

Amcon International, Inc. and International Molders & Allied Workers Union, AFL-CIO. Cases 10-CA-9515 and 10-CA-9681

September 11, 1973

DECISION AND ORDER

BY MEMBERS FANNING, KENNEDY, AND PENELLO

On March 19, 1973, Administrative Law Judge William J. Brown issued the attached Decision in this proceeding. Thereafter, the General Counsel and Respondent filed exceptions and supporting briefs.

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 only insofar as they are consistent with the following discussion.

1. The complaint alleges that on or about February 3, 1972, Respondent, through Powell, instructed employees to engage in surveillance of the union activities of other employees. Although the Administrative Law Judge credits employee Maddox's testimony that Powell asked her to keep an eye on Pate because Powell believed him to be a union supporter, the Administrative Law Judge did not find this an indication of an order to engage in surveillance.

The General Counsel, in his exceptions, contends that the testimony of Maddox, as paraphrased by the Administrative Law Judge, demonstrates a clearcut example of an instruction to engage in surveillance. We agree. Maddox testified that Powell asked her to "go in and see if [Pate] talked to the kitchen employees about the union." The only logical interpretation of this request is that Powell was asking Maddox to serve as his agent for the limited purpose of observing the protected activities of Pate. We agree with Administrative Law Judge's finding that Pate was an employee, not a supervisor or a managerial employee. The Administrative Law Judge credited Pate's testimony that he never hired, fired, disciplined, reprimanded, or warned any employee; he was never told by anyone that he possessed supervisory authority;

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, enf'd 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

and he never held himself out as a supervisor. Whenever Pate needed help, whatever directions he gave the employee who was helping him were those that an experienced employee typically gives as guidance to a less experienced employee. Pate testified that the only supervisor's meeting he was ever invited to attend was held after the advent of union activities. Pate's signing for maintenance supplies involved a very limited amount of discretion, and merely demonstrated Respondent's realization that practicalities required that this routine function could be more efficiently performed if it were delegated to an experienced rank-and-file employee than if it were performed by the Innkeeper himself. For these reasons, we agree with the Administrative Law Judge that Pate was a rank-and-file employee. We additionally find that Powell's request was an order to engage in surveillance of Pate's union activities and therefore a violation of Section 8(a)(1).

2. The Administrative Law Judge, in finding that Powell on or about January 29 and February 15 interrogated employees concerning their union membership and activities, credited Bailey's testimony that on January 29, 1972, she heard Powell ask Turner which employees were supporting the union organizational drive. He found that this testimony established the existence of a concerted plan of inquiry among rank-and-file employees as to their knowledge of the identity of union supporters.

Respondent excepts to the finding that it violated Section 8(a)(1) by such inquiry. We agree. We note that the complaint does not allege a concerted plan of inquiry but alleges specific acts of interrogation. Although we do not dispute the crediting of Bailey's testimony by the Administrative Law Judge, we note that there is no dispute that both Powell and Turner are supervisors. Accordingly, we find no interrogation of employees in this conversation. We further find that this evidence is too attenuated to serve as proof that Turner interrogated employees. However, the General Counsel presented direct evidence to sustain the allegation that Respondent engaged in unlawful interrogation on February 15. Thus, Pate testified that Powell called him into his office in the middle of February, accused him of "going around and lying and trying to get employees to sign Union cards," and asked him why he thought that the employees needed a union. On the basis of this credited testimony, we find that Respondent coercively interrogated Pate as to his union activities, in violation of Section 8(a)(1) of the Act.

3. Moreover, we find that Respondent engaged in various other interrogations and threats, each violating Section 8(a)(1).

Brown testified that Powell spoke to her in his of-

fice sometime in February when he told her that he had heard rumors about a union going around and asked her if she knew anything about it. At a subsequent time before the April 7 election, Brown testified that Powell called her into his office, and referring to the Union, asked "how was this thing going around here" and who was in favor of it. Respondent violated Section 8(a)(1) by interrogating Brown at each of these meetings.

Brown also testified that on April 8, after the election, Powell called her into an office, turned on a tape recorder, and asked her questions about the election, "what went wrong," and who she voted for. As in the prior meetings, Powell did not advise Brown that no reprisals would be taken if she refused to answer. Again, Respondent's interrogation violated Section 8(a)(1). At this meeting, moreover, according to Brown's testimony, Powell also stated that the Union would have a picket line outside the motel on Monday, that all of the "yes" people would be out of a job while all of the "no" people would be provided for, and that the Inn would be sold and would be operated under another company. Two or three days later, when Brown spoke to Powell to request her job back, they went into the kitchen manager's office and again Powell turned on his tape recorder and again told Brown that the "yes" people would be out of a job after the picket line went up, and the "no" people would be provided for, and intimated that the ownership of the motel might change.

