

General Truck Drivers, Warehousemen and Helpers Union Local No. 980, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Auburn Constructors) and James M. Campbell. Case 20-CB-5524

13 February 1984

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER**

On 3 May 1983 Administrative Law Judge Earldean V.S. Robbins issued the attached decision. The Respondent filed exceptions and a supporting brief and the General Counsel filed an answering brief.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order as modified.²

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, General Truck Drivers, Warehousemen and Helpers Union Local No. 980, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Santa Rosa, California, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 2(c) and reletter the subsequent paragraphs.

"(c) Expunge from its files and ask the Employer to expunge from the Employer's files any reference to the unlawful layoff and refusal to recall James Campbell and notify this employee in writing that it has done so and that it will not use the layoff against him in any way."

2. Substitute the attached notice for that of the administrative law judge.

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We do note, however, that the judge erroneously found that Business Agent O'Neill gave James Campbell a dispatch slip at the jobsite when he reported for work in September 1981. (See judge's decision, *fn.* 7.) Campbell's testimony about receiving a dispatch slip from O'Neill at the jobsite referred to an incident which occurred in August 1982.

² We have modified the judge's recommended Order to include the expunction remedy recently approved by the Board in *R. H. Macy & Co.*, 266 NLRB 858 (1983).

APPENDIX

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT cause, or attempt to cause, Auburn Constructors to lay off and refuse to recall employees because they have exercised rights protected under Section 7 of the Act.

WE WILL NOT in any like or related manner restrain or coerce employees of Auburn Constructors in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8(a)(3) of the Act.

WE WILL notify Auburn Constructors and James M. Campbell, in writing, that we have no objection to his employment by Auburn Constructors and WE WILL request his reinstatement.

WE WILL make James M. Campbell whole, with interest, for any loss of wages and benefits suffered by reason of the discrimination against him from the date of his discharge to the date of his reinstatement by Auburn Constructors to his former, or substantially equivalent, job, or to the date that he secures employment with some other employer substantially equal to that which he formerly had with Auburn Constructors.

WE WILL expunge from our files and will request the Employer to expunge from its files any reference to our attempt to cause Auburn Constructors to lay off and refuse to recall James M. Campbell to the Warm Springs Project and notify him, in writing, that this has been done.

GENERAL TRUCK DRIVERS, WAREHOUSEMEN AND HELPERS UNION LOCAL NO. 980, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

DECISION

STATEMENT OF THE CASE

EARLDEAN V.S. ROBBINS, Administrative Law Judge: This case was tried before me in Santa Rosa, California, on December 9 and 10, 1982. The charge was filed by James M. Campbell, an individual, herein called Campbell, on February 11, 1982, and served on General Truck

Drivers, Warehousemen and Helpers Union Local No. 980, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Respondent or Local 980, on February 16, 1982. The complaint which issued on April 23, 1982, alleges that the Respondent violated Section 8(b)(1)(A) and (2) of the National Labor Relations Act, as amended, herein called the Act. The basic issue herein is whether the Respondent caused Auburn Constructors to lay off and refuse to recall Campbell because he had opposed the Respondent's secretary-treasurer in an intraunion election and thereafter continued as a rival to the Respondent's present leadership.

On the entire record,¹ including my observation of the demeanor of the witnesses, and after due consideration of the posthearing briefs submitted by the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all times material herein, Auburn Constructors, herein called Auburn, a joint venture, with an office and place of business in Healdsburg, California, has been engaged in performing heavy construction work for the building of a dam, herein called the Warm Springs Project, and has been and is now an employer-member of the Associated General Contractors of California, Inc., herein called AGC.

At all times material herein, AGC has been an organization composed of employers engaged in construction work which exists for the purpose, inter alia, of representing its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations, including the Respondent. During the 12-month period ending March 31, 1982, members of AGC, collectively, in the course and conduct of their business operations described above, derived gross revenues in excess of \$500,000, and during the same time period purchased and received at their respective California facilities products, goods, and materials valued in excess of \$50,000 directly from points outside the State of California.

