

**Westmont Tractor Company and Local Lodge 1434,
International Association of Machinists and Aero-
space Workers, AFL-CIO. Case 19-CA-3626**

December 9, 1968

DECISION AND ORDER

BY MEMBERS FANNING, BROWN, AND ZAGORIA

On March 5, 1968, Trial Examiner Howard Myers 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 together with a supporting brief, and the General Counsel filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its 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 findings, conclusions, and recommendations of the Trial Examiner with the following additions.

The Trial Examiner found, and we agree, that Respondent violated Section 8(a)(1) of the Act by discharging employee Frasier for engaging in protected concerted activities.

The record shows, in pertinent part, that for several years prior to his discharge, Frasier and his fellow workers had been concerned about various shop conditions and machines considered by them to be dangerous. High on their list of such hazards were a forklift which would buck several feet under a full load unless the operator was extremely careful in applying its faulty clutch, and a 100 ton vertical press whose tension springs, unless properly aligned, would sometimes be ejected from the press while under pressure and fly out into the shop. For approximately a year prior to his dismissal, Frasier, along with Jordan and other employees, frequently had complained about these hazards to both welding foreman Simons and service manager Landon, and although some unfavorable shop conditions had been rectified, no action was taken with regard to the vertical press.

¹ Jordan testified that during their ride to the hospital, he neither authorized Frasier to act on his behalf nor to contact the safety inspector. This answer, however, was elicited in response to a direct

question of whether Jordan gave Frasier such authorizations. The record does not establish that the matter of authorizations was either contemplated or discussed at this time

Despite their frequent discussions on shop safety among themselves and with Respondent's supervisors, the employees had made no decision as to what should be done because "nobody would stick together and talk to (Respondent's President) about it." Likewise, neither Frasier's long-time desire to have the shop inspected for safety by the State Industrial Board nor years of intermittent employee discussion of this matter resulted in any action because the employees, although in favor of such an inspection, were "afraid" to call the inspector, but agreed with Frasier that one should be called in and asked him to do so.

Beyond further employee discussions, however, Frasier took no action in this regard until after employee Jordan was injured by a roller shaft which was being worked on in the vertical press and which broke under pressure, flew out, and injured his hand. This accident, which was caused by Jordan's and his foreman's negligence, required treatment in a hospital to which Frasier drove Jordan. During the ride, Frasier stated that he intended to report Respondent to the Accident Board.¹ Upon his return to the plant, Frasier engaged in a heated discussion with foreman Simon concerning the "dangers of the press" and iterated his thought that "somebody should turn (Respondents) in to the - Accident Board." Pursuing this objective, Frasier subsequently contacted a union official who arranged to have the Accident Board inspect Respondent's plant. On January 3, 1967, an inspector from the Industrial Accident Board visited and inspected the plant and thereafter issued a safety certificate to Respondent. Prior to the arrival of the inspector at its plant, Respondent was unaware that an inspection either had been requested or was to be made.

That evening, Frasier informed Respondent's president, Gallagher, that the presses constituted dangerous work hazards and that it was he, Frasier, who had requested the safety inspection. He imparted this information to Gallagher ostensibly so that no one else would be blamed for what he had done. Six days later, Frasier was discharged by Landon. In effectuating the discharge, Landon told Frasier the reason therefor was because Frasier's "work is too slow and unsatisfactory, but I think we both know what the real reason is." Later, when Frasier met with Gallagher and protested that he was discharged because of his "complaint to the Industrial Accident people," Gallagher replied, ". . . but I know that there must be something wrong with the work or some problems other than that, because I instructed (departmental manager Johnson and Landon) that when you called me that this was not to be held against you *or anyone* in any way." (Emphasis supplied.)

