

**Allis-Chalmers Corporation and Trent Morrison. Case 30-CA-3526**

April 29, 1977

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS  
JENKINS AND MURPHY

On October 28, 1976, Administrative Law Judge William F. Jacobs issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and the Respondent 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 brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

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 and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

DECISION

STATEMENT OF THE CASE

WILLIAM F. JACOBS, Administrative Law Judge: This case was heard before me on June 17, 18, and 21, 1976, at Milwaukee, Wisconsin. The charge was filed on February 19, 1976, by Trent Morrison, an individual. Complaint issued April 26, 1976, alleging that Allis-Chalmers Corporation, herein called Respondent, violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, by discriminatorily assigning Morrison onerous jobs in disproportionate numbers and suspending him for 1 day because of his union and/or protected activity. The answer admitted the jurisdictional allegations but denied the commission of any unfair labor practices. These allegations and the answer frame the issues.

All parties appeared at the hearing and were afforded full opportunity to be heard and present evidence and

<sup>1</sup> General Counsel filed a motion to correct transcript. I find the requested corrections warranted and they are granted by Order issuing simultaneously herewith.

<sup>2</sup> Morrison testified concerning this incident in two different ways. At one point it appears from the record that Fowler was unhappy with Morrison for some unknown reason, threatened to fire him for whatever that reason was and simply added the notion that his father, even though he was a steward, would not be able to prevent it. During later testimony,

argument. General Counsel and Respondent filed briefs.<sup>1</sup> Upon the entire record, my observation of the demeanor of the witnesses and after giving due consideration to the briefs, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, a Wisconsin corporation, is engaged in the production of tractor castings at its facility in West Allis, Wisconsin. During the past calendar year, a representative period, Respondent purchased and received at its Wisconsin location, goods valued in excess of \$50,000 directly from points located outside the State of Wisconsin.

The complaint alleges, the answer admits, and I find that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Local 248, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW), herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

Morrison's history of employment

Trent Morrison was hired by Respondent on April 2, 1973, and employed in the cleaning room of the foundry, Department 1591 in the classification, casting chipper-production. He had been recommended to the Company by his stepfather Nevers Pittman, an employee who later became a steward.

Morrison was initially assigned to work on the first shift but after a short period of time was transferred to the second shift and assigned to work under Foreman Quincy Gill and Argie Fowler. Morrison testified that from the very beginning Fowler took a disliking to him. His dislike was manifested through Fowler's cursing him and watching him so closely that he could not leave his work station. In an incident which occurred in 1973, Fowler approached Morrison at his work station and told him that he was going to fire him and added that his father was not going to help him.<sup>2</sup> Despite Fowler's attitude toward Morrison, however, it does not appear from the record that he was treated any differently from the other employees with respect to work assignments during the 3-month period that he worked for Fowler. Fowler testified, however, that Morrison during this period failed to attain standard under Respondent's incentive plan but there is no indication that Morrison was in any way reprimanded for low efficiency at that time.

Morrison stated that he thought Fowler had said that he was going to fire him because his father was a steward. I find that the former statement was made, rather than the latter, and is not violative nor evidence of union animus but merely recognition of the probability that the father would in all likelihood attempt to save his son's job for him. Moreover, Morrison testified that Fowler harassed him before he learned that Pittman was his father.

On May 6, 1974, Morrison was transferred to the coreroom of the foundry and assigned the classification of coremaker-production finish. His foreman was Jeff Antonic.

On August 2, 1974, Morrison was discharged for excessive absenteeism but was reinstated without loss of pay or benefits following an arbitrator's decision that the discharge was improper because the Respondent had failed to give Morrison and the Union proper notice that Morrison's medical reasons for his absences were not acceptable, such notices being required by the contract.<sup>3</sup> Although Morrison had been working under Antonic at the time of his discharge, upon reinstatement on August 11, 1975, Morrison was once again assigned to the foundry cleaning room to work in the classification of casting chipper-production under Fowler and Gill, a job which Respondent contends and General Counsel does not contest is of like status and pay as the one he held when discharged. Approximately six terminated employees have been reinstated at Respondent's plant following arbitration but none to the foundry other than Morrison. There is no evidence that Respondent discriminated against any of these other reinstated employees.

#### The nature of the work

The type of work to which Morrison was assigned upon reinstatement required him to pick out for grinding various parts from a large box delivered to his work station by a forklift truck. The box contained a mixture of different types of castings, each requiring a somewhat different grinding operation to be made upon it on a stand grinder, after which handtools had to be used in order to reach the more inaccessible parts of the castings. After the grinding operation was completed on the castings they were stacked on a pallet which was eventually removed by a forklift driver who then replaced the stacked pallet with another one to be similarly stacked by the employee.

Production was covered by a Standard Hour Incentive Plan which allowed a specified length of time to grind each type of casting. Each operator was required to grind several different types of castings, and each casting had its own specific time allotment assigned to it for completion of the grinding operation. Though the time allotment or standard assigned to each type of casting had been carefully calculated and was the subject of the collective-bargaining agreement in effect at the plant, the operators had preferences as to the types of castings they wanted to work on, and found, for one reason or another, some types easier on which to make standard than others. If, based on these standards, an operator produced in excess of 108 percent of

that number of pieces he was expected to produce in an 8-hour day, he received incentive pay calculated on the basis of the number of extra pieces produced as translated into hours. An operator who produced over standard efficiency (108 percent) was said to be "making out." If he failed to operate at 108 percent efficiency, he was considered to be performing in a substandard manner, producing less than a full 8 hours' work per day, but nevertheless received a guaranteed hourly rate. Operators who consistently failed to meet the standard were subject to reprimand or disciplinary action.

