

Wolkerstorfer Company, Inc. and International Brotherhood of Painters and Allied Trades, AFL-CIO. Case 18-CA-11210

November 12, 1991

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

On December 19, 1990, Administrative Law Judge George Christensen issued the attached decision. The Respondent filed exceptions and a supporting brief and the General Counsel filed exceptions and a supporting brief. The Respondent also filed an answering 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 briefs¹ and has decided to affirm the judge's rulings, findings,² and conclusions,³ and to adopt the recommended Order as modified.⁴

¹ The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

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

We note that in sec. II.B.5, par. 1 and 3, the judge inadvertently stated that Hess notified the Respondent that he was quitting on January 2, 1990, rather than January 3, 1990, or December 29, 1989.

We agree with the judge that the Respondent violated Sec. 8(a)(1) of the Act by suspending Thatcher, Cannon, and Hess and by discharging Thatcher for engaging in protected concerted activities. In so finding, we also agree with the judge that their respective involvement in soliciting other employees to boycott the Respondent's Christmas party to protest changes in wages and working conditions and in posting a notice regarding a meeting at the American Legion Hall was not "so violent" or "of such character as to render [them] unfit for further service" and deprive their conduct of the Act's protection. See *Martin Marietta Corp.*, 293 NLRB 719, 725 (1989). We further find that their conduct did not otherwise constitute the sort of egregious misbehavior that would lose the protection of the Act. See *YMCA of Pikes Peak Region*, 291 NLRB 998 (1988), enfd. 914 F.2d 1442 (10th Cir. 1990).

³ In agreeing with the judge's conclusion that Hess and Cannon were not constructively discharged, we find that under the circumstances of this case their suspensions were not "so difficult or unpleasant as to force [them] to resign" under the standard set forth in *Crystal Princeton Refining Co.*, 222 NLRB 1068, 1069 (1976). See *Grocers Supply Co.*, 294 NLRB 438 fn. 9 (1989), in which the Board found that although the respondent unlawfully denied reinstatement to employee Evans when he attempted to return from medical leave, Evans' subsequent resignation over 3 months later in order to obtain pension money did not constitute a constructive discharge requiring reinstatement. Here, there is no evidence that the Respondent prolonged its investigation of Hess and Cannon to force them to resign or engaged in conduct with respect to the suspensions that it reasonably should have foreseen would force them to resign.

AMENDED REMEDY

Substitute the following for the final phrase of the second paragraph in the judge's remedy:

"Backpay shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987)."

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Wolkerstorfer Company, Inc., New Brighton, Minnesota, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

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

"(b) Make Ryan Thatcher, Donald Cannon, and Brett Hess whole for any wage and benefit losses they may have suffered due to the discrimination practiced against them in the manner prescribed in the remedy section of the judge's decision, as amended."

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

See generally *Keller Mfg. Co.*, 237 NLRB 712, 723 (1978). Rather, based on the fact that Hess and Cannon secured additional employment immediately after being suspended and during a period of time when the Respondent's plant was scheduled to be closed for the holidays, we find that they chose to quit rather than await the outcome of the Respondent's investigation. See also *American Licorice Co.*, 299 NLRB 145 (1990), in which the Board suggested that the Crystal Princeton test should not be read so narrowly as to apply only when an employer has changed an employee's working conditions.

⁴ The General Counsel has excepted to the judge's failure to include in his recommended remedy a reference to the appropriate formulas for the computation of backpay and interest. We find merit in the General Counsel's exceptions. Accordingly, we shall amend the remedy section of the judge's decision to rely on *F. W. Woolworth Co.*, 90 NLRB 289 (1950), for the quarterly method of computing backpay, and *New Horizons for the Retarded*, 283 NLRB 1173 (1987), for the computation of interest.

Additionally, we shall amend the notice to conform to the provisions of the judge's recommended Order.

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 suspend, discharge, or otherwise discipline you for soliciting other employees to act as a group in protest of or to complain against our policies or actions affecting your wages, hours, or working conditions.

WE WILL NOT suspend, discharge, or otherwise discipline you for instigating, organizing, or participating in meetings with other employees protesting our policies or actions affecting your wages, hours, or working conditions.

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

WE WILL offer Ryan Thatcher immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed and WE WILL make Ryan Thatcher whole for any loss of earnings and other benefits resulting from his suspension and discharge, less any net interim earnings, plus interest.

WE WILL make Donald Cannon and Brett Hess whole for any loss of earnings and other benefits resulting from their suspensions.

WE WILL notify Ryan Thatcher that we have removed from our files any reference to his suspension and discharge and that the suspension and discharge will not be used against him in any way and WE WILL notify Donald Cannon and Brett Hess that we have removed from our files any reference to their suspensions and that the suspensions will not be used against them in any way.

WOLKERSTORFER COMPANY, INC.

A. Marie Simpson, for the General Counsel.
M. J. Galvin Jr. and Ann Hantrods (Briggs & Morgan), of St. Paul, Minnesota, for the Respondent.

DECISION

STATEMENT OF THE CASE

GEORGE CHRISTENSEN, Administrative Law Judge. On May 15 and 16, 1990, I conducted a hearing at Minneapolis, Minnesota, to try issues raised by a complaint issued on March 28, 1990, based on an original and an amended charge filed by International Brotherhood of Painters and Allied Trades, AFL-CIO (Union or Painters) on February 13 and March 21, 1990.

The complaint alleged Wolkerstorfer Company, Inc. (Respondent) violated Section 8(a)(1) of the National Labor Relations Act (Act) by suspending employees Ryan Thatcher,

Donald Cannon and Brett Hess and subsequently discharging Thatcher and constructively discharging Cannon and Brett for engaging in concerted activities protected under Section 7 of the Act.

The Respondent conceded suspending the three employees but alleged Cannon and Hess shortly after their suspension voluntarily quit their employment, at all pertinent times Thatcher was a supervisor within the meaning of the Act not entitled to its protection, denied the three were disciplined for engaging in concerted activities protected under the Act and asserted by engaging in the conduct for which they were disciplined, the three forfeited any right to the Act's protection.

