ABCO Engineering Corp. *and* Lawrence McCleery.
Case 18–CA–3214

February 6, 1973

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS FANNING AND PENELLO

On May 8, 1972, Administrative Law Judge[1] George L. Powell issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and General Counsel filed limited exceptions.

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[2] and the attached Decision in light of the exceptions and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order with certain modifications.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge as modified below and hereby orders that Respondent, ABCO Engineering Corp., Oelwein, Iowa, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as modified below:

1. Delete from paragraph 2(d) of the recommended Order the phrase "or its successor."

2. Substitute the attached notice for the Administrative Law Judge's notice.

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

[2] The Respondent has excepted to certain credibility findings made by the Administrative Law Judge It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions were incorrect *Standard Dry Wall Products, Inc*, 91 NLRB 544, enfd 188 F 2d 362 (C A 3) We have carefully examined the record and find no basis for reversing his findings.

Contrary to Respondent's contentions, our careful examination of the record and the Administrative Law Judge's decision reveals no bias or prejudice Contrary to Respondent's allegations, he conducted the hearing in an evenhanded manner and did not unfairly restrict Respondent's examination or cross-examination of witnesses

APPENDIX

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

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

WE WILL NOT interrogate our employees about their union activities in a manner constituting interference, restraint, or coercion in violation of Section 8(a)(1) of the Act.

WE WILL NOT discharge employees because of their activities on behalf of ABCO Employees Union, or any other labor organization.

Since the Board found that we violated the law when we fired Keith A. Annis, Fred H. Barth, Robert C. Brant, Harold Harper, James Holtzman, Lynn L. Landis, L. D. McClerry, Kenneth W. Meyer, Larry Mohlis, Robert Patridge, Charles Schuchhardt, Rollyn D. Stedman, Manuel Villa, and Lewis J. Wolfs, WE WILL offer them their jobs back (if not already reinstated), discharging replacements if necessary or, if such jobs no longer exist, offer them substantially equivalent employment, and pay them for any loss of pay they may have suffered because we fired them.

WE WILL NOT in any other manner interfere with, restrain, or coerce 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 engaging in such activities.

WE WILL, upon request, bargain collectively with ABCO Employees Union in the following unit of employees with respect to rates of pay, wages, hours of work, and other conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement:

> All full-time and regular part-time production and maintenance employees in the Employer's Oelwein, Iowa, operation; excluding office clerical employees, professional employees, casual employees, and supervisors as defined in the National Labor Relations Act, as amended.

ABCO ENGINEERING CORP.
(Employer)

Dated By
(Representative) (Title)

We will notify immediately the above-named individuals if presently serving in the Armed Forces of the United States, of their right to full reinstatement upon application after discharge from the Armed Forces, in accordance with the Selective Service Act and the Universal Military Training and Service Act.

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, 316 Federal Building, 110 South Fourth Street, Minneapolis, Minnesota 55401, Telephone 612–725–2611.

TRIAL EXAMINER'S DECISION

Preliminary Statement

GEORGE L. POWELL, Trial Examiner: This proceeding under Section 10(b) of the National Labor Relations Act, as amended, 29 U.S.C. 151, *et seq.* (Act), based on a complaint and notice of hearing issued by the Acting Regional Director for the Region 18 of the National Labor Relations Board (Board) on October 7, 1971, founded upon a charge filed by Lawrence McCleery, an individual, on May 5, 1971, was tried before me in Oelwein, Iowa, on November 30, December 1, 2, and 3, 1971, with all parties participating throughout by counsel, who also filed briefs.[1] Those briefs, together with the entire record, as made at the trial, have been carefully considered.

