Pacific Maritime Association *and* James Strader

International Longshoremen and Warehousemen's Union, Local 8 *and* James Strader. Cases 36–CA–7546 and 36–CB–1951

July 23, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

On November 21, 1995, Administrative Law Judge Joan Wieder issued the attached bench decision and certification. The Respondents filed exceptions and supporting briefs, and the General Counsel 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 briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions only to the extent consistent with this Decision and Order.

The Respondents, Pacific Maritime Association (PMA), a multiemployer association of stevedoring companies, and International Longshoremen and Warehousemen's Union, Local 8, jointly operate a hiring hall in Portland, Oregon, for the dispatch of longshoremen to jobs with participating employers. Dispatch from the hall is governed by the Pacific Coast Longshore Contract Document (the PCLCD) and supplemental local agreements. Pursuant to the PCLCD, individuals seeking longshore employment are divided into four categories or lists, based on the number of hours worked: registered longshoremen (A list), limited registered longshoremen (B list), identified casuals (C list), and unidentified casuals (D list). Individuals are promoted from one list to a higher list based on hours worked and work record.

Referral category is significant for several reasons. First, dispatch priority is based on the four lists, with first priority going to A list workers, second priority to the B list, and so forth. Second, the PCLCD specifies higher pay rates for A and B list referrals than for identified and unidentified casuals on the C and D lists. Finally, although the Union represents all classes of longshoremen applicants, only individuals on the A list are eligible for union membership, and thus only those individuals are entitled to vote for union officers including the hiring hall dispatchers.

Charging Party James Strader, an identified casual at the time of the events that gave rise to this proceeding,[2] was an outspoken critic of the Union's hiring hall system. It is undisputed that he made frequent written complaints, including formal grievances filed with the Union and unfair labor practice charges filed with the Board, concerning alleged abuses and favoritism in the operation of the hiring hall and in the method used to select identified casuals for promotion to the B list.

On Friday, October 14, 1994, the Portland hiring hall dispatcher ordered the identified casuals to leave the hiring hall and wait outside while the A and B lists were dispatched. Also on October 14, Strader filed a charge with the Board concerning this action and served a copy on the Union by hand. On the following Monday, October 17, Strader reported to the hiring hall for assignment. According to Strader and other witnesses called by the General Counsel, the dispatcher never called Strader's number, but instead bypassed him by calling another number, belonging to an individual who was not present, and then accused Strader of failing to respond to the dispatch.[3] According to the dispatcher and other witnesses called by the Respondents, the dispatcher properly called Strader's number but he failed to respond until the dispatcher had moved on to the next number. It is undisputed that when the dispatcher called the number after Strader's, Strader protested that he had been skipped but was told by the dispatcher that he had ''burned'' (the parties' vernacular for missing his call) and was ordered away from the window so that the dispatch could continue.

Following the events set forth above, the dispatcher ''pulled'' Strader's plug and referred the matter to the Joint Port Labor Relations Committee (JPLLRC as designated in the parties' work rules), a body composed of an equal number of union and employer representatives with exclusive jurisdiction over disputes arising from the operation of the hiring hall. Strader filed a charge with the Board asserting that he had been unlawfully bypassed and, on October 18, filed a written grievance with the Union setting forth his version of the events of October 17 and stating that he had witnesses who could corroborate his statement.

The dispatcher and an employer observer, who was present at the hiring hall during the dispatch of October 17, also filed reports with the JPLLRC. Representatives of the Union and the PMA reviewed the documents on October 18, discussed the matter by phone,

[1] The Respondents have 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] He has since been promoted to the B list.

[3] Under the hiring hall rules, individuals request dispatch on a daily basis by inserting their ''plug'' in the dispatch board for their referral category. Once called, they are obligated to respond and accept the dispatch; failure to respond is a violation of the hiring hall rules which subjects the individual to disciplinary action as discussed more fully below.

and decided to credit the dispatcher and the PMA observer and find that Strader had indeed failed to respond to his call. Based on this finding, the two sides cast their votes to deny Strader's grievance and to impose the ''standard'' discipline for failing to respond to dispatch, i.e., 4 days' restriction from dispatch (termed beaching in the parties' vernacular).

