Allied Erecting and Dismantling Company, Inc. *and* **Kenneth W. Collins, Jr.** Cases 8–CA–14045 and 8–CA–14234

30 April 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

On 8 January 1982 Administrative Law Judge Philip P. McLeod issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions only to the extent consistent with this Decision and Order.

The judge found that the Respondent violated Section 8(a)(1) of the Act by laying off/terminating Kenneth W. Collins Jr., because he engaged in protected concerted activities.[2] We disagree with that finding.

The facts, as more fully set forth by the judge, are as follows. In May 1980, a day or two after receiving a union membership card from the Respondent,[3] Collins approached the Respondent's president, Ramun, and asked for a raise. In response, Ramun merely laughed and walked away. In that conversation, Collins made no reference to a union contract, and there is no indication that he asked for a raise for any employee other than himself. Around the same time, Collins and his fellow employees at the Republic Steel jobsite began talking among themselves about the fact that, although they were now union members, they still were receiving the same hourly wage. According to Collins, they had more than one discussion on the subject, but there was no "definite meeting."

About a week later, 20 May, Collins went alone to the engineering trailer to visit Republic Steel's project engineer, Serback. Collins testified that he was not sure whether he told any of the other employees that he was going to see Serback. Collins asked Serback whether the contractors and employees on the project were covered by a contract. Serback responded that they were and showed Collins a copy of a contract.[4] Collins then asked Serback if he knew that the Respondent's employees were not being paid union scale. Serback responded that he did not know that, but he would check into it. Later that day, Collins returned to the jobsite and spoke to his supervisor, Anzevino. According to Collins, whom the judge credited, Anzevino stated that Ramun was angry because Collins had spoken to Serback about pay and that Collins should get off the property. Collins then asked if he was fired, to which Anzevino responded no, he was laid off.

The judge found that, although Collins' early May request for a raise was made solely on his own behalf and therefore was not concerted in nature, the subsequent discussions among employees regarding the possibility of being covered by a union contract were clearly in the nature of protected concerted activities. The judge further found that Collins' effort to obtain information from Serback about such a contract was "a mere extension of that activity," and "was itself in furtherance of an interest common to all the truckdrivers," and therefore was protected by the Act.

The judge further found that the Respondent had knowledge that Collins had spoken to Serback. The judge relied on Anzevino's testimony that Serback had called to inform him that Collins had come in to discuss "wages and so forth." The judge also relied on Anzevino's failure to deny Collins' credited testimony that Anzevino told him that Ramun was angry that he had gone to Serback. Based on that credited testimony, the judge found that the Respondent was upset that Collins had contacted another employer to inquire about the wage rates the Respondent was supposed to be paying its employees, and he concluded that the Respondent "laid off/terminated" Collins because of such activities in violation of Section 8(a)(1).[5]

Recently, in *Meyers Industries*,[6] we held: "In general, to find an employee's activity to be 'concerted,' we shall require that it be engaged in with or on the authority of other employees, and not solely by or on behalf of the employee himself."

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] No exceptions were filed to the judge's failure to find that Collins' termination also violated Sec. 8(a)(3) of the Act.

[3] The judge found, and we agree, that the Respondent violated Sec. 8(a)(1) and (2) of the Act by paying employees' initiation fees and dues to the Union, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 377, without the employees' having expressed any desire to be represented by the Union and having authorized such payments on their behalf.

[4] No project agreement or any other contract, such as a collective-bargaining agreement between the Respondent and the Union, was introduced into evidence.

[5] The judge rejected as pretextual the Respondent's defense that Collins was discharged for having violated a work rule prohibiting the Respondent's employees from going to the Republic Steel engineering trailer. The judge found that no such rule existed.

[6] 268 NLRB 493, 497 (1984).

The Board also emphasized in *Meyers Industries* that cases of this kind will turn on their particular facts.

Applying the foregoing standard to the instant case, we find that the record does not support a finding that the activity for which Collins was discharged—visiting Serback—was concerted. It is undisputed that Collins went by himself to Serback's trailer, and there is no evidence that the employees in any way supported Collins' visit to Serback. In these circumstances, we cannot find that Collins acted "with or on the authority of other employees, and not solely by or on behalf of" himself. Accordingly, we find that Collins did not engage in concerted activity under *Meyers Industries*. We therefore conclude that the Respondent did not lay off or terminate Collins in violation of Section 8(a)(1).