These statements not only independently violated Section 8(a)(1) as blatant threats and other misconduct directed against those employees who supported the Union, but also serve as further evidence to support the Administrative Law Judge's various 8(a)(3) findings, which we affirm and adopt.

Manderson testified that Powell called her into his office 3 or 4 weeks prior to the April 7 election and asked her if she knew who had started passing out cards for the Union and if she knew "how the colored help in the back" were going to vote. Manderson further testified that Powell called her into his office on April 8, turned on his tape recorder, asked if she knew how different employees had voted, and specifically asked if she knew whether Brown had voted for or against the Union. Johnson testified that, 2 or 3 days after the election, Powell called her into his office and asked her how she voted. Johnson "figured he was recording" the conversation and testified that she had received no warnings or assurance from Powell. Again, Respondent violated Section 8(a)(1) by these interrogations of Manderson and Johnson.

Brown testified that on the night before the April 7 election, Powell was talking to her but suddenly said that he had better go because he saw one of the "yes"

people coming in. This statement, coupled with the other acts of interrogation and surveillance, created the impression that he had the approaching employee's union activities, and possibly the activities of the other employees, under surveillance. Accordingly, Respondent again violated Section 8(a)(1).

THE RÉMEDY

We adopt the findings and conclusions of the Administrative Law Judge that Linda Christian, Peggy Joyce Bailey, Doris Maddox, Edward Pate, Ruth Brown, and Barbara Ann Hines, but no other employees, were discharged in violation of Section 8(a)(3). Inasmuch as we also find that Respondent has violated Section 8(a)(1) by means of threats, interrogations, and instructions of surveillance, we shall modify the Administrative Law Judge's recommended Order and notice accordingly.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the purview of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the purview of Section 2(5) of the Act.
3. By discouraging membership in the Union by discharging or otherwise discriminating against employees respecting wages and/or terms and conditions of employment, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.
4. By interrogating employees concerning their union membership, activities, and desires, and the union membership, activities, and desires of the other employees, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
5. By threatening employees with discharge because of their union activities, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
6. By soliciting employees to withdraw from membership in the Union, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
7. By instructing employees to engage in the surveillance of union activities of other employees, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
8. By refusing to reduce the quota of rooms to be cleaned by each maid during the summer season, in accordance with past practice, Respondent has engaged in unfair labor practices within the meaning of

Section 8(a)(1) of the Act.²

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

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board orders that Respondent, Amcon International, Inc., Tuscaloosa, Alabama, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discriminating against employees by discharging or otherwise affecting their terms and conditions of employment in reprisal for their support of or assistance to any labor organization.

(b) Interrogating employees concerning their union membership, activities, and desires, and the union membership, activities, and desires of other employees.

(c) Threatening employees with discharge because of their union activities.

(d) Soliciting employees to withdraw from membership in the Union or any other labor organization.

(e) Instructing employees to engage in surveillance of the union activities of other employees.

(f) Failing and refusing to reduce the quota of rooms to be cleaned by each maid during the summer season, in accordance with past practice.

(g) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights under the Act.

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

(a) Offer the employees hereinabove found to have been discriminatorily discharged or otherwise discriminatorily treated immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, and make them whole for any loss of earnings they may have suffered by reason of the discrimination against them to the date of offer of reinstatement, less interim earnings, consistent with *F. W. Woolworth Company*, 90 NLRB 289, and *Isis Plumbing & Heating Co.*, 138 NLRB 716.

(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 Order.

(c) Post at its two operations in Tuscaloosa, Alabama, copies of the attached notice marked "Appendix."³ Copies of said notice, on forms provided by the Regional Director for Region 10, after being duly

signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 10, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

² Though the Administrative Law Judge found that Respondent violated Sec 8(a)(1) by such action, he omitted making a conclusion of law to this effect.

³ 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"

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

WE WILL NOT discourage membership in International Molders & Allied Workers Union, AFL-CIO, or any other labor organization of our employees, by discharging or otherwise discriminating against them respecting wages and/or terms and conditions of employment.

WE WILL NOT interrogate employees concerning their union membership, activities, and desires, and the union membership, activities, and desires of the other employees.

