

**American Community Stores, A Subsidiary of  
Collum Companies, Inc., d/b/a Grocery Supply  
and Joyce Arnold, Case 17-CA-11221**

30 April 1984

**DECISION AND ORDER**

**BY CHAIRMAN DOTSON AND MEMBERS  
HUNTER AND DENNIS**

On 6 June 1983 Administrative Law Judge George Christensen issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a cross-exception 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 briefs and has decided to affirm the judge's rulings, findings, and conclusions<sup>1</sup> and to adopt the recommended Order as modified below.<sup>2</sup>

<sup>1</sup> In adopting the judge's conclusion that the Respondent violated the Act by discharging the Charging Party, we find it unnecessary to rely on any implication in the judge's decision that the Charging Party's activities unrelated to her union activities or to her filing charges with the Board were protected concerted activities.

Contrary to the suggestion of our dissenting colleague, we are not holding that "the mere fact that an employee is engaged in union activity would preclude that employee from being discharged under any rule if that employee was the first to be discharged under that specific rule." The Charging Party led an unsuccessful organizing effort in 1981. The Respondent discharged her, and she was reinstated pursuant to a settlement agreement between Region 17 and the Respondent. On 1 September 1982 she filed charges with the Board protesting the reduction of her hours. On 20 September she was discharged. We do not dispute the evidence that the Respondent's longstanding written disciplinary rules provide that employees who commit the infraction committed by the Charging Party here will be discharged. The undisputed evidence also establishes, however, that the Respondent had not discharged any of the four employees who had committed similar infractions during the past 2 years. This clearly shows disparate treatment. Furthermore, the Respondent's assertion that it had tightened up the enforcement of this policy in 1981 is unsupported by any document announcing such a change or by any evidence of disciplinary actions taken against other employees.

More importantly, there is affirmative uncontradicted evidence that the Respondent created the shortage for which it discharged Arnold by its own actions. Thus, Store Manager Doran admits that, after the bank notified him it planned to clear the check for the higher amount on the customer's instructions, he directed the bank to credit the check for the lower amount instead. Doran then used the deposit slip showing this lower amount as the bank verification required by the Respondent's written policy in order to discharge Arnold for her fourth shortage. In light of Arnold's filing charges with the Board only a few weeks before her discharge and Doran's suspicious conduct, it is obvious the Respondent seized on this incident as a pretext to get rid of her in violation of the Act.

<sup>2</sup> The judge inadvertently omitted the narrow injunctive language from his recommended Order and notice. Accordingly, we grant the General Counsel's cross-exception and will order the Respondent to cease and desist from "in any like or related manner" interfering with, restraining, or coercing employees in the exercise of rights guaranteed by the National Labor Relations Act. *Hickmott Foods*, 242 NLRB 1357 (1979).

Also, in addition to ordering the Respondent to remove from its records any references to the unlawful discharge, we will order the Respondent to notify the Charging Party in writing that any reference to

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, American Community Stores, A Subsidiary of Collum Companies, Inc., d/b/a Grocery Supply, Joplin, Missouri, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order as modified.

1. Add the following to paragraph 2(d) following the word "thereon."

"(d) . . . and notify her 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 her."

2. Add the following as paragraph 2(e) and reletter the subsequent paragraphs.

"(e) Cease and desist from in any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed by Section 7 of the Act."

3. Substitute the attached Notice for that of the administrative law judge.

**CHAIRMAN DOTSON, dissenting.**

I cannot agree with the majority in this case and I would therefore find that the Respondent did not violate the Act by discharging Charging Party Joyce Arnold. The Respondent has a written policy of discharging employees with four cash register overages or shortages of \$5 or more within 6 months. This is undisputed. There is also no dispute that the Charging Party had three such infractions within a 6-month period set to expire 26 September. On 18 September, she accepted a check from a customer with "25.00" written in one section and "twenty and no/100 dollars" in the other section. The discrepancy was discovered when Arnold and management, pursuant to company policy, jointly checked out Arnold's drawer at the end of her shift. If the check had been credited as \$25, Arnold would have been \$.10 short that day. If the check had been credited as \$20, she would have been \$5.10 short, and that shortage would have been her fourth shortage or overage within 6 months. Store Manager Doran testified that the legal value of the check was the written amount, not the amount expressed in numerals. Doran and another employee prepared a report showing the alleged shortage.