ORDER

The National Labor Relations Board orders that the Respondent, Allied Erecting and Dismantling Company, Inc., Youngstown, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Paying employees' initiation fees and dues directly to International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 377, when such employees have not expressed any desire or intent to be represented by said Union and without employees' authorizing such payments on their behalf.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed them by Section 7 of the Act.

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

(a) Post at its facility located in Youngstown, Ohio, and at any jobsites which it may have in and around Youngstown and Warren, Ohio, including its Republic Steel jobsite, if such still exists, copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT pay employees' initiation fees and dues directly to International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 377, when employees have not expressed any desire or intent to be represented by said Union and without employees' authorizing such payment on their behalf.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

ALLIED ERECTING AND DISMANTLING COMPANY, INC.

DECISION

STATEMENT OF THE CASE

PHILIP P. MCLEOD, Administrative Law Judge. On July 22, 1980,[1] a charge was filed in Case 8-CA-14045 by Kenneth W. Collins Jr. against Allied Erecting and Dismantling Company, Inc., herein called Respondent. That charge was amended on September 4, and a complaint and notice of hearing issued in that case on September 5, 1980. A charge was filed in Case 8-CA-14234 on September 22. On November 7, the Regional Director for Region 8 issued an order consolidating cases, consolidated complaint and notice of consolidated hearing.[2]

[7] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[1] Unless otherwise indicated, all dates herein refer to 1980.

[2] The order consolidating cases dated November 7 consolidated the above-captioned cases as well as Case 8-CB-4294 filed by the Charging

Continued

The consolidated complaints alleged violations by Respondent of Section 8(a)(1), (2), and (3) and Section 2(6) and (7) of the National Labor Relations Act, herein called the Act. In its answer and amended answer, Respondent denies the commission of any unfair labor practices.

A trial was held before me in Youngstown, Ohio, on May 11 and 12, 1981, at which the General Counsel and Respondent were represented by counsel and all parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Thereafter, the General Counsel and Respondent filed briefs which have been duly considered.

On the entire record in this case, and from my observation of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, an Ohio corporation, with offices and a facility located in Youngstown, Ohio, is engaged in providing commercial demolition services. In the course and conduct of its business operations, Respondent annually provides services valued in excess of $50,000 to other enterprises located within the State of Ohio, including Republic Steel Corporation, which are themselves engaged directly in interstate commerce. Respondent admits it is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATION

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 377, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Allegations and Issues*

The complaints allege that Respondent violated Section 8(a)(1) and (2) of the Act by paying employees' initiation fees and dues to International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 377, herein called Teamsters Local 377 or the Union, notwithstanding the fact that employees had not authorized such payments. The complaints further allege that Respondent violated Section 8(a)(1) and (3) of the Act by laying off and/or terminating Kenneth W. Collins on May 20, 1980, because Collins had, or Respondent believed he had, engaged in union and/or protected concerted activity.

In its answers, Respondent denies having engaged in any act which might constitute any unfair labor pracitce.

Party herein against International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 377. By Order dated December 30, Case 8–CB–4294 was severed from the remaining cases because Respondent Union agreed to enter into a settlement agreement.

B. *Payment of Initiation Fees and Dues*

During the time at issue in this case, Respondent had several contracts with Republic Steel Corporation to perform heavy industrial dismantling work at its plant in Warren, Ohio. Part of its contract with Republic Steel Corporation called for Respondent to dismantle a boilerhouse. Near the boilerhouse, a blast furnace was being rebuilt by employees of another employer who were represented by Teamsters Local 377.

In May 1980, some of Respondent's employees reported to Corporate President John Ramun that they were being harassed by members of Teamsters Local 377 working at the blast furnace because Respondent's employees were nonunion. More than one of Respondent's employees reported having been threatened with physical violence. As a result, Ramun telephoned representatives of the Union. Ramun was told that his employees would have "to have a card to get in and off that job." Ramun testified that as a result of the telephone conversation, he held a meeting with all employees and asked them what, if anything, they wanted to do about joining the Union.[3] Ramun admits that during the meeting with employees, employees expressed to him "they would rather be unemployed than come up with the initiation fees and dues." There is no evidence that any employee expressed a desire to be represented by the Union.

