

Bruce Hardwood Floors and James C. Hill. Case
26-CA-15662

August 31, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

On March 24, 1994, Administrative Law Judge Philip P. McLeod 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, as modified below, and conclusions and to adopt the recommended Order.

The judge found, *inter alia*, that the Respondent violated Section 8(a)(1) and (3) of the Act by threatening to discharge and by discharging James C. Hill in retaliation for his attempt to help fellow employee Parker pursue a grievance and for offering to serve as his witness. In its exceptions,¹ the Respondent asserts, *inter alia*, that the judge erred in finding that it had offered no evidence that it maintained a work rule providing for the discharge of an employee for leaving his or her assigned work area without the permission of that employee's supervisor. We find merit in this exception.² However, because of other evidence which supports the judge's findings, we adopt his conclusion and recommended Order. In particular we note, as discussed below, that the Respondent failed to impose discipline in the instances in which employees violated this rule with respect to Union Steward Person.

In concluding that the Respondent violated the Act, the judge, *inter alia*, credited testimony which established that employees routinely spoke with Union Steward Person during work hours and while Person

¹ The Respondents also has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² The Respondent submitted a memorandum which allegedly was posted at the worksite and dated August 1, 1988, and the General Counsel submitted an undated employee handbook. Both include provisions which state that an employee who leaves his or her work station during worktime must obtain the permission of his or her supervisor and that failure to do so is grounds for immediate discharge. The Respondent further contends in its exceptions that the judge erred in not finding that Hill was discharged for violating this rule and for interfering with the work of Parker, his helper, and the "crucial" work of Union Steward Person in the lumber tally booth. However, we find no merit in this exception, for the reasons set forth above, and agree only that evidence of such a rule was presented.

was working.³ The judge credited former employee and Respondent witness Philip Brown who testified that employees frequently went to Person while he was working in the tally booth and when lumber was being graded.

Employee Carlos Hurt testified that he had spoken with Person inside his tally booth on 300 to 400 occasions and that he would often sit and talk to Person. After one such visit, Supervisor Dubose, who was aware that Hurt had been visiting with Person, informed Hurt that he should no longer go to the lumber slips and talk. However, no formal action was taken against Hurt. In addition, employee Charlie Smith testified that he had entered Person's tally booth and spoken to him "quite often" while Person was working and lumber was being graded. During one of those visits, Supervisor Dubose informed Smith that he should not be in the booth. Smith, however, received no discipline.

The judge further addressed three incidents raised by the Respondent in which it allegedly discharged employees for leaving their work areas without permission. Two of the discharges, the judge concluded, occurred after Hill's discharge and merely indicated that the Respondent had attempted to enforce a rule after Hill's discharge. The judge found the remaining discharge to be clearly distinguishable from Hill's discharge as it involved a production employee who walked away from operating equipment. By contrast, Hill's work area encompassed the entire yard and his interruption of Person was minimal.

We agree with the judge that the evidence amply demonstrates that other employees routinely interrupted Union Steward Person for longer periods than Hill without being disciplined and we find that the three instances the Respondent cites of its discharge of employees for leaving the work area do not outweigh that evidence. Accordingly, and in light of the judge's other findings with which we agree, we conclude that the Respondent violated Section 8(a)(1) and (3) of the Act by threatening to discharge and by discharging James C. Hill in retaliation for his attempt to help fellow employee Parker pursue a grievance and for offering to serve as his witness.

ORDER

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

³ The judge also concluded that Hill's interruption of Person was "minimal," as it lasted no more than 10-20 seconds.

William D. Levy, Esq., for the General Counsel.
Edward Bograd, Esq. (Blair, Conaway, Bograd & Martin),
 of Charlotte, North Carolina, for the Respondent.

