

American Machinery Corporation and United Steelworkers of America, AFL-CIO. Case 12-CA-4211

January 16, 1969

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS FANNING AND ZAGORIA.

On November 4, 1968, Trial Examiner Louis Libbin issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief.

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

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions, the brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

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 Trial Examiner and orders that the Respondent, American Machinery Corporation, Orlando, Florida, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

LOUIS LIBBIN, Trial Examiner: Upon charges filed on April 25, 1968, by United Steelworkers of America, AFL-CIO, herein called the Union, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 12 (Tampa, Florida), issued a complaint, dated August 12, 1968, against American Machinery Corporation, herein called the Respondent. With respect to the unfair labor practices, the complaint, as subsequently amended, alleges, in substance, that Respondent violated Section 8(a)(1) and (3) of the Act by failing and refusing to reinstate former striking employees subsequent to their unconditional request for

reinstatement. In its duly filed answer, Respondent denies all unfair labor practice allegations.

Pursuant to due notice, a hearing was held before me at Orlando, Florida, on September 17 and 18, 1968. All parties appeared at the hearing, were represented by counsel, and were given full opportunity to participate therein. On October 15, 1968, all parties filed briefs which I have fully considered.¹

Respondent's motion to dismiss the complaint, made before the close of the hearing and upon which I reserved ruling, is hereby denied. For the reasons hereinafter indicated, I find that Respondent violated Section 8(a)(1) and (3) of the Act.

Upon the entire record² in the case, and from my observation of the demeanor of the witnesses while testifying under oath, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent, a Florida corporation, is engaged in the manufacture, sale, and distribution of citrus, vegetable and canning machinery. During the 12-month period preceding the issuance of the instant complaint, Respondent sold and shipped goods and materials, valued in excess of \$50,000, from the State of Florida to points located outside the State of Florida.

Upon the above admitted facts, I find, as Respondent further admits in its answer, that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the answer admits, the record shows, and I find, that United Steelworkers of America, AFL-CIO, the Charging Party herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The sole issue in this proceeding is whether Respondent violated Section 8(a)(1) and (3) of the Act by refusing and failing to reinstate economic strikers after the termination of the strike.

A. The Facts

As counsel for Respondent concedes in his brief, there is no significant conflict with respect to the relevant and material facts.

1. The strike

Respondent has recognized the Union as the exclusive representative of its production and maintenance employees at the Orlando, Florida, plant from about April 7, 1952, to about February 6, 1968. They have been parties to collective-bargaining agreements covering this unit since 1952. The last such agreement expired by its terms on October 15, 1967.

¹As the Board's rules make no provisions for reply briefs, Respondent's reply brief, filed on October 21, 1968, has been rejected.

²Certain inadvertent errors in the transcript have been noted and corrected.

When negotiations for a new contract became deadlocked on October 17, 1967, the entire unit of approximately 50 employees went on strike in support of the Union's demands and picketed Respondent's plant. By registered letter dated November 14, 1967, and signed by President Sharts, Respondent notified each of the strikers that "*You have been permanently replaced as an employee of American Machinery Corporation.*"

In the latter part of January 1968, Union Representative Davidson requested President Sharts to meet for contract negotiations. By letter dated February 6, 1968, Sharts refused to bargain because of a "good faith doubt" of the Union's majority status and announced that "unless and until the Union establishes its position as the majority representative of the employees, the Company will no longer recognize the Union as representing the employees." Thereafter, the Union filed a refusal-to-bargain charge which was dismissed by the Regional Director, and his action was sustained on appeal.

2. Request for reinstatement; Respondent's refusals and failure to reinstate

The strike and picketing ended on March 13, 1968. On that date, Union Representative Davidson signed and sent the following registered letter, addressed to President Sharts and received by him the following day:

Please be advised that the strike by your employees is terminated. At this time, your employees hereby unconditionally offer to return to work immediately and request reinstatement. This offer is made on behalf of all employees who went on strike and have not returned to work to date.

In the event there are no openings as of the date you receive this offer, *you are further advised that said employees will be available for employment to fill openings when they develop or vacancies created by the departure of employees now working.* [Emphasis supplied.]

By reply letter from Sharts, dated March 21, 1968, Davidson was advised that —

At the time of receipt of your letter and at this time, our work force is fully manned and we have no job openings. When job openings occur, the strikers, like any other applicants, will be considered on a nondiscriminatory basis *if they make applications for employment and keep these applications current.* We do not give any applicants any preferential hiring status and we will hire to meet our needs from any available source. [Emphasis supplied.]

Thereafter, 17 strikers made individual applications for their jobs. Thus, Samuel Carlis went to the plant about 3 or 4 days after the picketing ended and was given an employment application by Sharts' secretary. He filled it out and returned it to the plant on March 26. Charles Moore telephoned Plant Manager Wittick concerning employment and was told to file an application. He also telephoned Sharts about a week after the strike ended and was told they had enough employees and were not hiring. He went to the plant, got an employment application from Sharts' secretary, filled it out and returned it on March 22. Sammy Thompson talked about his job to Sharts at the plant on March 20. Sharts stated he would hire the strikers back as jobs became available but that they would return as new employees, with no seniority and "nothing whatsoever," and that he would have to fill out an application. Thompson filed his application on March 22.

