

International Union of Operating Engineers, Local Union No. 132, AFL-CIO and Office and Professional Employees International Union, Local Union No. 67, AFL-CIO, Cases 9-CA-12420, 9-CA-12892, 9-CA-13461, and 9-CA-14688

March 26, 1981

DECISION AND ORDER

On September 8, 1980, Administrative Law Judge Frank H. Itkin issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief, and the General Counsel and the Charging Party filed briefs in support of the Administrative Law Judge's Decision.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,¹ and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, International Union of Operating Engineers, Local Union No. 132, AFL-CIO, Charleston, West Virginia, its officers, agents, and representatives, shall take the action set forth in the said recommended Order.

¹ The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

DECISION

FRANK H. ITKIN, Administrative Law Judge: An unfair labor practice charge was filed in Case 9-CA-12420 on April 13 and a complaint issued on May 12, 1978. An unfair labor practice charge was filed in Case 9-CA-12892 on August 24, as amended on August 28, and a complaint issued on August 30, 1978. An unfair labor practice charge was filed in Case 9-CA-13461 on February 5 and a complaint issued on March 29, 1979. An unfair labor practice charge was filed in Case 9-CA-14688 on December 21, 1979, and a complaint issued on January 29, 1980. The above cases were consolidated and hearings were held in Charleston, West Virginia, on February 27, 28, and 29, and on March 4, 1980.¹ The consolidated complaints were further amended at the hearing. Briefly, the General Counsel alleges that Respondent,

¹ A hearing was held in Cases 9-CA-12420 and 9-CA-12892 on September 12, 1978, before the late Administrative Law Judge John F. Corbley, resulting in a settlement agreement which, as discussed below, the General Counsel now seeks to set aside.

Operating Engineers Local Union No. 132, violated Section 8(a)(1), (3), and (4) of the National Labor Relations Act, as amended by reducing employee Phyllis Glazier's workweek from 5 to 3 days on or about April 7, 1978; by suspending employee Glazier for 5 days on or about August 18, 1978; by threatening employee Glazier with discharge and changing her job duties on or about January 29, 1979; by engaging in surveillance of employee Glazier's protected union activities; and by denying employee Glazier overtime work during December 1979. The General Counsel also alleges that the settlement agreement which was entered into by the parties on or about September 12, 1978, should be set aside. Respondent denies that it has violated the Act as alleged and that the settlement agreement should be set aside. Upon the entire record in this consolidated proceeding, including my observation of the witnesses, and after due consideration of the briefs of counsel, I make the following:

FINDINGS OF FACT

A. Introduction; Background

Charging Party Office and Professional Employees Local Union No. 67 is admittedly a labor organization as alleged. Respondent Operating Engineers Local Union No. 132 is admittedly an employer as alleged. Respondent Operating Engineers maintains its principal offices in Charleston, West Virginia. It also maintains branch offices in Clarksburg, Hinton, and Wheeling, West Virginia. Joseph Handley is business manager; he is assisted by James Pruett, treasurer and business agent; Homer Maddox, dispatcher and office manager; and Russell Barnett, financial secretary. Respondent Operating Engineers has a clerical staff at its Charleston offices consisting of employees Joann Hayhurst, Rheta Holt, and Phyllis Glazier. These clerical employees are represented by Charging Party Office and Professional Employees Union.

On May 7, 1979, Administrative Law Judge John M. Dyer issued a decision in Cases 6-CA-11150 and 6-CA-11644, involving the same parties to this consolidated proceeding, finding and concluding that Respondent Operating Engineers violated Section 8(a)(1), (3), and (4) of the Act by "the verbal and physical assault on [clerical employee] Eileen Duffy because she had filed a charge or given testimony to" the Board; by "the discriminatory reduction in the workweek of Eileen Duffy because she engaged in union and concerted activities"; by "threatening employees that unless employees ceased their union or concerted activities they could lose their jobs"; by "harassing an employee by taking work away and forcing the employee to sit idle"; by "harassing an employee by not allowing her to read books while keeping her idle"; by "harassing an employee by tapping her work telephone and recording all conversations"; by "unfairly criticizing and issuing a reprimand to an employee"; and by "physically and verbally assaulting an employee because the employee sought the assistance of the" Board. No exceptions were filed by Respondent Operating Engineers to the above findings, conclusions, and recom-

mended Order and, consequently, they were adopted by the Board. (See G.C. Exh. 13.)²

Phyllis Glazier, as she testified, was employed by Respondent as a clerk-typist at its Charleston offices since March 1975. She was a full-time employee working a 5-day week. Her duties included processing incoming dues mailed to the Charleston offices, processing related correspondence to and from members, typing work lists, answering telephones, ordering supplies, and assisting the dispatcher at the job-referral window. Joann Hayhurst's main duties consisted of serving as Business Manager Handley's personal secretary and performing secretary-bookkeeper functions. Rheta Holt's main duties consisted of serving as a posting machine operator. Glazier explained that, prior to April 1978, neither Holt nor Hayhurst performed her duties. Glazier, Holt, and Hayhurst are, as noted, all members of Charging Party Office and Professional Employees Union. Glazier has also served as trustee of Charging Party Union since September 1977 and "served as job steward for [the] office"³

Glazier recalled that, during early December 1977, she placed a telephone call from Respondent's Charleston offices to its Wheeling branch "pertaining to the business for the International Union Of Operating Engineers"; that she then spoke with a temporary clerical employee named Phyllis Kinney; and that, during their conversation, Kinney informed Glazier that Kinney was "filling in" for secretary Irene Duffield "who was on vacation." Shortly thereafter, Glazier notified June Harrah, president of Charging Party Union, "that we had a girl working" in the Wheeling branch and that "she should be paying us a service fee . . . because she was doing union work and anyone doing our union work has to pay if they're not a member of the union." Harrah instructed Glazier to "advise" Kinney "of this" during their "next" conversation.