The complaint alleges, the Respondent admits, and I find that Auburn is now, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The complaint alleges, the Respondent admits, and I find that the Respondent is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

¹ The Charging Party's motion to correct the official transcript is hereby denied as the transcript accurately reflects that portion of the proceeding which is the subject of the motion.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

Campbell was secretary-treasurer and chief executive officer of the Respondent from January 1, 1975, until December 31, 1980. He was succeeded in his position by Alfred Andrade. Andrade was initially employed by the Respondent as an organizer and business agent from January 2, 1978, until October 13, 1978, when he was laid off by Campbell. During this period, he was a member of the Respondent and worked under Campbell's supervision. Thereafter, Andrade registered on the Respondent's out-of-work list and sought employment as a truckdriver. On February 5, 1979, Andrade filed an unfair labor practice charge against the Respondent and subsequently a complaint issued alleging that the Respondent violated Section 8(b)(1)(A) of the Act by imposing a \$250 fine on Alfred Andrade "because of Andrade's intra-union sympathies and activities in opposition to the incumbent secretary-treasurer of Respondent, James Campbell," and by advising Andrade that the Respondent would not accept his membership dues until he paid his fine; and that the Respondent violated Section 8(b)(2) and (1)(A) of the Act by causing two employers to refuse to employ Andrade for reasons proscribed by the Act and by attempting to cause one of these employers to terminate Andrade's employment for reasons proscribed by the Act. Subsequently, the Board found that the Respondent violated Section 8(b)(2) of the Act by attempting to cause an employer to discriminate against Andrade because of Campbell's personal hostility towards Andrade.²

In June 1980, Andrade wrote Campbell inquiring in regard to his eligibility to run for office. In September 1980, Campbell notified Andrade that he was eligible to run for office. In October 1980, both Andrade and Campbell were nominated for secretary-treasurer of the Respondent. In an intraunion election held on November 22, 1980, Andrade was elected as secretary-treasurer. During that same election, Russell O'Neil, a member of the Respondent since the fall of 1978, was elected to a position as business representative.

Following the election, Campbell expressed to various members of the Respondent his intent to "hold his options open" to run for office at a later date. He has continued since then to express this same view. On April 16, 1981,³ Campbell attended a membership meeting, the agenda of which included a vote on a proposal to increase initiation and reinitiation fees recommended by Andrade and the executive board. According to Campbell, prior to the commencement of the meeting when he was standing in line to receive a ballot, some of the members asked him what he thought of the proposal, and he said he did not think it was necessary. A few minutes later, after Campbell had received his ballot and was seated, Andrade called Gary Mann, the person who had issued Campbell a ballot, over to where Andrade and Union President Robert G. Martin were talking. Immediately after speaking to Andrade and Martin, Mann

² *Teamsters Local 980 (Neilson Freight Lines)*, 249 NLRB 46 (1980).

³ All dates hereinafter will be in 1981 unless otherwise indicated.

approached Campbell and told him Andrade said Campbell was on withdrawal and was not eligible to vote, and asked Campbell to return his ballot. Campbell then told Andrade that he had a paid-up dues receipt and he was eligible to vote. Andrade said that Campbell was retired, he was on a withdrawal card, and was not allowed to take any part in the meeting. Campbell again said he had a paid-up dues receipt and did not have a withdrawal card; to which Andrade replied, "Don't worry, you will get one." Whereupon Campbell returned the ballot to Mann. The membership voted to increase the initiation fees.

About April 17 or 18, Campbell received a withdrawal card in the mail dated April 10. This unsolicited withdrawal card was accompanied by a letter from Andrade, the body of which reads:

Enclosed you will find your withdrawal card issued pursuant to the following provision of the International Constitution.

Article XVIII, Section 5 of the International Constitution requires that when you leave the craft or if you become unemployed or retire, you must request a withdrawal card from your Local Union. If you do not request a withdrawal card, your Local Union is obliged to issue the withdrawal card after the period of time and subject to the conditions specified in the International Constitution and/or the Local Union bylaws.

