

**Simcala, Inc. and United Steelworkers of America  
District No. 9, AFL-CIO-CLC. Case 15-CA-  
14060-1**

June 30, 1998

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS FOX AND  
HURTGEN

On March 13 and 26, 1998, Administrative Law Judge Howard I. Grossman issued the attached decision and an erratum, respectively. The Respondent filed exceptions and a supporting brief, the General Counsel and the Charging Party have filed answering briefs, and the Respondent filed a reply 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 briefs<sup>1</sup> and has decided to affirm the judge's rulings, findings,<sup>2</sup> and conclusions<sup>3</sup> and to adopt the recommended Order.

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Simcala, Inc., Mount Meigs, Alabama, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> In adopting the judge's conclusion that employee Hatfield was unlawfully discharged, we do not find that the Respondent failed to follow the contractual procedure for hearings on suspensions prior to discharge. We do, however, rely on the judge's unexcepted-to finding that the Union was not required to obtain prior permission before posting items involving union business on the break room bulletin board. In these circumstances, we find the Respondent's asserted reason for discharging Hatfield, i.e., because of his insubordinate refusal to remove the unauthorized postings, to be clearly pretextual.

*Patricia Adams, Esq.* and *Stephen C. Bensinger, Esq.*, for the General Counsel.

*James Nolan, Esq.* and *David L. Warren, Jr. Esq. (Ogletree, Deakins, Nash, Smoak & Steward, P.C.)*, of Birmingham, Alabama, for Respondent.

*Richard Rouco, Esq. (Cooper, Mitch, Crawford, Kuykendall & Whatley)*, of Birmingham, Alabama, for the Charging Party.

**DECISION**

**STATEMENT OF THE CASE**

HOWARD I. GROSSMAN, Administrative Law Judge. The original charge was filed on September 13, 1996,<sup>1</sup> by United Steelworkers of America District No. 9, AFL-CIO-CLC (the Union), and amended charges on October 23 and December 17. Complaint issued on December 17, and as amended at the hearing alleges that Simcala, Inc. (Respondent or the Company) unlawfully threatened employees with discharge if they assisted the Union, and told them that it would not have discharged an employee if the Union had not filed unfair labor practice charges concerning his being disciplined. The complaint also alleges that Respondent suspended employee Thomas Hatfield on September 4, and discharged him on September 16, because he assisted the Union, and because he and the Union, on his behalf, filed unfair labor practice charges.

A hearing on these matters were held before me in Montgomery, Alabama, on September 8 and 9, 1997. Thereafter, the General Counsel, Respondent, and the Charging Party filed briefs. On the basis of the entire record including my observations of the demeanor of the witnesses, I make the following

**FINDINGS OF FACTS**

**I. JURISDICTION**

Respondent is a corporation, with an office and place of business in Mount Meigs, Alabama, where it is engaged in the manufacturing of silicon metals. During the 12-month period ending November 30, 1996, Respondent sold and shipped from its Mount Meigs, Alabama facility goods valued in excess of \$50,000 directly to points located outside the State of Alabama, and during the same period purchased and received at the facility goods valued in excess of the same amount from points located outside the State of Alabama. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. THE ALLEGED UNFAIR LABOR PRACTICES**

*A. Thomas Hatfield's Employment History and Union Activities*

The facility at Mount Meigs was owned by a predecessor until 1995, when it was acquired by Respondent. The Union had represented employees at the facility for about 20 years, and was recognized by Respondent at the time of its acquisition of the business.

Hatfield had been employed for about 20 years, and worked as a microsilica attendant, maintaining the machines. He was a long-time union member, and served as chairman of the grievance committee for about 8 years before his termination. In this capacity, Hatfield handled over 90 percent of the Union's business at the plant, including the filing of grievances and Board charges, and attendance at grievance and arbitration hearings. He met weekly with Respondent's director of human relations, Donald Williams.

<sup>1</sup> All dates are in 1996 unless otherwise stated.

