

I also recommend that, unless on or before 20 days from the date of receipt of this Decision and Recommended Order that Respondent notify the said Regional Director, in writing, that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order, requiring the Respondent to take the action aforesaid.

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT refuse to bargain collectively with Food Store Employees Union, Local No. 347, affiliated with Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, as the exclusive representative of the employees comprising the appropriate unit described below.

WE WILL NOT unlawfully interrogate employees with respect to their union activities.

WE WILL NOT engage in the unlawful surveillance of employees' union activities, nor by interrogations or otherwise create the impression of surveillance of union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed by Section 7 of the National Labor Relations Act.

WE WILL, upon request, bargain collectively with the above-named union as the exclusive bargaining representative of all employees in the following bargaining unit with respect to rates of pay, wages, hours of employment, and other conditions of employment.

All employees of Respondent employed at its plant exclusive of truck-drivers, driver-salesmen, office clerical employees, and all guards, professional employees, and supervisors as defined in the Act.

All our employees are free to become or remain, or refrain from becoming or remaining, members of the above-named or any other labor organization.

S. S. LOGAN PACKING COMPANY,
Employer.

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, Room 2023 Federal Office Building, 550 Main Street, Cincinnati, Ohio, Telephone No. 381-2200, if they have any question concerning this notice or if they have information that its provisions are being violated.

American Compressed Steel Corporation and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Local 152, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. *Cases Nos. 9-CA-2932 and 9-CA-2968. May 5, 1965*

SUPPLEMENTAL DECISION AND ORDER

On May 8, 1964, the National Labor Relations Board issued its Decision and Order in these cases,¹ finding that the Respondent violated

¹ 146 NLRB 1226

152 NLRB No. 39.

Section 8(a)(1), (3), and (5) of the National Labor Relations Act, as amended. It further found that the Respondent had not engaged in certain other unfair labor practices, and dismissed the allegations of the complaints pertaining thereto. The Board ordered the Respondent to cease and desist from the unfair labor practices, and to take certain affirmative action necessary to effectuate the purposes of the Act.

On January 28, 1965, the United States Court of Appeals for the District of Columbia Circuit issued an opinion² in which the court affirmed the Board's finding that the Respondent had in certain respects violated Section 8(a)(1), (3), and (5) of the Act, and enforced the Board's Order with respect thereto. However, the court disagreed with the Board's basis for dismissing the complaint with regard to the alleged unlawful discharge of employee Robert Baker.

The Board's Order that the complaint be dismissed with regard to the alleged unlawful discharge of employee Baker rested on its adoption of the Trial Examiner's finding that the evidence did not establish that the Respondent knew of Baker's union activity.³ Furthermore, the Trial Examiner found that the Respondent's asserted reason for discharging Baker (i.e., that he had failed to turn off certain valves on his equipment), was supported by the possibility that those valves had not in fact been turned off on the day in question.

In its opinion, the court pointed out that, even assuming the Respondent's asserted reason for Baker's discharge was supported by evidence, "the question remain whether the reason assigned was the sole reason for Baker's discharge, or whether the Company was motivated even in part by what it thought was Baker's knowledge of and favorable attitude toward the Union." In the court's view, "the record is replete with evidence from which it could be concluded that Baker was discharged because the Company believed, or feared, he was sympathetic to the Union, though the Company was without knowledge he had signed a union card the evening before the discharge." The court was satisfied that the record reflects a clear hostility on the part of the Respondent to the Union, and also a clear concern about Baker's sympathy for the Union. Although the court did not decide whether the Board should have found that Baker's discharge was an unfair labor practice, it concluded that the basis the Board assigned for not so finding failed to meet the issue posed by the complaint and the General Counsel's exceptions to the Trial Examiner's Decision. The court remanded these

² *Local No. 152 aff/w International Brotherhood of Teamsters, etc (American Compressed Steel Corp.) v. N.L.R.B.*, 343 F.2d 307 (C.A.D.C.)

³ The context of the Trial Examiner's Decision made it clear that the reference to "Union activity" was a reference to Baker's activity in signing a union card the evening before this discharge. The Trial Examiner concluded that the Respondent was unaware of this "union activity" as there was no showing it was aware of this signing.

cases to the Board for its further consideration in light of the court's opinion. Accordingly, we⁴ have reviewed the record and particularly the evidence and issues referred to by the court.⁵

In our original Decision herein, we found that Herbert Byer, son of Respondent's president, and a manager-foreman, countered the Union's campaign by threatening to close the plant if the Union came in, by threatening to discharge union adherents or to make conditions so difficult they would quit, by interrogating employees as to what they knew about the Union, and by stating that he knew who had signed union cards, thereby violating Section 8(a) (1) of the Act. The Board found further that Herbert Byer on more than one occasion had communicated the aforementioned threats to Baker; had expressed disbelief in Baker's denials of knowledge about union activities; had asked Baker to talk to the other employees and get them to vote against the union; and had added a threat that, if the Union came in, Baker's hours would be cut.

The reason given by the Respondent for Baker's discharge was his alleged failure to turn off the gas valve on his burner on the night before his discharge. Baker maintained, both at the time he was charged with such failure, and again on the witness stand, that he distinctly recalled shutting off the gas before leaving his work station on the night in question. Herbert Byer testified that, on the night in question, another employee, Mack Beech, told him (Byer) that he saw Baker leave his station and forget to turn off his valves, and that he (Beech) went over and turned them off. Abe Byer, Herbert's father, testified that he saw Beech turn off Baker's valves. Beech did not testify. The Trial Examiner, because he recommended dismissal of the charges as to Baker on the ground that the Respondent did not know of his signing a union card, did not resolve the conflict in testimony with regard to the gas valve allegation. However, as to all other instances where the testimony of Herbert Byer and Baker conflicted, he credited Baker. Herbert Byer admitted that other employees on numerous occasions have forgotten to turn off their gas valves, but that no one had ever been fired for such failure because it had never been clear exactly which employees were responsible. However, he stated at another point in the record that he recalls several occasions on which he reprimanded employees for such failure.

⁴ Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Fanning and Jenkins].

⁵ Although granted leave by the court to do so, the Board deems it unnecessary to receive additional evidence for the purposes of this Supplemental Decision.

Upon reassessment of all the factors in these cases, we are persuaded that, whether or not Respondent's officials were aware that Baker had signed a union card on the evening before his discharge, Herbert Byer believed Baker to be sympathetic to the Union. The record evidence demonstrates further that Herbert Byer was hostile toward Baker because of such sympathies and because of his refusal to assist Byer in defeating the Union's organizational campaign, and that his threat to Baker that union adherents were marked for discharge was directed against Baker himself.

In the circumstances of this case, including the numerous other unfair labor practices engaged in by Respondent, we find that the record evidence preponderates in favor of a finding that the Respondent was motivated to discharge Baker, at least in part, in order to retaliate against him for his union sympathies and his refusal to assist Respondent in combatting the Union. While we do not exclude the possibility that Baker may have forgotten to turn off the gas valve on his equipment the night before his discharge, and that this failure may have been a contributing factor in his discharge, we are satisfied that it was not the sole reason for the discharge.⁶

Accordingly, we find that the Respondent, by discharging Baker because of his union sympathies, violated Section 8(a) (3) and (1) of the Act, and we shall order the Respondent to offer him reinstatement to his former job with backpay for any loss of earnings he may have suffered due to the Respondent's unlawful discharge.

CONCLUSION OF LAW

By discharging Robert Baker because of his union sympathies, the Respondent has engaged in and is engaging in an unfair labor practice affecting commerce within the meaning of Section 8(a) (1) and (3) and Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, American Compressed Steel Corporation, its officers, agents, successors, and assigns, shall:

1. Cease and desist from discriminating against Robert Baker or any other employee because of membership in, or activity on behalf of, any labor organization.

⁶ In this connection, we note particularly the equivocal nature of Herbert Byer's testimony as to whether such conduct was regarded as a dischargeable offense. In view of Baker's long service, and the absence of evidence indicating that Respondent was dissatisfied with his work performance, and the pattern of Respondent's unlawful conduct, there is some basis for inferring that the matter of the valves was at best a pretextuous reason for the discharge. We deem it unnecessary, however, to rest our decision on such a finding because it is clear that Respondent was motivated at least in substantial part by its hostility to Baker's sympathy for the Union.

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

(a) Offer to reinstate Robert Baker to his former position as a "burner" in the yard, and make him whole by offering him backpay in accordance with the formulae set forth in *F. W. Woolworth Company*, 90 NLRB 289, and *Isis Plumbing & Heating Co.*, 138 NLRB 716.

(b) Notify Robert Baker if he is serving in the Armed Forces of the United States of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

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

(d) Post at its yard in Cincinnati, Ohio, copies of the attached notice marked "Appendix."⁷ Copies of said notice, to be furnished by the Regional Director for Region 9, shall, after being duly signed by an authorized representative of the Respondent, be posted immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 9, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith.

⁷ In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Supplemental Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to a Supplemental Decision and Order of the National Labor Relations Board, and in order to effectuate the purposes of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL offer Robert Baker his former job as a burner in the yard, and pay him for wages lost since July 24, 1963.

WE WILL NOT discriminate against any employee because of membership in, or activity on behalf of, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization.

All our employees are free to become or remain, or to refrain from becoming or remaining, members in good standing of said International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization.

AMERICAN COMPRESSED STEEL CORPORATION,
Employer.

Dated_____ By_____

(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, Room 2023, Federal Office Building, 550 Main Street, Cincinnati, Ohio, Telephone No. 381-2200, if they have any questions concerning this notice or compliance with its provisions.

Oil, Chemical and Atomic Workers International Union, AFL-CIO and Its Local 8-718 and United Nuclear Corporation, Fuel Division. Case No. 1-CB-877. May 5, 1965

SUPPLEMENTAL DECISION AND ORDER

On August 28, 1964, the National Labor Relations Board, by a duly designated panel, issued a Decision and Order in this case, 148 NLRB 629, finding that the Respondents had violated Section 8(b) (1) (A) and (2) of the National Labor Relations Act, as amended, by attempting to invoke the sanctions of a maintenance-of-membership clause in its contract with the Company against 50 employees for nonpayment of dues for January 1963—the month prior to the execution of the contract—and against 16 of these 50 employees, who the Board found had resigned from the Union prior to the signing of the contract on February 12, 1963, for nonpayment of dues not only for January but also for subsequent months.¹ In reaching this conclusion, the Board affirmed the Trial Examiner's finding that the 50 employees had become union members although they had not satisfied the formal requirements set forth in Respondent's constitution for the acquisition of membership. The Board found it unnecessary to pass on the question

¹ The maintenance-of-membership clause provided as follows:

Any employee who is a member in good standing of the Union as of the date of this agreement or who thereafter voluntarily joins the Union during the term of this agreement shall remain a member of the Union in good standing as a condition of employment by the Company. For the purpose of this article, an employee shall be considered a member of the Union in good standing if he tenders the periodic dues and the initiation fees uniformly required as a condition of employment.