

ABC Specialty Foods, Inc. and Teamsters Local Union No. 688, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Rick Jones. Cases 14-CA-10007 and 14-CA-10254

January 25, 1978

DECISION AND ORDER

BY MEMBERS PENELLO, MURPHY, AND
TRUESDALE

On October 13, 1977, Administrative Law Judge Walter H. Maloney, Jr., issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.¹

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,² and conclusions of the Administrative Law Judge, to modify his recommended remedy,³ and to adopt his recommended Order, as modified herein.⁴

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, ABC Specialty Foods, Inc., Hazelwood, Missouri, 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 Rick Jones, William Hoffman, and Paul Lint full and immediate reinstatement to their former positions or, in the event their former positions no longer exist, to substantially equivalent employment, without prejudice to their seniority or other rights which they formerly enjoyed."

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

¹ Respondent asserts in its exceptions and brief that the Regional Director for Region 14 erred in refusing, after issuance of the attached Decision, to allow new counsel for Respondent to examine statements obtained during the investigation from persons who testified at the hearing. Such statements are ordinarily made available only at the hearing after the testimony of the witness so that counsel may use them for cross-examination, and then only if they are timely requested by counsel; see Sec. 102.118(a) of the Board's Rules and Regulations, Series 8, as amended; *Army Aviation Center*, 216 NLRB 435 (1975). Respondent was represented at the hearing by counsel, who did not request production of witnesses' statements at the close of direct examination. Respondent's new counsel could not use the statements at this point to cross-examine witnesses for the

General Counsel. Counsel must therefore stand in the shoes of Respondent's counsel at hearing, and we hold that any right to examine any investigatory statements was waived at the hearing. Accordingly, the Regional Director did not err in denying posthearing access to the statements.

² 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.

Respondent further asserts in its brief that the Administrative Law Judge erred in "ignoring" certain testimony which conflicted with his findings. As the Board stated in *Bishop and Malco, Inc., d/b/a Walker's*, 159 NLRB 1159, 1161 (1966), "The failure of [an Administrative Law Judge] to detail completely all conflicts in the evidence does not mean . . . that this conflicting evidence was not considered." Further, "[t]he absence of a statement of resolution of a conflict in specific testimony, or of an analysis of such testimony, does not mean that such did not occur." *Stanley Oil Company, Inc.*, 213 NLRB 219, 221 (1974). Finally, as the Supreme Court stated in *N.L.R.B. v. Pittsburgh Steamship Company*, 337 U.S. 656, 659 (1949), "[T]otal rejection of an opposed view cannot of itself impugn the integrity or competence of a trier of fact." We have examined the record in light of Respondent's contentions, and we find no merit in Respondent's exceptions in this regard.

³ See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). In the remedy section of his Decision and in the notice attached thereto, 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). We therefore modify the remedy so that interest will be computed in accordance with that Decision, and we correct the notice accordingly.

⁴ Although the Administrative Law Judge found that employees Hoffman and Lint were reinstated following their discharge, it is unclear whether the reinstatement completely restored them to their former positions. Accordingly, we will modify the Administrative Law Judge's recommended Order and notice to provide that the Respondent shall offer full and immediate reinstatement to Hoffman and Lint.

The Administrative Law Judge inadvertently failed to conform his notice to the recommended Order. We shall therefore correct the notice accordingly.

APPENDIX

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

WE WILL NOT coercively interrogate employees concerning their union activities or the union activities of other persons.

WE WILL NOT threaten employees with plant closure if discharged employees are restored to duty or if employees engage in union activities and concerted protected activities.

WE WILL NOT grant wage increases to employees in order to persuade them to abandon their support of the Union.

WE WILL NOT reduce wages of employees in order to take reprisal against them for supporting the Union.

WE WILL NOT tell employees that engaging in union activities or in collective bargaining will be an act of futility.

WE WILL NOT tell employees that utilizing the processes of the Board could result in adverse consequences.

WE WILL NOT reprimand employees because they have engaged in union activities.

WE WILL NOT discourage membership in, or activities on behalf of, Teamsters Local Union No. 688, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, by discharging employees or otherwise discriminating against them in their hire or tenure.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed them by Section 7 of the Act. These rights include the right to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for their mutual aid and protection.

