

**Central Freight Lines, Inc. and Bob Campbell. Case
23-CA-8717**

26 August 1983

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
JENKINS AND ZIMMERMAN**

On 26 January 1983 Administrative Law Judge Frank H. Itkin issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a brief in support thereof, and the General Counsel filed a brief in support of the Administrative Law Judge's Decision.

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 briefs and has decided to affirm the rulings, findings,¹ and conclusions of the Administrative Law Judge and to adopt his recommended Order.²

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, Central Freight Lines, Inc., Houston, Texas, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that

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.

In finding that Respondent violated Sec. 8(a)(1) by unlawfully interrogating its employees, we do not hold that an employer is prohibited from investigating the merits of complaints concerning the conduct of its supervisors. Rather, we merely require that investigations into the merits of such complaints be undertaken in a noncoercive manner. Here, within a short time of having complained among themselves concerning their treatment by Supervisor Cumbie and having signed a letter to management seeking relief from Cumbie's misuse of authority, Dock Foreman Powitzky, Cumbie's superior, called each employee into the dock office one by one and questioned each employee about his view of Cumbie's treatment of the dock workers. The setting in which the questioning took place was formal, the purpose of the questioning was not revealed, and no assurances against reprisal were given. That under these circumstances Respondent's conduct had a tendency to interfere with, restrain, or coerce employees is illustrated by the fact that several employees who earlier had expressed dissatisfaction with Cumbie sang a far different tune, telling Powitzky that they thought Cumbie was "fair." See *Backstage Restaurant*, 232 NLRB 1082, 1088 (1977). Plainly, Powitzky's questioning of employees under these circumstances tended to coerce those employees in the exercise of their protected rights. Hence, we affirm the Administrative Law Judge's finding that such questioning violated Sec. 8(a)(1) of the Act.

² We have modified the Administrative Law Judge's notice to conform with his recommended Order.

the attached notice is substituted for that of the Administrative Law Judge.

CHAIRMAN DOTSON, dissenting in part:

I can only agree with my colleagues that the Employer violated Section 8(a)(1) of the Act by discharging Campbell. However, I cannot agree that Respondent in this case violated Section 8(a)(1) of the Act by asking the employees if they had any complaints about their supervisor. Here, the Employer, after receiving a letter from an employee complaining about the supervisor, attempted to ascertain whether the employees were encountering problems with the supervisor. There is absolutely no evidence that Respondent questioned any employee about Campbell's letter or about any other concerted activity. Contrary to my colleagues, I do not find that the dock office was a "formal setting" or that the failure to reveal the purpose of the investigation or give assurances of no reprisals resulted in coercion. Respondent deliberately did not mention that Campbell's letter had prompted the investigation. To do so would only have resulted in claims that Respondent was questioning employees about their concerted activity. In fact, it was a letter signed by Campbell alone and not by the other employees that prompted Respondent's inquiry. The employees had no reason to believe that Respondent knew about their signing of another draft of the letter nor had they any reason to fear reprisals from Respondent under these circumstances. The fact that certain employees, when pressed for details, could only declare that Cumbie was "fair" does not lead me to conclude that they had been coerced by Respondent. It is just as likely that their initial signing of the letter was the result of being caught up in the collective spirit of the moment rather than the result of careful consideration of Campbell's claims. Therefore, I cannot find that the inquiry was coercive. I would not subscribe to this violation.

It is difficult to imagine how industrial peace is promoted by the Board's telling an employer that, after having received complaints about its supervisory personnel, it is then prohibited from investigating the merits of those complaints. It seems obvious that such a rigid rule as the majority is stating will only serve to exacerbate the problems between employers and employees. Consequently, I cannot find that the questioning interfered with any Section 7 rights and I would dismiss that part of the complaint.

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 suspend or discharge, and thereafter refuse to reinstate, any employee in consequence of his or her protected activity.

WE WILL NOT coercively interrogate any of our employees about their protected concerted activities.

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

WE WILL offer Bob Campbell immediate and full reinstatement to his former job or, if his former job no longer exists, to a substantially equivalent position of employment without prejudice to his seniority or other rights and privileges previously enjoyed, and WE WILL make him whole for any loss of pay that he may have suffered by reason of his unlawful suspension and discharge, with interest.

WE WILL expunge from our files any references to the suspension and discharge of Bob Campbell and notify him in writing that this has been done and that evidence of this unlawful suspension and discharge will not be used as a basis for future personnel actions against him.

CENTRAL FREIGHT LINES, INC.

DECISION

FRANK H. ITKIN, Administrative Law Judge: The unfair labor practice charge in this case was filed on October 29, 1981, and a complaint issued on January 6, 1982. A hearing was conducted in Houston, Texas, on

October 14 and 15, 1982. Briefly, the General Counsel alleges that Respondent Employer suspended and subsequently terminated Charging Party Bob Campbell because he had engaged in protected concerted activities, in violation of Section 8(a)(1) of the National Labor Relations Act, as amended. The General Counsel further alleges that Respondent Employer, shortly prior to the suspension and termination of Campbell, coercively interrogated its employees, also in violation of Section 8(a)(1) of the Act. Respondent Employer, although admitting the suspension and discharge of Campbell, denies that its conduct violated the Act as alleged. Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by counsel, I make the following:

FINDINGS OF FACT

Respondent Employer operates a terminal in Houston, Texas, where it is engaged in the distribution of freight. Respondent is admittedly an employer engaged in commerce as alleged. Charging Party Bob Campbell was initially employed by Respondent as a dock worker about March 1974. He was admittedly suspended on September 3 and then terminated on September 8, 1981. The evidence pertaining to Campbell's suspension and discharge, as well as Respondent's related interrogation of Campbell's coworkers, is summarized below.

Campbell testified that Morgan Cumbie became his supervisor at the Houston terminal during May 1981. Campbell recalled:

In May (1981), when Charlie Cumbie came to our area . . . the first meeting we had . . . he begins by saying, men the reason I am here is because all of you are not doing your work. He later went on to explain what he expected of us concerning production.

