Farmers Insurance Group *and* William Thomas Lawson. Case 31-CA-10069

August 3, 1981

DECISION AND ORDER

On March 30, 1981, Administrative Law Judge Jay R. Pollack issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in opposition to Respondent's exceptions.

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

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Farmers Insurance Group, Oxnard and Woodland Hills, California, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

[1] Respondent contends that it is deprived of due process by the findings that it violated Sec. 8(a)(1) by discriminatorily restricting an employee's conversations about the Union and by threatening an employee with loss of his job if he continued his union activities. We find no merit in this contention. Par. 6(b) of the complaint alleged that on or about April 7, 1980, at the Oxnard branch office, Respondent directed an employee not to discuss the Union with other employees, and par. 8(b) alleged that on or about April 14, 1980, at the Woodland Hills branch office, Respondent threatened to discharge an employee because of that employee's union activities and sympathies. Accordingly, we find that Respondent was given adequate notice of the allegations against it, which were fully proved at the hearing.

DECISION

STATEMENT OF THE CASE

JAY R. POLLACK, Administrative Law Judge: This matter was heard before me in Los Angeles, California, on January 22, 1981. Pursuant to a charge filed against Farmers Insurance Group (herein called Respondent), by William Thomas Lawson, an individual on May 29, 1980,[1] the Regional Director for Region 31 of the National Labor Relations Board (herein called the Board), issued a complaint against Respondent on July 6, alleging that Respondent committed certain violations of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, 29 U.S.C. §151, *et. seq.* (herein called the Act).

The Issues

The principal questions presented for decision are:

(1) Whether Respondent violated Section 8(a)(1) and (3) of the Act by discharging Lawson on May 14 because of his union sympathies and activities.

(2) Whether Respondent violated Section 8(a)(1) by creating the impression that Lawson's union activities were under surveillance by Respondent; by directing Lawson not to discuss the Union with other employees; and by threatening to discharge Lawson because of his union activities.

The parties have been afforded full opportunity to appear, to introduce evidence, to examine and cross-examine witnesses, and to file briefs. Upon the entire record, from my observation of the demeanor of the witnesses, and having considered the post-hearing briefs of the General Counsel and Respondent, I make the following:

FINDINGS OF FACT AND CONCLUSIONS

I. JURISDICTION

At all times material herein, Respondent has been a Nevada corporation, with an office and principal place of business located in Los Angeles, California, where it is engaged in the business of selling insurance. In the course and conduct of its business operations, Respondent annually derives gross revenues in excess of $500,000 and annually sells and ships goods or services valued in excess of $50,000 directly to customers located outside the State of Nevada. Accordingly, Respondent admits and I find that it is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The parties stipulated and I find that at all times material herein Office and Professional Employees Union, Local 30 (herein called the Union), has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

As discussed above, Respondent is engaged in the insurance business. It is the third largest casualty insurance company in the United States and operates in 26 States.

William Lawson, the Charging Party herein, was first hired by Respondent in May 1974, as a liability claims representative or adjuster. At the times material herein, Lawson was working as a senior property claims representative under the supervision of the branch manager of Respondent's Woodland Hills, California, branch claims office.[2] As he lived in Oxnard, California, and was assigned a geographic territory in Ventura County, California, Lawson was provided with office space in Respondent's Oxnard branch office. However, Lawson was supervised by the managers of the Woodland Hills office and not by the managers of the Oxnard office.

[1] Unless otherwise stated, all dates refer to the year 1980.

[2] From the fall of 1978 until May 1, 1980, Lawson's immediate supervisor was Edward Petersen, and his branch manager was Dennis Schliep. On May 1, 1980, Schliep was transferred to another location and Petersen became acting branch manager.

During the period from November 1979 until May 1980, Respondent experienced an unusual rise in the number of property claims filed with its Woodland Hills office. The increased number of claims was due to several large storms in Los Angeles and Ventura Counties. The increase in property claims resulted in an increase in the case assignments to Lawson and the other claims representatives.