The issues created by the foregoing are:

1. Whether the three were suspended for engaging in concerted activities protected by the Act.

2. If so, whether that conduct was of such a nature as to deny the three the protection of the Act.

3. If not, whether the Respondent would have suspended the three absent their engagement in concerted activity protected by the Act.

4. If not, whether whether Thatcher is not entitled to the protection of the Act because he was a supervisor within the meaning of the Act.

5. If Cannon and Hess were constructively discharged or voluntarily quit their employment.

6. Whether the Respondent by the suspensions and discharges violated the Act.

The General Counsel and the Respondent appeared by counsel and were afforded full opportunity to adduce evidence, examine and cross-examine witnesses, argue, and file briefs. Both filed briefs.

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

FINDINGS OF FACT¹

I. JURISDICTION

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

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Facts

At all relevant times the Respondent was engaged in the business of electroplating and enamelling metal at a plant in New Brighton, Minnesota. In December of 1989,² Jack, Joseph, Ken, and William Wolkerstorfer were owners of the Respondent actively engaged in its management. Jack Wolkerstorfer managed the plating department, assisted by

¹ While every apparent or nonapparent conflict in the evidence has not been specifically resolved below, my findings are based upon my examination of the entire record, my observation of the witnesses' demeanor while testifying and my evaluation of the reliability of their testimony; therefore any testimony in the record which is inconsistent with my findings is discredited.

² Read 1989 after further date references omitting the year.

David Grabowski, Charles Bergman, and Bob Belland.³ At that time the Respondent employed approximately 80 employees on two shifts; on the day shift there were about 10 production lines, with one to two employees manning the passivate line, one employee on the phosphate line, one on the tin line, two to four on the nickel/chrome line, five on the electroless nickel line, two to three on the barrel line, three on the Dow line, two on the hand line, and six on the transfer line. Four leads were scattered among the lines, plus one group lead.⁴

In mid-December (and previously) Thatcher was a working lead on the nickel/chrome line and Cannon was also assigned to work on the nickel/chrome line. Following his mid-December demotion from the classification of Plater Technician to Plater A (and consequent reduction in pay), Hess worked primarily on the tin line (though Bergman from time to time assigned him to other lines as need dictated).

Following the mid-1988 loss by the International Brotherhood of Teamsters (Teamsters) of a representation election conducted by the National Labor Relations Board (Board) among the Respondent's production and maintenance employees, changes in the wage system and other changes affecting the production and maintenance employees⁵ generated increasing dissatisfaction among the Respondent's employees and expression thereof in conversations during working and nonworking hours.

Prior to mid-December, Cannon had been adversely affected by the Respondent's denial of a wage increase despite his favorable wage evaluation. Bob Burfeind, a consultant employed by the Respondent to aid in guiding its response to the Teamsters organizing campaign and retained by the Respondent to devise and install a new wage system thereafter, was summoned by Bergman to advise Cannon under the new wage system, he would not receive a wage increase, despite the favorable review, unless an opening in a higher plater classification occurred and he was selected to fill it. Cannon subsequently learned other employees had been similarly advised as their reviews occurred and all, including Cannon, were dissatisfied over the new wage system and discussed their dissatisfaction during working and nonworking hours. Thatcher was adversely affected by the Respondent's requiring a substantial increase in the amount of his (and other employees') contribution to the premium cost for dependent coverage and discussed his dissatisfaction with other employees and managers.⁶ While Hess requested his demotion to his former classification after management criticized his performance as a plater technician, he resented the demotion and was unhappy over the demands managers made upon him while in the higher position.

Thatcher, Cannon and Hess worked in close proximity, spent most of their break time together (with other employees as well as managers), and all three were united, in addi-

³I find at all relevant times the four Wolkerstorfers (Jack W., Jos. W., Ken W. and Wm. W.), Grabowski, Bergman and Belland were supervisors and agents of the Respondent acting on its behalf within the meaning of Sec. 2 of the Act.

⁴According to Bergman.

⁵Change in the payday (from Thursday to Friday); a substantial increase in employee contributions for family health coverage; and finally, in mid-December, a ban on the longstanding employee practice of playing personal radios at work stations during working hours.

⁶Cannon and Hess were single and unaffected by that change.

tion to their other grievances, in their dissatisfaction over the radio ban in mid-December.⁷

As with the other changes, Thatcher, Cannon, Hess, and other employees expressed dissatisfaction over the radio ban frequently and openly, during working hours and during non-working hours, often in the presence of various managers.⁸

At or near this same time (mid-December), Cannon met with an organizer for the Painters in the Respondent's parking lot and discussed the desirability of union representation.

The three decided in mid-December to protest the various changes, particularly the radio ban, by boycotting the Respondent's January 5 Christmas party and urging other disaffected employees to join their boycott. Pursuing that objective, singly, jointly, or as a threesome during and outside working hours, the three advised other employees they were boycotting the party and urged those employees to join the boycott.⁹

The three also discussed those employees joining the boycott holding their own Christmas celebration prior to Christmas Day and on Thursday, December 21, Cannon posted a note on the bulletin board next to the timeclock in the plating department reading as follows:

TO THOSE WHO WILL NOT BE ATTENDING THE CHRISTMAS PARTY, WE WILL BE MEETING AT THE LEGION ON FRIDAY.¹⁰

And advised various employees orally of the gathering.

There is no evidence any managers saw the notice (it was removed and discarded by Group Lead Dave Hamlin the morning of December 22).

Several employees, under the impression the notice was an announcement of a union meeting, asked Hess if that was the purpose of the meeting. Hess denied knowing that was its purpose.

Approximately 30 employees met at the Legion Hall on December 22 after the end of their workshifts, pushed several tables together and shared some holiday cheer and conversation before departing for home.

The Wolkerstorfers were unaware of the boycott campaign or the December 22 meeting until December 28, when an office/clerical employee who doubled as a personnel clerk, Lynne Gam, advised Jack W attendance at the Respondent's January 5 Christmas party was going to be far below that of

⁷The Respondent advised the employees the ban was required by the Respondent's insurance carrier as a condition for granting continued workmens compensation coverage; Jos. W. testified, however, while an insurance company representative expressed annoyance and displeasure over the loud volume of the radios, he thereupon decided to institute the radio ban, and neither the insurance company representative nor the insurance company demanded or conditioned coverage on the institution of the ban.