The record clearly establishes that in attempting to modify working conditions which they considered to be dangerous, Respondent's employees not only frequently discussed among themselves plant safety conditions and the desirability of having their grievances regarding those conditions corrected by means of a shop inspection, but also specifically supported Frasier's suggestion that such an inspection be made and requested him to act on their behalf and arrange for an inspection. By doing so, Frasier was participating in a group action whose object was to attempt to safeguard himself and his fellow employees from certain plant hazards. Moreover, assuming without deciding that Respondent's prior knowledge of its employees' concerted activities is an essential element in support of a finding of an illegal discharge because of such activity,² it is apparent that Respondent was well aware of such activity. The frequency and continuity of complaints raised by Frasier, Jordan, and various other employees to various supervisors at various times with regard to the vertical press was a clear indication to Respondent that its employees were concerned about shop safety conditions, that their concern was of a collective and not an individual nature, and that they wanted corrective measures taken. Respondent's awareness of this concerted action is further established by the statement made to Frasier by Respondent's president to the effect that Frasier's action in obtaining a shop inspection "was not to be held against (Frasier) or anyone in any way." In view of the foregoing, we must conclude that Respondent's employees engaged in the aforesaid protected concerted activities with the object of inducing Respondent to correct certain grievances, that by engaging in such activities, Frasier and the other employees were acting in concert for their mutual aid and protection within the meaning of Section 7 of the Act,³ and that Respondent was aware, or, at the very least, had reason to suspect that its employees had agreed upon group action for the aforesaid purposes.⁴

Respondent contends, however, that although it had knowledge prior to his discharge that Frasier had called in the Industrial Accident Inspector, and, assuming that its employees were engaging in a protected concerted activity, Respondent nevertheless had no knowledge that Frasier was engaging in such activity since he advised Respondent's president that it was he alone who had called in the inspector. Three basic facts contradict Respondent's argument: (1) following Jordan's injury and hospitalization, Frasier became involved in an angry interchange with foreman Simon concerning the "dangers of the press" which concluded with Frasier's statement that Respondent should be "turn(ed) in to the Industrial Accident Board; (2) Frasier in fact arranged to obtain the inspector; and (3) Frasier admitted this fact to Respondent's president prior to his discharge.

We have no doubt that the coercive effect of Frasier's discharge was not lost on employees who had had a legitimate grievance for years and yet, until Frasier's action, were afraid to present their grievance either singly or collectively to top management. In these circumstances, it seems obvious that the reason assigned by Respondent for discharging Frasier, slow and unsatisfactory work, is clearly pretextual, and that Frasier was terminated because of his participation in protected concerted activities leading to the plant inspection, as reflected by supervisor Landon's remark that "We both know what the real reason is."

Accordingly, we find that, in order to foreclose protected concerted activity in the future, Respondent terminated the employment of Frasier, thereby violating Section 8(a)(1) of the Act.⁵

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 orders that Respondent, Westmont Tractor Company, Missoula, Montana, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

² See *Indiana Gear Works*, 156 NLRB 397, 400, *Walls Manufacturing Company, Inc.*, 137 NLRB 1317, enfd 321 F 2d 753 (C.A. D.C.), cert denied 375 U.S. 923

³ Cf. *Mushroom Transportation Co v N.L.R.B.*, 330 F.2d 683 (C.A. 3), *Indiana Gear Works v N.L.R.B.*, 371 F.2d 273 (C.A. 7), *Cleaver-Brooks Manufacturing Corp v N.L.R.B.*, 264 F.2d 637 (C.A. 7), *N.L.R.B. v Taylor Co.*, 342 F.2d 406 (C.A. 6), *Joanna Cotton Mills v N.L.R.B.*, 176 F.2d 749 (C.A. 4)

⁴ *Falcon Plastics—Division of B-D Laboratories, Inc.*, 164 NLRB No 101

⁵ Cf. *Falcon Plastics—Division of B-D Laboratories, supra, Nemec Combustion Engineers*, 100 NLRB 1118, enfd 207 F 2d 655 (C.A. 9).

