

W. T. Grant Company and Frances Swinick. Case
22-CA-5631

November 6, 1974

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS KENNEDY
AND PENELLO

On February 25, 1974, Administrative Law Judge Frank H. Itkin issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

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

We find merit in the Respondent's exceptions to the Administrative Law Judge's finding and conclusion that Respondent's discharge of Frances Swinick violated Section 8(a)(3) of the Act and that various statements attributed to Respondent's officials by Swinick violated Section 8(a)(1) of the Act. Swinick testified to three specific instances when she overheard portions of conversations between Respondent's officials and employees. The Administrative Law Judge credited Swinick's version of each of these purported conversations. Swinick first testified that, at one point, she overheard Store Manager Renna ask employee Vail "what Swinick was doing." Swinick also testified that she heard the word "union" used. Vail replied that she did not know, and, in her testimony, Vail made no mention of the word "union." Notwithstanding the paucity of evidence on this point, the Administrative Law Judge interpreted this incident as an act by Respondent's manager of "questioning employees about Swinick's activities" creating the inference that this questioning related to union activities. Swinick next testified that later in the day as she stepped through a doorway she overheard Department Manager Patenaude tell employees Vail, Molnar, and Iacorino "not to join the union," and that "things would be tough for them if they joined the union." Employee Vail in her testimony did not corroborate Swinick's testimony, but to the contrary, in corroboration of Patenaude's testimony, described the conversation as one where the parties merely discussed the Union, with Patenaude taking a neutral position. Employee Molnar, who was

called as a witness by Swinick, also not only failed to corroborate Swinick's version of the conversation but, again, corroborated the testimony of Vail and Patenaude as to the nature of the conversation.

Swinick next testified that while she was at the customer service desk she overheard an employee (who was not called as a witness by either the General Counsel or the Charging Party) tell Bergen, her department manager, that she (Swinick) was organizing a union and that Bergen said "he knew" and that she "was going to be fired." Notwithstanding this advance notice of discharge, the record shows that later in the day, when Bergen notified her that her hours were being reduced, Swinick made no objection or charge that this was related to her union activities, but, rather, merely asked Bergen for her new schedule. In contrast, when Swinick was later advised by Bergen and Operations Manager Downs that she was being let go rather than given reduced hours, she immediately asked if she was being discharged because she was organizing for the Union.

It is long-established Board policy that we will not overrule an Administrative Law Judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that such resolution is incorrect. In such circumstances the importance of the demeanor factor is greatly diminished, and we are impelled to substitute our own credibility findings for those of the Administrative Law Judge. This is such a case. In our opinion, the logical consistency of the facts requires the conclusion that Swinick's testimony is inconsistent, contrived, and unworthy of belief. Swinick's testimony was clearly designed and directed toward establishing that she had been engaging in union activity, that Respondent's management officials were aware of her union activity, and that Respondent's officials harbored animus towards those who would engage in such activity, all factors critical to establish a violation of Section 8(a)(3) of the Act.

As to the first incident, the record is void of any evidence that would support Swinick's version and sustain an inference that Renna was inquiring about Swinick's "union" activity. Vail, a participant in that conversation, did not corroborate Swinick's testimony that the word "union" was mentioned. As to the second incident, we again have a total failure of the record to support Swinick's testimony. Here again, we have an utter failure on the part of participating employees, witnesses called by the General Counsel and the Charging Party, to corroborate Swinick's testimony. Not only did these witnesses not support Swinick's testimony, but, to the contrary, contradicted Swinick and fully corroborated Department Manager Patenaude's version of the

incident.¹ As to the third incident, we have the incredible situation where an employee allegedly overhears *her* department manager state to an employee (not called as a witness) that she is going to be fired because of her union activity and yet upon being advised shortly thereafter *by this same* manager that her hours are going to be reduced makes no protest or attempt to relate this action to her union activity.

Other "missing" evidence casts substantial suspicion over Swinick's version of the events leading up to her termination. Swinick testified that the day before her termination she had a meeting with three officials from a union, and yet none of these officials were called to testify. Swinick also testified that she spoke to numerous employees about the Union while in the store and yet the entire thrust of the case against the Respondent evolves around two coemployees, neither of which, as noted above, corroborated Swinick's testimony.

