

Robins Engineers & Constructors, Division of Litton Systems, Inc. and John Kaminski. Case 23-CA-8914

10 August 1984

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND DENNIS**

On 10 June 1983 Administrative Law Judge Richard J. Linton issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order as modified.²

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Robins Engineers & Constructors, Division of Litton Systems, Inc., Rosenberg, Texas, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

"(a) Offer John T. Kaminski immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position,

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), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In fn. 16 of his decision, the judge discussed issues bearing on the materiality of his credibility resolutions. In adopting the judge's decision, we find it unnecessary to reach these issues in view of our determination set forth above.

² To remedy the Respondent's unlawful discharge of employee John T. Kaminski, the judge recommended, inter alia, that the Respondent be ordered to offer Kaminski reinstatement, even though the particular project on which he was employed has been completed. The Respondent contends that reinstatement is inappropriate in the circumstances of this case. We find no merit in the Respondent's contention. Reinstatement is the Board's normal remedy for violations of this kind, and we find it appropriate here. See *C. B. Display Service*, 260 NLRB 1102 (1982). We are aware that, even absent unfair labor practices, the Respondent might have terminated Kaminski at the end of the project. The record, however, does not clearly demonstrate that this would have happened. In fact, absent unfair labor practices, the Respondent might have transferred Kaminski to another of its projects. This matter is properly left to the compliance stage of this proceeding.

We shall, however, modify the reinstatement provision in the judge's recommended Order to conform more closely to the Board's standard practice in this type of case.

without prejudice to his seniority or any other rights or privileges previously enjoyed, discharging, if necessary, any employee hired after 22 April 1982 in order to facilitate Kaminski's reinstatement."

2. Insert the following as paragraph 2(c) and re-letter the subsequent paragraphs.

"(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."

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

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 discourage any of you from joining or supporting the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Local Union No. 74, or any other labor organization, by discharging or otherwise disciplining union stewards because they fail to comply with our request or instruction that they appoint a temporary replacement steward before they leave the jobsite.

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 John T. Kaminski immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make John T. Kaminski whole, with interest, for any loss of earnings he has suffered as a result of our discharging him effective 22 April 1982.

WE WILL expunge from our files any reference to our 22 April 1982 discharge of John T. Kaminski, and WE WILL notify him in writing that this has been done and that evidence of his unlawful

discharge will not be used as a basis for future personnel action against him.

ROBINS ENGINEERS & CONSTRUCTORS, DIVISION OF LITTON SYSTEMS, INC.

DECISION

STATEMENT OF THE CASE

RICHARD J. LINTON, Administrative Law Judge. This case was tried before me in Houston, Texas, on March 8, 1983, pursuant to the September 17, 1982 complaint issued by the General Counsel of the National Labor Relations Board through the Regional Director for Region 23 of the Board. The complaint is based on a charge filed May 10, 1982, by John Kaminski (Kaminski or Charging Party) against Robins Engineers & Constructors, Division of Litton Systems, Inc. (Respondent or Robins).¹

The General Counsel alleges that Respondent violated Section 8(a)(3) and (1) of the Act by discharging Charging Party Kaminski on April 22, 1982, because he failed to appoint a replacement steward before leaving the jobsite on April 21, 1982, as Respondent had instructed.

By its answer, Respondent admits certain factual matters but denies violating the Act. Respondent defends on the basis that Kaminski's unprotected conduct caused the remainder of his crew to refuse to work for nearly 2 hours until a replacement steward was elected. Robins fired Kaminski because of such refusal and the job delay it allegedly caused.

On the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all times material herein Robins, a Delaware corporation, maintained an office and place of business near Thompson, Texas, where it was engaged in assisting, as a subcontractor, in the construction of a fossil fuel power plant. During the past 12 months, Robins purchased and received goods and materials valued in excess of \$50,000 from firms located outside the State of Texas, which goods and materials were shipped directly to Robins at its Texas location from points outside the State of Texas. Respondent admits, and I find, that it is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION INVOLVED

Respondent admits, and I find that International Brotherhood of Boilermakers, Iron shipbuilders, Blacksmiths, Forgers and Helpers Local Union No. 74 (Union

or Local 74), is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Nature of the Job

EBASCO was the general contractor for certain construction on a power plant project of Houston Lighting & Power Company at Smither's Lake in the Richmond, Texas area. The plant generates electricity through the burning of coal. Robins was a subcontractor on the project for the purpose of installing a coal conveyor system. Part of Robins' responsibility was to build and install a dust collector device at the tripper deck inside boiler no. 8 at the point where the coal conveyors enter the boiler. The dust collector, a device to control pollution, picks up the coal dust which falls from the conveyors, and returns it through a filter system back to the coal conveyors (Tr. 9, 104, 109-110, 122-123).