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

HOWARD MYERS, Trial Examiner This proceeding, with all parties being represented, was heard before me, the duly designated Trial Examiner, at Missoula, Montana, on December 12, 1967, upon a complaint of the General Counsel of the National Labor Relations Board, herein respectively called the General Counsel¹ and the Board, dated August 29, 1967, and Respondent's answer duly filed on September 13, 1967. The complaint, based upon a charge and an amended charge, duly filed on March 14 and on April 27, 1967, respectively, by Local Lodge 1434, International Association of Machinists and Aerospace Workers, AFL-CIO, herein called the Union, alleged, in substance, that Westmont Tractor Company, herein called Respondent, violated Section 8(a)(1) of the National

¹ This term specifically includes counsel for the General Counsel appearing at the hearing.

Labor Relations Act, as amended from time to time, herein called the Act, by discharging Lee Frasier, on or about January 9, 1967, and thereafter refusing to reinstate him because he had engaged in certain protected concerted activities with his coworkers. Respondent's answer denied the commission of the unfair labor practices alleged.

Upon the entire record in the case² and from his observation of the witnesses, the Trial Examiner makes the following:

FINDINGS OF FACT

I RESPONDENT'S BUSINESS OPERATIONS

Westmont Tractor Company, a Montana corporation, has its principal offices and place of business at Missoula, Montana, where it is engaged in, and during all times material was engaged in, the sale and servicing of tractors and similar heavy equipment.

During the 12-month period immediately preceding the issuance of the complaint herein, a period representative of its annual operations generally, Respondent sold and distributed products valued in excess of \$500,000 and, in the course of its business operations, purchased equipment, goods, and materials valued in excess of \$50,000 from sources outside the State of Montana.

Upon the basis of the foregoing facts, the Trial Examiner finds, in line with established Board authority, that Respondent is, and during all times material was, engaged in commerce, or in a business affecting commerce, within the meaning of Section 2(6) and (7) of the Act, and that its business operations meet the standards fixed by the Board for the assertion of jurisdiction.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization admitting to membership employees of Respondent.

III THE UNFAIR LABOR PRACTICES

A *The Pertinent Facts*

Frasier commenced his employment with Respondent in July or August 1959, at its then Kalispell, Montana, facilities. There, Frasier operated the automatic rail rebuild machine³ as well as other automatic welding machines.⁴

In about 1961, Respondent moved its Kalispell operations to Missoula. In preparation for shipping the rail rebuild machine from Kalispell, Frasier disassembled it and upon its arrival in Missoula, he reassembled it and thereafter operated it. In addition to operating the rail rebuild machine since his transfer to Missoula, Frasier also operated Respondent's roller presses, track presses, and, for some months in 1965, worked in Respondent's toolroom doing various jobs, such as working on "turbochargers, heads, injectors, pumps."

Shortly after commencing work at Missoula, Frasier became aware of certain safety hazards which existed within Respond-

ent's facilities. Regarding this situation, Frasier testified, and the undersigned finds, "The biggest hazard [was] the presses. I was never afraid of the presses myself. I operated the presses, but I was afraid of them when some other people operated them. And especially the vertical press, because this was used to compress tension springs, bend steel, general work, and this machine if you don't have the right length of ram, they would add a piece of shafting to make the ram longer"; that the vertical press ejected up to 100 tons of pressure; that metal shafts were inserted in the press for particular jobs when the ram on the machine was not long enough, that on the occasions when a metal shaft was used and the tension spring was not perfectly in line with the ram and the article being worked on then the shaft "could and did fly out of there just like a bullet" due to the tremendous pressure being used on the press; that there was no safety guard around the press and people working in the area where the press is located were given no advance warning when the press would be put in operation; that he saw "tension springs come out of this press and bounce off across the shop" and that some of the employees were bruised by objects ejected at great force from this press.⁵

In addition to the hazardous condition created by the vertical press, as described immediately above, the forklift Hyster had a bad clutch and when the men got on it to load material, unless the operator was extremely careful "laying the hatch", the forklift would jump about 4 feet.