WE WILL offer Rick Jones, William Hoffman, and Paul Lint full and immediate reinstatement to their former positions, or, in the event those positions no longer exist, to substantially equivalent employment, and WE WILL make whole Rick Jones, William Hoffman, and Paul Lint for any loss of pay they have suffered by reason of the illegal discriminations which have been practiced against them, with interest thereon.

WE WILL remove from the personnel records of Rick Jones the written reprimand dated February 8, 1977, which was placed therein.

All of our employees are free to become or to remain members of this labor organization or any other labor organization.

ABC SPECIALTY FOODS,
INC.

DECISION

FINDINGS OF FACT

I. STATEMENT OF THE CASE

WALTER H. MALONEY, JR., Administrative Law Judge: This case came on for hearing before me on a consolidated unfair labor practice complaint,¹ issued by the Regional Director for Region 14, which alleges that the Respondent, ABC Specialty Foods, Inc.,² violated Section 8(a)(1) and

(3) of the National Labor Relations Act, as amended. More particularly, the complaint alleges that Respondent on several occasions unlawfully interrogated employees, threatened employees with harm if they utilized the Board's processes, threatened to close the plant if a discriminatee were restored to duty and if the Union won the election, unlawfully raised the wages of an employee as an inducement to keep him from voting for the Union and later reduced the wages of the same employee as a reprisal for voting for the Union, unlawfully terminated employees Paul Lint and William Hoffman because of their union activities and gave employee Rick Jones a written reprimand because of his union activities, unlawfully terminated Hoffman a second time because of union considerations, and terminated employee Rick Jones for discriminatory reasons. After Hoffman and Lint were restored to duty pursuant to an informal settlement agreement, the Regional Director set aside the settlement agreement when he issued a complaint which was prompted by activity occurring subsequent to the settlement agreement. The consolidated complaint includes both presettlement and postsettlement conduct. Respondent makes no defense respecting several individual allegations of 8(a)(1) conduct other than a general denial contained in the pleadings, asserts that the discriminatees named in the complaint were discharged for cause, and further claims that the Regional Director had no basis for setting aside the original settlement agreement in Case 14-CA-10007. On these contentions the issues herein were joined.³

II. THE UNFAIR LABOR PRACTICES ALLEGED

Respondent is a small family-owned business which operates a grocery warehouse and distribution center in a suburb of St. Louis. From this point, it sells and delivers gourmet and specialty food items to various grocery stores in southeast Missouri and southwest Illinois. Herbert Wilk is the president of Respondent and his son, Sam Wilk, is vice president. At this same location Herbert Wilk also operates Arrow Brokerage, a grocery brokerage firm. He

¹ The principal docket entries in this case are as follows: Charge filed by Teamsters Local Union No. 688, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (herein called the Union) in Case 14-CA-10007 on February 9, 1977; amended charge filed on February 17, 1977; charge filed herein by Rick Jones, an individual, on May 4, 1977, in Case 14-CA-10254; order revoking settlement agreement issued by the Regional Director for Region 14, on June 1, 1977, in Case 14-CA-10007; consolidated complaint issued in both cases by the Regional Director for Region 14, on June 1, 1977; Respondent's answer filed on June 7, 1977; hearing held before me in St. Louis, Missouri, on June 23, 1977; briefs filed by the General Counsel and Respondent on or before July 25, 1977.

² Respondent admits, and I find, that it is a Missouri corporation which maintains its principal place of business at Hazelwood, Missouri, where it is engaged in the nonretail sale and distribution of specialty and gourmet foods and related products. In the year ending April 30, 1977, a representative period, it sold and distributed from its Hazelwood, Missouri, place of business directly to points located outside the State of Missouri goods and merchandise valued in excess of \$50,000. Accordingly, Respondent is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act. The Union is a labor organization within the meaning of Sec. 2(5) of the Act.

³ By motion, dated July 22, 1977, the General Counsel sought to correct some 15 specified errors appearing in the transcript in this case. No response to this motion was filed by Respondent. The General Counsel's motion to correct the transcript is hereby granted.

devotes most of his working time to the brokerage firm while Sam Wilk spends most of his day operating Respondent Company. During most of the period involved in this proceeding, Respondent employed three full-time employees who did both warehouse and delivery work. They were Paul Lint, William Hoffman, and Rick Jones. Respondent also had two office employees and some part-time help.