Campbell spoke up at this meeting, stating, *inter alia*: "I don't agree . . . that we are not doing our jobs. . . ." And, as Campbell further recalled, "Approximately two weeks after that, Charlie Cumbie came to me . . . and says, Bob you must not have done anything yesterday. . . . You are to load 180 pieces per hour . . ."

Campbell responded: "I believe we can do 180 pieces an hour sometimes, but most of the time we cannot because of the situation with the freight." Cumbie then asked Campbell: "[A]re you refusing to do what I am telling you?" Campbell responded: "No . . . I am not. I am just telling you the reason why sometimes we are not able to do this." Campbell was sent to Dock Foreman George Powitzky's office. There, according to Campbell:

Charlie Cumbie said, George, I really don't know what to do with Bob, because when I tell him to do something, he questions me. He asks me to explain. Charlie said to George, I was a poor worker, that I had a bad attitude and that something needed to be done. I disagreed with what Charlie Cumbie said. . . . George said, gentlemen, I want both of you all to get along. I don't want you to be bringing these petty things to me. So, we went back.

Campbell next recalled that during July 1981 Cumbie faulted him at work because he "only did 127 pieces per hour" and that later, during August 1981, Cumbie again faulted him for leaving his duty station to assist a "loader," by "steady[ing] a buggy" and thus keeping it from being "knocked off the dock." Cumbie, however, ultimately acknowledged to Campbell that: "[T]here are times when the chain puller can leave his responsibility and go do that"

Campbell, during July 1981, repeatedly complained to Foreman Powitzky about Supervisor Cumbie. Campbell testified:

I said, well George [Powitzky], I know that you told me not to be coming to you with petty things. . . . It has to do with Cumbie. . . . He said, I understand we have two supervisors that we have problems with. He said that I know that Charlie Cumbie means well, but it is like he is living in the '50s. He is supervising in the '50s as compared to the '80s.

Later, during August 1981, Campbell spoke to Assistant Terminal Manager Danny Mullins about Supervisor Cumbie. According to Campbell:

I [Campbell] simply said, well, I have talked to Charlie Cumbie several times. I have talked to George Powitzky two or three times. I have talked to dock superintendent Tom Janak. And now Danny I am in your office and I really don't know what . . . to say about the condition in which Charlie treats us.

Mullins spoke about "production"; the "manual"; and "the guy that was responsible for that." Campbell stated to Mullins: "Danny, I could have this whole room filled with workers from out on the dock that have been abused or mistreated by Charlie Cumbie." Mullins responded that "there is no need for that," and he would "check into the matter" and "get back . . . in a couple or three weeks"¹

Campbell, as he further testified, prepared a letter addressed to management, dated August 21, 1981, complaining about "the condition in which Charlie Cumbie treated his men." Campbell and six coworkers signed this letter. (See G.C. Exh. 2.) Campbell recalled:

I took the letter to work one night and, while on break, all of the men were in the break room. . . . Tom Ewing was at the table. I took it over there and showed him the letter, and explained to him that I thought something needed to be done about the conditions in which Charlie Cumbie had been treating us. He [Ewing] said, yes, something does need to be done, I understand. I therefore showed him the letter. He looked at the letter, he read and signed it.

¹ During this meeting, Campbell cited to Mullins how Cumbie "would come to us while working and chew us out in front of everybody"; "he would tell us that we were poor workers; that we were lazy"; and that "our production was down"

Billy Robinson, who was close by in the break room at the time, said hey, I will sign that thing. So, I took it over there to Billy Robinson. He read the letter. I explained to him the circumstances, the condition of why I thought it necessary that something needed to be done about this situation. He [Robinson] agreed Billy Robinson said, he [Cumbie] is a mother-fucker. And I said, I know all that. And so he signed the letter.

In like manner, Campbell solicited and obtained, during that "same break period," the additional signatures of coworkers James Mitchell, Richard Lugo, and Gerald Merritt.² Campbell also recalled that coworker Merritt, before reading and signing this letter, commented: "I [Merritt] am tired of Charlie Cumbie getting onto me in front of everybody while I am working. Something needs to be done and I am all for it."

There were, however, as Campbell further testified, "others in the break room at the time" who had declined to sign this letter. Gary Parker, according to Campbell, said: "I agree with it and . . . a whole lot more that you haven't put there"; "jobs are just too hard to come by and I want to keep my job"; "I can't sign your letter" And Randy Cothran similarly stated, according to Campbell: "I need this job and I just can't sign your letter."³

Campbell did not mail this letter (G.C. Exh. 2) to management because, as he explained, "I simply didn't mail it because I was afraid the other guys would lose their jobs." Instead, on or about August 26, 1981, he again prepared a letter for management concerning "exactly the same" subject; he alone signed the second letter; and he mailed it to the Employer. He recalled mailing this second document (G.C. Exh. 3) on or about September 1, 1981; that letter reads as follows:

August 26, 1981

ATTENTION CENTRAL FREIGHT LINES—
HOUSTON DOCK

Mr. Lee Schroeder
Mr. Danny Mullins
Mr. James Urbanovsky
Mr. Tom Janak
Mr. George Powitzky

I would like to bring to your attention a very serious matter concerning one of Central's dock Supervisors. The man in question is Mr. Charlie Cumbie.

Mr. Cumbie in my estimation has not handled his position in an adequate manner, let alone a professional one. He continues to belittle us, antagonize, intimidate and a host of other things too numerous to mention at this time. I believe he uses his title of Supervisor to his advantage in the worst way. He insults our intelligence and never compliments his

² Campbell also obtained the signature of coworker Joe Guelara on this letter. Campbell was uncertain whether "it was [on] that same break or not"

³ On cross-examination, Campbell acknowledged that he "wrote the letter" because he had "talked to all of these supervisors and expected some action [but] didn't get any."

men, but rather tries to make us feel like we are poor workers and are unworthy of our jobs. Frankly I am sick and tired of this.