Following the meeting with employees, in order to avoid further confrontation, Ramun informed his office staff to pay the initiation fees and dues to Teamsters Local 377 on behalf of employees. Consequently, Respondent paid initiation fees and dues to the Union on behalf of all six employees who were then working at the Republic Steel facility. Respondent did not deduct the initiation fees or dues from employees' pay.

C. *The Layoff and/or Termination of Collins*

Collins, hired by Respondent on November 20, 1979, as a truckdriver, was one of the individuals on whose behalf Respondent paid initiation fees and dues to Teamsters Local 377 in May 1980. Collins, whom I credit, testified that a day or two after receiving the membership card from the Union, he approached Ramun individually and asked Ramun for a raise. Ramun simply laughed and walked away. There is no indication that in the conversation with Ramun, Collins referred to or made any inquiry about a union contract. Further, there is no indication that Collins asked for the raise for anyone other than himself.

Following the conversation with Ramun, Collins and the other truckdrivers began to discuss amongst themselves the fact that they were now members of Teamsters Local 377 but were still receiving the same hourly wage rate they had previously been receiving. I credit Collins that several conversations occurred regarding that subject between the time of his conversation with Ramun and May 20.

[3] The General Counsel called only one employee witness to testify that he did not attend this meeting, and I find such testimony insufficient to establish that the meeting did not occur. Consequently, I credit Ramun's account of the meeting with employees.

On May 20, Collins and other employees reported to work at the usual time. Supervisor Ron Anzevino approached Collins and employees Paul Ryhal and Anthony Daviduck in the parking lot and informed them that he did not need all of the drivers that day. Collins volunteered to take the day off, and Anzevino agreed. Collins then left the work area and went to a construction trailer where Republic Steel project engineer Dick Serback maintained an office. Serback was the individual who on behalf of Republic Steel oversaw the operations of several contractors engaged in extensive demolition and reconstruction work at its Warren facility. Collins asked Serback if the contractors and employees on the project were covered by a contract with any union. Serback said they were and showed Collins a copy of the contract. Collins then asked Serback if he knew that Respondent's employees were not paid union scale. Serback said he was not aware of that fact but would check into it. Collins then left the construction trailer and the jobsite. Later in the day, Collins returned to the jobsite and spoke to Anzevino. Collins, whom I credit, testified Anzevino told Collins that Ramun was mad because Collins had spoken to Serback about pay and that Collins was to get off the property. Collins asked Anzevino if he was fired. Anzevino replied no, that Collins was laid off. Collins then left.

Between May 20 and 27, Collins heard nothing from Respondent about being recalled. Consequently, on either May 27 or 29, Collins contacted Richard Dussman, a union steward for Teamsters Local 377 at the Republic Steel construction jobsite. Collins filled out grievance forms regarding the wage rate paid to him and his layoff/termination. These grievances were referred to union business agent Sammarone who spoke to Ramun. As a result of Sammarone's conversation with Ramun, Ramun agreed to recall/rehire Collins, and Ramun told Sammarone to tell Collins "he was welcome to come back to work." It appears that Sammarone spoke to Dussman because it was Dussman who telephoned Collins and told Collins to report back to work, which Collins did on the morning of June 10.

When Collins reported to work on June 10 at the regular starting time, Supervisor Anzevino told Collins that he was to drive the truck known as the "autocar tandum."[4] Collins told Anzevino that that truck was unsafe and he would not drive it. I credit Collins that Anzevino then said that Collins was to drive the truck and no other truck by order of John Ramun himself. Collins then repeated that that truck was unsafe and that Collins would not drive an unsafe vehicle. Collins then left the premises.[5] A few days later, Anzevino telephoned Collins and asked Collins to return to work. Collins asked Anzevino what truck he would be assigned to drive, and Anzevino replied that he would again be assigned the "autocar tandum." Collins again stated that he would not drive that truck because it was unsafe. Following this conversation, Collins had no further contact with Respondent regarding his job. Similarly, Respondent has never offered Collins a position driving the truck which he operated prior to the layoff/termination on May 20.

