

Yellow Freight System, Inc and Anna Allen Case 10-
CA-11302

June 18, 1976

DECISION AND ORDER

BY MEMBERS FANNING, PENELLO, AND WALTHER

On January 28, 1976, Administrative Law Judge Benjamin B Lipton issued the attached Decision in this proceeding. Thereafter, 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.

The Administrative Law Judge found that Respondent discharged employee Anna Allen in violation of Section 8(a)(3) and that certain statements made to her violated Section 8(a)(1). We disagree with both these findings.

Not long after the new branch manager, McClure, assumed his duties, he enforced an established company rule prohibiting the employment of individuals related to each other at the same terminal. Anna Allen knew that McClure's decision would cause her daughter to be terminated and unsuccessfully attempted to dissuade him from that action. Her daughter having been discharged, Anna Allen began to complain to other employees that she was disillusioned by what she called McClure's unjustified action. Her attitude toward other terminal employees and McClure, about whom she had previously been complimentary, changed. Among other things, she continually complained to other employees about McClure's work as branch manager, said he was not working out as the Company had planned, and warned employees and certain people she believed were friendly to him not to trust him. She told one employee, who apparently was her daughter's replacement, that everyone in the office resented her and that her job was in jeopardy, and made uncomplimentary comments to others suggesting that this particular person had a "relationship going on" with another office employee. On several occasions, it was repeated to McClure, she called Respondent's black clerical employees to tell them that McClure was prejudiced against them and that she had heard him saying as much, she warned them that his prejudice

might jeopardize their jobs and suggested to one of them that membership in a union might give needed protection.

As indicated, concerned employees approached Branch Manager McClure and related Allen's remarks to him. Some of them considered her conduct as harassing, were upset by it, and made plain their desire that Allen stop bothering them. Some sought specific reassurances from McClure that their jobs were not in jeopardy as Allen had told them. McClure, having no supervisory authority over Allen, reported these incidents to Division Manager Powell, who eventually ordered that Allen be discharged because she was creating problems.

On June 11, 1975, Powell himself told Allen that she was discharged. When Allen requested a letter stating the reasons for her dismissal, Powell ordered the preparation of such a letter. As directed by Powell, McClure explained to Cowles, vice president in charge of sales for whom Allen worked as secretary, what the letter should recite. He told Cowles that "she's been calling the black employees here, telling them I hated them, that I'm going to discharge them, and that they better join the union to protect themselves from me." As the letter was prepared by Cowles, it read "I have been advised by Mr McClure that you have called office employees of Yellow Freight System asking them to join the union and that you have advised at least two of our black employees that Mr McClure hates blacks and was going to fire them. It is therefore necessary to terminate your employment as of this date."

The Administrative Law Judge found that grounds stated in this letter "formed the essential basis of its decision to discharge" Allen and that the discharge was motivated in whole or in substantial part by Respondent's knowledge that Allen engaged in union activities. We have already noted our disagreement with the Administrative Law Judge.

If Respondent discharged Allen because of the reports it had received concerning the abusive and derogatory remarks made by her about McClure, the discharge was plainly for cause and not unlawfully motivated. We believe that this was the reason for the discharge. In essence, this was the reason given Cowles by McClure for inclusion in the letter requested by Allen. McClure's reference to Allen's urging union membership as a protection against McClure's alleged racial bias was, in our view, simply to underscore the aggravated nature of the racial charges made by Allen. We think it reasonable to conclude that it was not asserted as a separate and independent basis for the action taken against Allen. Nor, in the circumstances, do we view any differently the message which the letter prepared by Cowles was

intended to convey We note here the absence of evidence of union organization by the employees or of a showing of union animus on Respondent's part

We disagree, too, with the Administrative Law Judge's finding that remarks made to Anna Allen on May 22, 1975, violated Section 8(a)(1) because they predicated Respondent's decision to discharge Melanie Allen, daughter of Anna, and Betty Hildebrand, sister of employee Mary Biser, upon the factor "in significant part" that the office employees were contemplating joining or were joining a union

Respondent has a nepotism rule which prohibits employment in the same terminal of two or more employees who are related to each other Powell ordered Cowles to discharge Melanie Allen and Hildebrand upon report from McClure of the employees' reaction to their retention Powell told Cowles that Anna Allen's daughter was working "casual" and other employees were complaining that they were either laid off or not working full time and they felt that she should not have the job or that they should have one of the jobs filled by Melanie Allen and Hildebrand¹

