

Seaward International, Inc. and John R. Logsdon and Michael D. Murphy and Arthur Wayne Smith. Cases 5-CA-14150, 5-CA-14160, and 5-CA-14238

31 May 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER

On 18 July 1983 Administrative Law Judge Peter E. Donnelly issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in answer to the exceptions.

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 conclusions² only to the extent consistent with this Decision and Order, but to adopt the recommended Order as modified.

Although we affirm the judge in finding the other violations of the Act, we cannot adopt the violation of Section 8(a)(1) based on Respondent official Brown's speech to the employees on 23 September 1981. Under Section 102.17 of the Board's Rules and Regulations, an amendment to a complaint may be granted by an administrative law judge "upon such terms as may be deemed just." We conclude, based on the totality of the circumstances, that the amendment to allege a violation

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. We also correct the following inadvertent errors in the judge's decision: (1) At sec. III, A(3), par. 7, fn. 7, it is Terry Smith, not Wayne Smith, who was an employee testifying against the interests of his employer; (2) at sec. III, B(1), par. 3, it is Logsdon, not Murphy, who had the October 17 conversation with Blake; and (3) at sec. III, B(2), par. 3, it is Murphy, not Smith, to whom the evidence of union animus was directed from the earlier 8(a)(1) violation.

² In adopting the judge's finding of an 8(a)(3) violation in Murphy's and Smith's discharges, we do not rely on the evidence relating to the Respondent's profit-sharing bonuses or monthly production bonuses. The record does not show a probative correlation between these bonuses and the Respondent's general economic health.

In finding the Respondent's discharges of Murphy and Smith unlawful, Member Hunter does not rely on the judge's implication that the Respondent's opposition to the Union expressed in its employee manual constitutes animus.

Furthermore, we disavow reliance on the judge's conclusion that the discharges of employees Murphy, Smith, and Logsdon do not fall under the analysis set forth in *Wright Line*, 251 NLRB 1083 (1980). We adopt the judge's 8(a)(3) findings, however, because the evidence credited by the judge proves a prima facie case which has not been rebutted pursuant to *Wright Line*, *supra*. See *Limestone Apparel Corp.*, 255 NLRB 722 (1981).

based on Brown's speech was unjustly permitted by the judge herein and should be reversed.

The consolidated complaint in this case was issued on 21 May 1982, and the hearing opened on 31 August 1982. On 1 September 1982 the General Counsel sought to introduce testimony from employee Murphy as to Brown's speech. After representing that the testimony was being introduced only as background, and not in support of a separate 8(a)(1) allegation, the judge admitted it over the Respondent's objection. Following an adjournment, the close of General Counsel's case, and testimony by most of the Respondent's witnesses, the General Counsel moved to amend the complaint to include an independent 8(a)(1) violation based on Brown's speech. After considering³ the Respondent's objections the judge granted the motion to amend. The Respondent was given an opportunity to recall witnesses on this new section of the complaint on 9 November 1982.

Granting the amendment under these circumstances did not deny the Respondent the barest minimum of due process. Nevertheless, it did not treat the Respondent in a "just" manner as our regulations require. The General Counsel's representation that the testimony was introduced merely as background evidence of animus might have caused the Respondent to adopt a different trial strategy between 1 September and 24 September than the Respondent would have employed against an independent 8(a)(1) allegation. In addition, requiring the Respondent to defend against a new allegation near the close of its case may have deprived the Respondent of the protection afforded by the Board's sequestration rule. Finally,⁴ permitting the General Counsel to introduce a new allegation after the close of her case, near the end of the hearing, does not serve the interests of judicial economy or orderly adjudication.

Accordingly, based on the General Counsel's initial representation, the value of the Board's sequestration rule, and the tardy timing, we consider the amendment here to be unjust. The 8(a)(1) violation based on the amendment is dismissed.⁵

³ In ruling on the motion, the judge stated: "[T]his information was or should have been available to you at the time you issued the complaint, or at least during sometime in your pre-trial case. I think it's unfortunate that it comes at this point. Nevertheless, in order to expedite the matter and to have all matters heard at the same time, and because this matter is closely enough related to other matters upon which we have already taken evidence, I am going to grant the amendment to the complaint."

⁴ In considering the just nature of amendments at trial, we also look to whether the General Counsel has given opposing parties any informal pretrial notice concerning the pendency of potential amendments. Such notice may vitiate the due process concerns raised by unexpected trial amendments.

⁵ Member Zimmerman would adopt the judge's finding of an 8(a)(1) violation based on Brown's speech to employees on 23 September 1981.

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ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Seaward International, Inc., Clearbrook, Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Delete paragraph 1(a) and reletter the subsequent paragraphs.
2. Substitute the attached notice for that of the administrative law judge.

The Board permits its administrative law judges to exercise a substantial measure of discretion in ruling on motions at trial. Here, Judge Donnelly did not abuse this discretion by allowing the amendment to the complaint. In this regard, I see no basis for the conclusion "that the amendment . . . was unjustly permitted by the judge . . ." The matter on which the amendment rests was fully litigated, with the Respondent being given an opportunity to recall witnesses. My colleagues' assertions that the Respondent "might have adopted a different trial strategy" or "may have [been] deprived . . . of the protection" of the Board's sequestration rule is speculative. While I agree that "the interests of judicial economy or orderly adjudication" would have been better served by alleging the violation in the original complaint, I note that the amendment was made before the hearing closed. Therefore, no prejudice to the Respondent or denial of due process has been shown. I would accordingly affirm the judge's acceptance of the amendment. On the merits, I agree with him that the Respondent unlawfully threatened employees with the withdrawal of a previously existing benefit when it told them, in substance, that the Respondent's practice of retaining employees through periods of low production would be discontinued if the Union's organizing efforts succeeded.

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. 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.

WE WILL NOT tell you that other employees were laid off because of their union activity.

WE WILL NOT suggest that you reject the Union through decertification.

WE WILL NOT tell any of you that you received a lower pay raise due to your union activity.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting District Lodge 186 of the International Association of Machinists and Aerospace Workers, AFL-CIO.

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

WE WILL offer John Logsdon, Michael Murphy, and Arthur Wayne Smith immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and WE WILL make them whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest.

WE WILL notify each of them that we have removed from our files any reference to his discharge and that the discharge will not be used against him in any way.

SEAWARD INTERNATIONAL, INC.

