

Meco Corporation and Oil, Chemical and Atomic Workers International Union, AFL-CIO. Case 10-CA-25057

August 26, 1991

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On May 15, 1991, Administrative Law Judge William N. Cates issued the attached decision. The Respondent filed exceptions and a supporting brief.

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

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

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Meco Corporation, Greeneville, Tennessee, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

J. Howard Trimble, Esq., for the General Counsel.
Andrew T. Sanders Jr. and Sarah E. Groseclose, Esqs. (Williams, Mullen, Christian & Dobbins), of Richmond, Virginia, for the Respondent.
John Williams, International Representative, of Johnson City, Tennessee, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WILLIAM N. CATES, Administrative Law Judge. This case presents the question whether Meco Corporation (Company) discharged its employees Sharon Huff (Huff) and Jeannie Jones (Jones)¹ because of their activities on behalf of the Oil, Chemical and Atomic Workers International Union, AFL-CIO (Union)² or because they violated a published company rule prohibiting the use of "abusive language" toward "any supervisor or . . . employee." Although I conclude Huff and Jones engaged in a heated exchange involving language that might well fit within the prohibition referred to above, I also conclude the Company seized upon the incident to discharge these two employees because of their union activities. I have, accordingly, ordered the Company to reinstate Huff and Jones to their former jobs and make them whole for any losses they may have suffered as a result of the unlawful actions taken against them.

I heard this case in Greeneville, Tennessee, on April 4, 1991. Prior to the trial, the Regional Director for Region 10

¹Certain names are spelled more than one way in the record. The spellings throughout are believed to be correct.

²The name of the Charging Party appears as amended at trial.

of the National Labor Relations Board (Board) issued a complaint and notice of hearing (complaint) based on a charge filed by the Union on November 26, 1990, alleging violations of Section 8(a)(3) and (1) of the Act.³

All parties have been afforded full opportunity to appear, to introduce evidence, to examine and cross-examine witnesses, and to file briefs.

Based on the entire record, on briefs filed by the parties, and on my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all times material to this case, the Company has been a duly organized corporation with an office and place of business located at Greeneville, Tennessee, where it is engaged in the manufacture of grills and lawn furniture. During the year preceding issuance of the complaint, a representative period, the Company in the course and conduct of its business operations sold and shipped from its Greeneville, Tennessee facility finished products valued in excess of \$50,000 directly to customers located outside the State of Tennessee. The complaint alleges, the parties admit, and I find the Company is, and at all times material has been, an employer engaged in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The complaint alleges, the parties admit, the evidence establishes, and I find the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

The Union has engaged in three organizing campaigns at the Company during 1987 to 1990. The most recent campaign resulted in a Board-conducted election on March 22, 1990. The Union lost the election by approximately 220 votes⁴ and the Board certified the results thereof.

B. Huff's and Jones' Union Activities

It is undisputed that Huff, a 10-year employee most recently employed in the upholstery department, and Jones, a 11-year employee most recently employed as an inspector, were supporters of the Union. Huff served on the Union's organizing committee during the most recent campaign and in that capacity solicited employees at work, during lunchtimes to sign authorization cards for the Union. Huff attended union meetings and wore prounion buttons and a prounion T-shirt⁵ at work the entire week before the March 22, 1990 Board-conducted election. Huff testified without contradic-

³ Also included in the complaint was an allegation the Company unlawfully caused, and intended to cause, its employee Ella Jennings to terminate her employment with the Company. At trial, I approved a non-Board settlement agreement arrived at between counsel for the General Counsel, the Company, and Jennings. I granted counsel for the General Counsel's unopposed motion to amend out all references to Jennings in the complaint.

⁴The Company employs approximately 785 employees.

⁵The slogan on the T-shirt said "America Works Best When We Say Union OCAW Yes."

tion that Supervisor Jim Edds (Edds)⁶ and employee Phyllis Hughes came to her work station on October 9, 1989, and as the two approached her work area, Supervisor Edds told employee Hughes⁷ he did not like the union buttons Huff was wearing at the time and stated the Company “was going to get rid of everybody there that was associated with the Union, working for the Union.” Huff testified that when she asked Edds what he had said to Hughes, he repeated the same comments to her. According to Huff, Edds said the Union had attempted to organize the Company two or three times and the “Company wasn’t going to tolerate it anymore and they was going to find every reason in the world to get rid of the people that was working for the Union.”