These above-referred-to dangerous shop conditions were discussed on many occasions by Frasier with his welding shop coworkers.⁶ These talks, which took place from about 1962 until Frasier's discharge on January 9, 1967, not only centered around the unsafe conditions of the shop but also about calling in a safety inspector who could order Respondent to remedy the situation.

Frasier and some of his fellow workers, on many occasions over a period of nearly 1 year prior to Frasier's dismissal, talked to Pete Simons, the welding foreman, and with Ira Landon, Respondent's service manager,⁷ about the shop's hazardous working conditions created by the vertical press and the forklift. As a result of these talks some of the unsafe conditions in the shop were corrected but the vertical press continued to remain in an unsafe working condition.

On October 28, 1966, the following took place in the welding shop, according to Frasier's credited testimony:

Well, we have an air tester to test rollers, and by testing them by air you know whether they leak or not. This particular roller did leak. And we didn't know where it leaked, we couldn't find the leak, so we disassembled the roller. And we still couldn't see evidence of leakage on seals. So we examined the shaft and we found that the shaft had a flaw in it, and there is an oil passage in this shaft, and by putting air pressure on the roller when it was assembled, it forced the oil up through this flaw in the shaft. Well, after we discovered that, we brought it to the attention of the foreman,⁸ and he said, well, we should break that and show it to the general service manager.⁹ Well, why, I don't know, but it had a flaw in it.

² Including the briefs filed on January 15, 1968, by the General Counsel and by Respondent's counsel.

³ This is a submerged arc welding machine which is used to remove the tracks from the track-type tractors.

⁴ These are used to build up tractor rollers and idlers.

⁵ At the Kalispell operations some employees were actually hurt by objects ejected from this machine.

⁶ Namely, Dan Johnson, Dick Lewis, Tom Nichols, Glen Wisenberger, Carl Jordon.

⁷ Concededly, Simons and Landon are supervisors within the meaning of the Act.

⁸ Pete Simon.

⁹ Ira Landon.

* * * * *

Well, the foreman told the boy, Carl Jordan, to put it in the press and he laid it crosswise in the vertical press and they broke it. Well, roller shaft is quite hard, it induction hardens, shaft, on the surface, and when it broke, it flew out of there, and it hit him. And he put his hand up, and it hit his hand, and he had a big swelling on the back of his hand, and it shook me a little, so I took him to the doctor. Then, come back, I had a heated discussion with my foreman about the dangers of the press, and this was just about what it was, and told him that I thought that somebody should turn them into the Industrial Accident Board.

Frasier, almost immediately after the above-described accident and with Respondent's permission, drove the injured Jordon to a nearby hospital or clinic. En route to obtain medical care for Jordon, Frasier and Jordon discussed the unsafe conditions in the shop. Frasier then informed Jordon that he intended to request that a safety inspector be called into the plant to inspect the conditions then existing and have Respondent ordered to correct them.

Respondent's establishment, at all times prior to and at the time the above-recited facts took place, was unorganized. In order to carry out his plans, which had been discussed on many previous occasions with his coworkers and had been favorably received by them, Frasier, on December 4 or 5, 1967, called at the offices of A. H. Spencer, the Missoula area representative of the International Union of Operating Engineers Local 371. There, after outlining the unsafe working conditions in Respondent's welding shop to Spencer, Frasier asked Spencer to write to the Industrial Accident Board and request that it send one of its safety inspectors to Respondent's plant. Accordingly, under date of December 5, 1966, Spencer wrote said board as follows.

Mr. George Wenstron
Industrial Accident Board
Helena, Montana

Dear Sir.

I have been approached by several men working for Westmont Tractor Company, here in Missoula, asking my help in improving some safety measures in the shop. I do not have any business in the plant but will try to help them in their fight for safety. The men are concerned on the laxity of the supervisors on safety.

There are no guards for the operator or men working around the one-hundred ton horizontal press. They are using badly frayed cable slings on the cherry picker for moving heavy parts of machinery. They do have Arc welding shields, but most of the time they are not in use.

