

Western Stress, Inc. and Thompson Della Cioppa and John Traynor and Manuel Gonzalez. Cases 4-CA-14866-1, 4-CA-14866-2, and 4-CA-14866-3

July 29, 1988

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
JOHANSEN AND BABSON

On July 19, 1985, Administrative Law Judge William F. Jacobs issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in response.

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 briefs¹ and has decided to affirm the judge's rulings, findings,² and conclusions³ and to adopt the recommended Order.

The judge found and we agree that the Respondent violated Section 8(a)(1) of the Act by discharging employees Thompson Della Cioppa, Manuel Gonzalez, and John Traynor for refusing to cross the picket line set up at a customer's place of business.

On January 30, 1985,⁴ the Respondent's operations superintendent, David Spencer, assigned Della Cioppa and Gonzalez to work on a project at the Gulf refinery in Philadelphia, Pennsylvania. Della Cioppa and Gonzalez were to work with other Gulf employees under Gulf Oil Supervisor Jerry Hansen. The two employees worked January 30 and 31, Wednesday and Thursday, without incident. They entered and exited the refinery through gate 51 in one of the Respondent's trucks, which was clearly marked with the Respondent's decal and logo. On January 31, Hansen informed Gonzalez that there might be picketing at gate 51. The next morning, Friday, February 1, Della Cioppa and Gonzalez entered the refinery through gate 24

in an unmarked car. That day Hansen told the two employees that there would definitely be a strike on the following Monday, February 4,⁵ and that they should report to work through gate 24 in an unmarked car. Della Cioppa and Gonzalez were also advised to exit the refinery through gate 51, which had been assigned to the Union for primary picketing. When they left the refinery on February 1, Della Cioppa asked the guard if it would be all right for them to use gate 51 on the following Monday. The guard told them not to use the gate because there would be picketing at all gates and if they tried to go through the gate they would be beaten up.

On returning to the Respondent's facility, Della Cioppa and Gonzalez told Spencer and Operations Manager Raymond Toppin that if there were a strike on Monday they preferred not to cross the picket line. They also told Spencer and Toppin that they felt conditions were unsafe as they had heard that some employees of another company had been beaten up after leaving the refinery through gate 51. Spencer responded that as the strike was not scheduled to start until 7:30 a.m. on Monday, Della Cioppa and Gonzalez should report to the refinery at 7 a.m. in an unmarked vehicle. After this meeting, Della Cioppa and Gonzalez discussed the situation with other employees for about 2 hours and decided that if there were a picket line at the refinery on Monday they would not cross it for reasons of safety and business ethics.

On Monday, February 4, Della Cioppa and Gonzalez arrived at the refinery at 7:30 a.m. instead of at 7 a.m. as instructed by Spencer because they did not want to arrive before the pickets, enter the gate without obstruction, then later find themselves trapped behind the picket line on the way out. On arriving, the two employees found about 40 to 50 pickets at gate 51. A truck that was attempting to enter through that gate was surrounded by a crowd of pickets.

Della Cioppa and Gonzalez decided not to enter the site and made several trips around the refinery to assess the situation. They found pickets at all the gates. Gonzalez called Spencer and told him that they did not want to cross the picket line. Spencer instructed them to meet Hansen at gate 24. Gonzalez indicated that because he felt it would be unsafe and for business reasons he still did not want to cross the picket line. Della Cioppa and Gonzalez returned to the Respondent's facility.

Before Della Cioppa and Gonzalez arrived, Traynor was asked if he would cross the picket line to work at the refinery. Traynor told Spencer

¹ The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

² 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.

³ In agreeing with the judge that the discrepancies in Della Cioppa's and Gonzalez' timesheets do not preclude a remedy here, we rely solely on the judge's finding that there is no evidence that the Respondent would have terminated these employees on the basis of this misconduct in the absence of their protected activity.

⁴ Unless otherwise indicated all dates are in 1985.

⁵ We correct the judge's inadvertent error that the date was July 4.

that he did not want to cross because he did not have enough facts as to who was striking and why.

