Salem Paint, Inc. *and* United Food and Commercial Workers Union, Local 464A, a/w United Food and Commercial Workers International Union, AFL-CIO. Case 22-CA-9681

July 29, 1981

DECISION AND ORDER

On March 13, 1981, Administrative Law Judge D. Barry Morris issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief to Respondent's exceptions and a cross-exception and supporting brief.

The Board has considered the record and the attached Decision[1] in light of the exceptions and briefs and has decided to affirm the rulings, findings,[2] and conclusions[3] 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, Salem Paint, Inc., Hackensack, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

[1] In the last paragraph of sec. III,B,2, of the attached Decision, there is an erroneous reference to a "January 24" meeting; the meeting in question there took place on December 24. Also, in the second paragraph of sec. III,C,4, the Administrative Law Judge erroneously found that Respondent's election observer/personnel clerk Sylvia Niarhos "testified" that employee Robert McWilliams was "fired"; the record established that *McWilliams* credibly testified that Niarhos *stated at the election* that he had been "fired." These errors have in no way affected the results we reach in this case.

[2] 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), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[3] Member Jenkins regards reliance on *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), as inappropriate here since the Administrative Law Judge rejected as specious Respondent's asserted reasons for the discharges of Corey and McWilliams and thus no lawful reason exists for the discharges. The *Wright Line* analysis is useful and applicable only where there are both lawful and unlawful genuine reasons for a discharge. Also, Member Jenkins notes that he would award interest on any backpay owed on the basis of his position as set out in *Olympic Medical Corporation*, 250 NLRB 146 (1980).

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 promise benefits to employees on condition they do not engage in union activities.

WE WILL NOT discriminatorily discharge employees for activities protected by Section 7 of the National Labor Relations Act.

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

WE WILL offer Craig Corey full and immediate reinstatement to his former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed.

WE WILL make whole Craig Corey and Robert McWilliams for any loss of earnings they may have suffered by reason of their discharges, plus interest.

SALEM PAINT, INC.

DECISION

STATEMENT OF THE CASE

D. BARRY MORRIS, Administrative Law Judge: This case was heard at Newark, New Jersey, on October 20 and 21, 1980. The charge was filed on January 2, 1980,[1] and a complaint was issued on March 31, 1980, and amended October 20, 1980, alleging that Salem Paint, Inc., violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended (the Act). Respondent filed an answer denying the commission of the alleged unfair labor practices.

The parties were given full opportunity to participate, produce evidence, examine and cross-examine witnesses, argue orally, and file briefs. Briefs were filed by the General Counsel and Respondent.

Upon the entire record of the case,[2] including my observation of the witnesses, I make the following:

[1] Amended charges were filed on January 25 and February 1, 1980, but were subsequently withdrawn.

[2] The General Counsel's motion to correct the record is granted. Respondent's similar motion is also granted except the change requested in par. 3 of Respondent's motion is denied, it appearing that pp. 209-210 of the transcript accurately reflect the testimony.

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, a New Jersey corporation, with its principal office and place of business in Hackensack, New Jersey, is engaged in the retail sale of paints and related products. During the 12 months preceding the issuance of the complaint, Respondent's gross revenues were in excess of $500,000. During the same period Respondent purchased, and caused to be delivered to its New Jersey facility, goods valued in excess of $50,000 from suppliers located outside the State of New Jersey. Respondent admits that it is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and I so find.

II. THE LABOR ORGANIZATION INVOLVED

United Food and Commercial Workers Union, Local 464A, a/w United Food and Commercial Workers International Union, AFL-CIO (the Union), is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issues*

The amended complaint alleges that Respondent violated Section 8(a)(1) and (3) of the Act by creating an impression among its employees that their union activities were under surveillance; by offering its employees benefits to refrain from becoming or remaining members of the Union; and by discriminatorily discharging two employees. Respondent denied the allegations. The issues are:

(1) Did Respondent create the impression of surveillance of its employees' union activities;

(2) Did Respondent offer its employees benefits to refrain from becoming or remaining union members; and

(3) Did Respondent discriminatorily discharge two of its employees.