Jones testified she had been involved in all three union campaigns at the Company. She said she signed a card authorizing the Union to represent her and attended union meetings. She solicited fellow employees to sign union cards and handbilled for the Union at the entrance to the plant during the Union’s 1990 organizing campaign. She testified supervisors she knew observed her handbilling activities. Jones wore pronion buttons at work and wore a pronion T-shirt to work on March 22, 1990, the day the Board conducted the representation election. Jones testified without contradiction that while she and employee Judy Bailey (Bailey) were on break at the plant, they were approached by Supervisor Bill Carter. She testified “[h]e said that he heard that the Union was starting back up again.” Jones testified “we told him that we . . . had not heard that and didn’t know anything about it.” Jones stated Supervisor Carter replied, “well, I know that you have heard something about it” but then dropped the matter and walked away.⁸ Jones testified this conversation took place in October but did not specifically state whether it occurred in 1989 or 1990. Other record evidence tends to indicate it was in 1990. For example, at the time counsel for the General Counsel asked Jones when the conversation took place, she responded October and he stated “of 1990” and she did not respond to correct that suggested date if it was incorrect. Jones testified Carter was not her supervisor at the time of the conversation but rather that Ellenburg was. Ellenburg was Jones’ supervisor in 1990. When employee Bailey was asked about Carter’s comments, she was not certain of the month but indicated the conversation took place “last year” which would have been 1990. In light of all the above, I conclude the conversation took place in 1990.⁹

C. Huff’s and Jones’ “cuss fight”

It is undisputed that Huff and Jones engaged in a heated exchange on November 2, 1990. There are, as set forth below, conflicts regarding what words were actually exchanged between them. Huff and Jones had been friends for an extended period prior to the November incident and both testified they had cleared the air and were still friends. On the day in question, Jones and employee Bailey walked

through Huff’s assigned department.¹⁰ Huff, a first-shift employee, was working at the time. Jones as a second-shift employee had not commenced her workday. Huff testified Jones and Bailey usually spoke to her on those occasions when they proceeded through the department where she worked but had not been doing so for a while. Huff testified she told Bailey, as she and Jones walked through the door, “Judy, I guess you’re going to be next on the list.”¹¹ Huff stated Jones “turned around and told me to go to hell.” Huff responded “And I told her to go to hell, back.” Huff testified that as Jones approached the door to the department, she said something else which she (Huff) was unable to hear. Huff said she took a few steps away from her machine in the direction of Jones and Jones told her not to be calling her (Jones’) husband at home and telling him what she (Jones) was doing at the plant. Huff told Jones she had no lies to tell, that if any lies were being told, they (Jones and Bailey) were telling them.¹² Huff testified her supervisor, Barnes, came up and said to her “Sharon, one of these days Jeannie [Jones] is going to whup your ass.”¹³ Huff testified that when Jones later passed back through the area she told Jones she was going to go to hell for lying.

Jones testified she and employee Bailey worked different shifts and exchanged parking places daily. Jones stated Bailey told her Huff had said some things about her (Jones) on November 2. Jones testified Bailey asked to walk with her through Huff’s department because Huff was going to say something about their friendship. According to Jones, Huff told Bailey as they walked by that Bailey would be Jones’ “next victim.” Jones said they didn’t make any response so Huff repeated her statement. Jones testified she then faced Huff and told her to go to hell. She testified Huff responded suggesting she (Jones) go to hell. Jones stated that as she walked toward the exit door from Huff’s department she told Huff not to be telling her (Jones’) husband anything on the phone while she was at work¹⁴ and stated she didn’t have anything else to say. Jones testified that as she later reentered Huff’s department, Huff told her she “would go to hell for lying.”

Huff and Jones both deny using any harsher language than set forth above.

Jones testified she told some fellow employees about her conversation with Huff and her fellow employees suggested she tell her supervisor “and maybe . . . get it straightened out.” Jones told Supervisor Ellenburg what had happened and in doing so told him she did not want to lose her job

⁶Edds was Huff’s supervisor in October 1989. However, at the time of her discharge, she was supervised by James Ellenburg (Ellenburg).

