Amcon Industries, Inc , and Its Wholly Owned Subsidiary American Crane and Conveyor Company, Inc *and* International Association of Machinists and Aerospace Workers of America, AFL–CIO Case 7–CA–7454

May 20, 1970

DECISION AND ORDER

BY CHAIRMAN MCCULLOCH AND MEMBERS BROWN AND JENKINS

On February 19 1970, Trial Examiner Henry L Jalette issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision The Trial Examiner also found that the Respondent had not engaged in and was not engaging in certain other unfair labor practices as alleged in the complaint and recommended that the complaint be dismissed with respect thereto Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision, together with a supporting 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 powers in con nection 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 brief, and the entire record in this case, and hereby adopts the findings, conclusions and recommendations of the Trial Examiner [1]

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 Trial Examiner and hereby orders that the Respondent, Amcon Industries, Inc , and its wholly owned subsidiary American Crane and Conveyor Compa ny, Inc , Detroit, Michigan, their officers, agents, succes sors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order

[1] The Trial Examiner s findings and conclusions are based in large measure upon credibility resolutions made by him The Respondent has excepted to these credibility resolutions It is the policy of the Board not to overrule the credibility determinations made by the Trial Examiner unless the record convinces us that they are contrary to the clear preponderance of all the relevant evidence After a careful reivew of the record we conclude that the Trial Examiner s credibility findings are not contrary to the clear preponderance of all the relevant evidence Accordingly we find no basis for disturbing those findings *Standard Drv Wall Products Inc* 91 NLRB 544 enfd 188 F 2d 362 (C A 3)

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

HENRY L JALETTE, Trial Examiner This case was tried in Detroit, Michigan, on December 4 and 5, 1969,[1] The complaint issued on August 29 pursuant to a charge filed on August 6 The issues presented are whether or not Respondent violated Section 8(a)(1) of the Act by interrogating employees and threatening them with discharge, and Section 8(a)(1) and (3) of the Act by discharging three employees

Upon the entire record, including my observation of the witnesses, I make the following [2]

FINDINGS OF FACT

I THE BUSINESS OF RESPONDENT

American Crane and Conveyor Company, Inc , is a wholly owned subsidiary of Amcon Industries, Inc , an Ohio corporation American Crane maintains its only office and place of business in Warren, Michigan, where it is engaged in the manufacture, sale, and installation of material handling equipment During the calendar year 1968, a period representative of its operations during all times material herein, American Crane purchased and caused to be delivered to its Warren plant directly from points located outside the State of Michigan goods and materials valued in excess of $50,000 Upon these admitted facts, I find that Respondent Amcon Industries, Inc , and its wholly owned subsidiary American Crane and Conveyor Company, Inc , are, and at all times material herein have been, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act

II THE LABOR ORGANIZATION INVOLVED

International Association of Machinists and Aerospace Workers of America, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act

III THE ALLEGED UNFAIR LABOR PRACTICES

A *The Facts*

On a date not specified in the record, Fred Manvel, an employee of Respondent, contacted a representative of the AFL–CIO about organizing Respondent's employees As a result, on July 31 a meeting was held at the home of employee Graham Harwood, with Manvel and employee Daniel MacArthur in attendance After listening to a representative of the Union, all three employees signed cards that night, Harwood and MacAr thur incorrectly dating theirs August 1 The next day,

[1] Unless otherwise indicated all dates refer to the year 1969

For the reasons hereinafter set forth Respondent s motion to dismiss made at the close of the trial is denied

the employees brought some authorization cards to the shop and solicited employees to sign.

Manvel testified that on arriving at the shop on Monday, August 4, he was met at the door by Shop Manager James Eastin, who presented him with some sort of a union booklet saying, "Well, you want to join the Union." Manvel said why not, and Eastin said, "Well, here is a union book" and he opened it to a page that listed the jobs and classifications of every employee in the shop. Eastin said, "This is what they are paid. I will guarantee it, if the Union comes in this shop, these are the wages that we will pay." The wages shown to Manvel were about $2 an hour, and Manvel was receiving $4 an hour. Manvel stated he shrugged his shoulders and walked out into the shop.[3]

According to Manvel, either that same day or the next, while working on a truck trying to right a machine which had tipped over, Eastin, who was assisting him remarked, "How are you doing agitator?" Manvel told him he did not know what he was talking about. Eastin said that he knew what they were up to, that he had already spoken to Koch, president of Respondent, and that he had been instructed to get rid of the people who were causing problems. He had already spoken to Dugan (an employee of R & M Service Company, a company related to Respondent in that it has the same president and it provides services to Respondent on a contract basis), and Dugan had told him he would loan him men from his field crew to help him out in the shop should he become shorthanded. Manvel knew Dugan who had supervised his work.