It is also undisputed that it is a violation of company policy to pay the numerical amount on the check rather than the written amount.

her unlawful discharge has been expunged from its records. See *Sterling Sugars*, 261 NLRB 472 (1982).

There can be no question that according to company policy Arnold was subject to discharge. The judge and the majority of this Board seize upon the fact that Arnold was a union adherent during the 1981 union campaign and that she again engaged in protected concerted activity just prior to her termination. The judge and the majority of the Board seem to use this to show discriminatory motivation in the discharge even in the face of a clear written policy. I cannot agree that such activity cloaks a worker and negates a rule by the Company which on its face is designed to prevent employees from making mistakes, not to recoup losses. Thus, it is of no moment that the bank, the Charging Party, or the customer was willing to correct the error.

The fact that the Respondent insisted that the bank follow its (the bank's) policy and verify the error makes good business and legal sense.

There is absolutely no evidence that the Company used this as a pretext to rid itself of Arnold. Further, there is absolutely no evidence to refute the Respondent's contention that in 1981 it tightened up its policy concerning improperly drawn checks. The fact that Arnold was the first employee ever discharged pursuant to the Respondent's shortage/overage policy is of no consequence. In this respect, it is submitted that under all the circumstances present in this case, the mere fact that an employee is engaged in union activity would preclude that employee from being discharged under any rule if that employee was the first to be discharged under that specific rule. I also do not attach any significance to the fact that an employee was not fired for violating this policy even though a manager was dismissed for not firing an employee who violated the policy. It is obvious from this action that the Company did take this policy seriously since the manager was held accountable for his failure to fire an employee under company policy. I see nothing inconsistent with this since it is logical to assume that a manager should be held accountable for his failure to act. There is absolutely no independent evidence regarding an 8(a)(4) violation. Further, the only rationale I can glean from the majority is that the majority is finding an 8(a)(1) violation based on union activity which last occurred in the spring of 1981. Therefore, I cannot agree with the disposition of this case and I would reverse the judge and find no violation.

## 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 discharge any employee for filing charges with the National Labor Relations Board against us for engaging in activities on behalf of United Food & Commercial Workers Union Local 322, AFL-CIO, or any other labor organization, or for engaging in any other concerted activities for the purpose of collective bargaining or mutual employee aid or protection.

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 Joyce Arnold immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed and WE WILL make her whole for any loss of earnings and other benefits she suffered by virtue of our discharging her for filing charges with the National Labor Relations Board and engaging in activities on behalf of Local 322 and employee aid and protection, less any net interim earnings, plus interest.

WE WILL remove from our files any references to the disciplinary discharge of Joyce Arnold on 18 September 1982, and WE WILL notify her that this has been done and that evidence of this unlawful discharge will not be used against her in any way.

AMERICAN COMMUNITY STORES, A  
SUBSIDIARY OF COLLUM COMPANIES,  
INC., D/B/A GROCERY SUPPLY

### DECISION

#### STATEMENT OF THE CASE

GEORGE CHRISTENSEN, Administrative Law Judge. On February 24, 1983, I conducted a hearing at Joplin, Missouri, to try issues raised by complaint issued on November 22, 1983,<sup>1</sup> based on a charge filed by Joyce Arnold on September 30 and amended on November 19.

The complaint alleged that American Community Stores, A Subsidiary of Collum Companies, Inc., d/b/a Grocery Supply (the Company), violated Section 8(a)(1)

<sup>1</sup> Read 1982 after all further date references omitting the year.

of the National Labor Relations Act by directing Arnold to refrain from discussing with other employees their conditions of employment and Section 8(a)(1), (3), and (4) of the Act by discharging Arnold for engaging in activities on behalf of United Food & Commercial Workers Union Local 322, AFL-CIO (the Union), and for filing charges with Region 17 against the Company.