On arriving at the Respondent's office, Della Cioppa and Gonzalez told the other technicians about the pickets and the violence involving the employees of another company. When Gonzalez was summoned to the phone to speak with the Respondent's regional general manager, he was told that if he refused to go to the refinery he would be laid off. Toppin then asked Della Cioppa, Gonzalez, and Traynor each, if they would go to work at the refinery. Della Cioppa and Gonzalez refused. Traynor told Toppin that he felt that more information was necessary. Toppin responded, "You know your option." All three employees were discharged.

Later that morning, Spencer and technician William Mason went to the refinery, completed the job, and left the site around 2 or 2:30 p.m., apparently without incident.

The judge found that the Respondent unlawfully discharged the three employees for their refusal to cross the picket line at the Gulf refinery. In so finding, the judge relied on *Business Services By Manpower*, 272 NLRB 827 (1984); and *ABS Co.*, 269 NLRB 774 (1984), in which the Board held that the Act protects an employee's refusal to cross a picket line even when the sole motivation is fear.⁶

The Respondent argues that the Board should balance its legitimate business reasons for discharging the employees—performance of work assignments—against the employees' interest in the concerted activity at issue here and find that the type of conduct engaged in by Della Cioppa, Gonzalez, and Traynor is entitled to less weight than the Respondent's valid business considerations.

Even under this approach, the Respondent's interest in the performance of its work assignments is outweighed by the Section 7 rights of the employees in refusing to cross a stranger picket line. As found by the judge, the work that the three discharges refused to perform was performed by Spencer and employee Mason within 1 or 2 hours of the discharges and was completed in a couple of hours. Thus, this is a case in which the work that the discharges failed to perform could be completed with little or no disruption in the Employer's operation or with only a harmless delay. Moreover,

the discharges had given the Respondent advance notice on Friday of their concern regarding crossing the picket line on Monday morning. Thus, this case is plainly distinguishable from *Business Services by Manpower*, 272 NLRB 827 (1984), enf. denied 784 F.2d 442 (2d Cir. 1986). In denying enforcement of the Board's order, the Second Circuit noted that the nature of the operation in that case—a temporary help service—rendered the smooth replacement of the employee or performance of the work impossible, so that the failure of these employees to report to work meant that business was lost forever. As shown above, this factor does not exist in this case.

The Respondent also stresses that Gonzalez and Della Cioppa were instructed to arrive early so that they would not have to cross the picket line to enter the plant. As the judge found, Gonzalez and Della Cioppa did not want to arrive before the picket line was set up, enter the gate, and later find themselves caught behind the picket line, subject to possible violence. We cannot agree that the employees' refusal to arrive early weakens their Section 7 interests. Gonzalez and Della Cioppa were discharged for refusing to cross a picket line, not for refusing to report early. Had the latter been the case, and only then, would we need to address whether the refusal to report early was itself an act in concert with the strikers.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Western Stress, Inc., Philadelphia, Pennsylvania, and Mt. Laurel, Maryland, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

MEMBER CRACRAFT, concurring.

I concur in the result. I would find a violation here under either the approach applied by the Board in its decision in *Business Services by Manpower*, 272 NLRB 827 (1984), enf. denied 784 F.2d 442 (2d Cir. 1986), or under the balancing test applied by the Second Circuit in that case and advocated by the Respondent here.

Marvin L. Weinberg, Esq., for the General Counsel.

Doris J. Dabrowski, Esq., of Philadelphia, Pennsylvania, for the Respondent.

⁶ We note that, although the judge concludes that Della Cioppa, Gonzalez, and Traynor refused to cross the picket line out of fear for their personal safety, in his discussion of the facts the judge presents evidence that Della Cioppa and Gonzalez were also motivated by business ethics. As we agree with the judge that the employees were protected by Sec. 7 regardless of whether their motive for refusing to cross stranger picket lines was fear, we need not reach this alternative basis for Della Cioppa's and Gonzalez' refusal to cross the picket line.