I have talked with Mr. Cumbie "several" times. His most excellent answer to date is, "If you don't like your job why don't you go somewhere else."

I have also talked with Mr. George Powitzky, Mr. Tom Janak and with Mr. Danny Mullins. The situation remains.

Mr. Cumbie seems to delite [sic] in making his fellow workers miserable and the verbal harassment is uncalled for. That is definitely not a good working atmosphere for anyone, wouldn't you agree?

We at Central Freight Lines deserve better. Why Central has let this situation progress is beyond me. One fact is very clear though, it is hurting Central rather than helping. I really feel that maybe in the past no one wanted to take the responsibility of dealing with this matter.

Please help us. I care for the man, and realize he has Central at heart, but he has misused his authority for too long.

Respectfully,
Bob Campbell

Subsequently on September 3, 1981, as Campbell further testified, he attended a meeting in Dock Superintendent Tom Janak's office. Dock Foreman Powitzky was also present. According to Campbell:

Tom Janak held up the letter [G.C. Exh. 3] and said, I received this in the mail. You have made some very strong allegations. We have investigated the letter . . . with the crew. None of them agreed with anything that was said in the letter.

Campbell then asserted: "that is kind of strange, Tom, because of those same people you investigated, I showed that letter to [them] and they signed it." Campbell asked Powitzky, "did you show them the letter?" and Powitzky said "no." Campbell was then told that he was "on suspension until further notice." Thereafter, on September 8, 1981, Campbell was told by Personnel Manager James Urbanovsky that he was "fired." Urbanovsky said: "We have investigated the letter and nothing was found true except that Charlie failed to compliment his men . . ."⁴

Campbell, on cross-examination, further related his September 3 meeting with Janak and Powitzky, as follows:

⁴ On cross-examination, Campbell admitted testifying at the Texas Unemployment Commission that the "reason" for his discharge was a "conflict with supervisor." See Resp. Exh. 2. He also admitted testifying before the commission: "I thought that maybe Mr. Powitzky would either move me to a different area or Mr. Cumbie, or something, or all of us would sit down and talk, but that was never done . . . and that three weeks went by and I figured that was long enough, so that is when I got the letter together."

Q. When is it you told Tom Janak that you had talked to somebody else there at the terminal about your letter of August 26, 1981?

A. The same night that he told me that I was suspended.

Q. After he told you you were suspended?

A. Before.

Q. Before?

A. Yes.

Q. How long before? A moment or two?

A. A couple or three minutes.

Q. A couple or three minutes. As far as you know, the decision already had been made that you were going to be suspended when you went in to see Tom Janak in his office?

A. Yes, sir.

Q. And George Powitzky had told you at that meeting that he did not show that letter to any of the men?

A. Correct.

Q. In that meeting that you had with Tom Janak about midnight on September 3, 1981, is that the first discussion that you had with any supervisor about that letter?

A. Yes, sir.

* * * * *

Tom Ewing testified that he is employed by Respondent as a dock worker; that he saw the "letter" (G.C. Exh. 2) regarding Supervisor Cumbie; and that "Bob Campbell had it; he said he had something he want to show me; he like for me to read it; I asked him what it was and he said it was a petition." Ewing told Campbell that he "agreed" and "signed it."⁵ Ewing explained, in part, as follows:

Q. Mr. Ewing, it was your testimony that you have been working at Central Freight since September of 1969. Approximately how many loading supervisors have you had in that time, sir?

A. I don't know. I guess, say maybe, three or four different supervisors. I mean, I never had that type of supervisor.

Q. What I am asking, sir, is how many supervisors in the same position as Mr. Cumbie, as a loading dock supervisor?

A. When I say that, I mean I had as many as three or four different supervisors.

Q. Did any of those supervisors have a quota of 180 pieces an hour?

A. No one ever pushed me at that.

Q. Did you ever speak to Mr. Cumbie about difficulty in meeting the quota?

A. Yes. I had one talk with him about it.

Q. When was that?

A. I don't know exactly what date, I mean, it was. I mean—

⁵ Ewing testified on redirect that previously Campbell had "said he was going to type up a petition regardless [sic] to the supervisor harassing the employees."

Q. Was it after Mr. Cumbie started supervising?

A. Yes, it was.

Q. And what did you tell Mr. Cumbie?

A. I was suggesting to him that it is different in like loading light quality freight and maybe 55-gallon drums or maybe like 265 pounds of saline balls. It is different in freight. I mean, if you got heavy freight, you going to have a low—

Q. What, if anything, did Mr. Cumbie tell you when you brought this to his attention?

A. He said it was all the same. I mean, pieces was pieces. I mean,—

Q. Before you started working for Mr. Cumbie in May of 1981, did you have a five minute wash up break?

A. Well, we had a five minute wash up break. He told us later that we didn't have no more five minute wash up break. When I say go to lunch, go to lunch.

Q. When you say, he, who do you mean?

A. Charlie Cumbie say, when you go to lunch, go to lunch. No break.

Ewing further testified that about 1 week after signing the letter (G.C. Exh. 2) Powitzky and he had the following discussion in the office on the dock:

He [Powitzky] said he want to talk to me [Ewing]. I asked him what was we going to talk about. He say anything you want to talk about. I said, fishing or hunting? I ain't doing no hunting. Fish ain't biting. He said, well I like for you to tell me about your supervisor Charlie Cumbie. Is he a good supervisor? He is a bad supervisor? Just tell me what kind of guy is he?

I said, you asked me, I am going to tell you. I said, now he is the type of guy that would ride you. He wants you to stay in high gear at all time. I say, he haunts you about 180 pieces per hour. He is going to haunt you all the time. I said, we never had any problem like that. I mean, riding, haunting, like that⁶

Quinton Wood, also employed by Respondent as a dock worker, testified that "Bob [Campbell] came into the break room and he had a petition, a letter, he was passing it around, and he was letting people read it. And he was telling me some of the things that was in it."

