United States Steel Corporation *and* William Van Swenson. Case 32-CA-4835

31 March 1986

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS DENNIS AND BABSON

On 19 July 1983 Administrative Law Judge Gerald A. Wacknov issued the attached decision. The Respondent and the General Counsel filed exceptions and supporting briefs, and the General Counsel filed a brief in reply to the Respondent's exceptions.

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 briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, United States Steel Corporation, Pittsburg, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Substitute the following for paragraph 2(a).

"(a) Offer employment to employee William Van Swenson at its Pittsburg, California facility, and make him whole in the manner set forth in the remedy section of the judge's decision. In this connection, the Respondent shall preserve and on request make available to the Board or its agents, for examination and copying, all records, including the payroll records of other employees, necessary to analyze and compute the amount of backpay due."

CHAIRMAN DOTSON, dissenting.

I disagree with my colleagues that the Respondent rejected employee Swenson's application for transfer because of his union and/or protected activity, thereby violating Section 8(a)(1) and (3) of the Act.

The pertinent facts are as follows: Swenson, the Charging Party, was a machinist employed by Respondent beginning in 1968 first at its facility in Gary, Indiana, and later at Provo, Utah. Swenson was laid off from the Provo facility in October 1981. Swenson was recalled shortly before being laid off in October 1982. In May 1982, while still on layoff status, Swenson applied for a transfer to Respondent's facility in Pittsburg, California. Swenson's transfer request was approved by Supervisor Fox.

Swenson's union activity involved serving as assistant grievance committeeman for the Union from May 1979 to June 1980, during which time he filed 16 grievances and 12 complaints on behalf of employees and discussed with his supervisor, Fox, schedule changes which affected a number of employees. During the course of his employment with the Respondent, Swenson received two reprimands. In September 1979 he received a reprimand for incorrectly boring a hole. In June 1981 he received a reprimand and a 2-day suspension from Fox for faulty workmanship, which was subsequently removed from his record in settlement of his grievance. At that time Fox, who was admittedly disgruntled with the outcome of the grievance,

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[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

In agreeing with the judge's finding that the Respondent's characterization of Swenson as a "troublemaker" connoted union activity, we note that it is the context in which the word "troublemaker" is used and not the use of the word alone that imparts an unlawful connotation See, e g , *Guarantee Savings & Loan*, 274 NLRB 676, 679-680 (1985), *Orba Corp.*, 266 NLRB 917, 932 (1983). In the context of this case it is clear, as found by the judge, that the Respondent's use of the word was in reference to Swenson's grievance filing activities.

Contrary to the dissent, Swenson's supervisor, Fox, did not approve Swenson's transfer, Fox merely approved Swenson's application for transfer. Moreover, Fox explicitly recommended against the hiring of Swenson when asked for a recommendation by Johnson, the Respondent's foreman at the Pittsburg, California facility Further, although the dissent states there is no direct evidence that Johnson had knowledge of Swenson's union activities, it is not necessary that Johnson himself have personal knowledge of Swenson's activities Rather, it is sufficient that the General Counsel established that Johnson acted in reliance on Fox's recommendation Thus, this is not a case of "mere suspicion" as the dissent suggests

Regarding the unlawful interrogation found by the judge, we note, contrary to the dissent, that Johnson did not merely recount to Black Johnson's own recollection of their previous conversation Rather, Johnson asked Black what Black, remembered about the conversation and then, when Black's recollection differed from Johnson's, Johnson reiterated his own version We find that, in the circumstances here, Johnson's remarks, which were unaccompanied by any assurances against reprisal, had a reasonable tendency to coerce Black in violation of Sec 8(a)(1)

[2] The judge's recommended remedy provides that the Respondent shall notify Swenson that it will "afford him an opportunity to apply for reinstatement to its Pittsburg, California facility," while his recommended Order directs that the Respondent "offer reinstatement" to Swenson Because the 8(a)(1) and (3) violation found here, as alleged in the complaint, is the Respondent's refusal to employ Swenson at its Pittsburg plant, the appropriate remedy is to offer him employment at that facility Accordingly, we shall modify the recommended Order to reflect more closely the violation found and to conform to the judge's notice

We shall leave to the compliance state of this proceeding the issue whether the Respondent's backpay liability was tolled as of the date Swenson entered the Armed Forces

told Swenson that the suspension had been warranted and the whole thing "was bullshit."

