

Wadco Company and Bonnie J. Harris. Case 8-CA-10949

January 11, 1978

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS
PENELLO AND TRUESDALE

On November 3, 1977, Administrative Law Judge John C. Miller issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

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

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

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, Wadco Company, Wadsworth, Ohio, 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 Bonnie Harris immediate and full reinstatement to her former position or, if it no longer exists, to a substantially equivalent position, without prejudice to her seniority and other rights and privileges, dismissing, if necessary, any employee hired as a replacement, and make her whole for any loss of pay she may have suffered by reason of Respondent’s refusal to reinstate her by payment to her of a sum of money equal to that she would have earned from April 15, 1977, to the date of Respondent’s offer of reinstatement, with interest.”
2. Substitute the attached notice for that of the Administrative Law Judge.

¹ Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board’s established policy not to overrule an Administrative Law Judge’s resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

² In the recommended Order and notice, the Administrative Law Judge erroneously referred to a fixed 7-percent interest rate and thereby failed to apply properly the Board’s “adjusted prime interest rate” formula, which may vary in the manner prescribed in *Florida Steel Corporation*, 231 NLRB

651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). We shall therefore modify the recommended Order by deleting the reference to a specific interest rate percentage which may not necessarily govern Respondent’s backpay obligations in every calendar quarter involved.

APPENDIX

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

WE WILL NOT discharge employees or threaten to discharge employees because they have expressed support for a union.

WE WILL NOT interrogate employees about the union activities or support and sympathies for a union nor will we ask employees to engage in surveillance of employees’ union activities and sentiments.

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

WE WILL offer Bonnie Harris immediate and full reinstatement to her former job or, if it no longer exists, to a substantially equivalent job, without prejudice to her seniority or other rights and privileges, and WE WILL make her whole for any loss of pay she may have suffered because we discharged her, with interest.

WADCO COMPANY

DECISION

STATEMENT OF THE CASE

JOHN C. MILLER, Administrative Law Judge: On a charge brought by Bonnie J. Harris, an individual, the Regional Director for Region 8 issued a complaint on May 26, 1977, alleging that Respondent had discriminatorily terminated Harris on April 14, 1977, and at various times in the month of April had, *inter alia*, interrogated and threatened employees because of their union activity and had solicited an employee to engage in surveillance of the union activity of others, in violation of Section 8(a)(3) and (1) of the National Labor Relations Act, as amended. A hearing was held before me in Akron, Ohio, on September 12, 1977. At the close of the hearing, Counsel for the General Counsel amended the complaint to add an additional subparagraph, 6(F), alleging in substance an additional violation of Section 8(a)(1) in the interrogation of Loretta Marty. The Respondent’s answer denied the commission of any unfair labor practices. All parties were afforded full opportunity to participate, to present relevant evidence, and to file briefs.

Upon the entire record in this case and from my observation of the demeanor of the witnesses, and having considered the arguments of counsel and the briefs submit-

ted by the General Counsel and by Respondent, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Wadco Company, a Division of Cornwell Quality Tools, Inc., a corporation duly organized under the laws of Ohio, maintains a facility in Wadsworth, Ohio, at which it receives and assembles tools and equipment. The Wadsworth facility is the only one involved in this controversy. Cornwell Quality Tools, Inc., annually ships produce valued in excess of \$50,000 directly from points within the State of Ohio to points outside the State of Ohio. The 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.

II. UNFAIR LABOR PRACTICES

A. *The Facts*

The following factual findings are based on a composite of the testimony of Lou Roberts, plant manager, Dennis Roth, an admitted supervisor, and Bonnie Harris, the alleged discriminatee. On the basis of the witnesses' demeanor, I have credited the testimony of Bonnie Harris where it is in conflict with the testimony of Roberts or Roth.

On April 12, 1977, Supervisor Roth directed employee Loretta Marty to secure a chair and utilize it in operating another machine. As Marty was removing the chair, Bonnie Harris who worked nearby commented that it was Fay Wyatt's chair and, when told that Roth had instructed Marty to take that particular chair, Harris commented to Roth that "he was in big trouble." Fay Wyatt returned shortly thereafter and inquired what happened to her chair and, upon being informed by Harris, she went to talk to Supervisor Roth. She returned, however, without the chair and started working at her table. Shortly thereafter, Harris, being somewhat upset at the incident, remarked to Roth that "it is at times like this that we need a union." This prompted a heated discussion lasting several minutes after which Roth ordered Harris back to work. On the following day, April 13, Harris credibly testified that Roth came to her and said that if she did any more "union talk" he would take her to Lou's (Lou Roberts, plant manager) office to be fired as a "troublemaker" since she could not be fired for talking union. When Harris inquired of Roth whether Lou Roberts told him to tell her that he said yes.

