turpin and Brown's union activities, we find that the General Counsel demonstrated a *prima facie* case of illegal motivation on the part of the Respondent.

Further, we find that the Respondent's evidence in support of its defense that the shutdown was economically motivated is unpersuasive. Becker testified that he closed down the plant because there was no work. However, the Respondent presented no documentation of a lack of work, and the Administrative Law Judge concluded that Becker was not a trustworthy witness. Becker admitted under cross-examination that, during the shutdown, he had another company fill two orders and that the Respondent had many bids out on various projects. Under these circumstances, the Respondent failed to sustain its contentions that economic considerations forced its shutdown. Accordingly, we find that the Respondent's shutdown in late May 1976 and its discharge of employees Turpin and Brown were motivated by antiunion considerations and violated Section 8(a)(3) and (1) of the Act.

AMENDED CONCLUSIONS OF LAW

Substitute the following for the Administrative Law Judge's Conclusions of Law 1 and 2:

"1. By discriminatorily closing its facility and terminating its employees Charles Turpin and Willard Brown on or about May 26, 1976, and thereafter by discriminatorily failing to recall Charles Turpin on September 22 and Willard Brown on September 27, 1976, and by refusing thereafter to reemploy them because of their union membership and protected concerted activity, the Respondent engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

"2. By closing its facility on or about May 26, 1976, without giving the Union notice, or an opportunity to bargain over the effects, of said closure and by refusing on and since July 15, 1976, to recognize and bargain with the Union as a majority representative of its employees in an appropriate unit of all millworkers employed at its facility, excluding office clerical employees, guards, employees represented by Journeymen Stonecutters Association of Indiana, and supervisors as defined in the Act, the Respondent violated Section 8(a)(5) and (1) of the Act."

AMENDED REMEDY

Having found that the Respondent is engaged in certain unfair labor practices, we find it necessary to order the Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

As it has been found that the Respondent discriminatorily discharged employees Turpin and Brown and thereafter discriminatorily denied reemployment to these two employees, we find it necessary to order it to offer them employment, with backpay and 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),[5] from the date of their discharge in May 1976 to the date of a proper offer of employment. Inasmuch as the Respondent's unlawful conduct goes to the very heart of the act, we find it necessary to issue a broad Order, requiring the Respondent to cease and desist from infringing upon employee rights in any other manner.

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, Bedford Cut Stone Co., Inc., Bedford, Indiana, 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 1(a):

"(a) Discouraging membership in Machine Stone Workers, Local 93, Tile, Marble, Terrazzo Finishers and Shopmen's International Union, AFL–CIO, or

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

any other union, by shutting down the plant temporarily and by discharging and thereafter refusing to recall any employees because of their union or concerted activities."

2. Substitute the following for paragraph 2(a):

"(a) Offer Charles Turpin and Willard Brown immediate and full reinstatement to their former jobs or, if their jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay or other benefits in the manner set forth in the Amended Remedy section."

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

APPENDIX

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

WE WILL NOT discourage membership in Machine Stone Workers, Local 93, Tile, Marble, Terrazzo Finishers and Shopmen's International Union, AFL–CIO, or any other union, by shutting down the plant temporarily and by discharging and thereafter refusing to recall any employees because of their union or concerted activities.

WE WILL NOT discriminate against any of you for engaging in union or other protected concerted activity.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of your rights under Section 7 of the Act.

WE WILL offer full reinstatement to Charles Turpin and Willard Brown, and make them whole for any loss of pay or other benefits, plus interest.

WE WILL bargain upon request with Local 93 and put in writing and sign any bargaining agreement we reach covering these employees:

> All millworkers employed at the Bedford, Indiana facility, excluding office clerical employees, guards, employees represented by Journeymen Stonecutters Association of Indiana, and supervisors as defined in the Act.

BEDFORD CUT STONE CO., INC.

DECISION

STATEMENT OF THE CASE

MARION C. LADWIG, Administrative Law Judge: These consolidated cases were heard at Bloomington, Indiana, on April 11 and 12, 1977. The charges were filed by the Union[1] on October 14 and 20, 1976,[2] and the consolidation order and complaint were issued on December 29.