Campbell continued to express disagreement with Andrade's policies to various union members, including his opinion that Andrade was incurring unnecessary expense by having various business agents accompany him to grievance hearings and conventions, et cetera.⁴ He also initiated an intraunion appeal regarding the issuance of the withdrawal card and a protest of the increase in initiation fees. On July 14, Campbell was notified that the executive board of Teamsters Joint Council No. 7 had determined that the withdrawal card was improperly issued and that Campbell's membership should be reinstated; but that, in accordance with the International constitution, the executive board of Joint Council No. 7 could not hear his protest on the increase of initiation fees. By letter dated July 21, Andrade notified Campbell that in accordance with the decision of the Joint Council No. 7 executive board his membership had been reestablished retroactively to show his active membership through June 1981. The letter further stated:

A new withdrawal card has been issued effective July 1, 1981, pursuant to Article XVIII, Section 5(a) of the International Constitution which requires a withdrawal card be issued immediately after six months of unemployment. Since you have been unemployed between January 1, 1981 and June 30, 1981, the withdrawal card is mandatory under the constitution.

⁴ The International constitution requires that to be eligible to run for local union office a person must be a member in good standing for 2 years prior to the nomination. A member on withdrawal is not a member in good standing.

Subsequently, Campbell filed charges against Andrade regarding the issuance of this withdrawal card. By letter dated February 26, 1982, Campbell was notified by the Respondent's president that it was the decision of the Respondent's executive board that his request to appear before the Board pertaining to his charges against Andrade be deferred until such time as the charges filed by Campbell with the National Labor Relations Board are resolved.⁵ By letter dated April 26, 1982, Campbell requested to deposit his withdrawal card and resume active membership in the Respondent. By letter dated April 29, 1982, Andrade denied this request on the basis that Campbell was presently on retirement status and that, in addition, the constitution provides that acceptance of a withdrawal card may be refused where adverse employment conditions exist; and further denied Campbell's request for a meeting concerning dispatch procedures.

B. *The Alleged Discrimination*

Commencing in February 1981 and continuing at least through April 1982, Campbell has registered each month on both the construction out-of-work list and the movie out-of-work list except in September. He received his first dispatch from the construction out-of-work list on August 24 to commence work on August 25. According to Campbell, on August 24, dispatcher Stella Rovetti telephoned him and asked if he would be interested in a dispatch to the Warm Springs Project as a fill-in driver.⁶ Campbell said he would. Later that day, Campbell went into the union hall to pick up his dispatch slip. At that time, he tendered his dues for August and September, but was told that Andrade would have to be consulted. After a short delay while someone went to Andrade's office, Campbell was informed that they were not sure he would be working in September, and Andrade said he could work off of his hiring hall fees for August. Campbell protested, stating that normally if one works in a month one pays dues for that month. He was again told that Andrade said he could work on the hiring hall fee for the month of August. His dues tender was not accepted.

Campbell worked at the Warm Springs Project on August 25, 26, and 27. At the end of the shift on August 27, Willard "Swede" Kline, the teamster foreman, told him to report to work on August 28. Later that day, Kline called Campbell at home, told him that some equipment had broken down so he would not be needed the following day and that Kline would call him when he needed him. Campbell was not recalled to work until the second week in September when Kline called him on Friday and asked him to report to work the following Monday morning.⁷ He was again called to work by Kline on September 14 to work on September 15. He worked on September 15 and 16 and on September 16; Kline instructed him to return to work the following

⁵ The validity of the withdrawal card has not been finally determined by the Union and such validity is not at issue herein.

⁶ Essentially the employee filling this position would be on call to fill in for absent full-time employees.

⁷ On Monday morning, according to Campbell, O'Neil walked over to him at the jobsite and gave him a dispatch slip.

day. However, on the evening of September 16, Kline telephoned Campbell at home. According to Campbell Kline told him they had a problem, that he had arranged with O'Neil to meet with O'Neil and Andrade to see if they could settle a grievance filed by the Union, but that O'Neil later informed him that the meeting was off and Andrade had said they could not meet as long as Campbell was working on the job. Kline then said he could no longer employ Campbell.

On September 10, the Respondent filed a grievance with Auburn Constructors, the contractor at the Warm Springs Project. The "Statement of Facts" portion of the grievance reads, "Calling man to work who is not registered on hiring hall list at union hall." Under "Relief being Sought," the grievance further states, "Pay for first man on list from September 9, 1981 until grievance is heard for each day of violation."

