St. Paul Park Refining Co. d/b/a Andeavor *and* Richard Topor. Cases 18–CA–205871 and 18–CA–206697

August 30, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN AND KAPLAN

On October 5, 2018, Administrative Law Judge Arthur J. Amchan issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.[1]

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the judge's recommended Order, except that the attached notice is substituted for that of the administrative law judge.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, St. Paul Park Refining Co., LLC, d/b/a Andeavor, St. Paul Park, Minnesota, its officers, agents, successors, and assigns, shall take the action set forth in the Order, except that the attached notice is substituted for that of the administrative law judge.

Dated, Washington, D.C. August 30, 2019

John F. Ring, Chairman

Lauren McFerran, Member

Marvin E. Kaplan, Member

(SEAL) 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 Federal labor law and has ordered us to post and obey this notice.

[1] Member Emanuel is recused and took no part in the consideration of this case.

[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. We specifically reject the Respondent's contention that the judge erroneously relied on credibility findings from the earlier Board decision and find instead that the judge properly based his credibility findings on the record as a whole. See, e.g., *Local No. 3, IBEW (Nixdorf Computer Corp.)*, 252 NLRB 539, 539 fn. 1 (1980).

We adopt the judge's finding that the Respondent unlawfully issued employee Richard Topor adverse performance evaluations in August and September 2017. In adopting this finding, we note the following. During the roughly 13 years of Topor's employment by the Respondent prior to November 2016, Topor was never disciplined and he never received an unsatisfactory performance review. In November 2016, Topor engaged in protected concerted activity, for which he was suspended, issued a written warning, and denied a bonus. The Board found those adverse employment actions unlawful, and that finding has been upheld on appeal. See *St. Paul Park Refining Co., LLC d/b/a Western Refining*, 366 NLRB No. 83 (2018), enfd. 929 F.3d 610 (8th Cir. 2019). The Respondent began subjecting Topor to closer scrutiny beginning in January 2017 and continued to do so through July, and the adverse performance evaluations were the result of that scrutiny. These facts give rise to an inference that Topor's adverse evaluations were a continuation of the Respondent's campaign of retaliation against Topor for his earlier protected concerted activity. See *Sears, Roebuck & Co.*, 337 NLRB 443, 444–445 (2002). We therefore reject the Respondent's reliance on these adverse evaluations in connection with Topor's discharge.

In adopting the judge's finding that the Respondent's September 2017 discharge of Topor violated the Act, we find that the General Counsel sustained his initial burden under *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), by showing that the Respondent was aware that Topor engaged in protected concerted activity in November 2016 and evinced animus toward Topor's protected activity by subjecting him to closer scrutiny beginning in January 2017 and continuing through July 2017. We further find the Respondent did not establish that it would have discharged Topor in the absence of his protected activity, since the credited testimony and Topor's termination letter both establish that the Respondent relied in part on Topor's prior unlawful discipline as a basis for his discharge. Accordingly, we agree with the judge that the evidence fails to show that the Respondent viewed Topor's failure to notice a safety alarm during the night shift, on September 14–15, 2017, as sufficient to warrant his discharge. Further, even assuming the Respondent had genuine concerns about Topor's ability to perform his job safely, we agree with the judge that the Respondent did not establish that it treated similar incidents involving other operators' errors comparably. See *Sears*, supra at 444–445.

[3] We shall substitute a new notice to conform to the Board's standard remedial language.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against you because you engage in protected concerted activity.

WE WILL NOT give you adverse performance evaluations in retaliation for your protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, offer Richard Topor full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Richard Topor whole for any loss of earnings and other benefits resulting from the discrimination against him, less any net interim earnings, plus interest.

WE WILL compensate Richard Topor for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 18, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

WE WILL compensate Richard Topor for his search-for-work and interim employment expenses regardless of whether those expenses exceed his interim earnings.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful performance evaluations and discharge of Richard Topor, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

ST. PAUL PARK REFINING CO. D/B/A ANDEAVOR

The Board's decision can be found at https://www.nlrb.gov/case/18-CA-205871 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.

Florence I. Brammer, Esq., for the General Counsel.
Marko J. Mrkonich and *Alice D. Kirkland, Esqs. (Littler Mendelson, P.C.),* of Minneapolis, Minnesota, for the Respondent.

DECISION

STATEMENT OF THE CASE

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Minneapolis, Minnesota, on June 11–14 and July 24–26, 2018. Richard Topor filed the charges in this case on September 8, and 22, 2017. The General Counsel issued the complaint on December 8, 2017.

The General Counsel alleges that Respondent violated Section 8(a)(1) of the Act by issuing the Charging Party, Richard Topor, adverse performance evaluations on August 11, 24, and September 12, 2017, and then discharging him on September 21, 2017. More specifically, the General Counsel alleges that Respondent would not have taken any of these personnel actions were it not for his protected activity of November 4, 2016. The Board has found that in retaliation for this protected activity, Respondent violated Section 8(a)(1) by suspending Topor for 10 days on November 14, 2016, issuing him a final written warning on that date and denying him a quarterly bonus in January 2017, 366 NLRB No. 83 (2018).[1]

Topor's September 21, 2017 termination letter states that, "the basis for your discharge is that your performance has failed to meet company standards and has placed your fellow employees at risk. This includes, but is not limited to, your failure while on a final written warning, to respond to a high priority alarm while working as a console operator on September 14, 2017, as you have admitted. Even aside from the final written warning, the combination of this recent safety-related performance failure and your failure to improve your performance despite the many repeated coaching efforts of your supervisors warrants your termination"(GC Exh. 4). Thus, the issue in this matter is whether Respondent has established that it would have discharged Topor even if it had not issued the illegal final written warning to him or if he had not engaged in the protected activity for which he was disciplined, *The Celotex Corp.,* 259 NLRB 1186, 1186 fn. 2, 1190–1193 (1982); *Southern Bakeries, LLC,* 366 NLRB No.

