

Allis-Chalmers Corporation and Richard A. Salvador.
Case 13-CA-15775

September 8, 1977

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS
JENKINS AND PENELLO

On May 17, 1977, Administrative Law Judge Irwin Kaplan issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

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

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,¹ and conclusions of the Administrative Law Judge, to modify his remedy,² and to adopt his recommended Order, as modified herein.³

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, Allis-Chalmers Corporation, Harvey, Illinois, 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) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act.”

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

¹ The 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 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.

³ In par. 1(b) of his recommended Order, the Administrative Law Judge uses the narrow cease-and-desist language, “in any like or related manner,” rather than the broad injunctive language, “in any other manner,” which the Board traditionally provides in cases involving serious 8(a)(3) discriminatory conduct. See *N.L.R.B. v. Entwistle Mfg. Co.*, 120 F.2d 532, 536 (C.A. 4, 1941). We shall modify the recommended Order accordingly.

APPENDIX

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

WE WILL NOT condition the employment of Richard Salvador upon his refraining from serving as the Union's grievanceman.

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

WE WILL make Richard Salvador whole for any loss of pay or other benefits he may have suffered as a result of our discrimination against him, with interest at the rate of 7 percent per annum.

WE WILL notify United Steelworkers of America, Local 1091, in writing, with a copy to Richard Salvador, that we have no objection to Salvador serving as grievanceman.

ALLIS-CHALMERS
CORPORATION

DECISION

STATEMENT OF THE CASE

IRWIN KAPLAN, Administrative Law Judge: This case was heard in Chicago, Illinois, on February 3, 1977. The charge was filed by Richard Salvador on September 3, 1976,¹ and a complaint thereon issued on November 2 (amended at the hearing). The complaint and the amendments thereto alleged that Allis-Chalmers Corporation (referred to herein as Respondent, Employer, or Company) violated Section 8(a)(3) and (1) of the National Labor Relations Act, as amended, by conditioning Salvador's reinstatement on his resignation as grievanceman. In its answer duly filed (amended at the hearing), the Respondent conceded, *inter alia*, certain facts with respect to its business operations, and the supervisory and agency status of individuals as alleged in the complaint, but it denied all

¹ All dates hereinafter refer to 1976 unless otherwise noted.

allegations that it had committed any unfair labor practices.

Upon the entire record,² including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by counsel for General Counsel and Respondent,³ I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent, a Delaware corporation, is engaged in the manufacture of diesel engines at its facility in Harvey, Illinois. During the past calendar year, Respondent, in connection with the operations of its Harvey, Illinois, facility, did a gross volume of business in excess of \$1 million and sold and shipped goods valued in excess of \$50,000 to points directly outside the State of Illinois. Respondent admits, and I find, that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

The Respondent admits, and I find, that United Steelworkers of America, Local 1091, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Sequence of Events

Richard Salvador, a machinist, has been employed by the Employer for the past 13 years. The Employer and Union have had a long history of collective bargaining covering a series of collective-bargaining agreements, the most recent of which by its terms is effective September 16, 1974, to and including midnight September 15, 1977. At various times since 1969 Salvador has served as steward, trustee, and grievanceman for the Union. The aforementioned positions are normally obtained by an elective process. The most recent election for union office prior to the instant charges was in April 1976. Salvador was 1 of 7 grievancemen elected serving a unit of approximately 740 employees. Prior thereto, Salvador had been appointed grievanceman for a period in 1971 and 1972 and held the position since 1973 pursuant to elections.

The contract contains a five-step grievance procedure, the last of which is arbitration. The employee and union steward are normally involved in the initial step of the grievance procedure. The grievanceman pursuant to the second step has the right to meet with the superintendent of