On April 14, 1977, at approximately 4:15 p.m., Harris was directed to go to Roberts' office by Roth where she was terminated by Roberts allegedly for insubordination stemming from the chair incident. According to Harris' credited testimony, Roberts informed her of her termination because of complaints about her from both buildings and because she had refused to return to work. She further testified that she did not refuse to do any work on April 12, and that in the past, when she had refused to do work, it was said in jest and she did in fact perform the work. Roth confirmed Harris' testimony that occasionally she refused to do work but that it was simply done in jest and that she

always performed the work. When questioned, Harris credibly denied that she used profanity or swore at Roth in the discussions about the chair. Roberts testified that Roth told him Harris said they "needed a God-damn union" although Roth himself testified simply that Harris used the term "damn union" and avoided characterizing it as profanity. The record clearly reflects, however, that the dominant theme was Harris' remark about the need for a union and that in clearing Harris' subsequent discharge with Mr. Moller, president of the corporation, he also informed him of her remark about the Union.

Roth conceded that Harris was a good worker, that he did not complain about her work or think about firing her for the chair incident, and that he did not tell Roberts of the incident until questioned about it. It was about noon the next day that Roberts inquired about the incident and Roth told Roberts about Harris' comments about a union and that he had to tell her to go back to work. According to Roth, Roberts did not comment but just walked away. On that same day, April 13, according to Roth, he warned Harris to watch her step or she would get fired.

Roberts testified that he heard of the incident through his administrative assistant on April 13, who in turn had had complaints from several women about the "ruckus" in the plant on April 12. He also questioned several employees who confirmed that there had been a loud discussion and that Harris and Roth were involved. Roberts stated that the first he actually heard about union organization in the plant was from Karen Garrett late on April 13, when after working hours (shift ended at 4:30 p.m.), she came into his office and requested to be put on salary so she would not have to be a member of the Union. He stated that Karen also advised him that Bonnie Harris was not the one trying to organize the Union. He advised her that his mind was already made up to terminate Harris and that, when he went out in the plant on April 13 to advise Harris of her termination, employees had already left for the day. When asked why he did not terminate her the next morning, Roberts stated he did not know why. He did in fact, terminate her near the end of her shift at about 4:15 on the afternoon of April 14.

Roberts' testimony established that only one other person had been discharged by the Company in the last 6 months and that person was terminated for failure to report to work. Roberts admitted that no one had been discharged while on the job and that usually oral reprimands were sufficient to get employees to perform. He further testified that except for an incident 2 years prior, when Roberts was prepared to terminate Harris for refusal to perform work, Harris was a good worker until about the first of the year (1977). Roberts admitted that he did not talk to Harris about the matter apart from the meeting at which she was terminated and he stated he did not give Harris an oral or written warning. He noted, however, that they had no practice of giving warnings prior to termination and had no real need for such a practice.

In his initial conversation with Garrett, Roberts conceded that he asked her if other employees felt the same way as she did or were they interested in the Union. According to Roberts, Karen thought it was Janice Sinderath trying to bring in a union. Roberts stated that a couple of weeks

after Harris' discharge he had a conversation with Loretta Marty who commented that she did not see why people wanted the Union. Roberts also admitted asking Marty if she knew anyone else interested in a union or had heard anymore talk about it.

Roberts also testified that, a few days after Harris' discharge, Karen Garrett came into the office again and he asked her if there was anyone on the outside involved in the union organizational attempts and Karen responded that she did not know if there was. Roberts conceded that the name of a truckdriver named Friday may have been mentioned in the second conversation. He also conceded that he may have asked Karen to let him know if she heard anything.

B. Respondent's Defense

With respect to the discriminatory discharge allegations involving Bonnie Harris, Respondent contends that Harris was discharged solely for insubordination; i.e., her refusal to return to work after a heated discussion with Supervisor Roth over use of a chair. Respondent contends that there is no evidence of probative value and the 8(a)(3) allegations should be dismissed.

