

ABS Auto Parts, Inc. and Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO. Case 29-CA-1484

June 30, 1969

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS
JENKINS AND ZAGORIA

On April 25, 1969, Trial Examiner Joseph I. Nachman 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 and the General Counsel filed exceptions, with supporting briefs, to the Trial Examiner's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board had 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 proceeding, and hereby adopts the findings,¹ 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 the Respondent, ABS Auto Parts, Inc., Brooklyn, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

¹The Respondent's exceptions, in large part, are directed to the credibility findings made by the Trial Examiner. It is the Board's established policy not to overrule a Trial Examiner's resolutions as to credibility unless, as is not the case here, a clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enf'd. 188 F.2d 362 (C.A. 3). Nor do we find merit in the Respondent's contention that because the Trial Examiner uniformly credited the General Counsel's witnesses and discredited the Respondent's witnesses, his credibility resolutions are erroneous or attended by bias or prejudice. *N.L.R.B. v. Pittsburgh Steamship Co.*, 337 U.S. 656. Accordingly, we find no basis for disturbing the Trial Examiner's credibility findings in this case.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

JOSEPH I. NACHMAN, Trial Examiner: This proceeding tried before me at Brooklyn, New York, on March 6, 7, and 8, 1969, involves a complaint¹ pursuant to Section 10(b) of the National Labor Relations Act (herein the Act), which alleges that ABS Auto Parts, Inc. (herein Respondent), in the course of an organizational campaign among its employees, interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights, and discriminatorily discharged three employees because of their assistance to and support of Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO (herein the Union). By answer or stipulation Respondent admitted here certain allegations of the complaint, but denied the commission of any unfair labor practice. For reasons hereafter set forth, I find the aforementioned allegations proved, and recommend the usual remedial order.

At the trial all parties were represented by counsel and were afforded full opportunity to examine and cross-examine witnesses, to introduce relevant evidence, to argue orally on the record, and to submit briefs. Oral argument by the General Counsel is included in the transcript of proceeding. The General Counsel also submitted a brief. Respondent waived oral argument and submitted a brief. The oral argument and briefs have been duly considered.

Upon the entire record in the case, including my observation of the demeanor of the witnesses, I make the following:

FINDINGS OF FACT²

I. THE UNFAIR LABOR PRACTICES ALLEGED

A. Chronology of Events

1. Background

About mid-August a number of Respondent's employees including specifically Daniel Staggars, John Stanback, and Robert Williams, the three discriminatees involved in this proceeding, met with officials of the Union and solicited it to organize the employees and represent them in their employment relations with Respondent. Those present signed authorization cards and were given additional cards for signature by other employees. In due cause, a number of signed cards were delivered to the Union. There is no independent evidence that while signatures to the cards were being solicited, Respondent was aware of the organizational activity among its employees.

¹Issued November 29, on a charge filed October 9. These and all dates hereafter mentioned are 1968 unless otherwise noted.

²No issue of commerce or labor organization is presented. While Respondent in its answer denied the conclusion in paragraph 5 of the complaint that it was engaged in commerce within the meaning of the Act, it admitted the facts pleaded in paragraphs 3 and 4 of the complaint. I find those facts to be as pleaded. Although the Union's status as a labor organization was denied in the answer, that fact was stipulated at the trial. I find accordingly.