DECISION

STATEMENT OF THE CASE

PHILIP P. MCLEOD, Administrative Law Judge. I heard this case on October 14 and 15, 1993, in Jackson, Tennessee. The case originated from a charge filed by James C. Hill against Bruce Hardwood Floors (Respondent). Thereafter, a complaint and notice of hearing issued which alleges, inter alia, that Respondent violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act) by threatening to discharge and later discharging James C. Hill because he engaged in union or concerted activities protected by the Act.

In its answer to the complaint, Respondent admitted certain allegations, including the filing and serving of the charge; its status as an employer within the meaning of the Act; the status of UBC, Southern Council of Industrial Workers of America, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, as a labor organization within the meaning of the Act; and the status of certain individuals as supervisors and agents of Respondent within the meaning of Section 2(11) of the Act. Respondent denied having engaged in any conduct which would constitute an unfair labor practice within the meaning of the Act.

At the trial, all parties were represented and afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Following the close of the trial, counsel for General Counsel and Respondent both filed timely briefs with me which have been considered.

Upon the entire record in this case and from my observation of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Bruce Hardwood Floors is, and has been at all times material herein, engaged in the manufacture and distribution of hardwood flooring at its facility in Jackson, Tennessee. In the regular course and conduct of its business, Respondent annually sells and ships from its Jackson facility products valued in excess of \$50,000 directly to points outside the State of Tennessee.

Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATION

UBC, Southern Council of Industrial Workers of America, United Brotherhood of Carpenters and Joiners of America, AFL-CIO is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. Background

At its Jackson, Tennessee facility, Respondent manufactures hardwood flooring. The facility includes a lumber yard

where raw cut lumber is received, graded, stacked, dried, and restacked. Raw cut lumber is delivered to a slip where it is first graded by inspectors and then pulled by a chain conveyor to a stacking area. Approximately 60 to 70 employees work in the yard in various positions as inspectors, tally persons, forklift drivers, and helpers.

All production and maintenance employees at Respondent's Jackson facility, including those who work in the lumber yard, are represented for purposes of collective bargaining, and covered by a collective-bargaining agreement negotiated on their behalf by UBC, Southern Council of Industrial Workers of America, United Brotherhood of Carpenters and Joiners of America, AFL-CIO.

B. James C. Hill

James C. Hill was employed by Respondent at the Jackson facility for approximately 12 years prior to his termination in January 1993. Hill worked for approximately 4 years as a material handler and, thereafter, as a forklift driver. In March 1992, Hill bid for and received the position of lift operator leadperson.

As leadperson, Hill operated a forklift and gave routine work instructions to two other lift operators and two lift helpers. Hill himself was assisted by a lift helper, Steve Parker, who rode on the side of Hill's forklift and helped Hill as needed. Hill's primary duty was loading and unloading a Coe Stacker, taking lumber to the stacker, and removing lumber from the stacker to specific areas of the yard or to a predryer. Hill transported lumber on a forklift to various grading slips and from the slips to various stacking areas. Hill also had routine duties to perform in keeping the yard clean and in proper order. Hill's duties took him throughout Respondent's yard.

C. The Warning Issued to Steve Parker

During the week of January 18, 1993,¹ Steve Parker notified Supervisor Rick Dubose that he would be absent from work on Friday of that week in order to attend the funeral of a nephew. Parker testified that on Friday, January 22, he had two other conversations with Dubose, one when he called in prior to clock-in to again report that he would be absent, and another when he went to the facility to pick up his paycheck. Parker testified that when he picked up his paycheck, he had a conversation with Dubose in which he thought Dubose stated Dubose was going to treat the day as a "nonwork schedule." Dubose recalled the conversation somewhat differently, testifying that Parker "thanked me for letting him have the entire day." According to Dubose, however, when he handed Parker his paycheck, he told Parker that when he returned to work, Parker should turn in a statement certifying that he was in attendance at his nephew's funeral.

There is no dispute about the fact that Respondent ordinarily requires an employee absent for reason such as a funeral to bring a statement confirming that is where he has been. On the other hand, however, a "nonwork schedule day," or unscheduled workday, does not require an employee to report to work and therefore does not require the employee to bring an excuse for his/her absence.

