

Abitibi Corporation and Clayton Porter. Case 11-CA-5739

January 30, 1975

DECISION AND ORDER

BY ACTING CHAIRMAN FANNING AND
MEMBERS JENKINS AND PENELLO

On October 18, 1974, Administrative Law Judge Thomas D. Johnston issued the attached Decision in this proceeding. Thereafter, General Counsel and Respondent filed exceptions and supporting briefs, and Respondent filed a brief in support of the Administrative Law Judge's Decision.

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

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,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 Respondent, Abitibi Corporation, Roaring River, North Carolina, its officers, agents, successors, and assigns, shall take the action set forth in the said 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 (1950), enfd. 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

DECISION

STATEMENT OF THE CASE

THOMAS D. JOHNSTON, Administrative Law Judge: This case was heard at Wilkesboro, North Carolina, on August 21 and 22, 1974,¹ pursuant to a charge filed on May 16 by Clayton Porter, an individual, and a complaint issued on June 28.

The complaint, amended at the hearing,² alleged that Abitibi Corporation (herein referred to as Respondent) violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended (herein referred to as the Act), by creating impressions of surveillance of its employees'

union activities; interrogating employees concerning their union activities; threatening employees with loss of their jobs because of union activities; and discriminatorily discharging and refusing to reinstate Clayton Porter because of his union or concerted activities.

Respondent in its answer filed on July 5 denied having violated the Act. The defense asserted in its answer that the complaint was defective is rejected, since I find the complaint clearly alleged a violation of the Act. Further, a pretrial order issued by Administrative Law Judge Arthur Leff ruling on Respondent's motion for a More Definite Statement disposed of Respondent's contentions that certain allegations contained in the complaint were insufficient to allege a violation.

The issues involved are whether Respondent violated Section 8(a)(1) and (3) of the Act by unlawfully interrogating, threatening, or creating impressions of surveillance of its employees with respect to their union activities; and whether Respondent discriminatorily discharged Clayton Porter and denied him reinstatement because of his union or concerted activities.

The parties at the hearing were afforded full opportunity to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally on the record, and to submit briefs.

Upon the entire record in this case and from my observation of the witnesses, and after due consideration of the briefs filed by the General Counsel and Respondent,³ I hereby make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent, a Delaware corporation, has a plant located at Roaring River, North Carolina, where it is engaged in the manufacture of hardboard. During 1973, a representative period, Respondent in the operation of its Roaring River plant, which is the only facility involved in this proceeding, purchased and received goods and raw materials valued in excess of \$50,000 directly from points located outside the State of North Carolina and manufactured, sold, and shipped goods valued in excess of \$50,000 directly from its Roaring River plant to points located outside the State of North Carolina.

Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that the International Woodworkers of America, AFL-CIO-CLC (herein referred to as the Union), is a labor organization within the meaning of Section 2(5) of the Act.

¹ All dates referred to are in 1974 unless otherwise stated.

² The complaint was amended, without objection, to conform the dates

of alleged violations with evidence adduced at the hearing.

³ The Charging Party did not submit a brief.

III. THE UNFAIR LABOR PRACTICES

A. *Background*

Official notice has been taken as requested of the Board decision in *Abitibi Corporation*⁴ wherein Respondent was found to have violated Section 8(a)(1) of the Act by unlawfully questioning, pressuring, and threatening its employees; the results of a Board election held on February 25, 1971, were set aside following the Union's objections; and a second election was directed to be held for a unit comprised of all the production and maintenance employees including testers. The second election which the Union lost was subsequently held on December 14, 1972.

Clayton Porter, the alleged discriminatee, was employed by Respondent from about August 30, 1971, until April 19, 1974.

The General Counsel contended that prior to becoming active in the Union himself, Porter had assisted Respondent in its efforts against the Union.

According to Porter a few days before the first union election held on February 25, 1971, which was prior to his employment, Respondent's personnel manager, Willard Swift, solicited him to talk to his two brothers, Larry Porter and Bill Porter, and Ivan Shepherd, who were all employed by Respondent, to see what he could do because they were leaning toward the Union and for him to tell his brothers Swift would take care of them if they helped the Company.