About 2 years ago, the employees in the warehouse and driver unit considered organizing and selecting a union to represent them. This effort did not go anywhere. In late January 1977, Jones secured some designation cards from Bobo Chrostowski, an organizer for the Union, and gave them to Lint and Hoffman at the warehouse. All three signed cards and mailed them in.

On the morning of February 8, a union representative called the warehouse and spoke with H. Wilk. A few minutes after he completed the call, H. Wilk went into the warehouse and spoke with Jones. He asked Jones if he had requested Local 688 to represent him and Jones replied that he had done so. H. Wilk then asked Jones if the Union had come to the Company's premises to organize the employees. Jones replied that it had not done so. H. Wilk then asked him if someone at the warehouse had initiated this effort and Jones replied in the affirmative, whereupon H. Wilk said, "This is a federal matter. It is not to be played with."

On the afternoon of the same day, H. Wilk dictated three letters, addressed to each of its driver-warehousemen. The letter to Lint, dated February 8, stated:

This is to notify you that you will be discharged from this company as of this date for reasons of refusing to accept night runs or deliveries, which we feel and I'm sure you will agree can not be made in one day.

Contrary to procedures which has [sic] been in effect with our company a long time before.

The letter to Hoffman contained identical language. The letter to Jones stated as follows:

As you have known in the past, you do not combine several items into one box.

Also, you do not put heavy merchandise on fragile, such as canned product on taco shells.

If this continues, we will have to take what ever action is necessary to correct the above.

About 5:30 p.m., when Hoffman and Lint came in from their regular runs, H. Wilk called them both into the office. He asked Lint, who had previously refused to make overnight runs, to take an overnight run. Lint refused, so Wilk fired him. Wilk then asked Hoffman, who had previously agreed to take overnight runs only upon advance notice, to take the run which Lint refused. Hoffman refused, so Wilk fired him as well. Wilk then

⁴ The reprimand letter was placed in Jones' personnel file. One of the stipulations in the February 23 settlement agreement called for the removal of the letter. Some time after this agreement had been concluded, Jones asked to see his personnel file. Both of the Wilks declined to give him permission to see it, saying that his personnel file was confidential.

⁵ On the afternoon of February 8, S. Wilk interviewed James Poll for a job. Poll had advertised in a local paper for work and started to work at

presented each of them the previously typed letters of dismissal and asked them to sign, saying that he could not release their final paychecks until they did so. Both refused to sign the respective letters. Hoffman stated that he would check up and see if he had to do so and would return the following day for his check. Apparently H. Wilk relented on his insistence that Hoffman and Lint sign their letters. As H. Wilk began to write out their checks, he stated that "this had nothing to do with your union activities."⁴ The following day, when Jones reported to work, he asked S. Wilk why Lint and Hoffman were fired. S. Wilk replied that they refused to drive overnight runs. He also said that the Company had hired a new driver and might need yet an additional one.⁵ Jones volunteered to drive a truck. A few days later, Jones met H. Wilk in the warehouse. H. Wilk told him, "We are going to court over Bill and Paul. They are not coming back. I'll close the doors if they do." H. Wilk also told Jones that he had better watch what he said to Brinker (the Board's investigating attorney) or he could go to jail for perjury. Jones replied that he would not lie to the Federal Government.

On February 23, the Regional Director approved a settlement agreement by terms of which Lint and Hoffman were restored to duty. The Respondent did not close its doors. Instead, it was faced with a representation election which took place on March 15. The Union won that election 3 to 0 and was certified.

Just before Lint and Hoffman were restored to duty in mid-February, H. Wilk had another private conversation with Jones. He asked Jones why he wanted a union. Jones explained that he had not gotten any raises, had no insurance, and no job security. H. Wilk promised him a raise in his next paycheck but no additional money appeared in the check. When Jones asked him about it, H. Wilk pulled out a \$10 bill and handed it to him. Thereafter, H. Wilk gave Jones \$10 in cash each payday until the election. After the election, at which each of the three voters demonstrated their support for the Union, H. Wilk stopped supplementing Jones' paycheck. On another occasion before the election, H. Wilk said to Lint that if the Union came in, he would close the plant.

