

**Douglas Aircraft Company, a Component of McDonnell Douglas Corporation and Robert H. Mourning,**  
Case 31-CA-1435

September 29, 1978

**SUPPLEMENTAL DECISION AND ORDER**

BY CHAIRMAN FANNING AND MEMBERS PENELLO  
AND TRUESDALE

On December 16, 1975, the National Labor Relations Board issued its Decision and Order in this proceeding,<sup>1</sup> in which it affirmed an Administrative Law Judge's finding that Robert H. Mourning, the Charging Party herein, was a supervisor within the meaning of Section 2(11) of the Act, and, accordingly, that Respondent had not violated Section 8(a)(3) and (1) of the Act by discharging him on November 15, 1968. Thereafter, on May 13, 1977, the United States Court of Appeals for the District of Columbia remanded this proceeding to the Board<sup>2</sup> to consider the legal issue raised by Charging Party Mourning of whether an individual is a supervisor under Section 2(11) of the Act if it is found he only exercises supervisory authority over individuals who are themselves excluded from the definition of employees under Section 2(3) of the Act.<sup>3</sup> The court further remanded this proceeding to the Board for clarification of the factual questions whether Mourning's crew ever consisted of persons who were "employees" within Section 2(3) or were merely pilots like himself; and, if his crew was composed of employees, whether the authority he exercised over them was not too sporadic and/or routine to warrant classifying him as a supervisor under the Act. Thereafter, on July 6, 1977, the Board notified the parties that it had accepted the remand from the court of appeals and that the parties had the opportunity to file statements of position with the Board with regard to the issues remanded. Counsel for the General Counsel, for the Charging Party, and for Respondent thereafter filed statements of position on remand with the Board.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

<sup>1</sup> 221 NLRB 1180 (1975).

<sup>2</sup> *Robert H. Mourning v. N.L.R.B.*, 559 F.2d 768 (C.A.D.C., 1977) (Judge MacKinnon dissenting).

<sup>3</sup> Sec. 2(11) of the National Labor Relations Act provides that the "term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment." Sec. 2(3) of the National Labor Relations Act provides: The "term 'employee' shall include any employee . . . but shall not include any individual employed as a supervisor. . . ."

The Board has reviewed the entire record in this case, including the statements of position on remand and, for the reasons stated below, finds that Charging Party Mourning was not a supervisor within the meaning of the Act at the time of his discharge and further that his discharge was for reasons proscribed by the Act.

The record reveals that Respondent at times material herein employed approximately 50-55 pilots at its Long Beach, California, facility, including 5 transport pilots. Transport pilots were qualified to fly light aircraft, such as Aero-Commanders and Cessnas. Production test pilots and engineering test pilots had the same basic qualifications as transport pilots, but, in addition, were qualified to fly larger commercial passenger-type aircraft which were manufactured and assembled at Respondent's Long Beach, California, plant.

At the time of his discharge on November 15, 1968, Charging Party Mourning was classified as a transport pilot in Respondent's business fleet.<sup>4</sup> Mourning flew the transport planes, carrying cargo and Respondent's officials, employees, customers, and other persons, in and around Los Angeles and occasionally interstate. He also flew the transports on "chase" and "photo" missions,<sup>5</sup> postinspection test flights,<sup>6</sup> and training flights.<sup>7</sup> The Cessnas and Aero-Commanders had a left and right seat for the pilot-in-command and the copilot, respectively, but Federal regulations did not require that a copilot be assigned as part of the crew. However, Respondent's own regulations required a copilot in severe weather for safety reasons.<sup>8</sup>

Charging Party Mourning flew as a pilot of transport aircraft, which under Federal regulations did not require a copilot about 95 percent of the time he worked for Respondent. The Administrative Law Judge found that Mourning sometimes did have a copilot on chase flights, but that specific evidence was lacking that he ever had a copilot on postinspection test flights.<sup>9</sup> Mourning estimated that about 5 percent

<sup>4</sup> When discharged, he was rated to fly Cessnas and Aero-Commanders (which were small twin-engine propeller-driven planes), and the Jet Commander, a jet-engine aircraft. He had only become rated to fly the Jet Commander on August 6, 1968, some 3 months before he was discharged. Since his hire at Respondent, he had logged about 1,774 hours as a pilot in command, including only 38.2 hours in the Jet Commander. He had flown about 256 hours as a copilot.

