

Anaconda Wire and Cable Company *and* Randall R. Sparks. Case 25-CA-4757

February 13, 1973

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS
FANNING AND JENKINS

On October 10, 1972, Administrative Law Judge Gordon J. Myatt issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions to the Administrative Law Judge's Decision and a supporting brief, and the General Counsel filed a "limited cross-exception" to the Administrative Law Judge's Decision.

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 and to adopt his recommended Order, as modified herein.¹

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 and hereby orders that Respondent, Anaconda Wire and Cable Company, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's recommended Order as modified herein.

1. Delete paragraph 1(a) and substitute the following:

"(a) Threatening to issue complaints, issuing complaints, or taking disciplinary action, including layoffs, against employees in reprisal for filing or processing grievances pursuant to the terms of a collective-bargaining agreement."

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

¹ Although the Administrative Law Judge found that Respondent unlawfully threatened to issue a complaint against Sparks, he inadvertently failed to include this violation in the cease-and-desist part of his recommended Order. We shall modify the Order accordingly.

APPENDIX A

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

The National Labor Relations Board having found, after a duly held trial, that we violated Federal law by unlawfully disciplining an employee in reprisal for filing and processing a grievance pursuant to the terms of the collective-bargaining agreement, we hereby notify our employees that:

WE WILL NOT threaten to issue complaints, issue complaints, or take disciplinary action, including layoffs, against employees in reprisal for their filing or processing grievances pursuant to the terms of a collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with the Section 7 rights guaranteed our employees under the National Labor Relations Act, as amended.

WE WILL make Randall R. Sparks whole for any loss of earnings he may have suffered by reason of our unlawful conduct against him.

ANACONDA WIRE AND
CABLE COMPANY
(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, 614 ISTA Center, 150 West Market Street, Indianapolis, Indiana 46204, Telephone 317-633-8921.

DECISION

STATEMENT OF THE CASE

GORDON J. MYATT, Administrative Law Judge: Upon a charge filed on February 3, 1972,¹ by Randall R. Sparks, an individual, against Anaconda Wire and Cable Company (hereinafter called the Respondent), a complaint and notice of hearing was issued by the Regional Director for Region 25 on March 23. The complaint alleged, *inter alia*, that the Respondent violated Section 8(a)(1) and (3) of the Act by threatening employees with reprisals, including disciplinary layoff, if they filed grievances. Further, that

¹ Unless otherwise indicated, all dates herein refer to the year 1972.

the Respondent did engage in unlawful conduct by imposing a 3-day disciplinary layoff upon Randall R. Sparks for the reason that he filed a grievance pursuant to the terms of the collective-bargaining agreement against the Respondent. The Respondent's answer admitted certain allegations contained in the complaint and denied others, and specifically denied the commission of any unfair labor practices.

This case was tried before me on May 11 and 12 in Marion, Indiana. All parties were represented by counsel and were afforded full opportunity to be heard and to introduce relevant evidence on the issues. Briefs were submitted by the General Counsel and the Respondent and were fully considered by me in arriving at my decision in this matter.²

Upon the entire record herein, including my evaluation of the testimony of the witnesses based on my observation of their demeanor and upon consideration of the relevant evidence, I make the following:

FINDINGS OF FACT

I. JURISDICTIONAL FINDINGS

Respondent is a multplant company primarily engaged in the manufacture of electrical wire and cable. The Marion, Indiana, plant—the only facility involved in this proceeding—produces a variety of rubber and plastic insulated and jacked wire and cables for use in transmitting mili-amp and mili-volt electrical current. These products are used by power utilities, industrial and mining companies, and companies controlling nuclear reactors and generator waiting stations.

During the past 12 months the Respondent manufactured, sold, and shipped products valued in excess of \$50,000 from its Marion facility directly to points located outside the State of Indiana. During a similar period the Respondent purchased, transferred, and caused to be delivered to its Marion facility goods and materials valued in excess of \$50,000 which were transported to that plant directly from States other than the State of Indiana. Upon the basis of the foregoing, I find that the Respondent is, and has been at all times material herein, an employer as defined in Section 2(2) of the Act engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Local Union No. 1000 of the International Brotherhood of Electrical Workers, AFL-CIO (hereinafter called the Union), is a labor organization within the meaning of Section 2(5) of the Act.