[1] Respondent has appealed this decision in the United States Court of Appeals for the Eighth Circuit. Were the Court to reverse the Board, there would be no violation of the Act in this case.

78 (May 1, 2018); *Dynamics Corp,* 296 NLRB 1252, 1252–1255 (1989) enfd. 928 F. 2d 609 (2d Cir. 1991),

On the entire record,[2] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, St. Paul Park Refining Co., LLC d/b/a Andeavor, a corporation,[3] operates an oil refinery in St. Paul, Minnesota. It annually purchases and receives goods valued in excess of $50,000 directly from points outside of Minnesota. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The International Brotherhood of Teamsters, Local No. 120, which represented Richard Topor when he worked for Respondent, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Dramatis Personae

Richard Topor began working for Respondent in 2004. In about 2010 he became a vacancy relief operator (VRO), one of the most experienced and highly compensated bargaining unit positions. As a VRO, Topor worked both as a field technician, checking equipment such as vessels, piping and valves outdoors in the refinery and as a console operator. As a console operator he sat in semi-circular room looking at 8 computer screens and manipulated various processes (adjusting temperatures, product flow, etc.) in the reformer area[4] via his 3–4 computer keyboards. He was also responsible for monitoring certain alarms and insuring that action was taken to address the reasons for the alarm. Topor was also the union steward for the north and south reformer from 2014 until his termination.

Gary Regenscheid directly supervised Topor from 2006 or 2007 until his termination. In 2017, Regenscheid primarily supervised Topor when Topor was working as a console operator. When on duty Regenscheid had an office just outside of the control room from which he could see some or some parts of the screens in front of the console operators. Since April 2016, Dale Caswell supervised Topor when he worked as a field technician. In 2017, Topor worked as a field technician more often than he worked as a console operator.

On or about January 1, 2016, Briana Jung became the Operations Superintendent of the Reformer and Blending Area. Regenscheid and Caswell reported directly to Jung. She replaced David Barnholt, who was the Operations Superintendent for Reforming and Blending from 2013–2016. Barnholt then moved to the FCC/Crude area of the refinery as Operations Superintendent. From May 2015 until July 2018, the operations superintendents reported to Michael Whatley, the Operations Manager.[5] Until December 2017, Whatley reported directly to Richard Hastings, the Refinery Manager. In that month Hastings transferred to the Andeavor refinery in Mandan, North Dakota.

Tim Kerntz is Respondent's human resources director. Christa Powers is a human resources business partner who reports to Kerntz.

Richard Topor's work record at Respondent prior to November 4, 2016

In the 13 or so years he worked for Respondent prior to November 4, 2016. Richard Topor had never been disciplined, 366 NLRB No. 83, slip opinion at page 9. There is no record of an unsatisfactory performance review prior to November 4, 2016 and several generally positive reviews prior to 2017. His immediate supervisor, Gary Regenscheid, made a number of disparaging remarks about Topor's work ethic, Tr. 680, 696. Assuming, as Regenscheid testified, that Topor was always looking for a way to get others to do his work, this record indicates this has always been the case and that Respondent condoned this behavior until November 4, 2016. There is no evidence that Topor's *modus operandi* at work suddenly changed in 2017. Indeed, his performance review for 2015 (10/1/14–9/30/15) (G.C. Exh. 12(f)), indicates that at least in that year Respondent did not consider Topor a stellar employee. His overall rating was "generally meets expectations" rather than "meets expectations," as Topor thought he deserved.[6]

At least between 2009 and November 2014, Respondent had not even coached Topor for poor performance. Further, I find that Respondent has failed to establish that Topor was coached for poor performance from the date he was hired in 2004 until November 4, 2016.[7] The only blot on his record, if you can call

---

[2] Tr. 918, line 14 should indicate a question not an answer.

[3] The St. Paul Park Refinery has changed ownership several times in recent years. Recent owners have included Northern Tier Refining and Western Refining. The most recent owner, Tesoro changed its name to Andeavor. The refinery may be sold to Marathon Oil, in the near future. Marathon has also owned this refinery in the past.

[4] In the reformer area petroleum is purified into different products such as diesel fuel, jet fuel, etc. Four other console operators also worked in the console room about 6–8 feet from each other. They managed other areas of the refinery from their computer stations. There is a North and South Reformer Area. The console for the North Area is also called the hydrotreater board, Tr. 1363.

[5] Whatley left Andeavor for another employer in July 2018.

[6] Respondent discusses the 2015 and 2016 performance reviews at pp. 9–11 of its brief. While Regenscheid gave Topor an overall rating of 2 (generally meets expectations) in 2015 and a 3 (meets expectations) on December 4, 2016, the text of the review is far more negative in the 2016 rating than in the 2015 review. In fact, it is unclear why Topor did not get a 3 in 2015 as the text of that review contains nothing that is critical of his performance. The text of the 2017 reviews is far more negative than any review Topor had received previously. Moreover, Topor had never received a 1 rating (unsatisfactory performance) which he was given in some areas on the August 24 version of the 2017 review, GC Exh. 12 (b).

[7] Respondent introduced, via HR generalist Christa Powers, a document, R. Exh. 128 purporting to document some coachings or poor performance in 2005, 2008, and 2009, one in 2014 and one in which Regenscheid told Topor to confine union business to break times in 2016, Tr. 1457–1459. This is clearly a hearsay document and I give it no weight. The document does not fall within the exception to the hearsay rule in Federal Rule of Evidence 803(6). Respondent did not establish: (1) that these records were made at or near the time of the event recorded, by or from information transmitted by someone with knowledge of the event; (2) that these records were kept in the course of a regularly conducted activity; or (3) that making these records was a regular practice of Respondent.

it that, was a note by Briana Jung on September 8, 2016 regarding Topor's reluctance to serve a temporary foreman during a diesel desulfurizing unit shutdown (Exh. R-26; Tr. 857–859). He ultimately agreed to serve as temporary foreman. Tr. 936. Moreover, Respondent gave him an award for his performance at the end of that turnaround (Tr. 923).

