Brodart, Inc. *and* District 65, United Automobile Workers. Cases 4-CA-11017-2 and 4-CA-11017-3

July 29, 1981

DECISION AND ORDER

On March 27, 1981, Administrative Law Judge Frank H. Itkin issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief and the General Counsel filed an answering brief to Respondent's exceptions.

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 his recommended Order.[2]

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, Brodart, Inc., Williamsport, Pennsylvania, 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.

[1] 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 his findings.

[2] In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

APPENDIX

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

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT coercively interrogate our employees about their union activities.

WE WILL NOT create among our employees the impression that their union activities are under surveillance.

WE WILL NOT discourage membership in District 65, United Automobile Workers, or in any other labor organization, by discriminatorily discharging or transferring any of our employees or in any other manner discriminating against them with respect to their hire or tenure of employment 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 the rights guaranteed them in Section 7 of the National Labor Relations Act.

WE WILL offer employee Carol Keller immediate and full reinstatement to her former job, or, if that job no longer exists, to a substantially equivalent position without prejudice to her seniority or other rights and privileges and make her whole for any loss of earnings, with interest.

BRODART, INC.

DECISION

FRANK H. ITKIN, Administrative Law Judge: Unfair labor practice charges were filed in this case by District 65, United Automobile Workers (the Union), on April 21 and a consolidated complaint issued on May 30, 1980. A hearing was conducted in Williamsport, Pennsylvania, on January 7, 1981. The General Counsel alleges that Brodart, Inc. (Respondent), violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, by creating the impression among its employees that their union activities were under surveillance; by interrogating employees about union activities; by discharging employee Carol Keller; and by transferring employee Mary Ann Metzger to another department. Respondent denies that it has violated the Act. Respondent alleges in its answer:

> . . . Carol Keller was discharged because she was a supervisor within Section 2(11) of the Act, who had attended a Union meeting and disclosed information concerning the Respondent to the Union. Mary Ann Metzger was transferred because Respondent wished to quell rumors that she had disclosed confidential information to the Union.

Upon the entire record in this case, including my observation of the demeanor of the witnesses, and after due consideration of the briefs of counsel, I make the following findings of fact and conclusions of law:

FINDINGS OF FACT

Respondent is engaged in the manufacture of library furniture and in the wholesale distribution of books at its facilities in Williamsport, Pennsylvania. Respondent is admittedly an employer engaged in commerce as alleged. The Union is admittedly a labor organization as alleged.

Carol Keller testified that she worked for Respondent over 11 years prior to her discharge on April 4, 1980; that her last position with Respondent was "payroll supervisor"; that she started working in the payroll office about August 27, 1979, and was made "payroll supervisor" on November 12, 1979; that the only other person working in that office with her was employee Mary Ann Metzger; and that Richard Snodgrass, Respondent's assistant treasurer, was their "immediate supervisor." Keller explained that she, with the assistance of Metzger, "got out" Respondent's payroll.[1]

During early 1980, the Union attempted to organize Respondent's approximately 850 hourly paid employees. Keller testified that she became "involved" with the Union about February 2, 1980, as follows. "The only thing that I did, I passed out a few Union authorization cards and I had made [an employee] name and address list." Keller explained that she, with the assistance of Metzger, "prepared an address list" from Respondent's "computerized list" of its hourly paid employees and gave it to the Union. Keller added that she also attended union meetings.

Keller recalled that about March 1, 1980, she and Metzger "were discussing the Company's benefits and the pension plan" in the payroll office; that Snodgrass "came in" and "he just started talking to us"; that Metzger "asked why doesn't the Company do something for us"; and that Snodgrass "just said, the Company needs something, but not a Union." Later, as Keller further testified, "Mr. Snodgrass came in and he mentioned that he knew we were attending the Union meetings and he said, nothing was to be said about the payroll."

Keller next testified that on or about April 2, 1980:

> Mr. Snodgrass came in the office and he said there was a nasty rumor floating around that . . . some confidential booklets had been stolen from David Stark's office . . . the cost department supervisor. They were confidential. They were only to be seen by the board of directors. I was accused of taking—passing them around at the [union] meeting, and also another person.