¹ All dates herein refer to 1993 unless otherwise indicated.

James Hill testified that during the afternoon of Parker's absence, Supervisor Dubose approached him and asked if Parker had spoken to him about attending the funeral of a nephew. Hill confirmed for Dubose that Parker had told him in advance Parker would be absent for the funeral. Hill testified that Dubose then stated that he "was going to write it down for a non-scheduled work day."

When Parker returned to work on Monday, January 25, Parker did not bring with him any statement certifying that he had attended the funeral. That afternoon, at approximately 1:45 p.m., Dubose gave Parker a written warning for "unexcused absence" because Parker did not bring a statement verifying the Friday absence. Present at the time Dubose issued the warning to Parker was Jerry Person, the union steward who worked as a tally person in the yard.

D. January 25: Hill's Actions on Behalf of Parker

Parker told Hill about receiving the warning. Parker told Hill that he had been disciplined for his Friday absence even though Parker believed that Dubose had given him a non-scheduled workday which would not have required him to bring back a statement explaining his absence. Hill responded that Parker should file a grievance about receiving the warning. Within a matter of a few minutes, Hill drove his forklift to the slip where Union Steward Person was working. Hill approached Person's tally booth and knocked on the glass to get Person's attention. Hill then asked Person why Dubose had given Parker a written warning. Person told Hill that he would discuss the matter with him later. At Hill's suggestion, Union Steward Person agreed to meet with Hill and Parker in the employee parking lot after the end of the workday. As Hill turned and left, Hill cursed, although it is not clear whether he cursed Person, Dubose, or the warning issued to Parker. Hill returned to his forklift and left to continue his normal work duties. There is no dispute that Hill's conversation with Person lasted only about 10 to 20 seconds, and that the whole time he was away from his regular duties was no more than 2 or 3 minutes.

At or near the end of the shift on January 25, several lumber inspectors told Dubose about the fact that Hill had come to the slip and had spoken to Union Steward Person about the warning given to Parker. Union Steward Person was told by other lumber inspectors before he met with Hill and Parker that Dubose was upset or unhappy about Hill having come to the tally booth and talked to him about the grievance.

After the working day ended on January 25, Union Steward Person met with Parker and Hill in the parking lot as prearranged. Hill told Person that Dubose should not have issued a warning to Parker because Dubose had earlier informed him and employee Helen Traylor that Parker's absence on January 22 would be treated as an unscheduled workday. Hill expressed the view that Person should file a grievance on Parker's behalf, and that he and Traylor would serve as witnesses in support of the grievance. Person told Parker he should get a statement from Hill and that all three employees (Parker, Hill, and Traylor) would have to testify. Parker stated that he would just as soon drop the matter and take the writeup.

E. Respondent's Discharge of Hill

Union Steward Person testified that on Tuesday morning, January 26, he went to Supervisor Dubose's office and told Dubose that Parker was going to file a grievance concerning the discipline given him on January 25. Person testified he told Dubose that Hill, and perhaps Traylor, would serve as witnesses on Parker's behalf. Person testified credibly that Dubose replied, "I can fire him too." Person testified that at one point during the conversation, Dubose asked, "Why did he do what he did?" Person stated that he made no reply. Person testified that later the same day, he told Hill what Dubose had said, i.e., that Dubose said he could fire Hill too. Dubose denied telling Person that he could fire Hill for testifying on Parker's behalf.