DECISION

STATEMENT OF THE CASE

PETER E. DONNELLY, Administrative Law Judge. The charges in the above-captioned cases were filed by John R. Logsdon, Michael D. Murphy, and Arthur Wayne Smith, on March 9 and 12 and April 6, 1982, respectively. An order consolidating the cases, consolidated complaint and notice of hearing thereon was issued on May 21, 1982, alleging that Seaward International, Inc. (the Employer or Respondent) violated Section 8(a)(3) of the Act in laying off the above-named individuals because of their activity on behalf of District Lodge 186 of the International Association of Machinists and Aerospace Workers, AFL-CIO (the Union). Certain other conduct of Respondent was alleged as coercive within the meaning of Section 8(a)(1) of the Act and at the hearing the complaint was amended to add additional allegations of coercion, which are treated herein. An answer thereto was timely filed by Respondent. Pursuant to notice a hearing was held before me at Winchester, Virginia, on August 31, September 1, 2, 24, and November 9, 1982. Briefs have been timely filed by the General Counsel and Respondent which have been duly considered.¹

¹ On December 1, 1982, the General Counsel filed a posthearing "Motion to Amend General Counsel's Exhibit No. 28 and to Withdraw General Counsel's Exhibit No. 27 and Substitute Corrected Exhibit." G.C. Exh. 28 is a collection of maintenance employees' timecards and form the basis of what appears in evidence as G.C. Exh. 27. On December 19, 1982, Respondent filed an "Opposition" thereto, objecting to various corrections and substitutions except as to factual changes set out in pars. 9 and 10 of the General Counsel's motion with respect to the timecards of C. Patton Jr. and R. Rice. On December 15, 1982, the General Counsel filed a reply to Respondent's opposition.

First, since Respondent does not disagree with the requested factual changes set out in pars. 9 and 10 of the General Counsel's motion dealing with the timecards of Patton and Rice, I hereby grant the General Gen-

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FINDINGS OF FACT

I. THE EMPLOYER'S BUSINESS

The Employer is a Virginia corporation engaged in the manufacture of marine fenders and buoys, with a manufacturing facility at Clearbrook, Virginia. The Employer annually purchases and receives goods valued in excess of \$50,000 directly from points located outside the Commonwealth of Virginia. The complaint alleges, the answer admits, and I find that the Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATION

The complaint alleges, the Respondent stipulated at the hearing, and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Facts²

1. Background

The Union's effort to organize the Respondent's employees began in May 1981.³ A petition was filed on July 31, for an election in a unit of production and maintenance employees. An election was held on September 25, which was won by the Union. Objections to the election were thereafter filed by the Employer which were pending at the time of the hearing.

2. The supervisory status of Chad Blake

The supervisory status of Chad Blake is in issue. Blake is the plant manager, reporting to the part owner and vice president of manufacturing Lewis Brown, who has overall responsibility for the Respondent's manufacturing facility located in Clearbrook, Virginia. Marine fenders, or cushions, are manufactured in various sizes and are designed for use as buffers between ships and docks or piers. With respect to Blake's duties, it appears that, unlike other production employees, Blake is salaried and receives no overtime pay. It further appears that Blake

eral's motion to the extent that Respondent concedes the accuracy of the factual changes set out in para. 9 and 10 of the motion. Otherwise Respondent objects to the corrections and changes requested in the General Counsel's motion on the grounds, inter alia, that to grant the General Counsel's motion would be essentially to deny Respondent the normal and necessary evidentiary procedural safeguards incident to the admission of documentary evidence. I agree. The General Counsel's motion is hereby denied except as noted above.

² There is conflicting testimony regarding many of the allegations of the complaint. In resolving these conflicts I have taken into consideration the apparent interests of the witnesses, particularly where employee witnesses testified against the interests of their employer; the inherent probabilities in light of other events; corroboration or lack of it; and consistencies or inconsistencies within the testimony of each witness and between the testimony of each and that of other witnesses with similar apparent interests. In evaluating the testimony of each witness, I rely specifically on his or her demeanor and make my findings accordingly. And while apart from consideration of demeanor I have taken into account the above-noted credibility considerations, my failure to detail each of these is not to be deemed a failure on my part to have fully considered it. *Bishop & Malco, Inc.*, 159 NLRB 1159, 1161 (1966).

³ All dates refer to 1981 unless otherwise indicated.

has the authority to effectively recommend the hire and fire of production employees, particularly since Blake testified that he could recall no instances where his recommendations were not followed.

With respect to production, it appears that Blake and Brown have daily discussions on the scheduling of production. Thereafter, Blake is responsible for scheduling the production. He conducts daily meetings with the various foremen to determine daily production.

Blake, along with Brown and an engineer, determines the number of man hours needed to do a particular job and Blake establishes a production schedule, including a starting date, to ensure that the delivery date for the order will be met. Additionally, Blake is responsible for ordering the materials to meet the production.

With respect to the assignment of production employees, Blake has the authority, when the occasion demands, to move production employees from one job to another to accomplish production objectives.

When employees require time off, request for such time off on a daily basis for emergencies are brought to Blake for clearance by the employees' individual foreman.

While Brown has overall responsibility for the plant, he spends only about one-half hour per day in the plant and the rest of the time the operation is overseen by Blake who concededly has greater responsibility than the foremen because of his production responsibilities. At times when Brown is on vacation, Blake is responsible for the day-to-day running of the operation. Clearly this record supports the conclusion, and I find, that Blake is a supervisor and an agent of Respondent within the meaning of Section 2(11) and (13) of the Act.

3. The allegations of coercion

Shortly before the September 25 election Brown delivered an antiunion speech to employees on September 23. According to Jerry Reid, an employee in attendance, Brown, in speaking about the matter of layoffs, said that "the policy of Seaward before was, if there were any slow periods, that they would try and keep the employees working, but now, possibly, it was going to change; that people would be laid off and that we could mark his word." The substance of this testimony is corroborated by Logsdon and Murphy.⁴

Brown concedes that he did address the employees on September 23, but states that he did not digress from the text of the written speech and accompanying flipcharts which he used to compare Respondent's benefits with those purportedly being negotiated by the Union with some unidentified local employer.⁵ Ray Leach, quality

⁴ Reid testified that he could not recall the exact date of Brown's speech to the employees, putting it around the end of August or the first week in September. However a review of the relevant testimony, particularly Brown's testimony that he gave only one speech to employees on September 23, convinces me that Reid's testimony dealt with the speech delivered by Brown on September 23.

