

Pony Express Courier Corporation and Montana Union Guards. Cases 19-CA-14487 and 19-CA-15108

26 August 1983

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS JENKINS AND ZIMMERMAN

On 23 March 1983 Administrative Law Judge James M. Kennedy issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

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

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,¹ and conclusions² of the Administrative Law Judge and to adopt his recommended Order, as modified herein.³

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, as modified below, and hereby orders that the Respondent, Pony Express Courier Corporation, Helena, Montana, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 2(b):

“(b) Expunge from Stiffler’s personnel records and all other files any reference to his discharge, and notify him, in writing, that this has been done and that evidence of his unlawful discharge will not be used as a basis for future personnel action against him.”

2. Substitute the attached notice for that of the Administrative Law Judge.

¹ 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*, 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.

² In adopting the Administrative Law Judge’s finding of Respondent’s union animus, we rely also on uncontradicted evidence that in the spring of 1981, during an earlier organizing campaign, Branch Manager Ryan told employee Stiffler that he would do anything to prevent a union from coming into his facility, including terminating organizers or people sympathetic to the Union.

³ We shall modify the expunction order herein to conform to the language set forth in *Sterling Sugars*, 261 NLRB 472 (1982).

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.

The Act gives 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 the exercise of any or all such activities.

WE WILL NOT discharge any employees for exercising such rights.

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

WE WILL offer to James Stiffler immediate and full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority and other rights and privileges and WE WILL make him whole for any loss of pay, plus interest, suffered because of our discrimination against him.

WE WILL expunge from James Stiffler’s personnel records, or other files, any reference to his discharge, and notify him, in writing, that this has been done and that evidence of his unlawful discharge will not be used as a basis for future personnel action against him.

PONY EXPRESS COURIER CORPORATION

DECISION

STATEMENT OF THE CASE

JAMES M. KENNEDY, Administrative Law Judge: This case was heard before me at Helena, Montana, on December 12, 1982,¹ pursuant to consolidated complaints issued by the Regional Director for Region 19 for the National Labor Relations Board on May 19 and Novem-

¹ All dates herein refer to 1982, unless otherwise indicated.

ber 19 and which are based on charges filed by the Montana Union of Guards (herein called the Union) on April 7 and October 28, each of which was later amended. The complaints allege that Pony Express Courier Corporation (herein called Respondent) has engaged in certain violations of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended (herein called the Act).

Issues

Whether Respondent discharged its employee James Stiffler on February 18 because of his union activity, whether Respondent unlawfully interrogated an employee regarding the union activities of fellow employees, and whether it unlawfully encouraged employees to decertify the Union and/or get rid of Stiffler as the Union's business agent.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs, which have been carefully considered, have been filed on behalf of the General Counsel and Respondent.

Upon the entire record of the case, and from my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. RESPONDENT'S BUSINESS

Respondent admits it is a Delaware corporation engaged in the parcel transport business and having a terminal and office located in Helena, Montana. It further admits that during the past year, in the course and conduct of its business, it has sold and shipped goods and services valued in excess of \$50,000 to customers outside Montana. Accordingly it 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

Respondent admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Stiffler's Discharge*

Respondent's Montana operations are directed from its Helena office. Its Montana branch manager is David Ryan. He is assisted by a supervisor, Charles Crawford. The Montana branch is part of Respondent's Mountain States District which is headquartered in Denver, Colorado. The district manager is Drew Naber. Its national headquarters is in Atlanta, Georgia.

Although the record is not clear on the point, it appears that the Montana branch employs approximately 12 courier-guards. Their task is to run pickup and delivery routes for various customers. Some of these routes are located strictly within cities such as Helena; others are intercity routes. Much of Respondent's business involves the pickup and delivery of goods or financial material

which is said to be "time-critical." Such material includes nonnegotiable banking records being transferred from bank to bank or to and from the Helena branch of the Federal Reserve Bank of Minneapolis. Some of these customers are retail stores which sell film developing services and require timely pickup and delivery of film for processing—often requiring transfer to or from a scheduled airline.

To assure meeting the time-critical schedules, courier drivers running each route are required, among other things, to maintain a route log, recording arrival and departure times for each stop, as well as describing the material picked up or delivered. In addition, the driver must process "way bills" on many, but not all, packages. The route logs are to be filed daily and they are expected accurately to reflect the times for each stop.

