3 States Trucking, Incorporated *and* United Mine Workers of America. Cases 14–CA–9688, 14–CA–9700, and 14–CA–9714

September 21, 1977

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS PENELLO AND MURPHY

On June 17, 1977, Administrative Law Judge Melvin J. Welles issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, General Counsel filed limited exceptions and a motion for leave to join successor employer.[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 briefs and has decided to affirm the rulings, findings,[2] and conclusions of the Administrative Law Judge,[3] to modify his Remedy,[4] and to adopt his recommended Order, as modified herein.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge as modified below and hereby orders that the Respondent, 3 States Trucking, Incorporated, Grandview, 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(b):

"(b) Threatening its employees with removal of operations, discharge, loss of benefits, or other reprisals for engaging in union activities, and interrogating them about these activities."

2. Insert the following as paragraph 1(c) and reletter the following paragraph accordingly:

"(c) Failing to recall strikers to their former or substantially equivalent jobs as these jobs become available."

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

[1] General Counsel in his motion asserts that Southern Illinois Minerals Corporation is a successor employer to 3 States Trucking, Incorporated, and moves for leave to join Southern Illinois Minerals Corporation as a party to this proceeding. In the absence of any opposition thereto, General Counsel's motion is hereby granted.

[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.

We note that the Administrative Law Judge at one point in his Decision inadvertently attributes the remark "A union man will never be able to work at my mine. I'll weed them out one at a time" to Supervisor Shingleton, when it is clear, as he found elsewhere, that the remark was made by Supervisor Franklyn.

[3] The General Counsel excepted to certain parts of the Administrative Law Judge's recommended Order and notice to employees. We find merit in these exceptions. The recommended Order and notice have been modified accordingly.

[4] In accordance with our decision in *Florida Steel Corporation*, 231 NLRB 651 (1977), we shall apply the current 7-percent rate for periods prior to August 25, 1977, in which the "adjusted prime interest rate" as used by the Internal Revenue Service in calculating interest on tax payments was at least 7 percent.

APPENDIX

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

WE WILL NOT discharge or otherwise discriminate against any employees because of their concerted activities for mutual aid and protection, or their union activities.

WE WILL NOT threaten our employees with removal of operations, discharge, loss of benefits, or other reprisals for engaging in union activities, or interrogate them about these activities.

WE WILL NOT fail to recall strikers to their former or substantially equivalent jobs as these jobs become available.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of their rights guaranteed by the National Labor Relations Act.

WE WILL offer reemployment to John Fischer and William Avery and WE WILL pay them for losses suffered as a result of our having discriminated against them.

3 STATES TRUCKING, INCORPORATED

DECISION

STATEMENT OF THE CASE

MELVIN J. WELLES, Administrative Law Judge: This case was heard at Murphysboro and Carbondale, Illinois, on December 14, 15, and 16, 1976, based on charges filed on October 12, 18, and 26, 1976, and a complaint issued November 19, 1976, alleging that Respondent violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended. The General Counsel and Respondent have filed briefs.

Upon the entire record in the case, including my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER AND THE LABOR ORGANIZATION INVOLVED

Respondent is an Indiana corporation engaged in the business of owning and operating coal mines, with its principal office at Grandview, Indiana, and other places of business in the States of Illinois and Indiana. During the year 1976, it both received and shipped goods and equipment valued in excess of $50,000 from and to points outside the States of Illinois and Indiana. I find, as Respondent admits, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. United Mine Workers of America is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issues*

The complaint alleges that Respondent violated Section 8(a)(1) by the conduct of management officials and Supervisors Franklyn, Shingleton, and Burks, in threatening employees with discharge for supporting the Union, threatening plant closure or moving if the Union was successful, threatening the loss of employee "royalty checks" if the Union was successful, telling an applicant for employment he had to "drop" his union card before being hired, and telling employees they would be discharged for "talking union." The complaint also alleges that Respondent violated Section 8(a)(3) by refusing to reinstate striker William Avery to his former job, and by discharging employees John Fisher and Frank Mabry because of their union activities.