From the above, it is clear that the Administrative Law Judge rejected without explanation testimony from unbiased and disinterested witnesses called in support of their case by the General Counsel and the Charging Party. In our opinion, the rejection of this testimony has no support in the record and, accordingly, this evidence must be accepted.

Without Swinick's testimony which served as a foundation for the Administrative Law Judge's finding that the Respondent unlawfully terminated her, there is insufficient evidence remaining to refute Respondent's defense and establish that Swinick was terminated for union activity. We therefore find that the General Counsel has failed to prove that the Respondent violated Section 8(a)(3) and (1) of the Act by terminating Swinick. We also find that the General Counsel has failed to prove that Respondent's officials engaged in conduct violative of Section 8(a)(1) of the Act. Accordingly, we shall dismiss the complaint in its entirety.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

¹ In this respect we note that at the hearing all witnesses, with the exception of the Charging Party and Managers Renna and Downs, were sequestered.

DECISION

FRANK H. ITKIN, Administrative Law Judge: This case was tried before me in Newark, New Jersey, on December

12, 1973. The unfair labor practice charge was filed by Frances Swinick on October 4 and the complaint issued on November 20, 1973. The principal issue presented is whether Respondent Company violated Section 8(a)(1) and (3) of the National Labor Relations Act by interrogating employees concerning their union and protected, concerted activities; by warning employees that they would suffer economic reprisals if they became members of or gave assistance to a labor organization; and by discharging and refusing to reinstate employee Swinick because of her union and protected, concerted activities. Upon the entire record before me, including my observation of the witnesses, and after due consideration of the briefs filed by all counsel and parties, I make the following findings of fact and conclusions of law:

FINDINGS OF FACT

I. INTRODUCTION

Respondent Company,¹ at all times material to this proceeding, has been engaged in the retail sale of general merchandise. It maintains its principal office and place of business in New York City and maintains other places of business throughout the United States. This proceeding concerns Respondent Company's retail store in Somerset, New Jersey.

Respondent Company received, during the prior 12-month period, gross revenues in excess of \$500,000. During the same period, Respondent Company shipped and transported products in excess of \$50,000 in interstate commerce directly from States other than New Jersey. It is undisputed and I find and conclude that Respondent Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. Further, I find and conclude, based upon the credible testimony of employee Frances Swinick, that District 65, Distributive Workers of America, is an organization in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. I therefore find and conclude that District 65 is a labor organization within the meaning of Section 2(5) of the Act.

It is admitted that Anthony J. Renna was, at all times material to this proceeding, store manager at Respondent's Somerset operation; that James F. Downs was Respondent's operations manager; that Kenneth Bergen was Respondent's manager of the stationery, sporting goods, hardware and toy department; and that Ray Patenaude was Respondent's manager of the auto department. On the undisputed evidence of record, I find and conclude that Renna, Downs, Bergen, and Patenaude are supervisors and agents of Respondent within the meaning of the Act.

II. EMPLOYEE SWINICK ATTEMPTS TO ORGANIZE THE SOMERSET STORE AND IS DISCHARGED

Frances Swinick started working for Respondent Com-

¹ The complaint was amended at the hearing to correct the name of Respondent to W T Grant Company

pany at its Middlesex County store in South Plainfield, New Jersey, during April 1972. She was transferred to the Somerset store about February 1973. As Swinick explained, she requested the transfer because the Somerset store is closer to her home. Her duties at the Somerset store included selling merchandise, marking merchandise, installing fixtures, cleaning the stockroom and putting away merchandise. Her total hours of work each week and her work schedule varied. For a period of time Swinick worked over 40 hours each week. However, prior to Swinick's discharge on September 22, 1973, she was working only 35 hours each week.

Swinick credibly testified that shortly prior to her discharge,

[m]any of [the] employees were dissatisfied with certain conditions that existed there, and we discussed taking action in having, joining a union. . . .

Swinick was asked by her coworkers "to get in touch with the union and make some arrangements in organizing a union" in the Somerset store. As a result, Swinick spoke on the telephone with representatives of District 65 and, on the morning of September 21, 1973, Union Representatives Lou Palupi, Mike Hardin and Adrian DeCosta met and conferred with Swinick at her home. Swinick recalled:

. . . I discussed some of the conditions we were dissatisfied with. And amongst them was where they would cut your hours down at a time when you were entitled to a paid holiday. And we didn't have any good hospitalization benefits and other benefits, that we were dissatisfied and conditions that were going on there. . . .