⁸Grabowski, Bergman, and Belland. Jack W. stated he learned Thatcher was "borderline insubordinate" over the radio ban and Jos. W. stated he learned prior to Thatcher's January 10, 1990 discharge the three campaigned for boycotting the Respondent's Christmas party because of the radio ban.

⁹Their effort was successful; by December 28 the number of employees who responded negatively to the Respondent's invitation to its Christmas party was substantially greater than the employees' negative response in prior years.

¹⁰Friday, December 22, was the last day the employees were scheduled to work prior to Monday, December 25—Christmas Day.

prior years,¹¹ added she heard "someone" was influencing employees not to attend, identified maintenance department Manager Steve Saviola as her source of information and Saviola, in turn, identified Maintenance Department employees Paul Schwab and Mark Perrault as employees who told him they had been contacted and urged not to attend the Respondent's Christmas party.

Jack W. summoned Perrault and Schwab to his office individually. He asked Perrault if anyone contacted him about not going to the Respondent's Christmas party and Perrault responded he asked Thatcher if he was going to the party; Thatcher replied he was not going and didn't think Perrault should go either; and Perrault said he probably would not go, since his wife was expecting. He also told Jack W. he saw the meeting notice Cannon posted on the bulletin board on December 21, attended the gathering, Thatcher, Cannon and Hess were there, he asked who posted the notice, and Cannon responded he posted it. Jack W. again brought Perrault to his office on January 4 and asked Perrault to give Burfeind a written statement. Perrault agreed, Burfeind wrote up a statement, and Perrault signed it. In the written statement, Burfeind wrote Perrault stated he saw the notice Cannon posted on the bulletin board on December 21, attended the December 22 meeting, asked who posted the notice and Cannon said he posted it; and that on December 14 Thatcher told Perrault he was not going to the Respondent's Christmas party and did not think others should go (with Burfeind omitting from the written statement any mention of who attended the December 22 meeting or that Perrault asked Thatcher if he was going to go to the Respondent's Christmas party before Thatcher commented he should not go either). Burfeind included in the written statement signed by Perrault a Perrault statement he did not feel pressured by Thatcher.¹²

Discrepancies also developed between the testimony of Schwab and Jack W. on what transpired during their December 28 encounter and the Schwab-Jack W.-Burfeind January 4, 1990 encounter. Jack W. claimed he interviewed Schwab at or near the maintenance department when he went there on December 28, following his receipt of the Saviola report and Schwab responded to his inquiry concerning any contacts about not going to the Respondent's Christmas party with the statement Thatcher, Cannon and Hess were insistent he not go to the party until he decided to tell them what they wanted to hear, i.e., that he was not going to go, while Schwab testified he was summoned to Jack W.'s office on December 28 and identified only Thatcher and Cannon as persons who contacted and urged him not to go to the Respondent's Christmas party until he told them he wasn't going to go. Schwab, like Perrault, was again summoned to Jack W.'s office on January 4, 1990, asked to give Burfeind

a statement, agreed, and Burfeind then wrote up a statement which Schwab read and signed. Schwab's statement *as originally prepared by Burfeind*, fixed the date, noted by Perrault, December 14, as the date Thatcher and Cannon stated they were not going to the Respondent's Christmas party and did not think anyone else should go, adding that Thatcher invited Schwab to the December 22 meeting at the Legion Hall.

Schwab testified his January 4, 1990 interview with Burfeind was uninterrupted and he added to the statement in his handwriting a paragraph to the effect Thatcher and Cannon were "relentless" in pursuing the subject of his not going to the Respondent's Christmas party, brought it up several times during working hours, said they contacted most of the employees on the subject, and said they had most of the employees talked out of going to the party without Jack W.'s prompting, but was contradicted by Burfeind, who testified he showed Schwab's original statement to Jack W., Jack W. summoned Schwab, and Jack W. prevailed upon Schwab to add the paragraph which appears in Schwab's writing. I credit Schwab's testimony he was interviewed by Jack W. on December 28 at Jack W.'s office and limited his identification of the persons who contacted him about not going to the Respondent's Christmas party to Thatcher and Cannon. I also credit Burfeind's testimony Schwab made the addition to his original written statement at Jack W.'s urging after Jack W. expressed dissatisfaction with his original statement.

Substantial discrepancies also developed in Jack W.'s version of what transpired following his December 28 interrogation of Perrault and Schwab.

Jack W. testified that morning the Respondent's managers were meeting in the Respondent's conference room when he completed the Perrault-Schwab interrogations, he went there, advised the managers what he learned from Schwab and Perrault, directed the managers to investigate and seek further employee input from employees under their supervision regarding the efforts of Thatcher, Cannon, and Hess to influence employees not to attend the Respondent's Christmas party, received their reports other employees had been contacted by the three, advised Jos. W. what he learned and his belief action should be taken against the three, he and Jos. W. reviewed the employee handbook and decided they could charge the three with a number of rules violations,¹³ conferred with Grabowski, Bergman, Ray Mike, and Burfeind (who had been summoned), decided to suspend the three to stop their making further contact with other employees, had Burfeind assist Grabowski in writing up a document for reading to the three announcing their suspension, and instructed Grabowski and Bergman to carry out the suspensions. Jos. W. confirmed the consultation with Jack W., review of the handbook and decision to suspend, the presence and participation of Burfeind, the assignment of the document preparation, and the assignment of Grabowski to announce the suspensions to the three.

Grabowski, however, contradicted the testimony of Jack and Jos. W., testifying the morning of December 28 Jack W.

¹¹ Gam tabulated the employee replies to the Respondent's invitations to the party and compared the result with prior years' attendance figures.

¹² The findings in this paragraph are based upon Perrault's testimony, further supported by his written statement. Perrault impressed me as an honest witness who was risking continued employment by his failure to corroborate Jack W.'s testimony which I do not credit, that he interviewed Perrault at or near the maintenance department when he went there after receiving Saviola's report on December 28, and that Perrault told him Thatcher, Cannon, and Hess repeatedly contacted him and were insistent he not go to the Respondent's Christmas party.

