

Riley-Beard, Inc. and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL-CIO, CLC, and Earl Dixon. Cases 15-CA-8068 and 15-CA-8453

11 July 1984

DECISION AND ORDER

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

On 26 November 1982 Administrative Law Judge Richard H. Beddow Jr. issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Charging Party filed a brief in response to the Respondent's exceptions and in support of the decision of the judge.

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 only to the extent consistent with this Decision and Order.

As set forth at length in his decision, the judge concluded that the Respondent violated Section 8(a)(1), (3), and (4) of the Act in several respects. In affirming his decision on the merits, we disagree only with the judge's finding that the Respondent violated Section 8(a)(1) by giving a campaign speech that impliedly threatened "loss of benefits and other problems" if the Union won the election.

On 21 January 1981 the Respondent's president gave a speech to all employees during which he referred to a "blank piece of paper" and said: "We have shown you that paper as an example of how you could lose with the Union, as there are no guarantees that you would keep all your present pay and benefits." He then requested employees' help in "smashing" the Union. The Respondent's president gave another speech 3 February 1981, 2 days before the election, in which he thanked em-

ployees for supporting the Respondent and stated: "We will never forget it."

Contrary to the judge, we do not believe that the comments made by the Respondent, as set forth above, implied a threat that employees would suffer loss of benefits and other problems if they voted for the Union or conveyed the message that those who support the Union will not be forgotten. The Respondent's remarks referring to a blank piece of paper, in context, were merely a reflection of the bargaining process: negotiating carries with it no guarantee that the status quo will be preserved. Further, thanking employees for their support with the reminder that such support will not be forgotten is just that: a thank you. Such a statement cannot reasonably be said to imply that some type of retribution awaited those who supported the Union.

Comments of this nature do not interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. Rather, such comments constitute permissible partisan propaganda protected by Section 8(c). Accordingly, we find that the Respondent's conduct set forth above did not constitute a threat of "loss of benefits and other problems" in violation of Section 8(a)(1) and shall therefore dismiss that portion of the complaint.²

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Riley-Beard, Inc., Shreveport, Louisiana, its officers, agents, successors, and assigns, shall take the action set forth in the Order below.

1. Cease and desist from

(a) Unlawfully discharging any employees or otherwise discriminating against them because of their activities in pursuit of union affiliation for purposes of collective-bargaining representation or in retaliation for their giving testimony under the Act or otherwise engaging in protected concerted activities.

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

¹ In its exceptions, the Respondent argues that the judge improperly found that the Respondent violated Sec. 8(a)(1) of the Act by issuing a warning slip to employee Charles Meshell on 4 September 1980. Without reaching the merits of this allegation, we hereby reverse this holding of the judge in view of the fact that the Respondent's action occurred more than 6 months prior to the filing of the Union's charge in this case and is therefore barred by Sec. 10(b) of the Act. In so doing, however, we recognize that evidence of this conduct can be relied on as background evidence to shed light on allegedly unlawful conduct occurring during the 10(b) period. *Machinists Local 1424 (Byran Mfg. Co.) v. NLRB*, 362 U.S. 411 (1960).

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

² In sec. IV,C of his decision, the judge concluded that five blade ring welders were discharged in violation of Sec. 8(a)(1) and (3) of the Act. In evaluating the circumstances surrounding these discharges, the judge found that the Respondent had shown animus toward the Union by, *inter alia*, the unlawful campaign speeches given by the Respondent's president just prior to the election. As set forth above, however, we find that these campaign speeches did not constitute unlawful threats. Therefore, as we agree with the remainder of the judge's analysis concerning these discharges, in finding that the five blade ring welders were unlawfully terminated, we do not rely on his discussion of the Respondent's campaign speeches. Similarly, we do not rely on the judge's references to the campaign speeches in sec. IV(D) of his decision.

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

(a) Offer Charles Meshell, Jimmy R. Grant, Willie Loud Jr., Thomas B. Stamper, Lynn A. Arnold, Alvin Peters, and Billy Gene Ferguson 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 make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in section V of the administrative law judge's decision entitled "The Remedy."

(b) Remove from its files any reference to the unlawful discharges and related warnings given to Charles Meshell on 13 February 1981; Jimmy R. Grant, Willie Loud Jr., Thomas B. Stamper on 20 February 1981; Lynn A. Arnold and Alvin Peters on 23 February 1981; and Billy Gene Ferguson on 27 February 1981; and notify them in writing that this has been done and that the discharges will not be used against them in any way.

(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 Shreveport, Louisiana plant copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 15, 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.

(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 ORDERED that the complaints be dismissed insofar as they allege unfair labor practices not specifically found herein.

³ 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."

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 discharge or otherwise discriminate against any of you for supporting International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL-CIO, CLC, or any other union or in retaliation for giving testimony under the Act or otherwise engaging in protected concerted activities.

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 immediate and full reinstatement to Charles Meshell, Jimmy R. Grant, Willie Loud Jr., Thomas B. Stamper, Lynn A. Arnold, Alvin Peters, and Billy Gene Ferguson 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 remove from our files any reference to the discharges and related warnings given to Charles Meshell on 13 February 1981; Jimmy R. Grant, Willie Loud Jr., and Thomas B. Stamper on 20 February 1981; Lynn A. Arnold and Alvin Peters on 23 February 1981; and Billy Gene Ferguson on 27 February 1981, and WE WILL notify each of them that this has been done and that the discharges will not be used against them in any way.

RILEY-BEAIRD, INC.

DECISION

STATEMENT OF THE CASE

RICHARD H. BEDDOW, JR., Administrative Law Judge. This matter was heard in Shreveport, Louisiana, on April 12-16 and 26 and 27, 1982. The proceeding is based on charges filed March 5, 1981, as amended April 13, 1981, by the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL-CIO, CLC and February 3, 1982, by Earl Dixon, an individual. The General Counsel's complaint alleges that Respondent Riley Beard, Inc. of Shreveport, Louisiana, violated Section 8(a)(1), (3), and (4) of the National Labor Relations Act by discharging certain employees and suspending Charging Party Earl Dixon because of, and/or to discourage, their union and protected concerted activities; by engaging in surveillance of employee activity, by the issuance of a warning to an employee; and by threatening employees with loss of benefits in a speech by Respondent's president. At the close of the hearing oral argument was presented by the General Counsel.

After a requested extension of the normal filing date, briefs were filed by the Charging Party and Respondent.¹ On a review of the entire record in this case and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent engages in the fabrication of various steel products. During the representative year it received goods and materials valued in excess of \$50,000 and had direct outflow of manufactured products valued in excess of \$150,000. It admits that at all times material herein it is and has been an employer engaged in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL-CIO, CLC (the Union), is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

Respondent's Shreveport facility is engaged in fabricating various heavy steel products including turbine blade rings, compression combustors, pressure tanks, and cement mills. It employs as many as 900 employees in the designated voting unit; however, the employees are not represented by any labor organization. The Union did have an organization campaign in 1977, with an election in October 1979, which resulted in a vote of 438 to

424 against the Union. A related unfair labor practice charge was filed and a hearing was held in February 1980, which culminated in the December 10, 1980, decision of the Board in *Riley-Beaird, Inc.*, 253 NLRB 660 (*Riley-Beaird* 1980). In that Decision, Respondent is found to have violated Section 8(a)(1) of the Act by impliedly threatening plant closure and reduction of benefits if employees selected the union as their representative. Additionally, a supervisor was found to have unlawfully solicited and remedied grievances. The Board also granted the union's request to withdraw its election objections.