The issues presented are (1) whether the group of employees later identified as ABCO Employees Bargaining Union, herein called Union, is a labor organization within the meaning of Section 1(5) of the Act; (2) whether on April 28, 1971, a majority of Respondent's employees in an agreed-upon unit, set out hereinafter, had designated the Union as their duly authorized collective-bargaining representative; (3) whether the Union requested recognition and Respondent refused to bargain in good faith with it in violation of Section 8(a)(5) of the Act; (4) whether Respondent committed certain independent violations of Section 8(a)(1); and (5) whether Respondent discharged certain employees in violation of Section 8(a)(3) of the Act. In its duly filed answer, Respondent, while admitting certain allegations of the complaint, denied the commission of any unfair labor practices.

Upon the entire record, my observation of the witnesses as they testified, and the briefs filed by Respondent and General Counsel, I find, for the reasons hereinafter set forth, that the General Counsel has established by a preponderance of the evidence that Respondent violated Section 8(a)(1), (3), and (5) of the Act as alleged in the complaint.

FINDINGS AND CONCLUSIONS

I. PARTIES; JURISDICTION

At all material times Respondent, ABCO Engineering Corp., an Iowa corporation with offices and principal places of business located at Oelwein, Iowa, was engaged in the manufacture and sale of conveyors and other material-handling equipment. Respondent's total annual sales exceeded $175,000 of which goods and services valued in excess of $100,000 were sold and shipped from Iowa to customers located outside of Iowa. Also, Respondent annually purchased goods originating outside Iowa valued in excess of $50,000 for use in those manufacturing operations within Iowa.

I find that at all material times Respondent has been, and is, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Credible evidence was adduced at the trial that all 15 of the employees of Respondent in the appropriate unit met and agreed to present and through two spokesmen did present a demand entitled "Employees Agreement," to Respondent on April 28, 1971, involving wages, hours, and terms and conditions of employment. Credible evidence was also adduced that the employees later on agreed to call themselves the ABCO Employees Bargaining Union, and on May 4, 1971, picketed Respondent with a picket sign reading: "ABCO Refuses to Bargain With ABCO Employees Union In Good Faith."[2] Accordingly, I find that the group of employees identified later on as ABCO Employees Union constituted a labor organization within the meaning of Section 2(5) of the Act.

Jurisdiction is properly asserted in this proceeding.

II. THE ALLEGED UNFAIR LABOR PRACTICES

Robert R. Ruark, as president, and his wife, Virginia E. Ruark, as secretary-treasurer, organized Respondent and began manufacturing conveyors over 4 years ago. As business increased, they added employees as needed until by April 1971 there were 15 employees in a unit of:

> All full-time and regular part-time production and maintenance employees in the Employer's Oelwein, Iowa, operation; excluding office clerical employees, professional employees, casual employees, and supervisors as defined in the National Labor Relations Act, as amended.[3]

Following a tornado that partially destroyed the town of

[1] The time for filing briefs was extended twice until January 31, 1972, pursuant to requests by Respondent

[2] See G C. Exh. 9.

[3] This unit was stipulated by the parties at the trial.

Oelwein some 4 years ago, Respondent built its present plant. Sometime before April 28, 1971,[4] the employees had met and decided among themselves to make certain demands of Respondent.

A. *The Demand—April 28, 1971*

On April 28, 1971, immediately following the lunch-break, duly designated employee spokesmen Kenneth Meyer and Lynn Landis presented Mr. Ruark with a sheet of paper containing the following information:

EMPLOYEE: AGREEMENT

We, the undersigned, because of low salary and poor working conditions at ABCO Engineering, agree that the following changes must be made in order to comply with the cost of living and safety standards, date effective May 6, 1971.