Jung's predecessor as superintendent for the reformer area, David Barnholt, testified that in the 2–3 years he supervised that area he did not have any problems with Topor (Tr. 172). Similarly, Dale Caswell, who supervised Topor in the field from April 2016 until his termination, testified that he considered Topor to be a competent and safety-conscious operator (Tr. 801).

The events of November 4, 2016 and the prior litigation[8]

Judge Charles Muhl conducted a hearing pertaining to Topor's November 14, 2016 suspension and final written warning on July 12–14, 2017. Briana Jung, Gary Regenscheid, Tim Kerntz, Christa Powers and Michael Whatley testified for Respondent in that proceeding. Judge Muhl issued his decision on December 20, 2017, several months after Topor's termination. The Board affirmed his decision on May 8, 2018.

I adopt the rulings, findings and conclusions of Judge Muhl and the Board. To summarize, in early November 2016, Respondent was restarting its Penex machine after it had been shut down for maintenance work. In restarting the Penex, employees must inject hydrochloric acid (HCL) from a cylinder into the Penex. On November 4, 2016, Respondent planned to use a somewhat different method of injecting the HCL into the Penex than it had used the last time the Penex was down for maintenance several years earlier.

Richard Topor, who had worked on the most recent Penex start-up, objected to the fact that Respondent's written procedure had not been updated to reflect the revised HCL injection method. On November 4, Topor rejected the opinion of his supervisor, Gary Regenscheid, that the hazards with the new procedure could be obviated by putting insulation blankets over HCL cylinders that were not to be used in the procedure. Topor insisted that these cylinders be removed from the area in which the procedure was to take place. Topor told Regenscheid and Briana Jung, the Operations Superintendent for the Reformer Area, Regenscheid's boss, that he was going to exercise his rights under Respondent's safety stop policy. Regenscheid, with Jung's approval, sent Topor home.[9]

Jung contacted her boss, Michael Whatley, the Operations Manager for the entire refinery. Whatley ordered Jung to contact the human resources department in order to investigate the situation. After the investigation, Michael Whatley issued Topor a final written warning and suspended him without pay for the 10 days of work already missed. The disciplinary form stated that Toper was being disciplined for:

> Failing to follow instructions in which he refused to discuss mitigation steps as directed by his supervisors to formulate solutions to the tasks to which he was assigned;
>
> Insubordination in raising his voice and pointing at Regenscheid;
>
> Unauthorized removal of company property when he failed to return step change paper to Regenscheid after being instructed to do so;
>
> Failure to be accurate and truthful when questioned during your investigation.

In January 2017, Respondent denied Topor a quarterly bonus on account of the final written warning issued on November 14, 2016.

Judge Muhl and by adoption the Board, found that (1) Respondent sent Topor home based on his calling a safety stop and refusing to discuss mitigation until an independent safety representative evaluated the situation; (2) Regenscheid asked Topor to return the step change form but Topor did not hear him; and (3) Topor did not lie during the human resources investigation.[10] The Board in adopting Judge Muhl's decision concluded that Respondent violated Section 8(a)(1) of the Act in suspending Topor, giving him a final written warning and denying him a quarterly bonus.

Topor's work performance in 2017

January 9, 2017

Respondent contends that Topor was insufficiently proactive in carrying out instructions to take a sample of HDH foul water. An email from supervisor David Hetland states that Topor reported back that the sampling station was frozen and that he did not have a sampling cylinder. Hetland wrote that Topor did not thaw the station or associated tubing until he was asked to do so on January 11. His email further states that he, Gary Regenscheid and Dale Caswell met with Topor and told him he should have taken more initiative and should have initiated troubleshooting and problem solving before having to be asked. Topor, in a memorandum dated June 5, 2017, confirmed that he was coached about this situation on January 11, and that he thought the coaching was unwarranted (GC Exh. 30). Exhibits R-28, 29,

Moreover, Respondent had the opportunity to elicit testimony from Gary Regenscheid about any specific deficiencies in Topor's performance between 2007 and 2016 and did not do so. Moreover, I would note that the much of the document is complimentary about Topor's performance.

[8] I have made it clear that I would not allow the relitigation of any part of the Board's May 8, 2018 decision which affirmed the rulings, findings and conclusions of Administrative Law Judge Charles Muhl's December 20, 2017 decision.

[9] Topor was not the only employee concerned with the new procedure. Michael Rennert was concerned that heating the acid cylinder might cause an explosion. Rennert told Regenscheid "this scares the crap out of me and I don't want to do it, but if you are going to do the same thing to me that you did to Rick [Topor], then I will do it" 366 NLRB No. 83, slip opinion at page 7.

[10] Judge Muhl found that Topor dishonestly denied that he had a conversation with process engineer Eric Rowe, but that Topor immediately corrected this and admitted that he spoke to Rowe.

30, and 31 indicate that Respondent started building a case against Rick Topor in January.

February 9, 2017

At some point on February 9, Operations Superintendent Briana Jung went to the satellite office. While she was there, she overhead Rick Topor cursing. Also, that day there seems to have been a disagreement between Topor and his supervisor, Gary Regenscheid, as to how many operators had to be on duty when starting up the Penex. It appears that this disagreement may have delayed the start up by an hour or two (R. Exh. 33).

