Amason, Incorporated *and* Local No. 1, International Union of Bricklayers & Allied Craftsmen, AFL-CIO. Cases 11-CA-10638 and 11-CA-10712

30 March 1984

DECISION AND ORDER

BY MEMBERS ZIMMERMAN, HUNTER, AND DENNIS

On 22 September 1983 Administrative Law Judge Richard A. Scully issued the attached decision. The Respondent 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[2] and to adopt the recommended Order.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Amason, Incorporated, Ladson, South Carolina, its officers, agents, successors, and assigns, shall take the action set forth in the Order, except the attached notice is substituted for that of the administrative law judge.

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

[2] In concluding that the Respondent violated Sec. 8(a)(1) by illegal surveillance of employees at two union meetings, the judge found the coercive effect of the surveillance "readily apparent." A violation, however, need not be predicated on such a finding of actual coercive effect. It is well settled that it is not the actual effect of an employer's conduct that determines an 8(a)(1) violation, but the tendency of such conduct to interfere with the free exercise of employee rights under the Act. *A.A. Superior Ambulance Service*, 263 NLRB 499 (1982); *American Freightways Co.*, 124 NLRB 146 (1959).

Inasmuch as the Respondent's discharge of Smoot independently violated Sec. 8(a)(1) of the Act, we find it unnecessary to consider whether the Respondent's conduct also violated Sec. 8(a)(4). See *H. H. Robertson Co.*, 263 NLRB 1344 (1982); *Oil City Brass Works*, 147 NLRB 627 (1964), enfd. 357 F.2d 466 (5th Cir. 1966); *Better Monkey Grip Co.*, 115 NLRB 1170 (1956), enfd. 243 F.2d 836 (5th Cir. 1957). In reaching this decision, we do not find it necessary to rely on the judge's citation of *General Nutrition Center*, 221 NLRB 850 (1975).

[3] We have modified the judge's notice to conform with his recommended Order.

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.

WE WILL NOT interrogate our employees concerning their union membership or activities.

WE WILL NOT engage in unlawful surveillance of our employees' union activities.

WE WILL NOT discharge or otherwise discriminate against our employees or supervisors because they furnish information to the National Labor Relations Board.

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 offer Thomas Smoot Jr. immediate and full reinstatement to his former position of employment or, if that position no longer exists, to a substantially equivalent position of employment, without prejudice to his seniority or other rights and privileges previously enjoyed, and WE WILL make him whole for any loss of pay resulting from his unlawful discharge, plus interest.

WE WILL expunge from our files any reference to the unlawful discharge of Thomas Smoot Jr. on November 18, 1982, and WE WILL notify him that this has been done and that evidence of this unlawful discharge will not be used as a basis for future personnel actions against him.

AMASON, INCORPORATED

DECISION

STATEMENT OF THE CASE

RICHARD A. SCULLY, Administrative Law Judge. Upon charges filed on October 12 and December 6, 1982, by Local No. 1, International Union of Bricklayers & Allied Craftsmen, AFL-CIO (the Union), the Regional Director for Region 11 of the National Labor Relations Board (the Board), issued a consolidated complaint on January 13, 1983, alleging that Amason, Incorporated (the Respondent) had committed certain violations of Section 8(a)(1) and (4) of the National Labor Relations Act (the Act). The Respondent has filed an answer denying that it has committed any violation of the Act.

A hearing was held in Charleston, South Carolina, on January 27 and 28, 1983, at which the parties were given a full opportunity to participate, to examine and cross-examine witnesses, and to present other evidence and argument. Briefs submitted on behalf of the parties have been

given due consideration. On the entire record and from my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

At all times material, the Respondent was a Georgia corporation engaged in masonry construction work at various locations, including a school construction project at Ladson, South Carolina. During the 12-month period preceding January 13, 1983, a representative period, the Respondent, in the course and conduct of its business, performed services valued in excess of $50,000 in States other than South Carolina. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Respondent admits, and I find, that at all times material the Union was a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

The Respondent has a contract for the masonry construction work at the Stratford High School being built at Ladson, South Carolina. In May 1982,[1] Union President and Business Manager Charles Dingle was contacted by employees of the Respondent concerning representation by the Union. Dingle obtained the requisite number of signed authorization cards and, on August 19, filed a representation petition with the Board in Case 11-RC-5100. There was a Board hearing in that case on September 8 and an election was held on October 19. The Union was certified as the bargaining representative of all bricklayers, welders, and apprentices employed by the Respondent at the Stratford High School project and at a parking garage project in Charleston, South Carolina. Dingle testified that shortly after he filed the petition with the Board he had a telephone conversation with William Amason, who is one of the owners and an admitted agent of the Respondent, in which Amason told him that the Respondent was a nonunion contractor and was going to stay that way. Amason said that he was "a mean Georgia cracker" and told Dingle to "get those damned cards out of Winston-Salem or I'll kick your ass." Amason also threatened to sue Dingle as an individual if he did not withdraw the authorization cards from the Board's Regional Office. Amason did not deny making these remarks to Dingle, and I credit Dingle's testimony.