² The General Counsel submitted a motion to correct the record along with his brief. Upon examination of my notes and the pertinent parts of the record, I hereby grant the motion. Accordingly, the record is hereby corrected in the manner indicated in the motion; a copy of which is attached to this Decision as "Appendix B. [Omitted from publication.]"

³ The testimony indicates that the cleaning procedure was an involved operation which consumed several hours. The process required the operator to shut the machine off and to heat it up in order to keep the plastic material, used in coating the cables, soft and pliable. If the material were allowed to cool and harden, then the job became more difficult. In addition,

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Filing of the Sparks Grievance*

The initial dispute which set in motion the forces of discord in this case occurred on January 12. There are conflicting versions between the General Counsel's witness and the witnesses for the Respondent as to what took place in the plant that evening.

According to Sparks, he was operating the #1-6 inch combination extruder machine with the assistance of a utility helper. Sparks was working the second shift on that date. He stated that at approximately 7:30 the machine was down in preparation to cleaning the "head."³ Shift Foreman Fair came over and informed Sparks that he was taking his helper away to carry lead for the lead press. Sparks testified that he protested because the cleaning of the machine was a two-man job. According to Sparks, the Company considered it to be such, since the operators manual assigned a helper to the machine operator for this purpose. Fair replied that he was the foreman and had made a decision to remove the helper. During the course of the conversation Sparks stated that he "might file a grievance" about the matter.⁴ After his helper was assigned elsewhere, Sparks left his machine without notifying Fair and walked over to a machine operated by Moore, the union steward.⁵ Sparks told Moore that his helper had been taken away again (this had occurred on a prior occasion and Sparks had complained then to Moore). Sparks discussed the possibility of filing a grievance and received a grievance form from Moore. Sparks testified that he spent no more than 20 minutes with Moore discussing the matter and then returned to his machine. Sparks started the process of cleaning the head but did not finish the job by the time his shift ended. He completed the cleaning procedure during the first hour of his shift the following day.

When Sparks left work on January 12, he took the grievance forms home and typed a grievance stating that Fair had violated Code 13 of the Operators Manual. This regulation required an operator and a utility helper for the shutdown and cleaning of his particular machine. According to Sparks, when he returned to work on the second shift on January 13, he left his machine to hand the grievance to Moore. He stated that Fair observed him and told him that "if you file a grievance I am going to file a complaint against you for being off the job 45 minutes." Fair claimed to have three witnesses who would substantiate his charge. Sparks went to Moore nonetheless and handed him the grievance. Moore testified that he gave the grievance to Fair who asked if he could take it home and look it over. Moore agreed to this and nothing further was stated regarding the grievance that day.

the material had corrosive properties which if allowed to stand for a long period of time would cause damage to the machine

⁴ The record discloses that Sparks was not hesitant about using the grievance procedure when he felt he was being wronged by management. He was the only employee in the high voltage department who filed grievances between July 1971 and January 1972.

⁵ A diagram of the plant layout indicates that Sparks' machine was approximately 80 to 90 feet in length and he had to walk the length of his machine and an additional 25 feet in order to reach the machine operated by Moore.

On January 14, Fair returned the grievance to Moore with the notation that the grievance was denied because the particular code cited as being violated had been long discontinued. Moore placed his "steward's comment" on the grievance. Moore took the position that Fair had violated the contract when he removed the utility helper from Sparks' machine on January 12. Moore subsequently processed the grievance by delivering it to Rader, the department foreman. Rader and Fair were standing in the aisle at the time approximately 5 to 6 feet from the machine operated by Sparks. Moore testified that when he handed the grievance form to Rader, he (Rader) turned to Fair and said, "all right, if he filed that complaint against you, you file one against him for being away from his machine for 45 minutes." Sparks testified that he overheard this comment.

The Respondent's witnesses presented a different version of what took place on January 12, and the events that led up to the formal filing of the grievance. Fair testified that he observed Sparks on January 12, and that the employee left his machine at 3:30 p.m. to talk to the union steward. He stated that Sparks stayed away from his machine 10 to 15 minutes and had to be instructed to return. According to Fair, Sparks' machine was not operating at the time. Fair further testified that at 4:30 p.m. he observed Sparks leaving his machine again to talk to another operator. Fair stated that he told Sparks to return to his work station, where he should have been setting up the machine. Fair testified that at 8:50 p.m. Sparks once again left his machine and was talking to another machine operator in the area. According to Fair, he stayed until 9:25 p.m. Fair observed Sparks but said nothing to him at that point, as he wanted to see how long the employee would stay away from his machine. He stated that Sparks then started walking down the aisle in the direction of the other end of the plant, and he told the employee to return to his machine because he had been away long enough to warrant a complaint. According to Fair, Sparks ignored him and went over and talked to the union steward. After this conversation Sparks returned to his machine, but did not complete the cleaning of the head which was his assigned duty.