2. Events of August 26

To establish Company knowledge of the union activity among its employees, the General Counsel introduced a telegram which the Union sent Respondent on August 23 (a Friday), which was admittedly received,³ but as the time of such receipt is critical and in dispute, the facts relating to that issue are detailed. The telegram was filed with the Western Union originating office in New York at 5:42 p.m. August 23, and was received by its delivery office in Brooklyn, on Saturday, August 24, at 9:03 a.m. This telegram, along with a number of others, was given to a delivery messenger, who left the Brooklyn office at 10:26 a.m., August 24. The messenger returned to his office the same day at 11:32 a.m., reporting his inability to deliver the message because the office of the addressee was closed. The telegram was held by Western Union until Monday, August 26, when it again was sent out for delivery by a messenger at 7:36 a.m. That messenger returned to his office at 9:59 a.m., filing his report which is in evidence, showing his disposition of this and other telegrams. With respect to this telegram, his report carries no entry relating to delivery, which according to Western Union's Manager of Customer Service, means that the telegram was delivered. No signature was obtained from the addressee because, again according to the Western Union witnesses, such signatures are not obtained unless specifically requested by the sender, which was not the case here. The Western Union messenger who made the run on Monday, August 26, testified that while he had no independent recollection regarding the delivery of this telegram, the fact that no notation appeared on his route slip indicated that the telegram was delivered, and that no signature of the addressee was obtained, because his route slip did not indicate that such was requested by the sender. The messenger further testified that if delivery of a telegram is made by leaving it under a door, a notation to the effect is made on the route sheet, and as such did not appear here, he was certain this telegram was not delivered in that fashion. When there is added to this the fact that Respondent offered no evidence to prove when or under what circumstances it received the telegram and the evidence it did offer as to the receipt of the telegram I do not credit, the records maintained by Western Union in the normal course of its business must be accorded paramount significance. Cf. *Novelty Products Co.*, 170 NLRB No. 68. Accordingly, I find and conclude that the telegram was received by Respondent and its contents became known to its responsible officials before 10 a.m., Monday, August 26.⁴

³The telegram, which Respondent produced at the trial in obedience to a subpoena, stated that the Union had been designated majority representative in a unit of Respondent's production, maintenance, and warehouse employees, requested bargaining for a contract, and offered to prove its majority status if such was questioned by Respondent.

⁴Abraham Sapperstein testified that he first saw the telegram on Tuesday morning, August 27, while the picketing, hereafter discussed and which began that day about 8 a.m. was in progress, when he opened his desk drawer looking for some paper, and there found the telegram; that he immediately asked when and by whom it was received, but that he was unable to obtain any satisfactory information. Samuel Sapperstein at first denied that he had ever seen the telegram, and testified that it was for this reason that he had replied in the negative when he was called several months later by Western Union inquiring whether the telegram had been received. When pressed further he admitted that he saw the telegram the morning of the picketing "around eleven or twelve o'clock — maybe one o'clock." Not only do I not credit their testimony in that regard, but in this and in other aspects of their testimony, I am convinced and find the contrary to be true. See *N.L.R.B. v. Walton Manufacturing Co.*, 369 U.S.

Shortly after 10 a.m., employee Stanback, while at work, received a message that he was wanted in the office. Reaching the office Samuel Sapperstein, addressing Stanback, stated, "I guess you signed for the Union, too." Although he had signed a card, Stanback denied that he did so. At this point Herman Goldberg,⁵ commented that Local 455 was for those who build bridges, and asked Stanback if he could build a bridge. Stanback responded in the negative. Sapperstein then told Stanback, that he would have to let him go, but that Stanback should come back in about 2 weeks, "after the mess was over with," and that he would try to put him back to work; that he was a good worker, adding as a parting remark, "You see what your friends have got you into." Stanback then left Respondent's premises and went to a corner store where the employees normally gather for lunch. During the lunch period, Stanback told his fellow employees of his discharge and the Union was immediately informed of that fact.⁶

Stanback began working for Respondent as a yardman. His starting rate was \$1.85 an hour, and within a few days increased to \$2 an hour. Stanback credibly testified that while employed by Respondent no one in authority ever criticized his work. On the contrary, as I have heretofore found, when he was initially laid off on August 26, he was told by Samuel Sapperstein that he "was a good worker", and that he would be put back to work in about 2 weeks, "after the mess was over with."⁷

⁵404, where the Supreme Court, quoting with approval from Judge Learned Hand in *Dyer v. Mac Dougall*, 201 F.2d 265, 269, stated that the demeanor of a witness

... may satisfy the tribunal, not only that the witness' testimony is not true, but that the truth is the opposite of his story; for the denial of one, who has a motive to deny, may be uttered with such hesitation, discomfort, arrogance or defiance, as to give assurance that he is fabricating, and that, if he is, there is no alternative but to assume the truth of what he denies [369 U.S. at 408]

⁶Considerable testimony was introduced relating to the supervisory status of Goldberg. For reasons hereafter stated I find it unnecessary to decide that issue.