I. WAGES
Starting salary—$2.50 across the board
After three month probation—$2.75
Sixth month—$3.00
One year—$3.25
Second year—This will depend upon a year to year inflation basis

II. WORKING CONDITIONS:
1. Lifting hoist—safety hazard
2. Painting outside or apart from main building
3. Sufficient ventilation for welding fumes
4. Sufficient goggles and shields

III. ADDITIONAL CHANGES
1. Grievance committee elected
2. Hours—7:00 am—4:30 pm (30 minute noon)

This document then carried the signatures of the stipulated total complement of employees on Respondent's payroll, on that date in the above unit, listed alphabetically as follows:

Keith A. Annis	Larry Mohlis
Fred H. Barth	Robert Patridge
Robert C. Brant	Charles Schuchhardt
Harold Harper	Rollyn D. Stedman
James Holtzman	Manuel Villa
Lynn L. Landis	Lewis J. Wolfs
L. D. McCleery	Rick Zanatta
Kenneth W. Meyer	

According to Meyer's credited testimony,[5] Ruark wanted to know how this action had come about and Meyer told him that the employees had gotten together and had drawn up the document. Ruark told them the wage disclosure violated a strict rule not to divulge wages. In the words of Meyer, "And he also said that he was very unhappy that we had gotten together to bring this to him. That we couldn't have come in one at a time or as individuals and presented the problem to him. The fact that all these men appeared here, that we had gotten together and done this together and brought it in."

As for the paint fume grievance, Ruark asked them if they had done any research on the cost of an exhaust fan or how much it would cost to put up a building to paint in with adequate ventilation. He told them it would cost $50,000 to put up a building that would pass inspection for spray painting, and he didn't have the money to build an adequate building. Ruark mentioned, "that maybe . . . he should close the shop." Meyer argued not to do that because the men needed the money and it wasn't necessary to close down, but all Ruark needed to do was to go over the paper "and come to some kind of a conclusion or give us some kind of an answer." This discussion lasted about 2 hours, and, as it was concluding (around 3:15 p.m.), Ruark wanted to know what the "or else" would be if he didn't agree to the proposals. Meyer replied that he did not know but would have to go back to the group and have the employees decide what they would do if the "demands were thrown out" or "if he [Ruark] wouldn't bargain."

Ruark and Meyer went into the plant where all the employees were on their coffeebreak and Ruark gave a talk to them. Among other things,

> . . . he said that he was very unhappy we had gotten together and that we could have come to him as individuals and this was a form of communism and socialism that we had banded together, that we should have just come to him as individuals.

Ruark then wanted to know what the alternative would be for the employees if he wouldn't consider the proposals.

Ruark returned to his office leaving the employees to discuss and decide this issue. They decided: (1) to lower their demands and ask for a 25-cent raise per individual; (2) that something "definitely" should be done about the paint fumes; and (3) that they should have a grievance committee which could meet with Ruark and discuss plant problems. If these demands were not met, "we were prepared to walk out." Zanatta, only, would not agree to walk out.

The group again met with Ruark and told him of the reduced demands and wanted him to think them over and give them an answer. He wanted to know what would happen if he didn't agree, "and we said we were going to walk out, or we were prepared to walk out." They also told Ruark that Zanatta would not join a walkout.

Ruark then stated, "We will close the plant for the day." Meyer then told Ruark he didn't think the plant needed to be closed as "the men needed the money." Ruark replied, "Well we will just close the plant for the day and the men can go home." He told them that Zanatta, together with the shop foreman, and plant engineer "would stay and build conveyors." All of the employees punched out except Zanatta who stayed and made conveyors, with the shop foreman and plant engineer for the rest of the day. The time was "approximately 3:45 or 4 o'clock" and the scheduled workday was until 5 p.m.

Conclusions as to the workday of April 28

By closing the plant for the remainder of the day on April 28 to all employees but Zanatta, I find that

[4] All dates are in 1971 unless otherwise indicated

[5] Meyer's testimony was corroborated by other witnesses for the General Counsel