Rader testified that on January 13, the first-shift operator of the same machine used by Sparks complained that the head had not been cleaned the evening before. Rader instructed the operator to use a smaller head and leave the uncleaned head for the second-shift operator. He stated that at the beginning of the second shift Sparks came into his office and complained about his helper being taken away the evening before. Rader told Sparks that if the helper was needed elsewhere, it was perfectly permissible. Fair complained to Rader at the beginning of the shift about Sparks' activity the evening before. He stated that he wanted to write a complaint against Sparks. Rader told Fair he wanted to review Sparks' file before taking any action. He also told Fair that, if Sparks did not clean the head that evening, he should write up a complaint against

him for poor workmanship. He testified that he had examined Sparks' timecard and felt that he had ample time to have completed the cleaning of the head the evening before.

Pence, the general foreman, testified that on January 12, he had returned to the plant in the evening to do some work. As he was leaving at 9:10 p.m. Fair complained to him about Sparks being away from his machine. Pence stated that he instructed Fair to observe the employee for the balance of the night and make his recommendations. Rader and Pence testified that they discussed the matter regarding Sparks on January 14 and decided Fair should file a complaint against him for his conduct on January 12. Rader stated he relayed these instructions to Fair at 2:45 p.m. while they were standing in the aisle near the machine operated by Sparks. While he was talking to Fair and after he had instructed Fair to issue the complaint, according to Rader, Moore came up and handed him the Sparks grievance. Rader testified that he placed it in his pocket and told Moore that he would receive it (the Respondent's answer) in the proper time. Fair testified, however, that nothing was said by anyone when Moore presented the grievance.

B. *The Events Following the Filing of the Grievance*

There is a factual dispute concerning what occurred at the plant after Moore formally filed the grievance. Rader testified that on January 17, at 7:30 a.m., he found the written complaint from Fair on his desk.⁶ Rader walked the document over to the personnel department and gave it to Blair, the personnel manager. He recommended that disciplinary action be taken against Sparks.

Blair testified that he was aware that Sparks had filed a grievance at the time that Rader brought the complaint to his office. He stated, however, that the grievance was not considered when he discussed the merits of the complaint with Plant Manager Van Hoy and Plant Superintendent Benjamin.⁷ As a result of the conference among the management officials, a decision was made to impose a 3-day disciplinary suspension on Sparks. Blair subsequently admitted to a union official that he wanted to fire Sparks.

The following day Sparks was working the third shift. At approximately 7 a.m. Rader approached him and instructed him to go to the personnel office. Sparks testified that he asked Rader if he needed a union representative present. Sparks stated that Rader replied that he did not "think" it was necessary. Both Pence and Rader were present in the office when Sparks talked with Blair. Sparks testified that Blair told him jobs were not plentiful and that the Respondent was losing money as a result of the loss of their copper mines in Chile. Sparks responded by saying that he was not concerned about the loss the Company was suffering and that he felt the complaint was unfounded

⁶ The complaint was on a form used for internal communications; the form was entitled "Avoid Verbal Orders" This document was put in evidence (G C Exh. 7) and examination thereof revealed an obvious strikeover of the date on which the alleged misconduct occurred. Fair could offer no explanation for the strikeover.

⁷ Blair stated he examined Sparks' personnel file in addition to talking to Pence and Rader. Sparks, who had been employed by the Respondent for 2 1/2 years, had a prior warning dated August 31, 1971, on his record for being away from his work area on two separate dates. Sparks grieved this action, and was absolved of any wrongdoing in one instance.

because he was away from his machine talking to his union steward.⁸ Blair then informed Sparks of the disciplinary layoff which was to become effective immediately. After the disciplinary layoff was imposed, Sparks went to Pulley, an employee and business agent of the Union, and was promised that a meeting would be set up that afternoon with the management officials on Sparks' grievance.