Collins testified that he refused the assignment to drive the autocar tandum truck because he believed that truck to be unsafe. In its posttrial brief, Respondent apparently concedes that Collins' belief was held in good faith, but argues that testimony has shown the truck not to have been unsafe in fact. Collins testified that in March 1980 he drove this truck approximately 20 to 25 miles from a garage to the Republic Steel jobsite. Collins testified that the windshield wipers, brake lights, and turn signals did not function and that the brakes were bad. At various times during his employment, other truckdrivers have commented to Collins that they too had observed the brakes on this truck to function poorly. On one occasion in April 1980 while employee Courtney was driving the truck, Collins observed Courtney tear the mirror off a crane with the truck while attempting to stop. Collins attributed this accident to the fact that the brakes were bad. At the trial herein, Courtney testified that he was not able to state that the accident was solely attributable to the brakes, but that it was at least partly attributable to the brake system, and partly to human error. Employee Daviduck testified that, in April 1980, Courtney informed him that the brakes on the autocar tandum truck were not operating properly. Daviduck made some adjustments, but could not completely repair the brakes.

In contrast to this testimony of witnesses called by the General Counsel, Respondent called four witnesses who testified in essence that the brakes on the autocar tandum truck were at least safe. These witnesses included Supervisor Anzevino, mechanic William Gulfo, and employees Paul Ryhal and George Lloyd. From the testimony of Ryhal and Lloyd, it is impossible to determine how often and for how long they had occasion to operate the truck in question, and consequently I give no particular weight to their testimony regarding the condition of the truck. I also give little weight to Anzevino's testimony regarding its condition for he admitted on cross-examination that he was not personally familiar with its condition on a day-to-day basis and would not even be made aware of its condition by drivers assigned to that vehicle. Mechanic Gulfo testified that in his opinion the condition of the brakes in April 1980 was "good." On cross-examination, however, Gulfo admitted that he had not repaired any part of the brake system on that truck since 1979.

On balance, I find the testimony of employee Courtney to be most accurate regarding the condition of the autocar tandum truck, including its braking system. Courtney was the least senior truckdriver and, as such,

[4] This was the only such truck in use by Respondent at the time. A smaller truck, consisting of a cab and dump bed on a single frame, it was also the oldest truck in Respondent's fleet. All the other trucks then being used by Respondent were larger, newer pieces of equipment consisting of a separate cab and semitrailer. Collins had driven this latter type of truck prior to his layoff/termination.

[5] I discredit Anzevino who claimed that, when Collins refused to drive the autocar tandum, Anzevino drove it to test the brakes and found them to be in good working order. I credit Collins' denial that Anzevino did so. I found Anzevino to be an untrustworthy and evasive witness. As is detailed more fully below, his testimony differed in several important respects from a pretrial affidavit which he had given to a Board agent. Further, Anzevino struck me as a person who embellished his testimony at will.

had been assigned to drive the autocar tandum truck on a daily basis before Collins was given that assignment on June 10. Further, when Collins refused to accept the assignment to drive that truck on June 10, Courtney was again assigned to drive it. Courtney confirmed Collins' testimony that the truck had no windshield wipers. Regarding the brake system, Courtney testified:

> It is an older unit. The brakes weren't the best in the world . . . .

Later he testified:

> Well, they weren't the best in the world. They needed service, but, you know, its like anything else, you know what you are operating, and you kind of go according to the equipment.

Courtney testified to one incident in which he almost had an accident while driving the truck on a public street. Courtney further testified that, when it rained, he had to stick his head out the window in order to see. Finally, as noted, Courtney testified that the condition of the brake system contributed at least in part to the accident in which he broke off a mirror from a crane. On cross-examination, Courtney freely admitted that he did not believe the condition of the brakes to be "unsafe" and that if he had he would not have driven the truck. As Courtney described the truck in question, it was the oldest truck in Respondent's fleet, used only for the roughest jobs involving the greatest wear and tear to the truck. In Courtney's opinion, the truck was not "unsafe," but "it had its problems."

IV. ANALYSIS AND CONCLUSIONS

Respondent admits that it paid initiation fees and dues directly to Teamsters Local 377 on behalf of its truckdrivers. At the time it did so, no employee had expressed any desire to be represented by Local 377, and none had authorized these payments on their behalf. Consequently, such payments constitute clear violations of Section 8(a)(1) and (2) of the Act. *Dura-Vent Corp.*, 235 NLRB 1300 (1978); *Stockton Door Co.*, 218 NLRB 1053 (1975).