As between Person and Dubose, I have no trouble whatever crediting Person. I find that when Union Steward Person told Supervisor Dubose that Parker was going to or might file a grievance over the discipline given him on January 25, and that Hill would testify on Parker's behalf, Dubose replied, "I can fire him too." I note one possible interpretation of the facts in this case is that Dubose made this statement to Person on the afternoon of January 25, because Hill testified that when he met with Steward Person in the parking lot late that afternoon, Person told Hill about Dubose's threat. Another, more likely interpretation, is that Hill was simply wrong about the timing of Person telling him about Dubose's threat. Person corroborates Hill that he told Hill about Dubose's threat, but according to Person he told Hill about the threat later in the day on January 26, after the threat was made that morning. I find that Person's account is more accurate. Despite vigorous cross-examination by Respondent's counsel concerning Dubose's statement to Person, Person testified repeatedly and credibly that Dubose stated, "I can fire him too." Person seemed altogether confident and sure not only of Dubose's remark, but the timing as well.

Respondent argues that Person's account is not credible since Parker stated in the parking lot on the afternoon of January 25, he would simply accept Dubose's written warning. It is not at all illogical that in spite of Parker saying he would accept Dubose's discipline, Person should decide to pursue the matter further in light of Hill telling Person that both he and Traylor would testify on Parker's behalf. In the final analysis, all of this discussion leads more toward a finding of when Dubose made the threat to Person, and not to whether the threat was made, a matter on which I have no doubt and on which I credit Person entirely.

The record reflects that on the morning of January 26, almost certainly after Person told Dubose that Hill would testify on Parker's behalf, Dubose again spoke with each of the lumber inspectors to determine more specifically what Hill had done when he came to the slip on the previous afternoon. Dubose then went and spoke with personnel director Mary Meadows to initiate Hill's discharge. Meadows told Dubose that she would speak to general manager Jim Horner and that Horner or Meadows would get back in touch with Dubose. When neither Horner or Meadows got back in touch with Dubose, Dubose went himself to speak with general manager Horner near the end of the workday on January 26. Dubose told Horner that Hill had interrupted Person's work and recommended Hill's discharge. After hearing the facts presented by Dubose, Horner authorized Dubose to terminate

Hill for walking off the job. Dubose then went back to his office and pulled Hill's timecard.

On Wednesday morning, January 27, when Hill reported to work, Dubose called Hill and Union Steward Person to his office and discharged Hill. Although the decision had already been made to discharge Hill, Dubose asked Hill about his coming to Person's work station on January 25 and interrupting Person's work. After Hill told Dubose his version of the facts about what happened on January 25, Dubose informed Hill that the decision had been made to discharge him, and handed Hill a written notice which stated that Hill was being discharged because he "walked off the job."

After Hill was discharged and Dubose brought the termination papers to Personnel Director Meadows for processing, Meadows told Dubose that the reason provided on the termination was incorrect and that the termination should have indicated Hill left his assigned work area rather than walked off the job. A new separation notice was prepared and given to Hill on Friday, January 29, when Hill came to pick up his final paycheck. The corrected termination notice states that Hill was discharged for "leaving the assigned work area."

Analysis and Conclusions

There is really no question that all of Hill's actions on behalf of fellow employee Steve Parker were directed toward attempting to help Parker pursue a grievance pursuant to collective-bargaining agreement between Respondent and the Union to protest the warning which had been given to Parker by Supervisor Dubose. It is well established that employee actions in pursuing such a grievance or enforcing the terms of a collective-bargaining agreement constitute protected union activity within the meaning of the Act. *NLRB v. City Disposal Systems*, 465 U.S. 822 (1984); *Supreme Optical Co.*, 235 NLRB 1432 (1975); *Interboro Contractor*, 157 NLRB 1295 (1966). The record amply demonstrates that Dubose became unhappy and upset when he learned that Hill had come to Person's tally booth and spoken to Person about the warning Dubose had given to Parker. I credit Steward Person that on Tuesday morning, January 26, he told Supervisor Dubose that Parker was going to file a grievance concerning the warning and that Hill, and perhaps Traylor, would serve as witnesses on Parker's behalf. I also credit Person that when he told Dubose this, Dubose replied, "I can fire him too." Respondent argues that Dubose's statement did not constitute an unlawful threat of reprisal because Dubose was referring to being able to fire Hill for being away from his work area. The simple fact that Dubose may have thought Hill had committed some transgression with which Dubose could justify Hill's discharge does not negate the fact that Dubose was issuing this threat because, and in retaliation for, Hill testifying on Parker's behalf. Any interpretation of the facts lead to the conclusion Dubose was angered to hear Hill would testify on Parker's behalf concerning a grievance, and Dubose was threatening to retaliate against Hill for this. I find that Dubose threatened to fire Hill in retaliation for Hill's union and concerted activities, and Respondent thereby violated Section 8(a)(1) of the Act.