Hatfield testified that his supervisor, Environmental Superintendent Roy Glenn<sup>2</sup> repeatedly told him, beginning in February that the Company was going to fire him if he did not stop filing grievances and handling Union business. Glenn corroborated this. He affirmed that he told Hatfield “a hundred times, ‘Hey, man, just cool [it]. Lay back. If you don’t, they going to run your ass off.’” Employee Richard King testified that Glenn said that if Hatfield did not “slack up,” the Company was going to run him off. It was Glenn’s “basic comment” which he made more than once. Employee Timothy Tuell testified that Glenn told Hatfield on several occasions that he was going to be fired if he did not stop doing what he was doing.

Hatfield testified that Company President Ed Boardwine<sup>3</sup> told him that he was costing the Company money by filing frivolous charges and grievances, that Hatfield was a “trouble maker,” and that Boardwine was going to retain Human Relations Manager Donald Williams in his job “to keep the Union straight and to keep Hatfield straight.” Boardwine denied saying anything about the Union to Hatfield. Hatfield was the more credible of these two witnesses, and his testimony concerning the Company’s attitude toward his Union activity is corroborated by the evidence cited above. I credit Hatfield.

### B. The Grievances

The collective-bargaining agreement provided for a four-step grievance procedure, with designated times for appeal from one step to the next. An appeal from the third step to arbitration (the fourth step) had to be filed within 10 days.<sup>4</sup>

A third-step meeting was held on July 25 with respect to six grievances.<sup>5</sup> On July 30, Respondent denied five of these grievances and held the sixth in abeyance.<sup>6</sup> Union Staff Representative Raymond League testified that on August 5, he mailed a letter to Company Director of Human Resources Donald Williams requesting arbitration of these cases. Federal Mediation & Conciliation Service (FMCS) forms requesting arbitration were enclosed. A copy was sent to Grievance Chairman Hatfield.<sup>7</sup> League testified that Williams called him on August 12, and said that he did not accept only “one” FMCS form. Williams did not say that he had not received the August 5 letter, according to League. The latter apologized to Williams, and said that it was an error of a temporary secretary. On the next day, August 13, League wrote a letter to Williams, referred to his August 5 letter, and enclosed FMCS forms.<sup>8</sup> On August 16, Williams sent League a letter asserting that the secretary had not only failed to send the FMCS forms, but had also failed to send the August 5 letter requesting arbitration. Accordingly, Williams rejected the appeal as “untimely,” and refused to sign the FMCS forms.<sup>9</sup>

<sup>2</sup>The pleadings establish that Glenn was a supervisor within the meaning of the Act.

<sup>3</sup>The pleadings establish that Boardwine was a supervisor within the meaning of the Act.

<sup>4</sup>R. Exh. 1, p. 21.

<sup>5</sup>R. Exh. 9; grievances 4-96; 5-96; 7-96; 9-96; 10-96; and 11-96.

<sup>6</sup>Ibid.

<sup>7</sup>G.C. Exh. 5(a).

<sup>8</sup>R. Exh. 10.

<sup>9</sup>R. Exh. 11.

The Union thereafter filed an action in a Federal district court to compel Respondent to arbitrate the timeliness of the appeal for arbitration of the grievances. On July 15, 1997, the court granted the Union’s Motion for Summary Judgment.<sup>10</sup>

The Union arbitrated other disputes with Respondent. On July 31, League wrote Williams requesting that the Company honor an arbitrator’s award requiring the Company to pay overtime meal allowances to employees working overtime.<sup>11</sup> On August 5, League wrote to an arbitrator who had denied a grievance, and made various comments.<sup>12</sup>

### C. The Posting on the Bulletin Board

#### 1. Summary of the evidence

The Union and the Company negotiated for a contract after the Company’s acquisition of the plant. After the negotiations were completed, the Union asked for a bulletin board. Company President Boardwine responded that they could have one, and to “work it out” with Director of Human Resources Williams. Thereafter, the Union was allowed to use half a bulletin board in the breakroom.