On the day of the election Porter stated Swift informed him his brother who they needed to vote had not reported for work, and requested him to get in touch with his brother and tell him Swift would fix him up.

Following the election Swift thanked him for what he had done and suggested if he was ever interested in employment to let him know and he would take care of him.

Personnel Manager Swift denied making the statements attributed to him by Porter, claiming it was Porter who brought up the subject of the union election at the plant and had asked him how his brothers stood. When Swift replied he did not know, Porter volunteered to talk to them and see what he could find out, whereupon Swift agreed.

Swift claimed the reason he called Porter on the day of the election was to obtain his assistance in locating his brother Bill Porter to inform him of the election hours and for him to vote.

I credit the testimony of Porter who I find to be a more credible witness than Swift. Apart from my observations of the witnesses I do not find plausible Swift's version that Porter broached the subject of the Union and the union feelings of his two brothers who, unlike himself, were both employed by the Respondent since it might jeopardize their jobs.

When Porter subsequently applied for a job in August 1971 and was hired by Personnel Manager Swift as a quality control tester in the laboratory, no mention was

made of their earlier conversations.⁵

About December 2, 1971, Porter was promoted to the newly created position of chief tester which Respondent and Porter both contended was a supervisory position.⁶

Porter testified upon being promoted and informed of his duties by Personnel Manager Swift and Quality Control Superintendent Fred Wheeler, who was Porter's supervisor throughout his employment with Respondent, Swift told him he was going into the rough part of the plant where the laboratory was 75 percent Union and for him to go out and take care of them.⁷

While Swift denied and Wheeler doubted those specific words were used, Wheeler acknowledged they had informed Porter they had just gone through a union campaign and learned they had to present the Company's side of the argument and discuss with the employees they did not want a union in the plant. Wheeler stated they told Porter there were some employees in the laboratory who they felt had not gotten the Company's side of the picture in the past and they wanted to make sure Porter presented it that way, mentioning the laboratory was a difficult place and they knew some organizers in the past had talked to the employees. Both Swift and Wheeler, who contended those instructions were given Porter because of his supervisory capacity, denied Porter's promotion was related to the Union but claimed he was selected because he was the best qualified employee. Porter's personnel ratings as a tester support Respondent's reasons for his promotion.

Porter testified while serving as chief tester Personnel Manager Swift informed him Dee Mitchell, a tester on the first shift, had applied for employment with Lowe's Company and instructed him to get a change order signed by Mitchell, who he said was sympathetic with the Union, stating he was going to quit so they could force him out if he did not quit. Personnel Manager Swift denied the incident, claiming Mitchell had quit his job voluntarily to go to work at the Lowe's Company.

Porter stated about April 1972 Swift told him to go to the plant some night to see if he could catch Donnie Royal, a tester on the third shift, asleep because he was afraid what might happen since if a union man approached Royal prior to the election he would vote for the Union and if a company man approached him he would vote for the Company. Swift acknowledged telling Porter to see if he could catch Royal asleep but claimed the reason was because he had received reports Royal was sleeping on the job which was against company rules.

Although I credit Porter's testimony rather than Swift, whom I have previously discredited, there was no evidence Porter complied with either of those instructions or that Mitchell or Royal were actually discriminated against because of the Union.

Porter testified although he had helped Respondent in the December 14, 1972, election campaign he described his assistance as being slight. Wheeler and Swift acknowledged

copy of the supervisor's handbook. Respondent, contrary to its position at the hearing concerning Porter's supervisory status, had included his name on the list of eligible voters for the December 14, 1972, union election in which Porter voted a challenged ballot.

⁷ Porter's testimony does not establish how he was supposed to take care of them.

⁴ 198 NLRB 1249 (1972).

⁵ According to Porter, Swift mentioned the job of chief tester was coming up and he could get the job.

⁶ Although the supervisory issue was not fully litigated, the evidence established Porter supervised four testers who worked under him, received a higher hourly rate of pay, attended supervisory meetings, and received a

Porter, like the other supervisors, had supported Respondent's position.

On January 2, 1973, Porter's job was changed from chief tester to day technician with the same rate of pay.