The union representatives gave Swinick a booklet entitled "The 65 Security Plan" and instructed her "to get a group together and arrange a meeting convenient to all employees so that they could talk to them."

Later that same day, September 21, Swinick went to work at the Somerset store. At work, as Swinick credibly testified,

. . . I approached many employees and I asked them if they were interested in joining the union, and if they wanted to attend a union meeting, and I also asked them where they would suggest a place nearby where it would be a good place to hold a meeting. . . . I also asked them to sign my address book to show who was interested in joining the union and attending this union meeting, and I obtained about 50 signatures in my address book. . . .

Swinick credibly testified that during the early afternoon of the following day, September 22, she witnessed portions of a conversation in the Somerset store between Store Manager Renna, Operations Manager Downs, and employees Mary Vail and Bill Molnar. Renna asked the employees, "what [Swinick] was doing"; the word "union" was used; and Molnar said to Renna and Downs: "he doesn't know anything." Swinick also witnessed on that same day portions of a conversation in the store between Department Manager Patenaude and employees Mary Vail, Bill Molnar, and Tom Iacolino. Patenaude told the

employees "not to join the union"—"things would be bad or tough for them if they joined the union." Swinick attempted to participate in this latter conversation. She asked the group, "if I was invited to the meeting . . ."; she was told "no." Swinick then walked away. Later that same afternoon, as Swinick recalled, Department Manager Bergen was told by an employee at the customer service desk that Swinick is "organizing a union there . . ." Swinick was standing some 5 feet away from Bergen. Bergen then stated to the complaining employee: ". . . he [Bergen] knows, [Swinick is] going to be fired."

Shortly thereafter, about 5 to 5:30 p.m. that same day, Department Manager Bergen apprised Swinick that he was reducing her from 35 to 25 hours of work each week. Swinick asked Bergen for her new schedule. Bergen said that he would give Swinick her schedule later. However, about 5:45 p.m. that same day, Swinick was summoned on the store loudspeaker to the personnel office. Present in the personnel office were Downs and Bergen. Downs told Swinick: "they had decided to let [Swinick] go altogether . . ." Downs handed Swinick her salary. Swinick asked Downs "for the reason why, and he told [Swinick] they were discontinuing the toy department." Downs gave Swinick "some kind of a piece of paper and he told [her] it's a voucher, and he asked [her] to sign . . . ; [Swinick] refused to sign." Swinick asked Downs: "if it's not a fact that I am being discharged because he heard that I'm organizing a union in the place." Downs claimed that this was "the first time he heard about it, he didn't know."²

Mary Vail, an employee at Respondent's Somerset store, acknowledged that Swinick spoke to her "about the union and what it was . . ." Vail acknowledged that shortly prior to Swinick's discharge Store Manager Renna and Operations Manager Downs,

. . . asked me [Vail] what Fran [Swinick] was doing and I [Vail] said I didn't know, because at the time I didn't

Vail claimed that she could not recall "the second question" which Renna and Downs "asked" her during this same incident. Vail acknowledged that she spoke to coworkers Bill Molnar and Doug Tompkins about Swinick's earlier conversation with her concerning the Union. Vail acknowledged that shortly prior to Swinick's discharge, Department Manager Patenaude discussed the Union with employees Tompkins, Molnar, and Vail. Vail recalled,

Mr. Patenaude was telling us more about the union, you know, like giving us like his opinion and letting us make up our own mind . . .³

² As Swinick was leaving the store she also spoke to a number of employees and Store Manager Renna. Swinick asked Renna "if [he] knew [Swinick] was being fired and if it was with his approval." Renna indicated, *inter alia*, that he had approved her termination.

