

**Alum-A-Form of Idaho and Local Lodge 1491,
International Association of Machinists &
Aerospace Workers, AFL-CIO. Case 19-CA-4046**

June 25, 1969

DECISION AND ORDER

**BY CHAIRMAN McCULLOCH AND MEMBERS
FANNING AND JENKINS**

On March 5, 1969, Trial Examiner David Karasick 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, Respondent filed exceptions to the Trial Examiner's Decision and 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 connection with this case to a three-member panel.

The Board has reviewed the rulings made by the Trial Examiner 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, the brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

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 orders that Respondent, Alum-A-Form of Idaho, Boise, Idaho, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

DAVID KARASICK, Trial Examiner: This proceeding under Section 10(c) of the National Labor Relations Act, herein called the Act, was heard at Boise, Idaho, on September 19, 1968, pursuant to due notice. The Complaint, dated July 29, 1968, was based upon charges and amended charges filed on June 5 and July 24, 1968, respectively, by Local Lodge 1491, International Association of Machinists & Aerospace Workers, AFL-CIO, and alleged that the Respondent had engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the National Labor Relations Act, as amended.

Upon the entire record in the case, including briefs filed by the General Counsel and the Respondent, and from my

observation of the demeanor of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OPERATIONS OF THE RESPONDENT

The Respondent, an Idaho corporation, is engaged at Boise, Idaho, in metal fabrication where it annually receives from suppliers located outside the State of Idaho materials valued in excess of \$50,000. As alleged in the Complaint and admitted in the Answer, the Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

Hod Carriers and Laborers Local 434, herein called the Union, and Local Lodge 1491, International Association of Machinists & Aerospace Workers, AFL-CIO, the Charging Party herein, are labor organizations within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES ALLEGED

A. The Issue

The primary issue in this case is whether the Respondent discharged employees David Douglas, Herbert Sparks and James Allen for reasons prohibited by the Act.

B. The Facts

Early in May 1968,¹ some of the employees in the Respondent's Boise plant began to discuss the question of joining a union. David Douglas, one of the employees, knew an official of the Union and spoke to him about the matter. Following this, a meeting was arranged for the evening of Thursday, May 9, 1968. Among the seven employees of the Respondent who attended this meeting were David Douglas, Herbert Sparks, James Allen, and David Irish. Each of the employees was given several union designation cards. On the following day, Douglas, Sparks, and Allen told the employees who had not attended the meeting what had occurred and spoke to them about the Union.

On Monday, May 13, at approximately 12:30 in the afternoon, Douglas was told to report to the office of Robert Scharf, plant superintendent. According to the uncontradicted testimony of Douglas, when he arrived in Scharf's office, the latter handed him a check. The employees were customarily paid each Friday for the week ending the preceding Wednesday. Douglas asked what the check was for and Scharf replied: "You and I both know what the reason is, but I can think of lots of reasons according to our little rule book. We feel as though we don't need you anymore." Scharf did not mention any rule or rules which Douglas was alleged to have violated. He did, however, tell Douglas that the latter was being paid for the whole day and he could either stay or leave.

Shortly after Douglas had been informed that he had been discharged, Sparks was told to report to Scharf's office. When he arrived he also was handed a check. He, too, asked what it was for. Scharf replied: "Seeings [sic]

¹Unless otherwise noted, all dates hereafter refer to the year 1968.

you don't like the way we pay and the way things are going around here, the Company feels they don't need you anymore." Sparks said that he would like a better reason than that and Scharf then pulled out the Respondent's book of rules and circled one rule relating to tardiness and another for missing work, saying that these would be sufficient. As was true in the case of Douglas, Scharf told Sparks that he could continue to work for the balance of the day or that he could leave at once but that he was getting paid for the entire day. Before he left the plant, Sparks told David Irish, another employee, that he had been terminated.