With respect to the 8(a)(1) allegations, in each and every instance the testimony of the General Counsel's witness or witnesses was denied by the asserted perpetrator, so that only by resolving credibility can the 8(a)(1) question be answered. With respect to the refusal to recall Avery, the facts are not in any material dispute, the questions being primarily one of law. Finally, with respect to the discharges of Mabry and Fisher, although there are some differences between the testimony of the General Counsel's and Respondent's witnesses requiring resolution, the root question is Respondent's motivation in effecting the discharges, and credibility does not loom large in making the necessary determinations.

B. *The Refusal to Reinstate Avery*

William Avery had been employed by Respondent for about 3 weeks in September 1975, as a helper on an exploratory drill. On September 29, he joined the Union's strike.[1] Thereafter, on November 20, the Union made an unconditional offer to return to work. At that time, Avery's job as a helper on the exploratory drill was not open. It became open on August 20, 1976, and Respondent hired a new employee, Peterman, to fill it. On its face, hiring Peterman rather than Avery violated Section 8(a)(3) of the Act. Respondent contends, however, that it hired Peterman rather than recalling Avery because Peterman "was considered a more qualified man," and that the job had "added responsibilities" that required the extra qualifications posed by him. Respondent also contends that it did not have a "discriminatory motivation" in refusing to rehire Avery. I do not regard such a motivation as necessary to a finding of a violation, for if in fact Avery should have been reinstated, *Fleetwood* and *Laidlaw*[2] make unnecessary any specific evidence of unlawful motivation. The General Counsel also contends, alternatively, that, even assuming Avery was not entitled to be recalled to his former position, he was entitled to recall as a laborer when, also on August 20, Respondent hired three laborers who had never before worked for the Company.

The principal "changes" in the exploratory drill operation, as testified to by General Manager James Burks, are that a larger truck is now used, and that a "dozer" is hauled along with the drill rig to clear areas into which a drill must be moved. The testimony of Avery shows, and some of the testimony of Burks seems to contradict, that the operation of the larger truck was essentially no different from that of the smaller truck, and that Avery could handle that aspect of the "change." Avery stated that he was not qualified to operate a dozer (Peterman was), but there is no clear showing in the record that the helper, rather than the "lead man" (operating the exploratory drill was a two-man job) had to be proficient on the dozer.[3] Furthermore, it seems obvious that Respondent would not have discharged Avery for the lack of dozer-operating ability had he remained on the job. The fact that Peterman may have been "more qualified" is thus no basis for failing to recall Avery. A company cannot refuse reinstatement to a striker otherwise entitled thereto merely because a "better man" is available. Even if Respondent is correct, contrary to my finding, that Avery was not, on August 20, qualified for the driller helper job as then constituted, the General Counsel is correct in contending that he was entitled at least to be offered one of the laborer jobs filled on that day with three new men. So the violation of Section 8(a)(3) in not recalling Avery is crystal clear, and only the quantum of backpay might be affected if the failure to recall Avery to the driller helper position from which he went on strike was excused because of the dozer equipment being added to the drill rig and truck formerly used. I find, accordingly, that Respondent violated Section 8(a)(3) and (1) of the Act by failing to recall Avery to work on August 20, 1976.

[1] The Company at the hearing and in its brief contended that the strike itself was unlawful (in violation of Sec. 8(b)(7)(C) of the Act), and therefore that Avery was not protected. The predicate for this contention was a companion case heard by me in which the General Counsel alleged that the strike was unlawful. As that case has since been withdrawn, there is now no basis for Respondent's contention in this respect.

[2] *N.L.R.B.* v. *Fleetwood Trailer Co., Inc.*, 389 U.S. 375 (1967), and *Laidlaw Corporation*, 171 NLRB 1366 (1968), enfd. 414 F.2d 99 (C.A. 7, 1969).

[3] Burks' testimony that "it was necessary that the man that was working with the driller be able to have the ability to operate a dozer" does not explain why the driller himself could not operate the dozer.