The Company concedes that it discharged Arnold, contends she was discharged for cause, denies uttering the direction recited in the complaint, contends the statement it made was not violative of the Act, and denies committing any violation of the Act.

The issues are: (1) whether the Company made the statement set out in the complaint and, if so, whether it thereby violated the Act, and (2) whether the Company discharged Arnold for engaging in activities on behalf of the Union and filing charges and thereby violated the Act, or discharged her for cause.

The parties appeared at the hearing by counsel and were afforded full opportunity to adduce, evidence, to examine and cross-examine witnesses, to argue, and to file briefs. Briefs were filed by the General Counsel and the Company.

Based on my review of the entire record, observation of the witnesses, perusal of the briefs and research, I enter the following

#### FINDINGS OF FACT

##### I. JURISDICTION AND LABOR ORGANIZATION

The complaint alleges, the answer admits, and I find at all pertinent times the Company was an employer engaged in commerce in a business affecting commerce and the Union was a labor organization within the meaning of Section 2 of the Act.

##### II. THE ALLEGED UNFAIR LABOR PRACTICES

###### A. Facts

The Company operates a chain of retail grocery stores, including a warehouse-type store operation at Joplin, Missouri, which is the scene of the events pertinent to this decision. At times pertinent, the Company employed approximately 19 employees, who worked interchangeably as checker-cashiers and stockclerks.

Joyce Arnold was originally hired on August 16, 1976. She was the leading union activist among the Joplin employees during the Union's unsuccessful campaign to represent the Joplin employees in 1981.<sup>2</sup> Following the election (on May 18, 1981) Arnold was discharged. She was reinstated in August 1981 pursuant to the terms of a settlement agreement negotiated by representatives of Region 17 and the Company, following her filing of a charge with the Region alleging she was discharged because of her activities on behalf of the Union.<sup>3</sup>

The Company has a policy of discharging any checker-cashier who is \$5 or more over or under, when her cash drawer is checked out, on four separate occasions within a 6-month period. The policy is contained in

formal, written instructions issued to its managers and conveyed to its employees. Those same instructions require each manager to prepare and send to headquarters a "significant incident" report setting out the date of the first over/under incident exceeding \$5, the circumstances, the amount, the name of the affected employee, and the fact that the employee has been advised the clock has begun to run and he or she will be discharged if three more over/unders occur within 6 months; a "contact report" on the second incident within 6 months of the first one, setting out the same information; and another "contact report" on the third incident within 6 months of the first one, setting out the same information, plus a statement the employee has been offered retraining and whether or not the offer was accepted. After the third over/under in excess of \$5 within 6 months, the employee is also placed "in isolation," which means his or her cash drawer is checked out jointly after each work shift by the affected employee and a supervisor for the balance of the 6-month period and the resulting checker report is signed by both the employee and the supervisor.

On March 26, Arnold was short over \$5 at the end of her shift. She was orally warned the clock had begun to run and she would be subject to discharge if three or more incidents of a like nature occurred before September 26.

On May 28, Arnold was \$12.71 over. She was warned two more incidents of a like nature before September 26 would cause her discharge and the requisite contact report was prepared.

On June 1, Arnold was \$20.82 over. She was warned one more shortage or overage exceeding \$5 before September 26 would result in her discharge, was offered retraining (which she accepted and received), was placed "in isolation," and the requisite contact report was prepared.

In August, the Company decided labor costs at several stores within the district<sup>4</sup> were too high and directed the managers of those stores to place all employees on a part-time basis and schedule their hours in accordance with the traffic volume each store was experiencing, thereby lowering labor costs<sup>5</sup> and attaining greater flexibility in work scheduling.