Cowles, in turn, told Anna Allen that Powell had called to tell him that McClure said that "there were six office employees who either had signed or were considering signing union cards because there were two casual employees who were also relatives of permanent employees, and that these office employees were afraid in case of a layoff, that they would be laid off rather than these casual employees"

Viewed in isolation and read literally, this version by Cowles of what Powell reported was said by McClure may lend itself to an interpretation that Union considerations motivated the discharge of Melanie Allen and Hildebrand But a complete and accurate understanding of it must take into account the context in which Cowles' statement was made When it is, a message reasonably conveyed is that Respondent's discharge of Melanie Allen and Hildebrand was influenced by the legitimate economic concerns of the employees² The attendant circumstances which provide the proper backdrop for evaluating Cowles' statement are the hearsay character of Cowles' remarks, the existence of a nepotism rule which did require the discharge of Melanie Allen and Hildebrand, the fact that the retention of Melanie Allen and Hildebrand was deemed by the permanent employees to be prejudicial to them, that these justifiable concerns were voiced by the employees to Re-

spondent, and the nonexistence of any union movement which might be of concern to Respondent, all this to the knowledge of Anna Allen Given these circumstances, and the fact that Cowles' remarks were made on a single occasion only to Anna Allen, we are not persuaded that Respondent should be held in violation of the Act on the basis of Cowles' remarks alone

Accordingly, we shall dismiss the complaint

ORDER

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

MEMBER FANNING, dissenting

I disagree with the majority's conclusion that Respondent did not violate Section 8(a)(3) and (1) and that the complaint should be dismissed

My colleagues have ignored the clear record evidence, that union sentiment was growing among office employees McClure himself testified that after assuming his new duties as branch manager in February 1975 he was approached by Teamsters officials who told him that they had previously represented the office employees and considered the 1972 contract with the previous owner still in effect

Respondent was also aware that several office employees, dissatisfied with recall for part-time work when "casual" clericals like Allen's daughter were working full time, had made known their desire to sign union cards At different times, both Cowles and McClure told Anna Allen that the sudden decision to follow a previously unenforced company rule against relatives working at the same terminal was to quell the complaints of these potential union supporters The Administrative Law Judge found, and I agree, that these May 22 statements of Cowles and McClure tended to discourage union membership among Respondent's office employees, thus violating Section 8(a)(1) The characterization of these remarks as isolated comments made only to Allen ignores the fact that the issue of discharge of relatives to discourage employee unrest and de-stimulate interest in unionization was kept alive by Allen who complained to office employees that her daughter's discharge was unjustified and attempted to discover which employees had expressed interest in the Union, thus leading to the discharge

I am simply unpersuaded, particularly so against this backdrop, by Respondent's attempt to excuse as a mere inaccuracy its blatant reference in the discharge letter to Allen's having "called office employees of Yellow Freight System asking them to join the

¹ Early in 1975 certain permanent employees were laid off and some recalled were working part time

² Significantly no claim is made herein that the discharges were otherwise motivated

union ” Outside the terminal on the day after her discharge and in response to Allen’s demand to know why she was fired, McClure specifically questioned Allen only about the discussions in which she urged employees to join the Union and, inside the office a few moments later, when discussing the letter with Cowles, he once again referred only to these same conversations

I find it difficult to believe that my colleagues can reach the conclusion that Cowles, a senior official in Respondent’s organization and Allen’s immediate supervisor, mistakenly included her encouragement of others to join the Union in the letter, or that such encouragement by her was not a consideration in her discharge. As Cowles testified, on that very morning before writing the letter he met with Powell, who had directed Allen’s discharge, and Branch Manager McClure, and was told by them why Allen (his own secretary) had been discharged by them. The matter was obviously fresh in Cowles’ mind when he wrote the discharge letter requested by Allen. The letter speaks for itself.

I would adopt the Administrative Law Judge’s conclusions that Respondent violated Section 8(a)(3) and (1).

DECISION

STATEMENT OF THE CASE

BENJAMIN B LIPTON, Administrative Law Judge. On September 3, 1975,¹ this case was heard in Atlanta, Georgia, upon a complaint by the General Counsel² alleging certain independent violations of Section 8(a)(1) and the discharge of Anna Allen in violation of Section 8(a)(3) of the Act.