At 4:30 p.m. the usual quitting time, Manvel left work and as he was walking away from the shop he was stopped by Eastin in the parking lot. Eastin said he was going to have to lay him off. Manvel asked why and Eastin said he thought Manvel knew why, that he did not have to explain himself. He said, "You're trying to organize my shop, you are agitating the men, you are causing a conspiracy against the company and myself; and I'm going to have to lay you off." Manvel asked him for how long and Eastin said he did not know, he would have to talk to company officers and find out what he should do about the situation. Manvel asked him if he was the only one and Eastin said no. Manvel said, "Who else, I am the only one standing here and everyone else is going home." At that moment, MacArthur and Harwood joined them, and, according to Manvel, they asked what was going on and Eastin said that the three of them were being laid off. Eastin was asked why, and he said, "I won't have this going on in my shop. You are agitating the men, you are causing conspiracy." He said, "The first thing you know it, they are going to lock the gates and close the plant." Eastin explained that he had been a union organizer and knew that he was within his rights in doing what he was doing, that if he really wanted to get rid of them he knew ways to do it by directing them to do wrong work or something to that effect. The employees asked for layoff slips, and Eastin said he did not have to give them any. After arguing awhile they left with the understanding they were to return the next day for their paychecks.

The foregoing is Manvel's version which is essentially corroborated by Harwood and MacArthur from the point in the conversation when they arrived. MacArthur's version fleshes out the conversation on two pertinent points not otherwise appearing in Manvel's and Harwood's versions, namely, that Eastin mentioned Manvel's work performance on a truck that day, and that the argument was heated because "the conversation kind of cooled down at one point."

The next day, the employees went to the shop to receive their checks and they were told they were not laid off, but discharged for unsatisfactory work.

Eastin denied any knowledge of union activity. He denied having a conversation with Manvel in which he greeted him with "How do you do, agitator" or that he told Manvel "I know what you're up to." As to the conversation with Manvel about a contract and wage rates, Eastin testified it was Manvel who showed him the contract and not he who showed it to Manvel.

Eastin testified that about a month before he discharged Manvel, he had warned him that he would be discharged unless his work improved. On August 5, Manvel was assigned to repair tail lights on a company truck and spent several hours on a job that should have taken only a few minutes. Eastin decided to discharge Manvel, but Manvel got out of the shop before he had a chance to talk to him. Eastin went after him and told him he was discharged for unsatisfactory work. While he was talking to Manvel, Harwood and MacArthur joined them and began an argument about his firing Manvel. They started using abusive language and Eastin thought they were going to pick a fight with him. He fired them for that reason.

B. *Analysis and Conclusions*

In the course of his testimony, Eastin gave two reasons for discharging Harwood and MacArthur: (1) they had been bothering the men, and (2) they used abusive language and argued with him. The first reason, bothering the men, was his way of describing the conduct of Harwood and MacArthur in allegedly talking to other employees during working hours and interfering with their work. However, he retracted the first reason as a reason for discharge when he testified, "I would never have discharged them if they hadn't started the argument in the parking lot. I wasn't discharging them over that."