On the same afternoon, shortly after Douglas and Sparks had been discharged, Irish was called into Scharf's office. Scharf asked Irish where the latter stood on this. Irish replied that he guessed he was in on it as much as the rest of the employees were. Scharf said that they had tried it before and it was just not going to work out. He also stated that if the Respondent found it necessary, it could get another crew. Irish asked Scharf why he had discharged Sparks and Douglas. In reply, Scharf handed Irish a copy of the Company rules and pointed to two of them, saying those were a couple of reasons. He continued, however, by saying, "I think you know the real reason why." Irish asked Scharf if it was Ed Koelling who had told him about the Union. Scharf replied that it definitely was not Koelling but stated that he would not tell Irish who it was. Irish and Scharf checked the records of tardiness of Sparks and Douglas together with those of 8 or 10 other employees in the plant.² According to the testimony of Irish, the record of Sparks "wasn't quite the best, but Dave's [Douglas] wasn't actually that bad compared to a few other members in the job." Scharf then started talking about things being better in the shop. He explained some of the new things that were going to be in the plant and stated that if things did not get better that he would be out there with a picket sign along with the employees.

When he left Scharf's office, Irish was of the belief that Ed Koelling had told Scharf about the union activities of Sparks and Douglas and he told Koelling that he was angry at him because of that. Later that same afternoon, Irish was again called to Scharf's office. On this occasion, Scharf again stated that it was not Ed Koelling³ who had told him about the union activities of the employees.⁴

²At this time, the plant was operating on the basis of two shifts. Approximately 18 employees worked on the day shift and 6 on the night shift. Sparks and Douglas worked on the day shift.

³At this time Koelling, who previously had been a foreman, was demoted to the position of shipping clerk. At the time of the hearing, Koelling had been reinstated to his former position as foreman. The General Counsel argues that knowledge of the union activities of the employees on the part of Koelling is attributable to the Respondent because Koelling was a close associate of Scharf during and after working hours; that, even while Koelling was acting as a shipping clerk, he issued orders to other employees on behalf of Scharf; that while he acted as a shipping clerk, he received an hourly rate of \$2.50 which was considerably higher than the wages received by the three discriminatees; and that Koelling sought to obtain information concerning the union activities of the employees. Koelling was not a supervisor during the period in question and the evidence is not sufficient to support a finding that such information as he may have had with respect to the union activities of the alleged discriminatees in this case was transmitted by him to the Respondent. I therefore do not draw the inference urged upon me by the General Counsel.

⁴The foregoing findings are based on the testimony of Irish. Scharf denied that he brought up the matter of the Union during the meeting in his office on the first occasion with Irish. He further denied that he ever asked Irish where the latter stood in regard to the Union. He admitted

On May 15 or 16, Carl Morris, general production manager of all plants of the Respondent,⁵ visited the Boise plant. Each of the employees met separately with Morris in Scharf's office. When Irish was called in to meet with Morris, the latter asked Irish if he had any problems in the shop or anything that he wanted changed. Irish said that Sparks and Douglas had been discharged and Irish did not think they should have been. Morris then checked the records of the employees, and after having done so, said that he could not understand why Sparks and Douglas had been discharged when Scharf did not fire some of the other employees. Morris said that he would talk to Scharf, that maybe he could get Sparks and Douglas reinstated, and that he would let Irish know. Irish, however, did not hear further from Morris about the matter.⁶

James Allen also was called in to have Morris speak to him. Allen testified without contradiction that he was told by Scharf that Morris wanted to talk to him about the Union; that Allen thereupon went to see Morris; that no one else was present; that Morris introduced himself and told Allen that he was from California and asked Allen what he liked and disliked about the shop; that Allen told Morris about some of the working conditions and then told him that if Scharf did not quit firing good employees that the Respondent would not have anybody to go into the new shop which the Respondent was planning; that Morris asked what Allen meant and Allen replied that he felt that Sparks and Douglas had been discharged because of the Union; and that Morris denied having any knowledge about the Union.

On the morning of June 8, Allen was told by Scharf that his services were no longer needed. Allen asked why and Scharf answered, "for the same reason I fired Herb [Sparks] and Dave [Douglas]."

C. Summary and Concluding Findings

The record thus shows that Douglas and Sparks were abruptly discharged on Monday, May 13. This was 2 working days after they had attended a union meeting on May 9 and 1 working day after each of them had talked to other employees in the plant about the formation of a union and about the union meeting. It was also in the middle of the workweek which ended on Wednesday and for which the employees were paid each Friday.