Walter Standish, assistant business manager for Local 74, testified that pursuant to an initial staffing request from John Tranchina, Respondent's assistant project superintendent,² he referred Jack E. Savage as the boilermakers' general foreman and John T. Kaminski as the boilermakers' steward (Tr. 59, 68, 82). Standish explained that he made the referrals as designated by W.E. Wittge, the business manager of Local 74 (Tr. 69). Savage arrived on the job April 6 (Tr. 104), and Kaminski on April 7 (Tr. 8). Standish testified that he referred a total of 12 to 18 boilermakers to the job (Tr. 68). Savage testified that it was his responsibility to supervise the boilermakers in building the dust collector system (Tr. 104, 123-124), and that when he finished the work on August 20 ahead of schedule he laid off the entire crew, including himself (Tr. 120).³

Kaminski has been a boilermaker since 1942. He testified that Local 74 has referred him to several jobs as a steward since 1969 and that he is familiar with the duties of a steward (Tr. 27). Savage testified that he had been a member of Local 74 for 7 years (Tr. 101, 142), and that although he previously had served as a steward, only once before had he served as a general foreman (Tr. 102).

Three witnesses testified in this proceeding. The General Counsel called Kaminski and Standish, and Respondent called Savage. Standish also was called as a rebuttal witness by the General Counsel.

B. The Events of April 21, 1982

1. Kaminski leaves the job

On April 21 Kaminski arrived at the job shortly before the 7 a.m. reporting time. Because of heavy rain in the area several crew members were absent. As of that date the scheduled crew consisted of seven or eight employ-

¹ All dates are for 1982 unless otherwise indicated. Kaminski has "T" as a middle initial.

² Tranchina also is referred to in the record as the superintendent.

³ At one point Savage testified that the job lasted 7 months (Tr. 115). As the work of Robins which Savage supervised lasted less than 5 months, the 7 months must be a reference to the length of the entire job of Robins constructing the coal conveyor system or to the complete EBASCO construction at the jobsite.

ees. Savage was present in the boilermakers' shack as was Steve Schwab, an apprentice. According to Kaminski, Savage stated that if the rest of the crew did not show up "we will go home at 7:30." (Tr. 11) Both Kaminski and the apprentice replied that such sounded good to them because they had other things to do. Savage then left for the superintendent's office. On his return Savage reported that the superintendent said they could go up and do some cleaning at the project since the regular work could not be done without the balance of the crew (Tr. 12, 36-37). As they walked toward the elevator Kaminski told Savage that his mind was set on going home where he had some things to do. Kaminski also noted that most of the crew was absent. Savage told him there was no need for him to ride up the elevator then, and inquired as to who was going to be the steward since the apprentice could not be appointed (Tr. 12-13, 37-38). It is unclear, even under Kaminski's version, whether Kaminski responded with anything more than that he would see Savage the next day.

Under Savage's version, a couple minutes before 7 a.m. he went to see Superintendent Tranchina concerning whether they were to work that day because the men had asked if they were being rained out. He returned to the shack around 7:10 a.m. and reported to the group⁴ that they would work since they would be working inside. Savage testified that the work location was under a roof (Tr. 110-111, 152). Apprentice Schwab "whined and cried," and Kaminski stated that he wanted to go home and work on his house.⁵ He denies saying that the job would not work or that the men could go home (Tr. 106).

Savage testified that as he and Kaminski walked toward the elevator to the project, Kaminski kept repeating that he was going home, and Savage repeatedly said that Kaminski had to appoint a replacement steward. He told Kaminski, "This job cannot run without a steward, because these people won't work without a steward. They are supposed to, but they don't." (Tr. 106). Kaminski replied that Savage could not make him stay, "muttered" something to Savage, and walked off toward the gate (Tr. 107). At that point Savage went upstairs to the crew (Bowlin and Schwab) "and I asked them if Mr. Kaminski showed up, and they said that he had not been up there"⁶ (Tr. 107).