⁷Huff testified employee Hughes was “against the Union.”

⁸Employee Bailey, called as a witness by the Company, corroborated Jones’ testimony as outlined above.

⁹Even if I concluded the Carter conversation took place earlier than 1990, I would reach the same overall conclusions I have arrived at herein.

¹⁰Bailey worked the first shift and gave her parking space to Jones each day inasmuch as Jones worked the second shift. It appears the two of them left the plant daily to accomplish that task. On the day in question, they went through Huff’s department.

¹¹Bailey testified Huff said “Judy, you’re the next one on Jeannie’s [Jones’] list to stab in the back.”

¹²Huff testified she and Bailey had talked prior to this incident. She said Bailey “was going back there and she was telling Jeannie [Jones] . . . tales on me to get Jeannie [Jones] mad at me.” Huff further testified: “This girl went back on that line and told Jeannie [Jones] that I was going to call her husband and tell her husband that she was running a man in the plant, which was a lie.”

¹³Supervisor Barnes denied making any such comment.

¹⁴Jones testified she understood Huff had been calling her husband at home a matter which Jones found “somewhat” unusual but asserted it was not the source of her dispute with Huff on the day in question.

as a result of the incident but rather wanted to get the matter resolved.¹⁵

The Company presented two employee witnesses that testified regarding the incident between Huff and Jones.

Employee Bailey testified that as she and Jones walked through Huff's department on November 2, 1990, Jones and Huff had an "angry" verbal confrontation in which they "scream[ed]" at each other. Bailey testified she first heard Huff say "Judy, you're the next one on Jeannie's list to stab in the back." Bailey testified "I went walking on and they started cursing one another then." Bailey said "[Huff] called [Jones] a bitch first" and added Jones then "hollered" back to Huff that she was a "fucking bitch." Bailey testified she never heard Huff or Jones tell the other to go to hell but stated the work area was noisy and she could not hear everything that was said.

Cynthia Barner, an employee that worked in the same department as Huff, testified she saw Jones and Bailey walking in the aisle where Huff worked and that Huff "hollered" at Bailey "Judy, I guess you know you're next on her damn list." Barner testified Jones continued on but as she reached the exit door from the department she told Huff "You go to hell, you damn lying bitch." According to Barner, Huff responded; "You're the damn lying bitch. I guess you know you can go to hell for lying just as well as you can for stealing." Barner testified that was all she heard of the conversation. Barner said the workplace was "noisy" because of "machines" and "staple guns" and stated more was said that she did not hear.

I am persuaded, as testified to by Bailey and Barner, that Huff and Jones exchanged more comments than they acknowledged and that they used harsher language than they were able or willing to recall. Barner impressed me as a disinterested, honest witness. That Huff and Jones used the stronger language attributed to them by Bailey and Barner is supported by the testimony of Supervisors Barnes and Ellenburg. Barnes testified that although he was some 20 yards away, he heard screaming and yelling between Huff and Jones but when he got to the immediate area Jones had already left. Barnes said he asked Huff what had happened and she told him Jones had called her a "bitch or something like that" and added she would "kick the fucking bitch's ass." Supervisor Ellenburg testified Jones spoke with him after the incident and "was very concerned about her job." He testified Jones explained she and Huff had engaged in a "cuss fight" and that Huff had called her a "fucking bitch" and they had told each other to go to hell. I am not unmindful that none of the witnesses recounted exactly the same version of what was said between Huff and Jones; however, that is not troubling because the work area was noisy and it is not unreasonable to assume that no one of them heard or was able to recall all that was said. In that regard, I note employee Barner testified about other distractions in the work area such as the playing of radios and the wearing of ear plugs. Perhaps the "anger" and "emotion" involved clouded Huff's and Jones' recall.

To summarize, and in light of all the above, I conclude from a composite of the testimony that Huff and Jones en-

gaged in a heated and somewhat profane verbal exchange on November 2, 1990.