that Irish asked him if Ed Koelling had told him about "it" but testified that he was "in the dark about it" because he did not know what Irish was talking about. Scharf did not deny, however, the remaining statements attributed to him by Irish. Scharf's denials that he brought up the subject of the Union or that he knew anything about it on this occasion are difficult to believe in view of the uncontradicted testimony of Irish that Scharf also said that they had tried it before and it was just not going to work out; that the Respondent could get another crew if necessary; and that, if things did not get better, he would join the employees and carry a picket sign himself. These statements would be without meaning if they did not refer in some manner to the Union. Irish was still employed by Respondent at the time of the hearing. He impressed me as a witness who was honestly trying to relate the events about which he testified. The testimony of Scharf, however, was marked by contradictions and evasions, as noted in part hereafter. Based upon my impressions of the demeanor of the two witnesses in question and in light of the foregoing evidence, I believe that the testimony of Irish is the more accurate and I find that the conversations in Scharf's office occurred in the manner recounted by Irish, as above related.

⁵The Respondent operates three plants in addition to the Boise plant which alone is involved in this case.

⁶Morris was not called as a witness by the Respondent and the foregoing testimony of Irish regarding his meeting with Morris is uncontroverted.

Plant Superintendent Scharf intimated to both employees that the reason for their termination was something other than the reasons which he had stated to them. Scharf told Douglas, "You and I both know what the reason is, but I can think of lots of reasons according to our little rule book." And, when pressed for an answer by Sparks, Scharf cited rules relating to tardiness and for missing work, saying these would be sufficient. The record further shows that, despite Scharf's denial, he knew of the union activities of the employees. On May 13, shortly after Douglas and Sparks had been terminated, Scharf questioned employee Irish as to where the latter stood with respect to the Union; told Irish that attempts to organize a union had been tried previously; that it would not work; and that if the Respondent found it necessary, it could get another crew of employees. When Irish asked why Sparks and Douglas had been discharged, Scharf handed Irish a copy of the Respondent's rules, pointed to two of them dealing with absenteeism and tardiness and said that these were a couple of reasons but went on to say, "I think you know the real reason why." When Irish asked Scharf if Ed Koelling had told him about the Union, Scharf answered that it had not been Koelling but went on to say that he would not tell Irish who it was who had told him.

On June 8, Allen also was terminated. According to the undenied evidence, Scharf told him that he was being discharged, "for the same reason I fired Herb [Sparks] and Dave [Douglas]." On May 15 or 16, Allen had told General Production Manager Morris that Sparks and Douglas were good employees and that Allen believed they had been discharged by Scharf because of their union activities.

Sparks had first been employed by the Respondent in March 1967, Douglas in May of that year and Allen in December. In the fall of 1967, Sparks and Douglas had left the Respondent's employment for a short period of time. When Sparks began work, he was paid \$1.50 per hour. Thereafter, he received four wage increases, the last of which was granted in March, 1968, two months before he was discharged. At the time of his termination he was receiving \$1.90 per hour. Douglas also began to work for the Respondent at a wage of \$1.50 per hour. He was granted several wage increases during the period of his employment. At the time of his termination, he was being paid \$2 per hour. In April 1968, Douglas asked Scharf for an increase in pay. According to the undenied evidence, Scharf stated that Douglas had done good work and Scharf would like to see him get a wage increase but he felt he could not grant it to him because the leadman in the department was making only 20 cents more an hour than Douglas was and had been there for 2 years. Scharf then hit upon the idea of making Douglas a leadman which he then did, thus enabling him to pay Douglas \$2 per hour. This was one month before Douglas was discharged. Douglas had also received a wage increase a couple of months before. As was true of the other two employees, Allen was hired at \$1.50 per hour. He received three wage increases and was being paid \$1.80 per hour at the time of his discharge. The last wage increase was a month or two before his termination when he asked Scharf for an increase in pay which was immediately granted to him. All three of the employees were admittedly good workers.

On the basis of the foregoing evidence, the General Counsel contends, that Sparks, Douglas and Allen were discharged because of their union activities.⁷ The Respondent, however, asserts that the three employees

were terminated because each was guilty of absenteeism, tardiness and improper punching in or punching out of his timecards. Scharf testified that he reviewed the records of all the employees in the plant and found that Douglas, Sparks and Allen were the worst offenders; that as a result of such review, he decided to discharge Douglas and Sparks; that he gave a warning to Allen which proved to be of no avail and that he then decided to terminate him as well. He first testified that he arrived at his decision to discharge Douglas and Sparks on May 11; then that he had decided to do so on May 8 or 9 and finally that he reached that decision on May 10.