the Company to settle grievances not orally settled in the first step. Grievancemen also participate in the third and fourth steps of the aforesaid procedure. As grievanceman Salvador is involved in approximately 12 to 16 grievances annually. In this regard he has devoted approximately 15 to 30 hours a month inside and outside the facility, of which approximately one-half is on company time⁴ and one-half is on his own time. On June 8, 1976, Salvador was terminated for sleeping on the job. At that time he was employed on the third shift from 12 midnight to 7 a.m. He filed a grievance concerning his termination which was processed through several steps of the grievance procedure. Salvador was reinstated on or about August 2, terminated on August 4 a second time, and returned to work on or about August 16 and was working at the time of the hearing. On August 16 he submitted a letter of resignation from his position of grievanceman to the Union. Later that night Salvador was permitted to return to work and has worked since. The General Counsel alleges that the Employer conditioned reinstatement, *inter alia*, on Salvador resigning his position as grievanceman. The Employer on the other hand denies that it conditioned Salvador's reinstatement on his resignation from the position of union grievanceman, but rather that he was reinstated pursuant to an agreement entered into voluntarily by Salvador with the approval of the Union. The terms of the agreement called for Salvador to give up employment elsewhere, his schooling, and his grievanceman's position so that he could work full time as a production employee. The Employer asserts that it was concerned that Salvador was unable to work full time because he was dissipating his energies in areas unrelated to production.

Bruno Sendera, who has been employed by the Employer for the past 36 years and was local union president in June 1976, testified in support of the allegations. According to Sendera, on June 8 at approximately 8 a.m., he, along with Robert Belcher, chairman of the grievance committee, and Salvador met with company representatives concerning Salvador's status but they were unable to resolve the matter. After the aforesaid meeting Belcher and Sendera went to see John Hamilton, manager of employee relations for the Employer, in an unofficial but further attempt to resolve Salvador's grievance. Sendera tried to convince Hamilton that Salvador's conduct on the morning of June 8 was not a dischargeable offense and asked Hamilton to reinstate him. Hamilton stated that the only way he would consider reinstating Salvador would be for him to be confined to the shop area and not perform as grievanceman. Hamilton concedes meeting with Sendera and

² The General Counsel's unopposed motion to correct the transcript, dated March 4, 1977, is granted and received in evidence as G.C. Exh. 6.

³ The briefs herein were due on March 7, 1977. While General Counsel's brief was timely filed, Respondent's brief was received by the Division of Judges on March 8. Respondent's brief with attached certificate of service was signed and dated March 4. Counsel for the General Counsel filed a motion to strike Respondent's brief on the basis that it was untimely filed and not received by the Regional Office until March 9. Counsel for Respondent filed a response thereto asserting, *inter alia*, that Respondent did not receive General Counsel's brief until March 8. In the circumstances herein, and noting that the late filing of Respondent's brief did not cause any delay in the issuance of the Decision, I accept the brief of Respondent's counsel and deny the General Counsel's motion to strike.

⁴ In relevant part, art. V, secs. 3 and 4 of the most recent contract, contain the following:

The Union Grievance Committee, the Bargaining Committee, the Stewards and the employe in meeting with the representatives of the Company, the time shall be counted as hours worked in determining overtime pay. The Union Grievance Committee, Stewards and employe will be paid the earnings of job grade one within the bargaining unit for all time lost when meetings are held at the request of the Company.

Section 4. Any member of the Union Grievance Committee, Union Steward, or Union Officer, shall have the right to visit departments other than his own at all reasonable times for the purpose of transacting the regular business of the Union, provided that they have notified their supervisor or another person designated. Upon returning to the job, such employes shall report to their supervisor or another person designated.

Belcher in his office on June 8, but all that he said therein is that he would not reinstate Salvador. Hamilton attended on June 9 a second unofficial meeting with Union Representatives Sendera and Belcher and Paul Markonni, International representative. Michael Roberts, union relations representative, was also in attendance on behalf of the Employer. The June 9 meeting was called by Markonni in order to learn more about the circumstances surrounding Salvador's termination and to determine whether the Company was going to modify its position regarding the termination. The next official meeting took place on June 28. This meeting was on the International level and was the fourth step of the grievance procedure. Markonni, according to the testimony of Hamilton and Roberts, agreed that Salvador more than likely overextended himself and was not in a position to do his job at the time he was caught sleeping. He then asked them whether the Company would consider reinstating Salvador if he was in a position where he was able to perform his job fully. The Company responded in writing by letter dated July 2, 1976, wherein in pertinent part it reads as follows:

Perhaps it can be stated that Mr. Salvador's termination can be attributed to the fact that he attempted to hold two different jobs and continue his education at the same time. If so, we are willing to listen to a proposed schedule of Mr. Salvador's activities which would include full-time employment at Allis-Chalmers' Engine Division. If such a schedule could be agreed upon and a firm commitment made, we would consider Mr. Salvador for reinstatement with all time off considered as disciplinary layoff and a final warning for any underlined offenses placed against his record.⁵