In May 1982 Swenson learned about vacant machinist positions at the Pittsburg plant from Black, a machinist who worked at the Pittsburg facility. When Swenson's application for transfer was delayed, Black, at Swenson's request, questioned his supervisor, Johnson, to whom Swenson had sent his application, concerning the application. According to Black, Johnson stated that he had spoken to Fox and that Fox recommended that Swenson not be hired because he was a "troublemaker." Johnson stated that he had no place for a troublemaker at the Pittsburg facility and that Black should tell Swenson to "clean up his act and get his affairs in order, talk to his general foreman and find out exactly what the problem is," and perhaps reapply later. According to Johnson, Fox stated during their conversation that although the Gary facility had recommended Swenson to him as one of their better machinists, Fox had problems with Swenson's work and would not hire him again. Johnson testified that he decided not to consider Swenson on the basis of Fox's statement concerning the poor quality of Swenson's work.

In my view, the evidence is insufficient to establish that Respondent rejected Swenson's application for transfer on the basis of union and/or protected activity in violation of Section 8(a)(1) and (3). Thus, there is no direct evidence indicating that Johnson had any knowledge of Swenson's union activity in making his decision not to hire Swenson. Johnson and Fox both testified that during their discussion concerning Swenson's work performance, union activity was not mentioned, and Black's testimony does not show that Johnson referred to either union or protected concerted activity. Furthermore, Johnson's reference to Swenson as a "troublemaker" does not necessarily connote that troublemaker was a reference to Swenson's union or protected concerted activities.[1] In my view, the surrounding circumstances, including the absence of any specific mention of such activities, Fox's approval of the transfer, and Johnson's subsequent statement that Swenson should straighten things out with his supervisor and perhaps reapply, do not support the conclusion that "troublemaker" was a reference to Swenson's union or protected concerted activities. Mere suspicions cannot serve as a basis for finding a violation.[2]

In view of all the foregoing, the General Counsel has not proven by a preponderance of the evidence that the Respondent, in violation of the Act, rejected Swenson's application for transfer because of his union activities.

I also disagree with my colleagues' finding that the Respondent coercively interrogated Black in violation of Section 8(a)(1) of the Act.

The pertinent facts are as follows: Black testified that on 25 April 1983, 3 days prior to the hearing, Supervisor Johnson called him into his office. According to Black, Johnson told Black that he had been subpoenaed to appear at the hearing and asked Black what was going on. When Black replied that he had also been subpoenaed, Johnson asked if Black remembered what Johnson had said during their conversation concerning Swenson. Black said that he had given a statement to the Board and initially told Johnson that he could not help without divulging the nature of the statement. Johnson then stated that he remembered discussing Swenson's poor craftsmanship and work record, whereupon Black responded that Johnson had only related that Swenson was a "troublemaker." Black testified that, although no assurances against reprisals was given, he felt that none were necessary concerning Johnson's open-door policy with the employees.

In my view, the evidence does not establish a coercive interrogation. Thus, it is clear that Johnson did not actually ask Black any questions concerning the subpoena or inquire into the content of Black's statement to the Board. Rather, Johnson merely recounted his recollection of his previous conversation about Swenson with Black. Furthermore, it is clear the discussion occurred in a noncoercive atmosphere. As noted by Black, Johnson had an open-door policy with respect to employees, and Black himself felt no need for assurances against reprisals. In these circumstances, Johnson's remarks to Black would not reasonably tend to coerce Black. Accordingly, I would find that the Respondent did not violate Section 8(a)(1) and would therefore dismiss the complaint in its entirety.

[1] Although the Board in *Orba Corp*, 266 NLRB 917 (1983), acknowledged that "troublemaker" was a familiar euphemism for a union supporter, it found any unlawful connotation should be applied only after consideration of the circumstances and context of the statement In *Orba*, the Board held that "troublemaker" referred to a worker who would not follow instructions and not for a union supporter The majority here, of course, seeks to put the term into context which antedates by nearly a year Fox's alleged use of it

[2] See *Kings Terrace Nursing Home*, 229 NLRB 1180 (1977), *International Computaprint Corp*, 261 NLRB 1106 (1982)

Elaine D. Climpson, Esq, for the General Counsel.
Lee M. Pruett, Esq., of San Francisco, California, for the Respondent.