Thomas Smoot Jr. has been a brick mason for over 27 years and has worked for the Respondent on four different construction projects since April 1981. During the last 5 months on the first project and on the second project, Smoot worked as a brick mason foreman. On the third job, which lasted about a month, and when he began working at Stratford High School in May 1982, he worked as a brick mason but was not a foreman. He became a foreman on the Stratford job on September 21.

B. *Interrogations*

Smoot testified that during June he was involved with the Union's attempt to organize the Respondent's employees at the Stratford job, speaking to employees about the advantages of the Union, attending meetings, and passing out authorization cards for the employees to sign. During the first week of August, he had a conversation with Paul Ashley, who is a vice president of the Respondent and at that time was the supervisor on the Stratford job. Ashley asked Smoot if he was a member of the Union and Smoot said he had not been a member for quite some time. Ashley then asked Smoot if he knew "about cards being circulated on the job." Smoot said that he did not and Ashley left. On direct-examination, Ashley generally denied that he had interrogated anybody about union activities, but was not specifically asked about a conversation with Smoot. On cross-examination, he stated that there had been union talk on the job for a long time and that he had heard employees, including Smoot, talk about it. Ashley said he might have talked with Smoot about the Union, but he could not remember any specific conversation. He denied that he had any interest in whether there was union activity on the job.[2] Having observed their demeanor while testifying, and considering the content, I credit Smoot's testimony, which was straightforward and convincing, over the uncertain, generalized denials of Ashley and find that Ashley did question Smoot about the Union and that such interrogation violated Section 8(a)(1) of the Act.[3]

Smoot also testified that on September 6 Foreman Shellree Gaines had a conversation with him at the Stratford jobsite. Gaines said that he had heard that there had been a meeting down at the store, which Smoot acknowledged, and asked Smoot if there were enough men for the job to go union if an election were held. Smoot told Gaines he was sure there were and

[1] Hereinafter, all dates are in 1982.

[2] I find this incredible, given William Amason's testimony concerning the Respondent's intention to remain "an open shop company" and its willingness to do "whatever is necessary" to achieve that end, as well as his similar comments to Union President Dingle after the petition was filed, not to mention the emphatic manner in which they were phrased.

[3] At the time of this interrogation and that by Foreman Gaines, discussed infra, Smoot was working as a brick mason and layout man and not as a foreman, although the Respondent paid Smoot at the same rate he had received while working as a foreman on an earlier project. According to Smoot, the Respondent's policy was that when a foreman goes to another job and is going to be put back into a foreman position again, his rate of pay remains the same even though he is doing rank-and-file work. Apart from receiving a slightly higher rate of pay ($10 versus $9.40 per hour), there is no evidence that Smoot had any of the responsibilities, performed any of the duties, or in any way served in the capacity of a foreman while on the Stratford project prior to being made the foreman of a crew on September 21. Salary is a factor to be considered in determining supervisory status. *Para-Chem Southern, Inc.*, 258 NLRB 265 (1981). However, under the circumstances presented here, the fact that Smoot possessed none of the aspects of supervisory authority referred to in Sec. 2(11) of the Act outweighs his wage rate in determining whether he was a supervisor. The fact that he had a prospect of being elevated to a supervisory capacity with the Respondent is not indicative of supervisory status. *Fred Rogers Co.*, 226 NLRB 1160 (1976). I find that Smoot was not a supervisor when these interrogations occurred.

Gaines said he hoped so because he had a union card himself. Gaines asked Smoot if he had signed a card and Smoot said that he had. Gaines also asked who had passed out the union cards and how many employees had signed cards, but Smoot said he did not know.

Gaines testified that he had been a foreman for the Respondent for 3 years, including all of the time he was on the Stratford project. He denied that he had interrogated anyone. On cross-examination, Gaines said that he had a conversation about the Union with Smoot, but said that Smoot had come to him and asked him how he felt about the Union. After that Gaines asked Smoot, "what do the guys think about it?"