¹³ Prohibitions against:

1. Wasting time
2. Improper interference with operations
3. Violation of the company's no-solicitation rule
4. Threats, intimidation
5. Inability to work cooperatively with fellow employees
6. Misuse of the company bulletin boards

requested he come to Jack W.'s office following the conclusion of the managers' meeting in the Respondent's conference room; that when he went to Jack W.'s office after the meeting, Jack W., Jos. W., Ray Mike, and Bergman were there; Jack W. stated two employees had come to him and complained they were being harassed and intimidated by Thatcher, Cannon, and Hess into not attending the Respondent's Christmas party and that one of those employees had informed him Thatcher, Cannon and Hess were involved in the December 21 posting of a notice of an employee meeting on December 22 on the Respondent's bulletin board and in holding a meeting of the employees on December 22 (which Grabowski believed was a union meeting). Grabowski further testified while there was some discussion of what action to take, he was under the impression the two Wolkerstorfers had decided to suspend Thatcher, Cannon, and Hess; he and Mike were instructed by the Wolkerstorfers to prepare a statement for reading to the three advising them of their suspensions; he and Mike prepared a statement and secured Wolkerstorfers' approval of its language;¹⁴ he had Bergman and Belland bring the three before him at the lunchroom, one at a time, read each one the suspension statement, and had Bergman and Belland escort each one out of the plant.¹⁵ Grabowski also testified *following the suspensions* he was instructed by the Wolkerstorfers to investigate the extent of the three's contacts with other employees regarding the boycott.

Bergman essentially corroborated Grabowski's testimony.

Burfeind also contradicted the testimony of Jack and Jos. W., stating he was vacationing on December 28 and first became aware of the suspensions in the course of a telephone conversation with one of the Wolkerstorfers on January 2, 1990, played no role in the decision to suspend, and first became involved in the "investigation" following the suspensions on January 4, 1990, when at Jack W.'s behest he secured written statements from Perrault and Schwab.

Grabowski, Bergman, and Burfeind were credible witnesses and I credit their testimony where it conflicts with that of the Wolkerstorfers.

On the basis of the foregoing, I find during the morning of December 28 Jack W. solely on the basis of his interrogations of Schwab and Perrault at his office, sought and secured Jos. W.'s concurrence to the suspension of Thatcher, Cannon and Hess and quickly thereafter carried out the suspensions.

As noted above, following his suspension of Thatcher, Cannon, and Hess, Grabowski was instructed to investigate the extent to which the three made contact with other employees and secured their support. Grabowski thereupon interrogated employees Dan Biese, Vern Fetter, Dave Hamlin, John Joa, and Randy Ritchie. Taking his cue from Jack W.'s statement to him that two employees complained they were "harassed and intimidated" by Thatcher, Cannon and Hess, Grabowski asked each employee if he had been "harassed and intimidated" by one or more of the three. According to Grabowski, Biese responded the three harassed him "a little bit," he "didn't pay attention to them," but the Respondent

had rid itself of "two of the biggest instigators in the company," identifying Thatcher and Cannon. Grabowski testified neither Fetter nor Hamlin responded affirmatively to his question, Ritchie stated he told the three he was unable to attend the party, since he was going to be in Duluth that date when one or more of the three asked him if he was going to the party and the three expressed pleasure at his response, and Joa stated when he told the three he was going to the party, they called him a dumb (expletive). Joa also testified the three sought his joining the boycott in order to protest the radio ban.

Bergman testified following the suspensions he also was instructed by the Wolkerstorfers to investigate the extent to which Thatcher, Cannon, and Hess had made contact with employees and enlisted their support. He testified he interrogated the same employees Grabowski questioned, i.e., Biese, Fetter, Hamlin, Joa, and Ritchie, plus one additional employee, Ken Irwin. Bergman testified in almost identical language to that of Grabowski concerning Biese's response, except that Biese only identified Thatcher and Cannon as those who approached him; that Joa only identified Thatcher and Cannon as those who approached him and said while the two gave him a "little" hard time, he was used to that; he could not remember what Fetter said in response to his questions; Hamlin and Irwin did not respond affirmatively; and Ritchie gave him the same response Grabowski testified he received.¹⁶

The day following his suspension (Friday, Dec. 29) Hess applied for a job with another employer in the same business as the Respondent in the area and was hired, with a starting date of January 8, 1990.

The Respondent's plant was closed on December 30 and 31, and January 1, 1990. On either December 29 or January 2, 1990, Hess telephoned the Respondent's plant, spoke to Grabowski and Bergman, and inquired about his employment status. They professed to have no information. On Wednesday, January 3, 1990, Hess telephoned the Respondent's plant, stated he would like to come and clean out his locker, was granted permission to do so, and was met at the plant by Bergman. As Bergman accompanied him to his locker, Hess informed Bergman he was quitting his employment with the Respondent. Bergman asked him if he was sure that was what he wanted to do. He replied affirmatively. Bergman reported the conversation to Jack W., the Respondent's personnel department recorded Hess as a voluntary quit and the Respondent ceased further investigation of Hess' conduct or consideration of his employee status.

On January 5, 1990, Cannon telephoned Bergman and asked whether he could come back to work or was he fired. Bergman replied he could not give Cannon an answer. Cannon stated he would like to come to the plant to pick up his paycheck and collect some of his personal possessions. Bergman told him to come ahead. Cannon went to the plant and was met by Bergman. Bergman accompanied Cannon to

¹⁴The statement informed each of the three he was suspended immediately without pay for harassing and intimidating other employees and for involvement in an illegal posting and advised the suspension was indefinite, pending completion of an investigation of their conduct.

¹⁵The three were outside the plant by approximately 10 a.m.

¹⁶While it seems strange the two managers interviewed the same employees, I nevertheless credit their testimony they questioned Biese, Fetter, Hamlin, Irwin, Joa, and Ritchie. I do not find, however, either Thatcher or Cannon, or Hess made any of the statements Grabowski and Bergman related. Biese, Fetter, Hamlin, Irwin, Joa, and Ritchie did not testify and the Grabowski and Bergman testimony as to what Thatcher or Cannon or Hess said to Biese et al. is pure hearsay.

his work area, where Cannon unbolted his radio, cleaned out his locker, and Bergman assisted him in carrying his possessions out to his van. In the course of gathering his possessions, Cannon informed Bergman he was quitting, that he had secured another job installing cable TV and asked Bergman if he wanted an installation. Bergman replied negatively, stating there was no cable running to the area where his house was located. While Cannon was in the Respondent's parking lot, Hamlin approached and asked if he heard anything yet regarding his suspension; Cannon replied no, but he didn't care, he had a job installing cable TV, he was starting a training program and was glad he wouldn't have to work around acid anymore, his hands were improving.¹⁷ The Respondent recorded Cannon as a voluntary quit, ceased further investigation of his conduct and consideration of his employee status.