Regarding the 8(a)(1) allegations, Respondent emphasizes the failure of proof as to the various allegations involving interrogation, threats, and surveillance of union activities, and especially notes the absence of any employee testimony.

C. Concluding Findings

The 8(a)(1) Allegations

Crediting the testimony of Bonnie Harris, I conclude and find that Supervisor Dennis Roth did in fact threaten Harris with discharge as a troublemaker if she continued to talk about the Union and that such conduct is violative of Section 8(a)(1) of the Act.

With respect to certain 8(a)(1) allegations contained in paragraph 6 of the complaint, there is no evidentiary support in this record to sustain the allegations set forth in paragraphs 6(B), 6(C), and 6(D) of the complaint. Accordingly, such allegations are dismissed.

The remainder of the 8(a)(1) allegations are discussed hereinafter. Paragraph 6(A) of the complaint alleges in essence that on April 13, 1977, Plant Manager Lou Roberts, *inter alia*, interrogated an employee about her union activities, sympathies, and desires and the union activities of other employees. On the basis of Roberts' own testimony, I find that his asking employee Karen Garrett if other employees felt the same way, or were interested in the Union, constitutes an illegal inquiry into the union sympathies of its employees and is a violation of Section 8(a)(1) of the Act.¹ In so doing, I have taken into consideration that the conversation about the Union was initiated by Garrett and conclude that it does not, in any event, justify Roberts' illegal inquiry into other employees' union sympathies.

Subparagraph 6(E) of the complaint alleged that Roberts, on or about April 26, 1977, solicited an employee to

engage in surveillance of the union activity of other employees. In his initial testimony, Roberts stated he may or may not have asked Garrett if she heard anything (about the Union) to let him know. Later, when asked if he remembered telling Tom Nicholas, an investigator for the NLRB, that he asked Karen Garrett if she heard anything about the Union to let him know, he conceded that it was possible that he advised Karen to let him know if she heard anything (about the Union). In view of these reluctant admissions by Roberts, I find and conclude that he attempted to enlist and did solicit the support of Karen Garrett to keep him informed of the union activities of employees and that such conduct constituted illegal surveillance of employees' union activities and was therefore violative of Section 8(a)(1) of the Act.

Subparagraph 6(F) was added as an amendment at the close of the hearing and alleged that Roberts interrogated Loretta Marty in or around late April about her union activities and that of other employees. When questioned, Roberts conceded questioning Marty whether she knew anyone else interested in the Union. Irrespective of the fact that Marty initiated such conversation I find such question an illegal inquiry into the union sympathies of the employees and violative of Section 8(a)(1) of the Act.²

The 8(a)(3) Allegations

For the reasons set forth hereafter, I find and conclude that Bonnie Harris was discharged because of her publicly announced support for a union and that such discharge violated Section 8(a)(3) of the Act.

It is clear that Plant Manager Roberts opposed a union among his employees because he felt that the Union was not needed in view of existing benefits insuring to employees. The chronology of events establishes that, although Roberts was aware of Harris' conduct by the early afternoon of April 13, he did not in fact discharge her until near the end of the workshift on April 14. While Harris' comment may have been innocuous initially to Supervisor Roth and Manager Harris, it achieved much more significance when Roberts actually learned, late in the afternoon of April 13, that an active union organizational campaign was underway. I conclude that the reasons given for Harris' discharge were a pretext and that it was her fervently announced support for a union at the time when management discovered that a union organizational attempt was underway that, in fact, triggered her discharge.

My conclusion is based on the following factors. The Respondent did not give an oral or written warning to Harris but precipitously discharged her despite the fact that the Respondent had not found it necessary in the past to discharge employees. While Roberts was aware of the incident early in the afternoon of April 13, he did not take action to terminate Harris until he also learned from Karen Garrett, later on April 13, that active efforts were being made to organize employees in the plant. While it is true that Garrett indicated that Bonnie Harris was not the person attempting to organize the Union, her avowed support of a union rendered her immediately suspect, if not

¹ *Contractors Cargo Co., Inc.*, 218 NLRB 549 (1975); *Answering, Inc.*, 215 NLRB 688 (1974).

² *Supra*, fn. 1.

as an organizer, at least that of a fervent supporter. In view of Roberts' testimony that he was "shocked" to learn of the union activity and his avowed opposition to any union for the employees, I conclude and find that the reasons proffered for the discharge of Harris were a pretext. While Roberts testified that Harris was discharged solely for insubordination, he later offered other reasons.