Scharf further testified that he spoke to the employees and told them that they could be discharged if they continued to be tardy; that they did not improve; and that he therefore discharged them. He first testified that he spoke to the employees approximately in the middle of April; then he changed the time to the first part of April; then he testified that this had occurred about the end of April or early May; then the middle of May and finally the end of May. He further testified that he had gone around the plant and spoken mainly to the offenders of whom there were about eight⁸ and that he had spoken to them only once. Thereafter, however, he testified that he had spoken to Allen about this in February and again about the middle or end of May. When confronted with a copy of the transcript of his testimony which he had previously given before the Department of Employment of the State of Idaho, Scharf admitted that he had testified in that hearing that he could not recall any specific instances when he had warned Sparks, Douglas or any other employees that they would be terminated. At the hearing in this case, he testified that he regarded the questions on this point which he had been asked at the proceedings before the Department of Employment as a request to name a specific time or date which he had been unable to do. Douglas, Sparks and Allen each denied having been warned that they would be discharged for tardiness. From their demeanor, I gathered the impression that they were recounting the events about which they testified, in this and in other respects, in an honest and straightforward manner and this impression is reinforced by an inner consistency which marks their testimony. From my impression of the demeanor of the witnesses involved and from a consideration of the contradictions in Scharf's testimony in this case and in the hearing before the Idaho Department of Employment as to whether he warned the employees about being tardy, his indefiniteness about the time he spoke to them, his contradictions as to the number of occasions on which he did so, as well as his contradictions as to the time he decided to discharge them, I am led to the conclusion that the recollections of Sparks, Douglas and Allen are the more accurate and reliable. A fair appraisal of all the evidence demonstrates that Scharf, on occasion, requested the employees not to be absent or tardy, but that he did not warn them that they would be discharged for such derelictions.

In support of its asserted reasons for the discharges of the employees, the Respondent introduced in evidence the timecards of Douglas, Sparks and Allen, which it asserts

⁷The complaint does not allege, and the General Counsel did not indicate an intention to litigate and thus place in issue the interrogation regarding the Union of Irish by Scharf on May 13, and I therefore make no finding herein whether such interrogation in itself constituted an unfair labor practice.

⁸Presumably this referred to the day shift which consisted of 18 employees. The Boise plant at that time also operated a night shift which employed six workers

in each case show numerous instances of tardiness, absenteeism and a failure to properly punch in or punch out. On cross-examination, Plant Superintendent Scharf admitted that the timecards in question were not available to him⁹ at the time he testified he made his decision to discharge the employees and that his decision was based, not on the timecards themselves, but on records kept by him which showed only the total hours of work performed in a given week by each of the employees. Those records were not produced by the Respondent. Nor did the Respondent produce the timecards of the other employees in the plant which would have permitted a comparison of the records of the three employees in question with those of the other employees with respect to absenteeism, tardiness or improper punching of the cards.

An examination of the timecards raises a number of questions which the record fails to answer. The number of instances of tardiness which the Respondent asserts the timecards show varies from the number shown on the cards themselves; in addition, although the three employees in question were supposed to have worked the day shift which began at 8 a.m. and ended at 4:30 p.m. and presumably worked a 40-hour week, the timecards show that their reporting times and the hours they worked each day and each week were varied and irregular. The cards show that during some weeks these employees worked less, while during other weeks they worked more, than 40 hours; that on some occasions they worked in excess of 8 hours in a single day while at other times they worked less than 4 hours; and that they sometimes began work at 4, 7, or 12 o'clock, rather than 8 o'clock when the day shift was supposed to begin. Absent further evidence, it is impossible to intelligently assess the proper meaning to be given the notations on the timecards in light of the Respondent's claim that they show improper use, unexcused absences or excessive tardiness. This is particularly true since the timecards of the other employees with whom they could have been compared were not produced and in view of Scharf's admission that the Respondent permitted an employee to be 8 minutes late without penalty but did not pay him for a quarter of an hour's work if he was late between 8 and 15 minutes. The instances of tardiness cited by the Respondent for each of the employees as between 1 and 15 minutes was, in the vast preponderance of cases, actually 8 minutes or less. This is not to say that the Respondent could not properly regard these occasions as derelictions on the part of the employees, but indicates rather that, in view of its lax attitude toward tardiness in general and the manner in which it treated such short periods of lateness, the Respondent itself did not regard them with the degree of seriousness which it now suggests. With regard to asserted unreported absences, Scharf admitted that the employees may actually have given notice which he did not receive. He also admitted, and the record shows, that other employees in the plant were guilty of tardiness and absenteeism. He further admitted that he had tolerated these conditions. However, according to his testimony, the Respondent was about to move to a new plant and it was necessary to tighten up the work force and therefore he had taken this action with respect to the three employees in question. The Respondent, however, produced no evidence of the tardiness, absenteeism or failure to properly punch in or out on the involved workers as compared with the three employees involved.