Philip Rooks telephoned Foreman Ruff on March 13 and 14. In the first conversation, Ruff stated he did not know if any jobs were available; in the second conversation, he stated that no jobs were available for Rooks. About a week later, Rooks applied in person to Sharts who stated that no jobs were available and that if he came back it would be as a "new man" with no seniority. Sharts gave Rooks an employment application blank to fill out and promised, "I'll let you know when something opened up." Rooks submitted his application on March 24. Gene Norris talked to Sharts about 3 or 4 days after the strike and asked about his job. Sharts stated everything was filled up, gave Norris an application, told him to keep it "current," and promised to let him "know if anything opened up." Norris submitted his application on March 26. About 2 months before the instant hearing, Norris telephoned Plant Manager Wittick, asked if there were any openings, and was told there were none. Robert Mollinari was given an application to fill out by Sharts' secretary who stated that the company was filled up and was not hiring at that time but was only taking applications. Mollinari submitted his application on March 26. Billy Johnson saw Wittick at the plant about 3 days after the strike and asked about getting his job back. Wittick stated they were all filled up. Earl Shope telephoned Sharts about his job about March 19 and was told his job was filled. A few days after the strike Robert Taylor and G. Lowery each got an application from Sharts' secretary. They returned them on March 27 and March 26, respectively. Charles Patterson talked to Sharts in his office about the first part of April, was told he would have to be hired as a "new man" without seniority, and was given an employment application to fill out. Patterson testified that he mailed it back about a week later, while Sharts testified that the Company had no record of having received his application. Richard Harrison saw Sharts about his job on March 13 and was told that Sharts would have to get a clarification before he could tell anything. Harrison returned to the plant the following day. When Sharts told his secretary to give Harrison an application blank, Harrison remarked that Sharts already had more information on him in the office than he could possibly put down in an application. They both laughed. Harrison took the application but never returned it. In the latter part of July or early August, Harrison spoke to Wittick who stated they were filled up because they had hired 15 the day before and did not need anyone else. In addition, the following strikers spoke to management representatives about returning to work: Melvin Engle on March 15 and 18, Fred Oliver on March 18 and M. Jordan on March 21 spoke to Sharts; S. Mahoney spoke to Wittick on March 14; and S. Douglas spoke to Assistant Plant Manager Morrow.³

Sharts admitted that the employment application which the strikers were required to fill out is the same application which all new applicants for employment have been and are required to fill out. It is entitled "APPLICATION FOR EMPLOYMENT" and, in substance, inquires as to the applicant's name, address, age, date of birth, citizenship, sex, marital status, physical defects, past illnesses, past arrests, children, work and

³The only other disputed testimony in addition to that involving the receipt of Patterson's application, as set forth in the text, was the disputed testimony of Sharts that he showed strikers Thompson, Rooks and Norris a copy of his March 21 letter to the Union and told them that "these are the rules of the game that we have to follow" I deem it unnecessary to resolve these conflicts

wages desired, previous employment record, armed service record, and education. He further admitted that, as a matter of company policy, any striker who would have been or would be reemployed would occupy the status of a new employee and would not carry over his old seniority. He also admitted that strikers to whom he spoke generally inquired about whether or not they would be returning as new employees and that he told them that they would be "returning as new employees." He further admitted that Respondent maintains a list of all its employees with their mailing addresses, that Respondent has not requested any striker to report to work or informed him that a job was available, and that not a single striker had been reinstated or reemployed as of the date of the instant hearing.

3. Jobs available for strikers after March 14, 1968

Pursuant to the General Counsel's subpoena duces tecum, Respondent produced at the instant hearing a breakdown of all its employees from the date immediately preceding the strike to the time of the instant hearing, which were received in evidence as General Counsel's exhibits as follows:

General Counsel's Exhibit 2 is a list of all of Respondent's employees (51 in number) who were employed immediately preceding the commencement of the strike on October 18, 1967, together with their job classifications.

General Counsel's Exhibit 3 is a list of Respondent's employees who engaged in the strike (51 in number), together with their job classifications and rates of pay. These two exhibits are identical, except that the latter also contains the rates of pay.

General Counsel's Exhibit 4 is a list of the same 51 strikers, together with the names of their original replacements and the replacements' job classifications, rate of pay and dates of employment. This shows that all original replacements were employed during the month of November, 1967.

General Counsel's Exhibit 5 is a list of all employees hired from the date of the commencement of the strike on October 18, 1967 to the date of the instant hearing, excluding the replacements listed on General Counsel's Exhibit 4, together with their dates of employment, job classifications and rates of pay. This list contains 121 names, with the earliest and latest dates of employment being November 1, 1967 (W. Bracey) and September 4, 1968 (L. Henderson), respectively.

General Counsel's Exhibit 6 is a list of all new employees who appear on General Counsel's Exhibit 4 (replacements) and 5 and who have ceased their employment with Respondent together with the dates of their employment terminations. This list contains 95 names, with the earliest and latest termination dates being November 17, 1967 (W. Bracey) and September 16, 1968 (T. Fuller), respectively.

In addition, President Sharts at the instant hearing testified that on March 14, 1968, Respondent's work force consisted of 51 in job classifications formerly occupied by strikers. He then named the employees who on that date were performing the jobs or functions formerly performed by each of the named strikers, and testified as to whether or not they were still employed in the same positions as of the date of the instant hearing.