<sup>5</sup> On the chase missions, he would follow another plane, which was on a test flight, for surveillance, and to assist in rescue if necessary; on photo missions, a company photographer went along to take pictures of a plane in flight.

<sup>6</sup> These flights took place after normal maintenance and inspection procedures were completed.

<sup>7</sup> These training flights were to instruct new pilots.

<sup>8</sup> The record does not show how often this occurred.

<sup>9</sup> Contrary to Respondent's assertion in its statement of position, the Administrative Law Judge did not credit the testimony of former Director of Test Administration and Support Walter Kent that, on postinspection flights, Mourning himself sometimes had a crew consisting of a copilot, a mechanic, and an engineer.

of the time a pilot would fly the right seat with him pursuant to company assignment and that on or about 5 percent of his flights as pilot-in-command in transports he was accompanied by a new hire, who was becoming acquainted with the pilot's routine. Mourning and others like him reported to their superiors on the competence and progress of the new pilots, but Mourning never assisted in the determination of whether to promote, terminate, or continue training a particular pilot. Contrary to Respondent's contention in its statement of position on remand, there is no evidence that Mourning ever had anyone but pilots as members of his crew.<sup>10</sup>

As noted *supra*, on August 6, 1968, Mourning was rated for assignment as a pilot to fly Jet Commander aircraft. Federal regulations required that a pilot be assigned as copilot in this type aircraft. But Mourning flew the Jet Commander as pilot-in-command with a copilot a total of only 38.2 hours before he was discharged. The record contains no specific evidence identifying the pilots who were designated as copilots in Jet Commander flights with Mourning, but admittedly some were so selected.

In all those cases where Mourning had another pilot assigned as a crewmember, that pilot had to be qualified to fly the plane in case of emergency. In addition, the duties of the pilot-in-command and the copilot on normal flights included the responsibility to execute the various procedures prescribed on a checklist, as required by Federal regulations and/or Respondent's policy, which related solely to flying the particular aircraft. Thus, before the pilot and the copilot entered the plane, each would know precisely what technical functions each would be required to perform during a particular flight.

The Administrative Law Judge in the earlier proceeding found that Mourning, as pilot-in-command (as with all other pilots in that role), had ultimate, nondelegable responsibility for the success of the mission. This included responsibility for the safety of the passengers, and crew, if any, and for the preservation of equipment. The Administrative Law Judge found that the pilot-in-command could direct the copilot in the way he performed his duties and could override the copilot's judgment and actions if necessary. And he noted that if the conduct of others abroad created a safety hazard or otherwise imperiled the success of the mission, the pilot-in-command was empowered to take appropriate action. In reaching his conclusion that Mourning was a statutory supervisor, the Administrative Law Judge relied heavily on three Board

decisions postdating the conduct in question here by about 5 years. One of those decisions involved the pilots at Respondent's Long Beach facility, and the other two involved pilots at similar facilities of other aircraft manufacturers.<sup>11</sup> The Administrative Law Judge noted that the Board had concluded in one of those cases that pilots who "serve some of their time as captains, at which time they are responsible for, and in complete control of, the plane and all persons on board" were supervisors under the Act.<sup>12</sup> The Administrative Law Judge found that in those cases transport pilots with duties much like Mourning's were included in this earlier finding and, accordingly, he found Mourning to be a statutory supervisor, a conclusion which the Board affirmed.