The employee code of conduct stated that no employee could “post or distribute any literature” without the prior written permission of the human resources director.<sup>13</sup> It also provided that no employee could “post . . . any notice from [sic] the bulletin boards or in the plant without the permission of the plant superintendent.”<sup>14</sup>

Williams was asked whether he told employees that they had to get permission before posting. He answered: “No, I didn’t have to. They came and got permission . . . they already knew.” He contended that Hatfield asked him for permission to post a notice of a union meeting, which Williams granted. Hatfield also requested permission to post a notice regarding back moneys due union members for meals, but Williams could not recall the contract. Williams also contended that either Union President Johnny Ross or Union Committeeman Richard King asked permission to post a notice about an election. Williams granted this request. Also according to Williams, an employee posted a menu from a “local eatery,” and Williams required him to remove it. “The first time I asked Union materials to be taken down was the 28th [August, 1996],” Williams asserted, “and that was because my permission had not been gotten.”

Hatfield testified that he made a request for Union use of a bulletin board during the last phase of the contract negotiations. He affirmed that he initiated the issue of whether Company permission to make a posting was required. The Company simply replied that the Union could have a bulletin board to conduct union activities. Hatfield agreed that, prior to the execution of the contract, the Union had to ask for permission from the former owner to make a posting. However, after the contract with Respondent was signed, Hatfield “used the bulletin board by free will to post documents.” Thus, he posted a notice of the bankruptcy of the Company’s

<sup>10</sup>*United Steelworkers of America v. Simcala, Inc.*, United States District for the Middle District of Alabama, Northern Division, Civil Action No. 97-T-151-N.

<sup>11</sup>G.C. Exh. 5(b).

<sup>12</sup>G.C. Exhs. 5(c), 5(d).

<sup>13</sup>R. Exh. 2, par. 10.

<sup>14</sup>Ibid., par. 13.

predecessor, and notices about vacation pay and arbitration awards.

Union President Ross testified that, at Hatfield's request, he posted a lawyer's letter regarding vacation pay due to the employees of the Company's predecessor<sup>15</sup> without getting the Company's permission. Ross was present during the contract negotiations, and did not hear any requirement that permission to post was required.

Union Committeeman Richard King corroborated Hatfield. Prior to the contract signing, the Union needed the prior owner's permission to post materials. However, after the signing of the contract with Respondent, this requirement was discontinued, and the Union had "half the bulletin board to use for business."

Later in August, Hatfield posted Raymond League's letter to Williams on August 5 requesting arbitration, a letter from League to Williams protesting the Company's alleged failure to administer an arbitral award on overtime meal money due employees, a letter to the arbitrator commenting on a prior denial of a grievance, and a copy of the denial.<sup>16</sup>

## 2. Factual conclusions

Hatfield, Ross, and King impressed me as more reliable witnesses than Williams on this issue. Williams did not deny Hatfield's testimony, corroborated by the other union witnesses, that no limitations were placed on use of the bulletin board during the negotiations. Williams' assertion that Hatfield asked for permission to post an innocuous notice of a Union meeting is scarcely credible in light of the Company's agreement to permit use of the bulletin board for union business. I conclude that prior permission for posting was not required, and that Hatfield posted the items listed above without asking for permission.

### *D. The Events of August 28, 1996*

#### 1. Williams' discovery of the posted materials

Director of Human Resources Williams became aware on August 27 of the items which Hatfield had posted on the bulletin board.<sup>17</sup> Union witness Brady Baker testified that he and other employees were sitting in the breakroom, where the bulletin board was located, when Williams entered and began reading the items on the board. He said, "Hatfield went too far this time. I'm going to have to step on his toes a little bit." Williams confirmed that he said this. He testified that he considered the postings "inappropriate" because Hatfield had not asked for permission to post them.