⁵ Neither the speech nor the flipcharts are in evidence, only a memo from Brown to his attorney, ostensibly containing their content. However, this memo is hearsay as to the actual content of the speech and flipcharts.

control inspector, and Blake offered testimony to the effect that Brown read from a prepared text and that his remarks were limited to the benefits comparison noted above. However, a review of all the relevant testimony, in accordance with the credibility criteria set out above, convinces me that Brown did suggest that employees would be laid off when production declined rather than retained as in the past, if the Union came in.

About October 1, shortly after the election on September 25, Logsdon was called into the office of Chad Blake where he was advised that he was to receive a raise of about 40 cents per hour. Logsdon mentioned that he was surprised at having received a raise since he was involved with the Union. Logsdon testified that, with respect to his remark about union involvement, Blake said "that he was disappointed in me." Blake recalls a conversation with Logsdon concerning a pay raise in October 1981, but denies telling Logsdon that he was disappointed in him because of his involvement with the Union. However, based on a review of the relevant and competent testimony, I am convinced that Logsdon's account is the more credible.

Logsdon also testified that sometime between October 17 and 19, shortly after the discharges of Smith and Murphy on October 15, Logsdon called Blake aside and asked him why Murphy was laid off, and Blake responded, "John, it's out of my hands." Logsdon asked him how it could be out of his hands if he was the plant manager and Blake did not reply. Thereupon Logsdon suggested that Murphy had been laid off "over the union" and Blake "shook his head yes" and reiterated, "It's out of my hands, John."

Blake conceded that he "might" have had a conversation with Logsdon about Murphy's layoff, and that it "could" have taken place in October, but he denies having indicated that Murphy was laid off because of his union activities. Nonetheless, having carefully reviewed the testimony, I am persuaded that Logsdon's account is the more reliable, and I credit it.

Terry Smith, brother of Wayne Smith, and a production employee of Respondent, testified to a conversation with Frank March, president and part owner of Respondent, in mid or late February 1982. March was at the plant for the purpose of distributing the profit-sharing checks for the previous quarter. Terry Smith approached March and inquired why his brother had been discharged and March replied that he did not know the circumstances of that event, that Brown was in charge of it. Smith asked March about a rumored "hit list" of union organizers and March denied it. They agreed to speak openly, with March telling Smith that if Smith tried to use anything against him he would call him a liar. March then asked if Smith "liked the way things were going between us," apparently a reference to those employees who supported the Union as opposed to those who did not support the Union. Smith said that he did not like the hostility, the bickering back and forth among the employees. March asked, "Have you ever thought about decertifying the Union?" When Smith said "No," March replied, "You can vote it out like you can vote it in."

March recalled a conversation with Smith, but his recollection was that Smith approached him expressing concern about being laid off, and March reassured him by saying that so long as production continued he had no worry about his job. March also recited that Smith asked about instituting a pension plan and March replied that they risked an unfair labor practice by instituting a pension plan while the union question was still pending.⁶ March testified that the subject of decertification did not come up in his conversation with Terry Smith; however, a comparison of their testimony persuades me that Smith's recollection of the event is more accurate and I credit him.⁷

In March 1982 according to employee Gary Kitts, chemical supervisor of Respondent, he was advised by Blake that he was getting a raise of 50 cents per hour. Kitts responded that he was satisfied with the raise, but that he thought it should have been more. Blake told him that "it probably would have been more if it wasn't for what you went through back a few months ago." Kitts said that he did not think that was fair. Kitts testified, "He said that he didn't think that was fair either. He said, 'Put yourself in his shoes.' He said, 'Suppose you had a business you started up in your backyard, and it got too much for you to handle. You hire some people and it got bigger. You hired more people. Soon you had twenty, twenty-five people working for you.' And he said, 'Suppose them people got together and wanted to bring someone in to help run your company; wouldn't you be a little bit upset too?'"

Blake testified that he did have a discussion with Kitts, among others, about reduced pay raises, but that the reduced pay raises had nothing to do with union activity. Blake stated that, in his conversation with Kitts, he told Kitts, in essence, that his performance had fallen off in the last year and that his pay raise was substantially less, and that the words "union" or "union activity" were not mentioned during this conversation. However, a review of the probative testimony satisfies me that Kitts' version is the more inherently credible, particularly since Kitts is currently employed and testifying against the interest of his employer.

4. Terminations of Wayne Smith and Michael Murphy

Wayne Smith was employed by Respondent on January 14.⁸ During the course of his employment he

⁶ Respondent's objections to the September 25 election were pending at this time.

⁷ In making this credibility resolution, I am aware that Terry Smith is the brother of Charging Party Wayne Smith; however, from a credibility viewpoint, I also note that Wayne Smith is an employee testifying against the interests of his employer, which tends to lend credence to his testimony.

⁸ Smith testified that he did not receive an "Employee Manual" at this time, but it is undisputed that the manual in effect throughout the relevant time periods herein reads, in relevant part:

Policy on Unions

It is Seaward International's belief that it is in the best interest of the employees and the company not to have a union. Seaward Inter-

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worked at various jobs in the production process of marine fenders.

On March 3, Smith was given a 2-month "Basis for Employee Rating," prepared by John Thompson, then production supervisor. In the narrative portion under "other comments" it reads: "Wayne tries hard and learns fast. I think he will make very good employee." With the approval of Blake, Smith was given a raise of 35 cents per hour about this time.

In early May, Smith called Sam Spade, president of the Union, and expressed a desire to organize the Respondent's plant. A meeting was arranged with the Union attended by Spade, Wayne Smith, and his brother Terry Smith. Spade told them what was involved in organizing the plant, particularly as to the necessity for obtaining authorization cards from the employees. Spade gave Wayne a number of authorization cards to sign. That same evening Wayne Smith went to the house of John Logsdon and obtained a card signed by Logsdon. The next morning he went to Respondent's parking lot where he distributed more authorization cards and spoke to employees about the Union. He did the same thing during his breaks and during his lunch periods and obtained five or six signed authorization cards. On this same day, as he was working, he was approached by Blake who told him that he understood that he had seen a union official. Blake also said, "That would cause troubles in the plant, and Mr. Brown would never let it come in." Thereafter on several occasions Blake asked him how many cards he had and Smith told him that they had "enough."⁹

Sometime in June 1981 Thompson and Blake discussed, from a scratch pad list of production employees, the union sentiments of the listed employees. They were

national's wage and benefit program for employees as described in this manual is largely dependent upon the existence and scope of contracts it has. No union can bring more contracts or change the terms of contracts to provide greater benefits to employees. Further, because unions reduce flexibility and efficiency of operation, unionization would slow down and hamper the demonstrated record of growth of your company. It is this growth that has enabled us to improve regularly your compensation, working conditions and other benefits.