⁷The findings in this paragraph are based on the credited testimony of Stanback, Staggers and Williams. Both Sappersteins denied that they ever discussed the Union with Stanback or any other employee. Although they admitted that Stanback was discharged, they gave differing accounts as to who fired him, when he was fired, and the circumstances under which he was fired. Abraham Sapperstein initially testified on direct that he discharged Stanback about noon on Friday, August 23, because the latter who had only worked since the first week of August, and who had been tried on several jobs but proved unable to perform any of them satisfactorily, was asked if he could drive a truck, and when it developed that the license which Stanback had was issued to him in Maryland, he told Stanback that Respondent had no further use for his services, that he should go get his pay. Upon completion of his direct examination, the hearing was recessed for lunch. When the hearing resumed, I granted the request of Respondent's counsel for further direct examination. At this time Sapperstein testified that it was on Monday, August 26, that he had the conversation with Stanback concerning the latter's ability to drive a truck, and that he discharged him about noon of that day. In this connection it is pertinent to note that Stanback's time card shows that he was paid to 5 p.m. on August 23, but only until noon on August 26. Samuel Sapperstein also testified as to Stanback's alleged incompetence, but claimed that it was he who asked Stanback about driving a truck, and that when it developed that Stanback had only a Maryland license, he directed Stanback to get his pay. Interestingly enough Samuel Sapperstein fixes this conversation as having occurred on August 29. It is noted, however, that nowhere in the affidavit he gave the Board, did Samuel Sapperstein claim that Stanback's failure to have a valid license was the motivating factor in the decision to discharge him.

⁸Samuel Sapperstein did not specifically deny having made these statements.

3. Events of August 27

The morning of August 27, instead of beginning work at the usual 8 a.m. starting time, the employees began picketing Respondent's premises to protest Stanback's discharge. Union Agent Candelora was present and assisted with the picketing in which Stanback, Williams and Stagers and a number of other employees participated, and which was observed by all three of the Sapperstein brothers. After a conference between the Sappersteins and Union Agent Candelora, the latter directed all the employees, including Stanback, to return to work, which they did, and all were paid for the full day. Thereupon the picketing terminated about 10 or 10:30 a.m.⁸

4. Other events during week of August 26

In addition to the interrogation of, and the statements made to Stanback, detailed *supra*, the evidence also shows interrogation of, and coercive statements by the Sappersteins to employees Stagers and Williams. The fact with respect to these are:

1. Apparently during the morning of August 26, Stagers heard from fellow employees that Respondent had received a telegram from the Union. Shortly thereafter Abraham Sapperstein approached Stagers and asked whether the latter had signed a union card. Although he had done so, Stagers denied that he signed a union card. Sapperstein stated that he had papers to prove that Stagers had signed a card, but Stagers persisted in his denial. Later in the day, as Stagers was returning from lunch, he met Goldberg, Samuel and Abraham Sapperstein at the entrance to the premises. One of the Sappersteins, addressing Stagers, remarked, "If you guys wanted a union, why didn't you come to us and we would get you a union." Goldberg stated, ". . . the Union is not going to do [you] any good, the only thing is they will take your money and not do anything for you." Sam Sapperstein remarked, in substance, that if the Union did come in he would reduce the operation to the point that only 5 men would be needed and that the remainder would be laid off. Later in the week Stagers was called to the office and was there told by Abraham Sapperstein that if the Union came in "a lot of fellows would be hurt," but if there was no union in the plant, the operation would continue as in the past, and "nobody would get laid off."⁹

2. During the week of August 26, Robert Williams was asked by Abraham Sapperstein whether he had signed a union card. Williams answered by asking "what union." Later, Goldberg told Williams that the men would only be hurting themselves by getting a union in, and Samuel Sapperstein told Williams that if the Union got in he

