

ABC Body Works, Inc. and Local 810, Steel, Metals, Alloys & Hardware Fabricators & Warehousemen, Affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 29-CA-2422

February 13, 1973

DECISION AND ORDER

BY MEMBERS FANNING, KENNEDY, AND
PENELLO

On May 25, 1972, Administrative Law Judge¹ Eugene E. Dixon issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and counsel for the General Counsel filed 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 authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

As fully set forth in his Decision, the Administrative Law Judge concluded that employee Nicholas Shevchuk's discharge was motivated by antiunion consideration and thus in violation of Section 8(a)(3) of the Act. On the facts before us, we do not agree with this conclusion.

The record reflects the following facts. Shevchuk, an employee of 11 years' tenure with Respondent, worked in Respondent's metal shop as a metal man. Categorized as a mediocre worker by his supervisor, Shevchuk would often abandon his work assignments for short periods of time and "disappear" from his work area. When found, he often had the smell of liquor on his breath. Although he was never actually seen drinking on the job, circumstances were such as to suggest that he concealed cans of beer in proximity to where he worked. Prior to his discharge, there were occasions when he asked to be excused from work because of his drinking and when Respondent sent him home for being drunk. As a result of these circumstances, his time record indicated fewer working hours than his fellow employees in the same classification.

On numerous occasions, Shevchuk had been warned about leaving the shop on working time, the most recent time before his discharge in June being in February 1971. The record indicates that after an absence from the shop on this occasion, Respon-

dent's supervisor, Scotti, told Shevchuk, "If you leave the shop anymore, that's going to be the end of it because it has been too many times."

On June 7, Shevchuk had been assigned work on an oil truck in the rear of the shop. George Mallozzi, foreman of the metal shop, came to Scotti at about 11:15 a.m. to inquire as to the whereabouts of Shevchuk as he was not at his work assignment. According to Scotti, he could not find Shevchuk, and upon hearing that Shevchuk had gone out the back door, Scotti went looking for him. Scotti found Shevchuk sitting in a bar one block from the plant talking with Robinson, the union representative. To Scotti's inquiry as to what Shevchuk was doing at the bar, Shevchuk replied, "I am finished." Scotti then walked back to the shop and told the foreman that Shevchuk was down at the bar. Upon discovering that Shevchuk's timecard had not been punched out, Scotti testified that he put 11:45 on the card—that Shevchuk was finished as of then as he intended to lay him off.

On returning to the plant, Shevchuk saw that Scotti had written "11:45 a.m." across the face of his timecard. Without making any inquiry as to what it meant or disputing the time entered on it, Shevchuk changed his clothes and left for the day.

The following morning Scotti told Shevchuk that he was fired, that he knew why, and that he had been warned many times. Not responding, Shevchuk smiled, walked into the shop, picked up cans of beer that he had hidden, and sat on a box in front of the shop drinking the beer.

On the facts as set forth above, we find insufficient evidence that Respondent was motivated by antiunion considerations in discharging Shevchuk. The record reflects employee Shevchuk's trend of repeated absences from his post during working hours. Moreover, there is evidence to support the fact that these absences were often the result of excessive drinking and that Shevchuk had been warned against leaving his work assignments.

In finding an 8(a)(3) violation here, the Administrative Law Judge found that the discharge stemmed from the fact that Shevchuk attended a union meeting away from the plant after hours on June 7 and that Scotti did not really intend to discharge Shevchuk as of 11:45 a.m. on that day, but intended to treat the matter as it had been handled in the past. As the Administrative Law Judge finds, there is no direct evidence to show that Respondent had knowledge of the June 7 meeting. We do not agree with the Administrative Law Judge's reliance on the small plant doctrine to prove knowledge of Shevchuk's attendance at this meeting in the circum-

¹ The title of "Trial Examiner" was changed to "Administrative Law Judge" effective August 19, 1972.

stances of this case. The evidence does disclose that Shevchuk's connection with the Union dates back to January 20, 1971, when he signed a union authorization card on the occasion of a visit to the union offices. We conclude, however, that, despite Shevchuk's interest in the Union, Respondent did not have an antiunion motive in discharging Shevchuk as the facts indicate that Respondent discharged Shevchuk because of his habitual absence from the plant during working hours and his conduct as detailed in the Administrative Law Judge's Decision. Further, we note that, although other coworkers were active in the Union, Shevchuk was the only union member fired by Respondent.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, ABC Body Works, Inc., Brooklyn, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with a shutdown or other reprisals if they chose to be represented by a union.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist Local 810, Steel, Metals, Alloys & Hardware Fabricators & Warehousemen, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization 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 engaging in such activities.