April 5, 2017

On April 5, Respondent discovered a cable or conduit with exposed electrical wires. Gary Regenscheid instructed Rick Topor, who was working as a console operator, to reduce the flow rate of oil to vessels associated with this cable, so the system could be taken off-line. This was a prerequisite to repairing the cables. Regenscheid told Topor he was reducing the flow rate too slowly. At the time of this incident, Regenscheid did not believe that Topor's performance merited discipline (Tr. 723). He did not coach Topor about his performance. However, Regenscheid made notes on this event of April 5, which he did not share with anyone else until September 8. On that day Topor met with Human Resources Director Tim Kerntz to complain about performance reviews he received in August.

May 4, 2017

On May 4, Rick Topor was tasked with placing a new system in service. He called Superintendent Briana Jung and asked whether in order to proceed, a bleeder valve needed to be installed to drain a pipe of hydrocarbon. Jung told Topor to wait until she could get back to him. It was determined that this was not necessary, and that the hydrocarbon would be displaced without a bleeder valve. Jung made a note of her conversation with Topor and Gary Regenscheid apparently coached him on this issue on or about May 12.

Meeting of May 12 or 15

Mike Whatley, Briana Jung, and Christa Powers met with Rick Topor and Teamsters Business Agent Chris Riley on May 12 or 15. Whatley asked Topor for a commitment to improve his performance. At some point Whatley gave Topor a poor performance letter which he stated he had planned to put in Topor's personnel. Whatley indicated that if Topor's performance did not improve, he might lose his status as a vacancy relief operator, R. Exhs. 40, 47.

Coaching session of May 31

On May 31, Whatley and Jung again coached Topor about his performance during the week of May 15.

Coaching session of June 12

Whatley coached Topor again on June 12 and returned the poor performance letter to Topor at that time.

July 12–14, 2017

Rick Topor, Briana Jung, Gary Regenscheid, Tim Kerntz, Christa Powers and Michael Whatley testified in the unfair labor practice proceeding concerning Topor's November 2016 suspension and final written warning.

July 27

Respondent's managers determined that a high flair procedure was not initiated when it should have been on July 17, 2017. Jack Kariesch, the blending control board operator, Mike Rennert, a field operator, and Rick Topor, the north reformer console operator, were deemed to be at fault, (GC Exh. 14, R. Exh. 105). Gary Regenscheid faulted Topor for not insuring that the work was done on time.

Topor's Performance Reviews

Meeting of August 11, 2017

On August 11, Rick Topor met with Briana Jung, Michael Whatley, Gary Regenscheid and Union Steward Brandon Riley. Management calls this a pre-review meeting. Whatley did not attend a pre-review meeting with any other employee. He could not give any specific examples of any other manager or supervisor doing so (Tr. 1589–1590).

Respondent gave Topor and Riley a document similar to the one entitled Rick Topor Mid-Year Performance Review, G.C. Exh. 18. The document was negative as to Topor's performance, rating him below expectations in 3 categories. It specifically cited the January incident regarding the foul water sampling; what was perceived as his slowness in taking the compressor out of service on April 5; and a disagreement Topor had with a console operator on June 1 regarding the temperatures during a start-up of the Penex unit. Management had not spoken to Topor about the June 1 incident prior to August 11.

Respondent provided Topor a copy of the document on which he made notes. At some point Riley began taking notes or copying Topor's notes. Michael Whatley told Topor and Riley that the time for note-taking was over and took their copy or copies back. Briana Jung at some point shredded the copies with Topor and Riley's notes.

Meeting of August 24

On August 24, Topor met with Michael Whatley. Neither Jung, nor Regenscheid, who was on vacation was present. Whatley gave Topor a mid-year performance review that rated him unsatisfactory (1 of out a possible 3) in teamwork and initiative and work quality and ability to follow work instructions (GC Exh. 12(a)). The review cited two incidents of poor performance for which Topor had never been coached. The first was the April 5 incident regarding reducing the flow rate in a compressor so that an electrical cable could be repaired. The second was the June 1 incident in which Topor disagreed with the console operator regarding the temperatures when starting up the Penex system. Respondent had never given Topor an unsatisfactory review previously. A manager with the rank of operations manager had never given him a performance review previously.

September 12

On September 12, Gary Regenscheid personally handed Topor of copy of the review which indicated that it had been signed electronically by Briana Jung on August 24 and by Michael Whatley on September 12. Regenscheid signed the review in ink on the 12th. Although the ratings for team work and work quality ratings had been changed from a 1 to a 2, the text of the review was unchanged from that given Topor on August 24. The text

concluded that his performance was below expectations, G.C. Exh. 22.

The Events on the night shift of September 14–15, 2017

On September 14, 2017 at 6 p.m. Rick Topor started his 14th consecutive night shift. He was scheduled for so many consecutive shifts, due to the fact that the diesel desulfurizing unit (DDS) had been shut down for periodic maintenance for two weeks (aka a "turnaround"). The maintenance work was completed on September 13 and the DDS unit was put back in operation taking sulfur out of diesel fuel. Things are more likely to go wrong immediately after an out-of-service unit starts up again than usually. Thus, the refinery continued to have increased staffing during the night shift of September 14–15 (Tr. 124, 242–43, 1557–1559).

Topor was working as a console operator on this shift. In addition to monitoring the DDS unit, Topor was responsible for the Penex unit which produces higher octane gasoline (the same unit involved in his 2016 discipline). He was very busy during his shift trying to optimize the temperatures associated with the Penex unit (Tr. 913–914).[11]

Hydrogen circulates through the DDS unit to remove sulfur from diesel fuel. A compressor recirculates the hydrogen through the unit. The compressor has a knockout drum associated with it in which liquid is separated from the gas. It is important that liquid not get into the compressor. Since liquid does not compress like gas, liquid can cause a compressor to come apart or explode.

The knockout drum has two indicators that measure the amount of liquid in the vessel. Both are below the inlet valve where hydrogen enters the vessel. The indicators are set at different levels and have alarms associated with each one. The lower indicator has a "high" alarm which sounds and flashes on the control board of the console operator in the reformer area. The higher-level indicator has a "high-high" alarm associated with it. If the alarm goes off the console operator is supposed to notify a field technician who will go to the knockout drum and drain the liquid.