D. Other Workplace Language

That shop talk at the plant sometimes included curse words and/or profane language does not appear to be disputed. Former Supervisor and current Quality Control Manager Ellenburg testified, for example, that he had heard employees "cuss" and call each other names and added he had never fired anyone for doing so. Supervisor Barnes testified he had occasionally engaged in "shop talk" with employees and had used "cuss words." He was hesitant to state what he believed constituted vulgar language but he assumed the word "bitch" did not unless one added "fucking . . . to it." Employee Barner, called as a witness by the Company, testified she had cursed at work and had heard other employees and foremen do so. Barner recalled that some years ago she was called a "damn black bitch" by a fellow employee. Barner said she was about to "whip" the other employee when her coworkers prevented her from doing so. She testified supervision knew of the incident but no discipline resulted therefrom. Employee Bailey, also called as a witness by the Company, testified cursing like that discussed above was somewhat common at the plant and that she "sometimes" used such language herself. She said she had never been disciplined for using such language and added she had never heard of anyone being fired for cursing or name calling.¹⁶

Employee David Bird, called as a witness by counsel for the General Counsel, stated he had heard employees curse one another and had also heard supervisors curse employees. He said he had heard employees curse one another in the presence of supervisors without being reprimanded or discharged. He testified the type of curse words he had heard were "goddamn, son-of-a-bitch, and all that stuff."

Jones also testified she had heard employees curse one another but did not know of anyone being discharged for doing so. Huff said it was an everyday occurrence for employees and foremen to tell each other to go to hell. Huff testified, without contradiction, that Supervisor Barnes told employee Linda Easterly he was going to write her "damn ass up" for being in the bathroom too much. Huff said she heard employee Judy Stills tell Leadperson Jack Rockwell "hell no" she wasn't going to do certain job assignments. Huff also testified Stills told Supervisor Mark Jones she was not going to pack "damn chairs" in small boxes. Huff stated that as far as she knew, no discipline resulted from these incidents.

E. The Company's Actions

Company Director of Human Resources Dominic Jackson (Jackson) testified the Huff/Jones incident happened on a Friday but did not come to his attention until the following Monday when General Foreman Bobby Buck (Buck) informed him. Director Jackson said he, General Foreman Buck, and Foreman Barnes compiled a list of employees that might have been nearby at the time of the incident. Jackson said they then followed normal company procedure in investigating an incident such as this by interviewing witnesses.

¹⁵ Jones testified she hoped her supervisor could get with Huff's supervisor and between the four of them the matter could be resolved.

¹⁶ Bailey did testify that employee Debbie Hogan was suspended for 3 days for cursing Foreman Erland O'Dell but she was not sure when the incident took place.

He testified employees Bailey, Barner, Beverly Cogdell, Ann Hensley, and Edna Ricker were interviewed. Jackson testified they learned from Bailey and Barner the same as those two testified at trial. He testified the remaining three witnesses—Cogdell, Hensley, and Ricker—said they only heard parts of the Huff/Jones exchange but that all three said it was “heated.” Jackson said they learned from employee Cogdell that the phrase “go to hell” had been used. He stated they learned from employee Hensley that the phrase “mother-fucking liar” had been used. Jackson said they also interviewed Huff and Jones. Jackson testified Jones “mentioned that Ms. Huff had called her a lying bitch and had told her to go to hell.” Jackson testified:

Well, we looked at the entire situation and basically felt like that there were four or five things going on here. Number one, there was a heated exchange between two people, a direct personal exchange in the factory on worktime on one of the employees. In fact, there was—some of the witnesses mentioned that Ms. Huff had even moved over toward Ms. Jones. In this exchange it was loud, angry, there was profanity.

Also, Mr. Barnes reported to us that Ms. Huff had mentioned several of these things. Also, James Ellenburg later had brought up the fact that Ms. Jones had been worried about her job. In looking at all of the evidence that we could gather it looked like this was more than just a general run of the mill type of an incident.

Jackson testified they looked at other situations they thought were somewhat similar to this one¹⁷ and concluded three were similar enough to the Huff-Jones incident to utilize as precedent. The first such incident involved an employee, Lawrence Supcoe, who had been terminated on January 11, 1990, for verbal abuse. Supcoe’s termination notice reflected he was discharged pursuant to group III rules, specifically, rule 17 related to abusive language to any supervisor or employee. Specifically, Jackson testified Supcoe called his supervisor “a four-eyed mother-fucking son-of-a-bitch” and challenged the supervisor “to meet him down at the Burger Chef or Burger Queen or somewhere like that.” The second incident Jackson identified as being similar involved an employee, Asa Dyer, who had been discharged on April 18, 1989. Dyer’s termination notice reflected “employee using abusive language to leadlady” and “didn’t want to do his job” but rather “wanted to do another job.” The third incident which Jackson said was similar involved an employee, Rita Braun, who was discharged on May 24, 1989. Her termination notice reads “Employee was using abusive language to another, or more than one employee. Penalties for Group III Rule #17 in this particular case is termination.” Jackson testified Braun, who had worked in the same department that Huff worked, went “through the plant that particular afternoon [May 24, 1989] . . . cursing people left and right. Just lots of people, including her husband and other people as well.”

On cross-examination, Director Jackson acknowledged Supcoe not only used abusive language toward his supervisor

but threatened to try and whip him. Jackson acknowledged threatening a supervisor was pretty serious and “not totally comparable” with the Huff-Jones situation. Jackson further acknowledged on cross-examination that Dyer was a probationary employee who had only worked for the Company approximately 16 days at the time of his discharge and had not only used abusive language toward his leadperson but had also been insubordinate in that he wanted to pick his own job assignments. Jackson also acknowledged on cross-examination that employee Braun had almost resigned in that she had stated “nothing would do her better than get out of [the Company].” Jackson could not deny Braun had been discharged for abusing her husband on company time, causing him problems, kicking him on the legs, and slapping him in the face. He even added “it was more than just her husband. She was verbally abusing some other employees as well.”

Jackson said the Supcoe-Dyer-Braun incidents were as close as the Company could come to what had happened in the Huff-Jones situation and candidly acknowledged no incidents were exactly like Huff’s and Jones’ situation.

Jackson testified; “After looking at all these things we concluded that separation [for Huff and Jones] was the proper course [to follow].”

F. *The Events on and After November 8, 1990*

Huff and Jones were discharged on November 8, 1990. They were discharged pursuant to rules set forth in the “Employee Guide to Meco” a publication provided to all employees. The specific rule cited was group III, rule 17 which reads:

Abusive language to any supervisor or any employee.

The penalties for group III rule violations for a first offense range from a written correction to discharge “depending on [the] nature of [the] offense.”

Neither Huff nor Jones worked the days immediately following their November 2 incident, however, their reasons for not working were unrelated to the incident. Jones suffers from carpal tunnel and has been under medical care restricted from working since on or about November 7, 1990. Huff was granted personal leave for Monday, November 5, and Tuesday, November 6, 1990, to attend to her farming interests.

Huff testified she worked her usual job on November 7, with no mention being made of the November 2 incident. Huff said she was called to General Foreman Buck’s office at approximately 10 a.m. on November 8, and asked for her version of what had happened between she and Jones. She told Buck what had happened¹⁸ and returned to work. She testified that at approximately 10:30 a.m. she was called back to Buck’s office where Buck told her “I hate to do this . . . but I’ve got to discharge you for what happened.” General Foreman Buck told Huff she had a right to speak with Manufacturing Manager Wrenn. Huff told Buck she wanted to do so. Buck arranged for Huff to immediately see Wrenn. In addition to Manufacturing Manager Wrenn and General Foreman Buck, Director of Human Resources Jackson was present. Huff testified:

¹⁷He testified they looked at some incidents that involved fisticuffs which resulted in the employees being terminated but decided those were not similar to what had happened in the Huff-Jones incident.

¹⁸She asserts she told Buck the same as is reflected in her account of the incident as set forth elsewhere in this Decision and will not be repeated here.

[I] said, "Mr. Wrenn," I said, "you mean you're going to discharge me for this and I've been here ten years and I've never been counseled, I've never been written up. I've always made over production for the Company and you're going to fire me for this?"

And he said, "Yes." He said, "Sharon, when we fire one we have to fire the other one." And he said, "But let Mr. Jackson and myself and Mr. Buck get back with [plant president] Landas.

"And we'll get back with you by Tuesday."