After the hearing in February 1980, additional charges regarding alleged unfair labor practices by the Respondent were filed. These charges resulted in a hearing in August 1980. The Board, on February 3, 1982, in *Riley-Beaird, Inc.*, 259 NLRB 1339 (*Riley-Beaird* 1982),² found that Respondent violated Section 8(a)(1) of the Act by unlawfully interrogating employees about their protected activities, by giving them the impression of unlawful surveillance, and by illegally threatening them because of their protected activities; and that Respondent further violated Section 8(a)(3), (4), and (1) of the Act by assigning employees to more onerous and less desirable work, subjecting them to stricter supervision, requiring them to adhere more closely to plant rules, restricting their communications with their fellow employees, citing them with unexcused absences, and by warning, transferring, and discharging employees.³

Respondent's employees Lynn Arnold and Thomas Stamper gave testimony on behalf of the General Counsel at the hearing in *Riley-Beaird* 1980. These two employees as well as employees Charles Meshell and Jimmy R. Grant also were present and gave testimony on behalf of the General Counsel at the hearing in *Riley-Beaird* 1982. Arnold, Stamper, and Grant were found to have been illegally discriminated against in *Riley-Beaird* 1982. These four employees are alleged discriminatees in this proceeding and Arnold, Stamper, Grant, and Meshell also were members of the union organizing committee as was B. G. Ferguson. This information was conveyed to Respondent in letters dated in March and May 1980 by the Union's International representative. These employees as well as Willie Loud, Peters, and Earl Dixon were active union supporters and wore union paraphernalia and participated in handbilling in the presence of supervisors prior to the representation election in February 1981.

Between September 1980 and February 5, 1981, the Union engaged in various activities in order to gain support in the forthcoming election. On at least one occasion while Dixon was handbilling by the employee's entrance to the parking lot he observed Manager of Employee Relations Hillman Deaton standing about 70 or 80 yards away and apparently writing on a tablet (the distance was determined to be approximately 106 yards). Although the distance does not allow for easy identifica-

¹ Respondent also filed a motion to correct numerous errors in the transcript, especially substituting the name *Clarence Poland* for *Clarence Ponder*. The sought corrections are appropriate and the motion is granted.

² Enforcement of this matter is pending before the United States Circuit Court for the Fifth Circuit.

³ As requested by the General Counsel and the Union, I take administrative notice of the Board's decision in these two past cases.

tion of similarly dressed or sized persons, it is not implausible that a known, distinctively dressed (i.e., coat or shirt and tie as compared with blue collar dress) management official could be recognized, and I credit Dixon's testimony.

Prior to the February election the Company held several meetings. At one meeting employee Willie Loud Jr. spoke out and a supervisor asked "Willie Loud, that you?" At a meeting on January 12, 1981, Respondent's president William E. Adams gave a speech to all the employees in which the following comments were made:

Some of you may have misunderstood what we have tried to tell you in the past. For instance, you have all heard about the blank piece of paper. We have shown you that paper as an example of how you could lose with the union, as there are no guarantees that you would keep all your present pay and benefits. I want to make something clear right now. The last thing on earth I want is for you to have less pay or less benefits. Our record proves this is true. I would just as soon never talk about this blank piece of paper again and I want all of us to continue to move forward without thinking about any blank piece of paper, but I also want you to understand the facts of life. The facts of life are that those union promises are worthless and you can lose as well as gain with a union. I don't want to see any of you risk being hurt by this union.

I'd just like to say one more thing. We've made tremendous progress despite having to stop and fight this union every year or so. I'd like to see the kind of progress we could make if we had several years, without having to pause and do battle with the union. I don't want you just beat the union this time. I am asking for your help in *smashing* it so that we can get on with the business of making this company an even better place to work for everyone.

Thank You.

Adams gave another speech on February 3, 1981, 2 days before the election. Pertinent statements made include the following:

Look what happened to the Hendrix employees in Mansfield when they gave the union a chance. It was a disaster for every Hendrix employee. Look at other companies with Boilermakers contracts in our area—Fabsteel, Dollinger, Lufkin Industries, American Bridge. Employees of these companies gave the Boilermakers a chance and what have they got? They have a long history of strikes and other troubles and their wages are less than yours.

The facts haven't changed a lot in the last 15 years. They were bad in 1966 and they are still bad in 1981. It's a long record of strikes, lost pay and lost opportunities for many employees.

I don't believe this union with its record deserves to represent good people like you. You don't need to risk strikes—you don't need to pay a dime to this

union—and you don't need to have happen to you what has happened to so many Boilermakers members.

Many of you have openly supported us and let it be known that you don't want any part of this union or its trouble. I thank you for your support. **WE WILL NEVER FORGET IT.** Your decision to defeat the union is a decision you and your family will never regret. Once again, thank you for your support.

The representation election was held on February 5, 1981, and the result favored Respondent by a vote of 453 to 356. No objection was filed by the Union and the results were certified.

Shortly after the election, employees Meshell, Ferguson, Arnold, Grant, Loud, Peters, and Stamper were terminated or otherwise disciplined. Several months later employee Dixon was given a warning and a 1-week suspension.

B. Preliminary Conclusions

The General Counsel has shown that Respondent has had a recent history of demonstrated union animus and that the discharged employees were known by Respondent to be active union supporters. Under these circumstances and in view of the background noted above and in the factual discussion to follow, I conclude that the General Counsel has met his initial burden of presenting a prima facie showing sufficient to support an inference that the employees' union activities were the motivating factor in Respondent's decision to discharge or discipline the involved employees. Accordingly, the testimony will be discussed and the record evaluated in keeping with the criteria set forth in *Wright Line*, 251 NLRB 1083 (1980), and *Castle Instant Maintenance*, 256 NLRB 130 (1981), to consider Respondent's defense, and in the fight thereof, whether the General Counsel has carried his overall burden.

C. The Discharge of Blade Ring Welders Arnold, Grant, Loud, Peters, and Stamper

Respondent contends that these five named employees were discharged because of their bad welding on the vertical flanges of blade rings fabricated as components of turbines for Westinghouse Electric Corporation.

Westinghouse is an important Riley-Beaird customer whose business has at times comprised as much as one-seventh of Respondent's total yearly sales. An order for four sets of blade rings (12 to the set) valued at \$10 million was placed in April 1979. Respondent is experienced in fabricating blade rings, and production began in the summer of 1979. The blade rings were assembled principally in bay 8 of Respondent's facility because of the high quality welding that is required. Respondent assertedly assigned only experienced, first-class welders to the work. The work is difficult, and in the Board's decision in *Riley-Beaird* 1982, it was found that Respondent's transfer of Arnold and Stamper to work on blade rings in bay 8 was a discriminatory assignment to a more onerous and less desirable position and was done to punish

them in retaliation for their testimony and other protected activities and violated Section 8(a)(1), (3), and (4) of the Act. It also was found that welding on the blade rings, which are preheated to between 400 and 450 degrees Fahrenheit, is considered the hottest and worst job in the plant. That decision also found that Grant, although a first-class welder, was not experienced in this type of work at the time he was assigned to blade ring work.

The work on the blade rings proceeded according to a set schedule and was not a rush job. In the ordinary course of business, the fabricated blade rings were shipped by truck to Westinghouse's Lester Pennsylvania facility. All work on the blade rings was completed by the summer of 1980, with the last blade ring being shipped in July 1980.

The rings and the accompanying compression combustor, another component necessary for use in the turbine engine, remained at the buyer's plant for 6 months, awaiting the arrival of additional parts manufactured by other subcontractors. Apparently in early January 1981 Westinghouse employees machined off between three-eighths and one-half of an inch of the surface welding on each blade ring and discovered flaws including serious slag inclusions, porosity, and other major welding discontinuities, especially on the vertical flanges. Major welding defects such as those found on the vertical flanges of the blade rings also were discovered when a compression combustor fabricated by Respondent was machined. In mid-January a Westinghouse representative gave Respondent "Error Appraisal Notices" for the work and Respondent began a routine check of the problem. During the last week of January 1981, Chester J. Leonowich, purchasing manager of Westinghouse, called Charles Moore, vice president of Respondent, to inform him directly of the serious nature of the welding defects found in the vertical flanges of the blade rings. (The similar defects in the compression combustor were said to be of a secondary concern as they could be repaired by Westinghouse at its Lester facility.) Leonowich demanded that Riley-Beaird representatives fly to Lester as soon as possible to view the defective workmanship and to take whatever action necessary to repair the blade rings and to ensure that quality deficiencies would not be a problem in the future. On January 28-29, 1981, E. B. Reeves, chief welding engineer; Billy Thomas Ponder, product manager; Frank Booker, general foreman of bay 8, and Moore visited the Lester facility.

Moore concurred in Leonowich's opinion that the poor welding was mainly slag inclusions and was the fault of Riley-Beaird employees. Moore assured Leonowich that everything possible would be done to prevent the reoccurrence of such quality deficiencies. He drafted a procedure which was considered by Westinghouse quality control employees but ultimately rejected several weeks later as it did not include x-ray testing. Moore reported back directly to Adams (Respondent's president), and 10 of the 12 rings in the set were returned to Riley-Beaird for re-fabrication. While at Westinghouse, Reeves attempted to identify the weld symbols made by welders on their work but he testified that the symbols had been machined off the 12 rings in the

order. Reeves found that the compression welding had the same type of defect but not as bad as on the rings.

Adams then ordered an immediate investigation, to be headed by Manager of Employee Relations Deaton. Deaton convened Respondent's disciplinary control board composed of himself, General Foreman Booker, of bay 8, Shop Superintendent E. C. Greene, and Vice President of Manufacturing William Bradshaw. Acting on the knowledge that the welding symbols had been machined off at Westinghouse, Deaton ordered computer tab runs reflecting every employee performing semiautomatic (code 540) welding on blade ring job number 159122 and compression combustor number 159123. These computer reports indicated that 20 bay 8 employees had worked on various sections of the blade rings for a total of 956 hours. Arnold (247.3 hours), Peters (120.9 hours), and Stamper (105.6 hours) worked the most hours. Four others worked 52-69 hours and Loud was next with 47.8 hours. Grant was listed for 29.8 hours. Booker, who makes assignments of employees to particular jobs, was asked if he knew who worked on the vertical flanges. Although he did not at that time have the computer list, he determined that these five had been the main welders on the vertical flanges. He sought the concurrence of Shift Supervisor O. C. Wise, who agreed with Booker. Booker did not check with Second-Shift Supervisor Manuel Law. Three codes applied to blade ring welding. The code 540 for semiautomatic welding would apply to the horizontal flanges and areas other than the vertical flanges. The latter area comprised the predominant portion of welding, between 75 and 90 percent; however, the time spent could be less because the semiautomatic welding process can handle more quickly a larger area. Other employees on the list generally were identified by Respondent at the hearing as having worked on other portions of the blade rings, the horizontal flanges, and the lug joints, or as pickup men performing cleanup task. Welder R. L. Southern was identified as having performed fitup and initial stringer passes⁴ and he also testified in the prior hearing that he had welded on the blade rings.

Booker reported the five names to Deaton and, pursuant to earlier instructions by Adams, the disciplinary control board about February 20, 1981, decided to terminate every employee who worked on the vertical flanges of the blade rings. Respondent asserts that the identities of the employees had absolutely no bearing on the decision to terminate as Adams had previously indicated that the quality of the welding on the vertical flanges was so poor that no employee involved in the matter should be retained. For identical reasons, the past performance and work records of the five employees were not considered.

Superintendent Greene was assigned to inform each of the five employees of their immediate separation from the Company and he called the five involved welders to his office one at a time, each welder was accompanied by his immediate supervisor.

⁴ Accordingly, it would be possible, as Stamper testified, that he could have followed Southern when he first started on the rings even though there is some conflict over when this welding occurred.

Stamper was called on Friday afternoon, February 20, 1981, by Foreman Sepulvedo, who accompanied him to Greene's office. Stamper was told to sit down and Greene "sort of whipped out" a copy of the Westinghouse letter of February 17 and gave it to Stamper. Stamper testified that Greene then said "you know back a few months ago some of y'all took us to court on unfair labor practice. I want you to read this." Stamper started to read it but had difficulty in doing so. Greene then read it to him and indicated that it related to bad welding in bay 8 about a year or a year and a half ago. Greene finished and said, "As of now you are terminated." Stamper started to ask about his stencil but Greene cut him off and told him not to say anything but to just get his stuff, check out at the credit union, and leave. On leaving Greene's office, Stamper saw Respondent's vice president Bill Bradshaw and went over to him and said that it did not make sense, being fired after 13 years. Bradshaw shook Stamper's hand and told him, "Well, we're going to get some more of y'all." On his way to check out, Stamper asked Sepulvedo if he was unsatisfied with Stamper's work and Sepulvedo answered "no," that Stamper had always done good work. Stamper asked to use him as a reference and Sepulvedo agreed.

Grant and Loud reported to work on the night shift at 3:30 p.m. on February 20, 1982. They were given no assignments but were told where to go to the bay office and then to Greene's office. Foreman Wise accompanied Loud and they met with Greene while Grant and Foreman Law waited. Greene gave Loud the Westinghouse letter to read. Loud testified that Greene then made a comment about "the hearing that the Union had and that even though Loud wasn't involved with it, did he know about it." Loud nodded affirmatively and Greene said, "As of now you're terminated."⁵ Loud became emotional and started to argue that he did not weld on the rings except for pickup. He was told by Greene that they had him down for welding on them and there was no need to argue. Loud said he wanted to see Deaton and left, accompanied by Wise. Loud further testified that on the way to Deaton's office he asked Wise why they were doing this to him and that Wise replied, "You know why, and I know it, too." Loud, who then was in a highly excited state, asked why Wise had not defended him and Wise replied, "Well, you know how it is, because of your union activities, that's why you're getting fired." Loud renewed his argument with Deaton, trying to explain that he had not welded on the rings. Deaton told him there was nothing he could do. Loud unsuccessfully attempted to see Bradshaw but on seeing another supervisor he explained the events and then left.

Grant testified that when he entered Greene's office he was told to sit down and was handed the Westinghouse letter and told to read it. Greene asked, "Do you understand what you're reading?" Grant replied, "Yes." Greene then said, "Grant, you know we spent an excessive amount of time in court back in August. As of now, you're terminated." Grant asked, "Why did you say I

⁵ Loud testified that he specifically remembered the statement about the hearing because he could not understand what it had to do with the letter.

was terminated?" and Greene replied, "For poor workmanship, bad welding." Grant said nothing and Greene told him that Foreman Law would see him out, and Grant left.

Peters was working the 11 p.m. to 7 a.m. shift in bay 8. On Sunday night February 22, 1981, when he arrived for work, Peters' supervisor, M. O. Green told him he was going to have to be sent home. Peters asked, "Why?" and was told to come back the next day to see E. C. Greene. Peters did so and was accompanied to Greene's office by Day Foreman Wise. Greene gave him the Westinghouse letter to read. Peters testified that when he handed the letter back: "Greene told me they were giving pink slips to some people and some people he was going to let go and that Peters was one of them to let go." Greene mentioned a lot of bad welding but also said that if Peters needed a reference Greene would be glad to give it to him. As Wise was accompanying him out Peters, who felt in a state of shock, asked what was going on. Wise replied that he knew on Friday Peters would be fired and that it was not right because he knew Peters could be counted on to do a good job and never got into any trouble. Peters also testified that Wise offered to give him a reference if he ever needed one.

Arnold was not called to testify regarding the details of his termination on February 23, 1981; however, it is noted that the subsequent report of the disciplinary board, discussed below, otherwise indicates that he was argumentative and had asserted he was a good welder.

Greene and each of the foremen denied that the Union or the 1980 NLRB hearing were mentioned during any of the termination sessions. Greene also denied that anyone but Loud denied responsibility for working on the blade rings. He also denied that he offered to give Peters any references. Sepulvedo testified that he had no further conversation with Stamper other than to tell him that he could not give references, that it was up to personnel.

Wise did not remember if the subject of references came up when he escorted Peters out; however, he was aware of a company policy that requires that all references be handled through personnel and he denied any conversation with Loud on the way to Deaton's office.

Stamper also testified that in February 1980 he had been transferred to bay 8 and immediately began welding on the vertical flanges that welder R. L. Southern had been working on. He noted that Arnold normally followed him on the next shift and that numerous welding passes would be made on each weld with work being performed on different shifts by different welders. He noted that supervisors and weld technicians watched their welding a good bit of time. In fact, Stamper (and Arnold) had been subjected to strict supervision by the bay 8 supervisors and it was found in the "1981" proceeding that supervision was such that it constituted a violation of the Act. Weld technicians would check an area to be welded and tell a welder to proceed or to gouge it out (to remove slag) or to recap it. Stamper also testified that in his experience welders job reported for

all jobs started, even if they were less than 15 minutes and he was never told of any rule to the contrary.

Loud further testified that he had never done any semiautomatic welding on the blade rings, that he had only done pickup (hand welding after an inspector has looked over the unit that has been removed from the semiautomatic welding station), and that he had not done semiautomatic welding on blade ring vertical flanges for 5 or 6 years. He testified that under the instruction of his supervisor pickup welders would job report code 540 semiautomatic welding when using a "hand roller" in order to retain their qualification on semiautomatic. Loud also testified that welders were graded periodically and it was common knowledge that three warning slips in a year would result in termination.

Grant further testified that he remembered working on the vertical flange on some pickup work as well as semi-automatic for 3 days when another worker was absent. He received a warning slip regarding his welding at that time and that warning was one of the subjects of the 1980 hearing. He also testified that he remembered seeing other welders including Elree Johnson, J. E. Johnson, N. Parker, H. W. Ramsey, and R. L. Southern (as well as Stamper and Arnold) working on the vertical flanges during 1980 but not Loud. He also noted that two or three welders per shift worked on the vertical flanges and that weld technicians worked in bay 8 to check the welding and to offer advice or help with problems.

Peters also testified that a week before being fired Foreman Law told him he would be put back on the blade rings because they were having trouble and they could count on Peters to do a good job for them.

Subsequent to the actual discharges, the disciplinary board over Deaton's signature, put out a report⁶ dated March 12, 1981, which concluded:

The situation is one of intolerable consequences with the Westinghouse Company, composing one-seventh of the Company's sales annually[.] [I]t was deemed imperative that the issue be resolved immediately to the customer's satisfaction.

All men working on Job 159122 were first class welders averaging 11.7 years of experience per welder at Riley-Beaird working on a similar product mix.

The Board could not account for the reason that while these men's past performance had met acceptable quality standards, suddenly the workmanship digressed to the point that a major customer relationship was jeopardized.

With no assurance that a similar reoccurrence could not and would not develop, the Board was of the opinion that the employees for some unknown reason, did not function up to their normal work capability which resulted in a substantial economic loss to the company in rework notwithstanding the possible loss of future business.

⁶ The report also contained a notation that an unfair labor charge had been filed with the NLRB under date of March 19, 1981.

On this premise, separation was recommended for all employees involved effective immediately.

The disciplinary board's report also concluded that the situation of employees working on the compression combustor was materially different in that although the welding defects apparent in the compression combustor were similar to the problems found on the vertical flanges of the blade rings, they were not confined to isolated areas of the combustor. It also asserted that there was good and bad welding throughout, making it impossible to determine who had performed the faulty welding.

D. The Warning and Discharge of Tank Car Welder Meshell

Meshell was a first-class welder who began working for Respondent in 1972. During August and September 1980, he was assigned to day shift in bay 11 under the supervision of Delmo Cason and Claude Veatch. Meshell was a known union adherent who testified at the NLRB hearing in August 1980 about events pertaining to a loose ground's warning and suspension given to another welder. Specifically, he testified that Cason had not checked his grounding on a particular occasion. Subsequently, in *Riley-Beaird* 1982, it was found that the warning had been discriminatorily issued.

During the first week of September 1980, bay employees attended a safety meeting where Cason discussed the Company's new program for grounding. Meshell remembered being told about using grounding nuts but denied that it occurred in a safety meeting.

On September 4, 1980, shortly after implementation of the program and after the hearing at which Meshell testified, Cason checked the groundings of employees, pulled on Meshell's grounding, and concluded that it was loose. Veatch and Cason then met with Meshell to give him a warning slip. Specifically, Veatch told Meshell that the Company had taken great pains to implement an extensive program to improve grounding. Meshell testified that he told Veatch that he felt they were picking on him because of his union activities and Veatch said that "just between me and you, it does chap my ass that you're wearing your [Union] badge."⁷ Veatch then added that he had seen Veatch, Greene, and leadman Woodford watching him after his August testimony. Meshell specifically made a notation in a notebook that Greene had stood watching him for approximately 30 minutes on August 13 at 9:15. Meshell also observed that after his testimony Cason kept telling him to hurry up and asking what was holding him up and during September Woodford watched him for a week. Meshell's notes, which he began keeping on the advice of the union representative, also indicated that Cason had come around and pulled on Meshell's grounds on the September 2 and 3 and again on September 4 when he got his "pink" warning slip.

Meshell then complained to Manager of Employee Relations Deaton who said he would check into it. Deaton

⁷ Cason and Veatch denied that the latter remark was made; however, the rest of the conversation was essentially corroborated.

reported back that Veatch thought highly of Meshell, that he was not picking on Meshell because of union activities, and that the "pink" slip would not be dropped. Meshell explained that he wanted the warning dropped because of his understanding that it was three pink slips and you were gone. Deaton replied "it's not like that. Three pink slips on the same offense is when you are terminated." Deaton did not deny the latter statement during his testimony. Meshell went to second shift in October 1980, and at the end of the month when he returned to the day shift, he testified that he stopped wearing his union badge in order to avoid having Cason "bird-dogging" him.

Sometime in January, Cason and Veatch called Meshell over to a tank he had welded on. Meshell testified they "told him he had a tank that leaked at the weep hole and said he filed charges on them last time because "they didn't show me the tank" and this time they were going to show him the work he had done." He then was shown a manway where 15 of 24 inches of weld had been gouged out.

On February 13, 1981, Meshell was called to Greene's office and in the presence of Supervisors Cason and McCullough was told by Greene that "we took everything under consideration and decided to terminate you. You don't owe nothing to the Credit Union. Don't come back." Greene told him McCullough was there to help him check out. Meshell said, "I knew you were going to do it" and left with McCullough. No specific reason for the firing was given to Meshell.

Cason testified that Meshell was fired for depositing bad weld metal in a manway in a tank car which was discovered during Respondent's internal inspection after the car was moved from bay 11.

Two of Respondent's internal form 206s were made out with respect to the tank car which Meshell had welded on (the only example demonstrated of a situation in which two such forms were made out). The first Meshell form 206, dated January 27, 1982, is the same as all the other form 206s in Respondent's files that deal with this specific type of problem. The second form 206, dated January 28, 1982, is by a second inspector with respect to the same Meshell incident and is the only form in all of the 206s introduced into evidence that specifically identifies the welder and goes into detail of how bad the work was. Respondent explained that one test was made on January 27 and at that time bay 14 employees thought they could repair the tank in the bay.

The following day, January 28, 1981, the tank was again preheated and hydrotested a second time to determine the extent of and source of the leak. After the weld was gouged out and the extent of the defect was discovered, a second form was filled out. It is noted that although the first inspector made out a job report, the second inspector did not, even though it would appear that more time would be involved in the second, more extensive inspection.

Greene testified that it was reported to him that a tank car was brought back to bay 11 after a hydrotest had discovered a leak from the manway, that the weld had been gouged out and it was discovered that it was not previously gouged down to solid metal as required for a

proper weld; and that Meshell's weld symbol was at the weld.

A few days before February 13, 1981, Greene contacted Deaton and turned the matter over to him in his role as chairman of the disciplinary board. The board's investigation did not include any interview with Meshell. Greene and Deaton testified that Meshell had received three warnings in the prior year and the board was concerned that a pattern of negligence and poor workmanship had developed that could not be tolerated and decided he should be terminated. Meshell had received a warning slip dated December 3, 1980, for unacceptable welding on the neck of a tank car (this warning was the subject of an alleged unfair labor practice complaint that was subsequently dismissed). The other warnings were the loose ground warning of September 4, 1980, and the weep hole problem of January 1981.

Greene further testified that on February 13, 1981, when Meshell was called to his office he told Meshell that they had a tank car with a leak in the manway, had gouged it out and what was found, and that due to that and his past record they had no choice but to terminate him. Greene also testified that although he has walked past Meshell's work station on occasion, he did not stand there staring at him for 30 minutes at 9:15 a.m. on August 13, 1980. He admitted that he has checked grounds on his tours through the plant and that it was possible that he checked Meshell's ground without knowing it was his.

Meshell also testified that he was aware of four or five leaks in some 50 or so hydrotest of tank cars but had never heard any shop talk of anyone being disciplined as a result of poor welding on them. He also testified that on the day of the union election he stood by at the ballot count wearing a union hat in front of several supervisors including Adams, Greene, and Cason and that each time there was a "no" vote Cason would turn and smile at him.

E. The Discharge of Cement Mill Welder Ferguson

Ferguson was a first-class welder who also began working for Respondent in 1972. He was a known union supporter. On Tuesday, February 24, 1981, he was asked to help out in bay 7 on the welding of a cement mill ordered by F. L. Smidth Company. Ferguson worked the day shift and was followed on the evening shift by welder B. J. Douglas who worked on the same project. Ferguson's job entailed the welding together of two circular metal rings about 6 to 10 feet in diameter. Initially, the rings had been aligned and braced by a fitter and tacked together with a series of small, temporary welds spaced about a foot apart. Ferguson testified that when he first saw the rings there was a strain on the tacks and that the gap between the rings was too wide in places. The pieces were jacked together under the direction of Supervisor Poland and retacked. Poland also instructed Ferguson first to hand weld a stringer using a one-eighth-inch rod for welding the stringer and then a five-thirty-second-inch rod for the next pass. Ferguson said he did not think an one-eighth inch rod would hold but that Poland was the boss. On Thursday, February 26,

near the end of Ferguson's shift Poland instructed him to cut the jacks loose so they could put the automatic welder on it. Ferguson had made one pass with an one-eighth-inch stringer when his shift ended and Ferguson told Douglas, who followed him on the next shift, that he had not had time for another stringer and that five-thirty-second-inch rod should be used for the next pass according to Poland's instructions.

On Friday when he came to work, Poland met him as he came down the aisle and told Ferguson that he did not need Ferguson, that the inspector would not work him, his welding was sorry and it broke, and Poland had come back on the next shift and worked until 12 midnight to have it redone. Poland told him to go over to see if Booker needed him in bay 8. Ferguson could not find Booker, however, Foreman Wise gave him an assignment. Just before quitting time, he was called to go with Booker to Greene's office. Ferguson testified that Greene said, "Well, I guess you know we don't need you anymore. Bad welding. And the number of years you been out here and had a pink slip or two." Greene told Booker to take Ferguson to the credit union and when Ferguson started to say something Greene said, "No, I know what I want to know." Robert Jones, quality control inspector for F. L. Smidth, was in bay 7 observing the progress of the work throughout the entire week of February 23, 1981. Jones assertedly was working some 12 hours a day and scheduled his inspections so he could observe work on both shifts and be present at all critical phases of the operation. Ferguson remembered seeing Jones on Tuesday and Wednesday but not Thursday. Jones testified that on a Friday, February 27, between 7 and 8 a.m., he discovered some poor welding on the joined rings of a cement mill. He told Poland about it, and said that he did not want the welder on his job in the future. Subsequently, when asked to by Poland, he put the request in a written memo dated February 27. Jones testified that there was no "unusual" strain on the rings but that initial restraints were used as a safety precaution. On cross-examination he admitted that earlier in the week there had been some initial problems with alignment and with some tacks breaking. He also admitted that if the fixturing and bracing done by the fitter were improper, stress could be put on the following weld. He also said that to remove the braces too early would have run the risk of lost alignment and cracking. He further testified while the cement mill was not a rush job, it had a deadline and was behind schedule, and that he did not authorize removal of the braces until after February 27.

Billy Joe Douglas was a first-class welder who followed Ferguson on the second shift during the last week of February 1981, on the welding of the cement mill rings. He had started the job before Ferguson came on and on Wednesday or Thursday night he observed that the stringer weld that had been put in since he last worked on it, had just cracked. Douglas testified he worked under the direction of inspector Jones. Jones held his light on the seam and asked who welded it and Douglas told him Ferguson.

Douglas arced out the cracked weld and he and another welder redid the inside seam and eventually did

the outside. He further testified that it was a tedious, slow job and that it took about 3 days to finish the inside seam. Poland testified that on Friday, February 27, Jones called his attention to a crack in the weld between the rings crack and told him that he did not want the welder who had put that weld in to be on that job or any other for his company. Poland agreed with a statement in Ferguson's affidavit that 50 or so feet of the inside circumference had been welded when Ferguson got to the job and that Ferguson did the final inside 9 or 10 feet. Poland did not refute Ferguson's testimony regarding Poland's supervision of his work on the day when the cracked weld was discovered. Poland told Greene of Jones' comments and Greene told Poland to tell Deaton. Deaton then told Poland to get a letter from Jones.

Greene testified that when Poland told him about Ferguson's welding problem he sent Poland to see Deaton. Greene then participated in a phone meeting of the disciplinary control board (himself, Deaton, Poland, and Bradshaw) and it was decided to terminate Ferguson. Deaton testified that in addition to cement mill welding the board also considered the fact that Ferguson had received warnings on both March 7, and May 29, 1980, for unacceptable appearing welding and unsatisfactory welding, respectively, as well as a warning for gross mishandling of company property (using his CO 2 gun as a chipping hammer). The board saw no reason to consult with Booker, Ferguson's regular general foreman and did not ask any employees about the incident. On cross-examination Greene testified that Respondent's records show that Ferguson's job reports show that he job reported on the cement mill for 8 hours each on the day shift for Tuesday through Thursday, February 24, 25, and 26; that Douglas did the same for the second shift; and that no other welders worked on the job on these dates.

Ferguson recalled that the warning of March 7 was for a job that had a good weld that looked high and that it was shipped out to the customer the way it was. Ferguson denied that he ever used his CO 2 gun as a chipping hammer and that Booker became aware of the problem when Ferguson told Foreman Hayes it was broken and that he needed a new one.

F. The Suspension of Crane Operator Dixon

Earl Dixon was employed as a first-class crane operator in the Riley-Beaird steelyard (bay 1) and in December 1981 he was working on the first shift from 7 a.m. to 3:30 p.m. His name appears on the union organizing committee list and he was a known union supporter.

On December 22 at approximately 3:10 p.m., a flatbed truck loaded with steel plates arrived at the steelyard and Dixon began unloading it. Two or three plates remained to be removed near 3:25 p.m. when Dixon parked the crane and began preparations to leave when the 3:25 p.m. whistle sounded. When the 3:25 p.m. whistle sounded, leaderman C. M. Vance noticed that Dixon was preparing to exit the crane without finishing his job. Vance yelled at Dixon to finish the job, but Dixon did not acknowledge. Hardin Wilson, who was standing next

to Vance, also yelled at Dixon, but no acknowledgement was given.

Vance attempted to find Dixon immediately after the incident, but Dixon had taken another route from the steelyard. Believing that Dixon had heard his call but had deliberately refused to answer, Vance reported the incident to Rex Bain, manager of the steelyard, the next morning. Bain then met with both Dixon and Vance to discuss the matter and Dixon denied that he had heard their calls.

Dixon testified that he believed he was entitled to leave his crane at 3:25 p.m. to prepare for leaving at 3:30 p.m. and that he did not hear the request for him to finish unloading. Although it appears that the general practice in bay 1 was for everyone to prepare to leave at 3:25 p.m. a notice had been posted to the effect that they were to stay at their work stations until 3:30 p.m. Bain testified that Dixon's leaving his work station early was of little significance in the decision to give him a written warning, inasmuch as this would be acceptable if he was not doing anything at the time; however, the confirmation by Wilson and Vance that Dixon had heard his supervisor and fellow employee calling to him to complete the unloading that already was in progress convinced Bairt that a written warning was in order.

After the conversation with Dixon, Bain wrote out a warning slip. As this warning contained extraneous information which was not necessary for recordation in the file, Bain later that same day wrote out a shorter version of the incident which was placed in Dixon's file.

Before Bain gave Dixon the warning, he and C. M. Vance approached Manager of Employee Relations Deaton in order to confirm the proper action to be taken. Deaton began an investigation of the matter on December 23. He spoke with Wilson, Bain, and Vance and contacted Dixon by phone. Dixon again responded that he had not heard anyone calling to him. Subsequently, Vance reported to Deaton that employee Mile Reggio had casually mentioned to him on Saturday December 26 that Dixon had said something about Vance wanting Dixon to stick around a bit longer the other day. Reggio confirmed that as he and Dixon were leaving just before Christmas, Dixon has said something about Vance wanted him to work overtime or stay over after the first whistle and that he later had mentioned it to Vance and that Vance had reacted with a wide-eyed expression. Twenty minutes after Reggio told Vance, Bain called Reggio to his office and inquired about Dixon's comment.

Deaton spoke with Reggio to confirm that Dixon had made a remark about Vance calling to him. Based on this information Deaton and the disciplinary board decided that Dixon had been insubordinate and that suspension for 1 week was an appropriate disciplinary action because even though flagrant insubordination was grounds for termination, Dixon had many years of longevity and a clean record. Deaton phoned Dixon on December 31 to inform him of his suspension from January 4 to 8, 1982.

IV. DISCUSSION

The charges in this proceeding relate to several different matters growing out of the union election campaign of 1980-1981 at Riley-Beaird. Although a charge of alleged unlawful surveillance was asserted by the General Counsel, the evidence in support thereof essentially was limited to testimony that Respondent's personnel manager was seen standing in a position to observe employees handbilling at the entrance to the employee parking lot and apparently was writing in a notebook. While I accept this as evidence supplementing the General Counsel's showing that Respondent was aware of the union activities of the alleged discriminatees, I am not persuaded that it is sufficient to establish a violation of the Act and accordingly, I will recommend that the allegation of unlawful conduct in such respect be dismissed.

As indicated in the preliminary conclusions above, I have concluded that the General Counsel has made a prima facie showing of unlawful motivation in the discipline of the alleged discriminatees. The several different situations as well as credibility and the allegation regarding the pre-election speech of Respondent's president will be discussed below.

A. Credibility

Although the cross-examination by Respondent's counsel, occasionally succeeded in confusing the General Counsel's witnesses in their recitation of the pertinent events, or in their use or understanding of vocabulary, I find their testimony to be credible and, where relevant conflicts of testimony have occurred, I basically find the employees' testimony to be the more credible and accurate description of the events. With particular reference to the termination interviews of the blade ring welders, I note that Stamper, Loud, and Grant all testified that Superintendent Greene alluded to the prior NLRB hearing at the time of their discharge. Greene, Foreman Sepulvedo, Law, and Wise deny any union or hearing remarks. Respondent argues that it would be inconceivable that Greene would make such a remark. It is shown, however, that Greene did participate in the unfair labor practice hearing prior to the election and it also is shown that Adams had expressed his desire to smash the Union and that he would never forget the employees that supported the Company over the Union. I find Greene's alleged remark, following 2 weeks after the Union failed in the representation election, to be the reflection of an impulsive desire to gloat over the Union's defeat and is consistent with Respondent's general attitude of union animus. It also is noted that some testimony of Respondent's supervisors was discredited in the prior decisions in *Riley-Beaird* 1980 and 1982 supra and that judicial notice of these decisions has been taken herein, compare *Plumbers Local 598 (Rust/W.S.H)*, 255 NLRB 450 (1981). Under these circumstances, I credit the employee's testimony that Greene specifically alluded to the Union and the prior NLRB hearing during his termination interviews.

B. *The Speeches by Respondent's President*

In his speech of January 12, 1981, President Adams referred to a "blank piece of paper" and said "we have shown you that paper as an example of how you could lose with the Union, as there are no guarantees that you would keep all your present pay and benefits." As noted by Respondent a "blank sheet" remark is not a per se violation of the Act when it is made clear that any reductions in wages or benefits would occur only as the result of normal give-and-take negotiations *Taylor-Dunn Mfg. Co.*, 252 NLRB 799 (1980). However, it is equally clear that Adams' January speech and the one of February 3, 1981, in which Adams referred to an example of union representation that led to "a long history of strikes, and other troubles" and "a long record of strikes, lost pay and lost opportunities for many employees"; were made under circumstances where union animus is shown to have existed and where other significant unfair labor practices had occurred as indicated in the *Riley-Beard* 1980 and 1982 decisions. In particular, it is observed that Respondent's past speeches at the time of the prior election in 1979, were found to be threatening and in violation of the Act in *Riley-Beard* 1980.

The Adams' speeches of 1981 also contained references to his desire for help in "smashing" the Union and the remark that Respondent would "never forget" employees that openly supported the Company. I infer that the latter remark also conveys the message that the opposite is true and that those who openly support the Union also would not be forgotten. All in all, I conclude that the speeches had the reasonable tendency to cause employees to believe that they would suffer loss of benefits and other problems if they voted for the Union and I find an implied threat in violation of Section 8(a)(1) of the Act as alleged.

C. *Discharge of the Blade Ring Welders*

Respondent has shown that welding of unacceptable quality occurred on the vertical flanges of an order of blade rings delivered to Westinghouse during 1980, and it contends that it has the right to terminate any and all of the welders for grossly negligent or intentionally poor work.

The above-discussed testimony and Respondent's reasons for its termination of welders Arnold, Grant, Loud, Peters, and Stamper must be balanced against the General Counsel's showing that Stamper, Grant, and Arnold testified in one or the other of the prior cases, were members of the union organizing committee, and were found to have been illegally discriminated against in the decision in *Riley-Beard* 1982. Moreover, they were active union supporters engaged in preelection activities as were Loud and Peters.

I am persuaded that preponderance of the evidence supports a finding that the bad welding on the Westinghouse blade rings, standing alone, was not the controlling reason for the termination of Arnold, Grant, Loud, Peters, and Stamper. Moreover, I find that all five welders, four of them with over 12 years of service with the Company, would not have been collectively terminated were it not for their protected concerted activity of

active participation in support of the Union in the recent union campaign and election.

Although Westinghouse had received the blade rings by mid-1980, it did not begin machining them until January 1981, and then it apparently processed all of them, removing all welder identification symbols, prior to notification to Respondent in mid-January. By the last week of January 1981, the Westinghouse complaint had become a problem of major proportions. The election, lost by the Union, was held February 5, 1981. By letter of February 17, 1981, the Westinghouse problem was formalized, Respondent's president Adams ordered an immediate investigation, and on February 20 and 23 the five welders were called in, handed a copy of the Westinghouse memo of February 17, and discharged.

Despite Respondent's contentions to the contrary, I cannot find that it made a valid and fair investigation and evaluation of the bad welding problem and in particular, I find Loud's testimony that he never worked on the semiautomatic welding of the vertical flanges is supported by other testimony and his explanation of how he would occasionally code 540 welding for pickup work is found to be credible, as is his overall testimony which appeared to be emotional, honest, and open. Grant's testimony that he only spent 3 days on semiautomatic welding of the vertical flanges is supported by Respondent's own listing of code 540 welding. Moreover, in the *Riley-Beard* 1982 decision it was found that Grant received a specific warning for bad welding for the 3 days he was on the job, that Grant was just learning how to do the vertical flanges, that his problem was with pin holes, and that he had brought the problem to management's attention himself. The issuance of a warning for this welding was found to be an unfair labor practice, the type of bad welding appears to be different than the slag inclusion problems found by Westinghouse and yet Grant was terminated for what he was previously (and illegally) disciplined for.

Accordingly, I find that welders Loud and Grant were not responsible for the undisclosed bad welding and that a full and fair investigation by Respondent would have shown them to be blameless for the Westinghouse problem.

In its investigation Respondent made no attempt to receive any input from any of the welders, weld technicians, or inspectors or even all of the supervisors. At the most, it merely got the names of five welders from the memory of General Foreman Booker and matched them with its records of code 540 semiautomatic welding. Once some names were identified, no further effect was made to investigate or access individual responsibility or to see if any responsibility might rest with other welders inspectors, weld technicians, supervisors, or plant procedures. Because of the issues raised in the *Riley-Beard* 1982 proceeding, three of these names were known to be those who testified about vertical flanges welding at the prior hearing. Peters, who displays distinctive individualistic traits and who spent the greatest number of hours on the blade rings, necessarily would be recognized as a participant. Respondent's asserted investigation and its decision to terminate was made in an apparent 3-day

time span and I find this undue haste as well as the lack of any meaningful investigation supports the inference that Respondent had another motive in discharging the vertical flanges welders.

As noted in the preliminary conclusions, Respondent had knowledge of the union activities of these employees and of the fact that three of them had testified against it in prior proceedings. Moreover, the events reflected in the Board's prior *Riley-Beaird* decisions, supra, regarding Respondent's past practices shows a continuous pattern of union animus which further supports the General Counsel's contentions that the principal or other motive for their termination was a desire to retaliate against them for their activities in support of the Union.

The finding of animus and other motivations is reinforced by the above-found unfair labor practice relative to the contents of the speech of Respondent's president just prior to the election. Moreover, in view of the timing of Respondent's termination action, only 2 weeks after its success in overcoming the Union's attempt to obtain bargaining rights, I infer that Respondent, flush with victory in the representation election, seized on an opportunity to terminate these five welders and union supporters in order to reinforce the desire expressed by President Adams in his speech on January 12, 1981, to *smash* the Union and his threat in his speech of February 3, 1981, to let the employees know that management *never intends to forget* those who supported and, implicitly, those who opposed it. While it is apparent that serious bad welding did occur, there is little indication that the response by management was directed at any meaningful attempt to identify and correct the problem. Instead, management took the perceived opportunity to retaliate against some of those who had caused it to go through the prior Labor Board proceeding and the representation election and, in the process, it found a scape goat to excuse its own managerial failures regarding the fabrication of the Westinghouse blade rings.

In view of the factors discussed above, I conclude that the General Counsel has met his overall burden of proof and that he has shown by a preponderance of the evidence that by discharging Lynn Arnold, Willie Loud Jr., Jimmy R. Grant, Alvin Peters, and Thomas B. Stamper on February 20 and 23, 1981, Respondent violated Section 8(a)(1) and (3) of the Act as alleged.

Moreover, Arnold, Grant, and Stamper are shown to have testified on behalf of the General Counsel in the prior *Riley-Beaird* proceedings and found to have been illegally discriminated against and I find that their discharges under the circumstances shown would tend to have a coercive effect on others called to testify in Board proceedings and that Respondent has also violated Section 8(a)(4) of the Act as alleged.

D. Discharges of the Tank Car and Cement Mill Welders

Respondent has shown that some bad welding occurred on a tank car manway welded by alleged discriminatee Meshell and that he had been given a warning slip for having loose grounds. With respect to the latter incident, Respondent contends that the charge should be dismissed inasmuch as the event occurred more than 6

months prior to the Board's filing of the charge on March 5, 1981. I find, however, that the timely filed charge relative to Meshell's discharge is broad enough to support the amended charge pertaining to the warning which is material and relevant to his subsequent discharge on February 13 and is within the General Counsel's discretionary authority. See *R & S Transport*, 255 NLRB 346 (1981).

With respect to the September 4, 1980 warning slip I credit Meshell's testimony that several supervisors had stood watching him on occasions after his testimony at the August 1980 hearing and that Supervisor Cason had pulled on his grounds 3 days in a row before writing him up. In *Riley-Beaird* 1982, Cason was found to have deliberately loosened the grounding of another employee, leading to a discriminatory warning and Meshell had testified on this point. I also credit Meshell's testimony that Supervisor Veatch did admit that Meshell's wearing of a union badge "does chap my ass" at the time he was given the warning. Under these circumstances, I infer that Respondent had no sound basis for issuance of the September 4, 1980 warning slip but, at a time shortly after the hearing closed, manufactured a reason to discipline him in order to let him know of their displeasure with his testimony. I conclude that the General Counsel has shown that Meshell in effect, was set up and that the warning would not have been issued were it not for his protected activity. Accordingly, I conclude that Respondent's issuance of a disciplinary warning slip on September 4, 1980, violated Section 8(a)(1) of the Act as alleged.

