Book Covers, Inc. *and* **Humberto Garcia.** Case 22–CA–13300–1

21 October 1985

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS DENNIS AND BABSON

On 10 July 1985 Administrative Law Judge Howard Edelman 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 and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Book Covers, Inc., Newark, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[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

Mitchell A. Schley, Esq. and *Susan K. Anderson, Esq.*, for the General Counsel.

Richard J. Delello, Esq. (Grotta, Glassman & Hoffman, P.A.), for the Respondent.

DECISION

STATEMENT OF THE CASE

HOWARD EDELMAN, Administrative Law Judge. This case was tried before me November 19 through 21, 1984.

On June 14, 1984, Humberto Garcia, an individual, filed an unfair labor practice charge against Book Covers, Inc. (Respondent). On November 8, 1984, a complaint issued alleging Respondent discharged Garcia in violation of Section 8(a)(1) and (4) of the Act.

Briefs were filed by the General Counsel and Respondent. On my consideration of the entire record, the briefs, and my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is a New Jersey corporation with an office and place of business in Newark, New Jersey. Respondent is engaged in the manufacture and distribution of cardboard goods and products. Respondent, in the normal course of its business, annually sells and ships from its Newark, New Jersey facility goods and products valued in excess of $50,000 directly in interstate commerce to points outside the State of New Jersey.

I find Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

As of January 1984 Respondent's production and maintenance employees were represented pursuant to a collective-bargaining agreement by Local Union No. 300, United Paperworkers International Union, AFL–CIO–CLC. This agreement expired on March 31, 1984. On January 16, 1984, Amalgamated Local 747 filed a representation petition with Region 22. Pursuant to this petition, an election was conducted on April 18, 1984. On June 15, 1984, Amalgamated Local 747 was certified as the employees' collective-bargaining representative.

Garcia was employed by Respondent as a production employee. Prior to his discharge on June 14, 1984, he had been continuously employed by Respondent for a period of 8 years.

On June 11, a fellow production employee, Blademor Lemos, spoke with Garcia and advised him that they had an appointment on June 13 to meet Local 747's attorney at the offices of Region 22 after work where they intended to file unfair labor practice charges alleging unlawful discrimination because of their activities on behalf of Local 747. Garcia's normal working hours were from 7:30 a.m. to 4 p.m., the same as all production employees.

Garcia testified that on June 13 about 8 a.m., shortly after he arrived at work, he informed his supervisor Salvatore Scavuzzo that he would be unable to work overtime that day because "he had to go out." Scavuzzo denies that he was so informed. I credit Garcia.[1]

Sometime about noon, Scavuzzo notified Garcia and all other production employees that they would have to work overtime that day. Garcia informed Scavuzzo that he would not be able to work overtime that day. He did not state a reason. Lemos and eight other employees similarly refused to work overtime that day. Aside from Lemos, the refusal to work overtime by the aforementioned eight employees was unrelated to union activities or filing charges with the Board.

[1] I was favorably impressed with Garcia's testimony. He was candid and responsive to questions put to him on both direct and cross-examination and he impressed me as an honest and sincere witness Based on a comparison of demeanor, I was more favorably impressed with Garcia's demeanor over that of Scavuzzo

Additionally, Garcia spoke only Spanish. Scavuzzo admittedly spoke just "a little bit of Spanish," just enough to get his assignments across. In view of this language problem, and in view of the fact that overtime is not usually determined until later in the day, I believe Scavuzzo either did not understand Garcia, or since overtime had not been determined for that day, he paid no attention to his statement and dismissed it from his mind

I find Garcia's testimony to be believable He had a scheduled appointment at the Board's Newark Office where he was to meet with a fellow employee and Local 747's attorney. He was also aware that while overtime was not required on a daily basis, it was required frequently. It is therefore logical that he would want to give advance notice of his unavailability should overtime be required to avoid any problems

Scavuzzo then notified Personnel Manager Gemma Gerstorfer of the 10 employees, including Garcia, who refused to work overtime. Gerstorfer then met with each of these 10 employees individually in her office.