In late May, about a month before the expiration of its agreement with the Union, the Company closed its plant. In early September, the Company reopened the plant as a nonunion shop, and refused to recall or rehire either of the two employees in the bargaining unit represented by the Union. The primary issues are whether the Company, the Respondent (a) discriminated against the two employees because of their protected concerted activity and to discourage membership in the Union, and (b) unlawfully refused to bargain with the Union in violation of Section 8(a)(1), (3), and (5) of the National Labor Relations Act, as amended.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel and the Company, I make the following:

FINDINGS OF FACT

I. JURISDICTION

The Company, an Indiana corporation, is engaged in cutting, fabricating, and distributing limestone at its plant in Bedford, Indiana. The evidence shows that in the last calendar year, 1975, its deliveries of limestone to construction industry contractors included shipments valued in excess of $8,579.91 directly across state lines (e.g., $4,324.91 to Dixie Masonry, Inc., in Kentucky; $2,520 to Paul Kintz Construction Co. in Ohio; and $1,735 to Zeller's Red Hill job in Illinois) and shipments valued in excess of $53,103.46 within the State to users meeting the Board's jurisdictional standards (e.g., $14,387.40 to Hughes Masonry Co. which had direct outflow across state lines in excess of $50,000; and $21,283.06 to Taylor Bros. Construction Co., Inc.; $10,400 to Repp and Mundt, Inc.; $4,365 to K. H. Kettelhut Co.; and $2,668 to V. H. Juerling, each of which had direct inflow across state lines in excess of $50,000), making the Company's total direct and indirect outflow in excess of $61,683.37, well above the $50,000 minimum for such a nonretail enterprise. *Siemons Mailing Service*, 122 NLRB 81, 85 (1958). Contrary to the Company's untenable position that only its direct outflow should be considered in determining the Board's jurisdiction, I find it clear that the Company is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and further find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

[1] The name of the Union was corrected at the hearing.

[2] All dates are in 1976 unless otherwise stated.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Controversy Over Benefits*

The Company's stonecutting plant was operating nonunion until 1973, when millworker Charles Turpin began working there and succeeded in getting the approximately five millworkers and stonecutters to sign union authorization cards. The Union took jurisdiction over the three millworkers (including Turpin and Willard Brown) and the Stonecutters (also a member of the Federal Council of Limestone Trades) took jurisdiction over the stonecutters (Foreman Donald Frazier and planerman Burl Meadows).

On October 8, 1973, the Company signed a multiemployer agreement with the Union, effective from July 1, 1973, through June 30, 1976, covering an appropriate bargaining unit of all millworkers employed at its facility, excluding office clerical employees, guards, employees represented by Journeymen Stonecutters Association of Indiana, and supervisors as defined in the Act.

Both millworkers Turpin and Brown were members of the Union from October 1973 until the plant was closed in May 1976. In 1976, and during most of the time since 1973, they were the only millworkers in the plant. Turpin worked primarily as a truckdriver and ripsawyer, and Brown as diamond sawyer, but in the absence of other millworkers, they also did "a little bit of everything." They operated the crane, shoveled out around the planer, loaded and unloaded trucks, and performed maintenance (making electrical and mechanical repairs, replacing motors and wheels on the crane, and lining up and adjusting the rip and diamond saws). Brown also drove the truck, and operated the ripsaw.

During this time, the Company became delinquent in paying the contractual insurance and pension benefits, as well as contributions to the promotional trust fund, and the Union pressed it to make these payments required by the multiemployer agreement. In October and November 1975, Turpin and Brown filed grievances against the Company for unpaid insurance premiums. It is undisputed that Company President Dolph Becker became so angry in the November 10, 1975, grievance meeting that when he wrote out a check to Turpin for $809.59 and to Brown for $656.93 to cover unpaid insurance premiums, he threatened both of them with discharge. As Union Business Agent David Kirkman credibly testified, "When Mr. Becker handed the checks to me to give to the two employees he said that you can consider this as severance pay." (As Kirkman also credibly testified, Becker "frequently during the course of our conversation stated that business was bad and that he should just shut the plant down and forget the whole deal." Kirkman responded that it was Becker's prerogative to shut the plant down, but that if he tried firing them, there would be "another fight on our hands.") As it turned out, Becker did not discharge Turpin and Brown at that time, and told Kirkman "he was going to think about it."

The Company remained delinquent in paying the insurance premiums until April, when it began paying them (for 2 months). Meanwhile, the Company paid directly to Turpin about half the amount of the insurance premium for 3 months.

Early in 1976, stonecutter Meadows applied for his retirement pay, which was denied because the Company had failed to make contributions to the pension plan. (Both the Union and the Stonecutters had provisions in their agreements with the Company, calling for contributions to the same plan.) In the absence of any stewards on the job Meadows, as well as millworkers Turpin and Brown, complained to Union Business Agent Chase, who attempted to resolve this delinquence with Company President Becker. On April 27, Becker sent a check in the amount of $3,121.88 to the pension plan to cover the contributions retroactive to July 1, 1973. However, he thereafter failed to pay the approximately $750 in delinquency charges and to sign the trust and participation agreement, and the check was returned to the Company.

Union Business Agent Chase also induced the Company to pay the full amount of the deliquency (over $1,300) to the promotional trust fund. The Stonecutters were less active in representing employees at the plant, and did not file any grievances.