C. *The Alleged 8(a)(1) Violations*

Credibility

With the exception of Mabry and Fisher, the alleged discriminatees herein, the General Counsel's witnesses had no particular axe to grind. Some of them were still employed by Respondent at the time of the hearing. One, Sanders, was a "close friend" of Supervisor Franklyn, who had hired him. Their testimony did not appear to be contrived, carried a "ring of truth," and is credited over the flat denials of Respondent's witnesses Shingleton and Franklyn. As a particular example demonstrating the basis for my credibility resolutions, consider the conflict between the testimony of employee Darrell Sanders and Superintendent Nathan "Sonny" Franklyn. As noted above, Sanders was still working for the Company at the time of the hearing and was a good friend of Franklyn's. He testified that on November 28 he was having lunch with Franklyn in the trailer (used as an office), and that Franklyn indicated his feelings about certain employees "he wasn't especially fond of . . . for their feelings about the union . . . ." Franklyn then pulled out the timecards, which were admittedly kept in the trailer, said, "Well, let's take a vote here," started to separate the cards into "union" and "nonunion" supporters, and ended up counting 11 against and 7 for the Union. The employees in the bottom seven cards, those for the Union in Franklyn's estimation, Franklyn called his "shit list," and said he would "never forget them." On cross-examination, Sanders seemed particularly candid, stating that he started the conversation with Franklyn, asking Franklyn if he thought the employees would go on strike, and that he also asked Franklyn why he thought the employees would not "go union." Sanders also stated that he never heard Franklyn use the term "shit list" at any other time. Franklyn flatly denied showing Sanders any timecards of people he believed were for or against the Union, as well as denying that he used the term "shit list." It is not conceivable to me that Sanders, a friend of Franklyn, hired by him and still working for him, would have made up the incident in question. There is nothing in the record to indicate that Sanders had attended union meetings, or was even in favor of the Union.[4] There is thus no reason at all for him to have manufactured this relatively minor incident. Franklyn's flat denial that it occurred must therefore be discredited, and his other flat denials of the testimony of Charles Johnson, Wayne Helberg, Frank Mabry, and John Fisher concerning other 8(a)(1) statements attributed to him also falls. Without detailing any of the testimony involved, the aforesaid reasons for resolving credibility apply equally to the conflicts between Supervisor Shingleton and employee witnesses Erskine Rich, Tim Ward, Mabry, and Fisher.

With respect to a final 8(a)(1) allegation, involving Respondent's general manager, James Burks, and employee Tim Ward, the conflict in testimony is minor in nature. According to Ward, when he was interviewed by Burks for a job with Respondent, and Ward told Burks his prior experience had been at a company called Consolidated, at its No. 5 Mine (a UMWA mine), Burks asked Ward if he had a union card and, when Ward said that he did, told Ward he would have to "drop it before he could hire me because they didn't hire Union men." Burks did not specifically deny asking Ward whether he had a union card; he stated, "I don't know that I questioned the individual. I was told by the individual that he had been working at a mine who I know, by general knowledge, to be a union mine." He further testified that he told Ward, "We are operating . . . as a nounion mine," and that Ward then replied, "Well, it doesn't make any difference to me. I'll turn my card in."[5] As stated earlier, there is no great difference between the testimony of the two witnesses, both of whom impressed me as candid and honest. Burks' own testimony makes clear, as the General Counsel contends, that he was conveying to Ward the notion that "being a UMWA member would be a barrier to obtaining a job with three States." And Ward's own testimony makes clear that Ward knew this, and that at least in his belief the Union would not let him work for a nonunion company, unless he dropped his card. In these circumstances, I do not believe any questioning that occurred was coercive in nature, and do not find a violation of the Act as to this incident. As to all the other incidents, which I detail below, the facts speak for themselves and establish violations of Section 8(a)(1) of the Act. These incidents, including the supervisor or official involved, and the employee or employees who testified thereto, follow:

1. Sonny Franklyn, about August 10, told employee Helberg, after saying to him, "I don't know why you guys want a union," "I think we treat you pretty nice myself. If the Union gets in, we will move away."

2. Shingleton told employee Erskine Rich that "the guys who were going around causing trouble and talking about getting a union would be weeded out," and that "the ones that went along with the company, that they would take care of them."

3. Franklyn, when interviewing Mabry for the latter's employment with the Company, asked Mabry how he felt about the Union. When Mabry replied that he could work either way, whatever suited Franklyn, Franklyn said that "the company had been broke by the union at one time and they wouldn't be broke again."