WE WILL NOT threaten employees with discharge because of their union activities.

WE WILL NOT solicit employees to withdraw from membership in the Union or any other labor organization.

WE WILL NOT instruct employees to engage in the surveillance of the union activities of other employees.

WE WILL NOT refuse to reduce the quota of rooms to be cleaned by each maid during the summer season, in accordance with past practice.

WE WILL offer employees Linda Christian, Peggy Joyce Bailey, Doris Maddox, Edward Pate, Ruth Brown, and Barbara Ann Hines immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equiv-

Powell interrogated employees concerning their union membership and activities. The testimony of Switchboard Operator Bailey to the effect that she remained on the line after connecting supervisors Powell and Turner and overheard their discussion which included an inquiry as to who among employees of the Company were supporting the union organizational drive, establishes that there was a concerted plan of inquiry among rank-and-file employees as to their knowledge of the identity of union supporters. I conclude that this credited testimony inquires the inference that these allegations of this paragraph of the complaint relating thereto are sustained by the evidence.

C. Threats

The complaint alleges that Powell, in the area of the motel and on or about January 31 and February 15 threatened to discharge employees for discussing the Union. In support of the allegations of threats on or about January 31, General Counsel points to the testimony of Peggy Bailey, an alleged discriminatee discharged on January 29, to the effect that Powell, on or about January 27, told her that Linda Christian had been discharged on account of her support of the Union. According to Miss Bailey, Powell also informed her on that occasion that he had the names of the other employees in on the activity on behalf of the Union and that they would also be discharged. Although Powell denied making these utterances I credit the testimony of Peggy Bailey and find that the allegations of threats in this regard are sustained.

D. Instructions Regarding Surveillance

The complaint alleges that on or about February 3, at the motel, Powell instructed employees to engage in the surveillance of union activities of other employees. To substantiate these allegations of the complaint General Counsel relies on the testimony of employee Maddox to the effect that Powell asked her to keep an eye on employee Ed Pate because he said he was believed to be a union supporter. I credit this testimony of Maddox but I cannot see that it necessarily amounts to a indication of an order to engage in surveillance and I therefore recommend dismissal of this allegation of the complaint.

The complaint alleges in paragraph 10, that on or about February 25, in and near the motel, Powell solicited employees to withdraw from membership in the Union. It appears from the testimony of employee Pate that, about the time and place alleged in the complaint, Powell solicited Pate to spread the seeds of disaffection respecting the Union. I find on the basis of the credited account of Pate that Powell urged Pate to solicit dissatisfaction from union supporters and that Powell thereby engaged in unfair labor practices within the scope of Section 8(a)(1) of the Act.

E. Discriminatory Discharges

The complaint alleges and the Company answer denies that on specified dates in the period January through March 1972, the Company discriminatorily discharged and refused reinstatement to four employees in reprisal for their support

of the Union. The issues arising from these discharges are next hereinafter discussed.

1. Linda Christian

An employee of Respondent Holiday Inn South since June 1969, Linda Christian worked as secretary to the innkeeper until her discharge on January 25, 1972. Prior to the arrival of Innkeeper Powell on the scene, she had worked for his predecessor since June 1969. On the day preceding her discharge she was called upon during the course of a staff meeting to straighten out a relatively simple error in the banking deposits which was her responsibility but I credit her testimony to the effect that the banking mishap was never the subject of adverse criticism from her superior, Innkeeper Powell. The true cause of her discharge appears from the testimony of employees Bailey and Maddox, which I credit, and which establishes an admission on the part of Powell that Christian had been discharged because she was trying to start a union among employees of the Holiday Inn South. On this record, crediting Bailey, Maddox, and Christian as against Powell, as I do, I find that the allegations of unlawful discharge in the case of Linda Christian are established by a preponderance of the credited testimony.

2. Peggy Joyce Bailey

Peggy Joyce Bailey worked for the Company as a desk clerk for some 3 years until her discharge on January 29, 1972. At the inception of union activity among employees she played a prominent role by signing a union card and soliciting other employees to do the same. Two days before her termination Bailey solicited a number of maids and houseboys to sign union cards. The evidence establishes that Powell was informed of Bailey's activity on behalf of the Union and the Company's assigned reasons for her termination relate plainly to matters that had been inevitably known to the Company for a period of time prior to her release. I conclude that the real reason for her release was her support of the union campaign.

