Accurate Tool & Manufacturing Inc., d/b/a Accurate Wire Harness *and* Tammy Jackson. Cases 9–CA–36910 and 9–CA–37007

September 19, 2001

DECISION AND ORDER

BY MEMBERS LIEBMAN, TRUESDALE, AND WALSH

On June 30, 2000, Administrative Law Judge Nancy M. Sherman issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief. In addition, the General Counsel filed exceptions and a supporting brief, and the Respondent 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[1] and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order as modified.[3]

The judge found that the Respondent violated Section 8(a)(1) by threatening to discharge, and discharging, 12 employees for engaging in a protected concerted walkout on July 9, 1999.[4] The judge further found that the Respondent violated Section 8(a)(1) by suspending and discharging employee Tammy Jackson for allegedly threatening a coworker with bodily harm if she did not participate in the walkout. For the reasons stated by the judge and the additional reasons set forth below, we agree.

[1] No exceptions were filed to the judge's dismissal of the allegation that employee Mearlean Nichols was discharged in violation of Sec. 8(a)(1). Furthermore, no exceptions were filed to the judge's denial of the Respondent's motion to dismiss for prosecutorial misconduct.

The General Counsel's exceptions relate to the calculation of interest on backpay awarded to the discriminatees. The General Counsel asks that the Board change its practice of awarding simple interest on backpay and, instead, calculate interest on a daily compounded basis. Having duly considered the matter, we are not prepared at this time to deviate from our current practice. Members Liebman and Walsh, however, do not foreclose future consideration of the request. In Member Truesdale's view it would be preferable for the Board to address the General Counsel's request for compound interest in a rulemaking proceeding.

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

[3] We shall modify the judge's recommended Order and issue a new notice to conform to the violations found and the Board's recent decision in *Ferguson Electric Co.,* 335 NLRB 142 (2001).

[4] All dates are in 1999 unless otherwise specified.

I. THE JULY 9 WALKOUT

A. Alleged Threats of Discharge

The judge found that the Respondent violated Section 8(a)(1) when its production supervisor, Shirley Powers, told employees as they began to walk out that if they walked out, the Respondent would accept it as a resignation. The judge also found that the Respondent violated Section 8(a)(1) when its president, Nestor Fernandez, told employees immediately after they walked out that if they did not return within 2 minutes, the Respondent would accept it as a resignation. The judge found that these statements constituted unlawful threats to discharge the employees if they engaged in a protected strike. We agree. See, e.g., *Conair Corp.,* 261 NLRB 1189 (1982) (mailgram telling strikers that they would be "deemed to have voluntarily quit" unless they returned to work in 2 days was a threat of discharge in violation of Sec. 8(a)(1)), enfd. in relevant part 721 F.2d 1355 (D.C. Cir. 1983), cert. denied sub nom. *Garment Workers Local 222 v. NLRB*, 467 U.S. 1241 (1984).

B. Alleged Discharge of Employees Engaged in Walkout

The judge further found that the Respondent violated Section 8(a)(1) by discharging the 12 employees for engaging in the walkout. We agree. The Respondent argues that the employees were not discharged, relying on *Pink Supply Corp.,* 249 NLRB 674 (1980). *Pink Supply,* however, is distinguishable. In that case, a group of employees engaged in a concerted work stoppage. After urging the employees' spokesperson to convince the employees to return to work, the employer told the spokesperson that it needed people to do the employees' work, and therefore it would have to act as though the employees were quitting and find replacements. When the spokesperson denied that the employees were quitting, the employer asked, "Well, what do you call it? What am I supposed to do?" The spokesperson did not respond to these questions, but volunteered that the employees would come in to clean out their desks, which they did the next day. Under these circumstances, the Board found that "[t]he conversation taken as a whole did not, as we attempt to view it through the employees' eyes, present anything like an unequivocal refusal by Respondent to permit them to return to work." 249 NLRB at 674. The Board therefore found that the employees had not been discharged.

Unlike the employer in *Pink Supply*, the Respondent in this case expressed no uncertainty to the employees about how it would treat those who walked out. Rather, the Respondent twice told the employees unequivocally that it would treat the walkout as a resignation. When one employee protested that the group had merely

wanted the Respondent to talk to them, Fernandez said, "You went about it the wrong way."[5] He then posted a "Now Hiring" sign at the front entrance to the Respondent's building. Under these circumstances, we agree with the judge that the Respondent's statements and conduct would reasonably lead the employees to believe that they had been discharged. See, e.g., *Kolkka Tables & Finnish-American Saunas*, 335 NLRB 844, 846 (determination of whether there was a discharge is judged from the employees' perspective, and the employer "will be held responsible when its statements or conduct create an uncertain situation for the affected employees"); *Christopher Co.,* 288 NLRB 1272, 1275–1276 (1988) (the respondent unlawfully discharged striking employees by telling them that if they did not report for work the following Monday, the respondent would consider them to have quit and would replace them); *Ridgeway Trucking Co.,* 243 NLRB 1048, 1048–1049 (1979) (the respondent unlawfully discharged employees engaged in a work stoppage by telling them to leave the premises unless they were going to go to work; discharge "does not depend on the use of formal words of firing," but on whether the employer's actions "would reasonably lead the employees to believe that they had been discharged"), enfd. 622 F.2d 1222 (5th Cir. 1980). Therefore, we agree that the Respondent violated Section 8(a)(1) by discharging the employees for engaging in a protected strike.

II. SUSPENSION AND DISCHARGE OF TAMMY JACKSON

The Respondent suspended, and ultimately discharged, employee Tammy Jackson for allegedly threatening her coworker, Jamie Jewell, that Jewell would "get [her] ass kicked" if she did not participate in the walkout. The judge concluded, and we agree, that Jackson's suspension and discharge violated Section 8(a)(1) under *NLRB v. Burnup & Sims, Inc.,* 379 U.S. 21 (1964), which governs discharges for alleged misconduct arising out of protected concerted activity. Under *Burnup & Sims*, even if an employer discharges an employee in the honest belief that the employee engaged in misconduct, it violates Section 8(a)(1) if the General Counsel proves that the alleged misconduct did not in fact occur. See id.; see also *Pepsi-Cola Co.,* 330 NLRB 474, 475 (2000). We find it unnecessary to pass on the judge's finding that the Respondent lacked an honest belief that Jackson threatened Jewell. Even assuming arguendo that the Respondent had such a belief, we agree with the judge that the General Counsel proved by a preponderance of the evidence that Jackson did not threaten Jewell. Therefore, we agree that the Respondent suspended, and discharged Jackson in violation of Section 8(a)(1).[6]

AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusion of Law 4:

"4. Respondent has violated Section 8(a)(1) of the Act by suspending employee Tammy Jackson on August 16, 1999, and discharging her on August 23, 1999."

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Accurate Tool & Manufacturing Inc., d/b/a Accurate Wire Harness, Springboro, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Delete paragraph 1(c) and reletter the subsequent paragraph.

2. Substitute the following for paragraph 2(e).

"(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary or useful in analyzing the amount of backpay due under the terms of this Order."

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

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:

[5] In sec. II,K,4 of her decision, the judge found that Fernandez told the employees they were "going about it the wrong way." The witnesses' actual testimony was that Fernandez said they "went about it the wrong way." We are satisfied that this minor error does not undermine the judge's conclusion that the Respondent discharged the employees in violation of Sec. 8(a)(1).

[6] We find it unnecessary to pass on the judge's additional conclusions that the Respondent violated Sec. 8(a)(1) and (4) because its only motives for suspending and discharging Jackson were her participation in the walkout, her efforts to encourage others to participate, and her filing of charges with the Board alleging unlawful termination of the employees who walked out. The remedy for these violations would be the same in all material respects as the remedy for the violation of Sec. 8(a)(1) under *Burnup & Sims.*

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 you with discharge if you go out on a strike protected by the Act.

WE WILL NOT suspend or discharge you because you have engaged in a strike protected by the Act, or because you have instigated or in a lawful manner attempted to induce other employees to engage in such a strike.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights under the Act.

If we have not already done so, WE WILL, within 14 days of the date of the Board's order, offer Tammy Jackson full reinstatement to her former position or, if such a position no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges previously enjoyed.

WE WILL make Tammy Jackson whole, with interest, for any loss of earnings and other benefits suffered as a result of her July 1999 discharge, her August 1999 suspension, and her August 1999 discharge.

WE WILL make the following employees, who have been offered reinstatement, whole, with interest, for any loss of earnings and other benefits suffered as a result of their discharge on July 9, 1999:

Mary Kathryn (Kathy) Brown
Stephanie Brown
Letcher Carl
Toni Ehrnschwender
Phyllis Gallienne
Penny Harvie
Paul Morris
Patty Ross
Doug Slacker

Employees Brian Moore and Jonathan Wyatt have waived reinstatement and have received "settlement pay."

WE WILL, within 14 days from the date of the Board's Order, remove from our files all references to the unlawful suspension of Tammy Jackson and the unlawful discharges of all the employees (including Jackson, Moore, and Wyatt, and also Kathy Brown unless we have already done so) named in this notice; and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the action and matters reflected in these documents will not be held against them in any way.

ACCURATE TOOL & MANUFACTURING INC. D/B/A ACCURATE WIRE HARNESS

Theresa L. Donnelly, Esq., for the General Counsel.
Gary L. Greenberg, Esq., of Cincinnati, Ohio, for the Respondent.

DECISION

STATEMENT OF THE CASE

NANCY M. SHERMAN, Administrative Law Judge. These consolidated cases were heard before me in Cincinnati, Ohio, on January 11, February 29, and March 1 and 2, 2000, pursuant to a charge in Case 9–CA–36910 filed by Tammy Jackson, an individual, against Respondent Accurate Tool and Manufacturing Inc. d/b/a Accurate Wire Harness, on July 15, 1999, and amended on August 20, 1999; a charge in Case 9–CA–37007, filed by Jackson on August 19, 1999, and amended on August 26, 1999; a complaint in Case 9–CA–36910, issued on August 30, 1999; and a consolidated complaint in both cases issued on October 29, 1999, and amended on December 10, 1999, and February 29, 2000. The complaint in its final form alleges that Respondent violated Section 8(a)(1) of the National Labor Relations Act (the Act) on July 9, 1999, by telling employees who had left Respondent's plant in order to engage in a protected concerted walkout that if they did not return immediately, "consider it your resignation." The complaint in its final form further alleges that Respondent violated Section 8(a)(1) by terminating 13 named employees (including Jackson and Kathy Brown)[1] about July 9, 1999, and by failing to reinstate them until August 16, 1999, because of their participation in the walkout. In addition, the complaint in its final form alleges that Respondent violated Section 8(a)(1) and (4) of the Act by suspending Jackson and Kathy Brown about August 16, 1999, and discharging them about August 23, 1999, because of their participation in the walkout and/or because they filed and/or participated in the processing of the charges. On the last day of the hearing, March 2, 2000, Kathy Brown and Respondent entered into a settlement agreement with respect to the allegations that she was unlawfully suspended about August 16, 1999, and unlawfully discharged about August 23, 1999. This settlement agreement includes a nonadmission clause and provides, inter alia, for waiver of reinstatement and for a liquidated amount of money to be paid to her in three installments, the last of which was due on May 28, 2000; my approval of the withdrawal of these portions of the charge as to Kathy Brown was contingent upon timely completion of these payments. The settlement does not encompass her claim to backpay for the period from July 9 through August 15, 1999. The settlement agreement was marked as Joint Exhibit 1, and is hereby received into evidence. Together with documents purporting to show that Respondent has complied with the terms of the settlement, Respondent filed a motion, dated June 1, 2000, to ap-

[1] So referred to herein and in the record. Her legal name is Mary Kathryn Brown.

prove the withdrawal described in the settlement. This motion was unopposed, and was granted by me on June 15, 2000.

On the basis of the entire record, including the demeanor of the witnesses, and after due consideration of the briefs filed by counsel for the General Counsel (the General Counsel) and Respondent, I hereby make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is a corporation which manufactures wire harnesses at its Springboro, Ohio facility. During the year preceding the issuance of the original complaint and each of the amended complaints, Respondent sold and shipped goods valued in excess of $50,000 from its Springboro facility directly to points outside Ohio. I find that, as Respondent admits, it is engaged in commerce within the meaning of the Act, and that assertion of jurisdiction over its operations will effectuate the policies of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

All of Respondent's stock is owned by Mr. and Mrs. Nestor Fernandez Sr. Prior to about February 1997, Respondent's president was Nelson Fernandez, who is the brother of Nestor Fernandez Sr. Thereafter, the president was Nestor Fernandez Jr., the son of Mr. and Mrs. Nestor Fernandez Sr. Unless otherwise indicated, all references to "Fernandez" refer to Nestor Fernandez Jr.