It is well established that employees who protest their employer's conduct toward fellow employees are engaged in protected activity for which they may not be discharged. *Time-O-Matic, Inc.* v. *N.L.R.B.*, 264 F.2d 96 (C.A. 7). This holds true regardless of the merit of their protest. *N.L.R.B.* v. *Phaostron Instrument and Electronic Co.*, 344 F.2d 855 (C.A. 9). Nor do

[3] Manvel was not certain whether this happened on Monday or Tuesday, but it appeared to me that on cross-examination he expressed more certitude that the incident occurred on Monday

employees lose that protection if they engage in misconduct in the course of their protected activities unless the misconduct is so flagrant, violent, or extreme to render them unfit for further service. *Socony Mobil Oil Company, Inc.*, 153 NLRB 1244, 1247. In this case, there is no evidence of misconduct. MacArthur's testimony that the conversation "kind of cooled down" suggests a heated argument, but that is not misconduct. Accepting Eastin's own testimony, the worst that can be said is that Harwood and MacArthur argued with him and used "abusive language" which he could not recall. Accordingly, if Eastin is believed, since he admitted that he discharged Harwood and MacArthur for protesting the discharge of Manvel, a protected activity, and since the record does not show they engaged in misconduct in the course of their protest, the finding is warranted that Respondent violated Section 8(a)(1) of the Act by discharging them.[4]

Although Eastin's testimony supports a finding that the discharges of Harwood and MacArthur were violative of Section 8(a)(1) of the Act, that does not mean I believe his testimony that the reason they were discharged was because they argued with him. To the contrary, I credit the testimony of the three employees that Eastin told them they were being laid off,[5] because they were agitators, that they were bothering the men, causing the men trouble, and trying to ruin him and the company, in other words, because of their union activities.

I credit this testimony for several reasons. Eastin did not deny saying that they were trying to ruin him and the company, and that he knew ways to get rid of them and that the first thing they knew the plant would be closed. Moreover, his admission that he told them they were being fired for "irritating and bothering the men" partially corroborates the employees about the subject matter of their conversation, namely, their union activities.

Another reason for not crediting Eastin's assertion that he fired Harwood and MacArthur because they argued with him and were abusive is that the evidence does not establish that they were abusive and he never gave them that reason for discharge. Rather, he told them they were discharged for unsatisfactory work performance although admittedly he had no complaints about their work. When asked to explain what he meant by unsatisfactory work performance, Eastin lamely explained that the terms referred to their bothering the men. Yet, he also testified he did not discharge them for this conduct. Giving an employee one reason for discharge, and asserting a different reason before the Board is an indication of a discriminatory motive. *N.L.R.B.* v. *Bowman Transportation, Inc.*, 314 F.2d 497, 498 (C.A. 5). So is the assignment of a false reason. *N.L.R.B.* v. *Joseph Antell, Inc.*, 358 F.2d 880 (C.A. 1).

Eastin's credibility was further impugned by his denial that he had any knowledge of union activity. Company knowledge of union activity is an essential element of a discharge alleged to be in violation of Section 8(a)(3) of the Act. Such knowledge may be inferred in a small plant of 13 employees such as Respondent's. Direct evidence of knowledge is not required. *Weise Plow Welding Co., Inc.*, 123 NLRB 616; *N.L.R.B.* v. *Joseph Antell, Inc., supra.* According to Eastin, he observed the alleged discriminatees talking to other employees, and he confronted those other employees, but he did not ask, nor was he told, what they were talking about. I consider this patently incredible. Added to this, Eastin's own version of his conversation with Manvel about wages under a union contract establishes knowledge of union activity.

Finally, in rejecting Eastin's testimony that he fired Harwood and MacArthur because they argued with him and were abusive, I have considered the seemingly fortuitous circumstances whereby they joined the conversation only to be discharged. Seemingly, had they not joined the conversation and just passed on by they would not have been discharged, lending substance to Eastin's testimony. In trying to recapitulate what happened, I am hampered by Eastin's sketchy description of the conversation, in particular, his failure to provide any details about how the conversation with Harwood and MacArthur started, or even how it ended. If he had told Manvel that he was fired for unsatisfactory work and Harwood and MacArthur intervened, and if in protesting his action they were abusive, how did the conversation turn to their irritating and bothering the men? Certainly, the employees did not introduce the subject; at least, Eastin did not state they did. It seems clear Eastin brought up the subject, and the inference is warranted that he did so because he had decided to lay them off, but he had missed Harwood and MacArthur in going after Manvel in the parking lot. When they joined the conversation, Eastin could tell Manvel that he was not the only one to be laid off, but the other two also.