The introduction of a union would destroy the existing harmonious relations here and would create division and bitterness between the employees. Because unions are political in nature, they must find problems with a company in order to convince employees of the need for a union. This could create unrest, doubt and conflict, which in turn could result in the impairment of the unity of purpose. This would certainly be detrimental to everyone at Seaward International.

As in the past, Seaward International will continue to provide, as far as it is able, wages and benefits comparable to, if not better than, other private employers in this industry. Unions did not contribute to our development or growth in the past or the benefits employees now enjoy, and they are not needed for the progress the company will make in the future. Seaward International will continue to improve and strengthen its policies and programs to assure that all employees can continue to work in a friendly, pleasant atmosphere where morale is high, where the individual is treated with dignity and respect. We believe you and the company are better off without the interference of a union.

⁹ None of Blake's remarks at this time is alleged to have violated Sec. 8(a)(1) of the Act, presumably because the remarks occurred prior to September 9, that is, more than 6 months prior to the filing of the charge herein, and thus barred by Sec. 10(b) of the Act as untimely.

individually evaluated and, with respect to Smith, Murphy, and Logsdon, identified as union supporters.¹⁰

On July 17, Smith was given a 6-month evaluation in connection with a raise. This recommendation was less favorable, commenting, "Wayne will work but needs supervision to keep him on the job. Also misses too much time." When no raise was forthcoming, Smith raised the matter with Blake. Smith, whose testimony I credit in this regard, testified that, in August 1981, Blake told him that Brown had twice blocked any raise despite Blake's favorable recommendation. Smith asked him, "Was it because of my involvement with the Union that he would want me to get mad and quit," and Blake responded, "I think you can safely assume that." Smith told Blake that he had no intention of quitting and was determined to see the Union voted in. Blake suggested that it would be wise for him to look for another job. Smith asked if Blake would give him a letter of recommendation and Blake agreed. A couple of days later Blake gave Smith a letter dated August 7 which read:

To Whom It May Concern:

Mr. Wayne Smith has been employed by Seaward International for approximately six (6) months.

During this period, Mr. Smith has performed many various tasks in a workmanlike manner. Some of the tasks have been quite specialized in their nature, requiring the ability to make judgement decisions.

His reliability has been quite good and attitude about his work has been good also.

I feel Mr. Smith is a good employee.

If I can be of further assistance, please feel free to contact me.

On October 15 about 3:30 p.m. Brown called Smith into his office and told him that he was being laid off due to "lack of work, and skills and ability." Brown gave Smith a letter signed by Brown dated October 15, stating, in pertinent part, "Because of a reduction in fender orders, Seaward is reducing the size of its workforce and will no longer be able to employ you effective October 15, 1981. The decision on who not to employ was based primarily on individual skills and work experience and the Company's needs and secondarily on seniority." Checks for wages and unused vacation accompanied the letter. Smith asked if he would be recalled and Brown said that he did not know. By letter dated January 13, 1982, from Brown, Smith was advised, "On October 15, 1981 you were laid off because of reduction in the size of the company's work force. The company does not foresee the need for your services in the future and wishes to inform you by means of this letter that we consider your separation from the company to be permanent."

With respect to the discharge of Michael Murphy, it appears that Murphy was employed by Respondent as a production employee on May 12, 1980, and thereafter worked in all the production areas except the shop area.

¹⁰ The record is not clear as to Respondent's motivation in identifying employees according to their union sentiments.

During the course of his employment he had been regarded by both Blake and his leadman Robert Wood as a good dependable worker.

Around first of May, Murphy signed an authorization card given him by Smith. In addition, Smith gave him about six authorization cards and Murphy obtained signed authorization cards from two or three employees. Murphy also attended several employee union meetings and spoke to other employees to persuade them about the advantages of union representation.

On election day, September 25, Murphy and Jerry Reid wore union T-shirts and union hats to work, prompting Blake to comment, "That's the best I have ever seen you fellows dress."

On October 15, Murphy was laid off by Brown for what Brown described to him as lack of work and job skills. Brown also gave Murphy a letter, identical in the quoted portion, to the letter given Smith on the same day.

Shortly after he was laid off, Murphy called Blake and told him that his layoff was not fair and Blake responded that he was "sorry" but there was nothing he could do since it was "out of his hands."

Sometime in early December, Murphy called Brown and asked him if there was any chance of being called back to work and Brown responded, "Don't look forward to it." By letter dated January 13 from Brown, Murphy was advised that his separation from the Company was permanent.¹¹

Brown testified that the possibility of a layoff had been considered by the executive committee, that is, Brown and his co-owners Frank March and Sidney Shore, as early as January 1981.¹²

With respect to the terminations of Smith and Murphy, Brown testified that consideration was again given to a layoff in July 1981. At that time, according to Brown, "We could see a down turn in business." He also stated that business had been poor for the prior 9 to 12 months.¹³ According to Brown, if they did not receive additional orders for fenders it would be necessary to lay off some production employees in October when a large order for fenders for the U.S. Navy would be completed.¹⁴ Brown testified that a decision was made in July, after consultation with Blake and his co-owners, sitting as a board of directors, to lay off four or five people.

Brown testified that, in October 1981, orders continued to be low and he made a decision to lay off some employees. These employees were Ken Eichhorst and Cecil Clem, in addition to Smith and Murphy. It appears that Clem was disabled and had not worked for several months and was terminated because he could not give Respondent a definite date to return to work. Eichhorst

was a part-time student employee who had returned to school in September 1981.

Brown testified that the determination to lay off Smith and Murphy was the result of a consultation with Blake. A chart was drawn up by Brown listing all the production employees and the various production operations. The employees' skill levels for the various jobs, rated on a scale of 0 to 10, were assigned by Blake. Smith and Murphy were both determined to have skills only in the "net" and solvent spray areas, two points in each category, for a total of four points. Brown testified that these were the lowest point totals with result that they were laid off. It does not appear that any other supervisors participated in these evaluations and it is undisputed that this was the first time that this method of selecting employees for layoff had been employed. This method of selection was not employed at the time of Respondent's last layoff in 1978.