On January 10, 1990 Grabowski was summoned to meet with Jack, Jos., Wm. and Ken Wolkerstorfer and was advised the Wolkerstorfers decided to discharge Thatcher. Thatcher was requested to come to the plant and Bergman was assigned to read to him a statement prepared by Burfeind. The statement read as follows:

January 16, 1990

To: Ryan Thatcher

Re: Termination of employment

Your employment with Wolkerstorfer was terminated on January 10, 1990 for the following reasons:

1. Excessive wasting of your company time
2. Excessive wasting of other employees' time
3. Conversations which could be viewed as intimidating
4. Being associated with posting an unauthorized notice
5. Actions which are not appropriate for a lead person.

This decision has been reviewed by plating management and by the Wolkerstorfers.

Thatcher has not been recalled by the Respondent since his discharge.

The reasons stated in Thatcher's discharge notice are based upon two premises, i.e., his oral advocacy during working hours of an employee boycott of the Respondent's Christmas party to protest the Respondent's radio ban and for "being associated with" posting an unauthorized notice.

In March 1990 Hess asked John Ericson, the Respondent's Manager of Customer Relations,¹⁸ why he, Thatcher, and Cannon were suspended. Ericson replied because the three were internal leaders and the employees were following them and not the Respondent's management.

¹⁷The findings in this section are based upon the testimony of Bergman and Hamlin, which I credit; they impressed me as sincere and honest witnesses with respect to what occurred January 5, 1990 vis-a-vis Cannon.

¹⁸The complaint was amended to list Ericson as a supervisor and agent of the Respondent acting on its behalf and the Respondent admitted the amendment. I therefore find and conclude at all pertinent times Ericson was a supervisor and agent of the Respondent acting on its behalf within the meaning of Sec. 2 of the Act.

The Respondent neither challenged nor rebutted evidence the Respondent's owners, managers, and employees, during working hours: (1) engaged in conversations concerning hunting, fishing, vacation trips, sports, etc.; (2) engaged in horseplay (water fights, throwing objects at one another, playful wrestling—during which, inter alia, Manager Belland ripped Cannon's shirt and Cannon ripped out one of his pockets); (3) solicited contributions, participation in betting pools—including a football pool sponsored by Wm. W., sale of raffle tickets, sale of cookies, Avon, and Tupperware products; and (4) encouraged and thanked an employee (Hess) for campaigning during working hours against the Teamsters in 1988. Nor did the Respondent challenge or rebut evidence owners and managers of the Respondent were fully aware of and participated in the foregoing, and that no employees or managers were censured or disciplined for engaging therein.

Additionally, the Respondent failed to challenge or rebut evidence employees regularly posted on the plant bulletin board cards thanking fellow employees for expressions of sympathy or gifts; advertisements for the sale of employees' personal possessions; football pools; birthday cards, etc., and that such postings were made by employees without prior authorization and no employee was censured or disciplined therefor.

The Respondent contends Thatcher was a supervisor within the meaning of the Act and therefore is not entitled to the protections afforded by the Act.

At the time Thatcher was discharged, he and Cannon were assigned to the nickel/chrome line and Hess was assigned to the tin line. Each morning manager Ericson advised Thatcher what jobs he wanted accomplished that day on the nickel/chrome line and Thatcher and Cannon were expected to accomplish the goals set. Thatcher (and sometimes Cannon) asked Bergman for assistance if it appeared additional help was needed to accomplish the goals set. Bergman decided if additional help was needed and available; if so, he assigned additional help to the line. Thatcher spent practically all his time performing production work, describing his lead function as seeing to it the work ran smoothly and production goals were met. Thatcher did not hire employees, fire employees, suspend employees, discipline employees, conduct employee job evaluations, or grant wage increases (his role was limited to responding to any questions Bergman might have regarding employee job performance and wage increases within established rate ranges were practically automatic following a favorable job evaluation by Bergman), assign or transfer employees, authorize time off or vacation choice, or process employee complaints or grievances (any he received were referred to Bergman for disposition). Thatcher received an hourly pay rate differential over Cannon's rate of pay as a working lead; Bergman was salaried.

The Respondent produced a written job description for the working lead job. However, Burfeind stated he prepared the description on the basis of his conversations with various managers and without observation of the work performed by the various working leads. Thatcher never saw the description nor was aware of its existence, while my findings concerning his functions are based upon mutually corroboratory testimony by Manager Grabowski, Manager Bergman, and Thatcher concerning Thatcher's assigned duties and his per-

formance thereof, so I find the written job description entitled to no weight in this proceeding.

Based upon the findings above, I conclude the Respondent failed to establish at times pertinent Thatcher either possessed or exercised sufficient independent authority as a working lead to satisfy the definition of "supervisor" set out in Section 2 of the Act and therefore further conclude at all pertinent times Thatcher was an "employee" within the meaning of Section 2 of the Act entitled to the protection of the Act.

B. Analysis and Conclusions

1. Were the three suspended for engaging in concerted activities protected by the Act?

Employee attempts to induce other employees to support a group action protesting policies and/or actions of their employer affecting their wages, hours or working conditions are concerted activities protected by the Act.¹⁹

In this case, Thatcher, Cannon, and Hess were suspended on December 28 for participating in the suspected solicitation of other employees to support a boycott of the Respondent's Christmas party in protest of a series of changes in their wages and working conditions, culminating in a ban against their playing their personal radios at their work stations during working hours and for their suspected involvement in the posting upon the Respondent's bulletin board of an invitation to those employees who supported the protest boycott to attend a December 22 meeting at the Legion Hall which many (including Grabowski) believed was a union meeting.