I credit the testimony of Smoot over that of Gaines. Gaines admitted that his conversation with Smoot occurred about a week after he heard a rumor that the employees had had a meeting at a nearby store called the Zippy Mart and that they were trying to form a union. I find it unlikely that Smoot would bring up the subject of the Union with a foreman or would ask Gaines how he felt about it, particularly after having been questioned about it by Ashley. Gaines' questions about how many employees had signed cards and who had passed them out went well beyond simply answering how he felt about the Union, if Smoot had, in fact, asked him that question.

The record fails to disclose any legitimate purpose to the questioning of Smoot about union activity at the Stratford project by either Ashley or Gaines. The fact that no threats were made during the course of the conversations with Smoot and the fact that Smoot affirmatively responded to Gaines' inquiry about whether he had signed an authorization card did not remove the coercive nature of the interrogations.[4] These inquiries, even if seemingly motivated only by curiosity, reasonably tend to interfere with the free exercise of an employee's protected rights.[5] I find that the Respondent violated Section 8(a)(1) of the Act by its supervisors' interrogations of Thomas Smoot.

C. *Surveillance*

Charles Dingle testified that, on October 6, he was holding a meeting with about 20 of the Respondent's employees, after work, on a dead end dirt road near the Zippy Mart,[6] which is about one-half mile from the Stratford jobsite. During the course of the meeting, Dingle observed Paul Ashley drive into the parking lot of the Zippy Mart in a pickup truck, enter the store, and come out with a drink in his hand. Dingle was acquainted with Ashley and had talked with him on several occasions on different jobs in the area. Ashley sat in his truck and observed the meeting for about 30 minutes. On the following day, Dingle held another meeting, after work, at the same location with about 18 of the Respondent's employees. Ashley pulled into the Zippy Mart parking lot driving a van with a woman and small children in it. After returning to the van from the store, Ashley observed the meeting for a while and then drove over to the dirt road where the meeting was going on. Dingle and Ron Anglin, another union representative, left the meeting and walked over to where Ashley had parked and had a conversation with him which lasted about 20 minutes.

Paul Ashley testified that, on October 6, he pulled into the Zippy Mart, which is located across the road from the housing development in which he lives and where he stops almost every day on his way home. He noticed several of the Respondent's employees on an adjoining road drinking beer. He drove over to where the employees were congregated and Ron Anglin came over to him and offered him a beer. Ashley declined the offer and left. Ashley denied that he knew that there was a union meeting going on when he approached. He stated that when he saw the men there he thought they were having a beer party and "wanted to be in on it." He said that he saw the employees at the same spot on several occasions, but could not recall exactly when.

Based on their demeanor while testifying and the content of their testimony, I found Dingle to be a more credible witness than Ashley. Although he was undoubtedly aware of the Union's representation petition, filed on August 19, Ashley testified that he thought the men were simply having a beer party and did not know that it was a union meeting. However, Foreman Shellree Gaines was aware that a union meeting had been held at the Zippy Mart in early September shortly before he had questioned Thomas Smoot. I find it unlikely that Ashley, who was the project superintendent at that time, would not also have been aware of the fact that union meetings were being held at the Zippy Mart or aware of the rumor about such a meeting that Gaines had heard. Ashley admitted first observing the meeting from 20 to 25 yards away before going over to it. Although he said he did not notice Dingle and Anglin before he got to the meeting, it is difficult to believe he could make out the identities of the employees at the meeting and determine that they were drinking beer, but not see either Dingle or Anglin.

Based on the credited, detailed testimony of Dingle, I find that Ashley did observe the meeting on October 6 from the Zippy Mart parking lot. Even if he were there solely by virtue of the fact that he stops at the store every day, there was no reason why he would sit in the parking lot for 30 minutes except to observe the union meeting. On the following day, Ashley first observed the meeting from the Zippy Mart and then drove over to where the employees were standing. I find it unlikely that Ashley, although uninvited, would take a woman and small children, presumably his family, into a crowd of men standing around drinking beer, because he wanted to take part in a beer party. I find it much more likely that he wanted to be sure that any employees who might not have seen him at the Zippy Mart were aware that he had observed their participation in a union meeting. Coming less than 2 weeks before the scheduled representation election, the coercive effect of such surveillance is readily apparent. I find that the Respondent vio-

[4] *Raley's, Inc.*, 256 NLRB 946, 954 (1981).

[5] *Shirt Shed, Inc.*, 252 NLRB 292, 301 (1980).