With respect to the matter of overtime, it appears that during November, the month after the discharges of Smith and Murphy, production employees worked an unusually high number of overtime hours. Brown testified that this was due to an unanticipated large order for fenders received by Respondent on October 27. According to Brown, this necessitated a memo from him dated November 20, requiring employees to work 9 hours of overtime per week. The memo read:

Effective November 23, 1981, the normal work hours will be from 7:00 a.m. to 4:40 p.m. In addition, all employees will be required to work 4 hours on Saturday or as an alternative make arrangements with Chad [Blake] to work additional time during the week. This overtime policy is necessary in order to meet our current production schedule and will be cut back when we have caught up with our work load.

I am sure I can count on each of you to contribute your best to catch up on our back log.

According to Respondent's own figures, production employees worked an average of 29.6 hours of overtime in November 1981 as opposed to 14.4 hours in October 1981, the month of the layoffs. During the 3 months after the layoffs, that is November, December, and January 1982, production employees averaged 22.5 hours of overtime as opposed to an average of about 13 hours per month for the 3 months preceding the layoffs, i.e., July, August, and September 1981.

Respondent pays a profit-sharing bonus to employees on a quarterly basis. The profit-sharing bonus plan is described in the employee manual in the following terms:

Seaward International, Inc. provides a profit sharing bonus plan for all full time employees with one year or greater service. The purpose of the plan is to enable employees to share in the profits of the company and to provide an incentive for improving the productivity and profitability of the company. Bonuses are paid quarterly as long as the company's quarterly profits are 75% or greater than projected in the company's current business plan. The total

¹¹ This letter was identical in content to the one Brown sent to Smith dated January 13, quoted above.

¹² March testified that a projection of anticipated business had been made in 1981 showing a decline in business; however, no probative supporting documentation or comparisons were offered to support this projection.

¹³ Despite this representation, two production employees Wayne Smith and Roland Tomasic were hired since January 1981.

¹⁴ While Brown testified that production orders had declined, he offered no documentary support for this testimony.

bonus amount is 10% of the quarterly profits of the company and is paid at the end of the quarter or as soon thereafter as is administrative feasible.

Each eligible employee receives a share of the plan contributions based on his compensation during the quarter. The individual's share is based on the ratio of his compensation to the total compensation of all Plan participants for the quarter. For example, if all compensation equals \$100,000 and the employee's compensation is \$5,000, his share of the company contribution is 5%. If \$10,000 is contributed his share is \$500 for the quarter.

A profit-sharing bonus was paid for the first quarter of Respondent's fiscal year in 1982.¹⁶

Profit-sharing bonuses were also paid for the second and third quarters. A memo dated February 22, 1982, from March which accompanied the distribution of the second quarter profit-sharing bonus checks states, "This was the best quarter in our company's history, and the bonus checks reflect it. This shows what we can do when we all pull together."

In addition to the quarterly profit-sharing plan, Respondent also pays a monthly production bonus to eligible production employees. Brown was unable to state the criteria for payment of the production bonus, only that it was related to the amount of an elastomer or coating, applied to the marine fenders. Production bonuses were paid for the months of September, October, November, and December 1981. A memo to the 18 eligible production employees dated January 6, 1982, from Brown was accompanied by the bonus checks and read, *inter alia*:

As you know we had a good December and this is the largest monthly Production Bonus paid to date.

Thank you for your effort this past month. We have plenty of work for January so let's all work together to get the jobs out on schedule.

The record also discloses that shortly after the layoffs of Smith and Murphy, about November 1, 1981, Respondent hired two employees, Raymond Rice and Charles Patton Jr. Previously they were employed, according to Brown, as part-time independent contractors. Respondent contends that these were maintenance employees hired to perform janitorial work. However, the record discloses that they did not perform exclusively janitorial type maintenance, but also performed substantial amount of production work including production work in the tire and net departments cutting the foam cushioning used on the fenders.

From the testimony of Reid and Logsdon, it appears that in the past it had been the policy of Respondent, when production was slow, to utilize production employees for maintenance work such as general cleanup and painting. The timecards of the employees, as well as the testimony of Blake, tend to support this conclusion. Brown testified that in his speech to employees on September 23 he stated, "At Seaward International there

¹⁶ Respondent's fiscal year begins with August, so the first quarter is composed of the months of August, September, and October.

have been no layoffs in the last 3 years. At the Company covered by the IAM agreement, there had been several layoffs in the past 3 years."

5. The termination of John Logsdon

Logsdon became involved in the effort to organize the Respondent's employees in early May when he signed an authorization card for the Union and obtained signed authorization cards from several other employees. Logsdon attended all seven employee union meetings which were held during the period May to September and spoke to other employees about the advantages of union representation.

Logsdon was employed by Respondent as a production worker on October 1, 1979. During the course of his employment, he performed various production jobs, including a job known as wiping.¹⁶

Logsdon was a good employee with an exemplary record insofar as absence and lateness was concerned, and had received awards from Respondent for his attendance. About 8 months after he was employed, he was asked by John Thompson, plant manager at the time, if he were interested in a promotion, but Logsdon declined saying that he did not want to "bump" a senior employee. Brown conceded in his testimony that Logsdon "normally did a very good job."¹⁷

On August 17, Blake called Logsdon into his office where Blake asked him what could be done to "head off the Union."¹⁸ Logsdon suggested a retirement plan and sick leave. Blake asked him to make up a list of benefits that night and discuss it with Brown the next day. Logsdon agreed. On the morning of August 18, they met in Brown's office where Logsdon read to Brown from a written list of benefits that he had compiled. Brown rejected each suggestion in order. At a meeting of employees on August 19 in the cafeteria Brown again rejected the benefits proposed by Logsdon.

Turning to the time of Logsdon's discharge, it appears that Brown was advised on February 22, 1982, by Raymond Leake, quality control inspector, that a defective 6- by 12-foot fender had come out of the spray booth. Leake testified, "When the fender came out of the spray booth, it was noticed that there was some delamination and an excessive rough end on the fender. Upon examination of the fender, we found that it was delaminated very badly; the skin had started to crack. Then we proceeded further, and found that there were excessive amounts of knotted strings [filaments] and voids in the string area where the material had not been wiped into."

¹⁶ In the process of coating the exterior of the fender, strands or filaments are released from a machine and wrap around the fender which is rotating on a mandrel. It is the responsibility of wipers at either end to see to it that the strands are flattened so that they adhere to the elastomer coating to ensure an even coat.