Quality Control Superintendent Wheeler and Personnel Manager Swift testified Porter's job was changed because of a continuous turnover in laboratory personnel, complaints from other employees, and because Porter had bypassed his responsibility in giving orders.

Porter testified Personnel Manager Swift had informed him he was being moved to the day technician's job to put him in the voting unit so he would have the power to vote. Porter also stated Swift told him to report to him about any union meetings being held.

Personnel Manager Swift denied making such statements but stated he had informed Porter as a day technician he would no longer be a supervisor and would be in the unit. While Swift denied telling Porter to report to him about union meetings, he stated Porter did report such information without being asked.

Inasmuch as there was no evidence of any union activity at the time of the transfer or an election pending and absent evidence to rebut those reasons given by Respondent for transferring Porter to a job within the unit, I do not find the transfer was discriminatorily motivated. Although I credit Porter's version about his being asked to report on union meetings, Porter did not testify concerning what information, if any, was ever reported to Swift.

B. *Unlawful Interrogations, Threats, and Impressions of Surveillance of Employees' Union Activities*

The Union began an organizing campaign among Respondent's employees about January 1974. Union literature distributed to the employees at Respondent's gate about January 9 invited employees to meet with the union's representative at Room 7 of the Lowes Motel which was located approximately 14 to 20 miles from the plant.

Porter's union activities consisted of attending three union meetings held on January 13, 14, and about the middle of March at Lowes Motel; signing a union authorization card on January 14; and discussing the Union with six or seven other employees. These discussions occurred between about January 13 and the latter part of March in Respondent's lunchroom.

Porter testified on January 14, after he had attended a union meeting held the previous evening, Quality Control Superintendent Wheeler in the presence of David Higgins asked him if he had enjoyed the beer last night. According to Porter and other witnesses presented by Respondent the topic of the union meeting and free beer had been a topic of discussion in the plant.

Wheeler, while denying he had addressed his remarks solely to Porter, testified he had made a statement to Porter, David Higgins, and Eric Rogers⁸ together that he hoped they would enjoy the beer. Regardless of whether Wheeler singled out Porter in making his remarks, I do not find such statements constituted a threat by Wheeler that

employees would lose their jobs because of the Union as alleged in the complaint.

Porter stated about January 15 during a telephone conversation with Personnel Manager Swift, Swift informed him he had gotten word Porter had been in the lunchroom talking about Room 7 and drinking beer and told him that wasn't good for his employment. Porter, who had previously been discussing with another employee in the lunchroom about attending a union meeting, denied he had heard anything about it.

Personnel Manager Swift acknowledged telling Porter he had heard a discussion in the lunchroom about the Union and free beer and a girl being at the motel but denied telling Porter it wasn't good for his employment. Instead Swift stated he told Porter somebody was going to get the wrong idea about those things.

I credit Porter rather than Swift, whom I have previously discredited, and find that Swift by his statements to Porter threatened Porter with the loss of his job for engaging in union activities. Inasmuch as Porter had been discussing the subject of the union meeting in Respondent's lunchroom, I do not find such remarks by Swift further constituted an impression of surveillance of Porter's union activities.

Porter also testified about February 27 Personnel Assistant John Cox, in the presence of employee Jessie Blackburn, came up, slapped him on the back, and said, "Hello, car thief." According to Porter the previous night he had used his brother's automobile to attend a meeting held at Lowes Motel at which he and other employees had discussed signing union authorization cards.

Personnel Assistant Cox's version was he had remarked to Porter who he thought was trading automobiles that he had heard Porter was not trying to buy a car but to find some sucker and steal one. Cox denied having any knowledge Porter had attended a union meeting.

Apart from Cox's denial assuming *arguendo* such a statement had been made as Porter alleged, I do not find it sufficient standing alone to establish a findings of an unlawful impression of surveillance of Porter's union activities as the complaint alleged.

Employee Holland Bauguess testified, on March 30 while talking to Personnel Manager Swift about his being off work because of illness, Swift asked him how the boys were in the finishing department. Upon replying they were fine Swift asked him if the Union had died down out there. Bauguess stated after informing Swift it had as far as he knew he asked Swift if that was the reason he was writing him up. Swift responded it wasn't but added, "If it was, you would be like the boy on the day time, you would have done been gone." Swift did not mention the name of the employee he was referring to.