Upon appeal of the Board's decision, however, the United States Court of Appeals for the District of Columbia Circuit, as noted, remanded this proceeding to the Board for further consideration of a number of issues. The court majority noted Mourning's argument that "all of the transport pilots exercised . . . command authority, vis-a-vis each other, from time to time," but they never "exercised such authority over other employees."<sup>13</sup> Accordingly, under Mourning's argument, such pilots could not be supervisors because they never responsibly directed "employees" under the Act. The court majority then indicated that it would be "inclined to agree with [Mourning] that a person generally may not be considered a 'supervisor' unless he exercises Section 2(11) authority over an 'employee' as defined by Section 2(3), which expressly excluded any individual employed as a 'supervisor.'" (Fn. omitted.)<sup>14</sup> Proceeding from this premise, the court majority further questioned the Board's factual predicate for its Order. The majority observed that it was not clear whether the Board's decision rested on Mourning's alleged command authority over a crew of several persons, or simply over an occasional pilot with the same rank and authority as Mourning. The court characterized as ambiguous the Administrative Law Judge's finding that Mourning "sometimes commanded at least one subordinate crew member, a copilot," thereby, according to the court, suggesting that he occasionally directed a larger crew. In light of all the foregoing, the majority remanded this proceeding.

In dissenting to the remand, Judge MacKinnon disagreed with the majority's legal view of what constituted supervisory status under the Act, and stated

<sup>10</sup> Respondent's assertion that Mourning admitted that he often flew as pilot-in-command with his aircraft full of personnel including copilots, flight engineers, and test engineers is inapt. The clear import of the record is that personnel on board, besides other pilots sometimes acting as copilots, were passengers only and not crewmembers.

<sup>11</sup> These cases to which the Administrative Law Judge referred were *Douglas Aircraft Company, a Component of the McDonnell Douglas Corporation*, 207 N.R.L.B. 682 (1973); *McDonnell Aircraft Company, a Division of McDonnell Douglas Corporation*, 207 N.R.L.B. 684 (1973); *Lockheed-California Company, a Division of Lockheed Aircraft Corporation*, 207 N.R.L.B. 686 (1973).

<sup>12</sup> *Douglas Aircraft Company, supra* at 682.

<sup>13</sup> *Robert H. Mourning, supra* at 769.

<sup>14</sup> *Id.* at 770.

that he would find Mourning a statutory supervisor. Judge MacKinnon argued that Section 2(3) defines "employee" loosely; i.e., to "include"; whereas Section 2(11) defines the word "supervisor" more rigidly; i.e., it "means." He argued that, in the case of a conflict between the two sections, Section 2(11) would give way the least. He noted Section 2(11) indicates supervisors direct "other employees," and he concluded that supervisors are employees *for the purposes of Section 2(11)*, for otherwise the statute could merely have read "supervisors exercise authority over employees" not "supervisors" direct "other employees."

In his statement of position on remand, General Counsel argues that Mourning's crew, when he had one, consisted of a copilot only; that Mourning had no authority responsibly to direct the copilot, but, assuming that he did, that the exercise of this authority was too sporadic and routine to classify Mourning a statutory supervisor.<sup>15</sup>

The Charging Party argues that the Board in its earlier decision erroneously failed to distinguish between pilot-in-command authority (which originates from the needs of flight safety, not from labor relations), and the authority responsibly to direct the copilot in the way he performed his duties; that Mourning and other transport pilots were not vested with any supervisory authority and they did not direct the performance of their crews' work when they functioned with a crew; that the facts of the trilogy cases relied on by the Administrative Law Judge were significantly different from the facts in this proceeding; that, even if Mourning's pilot-in-command authority could be equated with authority responsibly to direct, he was not a statutory supervisor because the exercise of any such authority was sporadic and infrequent.<sup>16</sup>

Respondent contends that the Board should reaffirm its original decision. Thus, it asserts that the court's "selective view" of the facts was erroneous, as it was allegedly based on Mourning's discredited testimony; that the court ignored Respondent's credited evidence that Mourning had a crew on postinspection test flights of one or more persons;<sup>17</sup> and that the court erroneously characterized crew members as passengers.<sup>18</sup>