In summary, on the basis of the credited testimony of Manvel, Harwood, and MacArthur; the fact that they, with Manvel, were the ringleaders of the Union; that they were discharged so quickly after the start of the organizational activities; and in the absence of any evidence of cause for discharge,[6] I find that Harwood

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[4] General Counsel in oral argument suggested such a finding, as an alternative basis for finding the discharges unlawful, but he expressed reservations ". . . whether it's covered in my complaint is something else." There is no question of the adequacy of the complaint to support a finding of an 8(a)(1) protected activity discharge. Par. 12 alleges that Respondent discriminated against MacArthur and Harwood because they joined and assisted the Union "and because they engaged in other concerted activities for the purpose of collective bargaining and other mutual aid and protection." This was adequate notice to Respondent. There was no motion for a bill of particulars and the issues of fact relating to the discharges were fully litigated.

[5] The employees insited Eastin said he was laying them off, instead of firing them. I am not certain of the significance between a layoff and a discharge in the circumstances. It is not necessary to resolve the conflict between Eastin and the employees on this point in order to resolve the issues. It is undisputed Eastin discharged them on August 6, if he had not already done so on August 5.

[6] Soliciting employees to sign union cards on company time is cause for discharge in appropriate circumstances. However, Respondent has not asserted this as a reason for discharge, and in any event, such

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and MacArthur were discharged because of their union activities in violation of Section 8(a)(1) and (3) of the Act

The only difference between Manvel's discharge and the discharge of Harwood and MacArthur is that in his case, there is an issue about his work performance Robert Strome, supervisor and officer of R & M Service Company, testified that 2 or 3 months after Manvel was hired, he advised Company President Koch that Manvel was not qualified for his job and would not learn He washed his hands of him This occurred about March

E D Koch, president of Respondent, confirmed Strome's testimony and added that he spoke to Eastin about firing Manvel, but Eastin persuaded him to let him stay on awhile This occurred about June or July

Eastin testified that about 30 days before he discharged Manvel, he warned him that he would be replaced if he did not shape up The warning was provoked by Manvel's having gone on a frolic during working hours to get a radio for his car

The foregoing, if true, presents a picture of a very unsatisfactory employee I find no basis for discrediting Strome and Koch, although Koch's testimony about speaking to Eastin in June or July leaves unexplained his failure to act between March and June after he received Strome's report It is this inaction, as well as Eastin's inaction, which persuades me that whatever Manvel's shortcomings may have been, they were not serious enough to warrant his termination before the union activity started

To rebut the inference to be drawn from its inaction, Respondent relies on the warning Eastin claims to have given Manvel about 30 days before he discharged him Manvel denied receiving a warning about the quality of his work As is evident from the preceding analysis of Eastin's testimony relative to the discharge of Harwood and MacArthur, I have not found Eastin to be a credible witness Nevertheless, I credit his testimony that he warned Manvel about 30 days before his discharge Manvel did not deny the incident described by Eastin as the cause of the warning However, I believe that the warning was provoked by the nature of Manvel's infraction and that it did not relate to the quality of Manvel's work I credit Manvel that he was not warned about the quality of his work In this connection, I note Manvel's uncontradicted testimony that he had a meeting with Eastin about 2 months before his discharge when his former supervisor spoke in his behalf for a raise Although Manvel did not receive a raise he was not expressly turned down and Eastin did not use the occasion to advise him that his work was unsatisfactory

Despite the foregoing, the question remains whether Manvel gave cause for discharge because of poor work performance and was he discharged for that reason According to Eastin, on August 5, Manvel did unsatisfactory work in the repair of tail lights and flashing signals on a company truck Not only did he not get the job done, but he spent too much time on the job Apart from Eastin's assertion, there is really no evidence in the record to establish how long it should have taken Manvel to do the work in question Accepting Eastin's testimony about the fuse and loose wire he connected, testimony not seriously disputed by Manvel, I believe a finding is warranted that Manvel's work performance on the truck was unsatisfactory and that it gave Eastin cause to discharge him However, it is settled law that if Manvel's discharge was motivated wholly, or even in part, by his union activity, it was unlawful despite the existence of adequate cause for discharging him *N L R B* v *Barberton Plastic Products,* 354 F 2d 66 (C A 6)