Upon the entire record, with due consideration of the posthearing briefs filed by General Counsel and Respondent, and from my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I JURISDICTION

Respondent maintains an office and freight terminal in Marietta, Georgia, where it is engaged in the interstate transportation of freight by motor carrier. The Marietta terminal, which houses personnel of Respondent’s Atlanta Branch, is the sole facility involved in this proceeding. During the year preceding the issuance of the complaint, Respondent provided freight services valued in excess of \$50,000 directly to customers located outside the State of Georgia. Respondent admits, and I find, that it is engaged in commerce within the meaning of the Act.

¹ All dates are in 1975 unless otherwise shown.

² The charge was filed and served by registered mail on June 16 and the complaint thereon issued on July 29.

II THE LABOR ORGANIZATION INVOLVED

Teamsters Local Union No 728, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, herein called the Union, is a labor organization within the meaning of the Act.

III THE UNFAIR LABOR PRACTICES

A Introduction

Anna Allen, the Charging Party, was employed as secretary to Robert Cowles at the Marietta terminal for a period of 3 years until her discharge on June 11. Until April, Cowles was vice president and division manager in charge of operations and sales in Respondent’s Southeastern Division, and in this capacity he exercised direct authority over the personnel in the Atlanta Branch and the Marietta terminal. In April, Cowles’ position was changed to that of vice president of sales, entailing no authority over operations and no supervision over terminal personnel other than his own secretary, Allen. At the same time, the position and responsibilities previously held by Cowles were “basically assumed” by George Powell III operating from Respondent’s headquarters in Kansas City, Missouri. Since February, Jack McClure was employed by Respondent at the terminal as branch manager, having certain authority over sales and operations in the Atlanta Branch, including immediate supervision of all office clericals in the terminal—except Cowles’ secretary, Allen. The work of Cowles and Allen related to that of McClure only “in a staff capacity.” It is apparent that until the reorganization in April, McClure was under the authority of Cowles. Since April, Cowles and McClure were both responsible to Powell.

The Union represents drivers and dock workers of Respondent at the Atlanta Branch. McClure testified that the subject of a union drive involving the office clerical employees at the terminal came to his attention while he was employed there. On an undisclosed date, two officials of the Union came to the terminal and told him “this was a union office,” claiming that when Respondent purchased the Adley (Company) in 1972, it assumed the union contract in effect with Adley covering office clerical employees. McClure responded that this was a matter to be determined by someone other than himself, and that his position at the moment was that no union represented the local office crew in Atlanta.

B Section 8(a)(1)

Early in 1975, certain permanent office employees were laid off at the terminal. Among those later recalled, some were working part time. Also employed were two clericals referred to as “casual” employees. One was Betty Hildebrand, the sister of a permanent employee, Mary Biser. The other was Anna Allen’s daughter, Melanie Allen, who “was a permanent in the sense that she worked full time forty hours every week,” at least during the time McClure was there, as he testified. Respondent’s testimony indicates the existence of a nepotism rule prohibiting em-

ployment in the same terminal of two or more employees who were related to each other³ Cowles testified that, shortly before May 22, Powell called to tell him that Anna Allen's daughter "was working casual, and other employees were complaining that they were either laid off or were not working full time, and they felt that she shouldn't have the job, or that they should have one of those jobs" Powell "instructed" Cowles that Melanie would have to be discharged, since she was related to Anna⁴ Anna Allen testified that, on May 22, Cowles spoke to her in the terminal office He said Powell had called and told him that McClure said—"There were six office employees who either had signed or were considering signing union cards because there were two casual employees who were also relatives of permanent employees, and that these office employees were afraid, in case of a layoff, that they would be laid off rather than these casual employees [i.e., her daughter Melanie, and Betty Hildebrand]"⁵ Cowles also told her in the same conversation that some office employees resented her having special privileges and that he was instructed to speak to her about that, the only thing mentioned was that she had parked in his parking space while he was out of town

Thereafter, on the same date, Allen went into Branch Manager McClure's office She told him the "allegations" concerned both her daughter and herself and asked that he inform her before firing Melanie, because Melanie needs her job while she (Anna) has some other income McClure said, "I am sick because I have caused this thing I did have the report about the union sentiment, and I have reported it I was told by George Powell, III, to let both Melanie and Betty Hildebrand go today, but that I am so upset over it that I'm thinking about resigning myself" Allen responded, "if the union talk were current and accurate," she felt she had done the right thing, "but if it were just some old gossip," she felt like she "had been kicked in the teeth in the thing"⁶ McClure testified that he discharged Melanie Allen on May 23, on the basis of the "operation manual" requirement that relatives may not be employed in the same terminal