DECISION

STATEMENT OF THE CASE

WILLIAM F. JACOBS, Administrative Law Judge. This case was tried before me on 8 May 1985¹ at Philadelphia, Pennsylvania. The charges in Cases 4-CA-14866-1 and 4-CA-14866-2 were filed on 6 February by Thompson Della Cioppa, and John F. Traynor, respectively. The charge in Case 4-CA-14866-3 was filed on 7 February by Manuel Gonzalez.² The complaint issued 27 March alleging that the above-named individuals were terminated by Respondent Western Stress, Inc. on 4 February because they concertedly refused to work at Respondent's jobsite at the Gulf Oil Corporation's Philadelphia refinery because of adverse working conditions in violation of Section 8(a)(1) of the Act. Respondent, in its answer and amended answer, denied the commission of any unfair labor practices.

The parties were represented at the hearing and afforded full opportunity to be heard and to present evidence and argument. Briefs were filed by both the General Counsel and Respondent.

On the entire record in the case, my observation of the demeanor of the witnesses, and after giving full consideration to the briefs, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent, a Texas corporation with an office and place of business in Mt. Laurel, New Jersey, is engaged in the service of onsite heat treating of process piping and vessels at various refineries, powerhouses, chemical, and fabrication plants located throughout the United States. During the past year, Respondent, in the course and conduct of its business operations, derived gross revenues in excess of \$1 million and purchased and received materials valued in excess of \$50,000 directly from points located outside the State of New Jersey. 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 ALLEGED UNFAIR LABOR PRACTICES

Supervisory Issue

As noted above, Respondent does onsite heat treating of process piping and vessels. As of 4 February, the date of the alleged unfair labor practice, it employed eight full-time technicians and four part-time technicians, the latter on an on-call basis, three salespersons, a secretary, an operations manager, and an operations superintendent, all nonunion.

Operations Superintendent Spencer or Operations Manager Toppin assigns Respondent's technicians to their jobs, and the latter report directly to these two members of management. At the jobsite, the technicians do the actual physical labor involved in the heat treatment but may also oversee fellow employees or employ-

ees of other employers, union or nonunion, doing the actual physical labor. Whether a particular technician is to be employed as a helper on a project, or is to be a lead technician is determined by Spencer or Toppin. In each case, the designation of lead technician is based on which technician is first on the job, which has the most overall experience, or which has the most experience with regard to a specific type of job. The lead technician, whoever it might be, is responsible for filling out daily time tickets that keep track of the technicians' time, weekly timesheets, and project forms. At one time or another, all three of the alleged discriminatees have worked as helpers and as lead technicians.

Thompson Della Cioppa, a level 2 field technician, has worked for Respondent for 4 years, and at the time of his discharge was earning \$9.50 per hour while working in the field, and \$7 per hour while working in the shop or on travel. Della Cioppa worked directly under Spencer, the person who hired him, and was assigned as lead technician only when he worked with part-time or casual employees. On these occasions, he received no increase in wages over and above those he earned when he worked as a helper doing only manual labor. Della Cioppa credibly testified that he did not have authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline, or interview for employment either Respondent's other employees or employees of other employers.

John Traynor, a level 3 senior technician, has worked for Respondent for 4 years and 9 months and, at the time of his discharge, was earning \$11.50 per hour while working in the field and \$8 per hour while working in the shop or traveling. On these occasions, when Traynor was assigned the job of lead technician or supervisory technician on a project, he received no additional remuneration over and above his regular wages for performing these duties. Traynor did not interview employees for hire nor did he have authority to hire, fire, transfer, suspend, promote, reward, or discipline Respondent's employees or the employees of other employers working with him on the job.