#### Morrison's assignment to grinder 3

When Morrison was reinstated in August 1975, he was assigned by Fowler<sup>4</sup> to work on grinder 3, apparently with the approval of Fowler's superior, Quincy Gill. About 2 weeks after Morrison was back on the job, Fowler approached him at his work area and initiated a conversation during which he stated that he was surprised to see him, that Jeff had made a mistake, that he was going to get him and that his father wasn't going to help him this time.<sup>5</sup> Fowler denied making this statement.

General Counsel contends that, upon the reinstatement of Morrison, Fowler began to treat him differently than he had prior to his termination. More specifically General Counsel charges that because Morrison's father is a steward and because he was successful in obtaining a favorable decision from the arbitrator, including reinstatement and backpay, Respondent discriminated against him by assigning him to grinder 3, a machine upon which General Counsel contends it is difficult, if not impossible, to produce up to the standard required. Additionally, General Counsel further contends that Respondent discriminated against Morrison for the same reasons by the method used to assign him jobs, by assigning him an inordinate number of tractor weights to grind, a particularly onerous item to work with, and through general harassment, treating him in a disparate manner relative to other employees. Respondent contends that Fowler was unaware of the arbitrator's decision providing for reinstatement of Morrison with backpay. I find Respondent's position untenable in light of employee Maye's credited testimony that, on one occasion following Morrison's return, Fowler described Morrison as "the guy who got the backpay." Fowler was aware of the arbitration case, decision and Morrison's reinstatement.

#### Grinder 3

As noted above, immediately upon reinstatement, Morrison was assigned to work on grinder 3 where he remained,

such a statement and if he said anything similar to it, I interpret it as meaning that Fowler felt that Morrison was a substandard employee who never should have been reinstated on the basis of what he, Fowler, felt was a technicality and that, assuming Morrison continued his substandard performance, he would terminate him, and his father, Nevers Pittman, would not be able to save his job this time as the Union had done when Morrison was terminated by Jeff Antonic. It should also be noted that Morrison never filed a grievance over this alleged threat, never discussed it with his fellow employees although he frequently discussed with them other conversations which he had had with Fowler, and most importantly, Pittman could not recall Morrison discussing the threat with him. Under the circumstances I cannot credit Morrison.

<sup>3</sup> Although the arbitrator found in Morrison's favor, he noted that the evidence adduced at the hearing "raised serious questions about the medical justification for Grievants' absences."

<sup>4</sup> Respondent contends that the assignment was made by Gill alone because Fowler was not working the same shift as Morrison. Morrison and Pittman testified that he was assigned to grinder 3 by Fowler. Respondent did not offer company records into evidence to support its contention that Fowler and Morrison were on different shifts. I therefore credit Morrison and Pittman with regard to this matter.

<sup>5</sup> It should be noted that this statement, alleged by Morrison to have been made by Fowler in August 1975, is similar in content to the statement allegedly made in 1973 see fn. 2, *supra*. I credit Fowler that he did not make

except for a few weeks, until April 1976. Although other employees were occasionally assigned to grinder 3 they usually were, after a short period of time, reassigned to other grinders. Only Morrison remained on grinder 3 for any extensive period.

Grinder 3 was referred to by Supervisor Quincy Gill as his "punishment grinder."<sup>6</sup> According to General Counsel, grinder 3 had several unsatisfactory features connected with it that made it difficult and almost impossible to meet the required production standard under the contract. Thus there was testimony that grinder 3 had a smaller grinding wheel than grinders 1 and 2, no conveyor or hoist, and the area in which its operator worked was so congested that material drivers delivering parts to be ground were unable to place these parts as close to grinder 3 as they could to grinders 1 and 2. Although the witnesses who offered this testimony did not work on grinder 3 for more than a few days, they did work sufficiently close to it to be able to observe the problems connected with its operation. Moreover, they credibly testified that when they did work on grinder 3 they could meet production standards on castings other than weights, but when grinding tractor weights, they could not meet the standard. This was because whereas grinders 1 and 2 were specifically set up to handle tractor weights, grinder 3 was not. Thus, General Counsel's witnesses testified that the grinding wheels on grinders 1 and 2 are larger, coarser, harder, and more long lasting than those used on the other stand grinders. These wheels, since they are harder, maintain their width longer and are therefore better for grinding tractor weights, in particular the hook section of the weights. If the stand grinders cannot be used to grind the hook areas of the tractor weights because they are worn or for any other reason, the weights must be ground by hand. This cuts down on production and may result in the operator failing to meet the production standard. Respondent concedes that grinder 3 is different from grinders 1 and 2 but points out that at least with respect to the size of the grinding wheels, grinder 3 is the same as grinders 4 through 8. In this regard Respondent's witnesses testified that the size of the wheel made no difference but when asked about the comparative softness of the stones, Respondent's supervisor of industrial engineering stated that he did not know whether or not there was a difference in this regard. I therefore credit General Counsel's witnesses on this point because they clearly demonstrated greater personal familiarity with the equipment in this respect than did Respondent's witnesses.

