

**Louis Ronca d/b/a Ronca's Exxon Service and
Robert S. McQuiston, Jr. Case 6-CA-16045**

27 February 1984

DECISION AND ORDER

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

On 6 September 1983 Administrative Law Judge Robert A. Giannasi issued the attached decision. The General Counsel filed exceptions and a supporting 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 brief 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, Louis Ronca d/b/a Ronca's Exxon Service, Weirton, West Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the Order, except that the attached notice is substituted for that of the administrative law judge.

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

The judge found that the Respondent did not unlawfully discharge employee McQuiston as McQuiston voluntarily quit his employment. We agree with this finding and find it unnecessary to rely on the judge's discussion of various theories of protected concerted activity set forth in sec. II, B, of his decision.

Additionally, in adopting the judge's finding that the Respondent violated Sec. 8(a)(1) and (4) of the Act by failing and refusing to pay to employee McQuiston an amount of money owed him because he filed charges with the Wage and Hour Division of the Labor Department, we specifically note that no exceptions were filed to this portion of the judge's decision.

APPENDIX

**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.

268 NLRB No. 171

WE WILL NOT refuse to pay employees amounts found payable to them by the Labor Department's Wage and Hour Division because they filed charges with the National Labor Relations Board or the Wage and Hour Division.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make immediate and full payment to Robert McQuiston of the amount found due him by the Labor Department's Wage and Hour Division.

**LOUIS RONCA D/B/A RONCA'S
EXXON SERVICE**

DECISION

STATEMENT OF THE CASE

ROBERT A. GIANNASI, Administrative Law Judge: This case was tried in Weirton and Wheeling, West Virginia, on June 16 and 17, 1983. The complaint alleges that the Respondent violated Section 8(a)(1) of the Act by discharging employee Robert McQuiston for engaging in protected concerted activity, more specifically, for complaining about work-related matters on behalf of himself and other employees, and by threatening to file charges against the Respondent with the Labor Department's Wage and Hour Division. The complaint also alleges that the Respondent violated Section 8(a)(4) and (1) of the Act by discharging McQuiston because he sought the assistance of the National Labor Relations Board and that the Respondent violated Section 8(a)(1) of the Act by threatening McQuiston with discharge for engaging in protected concerted activities. An amendment to the complaint also alleges that the Respondent violated Section 8(a)(4) and (1) of the Act by withholding benefits due McQuiston after a Labor Department investigation and audit because McQuiston had filed charges with the NLRB and the Wage and Hour Division. The Respondent denies the essential allegations of the complaint. The parties filed briefs which I have read and considered.

On the entire record, including the testimony of the witnesses and my observation of their demeanor, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent is a sole proprietorship with places of business in Weirton, West Virginia, and in Wheeling, West Virginia, where it is engaged in the retail sale of gasoline and related products and the service and repair of automobiles. During a representative 1-year period, the Respondent derived gross revenues in excess of \$500,000 and purchased and received at its facilities products, goods, and materials valued in excess of \$50,000 directly from points outside the State of West Virginia. Accordingly, I find, as the Respondent admits,

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

II. THE UNFAIR LABOR PRACTICE ALLEGATIONS

A. *The Facts*

The Respondent operates two service stations, one located in Wheeling, West Virginia, where the owner, Louis Ronca, has an office and a staff of two employees, and another in Weirton, West Virginia, the facility involved in this proceeding. The Respondent employed six people at the Weirton station in December 1982. The manager was Marvin Davis. Two employees, John Hoyt and Richard Byers, worked daytime hours and were paid on a salary basis. Bill Leasure, a mechanic, was paid \$5 per hour and also worked daytime hours. Robert McQuiston and Pete Brogdon were paid \$3.50 per hour and worked mostly afternoon and evening hours. McQuiston, who had been working for the Respondent for about 1 year, worked from 3 p.m. to midnight on Fridays, Saturdays, and Sundays; during the week he worked from 4 to 7 p.m.

The Weirton employees were required to attend weekly 1-hour meetings at the station. The meetings dealt with work-related issues such as sales techniques and repairs. The meetings usually began at 7 p.m., a time at which some employees were not scheduled to work. This necessitated that they make a special trip to the station to attend the meetings. The employees, however, were not specifically paid for the time spent at the meetings.