Personnel Manager Swift's version was upon telling Bauguess unless his attendance record improved further action would be taken, Bauguess asked whether that meant he was going to lose his job. Swift stated, upon replying it would not, Bauguess mentioned an employee in his department had lost his job a few weeks ago while he was out. Swift stated he told Bauguess if he had done what that employee did he would have too.

⁸ David Higgins and Eric Rogers did not testify.

I credit Bauguess who impressed me as a credible witness rather than Swift, whom I have previously discredited, and find that Swift by his statements to Bauguess coercively interrogated Bauguess concerning his union activities and threatened Bauguess with the loss of his job for engaging in union activities. Further in crediting Bauguess the threat made to him is consistent with Swift's threat to Porter.

C. Events Leading Up To and Porter's Termination

Quality Control Superintendent Wheeler, Personnel Manager Swift, and Plant Manager Ray Longevin all testified they had previously discussed removing Porter from his job as day technician in the laboratory because of his work performance,⁹ however, because of an anticipated plant expansion program announced in June 1973 whereby jobs more suitable to Porter's abilities might become available, the decision was delayed.

Porter's personnel rating dated September 12, 1973, which was prepared by Wheeler and signed by Porter, reflected his production performance and the quality of his work as a day technician as only fair and contained the comment, "Clayton has certain abilities but they do not lie in an area of technical application. I feel his ability could best be applied in the general area of public relations."

Both Wheeler and Smith stated they discussed this rating with Porter and the fact he wasn't suited for the job and discussed moving him to other more suitable jobs which might be created when the plant was expanded. According to Wheeler, Porter told him he wasn't suited for the day technician's job and had mentioned when they put someone in a laboratory who didn't know what he was doing he was going to get his head blown off.

Porter, who acknowledged he wasn't interested in the day technician's job and was afraid of chemicals which the work required, did not deny those discussions pertaining to his rating.

Quality Control Superintendent Wheeler, Personnel Manager Swift, and Plant Manager Longevin all testified the decision to remove Porter from his day technician's job in the laboratory and give him an opportunity to find another job either inside or outside the plant occurred in March 1974 after the plant expansion plans which had been postponed indefinitely in November 1973 because the energy crisis had been canceled. They denied their decision had anything to do with the Union.

Porter stated on April 1 Quality Control Superintendent Wheeler¹⁰ informed him he had been thinking about it over the weekend and thought it would be better if Porter would leave the laboratory and seek employment elsewhere. Porter stated when he mentioned he knew it was because of his sympathy with the Union, Wheeler's response was he had heard Porter was in sympathy with it and they were actually worried about him at one time. Wheeler refused his request to prepare a change order showing he had asked him to quit.

Wheeler, who denied the statements attributed to him by Porter, testified on March 29 he informed Porter he could no longer support him in the laboratory and wanted him to find something else either in the plant or outside the plant within the next couple of weeks. Wheeler stated when he said they had previously discussed trying to fit a square peg in a round hole and it was not working out, Porter replied he had told him all along he was not suited for that kind of work mentioning when they put someone who didn't know anything about chemistry in a nitroglycerin plant he was going to blow his head off. According to Wheeler, Porter then brought up certain matters such as Personnel Assistant Cox having called him a car thief and that a union representative had visited his home but denied anything had happened. Wheeler informed Porter that was his own business. Wheeler stated he advised Porter he wasn't going to make it known it was his decision to move Porter out of the laboratory and Porter could say what he liked but to let him know what his story was so he could corroborate it.

Wheeler then instructed Porter to see Personnel Manager Swift.

I credit Wheeler who I find to be a more credible witness than Porter. Further the reasons given by Wheeler are consistent with the undisputed testimony about the initial decision to move Porter and his personnel rating which occurred prior to the most recent union campaign and Porter's admitted lack of interest and fear of his day technician's job.