Respondent's employees are not union represented. During a period which extended beyond October 1994 Respondent had a human resources department and was advising the employees that there was an open door policy. However, as of July 1999, this department no longer existed, and Production Supervisor Shirley Powers, admittedly a statutory supervisor, told the employees that they had to follow the "chain of command." Until about the end of 1998 Respondent conducted monthly meetings at which management was available on the floor for questions. Then, Respondent announced that such meetings would be held on a quarterly basis. After that management conducted employee meetings irregularly, at unpredictable intervals exceeding 3 months, and failed to reply to employee inquiries about the date of the next meeting. As of July 9, 1999,[2] no such meeting had been held for more than 3 months. Employees were not permitted to come to Respondent's office, and their only access to members of management was on the plant floor.

B. Employees' Dissatisfaction with and Complaints to Management About Certain of Respondent's Personnel Policies

At all relevant times Respondent maintained a 30-page policy manual, copies of which were given to the employees and kept in the office. Included in this manual are three pages of rules under the heading "Attendance-Punctuality" and "Personal Absence Days." The "Attendance-Punctuality" rules assign a particular number of "points" for each "tardy" and each "absence," and call for employee discipline based on the number of "points" accumulated during the current calendar year. No points are assessed for "excused absences." In the form given to the employees the manual states that "excused absences" include "Illness with Doctor's Slip" and "Five (5) Unpaid Personal Absence Days" (PA days). At the beginning of 1999 Respondent effected certain changes in the rules as set forth in the complete printed manual, and the record suggests that during much and perhaps all of 1999, other changes were being considered and, perhaps, put into effect. The changes put into effect in January 1999 included a 3-day increase in PA days (i.e., from 5 to 8), but elimination of the provision that "Illness with Doctor's Slip" was an "excused absence" for which no attendance points would be assessed. In addition, the number of "points" calling for a written warning, a suspension, and possible termination was reduced. These and other changes were orally explained to employees in the fall of 1998. Also, on an undisclosed date or dates (perhaps, during the 1998 explanation), Respondent passed out to employees a 7-page document which contained amended versions of Respondent's manual with respect to PA days, holiday pay, and "Attendance-Punctuality." This document was posted about January 1999. However, it contains no markings, or other indications on its face, as to what changes were thereby being effected in the rules as set forth in the printed manual, and Respondent retrieved from the employees all copies of the amended rules. On several occasions prior to about April 1999 employees complained to then Production Manager Paul Kirves, that they wanted to receive an up-to-date manual. He replied that "it was in revision." So far as the record shows no complete up-to-date printed manual was ever prepared. Also, on undisclosed dates before July 9, 1999, employee Tammy Jackson and other employees complained to Kirves (who by this time may have been transferred to a job in "purchasing"), Powers, and quality control engineer Teresa McFarland, about the change in the point system and in the effect of absences with a doctor's excuse.[3]

Beginning no later than July 1997, employees who worked less than 15 minutes of overtime were never paid at overtime rates for such periods, and usually, were not paid for such periods at all. Shortly after this practice began the employees began to complain about this to Powers, Kirves, McFarland, and Comptroller Richard P. Rosen, to which Rosen replied that the timeclock went "strictly by 15 minute increments."[4] After being discharged in August 1999 Jackson caused the United States Department of Labor to initiate an investigation of this practice.

[2] All dates hereafter are 1999 unless otherwise stated.

[3] McFarland testified on behalf of both the General Counsel and Respondent. The complaint in its final form alleged that "At all material times" McFarland had been a supervisor of Respondent within the meaning of Sec. 2(11) of the Act. Respondent's answer denied that she had been a supervisor "at all material times, otherwise admitted." At the hearing Respondent's counsel moved to strike her testimony for the General Counsel, on the ground that Respondent's counsel had not been notified before she was interviewed by Board personnel. This matter is not addressed in Respondent's posthearing brief. The motion is hereby denied, on the ground that she had left Respondent's employ before being contacted by the General Counsel. *Grand River Village*, 326 NLRB 1215 fn. 2 (1998).

[4] However, employees were docked 15 minutes' pay if they left 10 minutes early.

Respondent's production employees are divided between the "automotive department" and the "steel-case department," which departments, during the period relevant here, consisted of about 18 employees and about 7 employees, respectively. Before early June 1999 all newly hired employees were paid at the same rate regardless of which department they were assigned to, and general annual wage increases were simultaneously given to employees in both departments. At a meeting of all employees about early June 1999, Fernandez announced that every employee in the steel-case department was going to receive a wage increase of $1 an hour (which meant, among other things that the hiring rate in that department would exceed the rates paid to some experienced employees in the automotive department), and that as to the "other lines . . . they would get to [them] and evaluate them." At least as of July 9, 1999, no such evaluation had been made; and shortly after the steel-case employees had received their $1 increase, an automotive employee identified in the record as "Doug" (perhaps Doug Slacker, among the employees alleged as having been unlawfully discharged on July 9) received a 25-cent hourly increase as his annual increase. After the June 1999 steel-case raise was announced, employee Kathy Brown who had been working for Respondent since September 1996 and had received an "Outstanding" performance appraisal in November 1998, complained to Quality Control Engineer McFarland that because of the June 1999 raise, newly hired steel-case employees would be paid more than Kathy Brown was. Employee Stephanie Brown (among the employees alleged as having been unlawfully discharged on July 9), made a similar complaint to Production Supervisor Powers. Also, on several occasions between the announcement of the steel-case raise and July 9, Jackson and other employees complained to Supervisor Powers that the exclusion of the automotive employees from the pay raise was not fair, and that previously, the hiring rate for both groups had been the same. Powers replied, "I know what you guys are saying . . . they are working on it, . . . they said they would be evaluating the lines . . . to make evaluations and give you guys . . . raises according to your production." In addition, Jackson and other employees complained to Kirves and McFarland that the employees were upset about the steel-case wage increase, that they felt it should have been universal, and that they felt that management was "stalling" when it told them they would get a wage increase after the automotive department had been reevaluated.

C. The Walkout on July 9, 1999; Allegedly Unlawful Threats by Management; Alleged Unlawful July 9 Discharges

In early July 1999, all of Respondent's employees engaged in discussions about what to do to get management's attention so that management would talk to the employees about the pay raise, the manual, the change in the absenteeism policy, and other matters. They decided that if management would not agree to meeting and talking with the employees, they would walkout in protest. Employee Jackson telephoned an "investigation officer" employed at the NLRB's Regional Office in Cincinnati, Ohio, and asked whether the employees would be "protected" in such a walkout, if the employees could possibly lose their jobs. The "investigation officer" replied that the employees could not be terminated (see infra, fn. 29).

Inferentially a few days later, employee Phyllis Gallienne (among the employees alleged to have been unlawfully discharged on July 9), told employee Kathy Brown that the employees needed to write a letter to Fernandez to let him know what was going on. Kathy Brown prepared a draft letter to Fernandez and gave the draft to Jackson. Early in the morning of July 9, Jackson hand wrote a revised draft letter so that it read as follows:

> To the Management:
>
> We're requesting an emergency meeting at 3:15 to discuss some troublesome and urgent concerns. Your compliance will be appreciated.
>
> Thank you,
>
> All AWH [Accurate Wire Harness] Employees
>
> RSVP
> By 3:00 or walkout

Between the beginning of the second morning break and of the first afternoon break that day, a number of employees signed a sheet of paper which was a signatory page to this letter. Kathy Brown, who obtained all but about 5 of the approximately 18 signatures, told the employees to sign the letter if they were "behind" giving it to Fernandez; and that because she did not want the first person to sign it to get into trouble, the employees should sign the letter in "random order." After the lunchbreak she told all of them that because she did not want management to think the employees were quitting, they should make sure not to clock out when they went outside. With the possible exceptions of Penny Harvie and Doug Slacker this letter was signed by or on behalf of all of the employees whose discharge is attacked in the complaint.[5] Because employee Mearlean Nichols (also named in the complaint) was absent from the plant that day, employee Jackson, who is Nichols' daughter, signed Nichols' name (her given name only) after receiving authority by telephone to do so. Kathy Brown did not ask three probationary employees (including Jamie Jewell) to sign the letter because their probationary period had not ended.

Although Respondent permitted employees to take either of two afternoon breaks, the steel-case employees usually went on the first break, and the automotive employees on the second break. That afternoon, by word of mouth, Jackson and Kathy Brown induced a number of employees in both departments to take the first break, in order to discuss what action to take in connection with the letter as redrafted by Jackson. During this break, the employees gathered a few feet outside the employee entrance, with Jackson and Kathy Brown standing on the side-

[5] Slacker did not testify. Harvie testified for the General Counsel, but was not asked about this matter. Most of the employees signed either their given names only, or their given names plus the first initial of their last names. Because much of the handwriting is rather poor, and the document in the exhibit folder is a rather poor photocopy, the identity of some of the signatories cannot be determined from the exhibit.

walk and the other employees sitting at picnic tables and on the grass. Jackson read the letter aloud to the employees present—who included all the signatories except Wanda Holmes (a part-time employee who had left for the day) and Nichols, and also included employees who had not signed it. Jackson asked them what they thought of it, and whether there were any questions. Brian Moore or Jonathan Wyatt, both of whom were steel-case employees, asked why the steel-case employees should be interested in participating since they had received the one-dollar increase. Kathy Brown said that there were also other issues, including the manual and the medical leave. She went on to say, "[W]e've been [here] for years and nothing had changed. It had steadily gotten worse. [The steel-case employees] could participate in support of the rest of us." An employee or employees said that the purpose of the proposed walkout was "basically to get management to meet with us so we could . . . discuss the problems with them." Employee Moore said that he and some other employees were probationary employees, and asked how backing up the employees' action would help or hurt. Kathy Brown replied that as long as he was there, he could back up the rest of the employees. He then signed the letter, at Gallienne's solicitation. Jackson said that there was not 100 percent support for the walkout, sounded anxious to make sure that the rest of the employees at the meeting were going to support it, and asked for a show of hands by all those who favored giving the letter to Powers after the break was over. All those present, including the steel-case employees, raised their hands. Employee Wyatt volunteered to give Powers the letter and the paper containing the signatures. When the break ended at 2:10 p.m., Wyatt (followed by "a group of people coming in behind him") gave these documents to Powers. Then, he and the other employees went back to work.

Shortly after lunch Fernandez received what was apparently an anonymous telephone call from one of the employees, stating that some of the employees were going to walkout. Fernandez called Powers, McFarland, Rosen, and (perhaps) Kirves into the office and asked if they knew about the prospective walkout. When they said no, Fernandez told them to keep their eyes and ears open. He further stated that he was going to contact his father and a lawyer to see what to do about the prospective walkout. Inferentially after the others had left Fernandez' office, he telephoned Respondent's corporate attorney, Michael Barron, but was advised that he was out of the office on his honeymoon. When one of Barron's partners, Attorney David Wade Peck, got on the line, according to Fernandez' testimony he "explained the situation that there could be a possible walkout," and asked what he should do. Peck told him to call Peck back when Fernandez had more information. While Fernandez was still on the phone, Powers came into his office and gave him the employees' letter and the signature page. He told her to go on out and "kind of keep an eye on things and see if they were really going to walkout or not." After hanging up the phone, Fernandez summoned Powers, Rosen, and McFarland to Fernandez' office. During this conference Powers remarked that the letter appeared to be in Jackson's handwriting.[6] When Fernandez asked why the employees were upset and why they wanted a meeting, Powers replied that she thought some of the employees were upset because of the pay increase for the steel-case line.

After Powers had given Fernandez the employees' letter, he telephoned Peck, and said, "Hey, this is a walkout. What do I do? . . . What are my options? I got to come up with a decision now." Peck said to let the employees know that they had resigned. Then, Fernandez told Powers to go out and keep an eye on things, and to tell the employees that if they walked out, Respondent was going to accept that as their resignation. Powers left the office and went out to the workfloor.