Wood "told him [Campbell] that some of the things he said in the letter was true" pertaining to Supervisor Cumbie—Campbell "said he was going to try to get enough people to sign the letter and then turn it in." Wood was later told by Supervisor Cumbie at a meeting in the dock office that Campbell "would no longer be with us because he was suspended for falsification of a

⁶ Ewing further testified that about 1 or 2 weeks later at a "meeting" on the dock with Cumbie and other employees, "there was a question asked, what happened to Bob Campbell? He [Cumbie] said, he [Campbell] was determined [sic] this morning regardless [sic] to false statement in his document [sic]."

Ewing also acknowledged on cross-examination that he never told any supervisor that he signed the letter (G.C. Exh. 2); "no one ever asked me had I signed it"; and there "wasn't anyone present when I signed it."

document." Wood added: "Charlie [Cumbie] also said, he [Campbell] couldn't back up the words that he had wrote in the letter."⁷

Richard Lugo, also employed by Respondent as a dock worker, testified that Campbell "showed" him the letter (G.C. Exh. 2) in the breakroom and that Campbell "told me it was about how Charlie had been treating his employees." Lugo signed the letter and told Campbell "that I agreed with him." Coworker Joe Guelara was also present at the time. Lugo admittedly had no "reason to believe that any supervisor ever learned" that he had signed the letter, or had ever questioned him about the letter.

Billy Robinson, also employed by Respondent as a dock worker, testified that he signed Campbell's letter (G.C. Exh. 2) in the breakroom and that later Supervisor Cumbie told him and his coworkers at a meeting in the dock office that "Bob Campbell will no longer be with us for falsification of documentation [sic] or petition." Robinson admitted on cross-examination that no supervisors were present when he signed the letter. Robinson also testified:

. . . Bob told me once that he didn't get enough signatures, or something, to send the letter, and that he would represent [sic] it himself . . . he didn't tell me he wouldn't be representing me; he just said that he wouldn't [sic] send the letter without signatures on it.

Robinson admittedly did not ask Campbell to send the letter on his behalf. Further, Robinson, when questioned by Powitzky about Cumbie, admittedly told Powitzky that he "thought Cumbie was fair."

Tom Janak, Respondent's dock superintendent, testified that he received a letter from employee Campbell (G.C. Exh. 3) on September 1, 1981; that Assistant Terminal Manager Danny Mullins "showed me [Janak] the letter from Bob Campbell and told me to investigate it"; and that he, Janak, later, told Dock Foreman George Powitzky "to investigate the allegation in the letter; to talk to all the men in the Dallas load-out area; and not to use any names or talk about the letter, just investigate the allegations."

Thereafter, on September 3, Powitzky presented to Janak "memos" of Powitzky's "conversations with each of the men." (See Resp. Exhs. 7-14.) Janak in turn read the "memos" and reported to Mullins. Janak was then instructed "to see Mr. Schroeder," the terminal manager. Schroeder also read the "memos"; Janak told Schroeder that he, Janak, "felt that the accusations were false"; Schroeder agreed; and Schroeder "told me [Janak] to suspend him [Campbell] at the end of the shift."

Later that same day, September 3, Janak notified Campbell: "[W]e have received a letter of accusations against Mr. Cumbie; we had investigated it and found it to be false; and that I was suspending him until Tuesday at 10 o'clock to see Mr. Urbanovsky."

⁷ On cross-examination, Wood admitted telling Powitzky, in response to Powitzky's questioning "about what kind of supervisor Mr. Cumbie was," that Cumbie "was a good supervisor."

In addition, Janak recalled:

Q. Tell us was there anything else said in this conversation that you can recall?

A. Mr. Campbell asked who we talked to. Mr. Powitzky told him that he had talked to everyone in the Dallas load-out crew.

Q. Anything else said in the conversation?

A. Not that I can recall.

Q. At any time during this conversation, did Mr. Campbell tell you that other people other than himself had signed this letter?

A. No, sir.

Q. Did he in any way indicate to you that had asked others to sign this letter?

A. No, sir.

Campbell then left the office.

Thereafter, as Janak further testified, he prepared the following memorandum or memoranda dated September 3, 1981, for Personnel Manager James Urbanovsky (Resp. Exh. 15):

Suspended Bobby Campbell for false statements written to Central terminal.

All eight men in supervisor Charlie Cumbie's area were interviewed and there was no truth to the letter he wrote.

The write ups are attached. Mr. Campbell has a bad attitude . . . and has low production. He is a bad influence on the entire group and will be happy elsewhere.

I suspended him until 10 am Tues morning 9-8-81 to see you.

Mr. Schroeder and Mr. Mullins both read the interviews with the eight men.

* * * * *

In talking to this man I feel he has a one man vendetta against Charles Cumbie. He made the statement that everything has been fine and running smooth for over three weeks. Why would he write the letter which is dated August the 27th if everything is fine.

Janak also claimed that Supervisor Cumbie previously had complained to him that Campbell "constantly talked back to him; he [Campbell] didn't want to take direction"⁸

On cross-examination, Janak testified:

Q. Now, referring to Respondent's Exhibit Number 15, you state here that all men in the crew were interviewed and there was no truth to the letter he wrote.

A. Yes, sir.

⁸ Resp. Exh. 16 was identified by Janak as a written "memo" or "complaint" from Supervisor Cumbie pertaining to employee Campbell. Resp. Exh. 16 is dated August 7, 1981. I note that Cumbie did not testify at this hearing. I further note that Mullins also did not testify at this hearing.

Q. But there was some truth to it, wasn't there, sir, with respect to him never complimenting the men?

A. Yes, sir. That was true.

Q. Also with reference to Respondent's Exhibit 15, which was your memo to Mr. Urbanovsky of September 3, you note here that Mr. Campbell has low production. To your knowledge, sir, was Mr. Campbell ever officially reprimanded for low production? Was he ever given a write up such as Respondent's Exhibit 15, which was shown to him and put in his file as to his low production?