Respondent discriminated against the employees because they were acting in concert over demands relating to wages, hours, and working conditions. This interfered with, restrained, or coerced employees in the exercise of the rights guaranteed in Section 7 of the Act and, in so doing, Respondent violated Section 8(a)(1) of the Act.[6] This discrimination resulted in loss of pay to the employees affecting as it did the tenure of their employment. I find that Ruark closed the plant in retaliation for the concerted action of the employees, and to discourage them in their protected union activities. He testified that he did it because they were all so shook up they were "not going to get any work done today . . . ." This statement is beyond belief as he did get work done that day by Zanatta and the supervisors and there is no evidence that they were any less "shook up" than the others. Accordingly, the plant shutdown violated Section 8(a)(3) of the Act.[7] By closing the plant to all employees but the one employee who refused to strike to enforce the groups' bargaining position, Respondent showed the other employees that they too could work if they gave up their protected activity. Likewise Ruark told Meyer and Landis that "he was very unhappy that we had gotten together to bring [the demands] to him" and indicated he favored bargaining with them on an individual basis. This remark plus the plant shutdown was an effort to undermine the Union and destroy its majority and amounts to a refusal to bargain in good faith within the meaning of Section 8(a)(5) of the Act[8] as Meyer and Landis were the representatives of all of the employees.

B. *The Evening of April 28*

On the evening of Wednesday, April 28, Ruark telephoned the employees,[9] one at a time, and, with his wife on the extension, asked each one certain questions, in effect, as follows:

1. Do you, as an individual, ascribe to the demands as presented?
2. Do you, as an individual, state that unless ABCO complies with said terms you will terminate your employment?
3. Do you refuse to negotiate employment on an individual contractual basis?

They all testified, and I credit their testimony, that they stood together and refused to negotiate individually and they would not quit although Ruark attempted to force them to say "yes" to question No. 2. McCleery testified he was "forced" to say "yes" to question No. 2 but at no time did he want to quit.

I find these telephone inquiries to be a violation of Section 8(a)(1) and (5) of the Act. As to Section 8(a)(1), such questioning interfered with and coerced the employees into abandoning their group action engaged in earlier that day. Polling employees as to their group allegiance violates the law unless adequate safeguards are used. There were no safeguards here and hence the violation. As to Section 8(a)(5), the questioning bypassed the duly elected representatives and the Employer attempted to bargain directly with the individual employee. This is contrary to the theory of collective bargaining embodied in the Act and is illegal.

After the phone conversation on the evening of April 28 and during the day of April 29, Ruark wrote letters to those employees he had telephoned substantially as the following letter to Annis:

ABCO ENGINEERING CORP.
801 Second Avenue S.E.
Oelwein, Iowa 50662
319–283–5652

April 29, 1971

Mr. Keith A. Annis
606 4th Ave. NE
Independence, Iowa 50644

Dear Keith:

Because the following questions were acknowledged in the affirmative, we accept your resignation as of this date.

1. Do you, as an individual, ascribe to the demands as presented? You answered "Yes".
2. Do you, as an individual, state that unless ABCO complies with said terms you will terminate your employment? . . . . You said "Yes".

You further refused to negotiate employment on an individual contractual basis.

We regret, Keith, that you have terminated your employment, without good cause.

Very truly yours,

ABCO ENGINEERING CORP.

/s/ Robert W. Ruark
Robert W. Ruark
President
RWR:ver

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[6] Sec. 7 of the Act reads as follows:
Employees shall have the 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, and shall also have the right to refrain from any or all of 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).

Sec. 8(a)(1) of the Act reads as follows:
It shall be an unfair labor practice for an employer—
(1) to interfere with, restrain, or coerce employees in the exercise of the right guaranteed in section 7:

[7] Sec. 8(a)(3) of the Act reads as follows:
It shall be an unfair labor practice for an employer—
(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization:

[8] Sec. 8(a)(5) of the Act reads as follows:
It shall be an unfair labor practice for an employer—
(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

[9] Those who testified to the calls were: Meyer, Annis, Brant, Stedman, Landis, Villa, and McCleery. The testimony of these employees is credited as against any contrary testimony of Ruark. Differences in the testimony of the employees are insubstantial and the facts are pieced together from the total testimony of these employees.