B. *The Facts*

1. Background

Beginning in the latter part of October 1979 through January 2, 1980, when an election was held, the Union conducted an organizational campaign at Respondent's Hackensack facility (the plant). During the course of the campaign numerous meetings were held by employees with union organizers during which time the organizational effort was discussed. The first meeting took place on October 30,[3] at a Dunkin Donuts shop, located approximately a half mile from the plant. The second meeting took place soon thereafter behind the plant's loading platform. All the remaining meetings, which were held approximately once a week in November and more frequently in December, took place at the Fairmont Diner, located close to the plant.[4]

Lemont Persinger, a supervisor of Respondent and warehouse manager, was involved in the organizational effort from its inception. He attended employee meetings with the union organizers and attended the meetings held in November. In early November, Persinger admonished an employee, Maria Soto, to stop telling employees not to join the Union. Soto became upset, began crying and reported the conversation to Joe Marshall, Respondent's controller. Soto told Marshall that Persinger was trying to bring a union into the store. After Marshall asked what union, Soto replied "a union that the guys . . . they're trying to bring into the store."

During the second week of December a union meeting was held at the Fairmont Diner during the lunch hour. In attendance at that meeting were Richard Lindemann, Craig Corey, and several other employees, together with the union organizer, Frank DiChristina. Approximately 15 to 20 minutes after the meeting took place and the employees returned to work, Harvey Greenberg, who was in overall charge of the warehouse, approached several of the warehouse employees, including Corey and Lindemann. At the time the employees were picking orders and were also talking. Corey credibly testified, as follows: "Mr. Greenberg came back to see what we were doing, and he said just because you guys got a free lunch today doesn't mean you have to stop working entirely." His testimony was corroborated by Lindemann, who testified with respect to the same conversation, "We had been working and talking, and Harvey approached us and said I don't care who buys you lunch, but there's work to be done and you have to get it done."[5]

2. Discharge of Craig Corey

Craig Corey worked at Respondent's Hackensack facility from the beginning of October until December 28. Prior to working for Respondent, Corey attended college and was in his junior year. He decided not to attend school during the fall of 1979 but instead to work and "raise money to go back to school." While employed at Respondent, he spent approximately 75 percent of his time working in the warehouse and 25 percent of his time on the road, driving a truck and delivering items to Respondent's other stores.

[3] All dates refer to 1979 unless otherwise specified.

[4] The diner was "across a large parking lot, across the street and on the adjacent corner."

[5] In response to Respondent's counsel's question whether Greenberg said to the employees "I don't care if the Union buys your lunch, you still have to get the work done," Greenberg denied making such statement. The denial does not controvert the testimony of Corey and Lindemann. Each of them stated, in substance, that Greenberg referred to the fact that they got a "free lunch." They did not testify that Greenberg specifically mentioned that it was the Union which bought them lunch. Greenberg did not testify as to his version of the conversation, if, indeed, it differed from that of Corey and Lindemann. Similarly, Heuther was asked whether "Abby Greenberg" made the statement "I don't care if the Union buys your lunch, you still have to get the work done." He stated that Greenberg did not make such a statement in his presence. His testimony clearly does not controvert that of Corey and Lindemann. In the first place, he answered that "Abby" Greenberg, Respondent's president, did not make the statement when, in fact, the testimony was that Harvey Greenberg made the statement. In addition, as pointed out with respect to Harvey Greenberg's testimony, it was not alleged that the word "Union" was mentioned. Finally, Heuther did not deny that the statement was made, but merely stated that it was not made in his presence.

Corey was active in the Union's organizational campaign from its inception. He signed an authorization card and thereafter attended at least four union meetings, including the meeting held during the second week of December referred to above in connection with the remark by Harvey Greenberg.

On Friday, December 21, Corey was on the road delivering merchandise to a new store Respondent was opening in Massachusetts. When he called in to say that he would be returning to New Jersey late, he was instructed to take the truck home. On Monday morning, December 24, even though the warehouse was closed that day, Corey took the truck back to the warehouse at approximately 10:30 a.m. When he arrived at the warehouse he saw Harvey Greenberg and informed him that his last day of work would be December 28 because he would be returning to school on January 1 or 2. Corey testified that Greenberg responded "that would be fine with him."