THE WITNESS: I don't recall. I would have to read the personnel file.

Q. Well, to your knowledge, has Mr. Campbell ever been officially reprimanded in this manner, with an official write up, as to talking back or refusing to follow instructions of Mr. Cumbie?

A. I have to review the personnel file. I don't recall.

Q. Let me show you Respondent's Exhibit 16. It states, To Personnel File, Subject Bobby Campbell. It is something that Charlie Cumbie signed. Was that ever shown to Mr. Campbell?

A. I don't know.

Q. Did you show it to Mr. Campbell when you suspended him on the 3rd?

A. No, sir.

George Powitzky, Respondent's dock foreman, testified that Superintendent Janak, after having received the letter (G.C. Exh. 3), discussed it with him. Powitzky claimed:

I don't recall just what was said about it. After we read it I thought the accusations were totally false. He told me to interview everybody in the Dallas load-out area. He told me not to mention the name of Mr. Campbell or the letter . . . he didn't want people to think that it was for any specific reason such as this.

Powitzky questioned each employee in the dock office, "one-on-one," asking them, "If they was having a problem in their area or with their supervisor."

Powitzky testified that his "findings" as a result of his questioning of the employees "were negative"—the "accusations were false." Powitzky added that there was only "one" "negative comment"—that is, Cumbie "didn't compliment them enough." Following the employee interviews, Powitzky prepared memos (Resp. Exhs. 7-14). He gave these "memos" of the interviews to Superintendent Janak on September 3. Campbell, as noted, was "suspended" that same day. Powitzky testified:

Q. Well, now, you say he talked to him about the letter. Again, let me ask you, as best you recall, to tell us what Mr. Janak said, what words did he use, and what words did Mr. Campbell use? And start at the beginning of the conversation and go to the end.

A. Mr. Janak asked Bob if he was having any problems with his supervisor, Charlie Cumbie. He says, no, everything has been going fine for the last two or three weeks. And then Mr. Janak told him that we just received this letter from you and that we have interviewed the people in his load-out area and that he found the allegations were not true and he told him that he was suspended until the following Tuesday morning.

Q. Do you recall Mr. Campbell saying anything else in this conversation?

A. No, sir.

Q. Did, at any time in the conversation, did Mr. Campbell mention having talked to other employees about the letter.

A. No.

Q. At any time in the conversation did Mr. Campbell make reference to obtaining signatures of other employees?

A. No, sir.

Q. At any time during the conversation, did Mr. Campbell say that the other employees on the dock agreed with him?

A. No, sir.

On cross-examination, Powitzky further recalled as follows:

Q. In interviewing these men, was there any complaint about the manner in which Mr. Cumbie was supervising the men?

A. No, sir.

Q. Are you sure about that?

A. Except for one that said that he wasn't—they wasn't complimented.

Q. Just never compliment the men? That was the only complaint. Is that right?

A. That was from one man.

Q. Did you talk to Larry Haverland?

A. Yes, sir.

Q. What night did you talk to Mr. Haverland, the first or the second of September?

A. I am not sure of the date.

Q. Did you talk to him first or did you talk to him at the end?

A. I don't recall that.

Q. And there was no complaint at all about the manner in which Mr. Cumbie carried out his duties as a supervisor, you are sure about that?

A. Yes, sir.

Q. Let me show you Respondent's Exhibit Number 13, which apparently is Larry Haverland's. Let me just ask you to look that over and read it over and tell me when you are finished.

* * * * *

Q. Now, after reading that over, can you still say that Haverland didn't have any complaints at all about the manner in which Mr. Cumbie supervised his men? Look at me, sir. I am asking the question.

A. I don't think he has a complaint.

Q. Well, it says here in your handwriting, "He went on to say that he thinks Cumbie at times uses the wrong approach when trying to explain things or listening to some ideas that arise in the area." You don't consider that to be a complaint about the manner in which Mr. Cumbie supervises his men?

A. That is not a complaint.

Q. Well, is it a comment about the manner in which Mr. Cumbie supervises his men?

A. That was his comment.

Q. Do you consider it a compliment?

A. No, sir.

Q. Did the other men mention anything like this?

A. Not to my knowledge.

Q. Well, you conducted the interviews. Either they did or they didn't sir.

A. I don't recall.

Q. All right, sir. You say you don't recall. Let me ask you to define, recall. When you say you don't recall, do you mean to say that maybe they did say it or may they didn't say it; you are just not sure? Or do you mean to say that you thought about it and you are absolutely positive that no other men brought to your attention any other complaints such as Mr. Haverland's?

A. No. No complaints.

Q. All right. Well, I mean, what I am asking you: when you say you don't recall, do you mean you thought it over and maybe they did or maybe they didn't, I just am not sure; I can't remember?

A. I don't remember.

Q. You don't remember so it is possible then, isn't it?

A. It is possible.

Q. What did you do with your notes before you wrote these up? Did you take notes and then you wrote these up?

A. Yes, sir.

Q. What happened to those notes?

A. They have been destroyed.

Powitzky further claimed that prior to receipt of the letter (G.C. Exh. 3) on September 1, Supervisor Cumbie had "complained" to him about Campbell "almost on a daily basis." Powitzky recalled that Cumbie had complained that Campbell "was low on production, objected to instructions, et cetera, and stuff like that." Powitzky also asserted that he had spoken to Campbell about his "attitude" and "production." Powitzky, however, could not "recall the specific occasions or dates of these talks." And Powitzky acknowledged that no "official reprimand" concerning Campbell's "low productivity" or "attitude" was prepared and shown to Campbell. Respondent's Exhibit 16, assertedly a writeup by Cumbie concerning Campbell's attitude at work, dated August 7, 1981, was admittedly never shown to Campbell.⁹

⁹ As noted, Cumbie did not testify. His August 7 writeup, Resp. Exh. 16, states, *inter alia*, that Campbell "is a bad influence on the other men" And Janak's September 3 memo to Urbanovsky also expresses the concern that Campbell "is a bad influence on the entire group" Resp. Exh. 15.