Upon reevaluation of the entire record in this proceeding, we now find merit in the arguments of the General Counsel and the Charging Party and, contrary to the Administrative Law Judge, we find first that Mourning was an employee within the meaning

of the Act. The Administrative Law Judge, in concluding otherwise, relied heavily on the three decisions noted at footnote 11, *supra*. But we find that the facts in this proceeding, as outlined above, are substantially different from the facts in the "trilogy" cases. In those cases, the Board found that the transport pilots were supervisors because they regularly exercised supervisory authority over at least two other crewmen, a copilot and a flight engineer. The record in this proceeding, however, involving events 5 years earlier than the three cases relied on by the Administrative Law Judge, shows that Mourning flew without other crewmembers the bulk of his worktime. Thus Mourning's log of all flight time since becoming employed by Respondent shows that he flew only 38.2 hours as a pilot-in-command in a plane which *required* another crewmember and that as a transport pilot he flew the great percentage of his time without a crewmember present.<sup>19</sup> Accordingly, we find that any supervisory authority Mourning may have exercised in his tenure at Respondent was clearly too sporadic to find him a supervisor under the Act.

Further, even were we to find that Mourning did exercise such supervisory authority for a sufficient period of time that would ordinarily constitute him a supervisor, we would find on the special facts of this case that Mourning nevertheless did not qualify as a statutory supervisor.

As noted *supra*, the court majority also remanded for the Board's consideration in this proceeding Mourning's contention that he and his fellow pilots could not be found to be statutory supervisors because there were no "employees" for them responsibly to direct. The court majority was inclined to agree with Mourning that a person may generally not be considered a supervisor unless he exercises Section 2(11) authority over one who is an employee as defined by Section 2(3) of the Act, which in turn explicitly states that supervisors are excluded from the definition "employee." We agree with the court majority's conclusion. We note the critical fact that the only person over whom Mourning, as pilot, could conceivably have exercised any supervisory authority was his copilot. And yet, transport pilots interchanged roles as pilot and copilot. Thus, Mourning would have supervised no one but his equal, another pilot, who would have been acting at that time as his copilot. If Mourning were found to be a supervisor, so too would all the other transport pilots. Yet, Section 2(11) of the Act limits the definition of supervisor only to those individuals who are given by their employer responsible authority over other "employees." And Section 2(3) of the Act specifically excludes the

<sup>15</sup> General Counsel did not address himself to the legal issue remanded by the court.

<sup>16</sup> Charging Party addressed itself to the legal issue only to the extent it indicated agreement with the court majority view thereon.

<sup>17</sup> See fn. 9, *supra*.

<sup>18</sup> Respondent did not address itself to the legal issue remanded for consideration.

<sup>19</sup> The Administrative Law Judge characterized Mourning's flight time with at least one subordinate crew member on board as "significant." On further review of the record we disagree with the conclusion.

term "supervisor" from the definition of "employee." With respect to the argument that as Section 2(11)'s definition of "supervisor" calls for that individual to exercise authority over "other employees," the term "employee" must be read in its everyday sense rather than as defined by Section 2(3), we agree with the court here the phrase "other employees" refers to other employees of the same, as opposed to another, employer. It does not mean all workers other than the supervisor himself.

Congress excluded supervisors to insure that as agents of management they would not be pressured by divided loyalties and also because employees needed protection from management. But, as the pilots alternated between being "supervisors" and "supervisees," there is no continuing conflict of interest of the usual type justifying their exclusion from the Act.

In sum, we find that before it may be claimed that an individual is a supervisor within the meaning of Section 2(11) of the Act it must be shown that the individual exercises responsible direction, in the interest of his own employer, over that employer's employees who are employees within the meaning of Section 2(3) of the Act. As Mourning supervised no Section 2(3) employees in his tenure at Respondent, we conclude that Mourning was an employee under the Act at the time he was discharged.