The grievance is purportedly based on the following provision of the contract:

Section 4—CALLBACK AFTER LAYOFF

An Employee laid off due to inclement weather or equipment breakdown not in excess of thirty (30) days, shall be recalled to employment on the project from which he was laid off before the Employer calls the Employment Office in the locality for new registrants.

An Employee laid off due to a reduction in force shall be given a lay-off slip with a copy sent on the same date to the Union, and may be recalled by the Employer or may be redispached by the Employment Office to employment on the project from which he was laid off regardless of his position on the registration list. For the purpose of this Section only, an Employee so re-dispatched shall not be considered as a new registrant for employment under Section 8 if re-dispatched to the classification from which he was laid off.

Except as otherwise mutually agreed by the Union in the locality, said Employees shall be recalled through the Employment Office in the locality.

An Employee who fails to report for work within forty-eight (48) hours in response to a callback by his Employer may be regarded by said Employer as having quit his employment.

O'Neil testified that despite the description of the grievance as "calling man to work," the grievance does not refer to Campbell or to any one person; rather, it relates to the general practice of contacting employees directly to return to work at the Warm Springs Project without going through the hiring hall, as required by the collective-bargaining agreement. According to him, he first learned of this violation of the collective-bargaining agreement around September 9 when he received a telephone call from a teamster employee at the project, Larry Drake. Drake said he had been laid off⁸ and there

were people still working who had not been there as long as he had. O'Neil said there was no seniority, that it was a jobsite, not a stationary construction yard. Drake asked how they could lay off someone for a week, recall him, lay him off after a day or two, and then call them back 2 or 3 days later. O'Neil said they were not allowed to do so under the contract unless they issued a layoff slip. Drake said Auburn had not been issuing layoff slips, that he knew of two, three, or four people who would work 1 or 2 days, be laid off for a week or longer, and then recalled; and that he knew these persons were not registering on the out-of-work list. According to O'Neil, Drake specifically mentioned the names of three persons, one of whom was Campbell; however, he does not recall the names of the other two persons. O'Neil said he would look into the matter and if there were a violation he would file a grievance. Drake specifically said, as to Campbell, that he and "a couple of other guys" who had been working all summer were laid off and Campbell, who had just been dispatched to the job, was still working. O'Neil further testified that, within a day or two after Drake's telephone call, a couple of other persons, whose names he does not recall, telephoned him and made the same general complaint.

According to O'Neil, on the morning of September 9, he spoke to someone in the office at the project, and told her he had a complaint, that they were laying employees off for 1, 2, or 3 days and recalling them. This person said yes, if they ran out of work they laid them off, and would then recall them. O'Neil said that according to the contract the Union had to be provided with a layoff slip. This person said they had not been doing that. Later that day, O'Neil spoke to Kline by telephone. He informed Kline that he was filing a grievance against Auburn Constructors for laying off and recalling employees without issuing layoff slips. Kline said he had the right to do that. O'Neil said, no, you do not unless it is for equipment breakdown or inclement weather. Kline said, "go ahead and file your grievance." O'Neil denies that Campbell or Andrade was mentioned in this conversation.

According to O'Neil, he then drafted the grievance and took the draft to Andrade's office for approval. Andrade inquired what the grievance was about. O'Neil said Auburn Constructors was failing to issue layoff slips and that the Union had no way of knowing who was working there. Andrade initialed the draft indicating his approval. Both O'Neil and Andrade testified that this was their first discussion of the grievance and the incidents leading thereto. O'Neil testified that the only other time he spoke to Andrade regarding this grievance was when he told him he was going to the hearing on the grievance and asked what position he should take. Andrade said the Respondent would drop the backpay issue if Auburn Constructors would follow the collective-bargaining agreement and issue the layoff slips.