Management never did reply to the employees' letter. At about 3 p.m., Fernandez walked out of his office, smiled and winked at the employees, and 2 minutes later, went back into his office. At about 3:15 p.m., a half hour before the end of the shift, Jackson and Kathy Brown took their purses, Kathy Brown took her personal calendar, and both of them walked toward the exit.[7] As they went down the aisle, Jackson emitted a whistle, where most of the employees started slowly getting up and heading toward the employee exit door. In accordance with Fernandez' instructions, Powers said that if they walked out, Respondent was going to accept that as their resignation; a majority of the employees were in a position to hear her. On hearing Powers say this, employees Bob Patel, Mena Patel, and Alpesh Patel, all of whom had signed the employees' letter to management, slowed down. While the Patels were still inside the building, Fernandez said to Mena Patel, within earshot of at least one of the other exiting employees (Kathy Brown) and inferentially within earshot of at least the other two Patels, "Do you know what this means? You have no job." After Fernandez had made these remarks, the Patels stayed inside, and did not participate in the walkout.

After addressing Mena Patel, Fernandez went outside and told all the employees who were walking out that if they did not return within 2 minutes, he was going to accept it as the employees' resignation. Employees Jackson and Gallienne told Fernandez, "You can't do that," and the employees continued to walkout. Employee Kathy Brown said that all the employees wanted him to do was to talk to them. Pointing his finger at her, Fernandez replied that the employees had "gone about it the wrong way." Then, he went inside the factory and walked back out carrying a sign saying, "Now hiring, full and part time, inquire within." He walked past the front entrance, put up the sign at the sidewalk near the front entrance and in front of the office area, walked past the front entrance to the employee entrance, reentered the factory, and shut the door behind him.

[6] This finding is based on McFarland's testimony, which is not directly contradicted. In view of such testimony, and for demeanor reasons, I do not credit Fernandez' testimony that he never found out who drafted the note.

[7] At that time, Brown was having a dispute with management about whether attendance "points" should be charged for absences due to complications from pregnancy. The calendar contained a record of the days she missed for this reason. She left in the plant a picture of her dog.

Kathy Brown credibly testified that at that time, she thought she had no job.[8]

Respondent's manual requires an employee who resigns to complete and sign a resignation form; so far as the record shows, neither Nichols nor the employees who walked out on July 9 ever completed a form or were asked to do so. The manual further states, "Any employee terminated will be advised of such by the immediate supervisor and/or the Department Head in conjunction with Human Resources." Laying to one side Fernandez' and Powers' July 9 statements to the employees just before and shortly after the walkout, no such advice was ever given, so far as the record shows.

The employees who walked out and stayed out that day were Kathy Brown, Stephanie Brown (no kin to Kathy Brown, so far as the record shows), Letcher Carl, Toni Ehrnschwender, Phyllis Gallienne, Penny Harvie, Tammy Jackson, Brian Moore, Paul Morris, Patty Ross, Doug Slacker, and Jonathan Wyatt. Laying to one side the remarks made by Jackson, Gallienne, and Kathy Brown, none of the employees who were walking out said anything to the effect that they were not quitting but were on strike, or that they meant to keep their jobs. The complaint alleges that Respondent unlawfully terminated these 12 employees plus Mearlean Nichols. In order to show that they had not in fact resigned, the employees who walked out that day did not clock out.

D. Events After the Walkout Began

After Fernandez had put up the "Now hiring" sign outside the factory, the participants in the walkout stood outside for a while ("kind of in shock," according to Jackson's and Kathy Brown's honest testimony). Eventually Jackson suggested that the employees go to a nearby restaurant and discuss what they were going to do. After they had gathered at the restaurant, some of the employees said that they "couldn't believe that [Fernandez] had fired" them. The employees also discussed contacting the NLRB. At another employee's suggestion Jackson telephoned counsel. Then, the employees decided to setup a picket line on the following Monday, July 12 (the walkout began about 30 minutes before quitting time on a Friday).

Over the weekend some of the employees prepared picket signs and all of them agreed to meet in front of Respondent's facility on Monday morning. That morning Jackson alerted some local newspapers to the planned picketing. Inferentially because of Jackson's calls, "the media" telephoned Fernandez that morning asking for his "take" on the matter. Fernandez replied that he would have to get back to his attorneys to get the "proper information." In response to Fernandez' inquiry that morning about what to say to "the media," at 9:13 that same morning Corporate Attorney Barron faxed to Respondent's comptroller, Rosen, a letter which read in part:

> In response to your question regarding contact by the news media, I suggest that if you are again contacted regarding the current dispute, you make the following statement.
>
> Accurate Wire Harness is disappointed that several of its former employees chose to resign from this company; however, Accurate is taking all necessary steps to ensure continued operation and to meet our customers' needs. We feel that it would be inappropriate to specifically comment on any other matters relating to the choice made by these employees and have no further comment.

Portions of the statement thus, suggested by counsel were quoted in the July 13 editions of two local newspapers.

At about 9:30 a.m. on Monday, July 12, some of the employees who had walked out on Friday, July 9, and also employee Nichols drove to Respondent's facility, parked across the street, and began to picket on the street in front of Respondent's facility with signs saying, "Boycotting AWH," "Unfair Labor Practices," "Unfair Pay Practices," and "Refusal to Discuss Company Issues." The participants in the picketing that morning included Kathy Brown, Stephanie Brown, Ehrnschwender, Harvie, Jackson, Moore, Nichols, and Wyatt. Five minutes after the picketing began, Fernandez came out of the office and told the pickets that they were not allowed to do that. Jackson said that she knew they were within their rights, because on the night before, in order to make sure that the pickets would not be "carted away," she had spoken to a local police officer, who had said that the pickets "were protected as far as that went." Fernandez then threw his hands up in the air, shook his head, and went back inside the office. About 15 minutes later, two police officers came to the facility and went inside to speak with Fernandez. On coming back outside the officers told the picketers that the officers had told Fernandez the pickets were within their right to be there as long as they were peaceful, did not litter, and did not prevent anyone from entering or leaving the facility.[9] While the employees were picketing, Respondent placed a videotape camera in its office window and videotaped them except during a period when the pickets drew the attention of a newspaper reporter who was observing the scene. Later that day reporters from two local newspapers came to the picket line. At other picketers' request, Jackson spoke to the reporters; Kathy Brown, Nichols, and Wyatt also talked with them. The picketing continued that day until about 4 p.m., and until the picketers were sure that they had been seen by Respondent's active employees as they left for the day.

Using the same picket signs the pickets resumed their picketing on the following day, July 13. While pacing in the lobby and looking at the pickets Fernandez remarked, in the presence of his wife and McFarland, "I can't believe they're doing this. This all started cause Kathy Brown was upset cause she got written up and Tammy [Jackson] and [Mearlean Nichols] had the legal advice to keep it going."[10]

---

[8] My findings in this paragraph are based on a composite of credible parts of the testimony of Kathy Brown, Stephanie Brown, Jackson, and Fernandez.

[9] My findings in this sentence are based on Jackson's uncontradicted testimony, received without objection or limitation. Fernandez was not asked about his conversation with the police officers.

[10] My findings as to this remark by Fernandez are based on McFarland's uncontradicted testimony. In view of this remark by Fernandez, I do not credit his or Powers' testimony that management did not know the identity of the "ringleaders" of the walkout. (See also infra sec. II,H,7.)

That morning, Fernandez drew Powers' and McFarland's attention to a newspaper article which named Jackson and Nichols as among seven pickets. The article attributed to the pickets the assertion that they were engaging in a "boycott" in protest of what they believed to be unfair labor scale, unpaid overtime, and the inability to get paid sick days; attributed to Jackson the statement that Respondent's steel-case department employees had received a $1 raise while workers in other departments did not; and also attributed to her the assertion that "an employee timeclock registers 15-minute increments, leaving workers unpaid if they work less than 15 minutes overtime." Fernandez said that "he couldn't believe that they were going through all of this," and that the statement about not paying overtime was untrue. (However, neither he nor anyone else so testified, and Jackson's record testimony about unpaid overtime is undenied.) Later that day Fernandez drew Powers' and McFarland's attention to another newspaper article which attributed to Jackson, the statement that the participants in the walkout had not been fired and had not resigned. The article also attributed to Jackson the statement that the "boycotting workers" were talking to the NLRB "to review their options," and were "considering organizing a union."[11] Fernandez said that he did not want the shop to become union, and that before he would let a union take over, he would close down the place.[12] Later that day or on the following day, Fernandez expressed distress to McFarland about the participation of employee Carl, who is McFarland's nephew, in the walkout.

The employees permanently abandoned their picketing early in the afternoon of July 13. On Wednesday, July 14, the day before payday (see p. 6 of R. Exh. 6), Jackson telephoned Rosen about picking up the employees' paychecks. Fernandez told her that he was joining the conversation and had put her on speaker phone. She was told that it would be "fine" for the employees to pick up their checks, that this would save Respondent postage, but that the employees should pick them up within a certain time frame "that morning" (inferentially, the morning of payday). Jackson asked about the locker keys. Rosen asked her to tell the other employees to return their locker keys when they came to pick up their checks. Later that same day, July 14, Jackson signed the original charge which alleged that on or about July 9 Respondent, in violation of Section 8(a)(1) of the Act, "severed the [employment] of 14 of its employees because they exercised their right under the National Labor Relations Act to engage in a strike." This charge was filed on July 15 and a copy was served on Respondent by regular mail on July 16.

Fernandez testified that during the first week following the July 9 walkout, production work was being performed by him and his wife, as well as Production Supervisor Powers. On July 16 when Kathy Brown went into Respondent's front office to pick up her check, she asked Rosen whether she could have a job application. He gave her one but told her not to bring it back, but just to mail it to him. Her most recent performance appraisal in November 1998 had rated her as "outstanding." So far as the record shows, she never did fill out and mail the application form which Rosen had given her. On July 31 she rejected a July 30 settlement offer from Respondent which included a provision waiving reinstatement. Her rejection letter stated, inter alia, "The only thing I will agree to at this point is my job back with three [weeks'] backpay with the dollar an hour raise, that you have made universal since I was last there."[13]

About July 12, 1999, Jackson telephoned Bonnie Etherington who had worked with Jackson for Respondent until August 1998, and asked if Etherington had heard anything about the walkout at Respondent's facility. Etherington, who is the sister of Production Supervisor Powers, denied knowing anything about it. During a discussion of the walkout, Etherington asked Jackson whether everyone had walked out. Seeming to be upset, Jackson said that although it was supposed to have been a 100 percent walkout, some of the people stayed behind. On a date not shown by the record, Etherington told Powers about this conversation. After Etherington had returned to Respondent's employ on February 7, 2000, the subject of Jackson's telephoned remarks came up during a conversation (inferentially, between Etherington and Powers) which was joined by Fernandez. On February 11, 2000, Etherington gave Respondent's counsel a written statement about her July 1999 conversation with Jackson.[14]

E. Settlement Efforts Between July 20 and August 13

Several days after the walkout began, inferentially on or before July 20, Fernandez said to McFarland and Powers that he had received some misleading information from the lawyer that Fernandez had found out that the employees were not considered resigned but were considered on strike, that he might have to hire them back, and that if he had anything to do with it, they would not be back.

On an undisclosed date between July 12 and July 20, Respondent retained as counsel Gary L. Greenberg, who represented Respondent at the hearing in the instant case. By letter to the NLRB Regional Office dated July 20 Greenberg proposed (with Fernandez' authorization) a settlement of the charge which proposed settlement called for, inter alia, 1 week's pay for "each of the 13 employees [sic] who walked off the job on July 9, 1999," and waiver of reinstatement by each. The Regional Office and/or the employees did not agree to this proposal which expired by its terms on July 28. Fernandez testified that he authorized this proposed settlement because

[11] On timely objection, the newspaper articles were not received into evidence to show the truth of the contents. There is no probative evidence that Jackson made any of the remarks which the newspaper articles attributed to her, or that the employees were in fact considering a union.

[12] The complaint alleges that Powers and McFarland were statutory supervisors and does not allege that this statement by Fernandez violated the Act.

[13] According to Respondent's evidence, not until August 1999 did Respondent learn of the alleged incident which (according to Respondent) caused it to suspend and discharge Brown in mid-August. (See the statement of the case, supra.)

[14] My findings in this paragraph are based on Etherington's uncontradicted testimony. Although at a certain point her testimony arguably gives February 7, 1999, as the date of her return to Respondent's employ, her testimony as a whole shows that the date was in fact February 7, 2000.

> I didn't want any of the employees to come back . . . I felt let down. It's a small shop, I mean, there's only 30 people there. If there was a major problem . . . they could have sat down with me, explained it. The method . . . was wrong. I mean, you give people a chance . . . to think about something . . . you just don't plop it on them at the last minute and decide an answer.

Fernandez further testified that as of the time this settlement was proposed, his desire not to return these employees to work was not different for any particular employee, but was the same for "all 13."

