Kawasaki Motors Corporation, USA *and* International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW. Cases 17-CA-10173 and 17-CA-10301

14 February 1984

DECISION AND ORDER

BY MEMBERS ZIMMERMAN, HUNTER, AND DENNIS

On 30 July 1982 Administrative Law Judge Earldean V.S. Robbins issued the attached decision. The General Counsel and the Charging Party filed exceptions and supporting briefs and the Respondent filed cross-exceptions, a supporting brief, and 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.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Kawasaki Motors Corporation, USA, Lincoln, Nebraska, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The General Counsel and the Charging Party have 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.

DECISION

STATEMENT OF THE CASE

EARLDEAN V.S. ROBBINS, Administrative Law Judge: This case was heard before me in Lincoln, Nebraska, on various dates in September and November 1981. The charge in Case 17-CA-10173 was filed by International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW (the Union), on February 13, 1981, and served on Kawasaki Motors Corporation, USA (Respondent), on February 17, 1981. An amended charge was filed in that matter by the Union on February 23, 1981, and served on Respondent on February 24, 1981. The complaint therein issued on March 25, 1981, alleging that Respondent violated Section 8(a)(1), (3), and (4) of the National Labor Relations Act, as amended (the Act). The charge in Case 17-CA-10301 was filed by the Union and served on Respondent on April 16, 1981. The complaint therein issued on May 28, 1981, alleging that Respondent violated Section 8(a)(1), (3), and (4) of the Act. An order consolidating Cases 17-CA-10173 and 17-CA-10301 issued on May 29, 1981.

The principal issues herein are:

1. Whether Respondent discharged employee Gerard Bartek and subsequently refused to reinstate him because of his union and/or other protected concerted activities.
2. Whether Respondent issued a disciplinary incident report and letter to employee Bruce Berg regarding his appearance with, and in support of, Bartek at a discussion of Bartek's discharge because Berg testified at a previous hearing involving allegations of unfair labor practices and objections to an election.
3. Whether Respondent issued written reprimands to, and subsequently discharged, employee Steve Thiellen because of his union or other protected concerted activities and because he gave testimony under the Act.
4. Whether Respondent discharged employee William LeRoy Keys, Jr., because of his union or other protected concerted activities and because he gave testimony under the Act.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all times material herein, Respondent has been a corporation engaged in the design, production, distribution, and nonretail sale of motorcycles and other diversifield recreational products at various facilities including a facility located at Lincoln, Nebraska (the Lincoln facility). Respondent, in the course and conduct of its business operations within the State of Nebraska, annually sells goods and services valued in excess of $50,000, directly to customers located outside the State of Nebraska.

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

III. BACKGROUND

Certain of Respondent's employees became interested in union representation in late 1975. An abortive organizational campaign by a Teamsters local ended in early spring 1976 when the employees determined they did not want the Teamsters to represent them. In the spring or early summer of 1976, the Allied Industrial Workers of America, AFL-CIO, commenced an organizational campaign. During the course of this campaign an unfair labor practice hearing was held on the allegations that one of Respondent's first-line supervisors had engaged in surveillance and/or the impression of surveillance of em-

ployees' union activities, that a union activist was discharged because of his union activities, and that a second employee's discharge was so intertwined with that of the union activist that his discharge was also violative of the Act. The Board found that, while the supervisor had engaged in surveillance and the impression thereof, the ill effects of this conduct had been expunged by a subsequent notice posted by Respondent disclaiming the action of the supervisor and assuring employees of their right to join or not to join a union without supervisory interference. The Board further found that the two alleged discriminatees had been discharged lawfully for falsification of Respondent's timecard records. Accordingly, the complaint was dismissed in its entirety.[1]

In 1978 an organizational campaign by the Union herein culminated in a Board election conducted on June 2. On September 29, 1978, Respondent agreed with the Regional Director to void and set aside the results of that election. Pursuant thereto, and to a supplemental decision on objections and an order setting aside the election, which issued October 18, 1978, a rerun election by secret ballot was conducted on April 19, 1979. The Union filed timely objections to the conduct of the election. Thereafter the objections were consolidated with unfair labor practice complaints which allege various independent violations of Section 8(a)(1) of the Act and the unlawful discharges of two employees, who had been open advocates of the Union during both preelection campaigns, because of their union activity. A hearing therein was held on various dates in August, September, November 1979, and January 1980. Thiellen and Berg testified during that hearing and their testimony was credited by the administrative law judge who based certain findings thereon. The Board affirmed the findings and conclusions of the administrative law judge that Respondent had violated Section 8(a)(1) and (3) of the Act by the discharge of one employee and had violated Section 8(a)(1) of the Act by promise of benefits to employees in order to persuade them to stop supporting the Union; by threatening to make the employees' selection of a union futile; and by threatening to discharge employees, to impose more onerous job duties, to close or move the plant or its work, and to withhold promotions, job reviews or benefits, because of their activities on behalf of, or support for, the Union. The discharge of the second employee was found to be lawful, certain of the objections were sustained, and the election of April 8, 1979, was set aside. At the time of the hearing herein, the Board decision and order was pending before a circuit court of appeals.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

The complaint herein alleges no independent violations of Section 8(a)(1). There is little evidence to establish that the alleged discriminatees herein, subsequent to the April 1979 election, had engaged in union activities different in kind from that of other employees. Essentially the General Counsel's theory of motivation is based on preelection activity and the fact that Thiellen, Keys, and Berg gave testimony in the prior Board proceeding in late 1979 and early 1980. The Charging Party contends that inasmuch as the Board's direction of a second rerun election is still pending, Respondent is engaging in what are essentially preelection unfair labor practices and that Respondent's continuing unlawful conduct makes a fair rerun election doubtful or impossible and that the only remedy that can effectuate the Act is a bargaining order.

A. *The Discrimination Against Steve Thiellen*

1. Facts

Thiellen was employed at the Lincoln facility from August 28, 1978, through January 27, 1981, on which date he was discharged. During most of his employment and at the time of the alleged discriminations herein, he worked as a spray painter on the first shift in the black line department. Shortly after his employment commenced, Thiellen became a member of the union organizing committee and frequently wore union T-shirts and a union button which indicated that he was on the organizing committee. The only evidence as to postelection union activity by Thiellen other than remaining a member of an organizing committee that was not actively engaged in organizing is that in the spring or early summer of 1980 he prepared and, along with other employees, distributed two pieces of prounion literature.

The only evidence of union animus directed towards Thiellen occurred in 1979. Thiellen's supervisor was discharged in April 1979 shortly after the election. According to Thiellen's undenied testimony, in early May 1979 Jack Callender, the temporary head of the finishing department,[2] called Thiellen into his office. Present were Callender, Stan Hanson, production manager, and Dick Weyer, a foreman in the finishing department. Callender referred to a statement Thiellen had made to an employee that he thought his supervisor, Tina Parmley, had been discharged because her department went union; and said he did not want Thiellen talking about any controversial subjects, that if he was caught talking about any controversial subjects Callender had taken away 100 people's jobs in the past and he would do it again, that he would do what he had to do if Thiellen was caught talking about any controversial subjects.[3]

After Parmley's discharge, Jan Temple replaced her as the paint and black line department foreman. Later in May, Callender gave Thiellen his semiannual evaluation in which he scored him 70 out of a possible 100 points. Temple was present. Callender told Thiellen that if he had scored him any lower on congeniality, it would be real tough on Thiellen. Thiellen said he had never had any disagreement with fellow employees over anything but union issues. He further told Temple that he did not appreciate her going around taking some kind of a popularity poll on him with certain employees in the department. Thiellen also said that the only reason he ever had any problems was over discussions about the Union during the election and that was the only reason Cal-

[1] *Kawasaki Motors Corp.*, 231 NLRB 1151 (1977).

[2] The black line department is a part of the finishing department.

[3] During the prior proceeding which was heard in 1979 and 1980, Thiellen's testimony was credited that both Callender and Parmley had made certain unlawful threats.

lender was scoring him so low. Callender said, "Well, if I scored you on that you wouldn't be here." Temple said, "Well, it started out over union issues but it turned into something more." Thiellen reiterated that the only disagreement he had with fellow employees was over the Union.

About early June, Murray Johnson became general foreman in the finishing department and continued in that job until August or September 1979 when he asked to be removed from that position. During the time that Johnson was general foreman, Callender was general foreman on the second shift. Johnson was replaced as first-shift foreman by Callender. Thiellen testified that in late June 1979, Johnson told him that he was a steady worker and had good attendance and that he had defended Thiellen in front of management. In December 1979, Thiellen went hunting with Johnson. At that time Johnson told him that during a meeting he had in June 1979 with Plant Manager Dennis Butt, Hanson, and Callender, Thiellen had been described as a union agitator, one the Company could well do without.