We next proceed to the circumstances surrounding Mourning's termination and we conclude that he was unlawfully discharged because of his union activity.<sup>20</sup>

Mourning began his employment at Respondent in December 1965 as a pilot in the business fleet. He had a good work record and progressed from his initial rating as a reserve pilot to transport pilot in January 1967. As noted, he qualified to fly the Jet Commander aircraft in August 1968. Respondent's former director of flight operations, A. G. Heimerdinger, and its supervisor of the business fleet, Orion T. Quinn, who was Mourning's immediate supervisor, respected Mourning as a good and reliable pilot. Heimerdinger recommended a merit increase for Mourning, which was effective October 28, 1968, 18 days before his discharge.

Mourning became interested in organizing a union for the pilots in late 1967. He obtained some union literature from the Airline Pilots Association which he showed to some pilots and mailed other union literature to pilots. On several occasions, he spoke about the Union to his fellow pilots and to Quinn. The latter acknowledged that he received some union literature; that he might have received some from

Mourning; that he knew that Mourning was sympathetic to unions; that he was aware of Mourning's union activity; and that Mourning discussed the Union with him and with "every pilot there." Mourning also approached various company officials and spoke to them about the terms and conditions of employment of the pilot group. During one conversation with Heimerdinger in mid-1968, the latter stated that he had heard that Mourning did not like the way he was running the flight department and that if Mourning did not like it he could leave.

The record contains various documents which clearly show that Mourning's union activity was well known to Respondent's high-level officials. Thus, a memo dated May 20, 1968, from Heimerdinger advised Brizendine, Respondent's president, of union activity. Heimerdinger indicated that he had researched the "problem" with the pilots. Another memo, dated June 6, 1968, from W. I. Paine, assistant supervisor of labor relations, to an official of Respondent, states that Respondent's investigation showed that Mourning was one of three prime suspects in the advocacy of union representation, and that Heimerdinger would keep Respondent informed of any new developments with respect to union activity. Respondent's general practice at that time was to make every effort to find out what union was interested in its employees, who the organizers were, what the issues were, and to see if Respondent could take some remedial action.

Mourning was discharged on November 15, 1968. After Mourning's discharge, Quinn told Campbell, another pilot, not to worry about Mourning, that if Mourning had not been obnoxious and open about the Union it would not have come to "a head," and that the order to discharge Mourning came "from the top." Quinn also advised Campbell not to get mixed up in the "politics" between the pilots and pilot groups that was going on, but just to do his job, and it would be much better for him in the long run. Quinn admitted that he was trying to steer Campbell clear of the "malcontents." He did not characterize Mourning as a malcontent, but he did classify him as a very unhappy pilot.

With respect to the specifics of Mourning's discharge, on September 30, 1968, Mourning was designated as pilot-in-command of a Cessna aircraft to perform a chase flight of a DC-9 aircraft at an altitude of 20,000 feet. Shortly before the flight, a veteran transport pilot, Bob Allison, asked Mourning if he could fly the left seat as pilot.<sup>21</sup> Mourning agreed, and Allison was flying the plane as pilot during the entire

<sup>20</sup> The following facts leading to our finding that Mourning was discharged for his union activity are based on uncontradicted testimony in the record. Since the Administrative Law Judge found Mourning to be a supervisor and not under the Act's protection, he set out none of the facts relevant to determining the legality of his discharge.

<sup>21</sup> Respondent elicited testimony that a pilot-in-command did not have the authority to "delegate the position of pilot-in-command on that flight to another pilot," except in an emergency, but this appears to have played no part in Respondent's reason for letting Mourning go.