Shortly after the election, Hoffman was selected as shop steward and member of the negotiating committee. On April 9, discussions leading to a contract began and Hoffman took part in these discussions. On April 14, Hoffman experienced a breakdown in his private vehicle on the way to work. The water pump went out and he had to take his pickup truck home to have it worked on. Jones noticed that Hoffman had not reported for work and suggested to Debbie Guenzberger, the company secretary, that she call Hoffman's home to find out what had happened. She did so. Hoffman told her that he had a problem with his truck and could not report to work. Jones asked Miss Guenzberger if he could speak with Hoffman. He did so and Hoffman told Jones the same story.

ABC the following day. S. Wilk testified that he had no intention of hiring Poll that afternoon when he interviewed him, because he expected that Hoffman or Lint would take the overnight run which was offered to them a few hours after the interview was completed. S. Wilk stated that he merely wanted to interview Poll in order to build up a reserve list of qualified job applicants in his files. I discredit his explanation.

Guenzberger told H. Wilk that she had called Hoffman and that he said that he had truck problems and would not be able to come to work. H. Wilk then asked Jones if he had talked with Hoffman. Jones said that he had not done so.⁶ H. Wilk then called Joe Dino, a union representative, and complained to Dino that Hoffman had not come to work and had not called in sick. Dino called Hoffman and found out that Hoffman had told the company secretary about the problem he had experienced with his truck. Guenzberger later repeated to H. Wilk during the course of the morning that she had spoken with Hoffman and that he had indicated to her that he had a problem with his truck. H. Wilk then called his attorney, Raymond Harris, and asked him what should be done concerning Hoffman. Harris advised that Hoffman should either be fired or given a written reprimand. He was fired.⁷

The following Monday, H. Wilk had a private conversation with Guenzberger, in which he asked her to review once more the events which took place on April 14, before Hoffman was discharged. Guenzberger again told him that Jones had suggested that she call Hoffman at his home, that she had done so, and that Hoffman told her that he could not report to work because of trouble with his truck. H. Wilk acted as if he had not heard this story before and told Guenzberger that her account had now placed a different light on the entire matter. He told her that the Company might have to hire Hoffman back and then would close the plant. Hoffman was restored to duty on April 19 after H. Wilk called Joe Dino to inform Dino of the decision.

On April 19, H. Wilk had occasion to talk to Jones and asked him if he had talked with Hoffman on the day when Hoffman had failed to report. Jones finally admitted that he had talked with Hoffman but that he had denied doing so because he did not want to get into trouble about using the telephone. H. Wilk said to Hoffman that Guenzberger had told him that Hoffman had not called in. An argument ensued over who had called whom and Guenzberger was drawn into the argument. At this point, H. Wilk told Guenzberger she would have to apologize to Hoffman and to Joe Dino about the misunderstanding. Jones then stated that Hoffman was getting another paid vacation. Both Wilks followed Jones back into the warehouse. S. Wilk told Jones not to speak to his father as he had done. Jones replied that he was only speaking as he had been spoken to, at which point, H. Wilk told him that if he did not like his job he should leave. He accused Jones of being the source of the trouble about Hoffman's discharge and threatened to fire him if he opened his mouth again. He also told Jones not to expect the Union or anyone else to back him up because he (H. Wilk) was not sure there was going to be a business. He stated that he was the owner of the Company and could close his doors anytime he wanted.

⁶ Jones admitted on the stand that he had lied to H. Wilk. His excuse for doing so was that he was afraid of getting into trouble for unauthorized use of the telephone. H. Wilk sent Hoffman a letter, dated April 15, which read:

This letter is to notify you that you are being discharged for failure to report to work on April 14, 1977, as scheduled, without notifying the office. In view of the fact that you were available to report to work and that a phone was at your disposal, there was no excuse for you not contacting this Company but were able to speak with Mr. Joe Dino, Jr., of Local 688. Therefore, you leave this company no alternative but to dismiss you as of this day, April 15, 1977.

H. Wilk also called Hoffman, Lint, and Jones together and told them that henceforth some new rules would be in effect at the Company. He instructed them to wear hardhats at all times in the warehouses. He also said that anyone who was going to be absent because of sickness would be required to call the Company 10 minutes before his reporting time to give notice of his absence. Jones asked H. Wilk how he could call in ahead of his reporting time when nobody was ordinarily at the plant to take the call. H. Wilk replied by telling Jones to be quiet. Hoffman and Lint normally reported at 7:30 a.m., and were out on the road making local deliveries by about 9 a.m. Jones normally reported at 7 a.m., and S. Wilk was usually the only supervisor present during that period of time. It was he who unlocked the warehouse to permit Jones and other employees to enter.