Thiellen testified that Temple gave him an evaluation in late July or early August 1979 in which she scored him 90 out of a possible 100. At the time she told him she appreciated his showing her how the line ran and how the parts were set up. She further told Thiellen that he did a good job in training new employees and showing them the ropes. However, according to Thiellen, when Callender resumed the position of general foreman, Temple's attitude towards him became much harsher. For example, in April 1980 she chastised Brandon and Thiellen for reading the paper while they were working and when Thiellen pointed out some other employees who were openly reading magazines and not doing anything, Temple replied, "I'm talking about you two individually and that is it." Also, according to Thiellen, in June 1980, around the time that Thiellen and other employees distributed union pamphlets, Thiellen was in the breakroom when another employee jerked a racing form away from him and spilled some coffee on it. Thiellen responded by flicking coffee at the employee, some of which splashed on employee Helen Hasty. Hasty testified that during lunch, Temple, who was her supervisor, asked why Hasty was angry and Hasty related the coffee incident. Temple pulled out a book and said Thiellen had violated a rule and asked if she should report it to Callender. Hasty said no, that it would cause more trouble than it was worth and she would get over being angry. Nevertheless, Temple apparently reported the incident to Callender for Callender called Thiellen, Temple, and the other employee, Rocky Paine, into his office. At that time, Callender said a third party had complained about Thiellen's behavior in the lunchroom and he wanted to know what happened. At the conclusion of the discussion, Callender said it was not a company rule violation. In late July 1980,[4] Temple was replaced by Clay Smith who remained Thiellen's supervisor until Thiellen's discharge.

Johnson testified that in late summer 1979 he and Callender were discussing the Union and "people problems." Thiellen was discussed. Callender said, "One way or another we would like to get rid of the son of bitch." Callender did not testify. Johnson further testified that in late summer 1979 he and Personnel Manager Robert Summers were discussing finishing problems, people in general, the Union, and Thiellen. Summers said, "We would like to get rid of that sucker." Johnson replied that Thiellen was at work every day on time, did his job, worked overtime when it was necessary and, as far as he was concerned, those were the important things. Johnson also testified that in April or May 1979, during a general conversation between him and Summers, Summers referred to Thiellen as a ringleader or kingpin, an agitator, and said they would be better off without him. Johnson also testified that on four other occasions Summers had made remarks to the effect that Respondent would be better off without Thiellen. These conversations occurred from April or May 1979 until around October 1979 when Johnson was transferred out of the finishing department. Other supervisors were present during some of these conversations. During one conversation, Callender referred to Thiellen as a "union agitating son of bitch." Johnson also testified that he had several conversations with Summers during which Summers said something to the effect that they needed to get rid of that union pusher Thiellen. Johson admits that he and Summers never sat down and tried to figure out a way to get rid of Thiellen, nor does he know if Summers or Callender ever tried to do so. No one ever said anything to him in 1980 about getting Thiellen. Johnson left Respondent's employ in November. Some of the supervisors allegedly present during these conversations did not testify; others—Clay Smith and Hanson—did testify but were not questioned in this regard.

a. *The October 20 reprimand*

Thiellen was a painter assigned to the black line. He and another painter worked side by side on a line in the paint room using air spray guns to apply a second coat of black paint to various parts. When the item reaches the first painter stationed on the line he paints one side of the part; the part spins around and the second painter paints the other side. Occasionally a painter works by himself, principally during breaks. Usually painting one side of a frame is no more difficult than painting the other side, once the painter adjusts to the difference in pattern. Thiellen was also responsible for adjusting the two Ransburgs in the paint room. The Ransburgs are automatic electrostatic painters which move up and down and throw primer paint off of a disc with one of the Ransburgs throwing paint onto one side of the part and the second Ransburg onto the other side of the part.

On October 17, Mike Bradon and Thiellen were painting some KX frames when Thiellen noticed that the Ransburgs were not throwing paint. He left the stand to adjust the Ransburgs which meant that Brandon had to paint both sides of the frame. Additionally, at this point, according to Thiellen, the frames began coming down the line in an upside-down position from the way they had previously been positioned that day.

[4] Unless otherwise indicated, all dates in January and February are in 1981 and all other dates are in 1980.

On October 20, Thiellen and Brandon were called into Callender's office. Present were Callender, Clay Smith, and Steve Eicher, the assistant personnel manager, and Stand Hanson, the production manager. Brandon and Thiellen were asked what happened on the previous Friday to the frames. They explained that the Ransburg had quit and the frames were coming in upside-down. Brandon said it was probably his fault because he had never painted frames, especially upside-down. Thiellen and Brandon were told that was no excuse for Thiellen, that they were both responsible for the light frames, and that this should be considered as a verbal reprimand. Smith said he was tired of all the excuses. Brandon asked if they could see the frames after the meeting and was told that the leadman was repairing them while they were in the meeting.[5] According to Thiellen, that week he and Brandon had painted a total of about 900 frames and only 11 frames were found bad.

Clay Smith testified that during the meeting on October 20 in Callender's office he asked Thiellen and Brandon if there were any problems Friday afternoon with any of the equipment or any of the frames. They answered no. At that point, according to Smith, he asked them if they knew anything about a number of frames that had been mispainted on the line. They replied no.[6] Smith then went on to explain the absence of paint on the headpipe extending down to the lower pipe of 11 frames. Smith denies that Brandon said anything, or that either of them said anything, to the effect that it was the fault of one or not the fault of the other or that one painter was doing something else. According to him, they did not really offer any excuses but just said they would try to do better. Smith further testified that the KX frame is a frame for a motorcycle dirt bike and that because of holes in the headpipe this particular frame is always run upside-down for if it was positioned right-side-up, which is the normal way of running through a street bike, the headpipe would fill with water as it passed through the washer. Although this would not prevent the frame from being painted properly, once the frame went into the oven where the paint is dried, the water would boil out of the frame, ruining the paint. KX frames had been run that way since September. The portion of these 11 frames that had not been painted was on the bottom which indicated to him that the painters did not get down and spray it.

On October 23, Smith prepared a memo to the files of Brandon and Thiellen, the body of which reads:

> On Fridy, October 17th, during the last daily run, 11 of the 75 KX frames were so poorly painted that in order to touch them up they had to be run back through the paint booth.
>
> Conversations had been held earlier in the week regarding other parts and the need for the painters to be more aware of what they were actually doing while painting. What ensued that Friday afternoon with the frames could have been avoided if the painters would have paid attention to the earlier discussions throughout the week.
>
> A discussion was held during the morning of October 20th. Present throughout this discussion were: Mike Brandon-Painter, Steve Thiellen-Painter, Jack Callender-General Foreman, myself, & Steve Eicher-Personnel Asst. The purpose of this discussion was to ascertain the awareness of the two painters as to what had happened on Friday, October 17th. After finding that neither painter had been aware of the problem, the following points were stressed:
>
> 1. Responsibility
> 2. Concern for the job (awareness or lack of)
> 3. Adaptability by the painters to get the job done
>
> Throughout the discussion it was stressed that because of a deficiency in one or more of these three areas by the painters all 11 frames in question did not get painted properly.
>
> During this discussion it was also made clear that incidents of this nature were not tollerable [sic] to the operation of the line. When the discussion was finally concluded the painters left with no doubt as to the expectations of supervision and what they had to do in order to achieve a satisfactory performance in their job.

b. *The November 21 written reprimand*

On November 19 Thiellen was working in the paint room with painter Vern Duncan. When they began work at 6 a.m., KX mufflers were on the line. According to Thiellen, they were using a new kind of paint which they had never used before, called Reliance paint. Prior thereto they had used a Japanese imported paint for any parts requiring high temperature. Also, the Ransburgs were not operative because they were too low on paint. Each Ransburg holds 10 gallons of paint and that morning, according to Thiellen, there were approximately 2 gallons of paint in each of the Ransburgs. Greg Watson, a paint mixer, came in and put Ransburg paint into the air-driven handsprayers used by the painters. Thiellen asked Watson what he was doing. Watson said there was no paint, that Clay Smith did not order enough high heat Japanese paint to make it through the run. Thiellen asked if that was Watson's fault. Watson said Clay did not order it, so "I did not order it." Thiellen testified that he cannot recall ever using the Ransburg paint in the air-driven guns before. According to Thiellen, the Ransburg paint is thinner than the paint used in the air-driven hand spray gun because the Ransburg is an electrically charged unit so the paint does not have to be as thick to ensure proper coverage. They had a lot of problems for about a half hour. Thiellen kept asking Duncan if the parts were good, to which Duncan replied that the paint did not seem to be covering the parts properly. Thiellen kept trying to adjust his gun for heavier paint but the paint was still failing to adhere to the parts properly. After about a half hour of these adjustment attempts,

[5] Brandon testified that the meeting lasted about one-half hour and that it requires about 2 hours for 11 frames to run through the system.

[6] Thiellen admits that at first he and Brandon were "a little fuzzy" as to what they were being questioned about.

Thiellen asked Duncan, "How are they now?" Duncan replied, "Let's run them," and they did.

Thiellen testified that about 8:30 a.m. Smith came in and said they had been "screwing" the line for a half hour and what was the matter with them, that there were bare seams on the mufflers. Thiellen explained what the problems were.[7] Smith said those were just excuses and left. Thiellen remained on the paint line until about 11 a.m. At 11:15 a.m. he took his lunchbreak. On his way to the lunchroom, Smith met him in the hallway and commenced yelling in his ear as they walked to the lunchroom, "Why were those parts bad, why were those parts bad?" Thiellen said the paint was not holding and the Ransburgs were not working. Smith said, "I'm tired of your goddamned fucking excuses. Excuses, that is all I hear out of you." As Thiellen was returning from the lunchroom, Smith met him at the bottom of the stairs and again said, "I want to know why those parts were bad, why were they bad?" Thiellen said, "Clay, I told you the Ransburgs were down, the paint wasn't covering, we didn't have any flashlights, all our equipment is gone, to check the parts. We were not even allowed to clean our guns."[8] Duncan did not testify.