Such solicitation is concerted activity (since at least two employees are involved in any solicitation) and an activity protected by the Act (since its purpose is to induce group action, i.e., a boycott protesting policies and actions affecting the employees' wages or working conditions and a meeting of the group supporting the boycott).

I therefore find and conclude the three were suspended on December 28 for engaging in concerted activities protected by the Act.

2. Did their alleged involvement in the posting and their solicitations deprive the three of the protection of the Act?

The Respondent states the alleged involvement of the three prior to their suspensions in the December 21 posting of the meeting invitation on the Respondent's bulletin board without prior management authorization and the alleged solicitation by the three of other employees to support the protest boycott during working hours violated the following provisions of the "Employee Handbook" distributed to all employees.²⁰

¹⁹ *Landgrebe Motor Transport*, 295 NLRB 1040 (1989); *Martin Marietta Corp.*, 293 NLRB 719 (1989); *El Gran Combo de Puerto Rico*, 284 NLRB 1115 (1987); *Salisbury Hotel*, 283 NLRB 685 (1987); *Meyers Industries*, 281 NLRB 882 (1986); *Saddle West Restaurant & Casino*, 269 NLRB 1027 (1984).

²⁰ 1. *Bulletin Boards*. Employees who wish to use Company bulletin boards must obtain advance approval from their supervisors.

2. *Solicitations*. There shall be no solicitation of contributions, subscriptions, or memberships of any kind or distribution of literature for any purpose by any employee during the actual working time of the employee soliciting or the employee being solicited.

The Respondent next argues because the concerted, protected activities engaged in by the three allegedly violated those provisions of the employee handbook, they should be denied the protection of the Act.

The Board has repeatedly enunciated the standard for such a contention; for example, in *Prescott Industrial Products Co.*, 205 NLRB 51, 51-52 (1973), the Board stated:

The Board has long held there is a line beyond which employees may not go with impunity while engaging in protected concerted activities and that if employees exceed the line the activity loses its protection. That line is drawn between cases where employees engaged in concerted activities exceed the bounds of lawful conduct in a moment of animal exuberance or in a manner not motivated by improper motives and those flagrant cases in which the misconduct is so violent or of such character as to render the employee unfit for further service. [Citing cases and quoted with approval in *Postal Service*, 250 NLRB 4 (1980)].

and in *Hawthorne Mazda*, 251 NLRB 313, 316 (1980), stated:

the Board has evolved the standard that an employee does not forfeit the protection of the Act unless his misconduct is so violent or of such nature as to render the employee unfit for further service. [Again citing cases.]

At the time Jack and Jos. W. accomplished the precipitate²¹ suspensions of the three, the only evidence they had concerning the alleged "misuse of the Company bulletin boards" was a statement made by Perrault in the course of his interrogation by Jack W. that when he attended the December 22 employee meeting and asked who posted the invitation thereto, Cannon responded he posted the invitation. As to the alleged violation of the Company's no-solicitation rule; the alleged leading, instigation, supporting, or taking part in any improper interference with operations; wasting time; fighting, horseplay, threats, intimidation, gambling, or other disorderly conduct detracting from the efficient operation of the Company; and inability to work cooperatively with other employees, the only evidence Jack and Jos. W. had when they accomplished the suspensions concerning those alleged violations were statements made by Schwab in the course of his interrogation by Jack W. that Thatcher and Cannon solicited his joining the protest boycott until he told them he would join (Perrault's statement to Jack W. that Thatcher responded to his inquiry concerning Thatcher's attendance at the Respondent's Christmas party in the negative,

3. *Disciplinary Guidelines* . . . Engaging in any of the following examples of unacceptable conduct may result in . . . disciplinary actions including immediate termination . . .

a. Misuse of the Company bulletin boards

b. Violation of the Company's no-solicitation rule

c. Leading, instigating, supporting or taking part in any . . . improper interference with . . . operations

d. Wasting time

e. Fighting, horseplay, threats, intimidation, gambling or other disorderly conduct detracting from the efficient operation of the Company

f. Inability to work cooperatively with fellow employees

²¹ Precipitate in the sense within a few hours of receiving the Christmas party attendance report and interrogating Perrault and Schwab, the three were escorted from the plant.

with an accompanying comment he did not think Perrault should go either, is not a solicitation).

Thus at the time they accomplished the suspensions, Jack and Jos. W. had no evidence Thatcher or Hess were involved in the alleged "misuse of the Company bulletin boards," no evidence any of the three engaged in the "solicitation of contributions, subscriptions, or membership of any kind,"²² no evidence Hess engaged in any solicitations of any kind; no evidence Thatcher and Cannon were not engaged in normal work activities or off duty when they solicited Schwab, thus no evidence Thatcher and Cannon were at the time of the Schwab solicitations engaged in "improper interference with operations," "wasting time" or unable "to work cooperatively with fellow employees;"²³ no evidence Hess uttered any "threats" or engaged in any "intimidation"; and no evidence Thatcher or Cannon uttered any "threats" or "intimidation" while soliciting Schwab's support of the protest boycott.

It was also established that, despite the provisions of the Employee Handbook recited above, employees were not censured or disciplined for:

(1) without prior authorization by management, posting on the Company bulletin board items the employees wished to sell, solicitations to buy chances in betting pools, get well and thank-you cards, etc.

(2) leading, instigating, supporting and taking part in soliciting employee purchase of chances in bets on sporting events during working time, including owners and managers of the Respondent.

(4) soliciting employee purchase of cookies, Avon and Tupperware products during working hours.

(5) soliciting employees to contribute to charities during working hours.

(6) engaging in conversations with owners, managers and other employees during working hours concerning sporting events, hunting and fishing.

(7) engaging in horseplay during working hours with other employees and managers.

(8) tolerating and approving an employee solicitation during working hours of other employees to oppose employee representation by the Teamsters.

The factors recited above do not establish prior to their suspensions for engaging in concerted activities protected by the Act either Thatcher or Cannon or Hess committed any acts "so violent" or "of such nature as to render [those] employees unfit for further service."

I therefore conclude neither Thatcher nor Cannon nor Hess should be denied the protection of the Act by virtue of conduct known to the Respondent prior to their December 28 suspensions.

²² They did not solicit contributions, nor subscriptions, nor membership.