Due to the sharp increase in case assignments, Respondent's employees began discussing their perceived problems with working conditions. Lawson was the focal point for these discussions, and in February 1980, he contacted the Union on behalf of the claims representatives and secretaries of Respondent's Woodland Hills and Oxnard offices. Lawson arranged for a meeting for employees with the Union to be held in April. However, that meeting was canceled by a union representative and never rescheduled.

B. *The Alleged 8(a)(1) Violations*

As discussed above, Lawson maintained a desk at Respondent's Oxnard office. Lawson testified that during the first week of April, he first mentioned the Union to Harold Tollefson, supervisor at the Oxnard branch claims office.[3] According to Lawson, Tollefson was discussing pay raises with employees Debbie Graves and Kelly Steiger when Lawson "half jokingly" said that if the employees were represented by a union, they would be able to file a grievance and receive a pay raise. Tollefson walked over to Lawson and told him to quit talking about union organization or he would "find his ass right out on the street." Lawson further testified that during this conversation, Tollefson said he was aware of Lawson's union activities.

Tollefson testified that he, and Graves, and a telephone receptionist[4] were discussing a newspaper article regarding the Company when Lawson interrupted and said "when the union comes in, things are going to be a lot better." According to Tollefson, he told Lawson he was not talking about the Union and told him to "butt out." Lawson said that "management thinks they can talk about the union whenever they want to, but employees can't do that." Tollefson repeated that he was not talking about the Union, and Lawson walked away. Tollefson denied making the statements attributed to him by Lawson. Tollefson reported this incident to his supervisor, Albert Sutcliffe, branch claims manager of the Oxnard office.

The following day, Sutcliffe called Lawson into his office to talk about the incident of the prior day. According to Lawson, Sutcliffe pointed his finger at the employee and said, "I don't want any damn talk about union activities to any of my employees." Lawson answered, "I'll stop talking about the union if you stop talking against the union." Sutcliffe became angry and told Lawson that he was the manager of the office and that Lawson could not talk to him in that manner. Sutcliffe then told Lawson that Respondent would do everything in its power to stop any type of union activity. He said that Respondent knew of Lawson's organizing activities and that if Lawson continued his activities, he would be fired. Lawson said that he could not be fired for union activities because "that's the law." Sutcliffe answered that he did not want Lawson talking to any of his employees about the Union during duty hours because "that's the law." Lawson responded that he would talk to employees on his own time and ended the conversation.

Sutcliffe testified that Tollefson had told him that Lawson had interrupted one of his (Tollefson's) conversations and said that things would improve when the Union came in. Sutcliffe called Lawson into his office and told Lawson not to discuss union activities on the floor of the office during working hours. Sutcliffe said that if he found Lawson doing so, he would ask him to stop. Lawson answered that if he heard Sutcliffe was talking against the Union, he would ask Sutcliffe to stop. Sutcliffe denied making the statements attributed to him by Lawson.

Sutcliffe further testified that he had had a prior conversation with Lawson about union organizing. During general conversation, Lawson told Sutcliffe that there was a new attempt at union organizing.[5] Lawson explained why he thought the Union would be successful in attracting employees. Sutcliffe said he thought that it was a poor time economically to organize a union. Sutcliffe reported his conversation to his supervisor, James Heady, regional claims manager.