Later that day Greenberg called Corey at home and told Corey that he had forgotten to leave the keys for the truck at the warehouse and that Greenberg had a Christmas bonus for him. Corey returned to the warehouse and gave Greenberg the keys and received his Christmas bonus. Corey told Greenberg that he had just received information that he did not have to leave for school until January 6 or 7 and accordingly asked Greenberg whether he could work until January 4. Corey testified that Greenberg responded that "he would let me work under one condition and this condition would be that if I did not come in on the morning of the union election, January 2nd, he said he would pay me for the entire day anyway." Corey did not respond, but told Greenberg that he would like to think about it. He never did respond to Greenberg's proposal.

Corey next spoke with Greenberg about being able to work the extra week on Friday, December 28. On that day Greenberg was seeing employees individually in the breakroom and was giving out letters showing company benefits. Corey testified that Greenberg told him that "he just had a talk with his attorney, his lawyer, and that because they couldn't figure out how I was going to vote in the union election, they were going to have to terminate my employment." Corey then left and has not been recalled to work.

With respect to the meeting on December 24, Greenberg admitted that Corey asked whether he could work another week. However, Greenberg's version of the conversation that ensued was markedly different from Corey's. Greenberg testified that "I told him that we had no work and that we were coming up with things to keep those at work staying with us through the first of the year, coming up with work for them." Again with respect to the December 28 meeting Greenberg admitted having a conversation with Corey but in response to Corey's question whether he could work the extra week Greenberg simply said "no, we'd have no work." Greenberg denied that he told Corey that since they did not know how he was going to vote, Corey's employment would have to be terminated.

I credit the testimony of Corey with respect to the conversations which took place on December 24 and 28. On cross-examination, I found Greenberg to be an evasive witness. In addition, Greenberg's testimony itself points to the truth of Corey's statement. Thus, Greenberg testified that on December 28 Corey asked him whether Corey "was going to be working here next week." This conforms to Corey's testimony that the question of his working the following week was left unresolved at the January 24 meeting. According to Greenberg's testimony with respect to the December 24 meeting, however, the question was not left unresolved but Greenberg definitely told Corey that there would be no work.

3. Discharge of Robert McWilliams

Robert McWilliams worked as an order picker in the plant's warehouse from October 1979 until January 2, 1980. McWilliams attended the Union's first meeting at Dunkin Donuts and also signed an authorization card.

McWilliams did not work for most of the month of December due to illness. He testified that he called in daily and spoke with either Harvey Greenberg or Steve Heuther, to report that he would not be at work. Greenberg testified that he did not receive daily phone calls from McWilliams but instead was called by him during the first and second weeks of December and 3 or 4 days before the Christmas party, which was held December 21. Heuther acknowledged receiving one or two phone calls from McWilliams during December.

McWilliams testified that he went to the plant on Friday, December 21. He went to the warehouse to see Harvey Greenberg and asked him for his paycheck. Greenberg said he would have to look for it and told McWilliams about the Christmas party and told him to go to it. At the party Greenberg handed McWilliams the paycheck, a Christmas bonus of $15, and another envelope. In the other envelope was a campaign letter from Respondent about the Union vote and about "how great the company was." McWilliams credibly testified that he turned to Greenberg and said "what is this, propaganda bull—? And he just smiled at me; he says, well, we're allowed to spread it too."

McWilliams further testified that he called Greenberg on December 31 to report that he would not be in that day. However, he told Greenberg that he would be in on January 2. According to McWilliams, Greenberg responded, "Oh, I'll see you then, January 2nd."

I credit McWilliams' testimony concerning the events of January 2.[6] He testified that he returned to work that day. While in the warehouse, at approximately 9 a.m., Greenberg came up to him and told him that he had "some paper work, involving the insurance plan the company had, and that he was going to the office to pick it up and bring it back to me." Greenberg returned not with the "paper work" but instead "he just came back and he told me that I have to be laid off, that he was just talking to the company lawyer and they have to lay me off." McWilliams testified that he then replied, "When

[6] In many respects Greenberg's testimony was not at variance with that of McWilliams. As noted earlier, I found Greenberg to be an evasive witness.

will I be called back? Right after the union vote? And he just gave me a smile and he goes, I can't tell you."

McWilliams then punched out and left the plant but returned a little later to vote in the union election which was held that morning. When he attempted to vote, Respondent's bookkeeper and election observer, Sylvia Niarhos, stated, "He can't vote, he can't vote, he was just fired today." McWilliams thereafter voted a challenged ballot.