On an undisclosed date between July 14 and 20, Jackson faxed to Gary Lindsay, who worked in the Board's Cincinnati office, a letter which was addressed to Respondent and accurately stated that it had been authorized by all of the 13 employees (including Nichols) who are named in the complaint as having been unlawfully discharged. The letter stated that "If a few requests have been met by July 26, 1999 we would be willing to return to work. . . . We know and understand that all the requests are difficult to meet on [sic] such a short amount of time, but if items 1 [through] 5 are met we are willing to work on the remaining items." Items 1 through 5 specified a $1-wage increase effective July 9, for the employees who had not received such an increase; back wages for "time that employment was severed on July 9;" that "Anyone whom [sic] upon termination on July 9, 1999 that had vacation days, any and all bonuses, and seniority from the original start date to be reinstated;" that the employees who returned "have the same position as before termination on July 9, 1999. And that any and all pay increases and future evaluations not be based on this difficult time;" and a system where "a board of employees and management can review any and all complaints, together to insure a productive and successful company." Also requested were employee handbooks with "all the rules for all employees;" absences due to doctor's appointments to be excused without "points" or loss of a vacation day; job posting; a "safe and healthy work environment. . . . The heat gets so unbearable"; and wage raises sufficient for "a decent living to support our families." With the employees' consent, Lindsay faxed this letter to Greenberg's law firm on or before July 20. The record fails to show Respondent's reply, if any.

Between the beginning of the walkout and at least until August 1999, in McFarland's presence Fernandez occasionally remarked that the employees had left Respondent in a "terrible mess," and that he did not understand why they had engaged in such conduct because he had thought more of at least some of them and had never thought they would be a part of it.

F. Respondent's at Least Purported Investigation of Jackson's Conduct in Connection with the Walkout

Probationary employee Jewell did not sign the employees' July 9 letter to management, and was not asked to sign it by Kathy Brown (who obtained most of the signatures) nor by anyone else, so far as the record shows. Jewell was not present at the employee meeting, during the first afternoon break on July 9, when the employees finalized their arrangements for the walkout. Although among several employees whom Jackson solicited to join the walkout, Jewell did not participate. Rather, on July 9, she assisted other nonparticipants in cleaning up for the day. That afternoon, Fernandez approached her and thanked her for staying and not walking out. He went on to say that it was better to be a leader and not a follower, and that she would benefit in the long run. At the end of the day, McFarland, Powers, Mena Patel, Paul Carter, Jewell, and several other employees who did not participate in the walkout gathered in the breakroom. Powers asked Jewell (who was visibly upset, shaken, and nervous) if she knew what was going on, if she knew who had written the letter which notified Respondent of the impending walkout. Jewell said that she thought Jackson had written the letter, and that Kathy Brown had walked around asking people if they would be part of the walkout. Jewell said that she was nervous because some employees wanted to walkout and she did not, that the whole matter had got her torn up, that she did not want to get her "ass kicked" but just wanted to go to work to pay her bills, and that she did not "want any trouble out of this." Jewell said that she had gone to lunch at the home of McFarland's mother, and that "they" had told her not to say a word to McFarland's mother, because "they" did not want McFarland to find out that they were walking out. Inferentially after Jewell had made these remarks, the group was joined by Fernandez and Rosen. Fernandez thanked the employees present for their "loyalty" to Respondent, and told them that he would "make it up to them somehow."

Powers testified for Respondent that while "several of us" were sitting in the breakroom on "the evening of the walkout, that's after everybody had left," Jewell came in and said that Jackson had said if Jewell "didn't sign that paper, If they didn't have 100 percent, that they was going to kick [Jewell's] ass." According to Powers' testimony, during this conversation Jackson's name was first mentioned by Jewell and not Powers. Powers further testified that that evening, she reported to Fernandez statements which (she alleged) Jewell had made about Jackson. Fernandez testified that "soon after the walkout," he received "some information" from "I think" Powers, about "an allegation concerning Tammy Jackson." Neither Powers nor Fernandez testified as to exactly what Powers allegedly told him on this occasion. Jewell denied saying in the breakroom that Jackson had threatened to kick Jewell's ass. For demeanor reasons and other reasons discussed (infra sec. II,H,7), I credit Jewell. Later that same day, Jewell told employee Marie McGlothin that Jewell had been threatened because she had not joined the walkout, but Jewell did not name who had threatened her.

On Monday, July 12, McFarland told Fernandez that her mother had told her as follows: On July 9, Jewell had lunched at the home of McFarland's mother. Jewell had been very upset, and did not know whether to participate in the walkout. McFarland's mother told Jewell that she was still a probationary employee who possibly could be fired if she participated in the walkout, and advised her to stay there. Jewell told McFarland's mother that Jackson had told Jewell that if Jewell told McFarland's mother what was going on, "we'll kick your butt." On timely objection, McFarland's testimony in this respect was not received to show either the truth of what McFarland's mother told McFarland, or the truth of the statements which McFarland's mother attributed to Jewell.

During the first few days after the walkout began, Respondent experienced extreme difficulties in maintaining production. A major problem involved a wire-cutting machine which had been operated by walkout participant Gallienne. In accordance with normal practice at the end of the workday, she had turned the machine off before walking out. Operation of this machine is essential to much of Respondent's production. Employee Carl, who is McFarland"s nephew, reported to her that he had overheard employee Gallienne saying that when her wire-cutting machine was completely turned off, some of the computer programs were lost.[15] McFarland relayed Carl's report to Fernandez, and she and Attorney Greenberg obtained a statement from Carl, which was not offered into evidence. McFarland and (in effect) Fernandez testified that they suspected the wire-cutting machine had been sabotaged. Eventually, a computer analyst called in by Respondent ascertained that no programs had in fact been deleted. Fernandez testified that nobody was disciplined or terminated as a result of the investigation involving the wire-cutting machine, "there wasn't really what I felt wasn't [sic] enough evidence." He further testified to having concluded that Respondent's production difficulties were mostly due to the disappearance of a loose-leaf notebook, referred to in the plant as "the Bible," which was a compilation of some of the machine manuals and of notes written by Respondent's personnel in connection with correcting various problems which Respondent had from time to time experienced with its equipment. Fernandez suspected Gallienne had taken the "Bible," but Gallienne denied to Respondent's "investigation company" that she had taken it, and Respondent never ascertained what had happened to it.

On an undisclosed date shortly after the walkout began and before participants in the walkout had returned to work on August 16, Fernandez called Jewell into the office and gave her a $1 raise, to $7 an hour. He said that the raise was for "sticking by the Company and for staying there, for doing a good job." After the Regional Office had rejected Respondent's July 20 settlement offer and before August 9, Powers approached Jewell and said, "[D]idn't you say that Tammy Jackson threatened to kick your ass?" Jewell initially replied no, but said yes after Powers pressed the matter.

Respondent's manual provides that after an employee has been working for Respondent for a 90-day "Introductory Period," he will be evaluated, and his evaluation will be discussed with the employee by his immediate supervisor, "to determine continued employment. If a new employee is found to be unsatisfactory for the job he/she was hired to perform, before or at the end of the ninety . . . day Introductory Period, the employee may be terminated." On August 9, Powers told Jewell that Powers and Fernandez wanted to see Jewell in his office. Jewell's "Introductory Period" was drawing to a close. However, when she indicated to Powers a belief that the interview was for an evaluation, Powers said, " . . . it's nothing to be worried about, nothing like that."[16] When Jewell and Powers entered the office Fernandez and Greenberg were sitting there. Fernandez introduced Greenberg as a lawyer. Then, Greenberg asked Jewell about "your conversation with" Jackson. Initially, Jewell did not know what he was talking about, and did not want to get involved. Then, Powers told Jewell, " . . . he's talking about the time after lunch on the day of the walkout," When [Jackson] said you were going to get your ass kicked." Powers further said that Jewell had been so scared that she was going to file a police report. Jewell then said, "[I]f they would harass me, yes, I would file a restraining order for them to stay away from me." When asked by the General Counsel whether "during this meeting with Mr. Greenberg and [Fernandez] and other management persons, did you feel that [Powers] or anybody was directing you or coaching you?," Jewell credibly testified, "They were kind of coaching me yeah. . . I was scared and nervous."

During this conference Greenberg hand-printed the following statement:

> My name is Jamie Jewell. I am employed by Accurate Wire as a production worker. I was at work on July 9, 1999 when co-worker Penny Harvie approached me about the plans for a walkout. I told her I did not think I would join it because I needed the job. A little later Kathy Brown asked me if I decided to join. I said no - and then she said Tammy Jackson wanted to talk to me.
>
> Just before lunch Jackson approached me and asked if I was going to join. I said no because I needed to pay my bills. I told her I would let her know after lunch.
>
> After lunch she asked me again. I said no because I needed the job. She then said: "You're going to get your ass kicked. Everyone's going to be mad. We need 100%." She said this like she meant it. This conversation took place on the sidewalk right outside the employee's door. No one else was standing there. I told co-worker Kelly Crockett about Tammy's threat that day. I also told Shirley [Powers] and Theresa [McFarland] about Tammy's threat after the walkout that same day. I told Shirley I thought about reporting this to the police so they wouldn't harass me anymore.
>
> I have read the above 2-page statement and it is true and correct to the best of my knowledge.

After Greenberg had hand printed this statement Fernandez said that the word "harass don't sound . . . let's put threatened, that would sound better," Jewell said, "[W]ell, all right." She crossed out the hand-printed word "harass," wrote over it the word "threaten," and initialed the change. She read and signed the hand-printed statement, and thereafter signed a typewritten copy which used the word "threaten" and not the word "harass." After she had given and signed this unsworn statement,

[15] This finding is based on McFarland's testimony, which was offered and received without objection or limitation. Carl and Gallienne, both of whom are named in the complaint as having been unlawfully discharged, did not testify.

[16] This finding is based on Jewell's testimony. For demeanor reasons, I do not credit Powers' testimony that she told Jewell, "We need you to make a statement about the threat that you got from Tammy Jackson."

Fernandez told her that by giving it, she had done "the right thing.[17]

As discussed infra part II,H–J, on August 9 Respondent sent Jackson a letter offering her reinstatement effective August 16, but asserting that Respondent had "information that on July 9, 1999, you threatened a co-worker with physical harm. . . . This charge, if sustained, could lead to your discharge."

G. Settlement Agreements Executed by Moore and Wyatt; Offers of Reinstatement

On August 5, 1999, employee Moore signed a settlement agreement with Respondent, calling for "settlement pay" and waiving reinstatement. Under date of August 9, 1999, Fernandez sent to each of the 12 remaining employees who were allegedly unlawfully discharged in July 1999, a memorandum which began as follows:

> This is to clarify your employment status. It is now clear to us that you did not quit, but that instead you went on strike over terms of employment. As a striker, you have remained an employee of the Company, with rights to reinstatement. Since you did not quit, your employment never terminated with the Company. The following describes your rights as a striker:
>
> (a) You may return to your job immediately upon giving up the strike without conditions;
> (b) however, if you continue your strike and the Company permanently replaces you, and after that you give up the strike without conditions, the Company will reinstate you to a job for which you are qualified, but only if there is an opening for such a job. If there are no such openings you will have to wait for one to occur before you are recalled.
>
> Please contact me if you have any questions. If you would like to return to work, please report to the plant on Monday, August 16, 1999 at 7:00 a.m.

Five of these memoranda concluded with the following sentence: "You will be returned to your job with the same benefit package and at the same pay rate."[18] Six of these memorandums concluded with the sentence: "You will be returned to your job with [a specified] increase in pay."[19] These offers of reinstatement were accepted by Stephanie Brown, Ehrnschwender, Harvie, Morris, Nichols, and Ross, all of whom returned to work. These offers of reinstatement were rejected by Carl, Gallienne and Slacker. The General Counsel stated on the record that all of the allegedly unlawfully discharged employees were offered reinstatement except Jackson.[20]

On August 13 employee Wyatt signed a settlement agreement with Respondent which was virtually identical to the agreement signed by employee Moore on August 9.

H. The Allegedly Unlawful Suspension and August Discharge of Employee Tammy Jackson

The last sentence in the August 9 memorandum to Jackson read as follows: "If you would like to return to work, please report to the plant on Monday, August 16, 1999 at 7 a.m. at which time we will discuss the enclosed Incident Report with you." This " Incident Report," from Fernandez and dated August 9, stated:

> RE: Incident Notice
>
> We have information that on July 9, 1999, you threatened a co-worker with physical harm.
>
> We are investigating this incident and will inform you of the result of our investigation. If you wish to give us your side of the story or any other information, please contact me to make an appointment to do so. This charge, if sustained, could lead to your discharge or other discipline.