Snodgrass described the other "person," and Keller and Metzger

> . . . looked at each other until we realized that it was Mary Ann [Metzger] herself who was also accused. Well, we both denied it. And Mary Ann was really furious and she wanted to see the person who made the accusation, but Dick [Snodgrass] said he didn't know who it was. He said, I'm bucking a vice president . . . .

Snodgrass terminated Keller a few days later, on April 4, 1980. Keller recalled:

> He told me that the reason for my dismissal was my position of supervisor of the payroll office. He said, counsel had decided that . . . as part of Management I could get the Company into a lot of trouble by attending these meetings . . . .

Keller added that "when Dick told me of my dismissal, I asked him . . . what about Mary Ann, and he said . . . as of Monday April 7, she'll be in the tax department. . . ."[2]

Mary Ann Metzger testified that she worked for Respondent about 1-1/2 years; that "she started out as a deposit clerk and back-up payroll [clerk] for quite a few months and then was in payroll and then . . . back to deposit clerk and back in payroll . . . "; and that "on April 4 . . . I was . . . called at home and told, Monday morning I was starting in the tax department." Metzger recalled that she had worked in the payroll office, prior to her last transfer, from November through April 1980, and that Snodgrass was her "immediate supervisor."

Metzger related that she became involved with the Union during March 1980, as follows: "Handed out a few [union] cards and tried to help compile an address list of hourly people." About March 1, 1980, as Metzger further testified, "Mr. Snodgrass came into the office and said . . . that there were factions moving through Brodart and that it went without saying that this . . . payroll office . . . everything was confidential . . . ." Metzger stated to Snodgrass that she "heard all the pros for a Union, give me some cons, to which he gave an example or two . . . ." Snodgrass asked "what went on at the Union meetings." Metzger responded: ". . . they were gripe sessions . . . ."

Thereafter, about April 2, as Metzger testified:

> Mr. Snodgrass kind of flew in the office and said there is some ugly rumors being circulated that you—and he was addressing Carol—handed around some books, some very confidential material, at the Union meeting last night. And the way—the first thing I said, because I was there too, was "Who said this?," you know, who said this happened, because nothing was passed around last night, and again he directed his question to Carol and said, "Do you remember a tall girl with modern glasses and short hair sitting close by you?" Of course, Carol and I sort of looked at each other and thought and realized it was me. And he said at that time—I said, "That was me. That was me. I was sitting right by Carol." And he said, "It was rumored that you might be there . . . ." Over and over I kept saying I want to see who this person is because it infuriated me to think, you know, we were accused of stealing something out of Brodart when we were surrounded by things, you know, especially from someone else's office. And I think at that time—I don't remember if it was Carol or I said, does this mean that we're fired. I think Carol said that. Does this mean that we're fired and he said, "No, but I'm bucking a Vice President."

[1] The evidence pertaining to Keller's alleged supervisory status is discussed below.

[2] Keller testified on cross-examination that Snodgrass "also did ask us once what went on at . . . Union meetings." On redirect, she placed this conversation in March and explained that she told Snodgrass, in answer to his question, "the same old stuff."

Subsequently, on April 4, Metzger asked Snodgrass: "How do things stand with Carol and I." Snodgrass replied: "I'm still banging away at it." Metzger "told [Snodgrass] it was . . . totally stupid . . . ." Snodgrass asked: "Well, what goes on at these Union meetings." Metzger replied: "The same old thing . . . it's a rehash . . . ; it's a gripe session . . . ; it'll never get in . . . because there's too big a turnover at Brodart." Metzger then went home. She was later notified on the telephone by Keller that Keller "got it"—Keller was "fired." Snodgrass, during this same conversation, "got on the phone and . . . said he tried his best but the only concession he got was he could keep me, and I was to be in the tax credit [department] starting Monday morning." Metzger thereafter worked in the tax department; she also assisted in the payroll department.

Metzger, on cross-examination, denied that Snodgrass had stated to her that the April 4 "transfer from payroll . . . really was to protect [her] from rumors that [she] might have stolen something." Metzger explained: "We never discussed it." Metzger was not told "why" she was "transferred."[3]

Richard Snodgrass, formerly employed by Respondent as assistant treasurer, was asked: "Do you recall having any discussions with Ms. Keller and Ms. Metzger on or about March 1, 1980?" He testified:

> I really can't recall the dates, but I did have some discussions with them. . . . I guess there was the one discussion where I went into the payroll department and pretty much my exact words were that there would be some people possibly coming to them asking for information and I depended on them that nothing was going to leave our payroll department because of confidentiality . . . . Several other times when I came into the payroll department there were discussions going on and I was asked questions regarding the Union, regarding my opinion, regarding pros and cons of the Union, and I responded to those questions.