Conclusions

Respondent was aware for a substantial period that the two clericals, having "casual" status, are relatives of "permanent" employees at the terminal Nothing was done concerning the ostensible breach of the nepotism rule until McClure and Powell received the reports of complaints from office employees that Respondent's retention of the casual employees was affecting their job security and they had signed or were considering signing union cards The

³ No manual or other document in evidence describing this rule was introduced

⁴ That Powell would call Cowles instructing Melanie Allen's discharge does not appear to reconcile with Respondent's evidence that Cowles' duties at this time did not encompass supervision of the terminal clericals

⁵ This testimony is not controverted by Cowles and is credited

⁶ McClure denied there was any discussion of the Union He thought in this conversation she had brought up the subject of special privileges i.e., her parking in Cowles' place To the extent of conflict with Anna Allen's version as shown she is credited

statements made by Cowles and McClure to Anna Allen, on May 22, predicated the decision to discharge Melanie Allen and Betty Hildebrand on the factor, in significant part, that the protesting office employees contemplated or were joining the Union Accordingly, I find these statements plainly had the tendency of discouraging union membership among Respondent's office clericals and thereby violated Section 8(a)(1), as alleged

C Section 8(a)(3)

Testimony was adduced that, following the discharge of her daughter, statements were made by Anna Allen to Ann Lewis, Carolyn Hines, and Marie Dempsey, in telephone calls to their respective homes, and to Lewis and Hines during a luncheon they had with Anna and Melanie Allen, that Lewis, Hines, and Dempsey informed Branch Manager McClure of these conversations, and that McClure in turn conveyed such information to Vice President Powell

Lewis, a black office clerical, testified that Anna Allen told her, among other things, "how prejudiced" [McClure] was, "how he really didn't like blacks If I were you

maybe I would think about the union to protect my job and your job stuff like that" When she related these statements to McClure, he said—"There is some prejudice in everybody, even me, even you, but it's nothing like that I never worked around blacks before"

Dempsey testified, *inter alia*, that Allen "blamed" her for reporting to McClure and "telling him things" Allen said, "I hear that you are telling Mr McClure that there's a union trying to get started in the office" Allen also asked Dempsey, "Who are these people that's complaining about the union?"—and was not answered

Hines, a black office clerical, testified that Allen told her, among other things, that "McClure is prejudiced, that he does not like blacks" and that McClure told Allen and Cowles that he was "going to have to watch himself with them because he had never dealt with them before" Hines overheard Allen talking to certain dock workers during a break,—telling them that "things weren't working out around there like they hoped with McClure," and that she knows "some of you have had some problems with McClure also" And a black dock employee informed her he was told by Allen that McClure was prejudiced, that he wasn't running the operations, and that Cowles and other officials were "very unhappy" with him Allen also said that, if it were up to McClure, she (Hines) would not be working that switchboard now, because he was prejudiced and wanted Dempsey in that job When she informed McClure, he said that he had never dealt with blacks before, and was going to have to be tactful", that he "did tell them [Allen and Cowles] that," but he did not say he would be prejudiced He explained that—"All of us have a little prejudice, and it's something you can't help"

McClure testified concerning the reports he received As to Dempsey, he did not indicate anything was said regarding the Union Lewis related to him that Allen told her he "hated blacks" and was "going to get rid of them," and that "they better join a union, or better go along with her to protect themselves" from him As to Hines, McClure recited virtually the identical statements that he did regard-

ing Lewis⁷ There were recurring conversations with Lewis and Hines, "telling him essentially the same thing over and over" Hines also brought to his attention that Allen had talked to dock employees—hearsay information which Hines had obtained from the latter Allen purportedly told the dock employees that he (McClure) was "not to be trusted," he "didn't like blacks," and "at the first opportunity [he] would do them in"⁸ He communicated to Powell all of the complaints he received from these employees⁹