The complaint alleges that the Respondents violated the Act by bypassing Strader on October 17, by ''beaching'' him on October 18, and by denying his grievance without receiving the evidence proffered by Strader or giving him an opportunity to appear before the JPLLRC in person. The complaint further alleges that both Respondents took these actions for arbitrary, invidious, and other irrelevant reasons, including Strader's leadership of dissident casuals, his filing of charges with the Board, and his protest of the Respondent's failure to refer him on October 17, and that PMA thereby violated Section 8(a)(4) and (1) and the Union thereby violated Section 8(b)(1)(A) and (2).

The judge dismissed the complaint allegations that the Respondents' failure to refer Strader on October 17, and his subsequent beaching, violated the Act. In this regard, the judge apparently found it unnecessary to decide whether Strader had, in fact, been bypassed by the dispatcher on October 17, finding instead that ''there was perhaps a misunderstanding.'' Rather, the judge found that the General Counsel failed to establish that any failure to call Strader for referral to a job was motivated by unlawful considerations, and that the subsequent decision to beach him likewise had not been shown to have been unlawfully motivated.

However, the judge found that the Respondents breached their duty of fair representation to Strader by the manner in which they handled his grievance. Thus, the judge found that the Respondents had an obligation to inform Strader of the procedural rules under which his grievance would be processed, in particular the fact that he had to provide all relevant information in his initial filing and that he would not be given an opportunity to appear before the JPLLRC or to provide additional written evidence or witnesses. The judge declined to find that the failure to inform Strader of the JPLLRC procedures was motivated by invidious or retaliatory considerations, but instead cited the duty of fair representation applicable to exclusive collective-bargaining representatives. In this regard, however, the judge provides no rationale for finding a violation with respect to Respondent PMA, other than her observation that it jointly operates the hiring hall and the JPLLRC with the Union.[4]

[4] Although judges have the authority to issue bench decisions, we caution that such decisions, like written decisions, must be well considered and supported. We regret that the judge's bench decision did not meet this standard.

In the absence of exceptions, we adopt the judge's dismissal of the complaint allegations concerning the failure to refer Strader and his subsequent beaching. The Respondents have excepted to the judge's finding that their handling of Strader's grievance was unlawful. For the reasons that follow, we find merit to these exceptions.

The standard for determining whether a union has satisfied its duty of fair representation is well established. As the Board has previously observed,

> a union breaches its duty of fair representation toward employees it represents when it engages in conduct affecting those employees' employment conditions which is arbitrary, discriminatory, or in bad faith. . . . It is also well settled, however, that something more than mere negligence or the exercise of poor judgment on the part of the union must be shown in order to support a finding of arbitrary conduct.

Teamsters Local 337 (Swift-Eckrich), 307 NLRB 437, 438 (1992) (citations omitted). In light of the judge's findings, set forth above, this case presents no issue of bad faith or discrimination. Thus, the sole question presented is whether the judge correctly found that the Respondents' procedures in handling Strader's grievance—specifically the failure to allow him to present evidence and testimony at a hearing and the failure to notify him that a hearing would not be held—were arbitrary. Contrary to the judge, we find that the procedures fall within the ''wide range of reasonableness'' afforded a statutory bargaining representative. *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953).

The JPLLRC obtained and considered written submissions from Strader, the dispatcher, and an employer observer who was present in the hiring hall at the time. These statements essentially set forth the competing versions of the events of October 17 set forth above. Ultimately, they boil down to a credibility dispute between Strader on the one hand, and the dispatcher and observer on the other. Contrary to the judge, the JPLLRC was not required to hold a formal hearing or to obtain additional witness statements, under these circumstances, in order to satisfy its duty of fair representation. See *Douglas Aircraft Co*., 307 NLRB 536, 557 (1992) (duty of fair representation does not require union to follow particular procedures); *Asbestos Workers Local 17 (Catalytic, Inc*.,) 264 NLRB 735 (1982) (union lawfully agreed to discharges after reviewing work alleged to be substandard and attendance records, but without obtaining employees' side of story); *San Francisco Web Pressmen*, 249 NLRB 88 (1980) (union lawfully handled grievance by investigating incident by interviewing employee eyewitnesses and employee whom grievants had allegedly threatened), revd. sub nom. *Tenorio v. NLRB*, 680 F.2d 598 (9th Cir. 1982),

on remand 267 NLRB 451 (1983); *Plumbers Local 195 (Stone & Webster Engineering Corp.)*, 240 NLRB 504 (1979) (union lawfully relied on employer witnesses corroborated by objective evidence in dismissing grievance).[5] Accordingly, the failure to advise Strader explicitly that he would not receive a hearing does not violate the duty of fair representation either.[6]