Respondent maintains a rule prohibiting falsification of documents, but at least one practice permits filling out timecards 1 day in advance so that they can be delivered to Atlanta for timely processing the payroll.

On February 18, Respondent discharged driver James Stiffler. It appears that in January Stiffler and other drivers had decided to seek union representation and Stiffler had been designated by the group to investigate which union should be contacted. He also had been designated to approach various state agencies to discuss other employment related problems which the employees perceived. On February 2 Stiffler met with an official of Laborers Local 254, Gene Fenderson. Subsequently, on two different occasions at Stiffler's home Fenderson met with various drivers. Both meetings occurred on Saturdays, February 6 and 13.

On February 16 Laborers Local 254 filed an election petition in Case 19-RC-10446 with the Regional Office.² Manager Ryan testified he did not learn that the petition had been filed until 11:15 a.m. on February 18. At that time, he says, he received a telephone call from the NLRB agent assigned to process the petition. Ryan further states that although he had learned at that moment that the Laborers had filed the petition he did not know of Stiffler's involvement until the March 16 representation case hearing.

Ryan testified that earlier on the morning of February 18 he had discharged Stiffler. He says he had gone to the drivers' room to send a set of license plates to Missoula to be placed on a Missoula vehicle. Stiffler was the driver assigned to that run. Ryan says when he put the license plates on Stiffler's clipboard, he observed that the route log for February 18 and 19 had already been filled out, including the times of the stops. He knew this was contrary to company policy. He says because Stiffler was a friend he decided to seek advice on how to handle the problem. Accordingly, he called District Manager Naber in Denver and told him what had transpired. He testified Naber strongly "suggested" that he fire Stiffler. Naber says the decision to fire Stiffler was his, not Ryan's. Otherwise Naber's testimony corroborates Ryan's.

² After a hearing, on March 29, the Regional Director dismissed the petition finding that labor organization to be ineligible to represent a unit of guards. Subsequently the Union, an independent, was formed.

Thus, according to their testimony, they knew nothing of Stiffler's union activities, nor did they even know that the petition had been filed when they made the decision to discharge Stiffler.

However, the General Counsel has adduced contrary evidence that suggests, if not demands, a finding that Respondent did know of Stiffler's union organizing. A number of employees testified that on February 6 Ryan's vehicle was seen passing slowly in front of Stiffler's house while the union meeting was in progress. The vehicles of employees attending were parked in front of the house and Ryan was seen to have been turning his head from side to side taking note of each vehicle. This particular evidence, however, has been effectively rebutted by a showing that on that date Ryan was in Atlanta attending a company meeting. Both he and Naber attended that meeting and they testified that they did not leave Atlanta until February 7. The General Counsel argues that the employees may have been mistaken regarding the February 6 date, that they may have meant February 13.

Whether that is the case, nonetheless, there is the testimony of courier-driver Michael Menth. Menth had been hired in late December and had only been employed for about 6 weeks when the incidents he described occurred. On either February 15 or 16, Menth had been required to drop off a vehicle in Bozeman. To return he rode with that driver to Missoula. From there he rode back to Helena with Stiffler, although Menth did not then know his name. During the ride back, Stiffler persuaded Menth to sign an authorization card for the Laborers. The next morning, Menth discovered that some tires on his personal vehicle had been slashed. He brooded for nearly a day and then telephoned Supervisor Crawford. He told Crawford that he was very angry that his tires had been slashed and he thought that it had something to do with the Union—the driver on the Missoula run had persuaded him to sign an authorization card. Between the two of them they figured out that the Missoula driver was Stiffler. Menth told Crawford he could not afford to pay for new tires and that if he was going to be subjected to property damage while employed at Respondent, he would quit. Crawford told him not to quit until he had spoken with Ryan.

According to Menth, about 10 minutes after his conversation with Crawford ended, Ryan called him. He said he repeated exactly what he had told Crawford. Menth said he told Ryan that his tires had been slashed and he believed it had something to do with the union organizing because he had signed a card the night before. He told Ryan he no longer wanted to work for Respondent. He said Ryan told him that he would attempt to get payment for the tires and asked him not to quit.

On cross-examination Menth refused to be budged. Respondent suggested that there were two different phone calls between himself and Ryan on successive days. Menth readily agreed but insisted that his mentioning the union organizing and Stiffler to Crawford and Ryan occurred on the first day and that he is certain that it occurred before Stiffler was discharged. When Respondent's counsel suggested that it was on the evening of

February 18 that Menth first mentioned the union card to Ryan and Crawford,³ Menth responded, "No, sir, it was the first conversation. I'm almost positive it was." Later, he amplified his certainty: ". . . because, you know, I felt really bad about what happened, you know, I got a guy fired because I opened up my mouth . . ."

