Wheeling Electric Company *and* Imogene D McConnell
Case 6-CA-4427

April 29, 1970

DECISION AND ORDER

BY CHAIRMAN MCCULLOCH AND MEMBERS FANNING AND BROWN

On November 5, 1969, Trial Examiner Sidney Sherman issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief The General Counsel filed limited exceptions to the Trial Examiner's Decision, and a brief in support of its exceptions and of the Trial Examiner's Decision

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

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed The rulings are hereby affirmed The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in this case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations, as herein modified [1]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order the Recommended Order of the Trial Examiner, and hereby orders that the Respondent, Wheeling Electric Company, Moundsville, West Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as modified herein

1 Delete paragraph 2(a) and substitute the following

"(a) Offer Imogene McConnell immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges previously enjoyed, and make her whole in the manner set forth in the section of the Trial Examiner's Decision entitled "The Remedy" as modified herein for her loss of earnings by payment to her of the sum she would normally have earned on and after September 24, 1968, to the date the Respondent offers her reinstatement "

2 Delete the fourth indented paragraph of the Notice to Employees and substitute the following two paragraphs

> WE WILL offer to take back Imogene McConnell to her former job, or if that job no longer exists, to a substantially equivalent position, and pay her the sum she would normally have earned on and after September 24, 1968, until the date we offer her reinstatement, less her net earnings in any for that period
>
> WE WILL notify the above-named employee if presently serving in the Armed Forces of the United States of her right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

SIDNEY SHERMAN, Trial Examiner A copy of the original charge herein was served upon Respondent on December 4, 1968,[1] the complaint issued on July 24, 1969, and the case was heard on August 21 The only issues litigated were whether Respondent violated Section 8(a)(1) of the Act by threatening to discharge, and discharging, Imogene McConnell Briefs were filed by Respondent and the General Counsel

Upon the entire record,[2] including observation of the demeanor of the witnesses, the following findings and conclusions are adopted

I THE BUSINESS OF RESPONDENT

Wheeling Electric Company, herein called Respondent, is a West Virginia corporation, and operates as a public utility, furnishing heat, power, and light within that State During the 12-month period before the issuance of the instant complaint, Respondent derived gross income in excess of $1 million from its West Virginia operations, and Respondent received goods and materials valued in excess of $50,000 from out-of-State sources

Respondent is engaged in commerce under the Act

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[1] In adopting the Trial Examiner s finding that McConnell was not deprived of the Act s protection because she was a confidential employee we also rely on Sec 2(3) of the Act which provides in pertinent part that The term employee' shall include any employee and shall not be limited to the employees of a particular employer unless the Act explicitly states otherwise and the failure of the Act explicitly to state that confidentials are not employees

Since it is reasonable to infer that McConnell would have returned to work on September 24 1968 the day after the picket line was removed the Respondent will be required to make her whole for her loss of earnings by payment to her of the sum she would normally have earned on and after September 24 1968 to the date the Respondent offers her reinstatement less her net earnings for that period See *Nuodex Division of Tenneco Chemicals Inc* 176 NLRB No 79 *Difco Laboratories Inc* 172 NLRB No 235 *Southern Greyhound Lines* 169 NLRB 627

[1] All dates hereinafter are in 1968 unless otherwise indicated

[2] For corrections of the record and an evidentiary ruling see the orders of October 21 and 31 1969

II THE UNFAIR LABOR PRACTICES

The pleadings raise the following issues

1 Whether Imogene McConnell[3] was discharged for refusing to cross a picket line at Respondent's premises, and, if so, whether such discharge violated Section 8(a)(1) of the Act?

2 Whether Respondent violated Section 8(a)(1) by threatening McConnell with loss of employment if she honored the picket line?