#### 2. Hatfield's conversation with Williams

Williams called Hatfield to his office that morning. According to Hatfield, Williams told him that Hatfield had placed items on the bulletin board without permission. Hatfield responded that he did not need permission, and the two argued about the matter. Hatfield asserted that Williams ordered him to remove the items sometime during the day. Hatfield asked whether that was a direct order, and Williams replied that it was. Hatfield responded that he had left his job to talk to Williams, and would remove the items before

he left for the day. Williams acknowledged that Hatfield said this.

As indicated, Williams testified that the postings were "inappropriate" because they were done without Williams' permission. His version of the conversation is that he called Hatfield to his office and told him this. Hatfield said that the Union had the right to use the bulletin board. Williams told him to take the material down, and file a grievance. Hatfield asked whether Williams was issuing a direct order, and Williams said that he was and that Hatfield should remove the material "now." However, Williams acknowledged that Hatfield may not have heard the word "now," because "he was peeved that I told him at all."

Executive Assistant Rusty McBee testified that she was standing outside Williams' office during this conversation, and overheard Williams giving Hatfield a direct order to remove the materials "now." However, McBee added, Williams and Hatfield started talking again, and she left.

#### 3. The removal of the material

Hatfield returned to his work area. On the way, he encountered Union Committeeman Richard King, informed him of Williams' order, and asked King to remind him before Hatfield left for the day. King corroborated this testimony.

During his lunchbreak, Hatfield called his wife and asked her to get some of the union officials to either remove the materials or settle the matter with Williams.

Williams went to the breakroom during his lunch period and noticed that the postings were still on the bulletin board. He returned at 2 p.m., saw that the materials were still there, and directed Union President Johnny Ross to take them down. Ross did so.

Hatfield's shift normally ended at 2 p.m., but he was occupied with a problem, and worked until 2:20 p.m. He then went to the bulletin board, where Ross informed him that Williams had directed Ross to remove the materials Hatfield then went to see Williams, and demanded the documents. Williams informed him that he would return them to the "rightful owner." Hatfield proceeded to Company President Boardwine, who referred him back to Williams. Hatfield came back to Williams' office with Ross, and Williams gave the materials to the union president, who gave them to Hatfield. Williams and Hatfield then talked about scheduling. Williams agreed that he said to the union representatives that the bulletin board issue was a "done deal." Williams also agreed that he did not tell Hatfield that he had been insubordinate, or deserved discipline.

#### 4. The decision to terminate Hatfield

Company President Boardwine called Williams to Boardwine's office and Williams described the events of the day. Boardwine said that the Company's treatment of the matter had to be consistent with its treatment of similar conduct by other employees. The Company executives determined that similar incidents had occurred with respect to employees Vernon Hall and Kenneth Braswell. Hall was suspended in August 1995 for refusing to obey an order to get off a forklift. The matter was resolved and Hall was reinstated upon his signing a letter saying that insubordination was a dischargeable offense, and that he would abide by the

<sup>15</sup> G.C. Exh. 7.

<sup>16</sup> G.C. Exhs. 5(a)-5(d).

<sup>17</sup> *Ibid.*

code of conduct.<sup>18</sup> Braswell was considered insubordinate because he refused an order to work overtime in November 1995. He was suspended, and the matter was resolved in a manner similar to Hall's case by Braswell's signing a letter similar to the one signed by Hall.<sup>19</sup>

Williams and Broadwine testified that they decided Hatfield should be discharged for insubordination. However, the contract first required a suspension. According to Williams, "this is to give opportunity for them to have a hearing or whatever."<sup>20</sup> But the decision to discharge was predicated by the act itself.<sup>21</sup>

#### 5. Hatfield's suspension

Hatfield did not work on August 29, but did work his regular shift on Friday, August 30. He returned to work on September 3, and was told to get union representation and see Williams. Williams told Hatfield that he was charged with insubordination, and was suspended for 5 days pending discharge.<sup>21</sup>

A hearing on the suspension was held on September 10. An accurate record of the hearing is found in the notes of Rusty McBee.<sup>22</sup> Hatfield maintained the same position attributed to him above, on the events of August 28. Williams gave him a direct order to take down the documents on the bulletin board, and he replied that he would take them down that day. He told Union President Ross at about noon that he did not want to cause any problems and would take the items off the board. He denied that he had been insubordinate and stated that there had been a miscommunication.