(Williams) would be the first to go. On Thursday, when the employees were being paid for that week, as hereafter set forth, with the three Sappersteins and Goldberg present, Abraham Sapperstein told Williams that he knew the names of all employees who had signed for the Union, and added that if the Union did not get in, "everyone would receive a raise and no one would get laid off."¹⁰

5. Events of August 29 and September 3

Respondent's workweek ends with the close of business on Friday, at which time the employees are paid in full for all work during that week. However, on Thursday, August 29, the employees were paid the wages due them for that week and told not to report for work on Friday, August 30.¹¹ Nothing was said then about termination or not reporting for work the following week. The following Monday being Labor Day, the next scheduled work day was Tuesday, September 3, when all employees reported for work at the usual 8 a.m. starting time. Before he could start work, Stanback was told by Samuel Sapperstein to go home until Respondent sent for him. Stanback did so, but returned to Respondent's premises on September 4, to claim some overtime he felt was due him for work during the preceding week, and again on September 6, to collect for that overtime. At no time after September 3, was Stanback recalled for work, although there was ample work for him to do. Stanback testified without contradiction that when at Respondent's premises on September 4 and 6, he observed new employees doing the work he theretofore performed.

Shortly after Stagers and Williams who worked together, reported for work on September 3, they were told by Samuel Sapperstein that Respondent had no work for them, and that they punch out, saying they would be called when needed. Admittedly, Respondent has not called either for work, and the record shows that work was available, new employees having been hired to perform the work Stagers and Williams theretofore performed.¹² The following day Stagers and Williams returned to the plant seeking holiday pay for Labor Day. They were apparently told to return for it on Friday, and were then paid for 4 hours.¹³

⁸Based on the credited testimony of Williams Arthur Reeves, a witness called by Respondent, and for whose credibility it vouched, also testified that he was interrogated by Samuel Sapperstein as to whether he had signed a card for the Union. However, as I discredit other portions of Reeves' testimony, I make no finding as to that incident, because in no event would it affect the nature or scope of the order which I shall recommend.

⁹Employees testified that the reason given them for the Friday closing was the wedding of a son of one of the Sappersteins. Respondent's testimony was that the extra day was granted because Labor Day was approaching and some employees who had taken no vacation time, wanted the extended holiday period. As the General Counsel ascribes no antiunion motive to Respondent's failure to operate on Friday, I find it unnecessary to resolve the conflict.

¹⁰In its brief, Respondent refers to the testimony of Stagers and Williams, both of whom admitted that they were never told in so many words that they were terminated. However, Respondent's counsel conceded in his opening statement that all three of the discriminatees were discharged, and that each was discharged for cause, and both Abraham and Samuel Sapperstein testified that these employees were discharged, each claiming that he was the one who discharged them.

¹¹Based on a composite of the credited testimony of Stagers and Williams. Although Stagers' testimony varies to some extent from that of Williams as to the events of September 3, I am convinced that he was confused as to dates, and that the events he testified to as having occurred on September 4, in fact took place on September 3, as Williams testified. Initially, Respondent contended that Stagers and Williams were

⁸The foregoing findings are based on the credited testimony of Stagers, Williams, and Stanback. The record does not fully reflect the discussions between the Sappersteins and Candelora, as the latter did not testify. The testimony shows that beginning in November or December, Candelora was confined to a hospital under intensive care. At the time of the hearing he had been home several weeks but was not permitted to see anyone. The Sappersteins testified that Candelora pressured them into agreeing to return to work by threatening to close the place down. I deem it unnecessary to make any finding on this point.

⁹The Sappersteins denied that they discussed the Union with any employee. Respondent contends that Stagers as a convicted felon sentenced to a lengthy prison term, should not be credited. Upon consideration of the entire record, and the demeanor of the witnesses, I do credit Stagers and base the foregoing findings on his testimony.

Staggers was employed about March 1, and until his discharge on September 3, worked as a general helper cleaning automobile parts. His starting salary was \$2 an hour. Sometime in July, he received an increase of 25 cents an hour, at which time he was told by Abraham Sapperstein, as Staggers credibly testified, that he (Staggers) "had learned the job and . . . deserved a raise."

Williams had worked for Respondent some years back, but voluntarily quit. He was rehired in July, and until his discharge on September 3, worked as a general helper cleaning automobile parts. He was rehired at \$1.75 an hour, and about a month later received a raise of 25 cents an hour. Williams credibly testified that prior to his discharge on September 3, he was never reprimanded by management, nor was his work criticized. I also credit Williams that on the day of his discharge by Sapperstein the latter did not complain about Williams' work performance, but rather told Williams that the reason for his termination was lack of work.

B. Analysis and Conclusions

1. The independent 8(a)(1) allegations

I find and conclude that Respondent violated Section 8(a)(1) of the Act by the following conduct.

(a) Samuel Sapperstein's interrogation of Stanback on August 26, and the interrogation of Staggers and Williams during that week as to whether said employees had signed a union card. The facts as developed in the record show (1) Respondent's hostility to the advent of the Union, and that three employees were promptly discharged for discriminatory reasons, as hereafter found, demonstrates that the intent to discriminate was at least a purpose of the interrogation; (2) the interrogation was by the highest level of supervision, and the information requested was quite specific — did you sign a union card; (3) for the most part the interrogation was not informal but after being called to the office; (4) the employees found it necessary to deny that they had signed cards or otherwise knew of or participated in the affairs of the Union; and (5) the employees were not told the purpose of the inquiry, nor were any assurances against reprisal given — indeed the interrogation of Stanback was followed by his prompt discharge, and the interrogation of Williams, and some of the interrogation of Staggers took place at a time when they knew of Stanback's discriminatory discharge on August 26. These factors convince me that the

discharged for inefficiency, loafing on the job, and for vile and abusive language allegedly directed toward the Sappersteins. The alleged inefficiency and loafing may be put to one side in view of the testimony of Samuel Sapperstein that were it not for the vile and abusive language he would not have discharged Staggers or Williams on September 3. Both Staggers and Williams denied that they used vile and abusive language toward the Sappersteins. Consistent with my prior credibility resolutions, I credit Staggers and Williams, and discredit the Sappersteins in that regard. In this connection, it is of interest to note, that no where in his affidavit given the Board agent on October 8, did Samuel Sapperstein refer to any vile or abusive language by Staggers or Williams, nor is that assigned as a reason for their discharge. His testimony in that regard therefore, has all the earmarks of an afterthought. Neither was I impressed by his efforts to avoid the effect of his affidavit by claiming that the Board agent deliberately left that and other facts out of the affidavit. Also, because of his obvious bias in favor of the Sappersteins, I do not credit the testimony of Charles Smith that he was present and heard the vile language allegedly used by Staggers and Williams.

¹⁴It is noted that Samuel Sapperstein did not deny that he so stated to Staggers

interrogation of Stanback, Staggers, and Williams was intended by Respondent to be, and was in fact coercive, and therefore violative of Section 8(a)(1) of the Act. I so find and conclude. *Sturksnes Construction Co., Inc.*, 165 NLRB No. 102, *Bourne Company v. N.L.R.B.*, 332 F.2d 47 (C.A. 2); *N.L.R.B. v. Berggren & Sons, Inc.*, 406 F.2d 239 (C.A. 8).

(b) Samuel Sapperstein's statement to Stagger, that if the Union got in the operation would be reduced to the point that only five men would be needed and the remainder would be laid off, as well as his statement to Williams that if the Union came in he (Williams) would be the first to go. Both statements constituted a threat to the job security of these employees if they persisted in their efforts to secure union representation.

(c) Abraham Sapperstein's statements to Staggers and Williams that if the Union did not get in the operation would continue, no one would be fired and the employees would receive raises in pay. These were plainly promises of benefit designed to dissuade the employees from seeking union representation, and constituted the interference, restraint, and coercion proscribed by Section 8(a)(1) of the Act. *N.L.R.B. v. Miller Redwood Company*, 407 F.2d 1366 (C.A. 9).¹⁵

2. The 8(a)(3) allegations

The crucial question on this aspect of the case is Respondent's motive in discharging Stanback, Williams, and Staggers; was it because of their union activity, as the General Counsel contends, or was it for their derelictions of duty, as Respondent contends. My consideration of the entire record convinces me, and I therefore find and conclude that Stanback, Williams, and Staggers were discharged because of union activity, and that the claimed derelictions of duty was a mere afterthought seized upon in an effort to obscure the true motive for the discharges.