The Respondent points to the fact that although it knew of Irish's interest in or activities on behalf of the Union, it nevertheless did not discharge him. Apparently, it would argue that this tends to show that the terminations of Sparks, Douglas and Allen were not discriminatorily motivated. The fact that some, but not all, known adherents of a union are discharged does not constitute proof of lawful intent. In offering an explanation of his reasons for discharging Sparks and Douglas, Scharf testified that he took such action because of his belief that "maybe it would straighten up the rest of the crew." This testimony, though he obviously would interpret it differently, expressed the well-recognized fact that the discharge of only some of the active supporters in a union organizational campaign is sufficient warning to the remaining employees that a similar fate may befall them if they persist in their union efforts.

On this state of the record, it is impossible to intelligently assess the proper meaning to be given the notations on the timecards. Because of that, because of the Respondent's failure to produce the timecards of the other employees for the purpose of comparing them with those of Sparks, Douglas, and Allen and because of Scharf's admission that he did not have the timecards available but based his decision to discharge the three employees on other records, I cannot rely upon the timecards as providing sufficient proof to support the Respondent's assertion of the reasons for discharging the three employees in question. Nor can I accept the generalized conclusion of Scharf who testified that, after the three employees had been terminated, production and morale of the plant had improved. Evidence to prove that conclusion also was within possession of the Respondent but likewise was not produced.

Merely because Douglas, Sparks and Allen were discharged for reasons other than those advanced by the Respondent is not, of course, in itself proof of the fact that their discharges were for the reason asserted by the General Counsel. However, consideration of all of the evidence in this case, and particularly the following facts, does point to that conclusion. (1) Douglas and Sparks were discharged abruptly in the middle of a workweek, without prior warning. (2) The two employees were terminated 1 working day after they had spoken to their fellow employees about a union meeting which they had attended. (3) The Respondent knew of their union activities as shown by Scharf's statements to employee Irish on May 13. (4) Allen was discharged shortly after he had told Production Manager Morris that Douglas and Sparks were good employees and had been wrongfully discharged because of their union activities. (5) All three employees were good workers; each had received a number of wage increases, the last of which was within a month or two of the time he was discharged; and Douglas had been promoted shortly before his termination to the position to a leadman. (6) Tardiness and absenteeism admittedly were prevalent in the plant and were tolerated by the Respondent. (7) No records were produced to show the incidents of tardiness, absenteeism or alleged misuse of timecards on the part of the employees retained as compared with the three employees who were discharged. On the basis of the foregoing facts and on the record as a whole, I am convinced and find that Herbert Douglas and David Sparks were discharged on May 13, 1968, and James Allen on June 8, 1968, for reasons other than those advanced by the Respondent; that the three employees were actually discharged because of their interest in and activities on behalf of the Union; and that by so

⁹In accordance with regular practice, they had previously been sent to the Respondent's plant in Los Angeles, California.

discharging them the Respondent violated Section 8(a)(3) and (1) of the Act.¹⁹

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 the operations of the Respondent 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 the Respondent has engaged in certain unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the Respondent discriminatorily discharged Herbert L. Sparks and David Douglas on May 13, 1968, and James L. Allen on June 8, 1968. Accordingly, it will be recommended that the Respondent offer each of said employees immediate and full reinstatement to his former or substantially equivalent position of employment without prejudice to his seniority or other rights and privileges. See *The Chase National Bank of the City of New York, San Juan Puerto Rico Branch*, 65 NLRB 827. It will further be recommended that the Respondent make each of said employees whole for any loss of pay suffered by reason of its discrimination against him. Said loss of pay, based upon earnings which each employee would have earned as wages from the date of the discrimination to the date of offer of reinstatement, shall be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289. Interest thereon at the rate of 6 percent per annum shall be added, as provided in *Isis Plumbing & Heating Co.*, 138 NLRB 716.