Glazier recalled that subsequently, during late December 1977, she again telephoned the Wheeling branch pertaining to the business of the Operating Engineers. Glazier explained that she "called because [she] had mailed" a membership card to the Wheeling branch for a member as previously requested and that she "told [Kinney] that the card was in the mail." During this conversation, Glazier also "told [Kinney] that she should be paying Local 67 service dues" Kinney answered that "she would leave that up to" Beckner, a business agent for the Operating Engineers in the Wheeling branch. Glazier replied that "Mr. Beckner didn't have anything to do with it. It was strictly between [her] and the Office Workers." This conversation took about 2 or 3 minutes.

Thereafter, during early January 1978, Respondent's business manager, Handley, had the following conversation with Glazier:

He [Handley] called me [Glazier] in his office and he said he didn't appreciate it one damn bit that I

² The above Decision is noted for background purposes only.

³ During January 1980, Glazier also became vice president of Charging Party Union. Further, Glazier explained that she served in the "capacity of steward" although she was not formally appointed or elected to that position. Coworker Holt noted that Glazier "is the most active in the union in our office"

would call Wheeling on his time and money and ask this girl for the service fee.

Glazier explained to Handley that she "didn't make the call just for that reason" and that it was "in the course of a business call, and as a trustee or union official [she] felt that [she] had that right" Handley "said he was going to call June Harrah [president of Charging Party], and tell her that from now on to do this on her own time." Glazier "assured" Handley "that he would be paid for this when the bill came in" Glazier observed that Handley "was angry" during this exchange.⁴

Subsequently, by letter dated April 4, 1978, Charging Party Union sent Handley a check in the amount of \$1.98 "for reimbursement for a telephone call and time lost for one of our officers and your employee, Phyllis Glazier, on a call to your Wheeling, West Virginia, office on December 28, 1977" (See G.C. Exh. 4.) Glazier testified that later, during the morning of Friday, April 7, 1978, she "heard" Handley "reading this letter verbatim over the telephone" in his office—"he was very, very angry." Glazier recalled:

I heard him say that this really pisses me off and I'm going to call June [Harrah] and tell her to ram it up her ass.

Glazier noted that Handley made another telephone call in his office that morning at which time "he repeated the same thing." Handley also discussed the letter with his assistant, James Pruett.⁵

That afternoon, Friday, April 7, about 4 p.m., Handley instructed the three office clericals to go to the conference room. There, as Glazier testified:

Mr. Handley came in, and he had his head down, and he appeared to be in an intoxicated condition, and he threw [a] letter up on the desk. [G.C. Exh. 5.] He said there comes a time when you have to do things you don't want to. And, Phyllis [Glazier], effective Monday, we'll only need your services on Monday, Wednesday and Friday.⁶

Glazier noted that the "busy season" in the Charleston offices "begins in [or] about April, and it will be busy until November or December, and then it slacks off." Glazier further noted that there have never been any layoffs since the date of her hire in 1975 and none of the clericals has been reduced in hours during that period.

June Harrah, president of Charging Party, testified that, during late December 1977, Glazier informed her "that there was a temporary employee" in Respondent's

⁴ Glazier later spoke with June Harrah and related the above incident to her. Harrah informed Glazier that Handley "had called her and she had told him that he would be reimbursed also."

⁵ Glazier assertedly became "upset" after hearing Handley's statements over the telephone and promptly "went over to June Harrah's office." Glazier informed Harrah that she "had never seen or heard Mr. Handley as angry as he was"

⁶ G.C. Exh. 5, a letter from Handley to Glazier dated Friday, April 7, 1978, states, *inter alia*, that "effective Monday, April 10, 1978, due to lack of work and slow activity, we will only need your services on Mondays, Wednesdays and Fridays."

Wheeling branch who should be "paying service fees" under their collective-bargaining agreement. Harrah told Glazier "to let the girl know that she owes service fees." During early January 1978, Handley telephoned Harrah to complain that Glazier was using Respondent's "time to conduct Office and Professional Employees' business." Later, in April 1978, Charging Party Union sent Handley a check in the amount of \$1.98 to "reimburse him for the time and cost of the call." Thereafter, on April 7, 1978, Glazier visited Harrah and related to her Handley's statements and conduct upon receiving Charging Party's letter and check for \$1.98. (See G.C. Exh. 4.) That same day, Handley telephoned Harrah and stated:

June, I have to do something that I don't like to do . . . I'm going to have to lay [Glazier] off, cut her work week down to three days.

Handley had not previously spoken to Harrah about any possible layoff or reduction in unit work.