DECISION

STATEMENT OF THE CASE

GERALD A. WACKNOV, Administrative Law Judge. Pursuant to notice, a hearing with respect to this matter was held before me in Oakland, California, on April 28, 1983. The initial charge was filed on September 3, 1982, by William Van Swenson, an individual.

Thereafter, on November 22, 1982, the Regional Director for Region 32 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing alleging a violation by United States Steel Corporation (Respondent) of Section 8(a)(1) and (3) of the National Labor Relations Act. The complaint was amended at the hearing to allege an additional violation of Section 8(a)(1) of the Act.

The parties were afforded a full opportunity to be heard, to call, to examine and cross-examine witnesses, and to introduce relevant evidence. Since the close of hearing, briefs have been received from the General Counsel and counsel for Respondent.

On the entire record, and based on my observation of the witnesses and consideration of the briefs submitted, I make the following

I. JURISDICTION

Respondent is a Delaware corporation, with a facility in Pittsburg, California, where it has been engaged in the nonretail manufacture of steel products. Respondent, in the course and conduct of its business operations, annually sells and ships goods or services valued in excess of $50,000 directly to customers located outside the State of California, and annually purchases and receives goods or services valued in excess of $50,000 directly from suppliers located outside the State of California.

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

II. THE LABOR ORGANIZATION INVOLVED

It is admitted that United Steelworkers of America, Local 1440 is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issues*

The principal issues raised by the pleadings are whether Respondent, in violation of Section 8(a)(1) and (3) of the Act, refused to employ William Van Swenson at its Pittsburg, California facility because of his union or protected concerted activity; and engaged in coercive interrogation of an employee in violation of Section 8(a)(1) of the Act.

B. *The Facts*

William Van Swenson was first employed by Respondent in April 1968. He was continuously employed thereafter at various facilities of Respondent and became a journeyman machinist in 1975. He was laid off from Respondent's Provo, Utah facility in June 1980. He was called back in October 1980 and was again laid off in October 1981. About a year later he was recalled for a third time and worked about a month before again being laid off in late October 1982.

Swenson held the union position of assistant grievance committeeman from May 1979 to June 1980 and in this capacity dealt extensively with his supervisor, Earl Fox, general foreman of the machine shop and blacksmith shop. From time to time Swenson would notify his supervisor of the need to conduct union business. Such union activity would customarily require that he be absent from his work station from between 4 to 6 hours per week, for which time Swenson was docked. During this time Swenson filed some 16 grievances on behalf of employees, 7 of which were presented directly to Fox. During the same period, Swenson also presented some 12 complaints to various foremen on behalf of employees, although these complaints did not reach the level of official grievances. Further, in early 1980, Swenson engaged in considerable discussions with foremen, including Fox, about a change in the work schedule which adversely affected a number of employees. These discussions occurred on a daily basis over a 2-week period. Swenson recalled that as a result of these discussions, Fox told him that the Union was not going to tell him how to run his machine shop.

The record shows that Foremen Jack Gammon "reinstructed" Swenson on September 28, 1979, during the course of a personal interview regarding the incorrect boring of a hole. The "Employee Personal Interview" form, signed by Gammon, states: "You are hereby instructed to pay closer attention to the instructions of your supervisor and to blueprint specifications. You are also reinstructed that the maximum time allowed for breaks is 10 minutes." Swenson admitted that Fox also spoke to him about this matter, apparently around the same time.

In June 1981, Swenson received a reprimand and a 2-day suspension, apparently imposed by Fox, for faulty workmanship. Swenson considered the discipline to have been unwarranted, and a grievance was filed on his behalf in July 1981. The grievance proceeded to the third step of the grievance procedure. In late September 1981 Fox notified Swenson that the grievance had been resolved, and that Fox had been instructed by his superior to permit Swenson to make up the lost time and to remove the matter from Swenson's personnel records. Fox, who was admittedly disgruntled with the outcome of the grievance, told Swenson that the suspension had been warranted, and the whole thing was "bullshit."