At that time there were two full-time employees at the Joplin store: Arnold and Peggy Corrigan. On August 21, Joplin Store Manager Steven Doran advised Arnold she and Corrigan were going to be working part time rather than full time, along with the balance of the work force. Arnold objected, stating if the Company did not continue her full time, she would write to the Company's vice president and General Manager, Ken Eckles,<sup>6</sup> and file

<sup>4</sup> The district consisted of the Joplin store, another store at Springfield, Missouri, and four stores in Arkansas. A cost analysis determined labor costs at the Joplin, Springfield, Little Rock, and Texarkana stores were too high relative to total costs and revenues at the four stores in question.

<sup>5</sup> By reducing total hours and certain fringe benefits (part-time employees normally were not provided hospital and surgical insurance coverage, and other benefits).

<sup>6</sup> She had made written complaints to Eckles several times previous, when a company action or policy displeased her.

<sup>2</sup> The Union lost a Board-conducted election in the spring of 1981.

<sup>3</sup> Case 17-CA-10372

charges of discrimination with the National Labor Relations Board (NLRB) and the Equal Employment Opportunity Commission (EEOC). Doran was not swayed by her statement and placed new work schedules in effect which reduced the hours of Corrigan and Arnold from 40 hours per week to approximately 25 hours per week.

Arnold promptly sent a letter to Eckles protesting the change in her status from full time to part time, her loss of 15 hours of work and pay per week, an alleged increase in the hours of work scheduled for the employees who were part time before and after the change in her status, her loss of fringe benefits and seniority status, her loss of promotional opportunities (citing a provision of the Company's employee manual stating only full-time employees would be considered for promotion to management positions), charged a less senior and less qualified employee than she had recently been promoted to a management position because he was male (Jeff Owens, assistant manager at the Joplin store), and stated unless she was restored to a full-time status, she was going to file a charge with the NLRB, alleging her change in status, pay, fringe benefits, and promotional opportunities had been instituted because of her 1981 union activities and the filing of her 1981 charge with the NLRB, plus a charge with the EEOC alleging the company promotion of Owens instead of her, and her reduction to part-time status, and consequent loss of promotional opportunities, were made because of her sex.

On receipt of the letter, Eckles contacted District Manager Tom Lennons<sup>7</sup> and instructed Lennons to proceed to Joplin to discuss Arnold's complaints with her and try to convince her the Company was not discriminatorily motivated in taking the actions she complained about.

Lennons proceeded to Joplin and conferred with Arnold on August 26. In the course of the conference, Lennons informed Arnold of the reasons for its decision to reduce full-time employees to part time at a number of its stores (to reduce costs and increase flexibility in making work assignments), denied Arnold was singled out for such status change, denied the Company was discriminatorily motivated in changing Arnold's status to part time, denied the Company was discriminatorily motivated in promoting Owens over Arnold to a supervisory position, informed Arnold to do as her conscience dictated with reference to filing charges with the NLRB and EEOC, and requested Arnold to *refrain from saying anything detrimental about the store*, to which she assented. I credited mutually corroborative testimony that Lennons' only request concerning Arnold's future conduct was limited to the language italicized above.

On September 1, Eckles mailed a formal reply to Arnold's letter, in essence reiterating and reaffirming the explanations and positions voiced by Lennons at the August 26 Lennons-Arnold conference.

On the same date (September 1), Arnold filed a charge<sup>8</sup> with NLRB Region 17, alleging the Company

violated Section 8(a)(1), (3), and (4) of the Act by reducing her to part-time status because of her 1981 union activities and filing of the 1981 charge which led to her reinstatement and a second charge with the regional office of the EEOC, alleging the Company had discriminated against her because of her sex by promoting a less qualified male employee (Owens) to a management position and by reducing her to part-time status to render her ineligible for such promotion in the future.