Manuel Gonzalez, a technician, has worked for Respondent for 6 years and 8 months and, at the time of his discharge, was earning \$10.50 per hour for field work and \$7 per hour for shop work and travel. Gonzalez credibly testified that he has on occasion served as leadman on some projects but if he arrived on a job after other technicians were already on the job, he would not be assigned as leadman. Similarly, if other technicians on a particular project had more experience than he had, Gonzalez again would not be assigned to the leadman's position. Whether Gonzalez worked as leadman or field technician, he still received the same hourly wage. Gonzalez did not interview employees for hire nor did he have authority to hire, transfer, promote, recall, discharge, lay off,³ or suspend either Respondent's employees or those of other employers.

¹ All dates are in 1985 unless otherwise indicated.

² The motion of counsel for the General Counsel to correct spelling is granted.

³ Gonzalez credibly testified that on one occasion, on the Eddystone job, he laid off certain union craft workers hired by Respondent but that the decision to do so was not his own. Rather, he merely served as a

The record reveals that all the 10 full-time technicians have, at one time or another, served as lead technicians; that when so serving, they performed physical labor right alongside other employees; that the type of work performed by the lead technicians was the same as that performed by other technicians except for the filling out of various forms; that the designation of leadman was determined by which employee arrived first on the job or by which one had the most experience in general or in particular in the type of work being performed; and that the leadmen did not receive any remuneration over and above his regular wages.

I conclude from the above that when the technicians, including Della Cioppa, Traynor, and Gonzalez served as leadmen they had none of the authority usually associated with supervision; that the control that they exercised was merely derived from their experience in the type of work involved; and that whatever direction they exercised reflected that of a more experienced employee helping a less experienced one, rather than the authority responsibly to direct, as recognized in connection with the statutory definition of supervisor. *Bugle Coat, Apron & Linen, Inc.*, 132 NLRB 1098 (1961). In short, I find that Della Cioppa, Traynor, and Gonzalez were and are rank-and-file employees, and not supervisors as defined in the Act.

The Discharges

On 30 January, Respondent's Operations Superintendent Spencer assigned employees Della Cioppa and Gonzalez to work on a project at the Gulf refinery, Philadelphia, Pennsylvania. They were to perform mechanical physical labor on a compressor located there, and were assigned to work with other Gulf employees under Gulf Oil Supervisor Jerry Hansen. On Wednesday and Thursday, 30 and 31 January, the two employees went to work without incident, entering and exiting refinery gate 51 in one of Respondent's pickup trucks clearly marked with its decal and logo.

On January 31 Hansen advised Gonzalez that the following morning, Friday, 1 February, there might be picketing at gate 51 and suggested that Gonzalez and Della Cioppa report to work the following day in an unmarked vehicle. In accordance with Hansen's instructions, Gonzalez and Della Cioppa drove to work the following day in an unmarked car, entering the facility through gate 24. That day, Hansen told the two employees that the following Monday, 4 July, there would definitely be a strike and that they should report to work on that day, once again in an unmarked car, and enter through gate 24. He added that they would probably finish the job on Monday and, after doing so, should exit through gate 51, the very gate that Gulf assigned to the Union for primary picketing.

On leaving the refinery grounds through gate 51 on Friday, 1 February, Della Cioppa asked the guard if it would be all right for them to use that gate the following Monday. The guard replied that Della Cioppa and Gon-

zalez should not use gate 51 on Monday because there would be picketing at all gates, and that if they tried to go through the gate, they would be beaten up. When Della Cioppa and Gonzalez arrived back at Mt. Laurel, they advised Spencer and Toppin that if there were a strike on Monday at the refinery they preferred not to cross the picket line. They informed their superiors that they had been told that certain employees of Joule Maintenance Corporation had been beaten up after leaving the refinery through gate 51, and felt that conditions were unsafe. Spencer replied that the strike was not scheduled to start until 7:30 a.m. on Monday, and that Della Cioppa and Gonzalez should report to the project at 7 a.m. driving an unmarked vehicle. He told them to give him a call if there was any problem. Following this discussion, Della Cioppa and Gonzalez went out to the parking lot, where they remained for about 2 hours discussing with other technicians the forthcoming strike, the expected picketing, the possible hazard connected with crossing the picket line, their safety, and what they should do the following Monday. Previous incidents of strike violence directed at Respondent's employees were also discussed. As a result of these considerations, Della Cioppa and Gonzalez decided that they would go to the refinery the following Monday, but if there was a picket line, they would not cross it, both for reasons of safety and business ethics.⁴