Vice President Cowles testified that, about May 28, Vice President Powell called and told him that Allen had been interfering with the local office, that she had been enjoying special privileges, and that he should speak to her Thereafter, he asked Allen not to park in his parking place, and "Whatever these small things were, and if she was creating a disturbance in the office, whatever it was, not to do it any more, because the people were complaining" Allen responded that she was not doing these things, except the parking, that she would not park there any more, and that she was not "interfering in the context that they said she was" Testifying, he "had to accept that," and he "assumed that everything was all right"¹⁰ He was never told specifically in any conversation with Powell exactly what Allen had done wrong, other than he has indicated in his testimony On June 10, Powell called him in Birmingham, Alabama, instructing him to discharge Allen because she was "still creating problems" He rode back and met Allen after working hours He told her the only reason given to him for her discharge was that she was creating "an office disturbance" She said he was not going to discharge her while she was off duty, she was coming in in the morning, and they would have to tell her what she did and give her a letter with reasons for her discharge

In the morning on June 11, Allen was met in the parking lot by Powell, Cowles, and McClure Powell told her she was fired and could not go into the terminal She wanted to know why, as she had not been given any reason Powell told McClure to discuss this with her McClure testified that he asked her—"Did you advise the black employees that I hated them and that they should join the union to protect their jobs from me?"¹¹ And she answered, "No" He turned to Powell and said, "I see no sense in furthering this discussion" Allen requested a letter stating the reasons for dismissal Powell asked Cowles to write the letter Cowles said he didn't know any reason to let her go Powell instructed McClure to tell Cowles what to put into the letter Cowles and McClure went into the terminal, while Powell stayed in the parking lot with Allen Powell told her she had been an excellent employee, he did not know what happened, he did not understand, and he "had to take the word of the official of his company"¹² McClure testified

that, inside the terminal, he told Cowles—"she's been calling the black employees here, telling them I hated them, that I'm going to discharge them, and that they better join the union to protect themselves from me" Cowles testified he typed the letter, putting in what McClure had told him, he had McClure "review" the letter, he then signed it and proceeded to give it to Allen¹³ The letter states as follows

I have been advised by Mr McClure that you have called office employees of Yellow Freight System asking them to join the union and that you have advised at least two of our black employees that Mr McClure hates blacks and was going to fire them It is therefore necessary to terminate your employment as of this date

The foregoing evidence stemming principally from Respondent's witnesses, as well as the 8(a)(1) statements of Respondent earlier found, is sufficient in this record to warrant the finding that the grounds stated in Respondent's letter to Anna Allen formed the essential basis of its decision to discharge her Whether Allen actually engaged in union activities is not prerequisite for a violation, since it is clear in any event that Respondent believed that she did

In rebuttal, Allen specifically denied that she ever told any employee that McClure hated blacks, that they would lose their jobs, or that McClure was "setting them up" to lose their jobs However, there was no attempt on her part to deny the statements concerning the Union attributed to her by Lewis and Dempsey On June 11, when McClure asked her if she advised the black employees that he hated them and they should join the Union to protect their jobs, she replied to him in the negative, as she testified There is no allegation here of unlawful interrogation, and I do not take her response to such a question as an attestation of the truth In Allen's testimony, *inter alia*, she indicated she participated in a discussion concerning the Union with a couple of employees, but she did not bring up the subject, after Betty Hildebrand had been discharged, Allen called her sister, Mary Biser, to ask if Betty would want to join the Union, and she obtained from the Union three authorization cards, which she actually used only for purposes of her daughter, Melanie after the latter's discharge

Concerning Respondent's flat assertion that Allen was employed as a confidential employee at the time of her discharge, suffice it that this defense is devoid of any support¹⁴

The other reason given Allen was that she told two black employees that McClure hates blacks and was going to fire

¹² Powell did not testify

¹³ McClure testified that Cowles handed him the letter and asked "Is this what happened?" He perused the letter and answered "Yeah McClure's further testimony that he really didn't even read the letter is not credited It may be noted that although Cowles was the direct supervisor of Allen the discharge was ordered by Powell purportedly relying on the word of McClure who Respondent contends had no authority over Allen Thus in effect Cowles merely performed a mechanical act in signing the discharge letter

¹⁴ Confidential employees for purposes of the Act are those assigned to officials who formulate, determine, and effectuate management policies regarding labor relations. E.g. *Empire Mutual Insurance Company* 195 NLRB 284 (1972)

⁷ It may be noted that Hines did not testify that Allen said anything to her concerning the Union