Leland Schroeder, Respondent's terminal manager, testified that he received Campbell's letter (G.C. Exh. 3) on September 1; that he never previously had seen the letter (G.C. Exh. 2); that he then instructed Mullins "to have it investigated"; that he received a "report on that investigation" on September 3 from Janak; that Janak then showed him Powitzky's "memos" of employee interviews; that he reviewed, and discussed with Janak, Campbell's "file"; and that Janak "recommended suspension." Schroeder "agreed." Schroeder explained that in order to terminate an employee "we have to contact a member of the executive committee in Waco and review the file with this person and then get the authority to terminate the man." Campbell, as noted, was not terminated until on or about September 8. (Cf. Resp. Exh. 17 the Employer's "termination report" dated September 10, 1981.) This "termination report" cites as the "reason" for termination: "Code 2, unwilling to accept immediate supervisor's authority." It is signed by Schroeder. However, Schroeder, in his testimony, also claimed that there were two reasons for the disciplinary action taken:

One is the fact he [Campbell] had written this letter and all of the information or the largest proportion of the information contained in the letter was false.

The second reason was that he indicated that he was unwilling to accept the authority of his supervisor.

Schroeder generally denied any knowledge "prior to this hearing" that Campbell "had been talking to any other employees in the Dallas load-out crew about Cumbie."

On cross-examination, Schroeder admitted that he and Janak did not "look over" the writeup (Resp. Exh. 16) on September 3, when discussing Campbell's "file." To his knowledge, no "official reprimand" was ever shown to Campbell. Further, Schroeder acknowledged that: "if our executive committee had not agreed [with the September 3 suspension of Campbell], then we would have put him back . . . he would have been suspended for that one day."

I credit the testimony of employee Campbell as recited above. Campbell's testimony is corroborated in significant part by the credible testimony of employees Ewing, Wood, Lugo, and Robinson. Campbell's testimony is also substantiated in part by testimony of Dock Foreman Powitzky, Superintendent Janak, and Terminal Manager Schroeder. And, as noted, Supervisor Cumbie and Assistant Manager Mullins did not testify here.¹⁰ Insofar as the above-quoted testimony of Campbell, Ewing, Wood, Lugo, and Robinson differs with the testimony of Powitzky, Janak, and Schroeder, I find, on this record, the testimony of the former witnesses to be more complete, detailed, and trustworthy. In particular, I am persuaded here that Campbell, as he credibly testified, spoke up at his September 3 meeting with Powitzky and Janak and, there, stated to them that his coworkers had signed his letter complaining about Supervisor Cumbie's treatment of the dock personnel. I find the testimony of

¹⁰ Personnel Manager Urbanovsky also did not testify; however, the record shows that he previously had sustained a heart attack. See G.C. Exhs. 1(f) and (g).

Powitzky and Janak, as well as Schroeder, in this and related aspects of the pertinent sequence, to be incomplete, vague, unclear, evasive, and unreliable.

In sum, I am persuaded here, as discussed further below, that management became aware that Campbell was attempting to present a complaint on his own behalf and on behalf of his coworkers pertaining to Supervisor Cumbie's treatment of the Employer's dock personnel. Management, in response, promptly moved to discourage and block such complaints by summarily firing Campbell and then apprising his fellow employees that Campbell's firing was for allegedly making "false" statements in his letters of complaint.¹¹ And as for the Employer's other cited "reasons" for Campbell's summary firing—i.e., "low production" and "attitude"—I find, as discussed below, that these belated and shifting assertions are not the real or true reasons for Campbell's termination, but instead are merely pretexts advanced here in an attempt to justify the disciplinary action taken to block and discourage further employee protected activities.

Discussion

Section 7 of the Act guarantees employees "the right to self-organization, to form, join, or assist labor organizations . . . and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . ." Although "individual griping and complaining" by an employee may not constitute protected concerted activity under Section 7, it is now settled that, at the very least, employee action "engaged in with the object of initiating or inducing or preparing for group action or [having] some relation to group action in the interests of the employee . . ." is statutorily protected. See *NLRB v. Charles H. McCauley Associates*, 657 F.2d 685 (5th Cir. 1981), and cases cited. In *McCauley, supra*, the court of appeals, in sustaining the Board's finding of protected concerted activity, noted that the employee there "sought improvement of various working conditions for all the employees"; "unlike purely personal complaints . . . these were complaints advanced on behalf of all employees though without their express support"; and, before meeting with management, the employee "had discussions . . . with other employees concerning some of the matters that he later brought out at the meeting . . ." In the instant case, the General Counsel argues that employee Campbell similarly "engaged in protected concerted activities"; that Respondent "knew of this protected concerted activity"; and that Respondent "discharged Campbell for engaging in protected concerted activity." (Br. pp. 1, 4-5.) Counsel for

¹¹ I note that Powitzky, upon receipt of Campbell's letter of complaint and before interviewing any dock employees, asserted to Janak that he "thought the accusations were totally false." Powitzky's subsequent interviews of Campbell's coworkers "one-on-one" in the dock office were conducted in a manner calculated to obtain support for firing Campbell for this alleged reason. Powitzky's "memos" of his interviews (Resp. Exhs. 7-14) do not fairly or truthfully reflect the inhibited expression of criticism voiced by Campbell's coworkers of Supervisor Cumbie's treatment of them. Compare, for example, Ewing's credible testimony quoted above and "memo" (Resp. Exh. 8). Also compare the memo (Resp. Exh. 13) and Powitzky's assertion that the "findings" from his employee interviews "were negative" and the "accusations were false."