Mr Lee Frasier, mechanic and welder acting as spokesman for the men, can be contacted and is willing to point out the hazards in the shop; and, you can determine how serious the situation is and take it up with the proper authorities of the Company

On January 3, 1967, a safety inspector visited Respondent's plant. Frasier, however, was not at the plant that day, having been assigned to perform some work elsewhere. The safety inspector strolled around the plant alone for about 20 minutes before identifying himself. He then approached Simons, the welding foreman, introduced himself, and stated that he was there because of "some dangerous tool, the press." According to Simons, he told the inspector, "I don't know about any of this danger, the one that had been there has been in there for a good many years", that the inspector then went over to the vertical press, and looked at it, that after looking at "everything" in the shop, the inspector left. Thereafter, the aforementioned Industrial Accident Board issued a certificate attesting to the fact that the working conditions at Respondent's plant were safe.¹⁰

The evening following the inspector's visit to the plant, Frasier telephoned the home of Gary Gallagher, Respondent's president, and told Gallagher that it was he who had requested a safety inspector to inspect the welding shop.

Regarding the above-referred to telephone call, Frasier testified that he told Gallagher, among other things, that the reason he called for the plant inspection was due to the fact that there were a few things about the presses which could and should be corrected because in their present state they created dangerous work hazards; that Gallagher replied, "Well, we had sure been willing to go along with that, we will have Johnny Johnson,¹¹ come out in the morning, and we will look into this."

Regarding the telephone call referred to immediately above, Gallagher testified that Frasier "seemed very, very sincerely concerned about the safety thing, and dwelt on it quite a bit in the conversation"; that Frasier felt that the Inspector's visit would create turmoil among the shop; that in order to reassure Frasier, who seemed to him to be very emotionally disturbed over the whole matter, he told Frasier, "don't worry about it, Lee, I am glad to know what is going on out there, I will see Johnny Johnson in the morning and Ike (Ira Landon) will get together with him and see what the problems are, as they exist", that when Frasier remarked, "I don't need to worry about any repercussions" he said, "I am glad you called", and that ended the conversation.¹²

Gallagher further testified that the following day, January 5, he called Johnson into his office, told Johnson of his telephone conversation with Frasier, and of his assurances to Frasier that Respondent would not take any action against him because of his calling in the inspector; that he then said to Johnson, "If we have a problem out there, I want it taken care of"; that Johnson "seemed real concerned that this thing had come up this way, and he wasn't aware of any problem";¹³ Landon was then called into the meeting and was informed what transpired during the above referred to Gallagher-Frasier January 4 telephone conversation; that the three of them then "talked generally about" the situation; and that the following then ensued.

And Ike and Johnny assured me that there wasn't any problem there, that they were making maximum efforts to

¹⁰ While at Respondent's facilities on January 3, 1967, the inspector suggested that Respondent place a chain around the welding shop oxygen tanks to prevent them from falling. It is significant to note, however, that, as far as this record indicates, the vertical press was not in operation at the time the inspector was on Respondent's facilities

¹² Gallagher further testified that prior to Frasier's aforementioned telephone call he did not know that the inspector had visited the plant nor did he know that any "dangerous conditions" existed in Respondent's plant.

¹³ Johnson denied that he knew that an inspection had been made of the plant prior to being informed of that fact by Gallagher at this January 5 meeting

¹¹ General Parts and service manager

keep it safe And that they would certainly do everything they could to keep it safe.

And I said, "Well, Lee was very-very upset over this thing," and they said, "Well, he has been acting rather nervous and high strung lately around here." And then he said he just isn't working out on some of these things, and we have some problems

I said, "Well, he came up with this last night. It was a big surprise to me."

So I left it in Johnny's hands

Regarding the meeting in Gallagher's office referred to immediately above, Landon testified on direct examination by Respondent's counsel as follows.