We also find that the General Counsel failed to demonstrate that the Respondents' handling of the grievance was inconsistent with the written procedures they had established for resolving grievances of this type, and we note that the General Counsel eventually disclaimed at the hearing any argument to the contrary. In this regard, although section 17.4 of the PCLCD provides for a hearing with testimony and the opportunity to present oral and written evidence and argument, section 17.284 states that ''Nothing in this Section 17 shall prevent the parties from mutually agreeing upon other means of deciding matters upon which there has been disagreement.'' Pursuant to this clause, the parties promulgated procedures and rules applicable to casuals which do not provide for a hearing in cases of this type.[7]

As a supplement to her bench decision, the judge found that the Respondents did not refute Strader's testimony that the dispatcher did not always discipline casuals who failed to answer a call by pulling their plug and referring them to the JPLLRC for discipline. The Respondents have excepted to this finding, citing, inter alia, testimony by Union Business Agent Mulcahey that the disciplinary procedures for burning were uniformly applied.[8] In light of this and other transcript passages cited by the Respondents, and in light of the parties' written hiring hall procedures, which call for referral to the JPLLRC under these circumstances (see fn. 6, infra), we find that Strader's testimony was contradicted.[9] Although the judge failed to make credibility findings with respect to this (and other) disputed matters, we find it unnecessary to resolve this credibility dispute.[10] Even assuming that other individuals who burned under similar circumstances were not suspended and referred to the JPLLRC, as Strader testified, the sole issue before us is whether Strader's grievance was handled in an arbitrary or perfunctory manner. The question of disparate treatment in penalty would have been relevant only with respect to the complaint allegation that the Respondents' decision to beach Strader was unlawful. As noted above, the judge dismissed that allegation.

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[5] We note that the Ninth Circuit disagreed with the Board's finding in *San Francisco Web Pressmen* that an investigation conducted without obtaining a statement from the grievant was adequate under the circumstances. However, the court emphasized that its holding was based on the ''particular circumstances of this case,'' which included evidence that it was the union's policy to interview all discharged employees, circumstantial evidence suggesting that the union had prejudged the case, the fact that it was a discharge case and therefore of the utmost seriousness, and that the case presented a conflict of interest based on the fact that the grievant had been terminated for an altercation with a union executive board member at his workplace. In this case, in contrast, the penalty at issue was a 4-day suspension from referrals, the Respondents did obtain a statement from the grievant (Strader), and there is no evidence that the Union prejudged the case or that Strader's grievance was handled any differently from other grievances involving hiring hall referrals.

[6] We note in this regard that Strader complained to the JPLLRC on more than one occasion prior to October 17 because it had denied prior grievances he had filed without a hearing. Thus, it is evident that Strader was well aware of the Respondents' practice of deciding hiring hall grievances without a hearing when he filed the grievance at issue here.

[7] Sec. 3(k) of the parties' written procedures provides, in pertinent part:

> The dispatcher shall, on notice of either side of the JPLLRC that a nonregistered casual has given cause for suspension or revocation of dispatching hall privileges or upon his own knowledge thereof, refuse dispatch to the individual until action by the JPLLRC has been taken on the complaint. Should the casual claim that there was no cause for disciplinary action, the casual may file a grievance with the JPLLRC within 10 days of first being denied dispatch. The Committee shall then determine whether there is any basis for restoring dispatching hall privileges and, if it decides that the casual shall not be permanently denied dispatching hall privileges, the date that such privileges may be resumed.

The written procedures do not call for a hearing before the JPLLRC and there is no evidence that a hearing was afforded to any other grievant with a ''burn'' grievance like Strader's. Moreover, PMA Labor Relations Administrator Mann testified without contradiction that hearings were not held in cases of this type and that Strader's grievance was handled in the customary manner.

Accordingly, we find merit to the Respondents' exceptions to the judge's finding that the Respondents did not show that similarly situated casuals who ''burned'' had their grievances considered telephonically based on written submissions. We also note that it was the General Counsel's burden to establish that such similarly situated individuals existed, not the Respondents' burden to show that they did not exist.

[8] Mulcahey testified as follows:

> Q: For a casual to burn, does it matter why it might have happened?
>
> A: No, it doesn't make any difference what the reason is.
>
> Q: Is that uniformly applied?
>
> A: Yes, it is.

[9] Additionally, sec. 5, rule 6 of the parties' hiring hall procedures for casuals provides:

> Available casuals who fail to respond to a dispatch call or refuse an offered job during the regular dispatch period shall have their dispatching hall privileges suspended and shall be ineligible for dispatch unless such privileges are reinstated by the JPLLRC.