Lawson testified that later during the same week as his conversation with Sutcliffe, he had a telephone conversation with Dennis Schliep, then branch claims manager at the Woodland Hills office, in which Schliep brought up the subject of the Union. According to Lawson, he asked Schliep whether he had been able to hire another claims adjuster and Schliep answered yes. Schliep then said he had many qualified people applying for the job. Schliep said that he had applicants with law degrees and master's degrees and added, "this is really a rotten time for you to be organizing a union, especially with the times as hard as they are and these really good people applying for the job." According to Lawson, Schliep said that Respondent was aware of his union activities and if Lawson did not cut out his union activities, he would be fired. Lawson said that Schliep could not fire him for organizing a union and Schliep said, "Jim Heady still remembers when you were trying to organize for the Teamsters Union."[6]

Schliep, presently a senior liability claims representative, testified that he had one conversation with Lawson concerning the Union. According to Schliep, his conversation took place while Lawson was in Schliep's office. Schliep told Lawson that he had heard that there was

[3] Tollefson, an admitted statutory supervisor, had no supervisory authority over Lawson. As discussed above, Lawson worked under the supervision of the Woodland Hills office.

[4] Graves, no longer employed by Respondent, was not called to testify at the hearing. Steiger, also, was not called to testify.

[5] There had been a prior organizational campaign concerning Respondent's Los Angeles offices in 1976–77. That campaign resulted in a representation petition being filed with the Board by a local of the Teamsters Union. However, that petition was voluntarily withdrawn, prior to an election.

[6] The 1976–77 organizing campaign.

some sort of union activity and commented that it was a very poor time for such activity. Schliep said that highly qualified people including attorneys were looking for jobs as claims representatives.[7] Schliep denied saying that Respondent was aware of Lawson's union activities or that Lawson would be fired if he continued his union activities.

Lawson testified that he also had a conversation with Edward "Ted" Petersen, the supervisor at the Woodland Hills property office, concerning the Union. According to Lawson, Petersen was asking for Lawson's help in dealing with the work problems of employee John Dunn. Petersen said that if Dunn did not straighten out, he was going to fire Dunn. Lawson indignantly asked if Petersen was going to fire a claims representative that had 22 years seniority just because Dunn "did things his way." Lawson then said, "[T]hat's one of the reasons that we're trying to organize a union." Lawson said if there were a union, it would be able to defend Dunn. Petersen said Respondent was aware of Lawson's union activities and that it was very easy to fire somebody before they had union representation. Lawson told Petersen that unions were good things, and that the employees needed a union.

Petersen, branch claims manager at the Woodland Hills office, testified that he overheard a conversation in which Lawson was telling other employees about the benefits Lawson's wife received through her union. After that conversation, Petersen walked over to Lawson's desk to discuss unions. Petersen said he did not believe that the employees would gain anything by having a union. Petersen said that presently, an adjuster could work on his own time schedule and did not have to account for each and every hour of the day. Petersen denied having any conversation with Lawson about Dunn. Petersen further denied saying anything about Lawson's union activities or threatening to fire Lawson because of his union activities.

C. *The Discharge*

As discussed above, on May 14 Lawson was discharged. Lawson testified that between 6 and 6:30 p.m., Petersen called him into Petersen's office and asked him to bring along his case files. After Petersen and Lawson were alone in the office, Petersen closed the door and told Lawson that he had to let him go. Lawson laughed and said, "You've got to be kidding." Lawson said that Petersen had to have a reason for firing him, and Petersen said that he did not have a reason. Petersen said he did not have to give Lawson a reason but did say that the discharge was "coming from above." Lawson asked if Heady was firing him and Petersen said he was not at liberty to give out such information. Lawson said that even Respondent's personnel manual required a reason for firing him, and Petersen answered that Lawson's caseload was high and that he "was not working [his] files down fast enough." Lawson then sought to defend his high caseload. Petersen said that he did not want to discuss the matter any further. Petersen said he was going to pay Lawson 2 weeks' wages and asked the employee to turn in his files, keys to his company car, camera, and recorder. Lawson answered that if he was going to be paid for 2 weeks he would keep the company equipment and continue to work on the files. Petersen insisted that Lawson return the company's equipment and repeated that Lawson was terminated. At that point, Lawson accused Petersen of terminating him because of his union activities. Petersen denied that Respondent would fire anybody for that reason. Lawson insisted that he was being fired for his union activities and repeated that he was going to keep his files and continue to work on them. Petersen then left the room.