In May 1982, while on layoff status, Swenson phoned an acquaintance, Tom Black, with whom Swenson had previously worked in 1978, and learned from Black that several positions for machinists were available at Respondent's Pittsburg, California facility. Shortly thereafter, Swenson was advised by Black that his chances for the transfer were good, as Black had highly recommended Swenson to his foreman, Jim Johnson, who told Black to have him apply for the transfer. Thereupon, on May 7, 1982, Swenson submitted an "Application for

Transfer," approved by General Foreman Fox, and Max Curtis, superintendent of central maintenance and utilities, to the Respondent's Pittsburg, California facility.

In mid-June 1982, Swenson called Black and asked what the delay was on his application for transfer. Black said he would find out. Black testified that upon inquiring about the matter, he was told by Johnson that he had spoken to Fox at the Provo, Utah facility, that Fox recommended that Swenson not be hired because he was a "troublemaker," and that Johnson had no place for a troublemaker at the Pittsburg facility. Black indicated surprise at this response, and Johnson said that Black should tell Swenson to clean up his act, get things straightened out with Fox, and perhaps reapply at a later time.

Black testified that on April 25, 1983, 3 days prior to the instant hearing, he was summoned to Johnson's office. Johnson, smiling, asked Black what was going on, and advised him that he had received a letter to appear at the hearing. Black said that he too had been subpoened to appear at the hearing. Johnson asked Black to help refresh his recollection regarding their conversation about Swenson in mid-June 1982. Black said that he had given a statement to the Board agent and initially told Johnson that he could not give Johnson any assistance in this regard without divulging the nature of the statement. Johnson stated that he recalled talking to Black about Swenson's craftmanship and prior reprimands as reasons for refusing to act favorably on Swenson's request for transfer. Black replied that the only thing he recalled was that Johnson had related that Swenson was called a troublemaker by Fox, and that this was the reason Swenson had not been hired.

Fox testified that he was familiar with Swenson's work at the Provo facility, and that it was generally of poor quality, particularly with regard to adhering to tolerances established by blueprints. Further, according to Fox, Swenson was a slow worker and had a tendency to leave the job early and wander to other departments to visit. In this regard, Fox testified that supervisors were constantly after him for these unauthorized visits. In May, Fox received a phone call from Johnson and reluctantly told him that because of the quality of Swenson's work and the difficulty in keeping him on the job, he would not recommend that Swenson be hired. Although Fox testified that he did not mention "union" or "union activity" during the conversation, he did not specifically deny using the word "troublemaker."

Johnson, general machine shop foreman at Pittsburg, generally corroborated Fox's testimony and determined that he would not consider Swenson for the position because of Fox's unfavorable evaluation. Regarding his subsequent mid-June 1982 conversation with Black, Johnson testified that he told Black the reason that Swenson was no longer being considered for employment was because he had "problems on his job."

Johnson generally corroborated Black's testimony regarding the April 25, 1983 conversation. Further Johnson testified that at the time he summoned Black to his office he was unaware that Black had been subpoenaed to appear at the hearing and did not learn this until the very end of the conversation.

C. *Analysis and Conclusion*

Thomas Black impressed me as a highly credible witness with a precise recollection of his brief conversations with Johnson regarding Swenson. Moreover, absolutely no evidence was presented which would suggest any ulterior motive for Black to be less than totally candid. Thus, he has been a long-time employee of Respondent with a highly satisfactory relationship with Foreman Johnson, and was merely an acquaintance of Swenson having worked with him some years previously. Black's testimony was forthright and convincing, and I have no hesitation in crediting his testimony over that of Fox and Johnson, both of whom exhibited less than a vivid recollection of the events in question. Indeed, prior to the hearing, Johnson found it necessary to enlist the assistance of Black in order to "refresh" his recollection regarding the matter. I therefore conclude that Johnson clearly, directly, and succinctly told Black that Swenson was not being hired because his prior foreman, Fox, considered him to be a troublemaker, and that no other reasons were enunciated by Johnson for denying Swenson's application for transfer.

The record reflects that Swenson had a reputation as a competent journeyman machinist prior to his being transferred to the Provo, Utah facility of Respondent, and that he received only two reprimands in some 13 years of employment with Respondent. One reprimand occurred in 1979. The other reprimand occurred in June 1981, when Swenson received a 2-day suspension by Fox for unacceptable workmanship. In September 1981, as a result of Swenson's efforts in grieving the matter, this suspension was removed from his personnel file. Fox was admittedly unhappy about this, describing the resolution of Swenson's grievance as "bullshit."

As the General Counsel notes in her extensive brief, the term "troublemaker" is commonly a euphemism for denoting an employee who is considered a disruptive element because of his union activity. *Huntington Hospital*, 218 NLRB 51, 58 (1975); *Mack Trucks*, 242 NLRB 651, 656 (1979). Other than the grievances Swenson filed on behalf of other employees as an assistant grievance committeeman, and the grievance filed on his own behalf, there is no record evidence supporting any characterization of Swenson as a troublemaker. Certainly, boring oversized holes in a piece of metal or engaging in other similar conduct, or being away from one's work station, does not normally connote a "troublemaker." Moreover, I do not credit Fox's testimony that supervisors were constantly after Swenson for making unauthorized visits to other departments. Nor does the record indicate why no other supervisors were called as witnesses to substantiate this contention. Swenson's union activity has been substantially demonstrated, and the record shows that his relationship with Foreman Fox, who was instrumental in causing the Pittsburg facility to deny Swenson's application for transfer, included frequent discussions with Swenson concerning union grievances or complaints. Further, Fox exhibited displeasure with what he believed to be union interference with the way he ran his department.

The record is clear that Respondent needed machinists at the time Swenson applied, and that one machinist was hired after Swenson's application for transfer was denied. Further, Respondent has failed to establish by evidence that Swenson's application would have been rejected in any event, for reasons unrelated to his union or protected concerted activity. See *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981).

Based on the foregoing, and particularly Respondent's failure to adduce persuasive evidence that its characterization of Swenson as a "troublemaker" connoted conduct other than union activity, I find that the General Counsel has proven by a preponderance of the evidence that Swenson's application for transfer was rejected because of his union and/or protected concerted activity, as alleged, in violation of Section 8(a)(1) and (3) of the Act. See *Mack Trucks*, supra; *Roadway Express*, 239 NLRB 653 (1978); *Mrs. Baird's Bakeries*, 189 NLRB 606 (1971).

Black's testimony was critical to this case. It is clear that Johnson's interrogation of him prior to the hearing in an effort to ascertain what he recalled about an earlier inculpatory conversation with Johnson, creates an atmosphere of coercion which must be dispelled by an unequivocal statement that no repercussions will result from the interview or from Black's subsequent testimony in a Board proceeding. Indeed, the coercive nature of the conversation is compounded by Johnson's statement that his recollection of the matter was totally different from the true and correct version which Black had related to the Board agent. Johnson's suggestion to Black, during the interview, that he believed he told Black, in June 1982, that Swenson's poor workmanship was the reason for his not being hired, appears to be no more than an attempt to give Black pause to consider that his testimony would differ materially from that of Johnson's.[1] Obviously, this realization would reasonably cause Black to fear adverse consequences, and Black is to be commended for his resolve to testify forcefully and candidly in this proceeding despite Respondent's apparent attempt to cause him to equivocate. I find from the foregoing that, as alleged, Johnson's failure to give Black assurances against reprisals is violative of Section 8(a)(1) of the Act.[2] *Johnnie's Poultry Co.*, 146 NLRB 770 (1964), enf. denied on other grounds 344 F.2d 617 (8th Cir. 1965); *Roadway Express*, supra.

Moreover, even if Johnson, at the outset of the conversation, had not been aware that Black would be testifying in this matter, such interrogation for purposes of preparing a defense to an unfair labor practice complaint nevertheless requires that the safeguards established in *Johnnie's Poultry Co.*, supra, be followed. Even though Johnson's true intent may have been merely to assist himself in recalling the events regarding Swenson in preparation for the hearing and was not precipitated by an ulterior motive, lack of an unlawful intent is not a defense to the conducting of an interview which may reasonably, as noted above, be deemed to be inherently coercive. See *Perko's, Inc.*, 236 NLRB 884 fn. 2 (1978); *CTS Keene, Inc.*, 247 NLRB 1016 fn. 2 (1980).

Conclusions of Law

1. Respondent is an employer engaged in commerce within the meaning of Section 2(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. Respondent has violated Section 8(a)(1) and (3) of the Act by failing and refusing to hire employee William Van Swenson in about mid-May 1982.
4. Respondent has violated Section 8(a)(1) of the Act by engaging in coercive interrogation of employees.
5. The aforesaid unfair practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that Respondent violated and is violating Section 8(a)(1) and (3) of the Act, I recommend that it be required to cease and desist therefrom and from in any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act, and take certain affirmative action described herein, including the posting of an appropriate notice.

Having found that Respondent unlawfully failed and refused to hire employee William Van Swenson in about mid-May 1982,[3] I recommend that Respondent make him whole, with interest, for any loss of pay he may have suffered as a result of the discrimination against him, and notify him by registered letter that Respondent will afford him an opportunity to apply for reinstatement to its Pittsburg, California facility within 90 days after his discharge form the Armed Forces. It is further recommended that Swenson be awarded backpay from the date he would have commenced work until the date he was inducted into the Armed Forces, and from a date 5 days after he applies for reinstatement on his return from the service until the date of Respondent's offer of reinstatement. Respondent shall also be ordered to pay Swenson immediately that portion of his net backpay accumulated between the date he would have commenced working at Respondent's Pittsburg, California facility and the date he entered the Armed Forces, without awaiting a final determination of the full amount of his award. *Diversified Case Co.*, 263 NLRB 873 (1982). Backpay is to be computed in the manner prescribed in *F. W. Woolworth Co.*,

[1] I credit Black and find that he made Johnson aware at the outset of the April 25, 1982 interview that he would be a witness on behalf of Swenson in this proceeding

[2] I have carefully considered Respondent's arguments that the amendment of the complaint to include this allegation is untimely, and that Respondent did not have an adequate opportunity to fully litigate this issue, and find them to be without merit. I accepted the amendment of the complaint at the hearing and advised Respondent that I would grant it a reasonable amount of time to prepare its defense Insofar as the record shows, Respondent presented, at the hearing, whatever evidence it desired to present regarding this allegation, and no request was made to adjourn the hearing for the purpose of giving Respondent additional time or for calling additional witnesses

[3] The determination of the precise date when Swenson would have commenced working for Respondent is left for the compliance stage of the proceeding

90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 651 (1977). See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

It is further recommended that Respondent remove from its records any reference to its failure to hire Swenson at its Pittsburg, California facility. See *Sterling Sugars*, 261 NLRB 472 (1982).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, United States Steel Corporation, Pittsburg, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to hire employees because of their union and/or protected concerted activity.

(b) Coercively interrogating employees.

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

(a) Offer reinstatement to employee William Van Swenson and make him whole in the manner set forth in the remedy section of this decision. In this connection, Respondent shall preserve and, on request, make available to the Board or its agents, for examination and copying, all records, including the payroll records of other employees, necessary to analyze and compute the amount of backpay due.

(b) Remove from its records any reference to its failure to hire Swenson at its Pittsburg, California facility in about mid-May 1982.

(c) Post at its Ogden, Utah, and Pittsburg, California facilities copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 32, 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.

(d) 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

WE WILL NOT refuse to hire employees or to act favorably upon their application to transfer from one facility to another because they filed or processed grievances or engaged in other union activity on behalf of United Steelworkers of America, Local 1440.

WE WILL NOT interrogate employees in preparation for a hearing before the National Labor Relations Board without assuring them that their participation in the interview will not result in reprisals.

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.

WE WILL offer William Van Swenson employment at our Pittsburg, California facility as a machinist, upon his discharge from the Armed Forces, and make him whole, with interest, for any loss of earnings he may have suffered as a result of our discrimination against him.

WE WILL remove from our records any reference to our failure to hire Swenson in about mid-May 1982.

UNITED STATES STEEL CORPORATION

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[4] If no exceptions are filed as provided by Sec. 102 46 of the Board's Rules and Regulations, the findings, conclusions, and recommended 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

[5] 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"