The meeting on the grievance was also held in Blair's office. Pulley and Moore were present on behalf of Sparks and Blair and Pence were the management representatives. Prior to the conference, Blair had already notated on the grievance form that the grievance was to be denied because the regulation cited by Sparks had been rescinded for several years. Blair admitted that the regulation was still contained in the operator's manual although it no longer applied. During the discussion on the grievance, Sparks attempted to interject the subject of his disciplinary layoff. Blair refused to discuss that matter stating that the meeting was confined to the grievance. Sparks was told by the union officials that he could file a separate grievance concerning the layoff. During the discussion Moore protested that he did not know of any other employee who had ever been threatened, before this incident with Sparks, for filing a grievance.

After the meeting on the grievance, Sparks talked with the union representatives in the reception area of the office. According to Sparks, Pulley told him that Rader apologized to Blair for threatening Sparks over the filing of the grievance. Sparks at this point was uncertain as to whether he would grieve the disciplinary layoff. He left the plant and went to the home of Moore where he secured a grievance form from Mrs. Moore. He wrote on it in longhand stating that his layoff was unfair. He then decided to carry his protest to the employees at the plant. He made up a picket sign which stated that the Respondent had engaged in unfair labor practices. Sparks appeared at the plant at 10 p.m. that evening and began to picket the entrance as employees were reporting for work on the third shift. A number of employees approached him to find out why he was picketing. Sparks explained his situation to them and approximately 50 percent of the employees scheduled to work on the third shift remained out. Shelley, the second-shift general foreman, approached Sparks and told him to put the sign down and report to the personnel office at 10 a.m. the following morning. Sparks refused to discontinue the picketing, however, and remained in front of the plant with his sign until 6:30 a.m. the next day.

Shortly after Sparks started picketing, Benjamin telephoned Van Hoy at home and told him there was trouble at the plant. Van Hoy returned to the plant in order to investigate and also to insure that production would be maintained. Sometime during the course of the night, Bye, president of the Union, came into Van Hoy's office and stated that he and other union officials were at the plant to determine the cause of the work stoppage. The union

officials promised to assist management in ascertaining the reasons for the work stoppage.

Shortly before the first shift was scheduled to go to work on January 19, Cable, chairman of the Union's executive board, approached Sparks in front of the plant and asked for the particulars regarding his picketing. Sparks gave him the handwritten statement which he had in his pocket. Cable promised to meet with the management officials on the matter.

That morning the union and management officials met in Van Hoy's office. Cable gave the handwritten statement from Sparks to Van Hoy as the basis for the discussion. The union officials took the position that the work stoppage on the third shift was unauthorized and that they would attempt to settle the matter. Van Hoy testified that he contemplated taking disciplinary action against the employees who did not report for work, as well as against Sparks. During the course of the discussion, however, he agreed that no discipline would be imposed for the work stoppage, if the union representatives would keep the employees working and try to assist in settling the basic dispute. He also stated that if Sparks pursued the grievance on the layoff, the Respondent would take a closer look at his picketing activities. He asked the union officials to counsel Sparks regarding the possible consequences of his actions the night before. The union representatives agreed to this, and Van Hoy asked for a response from them by 5 or 6 p.m. that evening.

That afternoon Sparks and the union officials met at the labor temple. Pulley advised Sparks of the position taken by Van Hoy. Pulley told Sparks that if he did not grieve the layoff the Respondent would not discharge him, and he would be allowed to return to work after the expiration of the 3-day suspension. Pulley also told Sparks that he had until 5 p.m. to make his decision in the matter. Sparks was not pleased with the developments and stated he would reserve his right to file a grievance on the layoff. Pulley called Van Hoy that evening and informed him that things were calm and the men would continue to work. He also told Van Hoy that Sparks reserved the right to grieve the layoff.⁹

C. *The Grievance Procedure Contained in the Collective-Bargaining Agreement*

The collective-bargaining agreement in force at the time of the Sparks incident contained a complete grievance procedure which culminated with arbitration. The provisions of that agreement were as follows:

Step 1. By the aggrieved employee, or employees, and the department steward with the department foreman. If a satisfactory answer is not given within twenty-four (24) hours after the complaint has been presented, the matter shall be reduced to writing and signed by the aggrieved and referred to Step 2 below for adjustment. (Representatives of the parties shall make written and signed disposition of any matter

⁸ The Respondent had no written rule requiring employees to secure permission from their supervisors to talk to union stewards. Blair testified that it was the practice to do so, however, because of the continuous operation of the machines. He admitted that during his tenure as personnel manager (3 years) no employee had ever been disciplined for discussing a

grievance with a union steward without first getting permission from his supervisor.