During her work shift on Saturday, September 18, Arnold accepted a check drawn by Mrs. Harold G. Cates as worth \$25, though it was written out for "twenty and no/100 dollars" in one section and for "25.00" in another. This clearly was a mistake and contrary to company instructions.<sup>9</sup>

The discrepancy was noted when Arnold and Comanager Joella Beck<sup>10</sup> checked out Arnold's drawer at the end of her shift. Arnold tallied the check as worth \$25 relying on the figure amount, prepared and signed a checker report showing a shortage of 10 cents. Beck refused to sign the report and referred the matter to Doran. Doran took the position the check was worth \$20, not \$25,<sup>11</sup> and requested the report either be revised to show a \$5.10 shortage or a new report be prepared so showing. Arnold refused to revise the report or prepare a new one, asserting Cates tendered the check for the higher amount, it was the correct amount, and requested that Doran contact Cates to so verify. Doran refused to contact Cates; Arnold told Doran and Beck to do whatever they wanted, she was leaving. She picked up her belongings and left the store. Doran and Beck prepared a report showing a \$5.10 shortage.

After leaving the store, Arnold contacted Cates. Cates agreed she intended to pay \$25 and agreed to so notify her bank, the Commerce Bank of Joplin.

The Company maintained its account at the same bank. At approximately 8:15 a.m. on Monday, September 20, Commerce Bank's assistant cashier and facility manager, Betty Turner, noticed the discrepancy in the amounts on the Cates' check while checking the Company's September 18 deposit. She telephoned Cates and asked her which figure was correct. Cates informed her \$25 was correct and agreed to guarantee and pay that amount from her account to the Company. About 9 a.m., Turner telephoned the store, told Doran she noticed the discrepancy in checking the deposit, contacted Cates, and Cates authorized the bank to clear the check for the higher amount, \$25. Doran told Turner he was coming to the bank later and would discuss the matter further at that time.

About the same time (9 a.m.) Arnold arrived at the store prepared to go to work (prior to Arnold's leaving

<sup>9</sup> The checker-cashier manual, which Arnold reviewed in the course of her retraining after the second contact report was issued, instructs all checker-cashiers to scrutinize all checks to determine whether the written and number amounts on a check match, and to reject any checks where they differ.

<sup>10</sup> The complaint alleges, the answer admits, and I find at all pertinent times Beck was a supervisor and agent of the Company acting on its behalf within the meaning of Sec. 2 of the Act.

<sup>11</sup> Relying on an alleged banking practice of valuing a check at the written amount when the written and figure amounts varied.

<sup>7</sup> The complaint alleges, the answer admits, and I find at all pertinent times Eckles, Lennons, and Doran were supervisors and agents of the Company acting on its behalf within the meaning of Sec. 2 of the Act.

<sup>8</sup> Case 17-CA-11177.

the store on September 18, Beck told her to come to work at that time), found her timecard missing, and asked Doran where it was. Doran informed her the timecard was missing because she was discharged. Arnold asked why. Doran states she was discharged for having four shortages or overages in excess of \$5 within 6 months, the last one having occurred the previous Saturday. Arnold asked how he knew the bank was not going to clear the check for \$25, taking the position it was necessary that the bank verify a \$5 shortage in the Cates' check before disciplinary action was warranted,<sup>12</sup> and stated she wanted a written statement of the reason or reasons for her discharge. Doran replied he did not need bank verification of the shortage and refused to supply the requested statement. Arnold suggested he contact higher supervision and stated she was not leaving the store until she received the requested statement. Doran telephoned Lennons and was instructed to await bank verification and to put Arnold on the clock pending its receipt. Doran furnished Arnold with a timecard, she clocked in, and was put to work as a stockclerk.

Doran went to the bank and asked Turner if it was normal bank practice to accept a check for the written amount when the written and number amounts on a check were in conflict. Turner replied it was. Doran directed Turner to follow that practice with reference to the Cates' check and record it as a \$20 deposit. Turner complied.

At approximately 11 a.m. Beck went to the bank, picked up the September 18 deposit slip, and turned it over to Doran. Doran called Arnold aside, showed her a circled \$20 figure on the deposit slip, announced this verified the bank's acceptance of the check at the lower figure and confirmed she was short \$5.10 on September 18, not 10 cents.