[10] We note, however, that Strader's grievance does not allege disparate treatment.

Under all the foregoing circumstances, we find that the General Counsel has not shown that the Union's handling of Strader's grievance was arbitrary or perfunctory. A fortiori, we further find that any role played by Respondent PMA in these matters also did not violate the Act.[11]

ORDER

The complaint is dismissed.

[11] Accordingly, we do not pass on the judge's apparent finding that, merely by virtue of its participation in the hiring hall and the JPLLRC, Respondent PMA assumed a responsibility under the Act to the Charging Party to fairly investigate and consider his grievance, in the absence of any finding that PMA's actions had the purpose or effect of coercing or discriminating against Strader for exercising Sec. 7 rights.

James C. Sand, Esq., for the General Counsel.
Richard F. Leibman, Esq. (Lane, Powell, Spears & Lubersky), of Portland, Oregon, for Respondent Pacific Maritime Association.
Kevin Keaney, Esq. (Pozzi, Wilson, Atchison), of Portland, Oregon, for Respondent International Longshoremen and Warehousemen's Union, Local 8.

BENCH DECISION AND CERTIFICATION

This matter was heard before me in Portland, Oregon, on July 18 and October 31, 1995. At the close of hearing, at the request of the parties, I delivered a bench decision, pursuant to Section 102.35(a)(10) of the Board's Rules and Regulations, wherein I determined the Respondents have engaged in certain unfair labor practices.

As a supplement to my bench decision, I also note the Respondents did not refute Charging Party Strader's testimony the Union's starter, Cox, did not always discipline casuals who failed to step up to the dispatch window when their number was called by ''beaching'' them for 4 days, rather, at times the starter returned the plug ''with a slash'' of the individual who was in the hall but missed responding when his plug number was called. In other words, the casual who missed his number and was in the union hall was not always placed on ''non-dispatch'' and his plug given to the labor relations committee and given a 4-day suspension.

The manner the labor relations committee conducted its operation resulted in its failure to hear Strader's position, including his grievance, and precluded him from presenting witnesses. The labor relations committee prevented Strader from presenting evidence concerning his assertion the dispatcher did not apply the rules consistently and that his number was not called. The labor relations committee representative, Mann, an employee of Respondent PMA and its labor relations administrator, conducted the consideration of Strader's suspension with only representatives from PMA and Local 8 being contacted by him and receiving instructions what they should submit to the labor relations committee.

In this instance, the labor relations committee made its decision after Mann consulted Cox, and PMA Representative Davis who was present in the starter's booth, with no opportunity for direct input by Strader and/or any of his witnesses to the incident. Only Cox and Davis were requested to make written submissions which would form the basis for a decision. Strader was not similarly informed only written submissions would be considered, and he was denied the opportunity to prepare a submission which specifically addressed the proposed discipline and/or his grievance. Strader was also not informed whether he could present declarations from witnesses.

The Respondents admitted the only suspension they voted on telephonically without any presentation by employees who disputed their number was called and claimed they were not properly ''burned'' was the Strader incident. Thus, the Respondents failed to establish their method of consideration was standard practice or otherwise was not in an arbitrary, or invidious manner, or for other irrelevant reasons.

APPENDIX A

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the Complaint. So that, yes, the Union hasn't had the due process in that sense, because we are—that's—that's the scope—if that hypothetically is the scope of your Decision, you've gone beyond what we were on notice of in the Complaint.

JUDGE WIEDER: And your position?
MR. LIEBMAN: From the Union's standpoint?
JUDGE WIEDER: No, from your—
MR. LIEBMAN: No, I'm saying from their standpoint, that may be theirs. From our standpoint we put on Mr. Mann to testify why they made the decision, and he testified it wasn't arbitrary, he relied upon the statement of Mr. Davis. So from the company's standpoint, no; but from the Union's standpoint, I would agree with Mr. Keaney.
JUDGE WIEDER: Okay, do you have anything further?
MR. KEANEY: No, nothing further.
JUDGE WIEDER: Do you have anything further?
MR. SAND: Nothing further, Your Honor.
JUDGE WIEDER: Then I'll take about an hour. Off the record.

(A recess was taken.)

JUDGE WIEDER: Back on the record.
Initially I'd like to say that the parties have requested, and I've acceded to doing a directed verdict in accordancd [sic] with newly-established Board procedures.
Go off the record a moment, let me find a missing piece of paper.