On Monday, April 25, Jones felt too ill to report to work. He called the Company office twice.⁸ On the first call the phone was not answered. On the second call he told S. Wilk that he was not coming in. S. Wilk asked him if he was so sick that he could not call in at starting time. Jones replied that he had called earlier but no one answered the phone. S. Wilk then told Jones to call him if he was not coming in on Tuesday.

Jones still felt sick on Tuesday morning but thought he would make the effort to come to work because he was running low on money. He arrived about 6:50 a.m., and was sitting in his truck in the parking lot when S. Wilk arrived and walked over to him. S. Wilk said he did not need Jones that day and did not think he would be coming in. Jones then asked S. Wilk if his fingers were broke and asked him why he had not called him to let him know. He then gave S. Wilk his phone number. S. Wilk asked Jones how he felt and asked him to call him if he was not coming in on Wednesday. On Wednesday, April 27, Jones felt ill and asked his wife to call the Company for him to say that he would not be in. Jones' wife worked a sufficient distance from the plant that a toll call would have to be made from her place of employment to the Respondent's office. Mrs. Jones phoned the Respondent from her place of employment and had the charges billed to her home phone. A long distance bill in evidence indicates a call to the Respondent from Mrs. Jones' place of employment in Antonia, Missouri, at 7:23 a.m. S. Wilk acknowledged receiving a call from Mrs. Jones at or about this time notifying him that Jones was ill and would not come to work that day.

Sometime early in the afternoon, S. Wilk phoned Jones at his house and asked him how he was feeling. Jones said he was feeling horrible. S. Wilk said that he did not want him to come in Thursday if he was sick and Jones agreed. S. Wilk then conferred by telephone with his father, who was at home recuperating from a heart attack. They both agreed that Jones should be fired and collaborated on the

⁷ In discussing this matter with Hoffman, H. Wilk said he would have Guenzberger sign an affidavit that he had not called in to report his absence.

⁸ On this occasion, Jones was at his mother's house, which is located far enough from the plant that a toll call was required to phone the plant. Long distance toll slips in evidence indicate calls from Jones' mother's house to the Company at 7:08 a.m., and 8:34 a.m., on April 25. Jones testified that he preferred to make toll calls in matters concerning absences so that there would be some written documentation that calls had in fact been made.

text of a letter which was sent by certified mail to Jones on the same afternoon. The letter read:

In reviewing your past work record it is apparent you no longer desire to be employed with our company, therefore, this letter is to inform you that you are being terminated as of this date for failure to report to work at proper time, or to report sick within a reasonable time. After reporting sick there was no further communication as to when you would be able to return to work. In view of the above we have no other alternative than to take this action. All work tools, or equipment that you have in your possession must be returned before final check will be issued.

On May 4, Jones filed an individual charge with the Board claiming that his discharge was discriminatorily motivated.

III. ANALYSIS AND CONCLUSIONS

A. Individual Acts of Interference, Restraint, or Coercion

Based on credited evidence in the record, I conclude that Respondent violated Section 8(a)(1) of the Act by the following acts and conduct:

(a) H. Wilk questioned Jones on February 8, immediately after learning of the Union's interest in obtaining recognition. He asked Jones if Jones had requested Local 688 to represent him, whether the Union had come on company property to organize, and whether someone at the warehouse had initiated the effort. These questions constitute coercive interrogation in violation of the Act.

(b) In discussing the initial discharges of Lint and Hoffman with Jones, H. Wilk told Jones that these two employees were not coming back to work and that he would close the doors if they did. This threat of plant closure in the event that employees successfully exercised their statutory right of redress is coercive and a violation of the Act.

(c) H. Wilk's further statement to Jones, on this occasion, warning him about giving false testimony or evidence to a Board investigator was, under the circumstances herein, an attempt to coerce Jones into silence during the investigation of an unfair labor practice charge. It constitutes a violation of the Act.

(d) I credit Jones' testimony that H. Wilk gave him \$10 a week in cash every payday to supplement his regular earnings after learning that one of the main reasons for Jones' unhappiness with the Company and his support for the Union was the fact that he had not received a raise. H. Wilk's action was clearly an attempt to persuade an employee to abandon his support for the Union by offering a financial inducement and is an obvious violation of the Act. On March 15, all of the employees who voted in the election indicated their support for the Union. After this occurred, H. Wilk discontinued making these supplementary payments to Jones. His act of discontinuing a benefit, even though it was illegally granted in the first place, was taken in reprisal for Jones' action in voting for the Union and violates Section 8(a)(1) of the Act.