According to Lawson, Petersen left the building and proceeded to disable Lawson's company car by letting the air out of its tires. Lawson, upon learning of Petersen's actions from John Dunn, went to the parking lot. Lawson asked Petersen "very nicely" to get away from the car, whereupon Petersen got to his feet and ran away. Lawson retreived his files and equipment from the car and was driven home by Dunn. Lawson denied threatening Petersen or chasing him across the parking lot.

Petersen's account of his May 14 conversation with Lawson is markedly different from that of Lawson. According to Petersen, Lawson brought his files into Petersen's office and placed them on a coffee table. Lawson said, "Here are my files." Petersen said, "We have a case review that we're going to handle tomorrow" and Lawson answered that he was not going to work the next day.[8] The two men argued over the need for a case review the next day. Petersen then took out a list of case assignments which disproved an earlier claim of Lawson's, that Schliep had assigned him 40 percent more cases than the other claims representatives.[9] Petersen then said that his analysis of Lawson's casehandling was that Lawson had engaged in a slowdown. Lawson said that these were just lies made up by Schliep. Petersen told Lawson to check the assignment records and left the room in order to find Dunn. Petersen told Dunn that he was going to fire Lawson and asked Dunn to wait so that he could drive Lawson home.

Petersen returned to his office and told Lawson that since Lawson had not responded to the extra supervision that he was receiving, he was terminated. Lawson told Petersen that Petersen could not fire him, and Petersen answered that he was acting branch claims manager and had been told that he could terminate Lawson. Petersen then asked for Lawson's car keys and other company property. Lawson said that Petersen could not fire him because he had not been placed on probation. Petersen answered that he understood that Lawson had already been on probation and that there was no need to put him

[7] Schliep testified that he did not intend to suggest that these applicants would replace employees involved with the Union.

[8] Lawson testified that he had not intended to be absent from work the remainder of that week. However, Lawson's expense account report, apparently filled out on May 14, indicated that he would be absent for "personal business" on May 15 and would commence his vacation on May 16.

[9] According to Petersen, he had spent the prior weekend checking Respondent's records to ascertain whether Lawson's allegations concerning case assignments were true. The facts leading up to this event will be discussed more fully in the section of this decision entitled "Respondent's Defense."

on probation again. Petersen insisted that Lawson return the car keys and other equipment, and Lawson refused. While Lawson was emptying his desk, Petersen went to the parking lot to immobilize Lawson's company car.

Petersen was in the act of letting the air out of the tires of Lawson's car when Lawson approached. Lawson dropped his files and proceeded to chase Petersen who ran around the car and through the parking lot to safety. Petersen later walked back to a safe vantage point and saw Lawson hiding behind a platform near the office building. Lawson saw Petersen and went back to the parking lot. Petersen went into the building and called the police. Thereafter, a police car came to the premises but Lawson had already left with Dunn. The parties stipulated that the Los Angeles Police Department log for May 14 discloses that between 5:10 and 5:35 p.m., Petersen called for police assistance and that two police officers were dispatched to Respondent's Woodland Hills office pursuant to that call.

John Dunn, service claims representative, testified that he was at Respondent's Woodland Hills office on May 14, the evening of Lawson's discharge. Dunn did not hear the conversation between Lawson and Petersen in Petersen's office. Dunn saw Lawson and Petersen leave the office together. Petersen asked for Lawson's files and car keys, and Lawson refused. Dunn heard Petersen twice ask for the keys and files before Dunn left the area for a few minutes. When Dunn returned he saw Lawson putting his files into a box.[10] Dunn walked towards the restroom and from there saw Petersen letting the air out of the tires of Lawson's car. Shortly thereafter, Lawson walked out of the office. When Dunn left the office he found Lawson in the parking lot next to his immobilized car. Lawson loaded his belongings into Dunn's car and Dunn drove Lawson home.