Huff testified Wrenn also told her she had been a good worker and he had never received any complaints about her. As they left the office, General Foreman Buck escorted Huff to retrieve her personal belongings and he provided her with paperwork for unemployment but asked her not to "do anything" with the paperwork until Tuesday because he was going to try to have her back working by that time "because [she was] one hell of a worker." Huff testified she did not thereafter hear from the Company so she telephoned Director Jackson on Tuesday, November 13, 1990. Jackson told her Plant President Landas had decided it was best to let the discharges stand.

Jones testified she was called at home by the personnel office and asked to come to the Company to meet with Supervisor Ellenburg. She met with Ellenburg in General Foreman Buck's office along with Director Jackson. Jones told them what had happened.¹⁹ After she gave her version of the incident, she was excused from the office and returned to the personnel area where she waited approximately 30 minutes. At that time, Supervisor Ellenburg escorted her back to General Foreman Buck's office where Ellenburg told her he had no alternative but to terminate her. Jones asked if she could have another chance and was told no. Jones was given her separation notice and left the plant.

Analysis and Conclusion

In *Wright Line*, 251 NLRB 1083 (1980), enf. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the Board announced the following causation test in all cases alleging violations of Section 8(a)(3) and (1) of the Act turning, as does the instant case, on employer motivation. First, counsel for the General Counsel must make a prima facie showing sufficient to support the inference that protected conduct was a "motivating factor" in the employer's decision.

Upon such a showing, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of protected conduct.

I am persuaded counsel for the General Counsel met his burden of establishing a prima facie case. First, Huff and Jones had been visible and vocal supporters of the Union during the various union campaigns at the Company. They actively engaged in the most recent campaign and the Company was fully aware of their activities. Huff, for example, repeatedly wore a prounion T-shirt and buttons at work. In the most recent union campaign, Supervisor Edds told Huff he did not like the union buttons she was wearing at the time and also told her, "the Company was going to get rid of everybody there that was associated with the Union, working

for the Union" and added the Company "wasn't going to tolerate it any more and they was going to find every reason in the world to get rid of the people that was working for the Union." Although this took place in October 1989, and the Board-conducted election was not until March 1990, and Huff's termination was not until November 8, 1990, such unrefuted comments clearly demonstrate an antiunion animus and motive on the part of the Company to rid itself at some point of union supporters. I am not unmindful that Edds was not Huff's supervisor at the time of her discharge and there is no showing he played any role in her discharge; however, the Company's animus toward its employees' union activities was not refuted in any way. That the Company believed Jones was continually involved with the Union is demonstrated by the fact Supervisor Carter asked her in the present of fellow employee Bailey if the Union was starting up again and when told they had not heard anything, Supervisor Carter responded "Well, I know that you have heard something about it." Although the date of this conversation was not clearly established in the record, the actual conversation was not disputed and the record supports the finding, which I have made, that it took place in October 1990. Counsel for the General Counsel's prima facie showing is stronger if the Carter conversation took place in October 1990, however, if it was concluded the conversation occurred earlier, it would not defeat counsel for the General Counsel's prima facie showing. In summary, I'm persuaded the elements of a prima facie case have been established, namely, union activity by the discharged employees known to the Company with antiunion animus having been demonstrated in general and specifically directed toward the discharged employees.

I am, for a number of reasons, persuaded the Company failed to demonstrate it would have taken the same action in the absence of any protected conduct on the part of Huff and Jones. First, the Company tolerated in others the type of conduct it discharged Huff and Jones for. The record establishes, the Company tolerates profanity in the workplace by supervision as well as employees. Employees Barner and Bailey, both called as witnesses by the Company, testified they used (and heard others use) profanity in the workplace with no disciplinary action being taken against them. Barner specifically told of women cursing women which is exactly what occurred in the Huff-Jones incident. Barner said she had also heard supervisors curse. Supervisor Barnes testified it was nothing out of the ordinary to hear someone called a "bitch." Supervisor Ellenburg acknowledged he had heard employees curse each other and call each other names and added he had never fired anyone for doing so. The Company acknowledged that employee Lisa Shank used profanity in the workplace and was disciplined pursuant to the same rule as Huff and Jones, however, Shank was only reprimanded. Director Jackson acknowledged Shanks' offense involved "some damns and hells." Thus, it is clear the Company tolerated profanity and when it did take any corrective action related to profanity it involved discipline far less than discharge. Simply stated, the Company tolerated like conduct for which it discharged union supporters Huff and Jones.