Both Crawford and Ryan denied that their conversations with Menth occurred as he stated. They agreed that he said he would quit over the tire slashing, but denied that there was any discussion regarding who the perpetrator might have been. That seems quite unlikely. Victims invariably speculate on the possible identities of the perpetrators. To assert that there was no such discussion defies probability. Moreover, neither Ryan nor Crawford could specifically deny Menth's assertion that they discussed both Stiffler and signing the union card on February 17. They could only say they "didn't recall" it. Furthermore, there appears to have been no reason for Menth to fabricate. Although he is no longer employed by Respondent it does not appear his departure was unfriendly. On balance, I conclude that Menth's version is accurate and that Ryan's and Crawford's versions should be discounted.

With respect to the reasons which Respondent advances for discharging Stiffler, it appears that Stiffler actually had filled out his route logs in advance for February 18 and 19. Stiffler readily agreed that it was his practice to do so. Both he and other employees testified that it was a common practice for employees to fill out the route logs in advance; indeed both Stiffler and employee DeLong testified that they were trained to do so by fellow employees upon their hiring. They explained that although the logs were filled out in advance, they were accurate when turned in and that if some circumstance occurred to render them inaccurate, they were either changed or filled out anew. According to employee DeLong once, apparently in December 1981, Crawford observed DeLong filling out his log in advance. Crawford simply told DeLong not to let Ryan see it.

Crawford denies that incident but concedes he has attended some unemployment and similar proceedings and has heard employees testify that they had filled out route logs in advance. His testimony is not clear regarding whether he obtained that knowledge before or after Stiffler's discharge. He did say, however, that no specific problem ever arose for which Stiffler's route logs needed to be specially scrutinized. I conclude that Respondent, through Crawford, if not Ryan as well, was well aware of the practice.

Finally, there is some question regarding how strictly Respondent enforced the rule against falsifying documents. It appears true that Respondent had recently discharged at least one other employee, Coombs, for falsification of documents, both timecards and route logs. After discussing Coombs' discharge Ryan testified:

Q. (By Mr. Thompson): . . . Now conversely, do you have any knowledge of any other employees

³ Both Crawford and Ryan agree the first conversation was on February 17. Ryan says the union card was not mentioned until the evening of February 18.

who've falsified company records of any kind that had been retained in the employ of the company?

A. (Mr. Ryan): No, not without at least being reprimanded for it and watched to see if it's straightened out.

Furthermore, Respondent maintains in each employee's personnel file a document entitled, "Courier-Guard, Job Assignment Instructions." (C.P. Exh. 1.) That document describes the employee's duties; it is used as a check list by management when hiring a courier-guard. It is supposed to be signed by the interviewer as well as the employee whose signature is an acknowledgement of those instructions. One states that the employee is to "be responsible for completing a daily run sheet." Respondent concedes that, unlike the personnel files of other employees, Stiffler's file contains no such document signed or unsigned. It can reasonably be concluded, therefore, that the training which Stiffler received on the point was not in accord with the instruction sheet. Stiffler testified that he had been trained by a fellow employee who had told him that he could save time by filling out the run sheets in advance. There was no discussion regarding the applicability of the rule against falsification to the route sheet. Indeed, it has not been shown that Stiffler's route logs, upon the completion of his route, do not accurately reflect the manner in which the route was run. It is true that by filling out the route log in advance a suspicion of inaccuracy is created. However, both Stiffler and DeLong testified that routes were relatively uniform and by either speeding up or slowing down, the accuracy of the predicted arrival and departure times could be maintained. I have some trouble accepting those explanations, but in view of Crawford's concession that Stiffler's route logs never required scrutiny, though Crawford reviewed them daily, and that no incident occurred casting doubt on them, on balance Stiffler's and DeLong's testimony to the effect that employees were trained to fill them out in advance must be accepted.

B. *Alleged Restraint and Coercion*

The complaint alleges two independent 8(a)(1) violations. The first is the allegedly unlawful interrogation of Menth regarding the union activities of his fellow employees. This has earlier been described in the discussion relating to how Respondent obtained knowledge of Stiffler's union organizing in mid-February. The second occurred in October 1982, when Ryan supposedly encouraged employees to replace Stiffler as the union business agent and to decertify the Union.