The General Counsel has attached to his brief two charts which compile, in analysis form, the data contained in General Counsel's Exhibits 2 through 6, inclusive, and in the testimony of Sharts as to replacement of strikers as

of March 14, 1968, hereinabove mentioned. These are entitled Attachments A and B and indicate the specific exhibits or testimony from which the data listed therein is taken. Attachment A consists of nine columns, labeled A through I, inclusive, with a heading on each column indicating the nature of the information listed therein and the Exhibit Number or portion of the record from which this information is taken. Attachment B sets forth the names of all employees hired after March 14, 1968, in specified classifications, together with their dates of hire and termination, where applicable. Attachments A and B contain data which appear only in the instant record, are purely factual, and involve no interpretations or conclusions. I have checked the data and information contained in these Attachments and find that they accurately reflect the record. I accordingly adopt Attachments A and B as part of my decision and have annexed photo copies thereto.

As previously noted, Sharts admitted that as of March 14, 1968, the date he received the Union's unconditional request for reinstatement, Respondent's total work force consisted of 51 employees. An examination of General Counsel's Exhibit 5 shows that since March 14, 1968, Respondent employed approximately 85 new employees in positions which strikers formerly occupied, as is reflected in Attachment B. Moreover, an examination of General Counsel's Exhibits 4, 5, and 6 shows that Respondent's total work force in classifications formerly occupied by strikers increased to 77 as of the date of the instant hearing.⁴

The reason for the 50 percent increase in the work force and for the unusually large number of new hires is due to several factors. One factor is the great turnover, as shown by the employment terminations. It was and is Respondent's admitted policy to hire all employees on a 60-day probationary period. Respondent admitted that some employees, before completing their 60-day probationary period, either quit or were terminated because they proved to be unsatisfactory. In addition, Respondent's business is seasonal. Sharts testified that the "busy season" is "from May till the first of November" and that during that period they increased the work force in existing classifications.

Sharts testified that he was "pretty well versed" in the strikers' qualifications and that at the time of their application they were considered for all the classifications which they had occupied. He further admitted that positions in the same classifications were interchangeable. General Counsel's Exhibits show that many strikers had occupied a number of classifications in addition to the one which his replacement occupied on March 14, 1968. For example, Attachment A shows that striker Blackburn had occupied three classifications (MS LDMN.-WBA-IW2) but that Hubbard, his replacement, occupied only the classification of MS Ldmn; striker C. H. Moore occupied three classifications (WBA3-MS2-Elec. Maint.) but Cusick, his replacement, occupied only the classification of Elec. Maint.; and striker Patterson occupied three classifications (WBA2-IW2-WS3) but Swords, his replacement, occupied only the classification of IW3. The same situation occurred with respect to many other strikers. After March 14, 1968, new employees were hired in the remaining classifications which these strikers had

⁴This figure is computed by adding the 51 replacements listed in Exh. 4 to the 121 other employees hired since October 18, 1967, which are listed in Exh. 5, and subtracting the 95 employees who appear on these two exhibits and who were terminated as shown on Exh. 6.

occupied and for which they were qualified.

A comparison of Columns F and I with Column B on Attachment A shows that as of March 14, 1968, the positions of 24 strikers⁵ were filled by replacements who did not have the same skills or job classifications. New employees were subsequently hired in the skills and job classifications of these strikers. The strikers of course were also qualified to fill lesser skilled jobs. For example, a first class welder burner-assembler (WBA) was qualified to fill the job of a second or third class, and a leadman WBA was qualified to fill the jobs of all three classes. Moreover it appears that Respondent did some shifting and juggling in determining who constituted some of the replacements for specific strikers. Thus, a comparison of Column D with Column F of Attachment A shows that as of March 14, 1968, substitutions were made for the original alleged permanent replacements for specific strikers although the original replacements were still employed. In some cases, the original replacement was then designated as the permanent replacement of a different striker as of March 14, 1968.⁶ Admittedly, many of the initial alleged permanent replacements terminated their employment after the end of the strike, as appears from Columns D and E of Attachment A.

The General Counsel also contends that, since Respondent had a policy of requiring all new employees to serve a 60-day probationary period, all replacements who had not served their full probationary period as of March 14, 1968, when Respondent received the Union's unconditional request for reinstatement, were not permanent and therefore were occupying positions available to the strikers. The Board refused to take such a position in *Kansas Milling Company*, 97 NLRB 219, 220, 225-226.⁷ In that case, the Board held that only those employees who were terminated within their probationary period should not be regarded as permanent employees and that positions occupied by them were not filled by permanent replacements as of the date of the request for reinstatement. An examination of Columns F, G, and H of Attachment A discloses only three probationary replacements who fall within this category.⁸

In any event, even without regard to the probationary status of some of the replacements or new hires, I find upon consideration of all the foregoing that after March 14, 1968, a sufficient number of openings and vacancies became available in all categories formerly held by the strikers and for which they were qualified to have enabled Respondent to have reinstated all the strikers. Yet Respondent admittedly made no effort to offer any of the available jobs to any of the strikers, a list of whose names, addresses, and telephone numbers were admittedly in its records. Instead, Respondent admittedly made several inquiries since March 13, 1968, of the Florida State Employment Service and of certain employment agencies for the purpose of securing referrals. Indeed,

Sharts testified that "its possible" he also sought employees from other places. In addition, Respondent admittedly hired some employees from a nearby closed plant of the Citrus Machinery Company.

4. Respondent's contentions and concluding findings

Counsel for Respondent contends in his brief that there is no proof that the Union acted as agent for the strikers in making the unconditional request for reinstatement on March 14, 1968, in view of the fact that at that time the Union was no longer the recognized bargaining representative at the plant. I find no merit in this contention. The Union admittedly represented the strikers when the strike began. That fact was not changed by the Union's failure to represent the replacements. There is no evidence that the Union's authority to speak on behalf of the strikers had been revoked. Moreover, at no time did Sharts or any other representative of Respondent question Davidson's authority to speak on behalf of the strikers. On the contrary, Sharts' reply letter implies a recognition of Davidson's status in that respect. I find that a valid unconditional request for reinstatement was made by Union Representative Davidson on behalf of all strikers on March 14, 1968.

Counsel for Respondent further contends that as no jobs were available on March 14, 1968, and as the strikers did not comply with Respondent's requirement that they file individual employment applications and keep them current, Respondent owed the strikers no further duty when subsequent openings and vacancies became available. I do not agree.

In *Laidlaw Corporation*, 171 NLRB No. 175, the Board held "that economic strikers who unconditionally apply for reinstatement at a time when their positions are filled by permanent replacements: (1) remain employees; (2) are entitled to full reinstatement upon the departure of replacements unless they have in the meantime acquired regular and substantially equivalent employment, or the employer can sustain his burden of proof that the failure to offer full reinstatement was for legitimate and substantial business reasons." In the instant case there is no showing that at the time when openings and vacancies occurred any of the strikers had "acquired regular and substantially equivalent employment." As the sole reason for not reinstating the strikers when openings and vacancies occurred, Sharts relied on the failure of the strikers to comply with his requirement to file individual applications as new employees and the failure of those who filed such applications to keep them current. The information requested on this application was already in Respondent's records. As employee Harrison told Sharts when an application was offered to him, Sharts already had more information on him in the office than he could possibly put down in an application. Respondent also admittedly had a list of all the strikers with their mailing addresses and telephone numbers. The employment applications were the same ones which were required to be filed by all new applicants for employment and any employed strikers admittedly would occupy the status of new employees with no seniority. Under all the circumstances, I find, contrary to the contention of counsel for Respondent, that the requirements to file new applications for employment and to keep them current do not constitute "legitimate and substantial business

⁵Harrison, F. F. Oliver, Hampton, Hores, Dorman, Shope, Van Kirk, Lugas, Jarvis, Norris, Patterson, Molinari, Mahoney, Todd, Lowery, Johnson, Davis, McMullen, Peterson, Foggin, Price, Socky, Morrison, and Parker

⁶See, e.g., original replacements Foster, Hughes, Cusick, Morgan, Robinson, Loggins, Hendricks, Reilly, Hastings, Burns, Williams, Sanders and L. Conley

⁷The cases cited in the G. C. br. are inapposite as they turned on their own facts which are significantly different from those in the instant case.

⁸F. Brown, E. Thomas, and T. Russ. In addition, G. C. Exh 5 and 6 show that an additional probationary employee, Gaskins, who is not listed as a replacement as of March 14, 1968, was also terminated within his probationary period

⁹Although counsel for Respondent claimed at the instant hearing that

reasons" for the failure to accord the strikers full reinstatement.

As previously found, the strikers had made an unconditional request for reinstatement on March 14, 1968. At that time they also put Respondent on notice that their request was a continuing one by advising that the strikers will remain "available for employment to fill openings when they occur or vacancies created by the departure of employees now working." In addition, 17 strikers individually, in one form or another, made known their desire for reemployment to representatives of Respondent, as previously found. Under the holding in the *Laidlaw* decision, which I deem controlling in the instant case,¹⁰ Respondent was therefore required to offer the strikers the positions which became open and available and for which they were qualified without regard to whether they had filed new employment applications or had failed to keep them current. Moreover, the requirement that the strikers file applications for employment as new employees with loss of seniority was itself a discriminatory condition violative of Section 8(a)(1) and (3) of the Act, as it penalized the strikers for having engaged in a protected concerted and union activity. Hence, the failure to comply with this discriminatory condition could not in any event serve as a valid defense to the failure to reinstate the strikers.

I have previously found that sufficient openings and vacancies in positions formerly occupied by the strikers and for which they were qualified arose after the unconditional reinstatement request of March 14, 1968, to have enabled Respondent to have reinstated all the strikers. As the strikers continued to remain employees within the meaning of Section 2(3) of the Act and as Respondent did not sustain its "burden of proof that the failure to offer full reinstatement" to the strikers "was for legitimate and substantial business reasons" I find that Respondent's failure to accord full reinstatement to the strikers was violative of Section 8(a)(1) and (3) of the Act even without regard to Respondent's intent or antiunion motivation. *Laidlaw* case, *supra*.¹¹

Moreover, I am convinced and also find that in failing to reinstate any of the strikers, Respondent was discriminatorily motivated in an effort to keep the Union from regaining its representative status in the plant, and thereby further violated Section 8(a)(1) and (3) of the Act on this additional ground. Among the principal factors which lead me to this conclusion are the following:

(1) The strikers were experienced employees with long service records, some with over 15 and 20 years of service.

(2) Respondent was in need of help with the commencement of its busy season and the increase of its work force by about 50 percent. In addition, there was a great deal of turnover and new employees quit or were terminated during their probationary period because they proved to be unsatisfactory.

(3) Respondent kept a list of the names, addresses and telephone numbers of all strikers but never contacted any of them about employment, despite the Union's letter

some strikers had obtained substantially equivalent employment, he neither adduced nor offered sufficient probative evidence to support such a finding.

¹⁰I deem it unnecessary to determine whether the *Laidlaw* principles would be applicable even if the request for reinstatement were not a continuing one.

¹¹As the principles enunciated in the *Laidlaw* case were not applied prospectively in that case, I find no merit in Respondent's contention that they be applied prospectively in the instant case. Respondent's additional contention that the Board's holding in *Laidlaw* is wrong as a matter of law is an argument which must be addressed to the Board and the courts.

advising of their availability for future openings and vacancies and the inquiries of a large number of them about their jobs.

(4) Instead, Respondent sought referrals from the State Employment Service, other employment agencies, and hired from still other sources.

(5) Respondent admittedly at no time informed the Union or the individual strikers who applied what would have to be done to keep their applications "current."

(6) No employment was offered even to those strikers who had filed and kept their applications "current" within the meaning of Sharts' own definition. Thus, when asked by the General Counsel what he meant by "current," Sharts testified at one point, "Well, within at least weekly checkups." Respondent admitted that strikers R. Molinari, who had the classification of WBA-2, and G. Lowery, who had the classifications of MS-2 and WBA-3, filed their employment applications with Respondent on March 26, 1968. General Counsel's Exhibit 5 shows that on April 3, 1968, R. Oliver was employed in the classification of WBA-3. Thus, when an opening for which Molinari and Lowery were qualified arose within a week after they filed their application, it was filled by a new hire instead of being offered to them.

(7) Strikers Norris and Rook, who admittedly filed their employment applications on March 26 and 22, 1968, respectively, had been promised by Sharts to let them know when and if anything "opens up." Although openings and vacancies thereafter arose in classifications for which they were qualified, Sharts never kept his promise and filled the openings with new hires.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations set forth in section I, above, have a close, intimate and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

1. By requiring the replaced strikers, who had made an unconditional request for reinstatement, to file employment applications for employment as new employees with loss of seniority and by failing to offer full reinstatement to said strikers when openings and vacancies arose after their unconditional request for reinstatement, Respondent has discriminated with respect to their hire, tenure, and terms and conditions of employment, thereby discouraging membership in the Union, and has engaged and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

2. By the foregoing conduct Respondent has also interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights and thereby has engaged and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I will recommend that it cease and desist therefrom and take certain affirmative action which will effectuate the policies of the Act.

Having found that Respondent violated Section 8(a)(1) and (3) of the Act by failing to offer reinstatement to the replaced strikers when openings and vacancies arose after their unconditional request for reinstatement, I will recommend that Respondent offer to the strikers listed in Appendix B,¹² attached hereto, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings they may have suffered by reason of the discriminatory failure to reinstate them by payment to each of a sum of money equal to that which each normally would have earned as wages from the date of the unlawful failure to reinstate them to the date of Respondent's offer of reinstatement, less the net earnings of each during such period, with backpay and interest thereon to be computed in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289, and shall include interest at the rate of 6 percent per annum, to be computed in the manner set forth in *Isis Plumbing & Heating Co.*, 138 NLRB 716. The determination of the exact date when an opening or vacancy arose, to which a specific striker would have been reinstated absent the unlawful failure so to reinstate him, is hereby deferred to the compliance stage of this proceeding.

There remains for consideration the question of the remedy to be accorded the six strikers who applied for and accepted early retirement. As for the three (Rooks, Wales and Oliver) who applied for their early retirement after the unconditional request for reinstatement of March 14, 1968, and after Respondent's failure to reinstate them, I agree with the General Counsel that they are entitled to the same remedy as the other strikers and I have included their names on Appendix B, attached hereto. However, I agree with Respondent that the remaining three (Van Kirk, Ligas and Hampton) who applied for their early retirement before March 14, 1968, are not entitled to the same remedy and I have therefore excluded them.

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

RECOMMENDED ORDER

Respondent, American Machinery Corporation, Orlando, Florida, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in or activities on behalf of United Steelworkers of America, AFL-CIO, or any other labor organization, by requiring strikers who had made an unconditional request for reinstatement to file applications for employment as new employees with loss of seniority, or by failing to offer such strikers full reinstatement to existing openings or vacancies, or by discriminating against them in any other manner with respect to their hire, tenure, or any term or conditions of employment.

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

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

(a) Offer to those listed in Appendix B, attached hereto, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings they may have suffered by reason of the unlawful failure to reinstate them, in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board and its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports and all other records necessary in determining the amount due as backpay.

(c) Notify those listed in Appendix B if presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act, and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

(d) Post at its plant in Orlando, Florida, copies of the notice attached hereto as Appendix A.¹³ Copies of said notice, on forms to be provided by the Regional Director for Region 12, shall, after being duly signed by an authorized representative of Respondent, be posted by it immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily 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 12, in writing, within 20 days from the date of the receipt of this Decision, what steps the Respondent has taken to comply therewith.¹⁴

¹³In the event this Recommended Order is adopted by the Board the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals Enforcing an Order" shall be substituted for the words "a Decision and Order."

¹⁴In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT discourage membership in or activities on behalf of United Steelworkers of America, AFL-CIO, or any other labor organization, by requiring strikers who had made an unconditional request for reinstatement to file applications for employment as new employees with loss of seniority, or by failing to offer such strikers full reinstatement to

¹²This contains the names of all strikers listed in the complaint except for the three listed *infra*.

existing openings or vacancies, or by discriminating against them in any other manner with respect to their hire, tenure, or any term or condition of employment.

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

WE WILL offer to all those listed in Appendix B, attached hereto, immediate and full reinstatement, to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings they may have suffered as a result of the discrimination against them.

AMERICAN MACHINERY
CORPORATION
(Employer)

Dated	By	(Title)
	(Representative)	

Note: We will notify any of the above-named employees presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Room 706,

Federal Office Building, 500 Zack Street, Tampa, Florida 33602, Telephone 228-7227.

APPENDIX B

- | | |
|-------------------------|---------------------------|
| 1. R. G. Blackburn | 24. Billy Mlotkowski |
| 2. Cecil H. Bryant | 25. R. V. Molinari |
| 3. Samuel Carlis | 26. Charles H. Moore |
| 4. Frank Lee Clay | 27. E. J. Moore |
| 5. James John Davis | 28. William D. Morrison |
| 6. Fred E. Dorman | 29. Gene H. Norris |
| 7. Shelby B. Douglas | 30. F. F. Oliver |
| 8. Melvin Engel | 31. Charles E. Patterson |
| 9. Leland F. Foggin | 32. John H. Peterson, Sr. |
| 10. Lonnie Gamble | 33. Wendel Price |
| 11. Richard Harrison | 34. Philip S. Rooks |
| 12. Austin G. Holben | 35. John M. Schlayer |
| 13. John M. Hores | 36. Earl W. Shope |
| 14. Melvin R. Hyder | 37. John W. Socky |
| 15. Jasper F. Jarvis | 38. Thurman Soles |
| 16. Herbert C. Jeffrie | 39. Robert James Taylor |
| 17. Billy Johnson | 40. Sammy Lee Thompson |
| 18. Mitchell F. Jordan | 41. Alford S. Todd |
| 19. Coy E. Lewis | 42. Fred D. Wells |
| 20. G. M. Lowery | 43. John G. White |
| 21. Stanford J. Mahoney | 44. D. Poole |
| 22. John W. Martin, Sr. | 45. D. Parker |
| 23. Leslie T. McMulun | 46. Wales |

ATTACHMENT "A"

Column A	B	C	D	E	F	G	H	I
Info. from GC Ex 3 Strikers	Info. from GC Ex 3 Job Classification of Strikers	Info. from GC Ex. 4 Job Class. of Initial Replacement	Info. from GC Ex. 4 Initial Replacement	Info from GC Ex 6 — Term- ination Date of Initial Replacement	Testimony 188-209 Replacements as of 3/14/68	Info. from GC Ex. 4 & 5 Hiring Dates of Those in Column "F"	Info from GC Ex 6 — Termi- nation Dates of Those in Column "F"	Info. from GC Ex 4 & 5 Class. of Those in Column "F"
P S. Rooks	Tr.Dr -Cr.Op -Painter-Lab	Cr.Op	J L. Espejo	still employed	Espejo	11/9/67	still employed	Cr Op.
M F. Wales	SM 1 Ldmn	SM 1 Ldmn	E Crisp	1/2/68	Platt	2/7/68	7/26/68	SM Ldmn.
E.J. Moore	WBA Ldmn	WBA Ldmn	W W. Phelps	3/22/68	Rouse	1/16/68	still employed	WBA Ldmn
B H. Harrison	WBA 1	WBA Ldmn	W L. Taylor	2/21/68	Thompson	3/6/68	still employed	WBA 2
R G. Blackburn	MS Ldmn -WBA-IW 2	MS Ldmn	J Hubbard	still employed	Hubbard	11/9/67	still employed	MS Ldmn
S L. Thompson	WBA Ldmn	WBA Ldmn	W R. Harris	1/17/68	Hodge	2/19/68	still employed	WBA Ldmn
F F. Oliver	WBA Ldmn.	WBA Ldmn	E.L. Conley	12/1/67	P Ferguson	12/19/67	still employed	WBA 3
R S. Hampton	WBA 1	WBA 1	W T. Treadwell	1/12/68	L Conley	11/8/67	7/19/68	WBA 3
M A. Engel	WS Ldmn.	WS Ldmn	R Terry	3/22/68	Stone	12/12/67	still employed	WS Ldmn
J M. Hores	WBA 1	WBA 3	G.L. Hesson	11/24/67	Hodges	3/13/68	still employed	WBA 2
F F. Dorman	WS 1	WS 3	J.W. Foster	5/20/68	Reilly	11/9/67	still employed	WS 2
E.W. Shope	WBA Ldmn -Tr Dr	WBA 3	G F Hughes	5/3/68	Morgan	11/13/67	still employed	WBA 3
C H. Moore	WBA 3-MS 2-Elec.Maint.	Elec Maint	D J. Cusick	3/28/68	Smith	2/28/68	still employed	Elec. Maint
M E. Van Kirk	WBA 1-WS 3	WBA 3	B. Flake	11/29/67	Hughes	11/9/67	5/3/68	WBA 3
J. Ligas	MS 1-WS 3	MS 2	J F. Nosal	8/12/68	Nosal	11/9/67	8/12/68	MS 2
S. Carlis	Cr Op -Fk.Trk -Yd Trk -GL	GL	G A. Leigh	11/29/67	Burns	11/11/67	still employed	GL
J Jarvis	WBA 1	WBA 3	B F Morgan	still employed	Richardson	1/29/68	still employed	WBA 3
L Gamble	Ptr.-Fk.Trk -GL	Fk Tr -GL	W Mikell	still employed	Mikell	11/8/67	still employed	Fk.Tr -GL
J Schlager	Stk.Clk.- MS 2	Stk.Clk	R D. Small	still employed	Small	11/13/67	still employed	Stk Clk
C Bryant	GL-Grind	GL	L Robinson	4/5/68	Davis	2/21/68	still employed	GL
R J Taylor	Wax Dept -WS 1	Wax Dept	J E Elder	still employed	Elder	11/9/67	still employed	Wax Dept
G.H. Norris	WB 1-WS-SM 1	SM 2	L D. Loggins	6/21/68	Ferguson		still employed	
C.E. Patterson	WBA 2-IW 2-WS 3	IW 3	J.A. Swords	still employed	Swords	11/10/67	still employed	IW 3
R. Mollinari	WBA 2	WBA 3	S J Hendricks	5/25/68	Matler	2/5/68	still employed	WBA 3
C. Lewis	IW Ldmn -WBA 2	IW Ldmn	J M. Evans	8/9/68	Evans	11/13/67	8/9/68	IW Ldmn.
S. Mahoney	WBA 2	WBA 3	B G Summerford	1/26/68	Brown	3/11/68	5/2/68	WBA 3
M. Jordan	MS 2	MS 2	D Resseguia	3/11/68	Harrell	2/27/68	still employed	MS 2
A Todd	WS 2	WS 2	A A Reilly	still employed	Gausch	2/5/68	4/17/68	GL
G Lowery	MS 2-WBA 3	MS 3	J A. Tezak	12/15/67	Cusick	11/9/67	3/28/68	Elec. Maint
A Holben	Painter	Painter	M R Kurbaba	1/10/68	Brewer	1/25/68	still employed	Painter
B. Johnson	WBA 3	WBA 3	A J Cain	11/24/67	Hastings	11/10/67	still employed	WBA Hlpr
H Jeffries	WBA 3	WBA Hlpr	J.E. Hastings	still employed	Hamm	11/20/67	still employed	WBA 2
F. Wells	WBA 3	WBA Hlpr	M Owens	11/24/67	Franklin	3/10/68	5/24/68	WBA 3
M Hyder	IW 3	IW 3	T H. Stover	7/19/68	Stover	11/10/67	7/19/68	IW 3
J. Davis	IW 3	IW 3	R Smolk	11/17/67	E. Thomas	2/26/68	4/16/68	GL
L. McMullen	WBA 3	WBA 3	M.J. Faulk	12/30/67	J. Sanders		8/27/68	WBA Hlpr
S Douglas	MS 3	GL	A E. Nagorka	12/1/67	Ricks	2/12/68	still employed	MS 3
F Clay	GL	GL	H R. Ricketson	12/4/67	St Clair	2/6/68	still employed	GL
J. Peterson	WBA 3	WBA 3	C J Hammond	11/29/67	T. Russ	2/12/68	3/15/68	GL
L Foggin	WBA 3	GL	F.J. Burns	still employed	Williams	11/13/67	3/29/68	GL
W Price	WBA 3	GL	A C. Williams	3/29/68	Foster	11/10/67	5/20/68	WS 3
D Poole	SM 3	SM 2	W H. Neuroth	1/8/68	Loggins	11/9/67	6/21/68	SM 2
J Socky	MS 1	MS 3	W S. Nickerson	5/31/68	Nickerson	11/10/67	5/31/68	MS 3
T. Soles	WBA 3	WBA 3	W W. Whited	7/19/68	Whited	11/8/67	7/19/68	WBA 3
W. Morrison	WBA 3	WBA Hlpr	J C Sanders	8/27/68	Phelps			
J Martin, Sr.	WBA 3	WBA 3	W J Langley	12/1/67	Hendricks	11/21/67	5/25/68	WBA 3
B. Mlotkowski	WBA 3	WBA 3	Lloyd Conley	7/19/68	Terry	11/10/67	3/22/68	WS Ldmn.
D Parker	WBA 3	GL	D. Naismith	1/5/68	Robinson	11/8/67	4/5/68	GL
J. White	WBA 3	WBA 3	C. Gagnon	2/2/68	Gagnon	11/20/67	2/2/68	WBA 3

Attachment B

(Information herein was obtained from G.C Exhs. 5 & 6)

Names, classifications, hiring and termination dates of these employees who worked at American Machinery Corporation following March 14, 1968, to the present, but does not include those listed in Column F of Attachment A.

WBA Leadman		
Name	Hiring Date	Termination Date
A. Winfrey	4/30/68	Employed as of hearing date
H. Goodwin	7/22/68	Employed as of hearing date
	WBA 1	
C. Stickney	7/18/68	8/9/68
L. Scroggins	7/18/68	8/20/68
R. Mallard	7/20/68	7/31/68
	WBA 2	
C. Bolin	5/7/68	Employed as of hearing date
J. McGinnis	5/7/68	6/14/68
C. Stewart	7/23/68	8/2/68
L. Jarvis	7/29/68	8/2/68
D. Jacks	7/29/68	Employed as of hearing date
J. Anderson	7/30/68	8/15/68
W. Largent	8/20/68	8/22/68
J. Hargis	8/27/68	Employed as of hearing date
	WBA 3	
H. Thompson	4/15/68	Employed as of hearing date
W. Daugherty	4/25/68	7/19/68
R. Oliver	4/30/68	Employed as of hearing date
W. Robinson	5/13/68	Employed as of hearing date
D. Carney	5/15/68	Employed as of hearing date
D. Duncan	5/20/68	Employed as of hearing date

J. Adams	5/22/68	Employed as of hearing date
W. Burkholder	5/23/68	Employed as of hearing date
R. Francis	5/27/68	7/19/68
R. Geddis	6/6/68	Employed as of hearing date
T. Newborn	6/6/68	Employed as of hearing date
A. Erwin	6/7/68	Employed as of hearing date
G. Charbonneau	6/10/68	8/23/68
R. Oviatt	6/17/68	Employed as of hearing date
W. McCullar	6/24/68	7/19/68
P. Robinson	7/1/68	7/19/68
D. Norton	7/13/68	7/29/68
E. Stamford	7/17/68	Employed as of hearing date
J. Todd	7/24/68	Employed as of hearing date
S. Noniewicz	7/24/68	Employed as of hearing date
H. Wheeler	8/1/68	Employed as of hearing date
B. Roach	8/1/68	Employed as of hearing date
E. Jackson	8/26/68	Employed as of hearing date
WBA Helper		
R. Feacher	4/10/68	8/3/68
R. McGlothlin	4/15/68	8/15/68
M. Jenner	5/15/68	Employed as of hearing date
H. Smith	8/8/68	Employed as of hearing date
B. Schmidt	8/8/68	9/3/68
D. Hurst	8/14/68	8/22/68
J. Ragins	8/22/68	Employed as of hearing date
SM Leadman		
E. Goodwin	7/18/68	Employed as of hearing date
SM 1		
H. Bertot	7/15/68	Employed as of hearing date

DECISIONS OF NATIONAL LABOR RELATIONS BOARD

	SM 2	
J. Hutchinson	7/18/68	9/4/68
	SM 3	
C. Henley	4/16/68	7/19/68
H. Ellis	6/10/68	Employed as of hearing date
P. Levas	7/15/68	Employed as of hearing date
W. Tompkin	7/23/68	7/26/68
	SM Helper	
W. Gampher	7/18/68	Employed as of hearing date
L. Garavalia	7/22/68	8/2/68
	GL	
J. Gaskins	2/14/68	4/5/68
B. Acree	4/16/68	7/19/68
M. Lamprey	4/22/68	Employed as of hearing date
G. White	4/22/68	5/3/68
C. Jolly	5/1/68	Employed as of hearing date
C. Hill, Jr.	5/1/68	Employed as of hearing date
R. Criswell	5/6/68	5/10/68
B. Mikell	5/27/68	6/20/68
F. Ryles	6/1/68	Employed as of hearing date
D. Samples	7/1/68	7/12/68
V. Gray	7/3/68	Employed as of hearing date
G. Myers	7/8/68	7/24/68
T. Fuller	7/24/68	9/16/68
U. Crews	8/2/68	Employed as of hearing date
E. Dent	8/2/68	Employed as of hearing date
J. Gray	9/3/68	Employed as of hearing date
L. Henderson	9/4/68	Employed as of hearing date

	IW Leadman	
W. Elliot	7/24/68	Employed as of hearing date
	IW 3	
J. Streeter	7/18/68	Employed as of hearing date
M. Farris	7/22/68	Employed as of hearing date
H. Hagan	7/22/68	8/2/68
A. Barnes	8/5/68	8/19/68
J. Meade	9/3/68	Employed as of hearing date
	IW Helpers	
B. Adams	7/18/68	8/2/68
A. Gillian	8/7/68	Employed as of hearing date
	MS 1	
S. Smathers	6/17/68	8/9/68
	MS 2	
R. Armstrong	7/22/68	8/23/68
	MS 3	
H. Bathrick	4/15/68	Employed as of hearing date
D. Elliott	6/3/68	Employed as of hearing date
	WS Helper	
J. Hilburn	6/6/68	6/28/68
J. Scurlock	6/20/68	7/3/68
	Electrical Maintenance	
J. Maxon	5/6/68	Employed as of hearing date

	Painter	
L. Robeson	6/17/68	Employed as of hearing date
F. Watson	8/27/68	Employed as of hearing date