Jackson received one set of these documents through certified mail and another set through regular mail, about August 10 or 11. On receiving these documents, Jackson telephoned Respondent. She was initially connected with comptroller Rosen, but a minute or so later Fernandez came on the line, identified himself, and told her that he was on speakerphone. Jackson said that the letter offering reinstatement did not clarify what her wages or job duties would be. Rosen said that this had been an oversight, and that a "clarification memo" was on its way to her. As to the "Incident Notice," Jackson asked exactly what she was supposed to have done. Fernandez said that she "had threatened to kick [a female co-worker's] ass if she . . . did not participate." He did not name the allegedly threatened employee, and Jackson did not ask him who it was. Jackson said that she had not threatened anyone, and asked if she could come in and discuss the matter with management. Fernandez said that this was not necessary, told her to wait until she came back to work on August 16, and said that he would discuss the matter with her at that time.

Thereafter, and before August 16 Jackson received in the mail the following memorandum from Fernandez, dated August 12:

> This is to provide further clarification of my memo dated August 9, 1999, concerning your employment status. The Company is offering to return you to work on Monday, August 16, 1999, at 7:00 a.m. without any conditions. In other words, we are not asking you to waive or give up any past or future claim you might have against the Company, whether under the National Labor Relations Act or otherwise.

[17] My findings in this paragraph are based on Jewell's testimony, which is consistent with the face of the document. To the extent that such testimony by Fernandez may constitute a denial, I do not credit his testimony in response to the question, "Did anyone prompt Ms. Jewell as to what to say in any way?" that "Those are her own words." Powers, who testified for Respondent, was not asked about this matter, and Greenberg, who tried the case for Respondent, did not testify.

[18] Namely, those directed to Kathy Brown, Gallienne, Morris, Ross, and Slacker.

[19] Namely, those directed to Stephanie Brown, Carl, Ehrnschwender, Harvie, Nichols, and Wyatt.

[20] When so stating, the General Counsel also excepted Kathy Brown. However, this exception was in effect erased by Brown's subsequent execution of a settlement with respect to her August suspension and discharge (see the statement of the case, supra).

> Upon reporting to work, your assignment will be to discuss with us the incident notice dated August 9, 1999. If, after this discussion, you are suspended, you would receive pay at the rate of $8.35 an hour for your time at work as per Company policy, and the Company will pay its share of the cost of your health insurance for this month (assuming that you pay your share).

When Jackson clocked in shortly before 7 a.m. on August 16, Fernandez was standing in the aisle near where the employees' door was located. She asked whether he wanted her to report to the office immediately or to wait until 7 a.m. He told her to come to the office at 7 a.m. When she entered the office, Fernandez, Kirves, Powers, and Rosen were present. Jackson asked "to have a witness sit in on [my] behalf." Management agreed and employee Harvie (a participant in the walkout) was present during the conference.

Fernandez asked Jackson what she had to say. She said that she had not threatened anyone. Fernandez said that Respondent had a statement from a coworker that on July 9 Jackson had threatened to "kick her ass if she didn't participate in the walkout." Jackson said that this was not true, that it was "total fabrication," and that nothing like this had happened. Jackson asked who had made the accusation. Rosen said that her accuser was Jewell. Jackson said that this accusation was "totally false," that she had never threatened anyone. Jackson went on to say that she hardly knew Jewell, and that Jackson did not know why Jewell would say anything like that. Jackson said that the only July 9 conversation she had had with Jewell had been initiated by Jewell. Jackson went on to say that Jewell had asked Stephanie Brown to ask Jackson to talk to Jewell before lunch, and that Jewell and Jackson had met at the timeclock just before lunch. Jackson further said to management that Jewell had told her Jewell was "really scared" to participate in the walkout because she was still a probationary employee, she was afraid she might be fired, and she had bills to pay. Jackson related that she had told Jewell that Jackson had been advised that "we should be protected as far as walking out as far as our job security." Jackson further averred that she told Jewell that Jackson understood Jewell's concern, that she had to do whatever was best for her, and that it was an individual choice. Jackson told management that this had been Jackson's entire conversation with Jewell. Jackson said that she did not know why Jewell would lie. Fernandez asked Jackson whether she had threatened "anyone else." Jackson said that she had never threatened anyone.

Fernandez then told her that she was suspended effective immediately. Jackson said that she did not agree with this action, that it was not fair to take one employee's word against another's without first investigating and checking it all out. Fernandez said that he was just following company policy. Jackson asked the length of her suspension. He "kind of grinned," shrugged his shoulders, and said, "Zero to two weeks." He told her that he had an escort for her, and had her escorted outside by a security guard.[21]

Later that day, Fernandez told Jewell that he had just suspended Jackson, that Jackson had asked the identity of her accuser and he had "had to" give Jewell's name, and that he would advise her to make a police report, get a restraining order, and maybe even get her phone lines tapped. So far as the record shows, Jewell never followed Fernandez' advice.

On the following day, August 17, Jackson telephoned Respondent about her health insurance benefits. Initially, she was connected with Rosen. She asked him whether it would be all right for her to bring in her insurance contributions. He said yes, but Fernandez joined the conversation by means of speakerphone and said no. She asked if it would be all right if a family member brought in the contributions. She was told no, she would have to mail them in. She asked Fernandez how the investigation was going on, and whether he had talked to Stephanie Brown yet. He asked why he would want to talk to Stephanie Brown. Jackson reminded him that she had told him that it was Stephanie Brown who had advised Jackson that on July 9 Jewell had said she wanted to talk to Jackson before lunch; after Rosen had verified Jackson's account of her interview with management on the previous day, Fernandez said that management had not yet had a chance to talk to Stephanie Brown, "We've been too busy." Then, Fernandez again asked Jackson if she had ever "threatened any other co-workers." She said that she was again telling him that she had not threatened anyone. Neither Fernandez nor any other member of management ever mentioned to Jackson anyone other than Jewell as a person whom Jackson allegedly threatened.

On August 18 Rosen told Stephanie Brown that her name had come up in connection with allegations by Jewell against Jackson regarding a conversation near the timeclock. Inferentially, Rosen asked Brown about the accuracy of Jackson's statement to management that Brown had transmitted a message from Jewell to Jackson that Jewell wanted to speak to Jackson. Brown said that Jackson's statement was correct. Brown went on to say that she had overheard the Jackson-Jewell conversation at the timeclock; that Jewell had asked Jackson what was going on; that Jackson had said the employees were walking out, and Jackson wanted Jewell's support, but if the employees did not have it, that was fine; that Jewell had said she did not know if she could because she had bills to pay; that Jackson had said this was fine, it was Jewell's decision; that nothing else was said inside the plant; and that Jackson and Jewell had separated as soon as they left the plant and no further conversation took place. Brown further told Rosen that after lunch, when Jewell was working on the U-Van line, Jewell told Jackson that Jewell had called a lawyer at lunch, and he had told her not to walkout because she was in her probationary period and she could be fired, to which Jackson replied, "Well, that's fine. You don't have to walkout. It's your decision."[22]

---

[21] My findings as to the conversation on that day are based on a composite of Rosen's contemporaneous notes (offered and received into evidence without objection or limitation) and Jackson's and Fernandez' testimony. Rosen and Kirves did not testify, and Harvie, who testified for the General Counsel, was not asked about this matter.

[22] My findings as to Stephanie Brown's conversation with Rosen on this occasion are based on her testimony and on Rosen's contemporaneous notes, which were signed by both Rosen and Brown and were offered and received into evidence without limitation or objection. Rosen did not testify.

On August 23 Rosen and Powers called Stephanie Brown into the office and asked her to "clarify" the last part of her statement about the conversation at the U-Van line. She gave essentially the same description which she had given on August 18, and further named three other employees (Harvie; Mena Minox; and "Toni," inferentially Toni Ehrnschwender) who were also working on that line at that time. He asked Brown if she had been present at any other meetings between Jewell and Jackson. Brown replied that there were no other meetings that she knew of. Powers prepared some notes of this interview, and they were signed by Brown with Rosen as a witness. Jackson credibly testified that during her August 16 conversation with management, she had forgotten this second July 9 conversation with Jewell. Jackson credibly testified that during this second conversation, Jewell said she was not going to participate in the walkout because "someone" had told her during lunch that she might be fired because she was still probationary, to which Jackson replied, ". . . that's fine. I told you that, you know, it's your decision. Do whatever is best for you." Jackson credibly testified that this conversation was overheard by the four employees who were working on the U-Van Line that day.

I. Jackson's August 23 Discharge

Fernandez testified that he believed Stephanie Brown's account to him (which corroborated Jackson's account) of Jackson's July 9 conversation with Jewell at the timeclock, and that he believed Brown's account of Jackson's July 9 conversation with Jewell at the U-Van line. He further testified that he believed Jewell's account of a conversation with Jackson outside the employee entrance, during which alleged conversation Jewell's statement had averred that nobody else was there; Respondent never specifically asked Jackson about this alleged conversation outside the plant. By letter to Jackson dated August 23, Fernandez stated:

> On August 16, 1999, you were suspended pending the Company's investigation of an allegation that you threatened a coworker with bodily harm. At our meeting on August 16, you denied threatening anyone at the Company. You also said that you did not know why the coworker who made the allegation would have said anything like that.
>
> After thoroughly investigating this matter and evaluating the evidence, we have concluded that on July 9, 1999, you told coworker Jamie Jewell that "you 're going to get your ass kicked" for refusing to join the walkout of employees planned for that afternoon. This threat of bodily harm against a coworker was totally unjustified, and such misconduct will not be tolerated. Therefore, the Company has decided to terminate your employment effective the date of this letter. In addition, you are not to return to Accurate Wire Harness (including its parking lot and grounds) without first securing permission from me.

At the time of her discharge, Jackson had been working for Respondent for almost 5 years. Her personnel file contains no employee warning notices. Her most recent performance appraisal, in late October 1998, had given her an overall rating (on a scale of 1 to 5, with 5 being the highest) of 3.45, between "good" and "very good." She had scored "good" or better in each of 11 factors except for "attendance," where she scored "improvement needed." This last rating sheet contains the following entry by Powers:

> Tammy is a good employee, she needs to work on her attendance. She has a lot of knowledge on all the lines. She has been cross-trained in most areas. She has supervisory experience. Her quality is very good. She cooperates with supervision and finds things to do to help on other lines. She has lots of knowledge on the Kam [?] line. Her production level is average or above.

In connection with this appraisal, Jackson received a merit increase of 35 cents an hour, to $7.85. During a period which included May 1996, she had been a "team leader" or "lead person." Because of cutbacks, she had moved back to the line assembly before Fernandez became Respondent's president. Fernandez testified that Jackson was a "good employee" and a "good worker"; and that at the time of her discharge, he and Powers had been thinking about making Jackson a team leader.

J. Employee Jamie Jewell's Testimony about her Prewalkout Conversations with Jackson

Jewell quit her employment with Respondent a day or two after some of the participants in the walkout (not including Jackson) returned to work on August 16, 1999. Jewell told Powers that Jewell was quitting because "her nerves wouldn't handle it . . . she said she was having to go to the doctor for her stomach, ulcers or something. And she said, 'I wish I had never seen . . . Accurate Wire Harness.'" Pursuant to a subpoena issued at Respondent's request, Jewell testified before me on March 1, 2000. On direct examination, she testified to the following effect: Before lunch on the day of the walkout, she asked Jackson if Jewell was guaranteed to get her job back if she participated in the walkout, that she needed her job to make the money. Later that morning, Jackson asked her whether she was going to participate in the walkout, to which Jewell replied that she had not yet decided and would tell Jackson after lunch. After lunch, Jewell again told Jackson that Jewell was not sure whether she would participate in the walkout, because she needed the money. In reply, Jackson stated that she needed the money too, but was going to participate in the walkout anyway. Jackson said that she needed "at least 100 percent" participation in the walkout in order for the employees to keep and return to their jobs.

After Jewell gave this testimony, Respondent's counsel asked whether she recalled anything else from the conversation, and she said no. At this point, Respondent's counsel drew her attention to the statement which he had handprinted, and she had signed, on August 9, 1999. Thereafter, she testified as follows:

DIRECT EXAMINATION (CONT'D)

By Mr. Greenberg:

> Now, I'm going to read this out loud and you tell me if I'm reading it correctly. After lunch she asked me again. I said no because I needed the job. She then said quote

"You're going to get your ass kicked. Everyone's going to be mad. We need 100 percent," close quote.

Did I read that correctly?