Respondent's treasurer and business agent, Pruett, recalled that Business Manager Handley "might have been a little upset" when he received Charging Party's letter and check for \$1.98. (See G.C. Exh. 4.) Pruett added: "But he wasn't upset like I have seen him on some occasions." This check was later returned uncashed to Charging Party. Pruett claimed that he and Handley had previously discussed "laying [Glazier] off" for "lack of work." He, however did not know on April 7 that Handley "was going to lay her off" and "a three-day workweek" was not "mentioned" by Handley at "any time." Pruett agreed that "the winter months are the slowest months" for Respondent and "it starts to pick up . . . in about April."⁷

Business Manager Handley testified that Glazier was the most junior office clerical employee; that he reduced her workweek on April 7, 1978, "because the work wasn't there"; that he did receive the \$1.98 check from Charging Party but "I'm not sure of the date"; that previously, about December 1977, he faulted Glazier for "using our phone and our time to do the business of her union . . ."; and that he also apprised Harrah about this incident. Handley was asked: "When you received the letter with the check in it, did you make any phone calls and discuss that with anyone?" Handley replied: "I don't think I did—don't recall making any phone calls."

C. Business Manager Handley Suspends Employee Glazier

Charging Party Union, as noted, filed an unfair labor practice charge on April 13, 1978, on behalf of employee Glazier. A complaint issued on May 12, 1978, and the case was set for hearing on September 12, 1978. (See G.C. Exh. 1(c).) Employee Glazier testified that, upon commencing her reduced 3-day workweek, she found that her desk "was piled up with work—with dues." She "was trying to cram five days into three." Consequently, as Glazier explained,

I started saving the discarded [dues] envelopes. After everything was posted from the envelopes, I started saving them . . . I wanted to use them solely as evidence for when my hearing came up to show that the dues could be heavier on the days I was off than on the days I worked.

Glazier initially stored these discarded dues envelopes in her desk drawer at work, "and then after they accumulated" she "put them in a box" under her desk. She later stored the box of discarded envelopes in the nearby computer room where "they stayed . . . a month or more." Ultimately, Glazier moved the box of discarded envelopes to the trunk of her car because she "was afraid they would be thrown out . . ." Glazier testified that she accumulated these envelopes "in the normal course of business" and made no effort to hide or conceal what she was doing. She also testified that she had never been told "to keep the discarded envelopes" and, previously, she, together with her coworkers, "threw them in the garbage."

Glazier related the following telephone conversation with Business Manager Handley on August 18, 1978:

He [Handley] called for Mr. Pruett and then Mr. Pruett told me [Glazier] to get on the extension with them, and he wanted to know where they [the accumulated envelopes] were. I said . . . in my possession. . . . I asked him why he wanted to know and he said, well there was a governmental agency inquiring and he needed to know . . . where the envelopes were. I said, if you'll tell me which ones you need and if I have them, I'll be more than glad to give them to you. He said I had no business taking them out of the office. I said, well it's garbage, and he said, well that's Union business. He said, for your actions, I'm going to reprimand you. You are not going to work next week.

Following this telephone conversation, Business Agent Pruett "wanted to know if" Glazier "had the envelopes." Glazier said that she did. Pruett stated: "If you have them, you should bring them in here and we'll put them in the safe." Pruett "wanted to know why" Glazier "had them" and she explained that she "was keeping them solely for [her] hearing." Pruett then indicated that she "could be giving out the addresses, and [she] said, well, what would keep [anyone] from going to the garbage outside and getting them . . ."⁸

Glazier later spoke on the telephone with her union representative, June Harrah. Glazier requested Harrah to file additional charges with the Board as a result of her suspension. Harrah told Glazier that she would "get back" to her later. Thereafter, Harrah telephoned Glazier and informed her that additional charges would be filed. Harrah also advised Glazier that she "should give . . . up" the envelopes. Glazier then "took Mr. Pruett

⁷ Pruett elsewhere admitted that, prior to the April 7 meeting "in the conference room," he and Handley "had not even discussed specifically Ms. Glazier's layoff . . ."

⁸ Glazier noted that some of these envelopes show no return addresses and some do not show a sender's name.

out in the parking lot . . . opened [her] car trunk, and he [Pruett] picked them up."⁹

Secretary-bookkeeper Hayhurst testified that "when Phyllis [Glazier] was cut back to three days a week . . . I had to answer the phone on the days that she wasn't there on Tuesdays and Thursdays, so it increased my workload" and "on occasion" she performed Glazier's "duties" including processing "her dues" collections. Hayhurst was unaware of any rule that required personnel "to save" dues envelopes. She "always threw away the envelopes."¹⁰ And Charging Party President Harrah recalled that on August 18, 1978, Glazier telephoned her concerning her suspension. Harrah apprised Glazier to give the envelopes to Pruett. Harrah later called Handley and requested that he put Glazier's suspension "in writing."

Union Representative Pruett testified that he was aware for some time prior to August 18 that Glazier "was saving" the old dues envelopes; that he saw the "boxes of envelopes"; that on August 18 Handley "called me to try to find [a particular] envelope" in answer to an inquiry by a Government agent; that he looked for the envelopes on August 18 and "they weren't there"; and that he apprised Handley that "the envelopes weren't there"; Handley later spoke with Glazier on the telephone. Pruett recalled: "Mr. Handley asked her where the envelopes were and [Glazier] said, 'Tell me what you're looking for and I'll try to find it for you.'" About 20 minutes later, Glazier took Pruett to her car to give him the boxes of envelopes. Pruett faulted Glazier for "taking union property out of the union hall." Pruett acknowledged that in the past these envelopes "always had been thrown away" in "the trash." Pruett agreed that Glazier did not refuse "to turn over the envelopes."