Similarly, employee Maye testified that the fact that grinders 1 and 2 were operated in conjunction with the use of a conveyor whereas grinder 3 was not so equipped, made it impossible to meet the production standard on grinder 3 when tractor weights were being ground because without the conveyor the operator had to hand-carry the weights, and the walking time thereby made necessary for the operator on grinder 3 cut down significantly on his actual grinding time and therefore his production. Moreover, the conveyors could hold more weights than could the tables used on grinders 3 through 8 so that there was less interruption in production for operators of grinders 1 and

2. It was not until Morrison was about to be transferred in April 1976 that grinder 3 was equipped with a conveyor. Although Respondent's witnesses testified that the prescribed method for running tractor weights does not call for the use of a conveyor, I find this argument of little moment inasmuch as operators did in fact use the conveyors when available and did thereby improve their production. In this respect I find that operators of grinders 1 and 2 were benefited by the use of the conveyor and operators of the other grinders were relatively inconvenienced by the lack thereof.

Similarly there was testimony from several of General Counsel's witnesses that grinder 3 was inferior to grinders 1 and 2 because the former did not always have a crane at the operator's disposal, whereas the latter did have this convenience to aid the operator in lifting the 60- to 80-pound tractor weights from the bottom of the box in which they were delivered thus making handling easier. As was the case with regard to the use of the conveyor, I find Respondent's contention that the procedure for running tractor weights does not provide for the use of a hoist to be irrelevant, since it was the practice of the grinder operators to use hoists when available and the use of them was clearly a convenience. Likewise I am convinced by the testimony of General Counsel's witnesses that grinder 3 was inferior to grinders 1 and 2 with respect to the availability of adequate air pressure and space in which to work. The supply of air pressure is indispensable to any employee attempting to meet standard because inadequate air pressure adversely affects the speed with which the grinding can be done. Grinder 3 does not have full air pressure when grinder 2 is in use. None of the other grinders have similar problems. Similarly the spaces around grinders 1 and 2 are adequate to permit the proper positioning of boxes of parts, whereas the forklift truckdrivers have difficulty positioning the boxes of parts for the operators of grinders 3 through 8. This is because the cramped service aisles at grinders 3 through 8 necessitate additional waiting for parts to be delivered and require an excess of walking for the operators of grinders 3 through 8 to get from their box of parts to their grinder, then to their pallet with a consequent loss of incentive working time for both reasons. This is particularly true where the parts being ground are the heavier ones such as tractor weights. Though Argie Fowler testified on behalf of Respondent contrary to General Counsel's witnesses that boxes of parts could be placed equally close to the operators of grinders 3 through 8 as to grinders 1 and 2, I credit those neutral employee witnesses called by General Counsel.

From the testimony of the witnesses called by General Counsel it seems patently clear that grinders 1 and 2 are far superior to grinder 3 and that the testimony of employees Maye, Knox, and Stark prove conclusively that it is impossible for an employee to meet standard on grinder 3 if he is working on tractor weights alone. Similarly, the testimony to the effect that Supervisor Gill referred to grinder 3 as the "punishment grinder" is credited, for I believe that management was aware of its drawbacks. The testimony is not so clear as to the relative superiority of

grinders 1 and 2 were already in operation. To this request Gill replied that he was "too good a man," that grinder 3 was his "punishment grinder."

<sup>6</sup> Employee Maye credibly testified that when he was transferred to the first shift, he requested that he be assigned to operate grinder 3 because

grinder 3 as compared to grinders 4 through 8 although employee Maye testified that grinder 3 was less cramped for space than some of the others and was a better machine than grinders 4 and 5. Employees Maye and Stark were assigned to grinder 1 and employee Knox to grinder 2. Morrison worked on grinder 3 and an employee named Boyd worked on either grinder 4 or 5. The record does not indicate who was assigned to the other four grinders although each employee is assigned to a particular grinder. Grinders 7 and 8 were broken down for at least a part of the time.

Although the record reveals that Maye, Stark, and Knox met the standard of production on grinders 1 and 2 and Morrison never succeeded in meeting the standard, it cannot be concluded that it was solely because grinder 3 was inferior that Morrison failed to make standard because there appears little or no difference between grinder 3 and grinders 4 and 5, upon which Boyd was employed, and Boyd successfully met the standard on many occasions. Moreover, Stark, the grinder with the highest efficiency, testified that although he could not make out on grinder 3 if he worked solely on weights, he could make out if he worked on castings other than weights. Since, according to documentation in the record, Morrison did not work on weights for some 10 weeks after his assignment to grinder 3 on August 11, I find such assignment to be nondiscriminatory. From the totality of testimony, I also conclude that the grinder assigned to Morrison upon his return to work in August 1975, although inferior to grinders 1 and 2, was not necessarily inferior to grinders 4 through 8. I also find that Morrison's assignment to grinder 3 was not the sole reason for his failure to meet the standard requirements because employee Boyd was successful in making standard on grinder 4 or 5 which I have found equally inferior to grinders 1 and 2. The cause of Morrison's failure to make standard must, at least in part, be found elsewhere, particularly since it was quite possible to make out on grinder 3 when grinding castings other than tractor weights.

#### Tractor weights

General Counsel contends that Morrison's failure to make standard is not only the result of his being assigned to work on grinder 3 but a combination of factors including his assignment to grinder 3, Fowler's discriminatory means of assigning jobs to Morrison, plus the inordinate number of tractor weights assigned by him to Morrison. The grinding of tractor weights, in and of itself, General Counsel contends, is an onerous job and the testimony offered by witnesses tends to support this contention. Thus, the tractor weights weigh, on the average, 68 pounds whereas other items ground by the stand grinders are much lighter; lift arms for example weigh 20 to 30 pounds. If a grinder has the use of a hoist and conveyor as did the operators of grinders 1 and 2, the job is considerably less onerous and therefore it is easier to meet the standard. This, in part, accounts for the ability of Stark and other operators of grinders 1 and 2 to meet standard. The story is different, however, where the operators of grinders 3 through 8 are, as noted above, working without these conveniences. The record is replete

with testimony that the employees find these particular pieces far more difficult to work with than the smaller pieces and have trouble meeting the standard. I so find.