With respect to the latter allegation, the only witness which the General Counsel called was driver Rudy Ketchum. Ketchum had recently been injured and was under medication at the time he testified. The General Counsel concedes that his testimony "was often disjointed and not totally responsive to questions."

Ketchum testified that there had been some recent vandalism which had upset some of the employees. He had been asked by fellow employees DeVries and Cupp to join them while they spoke to Ryan about it. Accordingly the three went to Ryan's office. Both Ryan and Naber were there. When Ketchum was asked what the

management officials said regarding the Union or Stiffler, he was unable to be very specific. His principal testimony was:

And we figured between us—now I can't remember if they, if Mark [Cupp] and Kevin [DeVries] had figured out the idea or not whether to get a—they were going to make out a piece of paper, you know, for everybody to sign, for one thing, to get—see if we could get Jim Stiffler out of the—to get out of the union, to step down from being a, you know, his position in the union. And also we were going to go down to—they wanted to call Seattle, I guess it was, and talk to the union [NLRB Regional Office?], and tell them, you know, to make phone calls to tell them that we didn't want them in our office there in Helena.

* * * * *

See, they were—Mark and Keven, I guess, went down to Mark's house, and they wanted me to go with them to, you know, to call the union and that, so they could let them know that we didn't want them to be in our Helena branch.

If we got enough employees to call, they figured then that way that—Kevin and Mark figured that they would just leave the union out of our branch here. And we were going to have Mr. Stiffler step down from his position as an organizer and that, and then the union would just fizzle out, you know, and there'd be nobody to run it and that. So it would be a thing of the past.

However, Ketchum could not say that Ryan said anything specific in that conversation or that Ryan was the one who originated that idea. He could only say that Ryan was "going along with it." The General Counsel attempted to refresh Ketchum's recollection by showing him his affidavit. Ketchum then remembered that Ryan told the employees they would have to watch out and protect themselves from vandalism. The following colloquy then occurred:

JUDGE KENNEDY: Well, you haven't told me what Mr. Ryan said.

THE WITNESS: He said that we'd have to protect—we'd have to protect ourselves, and if we would decertify the union, you know—

JUDGE KENNEDY: That would do it?

THE WITNESS: Well, hopefully.

JUDGE KENNEDY: I see. Anything further?

THE WITNESS: That's about it.

Later, Ketchum said he really could not remember too much about the conversation other than they were trying to get the Union decertified. Counsel for the General Counsel asked if Ryan explained how that would be accomplished and Ketchum replied, "Well, he wasn't sure how we could, but he figured by the calls and—to the NLRB. And if we could get that petition circulated

around to have Jim step down, you know, from his position, that things would go easier."

On cross-examination, Ketchum stated that decertification discussions were common among employees. Furthermore, he testified as follows:

Q. (By Mr. Thompson): The truth of the matter is that during the first week of October when you were in Ryan's office with Mr. DeVries and Mr. Cupp and Mr. Naber, that Mr. DeVries and Mr. Cupp had come to Mr. Ryan and asked him how to get rid of the union, had they not? Isn't this the way that came about?

A. That could be, yeah. I'm not sure exactly how it all came about, you know, who started the conversation or whatever.

Q. Okay. So Mr. Ryan was merely responding, or answering, or giving his opinion as to the questions that had been previously posed to him; isn't that correct?

A. Yeah.

Q. And Mr. Ryan, in turn, said go to the National Labor Relations Board with your problem. Isn't that the essence of what he said?

A. Yeah.

Q. Okay. So it wasn't Mr. Ryan that suggested decertification, it was Mr. Ryan saying this was the only way you can get rid of the union legally, isn't that what he said?

A. Yeah. That would be it.

IV. ANALYSIS AND CONCLUSIONS

Based on the foregoing facts, I conclude that Respondent unlawfully discharged employee James Stiffler on February 18 as its immediate response to having discovered from Menth that Stiffler was engaged in union organizing. I specifically credit Menth's testimony that the day before Stiffler was discharged, he told Crawford and later told Ryan that Stiffler had solicited an authorization card from him while the two were returning to Helena from Missoula. Thus, the elements of both knowledge and timing with respect to proof of a 8(a)(3) discharge are present. Moreover, the hasty, precipitant nature of the decision constitutes at least some evidence of unlawful motivation. See *Great Chinese American Sewing Co.*, 227 NLRB 1670 (1977), *enfd.* 578 F.2d 251 (9th Cir. 1978).