Q. You heard Mr. Gallagher testify this afternoon, did you not?

A. Yes, sir.

Q. And he testified that he called in Mr. Johnson, and you came in, with reference to this telephone call from Mr. Frasier.

A. Yes, sir.

Q. Do you recall that occasion?

A. Yes, sir

Q. What was the nature of the discussion that took place at that time, as you recall it?

A. Well, as near as I can recall it, Gary talked to us about Lee, he told us that Lee had called him. That he was very upset.

Q. Who was?

A. That Lee Frasier was upset. And he told us that what the conversation was between him and Lee, he also told us that he had told Lee that he wasn't going to lose his job over this deal

After we talked a while, he told us that it was me and Johnson's jurisdiction, whatever we decided, why, we were to handle it

Q. When you say, whatever you decided, you were to handle it, does this mean with changing conditions in the shop or what?

A. Yes, this would be changing conditions in the shop, and also what to do with Mr Frasier.

Q. Well, there had been some discussion, then, at that morning after the phone call about Mr Frasier and his work?

A. Yes, sir.

Q. What was the nature of this conversation?

A. Well, me and Mr. Johnson had talked about this. I don't know how many times, two times, we talked, I think, once in September, once in November, about Mr Frasier being too slow And we had pretty well already made up our minds that we were going to have to let him go.

About mid-morning on Monday, January 9, 1967, Simon told Frasier to go to Landon's office There, according to Frasier, Landon stated "I hate to do this", that when he replied, "Well, what you have to do, you probably have to do", Landon stated, "I have to let you go"; that he then asked, "What is the reason?", that Landon remarked, "Well, your work is too slow and unsatisfactory, but I think we both know what the real reason is", that when he asked Landon whether Landon wanted him to leave Respondent's premises immediately or finish his day's work, Landon replied that it was

immaterial to him whether he left right then or finished his day's work, so he said, "Well, I will just go now"; that Landon then handed him a check for wages due;¹⁴ that he then went to his work area where he separated his personal tools from Respondent's tools, took the Respondent's to Landon's office, and placed his own tools in his jeep; that before leaving the plant that morning he went to Gallagher's office because the check Landon had handed him did not correctly reflect the amount of vacation pay due him; and that after Gallagher corrected the question of vacation pay, and had a check drawn for the amount due, he left the plant

Regarding what transpired at the time Frasier came to him on January 9, about the vacation pay problem, Gallagher testified as follows:

... when Lee was fired from the company. He came in, on his vacation check problem, which I took care of for him, and he also said, "I have been released because of my objection or rather my complaint to the Industrial Accident people "

And I told him, I said, "Lee, I am sure there is more to this than that " And I said, "I leave the management of the service department up to Mr Johnson and Mr. Landon, but I know that there must be something wrong with the work or some problem other than that, because I instructed them when you called me that this was not to be held against you or anyone in any way."

And Lee indicated, he said, "Well, I know you were going to get a good report of it probably anyway."

Landon denied that during Frasier's January 9, 1967 termination meeting, he said to Frasier, "But I think we both know the real reason" for your discharge. He testified that the only reason Frasier was discharged was, as he told Frasier on January 9, "because he was too slow and his work was unsatisfactory "

Several weeks after being discharged, Frasier went to the plant and asked Landon for a letter of recommendation Landon wrote the following letter on Respondent's letterhead and handed it to Frasier.

To whom it may concern—

Mr Lee Frasier worked for us for almost seven years He worked on our roller rebuild machine and our track rebuild machine He not only operated these machines but could also service them for us He also worked in our tool room; working on cyl heads, fuel Injection Equipment, turbo chargers, Hyd pumps & etc

Mr Frasier is very dependable and does good work No bad habits while working for us.

Yours truly

Ira Landon
Service Mgr.