A. Yes, you did.

Q. Does that refresh your recollection about your conversation with Tammy Jackson the day of the walk out?

A. She did not say that.

Q. If you didn't say it, can you explain to me then why you signed a statement that says that she did say it?

A. I was nervous. There was talk going around. I believe that I was afraid of that was going to be, you know, for the procedure that would happen and I believe that maybe, you know, I was afraid that I was going to get my ass kicked if I didn't do it because I was scared of not walking out.

I was scared of not participating in the time clock and I knew that most of them was going to and I would be one of the very few that didn't. Maybe it was in my mind but as I recall she did not say that.

Jewell testified on March 1, 2000, that she could not recall telling anyone from management, after her resignation in mid-August 1999, that what she had told management about Jackson was untrue or mistaken.

Later that day, March 1, 2000, after Respondent's counsel had rested his case in chief, he stated on the record that Respondent had authorized him to offer Jackson unconditional reinstatement to her former position effective Monday, March 6, 2000, or on a date within a reasonable time thereafter, at the same pay she had been receiving on "August 16, 1999, the day of her termination." Respondent's counsel further stated that Respondent was not conceding that the charges had merit, and was not offering her backpay, but that she did not have to withdraw her charges is order to come back to work.

K. Analysis and Conclusions

1. Respondent's motion to dismiss on claim of "prosecutorial misconduct"

At the hearing, Respondent's counsel (Greenberg) moved "that the charges be dismissed" for "prosecutorial misconduct," without spelling out whether his motion was directed to the entire complaint or only part of it. Greenberg relied partly on the following testimony by Respondent's witness Jewell on direct examination by him:

Q. You're here today because my office served you with a subpoena, is that correct?

A. Correct.

Q. And did you want to appear here today to testify?

A. No, not really.

Q. So, you're here reluctantly?

A. I didn't want to be here.

. . . .

Q. Okay. And do you recall that I visited you at [your then employer] in December to serve you with the subpoena?

A. Yes.

Q. And do you recall me asking if you would be willing to meet with me before the hearing to prepare for your testimony?

A. Yes.

Q. And do you recall what you told me in response to that?

A. I said that I believe that it wasn't my right, I mean it was my right that I did not have to speak with you because I had spoke with Theresa Donnelly [counsel for the General Counsel] and she said that I did not have to speak, you know, until Court date or whatever.

Q. Did Theresa Donnelly tell you that you did not have to speak to him?

A. Or the Company, yes.

. . . .

Q. When Ms. Donnelly told you that you didn't have to speak to me or the Company, was that in response to a question you asked or was it something that she just volunteered to you? Did it just come out of the blue from Ms. Donnelly?

A. I believe it was really on the answering machine of my telephone, I mean, it was like I hadn't spoke to—I mean I had already spoke to her but it was left on the answering machine that I could get in contact with her if I needed to speak with her about it.

Q. Oh and in that same message she told you that you did not have to speak to me or the Company, is that correct, do I understand that correctly?

A. I believe so.

In response to Greenberg's claim that Donnelly's statements to Jewell constituted "witness tampering," Donnelly replied, "I was getting calls from employees and I don't know whether [Jewell] was one of them that talked to me before, but I did tell employees . . . that it was their choice if they wanted to talk to Mr. Greenberg. They had to go to trial with a subpoena but they didn't have to talk to him beforehand but they would have to go to the trial. And I told her and everybody else, if you want to talk to him you can talk to him and if you don't want to, you don't have to." Donnelly went on to state on the record that she was not representing that her statements to Jewell were in response to a question by her, but was representing that Donnelly's statements were in response to various statements to her by employees who may or may not have included Jewell. A subsequent exchange on the record between counsel indicates as follows: About 6 months before the hearing, Greenberg had a conference with Regional personnel who included, and perhaps consisted of, Donnelly and the Regional Director. In settlement discussions during this conference, Regional personnel asked Greenberg whether it "would . . . make a difference if somebody had changed their testimony?" Greenberg said, ". . . sure we would consider that, what have you got? Do you want to lay your cards on the table?" In response, Regional personnel would not provide the relevant affidavits. During this conference, Regional personnel told Greenberg that Jackson and Kathy Brown demanded reinstatement, whereupon Greenberg said that "if it involves reinstatement then there's going to be no settlement."

At this point in the hearing, Greenberg stated that Respondent's position on settlement during this conference with the Regional Director was "based on the facts and the evidence that we had at the time," including Jewell's signed statement to Greenberg and management personnel. Before me, Greenberg thereafter stated that if Respondent had been informed by either Jewell or the General Counsel of Jewell's "recantation," then Respondent's offer of reinstatement would have been made at that time rather than on March 1, 2000, near the end of the hearing.

In response to Greenberg's motion to dismiss, I stated that I would not grant the motion at that point (before Respondent had rested its case in chief), but that I would consider it in writing my decision. Although Greenberg stated that he would brief the issue, it is not addressed in either of the posthearing briefs. My unassisted research has failed to show any "prosecutorial misconduct." Accordingly, the motion to dismiss on that ground is denied. See *NLRB v. Robbins Tire & Rubber Co.,* 437 U.S. 214 (1978); *NLRB v. Hardeman Garment Corp.,* 557 F.2d 559 (6th Cir. 1977); *Workman v. Bell*, 178 F.3d 759, 771–772 (6th Cir. 1998), cert. denied 528 U.S. 913 (1999*); Caterpillar, Inc*., 313 NLRB 626 (1993); *Nueva Engineering*, 269 NLRB 999, 1005 (1984), enfd. 761 F.2d 961, 969 (4th Cir. 1985); *Pan American Electric,* 328 NLRB 54 fn. 3 (1999); Section 102.118 of the Board's Rules and Regulations.

2. Whether the July 9, 1999 walkout was protected by Section 7 of the Act

The uncontradicted evidence establishes that the employees, who were not represented by any union, concertedly walked out at about 3:15 p.m. on July 9, 1999, because of the automotive employees' failure to receive a wage increase or evaluations in contemplation of a wage increase, the employees' failure to receive an up-to-date manual, management's policies with respect to medical leave, and management's failure to comply with the employees' request for a meeting with management "to discuss some troublesome and urgent concerns"—a request which management never even acknowledged. Clearly, in walking out, the employees intended to strike, and not to quit their jobs (see infra sec. II,H,3). I conclude that the walkout constituted concerted activity protected by Section 7 of the Act. See, e.g. *NLRB v. Washington Aluminum Co.*, 370 U.S. 9 (1962); *Vic Tanny International, Inc. v. NLRB,* 622 F.2d 237 (6th Cir. 1980); *Robbins Engineering*, 311 NLRB 1079, 1083–1084 (1993).

I find unmeritorious Respondent's contention in its answer (not tendered in Respondent's posthearing brief) that the strike was unprotected because the employees' letter allegedly gave Respondent "an unreasonably short time [i.e, 2:10 to 3:15 p.m.] to prepare for a meeting." The strike would have been protected even if it had begun before the employees had requested a meeting. *Washington Aluminum,* supra*,* 370 U.S. at 13–15. Furthermore, Jackson credibly testified that the statement in the employees' letter, "RSVP/By 3:00 or walk out," meant that the employees intended to walkout unless management acknowledged the request by 3 p.m., even if all management did was to say that it did not have time to meet with the employees that day "and possibly let [the employees] know [that management] would work with [the employees] and set up a time for a meeting to talk." However, Fernandez never so much as acknowledged the letter, let alone suggested a meeting at a later hour more convenient to management; cf. *Eaton Warehousing Co.*, 297 NLRB 958 fn. 3, 962 (1990), enfd. 919 F.2d 141 (6th Cir. 1990). In any event, the employees (whom Respondent required to follow "the chain of command") had been vainly complaining to their immediate supervisors about the out-of-date manual for more than 3 months, about the automotive employees' wages for approximately a month, and about the medical-leave system for an undisclosed period, before the employees threatened to and eventually did walkout in an effort to obtain an audience.

3. Whether Respondent knew at material times that the employees were not quitting en masse but, rather, were striking

As part of his opening statement at the outset of the hearing, after stating that the employees' July 9 letter to Fernandez ended with the words "RSVP by 3:00 or walk out," Respondent's attorney, Greenberg, stated:

> Now to a lay person, a walkout is a word that could have a couple of different meanings. One is, "We're going to walk off the job but we want to come back at some point." And another possible meaning is, mass resignation. As for example . . . the baseball umpires this past summer, who submitted their mass resignation.
>
> And—so Mr. Fernandez, wanting to make sure that he understood the company's legal rights and legal obligations, called . . . his business attorney on the phone and explained the situation. And his business attorney said, "Well, they're employed at will. And if they leave before the end of the shift, then they're quitting their jobs."
>
> And so Mr. Fernandez went out to the time clock and he [said] to the employees . . ., "If you all leave before the end of the shift, we'll consider this to be a resignation." And they walked out and so he did.

It is clear from the record that subjectively, the participants in the walkout did not intend to quit their jobs but, instead, intended to withhold their services temporarily in order to induce management to meet with them to discuss their concerns about their wages and working conditions. Thus, in order to show management that the employees had not quit, they refrained from punching out before joining the walkout, which began about 30 minutes before the end of the shift; moreover, when walking out, they retained their locker keys notwithstanding the provision in the employee manual requiring "any employee leaving employment" to turn in his keys to his supervisor. Three of the employees who had signed the letter which threatened that the employees would walkout changed their minds when Fernandez told them that such action would mean that they would not have a job. Before the employees decided to walkout, employee Jackson telephoned the NLRB regional office, and asked whether the employees could lose their jobs if they walked out; she received a negative reply to this inquiry, and relayed this information to employee Jewell when she expressed fear of being fired if she participated in the walkout (see infra part II,H,6). During the employees' restaurant meet-

ing immediately after Fernandez' and Powers' "consider it your resignation" remarks, several of the employees expressed incredulity at Respondent's action in firing them. The employees who participated in the walkout carried picket signs complaining about "Refusal to Discuss Company Issues" and "Unfair Pay Practices"—issues which would not likely have concerned them if they regarded themselves as having resigned from Respondent's employ; indeed, because they were factory workers who were paid a modest hourly wage,[23] if they had believed they had resigned they would likely have spent the next 2 business days looking for jobs elsewhere rather than picketing Respondent's plant. Also, on July 15 Jackson filled out an NLRB charge form (which states that "willful false statements on this charge can be punished by fine and imprisonment") alleging that about July 9, Respondent had unlawfully "severed the [employment] of 14 of its employees because they exercised their [statutory] right . . . to engage in a strike."[24]

However, Respondent appears to contend that initially, and perhaps until July 20,[25] Fernandez believed that the action of the 12 employees in walking out constituted a mass resignation. I find that Fernandez was aware from the very outset that the employees walked out because they had decided to withhold their labor on a temporary basis in order to induce management to take the action which the employees had requested in their letter and which Kathy Brown repeated after Fernandez told her and the other participants in the walkout that the walkout was being "accepted" as their "resignation"—namely, a meeting with management to discuss the employees' "concerns." Thus, he successfully induced the Patels to refrain from leaving the building to participate in the walkout by telling them that if they did so they would have "no job," a statement which he could hardly have believed to be a persuasive means of inducing employees to refrain from resigning their jobs. Then, repeating the message he had already told Powers to deliver, he told the employees who had already left the building that if they did not return inside within two minutes, he was going to "accept it" as the employees' "resignation"—an assertion inconsistent with any belief that when they walked out, they had already resigned. Also, Fernandez could not have believed that Nichols had resigned on July 9, because on that day she took a personal absence day and did not come to the plant at all;[26] she participated in the July 12 and July 13 picketing; and the picket signs themselves evinced concerns ("Refusal to Discuss Company Issues," "Unfair Pay Practices") which would not likely be entertained by employees who regarded themselves as having resigned. Finally, Fernandez did not testify to a subjective belief that the employees had intended to resign when they walked out.

4. Whether on July 9 Respondent discharged the employees named in the complaint

In response to the complaint allegation that about July 9, 1999, 13 named individuals (including Nichols) "concertedly ceased work to protest working conditions" and about July 9 Respondent "terminated" them (including Nichols) for this reason, Respondent's answers aver that about July 9 these employees "abandoned their jobs" and that they were not "terminated."[27] I agree with the General Counsel that the 12 employees who walked out on July 9 were in fact discharged.