flight. During the flight, Mourning noticed that the vacuum-operated instruments which provided the pilot with certain altitude and direction information were not working. Mourning immediately alerted Allison to the failure but as they were flying under visual flight rules they were able to complete the flight and return to the ground a half hour later without further incident. Upon returning to Long Beach, Mourning reported the failure of the vacuum pumps to Respondent's maintenance personnel. They examined the plane, found both vacuum pumps damaged, and replaced them.<sup>22</sup> The mechanics also found scorched paint on the engine cowling.<sup>23</sup> At or about the same time, Heimerdinger ordered a complete inspection of the aircraft for other possible damage to the engines and plane structure, but none could be found. Neither Allison nor Mourning was reprimanded at that time. Mourning continued to fly various aircraft for Respondent in the same capacity and on similar flights until he was discharged. The record also shows that within 30 days after Mourning's discharge, the shafts on two vacuum pumps were sheared on a Cessna during separate flights by pilot Campbell. These pumps had to be replaced, but Campbell was not discharged. The record further shows Respondent knew that other pilots had blown out tires upon landing on five occasions; had flown into power lines; and had collided with fixed objects on the ground causing damage, but none of them was discharged for such incidents.

On November 14, 1968, Heimerdinger and Kent met with Mourning and told him that he was going to be discharged the next day. Kent mentioned that the loss of the vacuum pumps on September 30 was "a matter of safety or possibly a matter of misoperation of the aircraft which involved safety considerations." Heimerdinger testified that he made the decision to discharge Mourning for a number of matters that had accumulated. However, he did not list these reasons for Mourning; but he did tell him of the vacuum pumps.<sup>24</sup>

<sup>22</sup> The vacuum pumps cost \$100 each.

<sup>23</sup> According to Respondent's supervisor of flight development, John L. Hobbs, who was Respondent's crew chief at the time of the vacuum pump incident, and the one who removed the damaged pumps, scorched paint can only be caused by overheating the engine. He testified that overheating comes about by exceeding the specified cylinder head temperature, but the condition was not necessarily related to the failure of the vacuum pumps. Hobbs also testified that there was no way to know whether the failure of a vacuum pump was due to overspeeding or overboosting engine. It was because of the loss of the vacuum pumps that Respondent eventually told Mourning it was letting him go. See *infra*. Hobbs further testified that the engines on the plane in question were equipped with governors to keep them from overspeeding. Overboosting was described by Hobbs as exceeding the specified manifold pressure, but Mourning had assured Hobbs that he had not overboosted the engines. Hobbs indicated that scorched cowling would probably be noticed at the time of the daily preflight inspection but he did not know if the paint on the cowling had been scorched before Mourning's flight, as he did not always perform the preflight inspection.

<sup>24</sup> Heimerdinger's other reasons were allegedly based on his own observation of Mourning's excessive speed in taxiing, 6 to 8 months before the

From the foregoing, it is clear that Respondent had knowledge of Mourning's union activity and that it was concerned about the pilots' interest in union representation. Thus, as we have noted above, several high-level officials were kept informed of and knew that Mourning was a prime suspect in union activity. In addition, during the time that Mourning allegedly used bad judgment, he was given a pay increase just before his discharge. Furthermore, although Heimerdinger was allegedly concerned with Mourning's other deficiencies, he was not reprimanded nor were such matters mentioned to him when he was discharged. And while other pilots were involved in several serious incidents where damage to planes and property resulted, none were discharged. In these circumstances, we conclude that Respondent merely seized upon the vacuum-pump incident as a pretext for discharging Mourning and that such conduct was designed to discourage its employees' union activity. Accordingly, we find that Mourning was discharged in violation of Section 8(a)(3) and (1) of the Act.<sup>25</sup>

We also find that Quinn's remark to Campbell was a warning to him not to get involved in the discussion between the pilots and pilot groups, and that this comment interfered with the employees' union activity and was a violation of Section 8(a)(1) of the Act.<sup>26</sup>

#### THE REMEDY

Having found that Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act we shall order that it cease and desist therefrom.