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

(a) Post at its place of business in Brooklyn, New York, copies of the attached notice marked "Appendix."² Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order,

what steps the Respondent has taken to comply herewith.

² In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

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

WE WILL NOT threaten our employees with a shutdown or other reprisals if they choose to be represented by a union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist any labor organization, 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, and to refrain from any or all such activities.

All of our employees are free to become or remain, or refrain from becoming members of Local 810, Steel Metals, Alloys & Hardware Fabricators & Warehousemen, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America or any other labor organization.

ABC BODY WORKS, INC.
(Employer)

Dated _____ By _____ (Title)
(Representative)

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

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

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Fourth Floor, 16 Court Street, Brooklyn, New York 11201, Telephone 212-596-3535.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

EUGENE E. DIXON, Trial Examiner: This proceeding, brought under Section 10(b) of the National Labor

Relations Act, as amended (61 Stat. 136), herein called the Act, was heard at Brooklyn, New York, on February 9, 1972. The complaint, dated August 31, 1971, was based on duly served charges filed June 10, 1971, by Local 810, Steel, Metals, Alloys & Hardware Fabricators & Warehousemen, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and was issued by the Regional Director for Region 29 (Brooklyn, New York) of the National Labors Relations Board on behalf of its General Counsel, herein called the Board and the General Counsel.

The complaint alleges that Respondent had engaged in and was engaging in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act by discharging and failing to reinstate its employee Nicholas Shevchuk because he joined and assisted the Union and engaged in other concerted activity for the purpose of collective bargaining and mutual aid and protection, and by threatening to close its business if the employees joined or assisted the Union.

In its duly filed answer Respondent denied the commission of any unfair labor practices.

Upon the entire record and from my observation of the witnesses I make the following:

FINDINGS OF FACT

I. RESPONDENT'S BUSINESS

At all times material Respondent has been a corporation duly organized under and existing by virtue of the laws of the State of New York and has maintained its principal office and place of business in the Borough of Brooklyn, city of New York, where it is and has been engaged in the repair and painting of truck bodies. During the year 1970, which period is representative of its annual operations generally, Respondent in the course and conduct of its business operations performed services valued in excess of \$500,000 of which services valued in excess of \$50,000 were performed for various enterprises including Getty Oil Company and Gulf Oil Company each of which enterprises annually purchases goods and materials valued in excess of \$50,000 directly from outside the State of New York. At all times material Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION

Local 810, Steel, Metals, Alloys & Hardware Fabricators & Warehousemen, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America at all times material has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The main issue here is whether or not Nicholas Shevchuk

(an employee of some 11 years tenure with Respondent) was discharged on June 8, 1971, because he joined and assisted the Teamsters Union.

According to Shevchuk's testimony sometime around October 1969 someone had written "Join the AFL-CIO" on the shop walls and Respondent's Secretary Bruno Scotti (in the hearing of Shevchuk) profanely indicated to another employee that Scotti would like to catch the writer and break his neck.¹ Shevchuk turned to Scotti and said, "That's right." Scotti asked Shevchuk what he meant. Shevchuk replied, "That's right we need a union."