Company Representative Williams contended that there had been restrictions on the use of the bulletin board. Four union representatives at the suspension hearing stated that they did not recall any restrictions. A union representative asked Williams what was derogatory toward the Company about the material Hatfield had posted. Williams replied at the suspension hearing that he did not know, because he had not read the material. However, at the unfair labor practice hearing, Williams agreed that he had read the material on the bulletin board, considered it "inappropriate," and discussed it with Company President Boardwine. Williams acknowledged that Hatfield was a good employee with a good work ethic.

#### 6. The filing of Board charges and Hatfield's termination

The complaint alleges and the answer admits that the Union filed an unfair labor practice charge on September 13

<sup>18</sup> R. Exh. 5.

<sup>19</sup> R. Exh. 4.

<sup>20</sup> Art. 12 of the contract provides that if the Company determines that an employee has engaged in conduct warranting discharge, he must first be suspended for not more than 5 days. During the period of his suspension, he will be advised of his rights to a hearing within another 5 days. The contract provides:

At any such hearing all of the known facts concerning the case shall be made available to both parties. After such hearing, the Company shall conclude within five (5) calendar days 1/4whether the discharge shall become final or dependent upon the facts of the case, that such discharge shall be revoked. . . . [R. Exh. 1.]

<sup>21</sup> G.C. Exh. 6.

<sup>22</sup> R. Exh. 7.

alleging the unlawful suspension of Thomas Hatfield, and that this charge was served upon Respondent the same day by regular mail.<sup>23</sup>

On September 16, Williams sent Hatfield a signed letter stating that Respondent had decided to uphold the discharge, and that Hatfield was terminated.<sup>24</sup> On direct examination, Williams denied that he knew about the filing of the charge at the time he prepared the letter. On cross-examination, Williams admitted that in his pretrial affidavit he stated that he knew at the time of Hatfield's termination that charges had been filed by the Union on his behalf.<sup>25</sup> Pressed to explain this discrepancy, Williams asserted that the discharge was "signed" on August 28. However, as indicated, the discharge letter was dated September 16 and bears Williams' signature.

Grievance Committeeman Richard King testified that he had a conversation with Williams about Hatfield's termination. He was in Williams' office. Williams opened a desk drawer and took out an NLRB charge filed by Union Representative Raymond League. Williams said that if League had waited a day or two to file the charge, possibly Hatfield could have been back to work. Union President Johnny Ross testified that Williams came out to the dock, said that League had filed "charges," and added, "Maybe if the charges hadn't been filed, maybe none of this would have happened." Williams denied that he used this precise language, but testified that he did say that, if Hatfield had not been insubordinate, he would still have his job. King and Ross were more believable, and I credit their testimony.

#### 7. The third-step grievance hearing

A third-step grievance hearing on Hatfield's discharge was held on September 26. During a recess, Union President Ross obtained a copy of the letter Vernon Hall and Kenneth Braswell had signed as a condition of their return to employment. Hatfield stated that, unlike these employees, he himself had not been insubordinate. The Company did not offer Hatfield reinstatement if he would sign such a letter.

#### 8. Factual and legal conclusions

The General Counsel has the burden of establishing a prima facie case that is sufficient to support an inference that protected conduct was a motivating factor in an employer's decision to discipline an employee. Once this is established, the burden shifts to the Respondent to demonstrate that the discipline would have been administered even in the absence of the protected conduct. The General Counsel must supply persuasive evidence that the employer acted because of antiunion animus.<sup>26</sup>

Hatfield was chairman of the Union's grievance committee, and engaged in the filing of grievances and Board charges, and attended arbitration hearings. His supervisor

<sup>23</sup> G.C. Exhs 1(a), 1(j), 1(l).