At the meetings, which were run by Manager Davis, and in separate conversations with Davis and owner Louis Ronca, McQuiston complained about a number of work-related matters. Some were problems involving only himself; some affected all employees. He complained, for example, that the employees were not paid for attending the meetings and that Davis was often late, thereby extending the length of the meetings. He also complained that the employees were not paid for time spent after the change of shifts when they performed administrative duties. Davis' response to these complaints was basically that this was part of the job, and, if he did not like the job, McQuiston could quit.

McQuiston also complained about not being paid commissions he asserted were due him on tires he allegedly had sold early in his employment. Owner Ronca met with McQuiston on this matter, which was the subject of incessant complaints by McQuiston. Ronca went through his sales records and found no proof that the tires were in fact sold. He told McQuiston that he could not pay the commission without pertinent sales tickets; McQuiston apparently could not verify that the sales were made even though, on one occasion, Ronca brought numerous sales tickets to the Weirton station so that McQuiston could review them. McQuiston also complained about not being paid for turning credit cards into the Respondent, as promised, and that he and other employees had cash shortages, for which they were responsible, deducted from their pay.

McQuiston aired his complaints at practically every weekly meeting. Except on one matter, there is no evi-

dence that any other employees complained about work-related problems at these meetings. The one exception is that Peter Brogdon complained about the meetings not starting on time.

McQuiston testified that he talked about his complaints to the other employees, although the evidence is sketchy as to what was said. There is no evidence that any other employees openly supported his position or authorized him to speak on their behalf. The two salaried employees specifically told McQuiston they were not concerned about being paid for the meetings or time spent working after a change in shifts.

On December 3, 1982, McQuiston called the Pittsburgh, Pennsylvania Regional Office of the NLRB about his work-related complaints. He was referred to the Labor Department's Wage and Hour Division in Pittsburgh. An official in that office advised him that employees were entitled to be paid for the meetings on work premises and work after shift changes and that shortages were not to be deducted from paychecks. He was told he could file a charge but that it would have to be filed with the Wheeling, West Virginia office.

When McQuiston reported for work that day, he told three of his fellow employees in separate conversations about the result of his calls and that he intended to file charges against Respondent. There is no evidence as to what was said by any of the employees in response to McQuiston, except in Brogdon's case. Brogdon did not say he was supporting McQuiston but he did advise McQuiston to speak first to Manager Davis before filing the charges. McQuiston agreed. McQuiston apparently spoke to Leasure on the next day, a Saturday. McQuiston testified that Leasure agreed that the employees should be paid for the meetings but he did not testify that Leasure agreed with his plan that he would file charges if the Respondent did not pay what he believed was owed to the employees. Leasure testified that McQuiston simply informed him of his plan and that he made no response. Because Leasure impressed me as an honest and impartial witness, I credit his testimony over that of McQuiston.

On Monday, December 6, 1982, McQuiston talked by telephone to a Mr. Hall in the Wheeling office of the Wage and Hour Division. He received confirmation of the Respondent's liability and told Hall that he did not wish to file a charge until he talked with the Respondent's officials. When he arrived at work shortly before 3 p.m., he approached Davis in the outside bay area of the station. McQuiston conceded that he was "hot" because he received confirmation that his complaints were valid and because he realized that, in his words, the Respondent was "cheating" him and the other employees. He told Davis that he received confirmation from the Wage and Hour Division that the Respondent owed the employees money for attending the meetings and working after shift changes. At this point, Byers, who was within hearing distance of McQuiston and Davis, interjected that he did not want "any of that money." It is unclear whether, at this point, McQuiston repeated his personal complaints about not being paid commissions or amounts due for turning in credit cards.

Davis and McQuiston continued their discussion inside the station with no one else present. At some point, Davis spoke on the phone with Ronca who was at his office in Wheeling. McQuiston later got on the phone and spoke to Ronca. According to McQuiston, he told Ronca that he had talked to the Wage and Hour Division and learned that the Respondent was in violation of the law. He also complained about money he was owed from having sold four tires and from turning in credit cards. He told Ronca that if the Respondent did not pay the money owed him and other employees he would file charges with the Wage and Hour Division and the Labor Board. He also said that Ronca "was screwing everybody out of the money." McQuiston testified that, during the course of the conversation, Ronca said, "turn me over to your government friends and you look for another job" and when McQuiston asked if that meant he was fired, Ronca said, "take it the way you want." According to McQuiston, he returned the phone to Davis and started to leave but was told by Davis to stay. Shortly thereafter, McQuiston and Ronca resumed their telephone conversation. McQuiston testified that he told Ronca, "If I didn't get the money, find out when we were going to get the money, that I was going to turn him in to the Labor Relations Board and Wage Hour." Ronca then repeated that, if McQuiston reported the matter, McQuiston could "look for another job." McQuiston then "threw the phone" at Davis, and walked out of the office, slamming the door. He then went to where Hoyt was sitting, "threw the keys down on the desk," and announced to Hoyt and Leasure that he was fired. He also said he would return his uniforms on Friday when he picked up his paycheck. He did return the uniforms and picked up his check on Friday.