⁹ Although Sparks would not commit himself regarding further action on the grievance, he did not pursue it any further. He returned to work after the layoff and was subsequently transferred to the receiving department.

referred to them in each step on forms provided by the "Union" for that purpose.)

Step 2. By the Business Manager of the "Union", or his designated representative, with the Plant Superintendent, or his designated representative. Should they fail to adjust the grievance within a further period of two working days it will then be referred to Step 3 for adjustment at the request of either or both parties.

Step 3. By a majority of members of the "Union" Executive Committee, (which committee shall not exceed seven (7) who may be accompanied by the President, Business Manager, and Secretary of the "Union" and, if desired by the "Union", a representative of the International Union, with the Plant Manager, or his designated representative, and other representatives of the "Company", at a meeting to be held on the Tuesday following the expiration of the time period under Step 2 above.

Should they fail to settle the matter, it will then be referred to Step 4 for adjustment at the request of either or both parties. Matters of mutual interest other than grievances may be discussed at this meeting.

Step 4. By a representative of the International Union, who may be accompanied by the representatives of the "Union" set forth in Step 3 above, with a representative of the officers of the "Company."

Step 5. In the event that the dispute shall not have been satisfactorily settled by the foregoing procedure, the matter shall then be referred to arbitration at the request of either party. One of the arbitrators is to be selected by the "Company," one is to be selected by the Union." The third is to be selected by the two thus appointed from a panel of five (5) arbitrators to be supplied by the Indiana Commissioner of Labor. The decision of the majority of arbitrators shall be final and binding. No question of a change in the wage scale or differentials of pay shall be the subject of arbitration.

An aggrieved employee and/or his department steward shall be present at each step of the grievance procedure if he or either party so requests.

Each party shall bear the expense of preparing and presenting its own case to the Arbitration Board, and the expense of the third arbitrator and other incidental expenses mutually agreed to in advance shall be borne equally by both parties.

All matters which are, or may be presented for settlement under the provisions of this Article shall be presented by the employee, employees, "Company," or "Union" as soon as practicable, but in no event later than thirty (30) days after the occurrence complained of came to the attention of the employees involved. Any matter not so presented shall be deemed to have been abandoned, and shall not be entitled to consideration.

D. Concluding Findings

The central issue presented here is whether the complaint

and the resultant disciplinary action was taken against Sparks in reprisal for his having filed a grievance over the reassignment of his helper on January 12. If it is determined that the Respondent initiated the action against Sparks for this reason, then such conduct would be in violation of the rights guaranteed the employee under Section 7 of the Act. *DC International, Inc.*, 162 NLRB 1383.

But before considering the merits of this case, attention must be given to the recent policy (adopted by a sharply divided Board) of deferring cases, in certain circumstances, to arbitration when a statutory violation is alleged. This policy, in its current form, first had its expression in *Collyer Insulated Wire*, 192 NLRB No. 150. There a Board majority held that changes in working conditions and wages, alleged to be in violation of Section 8(a)(5), were essentially "bottomed" on a substantial dispute over the meaning of contract provisions. Thus, it was held that the arbitration process was better suited to supply the interpretation of the contract provisions, and the Board should defer to that procedure as it would also resolve the same issues involved in the asserted statutory violation. This policy has been expanded recently to now include circumstances where it has been alleged that an employee has been disciplined or discharged in violation of Section 8(a)(3). *National Radio Company, Inc.*, 198 NLRB No. 1. In that case the majority held the Board should defer to the grievance process, including arbitration, as "a mechanism for a quick and fair vindication" of the employees' rights. The significance of the *National Radio* decision upon the instant case is apparent. If there is deferral here to the grievance procedure set forth in the collective-bargaining agreement, then the merits of the case need not be decided by this forum.¹⁰ On the other hand, if the rationale does not apply in this situation, then a determination must be made as to whether on the basis of this record the Respondent violated Section 8(a)(1) and (3) of the Act by disciplining Sparks.