3. Doris Maddox

Doris Maddox worked at the Holiday Inn South for about 2 years, her employment being terminated by discharge on February 17, 1972. There is a dispute relative to her status as supervisory or nonsupervisory under the Act. Paid on a salary basis, it clearly appears that Maddox possessed some authority and responsibility of a nature to approach that which accompanies supervisory status. I am convinced, however, that the record reveals on careful analysis that such authority as Maddox exerted was not of the nature to require the use of independent judgment. Rather, her responsibility appears to relate solely to a more or less mechanical assignment of equipment and manpower as obviously suitable and necessary for the functioning of the job duties of a banquet waitress. The record leaves me convinced that whatever authority Maddox possessed did not require the use of discretion and independent judgment. As a rank-and-file employee, her discharge must be ap-

praised as either a discriminatory discharge or as a lawful separation.

Miss Maddox worked at the Inn from late January 1970 until her discharge on February 17, 1972. She appears to have worked in a number of capacities and to have acquired the confidence of management sufficiently to be assigned the role of acting restaurant manager during the period when a regular manager was awaiting installation. On February 16, she signed a union authorization card, although for a time before signing her sympathies had wavered as between the Inn and the Union.

Early in February, Miss Maddox, in conversation with Powell, raised with him the question as to whether Powell could count on her sympathy with the Company as against the Union in the organizational period.

Miss Maddox was discharged, as noted above, on February 17. This was the day after she signed a union card and her pronoun sympathy became known at least to those in the union group. When discharged by Restaurant Manager Lester, the latter assigned as the reason for her discharge the assertion that she was simply not giving good service. She had never been warned by anyone in management of any shortcomings in her work. Considering the relatively long term and apparently satisfactory service rendered by Maddox and in view of my conviction that the Company was antiunion to a degree where it would not balk at the commission of unfair labor practices, I conclude that the discharge purportedly for not giving good service does not ring true and that the discharge constituted an unfair labor practice under Section 8(a)(3) and (1) of the Act.

4. Edward Pate

As in the case of Doris Maddox, the Company's primary contention is that Pate was a supervisor and thus not entitled to the production afforded under remedial action under Section 8(a)(3) of the Act. We first, then, examine the question of his status under the Act as supervisory or nonsupervisory.

The General Counsel's analysis of the factors tending to show nonsupervisory status on the part of Pate is supported by the evidence of record. Thus, it appears from the record that although paid on a salary basis, this factor could well reflect the uncertainty of hours and volume of work available and some of which necessarily had to be considered as of a standby nature. Pate, according to the evidence, never attended supervisor's meetings. Although he was paid on a salary basis, as noted above, that factor is no necessary indication of the possession of supervisory authority. The volume of evidence submitted to establish that his status as a supervisor is indicated by his buying items needed for the performance of certain of his maintenance tasks misses the mark. It bears no weight on the issue of his authority to use discretion and independent judgment in the exercise of matters relating to the terms and conditions of work of other employees. The record, indeed, clearly affirmatively establishes that Pate was at all material times a rank-and-file nonsupervisory employee.

We turn to the circumstances surrounding Pate's discharge. Pate had been employed for some 6 years at the Holiday Inn North in Tuscaloosa before transferring to the

Holiday Inn South sometime in March 1970. I credit Pate's testimony that he was the employee primarily responsible for the inception of the campaign to secure recognition by a labor organization, and that he secured the assistance of the union president in organizing the Holiday Inn South Motel employees into union membership.³ Pate's leading role in the employees organizational campaign was, I am convinced, known by mid-February to Company officials. This appears from credited testimony of Pate to the effect that Powell accused him of being the ringleader and of misleading employees into sympathy for the Union. Shortly thereafter Powell sought to induce Pate to engender employee disaffection with their concept of union representation and when Pate rejected the suggestion, Powell admonished him that he would have nothing more to do with him.

Shortly after the conversation aforementioned, Powell summoned Pate to the office again and again accused him of misleading employees regarding the Union situation. In the course of this second conversation, Powell again berated Pate for his union activities and concluded their talk with the statement that unless Pate changed over to the Company's side of their differences, he would have nothing more to do with him. On March 28, Pate was discharged. The reason for the discharge clearly appears from the contemporaneous statements of Powell, that Pate was paying a high price for his convictions. I conclude that Pate's discharge was an unfair labor practice as alleged in the complaint.

Case 10-CA-9681

The original charge of unfair labor practices was filed in this case on July 13 and duly served on the Company. The complaint was issued October 13 and alleged the commission of additional unfair labor practices on the part of the Company. The Company has denied the complaints allegations. The complaint designated Case 10-CA-9681, alleges unfair labor practices within the scope of Section 8(a)(1) and (3) of the Act, including the alleged discriminatory discharge of seven employees in addition to those heretofore considered.