This letter is a further effort by Respondent to undermine the group action to destroy its majority status, and like the telephone conversations above, it violates Section 8(a)(1) and (5) of the Act. Additionally, it violates Section 8(a)(3) of the Act by terminating the employment of those who refused to abandon their protected group action. The plant shutdown of slightly more than 1 hour on April 28 now became a permanent discharge.

C. *The Recall to Work*

As of Saturday, May 1, 4 (including Zanatta) of the 15 employees who had presented their original demands on April 28 had defected from the group and were working at the plant.[10] Respondent had also hired one replacement. Ruark admitted sending a letter to each of the remaining 11 employees on May 1 similar to the one he sent Meyer as follows:

May 1, 1971
Mr. Ken Meyer
407 North Frederick
Oelwein, Iowa 50662

Dear Ken:
This is an unconditional offer for you to return to work on Monday, May 3, 1971.
If you fellows would rather have your own committee represent you in regard to your grievances or problems —although I would prefer dealing with each individual—if that's what you want, I can, after thinking it over, go along with it. We can work out our problems together, as we have in the past.
We will expect to see you Monday.

Very truly yours,
ABCO ENGINEERING CORP.

Robert W. Ruark
President
P.S. This confirms our telephone conversation of Saturday Morning, May 1, 1971
RWR:ver

As noted in the P.S. above, in addition to the letter, Ruark, on Saturday, May 1, telephoned and spread the word for the employees to report for work on Monday morning, May 3.

All of the remaining 11 employees (with the exception of Meyer who had an emergency and could not report) reported dressed for work about 7:15 a.m. Monday, May 3. Work was to begin at 7:30 a.m. They all agreed to send in their representatives, McCleery[11] and Landis, agreeing among themselves not to work if something didn't happen to their demands. A new concern had developed. The employees were not sure from a reading of the letter that they were returning individually or as a group and whether the term "unconditional" applied to their return or to Ruark's offer. Ruark refused to recognize the two as the representatives without a designation. Accordingly, they returned to the group at the parking lot where McCleery wrote out the following designation which was signed by the employees listed:

May 3 *rd* 1971
7:30 a.m.

L.D. McCleery and Lynn Landis have been elected to discuss wage and safety regulations for ABCO employees.
Rollyn Douglas Stedman
Fred H. Barth -
Lewis J. Wolfs
Manuel Villa -
James Holtzman -
Robert Patridge
Larry Mohlis
Keith A. Annis

McCleery and Landis returned to Ruark with the designation but he then refused to meet and bargain with them, telling them he was busy and for them to return to work and he would set up a meeting at another time. Landis told Ruark that they just wanted to discuss the letter and would go back to work. He refused to discuss the letter. McCleery and Landis returned to the group and told them what happened and they decided not to return to work under those terms and to picket the plant.

D. *Picketing*

Picketing took place the following 2 days (May 4 and 5) with one picket sign reading: "ABCO Refuses to Bargain With ABCO Employees Union In Good Faith" and another reading: "Unsafe Working Conditions." McCleery never picketed but all of the remaining employees picketed the first hour and thereafter on a schedule so that two men would picket for 4 hours.

As noted above, McCleery filed the charge against Respondent on May 5.

Conclusions on the recall to work and picketing

Ruark's letter of May 1 was not an "unconditional" offer to the employees to return to work such as would stop the running of backpay to the 14 employees discharged on April 28,[12] because it was ambiguous. Once the employees had engaged in their union activities (which in law is no more than agreeing among themselves to bargain collectively with their employer over wages and hours and conditions of employment through a duly selected representative or representatives) the Employer no longer can

[10] Ruark admitted that Harper and Schuckhardt came back to work on April 29 Brandt testified that he returned on April 30. He further testified he was again called on April 29 by Ruark and after visiting with Ruark on that evening agreed to Ruark's terms of abandoning the employees' group and returning as an individual at his same pay. When he testified, Brandt no longer was an employee of Respondent. He impressed me as being a credible witness and I credit his testimony. Although the April 29 incident was not alleged as a specific violation of Sec 8(a)(1) and (5) of the Act, it does add evidence that Ruark had union animus and was attempting to drive the employees out of the group and back to individual bargaining as opposed to collective bargaining in violation of Sec 8(a)(1) and (5) of the Act

[11] McCleery replaced the absent Meyer

[12] Of course, backpay ceased to run on those who had resumed work individually at the time they resumed working.