²³ There was no evidence any employee or manager ever complained about the cooperativeness of the three prior to their suspensions.

3. Would the three have been suspended absent their engagement in concerted activities protected by the Act?

Relying on the *Wright Line* doctrine,²⁴ the Respondent argues it would have suspended the three in the absence of their engagement in concerted, protected activities.

I therefore find and conclude at all pertinent times Thatcher was and is entitled to the protection of the Act.

The record does not support that argument.

In view of a history of not disciplining employees for soliciting other employees during working hours for a variety of causes or reasons or for posting notices on the bulletin board for a similar variety of solicitations, announcements, etc., it is clear Thatcher, Cannon and Hess would not have been suspended had they not been engaged in protected concerted activities.

I therefore reject the argument.

4. Was Thatcher a supervisor within the meaning of the Act?

Findings have been entered above at all pertinent times Thatcher was an employee and not a supervisor within the meaning of the Act.

5. Were Cannon and Hess constructively discharged?

Findings have been entered on December 29, while indefinitely suspended pending completion of an investigation of his conduct, Hess applied to and was hired by another employer; on January 2, 1990, Hess notified the Respondent he was quitting its employment; on January 8 Hess started work at his new job; and following its December 29 receipt of Hess' quit notice, the Respondent ceased any further investigation of Hess's conduct and consideration of whether or not to continue him in its employ.

Findings have also been entered on January 5, while indefinitely suspending pending completion of an investigation of his conduct, Cannon advised the Respondent and another employee (Hamlin) he had applied for and was hired as a cable installer by another employer and was quitting Respondent's employment;²⁵ and following the Respondent's receipt of his quit notice, the Respondent ceased further investigation of Cannon's conduct and consideration of whether or not to continue him in its employ (treating Cannon's January 5, 1990 notice as a voluntary quitting of his employment). In a subsequent filing for unemployment compensation (which was denied), Hess stated he was placed on suspension by the Respondent and resigned his position with the Respondent to pursue other employment.

These facts support a conclusion on January 2 Hess quit his employment and on January 5 Cannon also quit his employment.

²⁴ *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); affd. in principle, *NLRB v. Transportation Management Corp.*, 462 U.S. 383 (1983).

²⁵ Cannon subsequently completed a training course and began work as a cable installer.

Counsel for the General Counsel contends, however, their suspensions were unlawful; were for an indefinite period without pay; their inquiries concerning their job status prior to securing other employment were met with ambiguous responses; and that but for their allegedly unlawful suspensions they would not have quit and therefore should be treated as constructive discharges.

The Board has stated the elements which must be proven to establish a constructive discharge are twofold, namely:

First, the burdens imposed upon the employee must cause, and be intended to cause, a change in his working conditions so difficult or unpleasant as to force him to resign. Second, it must be shown that those burdens were imposed because of the employee's union activities.²⁶

Applying the standard established by the *Crystal Refining* decision, in *Algreco Sportswear Co.*, 271 NLRB 499 (1984), the Board rejected a contention by counsel for the General Counsel an employee was constructively discharged when she quit her employment following a reclassification of her wage rate to the lowest rate in the plant because she was a union supporter. While the Board held the reclassification for that purpose was an unfair labor practice, the reclassification did not impose working conditions of difficulty and unpleasantness nor did the employer reasonably expect the employee to quit over the reclassification.

In a later case,²⁷ the Board held where two employees quit over a reduction in their hours of employment for an indefinite period because they participated in a meeting with a Department of Labor representative over employee wage claims under the Fair Labor Standards Act, the Board held the reduction in hours was an unfair labor practice, imposed difficult and unpleasant working conditions, was effected to induce the two employees to quit, and therefore was a constructive discharge.

Presuming, without deciding, the Cannon and Hess suspensions were unfair labor practices, it does not appear the Respondent suspended the two in reasonable expectation the suspensions would force them to resign.

The Respondent concluded its investigation of the alleged misconduct of Thatcher by January 10, 13 calendar days and 7 working days after the suspension of Thatcher, Cannon, and Hess, and advised Thatcher of its decision concerning his job status. It is reasonable to conclude Cannon and Hess would have been similarly advised at the same time. Rather than endure the 7 working day wait, the day after his suspension, Hess secured other employment, shortly thereafter Cannon secured other employment, and within 5 working days of their suspension both notified the Respondent they were resigning.

These factors do not support a finding and conclusion the Respondent either intended to force the two to resign or the two were forced to resign as a result of their suspensions. While the suspensions were certainly difficult and unpleasant for Hess and Cannon, the "difficult and unpleasant" standard set out for in *Crystal Princeton Refining* and related cases refers to the more common constructive discharge cases where onerous working conditions were imposed on an

employee because of his engagement in concerted, protected activities and is not relevant here.

I therefore find and conclude neither Hess nor Cannon was constructively discharged by the Respondent.

6. Did the Respondent violate the Act by the three suspensions and the Thatcher discharge?

a. *The suspensions*

I have previously noted prior to the suspensions, the only information Jack and Jos. W. possessed was: (1) a substantial number of employees were rejecting the Respondent's invitation to its Christmas party; (2) reports by a personnel clerk and a manager some employees were soliciting others not to attend the party; (3) statements by Perrault and Schwab identifying Thatcher and Cannon as solicitors; (4) identification of Cannon as the poster on the Respondent's bulletin board of an invitation to the group who supported boycotting the Respondent's Christmas party to a meeting; and (5) identification of Thatcher, Cannon, and Hess as attendees at the meeting of the boycotters.

While Jack and Jos. W. denied possessing any knowledge of the reason or reasons why the three were instigating and/or supporting the boycott, the record established lower-level supervisors were aware of the sources of their dissatisfaction with various policies and actions of the Respondent affecting their wages and working conditions and it is reasonable to conclude transmitted those sources of disaffection to the Wolkerstorfers when the Wolkerstorfers conferred with them immediately prior to effecting the suspensions.

In any event, the Wolkerstorfers had to be aware the three would not be organizing a group boycott by the Respondent's employees unless both the three and the employees who responded to their solicitations were dissatisfied with some aspect of the Respondent's policies and actions concerning their wages, hours or working conditions and wanted to protest those actions and policies, made no effort to learn directly from the three the express reasons for their activities and summarily suspended the three for alleged violation of provisions of the Employee Handbook which normally were never enforced vis-a-vis solicitations during working time and bulletin board postings.