[6] This was the first meeting at the Stratford job that Dingle attended although the employees had previously held union meetings at the same location.

lated Section 8(a)(1) of the Act by Ashley's surveillance of union meetings on October 6 and 7.

D. *The Discharge of Thomas Smoot Jr.*

The consolidated complaint alleges that Thomas Smoot was discharged by the Respondent because he gave testimony to the Board in the form of an affidavit and that this discharge violated Section 8(a)(1) and (4) of the Act. Although Smoot was made the foreman of a brick mason crew on September 21 and served in that capacity until his termination, at the time he gave the affidavit to a Board agent, September 15, he was not a supervisor. In any event, if Smoot were discharged because he gave an affidavit or otherwise cooperated with the Board during the course of its investigation, it would be a violation of the Act regardless of whether or not he was a supervisor since the effect of such a discharge:

> . . . is to tend to dry up legitimate sources of information to Board agents, to impair the functioning of the machinery provided for the vindication of employees' rights and, probably, to restrain employees in the exercise of their protected rights.[7]

On November 16, a Board agent met with William Amason, Paul Ashley, and Shellree Gaines, at the Respondent's office in Charleston to discuss alleged incidents of interrogation by Ashley and Gaines. In the course of those discussions, Thomas Smoot was the only employee whose name was mentioned in connection with the interrogations. Amason denied that the Board agent specifically mentioned Smoot in discussing the interrogations and Ashley said he could not recall. However, Gaines admitted that he was asked about whether he had a conversation with Smoot. Two days after this meeting with the Board agent, Smoot was called into the office of the Respondent's project supervisor, Donald Arrigo, and was discharged. According to Smoot, Arrigo told him he was being terminated because he was not meeting the production the Company had set for him and it was company policy not to put a foreman back in a crew. Arrigo gave Smoot a termination slip which stated that his services were no longer required because he was "not meeting job schedules and job requirements."

Although Amason denied that he became aware on November 16 that Smoot had talked with the Board about the interrogations by Ashley and Gaines, such a conclusion is almost inescapable. As noted above, Smoot was the only employee whose name was mentioned in the course of the discussion about the interrogations. I have found that Ashley and Gaines did, in fact, interrogate Smoot about union activity. While Amason may not have known that Smoot had actually given the Board an affidavit, it was obvious that the source of the Board's information about the interrogations had to have been Smoot. The timing of an adverse action can be persuasive evidence of an employer's motivation.[8] Here, the discharge of Smoot only 2 days after the Respondent learned that he had furnished information to the Board clearly supports the inference that Smoot was terminated because of that fact and makes out a prima facie case that his discharge was a violation of the Act.[9]

Arrigo's comments to Smoot at the time of the discharge and the language of the termination slip Smoot was given indicate that Smoot was discharged because his crew was not meeting its production schedules. When called as a witness by the Respondent, Arrigo testified that he fired Smoot because of "bad workmanship." Only in response to leading questions by William Amason, who was representing the Respondent, did Arrigo make any reference to low production as a reason for Smoot's discharge. The Respondent also placed in evidence certain company records which purportedly show that Smoot's production was deficient.[10] On cross-examination, Arrigo testified that failure to meet production had nothing to do with Smoot's discharge, which he attributed solely to the poor quality of the work done by Smoot's crew. This is not surprising in view of Smoot's credible testimony that he never had a discussion with Arrigo about production schedules until November 17, when Arrigo told him that the part of the building Smoot was working on had to be finished by December 10. Smoot was fired the following day. Based on Arrigo's unequivocal denial and the lack of any probative evidence that Smoot failed to meet production schedules, I find the Respondent's reliance on that reason as cause for firing Smoot to be a pretext. The reason given by Arrigo, poor quality workmanship by Smoot's crew, is likewise suspect.

On direct examination Arrigo testified that on more than one occasion poor quality work done by Smoot's crew was pointed out to him by the architect and the construction manager on the project and that he, in turn, showed it to Smoot. Arrigo was unable to give any dates when this happened. When pressed for details on cross-examination, Arrigo said that Smoot's work was good up until about 2 weeks before he was fired. He said he spoke to Smoot about poor work every day during the last week Smoot was on the job, but he was unable to remember where the conversations occurred or what was said. Although he said that the work was so bad the last 2 or 3 days that he was forced to let Smoot go, he could not specify what brought about this decision other than to say generally that Smoot's men were not finish-

[7] *NLRB v. Electro Motive Mfg. Co.*, 389 F.2d 61, 62 (4th Cir. 1968). Accord: *City Brass Works v. NLRB*, 357 F.2d 466 (5th 1966); *H. H. Robertson Co.*, 263 NLRB 1344 (1982).