(e) Prior to the election, H. Wilk told Lint that if the Union came into the plant, the plant would be closed. This statement is a threat which violates Section 8(a)(1) of the Act.

(f) In an argument which took place between H. Wilk and Jones, and which occurred on or about the time of Hoffman's second discharge, H. Wilk told Jones not to expect the Union or anyone else to back him up because he was not sure there was going to be a business. At this time the Union had been certified. H. Wilk also told Jones that he was still the boss and could close his doors anytime he wanted to. These statements by H. Wilk constitute a threat to close the plant in the event that employees pursued collective bargaining and continued to seek the assistance of a union. They are also an interference with union and protected activities, in that they are designed to impress upon an employee the futility of taking such a course of action. As such, these statements violate Section 8(a)(1) of the Act.

B. The Events of February 8, 1977

All of the discharges which occurred in the time period of February 8 to April 27, 1977, took place against a background of demonstrated and articulated animus against the Union, as evidenced by the statements of Respondent's owner and his son outlined above. Respondent argues that despite these statements there is no basis for a finding of union animus because Respondent negotiated a contract with the Union following the March 15 election which is now in force and effect. There is no allegation in the complaint that Respondent violated Section 8(a)(5) of the Act by bad-faith bargaining. The allegations in the complaint claim that Respondent committed certain *per se* violations of the Act, the illegality of which do not involve motive. The complaint also states that Respondent discriminatorily discharged all three of its unit employees. The fact that an employer did not violate Section 8(a)(5) can hardly support an inference that it did not violate other sections of the Act, nor can it demonstrate lack of union animus when such animus has been so clearly manifested by other words and conduct, some of which is not even denied by the Company's witnesses.

In addition to collateral evidence of animus, the February 8 discharges and reprimand to Jones are events surrounded by suspicious timing. They all took place on the same day the Union made its initial contact with Respondent. Before acting against Hoffman and Lint, the Wilks had obtained information from Jones concerning the current organizational effort. I credit record testimony that H. Wilk stated, with reference to Lint, that he had "done this to him" before, the reference being to Lint's role in the abortive organizational effort which took place in 1975. The pretext under which Respondent sought to execute the February 8 discharges is little short of preposterous. The Wilks knew that both drivers had a distinct aversion to overnight runs, especially ones which were assigned on short notice, and that they had refused such runs with impunity in the past. In advance of offering such a run, Respondent already had letters of discharge typed out and had taken the further precaution of hiring a replacement who came to work the following morning. Accordingly, it is

clear that Respondent did not discharge Lint and Hoffman on February 8 for the reasons indicated on their respective discharge letters but created a situation which would provide it with a basis for discharge. Its motive was an attempt to eliminate union activists from its business. The letter of reprimand, placed in Jones' file on the same day, is a lesser form of discipline meted out to a known adherent who had just declared his affinity for the union cause. The discharges in question violate Section 8(a)(1) and (3) of the Act, while the letter of reprimand violates Section 8(a)(1). I so find and conclude.

C. *The April 15 Discharge of Hoffman*

By April 15, Hoffman had already been the subject of one discriminatory discharge after which he obtained reinstatement. He had demonstrated his continued adherence to the union effort by voting in an election which the Union won unanimously. Hoffman had just been appointed to the negotiating committee and had just been elected shop steward. On April 9, he participated in a bargaining session. Even H. Wilk realized the baselessness of the grounds for which he fired Hoffman the second time. Hoffman was fired for not reporting for work and for failing to call in to notify the Company of his impending absence. Hoffman in fact had car trouble. He discussed his problem in detail with the company secretary, who had called him and later reported this fact to the Wilks prior to the time Respondent issued a letter of discharge. The timing, the knowledge of Hoffman's leadership role in union activities, the demonstrated animus of Respondent noted above, and the complete emptiness of its asserted reason for the discharge make it clear beyond any doubt that Hoffman was discharged a second time for the same reason he was discharged the first time. The second discharge also violates Section 8(a)(1) and (3) of the Act.