discharge. In addition, a Mr. Patton, from flight operations, who was not called as a witness, reported to Heimerdinger that Mourning checked the magnetos while taxiing the aircraft, contrary to company policy. On another occasion, employee Gerry Pearson, also not called as a witness, reported to Heimerdinger that in 1967 Mourning did not adhere to "instructions" and was taxiing at high speeds at a nearby Naval Air Station. At another time Heimerdinger also received a report that Mourning flew "at an altitude that probably he shouldn't have." Heimerdinger recalled that the only time he reprimanded Mourning was for doing "taxi magneto checks going down the runway." Heimerdinger, as noted *supra*, did not relate any of the above reasons to Mourning at the time of discharge and he was never reprimanded about them. Heimerdinger did admit that the above "problems" are "common" and that they happen to all pilots. We also note that overspeeding, overboosting, and/or overheating were not relied on as reasons for discharging Mourning.

<sup>25</sup> As we have found that Mourning was not a supervisor at the time of his discharge, we also find no merit in Respondent's argument that he was a supervisor trainee and he ultimately would have become a supervisor. There is evidence in this record that Mourning was attending ground school to prepare himself to fly larger aircraft, but there is no evidence that the program was designed to train pilots to become supervisors. Furthermore, before Mourning could expect assignment as a pilot-in-command on larger aircraft such assignment was contingent upon his demonstrating his qualifications therefor. Under the circumstances of this case it would be pure speculation whether he would have ultimately attained supervisor status.

<sup>26</sup> As the Administrative Law Judge found Campbell shared Mourning's status as a supervisor, he did not pass on the 8(a)(1) allegations of Quinn and Campbell's discussion.

We additionally shall order Respondent to offer Robert H. Mourning reinstatement to his former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of earnings he may have suffered by reasons of the discrimination against him. Backpay shall be computed on a quarterly basis, making deductions for interim earnings, and with interest to be paid on the amount owing to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977); see, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), enforcement denied on other grounds 322 F.2d 913 (C.A. 9, 1963).

#### CONCLUSIONS OF LAW

1. Respondent is an employer engaged in and affecting commerce within 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. By discharging Robert H. Mourning because of his union activity, Respondent has violated Section 8(a)(3) and (1) of the Act.

4. By advising employees not to get mixed up in union activity, Respondent has interfered with, restrained, and coerced employees in the exercise of their rights guaranteed them under Section 7 of the Act, and has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act.

5. The foregoing unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Douglas Aircraft Company, a Component of McDonnell Douglas Corporation, Long Beach, California, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in the Air Line Pilots Association, or any other labor organization of its employees, by discriminating against them in regard to their hire and tenure of employment.

(b) Discharging, refusing to employ, laying off, or otherwise discriminating against employees because of their union activities.

(c) Advising employees not to get mixed up in union activity or otherwise interfering with, restraining, or coercing employees in the exercise of their rights guaranteed them under Section 7 of the Act to

engage in organization or other protected concerted activity.

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act.

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

(a) Offer to Robert H. Mourning immediate and full reinstatement to his former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay suffered as a result of his unlawful discharge with interest thereon to be computed in the manner prescribed in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon 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) Post as its Long Beach, California, place of business copies of the attached notice marked "Appendix."<sup>27</sup> Copies of said notice, on forms provided by the Regional Director for Region 31, after being duly signed by an authorized representative of Respondent, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 31, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

<sup>27</sup> In the event that this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

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

WE WILL NOT advise employees not to get mixed up in union activities.

WE WILL NOT discharge or interfere with, restrain, or coerce employees in regard to hire or tenure of employment, or any term or condition of employment because of their protected concerted activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of their rights guaranteed in Section 7 of the Act except to the extent that such rights may be affected by lawful agreements in accordance with Section 8(a)(3) of the Act.

WE WILL offer to Robert H. Mourning immediate and full reinstatement to his former position, or, if such position no longer exists, to a

substantially equivalent position, without prejudice to his seniority or other rights previously enjoyed, and make him whole for any loss of pay, with interest, or other benefits suffered by reason of the discrimination against him.

DOUGLAS AIRCRAFT COMPANY, A COMPONENT OF MCDONNELL DOUGLAS CORPORATION