Although there are many similarities between the issues posed in the instant case and those found in *National Radio*, I am of the opinion that there are significant differences which make that case inapplicable here. It is true that in both cases the collective-bargaining agreements contained grievance procedures which culminated in arbitration. Likewise, in *National Radio* it was alleged that the Respondent engaged in certain unlawful acts because the discriminatee was involved in union activities, while in the instant case it is alleged that the Respondent engaged in certain unlawful conduct in order to discourage the alleged discriminatee from engaging in certain protected activity. But it is here that the similarities end. In *National Radio* the Board majority relied heavily on the assumption that the interests of the employee and the union were "in substantial harmony," and that the Union was "aware of its institutional interests in protecting its officer and leading proponent against discipline which is thought to restrict his activities on the Union's behalf." There is no

agreed upon by the employer and the union." I interpret such an argument as requiring me to consider whether this is the type of a case that should be deferred to the grievance process contained in the collective-bargaining agreement.

¹⁰ Although counsel for the Respondent did not couch his defense to the Board's proceedings in this precise manner, either at the trial or in his brief, he did argue at both stages that the issue of discipline administered to an employee is the proper subject "of a grievance procedure and arbitration as

such indication in the instant case, however, that Sparks' interests and that of the Union are one and the same. The undisputed facts show that the union officials went to management when Sparks was picketing and offered to act as "mediators"; after first assuring management that it disavowed the conduct which was taking place. When Sparks met with the Union's executive board on January 19, he was told that the Respondent's officials would not impose any further discipline on him, provided he did not grieve the layoff. It was then that the union representatives also informed him that he could be discharged, if the Respondent chose to act on the picketing. These statements reflected the position taken by Van Hoy when he met with the union representatives earlier that morning. Thus, it is clear that neither the Respondent nor the Union was interested at this point in utilizing the grievance procedure to resolve the dispute. Indeed, it is evident that they were determined to avoid using this process. Therefore, it cannot be said, in these circumstances, that the grievance procedure set forth in the collective-bargaining agreement would have operated in the salutary manner envisioned by *National Radio*; especially since neither the Union nor the Respondent desired to invoke this process. Although overt friction between Sparks and his union representatives was not present in this case, there was sufficient divergence of their respective positions so as to preclude any assumption that their interests were "in substantial harmony." Compare *Kansas Meat Packers, a Division of Aristo Foods, Inc.*, 198 NLRB No. 2. Furthermore, since Respondent's top officials made it clear that they did not want Sparks to pursue the grievance regarding his disciplinary layoff, there is serious question here as to whether that process would have the quick and stabilizing effect sought by the Board majority in *National Radio*.

On the basis of the above, I find that the rationale set forth in *National Radio* is not applicable to the facts of the instant case, and a deferral to the grievance and arbitration procedure is not warranted.

Turning to the merits of the case, the issue of whether the complaint and the resultant disciplinary action was taken against Sparks for unlawful reasons reduces itself to one of credibility. If Sparks and Moore are to be believed, then a violation of the Act has been established. If Fair, Rader, and Blair are to be believed, then the complaint must be dismissed.

It is clear from the undisputed testimony of the witnesses that Sparks left his machine on January 12, without securing permission from his supervisor to talk to the union steward about the reassignment of his helper. It is also apparent that Fair was angry over the fact that Sparks protested his decision to move the helper. Fair testified that Sparks was away from his machine for extended periods on three occasions that evening; the latest period being from 8:50 p.m. to 9:25 p.m. Sparks denied being away other than to talk to Moore and secure a grievance form. I do not credit the testimony of Fair regarding Sparks' absence from his machine. Having observed him on the stand, Fair did not impress me as being the kind of individual who

would have tolerated repeated infractions of plant rules by an employee under his supervision. Furthermore, Fair claimed he observed Sparks from 8:50 p.m. until 9:25 p.m. to see how long he would remain away from his work area. Yet Pence, if his testimony is to be believed, did not instruct Fair to do this until 9:10 p.m.¹¹ Accordingly, I find that other than to leave his machine to discuss the grievance with Moore, Sparks was not away from his work area as testified to by Fair.