4. On either August 8 or 15, Franklyn told Fisher that "if the company ever goes union, they'll pack up and leave and move to Wyoming." Franklyn added that "A union man will never be able to work at my mine. I'll weed them out one at a time."

5. About September 6, Franklyn came out of his office (in the trailer) and walked over to a group of men, saying, "I want you all to hear this. Anyone found talking about union activity will be immediately discharged, and this includes the lunch hour."

6. As noted above, Franklyn, about November 28, pulled a bunch of timecards, separating them into union and nonunion, and giving employee Sanders a count of 11

[4] Franklyn's own testimony was that he asked Sanders if the latter wanted to go to the union meeting being held that afternoon, and Sanders replied, "Well, I don't know."

[5] Ward had testified that when Burks told him he would have to drop his UMWA card, he (Ward) said, "Yes," adding, and it is not clear whether this was his view expressed at the hearing or his response to Burks, "You know I have to forfeit anyway because the union wouldn't let me work for a nonunion company."

nonunion and 7 union employees, going on to say that the bottom 7 were troublemakers, and that he would lay them off if he had a chance, and that these 7 were on his "shit list."

7. Ward, Fisher, and Mabry testified that on numerous occasions Supervisor Shingleton told them that, if the Union came in, the Company would pack up and move, and that was why he was living in a motel. He also told Fisher and Mabry that, if the Union came in, the employees would lose their royalty checks. Shingleton also said, on a number of occasions, that neither he nor Franklyn could work with union men, and that the Company would move to Indiana if it was forced to go union.

I find that, by the foregoing conduct, Respondent has violated Section 8(a)(1) of the Act.

D. *The Alleged 8(a)(3) Violations*

Frank Mabry and John Fisher were discharged on October 7, 1976, the discharges arising out of an incident in which two half sticks, rather than the one half-stick per instructions, were placed in a hole preparatory to a dynamite "shot" to be made. The testimony is conflicting as to exactly what occurred. According to Fisher, Shingleton told him to help Mabry pack the holes, Mabry having a little earlier been sent down to help Supervisor Jack Dyer do the same thing. In each instance, the employee protested lack of knowledge about dynamite, and Shingleton instructed them to perform the work or go home. Fisher cut a stick of dynamite in half, and placed it in an explosive bag, handing the other half stick to Mabry, with Shingleton and Dyer standing by watching. Shingleton and Dyer then left. Fisher and Mabry loaded two more holes and were working on a fourth when Shingleton, Dyer, and drag-line operator Harold Yates returned to where Mabry and Fisher were working. Shingleton asked Fisher, "How many sticks of dynamite did you put in that sack?" Fisher responded, "I put half a stick in just like you told me to." Shingleton then told Fisher he was lying. Shingleton asked Mabry the same question, but Fisher does not recall hearing Mabry's answer. Shingleton then told Fisher to pull the sack out of the hole.[6] Fisher did so. Shingleton started examining the sack, and while he was doing so, the other half stick of dynamite fell out of it. Shingleton then told both men they were fired for lying to him. Mabry then grabbed Fisher, said, "Come on, John, let's go," and they did so.

Fisher testified that he did not know at the time how the extra half stick got in the bag, but that Mabry told him later that it was he who put it there. Fisher subsequently stated, during cross-examination, that neither Shingleton nor Dyer told him not to put the other half stick of dynamite in the holes. Mabry's testimony is substantially the same as Fisher's, except that he testified that he said to Shingleton after the second half-stick of dynamite made its appearance, "John Fisher didn't lie. He put the half stick in just like he said."