Business Manager Handley recalled, *inter alia*, that he told Glazier on or about August 18 "that there was a federal [agent] . . . the federal government wanted to see one of those envelopes and she said, 'you tell me which one and I'll go get it for you'"; and that he replied: "No, I won't do that. I'll tell the federal government where the envelopes are and let them come and find it." Handley faulted Glazier for taking the envelopes out of the office. He acknowledged, however, that "the envelopes did come back." He admittedly "found the particular envelope" which the Government agent "was interested in." (Cf. G.C. Exh. 8, Handley's letter to Glazier dated August 18, 1978.)

⁹ A few days later, Glazier received a letter from Handley, dated August 18, 1978, reciting, *inter alia*, that on August 17, a Government representative "contacted me seeking certain information with regard to a member . . . which necessitated my searching for the envelopes . . . I was unable to locate any such envelopes . . . I contacted Mr. Pruett with regard to the whereabouts of these envelopes . . . He likewise was unable to determine their whereabouts. I then inquired of you as to the whereabouts and you advised me that you had the same in your possession but would not deliver the same to the local union . . ." Glazier, however, testified: "I had turned [the envelopes] over that very afternoon at lunch time, and the [above] letter was written after lunch."

¹⁰ Hayhurst noted that "that there was a time later that we were asked to keep our envelopes." She was uncertain of the date "when the rules changed."

*D. The Settlement Agreement and Timestudy:
Business Manager Handley Thereafter Threatens
Employee Glazier With Discharge and Relieves Her of
Certain of her Office Clerical Duties*

On September 12, 1978, the late Administrative Law Judge John F. Corbley approved a settlement agreement between the parties in Cases 9-CA-12420 and 9-CA-12892. (Resp. Exh. 3.) The settlement agreement provided, *inter alia*, that employee Glazier "will resume employment with the [Respondent] at five days per week on September 18, 1979"; that she will thereafter "work five days per week until a time study of her job and the work in the office is completed"; that the "time study will determine the number of days per week that her job requires" that "in the event that the time study determines that her job requires more than three days per week to a maximum of five days per week [Respondent] agrees to award Glazier backpay consistent with the time study beginning on April 7, 1978, and ending on September 15, 1978"; and that "her employment after the time study will be consistent with the time study." Further, it was agreed that:

The time study will be of the entire office operation—that is, of Glazier's duties and . . . of the duties of the two other personnel working there as well.

Guru B. Kademani, associate professor of management at Marshall University in Huntington, West Virginia, prepared the timestudy. (See Resp. Exh. 4.) Dr. Kademani concluded in this study that during "most of the weeks . . . total mail dues received is less than 180 per week"; Glazier "can easily process between 60 and 70 mail dues in a day"; "working three days a week she can easily process between 180 and 210 mail dues"; and Glazier also "has time to do other office work." Dr. Kademani, in his testimony at this proceeding, explained that "we decided . . . to ask each [clerical] employee [at the Charleston offices] to perform the duty and the kind of work Glazier was doing; we asked each employee to perform the job and we timed the amount of time each employee took in order to complete the task." He recalled that he, or his associate, conducted this study on 4 separate days—September 29, and October 2, 5, and 10, 1978—and that at no time did he, or his associate, study either employee Hayhurst or employee Holt performing "their own" office clerical jobs. He claimed:

. . . the study of the entire office did involve, in my judgment, a long period of time [and] a tremendous amount of expense

Dr. Kademani acknowledged that, in conducting this study, he only observed Glazier performing her job duties during portions of 2 workdays. Glazier was "still working" when he left on these 2 days. He was therefore unaware "what happened" after he left—that is, how many telephone calls Glazier received; how many pieces of mail she processed; and how many trips she had to make to the referral window. Dr. Kademani was admittedly not concerned with "how efficient" clericals Hay-

hurst and Holt were in the performance of their office duties. He claimed: "I would have been interested . . . if my charge was to look into the entire office efficiency." He had not actually performed such a study in the past.

Following the issuance of this timestudy during November 1978, Glazier, as she testified, was "again cut back to three days a week." On November 20, 1978, Charging Party President Harrah wrote Respondent Business Manager Handley that "we cannot accept the time study report [as] a true study of our member and your employee." (See G.C. Exhs. 11(b) and (a).)

Subsequently, on or about January 23, 1979, the three Charleston office clericals—including Glazier—discussed and determined to reopen their collective-bargaining agreement in an effort to secure "more money."¹¹ Consequently, Charging Party Union, by letter dated January 26, 1979, notified Handley "of our desire to open the agreement between our respective organizations." (See G.C. Exh. 2.) This letter was mailed to Respondent certified mail and admittedly received by the dispatcher and office manager, Maddox, on January 29, 1979. Maddox, as he recalled, received this letter on the morning of January 29, 1979, "signed for it," and "put it on Mr. Handley's desk."