<sup>24</sup> R. Exh. 6.

<sup>25</sup> The General Counsel argues that this admission by Williams constitutes evidence that the decision to terminate Hatfield was not made on August 28, but rather, after the filing of the unfair labor practice charge. G.C. Br. 12.

<sup>26</sup> *Wright Line*, 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983), *Manno Electric*, 321 NLRB 278 fn 12 (1996).

(Roy Glenn) told him that the Company was going to fire him if he did not cease engaging in this activity. This statement constituted a threat violative of Section 8(a)(1). The Company president (Ed Boardwine) told him that he was a "trouble maker," that Human Relations Director Williams would be retained in his job "to keep the Union straight and to keep Hatfield straight," and that Hatfield was costing the Company money by filing frivolous grievances and charges.

The courts of appeal have uniformly agreed with the Board's position that employer hostility to grievance filing and union activity supports a finding that the employee's discipline was unlawfully motivated. *NLRB v. Ryder/P.I.E. Nationwide, Inc.*, 124 LRRM 3024 (5th Cir. 1987), enfg. in part 278 NLRB 713 (1986); *NLRB v. Delta Gas, Inc.*, 127 LRRM 3085 (5th Cir. 1988), enfg. 283 NLRB 391 (1987); *NLRB v. Edgar Springs, Inc.*, 123 LRRM 2472 (6th Cir. 1986), enfg. 274 NLRB 998 (1985); *Roadmaster Corp. v. NLRB*, 131 LRRM 2483 (7th Cir. 1989), enfg. 288 NLRB 1195 (1988).

An inference of unlawful motivation is further supported by Respondent's decision to discharge Hatfield prior to a hearing, which was provided by the contract and intended to make all known facts available to the parties. Williams and Boardwine decided to terminate Hatfield but were first required by the contract to "give them an opportunity for a hearing, or whatever," according to Williams. Despite this provision, the decision to discharge was made before the hearing. This decision made a mockery of Hatfield's rights under the grievance procedure set out in the contract and is itself evidence of discriminatory motivation.

Hatfield's prohibited conduct, according to Respondent, was the posting without permission of material relating to disputes which the Union had with the Company. As I have concluded that there was no restriction on the posting of Union material, this was permissible activity. Williams, however, said that Hatfield had gone "too far," and that Williams would have to "step on his toes a little bit."

The posting led to Williams' order to Hatfield to remove the material, and to the alleged insubordination. The precise issue is whether Hatfield disobeyed an order to remove the material immediately. Williams himself admitted that Hatfield may not have heard the word "now." Nevertheless, Respondent argues, "Williams and Boardwine reasonably believed Hatfield's failure to remove the materials as instructed constituted insubordination."<sup>27</sup> This amounts to the strange argument that failure to obey an unheard order constitutes insubordination. Respondent further argues that it is "irrelevant whether (Hatfield) was insubordinate, since Respondent reasonably believed that he was."<sup>28</sup> It is difficult to perceive how the Company managers could have "reasonably" arrived at such a conclusion, since they denied Hatfield a hearing before deciding to terminate him. In any event, Respondent is wrong on the law in assuming that their erroneous belief of misconduct by Hatfield justifies his discharge. Regardless of the Company's asserted beliefs, such discipline had a deterrent effect on other employees. *Burnup & Sims*, 379 U.S. 21 (1964); *Ideal Dyeing & Finishing Co.*, 300 NLRB 303 (1990).

Under cross-examination, Williams conceded that he knew that the Union had filed a charge before Hatfield was termi-

nated. The credited evidence shows that Williams told employees that Hatfield might not have been discharged if the charge had not been filed. Accordingly, the discharge was in part motivated by the filing of a Board charge, as well as by Hatfield's Union activities, and thus violated Section 8(a)(4). In addition, Williams' statements to other employees threatened them with adverse action if they engaged in their statutory right to file charges, and violated Section 8(a)(1). *Alaska Pulp Corp.*, 296 NLRB 1260 (1989).