Shingleton testified that he told Fisher and Mabry to put "just a half a stick and a half a bag of ammonia nitrate, that's all I want," into each hole. He and Dyer left to check something, and when they returned, after about 5 minutes, Fisher and Mabry were loading a bag of ammonia nitrate, and they "were grinning." Shingleton asked Fisher how much dynamite he had there, and Fisher said, "Just a half a stick, Ray, just like you said." Shingleton then asked Fisher to pull the bag out of the hole, and as he was doing so Shingleton "looked at both of them and Frank Mabry just rolled his eyes back." Shingleton started to feel around in the bag, and finally felt the other half stick of dynamite. He asked Mabry and Fisher why they lied, and they "shrugged and just dropped their head." He then told them that he was letting them go, saying, "I can't use guys that I can't turn my back 5 minutes on." Asked further on direct examination, "What was the reason why you fired both these men?" Shingleton replied, "Because they just outright lied to me, just standing there and lying, and they'd done this sort of thing before. You know, work was just a joke to them." On cross-examination, Shingleton was again asked, "What is the exact reason for your discharge of Mabry and Fisher?" and replied, "That they did not follow my instructions." To "Is there any other reason?" he added, "Just that the instructions that they hadn't followed prior to that. Just that they would not follow instructions, period, up to the dismissal. And I'd had it. That was about the last straw for me. I'd just had it with them." Shingleton also testified to previous work deficiencies on the part of both Fisher and Mabry, and to having warned them about their work, testimony confirmed by both employees.

The General Counsel claims that the incident in question was only a pretext, and that Respondent's real reason for discharging Fisher and Mabry was their union sympathies and activities. In Fisher's case, these union activities consisted of attending three union organizational meetings, and putting UMWA stickers on his vehicles which he drove to work. In Mabry's case, they also consisted of attending three union meetings, and in talking with employees on the job about the Union, saying he was "for it." Mabry was asked by Franklyn the day before he began working for Respondent how he felt about the Union, and replied, as noted above, "I can work either way. Whatever suits you, suits me." Shingleton, also as noted above, asked him on several occasions how he felt about the Union, and how the men felt about it. Mabry's answer was noncommittal. Fisher had been told by Shingleton, as had other employees, that the Company would move if the Union came in. Shingleton also told Fisher that "A union man will never be able to work at my mine. I'll weed them out one at a time," and that men would lose their royalty checks if the Union was voted in. On one occasion, according to Fisher, Shingleton said to him "You damn union lover," after Fisher left Shingleton holding a board and went to eat dinner, despite Shingleton having asked him to stay and finish helping.

There are several puzzling aspects of the October 7 incident that the testimony does not fully resolve. It is not completely clear, for example, whether the hole in which

[6] The dynamite stick was placed in a sack of explosives before being lowered into the hole and tamped.

the two half-sticks were loaded by Fisher and Mabry was done before Shingleton and Dyer left the area, or was the last hole loaded, which Fisher and Mabry were doing when Shingleton and Dyer returned.[7] It is possible that Shingleton saw the two half-sticks being put in, left, and then decided to confront Mabry and Fisher when he returned, for Shingleton's explanation that he suspected what had happened based on Fisher and Mabry "grinning" when he returned seems rather farfetched. For a "grin" to lead Shingleton to the precise hole, and to have him "suspect" (even though correctly) precisely what had been done, without any background, for Fisher and Mabry had never performed this type of dynamite loading before, is a bit more than I can swallow. The fact does remain, however, that the second half-stick was put into the hole, and that it was flatly contrary to Shingleton's instructions.[8]

The offense involved seems to me to be rather a serious one, not merely a failure to follow some minor order that was of little consequence or significance. All the testimony, including that of Shingleton, Dyer, Mabry, Fisher, and Yates, was to the effect that Mabry admitted, after Shingleton pulled out the extra half-stick, having put it in, saying that it was his fault, and that Fisher had not lied (after Shingleton accused both employees of lying). Neither at the time of the incident nor at the hearing did Mabry explain why he put the extra half-stick in the bag. The General Counsel's attempt to attribute this to the employees' lack of experience in working with dynamite does not furnish any rational explanation, for a flat instruction to the men to use only one half-stick in each bag could certainly be understood even by men with no experience. Based on his own testimony, Mabry's union activities were to attend three meetings and talk to other employees. There is no particular reason to assume that Respondent, or Shingleton, Respondent's supervisor, regarded him as a proponent of the Union. And his own testimony was, as noted above, that he could "go either way." In the light of Mabry's rather limited union activities, his admission that he put the second half-stick of dynamite in the bag, as well as his failure to protest at the time, and the fact that immediately after Shingleton said to Mabry and Fisher "Both of you are fired for lying. I can't work with you because you lied to me," Mabry (in Fisher's words) "grabbed ahold of me and he said, 'Come on, John, let's go,' " I am convinced not only that his discharge was warranted, but that it was not attributable to his union activities.