Later that day, January 29, as Glazier testified, Handley telephoned "my agent June Harrah . . . and requested a meeting with her, that I was not doing my job." A meeting was held during that afternoon attended by Glazier, Harrah, Handley, Maddox, and Lafe C. Chafin, counsel for Respondent. Glazier recalled that the meeting

. . . started with Mr. Handley, with this time study before him, and he made the remark that I was not doing my job and that I would be fired. . . . He said that the study said you can do a certain amount of pieces of mail a day and you're not doing it. . . . [He] told me I wasn't doing my Tuesday and Thursday work. I said well, I haven't seen Tuesday's and Thursday's work since November. . . . I told him . . . that there were some days that I couldn't get all of my work done because I had to work the window and answer the phones. So, he told me to stop answering the phones and stop working in the window. I said, what about the work Homer [Maddox] gives me to do? [He said] stop helping Homer

Harrah asked Handley "if Mr. Maddox was not [Glazier's] immediate supervisor." Handley "beat his fist on the desk and said, god damn it, I'm the boss."

Glazier further testified that this was "the first time" that she had "ever been warned" that she was not performing her "dues collection work" in an expedited manner or threatened with such discipline. The time-study, as noted, had been completed some 2 months earlier during November 1978. Glazier explained that, following the meeting of January 29, she "was stripped of everything but the mail dues" duties; "there are times when the phones are very busy and they will ring sometimes and no one is available to answer"; and "lots of

times there are customers lined up at the window" Glazier, however, was not permitted to assist at the window or answer the telephones.

Charging Party President Harrah attended the meeting in Handley's office on January 29, 1979. She recalled, *inter alia*, that Handley then asserted: "This time study says that Glazier can do 80 pieces of mail a day and she is to do 80 pieces of mail a day or she will be fired." (Cf. Resp. Exh. 4, which refers to 60 to 70 "mail dues in a day.") Handley was "angry." Harrah also recalled that Respondent's office manager, Maddox, acknowledged to her at this meeting that he had no "problem" with Glazier's work—he "thought" that Glazier, in the past, "was doing her work."¹²

Secretary-bookkeeper Hayhurst testified that she attended the subsequent negotiations for a new contract between Charging Party and Respondent during March 1979. The subject matter of Glazier's earlier reduction from a 5- to 3-day workweek was discussed. Hayhurst testified:

Q. Did [financial secretary] Barnett venture any opinion as to whether she [Glazier] should or should not have been reduced from five days to three days a week?

A. I believe he might have.

Q. What do you think he might have said?

A. I believe that he said . . . that really she probably should be working five days a week.

Q. Was [treasurer and business agent] Pruett there at this time?

A. Yes.

Q. Did he agree with that statement?

A. I think he might have agreed.

Charging Party President Harrah, who also attended this bargaining session, recalled that Barnett stated: "If it had been up to us [Glazier] would never have been put on a three day workweek" and Pruett "may have nodded affirmative, that he felt that way too." Union Representative Barnett, in his testimony, could not "recall" whether he or Pruett made any statement to the effect that Glazier should be on a 5-day week. Barnett added: "We might have said something about we wished that we could work her full-time"¹³

Business Manager Handley claimed, *inter alia*, that "some of the members were complaining that . . . they mail their dues in and a week later they don't have their book back" Consequently, Handley, on January 29, 1979, "called them all in and . . . just told [Glazier] real plain . . . that she was dragging her feet and not

¹² Respondent's office manager, Homer Maddox, acknowledged in his testimony that, during 1978, Glazier "helped break [him] in" in performing his duties; that during Christmas time he sent her a card "thanking her for all the help"; that "she done her job"; that he did not then "have any complaints about her"; and that since January 1979 "the other two office clericals had complained . . . that they are overloaded and they've got too much work to do." See G.C. Exh. 3.

¹³ Computer operator Rheta Holt testified that she "probably did" Glazier's work after Glazier was reduced from a 5- to 3-day week. Holt, too, was unaware of any rule that required her to save dues envelopes and she "probably threw them away."

¹¹ The agreement was to expire on March 31, 1979.

doing the work that [he] knew she could do." Handley testified:

I pointed out the study to her . . . She could do like it's been said here, 80 pieces of mail and still attend the phone and what correspondence had to be done

Glazier complained that she "couldn't keep up" and he relieved her of all duties but the mail dues functions. Handley was asked if he remembered "using the word fire" and he replied: "I don't remember using that word."¹⁴

E. Employees Hayhurst and Holt Are Given Overtime Work; Business Manager Handley Engages in Repeated Surveillance of Employee Glazier's Work

Employee Hayhurst recalled that, during December 1979, she and coworker Rheta Holt worked overtime during two weekends. At the time, Holt "was writing labels to do the mailing" in connection with a special election and Hayhurst "worked on [her] International report and also . . . typed ballots" Hayhurst also assisted Holt at the time "with the labels and things" Employee Glazier did not work these two weekends.

Further, Hayhurst acknowledged that, during her employment, she has done personal chores, like writing personal letters or making private telephone calls, during working hours. She was unaware of any rule against using a typewriter for personal chores during working hours. Employee Holt was also unaware of any rule forbidding personal correspondence or telephone calls during working hours. She, too, wrote personal letters and made telephone calls during working time.