Andrade also denied that the grievance refers to Campbell or to any specific individual. He testified that he did not know why the reference was made to a "man" in the statement of the grievance. He admitted that he was aware at the time he signed the grievance that Campbell was one of the individuals who had alleg-

⁸ He did not mention the circumstances of his layoff.

edly been recalled to work without going through the hiring hall.⁹

Kline testified that in early August he telephoned Rovetti and inquired whether she had someone available to work as a fill-in employee. He said employees often did not show up so he needed someone close by whom he could call in the morning.¹⁰ He said he could not guarantee full-time work, it might be a day, 2 days, or an entire week, he just needed someone he could call back and forth like that. Rovetti said she would find someone. In response to this request, an employee named Ford, whose first name Kline does not know, was dispatched the following morning. After 2 or 3 days, Kline notified Rovetti that he had assigned Ford to a full-time job replacing a discharged employee, and requested that she dispatch someone to replace Ford as a fill-in driver. In accordance with this request, Campbell was dispatched to the job on the following day. Campbell worked 3 or 4 consecutive days. The following day there were no absences so Kline told Campbell that he would call when he needed him again. Campbell was not issued a layoff slip. Sometime in September, Kline telephoned Campbell and instructed him to report to work the following morning. Kline did not telephone the Union. Campbell worked for several days and was then told that there was no work for him and that Kline would telephone him when he needed him. According to Kline, when he explained to Rovetti his need for a fill-in driver, they did not discuss whether layoff slips would be used. He merely explained that he needed someone who would be able to work whenever a full-time employee did not show up for work or was otherwise absent from the job-site.

Kline further testified that sometime between Campbell's first dispatch to the Warm Springs Project and when he was called to work at the project the second time one of the office employees called him on his truck radio, told him that Rovetti had telephoned and wanted to know how many hours Campbell had worked, and asked if Kline wanted her to give Rovetti that information. Kline instructed her to do so. Kline further testified that on two later occasions his secretary called him on the radio and told him that Rovetti was inquiring whether Campbell was working. On the first of these occasions, Kline said Campbell was not working. The second occasion was shortly before Campbell returned to work at the project the last time. On that occasion, Kline answered that Campbell was not working but that he planned to call him back to work the following Wednesday.

O'Neil admits that he inquired of Auburn as to whether Campbell was working. When asked why he made this inquiry, he testified, "I was checking to find out if he was working. Somebody told me he had been working out there and I checked to find out because at that time I didn't even know he had been dispatched to the

dam and then I called back because somebody wanted to find out how many hours he put in because he was drawing a pension and he was only allowed to work so many hours a month. If he works over 49.9 hours a month, then he's not qualified for his pension." Yet when he was asked who the someone was who wanted to know whether Campbell was working, he insisted that on both occasions he was the one who wanted to know; on the first occasion because he did not know that Campbell had been dispatched and the dispatcher was not in the hall at the time, and the second time because of the pension requirement that Campbell work no more than 49.9 hours a month. He admits, however, that he has no responsibility for distribution of pension benefits.

Kline also testified that, in September, O'Neil telephoned him and told him he was submitting a grievance. When Kline inquired as to why, O'Neil said it was on Campbell. Kline asked what they had done. O'Neil said, you called him back to work. Kline said, I do that all of the time, what are you talking about. O'Neil said, "I don't know, Andrade called me from the City and told me to call you and tell you I was mailing you a grievance." According to Kline, O'Neil said nothing about layoff slips in this conversation.

Kline also testified that later that day, in his presence, one of the secretaries called Rovetti at his request and told her that Kline and Project Manager Chuck Weidmer wanted to meet with Andrade and O'Neil over "this Campbell deal." The secretary then turned to Kline and said, "Stella's going to take care of it." The following day, Kline received the grievance from the Union. Within the next day or two, Weidmer told Kline that Andrade would not meet with them because he could not have his lawyer present. Kline said he was going to let Campbell go, that he was sick and tired of this mess and was not going to get in the middle of it any more. According to Kline, he considered the grievance strictly as a political deal and since the job would last for another year and a half, he did not intend to be in the middle. That evening, according to Kline, he telephoned Campbell at home, told him he could no longer use him, and he was sending him a reduction-in-force slip. He does not think he told Campbell what Weidmer had told him, but he does not recall. The following morning, Kline telephoned O'Neil and told him he had given Campbell a reduction-in-force notice. O'Neil said, okay.¹¹

The grievance was placed on the agenda for the monthly board of adjustment meeting held on October 20. However, when no representative of the Respondent made an appearance, consideration of the grievance was postponed, at O'Neil's request. At the November board of adjustment meeting, Auburn Constructors was represented by an AGC representative who stated that he would inform the Warm Springs Project manager that layoff slips had to be issued in accordance with the collective-bargaining agreement when an employee is laid off. O'Neil further testified that at the December board of adjustment meeting, prior to the commencement of

⁹ The contract permits an employer to directly recall or request by name persons who had previously been laid off.