Garcia credibly testified he met with Gerstorfer in her office. She spoke Spanish fluently so that no interpreter was required. Gerstorfer asked Garcia why he was unable to work overtime. Garcia told her he had a problem at home and he had to leave at 4 p.m. She told him this was no excuse to refuse overtime. Garcia then told her he had an appointment at the "Labor Department" and he was going to file charges against Scavuzzo, Gerstorfer, and Edward Johnson, plant manager. He then left Gerstorfer's office.

Gerstorfer was not called by Respondent as a witness, nor did Respondent contend that she was unavailable for any reason.

Edward Johnson, plant manager, testified that after Gerstorfer met with Garcia she contacted him and told him that Garcia had refused to give any reason for not working overtime. Gerstorfer also told him that during her discussion with him he was abusive and at one point told her "to go fuck herself." At this point Johnson told Gerstorfer to bring Garcia to his office.

Garcia denied using the obscenities attributed to him by Gerstorfer through Johnson's testimony.[2]

About 3 p.m. Garcia was escorted into Johnson's office. Present were Gerstorfer, who acted as an interpreter, Johnson, and Scavuzzo. Garcia testified Johnson asked him why he did not want to work overtime. Garcia told him he had a personal matter at home. Johnson said that was no excuse. Gerstorfer then told Garcia to tell Johnson what he had told her. Garcia then told Johnson he was going to the "Labor Department" to file charges. Johnson said he had to work the overtime. Garcia asked Johnson if he would be disciplined if he did not work the overtime and Johnson said he did not know. Garcia then left and returned to work.

Johnson testified that he began the meeting by telling Garcia that his abuse of Gerstorfer was unacceptable and would not be tolerated in the future. Johnson then explained to Garcia that he was required to work overtime under the collective-bargaining agreement, unless he had a reasonable excuse. Although Johnson asked Garcia three or four times why he could not work, Garcia gave absolutely no explanation. Instead, Garcia became abusive and arrogant to Johnson, stating that he did not have to work more than 8 hours, he did not have to work overtime, his private life was his own business, and Johnson could not force him to work overtime. Johnson concluded the meeting by informing Garcia he was required to work until 6 p.m. (2 hours' overtime), and his failure to do so would result in discipline up to and including discharge.[3]

Garcia continued working until 4 p.m. when he left with Lemos to file charges at the Board.

Sometime between 4 p.m. and 5 p.m., Garcia and Lemos met with the Local 747 attorney, Charles Rosenberg, and his secretary, Maria Andino, who acted as an interpreter. Garcia testified that while at the Board's office waiting to file a charge, he expressed concern that disciplinary action would be taken against him because he had come to the Board to file charges rather than work overtime. Rosenberg asked him what reason he gave to Respondent for not working overtime and Garcia told him that he advised Johnson, Gerstorfer, and Scavuzzo that he was going to the Board to file charges against them.

Andino testified as to this meeting and fully corroborated Garcia's testimony.[4]

Shortly before 5 p.m. Garcia and Lemos filed unfair labor practice charges against Respondent alleging discrimination in their working conditions because of their membership in Local 747.[5]

On June 14, 1984, Garcia reported for work at 7 a.m., his regular starting time. He noticed his timecard was missing and spoke to Gerstorfer after he changed into his work clothes. Gerstorfer took him to Johnson's office. Johnson told Garcia that he was fired because he refused to work overtime, and gave him a letter of discharge. Johnson escorted Garcia to his locker. Garcia testified that after he cleaned out his locker he saw Johnson speaking to Gerstorfer. He asked Gerstorfer what Johnson was saying. She responded, "Let the Labor Department resolve your problem."

I credit Garcia's testimony. As set forth above Gerstorfer was not called as a witness by Respondent. Johnson did not deny Garcia's testimony.

Johnson then handed Garcia a letter which stated:

> Dear Humberto,
>
> As of today, June 14, 1984, your employment at Book Covers, Inc. has been terminated *for your failure to work overtime as instructed.* Your final check for this week's work and accrued vacation will be forwarded to you.
>
> Sincerely,
> Edward V. Johnson

During Garcia's 8 years' employment he had never received any prior warnings concerning a refusal to work overtime or any other warnings. He had never received any suspensions or other discipline. His work record in substance, prior to June 13, was perfect.