[8] *South Nassau Communities Hospital*, 262 NLRB 1166 (1982); *Limestone Apparel Corp.*, 255 NLRB 722, 736 (1981).

[9] See *Wright Line*, 251 NLRB 1083 (1980).

[10] The records submitted are not conclusive proof of anything. While they show that some weeks Smoot's crew lost money under the Respondent's system of accounting, there is no indication that Smoot's production was significantly lower in November than in previous weeks. There is no valid basis for comparison of Smoot's production figures with those of other foremen since there is no way of knowing what kind of work each crew was doing during a given period. There was evidence that Smoot's crew worked on more difficult areas of the building, such as bathrooms, which have short walls and in which allowances must be made for pipes and fixtures. At the same time, another crew might be working on a less complicated part of the project which could account for more bricks or blocks being laid in the same period of time.

ing work properly, not firestopping walls, not cutting mortar off the walls, and not filling joints properly. Although Arrigo said that he had to tear down a bad section of a wall Smoot's crew had put up, he never identified where this wall was located, but said he found it "possibly Wednesday of the week before I let Smoot go." Smoot, however, candidly and credibly testified that his crew had put up three walls that were improperly laid out and had to be torn down, two in late September and one in October. He was not aware of any other wall which had to be torn down. According to Arrigo's testimony, he found no fault with any of Smoot's work in September or October. It seems reasonable that if Arrigo had found a wall so defective that the architect demanded that it be removed a week before Smoot was fired, he would have discussed it with Smoot. There is no evidence that he did. The only specific instance wherein Arrigo actually called Smoot's attention to alleged poor quality work, established in the record, was on November 17 when Arrigo told Smoot that a wall in a bathroom in section A of the building had not been properly firestopped. Smoot told Arrigo that he already had a man working to correct it.[11] There was undisputed evidence that the quality of the Respondent's masonry work on the Stratford project was so poor that it was once in danger of being thrown off the project. Numerous walls had to be torn down and replaced because they did not have the seismic reinforcement required by the project plans. In the face of such evidence, it is difficult to believe that failure to firestop a wall was deemed so serious a failing as to warrant Smoot's discharge.

The Respondent called as a witness Anthony Maglione, the architect's representative on the Stratford project, in an effort to support its claim that Smoot was responsible for poor quality work. While Maglione confirmed that he had found and pointed out defective work done by the Respondent, he could not recall ever pointing out defective work to Smoot, personally, and was unable to identify any specific area in which Smoot's crew had done work where poor quality work was found. Interestingly, the only one of the Respondent's foremen that Maglione could specifically recall being responsible for poor quality work was Shellree Gaines, who is still employed by the Respondent.

James Spencer, the construction manager on the Stratford project, testified that he had found problems with work done by Smoot's crew and had reported it to Smoot on one occasion and to Arrigo at other times. He was unable to say how many times this happened or to say when it occurred other than having spoken to Smoot shortly after he became a foreman, which would appear to coincide with the time in late September when, as Smoot acknowledged, his crew put up bad walls. Spencer's testimony does not provide any support for Arrigo's claim that during the last 2 weeks and, particularly, the last 3 days that Smoot was on the job, the work his crew did was so bad as to compel his firing. Spencer mentioned an area on the first floor of section B of the building as the last area on which Smoot's crew worked[12] where he found defective work and ordered it repaired. Arrigo, however, testified that Smoot was working in bathrooms in section A when the problems which he found so significant arose.

Every witness who was familiar with Smoot's masonry work testified that he was a highly qualified brickmason and layout man. In view of this, it is difficult to understand why, whatever his shortcomings as a foreman, the Respondent, which was plagued throughout the Stratford project by poor quality work by its masons, would fire Smoot rather than relieve him of his supervisory duties and put him back to work as a brickmason. Although Arrigo told Smoot there was a "company policy to not place a foreman back in a crew," Smoot had been a foreman with the Respondent on previous projects but had worked as a member of a crew on one subsequent project and on the Stratford project for several months before taking over as a foreman. Also, in contrast to Smoot, Foreman Robert Wilson, whose crew built two walls without reinforcing bars, which had to be torn down when Arrigo returned from his vacation and discovered them, is still employed by the Respondent as a supervisor at another project although, according to Arrigo, "he'll never come back there [Stratford.]" The clear inference, which I draw from the Respondent's inability to support either of the reasons it gave for Smoot's discharge, is that having learned that Smoot had given information to the Board in support of the Union's unfair labor practice charges against it, the Respondent wanted him off the Stratford project and out of its employ.