Under all the circumstances, including the logic of the situation, the discrepancies in Savage's testimony,⁷ and

the demeanor of the witnesses, I conclude that Kaminski's version is the more accurate and reliable. This is not to say that every portion of Savage's is unreliable, and to the extent that his version is consistent with and supplements Kaminski's I accept it.

2. Savage telephones Standish

At the hearing Savage described what occurred leading up to his discharge of Kaminski.⁸ From about 7:15 or 7:30 a.m. on April 21 until about 8:15 a.m., or so, Savage, Bowlin, and Schwab sat around upstairs doing nothing because Bowlin and Schwab refused to work without a steward.⁹ After about an hour of "riding the clock," around 8:20 a.m. or so, Savage went to Superintendent Tranchina and reported the situation. Tranchina said the men needed to go to work. Savage replied that the men would not work without a steward. Tranchina, according to Savage, responded that he was going to come up and "check on" Savage (Tr. 135). Savage told Tranchina that he would go back and "check" the situation. Savage had been gone from the crew about 35 to 40 minutes. On his return Savage discovered that Jim Thatcher, apparently a journeyman boilermaker, had just arrived. The group, including Savage, elected Thatcher to be the steward (Tr. 112, 135). The crew, with Thatcher as the steward, began to work (Tr. 134).¹⁰ None of the rest of the three or so other members of the crew showed up that day (Tr. 111, 151).

According to Savage, after the crew began working, with Thatcher as steward, Savage telephoned Assistant Business Manager Standish (Tr. 112). Savage reported that Kaminski had left the job without appointing a replacement steward. Savage asked if he had permission to terminate Kaminski and Standish replied, yes (Tr. 113, 143). Savage then testified (Tr. 114):

I told Mr. Standish to call Kaminski and inform him that he has been terminated, and he said that he would if he got to it. So later on that afternoon I called him back and asked him if he had called Mr. Kaminski and he said he had not gotten to it. So I asked one of the girls in the office to call Mr. Kaminski and tell him that he was terminated for failure to follow [his] duties as steward.

Standish, Savage testified, said he would send Bill Brumblelow as a replacement steward the following day.

the fact that the date of May 13 falls after the charge was filed herein by Kaminski on May 10.

⁸ Savage testified in a disjointed fashion, and the version set forth here is that which I find occurred based on a composite of the evidence.

⁹ Savage admits that he was not supposed to sanction such idleness (Tr. 134).

¹⁰ Although Savage testified that he felt that it was proper for him to vote for a steward since he is a member of Local 74 (Tr. 145), and that he believes that anyone, including an apprentice, who is a member of the Union could be appointed as steward (Tr. 103-104, 141), he never explained why he, Bowlin, and Schwab did not elect Schwab to be the steward shortly after Kaminski left and Savage arrived upstairs. This lack of explanation further supports Kaminski's credited version that when Savage asked him about the steward replacement, Savage stated that the apprentice could not be appointed steward (Tr. 13).

⁴ Savage asserts that Foreman Jim Bowlin also was present (Tr. 111).

⁵ Savage's version is rather disjointed on the sequence of events. At one point he places Schwab as present and "whining" at the news (Tr. 132), but then states that Bowlin and Schwab had already left for the elevator (Tr. 133). He admits on cross-examination that common sense dictates the conclusion that those two, as well as Kaminski, would have remained waiting for Savage's report, and Savage ends his testimony on this detail by saying he cannot recall, but thinks that Bowlin and Schwab had already gone to the elevator and up to the project on their own before Savage returned (Tr. 133).

⁶ Savage does not explain why he would ask Bowlin and Schwab if they had seen Kaminski when Savage had just parted from Kaminski and the steward was heading for the gate.

⁷ I do not overlook a "To Whom It May Concern" statement, dated May 13, 1982, signed by Savage with copies to the Union, which is consistent with his testimonial version (R. Exh. 5). Although there is no evidence that Local 74 responded in writing to the statement, I take note of

It is undisputed that the following day Brumblelow did report to the job as steward.