The remaining circumstantial evidence regarding the discharge fills in the gap of the third element, union animus. Respondent asserts that it discharged Stiffler as soon as it realized that he had "falsified" the route sheets for February 18 and 19 by filling them out in advance. There is no question that Stiffler had done so. However, Respondent's reaction to this transgression was to discharge him. Even Ryan admits that a lesser penalty could have been selected. He conceded that he was aware of employees who had falsified records who had been retained after being "reprimanded for it and watched" Considering that Stiffler had been trained to fill out the route logs in advance, considering that his file contained no evidence of managerial training, and further considering the fact that there was no reason

to think that the routes had not been run as logged, it seems likely that a penalty less severe than discharge would have been selected had Respondent followed the approach Ryan said was available. And, if lesser penalties were available, why did Ryan need to call Naber? Ryan had authority to discharge employees on his own and had done so in the past. He did not need to do it here if a reprimand would have solved the problem. Since Stiffler was a friend, was not a reprimand more likely to be the response than a discharge? If so, the call to Naber was unnecessary. Did he call Naber to inform him of Stiffler's union organizing and to get instructions regarding that? A call for that purpose seems much more probable than simply to seek advice.

Furthermore, Respondent regularly breaches its own rule by requiring employees to fill out timecards in advance so that they may be promptly submitted to Atlanta. Even if timecards and route logs are different, the atmosphere the practice created promoted similar efficiency efforts for other paperwork.

Finally, although Respondent has discharged at least one other employee in the recent past for falsification of documents, it appears that the individual in question had falsified timecards as well as route logs. False timecards involving salary payments are, of course, a significantly different matter than route logs which were likely to have been, in the final analysis, accurate.⁴

Beyond that, I observe that Ryan's and Crawford's versions of their telephone conversations with Menth are somewhat inconsistent. Moreover, I was not impressed with the credibility of either of those two individuals. Ryan in particular resorted to an unnecessary tendency to assert that he "didn't recall" various matters.

Considering all of the above, I conclude the version advanced by Respondent, that Stiffler was discharged immediately upon Ryan's discovery of the route logs and upon a consultation with Naber who said he made the decision, is not to be believed. In that circumstance, I find that the reason advanced for Stiffler's discharge is not the true reason, and I further infer that the real reason for the discharge was the unlawful one of attempting to nip union organizing in the bud. As the Ninth Circuit Court of Appeals has said:

Actual motive, a state of mind, being the question, it is seldom that direct evidence will be available that is not also self-serving. In such cases, the self-serving declaration is not conclusive; the trier of fact may infer motive from the total circumstances proved. Otherwise no person accused of unlawful motive who took the stand and testified to a lawful motive could be brought to book. Nor is the trier of fact—here the trial examiner—required to

⁴ Respondent argues that it had earlier reprimanded Stiffler for reporting inaccurate mileage. It appears that Stiffler was under a misapprehension of what was required in that regard. He had run the route with one truck and had come to know the exact mileage by virtue of its odometer. When assigned another truck whose odometer worked but which was faulty, he put down the mileage he knew the route to be rather than that shown by the odometer. Ryan later told him to use the odometer rather than the actual mileage. This request hardly constitutes a reprimand for falsification.

be any more naïf than is a judge. If he finds that the stated motive for a discharge is false, he certainly can infer that there is another motive. More than that, he can infer that the motive is one that the employer desires to conceal—an unlawful motive—at least where, as in this case, the surrounding facts tend to reinforce that inference. [*Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466 at 470 (1966).]

I conclude therefore that on February 18 Respondent discharged Stiffler because he was engaged in union organizing.

With respect to the evidence relating to the allegations of unlawful interrogation and unlawfully soliciting a decertification, I believe in both instances the evidence fails to prove the allegations. The unlawful interrogation was that of Menth by Crawford and Ryan in their telephone conversations. Menth had initiated the conversations by telephoning Crawford to complain about the tire slashing. It was during the course of the conversation that he revealed he had signed an authorization card at Stiffler's behest. This appears to have been voluntary on his part and there is no evidence that Crawford ever asked him about it. It is true that Crawford reported the conversation to Ryan who immediately made his own telephone call, but Menth simply repeated all he had told Crawford. There simply is no evidence that Ryan did anything to induce, in a coercive fashion, revelations of the material which Menth supplied. Menth was very angry and, in a confused way, willing to blame the union organizing drive for the tire slashing. Even if Ryan called simply to induce Menth to repeat what he had just told Crawford, it cannot be seen as coercive. Menth's state of mind and his own action, voluntarily initiating the conversations, are the reasons that the colloquy occurred. He commenced the conversation and proceeded to speculate as to the reasons for the vandalism. Ryan and Crawford only listened. I cannot therefore find Respondent to have coercively interrogated Menth as alleged.