A *Sequence of Events*

Respondent's headquarters are at Wheeling, West Virginia It maintains a facility at Moundsville, West Virginia, about 12 miles from Wheeling, where it has about 10 physical employees and 10 office workers, 1 of whom was McConnell In February 1967 she was promoted to a position as personal secretary to Hubbard, the manager of the Moundsville operations McConnell's husband was at all times here material business manager of a West Virginia local of the International Brotherhood of Electrical Workers [4]

Respondent's workers have been covered by contracts with United Utility Workers of America (hereinafter called Utility Workers), representing its physical employees, and WECO Employees Association (hereinafter called the Association), representing all other employees, principally office and clerical Although she was an office employee, McConnell's position was regarded by Respondent and the Association as confidential and hence excluded from the coverage of their contract [5]

The contracts of both unions expired on July 31 While, before that date, it succeeded in negotiating a new contract with the Association, Respondent could not reach agreement with Utility Workers when its old contract expired, and that union called a strike, which lasted from August 1 to September 23 Throughout that period picket lines were maintained by Utility Workers at Respondent's Wheeling and Moundsville locations During the first few days of the strike, there was mass picketing, which prevented ingress and egress However, after the issuance of a state court injunction, on August 2, the picketing was on a more orderly basis, and by the morning of August 5, normal access to Respondent's facilities had been restored

There is no dispute that McConnell's employment ended on August 5 There was, also, general agreement that, either on July 26 (if one credits Hubbard) or on August 2 (if one credits McConnell) Hubbard proposed to her that, to avoid the necessity of crossing the picket line during the strike, she apply in writing to a 90-day leave of absence, that in the morning of August 5 she did post a letter to Respondent containing such an application, that later the same day Hubbard called to advise her that higher management had ruled out granting her any leave during the strike, and that she would have to report for work, and that she replied that she would not report

It was also generally agreed at the hearing that in mid-August Personnel Supervisor Brookes called to inform McConnell that he had some termination papers for her to sign and that they indicated that she had resigned, and that either McConnell or her husband declared that she would not sign the papers in that form and it was finally agreed to have the papers show that she had been discharged [6]

There was no further contact between Respondent and McConnell relative to her employment status She was not replaced until October 21, about a month after the end of the strike

B *Discussion*

It is the General Counsel's contention that McConnell was discharged for refusing to cross the picket line and that such discharge was unlawful, because it restrained her in the exercise of her statutory right to support the strike by absenting herself from work

In its brief, Respondent contends as follows

1 That McConnell's refusal to cross the picket line was motivated by considerations peculiar to herself, and, therefore, did not constitute "concerted activities" within the meaning of Section 7 of the Act

2 That, in any event, she was not protected by the Act because (a) she was a confidential employee or (b) she had waived the right to engage in concerted activities

3 That, even if her conduct was protected by the Act, Respondent was entitled to discharge her and to make room for a replacement, under the *Redwing Carriers*[7] rule [8]

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[3] Hereinafter referred to as McConnell

[4] That local did not represent any of Respondent s employees

[5] The contract excluded employees in confidential positions and there was no contradiction of the testimony of Respondent s personnel supervisor Brookes that this exclusion was intended by the contracting parties to apply to McConnell s job

[6] There is no need to resolve the conflict between the testimony of Brookes that McConnell merely referred him to her husband who discussed the matter with Brookes and the testimony of the McConnells that she initially so advised Brookes herself and that her husband later confirmed that advice Even if one credits Brookes version it is clear that McConnell s husband was purporting to speak for her

[7] *Redwing Carriers Inc* 137 NLRB 1545 affd 325 F 2d 1011 (C A D C)

[8] In making the foregoing contentions Respondent has apparently abandoned its attempt at the hearing to show that McConnell was not discharged but voluntarily quit on August 5 when ordered to report for work In any case the record amply supports a finding of a discharge on that date rather than a quit Both Hubbard and McConnell agreed that on the morning of August 5 he directed her to report for work and that she refused to do so The only dispute is as to whether as Hubbard testified she stated that she was quitting or as McConnell testified he warned her that if she did not report she would have to quit McConnell s denial that she made any reference to quitting on that occasion is consistent with the position conveyed on August 15 either by her or her husband to Personnel Supervisor Brookes that she would not sign a termination report because it recited that she had quit On the other hand Hubbard s testimony that she declared on August 5 that she was quitting and that he indicated he would proceed to terminate her on that basis is difficult to square with other testimony by Hubbard concerning his reason for instructing Brookes on August 13 to process her termination as a resignation At this point in his testimony he made no reference to McConnell s alleged verbal resignation on August 5 but indicated rather that he

The foregoing contentions will be considered in order.

1. McConnell's motivation

Respondent contends that McConnell's refusal to cross the picket line was not protected by the Act because such refusal was not motivated by sympathy for the cause of the strikers but by fear that, by crossing the picket line, she would jeopardize her husband's position as a union business agent.

The General Counsel counters that any inquiry into McConnell's motivation is foreclosed by the Board's decision in *Tenneco*,[9] which involved facts strikingly similar to those in the case at bar. There an office employee was discharged for refusing to cross a picket line established by a union representing the respondent's production and maintenance employees. Although she avowed that her action was dictated solely by respect for her husband's wishes, the Board adopted the finding of the Trial Examiner that her motivation was immaterial, and that the only relevant consideration was the nature of the activity for which she was discharged. The discharge was therefore found to have been unlawful.

The foregoing authority would seem to be controlling here, and it is, accordingly, found that, even if McConnell refused to cross the picket line for the reason alleged by Respondent,[10] that would not preclude granting her relief.

2. Applicability of act to confidential employees

It was stipulated at the hearing that, as Hubbard's personal secretary, McConnell was a "confidential employee" such as the Board customarily excludes from bargaining units because of their special relation to management. The excluded category has been defined by the Board as comprising all employees who assist and act in a confidential capacity to persons who formulate, determine, and effectuate an employer's labor relations policies.[11] While thus, in effect, denying to such employees the right to be represented in the same unit with other employees, the Board has never held that they might not be represented in a unit limited to confidential employees, nor that they were excluded entirely from the protection of the Act. On the contrary, although it had already adopted a policy of excluding confidential employees from bargaining units,[12] the Board early stated that the Act does not withhold from confidential employees "as a class" the right to engage in concerted activities.[13] However, Respondent cites the legislative history of the 1947 amendments to the Act, and particularly the explanation in the conference report for the failure of the conferees to adopt the provisions of the House Bill, which would have specifically removed confidential employees, *inter alia*, from the coverage of the Act. The conference report states in this regard:

> In the case of persons working in the labor relations, personnel and employment departments, it was not thought necessary to make specific provision, as was done in the House Bill, since the Board has treated, and presumably will continue to treat, such persons as outside the scope of the act. This is the prevailing Board practice with respect to such people as confidential secretaries as well, and it was not the intention of the conferees to alter this practice in any respect. (H. Conf. Rep. No. 51 on H.R. 3020, 89th Cong., 2d Sess., p. 35).

Thus, it is evident that, notwithstanding the contrary language in *Southern Colorado Power, supra*, the conferees construed the Board's policy of excluding confidential employees from bargaining units as tantamount to a denial to them of any rights under the Act.

To the extent that Respondent is here relying on the rule that, where Congress reenacts a statute without material change, it will be presumed to have approved a contemporaneous, administrative interpretation thereof,[14] such reliance is misplaced; since here there was in fact no administrative interpretation such as Respondent proposes.

It may be urged that, since the conferees rejected the proposal to exclude confidential employees from the protection of the Act because of a belief that they were already so excluded, the Board is required to conform its present policy to that belief. The result would be to treat the proposed exclusionary amendment as if it had been enacted, instead of rejected, on the assumption that, had they been advised that the proposal

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assumed that she had quit because she failed to report for work Moreover, Brookes acknowledged that on August 15 he told Mr McConnell that his wife's termination was being reported as a resignation out of consideration for her, and that it could have been termed a discharge In view of this, I credit McConnell rather than Hubbard and find that she did not in fact announce on August 5 that she was quitting, but only that she would not cross the picket line Moreover, for reasons indicated in the text below, I find that Hubbard warned her that, if she did not report, she would have to quit, which was tantamount to a warning of discharge It is found therefore that, as it apparently now concedes, Respondent's action with respect to McConnell constituted a discharge because of her refusal to work during the strike

[9] *Nuodex Division of Tenneco Chemicals, Inc*, 176 NLRB No 79

[10] If a finding as to McConnell's motivation were deemed relevant, the record would afford ample basis for finding that the dominant, if not the sole, reason for McConnell's conduct was a fear of jeopardizing her husband's position

[11] *The B F Goodrich Company*, 115 NLRB 722, 724, 725, *Vulcanized Rubber and Plastics Company, Inc*, 129 NLRB 1256, 1259

(In the *Goodrich* case, *supra*, the Board held that a supervisor who merely handled grievances was not engaged in formulating, determining and effectuating labor relations policies and that his secretary was therefore not a confidential employee, and no subsequent Board decisions have been found where an employee has been deemed confidential, unless she assisted one who engaged in contract negotiations Here, although General Counsel had stipulated to the legal conclusion that McConnell was a confidential employee under the Act, Respondent's counsel proceeded to examine Hubbard concerning her duties and his functions, and as to the latter elicited only testimony that Hubbard handled grievances at the third step of the grievance procedure under the union contracts While this raises a question as to the correctness of the legal conclusion embodied in the parties' stipulation, I have assumed for the purpose of this decision that I am bound by such stipulation)