The parties met again on July 27 regarding Salvador's grievance. Markonni opened this meeting by stating that Salvador had informed him that he quit school, was cutting back his hours of outside work, and was going to resign as union grievance man. The Company responded by taking the position that if Salvador would do all that he told Markonni he would do the Company would consider reinstating him, but that the Company wanted to hear this from Salvador who was not at the meeting on July 27. The parties conducted another meeting 2 days later, but this time Salvador was in attendance. According to Salvador, Hamilton stated at this meeting that the Company was willing to take him back but only on a full-time basis. Thus Hamilton pointed out to Salvador that he must not have another job, go to school, "and that other thing. Give up that other thing." The Company then left the room while the Union considered the conditions. Markonni turned to Salvador and asked him if he understood what Hamilton wanted him to do. Salvador told Markonni that he knew that the Employer wanted him to give up his grievance job. Markonni told him that he would have to decide, but that if the matter went to arbitration it would take a long time. Salvador told Markonni that he didn't have any choice and that he would resign. When the company officials returned to the room Markonni told Hamilton that Salvador

understood what had to be done. Hamilton responded that Salvador could be back at work Sunday night but pointed out to Markonni to make certain that Salvador understood what was said and that Markonni should make certain that the other matter was taken care of. Ronald Martin, union recording secretary and grievance committeeman, also attended the July 29 meeting. He testified that it was his understanding that the Company wanted Salvador to resign as grievance man. According to Hamilton and Roberts, Markonni repeated what he had stated on July 27, that is, that Salvador had quit his schooling, that he was going to reduce his outside employment to only part-time work, and that he also intended to resign as grievance man. Hamilton then asked Salvador if what Markonni said was true, to which Salvador replied in the affirmative.

Salvador testified that, on or about July 3, Markonni called him to his office and showed him the letter from Hamilton to Markonni dated July 2, referred to previously regarding certain conditions which would have to be met before the Company would consider reinstating Salvador. While there is no reference therein to Salvador's position as grievance man, it does state that he would have to curb his activity and be available for full-time employment. According to Salvador, Markonni showed him the reference in the letter to full-time employment and remarked, "You have to give up your grievance job. That's what they want." This, Salvador refused to do at that time. On a number of occasions during the month of July, Markonni reiterated the conditions under which the Company would reinstate Salvador, including his resignation as grievance man. Salvador states that it was not until the July 29 meeting that he agreed to resign for the first time and indicated he was willing to put it in writing. On July 30 Salvador had his wife give Union Recording Secretary Martin the following letter:⁶

July 30, 1976

To Whom It May Concern:

Effective July 30, 1976, I do hereby resign my position as Grievance man for the United Steel Workers of America.

Sincerely yours,

Richard A. Salvador

Salvador returned to work on August 2 and worked the midnight to 7 a.m. shift. He notified the Company that he was sick and could not work on August 3. On August 4 Salvador met Martin and Richard Foreman, the local union president,⁷ and was told by them that his letter of resignation was unsatisfactory and was not what the Company wanted. Martin gave Salvador a letter containing language which he asserted was acceptable to the Company.⁸ The letter read as follows:

⁵ G.C. Exh. 2.

⁶ G.C. Exh. 3.

⁷ Foreman replaced Sendera as the local union president on or about June 11.

July 30, 1976

United Steelworkers of America Local Union #1091

Effective July 30, 1976, I do hereby resign my position as grievanceman and other Union positions for the remainder of the election period as covered by the By-Laws. I do this because of personal reasons.