Thiellen testified that late afternoon November 21 he was called into Callender's office. Callender and Clay Smith were present. Duncan was not. According to Thiellen, Callender said he wanted to talk to him about the KX mufflers, that is, if Thiellen even cared about his job. Thiellen said he always cared about his job. Callender asked why the mufflers were painted bad. Thiellen said because of the problems they had and because they had nothing with which to check the parts, Thiellen also said the Ransburgs were not working and that no one could paint the parts correctly without the Ransburgs and in the condition in which their equipment was. Smith and Callender said those were just excuses. Thiellen also said he had never seen the parts that they said were painted bad. Callender said to Smith, "From now on, Clay, if it is going to be serious enough for these people to get written up for, the parts missing, then they should be shown them. The men should be shown the parts." According to Thiellen, Smith never showed him the bad parts. During this meeting, Thiellen was given a written reprimand signed by Smith and dated November 21, the body of which reads:

> On Monday, October 20, 1980 you were talked to, at length, by myself and Jack Callender regarding substandard painting of KX frames. In addition, you had been told earlier in the previous week to be more aware of what you were doing during the painting process.
>
> Subsequently on Wednesday, November 19, 1980 while painting KX mufflers, a number of parts were again mispainted by having a very light cover in overlaping [sic] spray areas. This is in violation of Company Work Rule #23.
>
> #23 "Unsatisfactory work performance" after attention has been called to same.
>
> Due to this fact, I am giving you this written reprimand which I hope will impress on you the seriousness of this problem. Failure to correct this situation in the future will result in further disciplinary action and possible termination.
>
> I am asking for a commitment from you to make full efforts to improve your performance in the future by signing below.

The bottom of the reprimand is a typed notation, "I have read this notice and discussed it with my supervisor," which Thiellen signed and dated. Duncan was given a reprimand also on that date which was basically the same as that issued to Thiellen except it did not include the first and the last paragraphs of the Thiellen reprimand. Also, Duncan's reprimand recites that the mispainting resulted in a production delay as well as additional time and expense to repaint them.

Smith testified that on that particular morning they were down to the last 25 of a run of KX dirt bikes prior to switching over to DX dirt bikes and the foreman and employees on the KX assembly line were waiting for the mufflers on which Thiellen and Duncan were working. These mufflers, which are imported from Japan, were the last mufflers in the plant. That morning it was called to his attention that the paint line had been turned off a couple of times. Smith went into the paint room to investigate and found that the 25 mufflers were just entering the booth. According to Smith's undenied testimony, he explained to Thiellen and Duncan the present need for the mufflers and the circumstances over the assembly line. He further told them that since the Ransburgs were not working, they could turn the line off as many times as necessary to get the mufflers good. Nevertheless, after spending approximately 30 minutes on the mufflers, the mufflers came through barren of paint on a stripe down the side about 2 inches in width. Smith further testified that the mufflers had to be scrapped because with that particular type of paint you cannot recoat the part, for if you do the paint is lifted off. In order to repaint, every speck of paint would have to be removed to prevent subsequent lifting. At that time, Respondent did not have a sandblaster and, with sandscraping, all of the paint could not be removed.

Clay Smith further testified that he and Callender spoke to Thiellen and Duncan together in Callender's office. According to him, he said he thought there was no reason for those mufflers to have been left in such condition, that it was due to their inattentiveness and lack of responsibility to the job situation that was provid-

[7] Thiellen did not testify as to specifically what he said to Smith.

[8] Thiellen contends that in order to determine if parts are painted correctly, one has to leave the platform on which the painters work to check them and that a flashlight is necessary in order to get underneath and look at the parts. According to him, he had asked Smith and Callender for a flashlight but had not been given one. Previously, when Dan Dakin was his painting partner prior to September, Dakin had a flashlight. Also, he complained that they were not provided time to clean their spray guns. Smith denies that painters who work as sprayers in the paint booth need to use a flashlight. According to him, there is plenty of light in the booth and he has never seen a sprayer use a flashlight. Finishing technicians do use flashlights. Smith also testified that painters should clean their paint guns every day and that they have an opportunity to do so because there are anywhere from 6 to 20 gaps or spaces between each set of parts. He does not recollect hearing any painters complain of insufficient time to clean their spray guns.

ed for them to get those mufflers. Duncan accepted the reprimand without comment. Thiellen said the parts were improperly painted because he could not see the area which had been left bare, so he was unable to determine whether it was painted properly. Smith said there was no reason for him not to be able to see it.

Smith also testified that after he informed Duncan and Thiellen of the condition of the parts, they went on break. As they walked out, he continued to discuss the mufflers with them. They stopped by the "un-hang" area just outside the oven. The mufflers were coming down at the time. Duncan stopped and looked at them, but Thiellen continued on to break without stopping. Smith denies that he screamed anything at Thiellen at this time. According to Smith, he saw Thiellen walk by the mufflers again, for the second time, when Thiellen returned from break; so Smith thought it necessary to make Thiellen aware that the mufflers did exist and that he should take a look at them. He therefore asked Thiellen if he saw the mufflers. Thiellen said yes, which, according to Smith, was clearly untrue since he saw Thiellen both when he went to break and when he returned from break and neither time did he stop and look at the mufflers. Duncan looked at them both times. After Thiellen untruthfully told him that he had seen the mufflers, Smith walked him back to the paint room. According to Smith, he was upset, disgusted, and irritated. He did not understand how Thiellen could be so inattentive to the problem that had just occurred so he was talking to him rather loudly as they walked back to the paint room. Smith further testified that Thiellen did not offer the use of the hand spray guns as a reason for the bad parts. According to Smith, this would not have been an acceptable excuse because there was nothing wrong with the paint and it would cover parts with or without the Ransburgs. If the part is painted by the Ransburg, the paint atomizes off of a disc; if the paint is used in a spray gun, then it atomizes out of this gun. According to him, the paint in the Ransburg is not electrically charged, as contended by Thiellen; rather, the part is.

c. *Thiellen's discharge*

On January 26, Randy Retzlaff was Thiellen's painting partner. According to Thiellen, when they returned from lunch and started painting, he noticed that the Ransburg had run out of paint completely so that the parts were not being given a prime coat. He left the platform and proceeded to turn on the valves to fill the paint pot, a 10-gallon receptacle that holds the paint used for the Ransburg. Because of frequent incidents of the pot overflowing, Smith had the paint pot placed inside a half 55-gallon drum so that the half drum, which had a capacity of about 20 gallons, could receive any overflow. On the morning of January 26, as the paint pots were filling, according to Thiellen, he went back and forth to watch the pots filling. However, Retzlaff was getting behind on the line so he went back to the line to help him. They worked pretty furiously to catch up and by the time they caught up Thiellen looked around and paint was on the floor. He jumped off the platform and turned off the valves and thereafter he and Retzlaff went back and forth from the painting stand to the Ransburg pot to clean the paint up.

Thiellen further testified that while they were cleaning it up, leadman Joel Claussen came into the department. Retzlaff turned to him and said, "Ha-ha, look at there, look at what Steve did. He made a mistake and there is a little paint on the floor." Claussen left the room and a few minutes later Clay Smith came in. Smith went over to the Ransburg and said, "There is some paint on the floor. Who did that?" Thiellen said, "Well, I guess I did it, but it was not my job to be doing it anyway." Smith said, "Well, it is anybody's job who sees that there is not any paint in the Ransburg." Thiellen said that was "bullshit," that when he was working the previous week as a reliever, he refilled the pots for the painters every day and was expected to. According to Thiellen, Smith just shook his head and left. Thiellen further testified that he and Retzlaff then got a clean barrel from the paint mix room, scooped all of the paint out of the safety barrels and put it in a clean barrel and returned it to the mix room to have it run back through the Ransburgh so that they saved the paint. Only approximately 3 gallons of paint spilled on the floor. Thiellen testified that Helen Hasty and Mike Brandon relieved him for lunch that day and that it was the responsibility of the relievers to refill the pots.

Smith testified, without contradiction, that earlier in November he had a meeting with the painters regarding a series of paint spills which had occurred over the past 6 months or so. Present were Vern Duncan, Joel Claussen, Mike Brandon, Steve Thiellen, and perhaps Helen Hasty. At that time, Smith told these painters who worked for him that if there were any more paint spills there would be a reprimand. Additionally, prior to this meeting, Smith had spoken to painters, including Brandon and Thiellen, regarding paint spills. These conversations were in the nature of verbal reprimands. Since the November meeting, all paint spills have resulted in written reprimands.

Smith testified that on January 26 his leadman told him he should go to the paint room. When he walked into the paint room, there was a paint spill on the floor. Smith asked who had done it and Thiellen gestured with his hand to indicate that he had done it. According to Smith, he did not say anything at that point; he just walked out of the room. Smith estimates the spillage at approximately 4 gallons.

Smith testified that during the meeting in November he made it very explicit that it was the sole responsibility of the painters, not the relievers or the leadman or the supervisor or the general foreman or of the hang people, to fill and maintain the paint pots. According to him, circumstances changed so often that you could not make anyone else responsible for it because they do not work in that area. The only persons in there throughout the entire day would be the painters, so the responsibility had to be theirs. It takes approximately 5 minutes to fill a paint pot. When it is filled, you stop the flow of paint by turning the valve off.

Smith testified that the spill occurred about 2 p.m. Later that afternoon, he discussed the incident with

Eicher, Summers, and Callender. They discussed that this was Thiellen's third reprimand in a 4-month period and that Smith was somewhat unsure what to do with him. Smith said that there was no progress being made as far as Thiellen's ability and no change of attitude from the time Smith had first become his supervisor. They were trying to decide whether to continue the reprimands or to terminate him. Smith's position was that there was no reason to continue with the written reprimands since the disciplinary action that had already been taken had no effect whatsoever.