During the drive home, Lawson questioned Petersen's authority to fire him. Lawson told Dunn that Petersen had not given him any particular reason for the firing other than Lawson's high caseload.

Douglas Gilman, senior property claims representative, was also working during the evening when Lawson was discharged. Gilman testified that he did not hear any of the conversation which occurred in Petersen's office. Gilman heard an argument between Lawson and Petersen about the discharge. According to Gilman, Lawson was upset over his discharge and was calling Petersen names.[11] Petersen asked for Lawson's files and car keys and Lawson refused.[12] Petersen and Lawson then left the building. Approximately 5 minutes later, Gilman saw Petersen in the parking lot. Petersen told Gilman that he was waiting for the police to arrive. Gilman saw a police car drive into the parking lot as he was leaving to go home.

D. *Respondent's Defense*

As discussed above, Respondent experienced a large volume of claims in Los Angeles and Ventura Counties during the period from November 1979 through May 1980. Petersen was called to a meeting on April 7, 1980, with James Heady and Leonard Gelfand, regional managers of the western claims division and eastern claims division, respectively, of Respondent's Los Angeles regional operations. The discussion centered around problems in the Woodland Hills office and the possibility of Petersen succeeding to the position of manager of that office.[13] During this meeting, Petersen discussed the inadequate work performance of three claims adjusters: Lawson, Mary Ann Van de Car, and John Dunn. Petersen reported that these three employees were the weakest adjusters in his office and that he had received the most complaints about their work. Each of the three adjusters had too many pending cases. At the time of the meeting, Lawson had 243 cases, which had not yet closed, Van de Car had 65, and Dunn had 105. The average number of open cases for a claims adjuster was 40.[14] Petersen promised to work with these three employees to improve their performance. At this meeting, Respondent's management decided to conduct an audit of the Woodland Hills office while Schliep was still present in order to determine the problems with the operation, and then to suggest appropriate action. It was further decided that Schliep would be transferred on May 1 and that Petersen would become acting manager on that date.

As discussed above, Petersen told Respondent's management that he would work with Lawson and the other two adjusters to improve their performance. On May 1, concurrent with becoming acting office manager, Petersen placed Lawson on a program of closer supervision: (1) Lawson was required to review his cases every Thursday with Petersen; (2) Lawson was to report to the Woodland Hills office every day (requiring a drive of approximately an hour each way); and (3) Lawson would not be assigned additional cases.[15] Pursuant to this program, Petersen met with Lawson on the first two Thursdays of May, May 1 and 8. On each occasion, Petersen spent a full day going through files with Lawson and instructing him as to what was required to close a specific case. At times during the day, while Lawson was making a phone call or filling out a form, Petersen would leave to perform some of his other duties. Petersen would then return and work with Lawson. During these meetings, Petersen determined that in many of the cases, Lawson had not yet made initial contact with the claimant. Also, in regard to many of the cases, Lawson had to review the file in order to familiarize himself with the case before he was able to answer routine questions from Petersen. Petersen testified that Lawson should have been familiar enough with the files to answer such questions. During a Thursday review with Petersen, Lawson was able to close 20 to 25 case files. However,

[10] Dunn heard no discussion of the Union.

[11] Gilman heard no discussion of the Union.

[12] According to Gilman, Lawson was very agitated but Petersen appeared calm.

[13] Manager Dennis Schliep was scheduled for reassignment to another location.

[14] Petersen testified that prior to that time the highest number of open cases he had ever observed was 110.

[15] Petersen testified that taking Lawson off assignment was unfair to the other claims adjusters, who would thereby receive a heavier caseload, but it was something he had to do. Petersen further testified that to his knowledge such a drastic action had not previously been taken in regard to a claims adjuster.

while unsupervised on the other 4 workdays, he closed only a total of about 20 cases.