"work out our problems together, as we have in the past." The past was based on individual arrangements and these no longer were legally possible. Yet the Employer in this case apparently persisted in trying to bargain illegally on an individual basis with his employees. Illustrations of this persistence have been set out above.[13]

Inasmuch as the letter of May 1 has been found not to be an unconditional offer to return to work, the Respondent violated Section 8(a)(5) again by refusing to bargain with the representatives of its employees unless they first returned to work and then only when Respondent would set the time. The action of Ruark's first refusing to meet with McCleery and Landis without a designation and then refusing to meet until some time later after the employees returned to work suggests that Respondent never intended to bargain in good faith with the employees' representatives.

The employees were ready to go to work on May 3, 1971, on substantially the same terms as when they were fired on April 28. Respondent's refusal to take them back continued his violation of Section 8(a)(3) and (1) of the Act. Accordingly, it is not necessary to decide whether the employees' action after Respondent's refusal to put them to work constituted a strike because the remedy for the discharged employee is the same. Assuming, *arguendo,* that such a decision is necessary, it is clear that they were protesting the Respondent's unfair labor practices and such a protest falls under the category of an unfair labor practice strike. Unlike an economic strike, employees engaging in an unfair labor practice strike are entitled to reinstatement to their old jobs upon application even if the Employer has to discharge a replacement to effect the reinstatement.

E. *May 5 and 6*

On the evening of May 5, McCleery telephoned Ruark saying "we had disbanded our group" and said, "you win, we lose," and told Ruark "we were ready to talk more or less on his terms, not ours." As a result of this conversation McCleery prepared and signed a letter the next day, delivering it on the same day to Ruark, "for the ABCO employees" as follows:

> We are agreeable, as a group, to return to work (as a group) under same hourly pay with no loss of vacation benefits but to have our paint-fume problems solved by November 1, 1971.

McCleery admitted that the letter was prepared because Ruark indicated to him that he was confused as to whether there was still a group or whether they were individuals. This should have indicated to him that they were ready to work as a group—a lawful position to take and substantially the same as the position they had on April 28 when they were fired. When he presented the letter to Ruark, McCleery told him he was "ready to talk on reduced demands." Ruark agreed to meet on May 10.

In the meantime Ruark was violating Section 8(a)(1) and (5) of the Act by talking individually to Landis and Villa. After a conversation with Ruark, Landis returned to work at his old rate of pay on May 8. Villa talked with Ruark on May 8 about coming back to work as an individual but was not taken back until May 13. Ruark violated the law as noted because he was still under an obligation to bargain with McCleery, the representative of his employees' union. If the Union had lost its majority by this time, it had been caused by the unfair labor practices of the Respondent. And an employer cannot justify refusing to bargain collectively and, instead, bargaining individually on the ground that the Union lost its majority status where the loss of majority status is attributable to the unfair labor practices of the employer. Respondent was obligated to bargain over paint fumes and terms of a return to work.