[12] E.g, *Southern Pacific Steamship Lines*, 8 NLRB 1263, 1268

[13] *Southern Colorado Power Co*, 13 NLRB 699, 719 The Board there found that the respondent violated Sec 8(a)(3) and (1) of the Act by coercing and discriminatorily discharging certain employees alleged to be confidential

[14] See *Sutherland, Statutory Construction*, 3rd ed, sec 5109

in the House Bill went beyond existing Board practice, the conferees would have approved the proposal and Congress would have enacted it This substitutes speculation as to Congressional action for the legislative process Even if it were proper to infer that the conferees would have agreed to the exclusionary provision had they been apprised of the limited nature of the Board's existing exclusionary policy, enactment of such provision by Congress would not have followed automatically While statements in conference reports may be valuable aids in construing statutory provisions actually enacted by Congress, they cannot afford a basis for dispensing with the requirement of enactment And, this would be true, even if there were no provision in the Act like Section 13, which stipulates that nothing in the Act, *except as specifically provided for therein,* shall be construed "so as to interfere with or impede or diminish in any way the right to strike "[15]

I therefore find no merit in the contention that in 1947 Congress withdrew from confidential employees the Act's protection of their right to engage in concerted activities

3 The waiver contention

At the time of McConnell's refusal to cross the picket line, the contract between Respondent and the union representing its office and clerical employees contained a clause forbidding "strikes, cessation of work, slowdown, stoppage of work " While McConnell's job concededly was excluded from the unit covered by this contract,[16] Respondent points to the apparent anomaly that would result, if McConnell, a confidential employee, were free to participate in concerted activity by withholding her services at the same time that all of Respondent's other office employees were precluded from doing so The short answer to this is that it would also be anomalous to hold that McConnell should, in effect, be subjected to the burden of the contract's no-strike clause, even though she was not entitled to any of the benefits or protection afforded by the other provisions of the contract

Respondent contends further that McConnell waived her right to strike by accepting the job as Hubbard's personal secretary "with the clear and expressed understanding that such job would require her undivided loyalty to the Company " In this respect, the record shows only that McConnell accepted the job as Hubbard's secretary after he stressed that she would have access to confidential labor relations matters and enjoined her that she would have to "separate her feelings, her actions in regard to Wheeling Electric Company from those of her husband" as a union official All that this would seem to imply is that McConnell agreed that she would not permit her husband's union affiliation to influence her to disclose to unauthorized persons any of the confidential matters contained in the documents to which she would have access [17] Admittedly, there was no reference at that time to what she should do in case of a strike, nor any anticipation that there might be a strike, and, that Respondent did not consider McConnell to have somehow waived the right to cross a picket line is clear from the fact that about the end of July Hubbard, himself, proposed an arrangement that would have allowed her to stay out during the strike Moreover, it is well settled that any waiver of a right conferred by the Act will not be lightly inferred but must be expressed in clear and unequivocal terms

4 The *Redwing Carriers* issue

In *Redwing Carriers, supra,* the Board held that, where a delivery employee refused to cross a picket line at the premises of one of his employer's customers, the employer was privileged to discharge him in the interest of efficiency of operations

While recognizing that it had in the past accorded to employers in such a situation only the right to replace, but not to discharge, employees who refused to perform services because of their involvement in concerted activities, the Board stated in *Redwing Carriers*

> In considering the continued validity of the discharge-replacement distinction in this situation, we are convinced that substance, rather than form, should be controlling That is, where it is clear from the record that the employer acted only to preserve efficient operation of his business, and terminated the services of the employees only so it could immediately or within a short period thereafter replace them with others willing to perform the scheduled work, we can see no reason for reaching different results solely on the basis of the precise words, i e , replacement or discharge used by the employer or the chronological order in which the employer terminated and replaced the employees in question