These facts support the finding and conclusion the Wolkerstorfers removed the three from the plant immediately following their acquisition of the knowledge recited above because they interpreted the substantial success the three had in inducing group action of a substantial number of employees in support of a protest over some aspect of the Respondent's wage and working condition policies affecting them and their apparent formation of a group consisting of employees who had a complaint against the Respondent over aspects of their wages, hours or working conditions and was the possible forerunner for the formation of a union or employee group seeking through united action the resolution of their complaint or complaints, possibly through union representation,²⁸ and decided the summary suspension of the three would discourage such activity by removing the three

²⁶ *Crystal Princeton Refining Co.*, 222 NLRB 1068, 1069 (1976).

²⁷ *T & W Fashions*, 291 NLRB 137 (1988).

²⁸ It is not unreasonable to conclude the Wolkerstorfers shared Grabowski's view, when the Wolkerstorfers advised him of the Schwab/Perrault statements, the December 21 posting was an invitation to a union meeting.

activists and at the same time limit or prevent their exercising any further influence among the employees.²⁹

I therefore find and conclude by its December 28 suspension of Thatcher, Cannon, and Hess for engaging in the concerted, protected activities described above, the Respondent violated Section 8(a)(1) of the Act.

b. *The Thatcher discharge*

The "investigation" following the December 28 suspensions culminated in Thatcher's January 10, 1990 discharge.

That investigation was conducted by Burfeind, Grabowski, and Bergman.

Following the December 28 suspensions, an "investigation" of the conduct of the three vis-a-vis the alleged solicitations and posting was conducted, at Jack and Jos. W's instructions, by Burfeind, Grabowski and Bergman and appears to have been concluded by January 5, 1990.

Burfeind simply recorded in writing statements made by Perrault and Schwab in response to his interrogation (on January 4). Grabowski and Bergman duplicated interrogations of employees Biese, Fetter, Hamlin, Joa, and Ritchie; Bergman also interrogated employee Irwin. Their interrogations produced little other than confirmation by a few of the interrogated employees they had been solicited by one or more of the three (Thatcher, Cannon, and Hess) to support the boycott protest.

On the basis of the findings and conclusions contained in the preceding section of this decision dealing with the suspensions, I find and conclude by its January 10, 1990 discharge of Thatcher for engaging in concerted activities protected by the Act, the Respondent violated Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. At all pertinent times the Respondent was an employer engaged in commerce in a business affecting commerce and the Union was a labor organization within the meaning of Section 2(5) of the Act.

2. At all pertinent times Jack, Jos., Ken and Wm. Wolkerstorfer, Grabowski, Bergman, Belland, and Ericson were supervisors and agents of the Respondent acting on its behalf and Burfeind was an agent of the Respondent acting on its behalf within the meaning of Section 2 of the Act.

3. At all pertinent times Thatcher was an employee of the Respondent within the meaning of Section 2 of the Act.

4. The conduct of Thatcher, Cannon and Hess while engaging in concerted activities protected by the Act did not deprive them of the protections of the Act.

5. Cannon and Hess were not constructively discharged by the Respondent but voluntarily quit Respondent's employ on January 3 and 5, 1990, respectively.

6. The Respondent violated Section 8(a)(1) of the Act by suspending employees Thatcher, Cannon, and Hess on December 28 and by discharging employee Thatcher on January 10, 1990, for engaging in concerted activities protected by the Act.

7. The aforesaid unfair labor practices affected commerce within the meaning of the Act.

²⁹ As Manager Ericson informed Hess following his suspension.

THE REMEDY

Having found the Respondent engaged in unfair labor practices, I recommend the Respondent be directed to cease and desist therefrom and to take affirmative action designed to effectuate the purposes of the Act.

Having found the Respondent discriminatorily suspended Cannon and Hess and they thereafter voluntarily resigned their employment, I recommend the Respondent be directed to make Cannon and Hess whole for any wage and benefit losses they suffered between the date they were suspended and the dates they resigned, with the amounts due and interest thereon computed in accordance with the formula of *New Horizons for the Retarded*, 283 NLRB 1173 (1987); *Florida Steel Corp.*, 231 NLRB 651 (1977).

Having found the Respondent discriminatorily suspended and discharged Thatcher, I recommend the Respondent be directed to immediately reinstate Thatcher to his former position or, if that position is not available, to an equivalent position, with all seniority and other rights and privileges restored, and to make Thatcher whole for any wage and benefit losses he suffered by virtue of the discrimination practiced against him, less any interim earnings, with the amounts due and interest thereon computed in accordance with the formulae contained in the cases last cited above.

On the basis of the foregoing findings of fact and conclusions of law and on the entire record in this case, I recommend the issuance of the following³⁰

ORDER

The Respondent, Wolkerstorfer Company, Inc., New Brighton, Minnesota, its officers, agents, successors, and assigns, shall

1. Cease and desist from suspending or discharging any employee for promoting group activity by other employees protesting policies or actions affecting the wages, hours, or working conditions of the employees or in any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

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

(a) Offer Ryan Thatcher immediate reinstatement to his former position or, if that position is no longer available, to equivalent employment with all seniority and other rights and privileges restored.

(b) Make Ryan Thatcher, Donald Cannon, and Brett Hess whole for any wage and benefit losses they may have suffered due to the discrimination practiced against them in the manner prescribed in the remedy section of this decision.

(c) Expunge from its records any reference pertaining to the unlawful suspensions of Donald Cannon and Brett Hess and the unlawful suspension and discharge of Ryan Thatcher, informing Cannon, Hess, and Thatcher, in writing, this has been done and their unlawful treatment shall not be used against them.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records,

³⁰ 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.

social security records, timecards, personnel records and reports, and all other records necessary to analyze and determine the amount or amounts due under the terms of this Order.

(e) Post at its facilities at New Brighton, Minnesota, copies of the attached notice marked "Appendix."³¹ Copies of the

³¹ 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."

notice, on forms provided by the Regional Director for Region 18, upon receipt shall immediately be signed and posted by Respondent's authorized representative and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure the notices are not altered, defaced, or covered by 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.