B. *Closing of Plant*

On April 2, the Union (as well as the Stonecutters) notified the Company that it wanted to open negotiations for a new contract, replacing the one expiring June 30. Thereafter, while separate negotiations were being conducted with the employer association, representatives of the Union, the Stonecutters, and the Federated Council of Limestone Trades met with President Becker to begin negotiations. As credibly testified by Robert Mosier, the spokesman for the group, Becker informed them "that the company was going to be shut down, there was no work available and, therefore, there would be no need to negotiate a new contract." Mosier recalled that this meeting was held sometime in June, but inasmuch as the plant shutdown occurred the last week in May, this meeting was undoubtedly held earlier. As credibly testified by Stonecutters Vice President George White, Becker also stated that the insurance was no good and too expensive, and that he did not believe in the different fringe benefits.

Then in the last week in May, without further notice, President Becker closed the plant, telling the employees that there was no work and that they were laid off. The Union did not request to negotiate on the effects of the shutdown. Thereafter, during the summer, the Company received two small orders, which it subcontracted to another stonecutting company.

The General Counsel contends that this was a discriminatorily motivated shutdown, and that the Company unlawfully terminated millworkers Turpin and Brown. However, the General Counsel failed to prove that there was sufficient work on hand, or sufficient orders received during the 3-month summer shutdown, to justify keeping the plant open. I reject the contentions that the shutdown and layoffs were unlawful.

C. *We Started Up Again Nonunion*

When asked at the hearing whether the Company had any plans at the time of the shutdown to reopen, President Becker answered, "Not at that time, no." Assuming this to

be true, the evidence shows that by the middle of July, when Becker refused to negotiate with the Union, he had decided not to reopen except as a nonunion plant.

In mid-July, President Becker met for the second time with representatives of the Union, the Stonecutters, and the Federated Council. As the union spokesman, Mosier, credibly testified, Becker became "very disturbed," said he had "no intention" of negotiating a new contract, refused to give a letter that the Company was "out of business," and "just the same as ordered us out of the office." I find that by Becker's refusal to disclaim any intention of remaining closed, by his refusing to negotiate with the Union, and by his later admitted conduct in reopening as a nonunion operation, he revealed his determination in mid-July not to bargain further with the Union. I therefore find that on and since this time, about July 15, the Company unlawfully refused to bargain with the Union in violation of Section 8(a)(5) of the Act.

In September, the Company reopened the plant but refused to recall either of the millworkers, Turpin and Brown, who, with the Union, had actively endeavored to get President Becker to abide by the terms of the recently expired collective-bargaining agreement. As indicated above, the other union in the plant, representing the stonecutters, had been less active and had filed no grievances. After being recalled, the two stonecutters worked without a union agreement.

President Becker recalled stonecutters Frazier and Meadows, and hired four millworkers on a verbal "contract" basis, to work for a "flat amount." Millworker David Wright began driving the company truck about September 22. Millworkers Charles Hoopengarner and James Reynolds were assigned to installing a diamond saw which the Company had purchased, and to other millworkers duties. Becker at first excluded them from the regular payroll records, but later included them in the cumulative earnings record, as he admitted in reference to Hoopengarner, "because I had the right to tell him what hour he came to work." Before that, as Becker testified, "They had a [verbal] contract with me and I paid them on the amount of money that they earned." The fourth millworker, Arther Bailey, was hired temporarily to produce split-faced stone. Although this millwork was covered by the Union's recently expired agreement, it was specialized work which neither Turpin nor Brown had performed.

Stonecutter Frazier, the foreman, was recalled on September 8 and assigned millwork. Stonecutter Meadows was recalled on September 27 to work as a planerman (stonecutter work), while Frazier was operating the diamond saw (millwork).

In the last week in September (just after Meadows was recalled), millworker Turpin went to the reopened plant to seek reemployment. He entered the plant and saw stonecutters Frazier and Meadows working, and also "these two other guys up there setting up a machine working." These were the "contract" workers, Hoopengarner and Reynolds. Turpin saw President Becker outside the plant and asked him, "Mr. Becker, are you gonna call me back?" As Turpin credibly testified, Becker answered no, and when Turpin asked why, Becker answered, "*You caused me too much trouble.*" (Emphasis supplied.) Becker did not impress me as being a trustworthy witness, and I discredit his denial. After Becker left in his car, Turpin went back inside the plant for a few minutes and noticed what Hoopengarner and Reynolds were doing. As he credibly testified, "One was operating the crane [work which Turpin and Brown had done previously] and the other one was just standing around over there next to . . . where a big saw was being installed." As testified by Turpin, who impressed me as being an honest witness, there was no difference in installing and setting up the new saw, on an existing concrete base, and the maintenance work which he and Brown had previously performed, lining up and adjusting the saws. In fact, on one occasion they had succeeded in squaring a saw after an outside mechanic had failed. About 3 or 4 weeks later, Turpin returned to the plant and again observed the two new employees doing millwork—one of them operating the ripsaw and the other operating the crane. Turpin again asked Becker if he ever intended to call Turpin back. Becker answered no, and "told me to *get out and not come back.*" (Emphasis supplied.) Again I discredit Becker's denial.