After Dubose threatened Hill's discharge, Dubose then followed up on his threat by actually causing Hill to be discharged. Dubose approached Personnel Director Mary Meadows, who told Dubose that she would speak to General Manager Jim Horner and that either Horner or Meadows would

get back in touch with Dubose. When neither Horner nor Meadows got back in touch with Dubose, Dubose then pursued the matter by himself approaching General Manager Horner near the end of the workday on January 26. Respondent argues that it was General Manager Horner who ultimately authorized Hill's discharge, and since there is no evidence Horner was unlawfully motivated, Hill's discharge did not violate the Act. I reject Respondent's argument. Respondent would ignore the fact that Dubose initiated the discharge, reported his version of the facts to General Manager Horner, and even recommended Hill's discharge. Respondent cannot be insulated from Dubose's unlawful motivation simply because the final action in discharging Hill was authorized by Horner. Clearly, Dubose caused Hill to be discharged. I find counsel for General Counsel has established a strong prima facie case that Hill was discharged by Respondent in retaliation for Hill attempting to help fellow employee Steve Parker pursue a grievance pursuant to the collective-bargaining agreement between Respondent and the Union. Discharging an employee for such activity clearly violates Section 8(a)(1) and (3) of the Act. *NLRB v. City Disposal Systems*, supra; *Supreme Optical Co.*, supra; *Interboro Contractor*, supra. Pursuant to *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 461 U.S. 393 (1983), the burden shifts to Respondent to demonstrate that the same action would have taken place even in the absence of the protected conduct. For the following reasons, I find that Respondent has failed to meet that burden.

Dubose asserted that he had no knowledge of Parker possibly filing a grievance. Dubose also claimed that prior to Hill's discharge, he had no knowledge that Hill might serve as a witness on behalf of Parker. I found Dubose less than credible. Dubose testified that he learned of Hill's visit to Person's tally booth from lumber inspectors. Dubose testified that Inspector Philip Brown reported to him the nature of the conversation between Hill and Person. Dubose admitted that Brown informed him that Hill "was excited and that it had something to do with Steve Parker." General Manager Horner testified that when Dubose approached him to get authorization to discharge Hill, Dubose informed Horner that Hill went to Person's booth because "he was upset about the discipline to his lift helper." Moreover, I note that in an unemployment compensation hearing in April 1993, Respondent asserted that Hill was discharged because he was engaged in union business on company time. I find Dubose was very much aware that Hill might testify on behalf of fellow employee Steve Parker, and that this is what precipitated both Dubose's threat and Hill's discharge.

Respondent next argues that Hill was discharged not because he might testify on behalf of a fellow employee, but solely because Hill left his work area and interrupted Person's work at the tally booth. Although Respondent admits that Hill's trip to Person's tally booth took no more than 1 or 2 minutes, and Hill's conversation with Person took no more than 10 to 20 seconds, Respondent argues that this alone resulted in Hill's discharge, regardless of the reason for Hill visiting Person. Respondent first argues that there is a plant rule which provides for the discharge of any employee who leaves his assigned work area without first obtaining permission of his supervisor. In fact, Respondent offered no

evidence whatever that such a rule existed! If such a rule existed, the rule itself would be the best evidence, and none was introduced. Respondent points to the collective-bargaining agreement between it and the Union which gives Respondent the right to discharge employees without prior warning for leaving the plant without permission of the department supervisor. Hill, however, never left the plant. This rule is clearly not applicable as even Personnel Director Meadows concluded when she instructed Dubose to change the stated reason for Hill's discharge on Hill's official termination papers.