At 1:33:40 on the morning of September 15, the "high" alarm on the DDS knockout drum was activated. Initially it sounded and flashed on the Topor's control board. 14 seconds later, somebody, but not necessarily Topor, acknowledged the alarm, stopping the sound and the flashing. However, a solid yellow light remained illuminated on Topor's control board.[12] A yellow light also continues to be illuminated on the alarm summary screen. Other lights were also illuminated on his keyword and alarm summary screen, some to which he was not expected to respond, particularly the tank alarms. Topor did not realize that this DDS knockout alarm had gone off and did not notify a field operator that the drum had to be drained. Other alarms, some associated with storage tanks, also regularly sounded on Topor's control board on an average of 8 per hour. The liquid level in the knockout drum continued to rise. However, it never set off the high-high alarm.[13]

Nevertheless, it is possible for liquid to get into the compressor before it sets off the high-high alarm. This is because the rising liquid could create a vortex (whirling rotation) essentially sucking the liquid upwards and out of the vessel and into the compressor.

At 3:49:49 a.m., an unknown field operator observed the alarm on the knockout drum on a screen located in the satellite office. This office has a lunchroom and locker room for the field technicians. This operator did nothing other than acknowledge the alarm and according to Respondent was not required or expected to do anything else.

Between about 5:30 and 5:57:24 a.m., P.J. Gabrielson, the console operator on the next shift, noticed that the alarm on the knockout drum was still active. He contacted a field operator who drained the drum. Liquid continued to rise and assumedly the drum was drained more than once.

The knockout unit has a visible gauge on the level indicators. Had a field technician gone to the vessel and looked at this gauge or she could have determined the level of liquid in the knockout drum (Tr. 177–178). Some vessels in the refinery are on "radar rounds" meaning they must be visited by field technicians on every shift. This knockout drum is not on these rounds. The reason that the knockout drum is not on radar round is that it rarely gets liquid in it. This usually occurs only after the unit has been shut down and started up again and/or the hydrogen plant was inoperative, as it was during the September 14–15 night-shift (Tr. 241–242). Thus, nobody went to the knockout drum on Topor's shift to check the liquid level.

Respondent's investigation of Topor's performance on September 14–15

Operations Manager Michael Whatley learned on September 15 that the high-level alarm on the knockout drum had been active for over 4 hours without being responded to by Topor (Tr. 1556–1557, 1561, 771). Nevertheless, Richard Topor worked two shifts afterwards. Whatley directed David Barnholt to conduct an investigation of Topor's conduct. He told Barnholt that he was selecting him for this task because Barnholt had not been involved in the November 2016 discipline. Whatley directed

[11] Respondent's assertion at p. 45 of its brief that Craig Wheatley's testimony "further established that, despite Topor's claims during the investigation, Topor's console was not particularly busy the night he missed the alarm," is misleading to the extent it suggests that Topor wasn't particularly busy. Wheatley's testimony establishes that the number of alarms on Topor's console was not unusual.

[12] R. Exh. 114 p. 1 and 2 show the very small yellow light that continues to be illuminated on the control operator's keyboard once the alarm is acknowledged. The light for the knockout drum could have been one of number yellow lights that were illuminated on Topor's keyboards and on the alarm summary screen that evening. Page 3 of R. Exh. 114 shows the alarm summary screen monitor at the top left, Tr. 565.

Console operators take breaks, during which one of the other console operators may cover for them by, for example, acknowledging an alarm on the other operator's board. Topor also testified that he may have been in Regenscheid's office when the alarm went off, discussing steps to manage the Penex.

In addition to the light on the console board, Topor could have accessed other screens that would have shown that the knockout alarm was active, e.g. R. Exh. 72.

[13] The high-high alarm would flash red; low priority alarms are blue.

Barnholt to investigate not only Topor's missing of the knockout drum alarm, but his handling of the Penex unit on that shift.

It is unclear why Whatley asked for the investigation to include the Penex unit because the record does not reflect that Whatley was aware of any performance issues regarding Topor's actions regarding the Penex unit on the September 14–15 shift. Briana Jung spoke to Gary Regenscheid on September 15 and Regenscheid had indicated that Topor's performance regarding the Penex was proper, or at least not improper. Barnholt knew that before he interviewed Topor (R. Exh. 67). I infer that Whatley was looking for evidence with which he would be able to discharge Topor.[14]

Barnholt contacted HR representative Christa Powers to assist him in the investigation. Barnholt and/or Powers interviewed Topor and Mark Rasmussen, the control room supervisor who replaced Regenscheid on the morning of September 15. They also interviewed P.J. Gabrielson the control room operator who replaced Topor, and Jason Christner, a field operator who was on duty during Topor's shift. Barnholt testified and his report reflects that he also interviewed Gary Regenscheid on September 18.

However, that Regenscheid was interviewed by Barnholt in conjunction with the investigation of Topor was news to Regenscheid. Regenscheid testified that on the morning of September 15, Briana Jung called him. First, she asked Regenscheid why there weren't any moves made on the Penex. Regenscheid responded that Topor was running the Penex manually, that moves were made and that Jung had to look at the temperatures. She then told him that the knockout drum on the DDS unit was full. She asked if Regenscheid knew this; he said he did not (Tr. 727). In fact the DDS unit was not full; the liquid level had reached a point at which it activated the high alarm, but not the high-high alarm.

> Regenscheid testified that he was not interviewed by either Barnholt or Powers.
>
> Dave Barnholt came down—if that's the correct Tuesday I recall—came down and discussed it with console. I had a console operator who looked at it. He did not interview me on it (Tr. 715).
>
> And all I was asked was, "Can I view the alarms in the alarm summary screen," and I showed them where they could find that…I didn't take that as part of an interview. (Tr. 727–730.)