³ William Molnar, employed at Respondent's Somerset store, acknowledged that Swinick had discussed with him unionizing the Somerset store, that Swinick had contacted a union, that Swinick thereafter had asked employees if they wanted to join a union and attend a meeting, and that Molnar had apprised Swinick that he was interested in joining a union. Molnar, however, claimed that "nobody had approached [him] from management" with respect to Swinick's union activities. Molnar recalled a conversation involving employees Mary Vail, Doug Tompkins, and Tom

Respondent's store manager, Anthony Renna, claimed that Swinick was terminated on September 22 for economic reasons. Renna asserted, *inter alia*, that "there was a definite plan for decreasing the payroll. . ."; that Operations Manager Downs apprised Renna on September 22 "that we could not arrange or rearrange hours with Fran Swinick as regards . . . a cutback" in payroll; that "we could not fit in Fran Swinick's hours into the hours that we had designed for her because of [Swinick's] transportation problems"; and that, as a result, Renna

couldn't come up with a satisfactory answer except to make an arbitrary decision to have her [Swinick] dismissed because we had to have payroll savings. . .

Renna claimed that he had no knowledge of Swinick's union activities prior to her discharge on September 22. Renna denied the antiunion statements and conduct attributed to him by Swinick. However, Renna acknowledged that shortly prior to Swinick's termination, he and Downs

were walking through the toy department and didn't see anyone there . . . and when we spotted Fran Swinick in the four seasons shop we went over to Mary Vail to find out what [Swinick] was doing, and we asked her [Vail] . . . "what is Fran doing? . . ."

Renna asserted that Vail's response to his question was that Vail did not know what Swinick was doing.

In support of Respondent's contention that Swinick was terminated for economic reasons, Renna cited the Company's "Weekly Control Report." The report does reflect, *inter alia*, a general payroll reduction from about the week ending July 12, 1973. The report also includes a weekly item entitled estimated payroll for next week. I note that commencing about the week ending September 12, 1973, this item remains at \$9,500 through November 8, 1973. Further, Respondent's "Chart of Payroll People" does reflect a reduction in store personnel commencing about the week ending July 12, 1973. However, this chart shows that the number of store personnel remained essentially constant commencing about the week ending September 20 through the week ending October 17, 1973. These exhibits and related testimony and evidence indicate that Respondent's asserted reductions in payroll and personnel principally occurred prior to Swinick's sudden termination on September 22. And, Store Manager Renna, when asked "if he knew how many other employees besides Miss Swinick were actually discharged because of the cutback," generally asserted:

Iacorno and Department Manager Patenaude The employees "were outside the garden shop on September 22 in the afternoon we were discussing the different views about a union" Patenaude assertedly walked over and told the employees "his views, what he thought of the union"

Ray Patenaude, manager of Respondent's auto center, acknowledged that on September 22 he overheard Molnar and Tompkins discussing a union Patenaude claimed that the employees "asked viewpoints on it and I expressed my opinion" Patenaude claimed that he told the employees that he "didn't particularly care for a union" Patenaude denied the antiunion statements attributed to him by Swinick

I don't have the definite answer. But I know quite a few were discharged and quite a few quit because of the cutback

Renna, however, could cite no numbers because he, assertedly, "was only concerned about the dollars of payroll rather than numbers." Renna acknowledged that at no time prior to Swinick's discharge on September 22 did he discuss with Swinick her alleged inability to work the new schedule assigned to her because of transportation problems

Respondent's operations manager, James Downs, testified, *inter alia*, that on September 22 he "went to several of our supervisors, and talked to them about where else we could make added cuts in hours throughout the store . . . to show a payroll saving." Downs claimed that Department Manager Kenneth Bergen informed Downs later that same day, that Swinick could not work the hours that he has set up and we had a problem with the scheduling Downs thereafter spoke with Renna and the "decision was made to [let] her go." Downs, in the presence of Bergen, conducted an "exit interview" for Swinick about 6 p.m. on September 22. At this interview, Downs assertedly told Swinick:

[d]ue to the cutback in the full-time position in that toy department and due to the flexibility, we had to do away with the full-time position in that department and use part-timers in the various areas where we could show a savings in dollars. . .

Downs could not "really remember the whole conversation."⁴ Downs denied engaging in the antiunion conduct attributed to him by Swinick. Downs claimed that he "understood [Swinick] to have transportation problems."