Respondent principally contends that the "Company had no knowledge of any concerted activities on the part of Campbell." (Br. pp. 21-35.)¹²

The credible evidence of record, as detailed *supra*, amply shows here that employee Campbell was engaged in protected concerted activity when complaining to management about Supervisor Cumbie's treatment of the dock employees; that management had knowledge of this concerted activity; and that management summarily fired Campbell in an attempt to deter and discourage employee protected concerted activity, in violation of Section 8(a)(1) of the Act. Thus, as Campbell credibly testified, Cumbie became his supervisor in May 1981. Cumbie immediately faulted the dock workers "because all of you are not doing your work." He vigorously implemented a production quota of "180 pieces per hour." Campbell complained to Cumbie "why sometimes we are not able to do this." Coworker Ewing, as he credibly testified, similarly complained to Cumbie why this production quota was at times unreasonable. Cumbie nevertheless continued to press the dock workers to meet his standards of performance. Campbell, as a result, complained to Foreman Powitzky. Powitzky, as Campbell credibly recalled, acknowledged to Campbell that he, Powitzky, was having "problems" with Cumbie—Cumbie "is supervising in the '50s as compared to the '80s." Campbell also complained to Assistant Terminal Manager Mullins "about the condition in which Charlie [Cumbie] treats us." Campbell explained to Mullins: "I could have this whole room filled with workers from out on the dock that have been abused or mistreated by Charlie Cumbie." Mullins, as Campbell credibly recalled, responded that there was "no need for that." Campbell, in like vein, complained to Superintendent Janak about Cumbie's treatment of the dock workers.

Employee Campbell, after waiting a few weeks, then prepared in good faith a letter (G.C. Exh. 2) addressed to management. This letter cites Supervisor Cumbie's mistreatment of the dock personnel: "he continues to belittle us"; "he insults our intelligence"; he "never compliments his men but rather tries to make us feel like we are poor workers and unworthy of our jobs"; he "seems to delite [sic] in making his fellow workers miserable . . . not a good working atmosphere for anyone"; "Please help us." Campbell and six coworkers signed this letter at work in the dock breakroom. However, as Campbell explained, he later retyped this letter (G.C. Exh. 3), omitting the signatures of his coworkers, because he "was afraid the other guys would lose their jobs."

Management, after receiving Campbell's letter (G.C. Exh. 3), called Campbell into the office. There, Superintendent Janak stated: "We have investigated the letter

with the crew. None of them agreed with anything that was said in the letter." Campbell questioned Janak's statement, explaining: "I showed that letter to [them] and they signed it." Campbell was then summarily suspended. Some 5 days later, Campbell was fired. Campbell's coworkers on the dock were then apprised by Supervisor Cumbie that Campbell had been fired because of his "false statement"—he, Campbell, assertedly "couldn't back up the words that he wrote in the letter."

However, as employee Ewing credibly testified, Ewing, when interrogated "one-on-one" by Foreman Powitzky in the dock office about Supervisor Cumbie, substantiated Campbell's complaints. Ewing then told Powitzky:

You asked me, I'm going to tell you . . . he [Cumbie] is the kind of guy that would ride you . . . he haunts you about 180 pieces per hour . . . he is going to haunt you all the time . . . we never had any problems like that . . . riding, haunting, like that . . .

Powitzky, however, had previously determined that he believed Campbell's "accusations were totally false." Also see the "memo" of employee Haverland (Resp. Exh. 13), referring to Cumbie's "wrong approach" in dealing with dock employees.

I find and conclude here that Campbell was, in good faith, complaining on his own behalf and on behalf of his fellow workers about Supervisor Cumbie's vigorous implementation of production quotas and related treatment of the employees. Employee Campbell's repeated complaints to management about Cumbie made clear to management that he was not simply engaged in "individual griping." Indeed, Campbell credibly testified, without contradiction, how he offered to Assistant Terminal Manager Mullins: "I could have this whole room filled with workers from out on the dock that have been abused or mistreated by Charlie Cumbie." Campbell's letter to management (G.C. Exh. 3) also makes clear that he, Campbell, was not engaged in a so-called "one-man vendetta" or "individual griping." There, Campbell repeatedly referred to Cumbie's mistreatment of "us"; "his men"; "tries to make us feel like we are poor workers and unworthy of our jobs"; "making his fellow workers miserable"; "not a good working atmosphere for anyone"; and Campbell asked: "Please help us." Management later quizzed the dock workers who, as found *supra*, provided substantiation for Campbell's complaints.

Management nevertheless notified Campbell that "none" of his fellow employees "agreed with anything that was said in the letter." Campbell then made clear to management that other dock workers had signed this letter. He was summarily suspended and, 5 days later, fired because he had sent this letter. And as Superintendent Janak noted in his memorandum dated September 3, 1981, "He [Campbell] is a bad influence on the entire group and will be happy elsewhere." (Resp. Exh. 15.)

In sum, management, with full knowledge of the concerted activity, determined to block any further or future employee protected concerted activity of this nature. Campbell was fired and his coworkers were told that he

¹² At the hearing, and in counsel for Respondent's post-hearing brief, it was argued that the Employer must be shown to have "had knowledge of the concerted nature of the discharged employee's activities." The General Counsel, in his brief, does not dispute this proposition and argues that he in fact has sufficiently made such a showing. Under these circumstances, and in view of the disposition which I make below of this issue, I deem it unnecessary to discuss the Board and court cases cited concerning this element of the alleged violation. However, I note that counsel for Respondent, after reviewing the various Board cases pertaining to this issue, acknowledges (Br. p. 33): "A careful analysis of the Board's cases will reveal that it has in fact imposed that requirement . . ."

was fired because his letter complaining about Supervisor Cumbie's treatment of the workers was untrue. Such conduct violates the protection afforded to employees in Section 7 and Section 8(a)(1) of the Act. See, e.g., *Hitchiner Mfg. Co.*, 238 NLRB 1253, 1256-57 (1978); *Walls Mfg. Co.*, 137 NLRB 1317 (1962), *enfd.* 321 F.2d 753 (D.C. Cir. 1962), *cert. denied* 375 U.S. 923 (1963); and *Jim Causley Pontiac*, 263 NLRB 942 (1982).¹³