Barbara Fetty is employed by counsel for Respondent as a secretary. She acknowledged that the Employer gave her certain typewriter ribbons and "told [her] to only look for personal letters and possibly a certain union letter or more than one union letter" of employee Glazier and then to transcribe this material. (See Resp. Exhs. 2(a), (b), and (c).) Fetty testified:

I just went through the tapes and I read them to myself and then I wrote down just the personal letters. I think that's what most of it was and just the beginnings of letters.

She transcribed this material on or about July 14, 1978, September 8, 1978, and May 28-29, 1979. The transcribed letters apparently start in May 1978. On cross-examination, Fetty was asked "what did [counsel for Respondent] mean by union letters," which she was "supposed to look out for"? Fetty replied:

I can't remember what it was. To the best of my recollection it was a letter—I can't remember.

* * * * *

¹⁴ Handley admittedly had not told Glazier prior to this incident that her production was unsatisfactory.

Mr. Handley had told me. I honestly can't remember right at the moment what all it was.

Business Manager Handley testified that, during December 1979, Respondent was involved in litigation; that an election was being conducted pursuant to a court order; and that to meet the deadlines imposed both Hayhurst and Holt worked on two Saturdays in December. Glazier did not work on these two occasions. According to Handley, Holt, on the first weekend, "ran the machine that runs the eligibility list" and Hayhurst "worked on her International Report." Hayhurst could also "help" Holt "put the cards back." On the second weekend, Holt "ran a complete mailing list." Handley claimed that, on both of these weekends, neither Holt nor Hayhurst performed any of Glazier's work. Handley agreed that, during December, Glazier was limited to a 3-day week and, consequently, Holt and Hayhurst, during their regular working hours, were performing some chores previously performed by Glazier. This, of course, detracted from the time available during the regular workdays of Holt and Hayhurst to do their assigned jobs.

Further, Handley recalled that on three occasions he had Pruett remove typewriter ribbons from Glazier's machine. Handley then gave them to Fetty. Handley asserted that he "was looking for . . . letters that should not be written during working hours" He acknowledged that the initial material transcribed was during the period of May 1978; "It was before the time study." (See Resp. Exh. 2(a), which was transcribed by Fetty in July 1978. Also see Resp. Exh. 2(b), which material was transcribed by Fetty on September 8, 1978. The timestudy, as noted, issued in November 1978.) Handley acknowledged that he told Fetty that he was concerned with letters by Glazier "to her own union." It is unclear what time of day Glazier typed the above materials. Glazier acknowledged, and it was stipulated, that she typed some of this material.¹⁵

I credit the testimony of Glazier and Harrah as detailed *supra*. They impressed me as reliable and trustworthy witnesses. Their testimony is in significant part mutually corroborative. Their testimony is also corroborated in part by the testimony of Hayhurst and Holt and is substantiated in part by uncontroverted documentary evidence and by acknowledgments of Handley, Maddox, Pruett, and Barnett. In addition, I credit the testimony of Hayhurst and Holt as recited above. I am persuaded here that the above-recited testimony of Hayhurst and Holt is truthful.¹⁶ Insofar as the testimony of Handley conflicts with the above-credited testimony of Glazier, Harrah, Hayhurst, and Holt, I do not credit his testimony. Handley did not impress me as a reliable or trustworthy witness. His testimony was at times contradictory, incomplete, evasive, and vague. In particular, I do not credit

¹⁵ Handley was recalled later and generally denied that he had instructed Fetty "to be on the lookout for a letter from Mrs. Glazier to her local union."

¹⁶ I note, however, that Hayhurst and Holt at times appeared to be reluctant witnesses on behalf of the General Counsel. I attribute this reluctance to the continuing nature of Respondent's coercive and discriminatory conduct against Charging Party Union's members, as found below.

his denials of various coercive and related statements attributed to him by Glazier. Nor do I credit his attempt to deny generally, contrary to his earlier testimony, that he had instructed Fetty "to be on the lookout for a letter" from Glazier "to her local union" while examining the ribbons from Glazier's typewriter. Likewise, I do not credit the testimony of Maddox, Pruett, and Barnett insofar as it conflicts with the testimony of Glazier, Harrah, Hayhurst, and Holt as recited above. The testimony of Maddox, Pruett, and Barnett was at times vague, incomplete, and contradictory. Finally, I credit only those portions of Fetty's testimony as quoted and cited *supra*. I note that Fetty—when pressed to explain her instructions from counsel for Respondent, her employer, concerning "union letters" which she was "supposed to look out for" in the typewriter ribbons of Glazier—became vague and evasive in her "recollection."¹⁷

Discussion

As the credited evidence recited *supra* shows, Respondent Operating Engineers employed three clericals at its Charleston office and one clerical at each of its branch offices in Clarksburg, Hinton, and Wheeling, West Virginia. The clericals were represented by Charging Party Union. Glazier, an officer and active supporter of Charging Party Union, worked at Respondent's Charleston office as a clerk-typist. She had worked a 5-day week since 1975 and had never experienced a layoff or reduction in her workweek. However, during late 1977, she discovered that Respondent was utilizing the services of a temporary office worker at its Wheeling branch who was not a member of Charging Party Union and who was not paying a service fee to Charging Party in accordance with the existing collective-bargaining agreement between the parties. During a telephone conversation with Respondent's Wheeling branch concerning Respondent's business, she mentioned to the temporary employee that the temporary employee should be paying a service fee to Charging Party Union. The entire telephone conversation took only a few minutes.