McQuiston testified that his second conversation with Ronca was "just a repeat of the same conversation except I didn't ask him again if I was fired." McQuiston did not leave after the first conversation because Davis told him to stay. He did leave after the second conversation because, according to McQuiston, Ronca "told me that I wasn't gonna get the money that I had coming and no one else was, he didn't owe anybody any money and that if I turned him in to the Labor Relations Board, to look for another job and I planned on turning him in, but I took it if I turned him in, I'm fired."

Although Davis and Ronca offered different versions of their conversations with McQuiston, the main discrepancy is in Ronca's testimony that he did not fire McQuiston and that he specifically answered McQuiston's question as to whether he was fired by stating, "hell no, you're not fired." Ronca's testimony was that McQuiston had wide-ranging complaints about his job, not limited to the Wage and Hour Division complaints, including the fact that McQuiston was still being carried as a part-time employee. It is clear from Ronca's testimony, however, that McQuiston did threaten to file charges against the Respondent with the Wage and Hour Division and the National Labor Relations Board. Ronca answered this point by stating, "fine, do whatever you need to do . . . I stand behind my records and I stand behind what I have paid you." Ronca described the 20- to 25-minute conversation between him and McQuiston as "one of ac-

cusations and attempted explanations to try to resolve the problem." Ronca testified as follows about the crucial part of the conversation:

At one point I said to Bob, I said, you know, if you're that unhappy with your job with me, you know, because he was bringing this thing in about not being a full-time employee, I said, if you're that unhappy with your job with me, I said, you go find a job, you know, that you'll be happy with, you know. And, you know, this again went back and forth for a little while and, you know, finally I said to him, I went through the whole thing again as to why he wasn't full-time, you know, why I didn't feel that he's been cheated, why I wasn't paying them for the meetings, the whole thing and finally I said to him, again, you know, if you're that unhappy go get another job, you know, that you're going to be happy with. And he said to me—

Q. What did he say?

A. He said to me, does that mean I'm fired? I said, Hell no, it doesn't mean you're fired. If you want to go get another job that's your business, you know, but no, no it doesn't mean you're fired.

Q. Was there any more to the conversation?

A. Well not much, you know, a little of back and forth and I finally said, I said Bob, I can't do anything for you and we hung up.

Ronca's testimony that he specifically told McQuiston that he was not fired was supported by two of Ronca's office employees who overheard his end of the conversation. The two employees, Wilda Flanegin and Wanda Glaser, were close enough to Ronca in the rather small office they all shared to overhear Ronca's remarks. I found them both to be honest witnesses. I also found Ronca to be a particularly candid witness. I therefore credit Ronca's testimony and that of the two office employees. In particular, I find that Ronca specifically told McQuiston during the course of their December 6 telephone conversation that he was not fired.

I also find that, in the December 6 telephone conversation, McQuiston complained about more than simply those matters which he was advised violated the wage and hour laws. He himself testified that he complained about not being paid for his tire commissions and for turning in credit cards. Indeed, Glaser overheard Ronca talking about commissions owed to McQuiston. In analyzing his testimony, I had the distinct impression that McQuiston was more concerned about the money owed him personally than what was owed to the group of employees. It is thus likely that he complained about other aspects of his job, including the fact that he was still being treated as a part-time employee, as Ronca testified.

The General Counsel attempts, in his brief, to attack the credibility of both Ronca and Glaser because, he alleges, their testimony was inconsistent with pretrial affidavits given to a representative of the General Counsel. This position is without merit. First of all, there is no attempt to attack Flanegin's testimony which supports that of Ronca and Glaser. Indeed, Flanegin was not even

cross-examined. Secondly, the so-called inconsistency involving Glaser was not significant. Glaser testified that she believed that there was more than one phone call and that one call was incoming and the other was placed by Ronca. In her affidavit, Glaser stated that "[A]s I recall, Ronca was talking to someone on the phone and then Ronca called the station in Weirton and asked to talk to Bob McQuiston." I fail to see how this discrepancy constitutes a significant inconsistency or reflects adversely on Glaser's testimony. Indeed, McQuiston himself testified that these were two distinct conversations between him and Ronca.