According to Savage, the reason he asked for permission to terminate Kaminski is that he was of the opinion that such permission was necessary in the case of a steward (Tr. 124-126, 144). Indeed, if the Union had not given permission, Savage testified that he would not have fired Kaminski (Tr. 126).

Standish denies giving Savage permission to discharge Kaminski. At the hearing Standish apparently became confused as to the number of times he had spoken to Savage on the subject, and erroneously split one conversation on April 21 into two, the first being on April 21 and the second the following day. He conceded that certain quotations from his pretrial affidavit accurately described the April 21 telephone conversation he had with Savage (Tr. 95). In light of such affidavit-aided recollection, it appears that when Savage called on April 21 he asked for a replacement steward because, as he related, he had fired Kaminski because the steward had walked off the job without appointing a replacement steward.

Savage did not ask for permission to fire Kaminski, and Standish affirmatively told Savage that he could not fire Kaminski for failure to perform the duties of a steward. Standish informed Savage that it was up to the Union's business manager to decide whether the steward was performing his duties properly and whether to replace the steward if he is not doing his job as a steward. Standish remarked that he would be over to talk to Savage in a day or two about the matter (Tr. 72, 92-93). Standish testified that while a steward may appoint a temporary replacement, he may not appoint an apprentice or a supervisor (Tr. 80).

For various reasons, including demeanor, I credit Standish over Savage. While it may be possible that Savage could have held the erroneous view that he needed the blessing of Local 74 in order to terminate the job steward, I am persuaded that he did not hold any such opinion. Rather, I find that Savage, who also had been general foreman once before, was well aware of his authority to discharge any boilermaker, including the steward, without needing any permission from Local 74. Notwithstanding Robins' argument on brief that Savage should be credited because he is the only "completely disinterested" witness in the case, I am persuaded that Savage testified here in opposition to his union representative because Savage keenly resented Kaminski's failure to follow his instructions to appoint a replacement steward. His interest, I find, was to justify the actions he took in April 1982. I therefore find that in their conversation of April 21, Savage reported the discharge and why, and Standish expressed his opinion that Savage had overstepped his authority in discharging Local 74's steward for reasons which fall within the internal affairs of the Union.¹¹

¹¹ Even under Savage's version Standish did not call Kaminski to convey the news of his discharge. The absence of a call to Kaminski by Standish supports the version of Standish that he expressed a negative reaction to the news as reported to him by Savage.

C. The Discharge Notices

Kaminski learned of his discharge from his wife who told him (apparently on April 21) that a woman had called from Robins and reported that he had been fired (Tr. 15). Presumably the caller said that Kaminski could pick up his check the following day.

The following day, April 22, Robins' office secretary gave Kaminski his check at the guard shack shortly after 7 a.m. She asked Kaminski to sign a receipt dated April 22, 1982, which contains the handwritten notation, "Failure to follow the duties as steward." (G.C. Exh. 2b.)¹² In signing, Kaminski added his own notation: "I don't agree." Kaminski then went to the union hall where he spoke with Standish and Business Manager Wittge (Tr. 19). They expressed the view that Respondent "can't do that," and Wittge said he would investigate the matter (Tr. 39, 47, 70-71). Kaminski declined their suggestion that he file a grievance (Tr. 31, 39), and on May 10 he filed the instant charge.

A few days after Kaminski reported his discharge, Wittge and Standish visited the jobsite on another matter. It is undisputed that they told Savage that appointing and removing stewards was the Union's business and that he had no right to discharge Kaminski for failing to perform the duties of steward (Tr. 147-148).¹³ Savage rejected their request that Kaminski be returned to work, as did Tranchina (Tr. 73-74, 148-149). Although at one point Savage testified that the reason Kaminski was not taken back was because he would walk off the job as a boilermaker (Tr. 148-149), he clarified that position on cross-examination by further testifying that if Kaminski had designated a replacement steward he would be free to go (Tr. 150). Thus (Tr. 150-151):

Q. So what we have basically is the problem as you have viewed that it was not the fact that Mr. Kaminski left the job as such; rather, he left the job and had not set somebody up as a steward. That was the nature of the problem. Is that correct?