Kenneth Bergen, Respondent's department manager, testified, *inter alia*, that he informed employee Swinick on September 22 that her weekly hours were being reduced; that Swinick "gave [him] a little speech about having transportation problems to the store and [she] wouldn't be able to work the exact hours"; that he told Swinick that he would give Swinick her new schedule later; and that he was present later that same day when Swinick was terminated by Downs. Bergen recalled:

Well, Mr. Downs and I had called you [Swinick] into our office and we had a problem with your hours. You [Swinick] said you couldn't make it, at that time, you had a transportation problem, so we told you that we would have to let you go.

Bergen recalled that Swinick asked during her interview for

⁴ Downs claimed that employee Gail Yachnovictz was discharged or laid off because of a payroll reduction on September 17 and that Cindy Reynolds was let go about September 1 or 14. Downs also claimed, *inter alia*, that employee John Slack was "cut from our big ticket department" and Tony Jackson was terminated. This occurred, according to Downs, "about a week and a half prior" to Swinick's discharge. Downs was uncertain whether Jackson was a parttime employee

the reason "why" she was being discharged. Bergen denied having prior knowledge of Swinick's union activities and the antunion conduct attributed to him by Swinick.⁵

Swinick testified on rebuttal that she did not refuse to accept her new schedule. She credibly explained:

I just asked him [Bergen] for my new schedule. He said he was going to get it for me [and] I never made . . . such a statement . . . I cannot meet my transportation because I was able to. At times when buses weren't running I used to take a cab. At other times, I used to share a cab with a person who lived nearby, or at times I walked . . .

I have credited the testimony of employee Swinick as summarized in this Decision. Her testimony is in part substantiated by the testimony of employees Vail and Molnar, Department Managers Bergen and Patenaude, Store Manager Renna, and Operations Manager Downs. And, upon the entire record before me, including the demeanor of the witnesses, I am persuaded that the testimony of Swinick as recited herein is a truthful, reliable, and complete account of the particular events. Insofar as the testimony of employees Vail and Molnar conflicts with the testimony of Swinick, I find that the testimony of Swinick is more reliable and complete. Likewise, insofar as the testimony of Renna, Downs, Bergen, and Patenaude conflicts with the testimony of Swinick, I credit Swinick. I am persuaded, as discussed *infra*, that the testimony of Renna, Downs, Bergen, and Patenaude represents an attempt by Respondent to justify the discriminatory and unlawful discharge of Swinick.

III. DISCUSSION

Respondent asserts that employee Swinick was discharged solely for economic reasons. The question raised here is whether Respondent Company, in discharging employee Swinick on September 22, 1973, was motivated by an unlawful purpose. For, under settled law, "the Board is not compelled to accept the employer's statement" of the reason for an employee's discharge "when there is reasonable cause for believing that the ground put forward by the employer was not the true one, and that the real reason was the employer's dissatisfaction with the employee's" union or protected, concerted activities. *Great Atlantic and Pacific Tea Co. v. N.L.R.B.*, 354 F.2d 707 709 (C.A. 5, 1966). And, "a discharge motivated only in part by by an unlawful purpose is similarly illegal." *J.P. Stevens & Co. v. N.L.R.B.*, 380 F.2d 292, 300 (C.A. 2, 1967), cert. denied 389 U.S. 1005 (1967).

The credited evidence makes it clear that Swinick, shortly prior to her discharge, became the key union protagonist at Respondent's Somerset store. Swinick, as requested by her coworkers, sought out and obtained organizational assistance from District 65. On September 21, the day before

Swinick's discharge, Swinick "approached many employees" in the Somerset store and "asked them if they were interested in joining the union and if they wanted to attend a union meeting." Swinick urged interested employees to sign their names in her book and, as a result, obtained some 50 signatures. On the following day, September 22, Store Manager Renna and Operations Manager Downs were observed questioning employees about Swinick's activities. Department Manager Patenaude admonished employees "not to join the union"—"things would be bad or tough for them if they joined the union." And, an employee informed Department Manager Bergen that Swinick was "organizing a union there." Bergen replied: "he knows, [Swinick is] going to be fired." Later that same day, Swinick was summoned to the office on the store loudspeaker and summarily discharged by Operations Manager Downs and Department Manager Bergen.