Despite Spencer's instructions that they should arrive at the jobsite at 7 a.m., before the picket lines were established, Della Cioppa and Gonzalez reported at 7:30 a.m. because they did not want to arrive before the pickets, enter the gate without obstruction, then later find themselves trapped behind the picket line, subject to possible violence on the way out. They found two or three pickets at gates 24 and 19, and about 40 to 50 more at gate 51. At gate 51, a truck attempting to gain entrance was being surrounded by the crowd of pickets. Someone was taking pictures of the truck and its driver. Della Cioppa and Gonzalez at that point decided that they would not attempt to enter the refinery. They proceeded to drive around the refinery grounds, taking second and third looks at the various gates, but found none of them free of pickets at any time.

Finding no apparent change in the situation after several trips around the block, Gonzalez called Spencer from a telephone booth, told him that there was picketing at every gate, that he felt it was unsafe to cross the picket line, and that he preferred not to do so. Spencer told Gonzalez to call back in a little while. When he did so, Spencer advised him that he had been in contact with Hansen and that Hansen had informed him that he, Hansen, had gotten into the refinery without any problem and that Della Cioppa and Gonzalez should report to gate 24 where Hansen would pick them up. Gonzalez replied that he still felt it would be unsafe and, for this and business reasons, he did not want to cross the picket line. Della Cioppa and Gonzalez then returned to Mt. Laurel.

conduit of orders decided on by his superior. When the testimony of Regional Administration Manager Thomas Dougher conflicts with that of Gonzalez, the latter is credited.

⁴ By business ethics Gonzalez meant that he had reservations about going through a picket line manned or supported by people with whom he might eventually have to work again, shoulder to shoulder.

Before Della Cioppa and Gonzalez arrived at the Mt. Laurel office, Toppin asked Traynor if he would be willing to cross the picket line to work at the refinery. Traynor decided that he would not and went into Spencer's office to say so. He told Spencer that he was unwilling to cross the picket line because Respondent did not have enough facts about who was striking and why. Toppin, Spencer, and Traynor then discussed the violence that had occurred involving the Joule employees and agreed that they could not blame Della Cioppa and Gonzalez for refusing to cross the picket line. Traynor asked Toppin to call the Union or go over to the refinery, presumably to get more information, but Toppin refused, stating that it was not the Respondent's problem. Traynor then discussed the situation at the refinery with the other technicians present.

When Della Cioppa and Gonzalez arrived, they engaged some of the other technicians present in conversation. Gonzalez told them what they had seen at the picket lines at the refinery and of the violence that had occurred involving the Joule employees. At that point, Toppin advised Gonzalez that Regional General Manager Paul Napeloni was on the phone and wanted to speak with him. When Gonzalez got on the phone, he told Napeloni that there was picketing at all gates at the refinery, and that he did not feel that it was either safe or good business to go through the picket line. Napeloni replied that Respondent was nonunion, had a commitment to Gulf, and if Gonzalez refused to go into the refinery he would be laid off. He then asked to speak to Toppin. After speaking to Napeloni, Toppin came out and asked Della Cioppa, Gonzalez, and Traynor, each separately, if they would go to work at the refinery. Della Cioppa and Gonzalez both refused. Traynor, having witnessed labor-connected violence in the past, was, like Della Cioppa and Gonzalez, also concerned for his safety. He told Toppin again that he felt that more information was necessary. Toppin replied, "You know your option." To all he said, "If you don't go over there, that's it, you're done."⁵ none of the three went to work at the refinery.

Later that morning, about 11:30, Spencer, along with technician Bill Mason went to the refinery, through the picket line, and did the job begun by Della Cioppa and Gonzalez. They completed the work and left the jobsite about 2 or 2:30 p.m. apparently without incident.