General Counsel contends that Fowler assigned jobs to Morrison in a discriminatory manner, by assigning him an inordinate number of tractor weights as compared to other less onerous jobs. There is little doubt that Fowler had full authority to assign whatever jobs he wished to whatever operator he chose without his decisions being questioned. He was admittedly in such a position of authority that he could, in fact, accomplish the discriminatory result attributed to him by General Counsel if he chose to do so. On the other hand, he could also assign work in such a way as to make certain that each of the grinders working under him received a relatively equal number of difficult or easy jobs, and these figures would be reflected in the company records made available as exhibits at the hearing. If, however, Fowler's primary consideration was increased production without regard to either discriminatory motivation or equalization and fairness in assignment, the pattern of assignments would not necessarily or conclusively prove the existence of either subjective consideration. Thus, Fowler might determine that although one job is far more difficult than another, and it would be unfair to assign it in inordinate numbers to one employee rather than to another, he might nevertheless choose to do so if in his considered judgment, greater production would result. Similarly, Fowler might reason that an employee incapable of meeting the standard on any job assigned, might just as well be given the more onerous tasks since, as no loss of production would result, the more able employees would be rewarded by being assigned fewer onerous tasks and the less able employees might thereby be induced to try harder to meet standards on the easier jobs if they were made aware that failure to make standard on the easier jobs would result in their being assigned more onerous jobs. Any or all of these motivations could determine the basis upon which a foreman might assign jobs, given the authority which Fowler possessed.

Tractor weights are considered by Respondent to be a priority piece and every effort is made to see that production of tractor weights takes precedence over the production of other pieces. Unhappily, the employees, as noted above, consider the job of grinding tractor weights one of the least desirable assignments and while management emphasizes the necessity of pushing the production of tractor weights to meet the required quota, the employees appear to do whatever they can to avoid grinding these specific pieces. The result of this dichotomy of interests is a certain amount of jockeying between lower management, Fowler, attempting to implement Respondent's program, and the employees, who avoid, where possible, the more onerous tasks. Thus, whenever an employee reporting to work finds that the box that has been left next to his grinder by the previous shift contains a large number of tractor weights, he will switch boxes in order to obtain a box containing fewer weights. Employees switch boxes, according to credited testimony, as often as they can "get away with it." Admittedly, the employees switch boxes only when Fowler is not around. Fowler, however, if he notices employees working on other pieces when tractor

weights have to be done pulls those boxes and replaces them with boxes containing tractor weights. He frequently does this as a matter of course in order to get the priority work done first, not simply because an employee has switched boxes. With regard to this matter, General Counsel contends that Fowler was in the habit of permitting other employees to switch boxes while discriminatorily keeping Morrison from doing it. Employee Knox testified, however, that Morrison seldom attempted to switch boxes because, in his opinion, it would not have done him any good since he would be back on weights again as soon as Fowler saw him working on something else. But Knox also testified that on occasions he would have other pieces taken away from him by Fowler and given weights to grind. This, according to Knox also happened to other employees. He testified also that sometimes there was nothing to work on but tractor weights and on other occasions he would work on tractor weights though other pieces were available because he knew they had to be done, that tractor weights were priority pieces.

When an employee finishes grinding a box of parts, he usually searches out another box containing the easier pieces to work on and, if he is not assigned a specific job by the foreman, he is permitted to choose his own work in this manner. All of the employees are free to choose their own work if there is nothing of a priority nature which must take precedence. Knox noted, however, that whenever Morrison attempted to choose his own work, he would invariably be assigned tractor weights by Fowler. He stated that this had not always been the case but that he first noticed Fowler's disparate treatment of Morrison in late November after he, Knox, returned from an extended leave. Knox also testified that beginning in late November 1975, Fowler and Knox engaged in frequent and loud arguments during which Fowler criticized Morrison's lack of production and absenteeism and Morrison, in turn, objected to his being assigned weights to grind. The documentary evidence, in so far as it bears on Knox's testimony concerning these arguments between Fowler and Morrison, indicates that although Morrison returned to work on August 11, 1975, he was not assigned to work on tractor weights until pay period 45, October 27 through November 2, 1975. During this 10-week period running from August 11 through October 27, 1975, despite the fact that Morrison was assigned none of the onerous tractor weights to grind, he nevertheless failed to meet the production standard as required even once and averaged over the period little over 50 percent efficiency. It is clear from the testimony and supporting documentation, then, that if Morrison was in fact the victim of disparate treatment, involving the assignment of onerous tasks, such treatment did not occur, at least until Morrison was back on the job for 10 weeks and had been completely free of such assignments for that period of time. Also, it should be noted that from August 11, 1975, until February 22, 1976, when he filed the instant charge, Morrison was responsible for only 6 percent of the total production of the tractor weights in question whereas Stark, Maye, Boyd, and Knox produced 24 percent, 20 percent, 16 percent, and 8 percent, respectively. I find then, that at least during the first 10

weeks of reemployment, Morrison was not disparately assigned more onerous tasks than other employees.