Further, I reject here as pretextual Respondent's other asserted "reasons" for Campbell's firing. Thus, Terminal Manager Schroeder claims that there were "two reasons" for terminating Campbell: "One is he [Campbell] had written this letter and all of the information or the largest proportion of the information contained in the letter was false." As found above, Campbell's letter had in fact been substantiated by Campbell's coworkers during Powitzky's interrogation of them. Schroeder also claimed as a second "reason" that Campbell "was unwilling to accept the authority of his supervisor." And, elsewhere, Superintendent Janak cites Campbell's "low production" and "attitude." None of these additional "reasons" were given to Campbell when he was suspended on September 3 or fired on September 8. These additional "reasons" were not given to Campbell's coworkers who, instead, were told that Campbell had been fired for making false statements in his letter. And Campbell, first hired by the Employer in 1974, admittedly had never received an official writeup citing his "production" or "attitude." Under the circumstances, I do not credit management's additional "reasons" as the real or true reasons for Campbell's firing. Instead, I find these belated and shifting assertions to be afterthoughts advanced in an attempt to justify the unlawful action taken. Further, Respondent, on this record, has not demonstrated that Campbell's termination would have occurred in the absence of the protected concerted activity. Cf. *Red Ball Motor Freight v. NLRB*, 660 F.2d 626 (5th Cir. 1981).

There remains the question of whether Powitzky's interrogation of the dock employees following receipt of Campbell's letter was coercive and therefore in further violation of Section 8(a)(1) of the Act. The controlling "test is whether [such conduct] tends to be coercive . . ." and a "few questions may be coercive if there is even slight evidence of threats . . ." Cf. *NLRB v. Camco, Inc.*, 340 F.2d 803, 804-807 (5th Cir. 1965). Assessed in the context of the sequence of events as found above, I am persuaded here that Powitzky's "one-on-one" questioning of dock workers in the dock office about their views of Supervisor Cumbie's treatment of them tended to impinge upon their right to engage in protected concerted activity. Thus, as employee Ewing credibly explained, he had signed coworker Campbell's letter of complaint; he was later questioned by Powitzky; and he attempted to explain to Powitzky how Cumbie

"haunts" and "rides" the workers—"we never had any problem like that . . . riding, haunting, like that . . ." Powitzky, in effect, ignored these and related complaints voiced by employees during these "one-on-one" interviews. The questioned employees were later told by Supervisor Cumbie that Campbell had been fired because his letter of complaint, which six employees had signed, was untrue and could not be substantiated. Such conduct, under these circumstances, tends to inhibit employee Section 7 activities and is coercive, in violation of Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. Respondent is engaged in commerce within the meaning of the Act.
2. Respondent has violated Section 8(a)(1) of the Act by suspending and discharging employee Bob Campbell and thereafter failing and refusing to reinstate him, and by coercively interrogating employees about their protected concerted activities.
3. Such unfair labor practices affect commerce within the meaning of the Act.

THE REMEDY

Having found that Respondent has violated the Act by unlawfully suspending and discharging employee Bob Campbell, and thereafter failing and refusing to reinstate him, I shall recommend that Respondent be required to cease and desist therefrom and from in any like or related manner infringing on employee Section 7 rights. In addition, I shall recommend that Respondent be required to take certain affirmative action which will effectuate the policies of the Act. I shall recommend that Respondent be required to offer employee Campbell immediate and full reinstatement to his old job or, in the event such job no longer exists, to a substantially equivalent job, without prejudice to his seniority and other rights and privileges, and make him whole for any loss of pay he may have suffered by reason of this unlawful action, by payment to him of a sum of money equal to that which he would have earned but for this unlawful action, from September 3, 1981, to the date of such offer of reinstatement, less his net earnings during this period, to be computed in the manner described in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed as set forth in *Florida Steel Corp.*, 231 NLRB 651 (1977).¹⁴ Respondent will also be directed to post the attached notice. Further, Respondent will also be ordered to expunge from its files any reference to his suspension and termination. See *Sterling Sugars*, 261 NLRB 472 (1982).

ORDER¹⁵

The Respondent, Central Freight Lines, Inc., Houston, Texas, its officers, agents, successors, and assigns, shall:

¹³ Counsel for Respondent argues that Campbell, by removing the signatures of his coworkers from his initial letter, "abandoned any effort at collective action" (Br. p. 36.) Campbell credibly explained, as found *supra*, that he was concerned that his fellow employees might lose their jobs. This would not constitute an abandonment or waiver of the protection afforded in Sec. 7 of the Act. Campbell, without disclosing the signatures of his fellow employees, was still presenting his and their complaints about Cumbie's treatment of the dock employees, and management became aware of this concerted activity.

¹⁴ See, generally, *Isis Plumbing Co.*, 138 NLRB 716 (1962).

¹⁵ 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.

1. Cease and desist from:

(a) Suspending or discharging employees, or failing or refusing to reinstate them, in consequence of their participation in concerted activity for the purpose of mutual aid and protection.

(b) Coercively interrogating employees about their protected concerted activities.

(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 which is necessary to effectuate the policies of the Act:

(a) Offer employee Bob Campbell immediate and full reinstatement to his old job or, in the event such job no longer exists, to a substantially equivalent job, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay he may have suffered by reason of Respondent's unlawful action in suspending, discharging, and failing and refusing to reinstate him, in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, as well as other records necessary or useful in analyzing and computing

the amount of backpay due under the terms of this Order.

(c) Expunge from its files any reference to the suspension and discharge of Bob Campbell, and notify him in writing that this has been done and that evidence of this unlawful suspension and discharge will not be used as a basis for future personnel actions against him.

(d) Post at its Houston, Texas, facility copies of the attached notice marked "Appendix."¹⁶ Copies of said notice, on forms provided by the Regional Director for Region 23, after being duly signed by Respondent's 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 ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 23, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

¹⁶ 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."