After Collins and other employees received membership cards in Local 377, they began to discuss amongst themselves the fact that they were receiving a wage rate lower than other employees on the jobsite who were being paid according to the union contract. Prior to these discussions between employees, however, Collins first went on his own to Respondent's president Ramun to ask for a raise. While evidence regarding this request is submitted by the General Counsel in support of its case, I do not rely on it in reaching my ultimate decision herein. The evidence does show that Collins had an interest in improving his working conditions, but I find nothing to evidence that at that point in time Collins was acting in any concerted manner with or on behalf of other employees. I conclude that in making that early request for a raise, Collins was acting solely on his own behalf and that the activity was not of a concerted nature protected by the Act. *National Wax Co.*, 251 NLRB 1065 (1980).

After Collins was denied his original request for a raise, the later conversations between him and other employees regarding the possibility that they were supposed to be covered by a union contract in the nature of a project agreement were clearly of a concerted nature intended to be protected by the Act. See *National Wax Co.*, supra; *Adams Delivery Service*, 237 NLRB 1411, 1420–21 (1979); and *Key City Mechanical Contractors*, 227 NLRB 1884, 1887–88 (1977). Collins' effort to obtain information from Serback about such an agreement was a mere extension of that concerted activity, was itself in furtherance of an interest common to all the truckdrivers, and was therefore protected by the Act. Anzevino admitted that he knew Collins had gone and spoken to Serback. According to Anzevino, Serback telephoned to inform him that Collins had come to talk to Serback to discuss "wages and so forth." Anzevino does not deny Collins' testimony which I have credited that immediately on encountering Collins after his discussion with Serback, Anzevino told Collins that Ramun was angry at Collins for having done so and was laid off. On cross-examination, Anzevino admitted that in a pretrial affidavit given to Board agent he stated, "I might have told him [Collins] that John Ramun was mad because he had talked with Serback . . . ."

Respondent's defense is founded in part on the contention that the Republic Steel project engineer trailer was off limits to Respondent's employees and, accordingly, to quote from its brief, "It was insubordination for Collins to go to Republic Steel with his complaints."[6]

Anzevino claimed that there was a well-known work rule prohibiting Respondent's employees, except supervisors, from going to the Republic Steel project engineer trailer. After careful examination of Anzevino's testimony on this point and on other points, and recalling his general demeanor, I have concluded that Anzevino's assertion represents a fabrication on his part in an attempt to establish that Collins committed an infraction of work rules and thereby mask Respondent's otherwise clear retribution for Collins engaging in protected concerted activities. At one point in his testimony, Anzevino claimed that he had not told Collins on May 20 that Collins was laid off. He then testified, "[O]n May 20th I had no reason to lay Kenny off." A pretrial affidavit given by Anzevino to an agent of the Board, however, states in part: "I told Mr. Collins he was laid off . . . . I did tell Collins that he was laid off; however, we had been planning to lay off people because the work had slowed up . . . ."

Although in giving the affidavit, Anzevino could not recall exactly when he told Collins he was laid off, it is clear from the context of the statement that Anzevino was referring to the conversation with Collins after Collins had spoken to Serback on May 20. Anzevino admitted that he did not know whether the alleged rule prohibiting employees from going to the Republic Steel

[6] I find it unnecessary to decide whether such a rule could be established or enforced in such a manner as to prevent employees from engaging in protected concerted activity by asserting claims regarding their working conditions. For the reasons expressed herein, I have found that in fact no such rule existed.

project engineer trailer had ever been documented and circulated to employees in written form. Further, Anzevino did not know if the rule was promulgated by Republic Steel or by Respondent, but claimed that he was notified by some representative of Republic Steel, possibly Serback, that the trailer was off limits to all individuals except supervisors. I find it significant that Respondent offered no confirmation or corroboration of Anzevino's testimony by any representative of Republic Steel. If such a rule existed, corroboration by Republic Steel should have been simple. If a violation of this rule was the real reason for Respondent's layoff/termination of Collins one would naturally expect corroboration on such an important aspect of the case. Even Anzevino did not claim that Serback complained to him about the fact that Collins had come to the Republic Steel project engineer trailer. Rather, Anzevino testified only that Serback reported to him that Collins was inquiring about "wages and so forth." Collins' own testimony which I credit discloses that he had gone to that trailer on several occasions prior to May 20 without anything being said to him either by Respondent or Republic Steel. Based on all these facts, I conclude that Anzevino's assertion regarding this alleged rule is simply convenient fabrication on his part, and I find that no such rule existed. Rather, as revealed by Anzevino's statement to Collins at the time of his layoff/termination, Respondent was upset about the fact that Collins had inquired of Republic Steel about the wage rates which Respondent was supposed to be paying its employees. Consequently, I conclude that Respondent laid off/terminated Collins on May 20 in violation of Section 8(a)(1) of the Act because Collins engaged in such protected concerted activity.