Whether an employer's statements constitute an unlawful discharge depends on whether they would reasonably lead the employees to believe that they had been discharged. The fact of discharge does not depend on the use of formal words of firing. It is sufficient if the words or actions of the employer would logically lead a prudent person to believe his tenure had been terminated. *Elastic Stop Nut v. NLRB,* 921 F.2d 1275, 1282–1283 (D.C. Cir. 1990), and cases cited; *Romar Refuse Removal*, 314 NLRB 658, 670 (1994); *Atlas Transit Mix Corp.*, 323 NLRB 1144, 1150 (1997). I conclude that management's conduct as the employees were walking out on July 9 would logically lead a prudent employee to believe that he had been terminated. Thus, in the hearing of at least one employee who nonetheless continued to participate in the walkout, Fernandez told three employees who were at the exit door but had not yet left the plant that their participation in the walkout would mean that they had "no job," whereupon they remained inside. Immediately after that, Fernandez told the employees who had already left the plant that if they did not return inside within two minutes, he was going to accept this as the employees' resignation—a statement which the strikers would logically believe to be an assertion that unless they abandoned what they intended as a strike, their tenure of employment would be severed because of a choice made by their employer. Employees Jackson and Gallienne made it clear to Fernandez that they so understood his "accept this as your resignation" statement by telling him that "You can't do that"—a remark which unequivocally placed on Respondent the onus of any separation of employment. Nonetheless, Fernandez did not respond by expressing any belief that any such separation would be brought about by their action and not his. Furthermore, when employee Kathy Brown evinced a continued interest in maintaining the strikers' employee status, by saying that all they wanted management to do was to talk to them, Fernandez rejected this by condemning their efforts to procure such a conference as "going about it the wrong way;" and, by promptly erecting a "Now Hiring" sign in full view of the strikers, again advised them that

[23] Six of the Respondent's reinstatement offers stated that the employee would receive a wage increase to specified amounts varying between $7 and $8.35 an hour. As previously noted, the automotive employees were concerned at their failure to receive the $1 hourly increase received by the steel-case employees.

[24] The complaint attacks the July 9 discharge of 13 employees. Inferentially, the fourteenth employee whom Jackson had in mind was part-time employee Holmes, who had signed the employees' letter to management but, before the walkout, had left work for the day.

[25] As previously noted, on or before that date Fernandez told McFarland and Powers that Fernandez had found out that the employees were not considered resigned but were considered on strike. Jackson's first charge, which was mailed on Friday, July 16, stated that the dischargees had been engaging in a strike.

[26] Although her authorized signature appears on the employees' July 9 letter to management, several of the other signatories actively worked in the plant that day and did not participate in the walkout.

[27] Except that the answer admitted that in August Jackson and Kathy Brown were suspended and eventually terminated, a matter immaterial to the aspect of the case discussed here.

they were no longer in Respondent's employ. Indeed, even before Fernandez himself spoke to the strikers, and while they were still in the plant and heading toward the door, Powers told them that if they walked out, Respondent was going to accept this as their resignation. I conclude that management's statements and conduct unequivocally advised the 12 employees who walked out that they were discharged. See *Elastic Stop Nut,* supra, 921 F.2d at 1282–1283; *Edy's Grand Ice Cream*, 323 NLRB 683, 694 (1997), enfd. 140 F.3d 684 (7th Cir. 1998). Accordingly, I attach no significance to the employees' failure to ask management personnel in terms if they really meant what they had said.[28]

For the foregoing reasons, I conclude that the 12 employees named in the complaint who walked out on July 9 were immediately discharged. However, the record fails to show that a notice of termination was ever effectively communicated to employee Nichols, who was absent from the plant on the day of the walkout. Accordingly, I find that the General Counsel has not shown by a preponderance of the evidence that Respondent discharged her. See *NLRB v. Fluor Daniel, Inc.,* 102 F.3d 818, 839 (6th Cir. 1996). The complaint will be dismissed as to her.

5. Conclusions as to the alleged unlawful July discharges and related allegations

For the foregoing reasons, I find that Respondent violated Section 8(a)(1) of the Act by discharging the following employees, on July 9, 1999, because they were engaging in a strike protected by Section 7 of the Act: Kathy Brown, Stephanie Brown, Letcher Carl, Toni Ehrnschwender, Phyllis Gallienne, Penny Harvie, Tammy Jackson, Brian Moore, Paul Morris, Patty Ross, Doug Slacker, and Jonathan Wyatt.[29] Under all the circumstances, the statements to the employees by President Fernandez and Production Supervisor Powers, that if the employees walked out Respondent was going to accept that as their resignation, constituted a threat to discharge them if they went out on a strike protected by Section 7 of the Act. Accordingly, I find that these statements constituted further violations of Section 8(a)(1). *Vic Tanny,* supra, 622 F.2d at 241; *Virginia Mfg. Co.,* 310 NLRB 1261(1993), enfd. 27 F.3d 265 (4th Cir 1994).[30]

6. Whether Jackson's August suspension and discharge violated Section 8(a)(1) on the basis of the *Burnup & Sims* line of cases

Respondent's August 9 letter to all the participants in the walkout, including Jackson, admitted that it was "clear to us that . . . you went on strike over terms of employment"—in other words, that Respondent admittedly knew, at least by the time that Respondent suspended Jackson on August 16, that in walking out on July 9, she was participating in the concerted activity of striking. Moreover, as shown supra section II,H,2, this strike was an activity protected by Section 7 of the Act. Furthermore, Respondent suspended Jackson on August 16, on the stated suspicion that on July 9 she had threatened employee Jewell with bodily harm if she did not join the walkout, and discharged Jackson on August 23 on the stated ground that in Respondent's opinion, she had in fact engaged in such conduct.

As stated in *Pepsi-Cola Co.,* 330 NLRB 474 (2000), where (as here) action is taken with respect to an employee's tenure of employment, on the employer's claim of misconduct arising out of a protected activity, under *NLRB v. Burnup & Sims,* 379 U.S. 21 (1964), an unfair labor practice finding is called for unless the employer has sustained the burden of showing that it held an honest belief that the employee engaged in serious misconduct; 379 U.S. at 23. Once the employer establishes that it had such an honest belief, the burden shifts to the General Counsel to affirmatively show that the misconduct did not in fact occur. *Rubin Bros. Footwear,* 99 NLRB 610, 611 (1952), enf. denied on other grounds 203 F.2d 486 (5th Cir. 1953). See also *Teledyne Industries v. NLRB,* 911 F.2d 1214, 1222 (6th Cir. 1990).

For the reasons set forth infra section II,H,7, I find that Respondent has failed to sustain its burden of showing that it had an honest belief that Jackson engaged in serious misconduct. In any event, as to whether Jackson in fact threatened Jewell, the evidence preponderantly shows that this did not occur. More specifically, Jackson, Jewell, Stephanie Brown, and Ehrnschwender all credibly testified that when attempting to induce Jewell to join the walkout, Jackson told her that whether to do so was up to Jewell, and that these inducements were unaccompanied by threats of any kind. Indeed, in attempted support of Respondent's contention that Jackson in fact threatened Jewell, Respondent's posthearing brief cites only Powers' testimony that Jewell so alleged to Powers a half hour or more after the walkout, which began after Jackson had allegedly threatened Jewell.[31] However, as previously noted, I credit Jewell's denial

[28] Cf. *Pink Supply Corp.,* 249 NLRB 674 (1980), relied on by Respondent, where, as a whole, the uncertainty in the employer-employee conversation during which the employees were allegedly told they were discharged was equally attributable to the employees (who, although they denied they were quitting, failed to answer the employer's inquiry ". . . what do you call it?") and the employer.

[29] *Washington Aluminum,* supra, 370 U.S. at 12–18; *Vic Tanny,* supra, 622 F.2d at 241; *Robbins Engineering*, supra, 311 NLRB at 1083–1084.

[30] I need not and do not consider whether this statement would have violated the Act if Fernandez had believed that the employees were not striking, but instead that they were engaging in a mass resignation. Cf. *J. I. Case Co. v. NLRB*, 321 U.S. 332, 339 (1944), affirming in this respect 134 F.2d 70, 73 (7th Cir. 1943); *Douglas Foods Corp.,* 330 NLRB 821 (2000); *Frontier Hotel & Casino*, 323 NLRB 815, 816 (1997); *Williamshouse of California, Inc.,* 317 NLRB 699, 713 (1995); *Virginia Mfg.,* supra, 310 NLRB 1261.

[31] Although correctly pointing out that the General Counsel did not object to Powers' hearing testimony in this respect, the brief of Respondent's counsel does not rely upon such failure as permitting consideration of Powers' testimony to show that Jackson in fact made such statements to Powers. Cf. Rule 103 (a)(1) of the Fed. R. Evd.; *U.S. Ecology Corp.,* 331 NLRB 223, 225 (2000); *Today's Man,* 263 NLRB 332 (1982). In view of my action in discrediting Powers' testimony that Jewell made this statement, and crediting Jewell's denial that she thus accused Jackson, I need not and do not evaluate Respondent's contention that Rule 803(2) of the FRE (Excited Utterance) renders Powers' testimony about statements allegedly made by Jewell, at an undisclosed hour after the 3:45 quitting hour, probative evidence of conduct allegedly engaged in by Jackson at an undisclosed hour after

that she told Powers that Jackson had threatened Jewell, and do not accept Powers' testimony otherwise. As previously noted, Powers testified that in telling her about Jackson's alleged threat, Jewell attached it to signing the employees' letter (which, the record suggests, she was never asked to sign). Moreover, Powers and Fernandez both testified that on July 9, she reported to him that Jewell had been threatened by Jackson; and there is no evidence that management ever received any report about this alleged incident from anyone other than Jewell. However, so far as the record shows, during the August 9 interview with Jewell, neither Powers nor Fernandez inquired about the discrepancies between Jewell's alleged report to Powers (which attached Jackson's alleged threat to signing the letter) and Jewell's written statement (which attached Jackson's alleged threat to nonparticipation in the walkout). Rather, during his August 23 interview with Jackson and in his letter discharging her, Fernandez simply attached Jackson's alleged threat to nonparticipation in the walkout. In view of these discrepancies, and for demeanor reasons, I credit Jewell. Because McGlothin's testimony about Jewell's eventual naming of Jackson is consistent with Jewell's having said this after her under-pressure August 9 interview with and written statement to management about Jackson, I do not regard McGlothin's testimony as tending to impeach Jewell's testimonial denial that Jackson made these remarks. I find at this point that Jackson's suspension and discharge violated Section 8(a)(1) of the Act, on the ground that the Respondent's stated reason for her suspension and discharge was misconduct arising out of protected activity, Respondent was aware of all the facts which rendered such activity protected, and the evidence preponderantly shows that she did not in fact engage in such misconduct.

Although as to this aspect of the case it is likely unnecessary to resolve the very limited discrepancies between the testimony of the four employee witnesses, on the basis of a composite of their testimony and for the benefit of reviewing authority I find that as to the July 9 Jewell-Jackson contacts on the day of but before the walkout the following occurred: Jewell asked Stephanie Brown to ask Jackson to talk to Jewell before lunch. At the timeclock just before lunch, Jewell told Jackson that Jewell was "really scared" to participate in the walkout because she was still a probationary employee, she was afraid she might be fired, and she had bills to pay. Jackson replied that she had been advised that the employees should be protected as far as walking out as far as their job security. Jackson said that it would be nice if the employees could all be together, but that she understood Jewell's concern, that Jewell had to do whatever was best for her, and that it was an individual choice. Nothing else was then said inside the plant. Jackson and Jewell separated as soon as they left the plant for lunch, and no further conversation took place between them before lunch. After lunch, when Jewell was working on the U-Van line, Jewell told Jackson that Jewell had called a lawyer at lunch, and he had told her not to walkout because she was in her probationary period and could be fired, to which Jackson replied that this was fine, Jewell did not have to walkout, and it was her decision.[32] No contacts occurred between them outside the plant on August 9.

Jewell's lunch period, which ended at 12:15 or 1 p.m., and before the walkout began at 3:15 p.m.

7. Whether Jackson's August suspension and discharge violated Section 8(a)(1) and (4) because motivated by her participation in the walkout and/or because she filed and/or participated in the processing of the charge

Further, I agree with the General Counsel that in suspending and then discharging Jackson in August 1999, Respondent was motivated by her participation in the walkout and by her filing and participation in the processing of the charges.