The General Counsel's attempt to impeach Ronca is also ineffective. The General Counsel showed Ronca his pretrial affidavit which stated that, in response to McQuiston's question as to whether he was fired, Ronca simply said "no." At the hearing, Ronca, testified that he said, "hell no, you're not fired." This is hardly an inconsistency. The point is that Ronca and two other witnesses testified essentially that Ronca denied he was firing McQuiston. Indeed, when the full context of Ronca's affidavit is considered, I believe it offers further support for other aspects of his testimony. For example, both in his testimony and in his affidavit, Ronca stated that he told McQuiston that if he were unhappy "he should find himself a job that he would be happy with." Thus Ronca's reliability as a witness is enhanced by virtue of the consistency between his testimony and his pretrial statement.

After McQuiston left the station, Brogdon was called at home and told to report early because McQuiston had left. According to Brogdon, he spoke to Davis about what had happened earlier that day. Davis said that "the only name that came out of [McQuiston's] mouth was Pete [Brogdon] was the only one that supported him." Brogdon responded, "I don't know what you're talking about . . . I had nothing to do with this and that this is Bob doing this himself."

On December 9, 1982, McQuiston did file a written complaint with the Labor Department. After an audit, the Labor Department made a determination that the Respondent owed moneys to its employees for time spent at the meetings and for work beyond the change of shifts. All employees but McQuiston were paid amounts in satisfaction of the Labor Department determination. McQuiston was deemed entitled to \$31.50 in back wages.¹

B. Discussion and Analysis

The General Counsel asserts that McQuiston engaged in concerted protected activities basically under three theories. The first is the traditional definition of concerted protected activity that includes work-related complaints to an employer which further a group interest rather than the gripes of a particular employee. See *Comet Fast Freight*, 262 NLRB 430 (1982); *Seere Dairy*, 237 NLRB 1350 (1978). The second is derived from the notion that even individual protests to governmental agencies, such as the Labor Department's Wage and

Hour Division, are protected because the statutory rights invoked deal with matters of general employee concern. See *Alleluia Cushion Co.*, 221 NLRB 999, 1000 (1975); *Triangle Tool & Engineering, Inc.*, 226 NLRB 1354, 1357 (1976). The third theory is that McQuiston, prior to his discharge, tried to invoke the aid of the National Labor Relations Board and, if he were discharged for this reason, the Respondent would have violated Section 8(a)(4) and (1) of the Act. See *Mitsubishi Aircraft*, 212 NLRB 856, 865-866 (1974); *General Nutrition Center*, 221 NLRB 850, 855 (1975).

The Respondent denies that McQuiston was engaged in concerted protected activity under any of the above theories and vehemently denies that he was discharged because of any protected activity. The Respondent asserts that McQuiston was not discharged at all, but rather that he quit voluntarily.

I turn first to the question of whether McQuiston was engaged in protected concerted activity. His expressed intention to file charges with the Wage and Hour Division was clearly protected concerted activity even though he undertook this project alone and was not specifically speaking for other employees. Also protected, although not concerted, was McQuiston's attempt to seek aid from the National Labor Relations Board. Employer retaliation for such activity is unlawful. See *Triangle Tool*, supra, and *Mitsubishi Aircraft*, supra.

The third point, whether McQuiston's complaints about job-related matters—apart from his attempt to bring them to the attention of government agencies—were properly considered group action or individual gripes, is a close question. I have some doubts on this score because many of McQuiston's complaints involved his own problems and none of the other employees openly voiced their support for his complaints or authorized him to speak on their behalf. Brogdon's limited support for the proposition that the meetings should start on time is hardly strong evidence of concerted activity. On the other hand, McQuiston's complaints about being paid for time spent at meetings and time worked after the change of shifts did affect all employees, as shown by the Labor Department's ultimate resolution of the charges filed by McQuiston. And the evidence here shows that another employee at least shared McQuiston's concerns. Manager Davis implied as much when he told Brogdon that McQuiston said that Brogdon supported his efforts. Although after McQuiston's discharge, Brogdon told Davis that he "had nothing to do with this," he did advise McQuiston to talk to Davis before filing a complaint and he testified that he agreed with McQuiston's actions if "we were being cheated out of the money." Thus, here, unlike in *Comet Fast Freight*, supra, the evidence does not clearly show that no employees shared the complaining employee's concerns. In *Comet Fast Freight*, supra, the employee's own testimony was construed to mean that his complaint about an allegedly unsafe truck was "of moment to him alone." Accordingly, although the issue is a close one on this point, I find that McQuiston's complaints about being paid for time spent at meetings and work after the change of shifts in-