During conversations with Petersen concerning his high caseload, Lawson accused Schliep of assigning him 40 percent more cases than any other claims adjuster. Petersen then inspected Respondent's assignment log, which showed that Lawson received no more assignments than any other agent. In fact, Lawson received slightly less than the average number of assignments. When Petersen confronted Lawson with the facts as shown by the assignment log, Lawson accused Schliep of lying and falsifying the assignment log. Petersen, upset by these allegations, took Respondent's master logbook home with him and, with help from his wife, made a comparison between the master log and the assignment log during the weekend of May 10 and 11.[16] Petersen's review showed that there was a slight discrepancy in the assignment log, but it was in Lawson's favor. This investigation of the records showed that there was clearly no merit to Lawson's accusations against Schliep.[17]

The next weekday following his investigation of the records, May 12, Petersen called Heady and advised him that there was no merit to Lawson's accusations against Schliep. Petersen told Heady that his close supervision of Lawson had not improved the employee's techniques or production. Therefore, Petersen recommended that Lawson be terminated. Heady granted approval for this action.

According to Petersen, he decided that he would discharge Lawson after their case review on Thursday, May 15. There were two reasons for this choice of date: (1) Dunn would be in the office on that date and could drive Lawson home to Oxnard; and (2) Petersen could have a case review with Lawson and learn the status of more of the employee's cases. However, at the end of the workday on May 14, Lawson brought his files into Petersen's office, indicating that he would not be coming in the next day for his case review.[18] As discussed above, Petersen noticed that Dunn had come into the office and told Lawson to check the records showing that the accusations against Schliep were without merit. Petersen left Lawson and made arrangements for Dunn to drive Lawson home. On his return to the office, Petersen terminated Lawson as set forth in detail above.

The General Counsel attempted to present evidence that prior to the union activities of early 1980, Lawson had a "good" work record with Respondent. The General Counsel's evidence is, at best, misleading.

Lawson received annual appraisals in April of each year. His most recent appraisals were issued in April 1978 by then supervisor Schliep and in April 1979 by then supervisor Petersen. On both occasions, Lawson's performance rating was "good." However, under Respondent's appraisal system any employee receiving a rating less than "good," i.e., fair or poor, is automatically placed on probation. Both Petersen and Schliep testified that Lawson received the least favorable rating of any claims adjuster. While Lawson received a wage increase in September 1979 and January 1980, those increases were virtually automatic for any employee not on probation. An employee on probation is not eligible for a raise. It is further noted that Lawson was placed on probation during March 1978, and was removed from probation 2 weeks later after his case backlog had decreased substantially. The record reveals other evidence of attempts by Respondent to take corrective measures in regard to Lawson's performance. However, further detail is not necessary for purposes of this decision.

E. *Credibility Resolutions*

The testimony of Lawson is critical to the establishment of the General Counsel's *prima facie* case. However, no corraboration of Lawson's testimony was offered. Where documentary evidence was produced, it contradicted Lawson's testimony. The testimony of employees Douglas Gilman and John Dunn was more consistent with the testimony of Petersen than that of Lawson. Lawson's perceptions of certain events were shown to be biased or inaccurate. The most graphic example of this was Lawson's testimony that a letter written by his supervisor and placed in his personnel file was a letter of apology. The letter at issue stated in pertinent part:

> I in no way apologize or regret having to write to you . . . setting forth the facts as I saw them. Therefore, copies of my memo placing you on probation along with your rebuttal along with this memo have been placed in the Master Personnel file of yours.

With regard to the close supervision given him by Petersen, beginning in May, Lawson testified that he did not consider that a reflection on his work but rather as evidence of how well he and Petersen were getting along. Further, Lawson testified that such extra supervision was a favor so that he could go on his vacation without worrying about his workload. Clearly requiring Lawson, a field employee, to drive an extra 2 hours a day for such close supervision indicated problems with his work. Further, it must have been evident to Lawson that Petersen's attention to his other duties suffered while he spent a whole day reviewing Lawson's files with the employee.