The circumstances surrounding Manvel's discharge argue strongly that his discharge was unlawfully motivated, at least in substantial part First, there is the obvious fact that he was one of the three ringleaders of the organizational effort, all of whom were fired on the third workday after they had their first union meeting and signed cards

Next, there is the fact that although Eastin was displeased with Manvel's performance on the tail lights, he assigned him to fix the flash signals without warning to him that if he did not shape up in getting that job done he would be fired A related circumstance is Eastin's testimony that he had discovered earlier that day that Manvel had damaged a hoist cable on Monday and Eastin had reprimanded him for it, again without adverting to a possible discharge Yet, having been so reticent all day, Eastin pursued Manvel in the parking lot to discharge him The following day was payday and there is no explanation why Eastin could not have waited until morning It was not to save Manvel a trip, because he had to return the next day to get his check

Intertwined with these circumstances is Eastin's testimony about the time Manvel spent working on the truck Initially, he testified " he spent all day on the truck, 8 hours, from starting time to quitting time, working on the truck " On further examination, he testified he assigned the job to Manvel at 11 a m , 3 hours after starting time, and he estimated Manvel was finished by 3 45 p m In other words, Eastin grossly exaggerated the time Manvel spent on the truck Moreover, to bolster his reasons for being dissatisfied with Manvel in one breath Eastin was critical of the fact Manvel spent the first hours of work cleaning the electrical cabinet, and in the next he said there was no electrical work in the shop he could do Thus, Eastin appeared to be searching for reasons to justify his action in discharging Manvel Yet, according to his own testimony, the only reason he gave Manvel for discharging him was his work on the truck Eastin's vacillation and the assignment of a multiplicity of reasons render his

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a defense would be lacking in merit there is no evidence that MacArthur solicited on company time and by including him in his accusations Eastin revealed the pretextuous nature of his charges the tenor of Eastin s accusations of soliciting e g irritating and bothering the men was clearly related to the subject matter of their conversation rather than the interference with work

claim that Manvel was discharged for nondiscriminatory reasons less convincing. *N.L.R.B.* v. *Schill Steel Products, Inc.*, 340 F.2d 568 (C.A. 5).

Important as the foregoing circumstances are in determining Respondent's motive for discharging Manvel, they are not essential to a finding of an unlawful motive if Manvel is credited about the parking lot conversation. My discussion of the Harwood and MacArthur discharges foreshadowed the fact that I was crediting Manvel about the parking lot conversation. In doing so, I look to the circumstances discussed above as they reflect adversely on Eastin's credibility. I note again that Eastin did not deny the remarks attributed to him by Manvel, and a finding that he made such remarks is consistent with the evidence in the record as a whole, including my findings that he also told Harwood and MacArthur that they were laid off because of their union activities.

Eastin's remarks to Manvel on August 4 wherein he called Manvel an agitator and told him that he had been instructed to get rid of the people who were causing problems also support my finding that Manvel was discharged because of his union activities. Eastin expressly denied the remark about "agitator" and implicitly denied the entire conversation, but I do not credit him. In addition to establishing an unlawful motive, the statements of Eastin constituted threats of discharge violative of Section 8(a)(1) of the Act.

Since I have credited Manvel, Harwood, and MacArthur about the parking lot conversation, I find that Eastin's remarks about locking the gate and closing the plant constituted threats violative of Section 8(a)(1) of the Act.

I discredit Eastin with regard to the incident with Manvel on the morning of August 5, involving the reference to a union contract, wherein Eastin stated that if the Union came in the shop, he would guarantee the employees would receive wages similar to those specified in the contract, which were substantially less for Manvel's classification. Eastin's testimony on this issue was inconsistent with a pretrial statement, and his description of the incident appears to me too improbable to be worthy of credence. The remark about wages was a clear threat violative of Section 8(a)(1) of the Act.