Greenberg's testimony varied in certain respects from the testimony of McWilliams. Greenberg denied receiving any phone calls from McWilliams between the Christmas party and January 2. Greenberg testified that when he saw McWilliams in the warehouse on January 2, "I asked him why he was there. He didn't answer. I said, you didn't call me or tell me you were coming in. I have no work for you." Greenberg testified that he then went to his office and returned soon thereafter and told McWilliams "that he was being laid off, there was no work in the warehouse for him." Greenberg further testified that he notified McWilliams on January 10 or 11 by mailgram to return to work.

C. *Discussion and Analysis*

1. Surveillance

The complaint alleges that Respondent created an impression among its employees that their union activities were under surveillance. In his brief, the General Counsel cites the remark by Greenberg concerning the "free lunch" as the only instance of alleged surveillance. For the reasons stated below I do not find that the Greenberg remark created an impression of surveillance.

The "free lunch" remark was made by Greenberg after several warehouse employees attended a union meeting during the second week of December. There is no question that Respondent knew of the union activities. Respondent's bookkeeper testified that Respondent submitted the list of eligible voters to the National Labor Relations Board on December 6, prior to the date of the union meeting when Greenberg made the remark concerning the "free lunch." In addition, the evidence is uncontroverted that Persinger, a supervisor of Respondent, knew of, and indeed was involved in, the organizational effort from its inception. Also, as discussed earlier, in early November there was a confrontation between Persinger and Soto. Soto reported the incident to Respondent's controller, Marshall, and told him about the Union the "guys" were "trying to bring into the store."

The Greenberg remark concerning the "free lunch" implies to me nothing more than a statement by Greenberg that he was aware that the employees he was speaking with attended a union meeting. There is no indication in the record that any attempt was made to hide the fact that the employees were attending union meetings. Meetings were held fairly frequently and in close proximity to the plant. Indeed, since the number of employees was relatively few, it is likely that management knew when the meetings were held and who attended them. Cf. *Borin Packing Co., Inc.*, 208 NLRB 280, 287, fn. 31 (1974).[7]

Under the circumstances I do not find that Greenberg's remark created an impression of surveillance. In this connection the Board's decision in *Trojan Steel Corp.*, 180 NLRB 704 (1970), is instructive. In that case the Board affirmed the Administrative Law Judge's Decision, which stated, in pertinent part (at 706), "the mere indication by Respondent of knowledge that the employees had a union meeting at a beer joint is insufficient to establish that Respondent created an impression of surveillance to its employees . . . ."[8] Accordingly, the allegation is dismissed.

2. Promise of benefits

Paragraph 9(b) of the amended complaint alleges that Respondent offered its employees benefits to refrain from becoming or remaining union members. In its brief the General Counsel specifies that the violation consisted of Greenberg telling Corey on December 24 that the latter would be allowed to work the extra week provided he agreed not to come to work on the morning of the union election. As noted above, I credited Corey's testimony with respect to his December 24 conversation with Greenberg. The Board has held that the promise of keeping a job in return for refraining from participating in union activity or otherwise supporting a union violates Section 8(a)(1) of the Act. *Erlich's 814, Inc., et al.*, 231 NLRB 1237, 1238 (1977), enfd. 566 F.2d 68 (8th Cir. 1978). Accordingly, I find that Greenberg's offer to allow Corey to work the extra week in return for Corey's agreement not to vote in the union election constitutes a violation of Section 8(a)(1) of the Act.

3. Discharge of Corey

The General Counsel contends that Respondent refused to allow Corey to work the extra week because Corey would not agree to be absent the day of the union election. Respondent, on the other hand, contends that Corey was terminated on December 28 because of a lack of work.

The Board has recently restated the test to be applied in so-called "mixed motive" cases. *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980). The Board requires that the General Counsel make a *prima facie* showing sufficient to support the inference that protected conduct was a motivating factor in the employer's decision. Once this is established, the burden shifts to the employer to demonstrate that the "same action would have taken place even in the absence of the protected conduct."

It is necessary to examine certain established elements to determine whether the General Counsel has made a *prima facie* showing that union activity was a motivating factor in the discharge. These elements are knowledge of

[7] While the record does not contain the precise number of employees located at the Hackensack facility, Greenburg testified that there were only seven-nine warehouse employees. In addition, Niarhos testified that there were approximately 175 total employees in Respondent's 32 stores.