(A recess was taken.)

JUDGE WIEDER: Back on the record.
A bench decision—pardon me—pursuuant to Section 102.35(a)(10) of the Board's Rules and Regulations. The parties have agreed as to jurisdiction, the supervisory status of the individuals named in the Complaint, the fact that Respondent Local 8 is a—has been at all times a labor organization within the meaning of Section 2(5) of the Act.
It's also undisputed that Respondents run an exclusive hiring hall, which under the collective bargaining

agreement, which is marked as General Counsel's 2, that it is basically operated by both Respondent PMA and Respondent Local 8.

The first allegation that I'm called upon to decide is paragraph 7 of the Complaint, ''That on or about October 17, 1994, Respondents, through their joint agent, Cox, bypassed Strader, despite protest, for arbitrary, invidious or other irrelevant reasons, and more particularly in response to his leadership in a dissident group of designated casuals and his filing of charges with the NLRB.''

I find that the testimony in rebuttal of the allegation by Messrs. Cox and Draper is at best confusing. Mr. Cox in his written statements made the day of October 17, 1994, stated he was calling the dispatch. Mr. Draper testified he was calling the dispatch numbers and pulling the plugs.

Mr. Strader was corroborated by both Mr. Hooper and Wamsher, that they heard 183 and not 187. The testimony that swayed me in how to determine this particular allegation is Mr. Davis. Mr. Davis stated that he heard the dispatch called three times. He thought it was 187. Nobody appeared until after the next number was pulled, the next plug was pulled.

His testimony was corroborated by his report to PMA and the billing. I also found him most convincing on the basis of demeanor. He testified in a straightforward manner, does not mean that I find that 187 was in fact called, rather than 183. But I find that a number was called three times, and that some individuals thought it was 183, some thought it was 187.

For the same reason I find that not only should paragraph 7 be dismissed, but paragraph 8, which is, ''On or about October 17, 1994, Respondents, through their joint agent, Cox, and with the participation of Respondent Local 8's agent, Mulcahy, beached Strader for four days during which period, October 17 through 20, 1994, he was not allowed to seek dispatch through Respondents joint dispatch hall which action was taken for arbitrary, invidious or other irrelevant reasons, and more particularly those reasons set forth in paragraph 7 above, and because of his protest of the bypass action described therein.

For the same reasons that I found that 7 should be dismissed, I find 8 should be dismissed.

Now we get to paragraph 9 which is, ''On a date unknown to General Counsel, within a few days of the events''—before we get to 9, I find that General Counsel has the burden of proving by a preponderance of the evidence that his witnesses clearly establish that there were, in fact, arbitrary, invidious or other irrelevant reasons, and particularly because Mr. Strader's leadership in a dissident group of designated casuals and his filing of charges with the NLRB, that those were the reasons for failure to call his number and then use that as an excuse to beach him. I find in this instance that the record demonstrates that there was perhaps a misunderstanding.

As to 9, which states, ''On a date unknown to General Counsel, within a few days of the events above-described in paragraph 7 and 8, the committee in closed session, without taking evidence proferred by Strader or giving him an opportunity to appear, denied a grievance he had filed with regard to the event described in paragraph 7 and confirmed the action of its dispatcher, Cox, in beaching Strader for four days, which actions were taken by Respondents for arbitrary, invidious and other irrelevant reasons, and more specifically in retaliation for Strader's leadership of the dissident group and his filing of charges against both Respondents as above-described in paragraph 7.''

In general a Union violates the Labor Relations Act if it fails to represent an employee fairly, impartially and in good faith. This duty of fair representation ensures employees of the right to be free from unfair or invidious treatment by their bargaining agent.

The burden of demonstrating a Union's breach of the duty of fair representation involves more than demonstrating negligence or mere errors in judgment. A violation of the Act to be found requires a showing of deliberate bad faith or an unintentional conduct that falls so far short of minimum standards of fairness and legitimate Union interests as to be arbitary. And here its not only the Union's interests, it's also PMA's interests, because they're both acting in the operation of the hiring hall and in the processing of grievances.

To satisfy its duty, the Respondents in this case must minimally investigate grievances brought to its attention. Now recently in 1990, in *Airline Pilots Association, International v. O'Neill*, the Supreme Court indicated that there was more of a duty than to just stand by.