On January 20, 1971, Shevchuk signed a union authorization card on the occasion of a visit to the union offices. On the following day Union Representative James Robinson came to Respondent's shop about 6:45 a.m. to hand out literature at the entrance used also by management. Robinson was there until 8 a.m. About 8:15 that same morning, according to Shevchuk's testimony, Respondent President Arthur Falco called Shevchuk over to him as Shevchuk was walking to his work and in the presence of Scotti put his arm around Shevchuk and said, "Nick, I want to tell you something. If I ever get a union in here, I am closing up the shop." Shevchuk asked, "Where do you come to think it's me?" Falco replied, "I heard." Shevchuk asked who told Falco. Falco refused to disclose his informant saying he didn't have to tell.²

Later on that same day Respondent's treasurer, Henry Schoettmer, came over to Shevchuk and they engaged in a conversation about the Union. When Shevchuk contended that the men should have a union Schoettmer replied that he did not need a union, that he had his money made and would "Close up."³ According to Shevchuk's further testimony, up to this time he had always had men to assist in his assignments. But from this point Respondent began assigning him jobs requiring assistance to do on his own. When Shevchuk asked his supervisors for help he was told that all the men were busy.

Union Representative Robinson continued to appear at the shop to distribute cards and literature and Shevchuk saw him each day that he so appeared (some 18 to 20 times) and stood with him and spoke to him on such occasions.⁴ These conversations were observed by Falco and Scotti. Apparently at the time he signed his union card Shevchuk was given some blank cards which he placed in his locker where they sat untouched until his discharge. According to Shevchuk there was a wire screening in the front of the locker about 12 inches by 12 inches through which it would be possible to see the cards.

Respondent's scheduled lunch period is from 12 noon to 12:30 p.m. However, a lunch wagon appears daily at the shop sometimes arriving as early as 11:45 a.m. at which time the employees cease working to go out and buy their lunch from the wagon. On June 7, according to Shevchuk's testimony, the lunch wagon arrived about 11:50 a.m. at which time the men quit working. Shevchuk also quit at

¹ In his testimony Shevchuk admitted he had written some of the graffiti. On his part, Scotti testified that he had heard that Shevchuk had done so.

² Falco did not testify; but Scotti, as will be seen in more detail, denied that such a conversation between Shevchuk and Falco took place in his presence. For reasons that will appear I credit Shevchuk here.

³ Schoettmer did not testify; thus Shevchuk's testimony in this respect stands undenied in the record and is credited.

⁴ Other employees also stood and talked with Robinson on such occasions.

11:50 and went to Nick's Caddy Inn, a bar near Respondent's shop, to buy a pack of cigarettes.⁵ At the bar Shevchuk saw Robinson and they sat together at the bar talking. Shevchuk drank nothing and Robinson drank a coca cola. About 11:55, while they were conversing, Scotti appeared in the doorway about 15 to 20 feet away (the bar was well lit) and hollered, "Nick, are you finished for the day?" Shevchuk said that he was and Scotti walked away.

Shevchuk thereupon left the bar and without eating any lunch returned to the shop about 12:10 p.m. There he looked at the timecard rack and found that his card was not punched out but was marked "11:45" in pencil by Scotti—a novel occurrence since never before had Scotti made a notation on Shevchuk's timecard on the numerous occasions that he was missing. Figuring that he was deemed to be through for the day Shevchuk washed up and left the premises.

At 5:30 or 6 o'clock that afternoon Shevchuk attended a meeting with Union Representative Robinson and some eight other of Respondent's employees. The meeting was held at a social club located about a block from Respondent's shop. The employees had been notified of the meeting by Shevchuk on June 3 and also on June 7 either in the morning at the shop or during lunchtime.

The next day on June 8, Shevchuk reported for work about 6:45 a.m. When he arrived he found that his timecard was not in the rack and the porter informed him that Scotti had his card and that Shevchuk was fired. Shevchuk waited until Scotti arrived at 7:45 and asked Scotti if he was discharged. Scotti said that he was and Shevchuk asked why. Scotti replied, "You know why. I warned you many times." Shevchuk claimed that he was being discharged because Scotti knew about the union meeting. Scotti only looked at Shevchuk and then walked away.

According to Shevchuk's further testimony he had never been spoken to about his drinking except on two occasions in 1969—one when he was seen having a beer during coffeebreak on a hot summer day and another occasion when Scotti accused him of being drunk and sent him home after an argument with a coworker. On the first occasion Falco told Scotti that they had to keep an eye on Shevchuk because he had seen him at the bar. According to Shevchuk, Falco said this in a friendly way and winked at him. As for the second occasion Shevchuk contended that he had not been drinking that day at all.

Shevchuk denied that he ever kept beer in the shop and claimed that on occasion he drank beer with Scotti in the shop. At the time of Shevchuk's discharge there were about 45 employees in Respondent's organization some 20 of which were employed in the metal shop where Shevchuk worked. Although Scotti claimed that Shevchuk was a mediocre worker, the fact is that he was one of the highest paid men in the shop. Moreover, as noted, his tenure with Respondent covered an 11-year span.

According to the undenied and credited testimony of Scotti, in February 1971 about 9:30 one morning Shevchuk

⁵ In order to get to the bar Shevchuk had to go right by the restaurant (where he usually ate lunch) that sold cigarettes over the counter. His explanation for going to the bar for his cigarettes was that they were cheaper there out of a vending machine. When cross-examined about this matter he emphasized that his sole object in going to the bar was to buy

was missing from the job. Scotti searched everywhere for him including the bathroom. Finally Shevchuk appeared coming from around the back of a truck. Scotti asked Shevchuk where he had been. Shevchuk claimed he was in the bathroom. Scotti said he had "looked in the bathroom . . . called all around the shop." He then warned Shevchuk "If you leave the shop anymore, that's going to be the end of it. Because it's been too many times." Scotti further testified that similar absences had been indulged in by Shevchuk "quite a few times" during the past couple of years and that frequently on these occasions he could smell liquor on Shevchuk's breath. Scotti also described how about some 25 times over the years he saw Shevchuk making unusually frequent trips to the bathroom and how on one occasion he found cans of beer stashed inside the toilet water tank. This was some 3 years prior to the discharge.

On June 7, according to Scotti's further testimony, about 11:15 a.m. Shevchuk's foreman, George Mallozzi, came to Scotti looking for Shevchuk. Together they went to the shop looking for him and were informed by someone in the stockroom that Shevchuk had gone out the back of the shop. Knowing that Shevchuk "hangs out . . . all the time" at Nick's Caddy Inn located about a block from the shop Scotti told Mallozzi that he was "going down the corner and see if [Shevchuk] is down in the bar." From the door of Nick's Caddy Inn Scotti saw Shevchuk sitting at the bar with his back to the door holding a glass on the counter in front of him and asked, "Nick, what are you doing here?" Shevchuk said, "I am finished." Scotti, "You are finished?" And not wanting to argue there said "Alright," and returned to the shop. According to Scotti at this time the lunch wagon had not yet arrived at the shop. Scotti described his actions after leaving the bar as follows:

I came back to the shop, and I told the foreman he was down at the bar. He was drinking at the bar, or he was sitting at the bar. And I said let me check his card. He said he was finished. So I checked his card. He hadn't punched his card out. This was about, I looked at the time, it was twenty to twelve, so I gave him the benefit of the doubt and I put 11:45 on his card, because he was finished as of then. I intended to lay him off. Scotti did not see Shevchuk the remainder of the day. The next day Scotti came in early for the express purpose of terminating Shevchuk. About this he testified as follows: I told him, I says, "Nick, you are through." I says, "That's too many times now. That's the end." So he said, "What for?" I said, "You know what for. I warned you in February. I warned you many times before, and this is the limit." I says, "That's the finish." . . . He didn't say nothing, he just smiled, he got up, no he just smiled. He got up, he walked into the shop, picked up his cans of beer that he had hidden in the trucks . . . and he brought them outside. He sat on a box and he started to drink his cans of beer.

According to Scotti's further testimony, during the 2-year period before Shevchuk's discharge Scotti had sent

cigarettes. He was then confronted with his testimony before the New York State Referee where he had testified that he had gone to the bar to meet a union delegate. His explanation was that the referee had "misinterpreted" what he had said.

him home eight or nine times for being drunk. On some of these occasions the initiative to leave was taken by Shevchuk himself. The evidence also reveals that it was a regular practice on the part of Respondent to lend Shevchuk money between paydays.

In his further testimony Scotti admitted that some 2 years past, he had asked one of the employees who had written prounion comments on the wall and stated to him that he would "like to get the fellow who is defacing the walls all over the place." But Scotti denied that he used any profanity in his comments and denied making them in the presence of Shevchuk. He also denied ever talking to Shevchuk about his union activities or threatening Shevchuk or any other employee with discharge for union activities. Scotti also denied that he ever witnessed Falco putting his arm around Shevchuk and telling him he would close the shop if the union came in by testifying, "If that happened, it happened without my knowledge, because I can't see Arthur putting his arm around a fellow and I was not at that—never heard any—I was not in the presence of any conversation like that." Summing up his reasons for firing Shevchuk he testified that he discharged Shevchuk "for being off his work. When he was supposed to be working, supposed to be on his job, he was down the bar drinking, and after repeated warnings throughout the years. I finally gave up."

On cross-examination Scotti testified that throughout Shevchuk's employment from 1963 or 1964 he found Shevchuk missing from his work 25 to 30 times; that Shevchuk's beer drinking dated back to the beginning of his employment and that about 15 times he found beer in trucks that Shevchuk was working on but that he never actually saw him drinking beer on the job except one some 4 or 5 years previously. He also denied seeing Union Representative Robinson at the bar with Shevchuk.⁶

According to Scotti's further testimony, from January 7 to the time of his discharge Shevchuk came back from lunch 10 or 15 times with liquor on his breath and his eyes would be "glassy." Moreover, according to Scotti, during the 11 years of Shevchuk's employment there were perhaps a 100 occasions upon which he was glassy eyed from drink. During none of this time was Shevchuk ever laid off. Instead he was just sent home.

Conclusions

First, as promised, a word about credibility. There is no question that Shevchuk's credibility was not enhanced by the transparent reason he gave for going to Nick's Caddy Inn on June 7 which I find, in accordance with the testimony he gave in the unemployment compensation hearing, was to meet the union representative. On the other hand, Scotti's testimony did not strike me as a shining example of forthrightness and objectivity either. It strains credulity to believe that an employer would have tolerated an employee who became "glassy eyed" from drink 50 times let alone 100. Along this line, I wonder just what kind of beer and how much of it was required to make a man engaged in a strenuous physical activity "glassy eyed."

⁶ Robert Gable, Respondent's vice president in charge of administration, testified that he saw Robinson at the bar with Shevchuk and that he so

Also questionable is how Scotti could see that Shevchuk had a glass in his hand when he was sitting at the bar with his back to Scotti. And if Scotti's perception was so good why wasn't it also good enough to enable him to see Robinson at the bar with Shevchuk. Gable, who presumably had less reason to notice Robinson since he was not looking for Shevchuk, apparently had no difficulty in seeing him.

Apart from the relative reliability of the two witnesses, however, is the plausibility of Shevchuk's testimony. As the General Counsel points out and as it appeared to me Shevchuk was a "simple minded" individual who just was not clever enough to dress up his story with little touches like having Falco put his arm around Shevchuk's shoulders. Moreover, with another official of Respondent making a threat to close down it is not too much to expect one of the same from Falco. It follows and I find that both Schoettmer's and Falco's threats to close the shop if a union came in interfered with, restrained, and coerced employees in violation of Section 8(a)(1) of the Act.

As for the main issue in the case, at first glance it has the appearance of a typical pretext discharge. Here is a man who has worked for Respondent 11 years all during that time having what must be considered egregious shortcomings tolerated by Respondent. Then he gets interested in a union, his shortcomings suddenly become unbearable and bingo out he goes. But with Shevchuk's connection with the Union dating back to January, Respondent contends that if it had an antiunion motive to rely on a pretext to discharge Shevchuk it had plenty of opportunity to do so long before June. Instead of doing so Respondent demonstrated its goodwill toward Shevchuk by continuing to lend him money during that period.