¹⁰ The Warm Springs Project is by far the largest in size and the longest in duration of any construction project in the Respondent's district. According to O'Neil, during both the 1981 and 1982 peak seasons—June and July—the maximum number of Teamsters-represented employees working at the Project at any one time was approximately 80.

¹¹ According to Kline, he issued a reduction-in-force notice when he did not need an employee any longer.

the meeting, the AGC representative asked him how things were going with Auburn. O'Neil replied that he really did not know, that they had not called him. The AGC representative said he would get in touch with Auburn and make sure they were following the agreement. O'Neil did not pursue the matter any further nor is there any record evidence that he made any subsequent contact with the AGC representative in this regard or any effort to police Auburn's compliance. He did testify that, after the grievance was resolved, Auburn issued layoff slips whenever they laid someone off unless it was due to inclement weather or equipment breakdown. However, as set forth below, both Kline and Karen Ainsworth, the Auburn office manager, refute this.

Kline testified that, prior to the September 10 grievance, if an employee were being recalled to the same piece of equipment after a short layoff, it was his practice to call the employee directly and not call the Union. He further testified that the Union was aware of this practice, that in 1978, prior to the commencement of the Warm Springs Project, he met with Campbell. During this meeting, he asked Campbell about the recall procedure when an employee had been laid off. Campbell said to call them back. He then asked about the rehires and Campbell said you can rehire, but you have got to call us. According to Kline, a rehire refers to someone to whom he has given a reduction-in-force notice. Under the agreed-upon procedure, he was required to call the Union before rehiring such a person, but, in the case of a person laid off just for a week or so, he was not required to call the Union, he just called the employee directly. Kline further testified that he has continually called employees back directly from short layoffs at the project approximately 400 or 500 times. Yet, prior to September 10, the Union never objected to this practice. According to him, variations in daily staffing requirements are typical of construction projects such as the Warm Springs Project. The project has approximately 500 different operations so they might do one operation one day and something else the next day. Thus, on an average of every other day somebody is on a short layoff. Kline also testified that since September 10 his practice in recalling employees directly from these short layoffs has not changed and the Union has never again objected to this practice. However, he further testified that when the project shut down for the 1980-81 rainy season winter layoff no one was issued a layoff slip. Rather, he just sent the employees home and told them they would be called back when the weather was good,¹² which he did directly, without going through the hiring hall. In 1982, after the winter layoff, Kline gave Ainsworth¹³ a list of the employees he wanted recalled and instructed her to telephone the Union first and ask what procedure they wanted them to follow, whether they wanted Auburn to call the employees directly or whether the Union wanted to call them. Later Ainsworth informed him that she was

told to call the employees directly and to notify the Union as to who was called.

Ainsworth further clarified Auburn's practice in her testimony that if there is a change in operation employees are sent home and then, when another operation starts up, they are called back without notifying the Union. According to Kline, this may also happen when there is a temporary shutdown of an operation. No layoff slip is issued if the employee is being kept on the payroll, regardless of the reason. The Union is called whenever there are not enough people on the payroll to fill available positions. The Union is also called when Auburn wishes to recall people from a long layoff.

O'Neil denies that he called Kline and told him that the grievance he was filing was related to Campbell or that he told Kline he did not know why the grievance was being filed, but that Andrade had called him from the city and told him to file it. He further testified that he has never been advised by an official or supervisor of Auburn or an official or dispatcher of the Union, or anyone else, that in 1978 there was some sort of agreement between Campbell and Kline that persons being laid off for short periods of time need not receive layoff slips and need not be called back through the hall. According to him, until September 1981 he had no reason to believe that Auburn was in fact laying people off and recalling them for short periods of time—other than for equipment breakdowns and inclement weather—without giving them layoff notices and without calling them back through the hall. He also testified that when the season started up again at the project in 1982 and up until the time of his layoff it never came to his attention that Auburn was continuing to lay off people for short periods of time and recalling them without giving them layoff notices or recalling them through the union hall.