B. Concluding Findings

This case presents the comparatively rare situation where the recitation of the facts leading up to the discharge of Frasier reveals its discriminatory character. The very sequence of events surrounding the discharge renders immediate suspect Respondent's explanation in justification of its conduct. Thus,

¹⁴ This paycheck had been made out prior to Frasier entering Landon's office that morning.

in the face of the overwhelming credited evidence that the discharge was plainly attributed to Respondent's resentment of Frasier's exercising his and his coworkers' protected rights to complain to the Industrial Accident Board regarding the unsafe nature of the working conditions at Respondent's premises, Respondent urges that the true reason for Frasier's termination was that Frasier's work was unsatisfactory and that he worked too slowly and that Frasier's complaint to the Industrial Accident Board played no part in its determination to fire him. The record does not bear out Respondent's contention. In fact, the record clearly establishes the contrary. Thus, Landon's "To Whom It May Concern" letter states in no uncertain terms that Frasier had been in Respondent's employ for almost 7 years, that he not only worked on Respondent's roller rebuild machine and its track rebuild machine but serviced them. The letter ended with the remark, "Mr Frasier is very dependable and does good work. No bad habits while working for us." That the aforesaid letter really reflected Landon's appraisal of Frasier's working ability is attested to by the following quote from Landon's testimony:

Q (By Mr Thane)¹⁵ With reference to General Counsel's Exhibit No. 3, the letter, I believe you testified to the Hearing Examiner that this was one or two weeks following the termination?

A Yes, sir.

Q Mr Frasier came in and requested this?

A Yes, sir.

Q Did he tell you what he wanted it for?

A No, he said he wanted to try and get another job.

Q Is it customary for you when a person is laid off to write a letter of recommendation to assist them in getting another job?

A It has been, yes.

Q And when you write a letter of recommendation, do you generally always say exactly what you think about the man's performance?

MR CRONIN I will object to that as leading.

TRIAL EXAMINER No, I would like to hear the answer.

A Yes, I do, yes.

Q (By Mr Thane) Did you feel that in your writing General Counsel's Exhibit 3 that this was an accurate statement as to Mr Frasier's work?

A Yes, Mr Frasier did a good job, and he was dependable. The reason I let him go is because he was too slow.

Respondent also contended that Frasier did not act in concert with any of his fellow workers, but took it upon himself to file the claim with the Industrial Accident Board. This contention is belied by the record. Thus, the record clearly establishes, and the Trial Examiner finds, that from time to time Frasier discussed with his fellow workers the hazardous conditions which existed in the welding shop and they agreed with him that the Industrial Accident Board should be called upon to inspect the shop. That Frasier filed the complaint with the Industrial Accident Board, through the aid of the Operating Engineers Union, does not minimize the concerted nature of his action, for the filing must in itself be considered his protected activity since, as the record discloses, his action was taken on behalf of all the shop employees.

As the employees had a right guaranteed by Section 7 of the Act to engage in concerted activities for mutual aid and

protection, it is clear, and the Trial Examiner finds, that Respondent's discharge of Frasier for doing so not only interfered with his exercise of that right but also had the inherent effect of coercing and restraining its exercise by his fellow employees. Accordingly, the Trial Examiner finds that Respondent violated Section 8(a)(1) of the Act by effecting Frasier's discharge for engaging in activities protected by the Act.

IV THE EFFECT OF UNFAIR LABOR PRACTICES UPON COMMERCE

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

V THE REMEDY

Having found that Respondent has engaged in unfair labor practices violative of Section 8(a)(1) of the Act, it is recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent has discriminated in regard to the hire and tenure of employment, and the terms and conditions of employment of Lee Frasier, it is recommended that Respondent offer him immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges. It is also recommended that Respondent make Frasier whole for any loss of pay he may have suffered by reason of Respondent's discrimination against him by payment to him of a sum of money equal to the amount he normally would have earned as wages from the date of his discharge to the date of Respondent's offer of reinstatement, together with interest thereon at the rate of 6 percent per annum, less his net earnings during said period. Backpay and interest shall be computed and paid in the manner and to the degree set forth in *F W Woolworth Co*, 90 NLRB 289, and *Isis Plumbing & Heating Co*, 138 NLRB 716.