Morrison himself testified that on occasions he asked Fowler if he could choose his own jobs. Fowler on one of these occasions commented that Morrison was there to work, not to play games, and that Fowler would choose the jobs for Morrison. When Morrison and Fowler discussed Morrison's low efficiency, Morrison blamed it on the assignment of weights. Fowler, however, told Morrison that he was walking around too much and that this was the reason for his low efficiency.

There seems little doubt that Morrison was the victim of disparate ill treatment. His testimony that Fowler made him restack his work because "it was not pretty enough" and on other occasions sent back work to be reworked after it had passed inspection is credited and lends credence to the allegation that Morrison was also discriminated against by the assignment of an inordinate number of onerous jobs. The question remains, however, when and for what reason was Morrison the recipient of such treatment.

General Counsel, in support of its allegation concerning the assignment of an inordinate number of onerous jobs points out that during pay periods 7, 8, and 9 in February 1976, Morrison worked 78.25 percent, 51.25 percent, and 86 percent of his total working time, respectively on tractor weights while the other operators worked a far lesser percentage of their time on this type of work. From this cold data it would appear rather conclusively that for one reason or another Morrison was, in fact, assigned to work on the tractor weights a greater part of his working day than were the other grinder operators during the period February 2, 1976, through February 20, 1976. But granting, *arguendo*, that such assignments were disparately made, a similar evaluation of the assignments made during the previous 3 pay periods indicates that during pay periods 4, 5, and 6 covering the period January 12 through February 1, 1976, Morrison worked only 29 percent, 1 percent, and 48 percent of his working day on tractor weights. During pay period 4, employees Boyd and Knox spent 58 percent and 43 percent of their time on tractor parts compared to Morrison's 29 percent. During pay period 5, Stark and Maye spent 90 percent and 19 percent of their time grinding tractor weights, while Morrison spent only 1 percent of his time at such work. Suddenly in pay period 6, the percentage of time spent by Morrison on grinding tractor weights dramatically increased from the 1 percent in pay period 5 to 48 percent in pay period 6, while Maye, Stark, and Knox spent 22 percent, 38 percent, and 12 percent, respectively, on the onerous job in question. It would appear that if Respondent or one of its officers suddenly decided to make life difficult for Morrison by having him assigned an inordinate number of tractor weights, the decision and implementation of that decision occurred during pay period 6, that is, between January 26 and February 1. By pay period 11, the first week in March, Morrison was spending 100 percent of his working time grinding tractor weights. Since Respondent is clearly concerned with production efficiency as evidenced by the 44 warning notices issued to its employees documented in the record, the question cries out for explanation as to why

Respondent should insist in January and February 1976 on Morrison spending an even larger proportion of his working time grinding tractor weights when over a period of months it must have become apparent to everyone that Morrison was unable or unwilling to meet the standard. Fowler's testimony that he treated all employees equally insofar as assignments are concerned is credited for the early months of Morrison's reinstatement. I further find, however, that in late January or early February 1976, Fowler did, despite his denials, undertake a campaign of harassment against Morrison by assigning him a grossly inordinate number of onerous jobs, namely the grinding of no. 26-788100 tractor weights. Where testimony of neutral employees concerning incidents in support of this allegation was offered without context as to time, the incidents described are deemed to have occurred in this latter period of Morrison's reemployment, and is so credited, largely because documentation in the record supports the conclusion that the assignment of an inordinate number of tractor weights did not occur until Morrison was back on the job for several months.

#### Morrison's production and relationship with Fowler

As noted above, from August 11, 1975, until October 26, 1975, Morrison was assigned no tractor weights to grind and despite this fact failed to make out or even produce over 87 percent of efficiency. During this period he averaged approximately 52 percent of efficiency. His supervisor, noting his low production and his very frequent absences from his work station, asked on several occasions why "he was walking," that is, why Morrison was away from his machine. On these occasions Morrison would reply that he was going to the men's room. Fowler testified that every time he turned his back, Morrison would be gone.<sup>7</sup> Other witnesses testified to the fact that Morrison was frequently away from his work station and that Fowler berated him numerous times because of it. Fowler further testified that he talked to Nevers Pittman, the steward and Morrison's father several times to see if together they could "rehabilitate" him to increase his efficiency. Pittman acknowledged that this had occurred and though he promised Fowler that he would help try to bring up Morrison's efficiency, he was unable to do anything about Morrison's failure to produce or about his wandering away from his machine, primarily because he was busy with his own duties. When Fowler counseled Morrison to remain at his work station, he neither received a reply from Morrison nor any later indication of improvement either in efficiency or in his work habits.

On November 12, 1975, Fowler sent Morrison a written warning, reminding him of an earlier verbal warning

concerning his low production efficiency, noting Morrison's subsequent failure to improve and warning him further that continued low efficiency could result in disciplinary action, possibly a layoff based on his inability to produce. On November 17 Fowler followed up his written warning to Morrison with a note to Foundry Foreman Olson in which he stated that Morrison had been given both verbal and written warnings about his low production but that his efficiency had gone down anyway.<sup>8</sup> Fowler advised Olson that Morrison had been working on the same type of castings on which other employees had been making out successfully. He stated that it seemed to him that Morrison did not want to make out and drew Olson's attention to the fact that Morrison had been going to the nurse just about everyday and concluded, "The man just walks around." Meanwhile, when Morrison received the written warning from Fowler on November 12, he contacted Pittman and complained about it. The result was that a grievance was filed November 14 in which Morrison claimed that his low efficiency was not always his fault because the foreman was requiring him to do excess work on each piece. The grievance charged Respondent with prejudice against Morrison on grounds that other employees in the department were not required to produce 100 percent efficiency while Morrison was threatened with layoff unless he met the standard.<sup>9</sup> Shortly after Morrison filed the grievance, Fowler returned a copy to Morrison and stated, "These monkey ass grievances ain't going to help you none because it just shows the company how much I want my job."<sup>10</sup> Morrison's grievance was rejected on November 24 on grounds that his foreman was not requiring him to do excess work, the pieces assigned to him were the same as those assigned to other employees<sup>11</sup> who were able to meet standard while performing the same work, and Morrison too would be required to meet the same standard demanded of other employees.<sup>12</sup> Meanwhile, on November 18 General Foreman Olson, on the basis of Fowler's communication, made the decision to assess a 1-day disciplinary layoff for low efficiency against Morrison. The official disciplinary notice was placed in Morrison's file on November 20. At this time Morrison was producing at 74 percent efficiency while Stark, Maye, and Boyd were producing at 140 percent, 151 percent, and 179 percent efficiency. Production of the onerous tractor weights by Stark, Maye, Boyd, and Morrison during this period were 782, 426, 613, and 114 respectively.<sup>13</sup> Employees Townsend and Butler, not otherwise involved in this case, produced 256 and 295 tractor weights, respectively. Thus, even taking into account the fact that Morrison was on disciplinary layoff November 18, it appears that he was underproducing while not disparately overburdened with tractor weight assignments. I conclude from these facts that

insist that Morrison produce up to standard, and Morrison's propensity to file grievances would not keep Fowler from persisting in pressuring Morrison to produce.

<sup>11</sup> No documentation was offered by Respondent or General Counsel to prove or disprove this assertion as it refers to this period of time.

<sup>12</sup> This grievance was not processed further.

<sup>13</sup> From September 22, 1975, through mid-November, Knox was on leave and according to Fowler's credited testimony, Morrison operated grinder 2. Though operating one of the better grinders, Morrison still failed to make standard. It is also of note that Morrison was offered the opportunity to operate grinder 1 but declined the offer.

<sup>7</sup> I credit Fowler's testimony that Morrison was frequently away from his work station and for that reason Fowler watched him more closely than other employees. Based on these findings, I conclude that Fowler's closer observation of Morrison was legitimately work related, not harassment allegedly in violation of the Act.

<sup>8</sup> The records indicate that Morrison production efficiency during the 3 previous weeks had been 41 percent, 60 percent, and 66 percent.

<sup>9</sup> Contrary to this contention, Respondent issued warnings to a large number of employees for failure to produce efficiently and disciplined several of them severely.

<sup>10</sup> I interpret this statement to mean that Fowler intended to continue to

the 1-day suspension assessed against Morrison was based on his failure to produce efficiently and not for reasons violative of the Act.

With Morrison's continued failure to make out on the stand grinders, Pittman requested that Fowler transfer Morrison to the production line to work on transmissions to see if his production efficiency might increase. Fowler agreed and both Pittman and Fowler instructed Morrison on the operation. Morrison worked in this area 3 days but failed to make production, evidently because of inexperience with the work. On the third day, following a near accident involving one of the 3,000 pound castings almost falling off the conveyor, Fowler took Morrison off the job and put him back onto the standup grinder. According to Fowler neither Pittman nor Morrison objected when Fowler decided to take Morrison off the transmissions. General Counsel points to Fowler's decision to transfer Morrison from the transmission line back to the stand grinders as an indication of animus. However, it appears patently clear that since Fowler need never have offered the transmission job to Morrison in the first place and did so only at the behest of Pittman, he did so in order to help raise Morrison's efficiency and returned him to the stand grinder job only after he failed to work out on the transmission line. If Fowler bore Morrison animus at this time, he would never have transferred Morrison to the transmission line initially. On the contrary, Fowler's several attempts at obtaining Pittman's cooperation in trying to rehabilitate Morrison and his agreeing at Pittman's request to try Morrison on the transmission line convinces me that, at least at this time, Fowler bore no animus toward Morrison either because Pittman was his father or because he won the arbitration case against Respondent. Fowler by mid-November had been aware for years that Pittman was Morrison's father and not only never took any action against Morrison before but seemed to get along and cooperate with Pittman to benefit Morrison whenever possible. He certainly demonstrated no animosity toward Pittman so I can conceive of no possible reason why he should bear Pittman's son ill will because he is his son while bearing no apparent ill will toward Pittman. Similarly, if Fowler was concerned with the reinstatement of Morrison following his winning of the arbitration award,

<sup>14</sup> In late December an incident occurred which General Counsel contends proves both animus on the part of Fowler toward Morrison and discriminatory motivation. Maye credibly testified to the occurrence of this incident generally as follows: Fowler approached Maye in the lunchroom cafeteria toward the end of the shift and initiated a conversation with him by asking him if he had made out yet. Maye replied that he had, whereupon Fowler suggested that Maye could bring up his production even further. Maye, who was chipping at the rate of 10 hours per night, suggested that if he increased his production the Company might cut the price on the job. Fowler then opined that Maye and Stark were the only employees who could make so many hours. At this point Maye asked Fowler if he read "The Trouble Shooter," a newsletter, distributed by a certain group of employees who call themselves the Trouble Shooters. Fowler then stated that Jim Allison, a metallurgist, regarded by Maye as a member of management, had come down to the foundry "to see who that Dulberger guy was." Maye identified Dulberger as the probable publisher of "The Trouble Shooter." Fowler continued the discussion by stating that the Company was going to set a trap for Dulberger and that he was going to walk right into it. What the trap was or precisely why it was being set for Dulberger, is not clear from Maye's testimony. The implication is, however, that it probably had something to do with an article appearing in the newsletter which Allison and Fowler found objectionable. Maye testified with regard to this

he would certainly have manifested his animosity when Morrison was first reinstated on August 11. Instead, as late as mid-November he continued to try to find means to help Morrison meet standard, either by transferring him or by seeking to get his father to convince him to increase his production. Where the Fowler/Morrison relationship was marked by friction, it invariably reflected Fowler's dissatisfaction with Morrison's inefficiency or the latter's dissatisfaction with his assignments which I find at this point in time, mid-November, to have been fair and equitable.

The week following Morrison's 1-day layoff his production increased from 74 percent the week previous to 94 percent, a mark he had never before attained and which he never quite equalled thereafter. The increase in Morrison's production during this week is all the more remarkable when considered in light of the fact that he produced 251 tractor weights, more than he had ever produced up to that time. The following week, however, his production efficiency once again dropped to 64 percent, less than half the production efficiency of Stark, Maye, or Boyd whose marks were, respectively, 136 percent, 131 percent, and 139 percent. During this week these three employees produced 477, 324, and 750 of the onerous tractor weights respectively while Morrison produced 21. Comparing Morrison's production efficiency during pay periods 49 and 50 with that of the other named employees, and comparing his own production efficiency during these 2 weeks, one with the other, and taking into consideration the type of jobs they worked on, the conclusion is unavoidable that Morrison was capable of producing at far greater efficiency than he did, regardless of the types of castings he worked on, but for one reason or another refused to produce enough to meet standard. This was certainly as clear to Fowler as it is to anyone analyzing this record.

During the period December 8 through 14 Morrison was assigned a relatively large number of tractor weights though far fewer than Maye, Boyd, or Knox. Nevertheless his production efficiency for that period was 83 percent, his third highest production since his reinstatement. The other grinders efficiency production ranged from 126 percent to 168 percent for that period. Morrison then took off from December 15, 1975, through January 4, 1976.<sup>14</sup> When he returned to work, he produced at 64 percent of efficiency

conversation, "We did get on the subject of *people making out*, and in other words, *troublemakers* in the foundry area. We discussed a few of them. Some of which was—John Pip and Trent Morrison." Fowler identified Dulberger also in terms of his having trouble making out and stated that the Company was going to get rid of a few guys, implying Morrison and Pip and mentioning Dulberger by name. General Counsel appears to argue that Respondent was discriminatorily motivated when it threatened to get rid of Morrison and Dulberger because the former was a son of a steward who had been successful in winning his arbitration case, reinstatement and backpay while the latter was the author of a newsletter critical of management and an activist who espoused the cause of labor and openly discussed walkouts and other union related matters. My analysis of the conversation, however, convinces me that not withstanding the historic place which the term "troublemaker" has held in unfair labor practice cases since the passage of the Wagner Act, its usage in this particular conversation, referred to those employees such as Dulberger, Pip, and Morrison, who consistently failed or refused to make standard. Maye so testified when he stated, "We did get on the subject of *people making out*, and in other words, *troublemakers* in the foundry area." Maye's description of the conversation clearly indicates that the main theme that ran through it was the failure of certain employees to make out and that these individuals were considered troublemakers. That one of them was publishing a newsletter critical of management and another

the first week back, the week of January 5-11 while producing among other castings, 221 tractor weights; 81 percent of efficiency during the week of January 12-18 while producing 163 tractor weights; and an extremely low 46 percent during the week of January 19-25 while producing only five tractor weights among the several types of castings he was assigned to grind. On January 27 Morrison received another written reprimand for inefficient production. The steps that had been taken in an effort to have him increase his production were outlined in it, and it was noted that since none of the steps taken had been successful, additional disciplinary action would be taken against him at some future date. The written reprimand was signed by Fowler.

On January 27, the date of his written reprimand, Morrison filed another grievance in which he complained that he was unfairly treated because he had been told to chip castings from a box other than the one located at his working station. According to the grievance, Morrison then asked that the box be moved to his working station so that he could work on the pieces contained in it but the foreman refused his request. He noted that in order to work on the pieces, he had to hand-carry them back to his work station. Morrison complained that other employees were not required to hand-carry castings in this manner and implied that he was the object of discrimination. The superintendent's decision on this grievance noted that Morrison had been assigned to grind weights but that he wanted to work on lift arms. Fowler requested Morrison to move to the grinding station where the weights were located but Morrison insisted on carrying the castings back to the machine on which he was working. It is not clear from the testimony or the exhibits precisely whose position was correct but it is clear that once again there was friction between Fowler and Morrison with regard to work assignments on January 27. This was payroll period 6 during which, according to the records, Morrison produced at 71 percent production efficiency and produced 123 tractor weights, as compared with 362 for Stark, 97 for Maye, and 92 for Knox. Although the records do not indicate that Morrison was particularly overburdened with assignments of tractor weights during this week, the testimony reflects that friction between Morrison and Fowler was excessive. Whether the excessive friction was the result of Morrison's 46 percent productivity the week before or his filing of the grievance on January 27 cannot be ascertained with certainty, at any rate, no immediate reaction to Morrison's grievance was evident during the period following its filing. Thereafter during pay periods 7,

had won a case in arbitration was coincidental to the determination to get rid of those who refused to produce. John Pip was one of those named by Fowler as a troublemaker of whom the Company would rid itself and there is no evidence that he was involved in any protected activity. He was simply identified as a nonproducer. Finally, Maye testified that when he complained to Fowler that Dulberger was bothering him and interfering with his production by insisting on engaging Maye in conversations about union related matters, Fowler had Dulberger transferred, not to a punishment grinder or some other more onerous work but to a machine where he was subsequently able to meet production standards, thus satisfying Maye who was no longer bothered. Fowler who obtained additional production and Dulberger who was satisfied because he was making out. It appears certain that if Respondent were motivated by animus, it would have handled the situation differently.