¹⁷ It appears that the only record of a reprimand was one written by Brown to Blake dated January 27, 1982, which read, "At 1:30 p.m. today John Logsdon was in the cafeteria taking a break. I informed him that his official break time was between 2:00 and 2:30 and that he would lose his job if he didn't get back to work." Logsdon was unaware of the existence of this memorandum.

¹⁸ This occurred after Thompson's meeting with Blake in June 1981 where Logsdon, Smith, and Murphy were identified from an employee list as prounion.

Brown then examined the fender and spoke to some of Logsdon's coworkers about the problem. He did not however consult Logsdon. These consultations occurred on Wednesday, February 24, about 4 hours before he actually discharged Logsdon. These employees were Assistant Foreman Asa Martin, who was responsible for the spray booth operation, Gary Kitts, chemical supervisor, responsible for the chemical mix (elastomer) with which the fenders are spray coated, and Michael McIntire, the sprayer.

Brown testified that Martin told him that all the sprayroom equipment was functioning properly and that, when asked by Brown what his opinion was as to the cause of the defect, Martin told him that Logsdon was not wiping his end of the fender properly. Brown also testified that McIntire told him essentially the same thing.¹⁹ Martin however testified that, when Brown questioned him, he responded with the question, "Could it be the chemicals?" Martin also testified that Logsdon had complained to him that the nylon filament was snagging as it came out of the winder. Martin conceded that such a problem existed and that he attempted to help Logsdon solve it. He confirmed that the nylon filament was rolling off the end of the fender, in his opinion, because the end was too wet. With too much wet spray on it, the filament was unable to adhere. Martin also testified that he had never seen a fender with so many cracks where the cracking was caused by defective wiping. I credit Martin as to this conversation particularly since he is a current employee testifying adversely to the interests of his employer.

With respect to his conversations with Kitts, Brown testified that Kitts told him that from his records there was nothing wrong with the chemicals, that the problem had to be with something else. Kitts, whose testimony I credit, testified only that he told Brown that he did not know what the problem was.

Brown testified that Woods told him that everything appeared normal during the spraying operation. Woods, whose testimony I credit, testified without alluding to any specific conversation with Brown about the matter that, in his opinion, the cracks were caused by "bad chemicals" in the spray solution giving the fender a "cheesy" consistency.

Alvin Dodson, a chemical department employee, testified that, when he and Blake began to strip the cushion a few days after Logsdon was discharged, he found the coating to be abnormally soft, and suggested to Blake that it might be a "ratio" problem²⁰ and Blake agreed. Dodson's opinion was that the problem was caused by an imbalance in the normal one-to-one "ratio" and that this also could cause a problem in the filament failing to adhere. Dodson testified "that [the imbalance] would make the material bad, where you could tear it off, and it would make the material crack, I believe. That would also explain why the strings were messed up, because the chemicals weren't setting right. When these strings touched the fenders, instead of it being tacky enough for

them to stay there while they still had tension on the winder, it could have made the string roll up and down the fender."

After his consultation on February 24, Brown testified that he was convinced that the damage to the fender had been intentional and decided that day to discharge Logsdon if he had no adequate explanation.

On February 24 Brown prepared a discharge letter, and had Logsdon's final checks made up. The discharge letter read:

Your employment with Seaward International, Inc. is being terminated effective today. You are being terminated because of the poor performance on the job and complete indifference towards the quality of your work, particularly as evidenced by the work you performed on a 6x12 Sea Cushion that was sprayed on February 22, 1982. This indifference to quality markmanship has been noted by several other employees and supervisors. In addition there have been other occasions recently where your work has been unsatisfactory.

Attached are checks in the amount of \$137.88 which covers your pay, and sick pay and check in the amount of \$77.50 which covers your accumulated vacation pay. A check for your share of the company's Profit Sharing Plan will be mailed to you.

Brown called Logsdon into his office where he gave Logsdon the letter, which he read. Brown's recollection of the meeting is vague and Logsdon, whose testimony I credit, states that Brown did not tell Logsdon, when he asked, who the "several other employees and supervisors were." Logsdon attempted to explain that the winder was not set right, but Brown turned away from him.²¹ Logsdon asked if Robin Clark was being fired also since her end was bad too, and Brown did not respond. Logsdon asked why two other employees were not fired for a prior incident where a fender had been damaged by fire. Brown told him that that was an "accident." Logsdon stated to Brown that the reason he was being fired was for his union involvement. Brown denied it and the conversation ended.

This was not the first time that a fender had to be stripped and resprayed. This had occurred previously in February 1982, when some 13 or 14 2-foot by 3-foot sea cushions were cracked and had to be stripped and resprayed. Another sea cushion, 5 feet by 10 feet in size, was cracked in October 1981, and needed to be stripped and resprayed. In June 1982, after Logsdon's discharge, some other 2-foot by 3-foot and 32-inch by 50-inch fenders were cracked, also requiring stripping and recoating. Respondent does not deny that these incidents occurred, but contends that it was not possible to determine the cause of the problem in those cases and that no disciplinary action was taken.

¹⁹ McIntire did not testify.

²⁰ The correct chemical mixture "ratio" should consist of equal parts of elastomer and curative.

²¹ Robin Clark, the wiper on the other end of the fender, testified that she experienced the same problem as Logsdon, in that the winder was not set right causing the filament not to adhere to the elastomer.

B. Discussion and Analysis

1. Allegations of coercion²²

Brown, in delivering a speech to employees on September 23, told them, in substance, that the Respondent's practice of retaining employees through periods of low production would be discontinued if the Union's organizing efforts succeeded. This observation is essentially a threat to withdraw a previously existing employment benefit if the employees, in the exercise of their rights under Section 7 of the Act, were successful in obtaining representation by the Union. Such remarks are patently coercive in violation of Section 8(a)(1) of the Act, and I so find.²³

As to the allegation that Blake violated the Act by telling Logsdon that he was "disappointed in him" because of his union involvement, I credit Logsdon's testimony concerning the remark; however, I do not find that it violates the Act since it is not coercive. It was simply a postelection expression of opinion on Blake's part and did not convey any threat of retaliation or intimidation by Respondent which can be construed as a violation of Section 8(a)(1) of the Act.