D. *The Discharge of Jones*

By the time Respondent focused its principal attention on Jones, it had demonstrated not only animus in general, but also its proclivity for engaging in discriminatory discharges to achieve its ends. Not more than a week before Jones was fired, he was involved in an acrimonious argument with both Wilks concerning the discharge and reinstatement of Hoffman, in the course of which H. Wilk suggested to Jones that if he did not like working for the Company he should go elsewhere. I must credit Jones' version of his final days on Respondent's payroll since S. Wilk's testimony on these points is replete with so many inconsistencies and contradictions that it is simply beyond belief.

Jones was ill with the flu on Monday (April 25) and called in sick. On Tuesday, he came to work and was told to go home because he had failed to notify the Company that he was coming in. S. Wilk said that he did not put Jones to work on Tuesday when he arrived because he had already notified a part-time employee, Sally Lynch, to come in as a substitute. However, S. Wilk admits that he was still short-handed, even with Lynch at work in the warehouse, a fact indicating that S. Wilk was acting punitively toward Jones on Tuesday when he sent him

home. Jones asked his wife to call in the following morning to report his inability to report because of a continuing bout with the flu. The receipt of this call is acknowledged. Early in the afternoon, S. Wilk called Jones at home and asked him how he felt. Jones replied that he felt horrible. It was after this call that Jones was fired for failing to report or to report sick within a reasonable time. As a makeweight reason, S. Wilk also wrote in the discharge letter that, after reporting sick, there had been no further communication as to when Jones would be able to return to work.

The asserted reasons contained in the discharge letter are clearly pretextual and, for the most part, false in fact. Jones did notify the Company, through the efforts of his wife, within 23 minutes after the start of his shift that he would not come to work on April 27 because of illness. There is no question that this call was received. Inasmuch as a phone call at an earlier hour which was made by Jones on Monday to give notice of his Monday absence was not answered, Respondent can hardly be heard to contend that a call at 7:23 a.m. on Wednesday was not reasonable notice of an impending absence. Both S. Wilk and Jones spoke later that day, at which time Jones told S. Wilk that he still felt bad. There was no way that he could say with any degree of certainty during the afternoon conversation when he would be able to return to work. Most significantly, S. Wilk did not even ask him this question. S. Wilk testified at the hearing that he thought Jones was lying on Wednesday about being sick, so he fired him, in effect, for malingering. What basis S. Wilk had for his telephone diagnosis of Jones' condition does not appear from the record. He admits he thought Jones was sick on the preceding days, and this was one of the reasons for sending him home on Tuesday. I credit Jones' testimony that S. Wilk told him in the course of the telephone conversation on Wednesday afternoon that he did not want Jones to come to work on Thursday because he did not want Jones to be working in the warehouse while he was sick. In light of this credited testimony, Respondent's excuse for firing Jones becomes all the more incomprehensible. Accordingly, I conclude that Respondent's excuse for firing Jones was, like its excuses for firing Hoffman and Lint, wholly pretextual, that its real reason for firing Jones was to take reprisal against him for his union adherence and activities, and that the discharge violated Section 8(a)(1) and (3).

E. *The Setting Aside of the Settlement Agreement in Case 14-CA-10007*

On February 23, 1977, the parties to this case entered into an approved settlement agreement disposing of the discharges of Hoffman and Lint, the warning letter to Jones, and the attendant conduct of Respondent which independently violated Section 8(a)(1) of the Act. Respondent urges as a defense that no finding or order should be made concerning these allegations in the consolidated complaint because they were amicably resolved by the parties and the terms of the resolution have been embodied in a settlement agreement which should be deemed to dispose of them with finality. One of the elements of any Board settlement agreement which disposes of unfair labor practices is an undertaking by Respondent not to engage in any unfair labor practices in the future. This undertaking

was not honored by Respondent in this case. The findings above demonstrate beyond peradventure that Respondent herein continued to act during the period following the settlement agreement in the same unlawful manner that it did before the agreement was concluded. Under such circumstances, the Regional Director had ample justification to set aside the agreement, as he did on June 1, and to prosecute the underlying unfair labor practices as if no agreement had ever been signed.

Upon the foregoing findings of fact, and upon the entire record herein considered as a whole, I make the following:

CONCLUSIONS OF LAW

1. The Respondent, ABC Specialty Foods, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Teamsters Local Union 688, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. By discharging Paul Lint and William Hoffman on February 8, 1977, by discharging William Hoffman on April 15, 1977, and by discharging Rick Jones on April 27, 1977, as found above, Respondent herein violated Section 8(a)(3) of the Act.