Porter testified the following day Personnel Manager Swift informed him he should be seeking work elsewhere and looking for another job as quickly as possible because they wanted him out of the laboratory. Porter stated when he told Swift he felt it was because of his sympathy with the Union, Swift made no reply. Swift also informed him not to tell anybody he and Wheeler had asked him to quit.

Personnel Manager Swift's version was upon asking Porter whether he agreed with Wheeler's decision, Porter replied he had told him before he just wasn't suited for that kind of work. Swift stated after asking Porter if he wanted to accept a job with some other department they talked about various openings explaining to Porter when he transferred from one department to another department he would go to the bottom of the seniority in that department and he would have to accept a utility position on whatever shift was open from which position he could work his way up to the day shift and different positions. Swift told him he would not lose his plant seniority which is used for layoffs and vacations and his insurance and hospitalization benefits would remain the same. When Porter asked what his pay would be, he informed him that depending on the shift differentials of 10 cents an hour for the second shift and 12 cents an hour for the third shift his rate of pay would be approximately \$3.26 or \$3.28 an hour.¹¹ Swift stated when he informed Porter he would give him 2 weeks to decide Porter indicated he was exploring the possibility of going into business for himself, mentioning opening a

had gotten to come to the finishing department, he had commented to Wheeler that it looked like the only way to get something was to be for the Union and it looked like he was going to be for the Union. Wheeler denied the incident.

¹¹ Porter was earning approximately \$3.71 an hour as a day technician.

⁹ Quality Control Superintendent Wheeler stated the discussion occurred prior to September 12, 1973, while Plant Manager Longevin thought it had occurred at the end of 1973

¹⁰ Porter testified in March after he had mentioned to Wheeler that one or two foremen who were for the union while working at another company

gas station¹² but said he really didn't know and wanted to think about it. Swift denied Porter had mentioned the Union.

According to Porter about April 10 Swift again reminded him he wasn't a laboratory man and it wasn't working out and told him he did not like it because Porter had gone over the plant telling them Wheeler had asked him to quit after he had told him not to.

Personnel Manager Swift testified after the 2 weeks were up upon asking Porter if he had made a decision, Porter informed him he had not obtained a license to open a service station and had talked to people in other departments about jobs, including Superintendent of Manufacturing Al Burkenbine¹³ and Finishing Foreman Alfred Wagner;¹⁴ however, they didn't have any openings on the day shift.¹⁵ Swift stated he told Porter they had openings in the manufacturing department, finishing department, and the woodyard and they could put him in a utility position in any of those departments but he would have to start at the bottom and take a second or third shift. Swift at his own suggestion gave Porter another week to make up his mind when Porter indicated maybe by then he could decide something.

Porter stated on Thursday, April 18, Swift asked him if he had another job and informed him his decision had to be made by Friday. Swift then offered him a utility job on the second shift in the woodyard or a new job on the third shift in the finishing department. Porter stated Swift, in response to his inquiries, informed him he would lose his seniority, have to start at the bottom of the ladder, and would receive a 50-cent-an-hour drop in pay and would be doing odd jobs. Swift also told him the new job offered would involve the continuous lifting and turning of boards for 8 hours.¹⁶ Under cross-examination, however, Porter denied Swift had told him he would lose his company seniority and acknowledged he had previously heard when an employee was transferred to a different department he had to start at the bottom.¹⁷

The last day Porter worked for the Respondent was on April 19.

Porter testified when Swift asked him that day if he had considered any of the jobs offered he told Swift under the circumstances he couldn't take them. Swift's response was they could no longer tolerate him in the laboratory and during the conversation mentioned Porter should not have told the people at the Company Swift had asked him to quit but that he was actually leaving on his own.

Personnel Manager Swift's version was upon asking Porter whether he had made up his mind and wanted to accept one of the jobs offered, Porter asked whether if he quit could he come back and accept one of the jobs in about a week. Swift's response was he could hold the jobs open that long but if Porter didn't want to quit he was

going to have to request a leave of absence if that's what he needed to make up his mind. Swift stated Porter replied if it was all right with him and if he could still come back in a week he would go home and think about it and if he decided to come back he would call him. Swift stated during the conversation he told Porter he had heard Porter had been telling people Swift had asked him to leave or find another job outside the laboratory and it would have been better if Porter had indicated it was his desire to change rather than to imply Wheeler didn't want him to stay there any longer as he was only hurting himself by telling people that.