Sincerely yours,

Richard A. Salvador

Salvador objected to signing the new letter. Martin told Salvador that if he refused to sign the letter he could forget about working that night because the Company would fire him again. According to Martin, he and Foreman showed Salvador's letter of resignation to Roberts. Martin testified that Roberts rejected the letter and remarked, "This isn't what he agreed to, as far as resignation." According to Martin, Roberts wanted Salvador to agree not merely to resign at that time but to agree not to run for the remainder of his term which was due to expire in 1979. His resignation would create an opening for a grievanceman and a new election would have to be held. The Company did not want him to be a candidate for grievanceman in the new election. Roberts concedes seeing the letter but denies that there was any discussion thereto. Martin further testified that he and Foreman went to Markonni and showed him Salvador's letter and informed Markonni of Roberts' reaction thereto. Markonni also expressed that Salvador's letter of resignation did not meet the terms of the agreement and he, Markonni, had a letter made up that would conform to the agreement with the Company. The aforesaid letter is the letter that Martin urged Salvador to sign on August 4 which he refused to do. Salvador testified that at approximately 11:55 p.m., August 4, he went to work and discovered that his timecard was missing from the rack. A. Anderson, night-shift superintendent, and Leo Wajslaw, Salvador's immediate supervisor, were at the rack and they told Salvador that he could not work that night. He asked if the reason was because he refused to sign the (resignation) letter. Wajslaw responded affirmatively, and added, "Take care of that matter before returning to work." According to Hamilton, Wajslaw informed him on Wednesday, August 4, at approximately 7:45 a.m., that while Salvador had quit school he, Salvador, still intends Wajslaw to regard him as grievanceman. As far as Hamilton was concerned, as Salvador was not abiding by the terms of the agreement, there was no longer any agreement. Therefore he instructed Wajslaw not to let Salvador punch in and to terminate him.

On Friday, August 13, Salvador visited Markonni and asked him whether he should sign the resignation letter.

⁹ G.C. Exh. 5.

¹⁰ Hamilton was asked by counsel for Respondent to relate in chronological sequence what was said by company and union representatives concerning Salvador's reinstatement. However, Hamilton did not make any reference to the critical June 8 "unofficial" meeting with Sendera and Belcher until asked on cross-examination. This meeting was critical because it revealed Hamilton's state of mind *vis-a-vis* Salvador resigning as grievanceman as early as June 8, the day he was discharged. According to Hamilton, Sendera and Belcher merely wanted to know whether the

Markonni told him that it was the only way he could return to work. Markonni then dictated a statement which Salvador wrote down and signed.⁹ Markonni told Salvador that he would be playing golf with Hamilton the next day and would inform him that he, Salvador, signed the letter. On Sunday, August 15, Markonni called Salvador and told him that Hamilton would accept the letter and that a meeting with regard to his status would be held on Monday. On Monday, August 16, at approximately 8:15 a.m. Salvador gave the signed handwritten letter, which was written in Markonni's office the previous Friday, to Martin at the Employer's facility. Later that morning Local Union President Foreman called Salvador and told him there would be a meeting that afternoon and asked Salvador whether he could make it. Salvador answered that he could attend the meeting. That afternoon Salvador attended a meeting with union and company officials which included International Representative Markonni and Company Officials Hamilton and Roberts. Hamilton reiterated that Salvador must remember that full employment meant that he must be by his machine 7 hours a day. That night Salvador went back to work and was still working at the time of the instant hearing.

B. Discussion

At the outset it is noted that the reason for the discharge on June 8 is not an issue herein. What is in dispute is whether the Respondent conditioned Salvador's reinstatement in whole or in part on his resignation as grievanceman. Respondent asserts that Salvador had overextended himself and it merely wanted assurances that he would engage in full-time employment before it would consider reinstating him. Thus it agreed to reinstate Salvador at the July 29 meeting when Salvador, with the Union's approval, agreed to quit school, curb his outside employment, and resign as grievanceman. Respondent avers that it reinstated the termination only when Salvador reneged on his agreement to curb his outside employment and resign as grievanceman. He apparently quit school as he had promised to do. Respondent denies that it insisted that Salvador resign as grievanceman, but rather it contends that it was Salvador who volunteered to take certain steps including resigning as grievanceman so that he could engage in full-time employment. According to Respondent, Salvador was permanently reinstated on August 16 only when it was satisfied that Salvador had freed himself of outside activities so that he could work full time. The evidence, however, does not support Respondent's position. There is substantial evidence in the instant record tending to demonstrate that Respondent made resignation a condition for reinstatement. In this connection, Bruno Sendera, former local union president, credibly testified¹⁰ that on June 8, the day Salvador was terminated, he,