According to Smith, the meeting that he had with employees regarding paint spillage was on his birthday, November 25. He explained to them that, because of the cost factor involved with spilling paint, the amount of time it took to clean it up, the lost material, and the excessive number of times that it was happening, he would not tolerate it anymore. He said that with the safety liner around the pot they should not have any trouble with spillages, but if it did happen again they should expect a minimum of a written reprimand. He also made it explicit that the painters, and only the painters, were responsible for filling the pots. Thereafter, painters other than Thiellen were given written reprimands for overflowing the paint pots—John Pugh on January 16, Randy Retzlaff on March 3, 1981, and Richard Goodwin on July 13, 1981.

According to Thiellen, shortly after Thiellen reported to work on January 27, Smith took him to Summers' office. Summers, Eicher, and Callender were present. Callender did the talking. Callender said, "I understand from Clay Smith that you spilled some paint on the floor yesterday. In view of your rule 23 write-ups, you are being immediately terminated. I want your glasses and I.D. badge." Thiellen responded, "Well, plenty of other people have spilled paint on the floor and were not fired for it." Callender said, "I'm not talking about anyone else, I'm just talking about you as an individual." Thiellen said, "My other write-ups were for light paint covers, not for paint spills." Callender said, "That does not make any difference, it is all the same thing." Thiellen said, "The only reason you are firing me, Jack, is because I organized for the union." Callender said, "We did not say anything about that now, did we?" Thiellen said they were nothing but slime and that he could not believe he was getting fired for such a little reason.

Smith testified that Thiellen was terminated because he had received three reprimands in 4 months, there was no improvement over any of that period of time, and his performance progressively got worse, or at best stayed the same. As to the termination interview, Smith testified only that as he recalled Thiellen could not believe that he was being discharged and that he uttered a couple of obscenities but Smith could not recall what they were. After he was told he was terminated, Thiellen asked Smith for some kind of defense in his behalf. Smith replied that he had nothing to say further than what he had said for the past 6 months.

2. Conclusions

The General Counsel contends that Respondent's disciminatory motivation for Thiellen's discharge and for the October 20 and November 21, 1980, disciplinary warning letters is evidenced by the animus toward Thiellen's union activity expressed by Summers to Johnson in late April or early May 1979, by Callender to Johnson in late summer 1979, and by Callender to Thiellen in early May 1979; the manifestations of Callender's animus as shown by his May 1979 evaluation of Thiellen and Temple's negative attitude toward Thiellen while she was under Callender's supervision; Thiellen's previous "excellent" attendance and work record; the existence of "genuine production problems" which contributed to the October 20 and November 21 incidents; the ignoring of Brandon's acceptance of blame for the October 20 incident; and by the fact that Clay Smith had never issued disciplinary warning notices for light paint other than for those two incidents. The General Counsel argues that this all indicates that Respondent was deliberately seizing upon any mistakes made by Thiellen so as to justify his discharge.

It is undisputed that Respondent's disciplinary policy for general rule violations is a progressive one with termination possible upon a third violation[9] and that unsatisfactory work performance is a general rule violation. It is also undisputed that if a year elapses without further warnings, earlier warnings are removed from this progression. It is further undisputed that at least one employee, Sorrell, received five warnings within a 6-month period before he was discharged in July 1979.[10] There is no other evidence in the record as to Respondent's implementation of its progressive disciplinary policy. In the circumstances I find that the record does not establish that Respondent's usual practice is to terminate an employee only after more than three violations. Accordingly, I conclude that the mere fact of Thiellen's termination upon the occurrence of the third incident is insufficient to establish disparate treatment.

For the reasons set forth above, the General Counsel contends that the October 20 warning letter was discriminatorily motivated. The most persuasive of these is that apparently light paint was not an unusual occurrence and normally employees were not written up therefor. However, the critical question is whether the circumstances are such as to support an inference that Thiellen would not have received a written reprimand were it not for his union activities.

Respondent argues that the inferior quality of the paint finish on bikes produced in the Lincoln facility was a matter of concern which intensified about the time of the October warning. In October the results of a poll showed that dealers considered Respondent's Lincoln-produced bikes comparable to those produced in Japan with the exception of the paint finish, which was considered inferior, and an article to this effect was published in October. As an indication of his concern, about this time Butt circulated a memo to supervisors regarding the

[9] Absenteeism is treated separately.

[10] The Charging Party argues that disparate treatment is shown by the fact that employee Richard Goodwin was not discharged even though he received warnings in June 1980 and March, July, and August 1981. However, I note that the March warning was for absenteeism and that more than a year elapsed between the June 1980 and the July 1981 warnings.

problem and earlier, during the week of the incident, the painters had been cautioned about being more careful in their work.

It was against this background that Thiellen and Brandon improperly painted the 11 frames under circumstances which precluded retouching the paint finish without any particular notice being taken of the problem. According to Smith's undenied testimony, Respondent was operating on a daily inventory system so that the frames—which were the end of the run—were needed for immediate use on the assembly line, rather than for inventory. However, a portion of the mispainted frames was completely barren of paint so that, in order to retouch the finish, the frames had to be run through the paint booth again, a process that required 2-1/2 hours.[11] According to Smith, such an occurrence would come to the immediate attention of management which tended to cause him difficulties.

I credit Smith and Dakin that the quality of the paint finish is the responsibility of both painters, and credit Dakin that generally it is impossible to ascertain fault as between the two painters for an improperly painted part. Moreover, according to Thiellen's testimony on cross-examination, Brandon did not definitely state that he was the one who had mispainted the frames. He merely said it was probably his fault. I therefore do not conclude, as argued by the General Counsel, that Thiellen was reprimand deliberately for an error he did not make.

I further conclude that Thiellen's union activity, his testimony in opposition to Respondent's position during the prior Board proceeding, and the expressions of animus toward Thiellen are too remote to support an inference of unlawful motivation. In this regard, I note the absence of evidence that following the rerun election in April 1979 Respondent engaged in any independent violations of Section 8(a)(1) of the Act. I also note that Respondent did not avail itself of opportunities closer in time to the Union's campaign and Thiellen's activities in support thereof to discipline Thiellen for incidents of paint spillage, inadequate painting, and distributing union literature in work areas. Further, in October 1979 following the period of Thiellen's active advocacy of the Union and after the expressions of animus, Thiellen was promoted to the painter classification with an accompanying wage increase of $1.60 a hour. This is not the conduct of an employer bent on punishing or ridding itself of a leading union adherent, nor is there any evidence to explain why, after ignoring past opportunities, Respondent would suddenly embark upon a course designed to rid itself of Thiellen because of his union activities.

In the circumstances, I find that the record does not support a conclusion that Thiellen was reprimanded for the October incident because of his union activities or his testimony in a prior Board proceeding. Rather, I conclude that Thiellen and Brandon had the misfortune to mispaint the frames so badly that they had to be rerun through the 2-1/2 hour process at a time when management and supervision were particularly sensitive to the problem of inferior paint quality and that Thiellen would have been so reprimanded even if he had not engaged in union activity or testified in opposition to Respondent's position.

As to the subsequent disciplinary action against Thiellen, I conclude that the evidence does not establish disparate treatment in considering the November light paint and the January paint spill incidents as warranting disciplinary action. As to the November light paint incident, I credit Smith's undenied testimony that he explained to Thiellen and Duncan the critical need for the mufflers they were to paint and instructed them that since the Ransburgs were inoperative they could shut off the line, if necessary, in order to ensure that the mufflers were painted properly. Nevertheless, they ran the parts through even though the paint was not adhering properly. It does not appear unreasonable to discipline an employee in these circumstances even if written reprimands are not normally given for light paint.

As to the January paint spill, it was clearly caused by Thiellen's carelessness. There is no evidence that any abnormal situation existed which caused Thiellen to allow the paint to overflow. It is apparent that he returned to the line and simply forgot that he was filling the paint pots. On November 25, Smith warned the painters that any future paint spills would result in a written reprimand. Thereafter, several painters other than Thiellen were given written reprimands for spilling paint and there is no evidence that any employee after November 25 spilled paint without receiving a reprimand.

I find that the same conclusions as to motivation set forth above as to the October reprimand are equally applicable to these subsequent disciplinary actions. In all of the circumstances, I find that the record does not support a conclusion that Thiellen was reprimanded in November and discharged in January because of his union activities or his testimony in prior Board proceedings and that Respondent has established that he would have been reprimanded in October and November and discharged in January even if he had not been a union adherent. Accordingly, I find that Respondent did not violate the Act by issuing Thiellen reprimands on October 23 and November 21 nor by discharging him on January 27.

B. *The Discharge of William Leroy Keyes Jr.*

1. Facts

Keyes was employed by Respondent from October 1975 until May 1977 and from May 1978 until December 23, 1980, the date of his discharge. In April 1979, prior to the second election, he commenced engaging in activities on behalf of the Union. He was an organizer, wore union buttons and T-shirts with the union insignia, distributed literature at Respondent's facility, and was an advocate of the Union in discussions with fellow employees. Additionally, he testified in an NLRB proceeding in November 1979.