A. Company Responsibility

The complaint alleges that Innkeeper Powell, Housekeeper Helen Poe Turner, Attorney Gordon Jackson, and Desk Clerk Carl Duncan are supervisory employees or agents of the Company. As in the findings made above, regarding Case 10-CA-9515, it is established that Powell is of supervisory status. With respect to the case of Attorney Gordon Jackson it seems clear that in the matters herein concerned he was acting for, at the request of, and in the interest of the Company and I conclude that his conduct taken in the interest of the employer is imputable to the Company which must assume the responsibility for his acts even insofar as they represent unfair labor practices under the Act.

³ The initial employee approaches to formal union recognition were on behalf of the Retail, Wholesale & Department Store Union but subsequently, Company employees allied themselves with the Charging Party.

B. *Discriminatory Discharges*

Case 10-CA-9681 involved additional allegations of discriminatory discharges in the course of the Union's organizational drive. The allegations are next herein considered.

1. Ruth Brown

Ruth Brown, a cook, was terminated April 8. There is a question as to whether her termination was a voluntary quit or a discriminatory discharge. The evidence establishes that she was an early and relatively ardent supporter of the Union. It also indicates that the Company had knowledge of her sympathy for the Union but only at a relatively late date in the organizing campaign. On the eve of the election, Powell questioned her as to the probabilities of the election outcome and the evidence indicates that he regarded Ruth Brown as a company ally in the organizational campaign. On the morning after the Union's success in winning the election, Powell questioned Brown as to the reasons for the Company's defeat and elicited from her the admission that she had voted for the Union. Shortly after this interrogation, Powell sent her home in a manner indicating that she was being dismissed from the company employment. I conclude that Powell discharged Ruth Brown in reprisal for her support of the Union, the knowledge of which came to him only after the results of the election had become known. In my view of the evidence her discharge constituted an unfair labor practice under Section 8(a)(3) and (1) of the Act.

2. Oscar Nevels

Nevels worked as a dishwasher and general kitchen helper from the time of his hire in July 1971 until his separation about April 8, the day after the election. General Counsel concedes that there is no direct evidence of company knowledge of union activity on the part of Nevels and the record requires the inference that his union activity consisted solely of signing a union card and voting in the election. On the day after the election he was discharged by Restaurant Manager David Lester. General Counsel asserts that Nevel's testimony is credible and asserts that it establishes that he was discharged for no reason at all. In the circumstances it must be concluded that the evidence does not preponderate in favor of the conclusion that Nevels was discharged in reprisal for union activity or that his discharge is shown by a preponderance of the evidence to reveal discrimination prohibited by the Act.

3. Spencer Lewis

Spencer Lewis was employed as a janitor at the Inn from September 1971 until he was discharged May 26, 1972. His immediate superior was the Inn's housekeeper. He signed a union card, attended all union meetings, and voted in the election. It is stipulated that the Company had knowledge of his union activity which was apparently limited to signing a card, voting in the election, and attending meetings, as above noted. The evidence offered by the parties as to the reason for his discharge is exceedingly voluminous and to some extent confusing and vapid. I conclude that the sum

total of the evidence on the matter does not preponderate in favor of the conclusion that his discharge was in reprisal for union activity. In this connection it is noted that the General Counsel appears to rely heavily on what he terms the company failure to show just cause for discharge. This reasoning amounts to a mislocation of the burden of proof and must also fail inasmuch as credible testimony reveals that there was a justifiable cause for discharge in the case. In this connection I credit the evidence offered by the Company to establish that Lewis was drunk at work on the day immediately before his firing. Thus, I find credible the testimony to the effect that he was in such a state as to present a considerably disagreeable condition to his fellow workers and guests of the motel. I cannot conclude that the evidence preponderates in favor of the conclusion that Lewis was discharged on account of his minimal union activity and recommended dismissal of the complaint allegations in this respect.

4. Dorothy Patton

Dorothy Patton was hired at the Holiday Inn South in September 1969 and worked thereafter as a salad girl on the buffet line until her separation on June 30. She signed a union authorization card in the course of the Union's organizational campaign but does not appear to have been otherwise active in organizing for the Union among other employees. Indeed General Counsel concedes that Patton's union activities consisted merely of signing an authorization card and attending several union meetings; further it is conceded by the General Counsel that there is no "direct, specific" evidence of Company knowledge of her limited organizational help to the Union. She was discharged, apparently, for reminding her supervisor of their previous discussions concerning higher rates of pay under certain circumstances. The evidence reveals merely that she was discharged, apparently, in an economic misunderstanding unrelated to concerted activity on behalf of the Union or any other labor organization. I conclude that the complaint's allegations in this regard are not supported by the preponderance of the testimony.