In accordance with my findings above, I make the following

#### CONCLUSIONS OF LAW

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

2. United Steelworkers of America District No. 9, AFL-CIO-CLC is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has violated Section 8(a)(1) of the Act by telling employees that they will be discharged for engaging in Union activities, and for filing charges against Respondent with the Board.

4. Respondent has violated Section 8(a)(1) and (3) of the Act by suspending Thomas Hatfield on September 3, 1996, for engaging in union activities, and Section 8(a)(1), (3), and (4) by discharging him on September 16, 1996, because of such activities and because the Union filed an unfair labor practice charge on his behalf.

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

#### THE REMEDY

It having been found that Respondent has engaged in certain unfair labor practices, it is recommended that it be ordered to cease and desist therefrom and take certain affirmative action necessary to effectuate the purposes of the Act.

It having been found that Respondent unlawfully suspended Thomas Hatfield on September 3, 1996, and discharged him on September 16, 1996, I shall recommend that Respondent be required to offer him immediate reinstatement to his former position, dismissing if necessary any employee hired to fill his position or, if such position does not exist, to a substantially equivalent position, and to make him whole for any loss of earnings he may have suffered by reason of Respondent's unlawful conduct, by paying him a sum of money equal to the amount he would have earned from the time of the discrimination against him to the date of an offer of reinstatement, less net earnings during such period, to be computed in the manner established by the Board in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).<sup>29</sup>

I shall also recommend the posting of appropriate notices.

<sup>29</sup> Under *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).

<sup>27</sup> R. brief, 26.

<sup>28</sup> *Ibid.*

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>30</sup>

#### ORDER

The Respondent, Simcala, Inc., Mount Meigs, Alabama, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling employees that they will be discharged for engaging in union activities, or because charges against Respondent have been filed on their behalf with the National Labor Relations Board.

(b) Discouraging membership in United Steelworkers of America District No. 9, AFL-CIO-CLC, or any other labor organization, by suspending or discharging employees because of their Union or other protected activities, or because charges are filed with the National Labor Relations Board or by discriminating against them in any other manner with respect to their wages, hours, tenure of employment or any other terms and conditions of employment.

(c) In any like or similar manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 8(a)(1) of the Act.

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

(a) Within 14 days from the date of this Order, offer Thomas Hatfield reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, dismissing if necessary any employee hired to fill said position, and make him whole in the manner set forth in the remedy section of this decision.

(b) Within 14 days from the date of this Order, expunge from its records all references to its unlawful suspension and discharge of Thomas Hatfield, and inform him in writing that this has been done, and that the aforesaid actions will not be used as the basis of any future discipline of him.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its Mount Meigs, Alabama facility, copies of the attached notice marked "Appendix."<sup>31</sup> Copies of the notice, on forms provided by the Regional Director for Region 17, 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 in-

cluding 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. In the event that, during pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail at its own expense a copy of the notice to all current employees employed by Respondent at any time since February 1, 1996.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

#### APPENDIX

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

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

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

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

WE WILL NOT tell employees that they will be discharged for engaging in union activities, or because charges against us have been filed on their behalf with the National Labor Relations Board.

WE WILL NOT discourage membership in the United Steelworkers of America District No. 9, AFL-CIO-CLC, or any other labor organization by suspending or discharging employees because of their union activities, or because charges against us on their behalf have been filed with the National Labor Relations Board.

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

WE WILL offer Thomas Hatfield reinstatement to his former job, and make him whole, with interest, for any loss of earnings he may have suffered because of our unlawful suspension and discharge of him.

WE WILL expunge from our records any references to our unlawful suspension and discharge of Thomas Hatfield, and inform him in writing that this has been done, and that these actions will not be used as the basis for any future discipline of him.

SIMCALA, INC.

<sup>30</sup> 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.

<sup>31</sup> 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."