Sparks testified that Fair threatened to file a complaint against him if he filed the grievance with the union steward. Moore and Sparks testified that when Moore handed the grievance to Rader, in the presence of Fair, Rader then instructed Fair to file a complaint against Sparks. Although both Fair and Rader denied that this was said, I do not credit their denials. Fair stated that Rader said nothing at the time the grievance was handed to him. Rader testified, however, that he told Moore he would get it (the Company's response) "in the proper time." It seems highly unlikely that Fair would not have heard this comment, since he was standing next to Rader at the time. The conflicting testimony of Fair and Rader in this regard causes me to credit the account given by Moore and Sparks.

The record discloses that Sparks was the type of employee who would not hesitate to protest or grieve any alleged injustice he felt he was suffering at the hands of management. He was the only employee in the high voltage department who filed grievances during the period July 1971 through January 1972. In addition, he did not hesitate to picket the plant when he felt his disciplinary layoff was unjustly imposed. It is apparent that his willingness to grieve and protest was a source of consternation to the Respondent's officials. For example, Blair admitted that he wanted to discharge Sparks on January 17, but acknowledged that, in the case of another employee with a more serious record of offenses, a disciplinary layoff was imposed.

I find, therefore, that the complaint was issued and the disciplinary layoff was imposed by the Respondent's officials in retaliation for Sparks' having filed a grievance over the reassignment of his helper on January 12. Such conduct interfered with the right of Sparks to engage in protected activity guaranteed by Section 7 of the Act and constitutes a violation of Section 8(a)(1). The complaint also alleges the conduct to be a violation of Section 8(a)(3) of the Act. Since the remedy would be the same, I find it unnecessary to decide here whether that section of the Act was also violated.

CONCLUSIONS OF LAW

1. Respondent, Anaconda Wire and Cable Company, is an employer as defined in Section 2(2) of the Act engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Local Union No. 1000 of the International Brotherhood of Electrical Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

work area during the time he worked under Fair's supervision. The personnel file of Sparks, however, did not indicate that this was a chronic complaint against the employee.

¹¹ My assessment of Fair's testimony is further influenced by his apparent willingness to color his testimony in order to portray Sparks as a chronic offender. He testified that Sparks was constantly away from his

3. By threatening to issue and by subsequently filing a complaint and imposing a disciplinary layoff upon employee Randall R. Sparks in reprisal for his having filed a grievance under the terms of the collective-bargaining agreement, the Respondent has engaged in conduct in violation of Section 8(a)(1) of the Act.

4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent had engaged in certain unfair labor practices I shall recommend the issuance of an order that it cease and desist therefrom and that it take certain affirmative action necessary to effectuate the policies of the Act.

The Respondent having discriminatorily laid off Randall R. Sparks for 3 days in reprisal for this employee having filed a grievance pursuant to the terms of the collective-bargaining agreement, I shall order the Respondent to make him whole for any loss of earnings that he may have suffered as a result of the discrimination against him. The backpay shall be computed on a quarterly basis plus interest at 6 percent per annum as prescribed in *F.W. Woolworth Company*, 90 NLRB 289 (1950), and *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

Accordingly, upon the foregoing findings of fact, conclusions of law, and upon the entire record in this case, pursuant to Section 10(c) of the Act, I make the following recommended:

ORDER¹²

Respondent, Anaconda Wire and Cable Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Issuing complaints or taking a disciplinary action,

¹² In the event no exceptions are filed to this recommended Order as provided in Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, recommendations, and recommended Order herein, shall as provided in Sec. 10(c) of the Act and 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.

¹³ In the event this Order is enforced by a Judgment by a United States Court of Appeals, the words in the notice reading "Posted by Order of the

including layoffs, against employees in reprisal for filing or processing grievances pursuant to the terms of a collective-bargaining agreement.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed under Section 7 of the Act.

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

(a) Make Randall R. Sparks whole for the loss of earnings sustained by him during his 3-day disciplinary layoff in the manner set forth in the section of this decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this recommended Order.

(c) Post at its plant in Marion, Indiana, copies of the attached notice marked "Appendix A."¹³ Copies of the notice, on forms provided by the Regional Director for Region 25, after being duly signed by the authorized representative of the Respondent, shall be posted by the Respondent immediately upon receipt thereof, and shall be maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 25, in writing, within 20 days from the date of this Decision, what steps the Respondent has taken to comply herewith.¹⁴

IT IS FURTHER ORDERED that the allegations of the complaint setting forth violations not specifically found herein be dismissed.

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."

¹⁴ In the event 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 25, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith."