

**A. J. Ross Logistics, Inc. and Miguel Santiago. Case
22-CA-14209**

30 March 1987

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
JOHANSEN AND BABSON**

On 10 November 1986 Administrative Law Judge Edwin H. Bennett 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, A. J. Ross Logistics, Inc., Keasbey, 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.

The Respondent contends that the judge's conduct at the hearing, interpretation of the evidence, and his credibility findings showed bias and prejudice against the Respondent. On examination of the judge's decision and the entire record, we are satisfied that the contentions of the Respondent in this regard are without merit.

The Respondent's request to reopen the record is denied as lacking in merit.

Gary A. Carlson, Esq., for the General Counsel.
Thomas F.X. Foley, Esq. (Foley, Shelly & Neimann), for the Respondent.

DECISION

STATEMENT OF THE CASE

EDWIN H. BENNETT, Administrative Law Judge. On 14 January 1986 an unfair labor practice charge was filed by Miguel Santiago against A. J. Ross Logistics, Inc. (Respondent or Company). On 27 February 1986 a complaint and notice of hearing was issued alleging, *inter alia*, that Respondent had discharged Santiago and Anselmo Larquin in January 1986 because of their activities on behalf of United Steelworkers of America, District No. 9 (Union), thereby violating Section 8(a)(3) of the Act. Additionally, the complaint alleged several instances of independent violations of Section 8(a)(1) of the

Act. Respondent denies that it violated the Act in any respect. The hearing on these charges was conducted in Newark, New Jersey, on 14 May 1986.¹

On the entire record, including my observation of the demeanor of the witnesses and after due consideration of the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is located on a site of approximately 40 acres in Keasbey, New Jersey, where it is engaged in the fabrication, storage, sale, and distribution of structural steel components for use in the construction industry, including the fabrication and sale of rebars, which are steel bars used for reinforcing concrete. It has revenues of several million dollars a year, of which amount, in excess of \$50,000 is derived from the sale of its products directly to places located outside the State of New Jersey. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondent also admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

Respondent began in business in 1975 and has grown steadily under the direction and control of its President and Chairman of the Board, Thomas Petrizzo. Petrizzo, who characterized himself as a "hands-on" executive, plays an active role in the day-to-day operations and management of the Company. Respondent's prospectus states: "The business of the Company is greatly dependent on the active participation of" Petrizzo. He works long hours six days a week, at times arriving as early as 4 a.m., and is thoroughly familiar with every phase of the business. He personally has guaranteed \$6 million worth of Company indebtedness and manifests his concern for the Company by overseeing its operations, performing manual labor, and regularly consulting with all the managers.

He tours the facility almost daily at which time he talks to the employees and observes work performance. He is particularly concerned with having "positive attitudes" among his employees and employs a secret intelligence system in order to detect "negative attitudes." Although he declined to specify all of the methods he employs to achieve this objective, his testimony left no doubt that he is constantly aware not only of the production operations but of employees concerns and attitudes towards the job.

Petrizzo's chief assistant is Ronnie Ferrer, who has been with the Company since its inception having held a variety of positions. For the past 3 years he has been a vice president whose duties place him in charge of the entire production facility. He is responsible for all receiv-

¹ All dates hereinafter are in 1986 unless otherwise stated.

ing of new products and shipment of finished goods, as well as maintenance of the equipment and evaluation of the production process. Additionally, he plays a key role as the liaison between Petrizzo and the Spanish speaking employees who constitute approximately 50 percent of the total work force of about 200 employees. Ferrer frequently accompanies Petrizzo on his daily tours of the facility and serves as a Spanish translator for him.

A major component of Respondent's operations is the rebar division located in a 40,000 square foot building with an adjacent lunchroom. That operation contains two automatic machines for fabricating steel bars used to reinforce concrete. The division operates on two, 8-hour shifts daily, employing from 20-30 employees per shift. The actual fabrication of the bars is done by computerized machinery operated by highly skilled employees. In addition, there are general laborers who are used to remove the bars, bundle them, tag them, and load them on the trucks. The two alleged discriminatees were employed in this unskilled labor category on the day shift. The rebar division is headed by a vice president, Hugh Brady, and the supervisor on the day shift is Larry Greenough, both of whom admittedly are supervisors within the meaning of the Act.

B. The Union Activity

Dissatisfaction surfaced among the employees in January, apparently as a result of the failure to receive expected raises the previous Christmas. Brady acknowledged that this disappointment could have contributed to the development of negative attitudes among the employees. In any event, Santiago felt that he was not being treated fairly and contacted a representative of the Union, a choice he decided on because the Union had represented employees where Santiago previously had worked in 1984. As a result, a union representative, Morton, met with Santiago, and his wife Gloria, at their home on the evening of 9 January. Morton gave him about 200 authorization cards for distribution among his coworkers to solicit their support for the Union.

The credited testimony of Santiago and Larquin establishes that on 10 January they arrived at the plant at approximately 6 a.m., about 45 minutes prior to their normal starting time. Larquin generally traveled with Santiago to and from work in Santiago's automobile which usually was driven by Gloria Santiago. The two men were socially friendly, a fact known to Ferrer and Petrizzo. Both employees stationed themselves in a locker room area used both by rebar and yard employees. With Larquin acting as lookout, Santiago distributed cards to about 20 to 25 employees and received approximately 15 signed cards in return.

About 4 p.m., that same day, following his discharge as described more fully below, Santiago and Larquin, who joined him on completion of his shift, distributed union cards to employees arriving for the second shift. They continued this union solicitation outside the plant until about 5 p.m., during which time they distributed approximately 20 to 30 additional cards, with several employees signing them on the spot. The foregoing account constitutes the only significant union activity prior to the

two discharges in question and is based on the credited testimony of the two employees.

C. The Discharge of Santiago

Santiago was hired by Ferrer in April 1984. He initially was employed as a security guard until June 1984 when he was transferred to work in the yard as an assistant to the hi-lo operator. In January 1985 he was transferred to the rebar department where he performed general labor work until his discharge on 10 January. His duties in that department included such various tasks as sweeping, throwing rods on the line, and loading cut rods on to the truck. His immediate supervisor was Greenough who in turn reported to Brady. In May 1985 he received a raise to \$6.50 an hour which remained his rate of pay until his discharge.

Although Ferrer asserted that Santiago had problems as a security guard (sleeping on the job) he conceded that he was an average employee. Both Ferrer and Petrizzo sought to portray Santiago as a less than adequate rebar employee as well but could describe only a single incident to support their testimony. In July 1985 Santiago, Larquin, and two other employees were fired by Brady for refusing to work overtime on a particular Saturday. Within days of that discharge, however, and at the request of Santiago and Larquin, Ferrer interceded with Petrizzo on their behalf and the employees were reinstated. No other disciplinary action of any kind was ever taken against Santiago for any other reason throughout the period of his employment. Nor is there any evidence that he was warned in any manner concerning his work performance. Furthermore, Santiago was assigned crane operation on Saturdays when the two regular operators normally did not work, despite the fact that Petrizzo described crane operation as a dangerous job. Other duties performed by Santiago, such as flipping bars and loading trucks, also were described as dangerous and it is clear that Respondent assigned these various tasks to Santiago throughout his employment in the rebar department. Finally, although Respondent elicited testimony from many of its witnesses purporting to demonstrate that Santiago was a particularly slow, incompetent, or dangerous worker, the alleged reason for his discharge was not related to his job performance.

As noted above, Santiago arrived early for work on Friday, 10 January and together with Larquin distributed union authorization cards to employees. Following this activity he clocked in and began his regular work at 7 a.m. About 10 a.m., Greenough called him aside and told him that he had heard there was an attempt to unionize the plant and that because he was a friend of his he did not want him to have problems. Santiago denied knowledge of any union activity. Nevertheless, Greenough told him to talk to Petrizzo because "he's a good guy and don't try to get a union because that's not going to get you anything." Santiago returned to work and although Greenough proceeded to transfer him from job to job, Santiago credibly testified that he was under constant observation by Brady. Greenough, who still is employed as a supervisor, did not testify, and therefore Santiago's testimony in this regard is credited and uncontroverted.

Santiago was discharged before the regular end of his shift and before the end of the regular workweek which runs from Monday through Saturday with payday the following Thursday.

According to Santiago's credited testimony, he was sweeping the floor following the unloading of a truck when Petrizzo and Brady approached him about 3 p.m. Petrizzo told Santiago that he did not like him anymore and when Santiago asked why Petrizzo said he did not like the way he was working and that he was fired. These few words were spoken in English and were understood by Santiago. Santiago did not reply and immediately left the building followed by Petrizzo and Brady. Petrizzo told a security guard that he did not want to see Santiago at the plant again.

Brady testified that since he had become vice president in charge of the rebar department in May 1985, and prior to Santiago's discharge, approximately seven employees had been fired. In each instance, Brady made the decision to discharge the employee and communicated that action to the employee. In not a single case did Brady consult with Petrizzo in advance although in some of the cases he notified Petrizzo subsequently. All of these discharges were for poor work performance of one type or another. The discharge of Santiago was unique in the manner in which it was made by Petrizzo and in the fact that neither Brady nor Ferrer had been informed of Santiago's impending discharge. Neither of these corporate officers, who normally would have at least been involved in, or advised of, such personnel action, had so much as a suspicion that Petrizzo was contemplating such step.

Although no reason was communicated to Santiago at the time of discharge, Respondent asserts that it had good and compelling justification for the sudden discharge of Santiago. Petrizzo testified that his reason for firing Santiago in the manner described was that for several weeks Santiago had worked at a noticeably slower pace and, more importantly, had been soliciting his fellow employees to join him in this slowdown campaign. However, Petrizzo conceded that although he knew of Santiago's slowdown tactics, he never warned Santiago to cease such activity, nor had he told any of his supervisors about his observations or instructed them to take measures to deter Santiago from this most serious conduct. Petrizzo was insistent that the reason for firing Santiago was the "slowdown" campaign he had been urging on other employees. However, Petrizzo's testimony is not supported by any independent evidence from other workers who were the recipients of Santiago's alleged slowdown activities nor is he supported by any of the supervisory staff or indeed by Respondent's formal response to the complaint.

Thus, Petrizzo's testimonial contentions are inconsistent with Respondent's opening statement asserting that both Santiago and Larquin were fired for their refusal to perform specifically assigned work. Their discharges in January, it was alleged, were motivated by the same type of conduct that resulted in their discharges in July 1985, at which time, it will be recalled, they were fired, although later reinstated, for their concerted refusal to perform overtime work. This alleged nonperformance of

duties as the reason for Santiago's discharge is repeated in Respondent's brief, i.e., that he was fired because Petrizzo observed him not working. Brady's testimony, while supportive of the formal position, is at odds with Petrizzo's testimony. According to Brady, he and Petrizzo had been observing Santiago loafing for several minutes prompting a comment to this effect by Petrizzo. It was at that very moment that Petrizzo summoned Santiago and fired him. It was Brady's belief that although he had not been informed of the reasons of the discharge, Santiago's loafing was the immediate cause therefor. Ferrer, who was the liaison between Petrizzo and the Spanish-speaking employees, and who can be described as Petrizzo's right hand man in the overall operations of Respondent, first learned of Santiago's discharge later that afternoon from an employee and not from Petrizzo or Brady. There is no explanation in the record for Ferrer's ignorance of Petrizzo's intent to discharge an employee who for several weeks allegedly had been instigating a slowdown.

D. *The Discharge of Larquin*

Larquin had been hired by Ferrer in February 1985 and had worked the entire period of his employment in the rebar department, tying and ticketing cut rods. At the time of his discharge he was earning \$6 an hour, a rate of pay that he started to receive in May 1985. He was described by Brady as a good worker, essentially no different than any other worker in the rebar department. He had never been warned or disciplined for poor work performance, except for the disciplinary action in July 1985 noted above, involving the concerted refusal to work overtime.

On Saturday, 11 January, the day after Santiago's discharge, about noon time, while Larquin was performing his assigned duties, he was approached by Petrizzo and Ferrer. Petrizzo called him over and told him, in English, that he was fired. At Larquin's request, Ferrer confirmed the discharge in Spanish. Neither official gave Larquin any reason. Nevertheless, as was the case with Santiago, Respondent, during the trial of this matter, offered several reasons for his discharge.

As noted, Respondent's position at the opening of the hearing was that Larquin and Santiago were fired essentially for the same reasons that motivated their discharges in July 1985, that is, that they refused to perform assigned work. Respondent's brief, however, asserts that Larquin was fired for "gesturing and screaming in Spanish at the other workers," and for continuing such threatening conduct despite efforts by Petrizzo to stop him. Notwithstanding these two reasons, Respondent's witnesses did not entirely agree and they testified at variance to both.

The crucial testimony, and the most contradictory, was given by Petrizzo who made the decision to discharge Larquin without any consultation whatsoever with Ferrer or Brady and who actually communicated the discharge notice. He testified repeatedly and unequivocally that he fired Larquin for the same reason that he fired Santiago, namely that Larquin, for a prolonged period of time, had been urging employees to

engage in a work slowdown. Further, although he claimed to have observed that conduct personally, he did not explain his failure to warn Larquin or to take measures to have him cease these slowdown tactics. His testimony regarding Larquin mirrors his testimony concerning Santiago. In addition, Petrizzo specifically denied that he had observed Larquin on the day of the discharge creating any sort of disturbance with the other employees or that Larquin's prior work performance, which he considered generally unsatisfactory, motivated his discharge decision.

Ferrer, on the other hand, testified that although he had no advance knowledge from Petrizzo that Larquin would be fired, and although Petrizzo did not communicate a reason to Larquin, he was sure that Larquin was fired because, on that day but not before then, he had been urging a slowdown. Unfortunately for Respondent, Ferrer was equally sure that such conduct was not the cause of the discharge but rather that he was fired because of his misconduct in cursing at other employees. Thus, Ferrer testified, "I think that the reason that he was laid off, it was because of these—the way he—he was cursing at everybody and everybody else and not because of the slowdown," and that this conduct occurred only moments before the discharge. Brady, in whose department Larquin worked and who had determined to fire Larquin and the others in July 1985, testified that he did not learn of the discharge until later and that to the best of his understanding, Larquin was fired for arguing or fighting and that he was not aware that Larquin had ever urged employees to engage in a slowdown.

E. The Postdischarge Events

On Monday, 13 January, Larquin, Santiago, and Santiago's wife drove to the plant about 6:30 a.m., to try and persuade Ferrer to again intercede with Petrizzo to have them reinstated. They waited for Ferrer to arrive and spoke with him outside the plant. Gloria Santiago, who knew Ferrer for several years, was the principal spokesperson. There was a brief conversation in which Ferrer was told that the two men wanted to return to work. According to the credited testimony of Gloria Santiago, Ferrer replied that "your husband is the leader of the union, and we can't have a union here because if the union comes in we'll have to close." The conversation ended with Ferrer stating that he would see what he could do about their reinstatement after such request was repeated. The testimony of the three General Counsel's witnesses is in substantial accord regarding this meeting, while Ferrer did not specifically testify about this event.

Several days later, at Ferrer's request, they all met again at a liquor store he owned in Elizabeth, New Jersey. Ferrer asked them what they wanted, to which they replied that they wanted their jobs back. In addition, Santiago and Larquin said they wanted wages lost as a result of their discharges and the wage increase that had been promised around Christmas time. Ferrer commented that they should have spoken to him before they became involved with a union. Furthermore, he told them he could do nothing about getting them any money but he would see what could be done about reinstatement.

He also repeated his statement that the Company would close rather than deal with a union in which case, he added, even he would have to collect unemployment. The foregoing account is based on a composite of the credited testimony of the three General Counsel's witnesses. Ferrer did testify about this meeting and denied that there was any mention of a union, that he made any of the threats attributed to him, and that the only subject discussed was reinstatement. I do not accept Ferrer's account of this meeting. The testimonial demeanor of the General Counsel's witnesses throughout was much more favorable. Ferrer's testimony generally was inconsistent and self-contradictory (particularly concerning the reason for the firings), and this second meeting, which he requested (a matter about which he also was evasive), was in keeping with the first meeting, which as noted, he did not specifically deny. I conclude that Ferrer, as well as Petrizzo, were not reliable witnesses and that their testimony concerning the alleged violations of the Act was not candid or complete.

F. Analysis

1. The discharges of Santiago and Larquin

It is now firmly established that if the General Counsel has made a prima facie showing that an employer's discharge decision was motivated by protected conduct, the employer has the burden of persuading, by a preponderance of the evidence, that such discharge would have occurred even in the absence of that protected conduct.² Whether or not an inference of a discriminatory motive exists, rests on the presence, or absence, of various indicia knowledge of protected conduct, the timing of the discharge in relation to such conduct, animus or hostility towards the protected activities—including the existence of other independent violations of the Act—and the validity of the asserted business justification for the discharge. In this last respect, the General Counsel notes in his brief, citing *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966): "If [the administrative law judge] finds that the stated motive for a discharge is false, he certainly can infer that there is another motive. More than that, he can infer that the motive is one that the employer desires to conceal—an unlawful motive—at least where, as in this case, the surrounding facts tend to reinforce that inference."

Applying these guidelines to the credited evidence, I find there is a substantial basis for concluding that a prima facie case, and a compelling one at that, has been established with respect to the discharges of Santiago and Larquin. The following recapitulation of the evidentiary highlights shows that on 10 January, Santiago and Larquin engaged in significant protected activity by soliciting union membership from their colleagues at the workplace.³ This conduct became known to Respondent

² See generally *Roure Bertrand Dupont, Inc.*, 271 NLRB 443 (1984), for a discussion of the *Wright Line* analysis in discrimination cases.

³ Larquin served only as a lookout on the morning of 10 January while Santiago did the actual card distribution. Larquin nailed his own coffin, however, by joining Santiago in direct card distribution that day after

Continued

almost immediately, for within hours Santiago's supervisor, Greenough, cautioned him about participating in such conduct. The involvement of Santiago and Larquin in union activity was a repeat display of a "negative" attitude towards the Company for it clearly showed their dissatisfaction with employment conditions. These two employees previously were linked in a protest regarding compulsory overtime for which they had been fired and, after a joint appeal, ultimately reinstated. Whether or not this earlier conduct implicated rights under the Act is not an issue in this case. However, it does reinforce the conclusion that Respondent considered them as a source of friction between management and employees for which a corrective measure (discharge) was required. In fact, one of Respondent's defenses is that they were fired in 1986 for the same reason for which they had been fired in 1985. Thus, we have the element of company knowledge of protected activity.

Respondent's denial of knowledge is without merit. Not only is there direct evidence of such knowledge in Greenough's statement to Santiago, but it is confirmed by Ferrer's statements on 13 January and a few days later to Larquin, Santiago, and his wife on the occasions outside the plant and at the liquor store when they sought Ferrer's help in securing their reinstatement as he had done in July 1985. Moreover, there is strong circumstantial evidence that Petrizzo learned of the card distribution immediately, in the morning and in the afternoon of 10 January. Petrizzo lauded his "secret service" for ferreting employee "negative" attitudes and when this is combined with the statements of Greenough and Ferrer, and the pretextual excuses given for the discharges (discussed more fully below), the inference of such knowledge by Petrizzo prior to the discharges is inescapable. "The same set of circumstances may be relied on to support both an inference of knowledge and an inference of discrimination." *Coca Cola Bottling Co.*, 237 NLRB 936, 944 (1978).

The other aspects of the prima facie case are that the discharges came immediately (the same day and next) on the heels of the union activity, they were done in the middle of a day and before the end of a pay period; they were effectuated in an unprecedented manner, i.e., by Petrizzo himself; no supervisor was aware of or consulted about the discharges; there is other evidence of animus towards the union activity (see discussion below regarding the independent 8(a)(1) allegations), no reason at all was stated at the time of the discharges; and, finally, the reasons for the discharges advanced in this proceeding are so flimsy and paperthin as to be almost nonexistent.

We turn then to the Respondent's purported justification for firing both men, i.e., that Petrizzo claimed they both had been engaged in fomenting a slowdown campaign for several weeks among the other employees. Yet not a single supervisor or manager was aware of such conduct, not a single employee supported the testimony,

work, thus sealing his fate for the discharge that followed the next day. If Respondent was not fully aware of Larquin's union involvement in the morning of 10 January, as discussed below, it undoubtedly learned of his union activity that afternoon.

and, most significantly, Petrizzo conceded that he allowed and permitted such disruptive conduct to occur without so much as a word of displeasure to anyone. Considering Petrizzo's total involvement in the Company—physically, emotionally, and financially—I find it inconceivable that he maintained total silence in the face of such serious misconduct. On the other hand, if as I conclude, the allegation of "slowdown" is but Petrizzo's euphemism for union activity, it is not surprising, and in keeping with his managerial style, that immediate and forceful action was taken to root out this manifestation of "negative attitudes."

Accordingly, I reject Petrizzo's assertion that he had just cause (incitement of a work slowdown) for firing Santiago and Larquin. I am confirmed in this finding by Respondent's own case, for as described above, various other contradictory and inconsistent reasons were offered for the necessity of firing the two men in such precipitous manner. Thus, Respondent also claims that Santiago was fired for loafing on the day of discharge, that Larquin was fired for loud and disruptive behavior immediately prior to his discharge, and that both were fired for insubordination, i.e., refusing to perform specific assignments. In cases of this kind it has been said that "an unfavorable inference can be drawn from an employer's shifting explanations for its treatment of an employee." *Louisiana Council No. 17, AFSCME*, 250 NLRB 880, 886 (1980) (see fn. 38 and cases cited). The instant case is a classic example of that proposition. Inasmuch as Petrizzo's reasons are without merit and it was he who made the decision, a fortiori the reasons advanced by other Respondent officials are equally fallacious. The insubstantial, unreliable, and pretextual justification for firing Santiago and Larquin does not satisfy Respondent's burden of overcoming the General Counsel's strong prima facie case. According, I conclude that Respondent violated Section 8(a)(3) and (1) in discharging these employees as alleged in the complaint.

2. The independent 8(a)(1) allegations

The complaint alleges that Respondent, through Ferrer during the two postdischarge conversations he had with the Santiagos and Larquin, unlawfully promised a wage increase, threatened the closing of the plant in the event of unionization, and unlawfully solicited grievances.

The credited evidence establishes that on both occasions, Ferrer made statements to the effect that the plant would close if employees obtained union representation. No lengthy discussion is required to conclude that such remarks are coercive and violated Section 8(a)(1) of the Act as alleged.

The credited evidence also establishes that at no time during these meetings did Ferrer so much as suggest that wage increases would be granted if employees cease their support for the Union. In fact the General Counsel's witnesses all testified that Ferrer categorically rejected the demand for reinstatement. The General Counsel does not pursue this allegation in his brief, but whether or not it is abandoned, I conclude there is no evidentiary support for it and therefore find it lacks merit.

The evidence regarding the allegation of solicitation shows that on 13 January, at the meeting outside the plant, Ferrer was told that the men wanted reinstatement to which he replied that he would see what he could accomplish. However, the conversation was initiated by the discriminatees and Ferrer did not "solicit" or ask their wishes about anything. On the other hand, the meeting at the liquor store began by Ferrer asking the discriminatees what they wanted and again saying that he would see what he could do about their request for reinstatement. The General Counsel argues that by such conduct, Respondent unlawfully solicited grievances.

The vice in such violation lies not in the solicitation itself but rather in the promise—be it inferred or explicit—that the grievance will be corrected without union representation. *Uarco Incorporated*, 216 NLRB 1 (1974). Of course, without a solicitation by the employer to begin with there can be no unlawful solicitation at all (which is not to say that there might not be an unlawful promise). Consequently, there is no factual support to the General Counsel's argument with respect to the meeting on 13 January.

The meeting at the liquor store, however, raises different considerations because at that time Ferrer did ask, i.e., "solicit," their concern or "grievance." Nevertheless, I do not believe that the context in which that question was asked constitutes the type of conduct envisioned by the Board when it refers to the soliciting of grievances in order to remedy them without union representation. Here the "grievance," if it be that, concerned not an ongoing term of employment, e.g., wages, hours, discipline, etc., which would be improved if employees ceased their union support, but rather a discriminatory discharge. Although it might be argued that Respondent might have considered reinstatement if the men abandoned their union interest, thus satisfying the element of corrective action, that inference appears too remote in the circumstances of this case. Considering the high degree of evidence supporting the case for finding that the discharges were discriminatory, Ferrer's question seems more rhetorical than solicitous. Moreover, absent controlling case authority, I am reluctant to conclude that discussions concerning possible reinstatement of illegally discharged employees, albeit that it is conditioned on foregoing union representation, constitutes an unlawful solicitation of grievances within the lexicon of Board law. It would suffice to deal with and remedy that conduct as part of the 8(a)(3) violation and therefore, I will recommend dismissal of this distinct 8(a)(1) allegation.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By discriminatorily discharging and refusing to reinstate its employees Miguele Santiago and Anselmo Larquin because of their activity on behalf of the Union, Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

4. By threatening its employees with the closing of its plants if they seek representation by a union, Respondent violated Section 8(a)(1) of the Act.

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

6. Respondent has not violated the Act in any respect other than that specifically found.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the purposes of the Act. Having found that Respondent discharged and failed to recall Miguel Santiago and Anselmo Larquin in violation of Section 8(a)(1) and (3) of the Act, I shall recommend that Respondent be ordered to offer them immediate and full reinstatement to their former positions of employment or, if these positions are not available, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed.

I shall also recommend that Respondent be ordered to make each of them whole for any loss of earnings they may have suffered from the date of their respective discharges to the date each is offered reinstatement. Their loss of earnings shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and shall include interest as set forth in *Isis Plumbing Co.*, 138 NLRB 716 (1962), and *Florida Steel Corp.*, 231 NLRB 651 (1977).

I shall also recommend that Respondent remove from its files any reference to the discharges of Santiago and Larquin and notify them in writing that it has done so, and that evidence of their discharges will not be used as a basis for future, personnel action against either of them. *Sterling Sugars*, 261 NLRB 472 (1982).

The prayer for relief in the complaint requests, as part of the remedy, authorization for discovery proceedings pursuant to the Federal Rules of Civil Procedure in order to secure compliance with any order of the Board. The General Counsel does not contend that there are any special circumstances necessitating departure from the standard remedy in similar cases and I will not include that requested remedy here. *Northwind Maintenance Co.*, 281 NLRB 317 (1986); *O. L. Willis, Inc.*, 278 NLRB 203 (1986).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁴

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.

ORDER

The Respondent, A. J. Ross Logistics, Inc., Keasbey, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees in regard to hire or tenure of employment, or any term of condition of employment, because of their activities on behalf of United Steelworkers of America, District No. 9, or any other union.

(b) Threatening employees that the plant will close if they seek to be represented by a union.

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

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

(a) Offer to Miguel Santiago and Anselmo Larquin immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, in the manner set forth in the remedy section of this decision.

(b) Make whole Miguel Santiago and Anselmo Larquin for any loss of pay they may have suffered by reason of Respondent's unlawful discharges in accordance with the remedy section of this decision.

(c) Remove from its files any reference to the discharges of Miguel Santiago and Anselmo Larquin and notify them in writing that this has been done and that evidence of their unlawful discharges will not be used as a basis for future personnel action against either of them.

(d) 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 or useful to the analysis of the amount of backpay due under the terms of this Order.

(e) Post at its place of business in Keasbey, New Jersey, copies of the attached notice marked "Appendix."⁵ 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 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.

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

IT IS FURTHER ORDERED that the complaint be, and it is hereby, dismissed in all other respects.

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.

WE WILL NOT discharge, or otherwise discriminate against our employees, because of their activities on behalf of United Steelworkers of America, District No. 9, or any other union.

WE WILL NOT threaten our employees that the plant will close if they seek to be represented by a union.

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

WE WILL offer Miguel Santiago and Anselmo Larquin immediate and full reinstatement to their former positions or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole, with interest, for any loss of earnings they may have suffered because we unlawfully fired them.

WE WILL remove from our files any reference to the discharges of Miguel Santiago and Anselmo Larquin, and we will notify them that this has been done and that evidence of their unlawful discharges will not be used as a basis for future personnel actions against either of them.

A. J. ROSS LOGISTICS, INC.

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."