The General Counsel and Respondent argue at length about the circumstances pursuant to which Collins was offered reemployment on June 10 and, more specifically, whether Collins' refusal to drive the autocar tandum truck itself constituted protected concerted activity. I find it unnecessary to reach that issue. The appropriate remedy for Respondent's unlawful termination of Collins on May 20 requires reinstatement to the position formerly held by him. Respondent does not deny, and the record amply demonstrates, that on June 10 Respondent was utilizing the type of vehicle which Collins had driven prior to his termination to do the same type of hauling work which Collins had done prior to that time. This work, however, was not offered to Collins on June 10. I credit Collins that the reason given to him on June 10 for not reinstating him to that type of work was that Ramun had specifically ordered that Collins be assigned only to drive the autocar tandum truck. I am convinced that, after Collins filed grievances with the Union following his termination, Respondent agreed to reinstate Collins in order to keep peace with the Union, as it had done in paying the union initiation fees and dues on behalf of its employees. However, Ramun also ordered that on his reinstatement Collins be assigned to the least desirable work available. I conclude that he did so as further retribution for Collins having spoken to Serback. Respondent offered no other logical reason for this assignment.

When asked by Respondent's own counsel about the reason for assigning Collins to drive the autocar tandum truck, the only explanation offered by Anzevino was as follows:

> Really, the only reason that I had for him driving that truck was because that was the truck at that particular time. At that particular time, we weren't using all the trucks, and at that particular time I needed that truck.

Anzevino's explanation is circuitous and illogical. He would have me believe that the assignment was mere happenstance. Although he does not bother to deny it himself, he would have me ignore Collins' testimony that Anzevino told Collins on June 10 the assignment was at the specific instruction of Ramun. Further, the record establishes that employee Courtney, because he was the junior employee, had been used on a regular basis prior to May 20 to drive the autocar tandum truck. Courtney was still employed on June 10. Respondent offers no explanation why Collins and not Courtney was assigned to drive that vehicle that day. I also find it significant that, after Collins refused that assignment on June 10, it was Courtney who was again assigned to drive that vehicle. Whether the autocar tandum truck was in fact safe to operate on June 10 is unnecessary to decide for it is clear that driving that truck was considered the least desirable job assignment, and there was at least a reasonable basis for questioning its safety, particularly by an employee who was not regularly assigned to drive that vehicle. Consequently, I find that even though Collins' former position was available on June 10, Respondent did not offer reinstatement to Collins to his former or a substantially equivalent position. Rather, Respondent attempted to continue to harass Collins for having engaged in protected concerted activity, and Collins was justified in declining this work.

CONCLUSIONS OF LAW

1. The Respondent, Allied Erecting and Dismantling Company, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 377 is a labor organization within the meaning of Section 2(5) of the Act.

3. By paying employees' initiation fees and dues directly to Teamsters Local 377 notwithstanding that employees had not expressed any desire or intent to be represented by said Union, nor authorized such payment on their behalf, Respondent rendered unlawful aid and assistance to said labor organization, in violation of Section 8(a)(1) and (2) of the Act.

4. By laying off/terminating Kenneth W. Collins Jr. because he engaged in protected concerted activity, Respondent has restrained and coerced its employees in the exercise of their rights guaranteed in Section 7 of the

Act, and thereby engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.[7]

5. The unfair labor practices which Respondent has been found to have engaged in, as described 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 of commerce within the meaning of Section 2(6) and (7) of the Act.

[7] In the particular circumstances of this case, I decline to find that Collins' termination violated Sec. 8(a)(3) of the Act, for to do so might suggest that Collins was engaged in activity on behalf of Teamsters Local 377, which clearly is not the case. Further, it is unnecessary to make such a finding in order to provide an adequate remedy herein.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices in violation of Section 8(a)(1) and (2) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

[Recommended Order omitted from publication.]