[8] To like effect is *Schrementi Brothers, Inc.*, 179 NLRB 853 (1969), cited by the General Counsel.

union activity, animus, timing, and the validity of the reasons for the discharge.

As discussed earlier, Greenberg clearly knew of Corey's union activities on December 24. It was the second week of December when Greenberg told Corey, after a union meeting, "[J]ust because you guys got a free lunch today doesn't mean you have to stop working entirely." As noted above, I have found this remark to indicate Greenberg's knowledge of Corey's and the other employees' union activities.[9]

With respect to animus, Greenberg testified that he distributed letters to employees several days before the union election on company benefits. Lindemann testified that when Greenberg handed McWilliams one of the letters, "McWilliams said more company propoganda, huh? And Harvey said we have to show our propaganda, too." Similarly, McWilliams credibly testified, "I turned to Harvey and said, what is this, propaganda bull—? And he just smiled at me; he says, well, we're allowed to spread it, too." In view of the above testimony and considering Greenberg's testimony that the union campaign was "not unimportant" to Respondent, I conclude that Respondent was opposed to the Union winning the election. This conclusion is buttressed by Greenberg's promise to Corey of additional work if Corey would agree not to vote. This is a clear indication of Greenberg's opposition to the Union.

Concerning timing, the nexus between the discharge and the union activity is clear. The meetings between Corey and Greenberg took place the week before the union election with the date of termination the last working day before the union election.

As discussed above, I have credited Corey's testimony concerning the December 24 conversation between himself and Greenberg. Accordingly, I find that Corey was terminated on December 28 and not permitted to work the extra week because Corey did not agree to absent himself on the day of the union election.

Respondent contends, however, that the reason Corey was not permitted to work the extra week was due to lack of work in the warehouse. I do not find sufficient evidence to support Respondent's contention. In addition to his work in the warehouse Corey also spent approximately 25 percent of his time delivering merchandise. Indeed, during the third week of December Corey delivered merchandise to a new store opening in Massachusetts. Further, I credit Corey's testimony that there was an additional store opening in Massachusetts and another one to be opened in Connecticut during the second week of January 1980.[10]

Accordingly, I find that the General Counsel has made a *prima facie* showing that Corey was not permitted to work the extra week because he would not agree to absent himself on the day of the union election. Respondent has not met its burden of demonstrating that Corey would have been terminated on December 28 were it not for the impending union election. I conclude that Respondent's conduct constitutes a violation of Section 8(a)(3) and (1) of the Act.

4. Discharge of McWilliams

McWilliams attended the organizational meeting at Dunkin Donuts when Persinger was present. As discussed earlier, because of the plant being relatively small and because of the fact that a supervisor was present, I believe that Respondent had knowledge of McWilliams' union activity from the very beginning of the organizational effort. Even, however, were this not the case, I believe that knowledge of union activity has been demonstrated. That is because the union activity at issue is voting in the election. Since McWilliams returned to work on January 2, Respondent had every reason to believe that McWilliams intended to vote in the union election that day.

With respect to timing, the discharge occurred immediately prior to the union election. When McWilliams appeared on the morning of January 2, he was told that he was being laid off. Niarhos used stronger language. She testified that McWilliams was "fired" that morning. The union election was held later that morning.

Again, Respondent contends that McWilliams was laid off because of lack of work in the warehouse. I credit McWilliams' testimony that he spoke to Greenberg on December 31 at which time Greenberg told him that he would see him at work on January 2. Greenberg did not tell McWilliams that there was no work even though Greenberg testified that warehouse work essentially ceased on December 20. Even, however, were I to believe Greenberg that the last conversation between himself and McWilliams took place on December 21, the day of the Christmas party, no explanation was given why Greenberg did not tell McWilliams that he was being laid off at that time.

For the above reasons, I believe that the General Counsel has made a *prima facie* showing that McWilliams was terminated so that he would not be able to vote in the union election. Respondent has not sustained its burden of showing that McWilliams would have been terminated on January 2 were it not for the election being held that day.

Accordingly, I conclude that by the above conduct Respondent violated election 8(a)(3) and (1) of the Act.

5. Offer of reinstatement

On January 11, 1980, Respondent sent a telegram to McWilliams, notifying him to report to work on or before January 16, 1980. Respondent requested that Western Union "report delivery by mailgram," and such

[9] In addition, Respondent was clearly aware of the impending union election. As noted earlier, I have found that Respondent offered to permit Corey to work the additional week if he agreed not to vote in the election.