Thereafter, Respondent's business manager, Handley, faulted employee Glazier for "call[ing] Wheeling on his time and money" in order to "ask this girl for the service fee." Glazier, as she credibly testified, explained to Handley that the purpose of the call was Respondent's business. And, subsequently, Charging Party Union sent a letter to Handley enclosing a check in the amount of \$1.98 to reimburse him for Glazier's time consumed by the call. Handley, upon receipt of this letter on Friday, April 7, 1978, became angry and disturbed. Later that same day, he summoned the three Charleston office workers to an office and summarily notified Glazier that her workweek would be reduced from 5 to 3 days commencing Monday, April 10, 1978.

I find and conclude here that Handley reduced Glazier's workweek in retaliation for her attempt to collect a service fee from a temporary employee and thereby enforce the existing collective-bargaining agreement. Glazier's brief reference to this fee requirement, while speaking with the temporary employee concerning Respondent's business, was protected activity under Section 7 of the Act. Handley faulted Glazier for this activity and, subsequently, reduced her workweek when Charging Party offered to reimburse him for the nominal sum involved. Handley was punishing Glazier because of his annoyance with her protected activity.

As for Respondent's assertion that Handley reduced Glazier's workweek because of lack of work, I reject this defense as plainly pretextual. No effort had been made to reduce the employee's workweek during Respondent's extended slack period. In April, Respondent's business increased. No advance notice was given to Glazier or to her union representative concerning this contemplated reduction in unit work. The reduction was unprecedented during Glazier's years of employment. And, as a consequence of the reduced workweek, the work which Glazier ordinarily performed was assigned to others and accumulated. Accordingly, on this record, I find and conclude that Respondent's belated and essentially unsupported economic claim was an excuse seized upon by Handley to justify the discriminatory reduction in work summarily imposed upon employee Glazier, in violation of Section 8(a)(1) and (3) of the Act.

I also find and conclude here that Respondent's business manager, Handley, in suspending employee Glazier for 5 days on August 18, 1978, was again retaliating against her because she had engaged in Section 7 protected union activities and because she had filed unfair labor practice charges with the Board. Unfair labor practice charges were filed on April 13, and a complaint issued on May 12, scheduling a hearing for September 12, 1978. Glazier, in preparation for this hearing, was saving old dues envelopes as proof of her increased workload. These envelopes, in the past, were discarded with the trash. Management was aware that Glazier was saving the envelopes. No effort had been made to stop her or to warn her against this. Suddenly, on August 18, Handley assertedly needed one envelope because of an attempt to locate a member. Handley then faulted Glazier for removing the envelopes from the office and refusing to deliver them to him. However, Glazier in fact offered to locate the requested envelope and, indeed, later that same day, took Respondent's representative, Pruett, to the trunk of her car and turned over all the envelopes to Pruett. Glazier was suspended for 5 days.

I am persuaded here that Respondent's action was discriminatory and in retaliation for Glazier's having filed charges with the Board. I reject as pretextual Respondent's assertions to the effect that removal of the envelopes could endanger Respondent's security concerning the names and addresses of its members. These envelopes were previously put in the trash. And, this record does not show that Glazier was suspected of attempting to undermine Respondent in this manner. Accordingly, Re-

¹⁷ I would credit the testimony of Dr. Kademani as recited above. I am persuaded here that he truthfully related how and under what circumstances he, or his associate, prepared his report. I do note, however, that his report was not prepared in accordance with the understanding of the parties. Further, I was not impressed with the quality of this study. The limited nature of this study, both as to the scope of Glazier's work as well as the work of the other office clericals, causes me to question the reliability of his findings, conclusions, and recommendations.

spondent, by this conduct, violated Section 8(a)(1), (3), and (4) of the Act.

In the meantime, Handley, as a part of this continuing coercive conduct, caused the typewriter ribbons of Glazier's machine to be removed on or about three occasions to spy upon her protected union activities. Letters assertedly typed by Glazier commencing in May 1978 (see Resp. Exh. 2(a)) and going to about May 1979 (see Resp. Exhs. 2(b) and (c)) were transcribed by the secretary of counsel for Respondent during July and September 1978 and during May 1979 (*ibid.*) Handley was searching for a letter by Glazier "to her own union." Such conduct plainly tends to impinge upon employee Section 7 activities, in violation of Section 8(a)(1) of the Act.

Thereafter, on January 29, 1979, some 2 months after the receipt of a timestudy which was prepared as part of an effort to settle the then pending unfair labor practice proceedings, Handley confronted Glazier with the timestudy, threatened to discharge her unless she increased her production in accordance with his understanding of the study and, at the same time, changed her job duties. Earlier that morning, Handley had received notification from Charging Party Union that it wanted to reopen its contract with Respondent. Glazier had never been warned that her work was inadequate. Indeed, Respondent's representative, Maddox, acknowledged that Glazier had been a satisfactory employee.

On this record, I find and conclude that Handley was again retaliating against Glazier because she had asserted her Section 7 rights and because Handley was now confronted with an attempt by Charging Party to negotiate increased wages and benefits for its members. I discredit Respondent's assertion that Glazier was not performing her work properly during January 1979. I find that Handley again seized upon this excuse in an effort to punish Glazier for her Section 7 activities, in violation of Section 8(a)(1) and (3) of the Act.