Turning to the General Counsel's allegation of coercion about October 17, it appears that Blake, in conversation with Murphy, concurred with an affirmative head gesture in Logsdon's suggestion that Murphy had been laid off because of his union activity, adding, that the matter was out of his hands. By this conduct, Blake conveyed to Logsdon the concept that union activity had caused the discharge of another employee. The import of such an intimidating statement is clearly coercive inasmuch as the remarks interfere with the statutory 8(a)(1) right of employees to organize without Respondent interference.²⁴

As noted above, in mid- or late February 1982, March asked Terry Smith, brother of alleged discriminatee Wayne Smith, if he had ever thought about decertifying

the Union by voting it out. By this statement March was suggesting to an employee a method whereby the employees could oust the Union and, by implication, was suggesting it by asking Smith if he ever thought about it. March's remarks violate Section 8(a)(1) of the Act since they disclose, not only that March was explaining to Smith a way for employees to get rid of the Union, but was actually encouraging him to do so.

Finally, in March 1982, as noted above, Blake in conversation with Kitts told him that their recent pay raise would have been greater were it not for "what you went through a few months ago." That this was a reference to the Union's organizational effort among the employees is clear from a review of the entire conversation, particularly Blake's thinly veiled reference to Brown's reaction to the Union's organizing his business. Clearly, suggesting to employees that benefits (in this case a greater wage increase) have been withheld, because employees were exercising their right to union representation, violates Section 8(a)(1) of the Act.

2. Terminations of Smith and Murphy

It is the position of the General Counsel that Smith and Murphy were discharged because of their activity on behalf of the Union. Respondent however contends that they were terminated for legitimate business considerations. A review of the salient facts convinces me that Smith and Murphy were discharged because of their activity on behalf of the Union.

First, with respect to Smith, the record establishes that he was the first employee to contact the Union about organizing Respondent's employees and was prominent in the organizational effort, to the extent of soliciting union authorization cards and speaking to employees in favor of union representation. It is equally clear that Respondent was aware that Smith was so involved, and that it opposed union representation for its employees. In addition to the 8(a)(1) findings of coercion noted above, Respondent's opposition to the Union is expressed generally in the employee manual quoted above, and individually with respect to Smith in conversations with Blake wherein Blake inquired of the Union's progress and told Smith that Brown would not permit a union. Smith was also specifically identified as a union supporter in June 1981 in the written listing of employees disclosing their union sentiments. Moreover, Blake forecast the termination of Smith by agreeing that Smith had been denied a raise by Brown because of his union involvement, and by suggesting that he seek employment elsewhere. To this end, Blake provided him on August 7 with a letter of recommendation for other employment.

As to Murphy, the record discloses that he engaged in substantial union activity by signing and distributing authorization cards obtained from Smith, attending union meetings, and speaking to employees on behalf of the Union. Like Smith, Respondent had listed Murphy as a union supporter as early as June 1981. Evidence of union animus directed to Smith is apparent from my earlier finding of 8(a)(1) coercion wherein Blake conceded to Logsdon, with an affirmative gesture, that Murphy had been discharged because of his union involvement.

²² Respondent contends that the complaint herein improperly expanded the allegations contained in the charge, specifically that while the three charges filed allege only three layoffs or discharges as 8(a)(3) violations, the complaint, in pars. 5(a) through 5(d), also alleges coercion in violation of Section 8(a)(1) of the Act. Respondent also argues that the judge erred in allowing the complaint to be expanded by amendment to add a par. 5(e) as set out above. These contentions are without merit. First the body, outside the charges themselves, includes the language, "By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act." Moreover, the action of the Regional Director and the judge are clearly supported by the National Labor Relations Board's Rules and Regulations as the means of giving expeditious consideration to all related matters in the same unfair labor practice hearing. Rules and Regulations, Sec. 17. Accordingly, Respondent's motion to dismiss based on improper expansion of charges is denied.

²³ Respondent alleged in a prehearing "Motion to Dismiss and/or For More Definite Statement" that par. 5(a) of the complaint was "vague." That motion was denied and is not appropriate for posthearing consideration since a disposition on the merits of this allegation is made herein.

²⁴ With respect to pars. 5(a), (b), (c), and (d) of the complaint, Respondent argues that, since the alleged instances of coercion involve presentations made to a single employee, there is no evidence to show coercion of "employees" as alleged in the complaint, and that dismissal is warranted for failure of proof as to those allegations. The record herein discloses that these allegations were fully litigated, and such insubstantial inaccuracies in the complaint are not sufficient basis to warrant their dismissal.

By way of defense, Respondent contends that the layoffs were necessitated by economic considerations. Central to this defense is the contention that the reduction in force resulting in the terminations²⁵ of Smith and Murphy was occasioned by reductions in the number of orders rather than discriminatory considerations. March and Brown testified, in general terms, that these gloomy business prospects and the possibility of layoffs were discussed among the members of the executive committee as early as January 1981, and later on July 7, 1981, as suggested in an executive committee memo bearing that date.

While Brown and March testified concerning a decline in customer orders, no customer orders were introduced at the hearing to support this contention. Such supporting documentation presumptively would have shown dates, number, and size of units ordered, etc., and would have been better evidence to support Respondent's position than the unspecific testimony concerning orders which was adduced.

Moreover, it appears that the predictions of a decline in production were not borne out, at least at the time Smith and Murphy were discharged, since it is undisputed that production was not declining then. It is also undisputed that in November 1981, the month following the discharges of Smith and Murphy, an unusual number of overtime hours were worked in order to meet the demands of increased production. Brown testified that an unanticipated order made the overtime necessary, but why and how the order was or should have been "unanticipated" is not clear on the record. Respondent's position is further diminished by the fact that substantially more overtime was worked in the 3 months after Smith and Murphy were discharged than in the 3 months prior to their discharges, suggesting that reduced production does not explain the terminations.²⁶

That the general economic health of Respondent was good is suggested by the fact that a profit-sharing bonus was paid for the first two quarters of Respondent's 1982 fiscal year, with the 3 months immediately succeeding the terminations (November, December, and January) being described by March as "the best quarter in our Company's history."

Respondent also pays a monthly production bonus and the record shows that production bonuses were paid for every month, September 1981 through December 1981, with December being the "largest monthly production bonus paid to date," and stating that there was plenty of work for January. These representations suggest less than the bleak production forecast alluded to in the testimony of Brown and March.

While Respondent argues that customer orders were "down," the level of production, as noted above, was not reduced and additional overtime was needed after

²⁵ At the hearing, the complaint was amended (par. 6(a)) to allege that Smith and Murphy were "terminated" rather than "laid off." Respondent contends that the General Counsel has not met its evidentiary burden to show that Smith and Murphy were terminated. However, the record herein, particularly the termination letter of October 15, supports the allegation of termination, and I so find.