Fisher, on the other hand, did nothing wrong. His own reactions, when Shingleton and Dyer returned, indicate to me that he did not know Mabry had put the second stick of dynamite into the bag, for he responded to Shingleton that he had put in "just half a stick, Ray, just like you said." I am convinced, in Fisher's case, that Shingleton seized upon the incident in question as a pretext to rid the Company of an employee it believed to be a strong protagonist for the Union. I believe that Shingleton could not have avoided seeing the UMWA bumper stickers on Fisher's vehicles, and do not credit Shingleton's denials in this respect. I also credit Fisher that Shingleton, on the occasion of Fisher walking away from him when Shingleton asked him to continue helping set the 16-foot post, called Fisher a "damn union lover." Shingleton knew because Mabry told him that Mabry put the stick in. Respondent witness Harold Yates also testified that Mabry said, "Well, I put it there. It is my fault." I agree with the General Counsel's statement in his brief that "The logical consequence of Mabry's action would be *for him to be discharged.*" (Emphasis supplied.) And I have concluded that this "logical consequence," which did follow, was not a violation of the Act. But it was not at all a logical consequence for Fisher to be discharged because of Mabry's admitted misconduct, and I therefore conclude that Respondent did violate Section 8(a)(3) and (1) of the Act by discharging Fisher.

As indicated above, I was not at all satisfied with Shingleton's "explanation" of why he checked out the particular bag when he returned to the location where the holes were being loaded. I am inclined to believe that he saw Mabry put the second stick in the hole before he left, decided to go away, then return and fire both men in order to get rid of Fisher. Had he taken immediate action before leaving, obviously he would have had no excuse for firing Fisher. Although this is speculative, the fact that Fisher was "not guilty" is not, the fact that Mabry admitted his own guilt is not, and the fact that Shingleton knew of Fisher's union activities and sympathies is not. The speculation merely provides a possible explanation for the sequence of events; it is not necessary to the conclusion, which I have reached, that Respondent discriminatorily discharged Fisher.

CONCLUSION OF LAW

By discharging John Fisher because of his union activities, by failing to reinstate striker William Avery, by threatening employees with reprisals because of their union activities, and by interrogating them about those activities, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(1) and (3) and 2(6) and (7) of the Act.

THE REMEDY

I shall recommend that Respondent cease and desist from its unfair labor practices, that it offer reinstatement to John Fisher and William Avery with backpay, computed as provided in *F. W. Woolworth Company,* 90 NLRB 289 (1950), and with interest as prescribed in *Isis Plumbing & Heating Co.,* 138 NLRB 716 (1962), and take certain affirmative action in order to effectuate the policies of the Act.

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

[7] Mabry's and Fisher's testimony suggest that Shingleton and Dyer were present when the two half-sticks were put in the bag; Shingleton's and Dyer's testimony pointed the other way.

[8] As noted above, Fisher's own testimony was that he replied to Shingleton's question how much dynamite was put in with "Just half a stick, Ray, just like you said."

ORDER[9]

The Respondent, 3 States Trucking, Incorporated, Grandview, Indiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or in any other manner discriminating against employees because they have engaged in concerted activities or union activities.

(b) Threatening its employees with reprisals for engaging in union activities, and interrogating them about these activities.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights protected by Section 7 of the Act.

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

(a) Offer John Fisher and William Avery immediate and full reinstatement to their former jobs or, if these 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 earnings they may have suffered, in the manner set forth in the section hereof entitled "The Remedy."

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

(c) Post at its places of business in Indiana and Illinois and any other locations where notices to its employees are customarily posted copies of the attached notice marked "Appendix."[10] Copies of the notice, on forms provided by the Regional Director for Region 14, shall be signed by an authorized representative of the Company and posted immediately upon receipt thereof and maintained for 60 consecutive days thereafter, in conspicuous places, including all places at all locations where notices to employees are customarily posted. Reasonable steps shall be taken by the Company to ensure that the notices are not altered, defaced, or covered by any other material.

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

[9] 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.

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