While several people including Barnholt and Regenscheid were gathered at a console in the field operators' satellite office on September 18, somebody mentioned that there were a lot of clicks on the radio during the September 14–15 shift and somebody mentioned that console operators may have been doing this to warn field operators of the approach of a supervisor.

Barnholt did not interview Briana Jung. There is no explanation for this omission. Jung was the first one to talk to Regenscheid about the missed alarm. He told Jung that that he was unaware of the missed alarm before she called him. Regenscheid also said, "I don't know how I missed that. I, you know, am surprised I didn't know about that" (Tr. 913–914). Regenscheid's conversation with Jung at least suggests that he as well as Topor had some responsibility for the missed alarm. Although Regenscheid could not see the screens that Topor was looking at, he had the ability to view all the screens available to Topor via his computer (Tr. 234–235). I infer that Barnholt's failure to interview Jung and Regenscheid is indicative of a predisposition to lay all the responsibility for the missed alarm on Topor.

On September 18, 2017, Barnholt and Powers submitted a report of their investigation to Operations Manager Michael Whatley (R. Exh. 66). The report concluded that Rick Toper followed proper procedure and properly kept his supervisor informed with regard to the Penex machine (referred to as the Isobutane purity issue). Regarding the alarm on the knockout drum, the report concluded that Topor failed to respond to the alarm which resulted in the drum continuing to fill. The report stated that the liquid level continued to rise reaching 98 percent. This statement is inaccurate insofar as it suggests that the drum was 98 percent full. The liquid had risen to the point that it was at 98 percent of the way to the level of the "high" or lower level indicator in the drum. It had not even reached the "high-high" alarm which was inches below the intake valve of the drum.

The report continues:

> Knowing that the hydrogen plant was shutting down Mr. Topor should have been more alert to the potential for liquid in the drum per his statement. Had the liquid carried over to 37-GC-1/2 it could have potentially resulted in catastrophic failure of the compressor(s) endangering personnel's safety, and possible unit shut down.
>
> Mr. Topor referred to the DDS start up procedure and rate increases during that shift as being a potential cause for missing the alarm. However research indicated that his statement was not accurate, as the DDS start-up procedure was already closed out and the DDS rate increases occurred prior to the shift in question.
>
> During the questioning of Mr. Topor he offered no explanation as to why the high alarm was not dealt with nor did he have a valid explanation as to why he did not identify the rising level through the remainder of his shift. In fact, Mr. Topor admitted to missing the high alarm and failed to identify the rising liquid level from 1:33 AM until the end of his shift. Based on the evidence it is clear that Mr. Topor failed to properly perform his job duties on the night of September 14, 2017.

Barnholt's notes of his September 18 interview with Topor recount that Topor told him that failure to respond to the alarm was "on me." He indicated that he did not know how he missed

[14] R. br. at p. 33 note 25 states that Gabrielson reported an issue with the Pentex. I see no credible evidence that supports that statement. David Barnholt's typewritten and handwritten notes state that on September 18, Mark Rasmussen told him that there "was an issue with the DIB tower and low purity, "R. Exhs. 66 and 67. Gabrielson did not testify in this proceeding. Rasmussen testified and said nothing about an issue with the DIB tower (i.e., the process involving the Penex) or Gabrielson raising a concern about this. Moreover, Briana Jung knew from talking to Gary Regenscheid on September 15, that there was no issue as to Topor's performance with regard to the Penex.

it for 4+ hours. Topor told Barnholt that he did not think he was at the console when the alarm sounded, suggesting that someone else (e.g. another of the 4 console operators in the room) acknowledged the alarm, thus silencing the alarm and turning off the flashing light. Topor said the unit was never in danger because the liquid had not reached the "high-high" alarm. Topor also mentioned the number of bogus alarms that appeared on his console as a possible explanation for missing the knockout drum alarm.

While it is clear that Topor missed the alarm for 4+ hours and was negligent in doing so, the report is a bit misleading in suggesting that he had any other way of identifying the rising liquid level in the drum. Had the drum been on the radar rounds of the field operators, one of them might have observed that the level indicator on the drum showed a rising liquid level. While the report is also accurate that the DDS shutdown was over, malfunctions were still more likely for while after the start-up as evidenced by the increased staffing levels. Moreover, while Topor should, as the report states, been more alert to the potential for liquid in the drum due to shutting down of the hydrogen plant, it is also clear that Respondent took no extra or redundant precautions in light of this abnormal situation, such as adding the knock-up drum to the radar rounds or advising Gary Regenscheid or the field operators to pay special attention to the knock out drum.

Barnholt testified that if he recommended that Topor be disciplined to anyone, he would have recommended termination because he already had a final written warning (Tr. 207). However, Barnholt was inconsistent and then evasive as to whether he communicated this opinion to anyone and if he did to whom, 203–204, 207–208. I conclude based on his testimony at Transcript 203–204 that Barnholt recommended to Michael Whatley and/or Human Resources Director Tim Kerntz and/or Refinery Manager Rick Hastings that Topor be fired in part because he had already received the final written warning later found to be an unfair labor practice.[15] Barnholt and Powers reviewed their report with Refinery Manager Hastings, who made the final decision to terminate Richard Topor (Tr. 1642–1643).[16]

Barnholt and Power confer with Topor on September 21

Rick Topor asked Barnholt and Powers to meet him at the knockout drum, which they did on September 21, after Barnholt submitted his report to Michael Whatley. Topor questioned why they were doing an investigation if there was no damage to anyone or anything. He also wanted to make sure they understood that if the liquid level for the high alarm was at 100 percent, the liquid would not be anywhere near filling the knockout drum. Topor mentioned the risk of operator complacency by virtue of having tank alarms on his board for which he was not responsible and asked why he was the only person being held responsible for the fact that knockout alarm was not responded to for 4 hours (R. Exh. 79).