[10] Greenberg's testimony with respect to the number of stores to be opened is an example of his evasiveness. In response to the General Counsel's question, "[D]uring December 1979, Mr. Greenberg, was Salem Paint in the process of opening new stores," Greenberg replied, "[S]ingular; store." However, when called as a rebuttal witness by counsel for Respondent, Greenberg conceded that three new stores were being opened, two in Massachusetts and one in Connecticut.

was done.[11] The General Counsel concedes that the telegram was delivered by telephone to the household of McWilliams. McWilliams testified, however, that he did not receive the telegram. McWilliams further testified that some time subsequent to January 11 a National Labor Relations Board representative advised him that Respondent contended that it sent McWilliams a telegram offering reinstatement. He admitted that he never called Respondent to inquire about the offer of reinstatement.

For an offer of reinstatement to be effective the employer must make it in good faith and in a manner in which it could be reasonably anticipated that the employee would receive notice of the offer. See *Knickerbocker Plastic Co., Inc.*, 132 NLRB 1209, 1236 (1961). The offer may be effective even though not received by the employee. See *Rollash Corp.*, 133 NLRB 464, 465-466 (1961); *Adams Books Co.*, 203 NLRB 761, 769, fn. 39 (1973); *Airports Service Lines, Inc.*, 218 NLRB 1160, 1161 (1975).

I conclude that Respondent acted in good faith in attempting to apprise McWilliams of the offer. It sent the offer by telegram and asked for and received confirmation of delivery. As mentioned above, the General Counsel concedes that delivery was made by telephone to McWilliams' home. Under the circumstances, I believe Respondent did everything that it reasonably could have done to communicate the offer to McWilliams. Accordingly, I find that Respondent made a valid offer of reinstatement to McWilliams.

Conclusions of Law

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By offering to allow Craig Corey to work an additional week in return for his agreement not to vote in the union election, Respondent has engaged in an unfair labor practice within the meaning of Section 8(a)(1) of the Act.
4. By terminating the employment of Craig Corey and Robert McWilliams for activities protected by the Act, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.
5. The aforesaid unfair labor practices constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.
6. Respondent did not violate the Act in any other manner alleged in the complaint.

The Remedy

Having found that Respondent has engaged in certain unfair labor practices, I find it necessary to order Respondent to cease and desist therefrom and to take affirmative action designed to effectuate the policies of the Act.

Respondent having discharged Craig Corey and Robert McWilliams in violation of the Act, I find it necessary to order Respondent to offer Corey full reinstatement to his former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make Corey and McWilliams whole for any loss of earnings that they may have suffered from the time of their termination to the date of Respondent's offers of reinstatement.[12]

Backpay shall be computed in accordance with the formula approved in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).[13]

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:

ORDER[14]

The Respondent, Salem Paint, Inc., Hackensack, New Jersey, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Promising benefits to employees on condition that they do not engage in union activities.

(b) Discriminatorily discharging employees for activities protected by Section 7 of the Act.

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

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

(a) Offer Craig Corey immediate and full reinstatement to his former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges.

(b) Make whole Craig Corey and Robert McWilliams for any loss of earnings in the manner set forth in the section above entitled "The Remedy."

(c) Post at its facility in Hackensack, New Jersey, copies of the attached notice marked "Appendix."[15] Copies of the notice on forms provided by the Regional Director for Region 22, after being duly signed by Respondent's authorized representative, 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

[11] General Counsel's motion for receipt of post-hearing exhibits is granted. Accordingly, G.C. Exhs. 3, 4, and 5 are received into evidence. In addition, letters dated October 22 and 31, 1980, from Respondent's counsel and a letter dated October 29, 1980, from the General Counsel are received into evidence as ALJ Exh. 1(a)-(c).

[12] Western Union telephoned the offer of reinstatement to McWilliams' home on January 11, 1980. Accordingly, the period of backpay ends on that date. See *Knickerbocker Plastic Co., Inc.*, 132 NLRB at 1236.

[13] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716, 717-721 (1962).

[14] 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.

[15] In the event that this Order is enforced by a Judgment of the 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."

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 22, in writing, within 20 days of the date of this Order, what steps Respondent has taken to comply herewith.