Relying on the foregoing language, Respondent contends that *Redwing* evinces an intent by the Board to jettison in all cases any distinction between the discharge and permanent replacement of persons absenting themselves from work in order to engage in concerted activities, and to equate the privilege to discharge such persons with the privilege to replace them However, it is clear from subsequent Board decisions that, if such was in fact the Board's intent, it has either had second thoughts about the matter or has decided to limit *Redwing* to its special facts—namely, a discharge for refusal by an employee to perform part of his assigned duties because of reluctance to cross a picket line Such a limited reading of *Redwing* was in fact adopted by the Board in *Southern Greyhound Lines,*[18]

[15] After the enactment of the 1947 amendments the Board continued to treat confidential employees as within the protection to Section 7 of the Act *American Book Stratford Press Inc* 80 NLRB 914 915 *Southern Greyhound Lines* 169 NLRB 627 (It does not appear from those cases that the Board gave any consideration to the legislative history here discussed In *Southern Greyhound* the parties in effect stipulated that confidential employees are covered by Sec 7)

[16] See fn 5 above

[17] There was no contention nor evidence that McConnell made any such improper disclosure nor that she was discharged because it was inferred from her refusal to cross the picket line that she would place her union allegiance above her duty to respect the confidential nature of matters entrusted to her

[18] 169 NLRB 627

where, on facts strikingly similar to those here presented, the Board found a violation of Section 8(a)(1) in the discharge of a nonunit employee for refusing to come to work through a picket line established by unit employees at the employer's premises.[19]

Moreover, even if one were to apply here the test of *Redwing Carriers*—namely, whether the employer "acted only to preserve efficient operation of his business" and resorted to discharge only so that he could "immediately or within a short period thereafter" replace the employee with one who was willing to perform the scheduled work—one would be forced to conclude that Respondent did not satisfy the foregoing requirements. While there was testimony by Hubbard that some time in August he made inquiries among acquaintances concerning a replacement for McConnell, he admittedly did not advertise for one until September 6, and McConnell's replacement did not actually report until October 21, almost a month after the end of the strike. It is difficult to believe that, if Respondent had in fact regarded the prompt replacement of McConnell as essential to the efficient operation of its business, it would have waited about a month before placing an advertisement, or that it would have made no effort to ascertain on September 23, when the picketing ended, whether McConnell was available to fill the as yet unfilled position.

The fact that no such effort was made and that the Respondent preferred to wait another month before filling her position would seem effectively to negate any sense of urgency on Respondent's part. In fact, even if the discharge of McConnell on August 5, were thought to be privileged as merely a necessary prelude to replacing her, it would be proper to infer that the failure to recall her after the strike ended and while Respondent was still seeking to fill her position was due solely to her refusal to cross the picket line, and that such failure was, therefore, in itself, unlawful[20]

Upon consideration of all the foregoing matters, it is concluded that McConnell's discharge for refusing to cross the picket line violated Section 8(a)(1) of the Act.

5. The threat

As already related, there is no dispute that, when Hubbard called McConnell on August 5, he advised her that she could not be granted a leave of absence and would have to report for work across the picket line. According to McConnell, Hubbard added that, if she did not report, she would have to quit. Hubbard at first denied categorically that he indicated what consequences would flow from her failure to report, but, when asked whether he warned her of termination, answered that he did not recall that he had done so. In view of this apparent vacillation, as well as the fact that I have already found McConnell a more credible witness with regard to another aspect of the same incident,[21] I credit McConnell.[22] It is accordingly found that by the foregoing warning Respondent violated Section 8(a)(1) of the Act.

III. THE REMEDY

It having been found that Respondent violated Section 8(a)(1) of the Act, it will be recommended that it be required to cease and desist therefrom and take appropriate, affirmative action. Such action shall include an offer of reinstatement to McConnell and reimbursement of McConnell for any loss of earnings suffered by reason of her discharge. Backpay shall be computed in accordance with the formula stated in *F. W. Woolworth Company*, 90 NLRB 289; interest shall be added to backpay at the rate of 6 percent per annum. *(Isis Plumbing & Heating Co.*, 138 NLRB 716.)

Although normally a broad cease-and-desist provision would be warranted in a case of unlawful discharge, I will not recommend that here, in view of the long history of contractual relations between Respondent and the unions representing its employees, which history effectively negates any hostility on its part to the basic policies of the Act.

CONCLUSIONS OF LAW

1. Wheeling Electric Company is an employer within the meaning of Section 2(2) of the Act, and is engaged in commerce within the meaning of Section 2(6) and(7) of the Act.