Based on Lawson's demeanor, his biased and inaccurate perceptions and the lack of corroboration for his testimony, I do not credit Lawson's testimony except to the extent that it may be consistent with the credited evidence.

F. *Conclusions Regarding 8(a)(1) Issues*

1. The complaint alleges that on or about April 7, Tollefson created the impression among employees that their union activities were under surveillance by Respondent and threatened to discharge Lawson because of his union activities and sympathies. The credible evidence shows

[16] Petersen received permission from Heady to conduct this investigation.

[17] During the hearing, Lawson testified that he received between 15 and 20 case assignments a day. The records indicated that the largest number of assignments Lawson received in a day was eight.

[18] Lawson denied that he intended to be absent the remainder of that week. As discussed above, Lawson filled out an expense account report on May 14 indicating that he would take May 15 off for "personal business" and start his vacation on May 16.

that Lawson interrogated Tollefson while the supervisor was having a conversation with a telephone receptionist. Lawson said, "when the union comes in, things are going to be a lot better." Tollefson told Lawson that he was not talking about the union and told Lawson to "butt out." Lawson answered that management talks about the Union whenever it wants to, but denies that right to employees. Tollefson repeated that he was not talking about the Union, and Lawson walked away. Based on the credible evidence above, I find that the General Counsel has failed to sustain his burden of proof on these allegations. I, therefore, recommend that these allegations of the complaint be dismissed.

2. The complaint alleges that on or about April 7,[19] Sutcliffe created an impression that Lawson's union activities were under surveillance by Respondent and directed Lawson not to discuss the Union with other employees. The credible evidence establishes that Sutcliffe, after learning that Lawson had interrupted Tollefson's conversation and said, "things would improve when the union came in," called Lawson into his office. Tollefson told Lawson not to discuss union activities on the floor of the office during working hours. Lawson answered that if he heard Sutcliffe talking against the Union, he would ask Sutcliffe to stop.

The record, herein, reveals no restriction on other types of employee conversations. Further, there is no evidence that conversations about the Union caused any job or business disruption requiring such a restriction. In my view, Respondent must show that the instant restriction on conversation was not discriminatorily applied to union conversations. Cf. *American Commercial Bank*, 226 NLRB 1130, 1131 (1976). Further, Respondent must show a disruption of production justifying such a restriction. *Custom Recovery, Div. of Keystone Resources, Inc.*, 230 NLRB 247, 253 (1977). Having found that Respondent has not justified this restriction on conversations, I find that Sutcliffe's direction to Lawson, not to talk about the Union, violated Section 8(a)(1) of the Act.

3. The complaint alleges that on or about April 14, Schliep created the impression that Lawson's union activities were under surveillance by Respondent and threatened to discharge Lawson because of his union activities and sympathies. The credited testimony of Schliep establishes that Schliep told Lawson that he had heard that there was some sort of union activity and commented that it was a very poor time for such activity. Schliep illustrated this by mentioning that he had highly qualified job applicants looking for jobs as claims representatives. Notwithstanding Schliep's testimony to the contrary, his reference to the highly qualified job applicants could only be calculated to imply that employees could lose their jobs to such applicants if they continued with their union activities. Accordingly, I find that Schliep's statements violated Section 8(a)(1) of the Act. Cf. *Grandee Beer Distributors, Inc.*, 247 NLRB 1279 (1980).

4. The complaint alleges that on or about April 21, Petersen threatened to discharge Lawson because of his union activities and sympathies. No such threat was proven. The credited testimony of Petersen establishes that after he heard Lawson discussing unions, he struck up a conversation with Lawson on that subject. Petersen told Lawson that he did not think the employees would gain anything by having a union. He added that without a union, claims adjusters had a flexible work schedule. Petersen's comments appear to be an expression of his opinion, that employees did not need a union, and were unaccompanied by any threat, express or implied, or any promise of benefit. Accordingly, I find Petersen's remarks to be permissible comment and not violative of the Act.