He first stated that 2 years prior Harris had refused to do certain work and that, although he was prepared to terminate her, she gave him an acceptable excuse (she had undergone an operation) and he did not terminate her. In the present incident, he did not talk to Harris to get her version, and did not give her a verbal or written warning despite acknowledging that she was a good worker. While attempting to relate her discharge to her refusal to do work, Roberts also stated that, since the first of the year, employees in both buildings had complained about her. Such complaints were somewhat vague and appeared to center on Harris' talking or otherwise disturbing employees while they were at work. Yet, Roth testified that apart from the discussion about the chair he had voiced to Roberts no complaints about her work. In fact, as previously related, Roth had not taken any complaint about the chair incident to Roberts nor recommended Harris' firing nor any disciplinary measures for her conduct. It appears clear, and I find, that Harris seized upon the incident as a pretext for discharge. Whatever his inclination to dismiss Harris' comment about the need for a union as mere shoptalk, it became of great significance once Roberts learned that there was in fact an active union campaign going on.

Based on the above factors, including the credited testimony of Harris and the discredited testimony of Roberts and Roth where it conflicts with Harris, I find that the reasons proffered for Harris' discharge were a pretext and that her discharge was for expressing a fervent need and thus support for a union. Accordingly, I find that her discharge was discriminatorily motivated and in violation of Section 8(a)(3) of the Act.³

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section II, above, occurring in connection with the 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 burden and obstruct commerce and the free flow of commerce.

Upon the basis of the foregoing findings of fact, and upon the entire record, I make the following:

CONCLUSIONS OF LAW

1. Wadco Company, a Division of Cornwell Quality Tools, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. By interrogating employees Karen Garrett and Loretta Marty about the union views and sympathies of fellow

employees, the Respondent, through the conduct of its agent and Plant Manager Lou Roberts, violated Section 8(a)(1) of the Act.

3. By requesting Karen Garrett to advise him of any union activities or development, the Respondent, through the conduct of its agent and plant manager, engaged in an informal program of surveillance and thereby violated Section 8(a)(1) of the Act.

4. By threatening employee Bonnie Harris with discharge if she continued to talk union, the Respondent, through the conduct of its agent and supervisor, Dennis Roth, violated Section 8(a)(1) of the Act.

5. By discharging employee Bonnie Harris for expressing a need for a union, the Respondent, through its agent and plant manager, Lou Roberts, violated Section 8(a)(3) and (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent, through its agents Lou Roberts and Dennis Roth, violated Section 8(a)(3) and (1) of the Act, I shall recommend that it be required to cease and desist from such violations and take certain affirmative action designed to effectuate the policies of the Act. It is recommended that the Respondent make Bonnie Harris whole for any loss of earnings as a result of her discharge and offer her reinstatement to her old position or a comparable position in the event such position no longer exists.

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

ORDER⁴

The Respondent, Wadco Company, a Division of Cornwell Quality Tools, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or threatening to discharge employees because they voiced sympathy or support for a union.

(b) Interrogating employees about the union views and sympathies of their fellow employees.

(c) Requesting employees to advise Respondent of any union activities or developments and thereby engaging in an informal program of surveillance.

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

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

(a) Offer to Bonnie Harris immediate and full reinstatement to her former position or, if it no longer exists, to a substantially equivalent position, without prejudice to her

³ *Farah Manufacturing Company, Inc.*, 202 NLRB 666 (1973); *Concourse Porsche Audi, Inc.*, 201 NLRB 181 (1973).

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.

seniority and other rights and privileges, dismissing, if necessary, any employee hired as a replacement, and make whole for any loss of pay she may have suffered by reason of the Respondent's refusal to reinstate her by payment to her of a sum of money equal to what she would have earned from April 15, 1977, to the date of the Respondent's offer of reinstatement including 7-percent interest,⁵ in the manner set forth in "The Remedy" section of this Decision.

(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 amounts of backpay due under the terms of this recommended Order.

(c) Post at its Wadsworth, Ohio, plant where the dispute arose copies of the attached notice marked "Appendix."⁶

⁵ *Florida Steel Corporation*, 231 NLRB 651 (1977); *F. W. Woolworth Company*, 90 NLRB 289 (1950).

⁶ 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

Copies of said notice, on forms provided by the Regional Director for Region 8, after being duly signed by the Respondent's 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 insure that said notice is not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 8, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges unfair labor practices not found herein.

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."