F. *May 10*

On May 10, McCleery, Wolfs, Patridge, Mohlis, Barth, and Meyers met with Mr. and Mrs. Ruark and three others for the Respondent. Ruark wanted the employees to sign the May 6 letter of McCleery, which was done, then asked what they wanted to talk about. (By this time 6 of the original 15 were working for the Respondent at the same rate of pay they were receiving on April 28.) They said, "Pay" and they didn't want to lose vacation benefits on account of their discharges and they wanted the paint fumes corrected by September (the fumes not being so bad with the doors open during the summer). Although they had reduced their pay demands, Mrs. Ruark mentioned a new pay of $2.15 per hour for each of them. This was less than some were earning when discharged on April 28; e.g., McCleery was making $2.65 when sent home on April 28. The employees caucused briefly and replied that the NLRB charges would be dropped if they could get $2.25 per hour. Finally, before the meeting broke up each of the employees was willing to work for $2.15 per hour. The time for the paint fumes to be corrected was changed to November 1. McCleery testified, "We wanted to get back to work." (They agreed to come back as a group but be individuals thereafter.) Ruark decided they would have to have another meeting and a meeting was arranged for May 13.

On May 13 the same persons met but there was no bargaining. Instead of bargaining, Mrs. Ruark read a prepared statement in which, among other things, the employees were told they had been replaced.

Conclusions as to the meetings on May 10 and 13

Again the Respondent refused to bargain in good faith in violation of Section 8(a)(5) of the Act. No effort was made by it for meaningful bargaining. It had beaten down the efforts of its employees to bargain collectively by illegal means as set out above. Respondent's final refusal to reinstate the employees on the asserted ground that they had been replaced again violates Section 8(a)(1) and (3) of the Act, as a replacement has no tenure to a job as against the employee who had been unlawfully discharged from it, and, in any event, they were unfair labor practice strikers

[13] Ruark maintained that the spokesmen for the group told him the employees had these demands but they didn't want a union and thusly he felt free to telephone them and deal with them on an individual basis Whether or not the employees meant a "union" affiliated with a national labor organization is immaterial because their very actions constituted the group into a "union" as a matter of law.

and cannot, as such, be refused reinstatement on the ground of replacement.

CONCLUSIONS OF LAW

1. ABCO Engineering Corp. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The group of employees identified as ABCO Employees Union, is a labor organization within the meaning of Section 2(5) of the Act.
3. An appropriate unit of employees for purposes of bargaining collectively with Respondent was the stipulated unit of:

> All full-time and regular part-time production and maintenance employees in the Employer's Oelwein, Iowa, operation; excluding office clerical employees, professional employees, casual employees, and supervisors as defined in the National Labor Relations Act, as amended.

4. ABCO Employees Union represented a majority of the employees in the appropriate unit at all times pertinent to this case.
5. By refusing to bargain in good faith with ABCO Employees Union on April 28, 1971, and thereafter, Respondent violated Sections 8(a)(1) and (5) and 2(6) and (7) of the Act.
6. By bargaining directly with employees and by asking them to return as individuals, rather than with their collective-bargaining agent, Respondent violated Sections 8(a)(1) and (5) and 2(6) and (7) of the Act.
7. By discriminating against Keith A. Annis, Fred H. Barth, Robert C. Brant, Harold Harper, James Holtzman, Lynn L. Landis, L. D. McCleery, Kenneth W. Meyer, Larry Mohlis, Robert Patridge, Charles Schuchhardt, Rollyn D. Stedman, Manuel Villa, and Lewis J. Wolfs by closing the plant on April 28, 1971, and finally discharging them on April 29 in order to discourage their membership in ABCO Employees Union, Respondent violated Sections 8(a)(3) and (1) and 2(6) and (7) of the Act.
8. By attempting to induce individual employees to return to work by personal phone calls and conversations, Respondent violated Sections 8(a)(1) and 2(6) and (7) of the Act.
9. By polling the employees individually on April 28, 1971, as to whether they were going to keep to their group action, Respondent violated Sections 8(a)(1) and 2(6) and (7) of the Act.

THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section II, above, have a close, intimate, and substantial relationship 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.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1), (3), and (5) of the Act, I shall recommend below that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent's unfair labor practices strike at the heart of the rights guaranteed employees by Section 7 of the Act. The rights involved are closely related to other rights guaranteed by Section 7. The Company's independent violations of Section 8(a)(1) evince a general hostility to the right of employees to engage in legitimate concerted activities and because of the nature of the unfair labor practices found, there is reasonable ground to believe that Respondent will infringe upon such other rights in the future unless appropriately restrained. Therefore, in order to make effective the interdependent guarantees of Section 7, I shall recommend an order below which will have the effect of requiring the Respondent to refrain in the future from abridging any of the rights guaranteed employees by Section 7.

Having found that Respondent has discriminatorily discharged Keith A. Annis, Fred H. Barth, Robert C. Brant, Harold Harper, James Holtzman, Lynn L. Landis, L. D. McCleery, Kenneth W. Meyer, Larry Mohlis, Robert Patridge, Charles Schuchhardt, Rollyn D. Stedman, Manuel Villa, and Lewis J. Wolfs, I will recommend that Respondent be ordered to offer immediate and full reinstatement, if not already reinstated, to their former or substantially equivalent positions, discharging replacements if necessary, and make them whole for any loss of earnings they may have suffered because of the discrimination against them, by payment to them of a sum of money equal to the amount of wages they would have earned from the date of the discrimination to the date of the offer of unconditional reinstatement together with interest thereon at the rate of 6 percent per annum and that the loss of pay and interest be computed in accordance with the formula and method prescribed by the Board in *F. W. Woolworth Company*, 90 NLRB 289, and *Isis Plumbing & Heating Co.*, 138 NLRB 716, to which the parties hereto are expressly referred.

Having found that Respondent has refused to meet and bargain in good faith with the Union, the majority representative of the employees in an appropriate unit, I will order it to do so and reduce to writing any agreement they may reach.

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record in the case, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended: [14]

ORDER

Respondent, ABCO Engineering Corp., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating employees about their union activities

[14] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

in a manner constituting interference, restraint, or coercion in violation of Section 8(a)(1) of the Act.

(b) Discouraging membership in ABCO Employees Union, or any other labor organization of its employees, by discharging its employees or closing the plant to them because of their concerted or union activities, or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of employment.

(c) Refusing to meet and bargain with the majority representative of the employees in the previously described appropriate unit.

(d) In any other manner interfering with, restraining, or coercing employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the ABCO Employees Union, 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 which it is found will effectuate the policies of the Act:

(a) Offer Keith A. Annis, Fred H. Barth, Robert C. Brant, Harold Harper, James Holtzman, Lynn L. Landis, L. D. McCleery, Kenneth W. Meyer, Larry Mohlis, Robert Patridge, Charles Schuchhardt, Rollyn D. Stedman, Manuel Villa, and Lewis J. Wolfs immediate and full reinstatement, if not previously reinstated, to their former or substantially equivalent positions, discharging replacements if necessary, without prejudice to all rights and privileges to which they are entitled and make them whole in the manner set forth above in the section entitled "The Remedy."

(b) Preserve until compliance with any order for reinstatement or backpay made by the Board is effectuated, and make available to the said Board and its agents, upon request, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, relative to a determination of the amount of backpay due, and to the reinstatement and related rights provided under the terms of any such order.

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

(d) Upon request, bargain in good faith with ABCO Employees Union, or its successor, the majority representative of the employees in an appropriate unit, and reduce to writing any agreement they may reach.

(e) Post at its Oelwein, Iowa, place of business, copies of the attached notice marked "Appendix."[15] Copies of said notice, on forms provided by the Regional Director for Region 18, after being duly signed by the Respondent's representative, shall be posted by it immediately upon receipt thereof, and maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the said Regional Director, in writing within 20 days from the date of this Decision, what steps Respondent has taken to comply herewith.[16]

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

[16] In the event that this Recommended Order is adopted by the Board after exceptions have been filed, this provision shall be modified to read: "Notify the Regional Director for Region 18, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith."