

Appalachian Power Company and U-5 System Council, International Brotherhood of Electrical Workers, AFL-CIO. Case 5-CA-5590

June 14, 1973

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS FANNING
AND PENELLO

On February 27, 1973, Administrative Law Judge Sidney D. Goldberg issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the Charging Party filed an answering 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,¹ and conclusions of the Administrative Law Judge and to adopt his recommended Order.

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 Appalachian Power Company, Cleveland, Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the Administrative Law Judge's recommended Order.

¹ 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 are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enfd. 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

DECISION

SIDNEY D. GOLDBERG, Administrative Law Judge: This case, tried before me at Norton, Virginia, on September 13 and 14, 1972, presents the issue of whether Wade B. Booker was discharged for union activities or because of his inadequacy on the job. There is evidence of both and the determination of this issue is dependent upon the credibility of the witnesses and the inferences that should be drawn from the facts established by their testimony.

The complaint herein,¹ issued pursuant to Section 10(b) of the National Labor Relations Act, as amended (the Act), alleges that Appalachian Power Company (Respondent or the Company), interrogated Booker concerning his intention to join Local 2175, International Brotherhood of Electrical Workers, AFL-CIO, and discharged him because he expressed his intention to do so. The Company answered, denying these allegations of the complaint and alleging that Booker, a probationary employee, had been terminated prior to the completion of his 6 months' probationary period "because of his unsatisfactory performance of assigned duties." The issues so presented came on for trial before me as set forth. All parties were represented and were afforded an opportunity to adduce evidence, cross-examine witnesses, and argue on the facts and the law. The excellent brief filed by the company has been considered.

For the reasons hereinafter set forth in detail, I find that the Company discharged Booker because of his expressed intention to join the Union and to refuse to work during the expected strike and that the Company thereby violated Section 8(a)(3) and (1) of the Act.

Upon the entire record herein, and upon the demeanor of the witnesses while testifying, I make the following:

FINDINGS OF FACT

1. The parties

The Company, part of the multistate American Light & Power system, operates electric generating plants in the Commonwealth of Virginia, including one at Cleveland, Virginia, called the Clinch River plant. It annually imports supplies valued at more than \$50,000 and has annual revenues of more than \$250,000. It admits that it is engaged in interstate commerce and I so find.

The union is a labor organization.

2. Background

a. *The plant*

The Clinch River plant was constructed in 1958 and generates electric power by burning coal. It operates 24 hours per day and 7 days per week, with a staff consisting normally of about 140 employees. In November 1971, when the events involved in this case occurred, the chief official of the plant, the plant manager, was T. W. Albion and the assistant plant manager was R. E. Senter. Below these two top officials, the major portion of the staff is divided into two divisions, operations and maintenance, each headed by an official having the title of "Supervisor." At this time, Thomas D. Watson was operations supervisor and Howard Ferguson was maintenance supervisor.

The employees of the operations division are assigned to four shifts which are on duty in rotation to keep the plant operating. The shifts are designated A, B, C, or D and each is headed by a shift engineer. The maintenance employees, designated as "mechanics" and "helpers," are directly supervised by maintenance foremen.

¹ Issued June 30, 1972, on a charge filed May 1, 1972

In addition to the employees in these two major divisions, there are employees in the labor gang, who perform services wherever needed. Probationary employees are customarily assigned to the labor gang. Here they first learn the layout of the plant as they perform cleaning, driving, and various other minor chores. As soon as capable, they are trained in the various functions of plant employees, such as coal handling, and they learn other skills by helping the operating and maintenance employees.

b. *The contract*

Local 2175, International Brotherhood of Electrical Workers, AFL-CIO (the Union), has been recognized as the collective-bargaining representative of the Company's operating and maintenance employees at the Clinch River plant. Other locals of the same International have been recognized as the representatives of similar employees at other plants of the company and 10 locals so recognized have organized themselves into the U-5 System Council for collective bargaining with the company. A contract between the Company and these 10 locals was signed September 27, 1968, covering the period from October 1, 1968, to September 30, 1971. On September 29, 1971, just before the expiration of this contract, the parties signed an agreement extending it "through November 13, 1971."

The contract contains no requirement that any employee become or remain a member of any labor organization. It also specifically excludes probationary employees from its coverage. All parties herein agree that the arbitration provisions of the contract are not applicable to Booker and that they may not be invoked to resolve the dispute underlying this case.

3. Summary of events

Wade B. Booker was hired by the Company on May 17, 1971, and his 6 months' probationary period would have expired on Wednesday, November 17. According to Booker's testimony, on two occasions during the week before the strike, in the presence of supervisors, he declared his allegiance to the Union, announced that it was his intention to apply for membership as soon as he became eligible, and stated that he would refuse to work during the strike that was imminent. At the close of his workday on Friday, November 12, Booker was told that his attitude toward his work was unsatisfactory and he was discharged.

The agreement extending the collective-bargaining contract expired at midnight on Saturday, November 13, and immediately thereafter, at 12:01 a.m., on November 14, the union struck. By using supervisory personnel, all the remaining probationary employees, and company employees from a nonunion plant, the Clinch River plant was kept operating until the strike was settled early in December.

4. Contentions of the parties

The General Counsel and the Union contend that Booker was discharged because of his expressed approval of the principle of collective bargaining, his expressed intention to join the Union as soon as he became eligible to do so, and

his statement that he would not work during the strike.

The Company contends that its sole reason for discharging Booker was the inadequacy of his performance as an employee.

5. Discussion and conclusions

a. *Booker's union statements*

It is not disputed that the first part of November, particularly the week of November 7 to 13, was a tense period in the plant. The agreement extending the union contract was due to expire Saturday evening, November 13, and company officials testified that they expected and were making preparations for a strike.

Booker testified that, about November 1, he began to discuss with other probationary employees the possibility that they might be required to work during the strike. Booker testified that he "made it plain" to everyone with whom he talked that he would not work during the strike because he believed in the union and wanted to join it; that if he had to work the 2 or 3 days necessary to complete his probationary period, he would do so and then go out on strike with the union members.

On two occasions during the days immediately preceding the strike, Booker testified, he made these statements in the presence of two supervisory officials of the Company, Edward C. Carr, the maintenance foreman, and Norwood Dingess, foreman of the labor gang. Carr admitted having been present in a group including Booker when there was discussion about the union, but he testified that when the union was mentioned, in accordance with instructions from top management, he left the group. Carr testified that he did not remember any specific comments by Booker concerning the union, the strike, or whether he would work during it. In view of his testimony that he moved away when the union was mentioned, it is obvious that he had already heard some talk on the subject and he did not attribute the union statements to any other employee. Accordingly, upon consideration of the testimony of both Booker and Carr, together with the demeanor of each of them while testifying, I find that Booker made the statements he described and that Carr heard him make them. Norwood Dingess, who was Booker's direct supervisor, was named by Booker as having been present, and only 5 to 7 feet away in a quiet place, on another occasion when Booker made the same statements concerning his intention to join the union and not to work during its strike. Dingess was a witness in this case, but was not questioned concerning his presence during the discussion of the Union and the upcoming strike as described by Booker. I accept, therefore, Booker's uncontradicted testimony on this point and find that Dingess also heard Booker's statements.

b. *The discharge of Booker*

On Friday, November 12, just before 3 p.m., the end of the day shift, Operations Manager Watson asked Booker to come to his office when the shift ended. A few minutes after 3 o'clock, Booker went to Watson's office, finding Watson there alone. A moment later, Maintenance Manager Fergu-

son came in; both Booker and Ferguson testified that Ferguson asked Booker how he liked working at the plant and that he noted that Booker's probationary period would soon be up. Booker testified that Ferguson then asked him whether he planned to join the union and that, when he answered: "Yes, definitely," Ferguson said: "Well, make today your last day." Both Ferguson and Watson denied that there was any reference to the union, but both Ferguson and Booker agreed that the discharge had been effected before Carr and Dingess entered the room. It is not disputed that Ferguson said these two supervisors had been summoned so that Booker could have an opportunity to question them, if he wished, about the matter. All five agreed that there was some talk about Booker's performance of his duties and that, while the company officials conceded that he performed well, they claimed that he "lacked initiative."

The disputed element of the discharge interview, that is, whether Ferguson asked Booker whether he intended to join the union, if found, would strongly support the Government's case. Moreover, it is separately alleged in the complaint as coercive interrogation violative of Section 8(a)(1) of the Act.

While Booker testified to this exchange several times, he also testified on rebuttal to a conversation which he had with Ben Thompson, the shift engineer on D shift, to which Booker had been assigned on the day he was discharged. According to Booker, he had gone back to the plant, on the night of the strike or a day later, to recover a jacket he had left in the coal room and he met Thompson. Booker testified that Thompson said: "I can't understand why they fired you," and that he answered: "I don't either, unless it's just because of the union, because I was so open about it."² There was also undisputed testimony by Houchins, the plant personnel supervisor, that on November 12 he met Booker in the hall and that Booker appeared distressed and depressed; that he asked Booker what was the matter and that Booker answered: "They've let me go, they've fired me, they don't like my work." These statements by Booker, in my opinion, seriously undercut his testimony that Ferguson, upon receiving an affirmative answer to his question about Booker's intention to join the union, immediately discharged him. If the exchange with Ferguson had occurred as described by Booker, it seems unlikely that, answering Houchins' question immediately thereafter, he would have failed to mention it or that, a day or 2 later, he would have responded equivocally, as he did, to Thompson's remark. Accordingly, not only is Booker's testimony on this point insufficient to overcome the positive denials of Ferguson and Watson, but my total impression of these two officials was that they were much too knowledgeable for either to have made a statement so revealing of union animus. Accordingly, the evidence is insufficient to justify a finding that Ferguson made the statement in question.

c. Senter's statement

In preparation for the strike set to begin at 12:01 Sunday morning, the six remaining probationary employees of the

Clinch River plant were brought into the plant on Saturday afternoon. They were provided with sleeping quarters so that they would be able to remain inside the plant throughout the strike.

Two of these probationary employees, Michael D. Killion and Robert E. Adams, testified that on Saturday evening four of them were sitting in their sleeping quarters talking with R. E. Senter, the assistant plant manager, that one of the probationers asked Senter what would have happened to a probationary employee who had refused to report for duty during the strike, and that Senter answered that such an employee would have been severed from the payroll. This testimony was not disputed. There is no reason to question the credibility of these two employees and I find that the exchange occurred as described. The incident is not alleged as a violation of the Act and no such conclusion is drawn. It constitutes evidence, however, contributing to the finding herein that the use of the probationary employees was part of the Company's plan for operating the plant during the strike and that Booker's advance announcement that he would refuse to work during the strike was the immediate cause of his discharge.

d. The company's defense

It is the company's contention, as stated in the answer, that its reason for discharging Booker was "his unsatisfactory performance of assigned duties."

In support of its position, the company presented testimony by 11 of the plant's supervisory staff and documentary evidence concerning Booker and the other probationers in the plant at the time. The testimony of the supervisors indicated that Booker performed competently when he was assigned particular tasks in maintenance and operations, but that he liked to talk and tended to wait until being told before performing tasks that some of the supervisors felt he should have done on his own. The undercurrent of their criticism was that Booker "lacked initiative." While there were a few references to specific instances of lax performance,³ the characterizations were mostly subjective in nature and appeared to contain at least a trace of personal animosity. All of the Company's witnesses conceded that Booker had never received a written or formal reprimand and no memorandum of faulty performance was in his file.

The Company's procedure for job performance evaluation of probationary employees directs that two written

³ Booker admitted that on one occasion, after he had swept a floor, Buskirk, the shift engineer, told him to do it again and he did. On cross-examination, Buskirk conceded that his own standards of performance were unusually high. Buskirk also criticized Booker for failing to stay "on the work," but, again on cross-examination, reluctantly conceded that it was part of Booker's job to leave whatever he was doing and to open and close the front gate when the daytime guard was not on duty. In the instances of the ash hopper cleaning and the freeing of the coal chutes, it is obvious that the supervisors' testimony on each of them was based upon an initial impression and failed to take into account Booker's uncontroverted explanation for his delay or apparent inactivity. Carr's testimony about Booker's failure to keep clearing away the empty bags during the relining of the ash hopper with gunnite concedes that he, Carr, was not in direct charge of that job but had four separate jobs going and that he merely passed this job from time to time. Booker denied being on that job and McFarland, the master mechanic in direct charge of the job, testified that he had no recollection of Booker being on it while the gunnite was being sprayed.

² Thompson did not testify.

evaluations, on prescribed forms, shall be completed "prior to the time the employee completes four months of employment" and that the contents of these evaluations should be discussed with the employees. Two such forms were produced by respondent as having been in Booker's file at the time he was discharged, but it is undisputed that their contents were never discussed with him.

One of the forms, undated, was partly filled out by Norwood Dingess, foreman of the labor gang and Booker's supervisor when he was not assigned elsewhere, who testified that he made the entries "just a few days before his six months was up, maybe a week or maybe two weeks." He also testified that, because he had not completed it, he had not sent it to the office.⁴ There were entries on only the first page of the 2-page form and Dingess rated Booker in only three of the six areas listed. The few entries indicate a mixture of competence in performance and failure to "take hold of work." In his testimony, Dingess conceded that Booker "knew how to do the job," that "he done his job well," and that he did "a good job" driving a pickup truck, but he also testified that sometimes Booker "was slow about taking hold, being a leader and going ahead and doing the job." He further testified that he agreed with the decision to terminate Booker's employment because "he was slow about his work." He admitted that he had never talked with Booker about these alleged shortcomings.

The other evaluation form produced by the Company is dated October 3, 1971, and is signed by R. Crumbaker, the assistant shift engineer on D shift. While the company records show that Booker, during his 134 days of employment, spent 15 days on D shift, Crumbaker testified that Booker was not on that shift when he made out the report and that he did not discuss it with him. This evaluation also shows ratings of "good" in "quality of work," "dependability," "attitude," and "aptitude," but ratings of "fair" in "job knowledge" and "quantity of work," and an overall rating of "good." The line, designated "Immediately qualified for promotion," shows that it had been completed with an insertion, "U.O.A. [utility operator grade A] classification,"⁵ but this insertion is crossed out. Crumbaker's direct testimony was that Booker, during part of the 15 days he was on the D shift, operated the trippers and conveyors used in running coal and that here he "did a good job." When Booker was not running coal, Crumbaker testified, he was sweeping and on this task "his quality work . . . was below normal"; that "he didn't seem to want to stay on the job and he sat around and talked to anybody that came along." Crumbaker further testified that he prepared the evaluation report at the request of Watson, then supervisor of operations, and that, after inserting the entry about Booker's qualification for immediate promotion, he "scratched it out" because he "had mixed feelings about this employee." On cross-examination, however, Crumbaker conceded that Booker was not only qualified for promotion to utility operator A, where he would be required to do little or no sweeping, but that he was also qualified to work on the burner

deck, where he would be required to have the competence to step up to a "red circle" (premium pay) position as "equipment operator." Crumbaker also conceded that Booker was qualified "for many jobs" at the plant and that Thompson, his superior and the shift engineer on D shift, shared that view. His testimony about the "second thoughts" that led him to cross out the promotion entry is therefore, to say the least, inconsistent with this testimony concerning Booker's qualifications.

The principal difficulty with these "job performance reviews" as part of the Company's case, however, is that Ferguson, who testified that he made the decision to discharge Booker, also testified that he did not believe that he checked these progress reports in making his decision. The information upon which he acted, Ferguson testified, was verbal and consisted of reports from Carr, Dingess, and Yard Supervisor Roush. This was his reason, he stated, for having Carr and Dingess attend the meeting at which Booker was discharged.

Although the foregoing discussion deals with the Company's case in some detail, it must be noted that, with a single reservation, it is both unnecessary and inappropriate in this case to make any finding concerning Booker's actual competence as an employee. The single reservation is a finding, which I here make, that the evidence does not so clearly prove Booker's lack of competence as to preclude any reasonable conclusion that there was any other motive for his discharge. On the contrary, the evidence concerning his competency is both close and equivocal.

e. Conclusions concerning the Company's motive

It is so well established as to require no citation of authority that, so far as this Act is concerned, an employer may discharge an employee for any reason or no reason, provided that its real reason is not that of encouraging or discouraging membership in a labor organization. Conversely, therefore, if the employer's real reason for discharging an employee is that of discouraging such membership, the existence of other reasons that might have justified discharge is irrelevant. Upon consideration of all the evidence in this case, I find that the real reason that Booker was discharged was his stated intention to join the union and his stated intention to refuse to work during the strike.

In reaching this conclusion, I have given considerable weight to the timing of Respondent's action. Ferguson testified that he made his initial decision to discharge Booker on Thursday, November 11, the previous day, and that he reached that decision after talking with Carr, Dingess, and Roush.⁶ It has been established, without serious contradiction, that Booker made statements of his intention to join the union and to refuse to work during the expected strike—except for the 3 days necessary to complete his probationary period and to make him eligible to join the union—within a day or 2 immediately preceding his discharge. It was during this week, moreover, that tensions were increasing in the plant as preparations were being made to operate despite the expected strike. It is not disputed that the company

⁴ In view of this testimony, Watson's statement that he read this evaluation report unfavorably affects his credibility and his testimony as a whole.

⁵ The reference by company counsel to this entry as "utility operator B" is unjustified, as the "A," although stricken through, can be clearly seen

⁶ In view of this testimony by Ferguson, it is obvious that the well-orchestrated chorus of testimony by all the other supervisors to prove Booker's inadequacy for permanent employment is irrelevant.

included the use of its probationary employees in its plans to keep the plant operating and the record shows that all of them were kept inside the plant, available for duty 24 hours per day during the strike. With these preparations under way, Booker's statement of his intention not to work during the strike but to go out with the union members was followed by his immediate discharge. Direct evidence of unlawful motivation is rarely available in these cases but the circumstances here⁷ constitute adequate evidence, in my opinion, of the existence of the unlawful motive. Accordingly, the factual background of Booker's discharge, together with the statement of Assistant Plant Manager Senter that any probationer who failed to report for work during the strike would have been discharged, makes inescapable the conclusion that Booker was discharged because of his declared intentions, and I so find.

In giving this consideration to the timing of Booker's discharge, I do not overlook the fact that Friday, November 12, was the end of the last full week of his employment prior to the completion of his probationary period, but Ferguson testified that a probationary employee whose performance is considered inadequate for permanent employment would have had those inadequacies pointed out to him by his immediate supervisors well before the end of the probationary period and only if he failed to remedy those inadequacies would he be terminated. It is not disputed that, except for Buskirk's direction that Booker resweep a floor, no supervisor ever called Booker's attention to the many inadequacies of performance to which they testified in this case. Moreover, none of the defects in Booker's performance to which Carr, Dingess, and Rousch testified had its origin in any incident later than a date 3 weeks before Booker's termination and that one, that of Carr dealing with the failure of someone to keep the ash hopper area clear of emptied gunnite sacks, is not clearly established as a default by Booker. If Crumbaker's October 3 evaluation report was, as testified, indicative of an undesirable employee, it is difficult to understand why it was not brought to Booker's attention and why no action was taken. On the other hand, Booker was not discharged until more than a month later, against the background of an imminent strike, closely following his statement that he would not work during that strike except long enough to complete his probationary period.⁸

The Company's claim that it was free of union animus is based upon the absence of findings of unfair labor practices in this or other cases and upon its collective-bargaining relationship with the Union. However free of animus this relationship might have been before and since the time of Booker's discharge, at that particular time the parties were about to enter into one of the most arduous struggles in labor-management relationships, an effort to keep operating despite a strike, and an inference that the Company had no union animus at that time would be naive.

⁷ The basic facts in this case are established by company proof and on the basis of additional testimony, by Booker and others, that is either conceded or undisputed.

⁸ "The abruptness of a discharge and its timing are persuasive evidence as to motivation. . . ." *N.L.R.B. v. Montgomery Ward & Co.*, 242 F.2d 497, 502 (C.A. 2, 1957), cert. denied 355 U.S. 829; cited with approval *N.L.R.B. v. Advanced Business Forms*, 474 F.2d 457 (C.A. 2, 1972)

For the foregoing reasons, I find that the Company's real reason for discharging Booker was his declared intention to join the Union as soon as his probationary period was completed and then to go out on strike with the other union members. This action constituted discrimination to discourage Booker from becoming a member of the Union and to interfere with his right to engage in concerted activities with other members of the union. Accordingly, the Company thereby violated Section 8(a)(3) and (1) of the Act.

6. The effect of the unfair labor practices upon commerce

The activities of Respondent, set forth in findings of fact 2, 4, and 5, above, occurring in connection with its operations described in finding of fact 1, 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 thereof.

THE REMEDY

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

Having found that Respondent, by terminating the employment of Wade B. Booker to discourage his membership in the Union and his activities in support of the Union, committed unfair labor practices, I shall recommend that it offer him reinstatement to the position he held on November 12, 1971, or, if that position no longer exists, to a position substantially equivalent thereto, without loss of seniority or other rights and benefits, and that it make him whole for any loss of compensation he may have suffered, computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289, and with interest at 6 percent per annum as prescribed in *Isis Plumbing & Heating Co.*, 138 NLRB 716.

Upon the foregoing findings of fact and upon the entire record herein, I reach the following:

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. At the time of the activities set forth in the Decision, R. E. Senter and Howard Ferguson were supervisors of Respondent within the meaning of Section 2(11) of the Act and acted as its agents.
4. By terminating the employment of Wade B. Booker for declaring his intention to go out on strike with the members of the Union, Respondent interfered with, restrained, and coerced employees in the exercise of rights guaranteed in the Act and committed an unfair labor practice within the meaning of Section 8(a)(1) of the Act.
5. By terminating the employment of Wade B. Booker because of his declared intention to join the Union, Respon-

dent discriminated against him to discourage his membership in the Union and committed an unfair labor practice within the meaning of Section 8(a)(3) of the Act.

6. The foregoing unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

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

ORDER⁹

Respondent, Appalachian Power Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Terminating the employment of any employee because he or she engaged in concerted activities for the purpose of collective bargaining or mutual aid or protection.

(b) Discouraging membership in Local 2175, International Brotherhood of Electrical Workers, AFL-CIO, or any other labor organization, by terminating the employment of, or otherwise discriminating against, any employee.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their right to self-organization, to form, join, or assist the above-named labor organization, 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 any or all such activities.

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

(a) Offer to Wade B. Booker immediate and full reinstatement to his former position or, if that position no longer exists, to a position substantially equivalent to that which he held immediately prior to November 12, 1971, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of wages 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 Clinch River plant, Cleveland, Virginia, copies of the attached notice marked "Appendix."¹⁰ Copies of said notice, on forms provided by the Regional Director for Region 5, after being duly signed by its representative, shall be posted by it immediately upon receipt thereof, and

be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by it to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 5, in writing, within 20 days from the date of the receipt of this Decision, what steps it has taken to comply herewith.

3. The complaint, insofar as it alleges violations of the Act not found in the Decision, is hereby dismissed.

APPENDIX

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

The trial held at Norton, Virginia, on September 13 and 14, 1972, in which we participated and had a chance to give evidence, resulted in a decision that we had committed unfair labor practices in violation of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, and this notice is posted pursuant to that decision.

The National Labor Relations Act, as amended, gives all employees the following rights:

To organize themselves

To form, join, or support unions

To bargain as a group through a representative they choose

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

To refrain from any or all such activities.

In recognition of these rights, we hereby notify our employees that:

WE WILL offer Wade B. Booker immediate and full reinstatement to his former job or, if this job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of earnings he may have suffered by reason of the termination of his employment.

WE WILL NOT discharge any of our employees because they join or assist, or express the desire or intention to join or assist, Local 2175, International Brotherhood of Electrical Workers, AFL-CIO, or any other labor organization, or because they engage in concerted activities for mutual aid or protection.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights to self-organization, to form labor organizations, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

⁹ 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.

¹⁰ 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."

DECISIONS OF NATIONAL LABOR RELATIONS BOARD

APPALACHIAN POWER COMPANY
(Employer)

anyone.

Dated

By

(Representative)

(Title)

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Building, Room 1019, Charles Center, Baltimore, Maryland 21201, Telephone 301-962-2822.

This is an official notice and must not be defaced by