²⁶ Obviously production was not affected by the layoffs of Eichhorst and Clem since neither was working in October 1981.

the terminations of Smith and Murphy to meet production demands. Also, as noted above, Rice and Charles Patton Jr. were hired and, although designated as maintenance employees, did perform production work.

In summary, this record makes it abundantly clear that neither declining production nor any substantiated predictions of declining production accounted for the terminations of Smith and Murphy.

In my view, noting particularly the evidence of union animus on the part of Respondent directed specifically toward Smith and Murphy, I am convinced that the layoffs were not supported by any economic justification, but were carried out in retaliation against Smith and Murphy for having led the union organizational effort. Such discharges violate Section 8(a)(3) of the Act.²⁷

3. Logsdon's discharge

This record supports the conclusion that Logsdon was, early on, an active union adherent soliciting union authorization cards, attending union meetings, and promoting the Union among other employees. It is equally apparent that Respondent knew of Logsdon's union sentiments not only from having identified him as a union supporter from an employee list in June 1981, but also since he was sought out by Blake with the view toward "heading off the union," and suggested certain employee benefits which were rejected by Brown.

There remains for consideration the issue of Respondent's motivation in discharging Logsdon. While the General Counsel contends that he was discharged because of his union activity, Respondent contends that he was discharged for intentionally damaging a fender as described above. I am satisfied that the record fully supports the General Counsel's position and that Logsdon was discharged for his union activity.

While Respondent contends that Logsdon was responsible for the damage to the fender, the testimony of those employees involved in supervising the production process does not support the conclusion. Most of the probative evidence suggests that damage to the fender was the result of a chemical imbalance in the elastomer coating causing the nylon filaments not to adhere to it. This situation appears to have been aggravated by a faulty winder releasing the filament. However, the contention that the damage to the fender was attributable to Logsdon, either deliberately or negligently, has not been shown.²⁸

Neither can it be said that Brown's investigation supports Respondent's position, since the bulk of the credible testimony of those with whom Brown discussed the

²⁷ Having concluded that Respondent's economic justification for the discharges was pretextual, and that the discharges of Smith and Murphy were discriminatory, I find it unnecessary to discuss that aspect of the case dealing with the legitimacy of the criteria for the selection of Smith and Murphy for discharge.

²⁸ Respondent contends that the damage to the fender was limited exclusively to Logsdon's end of the fender, and that therefore the damage is necessarily attributable to Logsdon. First I am not satisfied that the record establishes these premises and, second, even assuming that the deficiencies were only at Logsdon's end, the record does not support the conclusion that Logsdon had to be responsible for it.

matter suggests that factors other than Logsdon's alleged defective wiping were responsible for the damage.

Another factor which suggests an unlawful motivation for Logsdon's discharge is the fact that, in the past and even subsequent to Logsdon's discharge, other fenders had been damaged and no disciplinary action taken in those incidents. I do not find persuasive Respondent's explanation that those responsible for the damage in those incidents could not be identified.

Respondent's motivation is further made suspect by the manner in which the discharge was accomplished. Here we have a concededly good employee. Respondent conducts an inconclusive cursory investigation and determines to discharge him without even discussing the matter with him or otherwise giving him any opportunity to present his position.

In short, I am not persuaded, based on this record, that Logsdon even contributed to the damage to the fender and I so find. I find further that the reason asserted for his discharge was a pretext for the real motivation, which was to punish Logsdon for his union activity which violates Section 8(a)(3) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent as set forth in section III, above, occurring in connection with Respondent's operations described in section I, above, have a close and intimate relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in, and is engaging in, unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. I have found that Respondent discharged John Logsdon, Michael Murphy, and Arthur Smith for reasons which offended the provisions of Section 8(a)(3) of the Act.²⁹ I shall therefore recommend that Respondent make them whole for any loss of pay which they may have suffered as a result of the discrimination practiced against them. The backpay, provided with interest thereon, is to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 651 (1977).³⁰

²⁹ Respondent's reliance on the *Mt. Healthy Board of Education v. Doyle*, 429 U.S. 274 (1977), test of causality, as set out by the Board in *Wright Line*, 251 NLRB 1083 (1980), is misplaced. See also *NLRB v. Transportation Management Corp.*, 103 S.Ct. U.S. 2496 (1983). I am satisfied that this test applies to dual-motive cases where one factor in the employer's motivation is legitimate. I am satisfied that this record discloses no legitimate motivating factor for any of these discharges. In other words, these are not dual-motive cases; they are single-motive cases, and that motive was discriminatory within the meaning of Sec. 8(a)(3) of the Act. In these circumstances, no *Wright Line* analysis is necessary.

³⁰ See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

CONCLUSIONS OF LAW

1. Respondent is a 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. Chad Blake is a supervisor and an agent of Respondent within the meaning of Section 2(11) and (13) of the Act.

5. By interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, Respondent has engaged in and is engaging in unfair labor practices proscribed by Section 8(a)(1) of the Act.

On foregoing findings of fact and conclusions of law and on the entire record I issue the following recommended³¹

ORDER

The Respondent, Seaward International, Inc., Clearbrook, Virginia, its officers, agents, and successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with layoff because of their union activity.

(b) Telling employees that other employees were laid off because of their union activity.

(c) Suggesting to employees that they reject the Union through decertification.

(d) Telling employees that they received lower pay raises because of their union activity.

(e) Discharging or otherwise discriminating in regard to the hire and tenure of employees in order to discourage membership in District Lodge 186 of the International Association of Machinists and Aerospace Workers, AFL-CIO.

(f) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.³²

2. Take the following affirmative action which I find is necessary to effectuate the policies of the Act.

(a) Offer John Logsdon, Michael Murphy, and Arthur Smith immediate and full reinstatement to their former jobs or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed and make them whole for any loss of pay they may have suffered in the manner set forth in the section entitled "The Remedy."³³

(b) Expunge from its files any references to the discharges of John Logsdon, Michael Murphy, and Arthur Smith and notify them in writing that this has been done

³¹ 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.

³² A broad cease-and-desist order herein is appropriate under the criteria set out in *Hickmott Foods*, 242 NLRB 1357 (1979).

³³ The record suggests that Murphy and Smith were reemployed. Obviously, to the extent that full reinstatement was accomplished, that aspect of the recommended Order has been satisfied.

and that evidence of these unlawful discharges will not be used as a basis for future personnel action against them.

(c) 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.

(d) Post at its Clearbrook, Virginia facility copies of the attached notice marked "Appendix."³⁴ Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent

immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

³⁴ 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."