The three situations involving discharged employees (Supcoe, Dyer, and Braun) that the Company relied on to demonstrate the validity of its actions against Huff and Jones all involved more than the use of profane or vulgar language.

¹⁹ She indicated she told them about the incident in the same manner as she testified to at the trial herein.

Supcoe, for example, not only cursed his supervisor, but threatened to try to whip him by challenging the supervisor to meet him at a facility away from the plant. Director Jackson candidly admitted the Company could not have employees threatening its supervisors without disciplinary action taken against them. Employee Dyer was a probationary employee who not only cursed his leadperson but the 16-day employee also wanted to specifically select what work he was willing to perform. Again, the discharge involved far more than just profanity. Employee Braun not only cursed several employees but assaulted her husband who was working at the time. It is clear from the circumstances surrounding the above three incidents that each involved more than just employees using profanity. I am persuaded the Company simply seized upon the exchange between Huff and Jones to rid itself of two union supporters. Thus, I conclude the Company has failed to demonstrate it would have discharged Huff and Jones, both of whom were admittedly good employees, in the absence of any protected conduct on their part.²⁰ This conclusion is buttressed by the fact that when the Company investigated the incident they interviewed Huff and Jones last and within 30 minutes of each's interview, they were terminated. Such suggests the Company had already concluded it would terminate the two employees even before it had heard their versions of the events.

CONCLUSIONS OF LAW

1. Mecco Corporation is a corporation engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Oil, Chemical and Atomic Workers International Union, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. By discharging on or about November 8, 1990, and thereafter failing and refusing to reinstate its employees Sharon Huff and Jeannie Jones because of their union, concerted, and protected activities, the Company engaged in unfair labor practices in violation of Section 8(a)(3) and (1) of the Act.

4. The above unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Company has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found the Company discriminatorily discharged its employees Huff and Jones, I shall recommend it be ordered to offer them immediate and full reinstatement to their former positions of employment, or, if their former positions no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges previously enjoyed and make them whole for any loss of earnings they may have suffered by reason of the discrimination against them with interest. Backpay shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289

²⁰ An employer cannot carry its *Wright Line* burden simply by showing it had a valid reason for its actions, rather, it must "persuade" by a preponderance of the evidence, that the actions would have taken place even absent the protected conduct. This the Company herein failed to do.

(1950), plus interest, as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).²¹ I also recommend the Company be ordered to remove from its files all references to their discharges and to notify them in writing that this has been done and that evidence of these unlawful actions will not be used as a basis for any future personnel actions against them. Finally, it is recommended the Company be ordered to post a notice to its employees attached hereto as "Appendix" for a period for 60 days in order that employees may be apprised of their rights under the Act and the Company's obligation to remedy its unfair labor practices.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended²²

ORDER

The Company, Mecco Corporation, Greeneville, Tennessee, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees because of their membership in, or activities on behalf of, the Union or because they engage in other protected concerted activities.

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

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

(a) Offer its employees Huff and Jones 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, plus interest, suffered because of the illegal actions against them.

(b) Remove from its files all references to the discharge of Huff and Jones and notify them in writing this has been done and that evidence of their unlawful 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 Greeneville, Tennessee facility, copies of the attached notice marked "Appendix."²³ Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Company's authorized representative, shall be posted by the Company immediately on 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

²¹ Under *New Horizons*, interest is computed at the "short-term Federal rate" for the underpayment of taxes as set out in the 1986 amendments to 26 U.S.C. § 6621.

²² 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.

²³ 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."

Company to ensure that the notices are not altered, defaced, or covered by any other material.

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

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 our employees because of their activities on behalf of Oil, Chemical and Atomic Workers International Union, AFL-CIO or any other labor organization.

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

WE WILL offer Sharon Huff and Jeannie Jones immediate and full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and WE WILL make them whole for any loss of earnings and benefits resulting therefrom, less any net interim earnings, plus interest.

WE WILL remove from our files any references to Huff's and Jones' discharges and WE WILL notify them in writing this has been done and that evidence of their unlawful discharges will not be used against them in any way.

MECO CORPORATION