G. *The Discharge*

The critical issue, herein, is Respondent's motive for discharging Lawson. In such cases, the General Counsel must make a *prima facie* showing sufficient to support the inference that protected conduct was a "motivating factor" in the employer's decision. See *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980). On such a showing, the burden shifts to the employer to prove that the same action would have taken place even in the absence of the protected conduct.

I find that the General Counsel has failed to establish a *prima facie* case that the discharge was for any reason other than that given by Respondent, i.e., that Lawson was discharged for his failure to process his assigned cases in a timely manner. Lawson was discharged by Petersen after he failed to respond to the extraordinary measures taken to improve the employee's handling of his case assignments. The credited evidence shows that Lawson had an extremely high backlog of cases. Three employees, Van de Car, Dunn, and Lawson were identified as "problem" employees with whom Petersen was to take corrective measures. Lawson had by far the most open cases of the three employees. Petersen resorted to the extraordinary measure of taking Lawson off new assignments. However, Petersen was still not satisfied with Lawson's work habits and results. When pressed by Petersen about his high caseload, Lawson accused Schliep of assigning him an oppressive caseload and falsifying the records to conceal such action. Petersen considered such accusations to be of grave importance and spent a weekend going over the records. After establishing that there was no merit to Lawson's accusations, Petersen decided to terminate the employee. As Lawson had previously been placed on probation, Petersen decided to terminate Lawson rather than place him on probation again.

Against his business justification for the discharge, the General Counsel has not established by credible evidence that the discharge was motivated by antiunion considerations. The General Counsel has established that Respondent violated Section 8(a)(1) of the Act in two respects: by implying that union activities could result in the replacement of employees; and by directing an employee not to talk about unions in the office area during working hours. However, the nature of these unfair labor practices is not so serious and substantial as to infer their connection with the discharge. The credible evidence does not support a finding that Respondent's opposition to the Union was so strong as to impel it to violate the

[19] I find that the correct date is April 8.

law in order to keep the Union out. Moreover, even if the General Counsel were deemed to have established a *prima facie* case, the evidence overwhelmingly establishes that Lawson would have been discharged even in the absence of his union activities.

CONCLUSIONS OF LAW

1. Respondent Farmers Insurance Group is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Office and Professional Employees Union, Local 30, is a labor organization within the meaning of Section 2(5) of the Act.

3. By impliedly threatening employees with replacement in order to discourage union activities, and by directing an employee not to talk about unions for the purpose of interfering with self-organizational activities, Respondent engaged in conduct in violation of Section 8(a)(1) of the Act.

4. Respondent did not engage in conduct in violation of Section 8(a)(3) of the Act.

5. The unfair labor practices specifically found above are unfair labor practices affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

6. Respondent engaged in no other conduct violative of the Act.

THE REMEDY

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

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

ORDER[20]

The Respondent, Farmers Insurance Group, Oxnard and Woodland Hills, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees that they would be replaced for the purpose of discouraging union activities.

(b) Directing employees not to talk about unions for the purpose of interfering with self-organizational 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 designed to effectuate the purposes of the Act:

(a) Post at its Woodland Hills and Oxnard, California, facilities, copies of the attached notice marked "Appendix."[21] Copies of said notice, on forms to be provided by the Regional Director for Region 31, 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 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.

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

IT IS FURTHER ORDERED that the complaint is dismissed in all respects other than that specifically found.

[20] All outstanding motions inconsistent with this recommended Order hereby are denied. 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.

[21] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

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

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

The Act gives all employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from any or all such activities.

WE WILL NOT threaten employees that they will be replaced for the purpose of discouraging union activities.

WE WILL NOT direct employees not to talk about unions for the purpose of interfering with self-organizational activities.

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 Act.

FARMERS INSURANCE GROUP