5. Judy K. Manderson

Hired at the Holiday Inn South in June 1971, Miss Manderson worked initially as a daytime restaurant waitress and later as the daytime lounge cocktail waitress. The fact that she voted for the Union in the election was known to the Company through her admission in a tape recorder discussed with Manager Powell. She was discharged on June 30. It also appears that Manderson attended the initial organizational meeting and signed a union authorization card. General Counsel's brief asserts that the Company has totally failed to show that it had just cause for discharging Judy Manderson. This reflects, of course, a misplacement of the burden of proof. Viewing the evidence relating to Miss Manderson, it appears to indicate that she was discharged only after a series of incidents establishing that she was somewhat of a trial to smooth operations at the Inn and that ample cause existed for her discharge. It cannot be said that the preponderance of evidence establishes illegal discrimi-

nation on her discharge and I recommend dismissal of the complaint's allegations respecting her termination.

6. Barbara Ann Hines

Barbara Ann Hines worked as a maid from January 1971 until her discharge by Housekeeper Turner on July 11, 1972. She signed a union card at the first union meeting and the evidence indicates that the Company had knowledge of her having signed up for the Union. Turner's testimony offered to establish that the reason for her discharge was her failure to report for work on July 11 is not credible in view of evidence establishing that she was under instructions, according to her testimony which I credit, not to report on the day in question. Since the assigned reason for her termination is not the true reason I conclude that her discharge was in fact in reprisal for her support of the Union.

Discriminatory Changes in Work Conditions

The complaint alleges that on April 15 the Company changed working conditions of employees by discontinuing the practice of reducing the quota of room cleaning during the summer season and that its reason in so doing was in the nature of reprisal for union activity among the maids. The credited testimony of Maid Queen Johnson establishes that soon after the election, Powell told a gathering of the maids that he was uncertain that he could treat them as theretofore. The maids awaited in vain for the customary summer reduction of the room-cleaning quota. In the circumstances of antunion hostility revealed to exist on the record herein and in the absence of adequate explanation, the Company's failure to continue these summer working quota changes can only be based on the advent of the Union on the scene and I conclude that the complaint's allegations in this regard are supported by the evidence.

IV THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Company set forth in section III, above, and there found to constitute unfair labor practices, occurring in connection with the business operations of the Company as set forth in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V THE REMEDY

In view of the findings above, set forth, it will be recommended that the Company be required to cease and desist from any unfair labor practices, *N.L.R.B. v. Entwistle Manufacturing Co.*, 120 F.2d 532, 536 (C.A. 4), and take affirmative action as appears necessary to effectuate the policies of the Act.

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

CONCLUSIONS OF LAW

1. The Company is an employer engaged in commerce within the purview of Section 2(6) and (7) of the Act.

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

3. By interfering with, restraining, and coercing employees in the exercise of their rights under the Act the Company has engaged in unfair labor practices defined in Section

4. By discriminating against employees regarding terms and conditions of employment, to discuss membership in a labor organization the Company has engaged in unfair labor practices defined in Section 8(a)(3) and (1) of the Act.

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

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

ORDER ⁴

Respondent, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discriminating against employees by discharging or otherwise affecting their terms and conditions of employment in reprisal for their support of or assistance to any labor organization.

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

2. Take the following affirmative action which appears necessary and appropriate to effect the policies of the Act:

(a) Offer employees hereinabove found to have been discriminatorily discharged or otherwise discriminatorily treated immediate and full reinstatement to their former or substantially equivalent positions and make them whole for loss of earnings or the economic equivalent thereof in the manner above set forth in the section entitled "The Remedy."

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

(c) Post at its two operations in Tuscaloosa, Alabama, copies of the attached notice marked "Appendix."⁵ Copies of said notice, to be furnished by the Regional Director for Region 10, shall, after being duly signed by the Company's authorized representative, be posted immediately upon re-

⁴ 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.

⁵ 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 be changed to read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

ceipt thereof, and be maintained thereafter for a period of 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Company to insure

that such notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director, in writing, within 20 days from the date of this Order, what steps have been taken by the Company to comply herewith.