8, and 9, February 2-8, 9-15, and 16-22, respectively, Morrison produced at the efficiency rating of 61 percent, 77 percent, and 43 percent. During these periods he produced 328, 216, and 254 tractor weights, respectively, more than anyone else during the first two of these periods and the third highest number produced by any employee during the third week.

In analyzing all of the figures contained in the documentation offered as exhibits, I find that Morrison was not discriminated against with regard to onerous work assignments until late January or early February 1976, and that at that point in time he was assigned an inordinate number of tractor weights to grind. The reason for the sudden heavy assignment of onerous work at this time is not certain but in all probability it reflected Fowler's total loss of patience with Morrison's refusal to meet the production standards when assigned the same kind of work as other employees, particularly during the weeks immediately preceding these assignments. Whether Morrison's apparent ploy of filing a grievance<sup>15</sup> whenever he was reprimanded for failing to meet production standards was part of the consideration behind the onerous work assignments is not clear from the record nor did General Counsel allege or argue that this was a basis for the alleged discriminatory assignments of work. Moreover, the record reveals that despite Fowler's notice of January 27 that he would receive additional discipline for failure to produce, the record does not reveal that additional disciplinary action was ever taken against Morrison. Rather, on April 5, 1976, Morrison was transferred to the shaker conveyor line where he is now free to work on castings other than tractor weights. Respondent's attempt at solving the problems of Morrison and the tractor weights by transferring Morrison to the shaker conveyor line reflects a genuine desire to reach an equitable solution to which neither Morrison nor General Counsel apparently objects.

### Conclusion

General Counsel contends that Morrison was discriminated against in the manner fully discussed above because his father was steward and because he won an arbitration award, reinstatement, and backpay. But Morrison testified that Fowler was harassing him long before he knew that Pittman, the steward, was his father. Additionally the record reveals no animosity on the part of Fowler or any other member of management toward Pittman himself, so it is difficult to grasp General Counsel's theory that Respondent should discriminate against Morrison because Pittman is his father, yet show absolutely no animosity

<sup>15</sup> According to the testimony of Nevers Pittman, Fowler, on February 23 told Pittman, "You are all going to get into trouble filing these chicken shit grievances." This testimony was offered by Pittman following examination by General Counsel concerning the filing of a grievance the previous November. The statement was not placed in any context whereby the subject matter would normally have been discussed. No grievance, as far as the record shows, had been filed since January, about a month before, and no foundation laid for why Fowler, might, suddenly, out of the blue, make such a threat. If Fowler did, in fact, make such a statement on February 23, he must have been referring, not to a grievance but to the charge in the instant case, which was filed on February 19 and served on Respondent, February 23, the date of the alleged threat. This threat is not, however, alleged in the complaint and occurred, as did the filing of the charge, subsequent to the alleged discriminatory assignments.

toward Pittman himself. Finally, the record reveals a positive attempt on the part of Fowler to enlist Pittman in an attempt to rehabilitate Morrison, action certainly at odds with General Counsel's theory concerning animosity based on the father-son relationship. For these reasons I reject General Counsel's contention that Respondent discriminated against Morrison because of his relationship to Pittman.

General Counsel's contention that Respondent discriminated against Morrison since August 19, 1975, by discriminatorily assigning him onerous jobs in disproportionate numbers and suspended him on November 18, 1975, because he won the arbitration award is likewise rejected since as noted above, Morrison was not, in fact, assigned onerous tasks in a disproportionate number until late January and February 1976, 5 months after his reinstatement. If, as General Counsel contends, Respondent held Morrison's victory in arbitration against him, the animosity reflected by the assignment of the onerous jobs would have become evident immediately upon reinstatement or shortly thereafter. I find that the suspension of November 18 was a legitimate disciplinary action taken against Morrison

<sup>16</sup> Testimony of employee witnesses indicate that Fowler favored those employees who produced and manifested ill feelings toward those who did not.

<sup>17</sup> 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,

because of his record of consistently low production and that the heavy and disproportionate assignment of tractor weights in late January and February had nothing to do with the arbitration hearing but was the result of Morrison's substandard working habits, his consistent and persistent failure to meet production standards and the personal animosity between Fowler and Morrison engendered as a result thereof.<sup>16</sup> Similarly, I find that other incidents of harassment of Morrison by Fowler were the result of this same personal feeling of animosity, a type of work related animosity which Fowler not infrequently manifested against other employees.

In my opinion General Counsel has failed to show by evidence, fact, or inference any causal connection between the assignment of onerous tasks to and disciplining of Morrison on the one hand and his union and/or protected activity on the other. Accordingly, I shall recommend that the charge in the instant case be dismissed because I cannot find by a preponderance of the evidence that the allegations contained in the complaint are supported. I so recommend.<sup>17</sup>

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.