As noted above, one of the Respondent's alleged reasons for firing Smoot, failure to meet production schedules, has been disavowed by Arrigo, the man who fired him. Its other reason, that Smoot permitted his men to do poor quality work during his last 2 weeks on the job to an extent that Arrigo was compelled to fire him is not borne out by the evidence in the record. It is well established that where the stated motive for a discharge is false, another motive may be inferred from the facts in the record as a whole.[13] I find that the evidence as a whole fails to establish that the Respondent would have discharged Thomas Smoot on November 18 had it not learned that he had cooperated with the Board by giving information in support of the Union's unfair labor charges against it. Accordingly, I conclude that the Respondent discharged Smoot because of his cooperation

[11] This incident was described by Smoot, Arrigo apparently did not recall it.

[12] Although Spencer referred to poor work done by Smoot's crew, it appears that his conclusion was based on the fact that Smoot's crew worked in the particular area involved rather than on direct knowledge of what work Smoot's crew actually did, as evidenced by the following testimony:

Q. [By Mr. Favors.] How did you know Mr. Smoot was responsible for that?

A. I don't know he was responsible for it. The only thing that I know is he was assigned to that area. I don't know whether he done it or somebody else done it. All I know is that he was assigned to that area. I don't know who done it, really. All I know is that Mr. Smoot was assigned to that particular area.

Q. So some other foreman could have done it?

A. I have no knowledge of that. All I know is that Mr. Smoot was assigned to that area. Anybody could have done it.

[13] *Shattuck Denn Mining Corp. v. NLRB*, 363 F.2d 466 (9th Cir. 1966).

with the Board's investigation in violation of Section 8(a)(1) and (4) of the Act.[14]

Conclusions of Law

1. The Respondent, Amason, Incorporated, is an employer engaged in commerce within the meaning of Section 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. The Respondent violated Section 8(a)(1) of the Act by:

(a) Interrogating an employee concerning his union membership and activities.

(b) Engaging in surveillance of its employees' union activities.

(c) The Respondent violated Section 8(a)(1) and (4) of the Act by discharging Thomas Smoot Jr. because he gave information to the Board during the course of its investigation of unfair labor practice charges.

4. The unfair labor practices affect commerce within the meaning of the Act.

The Remedy

Having found that the Respondent has violated the Act, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having also found that the Respondent discharged Thomas Smoot Jr. in violation of Section 8(a)(1) and (4) of the Act, I shall recommend that it be ordered to offer Smoot immediate and full reinstatement to his former position, without prejudice to his seniority or other rights and privileges, and to make him whole for any loss of earnings he may have suffered by reason of the discrimination against him. Backpay shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be paid on the amount owing in accordance with *Florida Steel Corp.*, 231 NLRB 651 (1977).[15] The Respondent should also be ordered to expunge from its records any references to the unlawful discharge of Smoot and not to use it as a basis for future personnel actions against him.[16]

On the foregoing findings of fact and conclusions of law and on the entire record, I issue the following recommended[17]

ORDER

The Respondent, Amason, Incorporated, Ladson, South Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unlawfully interrogating employees concerning their union membership or activities.

(b) Engaging in unlawful surveillance of employees' union activities.

(c) Discharging or otherwise discriminating against employees or supervisors because they have furnished information to the Board.

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

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

(a) Offer Thomas Smoot Jr. immediate and full reinstatement to his former position of employment or, if that position no longer exists, to a substantially equivalent position of employment, without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole for any loss of wages he may have suffered by reason of his unlawful discharge, in accordance with the recommendations set forth in the section of this decision entitled "The Remedy."

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Expunge from its records and files any references to the discharge of Thomas Smoot Jr. and notify him in writing that this has been done and that evidence of this unlawful discharge will not be used as a basis for future personnel actions against him.

(d) Post at its facilities in Ladson and Charleston, South Carolina, copies of the attached notice marked "Appendix."[18] Copies of notice on forms provided by the Regional Director for Region 11, after being signed by Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and be maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(e) 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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[14] *General Nutrition Center*, 221 NLRB 850 (1975).

[15] See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

[16] *Sterling Sugars*, 261 NLRB 472 (1982).

[17] If no exceptions are filed as provided in 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.

[18] 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."