¹ It is unclear whether the \$31.50 due is less deductions for taxes withheld. The other employees were due more money than was McQuiston.

voked a group concern and thus were both protected and concerted.

Thus, McQuiston could not be punished for complaining to his Employer about being paid for time spent at meetings and work after the change of shifts as well as for invoking the aid of the Labor Department and the Labor Board.

The question then becomes whether McQuiston was fired for engaging in the above protected activity. I find that, as a matter of fact, McQuiston was not fired. The fact that McQuiston may have believed himself fired or told other employees that he was fired is not determinative. It is true, as the General Counsel asserts, that "the fact of discharge does not depend on the use of formal words of firing . . . it is sufficient that the words or actions of the employer would logically lead a prudent person to believe his tenure has been terminated," quoting from *NLRB v. Trumbull Asphalt Co.*, 327 F.2d 841, 843 (8th Cir. 1964). However, it is not the subjective view of the alleged discriminatee which governs. The determination must be based on objective facts and whether an ordinary person would have considered himself fired. See *Ridgeway Trucking Co.*, 243 NLRB 1048, 1049 (1979), *enfd.* 622 F.2d 1222 (5th Cir. 1980).

Analyzing the objective facts in accordance with my credibility determinations, I find that an ordinary person would not have considered himself fired after the conversation with Ronca. I also find that, in fact, McQuiston voluntarily quit his employment. First of all, Ronca specifically told McQuiston he was not fired. McQuiston was told that Ronca was satisfied that he had not violated any laws and that McQuiston could file charges if he wished. In light of other complaints McQuiston expressed dealing with his own working conditions, Ronca also told McQuiston that he might be happier working some place else. In view of Ronca's specific disavowal that he was firing McQuiston, the above language could not have caused an ordinary person to believe he was discharged. McQuiston was not, however, an ordinary person when he came to the station on December 6 and spoke with Ronca. According to his own testimony, he was very angry. His conduct after talking to Ronca confirmed this anger. He was ready to leave after his first conversation with Ronca but Davis restrained him from doing so. This is consistent with an act of impetuosity by an angry young man who was ready to quit because he did not get his way. Ronca did not agree to pay McQuiston what he believed was due him and the other employees. Moreover, Ronca was not sympathetic to McQuiston's other complaints which were uniquely personal such as payment of his own commissions and working as a part-time employee. Ronca and McQuiston spoke some more and McQuiston, visibly angered, "threw the phone" at Davis, turned in his keys, and said he would be turning in his uniforms. This was undertaken by McQuiston precipitously, without his being ordered to do so by Ronca or Davis, according to McQuiston's own version.²

² The facts in this case are thus distinguishable from those which might support a finding that an ordinary person would believe himself discharged. Compare, *i.e.*, *Caffe Giovanni*, 259 NLRB 233, 242-243 (1981)

In addition, I must conclude, after having heard both Ronca and McQuiston testify, that McQuiston's anger was reflected in his demeanor as a witness, whereas Ronca came across as a calm, albeit determined, man. My view is that McQuiston flew off the handle after realizing that Ronca was not going to capitulate and pay the money McQuiston believed was owed and he put on a childish display of pouting. He heard what he wanted to hear rather than what was said. In short, McQuiston was not fired but quit voluntarily.

Even assuming, however, that McQuiston could reasonably have considered himself fired, I find that the Respondent did not violate the Act by virtue of its termination of McQuiston. First of all, the evidence provides no basis for finding that, in his discussion with Ronca, McQuiston dwelt on his having invoked the aid of the Labor Board. It appears that, prior to the December 6 conversation with Ronca, McQuiston talked only briefly to the Labor Board's Regional Office and was immediately referred to the Labor Department. There is no evidence that Ronca particularly focused on or was upset by McQuiston's reference to the Labor Board or was motivated in any way to punish McQuiston for his approach to the Board. Secondly, I find that Ronca would have terminated McQuiston for reasons other than his group complaints and his filing charges with the Labor Department. According to Ronca's testimony, which I credit, McQuiston's complaints dealt not only with group concerns but also with his own uniquely personal complaints. He objected to his status as a part-time employee and to Ronca's failure to pay him commissions to which he believed he was entitled. Ronca responded that if McQuiston were not happy, he should look for another job. McQuiston admitted that he raised individual complaints with Ronca. He also admittedly was very angry at this time. Ronca told him to do what he wanted with respect to filing charges with the Wage and Hour Division and that he stood by his records. In evaluating all of the evidence, I conclude that McQuiston would have been terminated for his expressed dissatisfaction with his job even in the absence of his complaints about employees not being paid for time spent at meetings and working after shift changes and in the absence of expressing his intention to file charges with the Wage and Hour Division of the Labor Department.³

Finally, I turn to the allegation that the Respondent unlawfully withheld moneys due McQuiston as a result of the Labor Department audit because he filed charges with the National Labor Relations Board and with the

(employee told "you quit" and ordered off premises), *A & D Davenport Transportation*, 256 NLRB 463, 465-466 (1981), (employee told "you don't work here anymore" and ordered to leave); *Ridgeway Trucking Co.*, supra, 243 NLRB at 1049 (employees ordered to leave premises.)

³ In view of my findings set forth above and my credibility determinations concerning the Ronca-McQuiston telephone conversation, I shall dismiss the allegation that Ronca unlawfully threatened to discharge McQuiston for prohibited reasons. The General Counsel alleges that, even considering Ronca's testimony, his statement that McQuiston should "find a job . . . that you'll be happy with" was coercive. I disagree. This statement did not constitute a threat of discharge nor did it suggest retaliation for McQuiston's having engaged in protected activity. McQuiston had advanced numerous personal complaints which precipitated the statement by Ronca.

Wage and Hour Division. I find merit in this allegation. McQuiston first filed a charge with the Board on January 5, 1983. Thereafter, Ronca entered into negotiations with the Labor Department's Wage and Hour Division and eventually paid all of his employees, except McQuiston, amounts which were due them. The inference is fairly clear that McQuiston was treated differently than other employees due money under the Labor Department's audit, and the only factor which would distinguish McQuiston from the others is his having expressed his intent to pursue charges with the Labor Board and the Labor Department. He did, of course, file charges with both agencies prior to the Respondent's refusal to pay McQuiston the money due him. The Respondent offered no rebuttal of or explanation for this apparent discrimination. By the time the Respondent was obligated to pay McQuiston, he had already terminated his employment. Accordingly, I find that the Respondent violated Section 8(a)(4) and (1) of the Act by withholding back wages from McQuiston because he filed charges against the Respondent before the Labor Board and the Labor Department.

CONCLUSIONS OF LAW

1. By failing and refusing to pay employee Robert McQuiston the amount found payable to him by the Labor Department's Wage and Hour Division because he filed charges with the National Labor Relations Board and with the Wage and Hour Division, the Respondent violated Section 8(a)(4) and (1) of the Act.

2. The Respondent has not otherwise violated the Act.

REMEDY

Having found that the Respondent violated the Act, I shall order that it post an appropriate notice and make the requisite payment due to McQuiston.

On these findings of fact and conclusions of law, I issue the following recommended

ORDER⁴

The Respondent, Louis Ronca, d/b/a Ronca's Exxon Service, Weirton, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to pay employees amounts found payable to them by the Labor Department's Wage and Hour Division because they file charges with the National Labor Relations Board or the Wage and Hour Division.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them under the National Labor Relations Act.

2. Take the following affirmative action which will effectuate the policies of the Act.

(a) Make immediate and full payment to Robert McQuiston of the amount found due him by the Labor Department's Wage and Hour Division.

(b) Post in conspicuous places at the Respondent's Weirton, West Virginia service station copies of the attached notice marked "Appendix."⁵ Copies of said notice on forms to be provided by the Regional Director for Region 6, after being signed by the Respondent's representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days thereafter in places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that said notices are not altered, defaced, or covered by any other material.

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

IT IS ALSO RECOMMENDED that the allegations of the complaint which were found not to have been sustained are hereby dismissed.

⁴ 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.

⁵ If this Order is enforced by 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."