According to Swift after Porter left he did not hear from him again.

While the versions of the discharge conversations between Porter and Swift differ in certain respects it is not disputed that Porter, upon being removed from the day technician's job, was offered at least two other jobs which he refused, thereby resulting in his termination of employment.

Respondent presented several witnesses who testified Porter had told them he didn't know the reason Wheeler had asked him to leave unless it was because of run-ins he had had with engineer John Sims or that was the reason he was seeking a transfer or quitting. However, these statements occurred after Porter had been notified about his being moved from the day technician's job and Wheeler denied Porter's inability to get along with Sims had anything to do with the decision to remove Porter from the laboratory. Under these circumstances, I do not find as Respondent urged in its brief such statement, never conveyed by Porter to Swift or Wheeler, constituted an admission by Porter that Sims was the reason he had left Respondent's employment.

Porter on direct examination claimed his reason for refusing to accept the jobs offered him¹⁸ was because they involved continuous lifting which he was unable to perform because of a back injury suffered in an automobile accident in January 1966. However, employment applications filed by Porter with Respondent in July 1968 and August 1971 listed no physical defects as required by the application form, and his employment physical examination record for August 1971 listing a previous disability because of his back injury disclosed an examination of his back had revealed no limitation of motion. Moreover, under cross-examination Porter admitted and Quality Control Superintendent Wheeler testified that as a day technician Porter's duties on occasions involved lifting or assisting other employees in lifting heavy objects such as boards and placing oil drums on carriers.

Under cross-examination Porter gave as an additional reason for his refusal to accept the jobs offered the fact that his mother lived alone and from time to time he had to

operator, he could not recall mentioning it was a first-shift job nor was this job offered to Porter by Swift.

¹⁶ Personnel Manager Swift acknowledged one of the new jobs being created in the finishing department involved grading and checking boards.

¹⁷ Under Respondent's policies an employee upon being transferred from one department to another department starts as a utility employee on whatever shift is available and although he loses his departmental seniority he retains his plant seniority.

¹⁸ The fact the jobs offered paid less money was not given as a reason by Porter for having declined them

¹² Porter acknowledged he had mentioned to Swift the possibility of going into business for himself operating a store or selling gasoline.

¹³ Under cross-examination Porter acknowledged he had asked Superintendent Burkenbine about a job in the manufacturing department.

¹⁴ Finishing Foreman Wagner testified he had informed Porter pursuant to his inquiries there were no openings on the first shift.

¹⁵ Porter also stated he had asked Steam Plant Supervisor Roger Meade, on behalf of another employee, whether there was an opening in his department, whereupon Meade informed him there was no opening. While Meade contended he had informed Porter there was an opening as a utility

check on her.¹⁹

There was no evidence to establish and Swift denied he was aware of those reasons given by Porter for declining the jobs offered.

D. Analysis and Conclusions

The General Counsel contended while Respondent denied that Respondent violated Section 8(a)(1) and (3) of the Act by unlawfully interrogating, threatening, and creating impressions of surveillance with respect to its employees' union activities and by discriminatorily discharging and denying reinstatement to Porter because of his union or concerted activities.

Section 8(a)(1) of the Act prohibits an employer from interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act. Section 8(a)(3) of the Act provides in pertinent part: "It shall be an unfair labor practice for an employer . . . by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization"

Based upon my findings, *supra*, Respondent Personnel Manager Swift coercively interrogated Bauguess concerning his union activities and threatened both Porter and Bauguess with the loss of their jobs for engaging in union activities. I hereby find such conduct interfered with, restrained, and coerced Porter and Bauguess in the exercise of their rights guaranteed in Section 7 of the Act and thereby violated Section 8(a)(1) of the Act.

The remaining issue is whether Porter was discriminatorily terminated and denied reinstatement.

The evidence established that Porter, upon being removed from his job as day technician, quit his employment rather than accept other jobs offered him. Since the evidence established he quit rather than being terminated as alleged in the complaint, the issue first raised but fully litigated at the hearing was whether Porter was constructively discharged.