Turning to Meshell's discharge for allegedly bad welding, I am persuaded that the General Counsel has shown that it would not have occurred except for Meshell's known union support and his testimony at the prior Board hearing. It also is noted that another Board charge relating to a warning to Meshell for bad welding was filed in December 1980 and dismissed by the Regional Director on January 20, 1981. Although it is apparent that a leak was found on inspection of a manway that Meshell had welded, it appears that Respondent went to an unordinary and unusual extent to document and emphasize the deficiencies in Meshell's welding after it first was discovered that the leak was near his weld symbol and I infer that it was done specifically to provide a business justification to support the anticipated retaliatory discipline of Meshell.

I also infer from the timing of Meshell's discharge that its motivation was related to Meshell's union activities inasmuch as the inspection forms on the welding were made out on January 26 and 27 and Meshell was shown the welding during the latter part of January and yet according to Deaton, the matter was not referred to the disciplinary board until a few days before Meshell's discharge on February 13, 1981. One event of significance occurred during this intervening period, standing specifically, on February 4, the election was held, Meshell was, standing with the principal union supporters and company supervisors during the ballot count while wearing a union hat, and the Union lost the election. As noted in the discussion of the blade ring welders, Respondent has

shown union animus, and its president had recently made speeches regarding smashing the Union and not forgetting those who supported (or opposed) the Company.

Although the January 27 warning was the third warning within a 12-month period it was only the second for bad welding (the third warning was the grounding warning found above to have been discriminatorily issued), and a penalty of discharge would appear to be contrary of Respondent's apparent policy of discharge for three warnings on the same offense. Furthermore, no meaningful investigation of the bad welding was made and Meshell was not given the opportunity to defend himself and I conclude that Meshell's termination was motivated by Respondent's desire to seize on an opportunity to retaliate against a union supporter who had testified against it in the August 1980 NLRB hearing.

Under these circumstances, I conclude that the General Counsel has shown by a preponderance of the evidence that by discharging Charles Meshell on February 13, 1981, Respondent violated Section 8(a)(1), (3), and (4) of the Act as alleged.

Respondent has shown that it had a problem with a cracked weld between two rings of a large cement mill and that its customer's inspector told Supervisor Poland that the welder who had worked on it, identified as Ferguson, was not wanted on the customer's job in the future. Ferguson was known as a member of the union organizing committee and had been seen handbilling by several supervisors just prior to the election. At the request of Poland the inspector put the request in writing on Friday, February 27, 1981, and later that same day Ferguson was terminated.

Ferguson testified that Poland sent him back to bay 8 when he arrived for the day shift on Friday morning telling him that his weld had broken and Poland had worked the next shift (Thursday night) to have it redone. Second shift welder Douglas remembered the inspector looking at the weld crack on Wednesday or Thursday night and asking who welded it. Although the inspector and Poland assert that the crack was discovered the morning of February 27, I find their testimony to be inherently improbable inasmuch as the likely responsibility for the crack would then shift to Douglas who is shown by Respondent's job report record to have, in fact followed Ferguson on second shift on February 24, 25, and 26 and Ferguson was sent back to bay 8 on the morning of February 27. Under these circumstances, and in view of the absence of other contradictory testimony by Poland, I credit Ferguson's description of the events leading up to the discovery of the cracked weld. Specifically, I find that when Ferguson was transferred that week to help out with the job there were problems with poor alignment, strain, and cracked tacks and that on Thursday, February 26, at the end of Ferguson's shift after he had put in a thin stringer pass, Poland instructed him to cut the jacks loose so the automatic welder could be used for the next pass.

Respondent, however, made no attempt to fairly investigate the inspector's complaint in order to properly assess responsibility. In fact, in its haste to react, its disciplinary board met by phone and immediately terminated Ferguson the same day. Although it asserts that it

considered the complaint to be the third bad work warning, it is apparent that one of the warnings was merely for poor appearance and not for any real deficiency in workmanship and I infer that a long-term welder such as Ferguson would not have been issued another warning in such haste or terminated for a minor "third" warning unless Respondent had some other motivating reason. The severe nature and timing of the Ferguson discipline within a week of the discharge of the blade ring welders indicates that it was a followup of Respondent's retaliatory inclinations. It was designed to reinforce the message that the Union was smashed and that Respondent would continue to remember those who had supported the Union.

I conclude that the General Counsel has shown by a preponderance of the evidence that Ferguson would not have been discharged were it not for his union activities and Respondent's corresponding union animus and I further conclude that by discharging Billy Gene Ferguson February 27, 1981, Respondent violated Section 8(a)(1) and (3) of the Act as alleged.

E. Discharge of the Crane Operator

Respondent has shown that crane operator Dixon was given a warning for leaving his work station at a time when Supervisor Vance was attempting to get him to finish unloading two or three steel plates that remained on a truck. Subsequently, Respondent received information that Dixon, despite his denial, had heard the supervisor and Respondent then decided to give Dixon a 1-week suspension for insubordination.

Although Dixon denied that he heard and purposely ignored his supervisor, I credit the independent testimony of witness Reggio that Dixon had indicated that he was aware that Vance had attempted to get him to stay around after the first whistle and I find no support for the contention that the imposition of a 1-week suspension is indicative of disparate or retaliatory treatment by Respondent.

Although Dixon had signed the union organizing committee list, the disciplinary action taken against him occurred some 10 months after the union election and after the discriminatory discharges of the welders discussed above. Different supervisors and different areas of Respondent's operations are involved and I can find no direct tiein between Respondent's antiunion animus before and shortly after the election with the discipline imposed on Dixon. Accordingly, I conclude that the General Counsel has failed to show by a preponderance of the evidence that the 1-week suspension of Earl Dixon violated the Act and I will recommend that this complaint be dismissed.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By making implied threats in speeches of it president regarding loss of benefits and jobs in order to dis-

courage membership in the Union, Respondent violated Section 8(a)(1) of the Act.

4. By issuance of a warning slip to Charles Meshell on September 4, 1980, and discharging him on February 13, 1981, Respondent violated Section 8(a)(1), (3), and (4) of the Act.

5. By discharging Willie Loud Jr., on February 20, 1981; Alvin Peters on February 23, 1981, and Billy Gene Ferguson on February 27, 1981, Respondent violated Section 8(a)(1) and (3) of the Act.

6. By discharging Jimmy R. Grant and Thomas B. Stamper on February 20, 1981, and Lynn A. Arnold on February 23, 1981. Respondent violated Section 8(a)(1), (3), and (4) of the Act.

7. The evidence is insufficient to support a conclusion that Respondent engaged in unlawful surveillance or unlawfully suspended employee Earl Dixon in violation of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, it is recommended that Respondent be ordered to cease and desist therefrom and to take the affirmative action described below which is designed to effectuate the policies of the Act.

With respect to the necessary affirmative action, it is recommended that Respondent be ordered to offer Charles Meshell, Jimmy R. Grant, Willie Loud jr., Thomas B. Stamper, Lynn A. Arnold, Alvin Peters, and Billy Gene Ferguson immediate and full reinstatement to their former positions or, if such positions no longer exist to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed. It is also recommended that Respondent be ordered to expunge from its records the references to their discharges, the warnings relative thereto, and the other warnings found to have been discriminatorily issued, and to make them whole for the losses which they suffered as a result of their terminations in accordance with the method set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed by the Board in *Florida Steel Corp.*, 231 NLRB 651 (1977). See also *Isis Plumbing Co.*, 138 NLRB 716 (1962).

Although Respondent moved to dismiss the proceeding insofar as it relates to welder Lynn Arnold because he was not called as a witness, I conclude that this does not affect his entitlement or otherwise affect the record, see *Riley-Stoker Corp.*, 223 NLRB 1146 (1976), and *Hot Bagels & Donuts*, 227 NLRB 1597 (1977), and the motion is denied.

[Recommended Order omitted from publication.]