One of the questions Barnholt and Powers asked Topor was whether there were any radar rounds for the knockout drum. This indicates they were not aware that there were no such rounds for this vessel when they submitted their report to Whatley and Hastings.[17] Topor told them that the knockout drum was not on the radar rounds. Barnholt then spoke to Corey Freymiller, the supervisory maintenance planner in the reformer area, to confirm this and to explain why this was so. Freymiller told Barnholt and Powers that Respondent relies "on the console alarm since the drum is empty the majority of the time, except when the Hydrogen plant is down" (R. Exh. 80).

Evidence of Disparate Treatment

Respondent did not terminate any bargaining unit employees in 2016–2017 other than Rick Topor. He was not the only employee to have made a mistake with potentially catastrophic consequences (GC Exh-3).

RB was given a written warning on January 11, 2016, for unsafely putting a valve back in service that was set at a higher pressure than indicated. His warning concluded that the incident, "could have had a very serious consequence for you, your coworkers, the unit, refinery and local community."

JK received final written warning on January 1, 2016. He left the valve on one tank open allowing lower octane fuel to gravitate to a higher-octane tank. This warning carried the same warning as RB's regarding potential consequences. On July 20, 2016, JK was put on a "last chance agreement" for taking an unauthorized vacation. Respondent's managers determined that he was at fault when a high flair procedure was not initiated when it should have been on July 17, 2017. JK was apparently not disciplined for this incident.

TW received a verbal warning on March 25, 2016, when as a console operator he failed to properly monitor and interpret data leading to the carbon monoxide level in the FCC unit exceeding the permissible limit for an hour period. This warning carried the same warning as RB's regarding potential consequences.

On February 25, 2017, TW received a written warning for failing to prevent the overfilling and over-pressuring of the Iso-stripper tower. This warning carried the same warning as RB's regarding potential consequences.

Console operator BR received a verbal warning for the same incident.

On September 1, 2016, BB received a final written warning for failing to open a valve for pilot gas on a boiler. This resulted in the shutdown of the boiler due to low fuel gas pressure. This jeopardized refinery-wide operations as steam header pressures dropped. This warning carried the same warning as RB's regarding potential consequences.

[15] At the time that Topor was fired, Judge Muhl had not issued his decision on the suspension and final written warning. That did not occur until December 20, 2017. The trial in that matter was held on July 12–14, 2017. R. br. at p. 37 states that Barnholt recommended that the investigation result in disciplinary action.

[16] When Hastings decided to terminate Topor, he was unaware that the knockout drum had 2 alarms, Tr. 1649. The GC br. at p. 35 states that Barnholt also did not know the knockout drum had 2 alarms. I see nothing in the record that supports this assertion.

[17] However, Jason Christner told Barnholt and/or Powers on September 18, that the vessel is not checked often because it is seldom filled, R. Exh. 67.

CR received a verbal warning on January 31, 2017 for failing to follow proper procedures resulting in excessive carbon monoxide emissions. This warning carried the same warning as RB's regarding potential consequences.

Console operator JS received a verbal warning for the same incident as CR.

Analysis

As stated at the beginning of this decision, the issue in this matter is whether Respondent has established that it would have discharged Richard Topor even if it had not issued the illegal final written warning/suspension to him and if he had not engaged in the protected conduct that was the subject of the warning, *Celotex Corp.,* 259 NLRB 1186, 1186 fn. 2, 1190–1193 (1982); *Southern Bakeries, LLC,* 366 NLRB No. 78 (2018); *Dynamics Corp,* 296 NLRB 1252, 1252–1255 (1989) enfd. 928 F.2d 609 (2d Cir. 1991).

I conclude that Respondent has not met its burden in this respect. Both the termination letter (GC Exh. 4) and Tim Kerntz's September 21, 2017 email to Richard Hastings, mention Topor's prior illegal discipline. Kerntz, in recommending termination, noted that Topor had received a Final Written Warning in November 2016 for failing to follow supervisory instructions and insubordination, (GC Exh. 17). Kerntz further stated that, "all the prior coaching, counseling, and even discipline have had no significant, lasting effect upon him." From this I infer that the prior discipline was a factor in Topor's discharge. The Board will not seek to quantitatively analyze the effect of the unlawful cause once it has been found. "It is enough that the employees' protected activities are causally related to the employer action which is the basis of the complaint. Whether that 'cause' was the straw that broke the camel's back or a bullet between the eyes, if it were enough to determine events, it is enough to come within the proscription of the Act." *Wright Line,* 251 NLRB 1083, 1089 fn. 14; accord: *Bronco Wine Co.*, 256 NLRB 53, at 54 fn. 8 (1981).

Moreover, I am not otherwise persuaded by Respondent's self-serving protestations that it would have fired Topor even if he had not received the November 2016 final written warning/suspension or engaged in protected concerted activity on November 4, 2016.

To start with, Respondent does not contend that the events of September 14–15 were sufficient alone to terminate Richard Topor.[18] Instead it relies on these events and the incidents in which he was coached or otherwise found wanting in 2017. I find that Respondent's reaction to some or all of these incidents were also part of an effort to retaliate against Topor for his protected activity of November 4, 2016. Topor had worked for Respondent for 13 years. According to Gary Regenscheid, who had been his supervisor since 2006, Toper had never been a stellar employee and was always looking for a way to get others to do tasks that he should have performed. Regenscheid did not testify that there was any change in Topor's conduct or job performance in 2017.