As a transfer cart assembler, Keyes' job was to coordinate three assembly lines, put ball bearings into the top

[11] Smith impressed me as a reliable witness as to the painting operations. However, I did find him to be not particularly reliable as to the number of times he spoke to Thiellen regarding light paint. He seemed inclined to overstatement in this regard. On the other hand, Thiellen's testimony was colored by his concern with excusing his performance.

and bottom of the frame head pipe, assemble the front assembly onto the frame, and assemble the gauges onto the front fork assembly. These operations required the use of a red grease which discolored the hands. Keyes' undenied testimony is that sometimes a bike would arrive at his work station either misassembled or with defective parts. This required him to stop the line, usually for no more than 10 to 20 seconds, so that he could complete properly the operation performed at his work station. Keyes was the only regular transfer cart assembler. Dennis Wade, the lead person, relieved Keyes for breaks.

Since at least the fall of 1979, Respondent has maintained what is referred to as a green card system. Locked boxes are located throughout the plant with green cards alongside which read:

> *WE NEED YOUR COMMENTS*
>
> Kawasaki wants and needs your criticisms, complaints, suggestions and comments. If you are displeased with us, let us know. If you like what is being done, tell us so we will continue. If the job should be done better, make sure your ideas are known.
>
> Use this form to let us know that we have not been listening well enough. The Personnel Manager will collect the completed forms, but you can direct your comments to anyone you desire.
>
> All signed comments will be discussed with you personally.
>
> Your comments will be treated confidentially if you so desire.

Any employee desirous of doing so may fill out a green card and place it in the box. Respondent's personnel administrator collects the cards from the boxes at least twice a week. All cards are answered in some manner, either by direct communication with the employee who signed the card or by publishing the answer to all employees.

On November 4, 82 employees signed a green card communication protesting the announced holiday schedule providing for a holiday period of Wednesday, December 24, through Sunday, December 28, and January 1; and requesting that December 24 be traded for January 2 so that the employees could have two 4-day weekends. In response thereto, on November 2, Respondent conducted a written holiday survey which requested employees to indicate their approval or disapproval of a proposed plant shutdown from 2 p.m. December 24 until January 5, 1981. The proposal contemplated that the first shift would work on December 24 from 6 a.m. to 2:30 p.m. and that the second shift would work on Sunday, December 21, instead of on December 24. On November 11, Respondent posted the results of the holiday survey which indicated that 502 out of the 541 employees who responded to the survey approved of the Christmas shutdown as proposed by Respondent.

On November 17, Keyes prepared a green card communication signed by him and 42 other employees, which reads:

> In regards to the Christmas shutdown; we would like to change the hours of Wed. Dec. 24, to Saturday, Dec. 20, so people could travel on Christmas Eve Day.

Keyes' was the first signature on the card.

On November 20, Respondent posted the following response.

> Some of you have requested that we change the hours of Wednesday, December 24th, to Saturday, December 20th, so people could travel on Christmas Eve Day.
>
> > The Federal Wage & Hour Law, as it applies to our pay periods, would require that Saturday, December 20th, be paid as overtime which would be uneconomical. That is to say that the cost involved would be half again as much to produce on Saturday what we are scheduled to produce on Wednesday, December 24th.
> >
> > We have done the best with what we have to work with as far as the production schedule, holiday time and the proposed Christmas shutdown schedule that was overwhelmingly (93.2%) supported by the employees.
> >
> > Thank you for the good suggestion. We are sorry that it will not be possible.

On Monday, December 22, Keyes learned that the second shift had worked Saturday, December 20, instead of working as scheduled on Sunday, December 21. Whereupon he went to Summers' office to complain that the second shift was permitted to work that Saturday whereas the first shift was not. According to Keyes, Summers told him that it was necessary for the second shift to work that Saturday so that the employees on first shift would have something to do on Monday. As between working Saturday or working Sunday, Summers said it did not make any differences since the second shift would have to be paid time and half to work either day. Keyes said it was a special privilege to pay the second shift time and a half that the first shift wanted the same privilege. Keyes further said that Summers' explanation was "bullshit" and he did not believe a word of it.

Keyes then returned to his assembly area, related to Production Supervisor Ed Tomkiewicz what Summers had said, and requested Tomkiewicz to speak to the general foreman as to whether what Summers said was true. Tomkiewicz said he would get back to Keyes the next morning. On the morning of Tuesday, December 23, Keyes told Tomkiewicz that there was no use, they were scheduled to work and that Tomkiewicz should just forget what Keyes had requested him to do the previous day.

Later that day, Tomkiewicz interrupted Keyes' work and escorted him to the office of Don VandeWalker, general foreman of assembly I, where they spoke to VandeWalker. According to Keyes, Tomkiewicz said he wanted Keyes to tell them as accurately as possible about the troubles and the slowdown on the line on De-

cember 22 and 23. Keyes explained that he was having problems with bad parts, missing parts, that the employees on the main line were disrupting the sequence and he also mentioned that he was wearing surgical gloves. Tomkiewicz said a slowdown was a serious offense and mentioned that he had had problems with Keyes before on the snowmobile job during that run. Keyes asked if he had been doing a good job once he got the hang of the snowmobile job. Tomkiewicz said yes. Tomkiewicz mentioned that the line was shut down 13 times in 1 hour on December 22. Keyes again related the problems he was having. VandeWalker accused Keyes of being guilty of a slowdown. Keyes said he was not guilty of a slowdown but if he was guilty he was willing to go back to his job and give 100 percent of what was expected. Tomkiewicz and VandeWalker then left the room.

After about an hour, Tomkiewicz returned to VandeWalker's office and escorted Keyes to Summers' office. Present in the office were Summers, VandeWalker, and Production Manager Stan Hansen. According to Keyes, Hansen asked him about the problems he was having and why the slowdown. Keyes related everything he had said in VandeWalker's office about the problems with the parts and the job, and asked Hansen what the quota was. Hansen said 206 units per day. Keyes said they were making 220 units per day. Hansen said, "Well, we made 220 units per day every day last week. You can do that now." VandeWalker further said that the 14 bikes that they were missing was $34,000 down the tubes and that if Keyes was not slowing things down, things would be "as smooth as pie." Keyes said he was not guilty of a slowdown but, if he was, he was willing to return to work and give them 100 percent of what was expected. Keyes was then sent out of the office.

About 10 minutes later, Keyes was called back into the office. According to Keyes, he asked Hansen what the verdict was. Hansen said "termination." Keyes said, "It's not reprimandable?" Hansen said, "No, it's not." Keyes testified that he again said that, if he was guilty of a slowdown, he would go back to work, that if he was lazy he would not have been at work every day from the time he was employed at Kawasaki and would have had a worse attendance record than he did. Hansen said, "Once in a while you just fall a little short in life and you just fell a little short."

Tomkiewicz testified that he was absent on December 15, 16, and 17. When he returned to work on December 18, VandeWalker told him to watch the line because it appeared they were having some problems somewhere and production had slipped. Tomkiewicz did watch the line and he observed that Keyes seemed to be shutting down the line more than he should. On December 19, he told Wade he thought they were having trouble on the transfer cart platform and that he wanted Wade to watch it. Wade said yes, there was problem on the platform, that he had asked Keyes what was going on, and Keyes said he was going to regulate[12] the line. Tomkiewicz spoke to VandeWalker regarding the problem again and continued to observe Keyes. At the end of the day, VandeWalker and Tomkiewicz spoke to Hansen. Hansen said this was a very serious offense and if they were correct, they needed some proof. Consequently, he told them to again observe Keyes on Monday, December 22.

On December 22, Tomkiewicz continued to observe Keyes. During approximately a 2-hour period, the line shut off about 13 times. According to Tomkiewicz, only one time out of the 13 times was there a problem which would have necessitated shutting off the line. Tomkiewicz instructed Wade to check and see what the problem was. Subsequently Wade told him there was no reason for the line to be shut off at that station. Wade observed the line during lunch and reported to Tomkiewicz that the line was shut off three times.

At the end of the shift, VandeWalker and Tomkiewicz again spoke to Hansen, telling him that they had proof. Hansen replied, "I want you to make sure of it and I want you to go down tomorrow and I want you to watch him again." The following day, according to Tomkiewicz, he watched Keyes again for about 20 minutes. During that period, Keyes shut the line off three times. At that point, Tomkiewicz and VandeWalker talked to Hansen again. Hansen said they should speak to Summers about it. The three of them then went to Summers' office and discussed the matter. Summers said the best thing to do would be to go and get Keyes off the line, discuss the problem with him, tell him it was a very serious offense, that they had some proof, that his job would be in jeopardy and they wanted him to defend himself.

VandeWalker testified that during the period that Tomkiewicz was absent the assembly line had been running somewhat sporadically, and they were having problems keeping the line going, so when Tomkiewicz returned on Thursday, he instructed Tomkiewicz to look into it and see if he could figure out what the problem was. VandeWalker testified in substantial agreement with Tomkiewicz as to the subsequent conversations pertaining to Keyes' conduct on the line. Additionally, he testified that on Monday, December 22, during a 15-minute period of time he observed Keyes shut down the line twice and that on the morning of December 23 he and Tomkiewicz both observed Keyes shut the line down three times unnecessarily during a 20-minute period.

VandeWalker testified that on December 23, when he and Tomkiewicz spoke to Keyes in VandeWalker's office, Tomkiewicz conducted most of the conversation and VandeWalker sat mainly as an observer. Tomkiewicz started the conversation by telling Keyes the seriousness of the offense, that Tomkiewicz was charging him with deliberately restricting production, and that they needed some satisfactory explanations or his job was in jeopardy. Tomkiewicz then proceeded to outline the 13 times that Keyes had stopped the line the previous day and the 3 times he had stopped the line that morning and asked Keyes to justify these actions. Keyes responded that he was having a problem with the braces and head pipes, that he had some problems with the bearings in the head pipe and with the line indexing incorrectly.

