Caterpillar Tractor Company *and* Everett M. Cleveland, Jonathan H. Siegel, Kathleen Virginia McPherson, and Millicent Bell. Cases 32-CA-719, 32-CA-973, 32-CA-968, and 32-CA-976

May 24, 1979

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND PENELLO

On January 29, 1979, Administrative Law Judge Joan Wieder issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief, the General Counsel filed cross-exceptions and a supporting brief, and the Respondent filed an answering brief in opposition to the General Counsel's cross-exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt her recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Caterpillar Tractor Company, San Leandro, California, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

IT IS FURTHER ORDERED that the remainder of the complaint be, and it hereby is, dismissed.

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

In adopting the Administrative Law Judge's finding that the Respondent violated Sec. 8(a)(3) and (1) by enforcing its plant rules in a more rigorous manner against employee Cleveland because of Cleveland's status as a union steward, Member Penello would not rely on *Gould Corporation*, 237 NLRB 881 (1978), in which he dissented, and *Precision Castings Company*, 233 NLRB 183 (1977), inasmuch as those cases dealt with an employer's attempt to single out for discipline a union steward for failing to abide by his contractual duty to enforce the no-strike provisions of a collective-bargaining agreement.

APPENDIX

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

After a hearing in which all parties had the opportunity to present their evidence, it has been decided that we violated the law, and we have been ordered to post this notice. We intend to carry out the order of the Board and abide by the following:

The Act gives all employees these rights:

To engage in self-organization
To form, join, or help unions
To bargain collectively through representatives of their own choosing
To act together for collective bargaining or other mutual aid or protection
To refrain from any or all these rights.

WE WILL NOT interfere with, restrain, or coerce our employees by disciplining or in any other manner discriminating against them for engaging in protected concerted activities.

WE WILL NOT deviate from our disciplinary system and reprimand or otherwise discipline our employees because of their interest in or activity on behalf of United Automobile, Aerospace, and Argicultural Implement Workers of America, Local No. 76, or any other labor organization.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them by Section 7 of the National Labor Relations Act, as amended.

WE WILL make whole Everett M. Cleveland for any loss of earnings he may have suffered because of his unlawful suspension, with interest thereon.

WE WILL expunge from our records all unlawful warning notices issued to employees Everett M. Cleveland, Kathleen McPherson, and Millicent Bell.

CATERPILLAR TRACTOR COMPANY

DECISION

STATEMENT OF THE CASE

JOAN WIEDER, Administrative Law Judge: This case was heard at Oakland, California, on August 16 through 18, 1978.[1] The charge in Case 32-CA-719 was filed on February 13 by Everett M. Cleveland. The charge in Case 32-CA-973 was filed on July 11, 1978, by Jonathan H. Siegel,

[1] Unless otherwise indicated, all dates herein refer to the year 1978.

attorney for Everett M. Cleveland. The charge in Case 32-CA-968 was filed on May 23 by Kathleen McPherson, and the charge in Case 32-CA-976 was filed on May 26 by Millicent Bell. An order consolidating the four cases and an amended consolidated complaint and notice of hearing was issued on July 26.

The amended complaint alleged that Respondent engaged in unfair labor practices in violation of Section 8(a)(1) and 8(a)(3) of the National Labor Relations Act, as amended (hereinafter called the Act), 29 U.S.C., §151 *et seq.*

Issues

The primary issues are:

1. Whether Respondent violated Section 8(a)(1) of the Act by threatening, warning, and disciplining Millicent Bell in retaliation for her engaging in protected concerted activity.
2. Whether Respondent violated Section 8(a)(1) of the Act by subjecting Kathleen Virginia McPherson to formal discipline in retaliation for her engaging in protected concerted activity.
3. Whether Respondent violated Section 8(a)(1) and (3) of the Act by harassing and intimidating an employee attempting to engage in protected concerted activity; subjecting that individual, Everett Cleveland, to discipline for having engaged in such activity; and subsequently suspending Cleveland because he engaged in protected concerted activities and because he filed charges with the National Labor Relations Board against the Employer.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine the witnesses, to argue orally, and to file briefs. Briefs, which have been carefully considered, were filed on behalf of all parties.

Upon the entire record of the case and from my observation of the witnesses and their demeanor, I make the following:

Findings of Fact

I. THE BUSINESS OF RESPONDENT

Caterpillar Tractor Company, hereinafter called Respondent or Company, has its principal office in Peoria, Illinois, and a place of business in San Leandro, California. It is engaged in the manufacture of tractor parts. The San Leandro facility is the only place of business involved in this proceeding. During the past 12 months, Respondent sold and shipped goods or services valued in excess of $50,000 directly to customers located outside of the State of California. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

United Automobile, Aerospace, and Agricultural Implement Workers of America, Local No. 76, herein called the Union of U.A.W., is a labor organization within the meaning of Section 2(5) of the Act.

Preliminary Matters

During the course of the hearing, the parties entered into a settlement stipulation and agreement on the issues involved in the amended consolidated complaint in Case 32-CA-719 as to the issues related to Respondent's nonsolicitation rule during nonworking time. By Order dated September 5, 1978, I found that the settlement agreement effectuated the policies of the Act and that the issues involved in the amended consolidated complaint in Case 32-CA-719 relating to the nonsolicitation rule should be severed from the consolidated proceeding. As a condition to approving the settlement, it was required that the agreed-upon notice be posted for the requisite term; that the Regional Director inform the Division of Judges of the National Labor Relations Board that the terms and conditions of the notice have been complied with; and that with such notification the severed portion of the complaint would be dismissed.

On November 16, Jonathan H. Siegel, a party herein, filed a letter petition requesting that the hearing in this proceeding be reopened because one of the alleged discriminatees, Kathleen McPherson, was suspended subsequent to the close of the hearings in these proceedings. An Order to Show Cause was issued on November 16, and in reply counsel for the General Counsel indicated for the first time to me that a charge had been filed by Mr. Siegel in Case 32-CA-1374 based on the facts and circumstances alleged in the petition to reopen these proceedings. Inasmuch as General Counsel stated that the Charging Party withdrew the charge in Case 32-CA-1374, the General Counsel has investigated Case 32-CA-1374 and had the discretion to issue a complaint, which has not been issued, and the petitioner failed to show the relevance of post-hearing conduct to the merits of the case here under consideration, it is concluded that good cause for reopening the instant proceedings has not been shown. Accordingly, the petition to reopen is hereby denied.

III. THE ALLEGED UNFAIR LABOR PRACTICES

Background

Respondent's San Leandro plant manufactures tractor parts. The different activities of the plant are divided into units called departments. These proceedings involve three separate departments, numbered 98, 96, and 94cc. Some of the employees of these three departments have been represented by the U.A.W. since 1974.

A. *Matters Relating to Millicent Bell*

The complaint in Case 32-CA-976 alleges that Respondent, through its agent Foreman Melford Crawford (Crawford), interfered with, restrained, and coerced Millicent Bell in the exercise of her rights guaranteed in Section 7 of the Act by issuing to Bell a verbal reprimand. Bell has worked for Respondent for approximately 7 months as a first shift packer in department 98. Department 98 has a total of 76 employees, members of the U.A.W. The foreman in charge

of the first shift is Melford F. Crawford, who assumed the job in January.[2]

The work hours for the first shift are 7:18 a.m. to 3:48 p.m. The lunch hour is 11:48 a.m. to 12:18 p.m.

The incident on May 2 involved inquiring about the job classification of another employee. On that day an operator who was newly assigned to a packaging machine[3] was having difficulty operating that machine. Crawford went over to the machine site to assist, but was unable to solve the problem. The former operator of the machine, Tom Harris,[4] was passing by at the time, so Crawford stopped him to seek his assistance. While the three were standing next to the machine trying to resolve the difficulties, Bell left her work station and asked Tom Harris what his job was, forklift driver or shrink-pack operator. Harris did not reply. Crawford instructed Bell to return to her work station. Bell replied that it was her duty as a member of the U.A.W. to inquire as to what job classification people were working under. The three men then returned to resolving the difficulty with the machine, and Bell continued walking through a portion of the department to acquire stored materials required in her job. She acquired the needed materials and returned to her workbench. She had no further conversations with Harris. Crawford did not enter Bell's comments in her personnel file.

Later the same day, May 2, Bell and Crawford had further discussion involving the work jurisdiction issue. Crawford estimated that the second conversation lasted about 5 minutes. The record is not clear as to how their second discussion arose. Crawford testified that Bell came over to his desk. Bell testified[5] that approximately 1 hour after her comment to Harris, Crawford called her over to his desk, stating that it was not her job to inform fellow employees that they were working out of classification. Crawford further instructed Bell that, as foreman, he directed the workers in his department and if any work jurisdiction issues arose, it was the steward who must raise the question. Bell replied that as a member of the Union, she was obligated to know the terms of the union contract, and she also felt obligated to inform fellow union members when a contract violation occurred. Bell also told Crawford that he, as a member of management, had no right to proscribe the scope of her union obligation.

Bell then inquired when Crawford would allow her to discuss union matters, including work jurisdiction questions, with coworkers. Crawford testified that he replied that Bell could talk about job classifications while working if the discussion did not disrupt productivity.

I do not credit Crawford's testimony. It appears highly unlikely that the remainder of the conversation would have occurred if Bell had been informed that it was permissible to discuss job classifications while working. Crawford admits that, in response to a question by Bell regarding the permissibility of discussing job classifications during breaks, he replied that there was no such thing as a break at the plant and that any trips away from one's work station were permitted only for personal relief or for work-related matters. Bell then asked Crawford if she could go to the bulletin board which contained the rules that Crawford cited about personal relief, and Crawford replied that he would not allow this during worktime. Bell then asked, if she gave up one of her trips to the coffee machine to instruct or inquire about job classifications, would this be permissible; Crawford replied that he would not allow that either. Crawford stated that he would not allow Bell to instruct other employees instead of going for coffee because it would be a disruption in the section.

Crawford indicated again that it was not Bell's job to discuss contract violations. She replied, according to Crawford: "Giving as a ridiculous example, 'You mean I'm up at the bathroom and one of the ladies asks me about the contract, I have to tell them to go talk to a steward, or I can't answer that?' " Crawford admits replying to this inquiry "[t]hat he did not care what an employee did in the restroom, that he did not care if an employee played with himself in the restroom."[6]

Bell stated that she then asked for a steward. Crawford then decided to give her a verbal warning, which is disciplinary action. Crawford does not recall exactly when he made the decision to issue a verbal warning; it was either prior or subsequent to Bell's request for a steward. However, he stated that the decision to issue the warning was not based on Bell's request for a steward. He asserts that the basis for his decision to give a verbal reprimand for wasting time was Bell's leaving her work station to inquire as to Harris' job classification as well as her wasting time when she discussed the matter later with Crawford. Crawford then stated that he made the decision to issue the verbal reprimand when he had no more answers for her during the conversation. He does not recall if he told her his reasons for issuing the verbal reprimand.

Discussion

The record clearly establishes that Crawford has in the past given verbal warnings to other employees for wasting time. For example, Crawford gave Bell a warning on February 15 for excessive talking. He also gave Bell a verbal warning for wasting time on March 6 when she was reading a newspaper at her work station before the shift had ended.

[2] Crawford has been a member of a union. He was hired at Caterpillar over 15 years ago as a machinist and was a steward for approximately 6 months for the International Association of Machinists (I.A.M.). Later he became a forklift driver and joined the Teamsters Warehousemens' Union. The U.A.W. assumed the representational obligations of the Warehousemens' Union. Crawford testified that he left the Union.

[3] Called a shrink-pack machine.

[4] Tom Harris was recently assigned as a forklift driver under Crawford's supervision.

[5] There is very little disparity between the testimony of Bell and Crawford regarding the content of the conversation. Where there is a disparity, I credit the testimony of Bell based on her much clearer recollection of the content of the conversation.

[6] Crawford later apologized for the comment pursuant to a directive from his supervisor, Mike Oakey. Crawford was not disciplined for the comment. Oakey testified that there is a company policy regarding abusive language whether it be profane or just in poor taste. Such language is not to be tolerated by hourly employees, weekly employees, or management employees. When Oakey heard about Crawford's remark to Bell, he warned Crawford about making similar statements in the future, indicating that they would not be acceptable. Oakey stated that he had never heard of a similar incident where management directed language in similar poor taste or so provocatively to an employee under his supervision. It should be noted that Oakey's testimony is extremely relevant to the complaint regarding Everett Cleveland's suspension, discussed hereinafter.

It is also clear that Respondent does not have specifically designated work breaks. The Company does post notices around the facility entitled "Personal Time." As pertinent, the notice states:

> We do not schedule individual rest periods during the workday. Instead, all employees both male and female are permitted to leave their work stations as they require for personal needs, or to use the vending equipment. This applies to all operations at the San Leandro plant. We believe that flexibility in the use of such time best meets the variable needs of individuals; and that this practice conforms with State and Federal statutory requirements.

According to Kathryn Lyn Wade, a labor relations representative with Caterpillar Tractor Company, in charge of administering the U.A.W. contract, there are no written rules relating to personal time other than the notice. They do have certain unwritten practicies regarding personal time, and it is the obligation of the foreman to instruct the employees on these rules. In general, the unwritten rules are: If employees need to use the vending machine, canteen equipment, or restroom, they are allowed to as needed. Once they acquire their beverage or meet other personal needs, the employees are expected to return to their work areas and resume working.

The issue, therefore, is simply whether Bell was disciplined for wasting time or engaging in protected concerted activity.

Crawford testified that if Bell had just made the comment to Harris and returned to her work station, he would not have given her a verbal reprimand. Accordingly, it was the second discussion regarding job classifications which led to the disciplinary action. Based on Crawford's testimony, I find that the second discussion was part of the grievance procedure.[7] As pertinent, Crawford described the grievance procedure as follows:

Step 1 of the grievance procedure provides that any employee shall present the facts to the immediate supervisor when the grievance arises. The supervisor and the employees discuss the grievance and try to resolve the problem prior to calling for a steward. Crawford admitted that if one employee felt that other employees were working under improper job classifications or were assigned work they were not properly to do, it would be a grievable issue. Crawford further recognized that under the contract, the first step that an employee would take is try to speak to the immediate supervisor. Additionally, Crawford further admitted that it was exactly this type of activity Bell was engaged in when they held a discussion as to when job classifications were the subject of permissible conversation between employees. Finally, Crawford stated that he had never before given anyone a reprimand for wasting time when that individual had been talking to him. In the past Crawford had given reprimands only where employees were talking to fellow employees.

Furthermore, the freedom to discuss the provisions of the collective-bargaining agreement is an activity protected by the Act. An employee's expression of view on the provisions of the agreement with a supervisor, rather than a fellow employee, is likewise protected. *Diagnostic Center Hospital Corp. of Texas*, 228 NLRB 1215 (1977). The record clearly shows that Respondent's employees are permitted to engage in other than work-related conversation so long as it is not disruptive of production. Even if employees were not permitted to engage in casual conversation, and Bell's conversation was deemed excessive, Respondent's argument that Bell's exploring the parameters of what Crawford, her foreman, considered allowable union activity, was so disruptive of production as to warrant the imposition of discipline, is without merit.

The processing of a grievance is protected concerted activity. *Clara Barton Terrace Convalescent Center, a Division of National Health Enterprises-Delfern, Inc.*, 225 NLRB 1028 (1976). Disciplinary action precipitated by the taking of worktime to pursue a grievance, particularly where the action taken by Bell, according to the disciplinarian, is consonant with the established grievance procedure, is bound to discourage a recourse to that procedure for fear that the time taken might subject an employee to reprisal. I find, therefore, that the disciplining of Bell for following the established grievance procedure is a violation by Respondent of Section 8(a)(1) of the Act.

B. *Matters Relating to Kathleen McPherson*

The complaint in Case 32-CA-968 alleges that Respondent, through its agents Dennis Hundoble, Joe Rickey, and Katherine Lyn Wade,[8] interfered with, restrained, and coerced Kathleen McPherson in the exercise of her rights guaranteed in Section 7 of the Act by issuing a written reprimand.

McPherson has been employed at Caterpillar for approximately 1-1/2 years. Her job classification is 1K24,[9] which is the lower classification of forklift driver. McPherson started working in department 96 but was transferred to department 94cc on March 6. Prior to her assignment to department 94cc, all the drivers were classified as 1K21's.[10]

1. Department 94cc

This department is approximately 1 mile distant from the main office area and is serviced by a shuttle bus. Building 94cc is the San Leandro plant's new warehouse. The department was established to permit consolidation of all existing storage areas and implement a new materials handling system.

Department 94cc has three major functions: to store and retrieve raw stock, rough castings, and cardboard. The department is a large warehouse. Adjacent to department 94cc is a manufacturing area known as Building BB.

[7] Crawford stated that he was familiar with the U.A.W. provisions regarding grievance procedure.

[8] All are supervisors, as Respondent admitted in its answer to the complaint.

[9] The higher classification of driver is 1K21.

[10] Subsequently, three other 1K24 drivers were assigned to department 94cc.

The foreman of department 94cc is Joseph John Simi.[11] The warehouse was designed by Dennis Hundoble[12] who is often present in the department and acted as foreman in Simi's absence.

Department 94cc employees are represented by the U.A.W. as well as by the I.A.M., and there are some weekly salaried employees who are not affiliated with any union. The U.A.W. members are classified as either 1K21 or 1K24 drivers; these classifications do not apply to I.A.M. members.

The job descriptions of the different truckers are contained in Appendix A to the union agreement. A 1K21 truckdriver is described in the contract as follows:

> Operates any automobile truck and/or truck tractor with trailer combination with a license capacity of less than 59,000 pounds. Performs loading and unloading functions either manually or with power equipment. Complies with all traffic laws and regulations. Maintains fuel, lubricant, tire pressure and coolant requirement. Changes tires and performs repairs on the road.

A 1K24 power trucker is described in the contract as follows:

> Operates a power driven lift or platform truck to load, unload, transport and tier material, equipment and supplies as directed. Assumes responsibility for servicing of truck and reporting all mechanical defects.

Wade testified that the job descriptions contained in Appendix A to the local agreement are considered by management as not providing any kind of work jurisdiction but as merely describing the major rate-setting characteristics of the job. Additionally, management stated that all the duties of the two different types of truckers are not included in the contract. The 1K21 and 1K24 classifications are further described as combination jobs.[13]

2. Events leading to the issuance of a formal warning

Three days after being assigned to department 94cc, McPherson, on March 9, filed a grievance. This grievance was considered by Respondent to be the first of a series of repetitive grievances filed by McPherson involving the duties of the two truckdriver classifications hereinbefore described. The efforts expended to file the series of grievances involving the combination jobs were considered as wasting time.

On May 22, at the start of the workday, McPherson requested a steward to file a grievance, indicating that the grievance involved the combination job problem. The request was made to Hundoble, who was substituting for Simi as foreman of department 94cc for the week of May 22 through May 26. Simi had previously mentioned to Hundoble that McPherson was filing what he considered "repetitive grievances." Acting on this information from Simi, Hundoble indicated to McPherson that she had previously filed that particular grievance on numerous occasions, which the Company considered wasting time. Hundoble indicated that he would call a steward for her and said he would get back to her on the wasting time problem. He did not tell her he was going to take any further disciplinary action.

Hundoble then examined McPherson's foreman-employee file and ascertained from the file that she had received previous verbal warnings and reprimands for filing repetitive grievances. Hundoble decided under the Company's progressive discipline system to issue a formal written warning relating to her filing the combination job grievances.

To ascertain if he was on solid ground and prior to issuing the warning, Hundoble called Wade,[14] indicating that he wanted to give McPherson a formal warning for wasting time because she continued to file grievances regarding the combination job problem. Wade testified that she strongly urged Hundoble not to issue the warning, inasmuch as a meeting was scheduled with the U.A.W. the following day and she planned to raise the issue of repetitive grievances at that meeting. According to Wade, Hundoble felt very strongly about issuing the warning, so she volunteered to speak with her supervisor Jerry Brust, the employee relations manager.[15] Brust informed Wade that if the warning was warranted, it should be issued. He then opined that if at a later date an agreement were reached with the Union regarding McPherson's grievances, she could then file another grievance to resolve the issuance of the formal warning. Wade then telephoned Hundoble to relay Brust's views.

Hundoble also telephoned Joseph Rickey, the general foreman of the building, who had to attend the issuance of any formal warning and who was Simi's superior, to inform him of his actions.[16] Rickey replied "[F]ine, go ahead."

Hundoble issued the formal warning. He indicated that he never reviewed the individual grievances that led to his issuance of that warning. The warning was presented in an area referred to as a lunchroom. The warning listed five grievances that were relative to the work assignments made to 1K21 and 1K24 truckers. Hundoble told McPherson that the listed grievances were repetitive grievances, the filing of which were considered wasting time. Hundoble said that she had been warned previously by Simi about wasting time in this manner.[17] Hundoble then stated that if McPherson

[11] Simi was hired by Caterpillar in 1968 as a factory accounting clerk. In 1973 he was promoted to the position of office services coordinator and in 1976 became a manager.

[12] Hundoble is a materials distribution general foreman on special assignment for the past 2-1/2 years. He has been employed by Caterpillar 13-1/2 years, having first been hired as a machinist. He was a member of I.A.M. Hundoble designed department 94cc, which required his frequent presence in that department.

[13] According to management this means that if an employee is required to drive an over-the-road truck for a portion of the day he would be classified as a 1K21. Consequently, even if the work performed by the same employee for the remainder of the day consisted of the exact same duties as a 1K24 trucker was assigned, he would be paid at the highest classification; i.e., a 1K21.

[14] Wade participated in a negotiation of the present U.A.W. contract.

[15] Brust did not testify.

[16] Rickey did not testify.

[17] There is a dispute between the parties regarding the number of times Simi told McPherson that she was wasting time by filing repetitive grievances. McPherson remembered that Simi warned her once on May 10 that repetitive grievances were considered wasting time. The foreman-employee file indicates that three verbal comments were made to her. McPherson further remembers that Simi told her that she was filing repetitive grievances; however, some confusion may have arisen regarding the fact that repetitive grievances were considered wasting time. Wasting time is, under the union agreement, a subject of discipline. Inasmuch as formal notations were made in the foreman-employee record (hereinafter referred to as FER) the day of each occurrence, the FER will be credited.

filed another grievance on the same issue she would be subject to further discipline.

After Hundoble read the warning to her, he asked McPherson if she had any comments. There was a brief discussion concerning the job classification problem. There is no indication that McPherson understood combination jobs and how employees assigned to such jobs performed their assigned duties. There appears, in fact, to be no such understanding between McPherson and management because according to Hundoble, she indicated that she felt the warning was not fair because the grievances were all different. Hundoble was surprised, and he said he would get back to McPherson and (Chief Union Steward) Cleveland (who was assisting her in filing her grievances) on that issue after checking her allegation that there were differences in the grievances. At this time McPherson also indicated that the articles cited in the grievances were different, the settlements requested were not the same, and the relief requested was different in each instance. Hundoble then indicated that he did check into the matter; but he later testified that he requested that Rickey, who was returning to the same building that had the offices in which the grievances were filed, check into the allegation that the grievances were different as soon as he got back to the main plant. Rickey responded that he would and promised to inform Hundoble of his research. There is no indication that Hundoble himself reviewed the grievances or that Rickey detailed the content of the grievances so that it might have been ascertained that there were differences sufficient to avoid the characterization as repetitive grievances.

The grievances listed in the formal warning were:

The grievance of March 9, 1978

This grievance was filed 3 days after McPherson's transfer to department 94cc. The reasons given in the grievance for the filing included her assignment of duties other than those she was led to believe she would be assigned at the time she was transferred to department 94cc. The additional duties were the loading and unloading of vans, a job which had previously been accomplished by the higher rated 1K21 truckers. McPherson felt she was ill-trained to perform these additional duties. McPherson also stated that another employee with equal seniority actually requested the assignment to 94cc but was bypassed. Accordingly she attributed the reassignment to her union activities, characterizing the transfer as an attempt to "separate her from the main plant." The articles of the contract allegedly violated were 17.2 and 9.3.[18]

The grievance was considered at the second step and an answer was given to McPherson as follows: "The major portion of Miss McPherson's duties were moved to section 94, 1933 Davis Street. She moved in [sic] with them. There has been no contract violation." The answer does not address itself directly to the question of combination jobs nor does it explain how employees working in such jobs might occasionally do the same work as higher rated employees.

Simi testified that he explained to McPherson that the job she believed she would be assigned, moving cardboard, which was a duty she had performed at her prior job, would take only 2 or 3 hours a day, and therefore she would have to provide service to the adjacent building, Building BB. Simi's testimony is not fully credited since the grievance did not refer to servicing another building, but specifically referred to the loading and unloading of vans. In any event, the relief sought was a reassignment to her former position, which was not granted.

The May 9 grievances

The first grievance filed on May 9 resulted from an incident which occurred on May 5, 1978. McPherson was directed to unload a van and requested a steward. The grievance was discussed with Cleveland and was predicated upon an allegation that unloading vans was the work of a 1K21, not a 1K24. The assignment was characterized as requiring a 1K24 to perform duties out of the job classification. The grievance could not be completed on that date, so Cleveland returned to McPherson's department with a completed grievance form on May 9, 1978, which he and McPherson discussed and redrafted. The redrafted grievance indicated that 1K24's were unqualified to perform those duties for which they were assigned; i.e., loading and unloading large truck trailers.

Simi gave McPherson a verbal warning regarding the filing of this grievance on the basis that it was repetitive and was considered wasting time.

The second grievance filed by McPherson on May 9 again dealt with a directive to load or unload a large van. McPherson was told again by Simi that the continued filing of grievances on the same subject was considered wasting time.

The relief requested in the two grievances filed on May 9 was different, as were the sections of the contract allegedly violated. One of the grievances requested an increase in the hourly rate for the 1K24's assigned to perform 1K21 work. The section of the contract allegedly violated was 15.1 which deals in great length with salary and income security. The other grievance filed that day alleged that it was hazardous to assign 1K24's to perform work for which they

[18] Art. 17.2 provides, as pertinent:

> The Company and the Union shall not, in discharging their respective responsibilities under this contract, be discriminatory of any employees because of nationality, race, sex, political or religious affiliation, or membership in any labor or other lawful organization.

Art. 9.3 provides:

> In the event such opening is to be filled by reassignment within the bargaining unit, the reassignment shall be based on real and practical considerations, without discrimination; if the reassignment is not based on such reasons, then it shall be made on the basis of seniority.
>
> As used in this Section 9.3, "reassignment" means the assignment of an employee in the bargaining unit (1) to a job opening in the same classification on the same shift within the bargaining unit but under a different supervisor, or (2) to a job opening in a different classification, on the same shift within the bargaining unit, which has a maximum rate equal to the maximum rate of the classification to which the employee was assigned immediately before the reassignment.

were not qualified; i.e., the loading and unloading of large vans. The article cited in this grievance was 17.8.[19]

After the second grievance was filed on May 9, Simi gave McPherson a verbal warning for wasting time by filing grievances on the same subject. Simi also discussed with McPherson the loss of productivity in the department caused by the time devoted to filing these grievances. McPherson does not clearly remember the warnings but, inasmuch as the two warnings given that day were noted in the foreman-employee report, which was prepared the same day as the events, I credit Simi's testimony. These were the first warnings given to McPherson regarding the filing of what was considered repetitive grievances, the filing of which is wasting time.[20]

There was no clear statement that Simi in any way explained the operation of combination jobs in giving assignments. Additionally, there does not appear to have been a second-step answer to any of the grievances that were discussed hereinbefore or that will be discussed hereinafter, that delineates or explains the Company's position on combination jobs. The assignments of duties to individuals who are in combination job classifications is the problem which gave rise to all the grievances discussed herein. There is no evidence that these positions and how they operate were ever explained to McPherson.[21]

The May 10 grievance

Simi directed McPherson to unload a van and a flatbed. McPherson claimed that for the past 5 years this work had been performed by 1K21's. The relief requested in the grievance was higher pay and the assignment of more 1K21's where needed by the promotion of an appropriate number of 1K24's. The violation alleged was that of the local agreement citing Appendix A of the agreement, which is the section of the contract defining the different job classifications. Simi reiterated his belief that the filing of the grievance was a waste of time and informed McPherson that if she continued filing repetitive grievances, he would issue formal discipline.

The May 22 grievance

The first day Hundoble substituted for Simi,[22] both McPherson and Scott Gordon, a 1K21 truckdriver, requested a shop steward to file a grievance.[23] The grievance claimed that assigning a 1K24 to do the work of a 1K21 was hazardous because 1K24's were not familiar with the procedures for loading and unloading large trailers. The specific adjustment requested was the honoring of the contract or, in the alternative, the promotion of 1K24's to the 1K21 classification or the payment to 1K24's of the higher 1K21 rate when performing that work. Both McPherson and Gordon were listed as grievants but only Gordon[24] signed the form.

The record does not disclose whether this grievance was ever answered.

Hundoble indicated that he was extremely sensitive to problems involving repetitive grievances due to an incident which occurred approximately 3-1/2 years prior to the hearing herein, which involved U.A.W. claims that I.A.M. members were infringing on their work jurisdiction. This old incident devastated production because hundreds of grievances were filed during a 2- to 3-month period of time,[25] and the main receiving and storage area of the plant was almost shut down. Hundoble stated that no discipline was imposed for the filing of repetitive grievances during or subsequent to this work jurisdiction incident. It appears that McPherson was the first employee disciplined for filing repetitive grievances. Hundoble admitted that this old incident was "in his mind" when he decided to issue progressive discipline.[26]

The day following the May 22 incident, the meeting between the U.A.W. and Respondent was held. After discussing the problem of repetitive grievances, the U.A.W. international representative suggested that all the grievances be consolidated.[27] Chief Union Steward Cleveland was directed to inform McPherson of the solution. As part of the proposal, management agreed to withdraw the formal warning issued to McPherson.

The record clearly demonstrates that this straightforward solution was not clearly understood by the parties involved. Cleveland told McPherson that she would have to choose one grievance that would be pursued through the entire grievance procedure, and the rest of the grievances were to be dropped. McPherson refused.

Wade testified that Cleveland was to select a lead grievance, and then she was not sure what disposition was to be

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[19] Art. 17.8 provides:

> The Company shall continue to make the decisions as to whether work shall be performed by Company forces in any Company plant, or by others, consistent with an intention to maintain, so far as practicable, a stable work force. The Company shall make decisions of such nature with such intention taking into consideration such factors as the scope of the project or production requirement, relative costs, possession and availability of Company equipment and of employees qualified to accomplish the production without undue overtime or delay either of the specific production or of any other scheduled activity, desirability of continuity of relations with historic sources of supply and believed best utilization of all the Company's plants with a view to long-term stability and health of the enterprise as a whole.

[20] Two other grievances had been filed by McPherson on April 24 and May 1 regarding the combination jobs issue. These two grievances were not included in the formal warning. The reasons for their exclusion were not clearly explained. However, these two grievances will not be considered herein because they were not included in the formal warning as a basis for the issuance of the warning. The exclusion of these grievances in the formal warning indicates that Respondent did not consider them part and parcel of the "repetitive grievance problem" nor a basis for the action complained of herein.

[21] It appears that Simi's answer to all the grievances discussed herein is that there were no contract violations.

[22] Respondent admits that Hundoble was acting as a supervisor on this day.

[23] The incident which led to the request was the assigning of a new 1K24 power trucker to unload a large trailer.

[24] Hundoble did not know how many grievances Gordon had filed regarding the combination job issue, nor did he check the file to find out.

[25] McPherson filed five grievances deemed repetitive during a 2-1/2 month period of time.

[26] Hundoble appeared very sensitive to the combination job problem, having in that same week that he disciplined McPherson threatened another employee, Laurie Gitlin, with discipline for wasting time when she requested a steward to file a grievance involving the combination job issue. Hundoble recognized his error later and apologized to Gitlin, based on the fact that Gitlin had not previously filed a grievance on the combination job issue.

[27] The U.A.W. official did not review the grievances filed by McPherson to ascertain if they were repetitive. Wade, who represented management at the meeting, also did not review the individual grievances.

made of the remaining grievances. According to Wade, there was no firm commitment to drop the remaining grievances.

Hundoble, at the time of testifying, was not clear on the understanding leading to the withdrawal of the formal warning. However, in an affidavit given on June 28, he stated that his understanding of the settlement was as follows: "If all grievances were withdrawn except one, the warning would not go into McPherson's file." I find that Hundoble's statement made to the Board on June 28 clearly reflects his understanding at the time of the incidents considered herein, since it was made only 1 month after such incidents.

McPherson, in uncontroverted testimony, stated that Cleveland never informed her that the Union was a party to the proposed settlement or that the settlement was in fact proposed by the Union. In fact, she had heard the proposal only moments before she was given the written warning.

Within a week after the issuance of the formal warning, McPherson filed with Hundoble a grievance regarding the warning. Hundoble told McPherson that the Union and Respondent had reached an agreement. There ensued a discussion regarding the details of the agreement,[28] and McPherson indicated that she would not drop all but one grievance. Hundoble proceeded to rip up the formal warning consistent with his understanding of the agreement. McPherson stated that as far as she was concerned the issue was still alive. In response, Hundoble informed her that if she continued to file grievances on the classification issue, he would reissue the formal warning or take other disciplinary measures based on the filing of repetitive grievances.

Respondent's position

Respondent alleged that General Counsel has not met its burden of proof affirmatively by substantial evidence. Respondent also contends that General Counsel has failed to show animus.

Specifically, it is averred that the evidence does not support a finding that McPherson was disciplined for engaging in activity protected by Section 7 of the Act because the filing of repetitive grievances can be characterized as, and should be found to be, intentional harassment of Respondent. To support the argument of harassment, Respondent argues that the grievances had no basis in the agreement. Further indicia, according to Respondent, of McPherson's motive were: her admission that she was told of Respondent's position regarding her grievances 20 days before she was disciplined; her grievances of May 1 and March 9 were on opposite sides of the same issue; her refusal to agree to a reasonable settlement to the repetitive grievance problem; the statement by her own Union's international representative that he thought the filing of the same grievance over and over was a waste of everybody's time; the claim that the grievances were really different is transparently false because some of the articles cited did not even relate to the issue at hand—such as article 17.8, which deals with subcontracting; the desire to file a grievance on May 22 arose prior to beginning the workday; the failure to protest the warnings about filing repetitive grievances; and McPherson's statement that she presented Respondent with a consolidated grievance on the loading and unloading issue and offered to withdraw the others after the formal warning was torn up by Hundoble, cannot be credited, based on the fact that she would not agree to the settlement and the lack of any evidence that she presented such a consolidated grievance.

Respondent argues that the decision to issue the formal warning to McPherson was not based on all the grievances filed by McPherson but just those related to the combination jobs. The filing of repetitive grievances during worktime is not protected by Section 7 of the Act, Respondent argues, because it is abuse of a right created by the collective-bargaining agreement; even though Respondent admits that the right to file a grievance during working time is permissible pursuant to the contract. Respondent further states that even if the filing of the same grievance repeatedly is considered protected by Section 7 of the Act, Respondent's legitimate and substantial interest in preventing the waste of working time allows it to discipline employees for filing repetitive grievances. Department 94cc, it is argued, was having difficulty handling its obligations and to some extent the time expended by McPherson in the filing of grievances required working overtime to meet its operational duties.

Discussion

Employees, under Section 7 of the Act, have the protected right to file and process grievances. *Thor Power Tool Company,* 148 NLRB 1379 (1964), enfd. 351 F.2d 584 (7th Cir. 1965); *Top Notch Manufacturing Company Inc.,* 145 NLRB 429 (1963). Contrary to Respondent's position, the protection of the Act does not depend on the employer's or the Board's appraisal of the merits of the grievance, such as whether the contract disposes of the question raised in the grievance. The merits of the grievance are irrelevant in determining the question of whether a right is protected under the Act. See *Mushroom Transportation Company, Inc.,* 142 NLRB 1150 at 1158 (1963), reversed on other grounds 330 F.2d 683 (3d Cir. 1964); *Interboro Contractors, Inc.,* 157 NLRB 1295 at 1298, fn. 7 (1966); *Hartwell Company, Inc.,* 169 NLRB 412 (1968). While Section 7 shields employees from potential employer discipline or other adverse action in the exercise of Section 7 rights, it does not permit employees to use grievances as a sword to gain immunity from the consequences of harassment. See *Olympic Delivery Service, Inc., d/b/a Rocket Messenger Service,* 167 NLRB 252 (1967); *Charles Meyers & Company,* 190 NLRB 448 (1971).

McPherson admits that she filed numerous grievances over a 2-1/2 month period. It is also clear that the filing of the grievances was the major consideration in the decision to issue the formal warning. Accordingly, the General Counsel has clearly shown that Respondent issued the formal warning based on McPherson's filing of grievances deemed repetitive. Therefore, Respondent must prove that McPherson so abused her right to file grievances as to have engaged in unwarranted harassment of Respondent.

[28] Refer to prior discussion regarding the confusion relating to the disposition of all the grievances about job classifications under combination job descriptions.

The merits of the grievances were not clearly resolved by the contract. As the Respondent's representative at the negotiation of the contract, Katherine Lyn Wade, admitted, the contract does not fully and clearly describe all the duties of a 1K24 power trucker. The facts indicate that McPherson was the first trucker classified as a 1K24 to work in department 94cc: prior to her assignment to that department, all loading and unloading was done by 1K21's. Additionally, as illustrated by the first grievance discussed herein, filed March 9, the bases for filing the grievance were the transfer and the assignment of work believed to be beyond her job classification. There was no showing that any explanation was made to McPherson why the duties of a 1K24 included activities previously performed solely by 1K21's. The only second-step grievance answer entered into evidence in this proceeding failed to explain the operational duties of a 1K24 under a combination job description. Furthermore, according to Wade, if subsequent similar violations of the contract occur, the subsequent violations cannot be noted without filing a second grievance or a third or fourth grievance.[29]

Since, according to Wade, the grievance procedure fails to provide for the addition of remedies once a grievance is filed, McPherson's seeking additional remedies appears to have been the only procedure available to her to gain such additional remedies.

If McPherson were shown to have clearly understood the nuances of assignment of duties under combination-type jobs, then a strong argument for harassment might be made. However, Wade admitted that, assuming hypothetically there was no combination job description, and repetitive assignments required job performance out of classification, she did not know if each assignment would be grievable. Wade said she would have to ask her supervisor, Mr. Brust. Accordingly, if Respondent was so highly concerned about the filing of repetitive grievances involving combination job descriptions, it would appear that it would insure that the individual filing such repetitive grievances would clearly understand why, under the contract, a 1K24 and a 1K21 could do similar work without getting similar pay. The failure of Respondent to so clearly explain or even show an attempt to explain during the period between the first grievance, March 9, and the final grievance, May 22, demonstrates that the asserted concern was not nearly as strong as alleged. This failure, furthermore, leads me to find that the filing of several grievances based on the continued assignment of duties previously performed by 1K21's was not motivated by a desire to harass Respondent.

Respondent's argument that two of the grievances were contradictory, as previously found herein, is baseless. Respondent states that McPherson initially protested her assignment to work at Building BB but, as indicated heretofore, that grievance did not mention any work assignment to Building BB and I credit the written basis for the grievance; i.e., the assignment to do the work of a 1K21 to load and unload tractor-trailer combinations. Accordingly, the subsequent grievance protesting the failure to be assigned to Building BB cannot be found contradictory.

McPherson's failure to agree to the settlement proposal in the treatment of her grievances involving combination jobs is found to have been clearly induced by the lack of clear understanding of what the settlement entailed. In fact, all the principals involved, with the exception of the international union representative, Early Mays, appear to believe that all but one grievance would be withdrawn, which was clearly contrary to what was proposed by Mays. Inasmuch as McPherson never understood what the actual settlement proposal was, her refusal to accept an erroneous rendition cannot be deemed probative of harassment. In fact, McPherson's refusal to give up on her grievances indicates an intent to resolve the problem in its entirety, which is reflective of good will. A further expression of this good will is the fact that McPherson had not filed any other grievances involving the combination job issue up to the days of the hearing.

It is further found that the alleging of violations of different sections of the contract and requesting different relief were good-faith attempts to resolve the problem. The failure of Respondent to indicate why it felt there was no contract violation is found to have induced McPherson and Cleveland to try different approaches. Their attempt to change the wording and to allege violations of the different articles is not found to be based on an attempt to harass, but rather demonstrates a failure to appreciate the nuances of the contract while engaging in a good-faith attempt to resolve differences in the way the contract was being managed by Respondent. For example, the safety issue was one raised not only by McPherson but by Gordon, a 1K21. Simi indicated that he gave some instruction to McPherson, but when asked specifically about the dangers in failing to load a tractor-trailer combination correctly, Simi indicated it was the responsibility of the driver to insure proper weight distribution in the loading of such tractor-trailer combinations. Simi's response indicated that he never explained weight distribution to McPherson, while at the same time admitting that improper weight distribution could cause the jackknifing of the trailer, admittedly a great hazard.

It could be argued that the tearing up of the formal warning abrogates the need for a remedial order. The unlawful reprimand of McPherson has not been remedied since Hundoble still threatened disciplinary action if she filed similar grievances. Additionally, Respondent did not advise McPherson or the Union that employees are free to engage in such protected activity.

The allegation that the filing of the combination job grievances by McPherson led to the necessity to work overtime several times is found to be without merit. Respondent's foreman, Simi, indicated that the first-step meetings generally lasted between 15 and 20 minutes. Over the 3-month period here involved, and considering the five grievances which led to the issuance of the warning, a little more than 1-1/2 hours' time was expended. Added to that the amount of time to prepare a grievance, which for argument's sake would take the same or more time than the

[29] It should be noted that Early Mays believes that a grievance raising the same issue can treat and incorporate at later steps subsequent violations of the contract by keeping a log of all such subsequent violations. However, McPherson was never informed of this possibility if, contrary to Wade's testimony, such a possibility does in actuality exist. This direct contradiction between Wade and Mays indicates the lack of clarity in methods of handling grievances involving similar subsequent alleged violations of the contract.

first-step meetings, it could be found that the grievances here involved took between 3 hours to a day at the most to prepare and file and handle through the first step. One day, as the most generous estimate for Respondent's argument, during a nearly 3-month period, could not be found a major contributing factor to the backlog. It appears that Hundoble was anxious for the proper, smooth, and timely operation of department 94cc, which he designed. Hundoble remembered a prior incident involving work jurisdiction problems, and his concern for his newly designed department appears to have led him to have issued the formal warning. The issuance of the warning appears to be a reaction based on his concern for the department rather than a true belief that McPherson's grievances were repetitive and unwarranted, since Hundoble admitted he never even reviewed the grievances upon which he based the warning. The failure to review the grievances prior to the issuance of the warning to ascertain the soundness of his position leads to a conclusion that Hundoble's action was in fact a reaction to McPherson's filing of the grievances and not a result of ascertaining that such grievances were in fact repetitive or were a technique of harassment. *Ad Art, Incorporated,* 238 NLRB 1124 (1978).

Contrary to Respondent's allegation, no proof of antiunion bias or coercive intent or effect is necessary for a finding of a Section 8(a)(1) violation, where the employer engages in conduct which, it may reasonably be said, interferes with the free exercise of employee rights under the Act. See *Dover Garage II, Inc.,* 237 NLRB 1015 (1978).[30]

At no time did McPherson refuse to work. McPherson requested a steward, continued working until the steward arrived on the scene, filled out the grievance, and continued working thereafter. Accordingly, it is found that Respondent has failed to prove unwarranted harassment or in fact harassment at all. It appears that the treatment of the grievances, which apparently are in limbo, and McPherson's filing of such grievances resulted from a lack of communication and a failure to resolve the initial grievances with dispatch. Based on the circumstances in this case, it cannot be found that McPherson was harassing the Company to such an extent as to deprive her of the protection of Section 7 of the Act.

Respondent conceded through Wade that it may have been necessary to protect the different remedies sought as well as retaining the potential of getting additional remedies by filing repetitive grievances. Certainly Hundoble's failure to review the grievances prior to issuing the formal warning fails to demonstrate a good-faith belief of harassment since he could not even ascertain what was requested in the grievances or what the basis for their filing was. Accordingly, I conclude that Respondent violated Section 8(a)(1) of the Act when it reprimanded McPherson for filing grievances and threatened further discipline if grievances on the same issue were filed in the future.

[30] As the Board held in *Hanes Hosiery, Inc.,* 219 NLRB 338 (1975):

> We long have recognized that the test of interference, restraint, and coercion under Section 8(a)(1) of the Act does not turn on Respondent's motive, courtesy, or gentleness, or on whether the coercion succeeded or failed. The test is whether Respondent has engaged in conduct which reasonably tends to interfere with the free exercise of employee rights under the Act.

C. *Everett Cleveland*

Everett Cleveland has worked for Respondent for approximately 2 years as a 1K24 power trucker. He is assigned to department 96. Cleveland is a member of the U.A.W. Local 76 and has been the chief steward since November 1977.[31]

Department 96 is involved in material control and employs forklift truckdrivers to deliver and pick up materials and finished products to and from the different sections of the plant. The foreman of the department was Bill Barber, who assigned the drivers in his section to service particular areas of the plant. Everett Cleveland was assigned to that area called the "canopy area," which is on the east side of Alvarado Street. Additionally, Cleveland was designated the backup man to Stinson to service the west side of Alvarado Street, which includes department 98. Barber testified that accordingly Cleveland would be required to be on the west side of Alvarado Street "the biggest part of the day." According to Barber, Cleveland would be required to go to department 98 frequently; however, on the average, he would service department 98 four to six times a day. In the event that Willie Stinson, the driver who was permanently assigned to department 98, was absent, which was infrequent, then Cleveland would assume his duties, including frequent runs to department 98—approximately three to four times an hour.

The duty hours for department 96 are from 7:06 a.m. to 3:36 p.m., with lunch from 11:06 to 11:36 a.m. Departments 98 and 96 are under the general supervision of Michael Oakey.[32]

Cleveland is involved in two separate complaint cases; Cases 32-CA-719 and 32-CA-973.

1. Case 32-CA-719

In the complaint, General Counsel alleged that Respondent, through Supervisors Crawford and Oakey, discriminated against Cleveland because of his status as chief union steward[33] by restricting his access to department 98 during nonworking time since January 23, 1978. Additionally, on or about May 19, 1978, Respondent, by Supervisor Oakey, issued a written reprimand to Cleveland for being present in department 98 during nonworking time, in violation of Section 8(a)(1) and (3) of the Act.

The incidents leading up to the issuance of the written reprimand are as follows:

During the first week of January,[34] Crawford saw Cleveland talking to two of his employees, Kathleen McPherson and Millicent Bell. Crawford stated that he felt such activity was disruptive,[35] so he talked to Cleveland. According to Crawford, "I asked him not to take his breaks in Section

[31] Pursuant to the collective-bargaining agreement, the chief steward processes both first- and second-step grievances.

[32] Oakey's job title is materials general foreman, which is a second-line supervisory position. He started at Caterpillar as a weekly-salaried clerk and has worked as an I.A.M. union machinist.

[33] Respondent employs 62 U.A.W. members.

[34] As previously indicated, Crawford was appointed foreman of department 98 on January 1.

[35] Crawford did not reprimand either Bell or McPherson for this incident.

98." The foreman, Crawford, admitted that one of the reasons he asked Cleveland not to take his breaks in department 98 was that he held the position of chief shop steward. During the conversation between Cleveland and Crawford, the steward never alleged that he was in the department on union business. It had been Crawford's experience as a supervisor that where shop stewards entered a work area, they tended to be more disruptive because they attracted the workers. Crawford does not remember complaining to Oakey about this incident; however, Barber recalls Crawford telephoning him in early January to complain about the presence of drivers in department 98. After receiving the phone call, Barber immediately went to department 98 and found three[36] of his drivers at the coffee machine; he requested that they consume their beverages outside the department. Later that same day, Barber instructed the three drivers not to take their breaks in department 98 for it disturbs the employees. They were told that in the future they would have to take their breaks in an open yard outside the building.

On or about January 23, Crawford told Cleveland that he did not want him to take breaks in department 98 and Cleveland understood that he was restricted from the department as of that date except for job- and union-related business.

Also in January,[37] Oakey and Barber met with Cleveland. Oakey characterized the meeting as an attempt to establish a rapport between the supervisors and the chief shop steward. Oakey stated he discussed the importance of not mixing union activities with employment duties.[38] Oakey found Cleveland very receptive to his remarks.

In early February, Cleveland was observed passing out papers to the employees prior to the start of the shift in department 98.[39] Crawford brought the incident to the attention of the general foreman, Oakey, and later contacted Wade to ascertain if Cleveland had permission to hand out union literature in the department. Crawford also spoke to Cleveland, indicating that he was disrupting the employees. Crawford did not explain how Cleveland disrupted his employees, inasmuch as the shift had not yet started.

Although the exact basis for the next meeting between Oakey and Cleveland was not clearly presented on the record, it appears that as a result of the passing out of union material, Oakey spoke to Cleveland about wasting time and the role of a trucker versus the role of a union chief steward. Oakey informed Cleveland that the two roles should not be mixed; Barber was also present at the meeting. The discussion of roles constitutes Oakey's entire recollection of the conversation. Cleveland, whose testimony I credit based upon his much clearer recollection of the events, stated that Oakey informed him that he was spending too much time in department 98. Cleveland was dircted to stay out of department 98 unless he was there on union business or was present pursuant to his duties as a trucker. Oakey indicated that the request was made because Cleveland was the chief steward, which attracted attention due to employees wanting to come over and talk to the chief steward. Oakey further mentioned that the employees of department 98 were upset over the firing of a union steward who worked in department 94cc.[40] Cleveland admitted that he had a tendency to take a little more time on his breaks in department 98 then he should and that he would try and work on it. Cleveland further indicated that he understood that Oakey did not object to Cleveland being in department 98 on union business.

On February 23, Oakey again met with Cleveland, informing him that he was still wasting time, and, in fact, the problem was getting worse. Accordingly, Oakey gave Cleveland a verbal warning for wasting time. Cleveland during the discussion took offense to the directive to limit his visits to department 98 because he felt that his activities were so restricted that he could not function as chief steward.[41] Cleveland felt that he was the only trucker restricted against taking breaks in department 98. Oakey told him that Rudy Martinez and Willy Stinson were also warned about taking breaks in department 98 and disrupting the department employees.

Oakey also told Cleveland he was not restricted from going to department 98 if it was before the start of Cleveland's shift, during the course of his work as a trucker, or in the course of his union duties. However, he was requested to punch out and leave the premises at the completion of his shift because he had demonstrated his inability to go into department 98 after his shift without bothering employees who were still working.[42]

Cleveland understood that the verbal warning was based on the fact that he held the position of chief steward. Based on this belief, Cleveland stated, he inquired during this conversation if the restriction was placed upon him because he was chief steward, to which Oakey replied "yes." Cleveland indicated that he would contact the National Labor Relations Board because "there are laws protecting people that are in unions." After the meeting, Cleveland filed a grievance which was dropped after the first-step answer.[43]

Oakey further testified that there were several occasions when he personally observed Cleveland disrupting employees or wasting time in department 98.[44] The dates these incidents occurred were not specified.

[36] Cleveland, Willie Stinson, and Mike Noel.

[37] The exact date is not clearly established on the record.

[38] It appears that the question of taking breaks in department 98 was not discussed at this meeting.

[39] This incident occurred after Cleveland's shift started.

[40] The fired employee's name was Harry Lehl. Cleveland was not involved in the Lehl matter.

[41] Unlike the I.A.M. contract, the U.A.W. agreement does not provide the chief steward with walk-around time. Oakey, when he gave Cleveland the directive, felt that if it impaired Cleveland's operations as chief steward, Cleveland had recourse through the grievance procedure to effect a modification of the directive if necessary.

[42] All employees were asked to leave the plant upon completion of shift. If employees wanted to wait for another employee, they were to wait near the front gate, then exit the plant as promptly as possible.

[43] Cleveland testified that he may have decided to drop the grievance himself.

[44] Some of these incidents are as follows: Cleveland was sitting on his forklift while in department 98 while the employees had their lunch, even though Cleveland was not at lunch; on another occasion Cleveland parked his forklift outside of department 98, and proceeded to walk through the section to the vending machine, talking to and hence disrupting employees while he was walking through the section; another incident which occurred in February involved Cleveland at the start of department 98's shift delivering what appeared to be a container of coffee and a doughnut to Bell, then leaving the department.

On May 18 at about 3:40 p.m., approximately 8 minutes before the end of the shift in department 98 at 3:48 p.m., Oakey[45] observed Cleveland[46] enter the room and announce to several employees that former union President Frank Silva had been reinstated pursuant to an arbitrator's order. Silva had been employed in department 98 prior to his separation. Cleveland then proceeded to walk through a portion of the department, repeating the announcement. When Cleveland reached the desk of the routing clerk, Bob Handor,[47] who stopped work for just a minute to converse with Cleveland, Oakey yelled out Cleveland's name and Cleveland immediately left.

Oakey characterized this incident as very disruptive. Cleveland testified that no one stopped working during the incident. There are several sharp conflicts in the testimony regarding this incident. I credit the testimony of Christine Sandifer, who was not a party to the proceeding, based on her demeanor, the clarity of her recollection, and the fact that some of the matters testified to could be utilized against her best interest. Sandifer is a packer in department 98 and has worked for Respondent a little over 3 years. According to Sandifer, all employees generally punch out at 3:30 p.m. The time between 3:30 p.m. until the shift ends at 3:48 is devoted to cleanup. The employees chat with one another during the cleanup period; and employees who work in other departments come through 98 and at times stop and chat, but do not hang around until the end of the shift.[48]

Sandifer recognized that employees were not supposed to stand around after they finished cleaning up; however, Crawford does not "say anything to them [the employees] because when they are through cleaning up at that time he doesn't say anything if you stay in your work area."

Sandifer described the incident of May 18 as occurring during the cleanup period when Cleveland entered department 98. Sandifer stopped working to wait for him, to inquire whether Cleveland had seen her son. As Cleveland passed by her he yelled out, "Frank Silva was coming back, I just got the call."[49] Sandifer did not hear Cleveland utter another word after his announcement regarding the results of the arbitration. As Cleveland was leaving, Sandifer yelled at him but he would not turn around to converse with her. Cleveland continued walking out and left the department.

The following morning, Oakey, in the presence of Cleveland's supervisor and Handor, a steward, gave Cleveland a written warning for creating a disturbance in department 98 which constituted a failure to follow instructions to the effect that he was not to enter department 98, or any other area where people were working, except in the normal course of his duties.

The discussion during the issuance of the formal warning grew heated and Oakey, in uncontroverted testimony, stated Cleveland indicated he had a right to go to department 98 or any other portion of the plant anytime he desired, to conduct union business. Cleveland stated he would be contacting the NLRB since he knew Oakey "had been trying to set him up since December." Cleveland did file a grievance which has been dropped.

Respondents actions could be construed as eminently reasonable, warning an employee who is wasting time and disrupting other employees repeatedly. However, the actions taken by Respondent through its agent did treat Cleveland disparately. Willie Stinson,[50] the 1K24 power trucker assigned permanently to department 96, whom Cleveland backs up, takes most of his breaks at department 98 and occasionally engages in conversations with the employees of that department. Stinson testified that neither Crawford nor Barber has ever asked him not to take breaks in department 98.

Millicent Bell testified that she often observes employees of department 96 taking breaks in department 98, and frequently these truckers ask the packers to go to the vending machines and converse for a few minutes. Bell observed that two drivers[51] take breaks in department 98 once a day and have short breaks with Bell about five times a week.

Laurie Gitlin, another department 96 trucker, occasionally takes breaks in department 98,[52] sometimes consuming her beverage alone and other times conversing with the packers while they are working. Gitlin stated she does whatever she feels like and has never been asked by Crawford or Barber to refrain from taking breaks in department 98.

The formal warning issued for the incident of May 18 was predicated on the failure to follow instructions not to take breaks in department 98 or to enter department 98 for purposes other than union business or during the normal course of job duties. According to Sandifer, employees from other departments frequently walk through department 98, stopping occasionally to chitchat. There was no indication that other employees who walk through department 98 occasionally stopping to chitchat were ever given warnings for such activities during the cleanup period. Accordingly, even though Cleveland's activities on this day did disrupt Sandifer for approximately 5 minutes and Handor for approximately a minute, the issuance of a formal warning based on violation of instructions that were discriminatorily issued is found to have resulted in further disparate treatment of Cleveland. While there is no question that Cleveland did violate plant rules, it appears that the plant rules were applied to Cleveland in a much more rigorous manner than to other employees, based upon his union status which was one of the primary reasons generating the instructions given by the agents of Respondent that he not enter department 98 except explicitly on union business or during the course of his normal work duties. The disparate singling out of

[45] Oakey was acting as foreman that day in Crawford's absence.

[46] Cleveland's shift was over and he had just learned the results of an arbitration proceeding.

[47] Handor was working at the time of the incident. Handor was then a steward in the U.A.W.

[48] Oakey testified that not all employees were engaged in projects that necessitated cleaning up, and hence some worked right up to the end of the shift bell. This statement is controverted by Sandifer who said, to her knowledge, no packer is required to work up until the bell rings; and she doesn't know of any area where the people do not clean up. As stated previously, the testimony of Sandifer is credited.

[49] Originally Sandifer stated she stopped work for a minute or two, then revised her testimony stating that she waited to talk to Cleveland for about 5 minutes.

[50] Stinson, like Cleveland, is assigned to department 96, and Bill Barber is his supervisor.

[51] Tommy Harris and Rudy Martinez.

[52] Gitlin takes from zero to three breaks a week in department 98.

Cleveland by Crawford and Crawford's superiors from the first week Crawford was the foreman of department 98 cannot be found to have been the normal application of plant rules. The pattern of truckers from department 96 taking breaks in department 98 was well established on the record, and the initiation of discipline for such activity against Cleveland alone and the admission that such restriction was partly attributed to his status as steward establish a *prima facie* case requiring Respondent to show that the increased discipline was motivated by considerations unrelated to Cleveland's union activities. Respondent's failure to show similar treatment for similar offenses by other drivers taking breaks in department 98, as well as the testimony of the employees of department 98 that during the cleanup period employees from other departments do wander through and occasionally stop to converse without any apparent disciplinary action being taken against them, require a finding that the issuance of disciplinary action against Cleveland for these activities was discriminatory and hence a violation of Section 8(a)(3) and (1) of the Act.

The more stringent application of plant policies to a steward is contrary to Section 8(a)(3) of the Act. *Gould Corporation,* 237 NLRB 881 (1978); and *Precision Castings Company, Division of Aurora Corporation,* 233 NLRB 183 (1977). The more rigorous enforcement of plant rules was admittedly, according to Crawford, motivated at least in part by the fact that Cleveland was the chief steward. Though Respondent, through its agents, contends that the plant rules about wasting time by taking breaks, particularly in department 98, were equally enforced among all truckdrivers from department 96, the truckdrivers themselves disputed this allegation. As stated above, the testimony of the truckdrivers and other employees of department 98 was credited. The more rigorous enforcement of the plant rules against Cleveland, having been motivated on his union status as chief steward, violates Section 8(a)(3) and (1) because it deviated from the pattern established for the other employees of department 96 and was based on an admitted discriminatory motive. See *Upland Freight Lines, Inc.,* 209 NLRB 165 (1974), enfd. 527 F.2d 766 (9th Cir. 1976); and *Keller Manufacturing Company, Inc.,* 237 NLRB 712 (1978).

2. Case 32-CA-973

General Counsel alleges that Respondent violated Section 8(a)(1) and Section 2(6) and (7) of the Act by disciplining Chief Shop Steward Cleveland for engaging in protected grievance activity. Cleveland was suspended on June 7, 1978, for 60 days. Respondent based the suspension on the grounds of insubordination and swearing at a supervisor.

Events of June 7

At approximately 1 p.m. on June 7, pursuant to a call from the foreman of department 94cc, Cleveland was requested by his foreman, Bill Barber, to report to the requesting department to represent McPherson in filing a grievance. Because job duties required a delay, Cleveland left his work station at 2 o'clock to take a bus to department 94cc. When he disembarked from the bus he was met by Foreman Simi, who inquired if he was there to represent McPherson. Cleveland was confused as to why he was asked to wait outside but surveyed the area and noted a picnic table. There is great disparity in the testimony regarding the state of the picnic table. Cleveland claimed that the table was filthy, covered with grease and grime, necessitating his entering the building to find a rag to clean off the table. Simi and others testified that the table was merely slightly dusty. McPherson characterized the table as not only dirty but in an extremely windy location and close to loading docks which generated sufficient noise as to render working on a grievance difficult. No one disputes McPherson's characterization of the location as windy. It is admitted by Simi that a truck was being loaded at the time. I find that the condition of the picnic table was sufficiently dusty as to warrant cleaning prior to placing anything upon it, pursuant to the testimony of Peter Carnute.[53] Carnute stated that he always noted the table was dusty and wiped it off prior to leaning against the edge or leaning on the edge.

Cleveland testified that when he found that the table was not suitable because he could not clean it off, he entered department 94cc and headed to an area called the lunchroom. He met McPherson and she followed him into the lunchroom.[54] Cleveland and McPherson entered the lunchroom, which had no other workers present, and immediately started to prepare the grievance.[55] While McPherson and Cleveland were discussing the grievance, a coworker, Don McDonald, entered the room and got some tea from one of the vending machines. McDonald sat down at the end of the table. Approximately 5 minutes later, Simi entered the room and inquired what Cleveland and McPherson were doing there since he understood they were to prepare the grievance outdoors. McPherson and Cleveland replied that they were preparing a grievance, to which Simi replied that they were interrupting and interfering with other people in their work. At that point McDonald left the lunchroom. They then discussed where and when individuals could file grievances. Cleveland admitted that he told Simi that he was tired of Simi intimidating and harassing him every time he came to Simi's department to file a grievance and that he was going to "take his ass down to the NLRB." McPherson told Simi that he was interfering with their grievance procedure, to which Simi replied that he was not. Cleveland then asked that Simi call Wade. Cleveland also admitted further expletives were directed at Simi, such as "fuck you" and "I'll take your ass down to the

[53] Carnute is a layout planner for Caterpillar who was working in the building adjacent to department 94cc and often caught a shuttle bus at the picnic table location.

[54] The lunchroom is an area within the warehouse, set off by partitions, which contains a table and vending machines. Employees are allowed to enter the lunchroom to use the vending machines but upon acquiring a product from the machines they must return to their work area to consume what they have acquired.

[55] McPherson requested a steward to file a grievance because a new machine appeared on the floor which was operated by a member of the I.A.M. and McPherson felt that the machine should have been operated by a member of the U.A.W.

NLRB." Cleveland denies telling Simi "you ain't shit around here."[56]

Simi alleged that in addition to cursing at him, Cleveland waved his arms at him and made threatening motions. I do not credit Simi's testimony in this regard. Based on the demeanor of Simi compared to Cleveland, Cleveland's complete candor regarding the expletives used during this incident, the fact that Simi is much larger than Cleveland, and the fact that the men were separated by McPherson during the incident in the lunchroom, any visions of physical threat were dispelled.[57]

Simi gave as his reason for requesting that the grievances be written up at the picnic table rather than in the lunchroom the fact that in two instances there were other individuals present when grievances were being prepared in the lunchroom, which disrupted those employees. Simi admitted that the employees should not have been in the lunchroom during preparation of those other two grievances. Simi further stated that he had only designated the lunchroom as a place to write up grievances approximately four times because, at the time he so designated the lunchroom, there was excessive noise in the building due to construction, and at times it got chilly in the morning outside so that the picnic table could not be used. Simi indicated that he felt that using the lunchroom was disruptive of the other workers in contravention of article 5.4 in the current local agreement, which states that union business should be conducted with the least amount of interference with the department. It is also alleged by Simi that he informed Cleveland that he would have to use the picnic table for union business in the future prior to the events of June 7.

Contrary to Simi's testimony, it appears that the lunchroom had been regularly used for the preparation of grievances. Cleveland testified that he prepared between 10 and 20 grievances in department 94cc, all of which were handled in the lunchroom. McPherson, who is known to have filed many grievances, stated that she prepared all but one or two of her grievances in the lunchroom. Several other employees[58] filed a total of seven grievances, preparing all but one in the lunchroom. The evidence strongly indicates that the lunchroom was the standard area used to prepare grievances.

In response to the verbal altercation, Simi called Wade, relating Cleveland's behavior. The incident led to Cleveland's suspension for 60 days. Wade testified that if it had been any employee other than a chief union steward, dismissal would have been the norm. Wade listed many instances where cursing at a supervisor led to dismissal of the employee. Wade admitted that none of the examples involved a union steward.

On the basis of the record before me, Respondent has not sustained its burden of proving justifiable business reasons for maintaining the rule prohibiting access to building 94cc, instituted by Simi on June 7. The reason given by Simi—that it was to prevent disruption within the department—was the first time the non-access rule was announced and the use of the picnic table for the actual preparation of grievances was required.[59]

The basis for Simi's rule, instituted June 7, appears to be pretextual. Simi admitted that the work areas within the building were large and that the preparation of grievances within an individual's work area would not disrupt other individuals. Accordingly, there appears to be no reason why Cleveland should be denied access to department 94cc to perform the duties of a chief shop steward pursuant to Simi's request, under the agreement, for a steward to assist an employee of his section in preparing a grievance. In fact, the pretextual nature of Simi's actions was clearly demonstrated by Hundoble, who stated that when he was supervising in department 94cc he regularly instructed individuals to prepare grievances in the lunchroom. Hundoble's use of the lunchroom for the filing of grievances when he was acting supervisor indicates that, at least for one supervisor, the lunchroom was an area sufficiently removed from the general work areas of the department so as to cause little or no disruption within the department.

The filing of the grievance, as hereinbefore stated, is an activity protected by Section 7 of the Act. To deny an employee, during the agreed-upon grievance filing procedure, access to the actual premises of 94cc, is a disparate application of the no-access rule against an individual engaging in union activities. See *GTE Lenkurt, Incorporated,* 204 NLRB 921 (1973); *Ford Motor Company (Romeo Tractor & Equipment Plant),* 222 NLRB 855 (1976); *Barney's Club, Incorporated,* 227 NLRB 414 (1976); *Campbell Chain Company,* 237 NLRB 420 (1978); *Stein Seal Company,* 237 NLRB 996 (1978). Limiting Cleveland's access to department 94cc by requiring him to remain outside the department to fill out a grievance while it was admitted that there were many areas within the building that were suitable for such activity is violative of Section 8(a)(1) of the Act. That Cleveland did not comply with the limitation does not relieve Respondent from its responsibility to permit access to company premises, and in particular department 94cc, for the conduct of lawful union business pursuant to the terms agreed upon in the contract.

It is undisputed that Cleveland, when confronted by Simi during the preparation of the grievance, did use abusive and profane language. Although such conduct cannot be condoned, I find that it was an impulsive reaction to a provocative and unreasonable limitation on the grievance filing procedure, not causing any injury and not disrupting the

[56] Cleveland did admit that he stated to McPherson that Simi was "not shit around here."

[57] Respondent attempted to discredit the testimony of McPherson through the testimony of Buz Dupuis. Dupuis is a stock clerk in charge of the cardboard section. He overheard the altercation. Dupuis stated that McPherson, on the day following the incident, approached him and requested that he do a favor by replying to all inquiries about the incident stating that he did not see or hear anything. Dupuis said no one else overheard this conversation between himself and McPherson. Dupuis admitted that he had never been on the side of a labor union but had only been on one side, the Company's side. He referred to himself as a company person. Dupuis admitted he reacted very adversely to the confrontation which occurred in the lunchroom and thought that Cleveland was extremely disrespectful and should have been discharged. The admission of company bias, cojoined with his extremely adverse reaction to the incidents of June 7 including his desire to have Cleveland fired, his demeanor on the stand, and his failure to mention the incident to Don McDonald, the employee he saw immediately after the alleged confrontation with McPherson, led me to discredit his testimony.

[58] Gitlin, Young, and Martinez.

[59] Simi did give two first-step responses to Cleveland at the picnic table previously; however, responses do not require the use of a table to prepare written material. It also appears that when Simi gave the responses to Cleveland at the picnic table, they did not sit down and use the table.

activities of department 94cc. The incident was a single isolated event which was insufficiently serious to deprive the employee performing his duties as a chief steward of the protections of the Act. *MP Industries, Inc.*, 227 NLRB 1709 (1976). Accordingly, I find that Cleveland's use of abusive and profane language did not deprive this steward of the protective mantle of the Act, and that Cleveland's suspension for engaging in the protected concerted activity of preparing a grievance violated Section 8(a)(1) of the Act.

Furthermore, the reaction to Cleveland's abusive language was disparate when compared to the reaction to Crawford's comments to Bell.[60] As Oakey testified in relation to Crawford's behavior toward Bell, he stated that there was a company policy regarding abusive language. The use of abusive language would not be tolerated by any employee, including management. However, Crawford was not subjected to suspension or firing, contrary to Wade's testimony that such behavior would, normally and routinely, subject the employee who used abusive language to discharge. Oakey considered Crawford's comment a violation of this company rule and further stated that he had never heard of a similar incident where management directed language in similar poor taste or so provocatively to an employee under his supervision. The fact that the Company claims that it took great umbrage to any type of activity which included the use of abusive language is not supported by the facts on this record. Accordingly, the suspension of Cleveland, based on the incident, for insubordination and the use of abusive and profane language, is found to be violative of Section 8(a)(1).

Conclusions of Law

1. Respondent, Caterpillar Tractor Company, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. United Automobile, Aerospace, and Agricultural Implement Workers of America, Local No. 76, is a labor organization within the meaning of Section 2(5) of the Act.
3. By interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
4. Respondent has violated Section 8(a)(3) and (1) of the Act by disparate treatment of Everett Cleveland, motivated in part by his status as chief union steward.
5. Such unfair labor practices affect commerce within the meaning of the Act.

The Remedy

Having found that Respondent has engaged in and is engaging in certain unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act. Accordingly, the Respondent shall be ordered to immediately make Everett M. Cleveland whole for any loss of earnings and compensation he may have suffered because of this illegal discrimination against him in his employment as herein found. Backpay for Cleveland and interest thereon are to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[61] Respondent shall also revoke and expunge from its files and records all warnings issued to employees Everett M. Cleveland, Kathleen McPherson, and Millicent Bell which have been found unlawful herein.

Upon the foregoing findings of fact, conclusions of law and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[62]

The Respondent, Caterpillar Tractor Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Disciplining employees because they file grievances under the collective-bargaining agreement governing the terms and conditions of their employment.

(b) Disciplining or otherwise reprimanding employees in a manner more severe than consistent with established disciplinary policy because of their interest in or activity on behalf of the Union, or any other labor organization, or in order to discourage such union activity.

(c) Disciplining or otherwise discriminating against employees because of their interest in or activity on behalf of the Union or any other labor organization.

(d) In any other manner interfering with, restraining, or coercing its 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) Immediately offer Everett M. Cleveland the earnings lost during his unlawful suspension in the manner set forth in that portion of this Decision entitled "The Remedy."

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

(c) Strike and physically remove from its records and files any reference to formal and informal warnings, herein found unlawful, given to employees Everett M. Cleveland, Kathleen McPherson, and Millicent Bell.

(d) Post at its San Leandro, California, facility copies of the attached notice marked "Appendix."[63] Copies of the no-

[60] As noted previously, Crawford commented to Bell that she could play with herself in the ladies room.

[61] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[62] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[63] In the event that 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."

tice, on forms to be provided by the Regional Director for Region 32, after being duly signed by the authorized representative of Respondent, shall be posted by Respondent immediately upon receipt thereof, and be maintained for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees customarily are posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced or covered by any other material.

(e) Notify the Regional Director for Region 32, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the remainder of the complaint be, and it hereby is, dismissed.