Arnold asked for time to make a telephone call. Doran granted her request. Arnold telephoned Cates and Cates informed Arnold she authorized the bank that morning to honor the check for \$25, not \$20. Arnold returned to Doran, advised him of Cates' advice, and stated there would not be any \$5 shortages unless he or Beck instructed the bank to honor the check in the lesser amount. Neither replied, and Doran furnished Arnold with a copy of a separation report noting she was discharged for having four overages or shortages exceeding \$5 within 6 months.

Arnold's testimony was undisputed (and is credited) that in 1980 checker Margaret Fields accepted an improperly endorsed check and was permitted to contact the person who submitted it and secure a proper endorsement, without discipline; checker Peggy Corrigan accepted travelers checks signed in the wrong space and was permitted to contact the signatory and secure signatures in the proper space, without discipline; and in 1980 two checkers, Susan Boyd and Connie Gray, were not discharged on discovery of a fourth overage or underpayment exceeding \$5 within 6 months.

<sup>12</sup> In apparent reliance on a provision of the written disciplinary procedure requiring bank verification of a shortage prior to the issuance of a significant incident or contact report after a disavowed apparent shortage or overage exceeding \$5.

## B. Analysis and Conclusions

### 1. The alleged unlawful direction

The complaint alleges the Company violated Section 8(a)(1) of the Act on August 26 by Lennons' directing Arnold "to refrain from discussion with co-workers about terms or conditions of employment of Respondent (Company) while on Respondent's time."

Based on mutually corroborative testimony by Arnold and Lennons, I have entered findings that in fact Lennons, in the course of discussing Arnold's complaints over the Company's failure to promote her and changing her status from full to part time on August 26, asked Arnold to refrain from saying anything detrimental about the store in processing her charges before the NLRB and EEOC and Arnold agreed to comply with that request.

This is a complete departure from the complaint allegation and fails to lend it any support. I therefore recommend dismissal of those portions of the complaint so alleging.

### 2. The alleged unlawful discharge

The complaint alleges the Company violated Section 8(a)(1), (3), and (4) of the Act by discharging Arnold because of her 1981 activities on behalf of the Union, her 1981 filing of charges with the NLRB against the Company over her discharge for those activities, and her September 1, 1982 filing of charges with the NLRB (and the EEOC) against the Company alleging the Company had denied her promotion, caused her to lose promotion opportunities, and reduced her status from full to part time because of those 1981 acts and her sex.

The record established that Arnold was the leading union supporter among the employees during the Union's 1981 representation campaign; that she was discharged by the Company shortly after the Union lost the election following that campaign and secured reinstatement as the result of a charge she filed with the NLRB alleging she was discharged because of her activities on behalf of the Union during the campaign; that on September 1 she filed charges with the NLRB and EEOC against the Company alleging the Company promoted a less qualified employee over her and reduced her from full to part-time status, thereby causing her losses in income, benefits, and promotional opportunities, because of her 1981 activities on behalf of the Union, her filing of the NLRB charge which secured her reinstatement in 1981, and because of her sex; and that she was discharged 20 days after the date she filed those charges and 6 days prior to the time she would have become immune from discharge under the company rule governing discipline of employees with four shortages or overages exceeding \$5 within a 6-month period.

The question is whether the Company seized on the \$5 difference between the written and number figures on the Cates' check as a device or pretext to rid itself of Arnold for again causing the Company the same aggra-

vation,<sup>13</sup> time, money, and effort<sup>14</sup> she caused in 1981 by the filing of her September 1 charge with the NLRB (and the EEOC) or was simply carrying out a uniformly administered disciplinary action.

I find and conclude its motive was the former one set out above; not only was the discharge effective but, 20 days after Arnold filed her September 1 charges, the Company itself manufactured the shortage<sup>15</sup> which it utilized to effect the discharge, in a transparent effort to effect that discharge before another 6 days passed and insulated Arnold from discharge under its shortage/overage policy.<sup>16</sup>

That this was the driving motive is demonstrated by Doran's clumsy effort to "verify" the shortage by showing Arnold a bank deposit with a \$20 figure circled, as proof the check was valued by the bank in that amount; it showed \$20 only because Doran instructed Truner to ignore Cates' instructions! Added support for this motive finding and conclusion lies in the fact checker/cashiers on previous occasions have been afforded an opportunity to rectify their errors in accepting financial instruments which were inadvertently endorsed or signed by customers, without disciplinary action.