[12] Although Keyes can stop the line, if necessary, the speed of the line is regulated by Respondent.

Tomkiewicz said from his observation this was true on only one occasion. Keyes did not respond specifically to this assertion but rather stated that he was not working at 100 percent, maybe he was not trying hard enough, maybe if the problem was with him, he would take care of it. Tomkiewicz asked Keyes if he had anything else to say for himself, and he did not. Tomkiewicz testified in substantial agreement with VandeWalker except that he testified that, in response to Tomkiewiz's assertion that there had been a problem on the line only once, Keyes said, "Well, the problem must be me then and I will straighten it out."

Both VandeWalker and Tomkiewicz testified that at this point the two went into the hallway and discussed their feeling that Keyes was deliberately restricting production, that he had no legitimate excuses. They then spoke to Hansen who said they should talk again to Summers. The three of them proceeded to Summers' office where they related the conversation between Keyes, VandeWalker, and Tomkiewicz. They decided to call Keyes into Summers' office to give him another chance to see if he could come up with a valid reason for shutting off the line.

Keyes was called into Summers' office. Summers, Tomkiewicz, and VandeWalker testified in substantial agreement that Summers mentioned the 19 times that Keyes has been observed shutting down the line on December 22 and 23, explained that Keyes was being accused of a serious offense, and asked if he could explain why all of these work stoppages were occurring. Keyes repeated the same explanation that he had previously given, which Tomkiewicz contradicted. According to Summers, Keyes said he would correct it if it were his fault. According to Hansen, he said if there was a problem, he would fix it; and, according to VandeWalker and Tomkiewicz, Keyes said the problem was with him and he would correct it.

Keyes was asked to leave the room, after which the management representatives discussed the situation. They agreed that Keyes' explanations had been inadequate, that he was deliberately trying to restrict production, and that they had no choice but to terminate him. Summers testified that he then related the situation to Dennis Butt, the plant manager, and Butt agreed that termination was appropriate. Keyes was called back into the office and informed that he was terminated. According to Hansen, he told Keyes that they felt that he was regulating the line, deliberately shutting down the line, that they could not tolerate this and he left them no alternative other than termination.

Keyes does not deny the number of times Respondent claims he shut down the line. He does deny that he attempted to restrict production. According to him, he had valid reasons for shutting down the line as set forth above. Further, on direct examination he testified that during his last week of work he was experimenting with the use of a surgical glove on his right hand in an effort to avoid the discoloration of his hand by the red grease and that the use of the glove slowed down his work considerably because he was not used to wearing a glove. According to Keyes, he first started wearing the surgical glove on either December 19 or 22. VandeWalker, Tomkiewicz, and Wade testified that Keyes was not wearing a surgical glove on the day of his discharge nor on December 19 and 22. According to Wade, Keyes did wear a surgical glove for just a few days about a month or two before his termination. In his prehearing affidavit, Keyes does not mention that the difficulty on the line during the days in question was caused in part by his wearing of a surgical glove nor does he mention that he was wearing a surgical glove at all. Keyes admits that he sought some medical advice for the problem of his stained hand some 2 months prior to his discharge. Finally, during his testimony on rebuttal, he admitted that he was not wearing a surgical glove on the day of his discharge. According to his testimony at that time, he usually wore cotton gloves on each hand with the index finger cut out on the right hand glove to facilitate the insertion of the ball bearings with the index finger. According to him, when he wore surgical gloves, he wore the surgical gloves under the cotton gloves so that only the index finger of the surgical glove was visible.

Wade testified that on the morning of December 19, the line was shutting off and he walked up to Keyes and asked him if he had any problems. Keyes said he was going to control the line. Wade asked again if he had any problems. Keyes did not answer. Later that morning, Tomkiewicz asked Wade why the line was shutting off so much. Wade told him that Keyes had said he was going to control the line. Later that day, Tomkiewicz instructed Wade to watch the line when it was shut off and make sure it kept going. Wade further testified that on Monday, December 22, he still noticed that Keyes was shutting the line off, perhaps a dozen times, for no reason that Wade could see. Wade asked Keyes if he had any problems but Keyes did not relate any. That morning, according to Wade, Tomkiewicz told him he had to leave the area and instructed him to keep track of the time that Keyes had shut off the line and to write down the times. During the period that Tomkiewicz was out of the area, Wade observed Keyes shutting down the line three times. Wade denies that when he asked Keyes why the line was stopping, Keyes never said anything about bad parts or about the transfer cart operating improperly. Yet, on each of the three occasions that the line was stopped during the period that Wade was making notes of the time for Tomkiewicz, Wade asked Keyes if he were having any problems. Allegedly Keyes made no response to any of Wade's three inquiries.

Hansen testified that in December he and Butt decided that with the parts they had in house they could build 220 units a day of the model that Keyes had been working on at the time of, and for at least the week and a half prior to, his discharge. The purpose was to try to produce all of the units that they could by the end of the year. Further, they had a bonus plan that they wished to put into effect and has assured corporate headquarters that the plan would pay for itself. Thereafter, Hansen talked to VandeWalker regarding the increase in production. VandeWalker assured Hansen that they could produce 220 units a day and they decided to try for the 220 units effective immediately. According to VandeWalker, this was on December 10 or 11. The production

schedule had called for 206 units daily. Some days they produced more than 206; other days they produced less than 206. The production for the time involved herein was:

December 10	210
December 11	212
December 12	221
December 15	215
December 16	211
December 17	201
December 18	206
December 19	206
December 22	211
December 23	194
December 24	185

2. Conclusion

The General Counsel and the Charging Party argue that the asserted reason for Keyes' discharge—attemping to restrict production—is pretextual and that he was a model employee who was discharged because he was a known union adherent, had testified in opposition to Respondent's position in a prior Board proceeding and, on the day before his discharge, had engaged in the protected concerted activity of protesting the Christmas vacation schedule. I find no merit in the argument as to the latter alleged motivation. The protected activity in which Keyes engaged was to utilize the system set up by Respondent to encourage employees to communicate their concerns to Respondent. The system had been in active use for at least a year without any evidence of adverse consequences to the employees who utilized it, a number of whom had done so in protest of the holiday schedule. Further, Respondent had responded positively to a number of the concerns so expressed by employees, including changing the holiday schedule.

In these circumstances, I find it difficult to infer, from timing alone, that Respondent singled out Keyes for punishment simply because he utilized the system.[13] This is particularly true since any breakdown in the system could be expected to redound to the Union's benefit by underscoring the employee's need for union representation to solve their problems.

The General Counsel argues, however, that the holiday schedule protest was merely "the straw that broke the camel's back" and that it was this coupled with Keyes' union activity and his testimony in a prior Board proceeding that motivated Respondent to seize upon a pretextual reason to discharge Keyes. This argument suffers from the same remoteness as to protected activity as did the General Counsel's argument regarding Thiellen. If Keyes' stopping of the line on December 22 and 23 was merely normal procedure and his discharge therefor a "set-up," why did Respondent not "set him up" on any of the previous occasions when he "normally" shut off the line. Again the flaw in the General Counsel's reasoning is the lack of any precipitating event to motivate Respondent to choose this particular time to discriminate against Keyes. For the reasons set forth above, I reject the holiday schedule incident as such a motivating factor.

In the circumstances I find that the General Counsel has failed to establish that Keyes was discharged for any reason other than that asserted by Respondent—that Respondent thought he was deliberately attempting to restrict production. In reaching this conclusion, I have fully considered the argument of the General Counsel and the Charging Party that Keyes did not, in fact, restrict production, as evidenced by the meeting of the production quota on December 22. I credit VandeWalker and Hansen that they were trying to exceed the quota.[14] Furthermore, if Keyes was deliberately shutting off the line unnecessarily, it is immaterial whether Respondent met its production quota in spite of Keyes' conduct.

I also reject the General Counsel's urging that I should find that the penalty was too severe to fit the crime. I do not find it unreasonable that Respondent considered Keyes' conduct as a serious offense, and in the absence of other convincing evidence as to unlawful motivation, I conclude that the causal relationship between the penalty and the alleged misconduct is not so unreasonable as to support an inference that the asserted reason for the discharge was pretextual.

In these circumstances, I find that the General Counsel has not established that Keyes was discharged in violation of the Act.

C. *The Discharge of Gerard Bartek and the Discrimination Against Bruce Berg*

1. Facts

Bartek was employed by Respondent from January 2, 1980, to March 26, 1981. Although he regularly worked as an assembler, at the time of his discharge, due to the lack of work in assembly, Bartek had been working for 3 or 4 days on the third floor in the warehouse as an order processor under the supervision of Kerry Smith. His union activities consisted of wearing a union button for about 2 weeks in 1980 and for about a week on March 1981 when there was talk of a new election. His only other activity, as revealed by the record, was to talk to the union organizers in front of the plant prior to the start of his shift as the organizers handed out union literature during the summer of 1980. According to Bartek, some of these union organizers were Bruce Berg, Steve Thiellen, Paul Miller, Gregg Harms, Cathy Catlin, and Randy Lieber.

On March 24, Bartek was working the first shift which ends at 3:30 p.m. According to him, towards the end of the shift, about 3:22 or 3:23 p.m. he was standing behind employees Cindy Rust and Twila Minnick waiting for them to lead the way to the timeclock on lunch hour. While he was standing there, Smith came up and asked

[13] Without more, an inference could just as easily be drawn from the timing, as urged by Respondent, that Keyes gave vent to his admitted anger regarding the second shift being permitted to work on the Saturday which was denied to Keyes' shift, by deliberately slowing down the line.