⁸ Sharply in conflict with Hines testimony

⁹ There is no indication that McClure attempted to discuss them with Allen's immediate superior Vice President Cowles who was regularly there at the terminal

¹⁰ I do not find that this conversation constituted a warning to Allen as Respondent argues

¹¹ Allen testified that McClure asked her if she had been calling employees asking them to join the Union

them¹⁵ Allen specifically denied the charge in answer to a blanket question by McClure on June 11, and in her rebuttal testimony. Before his decision to discharge Allen, Respondent made no attempt to inform Allen of the substance of this complaint about her, and others, or to ascertain her version in these matters. And it undertook no semblance of a reasonable investigation of any charge against her which was being seriously considered by management. On the subject of the black employees, I am inclined to credit the testimony of Allen. In the present case there is substantial evidence that Respondent was opposed to union organization of the office clericals in the Marietta terminal, and that this was a major motivating factor in its determination to discharge Allen.¹⁶

It is my opinion on this record that a more summary disposition may be made of the numerous other grounds assertedly relied on by Respondent to justify Allen's discharge. At the hearing, Respondent disregarded repeated cautions against exploratory expeditions, and instructions that it could adduce only matters which it knew in advance and relied on as reasons for the discharge. Throughout, it sought to dredge up any conceivable criticism of Allen as contributing to its defense. I find as pretextuous all of these further grounds, principally in the form of alleged statements of Allen conveyed to McClure, such as the following: That Marie Dempsey and Billy McRae had a "relationship" going on, that employee Earl Reagan was not to be trusted because he would "tell McClure things", that Melanie's firing was unnecessary and unjust, that Allen praised McClure shortly after he came, but was critical of him after Melanie's discharge, that the Company was not happy with McClure, that Allen was parking in Cowles' parking space while he was out of town, that Allen threatened Dempsey's job, and that everyone in the office resented Dempsey just like she (Allen) was resented when she was first employed, that Allen told a dock foreman to put a rug down near the door because the floors were dirty and Cowles would not like it, and in general that Allen was "creating a disturbance in the office."

Accordingly, it is concluded upon on the evidence that, in discharging Allen, Respondent was motivated, in whole or substantial part, by its knowledge or belief that she engaged in union activities, and by its desire to discourage union membership among its office clericals.¹⁷ Therefore, the violation of Section 8(a)(3) is found.

¹⁵ This is not actually the testimony of Lewis and Hines *supra*. Respondent also relies on McClure's inaccurate account of Hines' report to him concerning Allen's conversations with the dock workers *supra*.

¹⁶ Cf. *Texberry Container Corporation* 217 NLRB 58 (1975). Here it is explicitly shown with an ample supportive background that considerations of Allen's union activity known or believed by Respondent were directly involved in Respondent's decision.

¹⁷ See e.g. *Sweeney & Company Inc v NLRB* 437 F.2d 1127 1133 (CA 5 1971); *Singer Company v NLRB* 429 F.2d 172 179 (CA 8 1970); *United States Rubber Company v NLRB* 384 F.2d 660 663 (CA 5 1967).

IV THE REMEDY

Having found that Respondent engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. A broad cease-and-desist order appears warranted, particularly by reason of the discriminatory discharge which goes "to the very heart of the Act."¹⁸

It has been found that Respondent discharged Anna Allen in violation of Section 8(a)(3). It will be recommended that Respondent offer Allen immediate and full reinstatement to her former job or, if such job no longer exists, to a substantially equivalent job, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of earnings suffered by reason of the discrimination against her, by payment to her of a sum equal to that which she normally would have earned, absent the discrimination, less net earnings during such period, with backpay computed on a quarterly basis in the manner established in *F W Woolworth Company*, 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 (1962). It will be further 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 amounts of backpay due and the rights of reinstatement under the terms of these recommendations.

Upon the foregoing findings of fact, and upon the entire record, I make the following

CONCLUSIONS OF LAW

- 1 Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
- 2 The Union is a labor organization within the meaning of Section 2(5) of the Act.
- 3 By discharging Anna Allen, thereby discouraging membership in the Union, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.
- 4 By the foregoing, and by other acts and conduct interfering with, restraining, and coercing employees in the exercise of their rights guaranteed in Section 7 of the Act, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
- 5 The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]

¹⁸ *NLRB v Express Publishing Company* 312 U.S. 426 (1941); *NLRB v Entwistle Mfg Co.* 120 F.2d 532 (CA 4 1941).