Respondent granted overtime work to clericals Hayhurst and Holt during two weekends in December 1979. Glazier, whose workweek had been reduced, was not given the opportunity to work overtime. This record shows that Holt and Hayhurst, during this general period, were required to perform chores previously done by Glazier. Consequently, some of the work which Holt and Hayhurst performed during this overtime was the result of Glazier's absence. And, there were tasks which Glazier was qualified to perform during the two December 1979 overtime sessions. I find and conclude here that Respondent withheld the opportunity for Glazier to work overtime on two weekends in December 1979 in further retaliation for her engaging in Section 7 union activities, in violation of Section 8(a)(1) and (3) of the Act. I reject as pretextual Respondent's assertion that Glazier's work was not in fact involved on these two occasions. As stated, there were tasks which she could have then performed.

Accordingly, I find and conclude that Respondent, by the above conduct, violated Section 8(a)(1), (3), and (4) of the Act, as alleged. I also find and conclude that the settlement agreement should be set aside because, as noted, Respondent, by this continuing misconduct, has

violated its terms.¹⁸ (See order dated July 6, 1979, G.C. Exh. 1(w).)

CONCLUSIONS OF LAW

1. Respondent Union is an employer as alleged.
2. Charging Party Union is a labor organization as alleged.
3. Respondent violated Section 8(a)(1), (3), and (4) of the Act as alleged by reducing employee Glazier's workweek; by later suspending her for 5 days; by threatening her with discharge and changing her job duties; by engaging in surveillance of her protected union activities; and by denying her overtime work. Respondent, by its misconduct, violated the settlement agreement as alleged.
4. The unfair labor practices found affect commerce as alleged.

REMEDY

Having found that Respondent engaged in certain unfair labor practices, Respondent will be directed to cease and desist from engaging in such conduct or like or related conduct and to post the attached notice.¹⁹ It has also been found that Respondent, in violation of Section 8(a)(3), (4), and (1) of the Act, unlawfully reduced employee Glazier's workweek on or about April 7, 1978; unlawfully suspended her for 5 days on or about August 18, 1978; unlawfully changed and thereby reduced her job assignments on or about January 29, 1979; and unlawfully denied her overtime work during December 1979. Respondent will therefore be directed to restore employee Glazier to her full workweek prior to its discriminatory action on or about April 7, 1978, and to restore her full job duties prior to its unlawful action on or about January 29, 1979. Further, Respondent will be directed to make employee Glazier whole for any loss of earnings suffered by reason of the above unlawful action, insofar as it has not already done so, by making payment to her of a sum of money equal to that which she normally would have earned had Respondent not engaged in the above unlawful action, with backpay and interest thereon to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).²⁰ Respondent will be directed to preserve and make available to the Board, upon request, all payroll records and reports, and all other records necessary and useful to determine the amount of backpay due and compliance with this Decision.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

¹⁸ The record here, as noted *supra*, also shows that the timestudy was not, in my view, performed in accordance with the agreement and understanding of the parties.

¹⁹ In view of the nature of Respondent's misconduct, the background violations noted *supra*, and the location of the some six clerical workers who may be affected by such continuing misconduct, Respondent will be directed to post this notice at its Charleston, Hinton, Clarksburg, and Wheeling offices.

²⁰ See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

ORDER²¹

The Respondent, International Union of Operating Engineers, Local Union No. 132, AFL-CIO, Charleston, West Virginia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Office and Professional Employees International Union, Local Union No. 67, AFL-CIO, or in any other labor organization, by reducing its employees' workweek; by suspending its employees; by changing its employees' job duties and thereby reducing the employees' job duties; and by denying its employees overtime work; or by in any other manner discriminating against its employees with respect to their hire or tenure of employment or any term or condition of employment.

(b) Discriminating against its employees because they have filed charges with the National Labor Relations Board.

(c) Threatening employees with discharge because they have engaged in protected union activities.

(d) Engaging in surveillance of employees' protected union activities.

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

2. Take the following affirmative action designed to effectuate the purposes and policies of the Act:

(a) Restore employee Glazier to her full workweek and to her full job duties, and make her whole for any loss of earnings, with interest, in the manner set forth in this Decision.

(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 at its offices in Charleston, Hinton, Clarksburg, and Wheeling, West Virginia, copies of the attached notice marked "Appendix."²² Copies of said notice, on forms provided by the Regional Director for Region 9, after being duly signed by Respondent's repre-

²¹ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

²² 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."

sentative, shall be posted by Respondent 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 9, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

APPENDIX

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

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT discourage membership in Office and Professional Employees International Union, Local Union No. 67, AFL-CIO, or in any other labor organization, by reducing our employees' workweek; by suspending our employees; by changing our employees' job duties and thereby reducing their job duties; by denying our employees overtime work; or by in any other manner discriminating against our employees with respect to their hire or tenure of employment or any term or condition of employment.

WE WILL NOT discriminate against our employees because they have filed charges with the Board.

WE WILL NOT threaten our employees with discharge because they have engaged in protected union activities.

WE WILL NOT engage in surveillance of our employees' protected union activities.

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

WE WILL restore employee Phyllis Glazier to her full workweek and to her full job duties and make her whole for any loss of earnings, with interest, as a result of our unlawful action.

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL UNION NO. 132, AFL-
CIO