Company would take Salvador back, and they received a negative answer from him. Sendera, on the other hand, testified that the meeting with Hamilton was lengthy. According to Sendera, he and Belcher did not ask to see Hamilton merely to determine what the Company was going to do but rather to urge Hamilton to give Salvador another chance. Sendera pointed out to Hamilton that at the time Salvador was allegedly caught sleeping he was at his machine and, therefore, Salvador was not cheating on the Company. Sendera voiced the opinion that Salvador was not engaged in a dischargeable offense. In view of Salvador's status as a union grievanceman,

Sendera, as local union president, and Bob Belcher, chairman of the grievance committee, met with Hamilton, manager of employee relations for Respondent, in a further attempt to get Salvador reinstated immediately. The aforementioned union officials met earlier that day with lower line company officials, and their answer regarding reinstatement was pending while Sendera and Belcher made an unofficial plea to Hamilton on Salvador's behalf. Sendera credibly testified that Hamilton told them that the only way he would consider taking Salvador back would be for him to resign from his union activities and be confined to an area where he wouldn't have the right to roam the shop as grievanceman. Hamilton did not say anything about Salvador's outside activities, i.e., outside job or schooling. According to Hamilton, the first time the subject of Salvador resigning as grievanceman came up was at a meeting called for by Markonni on July 27. Hamilton testified that Markonni informed the company representatives that Salvador was begging for his job, that he quit school, was willing to cut back on other job activities, and had volunteered to resign as grievanceman. Hamilton responded, "If he is willing to do those things that we would accept him to be reinstated." Indeed, the July 29 meeting was called only for the purpose of having Salvador give assurances personally to the company representatives that he "*understood the conditions under which he was coming Jack.*" (Emphasis supplied.) Thus, resignation as grievanceman was linked with quitting school and reducing outside employment as conditions precedent to reinstatement. According to Hamilton and Roberts, Markonni reiterated at the July 29 meeting what he had said at the July 27 meeting, including the fact that Salvador was resigning as union grievanceman. Hamilton reinstated Salvador only after Salvador agreed to the terms as expressed by Markonni. In contrast, Salvador credibly¹¹ testified that it was Hamilton rather than Markonni who first alluded to "resignation" by pointing out that he expected Salvador to be a full-time employee and "Give up that other thing." Salvador testified further that after the company representatives left the room the Union caucused. As Markonni

it would appear likely that the local president and chairman of the grievance committee would have devoted more time and effort in securing Salvador's reinstatement than attributed to them by Hamilton. Thus it appears that Sendera's account is more plausible than that provided by Hamilton. Further, Sendera, an employee of Respondent for 36 years in good standing, with no apparent direct interest in the outcome, appeared forthright and responsive, and I find his testimony is worthy of belief. On the other hand, on the basis of the foregoing and other reasons delineated *infra* and demeanor, I find Hamilton's testimony in critical areas to be unconvincing and unreliable.

¹¹ Salvador's testimony in critical areas was largely uncontradicted. Thus his uncontradicted testimony disclosed that, at the start of the midnight shift on August 5, Wajslaw, Salvador's immediate supervisor, pointed out to him that he could not work unless he signed the proper resignation form. The fact that Wajslaw, an admitted statutory supervisor, did not testify reflects adversely on Respondent. Further, Salvador's testimony relating to the various conversations with Markonni was uncontradicted. Counsel for Respondent in his brief argues that General Counsel's failure to call Markonni supports an inference that Salvador's resignation was solely an intraunion matter. I find otherwise. General Counsel established a *prima facie* case, *inter alia*, with Sendera's credible testimony that on June 8 Hamilton told him that he would only consider taking Salvador back if he, Salvador, resigned as grievanceman. Thus it would appear that at least it was as much in Respondent's interest as General Counsel's interest to call Markonni as a witness. Still further, Salvador's testimony in material respects was consistent with that given by Martin. In view of the foregoing

had on prior occasions made it clear to Salvador that the Company would take him back only if he resigned as grievanceman, he relented and asked to resign. Union Recording Secretary Martin, who attended the July 29 meeting, credibly testified he understood that the Company's reference to "full-time employee" was for Salvador to give up his grievance job and to submit a letter of resignation. Martin's testimony further tends to support Salvador's account of what transpired at the July 29 meeting. Salvador submitted a letter of resignation on July 30.¹²