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[2] As set forth above, and as will be more fully set forth below, I find Garcia to be a credible witness. As set forth below, I find Johnson to be an incredible witness who I believe fabricated significant testimony. Moreover, Gerstorfer was not called as a witness by Respondent to corroborate Johnson's testimony although there is no contention that she was unavailable.

[3] I credit Garcia's testimony As set forth above, I have concluded that Garcia is a credible witness, and Johnson is not a credible witness who, in my opinion, fabricated significant testimony. This will be discussed in detail below.

[4] I conclude that Andino was a very credible witness She was most forthright and responsive as to all questions put to her on both direct and cross-examination. Additionally, she displayed an excellent recollection as to the details of this meeting. Although she was an employee of the attorney who represented Local 747, I believe such relationship was too remote that it could be argued that she was a biased witness. I was very impressed with her demeanor and I do not believe she would fabricate testimony to further the interests of one of her employer's clients.

[5] It appears these charges were ultimately resolved The resolution of these charges is not relevant to the disposition of this case.

The existing collective-bargaining agreement between Respondent and Local 300 provided that Respondent could require its employees to work overtime. This agreement expired on March 31, 1984. Pursuant to this agreement and following its expiration, Respondent frequently assigned unit employees overtime.

Respondent had an extremely liberal policy when it came to excusing employees who requested to be excused from assigned overtime. This policy was never reduced to writing nor communicated directly to the employees, but was rather the practice in effect, and so understood by the employees. The practice was as follows. If an employee assigned to work overtime provided his immediate supervisor with what the supervisor deemed a reasonable excuse, the employee would be excused. Employees were excused from overtime for a wide latitude of reasons which included celebrating a mother's birthday, picking up a relative at the airport, and buying a new suit of clothes. On those occasions when the supervisor determined the excuse was unreasonable, the employee would meet with Gerstorfer, the personnel manager. In some cases she would reverse the supervisor's decision, while in others she would confirm his decision. If she determined the excuse was unreasonable, the employee had the option of working the overtime or being subject to progressive discipline. This discipline would start off with a verbal warning, then a written warning, then a possible suspension, and lastly a possible discharge. Among the excuses found to be unreasonable and subject to a verbal warning was arefusal to work overtime because of "personal business." Although Johnson did not testify why such reason was not deemed reasonable, so as to excuse working overtime, the conclusion is obvious, the employee who states "personal business" has not stated any reason unlike the employee who states his personal reason is to buy a new suit or to pick up a relative at the airport.

In the year 1983 and up to June 13, 1984, only 11 employees were disciplined for refusing to work overtime and none of these disciplinary actions went beyond issuing a warning. Prior to the discharge of Garcia and Lemos on June 14, 1984, Respondent had never suspended, much less discharged, any employee for refusing to work overtime. On June 13, 1984, the date that Garcia and Lemos refused to work overtime, eight other employees similarly refused to work overtime. Of these eight employees, five were deemed to have acceptable reasons for their refusal and were excused. Three employees were not excused. One told Gerstorfer he wanted to shop for a new car for his daughter, another stated he had to take care of his son, and another refused to give a specific reason, but merely stated he had "personal business." These employees refused to work the assigned overtime and were subsequently given oral warnings.

Johnson incredibly testified that, in addition to the practice described above, if an employee refused to give *any reason*, this employee would be required to meet with him and he would require the employee to set forth a specific reason, or work the overtime. If the employee refused to work the overtime he would be discharged. When Johnson was questioned as to who, if any, employees were ever discharged pursuant to such alleged practice, he replied Garcia and Lemos. Johnson admitted such practice was never communicated to the employees.

I conclude that Johnson's testimony in this connection is a total fabrication designed to support and justify his discharge of Garcia and Lemos.[6]

I find no distinction in an employee being questioned as to the reason for his unavailability to work overtime and stating "personal business" or refusing to state a reason. I conclude that Johnson, after denying that Garcia told him the reason for his unavailability to work overtime was because he was going to the Board to file charges, had to come up with some explanation, however incredible, for the discharge in the face of his ultra liberal overtime policy, and so I believe he manufactured this alleged practice. In support of my conclusion that such testimony was fabricated, Johnson further attempted to bolster his justification for Garcia's discharge by contending, for the first time at trial, that Garcia was also discharged for leaving the plant without permission, and being insubordinate to Gerstorfer, notwithstanding that the discharge letter prepared and signed by Johnson specifically set forth only his refusal to work overtime as the reason for discharge. Moreover, I was generally unimpressed with Johnson's overall demeanor during his testimony. He did not impress me as a candid forthright witness and appeared to be rather shifty and uneasy throughout his testimony.