Here there was testimony by Mr. Mann that as soon as he became aware a burn occurred, he informed both Local 8's representative Cox and his own representative, Mr. Davis, to write down. Therefore, he informed at least the Union, who had some other fiduciary duty under *Airline Pilots Association* to Mr. Strader, that he was going to consider their statements.

There was no concommitent call to Mr. Strader that he had an obligation to get statements from his asserted witnesses to the committee for their consideration of his grievance; therefore, the question is—you know, have Respondents any obligation to make reasonable efforts to inform its hiring hall users of the applicable rules under which the Joint Committee is going to operate, and its interpretations of those rules, so that those users may take informed action and make informed choices in availinq themselves of the grievance procedures afforded under the hiring hall rules?

Considering that Mr. Strader truly informed Respondents that he had a number of witnesses to corroborate that his number was not called, his grievance was clearly enough not frivilous. Its basic law that Respondents, in handling grievances, must treat them on a case-by-case basis.

To take this as a beaching, as all other beachings, where there was no claim shown in any of the other beachings for the same asserted violation of the rules, the hiring hall rules, where they were not grieved, where there weren't any witnesses claimed to have supported the grievance, I find is a failure of the duty owed to employees covered by the collective bargaining

agreement, and that there was a failure to represent them honestly and in good faith.

Since the Union had not stated that it processed other grievances of the same nature, it can't claim that it processed this grievance in a customary manner. The Union never claimed it failed to investigate hiring hall individuals' claims in other instances, and that there was no basic—you know, ''This guy has no witnesses, so we're not going to ask witnesses any questions,'' therefore I can't find that the decision of the Joint Committee was based on rational and substantial reasons.

The bargaining agent did not establish whether it had a rational and good faith basis to act in the detriment of a member or in this case a casual whom they have responsibility to represent under the collective bargaining agreement, because they never investigated or made inquiry as to the—any merit to his claim.

The Union has not claimed that they don't investigate or ignore the merits of any claim that is given to them. This isn't shown to be a normal, customary treatment by the Union.

Accordingly I find that Respondents have breached their duty of fair representation by failing to inform Mr. Strader of the manner in which they're going to handle this grievance, that they were not going to give him a hearing, they weren't going to give him an opportunity to give any information supplementing his initial filing, that he was not going to be affordd the opportunity to produce any witnesses, that he wasn't going to be given any hearing.

I find that although the complaint could be read that it requires a showing of invidious reasons specifically in retaliation for Straders leadership of a dissident group, that it is unclear, and that it does state clearly that the closed sessions without taking evidence proferred by Strader or giving him an opportunity to appear without informing him of the hiring hall rules was mentioned without objection by counsel for General Counsel during this proceeding, as well as the due process considerations were mentioned by Counsel for General Counsel without objection, and I therefore find that this matter has been fully and fairly tried, albeit counsel for the Union is of a different opinion.

I therefore, in addition to finding the violation of paragraph 9, recommend that Respondents, jointly and severally, make Mr. Strader whole for his loss of earnings and hours incurred October 17th through 20th, including, but not limited to a permanent re-assignment of his relative seniority date and order for promotion to permanent status, to reflect the order in which he would have been so promoted before his October 1994 loss of hours, and any earning s or hiring opportunities he may have lost as a result of that delay in promotion or loss of other seniority order.

Any back pay due should be paid in tne manner established by the Board in *F. W. Woolworth Co*., 90 NLRB 289 (1990)—1957 Decision, with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

I shall also require expungement from Mr. Strader's record of any reference to this discipline beaching him for four days for the events of October 17, 1994, and to provide Mr. Strader and the Regional Director of Region—Sub-Region 36 with notice that the expungement has been accomplished, to preserve and on request make available to the Board or its agent a copy of payroll records, Social Security payment records, timecards, and all other records necessary that allows the remedial action necessary under the terms of the Order; shall post at its joint dispatch hall in Portland, Oregon, copies of a notice which I shall provide at a later date marked, ''Appendix.''

Copies of said notice on forms provided by the Regional Director for Region 19, after being signed by Respondents' authorized representatives, shall be posted by Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to ensure that the notices are not altered, defaced or covered by any other material.

And just so that the record is clear, I have found that Respondents were exceedingly arbitrary in the matter of handling this grievance, which was unusual in the circumstances presented on the record, and dismiss the allegations under paragraphs 7 and 8 of the Complaint.

Okay, there being nothing further, this hearing is now closed.

Off the record.

(Whereupon, the hearing in the above-entitled matter was concluded at 5:00 p.m.)

[Recommended Order omitted from publication.]