Millworker Brown repeatedly went to the plant to seek reemployment. The first time was around October 1st, when he saw stonecutter Frazier operating the diamond saw, stonecutter Meadows operating the planer, and Hoopengarner and Reynolds setting up a diamond saw. The second time was about 2 weeks later, when he observed Hoopengarner operating the rip saw and running the crane. This time he saw President Becker and asked if Becker was going to call him back. Becker answered, as Brown credibly testified, "I might if we get any work."

In its answer, dated January 20, 1977, the Company made it clear that it had no intention of recalling these two union-represented millworkers. Citing nonunion competition, it stated that, "As for negotiation with the Union that is out of the question," and admitted, *"we started up again non-union* after being closed down since May 1976." (Emphasis supplied.)

When asked at the hearing why he hired millworkers Hoopengarner and Reynolds instead of inquiring about Turpin and Brown doing such work, President Becker falsely replied, "They were working elsewhere at the time this machine was installed." In its brief, the Company contends that "Mr. Turpin was not for hire as he had retired"—despite Turpin's repeated applications for recall—and "As for Mr. Brown, we had no work available for him as we were operating on a small basis." Later in the brief, the Company claims that when some stone was broken in the truck Turpin was driving on the highway in April (where the traffic had worn away the gravel in an unmarked sewer-line ditch dug across the highway), "This was deliberate sabotage by Mr. Turpin"—an obvious afterthought.

I find the evidence clear that the Company refused to reemploy Turpin and Brown because of their union membership and protected concerted activity, and thereby discriminated against them in violation of Section 8(a)(3) and (1) of the Act. I further find that in the absence of this discrimination, the Company would have recalled Turpin on September 22, instead of hiring truckdriver Wright on a "contract" basis, and Brown on September 27, when

stonecutter Meadows was recalled to resume regular production, and that the Company would have assigned them both production and maintenance work which it instead assigned to "contract" employees Hoopengarner and Reynolds.

CONCLUSIONS OF LAW

1. By discriminatorily failing to recall Charles Turpin on September 22 and Willard Brown on September 27, 1976, and by refusing thereafter to reemploy them because of their union membership and protected concerted activity, the Company engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(3) and (1) and 2(6) and (7) of the Act.

2. By refusing on and since July 15, 1976, to recognize and bargain with the Union as the majority representative of its employees in an appropriate unit of all millworkers employed at its facility, excluding office clerical employees, guards, employees represented by Journeymen Stonecutters Association of Indiana, and supervisors as defined in the Act, the Company violated Section 8(a)(5) and (1) of the Act.

REMEDY

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

The Respondent having discriminatorily denied reemployment to two employees, I find it necessary to order it to offer them employment, with backpay and 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] from the date of the denial of reemployment to the date of proper offer of employment. Inasmuch as the Respondent's unlawful conduct goes to the very heart of the Act, I find it necessary to issue a broad order, requiring the Respondent to cease and desist from infringing upon employee rights in any other manner.

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

ORDER[4]

The Respondent, Bedford Cut Stone Co., Inc., Bedford, Indiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to recall any laid-off employee because of membership in Machine Stone Workers, Local 93, Tile, Marble, Terrazzo Finishers and Shopmen's International Union, AFL–CIO, or any other union.

(b) Refusing to employ or reemploy any person because of protected concerted activity.

(c) Unlawfully refusing to bargain with Local 93 as the exclusive representative of its employees in the following appropriate unit:

> All millworkers employed at the Respondent's facility, excluding office clerical employees, guards, employees represented by Journeymen Stonecutters Association of Indiana, and supervisors as defined in the Act.

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

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

(a) Offer Charles Turpin and Willard Brown immediate and full reinstatement to their former jobs or, if their jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay or other benefits in the manner set forth in the "Remedy" section.

(b) Upon request, bargain in good faith with Local 93 as the exclusive representative of the employees in the above-described appropriate unit and embody in a signed agreement any understanding reached.

(c) 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 records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its plant in Bedford, Indiana, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 25, after being duly signed by the Respondent's authorized representative, shall be posted by the 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 the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

IT IS FURTHER RECOMMENDED that the complaint be dismissed insofar as it alleges violations of the Act not specifically found.

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

[4] 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.

[5] In the event that this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."