Thus, by Fernandez' own admission he did not want any of the participants in the walkout to return to work. As shown supra part II,H,3, he discharged all of the participants (including Jackson), because of their strike activity, as soon as they walked out. He thanked the nonparticipating employees for not walking out, and told them that they would benefit by their "loyalty," He attempted to have the pickets removed by the police. He offered the participants a money payment if they waived reinstatement, admittedly because he did not want them back. After discharging the strikers for striking and before offering them reinstatement, Fernandez repeatedly remarked that the participants in the walkout had left Respondent in a "terrible mess" and that he had previously thought more of at least some of them and had never thought they would be part of such conduct. Furthermore, Fernandez was aware of and resented Jackson's leadership in the walkout. Thus, before the July 9 walkout, Powers told Fernandez that the employees' letter that the employees were planning a walkout appeared to be in Jackson's handwriting, an opinion whose accuracy Jewell confirmed to Powers later that afternoon. On July 13, upon reading a newspaper article which attributed to Jackson the statement that the participants in the walkout were "considering organizing a union," Fernandez said that he did not want the shop to become union, and that before he would let a union take over, he would close down the place. That same day, when observing the pickets (who included Jackson), Fernandez said that he could not believe the employees were doing this, and that Jackson and her employee mother "had the legal advice to keep it going." Further, even before receiving the second charge signed by Jackson (and, perhaps, even before receiving her first charge), Fernandez resentfully drew a contrast between the results of Jackson's consultation with knowledgeable Board personnel and his discovery that he had received misleading information from his own lawyer, that Fernandez might have to "hire [the strikers] back," and that he did not want to do this.

Furthermore, the record shows that Respondent earnestly attempted to obtain some sort of plausible pretext for avoiding the reinstatement of Jackson, a 4-year employee with a good work record. Thus, although Powers testimonially denied that her alleged report to Fernandez about Jackson's alleged threat was motivated by Jackson's participation in the walkout, and

[32] For demeanor reasons, I do not credit Jewell's testimony that when encouraging her to participate in the walkout, Jackson said that she needed "at least 100 percent" of the employees to walkout in order for the employees to be able to keep their jobs. Rather, I credit Jackson's testimony that she never said anything to Jewell about having to have 100 percent.

testified that when making this alleged report Powers did not know that Jackson and Kathy Brown were involved in leading the walkout, Powers told Fernandez before the walkout that the employees' letter appeared to be in Jackson's handwriting, Powers attached the evening of July 9 to her alleged report to Fernandez about Jackson, and the undisputed evidence shows that earlier that day Jewell had told Powers that Jewell thought Jackson had written the employees' letter and that Kathy Brown had urged individual employees to participate in the walkout. Moreover, at the time Powers allegedly made this July 9 report, Fernandez by his own admission did not conclude therefrom that returning Jackson to work would be more objectionable than returning any other striker to work. However, after the rejection of Respondent's July 20 settlement offer which withheld reinstatement from Jackson, Powers approached Jewell and asked her, ".[D]idn't you say that Tammy Jackson threatened to kick your ass?" Jewell had not said this, and truthfully denied that Jackson had made such a statement, but Powers then exerted some pressure on Jewell (a probationary employee who was Powers' immediate subordinate) to obtain the affirmative response which Powers was seeking. Thereafter, Powers told her that Powers and Fernandez wanted to see her in the office, and escorted her there, where she also encountered a man (Greenberg) whom Jewell had never met before and who was accurately introduced to her as a lawyer. When she displayed bewilderment at Greenberg's inquiry about "your conversation with" Jackson, Powers obligingly explained that Greenberg was referring "the time after lunch" on the day of the walkout, when Jackson "said you were going to get your ass kicked"—a statement which Powers had pressed Jewell to attribute to Jackson. Continuing to lead Jewell in her responses to Greenberg's inquiry, Powers went on to claim that Jewell had been so scared she was going to file a police report—an assertion to which Jewell reacted merely by saying that she "*would* file a restraining order *if they would* harass me" (emphasis added). Moreover, after Greenberg had hand-printed the statement which Jewell eventually signed, Fernandez successfully requested a change in the word "harass"—"let's put threatened, that would sound better."

Furthermore, after pressuring Jewell into recanting her initial, oral exoneration of Jackson and, instead, signing an accusatory statement, Respondent sought to minimize Jackson's opportunity to refute Jewell's accusation. Thus, although Respondent obtained Jewell's written statement on August 9, and about August 12, Jackson denied having threatened anyone, Fernandez declined to discuss the matter with her until she was to return to the plant on August 16, pursuant to Respondent's conditional offer of reinstatement. Although Jackson again denied to Fernandez on August 16, that she had threatened Jewell or anyone else, Fernandez suspended Jackson on that date and had her escorted outside by a security guard. Fernandez initially disregarded her August 16 claim that her version of her contacts with Jewell could be partly corroborated by employee Stephanie Brown, and when Jackson reminded him of this on August 17, he replied that he had been too busy to talk to Brown. After management (through Rosen) did get around to interviewing Brown, who corroborated Jackson's statement (contrary to Jewell) that Jewell had initiated a July 9 conversation with Jackson about the walkout and also Jackson's account of that timeclock conversation, Rosen asked Brown about a conversation between Jewell and Jackson at the U-Van Line (a location previously given by Brown), even though Jewell's written statement had attached to a location outside the plant the sole alleged conversation with Jackson to which Jewell's statement attached a threat. On the other hand, management never specifically asked Jackson about a July 9 conversation with Jewell outside the plant when nobody else was there. Moreover, although Jewell's signed statement had said that on the day of the walkout she had told quality control engineer McFarland about this alleged conversation, Fernandez did not testify to asking McFarland about the matter, and there is no evidence that he did so.[33] Rather, he allegedly rejected the statement of a 4-year employee with a good work record, who at one time had been one of Respondent's supervisors and who had been under consideration for a promotion, in favor of a statement by visibly nervous probationary employee Jewell (whose first evaluation was, as Powers admittedly knew, coming up soon), where this allegedly credited statement was contrary to Jewell's initial representation to Powers, was given in the presence of management and its lawyer in response to leading remarks by Powers (Jewell's immediate superior), was physically written by management's lawyer, and was to some extent rephrased by Fernandez himself to make it "sound better."

For the foregoing reasons, I conclude that the evidence preponderantly shows that in suspending and then discharging Jackson, Respondent was motivated solely by her participation in a strike protected by Section 7 of the Act, by her efforts to encourage others to participate, and by her action in consulting, and filing the instant charges with, the Board's Regional Office. No different conclusion is warranted by Respondent's failure to discharge striker Gallienne on the suspicion (which she denied) that she had taken the equipment "Bible;" see *NLRB v. Centra, Inc.,* 954 F.2d 366, 374 (6th Cir. 1992); *NLRB v. Challenge-Cook Bros. of Ohio*, 374 F.2d 147, 152 (6th Cir. 1967); *Le Madri Restaurant,* 331 NLRB 269, 277 (2000). I note that Gallienne took much less action in connection with the walkout then did Jackson. Because of my finding that Respondent was in no respect motivated by a good-faith belief that Jackson had threatened Jewell, there is no need for further analysis. *General Fabrication Corp.,* 328 NLRB 1114, (1999); *Limestone Apparel*, 255 NLRB 722 (1981), enfd. 705 F.2d 799 (6th Cir. 1982). Accordingly, I conclude that Jackson's August suspension and discharge violated Section 8(a)(1) and (4) of the Act.

[33] As a witness for Respondent, McFarland testified that "Jamie [Jewell] did not directly come to me and tell me that [Jackson] threatened to kick her butt if she was not a part of the walkout." McFarland testified that she could not recall whether Jewell had made such a remark to the company personnel in the plant after they had cleaned up on July 9. It is unclear whether management asked employee Crockett about the assertion in Jewell's written statement that she had told Crockett, as well as McFarland, about Jackson's alleged threat. Crockett did not testify.

CONCLUSIONS OF LAW

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

2. Respondent has violated Section 8(a)(1) of the Act by threatening employees with discharge if they went out on a strike protected by Section 7 of the Act.

3. Respondent has violated Section 8(a)(1) of the Act by discharging the following employees on July 9, 1999: Mary Kathryn Brown, Stephanie Brown, Letcher Carl, Toni Ehrnschwender, Phyllis Gallienne, Penny Harvie, Tammy Jackson, Brian Moore, Paul Morris, Patty Ross, Doug Slacker, and Jonathan Wyatt.

4. Respondent has violated Section 8(a)(1) and (4) of the Act by suspending employee Tammy Jackson on August 16, 1999, and discharging her on August 23, 1999.

5. The unfair labor practices set forth in Conclusions of Law 2, 3, and 4 affect commerce within the meaning of Section 2(6) and (7) of the Act.

6. Respondent has not violated the Act by discharging employee Mearlean Nichols.

REMEDY

Having found that Respondent has violated the Act in certain respects, I shall recommend that Respondent be ordered to cease and desist from such conduct, and like or related conduct, and to take certain affirmative action necessary to effectuate the policies of the Act.

Employees Moore and Wyatt have waived reinstatement and received "settlement pay"; accordingly, no reinstatement or backpay order will issue as to them. Employees Mary Kathryn Brown, Stephanie Brown, Carl, Ehrnschwender, Gallienne, Harvie, Morris, Ross, and Slacker have received reinstatement offers effective August 16, 1999; accordingly, no reinstatement order will issue as to them. Respondent will be required (unless it has already done so) to offer employee Tammy Jackson reinstatement to her former position or, if such a position no longer exists, to a substantially equivalent position. Also, Respondent will be required to make the following employees whole for any loss of earnings and other benefits they may have suffered by reason of their discharge on July 9, 1999: Mary Kathryn Brown, Stephanie Brown, Carl, Ehrnschwender, Gallienne, Harvie, Morris, Ross, and Slacker. *Abilities & Goodwill, Inc.,* 241 NLRB 27 (1979), enf. denied on other grounds 612 F.2d 6 (1st Cir. 1979). In addition, Respondent will be required to make employee Jackson whole for any loss of earnings and other benefits she may have suffered by reason of her discharge on July 9, 1999 (see *Abilities & Goodwill,* supra), her suspension on August 16, 1999, and her discharge on August 23, 1999, as prescribed in *F. W. Woolworth Co.,* 90 NLRB 289 (1950). All sums due hereunder will include interest as computed in *New Horizons for the Retarded,* 263 NLRB 1173 (1987). In addition, Respondent will be required to expunge from its records all references to the unlawful termination of the employees named in this paragraph (including Mary Kathryn Brown, unless Respondent has already done so), and to the unlawful suspension of Tammy Jackson, and to notify them in writing that this has been done and that the actions and matters reflected in these documents will not be used against them in any way. Also, Respondent will be required to post appropriate notices.

On the basis of these findings of fact and conclusions of law, and the entire record, I issue the following recommended[34]

ORDER

Respondent Accurate Tool & Manufacturing Inc, d/b/a Accurate Wire Harness, Avondale, Louisiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with discharge if they go out on a strike protected by Section 7 of the Act.

(b) Suspending or discharging employees because they have gone out on a strike protected by Section 7 of the Act, or because they have instigated or in a lawful manner attempted to induce other employees to engage in such a strike.

(c) Suspending, discharging, or otherwise discriminating against employees because they have filed charges or given testimony under the Act.

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

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

(a) If Respondent has not already done so, offer Tammy Jackson, within 14 days from the date of this Order, full reinstatement to her former position or, if such a position no longer exists, a substantially equivalent position, without prejudice to her seniority or other rights and privileges previously enjoyed.

(b) Make Tammy Jackson whole for any loss of earnings and other benefits suffered as a result of her July 1999 discharge, her August 1999 suspension, and her August 1999 discharge, in the manner set forth in the remedy section of this decision.

(c) In the manner set forth in the remedy section of this Decision, make the following employees whole for any loss of earnings and other benefits suffered as a result of their July 1999 discharge: Mary Kathryn Brown, Stephanie Brown, Letcher Carl, Toni Ehrnschwender, Phyllis Gallienne, Penny Harvie, Paul Morris, Patty Ross, and Doug Slacker.

(d) Within 14 days from the date of this Order, remove from its files all references to the unlawful terminations of the following employees, and the unlawful suspension of Tammy Jackson, and within 3 days thereafter, notify such employees in writing that this has been done and that the actions and matters reflected in the documents will not be held against them in any way: Stephanie Brown, Letcher Carl, Toni Ehrnschwender, Phyllis Gallienne, Penny Harvie, Tammy Jackson, Brian Moore, Paul Morris, Patty Ross, Doug Slacker, Jonathan Wyatt, and (unless Respondent has already done so) Mary Kathryn Brown.

(e) 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

[34] 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 Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary or useful in analyzing the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by Region 9, post at its facility in Springboro, Ohio, copies of the attached notice marked "Appendix."[35] Copies of the notice, on forms provided by the Regional Director for Region 9, 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to current employees and former employees employed by the Respondent at its Springboro facility at any time since July 9, 1999.

(g) 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,

The complaint is dismissed as to the discharge of Mearlean Nichols.

[35] 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."