The unfair labor practices committed in this case strike at the very heart of the Act. *N.L.R.B. v. Entwistle Manufacturing Co.*, 120 F.2d 532 (C.A. 4). The inference is therefore warranted that the Respondent maintains an attitude of opposition to the fundamental purposes of the Act designed to protect the rights of the employees. It will accordingly be recommended that the Respondent cease and desist from infringing in any manner upon the rights guaranteed in Section 7 of the Act.

Upon the basis of the foregoing findings of fact and upon the entire record in this proceeding, I make the following:

CONCLUSIONS OF LAW

1. The Union is, and has been at all times material to the issues in this proceeding, a labor organization, within the meaning of Section 2(5) of the Act.

2. The Respondent is, and has been at all times material to the issues in this proceeding, an employer, within the meaning of Section 2(2) of the Act.

3. By discriminating with respect to the hire and tenure of employment of Herbert L. Sparks, David Douglas and James L. Allen, thereby discouraging membership in a labor organization, the Respondent has engaged in unfair labor practices, within the meaning of Section 8(a)(3) of the Act.

4. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed them in Section 7 of the Act, the Respondent has engaged 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 affecting commerce, within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and upon the entire record in this proceeding, I recommend that the Respondent, Alum-A-Form of Idaho, Boise, Idaho, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Hod Carriers and Laborers Local 434, or any other labor organization of its employees, by discharging, or in any other manner discriminating against them, in regard to hire, tenure of employment, or any term or condition of employment, except as authorized in Section 8(a)(3) of the Act.

(b) In any other manner interfering with, restraining or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Hod Carriers and Laborers Local 434, or any other labor organization, to bargain collectively through representatives of their own choosing, or to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

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

(a) Offer to Herbert L. Sparks, David Douglas and James L. Allen immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights or privileges.

(b) Make whole Herbert L. Sparks, David Douglas and James L. Allen for any loss of pay suffered by reason of the discrimination against them in accordance with the method set forth above in the section entitled, "The Remedy."

(c) Notify the above-named 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 of 1948, as amended, after discharge from the Armed Forces.

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

(e) Post in conspicuous places at its usual place of business located in Boise, Idaho, including all places

¹⁹In arriving at this conclusion, I have given consideration to an Order on Review of the Industrial Accident Board of the State of Idaho, dated October 3, 1968, of which I have taken official notice, finding that Sparks and Douglas were discharged for "repeated infractions of the employer's written rules as to attendance on the job." I do not regard this as sufficient to overcome the evidence which is set forth above and which supports the allegation in the complaint that Sparks, Douglas and Allen were unlawfully discharged. *Alex Wasleff Building Maintenance Company* 130 NLRB 50, 51, fn. 3.

where notices to employees are customarily posted, copies of the attached notice¹¹ marked "Appendix."¹² Copies of said notice to be furnished by the Regional Director for Region 19 of the National Labor Relations Board, shall, after being duly signed by an authorized representative of the Respondent, be posted by it immediately upon receipt thereof and maintained by it for 60 consecutive days thereafter in such conspicuous places. Reasonable steps shall be taken by the Respondent to insure that said 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 date of the receipt by the Respondent of a copy of this Decision, what steps the Respondent has taken to comply herewith.¹³

¹¹Since notices are customarily framed in the language of the statute and because of their technical nature are often difficult for employees to understand, I am recommending that the notice in this case embody the simplified form which appears in the Appendix.

¹²In 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."

¹³In 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:

WE WILL offer immediately to the employees named below, the jobs they held before they were discharged, or jobs like them, without loss of seniority or any other rights and privileges, and we will give each of the employees named below whatever backpay he has lost:

Herbert L. Sparks David Douglas James L. Allen

WE WILL NOT discharge, or otherwise discriminate against any of our employees, because they have engaged in union activities.

All our employees have the right to join or assist, or not to join or assist, Hod Carriers and Laborers Local 434, or any other union.

ALUM-A-FORM OF IDAHO
(Employer)

Dated By (Representative) (Title)

Note: Notify the above-named 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 of 1948, 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, Republic Building, 10th Floor, 1511 Third Avenue, Seattle, Washington 98101, Telephone 583-7473.