On 19 February Gonzalez visited the Mt. Laurel office of Respondent to pick up layoff slips for himself, Della Cioppa, and Traynor. After obtaining the requested slips, and as he was leaving, he noticed that the boxes on the slips labeled "discharge" and "resignation" were checked, whereas the one marked "layoff" was blank. Gonzalez realized that under these circumstances, he would be unable to collect unemployment. He returned, therefore, to Toppin's office where he asked for an explanation, inasmuch as he had been told on 4 February that he was being *laid off*, not discharged, if he refused to go to work behind the picket line. Toppin, however,

⁵ Elsewhere, Gonzalez testified that he was told by Toppin that he was laid off. Compare Tr 36 and 38. Traynor testified (Tr 76) that Gonzalez announced as he came out of Spencer's office that he and Della Cioppa had been fired for refusing to cross the picket line. I find that Gonzalez and the others were fired rather than laid off on 4 February.

denied that either he or Napeloni had used the term "layoff" during the conversations of 4 February. Gonzalez angrily called Toppin a "liar" and demanded to know if Toppin had given Napeloni the whole story. Toppin replied that he did not want to discuss it further, then proceeded to ignore Gonzalez. Gonzalez lost his temper and backhanded all of Toppin's books and papers off his desk. When Toppin threatened to call the police, Gonzalez left. Contrary to accusations leveled at Gonzalez by Toppin, Gonzalez credibly testified that he did not strike, swing at, or threaten Toppin.⁶

Conclusion

The 8(a)(1) allegations

Record evidence in the instant case clearly reveals that Della Cioppa, Gonzalez, and Traynor refused to cross the picket lines established at the Gulf refinery because of fear for their personal safety. The record is equally clear that these three employees were terminated because they refused to cross the picket line for the reasons stated. In a recent Board decision,⁷ the issue before me was discussed:

Indeed, we recently held in *ABS Co.*, 269 NLRB No. 138, slip op. at 4 (1984), that the Act protects an employee's refusal to cross a picket line even where the employee's sole reason is a fear of personal bodily injury. We stated, "[T]he focal point of the Board's inquiry is the nature of the activity itself; the employee's motives for engaging in the activity are irrelevant."

I find that the cited cases are controlling, and that by terminating Della Cioppa, Gonzalez, and Traynor because they refused to go through the picket line at the Gulf refinery, Respondent interfered with these employees' Section 7 rights in violation of Section 8(a)(1).⁸

Gonzalez' Postdischarge Conduct

Respondent argues that even if a violation of Section 8(a)(1) is found with regard to the discharges of the three discriminatees, their misconduct precludes the award of any relief. In support of this argument Respondent points to certain discrepancies in the reporting time of Della Cioppa and Gonzalez while employed at

⁶ Where Toppin's description of events differs from that of Gonzalez, insofar as the events of 19 February are concerned, I credit Gonzalez.

⁷ *Business Services By Manpower*, 272 NLRB 827 at fn. 8.

⁸ Respondent argues that the three dischargees lost the protection of Sec 7 because the picket line they refused to cross was unlawful. The record is devoid of any evidence to support this contention. The consent decree dated 19 February contains a nonadmission clause and is not evidentiary as to what the situation was on 4 February at the refinery. Moreover, the dischargees were told to exit through gate 51, a legal primary picket site where 40-50 pickets were located and where those pickets were told by Gulf to picket.

Respondent argues further that the discharge of the three employees was necessitated by business considerations. However, the record indicates that the work that the three dischargees refused to perform was, in fact, performed by Spencer and Mason within 1 or 2 hours of the discharges, and was completed in a couple of hours. Thus, there was no business consideration behind the discharges. *Browning-Ferris Industries*, 259 NLRB 60 (1981), rev'd 700 F.2d 385, *Business Services*, supra.

the Gulf refining job, a matter discovered after their discharge. With regard to these discrepancies and the minutes of worktime involved, I find that Della Cioppa and Gonzalez did not engage in such serious misconduct so as to forfeit the Section 7 protection accorded employees who participate in lawful activities. *Arrow Industries*, 245 NLRB 1376 (1979). Moreover, there is no evidence that Respondent would have terminated these employees on the basis of such misconduct absent their participation in protected concerted activities. *Arrow Industries*, supra.