The events of August 4 demonstrate even more poignantly that resignation was a condition precedent to Salvador's continued employment. In this regard, Salvador credibly testified that at approximately 7 a.m. on August 4 Union Recording Secretary Martin told Salvador that his letter of resignation was not satisfactory to either the Company or Markonni, and he handed Salvador a letter which he, Martin, stated was what they wanted. Salvador objected to the content of the letter and refused to sign. Martin warned Salvador if he refused to sign there would be no purpose in his going to work that night because he would be fired. At that time Local Union President Foreman approached them and Salvador inquired of him as to why he had to sign the letter. Foreman told him that he had nothing to do with it but that's the way the Company and Markonni wanted it done. According to Hamilton's uncorroborated testimony, Salvador is alleged to have stated to Wajslaw¹³ that he did not have to cut back on his outside job, that all he had done was quit school and that he, Salvador, would be dealing with Wajslaw as grievanceman. As far as Hamilton was concerned there was an agreement which included Salvador's resignation as grievanceman, and Salvador was not living up to the terms of the agreement. He immediately told Wajslaw not to let Salvador punch in but to terminate him. Hamilton took this action without attempting to contact Markonni or questioning Salvador as to why he was renegeing on the agreement.

This failure to do so reflects adversely on Hamilton's motive. It was Markonni who informed Hamilton that

demeanor and the record as a whole. I credit Salvador's testimony in all material respects.

¹² As previously noted, Union Recording Secretary Martin testified that he, in the presence of Local Union President Foreman, showed Salvador's letter of resignation to Roberts. According to Martin, Roberts remarked that "this isn't what he agreed to, as far as resignation," and then pointed out what would be satisfactory to the Company. Roberts, on the other hand, testified that Martin came into his office and asked him if he knew where Local Union President Foreman was because he had Salvador's resignation. Roberts asserts that he merely glanced at the letter and did not involve himself otherwise in any discussion concerning Salvador's resignation. Roberts testified that he did not inform his superior, Hamilton, of the resignation. However, Hamilton testified that he would expect Roberts to inform him of any conversation relative to Salvador's resignation. In this regard, one would expect Hamilton to be concerned with Salvador's resignation as it would be consistent with Hamilton's position on June 8 when he told Sendera that he would only take Salvador back if he resigned as union grievanceman. No explanation was offered as to why Roberts failed to inform Hamilton of the matter. In view of the history surrounding the disputed resignation, Roberts' attempt to treat the incident with Martin and Foreman regarding the resignation letter as inconsequential is not credible. In these circumstances I find Roberts' account of what transpired with Martin to be unconvincing. On the other hand I credit the testimony of Martin in all material respects.

¹³ Wajslaw, an admitted statutory supervisor, was not called upon to testify by Respondent.

Salvador had come to him because he had to have his job back and was willing to cut back all outside activities in order to be reinstated. According to Hamilton, Markonni's word is his bond and he believed that Markonni accepted his word on the same basis. Yet 1 week later Markonni telephoned Hamilton and informed him that Salvador was begging for his job and that he had Salvador's resignation in his hand. Hamilton did not remind Markonni that Salvador begged for his job once before and he had failed to live up to his agreement. No, he simply tells Markonni that if he, Markonni, is satisfied that Salvador will live up to the original conditions, he can return to work. Thus Hamilton's denial that he was not primarily interested in Salvador's resignation as grievanceman is unconvincing.