The complaint alleges that on August 5, Eastin coercively interrogated employees about their union activities. There is no evidence of interrogation, and I will therefore recommend dismissal of paragraph 9(a) of the complaint.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. THE REMEDY

Having found that Respondent violated Section 8(a)(1) and (3) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

As I have found that Respondent discriminatorily discharged Graham Harwood, Daniel MacArthur, and Fred Manvel, I shall recommend that it be ordered to offer them immediate and full reinstatement to their former or a substantially equivalent position, without prejudice to their senority or other rights and privileges, and to make them whole for any loss of earnings they may have suffered by reason of the discrimination against them by payment to them of a sum of money equal to that which they normally would have earned as wages, from the date of their discharge to the date of the offer of reinstatement less net earnings, to which shall be added interest at the rate of 6 percent per annum in accordance with the formula set forth in *F. W. Woolworth Company*, 90 NLRB 289 and *Isis Plumbing & Heating Co.*, 138 NLRB 716.

The unfair labor practices committed by Respondent strike at the very heart of employees' rights safeguarded by the Act. I shall therefore recommend that Respondent be placed under a broad order to cease and desist from in any manner infringing upon the rights of employees guaranteed in Section 7 of the Act. *N.L.R.B.* v. *Entwistle Manufacturing Co.*, 120 F.2d 532, 536 (C.A. 4).

CONCLUSIONS OF LAW

1. Amcon Industries, Inc., and American Crane and Conveyor Company, Inc., are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Association of Machinists and Aerospace Workers, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening employees with discharge and reduction in wages in reprisal for union activity, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Sections 8(a)(1) and 2(6) and (7) of the Act.

4. By discharging Graham Harwood, Daniel MacArthur, and Fred Manvel, because of their union activities, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Sections 8(a)(1) and (3) and 2(6) and (7) of the Act.

Upon the basis of the foregoing findings of fact, conclusions of law, and upon the entire record in this case, I hereby issue the following:

RECOMMENDED ORDER

Respondent, Amcon Industries, Inc., and its wholly owned subsidiary, American Crane and Conveyor Company, Inc., their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in or activities on behalf of the International Association of Machinists, and Aerospace Workers, AFL–CIO, or in any other labor organization of its employees, by discharging or otherwise discriminating in regard to the hire or tenure of employment or any terms or conditions of employment of its employees.

(b) Threatening employees with reduction in wage rates, discharge, or plant closure because of their union activities.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed by Section 7 of the Act, or to refrain from any or all activities.

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

(a) Offer Graham Harwood, Daniel MacArthur, and Fred Manvel, immediate and full reinstatement to their former or a substantially equivalent position, without prejudice to their seniority or other rights or privileges, and make them whole for any loss of pay they may have suffered by reason of the discrimination against them by payment to them of a sum of money equal to the amount they normally would have earned as wages from the date of their discharge to the date of their reinstatement in the manner set forth in the section entitled "The Remedy."

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

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

(d) Post at its Warren, Michigan, place of business copies of the attached notice marked "Appendix."[7] Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by the Respondent's representative, shall be posted by it 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 said notices are not altered, defaced, or covered by any other material.

(e) Notify the said Regional Director, in writing, within 20 days from the date of this Decision, what steps Respondent has taken to comply herewith.[8]

As to the allegations of the complaint found not to have constituted violations of the Act, it is recommended that they be dismissed.

[7] In the event no exceptions are filed as provided by Section 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 Section 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 "

[8] In the event that 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 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

After a trial in which both sides had the opportunity to present their evidence, the National Labor Relations Board has found that we violated the law and has ordered us to post this notice and to keep our word about what we say in this notice.

WE WILL NOT threaten you with discharge or plant closure because of your union membership, desires or activities.

WE WILL NOT threaten to reduce wages if you select a union to represent you.

WE WILL NOT discharge employees because they join, assist or give support to International Association of Machinists and Aerospace Workers, AFL–CIO, or any other labor organization.

Since the Board found that we violated the law when we fired Graham Harwood, Daniel MacArthur and Fred Manvel WE WILL offer them their jobs back and WE WILL pay them for any loss of pay they may have suffered because we fired them.

You are free to become and remain members of the International Association of Machinists and Aerospace Workers, AFL–CIO, or any other labor organization, and we will not punish you in any way if you do.

AMERICAN CRANE AND CONVEYOR COMPANY, INC.
(Employer)

Dated By
(Representative) (Title)

Note: We will notify the above-mentioned employees if presently serving in the Armed Forces of the United

States of their 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.

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, 500 Book Building, 1249 Washington Boulevard, Detroit, Michigan 48226, Telephone 313–226–3200.