Respondent's reliance on the events of 19 February as a basis for denying Gonzalez' reinstatement, I find to be inadequate in light of my earlier finding that Gonzalez neither threatened, swung at, nor struck Toppin. Though Gonzalez did, in fact, call Toppin a liar and did admittedly sweep Toppin's desk clear of Toppin's papers and books, an action certainly not condoned, it must be remembered that the confrontation was the direct result of Respondent's unlawful termination of Gonzalez and consequent denial to him of wages desparately needed. In my opinion, to deny Gonzalez his Section 7 rights and reinstatement because he showed visible signs of anger over the treatment he suffered would be unconscionable. Since no one was physically injured and there was no apparent damage to property as a result of the altercation, I shall recommend that Gonzalez not be denied reinstatement on the basis of the quarrel that took place on 19 February. *Hagerty Catering Co.*, 236 NLRB 1553 (1978).

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of the Respondent set forth in section II, above, occurring in connection with the operations of the Respondent described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce.

THE REMEDY

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

Having found that Respondent unlawfully terminated Thompson Della Cioppa, John Traynor, and Manuel Gonzalez I shall recommend that Respondent offer them immediate reinstatement to their former positions or, if such jobs no longer exist, to substantially equivalent positions, without loss of seniority or other rights and privileges, discharging, if necessary, any replacements, and make them whole for any loss of earnings they may have suffered by reason of their unlawful terminations, by payment to them of sums of money equal to the amounts that they normally would have earned from the date of their termination to the date on which a bona fide offer of reinstatement is made, with interest thereon to be computed in the manner prescribed in *F. W. Woolworth*

Co., 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 651 (1977).⁹

CONCLUSIONS OF LAW

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

2. By discharging Thompson Della Cioppa, John Traynor, and Manuel Gonzalez because they engaged in concerted activities for the mutual aid or protection guaranteed to employees by the Act, the Respondent has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁰

ORDER

The Respondent, Western Stress, Inc. Philadelphia, Pennsylvania, and Mt. Laurel, Maryland, its officers, agents, and assigns, shall

1. Cease and desist from

(a) Interfering with the rights of employees to engage in protected concerted activity by discharging employees for refusing to cross a lawful picket line.

(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) Offer to Thompson Della Cioppa, John Traynor, and Manuel Gonzalez immediate and full reinstatement to their former positions, without prejudice to their seniority and other rights and privileges dismissing, if necessary, any replacements and make them whole for any loss of earnings they may have suffered, in the manner set forth in the remedy section.

(b) 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.

(c) Remove from their files any references to the discharges of Thompson Della Cioppa, John Traynor, and Manuel Gonzalez on or about 4 February 1985, and notify them in writing that this has been done and that evidence of these unlawful discharges will not be used as a basis for future personnel actions against them.

(d) Post at its Philadelphia facility copies of the attached notice marked "Appendix."¹¹ Copies of the

⁹ See generally *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

¹⁰ 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.

¹¹ 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 Nation-

notice, on forms provided by the Regional Director for Region 4, 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.

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

al 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

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 interfere with the rights of employees to engage in protected concerted activity by discharging them for refusing to cross a lawful picket line.

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

WE WILL offer to Thompson Della Cioppa, John Traynor, and Manuel Gonzalez full reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings they may have suffered.

WE WILL remove from our files any references to the discharges of Thompson Della Cioppa, John Traynor, and Manuel Gonzalez on 4 February 1985 and WE WILL notify them that this has been done and that evidence of these unlawful discharges will not be used as a basis for future personnel actions against them.

All our employees are free to engage in concerted activities for their mutual aid and protection within the meaning of Section 7 of the Act or to refrain from such activities.

WESTERN STRESS, INC.