Salvador's uncontroverted testimony, on the other hand, reveals that he appeared at the Respondent's facility at approximately 11:55 p.m. on August 4, just prior to commencing his employment on the midnight or third shift, and discovered that his timecard was missing from the rack. The night-shift superintendent, Anderson, and Leo Wajslaw, Salvador's immediate supervisor, were standing near the rack. Wajslaw pointed out to Salvador that he could not work until he signed the resignation letter. Salvador was reinstated on August 16, but only after he signed a letter of resignation in the form which was satisfactory to the Company. It was undisputed that he had long before quit school. Thus, aside from resigning as grievanceman, the only other condition was the matter of outside or part-time employment. Yet the record is conspicuous by the absence of probative testimony regarding outside employment. The record does not reveal the names of other employers Salvador allegedly worked for or to what extent he agreed to cut back his outside work. The record is devoid as to the nature of the assurances Salvador gave Respondent concerning outside employment. Thus it appears that Salvador was reinstated only because he resigned effectively as grievanceman. In his brief, counsel for the Respondent relies heavily on the fact that Respondent did not expressly state at the meeting of July 29 that Salvador must give up his grievance job. According to Respondent, Salvador's resignation was solely an intraunion matter. However, Sendera credibly testified, over Respondent's objection,¹⁴ that Hamilton expressly told him on June 8 that the only way that he, Hamilton, would consider giving Salvador his job back would be for Salvador to resign from all his union activities so that he could be confined to an area where he wouldn't have the right to roam the shop as grievanceman. Further, Salvador's uncontradicted testimony reveals that Wajslaw, an admitted supervisor, told him that he could not work unless he signed the proper resignation letter. While it is conceded that Hamilton did not expressly state at the July 29 meeting that Salvador had to resign as union grievanceman, it is noted that there is more than one way to skin a cat. Thus Hamilton, who has been manager of employee

¹⁴ Counsel for Respondent in his brief renews his objection to Sendera's testimony regarding the June 8 session with Hamilton on the basis that it is outside of the scope of pleadings. It is noted that the complaint does not allege the aforesaid meeting as the basis of a separate violation and, accordingly, I deem it unnecessary to make a finding in this regard. However, the testimony was admitted over objection as evidence tending to show motive or state of mind. It has long been held that evidence reflecting

relations for Respondent the past 4 years and an experienced labor relations representative, displayed a degree of sophistication and subtlety by pointing out to Salvador that he must not have another job, go to school, "and that other thing. Give up that other thing." Hamilton was astute enough not to guarantee the filing of charges by insisting expressly, in a room full of labor relations people, that he must give up his grievance job. In these circumstances, noting particularly that Respondent concedes it had an agreement which included resignation, I find that Respondent's contention that it was merely concerned with Salvador's full employment in a context unrelated to Salvador's duties as grievanceman unpersuasive. Furthermore, it is noted that it is physically impossible for one to work full time, be restricted to one's work area, and yet function as a grievanceman. In this regard, Salvador testified that he devotes 15 hours a month on company time in processing grievances. According to Respondent, other grievancemen devote even more time in processing grievances. The foregoing further serves to underscore that resignation as grievanceman was implicit in Respondent's reference to full-time employment. Accordingly, I find that Respondent conditioned Salvador's reinstatement, *inter alia*, on his resigning as union grievanceman.

C. Conclusion

Having previously concluded that Respondent conditioned Salvador's reinstatement on his resignation as grievanceman, it remains to be determined whether Respondent in doing so violated the Act. While Respondent denies that it insisted that Salvador had to resign his grievance position, it does concede that it required him to agree to be confined to his work area and to work full time on production. In *Warner Gear Division, Borg-Warner Corporation*,¹⁵ a case involving the company's refusal to promote a shop steward because he was unwilling to give up his union office, the Board affirming a Trial Examiner (now known as Administrative Law Judge) found that the employer's desire for its employees to devote all of their production time to their work was a lawful policy. While the Board has not expressly overruled *Warner*, it has given it limited application. Thus in *Cameron Iron Works, Inc.*,¹⁶ wherein an employee had to decide between being a leadman and a steward or face demotion, the Board found a violation and expressed the following:

It will be apparent from this discussion that we feel constrained to give *narrow application* to the holding of *Warner Gear*. Employees' statutory rights should not be diluted in the absence of *compelling evidence* that other considerations require such limitations. Even then, only such limitations as appear to be reasonable and necessary to accommodate those considerations can be permitted. Where the facts, as here, indicate that much less restrictive measures could have preserved the

on motive is admissible. See *Darlington Manufacturing Company, et al.*, 165 NLRB 1074, 1079, fn. 8 (1967); *Edwards Brothers, Inc.*, 95 NLRB 1451, 1452, fn. 2 (1951); cf. *U.S. Rubber Company*, 93 NLRB 1232, 1233, fn. 2 (1951). Accordingly, I hereby reaffirm my previous ruling.

¹⁵ 102 NLRB 1223 (1953).

¹⁶ 194 NLRB 168 (1971).

freedom of employees and their union to designate a steward, we are unwilling to find that the Act permits the employer to impose the drastic measure of conditioning Baker's selection upon his acceptance of a demotion. [Emphasis supplied.]