[14] I have also considered, and reject, the Charging Party's argument as to Hansen's and VandeWalker's credibility. They were corroborated, as to Keyes' conduct, by Wade, who was a union adherent.

what he was doing. Bartek said he was waiting "to go punch out." Smith asked if Bartek was picking an order.[15] Bartek said no. According to Bartek, Smith just stood there and looked at him, so he thought he had better process an order, which he did. Meanwhile, Minnick and Rust walked to the timeclock. After Bartek concluded picking the order, he set his basket down and walked towards the timeclock. Smith went over and looked at the basket that Bartek had just put down, walked over to Bartek and told him he did not want him working in the warehouse any longer that he should report to his regular work area on assembly II the following morning.

On the following morning, March 25, Bartek reported to his regular supervisor, Woody Guthrie. Upon Bartek telling Guthrie that he was not to return to the warehouse, Guthrie said he would find Bartek something to do and would then go to the office and find out what was going on. Bartek testified that about 11 a.m. Guthrie instructed him to accompany Guthrie to the personnel office. Bartek asked who was going to be there and why they wanted to talk to him. Guthrie said he did not know. When they arrived in Summers' office, Summers, Hansen, and Terry Smith were present. According to Bartek, either Summers or Hansen asked why he quit early. Bartek said he was just following the girls because he had just started there and he did not know what he was doing yet and that he was waiting like they were. Bartek further asked why they had only summoned him to the office, why the girls were not summoned also. One of them said because Bartek was the most obvious one standing around. Hansen asked if the girls were to jump off a cliff would Bartek follow them. Then Hansen said he should terminate Bartek immediately but was going to give him the benefit of the doubt. Bartek was told to leave the room and, after about 5 minutes, he was called back. Either Hansen or Summers said they wanted a commitment from Bartek that he would go back to work and work until it was time to quit. Bartek said okay. Bartek was then instructed to return to the warehouse and told that he would be written up and he was to sign it.

On March 25, immediately after the morning break, at or about 9:30 or 9:45, Smith told Bartek he had something for him to sign. They then went to the office where Smith handed Bartek a copy of a letter signed by Summers, the body of which reads:

> The following is a summary of our discussion held on Wednesday, March 25, 1981. In attendance at this discussion with you were the following people: Terry Smith, Warehouse Supervisor; Stand Hansen, Production Manager; Woody Guthrie, Supervisor; and Bob Summers; Personnel Manager. The topic of this discussion was an incident that Terry Smith reportedly had with you on March 24, 1981. You were found loafing and Terry Smith asked you to finish pulling a warehouse parts order. You indicated that this was an imposition for you since it was very near the end of the shift. You have violated general rule #24 which is as follows:
>
> #24 Loafing or other abuse of time during assigned working hours.
>
> It was stressed in the meeting that you continue to work as directed and complete the assignment until quitting time. You were asked to make a commitment to return to the warehouse and make every effort to complete the parts order assignment given to you by Terry Smith. You agreed to this commitment. Should another incident such as the one on March 24 occur again, we will have no option but to terminate your employment at Kawasaki.

At the bottom of the letter was an acknowledgment stating, "I have read this notice and discussed it with my supervisor." Bartek signed the acknowledgment, "Signed under protest. Gerard Bartek, 3/26/81."

Bartek further testified that later that morning, around 11 a.m., Terry Smith again summoned him to the personnel office. When they arrived, Guthrie, Hansen, and Summers were present. Hansen said, "Why did you sign under protest? I thought we had a commitment." Bartek said, "Well, the only reason I didn't agree with it was because nothing was done to the girls and I felt they were just singling me out." Hansen said, "As far as I'm concerned now, you are terminated." Hansen then instructed Guthrie to take Bartek's badge and glasses and escort him out of the building.

Later that day, Bartek returned to Summers' office and requested a letter of termination. Summers asked him to return the next day about midmorning. The next day Bartek went to Summers' office about 8:45 a.m. accompanied by Bruce Berg, a member of the employee organizing committee, who was on vacation leave that day. When they arrived in Summers' office, his secretary said he was in a meeting, however, Summers agreed to see Bartek. When Bartek and Berg went into Summers' office, Steve Eicher and Jack Callender were present. According to Bartek, Summers asked Bartek why he was there. Bartek said he came for his letter of termination and his checks. Summers said they were not ready, that he had told Bartek to return about midmorning. Bartek said he thought it was midmorning and Summers replied that he meant about 11 or 11:30 a.m. Summers then asked Berg what he was doing there. Berg said he wanted to ask Summers a question regarding Bartek. Summers said he did not have to answer Berg's questions regarding Bartek. Berg then asked if he could ask Summers a question about himself. Summers agreed. Berg said, "Well, if I was written up and I signed the write-up under protest, would they terminate me?" Summers said, "Bruce, I'm tired of playing your fucking games and if you don't get out of this office right now, I'm going to throw your fucking asses out." Bartek and Berg then left. Berg testified in substantial agreement with Bartek.

Subsequently Bartek received a letter of termination dated March 26 and signed by Summers, the body of which reads:

[15] This is an apparent reference to the process of filling an intraplant order for parts stored in the warehouse.

> As per our discussion of March 25 and March 26, you were separated from employment with Kawasaki Motors Corp., U.S.A. for cause at 11:15 a.m.

On March 27, Summers sent Berg a disciplinary letter, the body of which reads:

> Attached is a copy of the incident that occurred in my office on March 27, 1981.
> A copy of this will be placed in your personnel file. Be informed that further interruptions of a business day of employees of Kawasaki will not be tolerated.

The following memo signed by Summers and dated March 27 was attached to the letter:

> At 8:40 a.m. on March 27, 1981, Bruce Berg and Gerard Bartek came into my office. Mr. Bartek asked if his letter of termination was ready yet. I replied, "I told you to pick it up midmorning about 10:30 or 11:00, and it is not ready yet."
>
> Bruce Berg then asked if he could ask a question. I replied, "Is it about the situation with Gerard Bartek?"
>
> Bruce Berg said yes.
>
> I replied, "I will not talk to you about this matter since it does not involve you."
>
> I asked Bruce Berg are you supposed to be working?
>
> Bruce replied that he was on vacation.
>
> I told him that he had no need to be here and that I was not going to talk to him about Gerard Bartek.
>
> Bruce then asked if he could ask a question regarding a situation involving Bruce Berg.
>
> I told him yes.
>
> Bruce's question was, If I am written up and I protest the write-up, can I be fired?
>
> I said your hypothetical [expletive deleted] questions are bothering me. I am in a meeting and I do not want to be interrupted. Please get out of my office. If you don't leave, I will have you thrown out.
>
> Bruce then said I am real sorry and he and Bartek left.

Terry Smith testified that around 3:15 p.m. he observed Bartek standing, looking over the railing with his back to Smith. Smith walked over and asked Bartek what he was doing. Bartek said he was not doing anything. Smith asked why not. Bartek looked at the clock and said, "I don't know." Smith asked Bartek to continue to work until quitting time. According to Smith, although this shift ends at 3:30 p.m. employees are permitted to stop work 5 minutes early to clean up. After Smith spoke to Bartek, Bartek commenced to pick an order which Smith checked. Smith testified that it was a three-item order and one item was pulled incorrectly and an incorrect quantity was pulled for a second item. Smith then approached Bartek at the timeclock, informed him that he had picked the order incorrectly and instructed him to report the next day to his supervisor in production. According to Smith, he got the impression that Bartek was resentful that he was being asked to work until quitting time. Further, when Smith pointed out his mistakes to Bartek, Bartek just shrugged his shoulders. It was for these reasons that he instructed Bartek to report to the production area the following day.

According to Smith, he then called Summers and told him the instructions that he had given to Bartek, stating that he would rather that Bartek did not work in the warehouse. On March 25, Smith, Summers, Hansen, and Guthrie met in Summers' office with Bartek. They discussed the incident that occurred the previous day and Hansen asked Bartek for a commitment to return to the warehouse and do the job he was supposed to do. Bartek agreed to do so. Smith agreed that during this meeting Bartek did mention that there were other people standing around. However, according to Smith, when Bartek was questioned as to who these other employees were, he said he did not know. Bartek was told he would be written up formally in a letter which would be given to him to sign.

Smith further testified that on March 26 he gave Bartek the letter and asked him to sign it. Bartek asked what would happen if he did not sign it, however, he did sign it. After Bartek left the office, Smith called Summers and told him Bartek has signed the letter under protest. Summers instructed Smith to bring Bartek to his office. Within a few minutes Summers, Hansen, Guthrie, and Smith again met with Bartek. According to Smith, Hansen asked Bartek why he was backing out on his commitment to return to the warehouse and perform his duties there as they were assigned. Bartek said he felt it was unfair because there were other people standing around besides himself. Hansen and Summers asked who these other people were. Bartek said there were some girls standing around but he was not sure of their names. According to Smith, at the time he spoke to Bartek regarding why he was not working, Minnick and Rust were in the area. However, they were working at the time and he did not see any other employee standing around not working. Smith denies that he ever saw Bartek wearing a union button or that he had any knowledge of Bartek's union sympathies.