As to the Company's argument Arnold was discharged for making the mistake of accepting a check containing written and figure amounts which differed, the short answer is that was *not* the reason the Company relied on in effecting the discharge, the Company consistently maintained prior to filing its post-hearing brief Arnold was discharged solely because she had a *shortage in her accounts exceeding \$5 on September 18 and three similar shortages or overages within the preceding 6 months.*

On the basis of the foregoing, I find and conclude that the Company discharged Arnold on September 20 because of her September 1 and previous filing of charges with the NLRB and her previous union activity, thereby violating Section 8(a)(1), (3), and (4) of the Act.

#### CONCLUSIONS OF LAW

1. At all pertinent times the Company was an employer engaged in commerce in a business affecting commerce and the Union was a labor organization within the meaning of Section 2 of the Act.

2. At all pertinent times Eckles, Lennons, Doran, and Beck were supervisors and agents of the Company acting on its behalf within the meaning of Section 2 of the Act.

3. The Company violated Section 8(a)(1), (3), and (4) of the Act by discharging Arnold on September 20 because of her September 1 and previous filing of charges with the NLRB and her previous union activity.

4. The Company did not otherwise violate the Act.

5. The aforesaid unfair labor practice affects commerce as defined in Section 2 of the Act.

<sup>13</sup> The vexation arising out of the necessity to defend its policies, practices, and actions before a public body.

<sup>14</sup> Referring to the time, money, and effort the Company was forced to expend to oppose the union campaign and defend against Arnold's 1981 charge.

<sup>15</sup> No shortage in Arnold's September 18 account in excess of \$5 would have occurred had Doran not countermanded Cates' instruction to the bank to honor her check for \$25 and pay the Company that amount.

#### THE REMEDY

Having found that the Company violated the Act by discharging Arnold, I recommend the Company be directed to offer Arnold reinstatement to her former position and to make her whole for any seniority, wage, and benefit losses she suffered by virtue of the discrimination against her, with the amounts due calculated in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest thereon computed in accordance with the formula set out in *Florida Steel Corp.*, 231 NLRB 651 (1977), and *Isis Plumbing Co.*, 138 NLRB 716 (1962), and to post appropriate notices set forth below. Having also found the alleged September 18 shortage was a pretext to cover the Company's discriminatory motivation in effecting the discharge, I also recommend that the Company be directed to withdraw and expunge from its records all and any separation or other reports reciting an alleged September 18 shortage of \$5 in Arnold's accounts as basis for any discipline.

Having found the Company did not violate the Act by other alleged actions set out in the complaint, I recommend the sections of the complaint setting out those allegations be dismissed.

On the foregoing findings of fact and conclusions of law and on the entire record, I recommend the issuance of the following<sup>16</sup>

#### ORDER

The Respondent, American Community Stores, a Subsidiary of Collum Companies, Inc., d/b/a Grocery Supply, Joplin, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from discharging any employee for filing charges with the National Labor Relations Board against the Company or engaging in activities on behalf of United Food & Commercial Workers Union Local 322, AFL-CIO, or any other labor organization, or engaging in other concerted activities for the purpose of collective bargaining or mutual employees aid or protection.

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

(a) Offer to Joyce Arnold reinstatement to her former position.

(b) Make Joyce Arnold whole in the manner set out in The Remedy section of this decision.

(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) Withdraw and expunge from its records any documents purporting to show a September 18 shortage of \$5 in Arnold's accounts and any discipline based thereon.

<sup>16</sup> 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.

(e) Post at its premises at Joplin, Missouri, copies of the attached notice marked "Appendix."<sup>17</sup> Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 con-

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<sup>17</sup> 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."

secutive 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.

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

IT IS FURTHER RECOMMENDED that paragraph 5 and the reference thereto in paragraph 7 of the complaint are dismissed.