There is some validity to Respondent's contention but its argument cuts both ways. According to Scotti's testimony from January to June 1971 Shevchuk came back to work from lunch 10 to 15 times "glassy eyed" from drink. Obviously a good number of these occasions must have occurred after Shevchuk had been given his warning. The question is why Respondent did not terminate Shevchuk until June 8. The answer to this question, I believe, lies in Shevchuk's meeting with Robinson at the bar on June 7 and the union meeting that took place that evening.

There are many varieties of antiunion employers, some with knee jerk opposition to unions—others with more relaxed and sophisticated approach. Here, as I see it, Respondent apparently did not feel so threatened at the early stages of the Union's campaign to think it necessary to take any affirmative counteraction. As Scotti explained in his testimony, employees would talk one day in favor of the union and the next day against. But by June the Union obviously began to make some headway in its campaign as evidenced by the meeting the night before Shevchuk's discharge attended by some eight or nine employees.

In my opinion it is this meeting and the circumstances surrounding the discharge that blow the whistle on Respondent. Thus, if Scotti really intended to discharge Shevchuk as of 11:45 a.m. on June 7 why didn't he do it that day instead of waiting until the following morning? I

informed Falco and Schoettmer and possibly Scotti later that day.

believe that it was because at 11:45 he did not intend to discharge Shevchuk but to treat the matter as he had repeatedly treated it for years. But later that day he learned of the union meeting and knowing of Shevchuk's pronoun position and having been informed by Gable that Shevchuk had met with Robinson that noon, decided that for these reasons, perhaps among others,⁷ it was time to eliminate Shevchuk.

I realize that there is no direct evidence to show that Respondent had knowledge of the June 7 union meeting. But in the circumstances we have here, the small size of Respondent's shop, the nearness of the meeting to Respondent's premises, and the timing of the discharge so soon after the meeting permit an inference that Respondent had knowledge of the meeting and that it played a significant part in triggering Shevchuk's discharge. I draw that inference and find that his discharge was in large measure motivated by antiunion consideration and thus in violation of Section 8(a)(3) of the Act. *N.L.R.B. v. The Pembeck Oil Corporation*, 404 F.2d 105 (C.A. 2); *A. J. Krajewski Manufacturing Co., Inc. v. N.L.R.B.*, 413 F.2d 673 (C.A. 1); *N.L.R.B. v. Joseph Antell, Inc.*, 358 F.2d 880 (C.A. 1); *Midland Container Corp.*, 190 NLRB No. 67.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operations of 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 of commerce.

V. THE REMEDY

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

Having found that Respondent discharged Nicholas Shevchuk for engaging in activity protected by the Act, I will recommend that Respondent be ordered to offer him immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority

⁷ Even though Respondent may have had a valid cause to discharge Shevchuk, if antiunion considerations played any part in the motivation for the discharge, it must be considered discriminatory within the meaning of

and other rights and privileges, and make him whole for any loss of earnings he may have suffered 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 an offer of reinstatement, less net earnings during said period, with backpay computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289, 291-294, including interest as held in *Isis Plumbing & Heating Co.*, 138 NLRB 716.

I shall also recommend that Respondent preserve and make available to the Board, upon request, payroll and all other records necessary to facilitate determination of the amount due under this recommended Order.

In view of the nature of the unfair labor practices committed, I am of the opinion that the commission of similar unfair labor practices may be reasonably anticipated, I shall therefore recommend that Respondent be ordered to cease and desist from infringing in any other manner upon the rights guaranteed its employees by Section 7 of the Act.

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

CONCLUSIONS OF LAW

1. ABC Body Works, Inc., is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Local 810, Steel, Metals, Alloys & Hardware Fabricators & Warehousemen, Affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.
3. By interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, Respondent engaged in unfair labor practices proscribed by Section 8(a)(1) of the Act.
4. By discharging Nicholas Shevchuk because of his union membership, sympathies, and activities thereby discouraging membership in the aforesaid labor organization, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) of the Act.
5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act. [Recommended Order omitted from publication.]

the Act and a violation of Sec. 8(a)(3) thereof. *N.L.R.B. v. Whitfield Pickle Company*, 374 F.2d 576, 582 (C.A. 5).