As I have found on the basis of the credited evidence, we have here a case of three employees whose work performance had not previously been criticized, and who are discharged without prior warning or notice, in the midst of the work week, hard upon receipt of the Union's demand for recognition. These factors — previously satisfactory employee, sudden discharge without prior warning after discovery of union activity, and in the midst of the work week — are the classic indicia of a discriminatorily motivated discharge. And when there is added the fact, as I have found in the instant case, that the stated reasons in defense of the discharges are false, it is appropriate to infer, as I do, that such reasons were not the real motive for the discharges, but that the true reason therefor was one which Respondent denies and seeks to

¹⁵A substantial portion of the evidence adduced by the parties dealt with the question whether, as the General Counsel contended but Respondent denied, Goldberg was an agent of Respondent, or a supervisor within the meaning of Sec. 2(11) of the Act. However, I find it unnecessary to resolve that issue. The statements shown by the evidence to have been made by Goldberg were (1) to Stanback that Local 455 was for those who build bridges; (2) to Staggers that the Union would not do the employees any good, and (3) to Williams that the employees would only be hurting themselves by getting a Union — all of which the General Counsel concedes (brief 21), "fall short of constituting 8(a)(1) conduct . . ." This being true, and there being no evidence that Goldberg engaged in other conduct that could be regarded as violative of the Act, no purpose would be served by deciding his supervisory status. Likewise it is unnecessary to pass upon Goldberg's status in order that his statements may be used to establish antiunion animus on the part of Respondent. Such animus is made clear by the conduct and statements of Abraham and Samuel Sapperstein.

conceal namely, to rid itself of these employees because of their support of the Union. As the Court of Appeals for the Ninth Circuit said in *Shattuck Denn Mining Corp. v. N.L.R.B.*, 360 F.2d 1018, 1020 (C.A. 9):

. . . If he [the trier of fact] finds that the stated motive for a discharge is false, he certainly can infer that there is another motive. More than that, he can infer that the motive is one that the employer desires to conceal — an unlawful motive — at least where, as in this case, the surrounding facts tend to reinforce that inference.

Accordingly, upon consideration of the entire record, I find and conclude that Respondent's discharge of Stanback, Williams and Stagers was discriminatorily motivated, and as it plainly had the natural tendency and effect of discouraging membership in the Union, was violative of Section 8(a)(3) and (1) of the Act.

Upon the foregoing findings of fact, and the entire record in the case, I make the following:

CONCLUSIONS OF LAW

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

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By the conduct set forth in section I,B,1, hereof, Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act, and thereby engaged in, and is engaging in unfair labor practices proscribed by Section 8(a)(1) of the Act.

4. By discharging, and thereafter failing and refusing to reinstate Stanback, Williams, and Stagers because of their assistance to and support of the Union, Respondent discriminated against them in regard to their hire and tenure of employment, thereby discouraging membership in the Union, and thus engaged in and is engaging in unfair labor practices proscribed by Section 8(a)(3) and (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.

THE REMEDY

Having found that Respondent engaged in certain unfair labor practices, I shall recommend that it be required to cease and desist therefrom, and take certain affirmative action found necessary and designed to effectuate the policies of the Act.

Having found that Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed to them by Section 7 of the Act, it will be recommended that it be required to cease and desist therefrom.