A. That is correct.

Kaminski testified that about April 29 he received a revised termination notice (Tr. 19). The new notice, signed by Savage, contains the typed notations (G.C. Exh. 3):

Reduction in force

NOTE: Disregard previous termination dated 4-22-82

Savage testified that about 2 days after Kaminski's discharge Standish telephoned and requested that Savage change the reason so that Kaminski could draw unemployment benefits (Tr. 116-117, 144-145). He further testified that he agreed to do so for that reason and for the further reason that a discharged employee, under union

¹² Savage testified that a copy of the termination notice was sent to Local 74, although he could not recall whether it was a copy of the document bearing Kaminski's signature or not (Tr. 116).

¹³ Although the date of the visit is in dispute (Tr. 147), I need not resolve this immaterial conflict.

rules, cannot be referred to another job for 15 days (Tr. 116-117).

According to Savage, in this conversation Standish said that it was up to the Union to decide whether a steward is doing his job properly (Tr. 119). Standish denied making any such request that the termination slip be revised so that Kaminski could obtain unemployment benefits (Tr. 78, 155).

The version advanced by Savage is inherently probable. I note that Standish's recollection of events is not completely reliable, and that no plausible reason has been advanced as to why Savage would testify falsely on this point. Although I have discredited Savage in other respects, I find that his testimony on this matter has the ring of truth. The relevance of such a finding, however, appears to be limited to credibility generally.¹⁴

Although the only relevance is by way of explaining the delay between the May 10 charge and the September 17 complaint, I should note that on June 23 the Region dismissed Kaminski's charge for "insufficient evidence" (R. Exh. 1), and on August 27 the General Counsel's Office of Appeals sustained Kaminski's appeal because the termination "presented issues warranting Board determination based on record testimony developed at a hearing before an Administrative Law Judge." (R. Exh. 2.)

D. Analysis and Conclusions

Citing a variety of cases, including *Radio Officers v. NLRB*, 347 U.S. 17 (1954), and *Scofield v. NLRB*, 394 U.S. 423 (1969), the General Counsel argues that Respondent violated Section 8(a)(3) and (1) of the Act by singling out Kaminski for discharge because it felt he should have taken certain affirmative action, while withholding discipline as to other employees who refused to perform work, and by, in essence, intruding on the internal affairs of the Union.

Robins argues that the General Counsel is inappropriately seeking here to extend the concept of *Precision Castings Co.*, 233 NLRB 183 (1977).¹⁵ Acknowledging that it had been unable to find a factual similar case, Respondent relies on the rationale of certain language used by the Circuit Court in *Gould Inc. v. NLRB*, 612 F.2d 728, (3d Cir. 1979), that "it was a breach of duty imposed by his office and not his office *as such* which formed the basis for his discharge." Immediately preceding that quotation, however, the Circuit Court asserts that the steward's duty there to take affirmative action to end an unlawful strike was a duty imposed on him by the collective-bargaining agreement.

In our case, there was no collective-bargaining agreement and there was not a contractual no-strike clause. There was no contractual duty that the Union's job steward do anything. It therefore appears that cases such as *Precision Castings, id.*, in which the steward does not play a leadership role, and *Midwest Precision Castings Co.*, 244 NLRB 597 (1979), where the steward does instigate

¹⁴ That is, the point in dispute is merely ancillary to the critical events rather than being one of them.

¹⁵ The Supreme Court recently affirmed the Board's *Precision Castings* doctrine in *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693 (1983).

the action or have a leadership role, are not squarely in point. This is all the more true here where a strike or work stoppage was not involved in the usual sense. While a work stoppage did develop, it occurred after Steward Kaminski left the job and was in response to the situation of no steward. As Savage testified, Kaminski would have been free to leave if he had just appointed a replacement steward. Thus, Respondent did not deem Kaminski's departure, standing alone, as improper.¹⁶

What is in point are cases asserting that an employer violates the Act by threatening to take job action, or imposing discipline, on an employee in a manner which intrudes on the internal affairs of a union. Thus, as Administrative Law Judge Michael O. Miller noted in *Metropolitan Edison Co.*, 252 NLRB 1030, 1035 (1980), *affd.* 460 U.S. 693 (1983):

Further, Respondent's action intruded on the internal affairs of the Union when it arrogated the right to discipline for "misuse of union office."

And in *Postal Service*, 258 NLRB 1414 (1981), the employer was found to have violated Section 8(a)(1) of the Act when Superintendent Coombs threatened Union Steward Dumont with suspension if the steward refused to represent an employee. The Board stated at 1414:

Thus, despite what Coombs may have perceived was Dumont's obligation as a steward, by his threatening Dumont's employment status in connection with his performance as a union steward, he coerced Dumont and interfered with his Section 7 rights to engage or not engage in union activities as the steward. Coombs' action was thus violative of Section 8(a)(1) of the Act.

In light of the foregoing, I find that Respondent violated Section 8(a)(3) and (1) of the Act by discharging Kaminski effective April 22, 1982.

CONCLUSIONS OF LAW

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

2. Local 74 is a labor organization within the meaning of Section 2(5) of the Act.

3. By discharging John T. Kaminski effective April 22, 1982, because he failed to appoint a replacement steward on April 21, 1982, before leaving the job, Respondent violated Section 8(a)(3) and (1) of the Act by intruding on the internal affairs of a labor organization in order to impose discipline on John T. Kaminski, thereby unlawfully discouraging membership in and support of a labor organization.

¹⁶ For that reason, the credibility resolutions I have made herein are immaterial. Thus, whether Standish gave Savage permission to fire Kaminski is not controlling because such telephonic permission, constituting a waiver of Kaminski's statutory rights under Sec. 7 of the Act, would not satisfy the strict standards for waiver enunciated by the Supreme Court in *Metropolitan Edison, id.* Regardless of whether a waiver may be oral, it is clear that any waiver of statutory rights must be "clearly unmistakable" and done within the collective-bargaining framework. Those conditions did not prevail here.

4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent Robins Engineers & Constructors, Division of Litton Systems, Inc. has engaged in and is engaging in unfair labor practices in violation of Section 8(a)(3) and (1) of the Act, I shall recommend that Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Respondent shall be ordered to make John T. Kaminski whole for any loss of pay he suffered by reason of his unlawful discharge. Any backpay found to be due shall be computed in the manner established by the Board in *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest computed in the manner prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977). See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962). Respondent shall expunge from its files any reference to its unlawful termination of Kaminski on April 22, 1982. *Sterling Sugars*, 261 NLRB 472 (1982).

Although the particular job in question has been completed, Respondent will be ordered, as requested by the General Counsel, to offer Kaminski reinstatement to a substantially equivalent job at any project it may have underway, or for which it is hiring, within the territorial jurisdiction of Local 74.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommendation¹⁷

ORDER

The Respondent, Robins Engineers & Constructors, Division of Litton Systems, Inc., Rosenberg, Texas, its officers, agents, successors, and assigns, shall

1. Cease desist from

(a) Discouraging membership in International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Local Union No. 74, by discharging or otherwise disciplining a union steward who fails to comply with a request or instruction that he appoint a temporary replacement steward before he leaves the jobsite.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of

their rights to self-organization, to form, join, or assist International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Local Union No. 74, or any other labor organization, to bargain collectively through representatives of their own choosing, to act together for the purpose of collective bargaining or mutual aid or protection, or to refrain from any or all such activities.

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

(a) Offer John T. Kaminski reinstatement to a substantially equivalent position of employment at any project it has underway, or if none is underway, for which it hires during the 60-day posting period of the notice described below, within the territorial jurisdiction of International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Local Union No. 74, without prejudice to his seniority or any other rights or privileges previously enjoyed, discharging, if necessary, an employee hired after April 22, 1982, in order to facilitate the reinstatement of Kaminski.

(b) Make John T. Kaminski whole for any loss of earnings he may have suffered by reason of his discriminatory discharge in the manner set forth in the section of this decision entitled "The Remedy."

(c) Expunge from its files any reference to the April 22, 1982 termination of John T. Kaminski, and notify him in writing that this has been done and that evidence of the unlawful termination will not be used as a basis for future personnel action against him.

(d) Post at its office, and at every jobsite where it is working within the territorial jurisdiction of Local 74, signed and dated copies of the attached notice marked "Appendix."¹⁸ Copies of said notice, on forms provided by the Regional Director for Region 23, after being signed by Respondent's authorized representative, shall be posted immediately upon receipt and maintained by the Respondent for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such 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 Respondent has taken to comply.

¹⁷ 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.

¹⁸ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."