A constructive discharge may be found where working conditions have been changed in a manner which has the effect of forcing an employee to quit his employment because he had engaged in union or protected concerted activity. See *Masdon Industries, Inc.*, 212 NLRB 505 (1974).

The initial decision to remove Porter from his day technician's job not only preceded the most recent union organizing campaign but occurred at a time when there was no evidence of any union activity or any reason shown why Porter, who had previously assisted Respondent in its efforts against the Union as herein found, would have been discriminated against because of such activities. That decision to remove Porter because he was unsuitable for the job was supported by his personnel rating and was consistent with his dislike and fear of the job. Thus the initial decision could not be found to have been discriminatorily motivated. However, when the final decision to remove Porter was made and implemented Respondent had knowledge that a couple of months earlier Porter had

discussed the Union with another employee in the lunchroom and it had threatened Porter with discharge for having engaged in union activities. While Respondent's knowledge of Porter's union activities and the threat to discharge him for having engaged in such activities coupled with Respondent's union animus established both by the prior Board decision²⁰ and the unlawful conduct herein found are significant factors in determining whether Porter's termination was unlawful, I am not persuaded he was discriminatorily terminated. Having found that the initial decision to remove him from his job as day technician was not discriminatorily motivated and the delay in implementing the decision was reasonably explained by the cancellation of the anticipated plant expansion plans, I find it significant that Respondent, rather than terminating Porter, offered him other jobs which he declined not only for reasons unknown to Respondent but which were substantially refuted by the evidence. Contrary to Porter's assertion he had declined the jobs offered because of an inability to perform continuous lifting, an examination of his employment applications and employment physical examination disclosed no such disability and Porter's duties as day technician had involved lifting heavy objects. Under these circumstances, I find that the General Counsel has not proven by a preponderance of the evidence as is his burden that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging and denying Porter reinstatement or that it forced him to quit his employment because he had engaged in union or protected concerted activities.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, found to constitute unfair labor practices occurring in connection with the operations of Respondent described in section I, 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.

CONCLUSIONS OF LAW

1. Abitibi Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. International Woodworkers of America, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.
3. By coercively interrogating an employee concerning his union activities, and by threatening to discharge employees for their having engaged in union activities, Respondent has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act and has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act.

¹⁹ Two of Porter's four brothers lived less than a mile from their mother and the other two brothers resided less than 10 miles from her.

²⁰ An employer's union animus can be established by reliance upon its

prior unfair labor practices. *Southwire Company*, 159 NLRB 394, *enfd.* as modified 383 F.2d 235 (C.A. 5, 1967).

4. Respondent did not violate Section 8(a)(3) and (1) of the Act by discriminatorily discharging and refusing to reinstate Clayton Porter as alleged.

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

THE REMEDY

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

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

ORDER ²¹

Abitibi Corporation, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interfering with, restraining, or coercing its employees by coercively interrogating them concerning their union activities and by threatening them with loss of their jobs for engaging in union activities.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist the International Woodworkers of America, AFL-CIO-CLC, or any other labor organization, to bargain collectively through representatives of their own choosing or to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the National Labor Relations Act, as amended, or to refrain from any or all such activities.

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

(a) Post at its place of business located at Roaring River, North Carolina, copies of the attached notice marked "Appendix."²² Copies of said notice, on forms provided by the Regional Director for Region 11, after being duly signed by an authorized representative of the Respondent, shall be posted by the Respondent immediately upon receipt thereof, and maintained by it for 60 consecutive

days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Respondent shall take reasonable steps to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 11, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

IT IS FURTHER ORDERED that the complaint, as amended, be and it hereby is, dismissed insofar as it alleged unfair labor practices not specifically found herein.

²¹ In the event no exceptions are filed as provided in 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.

²² In the event the Board's Order is enforced by a Judgment of the 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 coercively interrogate our employees concerning their union activities.

WE WILL NOT threaten our employees with discharge for engaging in union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist the International Woodworkers of America, AFL-CIO-CLC, or any other labor organization, 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 or all such activities.

ABITIBI CORPORATION