Respondent next points to the collective-bargaining agreement which provides that a union shop steward must obtain the permission of his supervisor before he leaves his job to attend to union business and, if the business is in another department, must obtain the permission of the supervisor of the other department. In support of its argument that Respondent has a rule prohibiting employees from leaving their assigned work areas without first obtaining permission of their supervisors, Respondent simply argues in its posttrial brief, "While the rule with respect to union activity specifically applies to union stewards, it certainly has no less an application to non-stewards." Respondent's argument, while clever, stretches both logic and reason. This contractual provision of the collective-bargaining agreement is intended, as well as on its face limited to, formalizing and defining certain relations between the Union and Respondent. In fact, this contractual provision gives the union steward a right to be granted "reasonable time" during worktime to participate in grievance adjustments provided the supervisor is first notified. I find nothing in this rule which creates by implication the rule which Respondent claims to have maintained directed to employees. If Respondent had maintained a rule directed to employees, it would have been simple to have done so, yet Respondent introduced no evidence of such a rule. Contrary to Respondent's argument, and although such a rule might be both reasonable and logical, I find that in fact Respondent never maintained a formal rule providing for the discharge of an employee who leaves his assigned work area without first obtaining the permission of his supervisor. Evidence of employee conduct, discussed in greater detail below, further supports that conclusion.

In support of its argument that it maintained a rule prohibiting employees from leaving their assigned work areas without permission of their supervisor, Respondent next points to fact that it has discharged three employees for leaving their assigned work area. The record reflects, however, that two of these three discharges occurred after Hill's discharge. That fact alone suggests that Respondent was attempting to construct a rule where none existed before. Prior to Hill's discharge, only one employee had ever been terminated for leaving their assigned work area. The record reflects that this was a production employee who walked away from operating equipment to go to Respondent's personnel office. Not only does this one instance not establish the existence of a rule, but the circumstances involved show that this situation was dramatically different from Hill driving his forklift to speak briefly to Person. Hill had no one specific work location. His duties on the forklift took him throughout Respondent's yard. There is no indication that Hill left duties which interfered with the work of other employees. As far as Hill interrupting the work of Person, the record is clear that Hill interrupted

Person no more than 10 to 20 seconds. No only was that interruption minimal, but the record amply demonstrates that other employees routinely interrupted Person for far longer periods without any action whatever being taken against them.

Employee Carlos Hurt, who works as a tag man, testified that he had spoken with Person inside Person's tally booth on 300 or 400 occasions and that he would often "sit around and talk with him." Hurt testified that prior to November 1992, he was never told that it was necessary to obtain permission of a supervisor to talk to Person. Hurt testified that in November 1992, one day shortly after Hurt had been visiting Person, Supervisor Dubose approached him and told Hurt, "don't be going on the slips and talking and stuff no more." From Hurt's testimony, it is quite apparent that Supervisor Dubose not only knew Hurt had been visiting with Person, but took no formal action against Hurt other than telling him not to do it anymore.

Hurt is not the only employee who spoke with Person while Person was working in the tally booth. Employee Charlie Smith testified credibly that he "quite often" entered Person's tally booth and spoke with Person, even while the line was running and Person was working. Smith testified that in doing so, he regularly visited with Person "about two or three minutes" at a time. Smith testified credibly that he was never told it would be necessary for him to obtain permission of a supervisor to speak with Person. Smith testified that on one occasion, Dubose came to the booth while Smith was visiting with Person and told Smith that he could not be inside the booth. Smith, however, did not receive any discipline concerning this incident.