According to O'Neil, the Warm Springs Project is the largest project that he has serviced. In 1981, he was at the project site three times during the season, and during 1982 he visited the site at least two times. Andrade also testified that no one told him when he assumed office that Kline and Campbell had reached some kind of an agreement in 1978 that employees laid off for short periods of time would not be given layoff slips and would not be recalled through the union hiring hall. Andrade denies that he ever telephoned O'Neil from San Francisco, instructing him to file a grievance against Auburn.

C. Conclusions

Although there is some conflict in the testimony as to exactly what days Campbell worked for Auburn, it is undisputed that he worked on three different occasions in August and September for periods of less than a week's duration. On the first occasion, he was dispatched by the Respondent. On the second occasion, although he was recalled directly by Auburn, the Union was evidently notified since Rovetti telephoned him a few minutes later regarding returning to work at the project and, on the following day when he was at work at the project, O'Neil gave him a dispatch slip. On the third occasion, he was recalled directly by Kline and the Union was not notified.

¹² If there was someone whom Kline did not want to return after the rainy season, Kline issued that person a reduction-in-force layoff slip. Also, on occasion a reduction-in-force layoff slip would be issued at the request of the employee.

¹³ Ainsworth is usually the person who, on Kline's instructions, contacts the Respondent's dispatcher regarding layoffs or requests for persons to be dispatched to the project.

I credit Kline that he laid off Campbell, and thereafter never recalled him as a direct result of the filing of the September 10 grievance because he believed the filing of the grievance was motivated by intraunion political considerations and he did not want to be "caught in the middle." Thus, Campbell's layoff and the refusal to recall him appear to be clearly unlawful. The question is whether the Respondent caused or attempted to cause the unlawful discrimination. Respondent argues that it did not, since it never requested that Campbell be laid off. However, this is not dispositive of the issue for unlawful discrimination may be caused by less than an express demand and an intent to do so may be inferred from the circumstances. *Food & Commercial Workers Local 454 (Central Soya of Athens)*, 245 NLRB 1295 (1979).

The Respondent further argues that the requisite intent cannot be inferred since the Respondent only sought to have Auburn recall employees through the Respondent's hiring hall as required by the collective-bargaining agreement and, thus, resolution of the grievance in the Union's favor would not have adversely affected Campbell's employment. In the circumstances, I find this view of the Respondent's conduct less than persuasive. Andrade and O'Neil had occupied their positions with the Respondent and O'Neil had serviced the Warm Springs Project for more than 8 months, a period which encompassed a peak season where some one or more of a unit employee complement of approximately 80 persons were on a short layoff or being recalled from one at least every other day. I credit Kline and Ainsworth that these persons were recalled directly without submitting a request to, or notifying, the Union. Yet Respondent never protested until Campbell was involved.

I am not persuaded by the testimony that neither Andrade nor O'Neil had knowledge of this practice. Considering the size of and the nature of the operation at the Warm Springs Project, the lack of request for recalls or notification thereof¹⁴ must have put the Respondent on notice that some such practice existed. Its failure to investigate the possible existence of such a practice indicates that Andrade and O'Neil either had actual knowledge of the Respondent's agreement to such a practice, had acquiesced in it, or were not interested in whether it existed. This conclusion is buttressed by the fact that after Campbell was discharged Auburn continued following this practice and the Respondent neither protested nor sought to police Auburn's adherence to the Respondent's interpretation as to the requirements of the collective-bargaining agreement in this regard. Its interest was only manifested when Campbell was involved.

I do not credit Andrade and O'Neil that the grievance was a general one and not specifically related to Campbell. On its face, the grievance refers to "man." Kline testified that O'Neil told him the grievance concerned Campbell. I credit Kline, who impressed me as a candid, reliable witness who was endeavoring to tell the truth. Further, although O'Neil testified that Drake named three persons who had been recalled directly, O'Neil could only recall the name of one—Campbell.

¹⁴ In this regard, I note that the Respondent adduced no evidence to refute the testimony that such request or notification was not made.

As to the Respondent's contention that the grievance was filed in response to the complaints of Drake, it is apparent from the testimony that Drake was not complaining about the failure to issue layoff slips or to recall through the hiring hall. He was complaining that he had been laid off and Campbell was still working. The alleged similar complaints made by other employees were made after the grievance was filed.