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[19] Such a limited reading would bring *Redwing* into line with the mainstream of the Board's thinking on the subject of the protection accorded by the Act to concerted activities, a basic tenet of which is that employees may not both work and strike at the same time, as by engaging in a concerted refusal to perform overtime work or by engaging in intermittent work stoppages

Respondent contends that the distinction drawn by the Board in *Southern Greyhound, supra,* between a partial and total refusal to perform services is unrealistic, because in the case of a total refusal there is "a more pressing management need to terminate and replace the employee " However, where an employee withholds his services entirely, there is no need to discharge him The employer can fill the void simply by replacing him It is only where he insists on remaining on the payroll, while doing only part of his job, that his discharge can be justified as a necessary prelude to replacing him with a full-time worker This elementary fact of industrial life affords a sufficient rationale for the rule of *Redwing Carriers,* and any discussion therein of the validity of any distinction between discharge and replacement would seem not to have been strictly necessary to the result reached (Moreover, insofar as *Redwing Carriers* implies that a permanently replaced employee has no better standing than one who has been (validly) discharged, that proposition is open to question in view of the recent decisions in *N L R B* v *Fleetwood Trailer Co* , 389 U S 375, and *The Laidlaw Corporation,* 171 NLRB No. 175)

[20] The failure to reinstate McConnell was alleged in the complaint as a separate violation However, in view of the finding herein that her original discharge was unlawful, a violation finding based on such failure would not affect the remedy Accordingly, absent reversal of such finding as to the discharge, there is no need to act on the foregoing allegation of the complaint

[21] See fn 8 above

[22] In any case, even if Hubbard had merely instructed McConnell that she would have to report to work, there was necessarily implicit in such instruction a warning of disciplinary action if she failed to do so

2. By threatening discharge for refusal to cross a picket line, Respondent has violated Section 8(a)(1) of the Act.

3. By discharging Imogene McConnell because of her refusal to cross a picket line, Respondent has violated Section 8(a)(1) of the Act.

4. The aforesaid violations are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the entire record in the proceeding and the foregoing findings of fact and conclusions of law, it is recommended that Wheeling Electric Company, Wheeling, West Virginia, its officers, agents, successors, and assigns, shall be required to:

1. Cease and desist from:

(a) Discharging or otherwise discriminating against employees in regard to their hire or tenure of employment or any term or condition of employment, or threatening employees with discharge because of their refusal to cross a picket line.

(b) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action, which is deemed necessary to effectuate the policies of the Act.

(a) Make whole Imogene McConnell, in the manner set forth in the section of the Trial Examiner's Decision entitled "The Remedy," for any loss of pay she may have suffered by reason of her discharge, and offer her immediate reinstatement to her former or substantially equivalent position, without prejudice to her seniority or other rights and privileges.

(b) Notify Imogene McConnell if presently serving in the Armed Forces of the United States of her right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Selective Service Act, as amended, after discharge from the Armed Forces.

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

(d) Post at Respondent's facility in Moundsville, West Virginia, copies of the notice attached marked "Appendix."[23] Copies of said notice, on forms to be provided by the Regional Director for Region 6, shall, after being duly signed by Respondent's representatives, be posted by Respondent immediately upon receipt thereof, and maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that such notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 6, in writing, within 20 days from the receipt of this Recommended Order, what steps Respondent has taken to comply herewith.[24]

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[23] 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, recommendations, 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 In the event that the Board's Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall be changed to read "Posted Pursuant to a Judgment of the United States Court of Appeals enforcing an Order of the National Labor Relations Board "

[24] If this Recommended Order is adopted by the Board, this provision shall be modified to read "Notify said Regional Director in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith "

APPENDIX

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

WE WILL NOT discharge employees or otherwise discriminate against them because of their refusal to cross a picket line at our premises.

WE WILL NOT threaten to discharge any employee for refusal to cross such a picket line.

WE WILL NOT in any like or related manner interfere with the rights guaranteed by Section 7 of the Act.

WE WILL offer to take back Imogene McConnell to her former, or substantially equivalent, job and pay her for all the wages lost because of her discharge.

WHEELING ELECTRIC COMPANY

(Employer)

Dated By

(Representative) (Title)

This is an official notice and must not be defaced by anyone.

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.

Any questions concerning this notice or compliance with its provisions, may be directed to the Board's Office, 1536 Federal Building, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222, 412–644–2969.