The unfair labor practices found to have been engaged in by Respondent are of such a character and scope that in order to insure Respondent's employees of their full rights guaranteed them by the act, it will be recommended that Respondent cease and desist in any manner from interfering with, restraining, and coercing its employees in the exercise of their guaranteed rights.

Upon the basis of the foregoing findings of fact and upon the record as a whole, the Trial Examiner makes the following

CONCLUSIONS OF LAW

1 Respondent is, and during all times material was, an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

¹⁵ Respondent's attorney.

2 The Union is, and during all times material was, a labor organization within the meaning of Section 2(5) of the Act.

3. By discriminating in regard to the hire and tenure of employment and the terms and conditions of employment of Lee Frasier, thereby discouraging protected concerted activities among its employees, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act

4 By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the record as a whole, it is recommended that Westmont Tractor Company, Missoula, Montana, its officers, agents, successors, and assigns, shall.

1. Cease and desist from:

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

(b) Discharging or otherwise discriminating against any employee in regard to hire or tenure of employment or any term or condition of employment for engaging in an activity protected by Section 7 of the Act.

2 Take the following affirmative action which it is found will effectuate the policies of the Act

(a) Immediately reinstate Lee Frasier to his former or equivalent position without prejudice to his seniority and other rights and privileges.

(b) Make Lee Frasier whole for any loss of wages he may have suffered because of Respondent's discrimination against him in the manner and to the degree set forth in the section above entitled "The Remedy"

(c) Preserve, and upon request, make available to the National Labor Relations Board or its agents, for examination and copying, all records necessary for the determination of the amount of pay due under these recommendations

(d) Notify Lee Frasier, if presently 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.

(e) Post at its establishment in Missoula, Montana, copies of the attached notice marked "Appendix"¹⁶ Copies of said notice on forms to be provided by the Regional Director for Region 19, shall, after being duly signed by Respondent's representative, be posted 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.

(f) Notify the Regional Director for Region 19, in writing, within 20 days from the receipt of this Decision what steps Respondent has taken to comply herewith.¹⁷

IT IS FURTHER RECOMMENDED that unless on or before 20 days from the receipt of this Decision, Respondent notifies the said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring said Respondent to take the action aforesaid.

¹⁶ In the event that this recommended order be adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's order be enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals enforcing an Order" shall be substituted for the words "a Decision and Order."

¹⁷ In the event that this recommended order be 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 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, as amended, we hereby notify our employees that.

After a hearing duly held, at which this Company was represented by legal counsel, it was determined that this Company unlawfully interfered with the guaranteed rights of our employees, such as by discharging Lee Frasier on January 9, 1967, for engaging in protected concerted activities. To remedy such conduct, this Company has been required to discontinue the practice found to be contrary to the National Labor Relations Act, to take certain affirmative measures to carry out the Act's policies, including reinstating Lee Frasier to his former or substantially equivalent job and make him whole for any loss of earnings he may have suffered as the result of our discrimination against him, to post this notice advising you of the action we will take and assuring you of your freedom from any future interference with your rights guaranteed you by the Act Accordingly, we hereby assure you as follows:

WE WILL NOT discharge or otherwise discriminate against any employee in regard to hire or tenure of employment or any term or condition of employment for engaging in any activity protected by Section 7 of the National Labor Relations Act.

WE WILL offer reinstatement to Lee Frasier to his former job without prejudice to his seniority or other rights and privileges and we will make him whole for any loss of pay or benefits suffered by him as a result of his unlawful discharge

WESTMONT TRACTOR
COMPANY
(Employer)

Dated

By

(Representative) (Title)

Note We will notify Lee Frasier if presently 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, as amended, after discharge from the Armed Forces

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.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 327 Logan Building, 500 Union Street, Seattle, Washington 98101, Telephone 583-7473.