Even assuming arguendo that the collective-bargaining agreement requires that employees laid off under the circumstances involved herein must be recalled through the hiring hall, I find that, considering the Respondent's apparent lack of interest in Auburn's practice of recalling laid-off employees directly from all short layoffs except when the practice involved Campbell, it had, at a minimum, acquiesced in such practice; and that, in view of this acquiescence and O'Neil's describing of the grievance to Kline as one concerning Campbell, the September 10 grievance was not in protest of a general practice but related specifically to the recall of Campbell.

I also find that in the context of the several inquiries as to whether Campbell was working, and the singling out of the Campbell recall for the Respondent's sole protest of Auburn's recall practice, that the September 10 grievance had the foreseeable consequence of indicating to Kline that continued employment of Campbell would result in problems with the Union. In the context of Campbell's continued opposition to Andrade's leadership, the continuing dispute as to Andrade's issuance of a withdrawal card to Campbell, thereby depriving him of the right to fully participate in intraunion affairs, and O'Neil's admission to Kline that the grievance was being filed pursuant to Andrade's instructions, I find this consequence was intended. Further, in these circumstances, and since Campbell was hired as a fill-in driver, I find that when Kline told O'Neil that he was giving Campbell a reduction-in-force notice O'Neil should have recognized the likelihood that this action was a consequence of the filing of the grievance and that he had an obligation to clarify any lawful objective of the grievance and to inform Kline that the Union had no objection to Campbell's continued employment.

In all of the circumstances, I find that, by filing the September 10 grievance, the Respondent intended to cause Auburn to lay off and refuse to recall Campbell and that such conduct was motivated not by any concern over the integrity of the collective-bargaining agreement, but rather by Campbell's protected intraunion activities. Accordingly, I find that the Respondent thereby violated Section 8(b)(1)(A) and (2) of the Act. *Food & Commercial Workers District 227 (Kroger Co.)*, 247 NLRB 195 (1980).

CONCLUSIONS OF LAW

1. Auburn Constructors is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.
3. By causing Auburn Constructors to lay off and refuse to recall James M. Campbell because he engaged

in intraunion activities protected under Section 7 of the Act, the Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(b)(2) and (1)(A) of the Act.

4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

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

Since I have found that the Respondent attempted to cause, and caused, Auburn Constructors to lay off and refuse to recall James M. Campbell, it is recommended that, to the extent it has not already done so, the Respondent immediately notify Auburn Constructors that it has no objection to Auburn's employment of James M. Campbell as a fill-in driver or for any other position for which he is qualified and request his reinstatement. I shall further recommend that the Respondent make Campbell whole for any loss of wages and benefits suffered by reason of the discrimination against him from the date of his layoff to the date of his reinstatement by Auburn Constructors to his former or substantially equivalent job, or to the date he secures substantially equivalent employment with some other employer, less his net earnings during this period. The loss of earnings shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest computed in accordance with Board policy set out in *Isis Plumbing Co.*, 138 NLRB 716 (1962), and *Florida Steel Corp.*, 231 NLRB 651 (1977).

On these findings of fact and conclusions of law and on the entire record, I recommend the following

ORDER¹⁵

The Respondent, General Truck Drivers, Warehousemen and Helpers Union Local No. 980, International

¹⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Santa Rosa, California, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Causing or attempting to cause, Auburn Constructors to discriminate against James M. Campbell, or any other employee, because they engaged in activities protected under Section 7 of the Act.

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

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

(a) Notify Auburn Constructors and James M. Campbell, in writing, that it has no objection to Campbell's employment and request his reinstatement.

(b) Make James M. Campbell whole for any loss of earnings he may have suffered by reason of the discrimination against him, as set forth in the section of this Decision entitled "The Remedy."

(c) Post at its offices and meeting halls a copy of the attached notice marked "Appendix."¹⁶ Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Forward to the said Regional Director signed copies of said notice for posting by Auburn Constructors, if it is willing, at the Warm Springs Project for 60 consecutive days in places where notices to employees are customarily posted.

(e) Notify the Regional Director within 20 days from the date of this Order what steps the Respondent has taken to comply.

¹⁶ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."