Counsel for Respondent contends that, even crediting Garcia's testimony, he did not inform Gerstorfer or Johnson that he was going to the "NLRB" to file charges, but rather that he was going to the "Labor Department." However, Garcia testified that, in his June 13 conversation with Johnson, he used the Spanish term of Labor Department, and that "this place here" (the Board), to his knowledge, is referred to as the Labor Department in Spanish. Notwithstanding Garcia's use of the term Labor Department rather than Labor Board, the record is clear that Johnson understood Garcia's reference to the Labor Department to mean National Labor Relations Board. This is conclusively shown by Respondent's Exhibit 7, which is a handwritten memo from Johnson to Carl Crook, another management official, setting forth Johnson's account of the facts concerning Garcia's discharge. The last paragraph of the memo states: "On June 14 we received the attached charge from the Labor Department." Below that paragraph is a list of items enclosed with the memo. The third item listed reads "Charge from Labor Dept." The charge attached to the memo is, in fact, a copy of the charge which Garcia filed with the National Labor Relations Board. Thus, in Johnson's mind, the Labor Department was synonomous with the NLRB. Moreover, during this period, an representation petition had been filed, an election and a certification were pending before the NLRB. I conclude that, when Garcia told Johnson he was going to

[6] The Region concluded that the discharge of Lemos violated Sec. 8(a)(1) and (4) of the Act and issued a complaint against Respondent alleging such violation The complaint was withdrawn when it was agreed by all parties to take this discharge to arbitration.

the Labor Department, Johnson knew he was going to the NLRB.

Counsel for Respondent contends that Garcia cannot be credited concerning his testimony that on June 13 he told both Gerstorfer and Johnson that he was unable to work overtime because he was going to the Labor Department (NLRB) to file charges against Respondent, because he gave contrary testimony at a unemployment insurance hearing. The record in the unemployment hearing established that when questioned on cross-examination by Respondent's attorney as what reason he gave to Johnson and Gerstorfer for not being able to work overtime on June 13, he testified he told them he was unable to work overtime for personal reasons.[7] In the instant case Garcia similarly testified that, when initially questioned by Gerstorfer and Johnson why he was unable to work overtime, he replied for personal reasons. It was only after they pressed him for a reason that he told them he was going to the Labor Department (NLRB) to file charges. Significantly, he was not specifically asked by counsel for Respondent, although the current unfair labor practice charge was pending, or the appeals examiner, whether he told Gerstorfer and Johnson he was going to the Labor Board.

There is no question that there is some inconsistency between Garcia's testimony at the unemployment hearing and the instant trial. I have taken this into careful consideration in my conclusion that Garcia was a credible witness and specifically in crediting his testimony concerning this conversation with Gerstorfer and Johnson.

As set forth above, I was most impressed with Garcia's demeanor. Secondly, his testimony at the unemployment hearing is not so much inconsistent as it is incomplete. He was not questioned by Respondent's counsel as to whether he told them he was going to the Labor Board to file charges, although the present unfair labor practice charges were pending at the time and the inquiry would have been relevant.

Third, Maria Andino, Local 747's attorney's secretary and a witness with whose credibility I was most impressed, corroborated Garcia's testimony.

Andino's testimony was introduced to rebut a charge against Garcia of recent fabrication concerning his unemployment hearing testimony. Counsel for Respondent objected to such testimony as being outside the scope of Rule 801(d)(1)(3) of the Federal Rules of Evidence. This objection was overruled. The Board has recently held in a case squarely on point, that such testimony is admissible. *Pagerly Detective Agency*, 273 NLRB 494 (1984).

Fourth, Respondent admittedly issued a mere verbal warning to an employeewho refused to work overtime on June 13 and who gave no reason other than "personal reasons" for such refusal. For the reasons set forth above, I have rejected as incredible Johnson's testimony that if an employee gave no reason for such refusal he would be subject to discharge. I am convinced had Garcia insisted his refusal was based on "personal reasons" he would have been permitted to leave at his usual quitting time, 4 p.m., and received an oral warning, the same discipline as the other employee received. That he and Lemos were discharged as a result of their conversations with Johnson concerning their refusal to work overtime convinces me that Garcia, during his conversation with Johnson, stated a reason which so infuriated Johnson that he discharged both Garcia and Lemos. Such action might be expected following Garcia's response that he intended to go to the Labor Board to file charges against Respondent. I find that Respondent's discharge of Garcia and Lemos in the circumstances of this case to be consistent with Garcia's testimony.

For all these reasons I credit Garcia's testimony.

II. ANALYSIS AND CONCLUSIONS

In cases involving a discriminatory discharge for union activities within the meaning of Section 8(a)(1) and (3) of the Act, the General Counsel has the burden of proving union animus was a substantial or motivating factor in the discharge. Once such motivating factor is established the burden of proof shifts to the Respondent to establish that the same action would have taken place even in the absence of the employees' protected activities. *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983); *Wright Line*, 251 NLRB 1080 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). The Board has held the same burdens apply to cases involving discharges within the meaning of Section 8(a)(4) of the Act. *Parker Laboratories*, 267 NLRB 1174 (1983); *Haynes-Trane Service Agency*, 259 NLRB 83 (1981).

Applying a *Wright Line* analysis to the facts of the case, the General Counsel has established the following. Garcia was discharged immediately after he announced his intention to file a charge with the Board. He informed Gerstorfer and Johnson of his intention to file charges at 3 p.m. on June 13 and was discharged before he could punch in to work on June 14. Thus, the timing of the discharge supports the General Counsel's contention that the discharge was discriminatorily motivated. By far, the strongest evidence in support of General Counsel's case is the evidence of disparate treatment. The General Counsel contends that such evidence is overwhelming. I believe this may be an understatement. As set forth above in detail, Respondent had an ultra liberal policy with respect to employees' refusals to work overtime. Employees were routinely excused for a wide variety of reasons and when they were not excused they received minimal discipline when they refused to work assigned overtime. Although discipline was progressive, starting with an oral warning and proceeding to a written warning, suspension and ultimately possible discharge, no employee prior to Garcia had ever received discipline beyond a warning. Prior to Garcia's refusal to work overtime on June 13, he had never been disciplined for refusing to work overtime or for any other work-related matter during his 8-year period of employment. To discharge an employee in these circumstances suggests the reason for the discharge was not because Garcia refused to state a reason for his refusal to work overtime, as contended by Respondent, but rather that such discharge was discriminatorily motivated. In this regard it should be noted that Lemos, who similarly refused to

[7] R. Exh. 1.

work overtime because he intended to file a similar unfair labor practice charge on June 13 was also discharged on June 14.

In view of the timing and the disparate treatment discussed above, I conclude that the General Counsel has established virtually conclusive evidence that a substantial or motivating factor in Garcia's discharge was his announced intention to file unfair labor practice charges with the Board.

Respondent now has the burden to establish that Garcia would have been discharged even given his announced intention to file charges with the Board.[8]

In Respondent's June 14 letter, notifying Garcia of his discharge, Respondent set forth his refusal to work overtime as the only reason for his discharge. At trial, apparently recognizing that in the face of its liberal overtime policy, this defense would not stand up, Respondent added additional reasons, namely, that Garcia left the plant without permission and that he was insubordinate.

The contention that Garcia left the plant without permission is obviously contrived. It suggests that he left work during his normal working hours without asking permission. This is not the case. What he did was to refuse to work overtime. No other employee who refused to work overtime ever received a warning for leaving the plant without permission. This contention needs no further discussion. To consider it is to reject it, except to the extent that it discredits Respondent's defense.

Respondent's contention that Garcia was discharged because he was insubordinate rests mainly on Johnson's testimony that Gerstorfer told him that Garcia told her to "go fuck herself." As set forth above, Gerstorfer was not called as a witness by Respondent and Johnson's testimony as to Gerstorfer's assertion was not credited. If Garcia had used such an obscene expression in the context of his conversation with Gerstorfer as contended by Respondent, it is inconceivable that Johnson would not have imposed some discipline upon Garcia during his meeting with him as he was allegedly aware of such gross insubordination at the time. Yet, not only was he not disciplined for such alleged insubordination, but it was not even set forth in Respondent's June 14 letter as a reason for Garcia's discharge. I conclude all of Respondent's testimony concerning such alleged insubordination to be fabricated, to support an otherwise untenable defense.

Respondent's after-the-fact attempt to demonstrate that Garcia's discharge was not only for his failure to work overtime as set forth in its June 13 letter of dismissal, but rather for leaving the plant without permission, and insubordination, only serves to buttress the General Counsel's case. The Board has repeatedly held that the attempted assignment of a multiplicity of additional reasons for the discharge, raised for the first time at the hearing, raises an inference that a respondent is attempting to cover up the true reason for the action, namely, the unlawful motivation. *Bohn Heat Transfer Group*, 267 NLRB 369, 373 (1983); *Bohemia, Inc.*, 266 NLRB 761, 777 (1983).

Respondent additionally contends that, even if Garcia told Johnson he was going to the "Labor Department," a discharge for such reason is not a violation of 8(a)(4) because that section does not extend protection to employees who resort to or threaten to resort to any agency other than the Board. *Inked Ribbon Corp.*, 241 NLRB 7 (1979). I agree with counsel for Respondent's interpretation of the law, however, that the facts of this case discussed above establish that, when Garcia told Johnson he was going to the "Labor Department," both he and Johnson knew that Garcia was referring to the Board and in particular Region 22, which was then processing a representation petition with Respondent. Accordingly, I find the law cited by Respondent's counsel to be inapplicable to the facts of this case.

After a careful consideration of Respondent's defenses and contentions, I conclude that Respondent has not come close to establishing its *Wright Line* burden, but rather that its defense only serves to strengthen the General Counsel's case.

Accordingly, I conclude that Respondent discharged Garcia in violation of Section 8(a)(4) as alleged.

CONCLUSIONS OF LAW

1. Respondent Book Covers, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent violated Section 8(a)(4) and (1) of the Act by discharging its employee Humberto Garcia on June 14, 1984, because he had filed charges with the National Labor Relations Board.

THE REMEDY

Having found Respondent has engaged in violations of Section 8(a)(4) and (1) 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. The affirmative action shall include an order requiring Respondent to reinstate Garcia to his former job if it still exists, and to make him whole for any loss of pay he may have suffered by reason of the discrimination against him. Backpay and interest shall be computed on a quarterly basis and in the manner prescribed by the Board in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 651 (1977). See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962). In addition, Respondent shall be required to expunge from its records any reference to Garcia's unlawful discharge, to provide written notice of such expunction to him and to inform him that its unlawful conduct will not be used as a basis for further personnel action concerning him.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[9]

[8] My credibility resolutions discussed above completely negate Respondent's contention that Garcia gave no reason for his refusal to work overtime.

[9] If no exceptions are filed as provided by Sec 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended

Continued

ORDER

The Respondent, Book Covers, Inc., Newark, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging employees because they have filed charges with the National Labor Relations Board.

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

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

(a) Immediately offer Humberto Garcia reinstatement to his former job or, if that job no longer exists, to a substantially equivalent job, without prejudice to his seniority or any other rights or privileges and make him whole, with interest, for lost earnings in the manner set forth in the section of this decision entitled "The Remedy," dismissing if necessary any employee who replaced him.

(b) Remove from Garcia's personnel records and all other files any reference to his discharge.

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

(d) Post at its Newark, New Jersey facility and jobsites copies of the attached notice marked "Appendix."[10] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted 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 Respondent to ensure that such notices are not altered, defaced, or covered by any other material.

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

Order shall, as provided in Sec 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[10] 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."

APPENDIX

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

WE WILL NOT discharge employees because they have filed charges with the National Labor Relations Board.

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

WE WILL immediately offer Humberto Garcia reinstatement to his former job or, if that job no longer exists, to a substantially equivalent job, without prejudice to his seniority or any other rights or privileges and make him whole, with interest, for lost earnings, dismissing if necessary any employee who replaced him.

WE WILL remove from Garcia's personnel records and all other files any reference to his discharge.

BOOK COVERS, INC.