Rust testified that at around 3:15 p.m. on March 24 she was sorting orders. Bartek was standing by the railing looking down on the first floor. He did not appear to be peforming any work. At the same time, Rust observed Minnick sorting orders about 4 feet from Bartek. Smith walked over and said something to Bartek, after which Bartek began picking an order. According to Minnick, they ran out of orders at or about 3:10 p.m. on March 24. Someone called for more orders, which came immediately. Thereafter Minick, Sheila Korner, Cindy Bono, and Rust sorted the orders which took about 5 minutes. They then picked orders until 3:25 p.m. Minnick testified in substantial agreement with Rust execpt that she testified that they did not finish sorting orders before it was time to go home. According to Minnick, there is always something to do in the warehouse, so that if there are no orders to pick they should be stocking parts.

Hansen testified that Bartek was terminated because he would not make a commitment to even try to do his job. According to him, Respondent had too many hourly workers and had been trying to avoid laying off employees. To this end, various techniques had been tried such as loaning employees to the city, providing economic incentives for employees to resign, and transferring employees from one area to another. Bartek was one of the employees who had been transferred out of assembly because of lack of work, and even though he was working in the warehouse at the time of his discharge, his compensation was still being charged to the production budget. According to Hansen, he could see no justification for making efforts to avoid discharging Bartek, an employee he did not need, when Bartek had indicated a lack of interest in making a commitment to do his job. Further, on March 25, after Bartek had agreed to sign the commitment, he was sent back to the production area to finish out the day. After the end of Bartek's shift that day, Steve Dahling, the general foreman in the assembly area where Bartek worked, told Hansen that at 3:15 p.m. he observed Bartek standing around not working. He asked Bartek what he was doing and Bartek replied that he was waiting to go down to the warehouse to clock out. Dahling instructed him to return to work.

Summers testified in substantial agreement with Smith and Hanson's account of what occurred during the two meetings with Bartek. According to Summers, at the time of the second meeting Hansen was pretty adamant that Bartek be terminated because of his backing out of what they considered to be an agreement—signing the letter without any protest or anything of that sort. Summers testified that Hansen was upset because of the signing under protest simply because he had too many employees, he had loaned Bartek to the warehouse and he felt that what Bartek was trying to do was back out of an agreement that they had made the day before when they explained the entire situation of the workload to him. Hansen said he simply could not take any more of that kind of employee, they did not need that kind at Kawasaki and he wanted Bartek terminated. According to Summers, the assumption when an employee signs a disciplinary letter under protest is that he disagrees with the substance of the alleged conduct underlying the disciplinary action. During the first meeting when Bartek agreed that he would make a commitment and would sign it, they understood that he agreed with the substantive aspect of such a letter and that he had agreed to make a commitment and to sign the letter. Thus, they considered his signing the letter under protest as reneging on the agreement they had made the day before. At the second meeting when Bartek was asked why he signed it under protest, he did not deny what he had done. He merely indicated that he felt others had done the same thing and should be disciplined also. However, he did not name the other employees.

2. Conclusions

The General Counsel contends that the reprimand and discharge of Bartek was in retaliation for his union activities and to keep a chilling effect on the union campaign which allegedly was rejuvenated by the issuance of the decision of the administrative law judge in the prior Board proceeding on January 29, 1981.[16] In support thereof, the General Counsel argues that Rust and Minnick were not reprimanded for the same conduct, Bartek was not disciplined in accordance with the normal progression of Respondent's disciplinary policy and other employees were permitted to protest adverse actions without discharge.

I credit Rust, Minnick, and Smith that Rust and Minnick were working at the time that Smith observed Bartek standing waiting for the end of the shift. I also credit Summers that the letters signed by Bartek encompassed something other than just a reprimand. It is undisputed that Hansen spoke to Bartek in terms of making a commitment to properly perform his work assignments until quitting time. Further, it is apparent that "making a commitment" is a counseling technique utilized by Respondent. Thus the November 21 Thiellen letter also spoke of a commitment, and the wording therein makes it clear that the signing of the letter was to be considered as making a commitment. In the circumstances, even though Summers was somewhat inept, during his testimony, in his attempt to differentiate between making a commitment and signing a reprimand, it is clear that the concept of signing a letter as an indication of making a commitment as to future work performance did exist, even though the letter contained traditional reprimand or warning language as well as the reference to a commitment.

Unfortunately, the Bartek letter was not as clear as the Thiellen letter in conveying this concept. However, this is not, in itself, indicia of unlawful motivation unless it can be inferred that the ambiguity was a deliberate attempt to elicit a negative response from Bartek so as to justify his discharge. I conclude that the record does not support such an inference. In this regard I note that if Respondent were inclined to utilize this method to achieve an unlawful purpose, Thiellen would have been an ideal candidate with his open advocacy of the Union and his history of protesting disciplinary action. Yet his letter clearly stated, "I am asking for a commitment from you to make all efforts to improve your performance in the future by signing below." I also note that even though employees were permitted to sign reprimands under protest, a refusal to sign resulted in termination. I further note that Bartek was one of the employees who could have been laid off for lack of work, but whom Respondent was attempting to retain through various alternative assignment strategies. There is no evidence to establish why, if Respondent wanted to rid itself of Bartek it was attempting to retain him, an employee it did not need, when he could have been laid off legitimately.

In the circumstances, I find that it was not unreasonable for Hansen to consider Bartek's signing under protest as a refusal to indicate his agreement that he made a commitment to return to the warehouse and make every effort to complete the parts order assignment given to him. This is particularly true in view of Hansen's expla-

[16] Bartek testified that he wore a union button for a week in March 1981 when there was talk of a new election. This is the only evidence as to a rejuvenation of the Union's campaign.

nation to Bartek of the overstaffing situation, Bartek's seeming reluctance at the time to agree to the commitment and his persistence in again stopping work before quitting time on the same day that Hansen had extracted the commitment from him.

In these circumstances, and considering the minimal nature of Bartek's union activity, most of which was remote in time, the lack of evidence that such activity was different in kind, or degree, from that of many other employees, the absence of any expression of animus toward Bartek for such activity, the absence of evidence that Smith had knowledge of such activity, and the absence of any evidence of independent violations of Section 8(a)(1) of the Act, I find that the General Counsel has failed to establish that Bartek was discharged for any reason other than that asserted by Respondent. Accordingly, I find that Respondent did not violate the Act by discharging Bartek.

As to the reprimand issued to Berg, the General Counsel contends that it was motivated by Berg's union activity and his testimony in the prior Board proceeding. Considering the remoteness in time of Berg's protected activity, the absence of any evidence of animus directed toward him for such activity, and the absence of any evidence of independent violations of Section 8(a)(1) of the Act, I find that the evidence does not establish that Respondent discriminated against Berg because of his union activities and/or because he testified in a prior Board proceeding.

However, contrary to the urgings of Respondent, I find that Berg was engaged in protected concerted activities when he accompanied Bartek into Summers' office. Although inartfully handled, it was clear that Berg was there to protest Bartek's discharge for what appeared to be the signing of a reprimand under protest, conduct previously permitted. Thus, he was making common cause with Bartek for their mutal aid and protection. It is clear that, following Summers' refusal to entertain a question as to Bartek, Berg simply phrased his question so as to substitute himself for Bartek; but clearly the thrust of his question was in protest of Bartek's discharge for what seemed to be permissible conduct. The fact that Berg briefly persisted in this, despite Summers' refusal to discuss Bartek with him, was not so disruptive as to remove Berg from the protection of the Act. In all of the circumstances, I find that Berg was given a written reprimand for engaging in protected concerted activity. Accordingly, I find that Respondent thereby violated Section 8(a)(1) of the Act.

Conclusions of Law

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

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By reprimanding Bruce Berg for accompanying Gerard Bartek to the personnel office in protest of, and to secure information regarding Bartek's discharge, Respondent violated Section 8(a)(1) of the Act.

4. Respondent has not violated Section 8(a)(1), (3), and (4) of the Act by discharging Steve Thiellen and William Leroy Keyes, Jr., or Section 8(a)(1) and (3) of the Act by discharging Gerard Bartek or Section 8(a)(3) and (4) of the Act by reprimanding Bruce Berg.

5. The aforesaid unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

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

On the basis of the foregoing findings of fact and conclusions of law and on the entire record[17] in the proceeding, I recommend the following

ORDER[18]

The Respondent, Kawasaki Motors Corporation, USA, Lincoln, Nebraska, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Reprimanding or otherwise discriminating against employees because of their protected concerted activities.

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

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

(a) Expunge from its records all memoranda of, or reference to, the warning given Bruce Berg on March 27, 1981, because he accompanied employee Gerard Bartek to the personnel office and attempted to protest, or seek information with regard to the reason for, Bartek's discharge.

(b) Post at its facility in Lincoln, Nebraska, copies of the attached notice marked "Appendix A."[19] Copies of said notice, on forms provided by the Regional Director for Region 17, after being signed by Respondent's authorized representative, shall be posted by 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 Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

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

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[17] The motion of the Charging Party is hereby granted to correct the official transcript of the hearing.

[18] 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.

[19] 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."

APPENDIX A

NOTICE TO EMPLOYEES
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.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

In recognition of these rights, we hereby notify our employees that:

WE WILL NOT reprimand our employees for engaging in protected concerted activities for their mutual aid and protection.

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

WE WILL expunge from our records all memoranda of, or reference to, the warning given to Bruce Berg on March 27, 1981, because he accompanied a fellow employee to the personnel office and attempted to protest, or seek information with regard to the reason for, the discharge of the fellow employee.

KAWASAKI MOTORS CORPORATION, USA