4. By the acts and conduct set forth above; by threatening to close the plant if discharged employees are restored to duty or if employees engage in union activities or in concerted, protected activities; by coercively interrogating employees concerning their union activities and the union activities of other persons; by telling employees that engaging in collective bargaining would be an act of futility; by granting employees wage increases in order to discourage their support for the Union and by reducing wages in reprisal for union activities; by reprimanding employees because they have engaged in union activities; and by threatening employees that the use of the Board's processes would result in adverse consequences, Respondent herein violated Section 8(a)(1) of the Act.

5. The unfair labor practices found herein affect commerce between the several States within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent herein has committed certain unfair labor practices, I will recommend that it be ordered to cease and desist therefrom and to take other actions designed to effectuate the purposes and policies of the Act. Since the violations of Section 8(a)(1) which have been found herein are repeated and pervasive and involve discriminatory discharges, I will recommend the issuance of a so-called broad 8(a)(1) order designed to suppress any and all violations of that section of the Act. *J. C. Penney Co.*, 172 NLRB 1279, fn. 1 (1968); *Adam & Eve Cosmetics, Inc.*, 218 NLRB 1317 (1975); *Thermo-Electric Company, Inc.*, 222 NLRB 358 (1976). In view of the fact that

⁹ *F. W. Woolworth Company*, 90 NLRB 289 (1950).

¹⁰ 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.

Hoffman and Lint have been reinstated and are now working, I will recommend that Respondent be required to offer full and immediate reinstatement to his former or substantially equivalent employment only in the case of Rick Jones, but I will require Respondent to make whole each of these three employees for any loss of pay they have suffered by reason of the discrimination practiced against them, in accordance with the *Woolworth* formula,⁹ with interest thereon computed at 7 percent per annum as required by the Board's recent decision in *Florida Steel Corporation*, 231 NLRB 651 (1977). I will also recommend that Respondent be required to post the usual notice, notifying its employees of their rights and of the results of this case.

Upon the foregoing findings of fact, conclusions of law, and upon the entire record herein considered as a whole, and pursuant to Section 10(c) of the Act, I make the following recommended:

ORDER¹⁰

The Respondent, ABC Specialty Foods, Inc., Hazelwood, Missouri, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Coercively interrogating employees concerning their union activities and the union activities of other persons.

(b) Threatening employees with plant closure if discharged employees are restored to duty or if employees engage in union activities and concerted protected activities.

(c) Granting employees wage increases in order to persuade them to abandon support of a union; provided that, nothing herein shall be construed as requiring Respondent to reduce any wage increase which has been granted to any employee.

(d) Reducing wages in order to take reprisal against employees for supporting a union.

(e) Telling employees that engaging in union activities or in collective bargaining would be an act of futility.

(f) Telling employees that utilizing the processes of the Board could result in adverse consequences.

(g) Reprimanding employees because they have engaged in union activities.

(h) Discouraging membership in or activities on behalf of Teamsters Local Union No. 688, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, by discharging employees or otherwise discriminating against them in their hire or tenure.

(i) By any other means interfering with, coercing, or restraining employees in the exercise of rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the purposes and policies of the Act:

(a) Offer to Rick Jones full and immediate reinstatement to his former position, or, in the event his former position no longer exists, to substantially equivalent employment,

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.

without prejudice to his seniority or other rights which he formerly enjoyed.

(b) Make whole Rick Jones, William Hoffman, and Paul Lint for any loss of pay they may have suffered by reason of the discriminations found herein, in the manner described above in the section entitled "Remedy."

(c) Remove from the personnel records of Rick Jones the written reprimand dated February 8, 1977, which was placed therein.

(d) Post at its Hazelwood, Missouri, plant copies of the attached notice marked "Appendix."¹¹ Copies of said notice on forms to be provided by the Regional Director for Region 14 and duly signed by a representative of the Respondent, shall be posted by the Respondent immedi-

¹¹ In the event the Board's 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

ately upon receipt thereof, and shall be maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by any other material.

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

(f) Notify the Regional Director for Region 14, in writing, within 20 days from the date of this Order, what steps it has taken to comply herewith.

to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."