The Board had in *Freezer Queen Foods, Inc.*,¹⁷ occasion to apply the foregoing principles to a contractual prohibition against leadmen serving as stewards. The record therein revealed, *inter alia*, that the parties were concerned about conflict of interest problems. Aside from the reasons delineated therein regarding the need for leadmen to be at the production line at all times, the parties expressed mutual concern about conflict of interest problems. Leadmen were prime candidates for supervisory positions and the Union regarded them as management oriented. The Board dismissed the complaint therein because it expressly found "compelling evidence" of legitimate considerations to justify the contractual restrictions.

More recently, the Board¹⁸ found the Respondent's refusal to recall a union shop steward and its subsequent recall conditioned upon his refraining from serving as the union steward violated the Act and concluded the following:

In these circumstances, we conclude that both Respondent's asserted reasons for refusing to recall Blake and its subsequent conditional recall of Blake were of an arbitrary, if not pretextual, nature, falling far short of *any compelling justification based upon legitimate considerations*. [Emphasis supplied.]

An examination of the instant record reveals a dearth of factors tending to justify Respondent's action. The record does not disclose, nor does Respondent contend, that Salvador's duties as grievance man interfere with his responsibilities as a production employee. According to Hamilton, Salvador's activities in pursuing grievances were much less than other grievance men. In these circumstances and the record as a whole, I find that Respondent failed to demonstrate any compelling justification based on legitimate considerations to condition Salvador's reinstatement on his resigning as grievance man. I further find that the natural and foreseeable consequence of Respondent's unlawful conduct was to discourage active membership in the Union by its employees and particularly to discourage employees from serving as grievance men on behalf of the Union, thereby violating Section 8(a)(3) and (1) of the Act.¹⁹

III. THE REMEDY

Having found that Respondent, from July 30, 1976, has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act by conditioning the reinstatement of Salvador on his resigning

as union grievance man, I shall recommend that it cease and desist therefrom and from any like or related conduct hereafter. I shall also recommend affirmatively that Respondent make Richard Salvador whole for any loss of earnings he may have suffered during the aforesaid period²⁰ as a result of the discrimination against him, less his net earnings during that period, with backpay and interest to be computed in the manner prescribed by the Board in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Isis PlumJing & Heating Co.*, 138 NLRB 716 (1962). Additionally, I shall recommend that Respondent notify the Union, in writing, with a copy to Salvador, that it has no objection to his serving as union grievance man.²¹

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
 2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
 3. By conditioning the reemployment of Richard Salvador from on or about July 30 upon his resignation as grievance man for the Union, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.
 4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.
- Upon the foregoing findings of fact, conclusions of law, and the entire record in this proceeding, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER²²

The Respondent, Allis-Chalmers Corporation, Harvey, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:
 - (a) Conditioning the reinstatement of Richard Salvador upon his refraining from serving as union grievance man.
 - (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act.
2. Take the following affirmative action which will effectuate the policies of the Act.
 - (a) Make Richard Salvador whole for any loss of pay or other benefits he may have suffered as a result of the discrimination against him in the manner set forth in the section hereof entitled "The Remedy."
 - (b) Notify United Steelworkers of America, Local 1091, in writing, with a copy to Richard Salvador, that it has no objection to Salvador serving as union grievance man.
 - (c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due, as herein provided.

¹⁷ 215 NLRB 638 (1974).

¹⁸ *Dravo Corporation*, 228 NLRB 872 (1977).

¹⁹ See *Northeast Constructors, Division of Cives Corp.*, 198 NLRB 846, fn. 21 (1972); *Dravo Corp.*, *supra*.

²⁰ It is noted that Salvador returned to work permanently the night of August 16, 1976.

²¹ See *Dravo Corporation*, *supra*.

²² 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.

(d) Post at its facility at Harvey, Illinois, copies of the attached notice marked "Appendix."²³ Copies of said notice, on forms provided by the Regional Director for Region 13, after being duly signed by the Respondent's authorized agent, shall be posted by it immediately upon receipt thereof, and be maintained by the Respondent for 60 consecutive days thereafter, in conspicuous places,

²³ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a

including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 13, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

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