Nobody in management was particularly bothered by Topor's alleged lackluster performance until the November 2016 protected conduct. Whatley had been Operations Manager at this refinery for about 18 months in November 2016 and so far as this record shows, he exercised no oversight or criticism of Topor's work performance prior to November 4, 2016. He never coached Topor prior to November 2016 (Tr. 1572). Jung had been Operations Manager of the Reformer Area for 10 months and likewise had no issues with Topor's performance prior to November 4, other than his reluctance to serve as a temporary foreman on one occasion.

Afterwards, anything that Topor did that irritated management in the slightest was documented. These included cursing in an industrial facility on February 9, not reducing the oil flow on April 5, "misconduct" for which he was neither coached nor disciplined, his mistake regarding the dead leg, about which Briana Jung was unable to correct him immediately (Tr. 823–825),[19] and the failure to timely correct the flair procedure, for which it appears he was not principally at fault.

In sum, Respondent was out to get Topor after the November 4, 2016 incident and scrutinized his performance in a way that it had never done in his prior 13 years of employment at the Refinery. There is no credible explanation for this enhanced scrutiny other than animus towards his November 2016 protected activity. This closer and unsatisfactorily explained scrutiny establishes animus towards that activity throughout 2017 and a causal relationship between the protected activity and Topor's discharge, *Sears, Roebuck & Co.,* 337 NLRB 443, 444–445 (2002).

The General Counsel did not allege that Topor's termination violated Section 8(a)(4). However, the filing of the unfair labor practice charges on November 9, 2016, and February 3, 2017, the issuance of the prior complaint on April 21, 2017, the July 2017 hearing and the fact that the prior case was pending before Judge Muhl at the time of Topor's termination, kept whatever hostility management had towards him raw throughout 2017. The parties filed their posttrial briefs with Judge Muhl on September 6, 2017, 15 days before Respondent terminated Topor. Thus, I reject Respondent's contention that the passage of 10 months between Topor's protected activity and his discharge supports a finding that his discharge was non-discriminatory. The General Counsel met his initial burden of proving discriminatory discharge. Respondent did not meet its burden of establishing a credible non-discriminatory basis for Topor's termination.

CONCLUSIONS OF LAW

I find that the General Counsel met his initial burden of

[18] Contrary to the General Counsel's brief at p. 20, Respondent does not contend that Topor's failure to respond to the alarm was intentional, Tr. 1574, 1658.

[19] According to Whatley, one of Topor's shortcomings was not understanding the behavior of the chemicals in the pipe. The chemical in question is a very light material which boils very easily under relatively low temperatures. Thus, it is easy to clear the pipe in question by heating it up and redirecting the chemical to a low-pressure system, Tr. 885–886, 1508–1517. If Topor was expected to understand the behavior of these chemicals, it strikes me that Jung, a chemical engineer, would be expected to understand this as well. According to Respondent's hearsay evidence, Operator Bruce Nelson (who did not testify in this proceeding) was the individual who first challenged Topor's assessment of the dead leg, Tr. 373. Assuming this is so, the evidence is silent as to how Nelson understood what Topor did not.

proving that Richard Topor's discharge was casually related to his November 4, 2016 protected activity. Respondent has failed to meet its burden of establishing that the prior illegal written warning and Richard Topor's protected concerted conduct of November 4, 2016, were not factors in Richard Topor's September 21, 2017 termination and that therefore Respondent violated Section 8(a)(1) of the Act in firing him.

I also find that the adverse performance evaluations Respondent gave to Topor on August 24 and September 12, 2017, and pre-review meeting of August 11, were also motivated by animus towards his protected activity and violated Section 8(a)(1).[20]

REMEDY

The Respondent, having discriminatorily discharged Richard Topor, must offer him reinstatement and make him whole for any loss of earnings and other benefits. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB 6 (2010). Respondent shall compensate him for his search-for-work and interim employment expenses regardless of whether those expenses exceed his interim earnings, computed as described above.

Respondent shall file a report with the Regional Director for Region 18 allocating backpay to the appropriate calendar quarters. Respondent shall also compensate Richard Topor for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year, *AdvoServ of New Jersey,* 363 NLRB No. 143 (2016).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[21]

ORDER

The Respondent, Saint Paul Park Refining LLC, doing business as Andeavor, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against any employee for engaging in protected concerted activity.

(b) Giving employees adverse performance evaluations in retaliation for their protected activities.

(c) 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) Within 14 days from the date of the Board's Order, offer Richard Topor full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Richard Topor whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the decision.

(c) Compensate Richard Topor or the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 18, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

(d) Compensate Richard Topor for his search-for-work and interim employment expenses regardless of whether those expenses exceed their interim earnings.

(e) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful performance evaluations and discharge and within 3 days thereafter notify Richard Topor in writing that this has been done and that the adverse evaluations and discharge will not be used against him in any way.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its St. Paul, Minnesota facility copies of the attached notice marked "Appendix."[22] Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 11, 2017.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official

[20] Respondent argues that these reviews are not adverse actions and therefore cannot violate the Act. However, the substance of those reviews was the result of Respondent's animus towards Topor's November 2016 protected activity. The substance of those reviews was part of the closer scrutiny to which Topor was subjected a result of his protected activity. They were adverse actions in that the substance of the reviews was tantamount to a written warning.

[21] 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.

[22] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

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

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against any of you for engaging in protected concerted activity.

WE WILL NOT give you adverse performance evaluations in retaliation for your protected concerted activities.

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

WE WILL, within 14 days from the date of this Order, offer Richard Topor full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Richard Topor whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest compounded daily.

WE WILL compensate Richard Topor for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file a report with the Regional Director for Region 18 allocating the backpay award to the appropriate calendar quarters.

WE WILL compensate Richard Topor for his search-for-work and interim employment expenses regardless of whether those expenses exceed his interim earnings.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful performance evaluations and discharge of Richard Topor and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the evaluations and discharge will not be used against him in any way.

ST. PAUL PARK REFINING CO. D/B/A ANDEAVOR

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/18-CA-205871 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.