The October conversation in Ryan's office involving Ryan, Naber, Ketchum, DeVries, and Cupp likewise does not reach the evidentiary level where I can be confident that the burden of proof has been met. Ketchum, for whatever reason, perhaps medication, was nearly incoherent. He was the only employee witness who the General Counsel chose to call, although two others could have been. In support of the General Counsel's case Ketchum was unable to testify who initiated the ideas of decertifying the Union or having the Union rid itself of Stiffler. He could only say that employees were upset because of some vandalism, were blaming the Union and wanted to get rid of it. Although he implied on direct that Ryan supported the ideal of decertifying the Union, he could not directly say so or that Ryan said anything else. On cross-examination, even that testimony fell apart. He conceded that all Ryan (and perhaps Naber) did was to tell the employees that if they wished to decertify the Union they would have to go the National Labor Relations Board in Seattle.⁵ Perhaps there

⁵ Ketchum never did testify to Naber's presence, though he was there and participated.

was more to the conversation but the record does not reflect it. The General Counsel did not call either DeVries or Cupp who may well have been able to shed a better light on the transaction than could Ketchum. Because Ketchum's testimony did not hold up on cross-examination, it was unnecessary for Ryan and Naber to testify on the question. They did so anyway, saying they simply told the employees to go to the NLRB. Even though they did not deal with the question of getting rid of Stiffler as the business agent, I do not believe Ketchum's testimony is sufficiently integrated to support that allegation.

THE REMEDY

Having found that Respondent has engaged in violations of Section 8(a)(1) and (3) of the Act by discharging its employee James Stiffler because he was engaged in union organizing, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. The affirmative action shall include an order requiring Respondent immediately to offer Stiffler reinstatement to his former job or, if it no longer exists, to a substantially equivalent job, and to make him whole for any loss of pay he may have suffered by reason of the discrimination against him. Backpay and interest thereon shall be computed on a quarterly basis in the manner prescribed by the Board in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing Co.*, 138 NLRB 716 (1962). In addition, I shall add the affirmative requirement that Respondent expunge from its records any reference to Stiffler's unlawful discharge, and shall require it to provide written notice of such expunction to Stiffler and to inform him that its unlawful conduct will not be used as a basis for future personnel actions concerning him.

Upon the foregoing findings of fact and upon the entire record in this case, I make the following:

CONCLUSIONS OF LAW

1. Respondent Pony Express Courier Corporation is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. Respondent violated Section 8(a)(3) and (1) of the Act when on February 18, 1982, it discharged its employee James Stiffler because of his union organizing activities.
3. The General Counsel has failed to prove any other violations of the Act.

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

ORDER⁶

The Respondent, Pony Express Courier Corporation, Helena, Montana, its officers, agents, successors, and assigns, shall:

⁶ In the event no exceptions are filed as provided in Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the find-

1. Cease and desist from:

(a) Discharging employees because they are engaged in union organizing.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

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

(a) Immediately offer James Stiffler reinstatement to his former job, or if that job no longer exists, to a substantially equivalent job, without prejudice to his seniority or any other rights and privileges and make him whole, with interest, for lost earning in the manner set forth in the section of this Decision entitled "The Remedy," dismissing if necessary any employee who replaced him.

(b) Expunge from Stiffler's personnel records and all other files any reference to his discharge.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all

ings, 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.

payroll records, social security payment records, time-cards, personnel records and reports, and all of the records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at each of its Montana facilities, copies of the attached notice marked "Appendix."⁷ Copies of said notice, on forms provided by the Regional Director for Region 19, after being duly signed by its authorized representative, shall be posted immediately upon receipt thereof, and be maintained 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 ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 19, in writing, within 20 days from the date of this Order, what steps it has taken to comply therewith.

IT IS FURTHER ORDERED that the remainder of the complaint be, and hereby is, dismissed.

⁷ 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."