Any remaining doubt on this issue was put to rest by former employee Philip Brown, who was called as a witness by Respondent. Brown, who was working as a lumber inspector at the time Hill approached Person, was called to testify to describe Hill's conversation with Person. In later testimony, however, Brown testified without hesitation and altogether credibly that employees frequently went to Person's tally booth during Person's working time, and at times when lumber was being graded, in order to speak with Person. Brown testified without any equivocation that such incidents occurred while inspectors were relaying grading information to Person and while Person was engaged in tallying. Brown's testimony established that this occurred on a regular and frequent basis and under circumstances where it was clear that these employees had not made any effort to secure a supervisor's permission.

Based on the testimony of Hurt, Smith, and Brown, described above, it is abundantly clear that Respondent never maintained a formal rule requiring employees to seek permission before going and speaking to Person. An analysis of Respondent's evidence shows that it has failed to meet its burden under *Wright Line* to establish that Hill would have been discharged even in the absence of union or protected activity. The evidence of disparate treatment accorded to Hill, the evidence of animus on the part of Dubose toward Hill for being willing to testify on behalf of Parker, and Dubose's own lack of credibility show that Respondent's asserted reasons for discharging Hill are no more than convenient pretext. I find that Respondent discharged Hill because of Hill's protected union activity, and Respondent thereby violated Section 8(a)(1) and (3) of the Act.

CONCLUSIONS OF LAW

1. The Respondent, Bruce Hardwood Floors, is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. UBC, Southern Council of Industrial Workers of American, United Brotherhood of Carpenters and Joiners of America, AFL-CIO is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

3. Supervisor Rick Dubose threatened to fire employee James C. Hill in retaliation for Hill's union and concerted activities, and Respondent thereby violated Section 8(a)(1) of the Act.

4. Respondent discharged James C. Hill because of Hill's union activity, and Respondent thereby violated Section 8(a)(1) and (3) of the Act.

5. The unfair labor practices which Respondent has been found to have engaged in, as described above, have a close, imitate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found Respondent has engaged in certain unfair labor practices in violation of Section 8(a)(1) and (3) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²

ORDER

The Respondent, Bruce Hardwood Floors, Jackson, Tennessee, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening to discharge employees in retaliation for their union and concerted activities.

(b) Discharging employees because of their protected union activity.

(c) In any like or related manner interfering with, restraining, or coercing 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 James C. Hill immediate and full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority and other rights and privileges.

(b) Make whole James C. Hill for any loss of earnings or other benefits he may have suffered by reason of the discrimination against him by paying him a sum of money equal to the amount he normally would have earned from the

²If 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.

date of said discrimination to the date of Respondent's offer of reinstatement, less net interim earnings, with backpay to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).³

(c) Remove from its files any reference to the discharge of James C. Hill and notify him in writing that this has been done and that evidence of the unlawful discharge will not be used as a basis for future personnel actions against him.

(d) 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.

(e) Post at its Jackson, Tennessee facility copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

³Under *New Horizons*, interest is computed at the "short term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621. Interest accrued before January 1, 1987 (the effective date of the amendment), shall be computed as in *Florida Steel Corp.*, 281 NLRB 651 (1977).

⁴If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid and protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten to discharge employees in retaliation for their union and concerted activities.

WE WILL NOT discharge employees because of their protected union activity.

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

WE WILL offer James C. Hill immediate and full reinstatement to his former position or, if that position no longer exists, to a substantial equivalent position, without prejudice to his seniority and other rights and privileges.

WE WILL make whole James C. Hill for any loss of earnings or benefits he may have suffered by reason of the discrimination against him by paying him a sum of money

equal to the amount he normally would have earned from the date of the discrimination to the date of our offer of reinstatement, less net interim earnings, with appropriate interest.

WE WILL remove from our files any reference to the discharge of James C. Hill and notify him in writing that this has been done and that evidence of the unlawful discharge will not be used as a basis for future personnel actions against him.

BRUCE HARDWOOD FLOORS