On this record, I find and conclude that the real reason for Swinick's sudden firing on September 22 was management's discovery that Swinick was engaging in union and protected, concerted activities. I do not credit management's assertion that it was unaware of Swinick's union activities prior to her termination. Nor do I credit management's assertion that Swinick was discharged on September 22 solely for economic reasons because, allegedly, she could not work her new schedule. I reject these assertions as untrue and pretextual.⁶ Respondent, in discharging and refusing to reinstate Swinick, has violated Section 8(a)(1) and (3) of the Act.

In addition, I find and conclude that Department Manager Patenaude's statements to employees "not to join the union"—"things would be bad or tough for them if they joined the union," are proscribed threats of reprisal calculated to deter employees from exercising their Section 7 rights, in violation of Section 8(a)(1) of the Act. Equally coercive and violative of Section 8(a)(1) is Department Manager Bergen's statement to an employee that, in effect, he knew Swinick was organizing a union and she was "going to be fired." Indeed, Swinick was terminated promptly thereafter. Finally, Store Manager Renna and Operations Manager Downs, under these circumstances, engaged in proscribed interrogation when they attempted to ascertain from employees "what Fran [Swinick] was doing . . ." Management, in attempting to ascertain from employees if Swinick was engaging in suspected union and protected, concerted activities, violated Section 8(a)(1) of the Act.⁷ See, e.g., *Carlisle Paper Box Co. v. N.L.R.B.*, 398 F.2d 1, 4-5 (C.A. 3, 1968), and cases cited.

⁶ In this respect, I note that evidence adduced by Respondent in support of its claimed reduction in payroll and personnel indicates that this asserted reduction by and large preceded Swinick's summary termination on September 22. Of course, even assuming that Respondent was still engaged in a reduction in personnel on September 22, I would find and conclude on this record that Respondent was motivated in substantial part by a discriminatory and unlawful purpose in terminating Swinick.

⁷ Respondent's motion to dismiss the complaint, insofar as it pertains to alleged unlawful interrogation, was taken under advisement. For the reasons stated above, the motion is denied.

Charging Party's motion or request to correct the transcript is granted. Charging Party's accompanying motions or requests that she now is given an opportunity "to examine all affidavits and statements obtained" and "be given a copy of the transcript" are denied as inappropriate.

⁵ Bergen was asked what Swinick's new schedule would have been. He replied "I told her it would have been a 10 to 5 schedule"—"somewhere around that." Swinick's earlier schedule was not constant and varied from about 10 or 11 a.m. to 6 or 9 p.m.

CONCLUSIONS OF LAW

1. Respondent, W.T. Grant Company, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. District 65, Distributive Workers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act by threatening employees with discharge and economic reprisals if they became members of or gave assistance to a labor organization and by coercively interrogating employees about union and protected, concerted activities.

4. Respondent violated Section 8(a)(1) and (3) of the Act by discharging and refusing to reinstate employee Frances Swinick because of her union and protected, concerted activities.

5. Respondent has not committed other violations of Section 8(a)(1), as alleged in the complaint

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

THE REMEDY

Having found that Respondent engaged in certain unfair labor practices, I will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. And, as the unfair labor practices committed by the Respondent are of a character striking at the core of employee rights safeguarded by the Act, I shall recommend that it cease and desist from in any

other manner infringing upon rights guaranteed in Section 7 of the Act.

It has been found that Respondent, in violation of Section 8(a)(1) and (3) of the Act, unlawfully discharged employee Swinick. It will therefore be recommended that Respondent offer employee Swinick immediate and full reinstatement to her former or substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of earnings suffered by reason of her unlawful termination by payment to her of a sum of money equal to that which she normally would have earned from the date of the discrimination to the date of Respondent's offer of reinstatement, less net earnings during such period, with backpay computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Co.*, 90 NLRB 289 (1950). Backpay shall carry interest at the rate of 6 percent per annum, as set forth in *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1969). Further, it will be recommended that Respondent preserve and make available to the Board, upon request, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary and useful to determine the amount of backpay due and the rights of reinstatement under the terms of these recommendations.⁸

[Recommended Order omitted from publication.]

⁸ Counsel for Respondent argues in his brief that General Counsel has failed to prove that District 65 is a labor organization within the meaning of Section 2(5) of the Act. I have found, as stated above, that District 65 is a labor organization as alleged. In any event, I have found that Swinick was discharged in further violation of Section 8(a)(1) and, accordingly, a reinstatement and backpay remedy would also be appropriate.