Having found that Respondent discriminatorily discharged and failed and refused to reinstate Stanback, Williams, and Stagers, I shall recommend that it be required to offer each of them immediate, full and unconditional reinstatement to their former or substantially equivalent position, without prejudice to their seniority or other rights, privileges and working conditions, and make each of them whole for any loss of earnings suffered as a result of the discrimination against him, by paying to him a sum of money equal to that which he would have earned as wages, from the date of the discrimination to the date of reinstatement, less net

earnings during such period, in accordance with the Board's formula set forth in *F. W. Woolworth Company*, 90 NLRB 289, with interest thereon at the rate of 6 percent per annum, as provided in *Isis Plumbing & Heating Co.*, 138 NLRB 716. To assist in procuring compliance with this provision, it will be recommended that Respondent be required to preserve and make available to agents of the Board, all payroll and other records necessary or useful in computing the amount of backpay due.

Because of the character of the unfair labor practices found, which go to the very heart of the Act, I shall recommend that Respondent be required to cease and desist from in any manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed by Section 7 of the Act. *N.L.R.B. v. Entwistle Mfg. Co.*, 120 F.2d 532 (C.A. 4).

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law and the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, it is recommended that the National Labor Relations Board order ABS Auto Parts, Inc., its officers, agents, successors, and assigns, to:

1. Cease and desist from:

(a) Interrogating employees as to whether they signed a union card.

(b) Threatening employees with discharge or other disciplinary action if they select union representation.

(c) Promising to grant benefits to employees if they cease their assistance to or support of the Union.

(d) Discouraging membership in Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, or any other labor organization of its employees, by discriminatorily discharging, or in any other manner discriminating against any employee in regard to his hire, tenure, or other term or condition of employment.

(e) In any other manner interfering with, restraining, or coercing 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 other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

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

(a) Offer John Stanback, Robert Williams, and Daniel Stagers immediate, full and unconditional reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights, privileges, or working conditions, and make each whole for any loss of earnings suffered, in the manner stated in the section hereof entitled "The Remedy."

(b) Notify John Stanback, Robert Williams, and Daniel Stagers 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.

(c) Preserve and, upon request, make available to authorized agents of the National Labor Relations Board, for examination and copying, all payroll records, social security payment records, timecards, personnel records

and reports, and all other records necessary or useful in determining compliance with this order, or in computing the amount of backpay due.

(d) Post at its business premises in Brooklyn, New York, copies of the attached notice marked "Appendix."¹⁶ Copies of said notice, on forms provided by the Regional Director for Region 29 (Brooklyn, New York), after being duly signed by its authorized representative, shall be posted by it immediately upon receipt thereof, and be 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 it to insure that said notices are not altered, defaced or covered by any other material.

(e) Notify the aforesaid Regional Director, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith.¹⁷

¹⁶In the event that this Recommended Order is 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 is 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."

¹⁷In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read. "Notify the aforesaid Regional Director, in writing, within 10 days from the date of this Order, what steps have been 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 formal trial before a Trial Examiner of the National Labor Relations Board at which all sides had the chance to present evidence, it has been found that we violated the law and we have been ordered to post this notice to inform our employees of their rights.

WE WILL NOT question you as to whether or not you have signed a union card.

WE WILL NOT promise you pay raises or other benefits to get you to stop supporting a union.

WE WILL NOT fire, threaten to fire, or otherwise discriminate against any employee because he joins, or helps a union.

As it has been found that we violated the law when we fired John Stanback, Robert Williams and Daniel Stagers, WE WILL offer each of them their job back, with full seniority, and we will make up the pay each of them lost, together with 6 percent interest.

WE WILL notify John Stanback, Robert Williams and Daniel Stagers 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.

The law gives all our employees these rights:

To organize themselves.

To form, join, or help unions.

To bargain as a group through a representative they choose.

To act together for collective bargaining or other mutual aid or protection.

To refuse to do any or all of these things.

WE assure you that WE WILL NOT do anything to interfere with you in the exercise of these rights. Every employee is free to become or remain a member of Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, or any other union, or not to become or remain a member of any union.

ABS AUTO PARTS, INC.
(Employer)

Dated

By

(Representative)

(Title)

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

If employees have any question concerning this notice or compliance with its provisions they may communicate directly with the Board's Regional Office, 16 Court Street, Fourth Floor, Brooklyn, New York 11201, Telephone 212-596-5387.