Snodgrass was asked about a meeting with Keller and Metzger on April 2. Snodgrass testified as follows:

> Q. Do you recall any discussion you might have had?
>
> A. Yes. At that point in time I had heard a rumor and I had been informed by my supervisor of a rumor that the information—a few days prior we had had some information [of] some board of directors' booklets stolen from an office and the information had come back to us that those booklets were turned over to the Union at the Union meeting. I went into the office to ask what the situation is, because one of my—you know, what I was trying to do was, I basically try to deal with my employees from a standpoint of straight. I want to deal with them straightly and get straight answers from them and deal with them fairly. So, I simply wanted to know what the situation was and I asked them if they know anything about it and if they did take those booklets and give them to the Union and to that they answered no. And I said fine, I believe you and I'll try to take care of it.
>
> Q. What, if any, discussions did you have with anyone else regarding this problem of the missing board of directors' booklets?
>
> A. Other discussions?
>
> Q. Yes.
>
> A. Of what nature?
>
> Q. Regarding Keller's and Metzger's involvement of possible theft of the board of directors' minutes.
>
> A. Okay. I had been told by my supervisor that he had heard this rumor also and he was very upset about it.
>
> Q. Was your supervisor aware at that time that Keller had been attending Union meetings?
>
> A. No. No, he was not aware of that.
>
> Q. Did you tell him at that time that she had?
>
> A. Yeah. That was one of the things that really concerned him about it because he was not aware at that point they had been attending Union meetings and this was the first thing that really came to his attention. I told him yes apparently they had been attending because they told me that and that was pretty much it.

Snodgrass was asked about his meeting with Keller on April 4. He testified as follows:

> Q. Would you state, for the record, what your recollection is of that discussion?
>
> A. I came into the payroll office and told her that I had discussed the situation regarding the booklets and her attendance at the Union meetings and that they were very upset about the fact that she is a supervisor, was attending Union meetings and that I'd have to terminate her.
>
> Q. Was it your decision to terminate her?
>
> A. No.
>
> Q. Who instructed you to terminate her?
>
> A. My supervisor.
>
> * * * * *
>
> Q. What did you tell Keller regarding her attendance at Union meetings, if anything?
>
> A. Okay. As I stated, I told her that—at the dismissal, that she was being dismissed because she was attending Union meetings and she was a supervisor and she wasn't allowed to do that.

Snodgrass acknowledged that no "other reasons were given to" Keller for her discharge.[4]

[3] Metzger subsequently terminated her employment with Respondent. There is no contention made here that she was unlawfully discharged. It was stipulated that Metzger's April 4 transfer to the tax department did not result in any monetary loss.

[4] Snodgrass was asked if he had related to his supervisor the fact that he "believed" Keller's and Metzger's denials of "any involvement" with respect to the theft of certain company books. Snodgrass testified:

> Yes. I think he [the supervisor] was more concerned at that point about them—Carol attending the meeting because she was a supervisor because he had not been aware of that up to that point.

In addition, Snodgrass was asked if he had indicated at any time to Metzger "why she was being transferred." Snodgrass testified:

> I don't know. Things were pretty strained at that time. I may not have said anything directly to her [Metzger] at that point. I transferred her and wanted her transferred because of all the problems that had blown up over the thing. Upper Management was very upset about (1) the fact that there was this rumor of the confidential information and (2) that the supervisor was attending the meetings and they just wanted the whole thing cleaned up because it was in the payroll department. We didn't want any kind of—I didn't want anything left in the payroll department where, you know, any kind of remnant of this whole thing because I knew that Carol and Mary Ann were friends and if I let Carol go that Mary Ann could potentially retaliate with all the confidential information she's got. I just didn't want to have to worry about any of that. So, the easiest resolution was to take Mary Ann out of the confidential situation.[5]

I credit the testimony of Keller and Metzger as summarized above. Their testimony is in large part mutually corroborative. Their testimony is also substantiated in significant part by the testimony of Snodgrass. And, relying also upon demeanor, Keller and Metzger impressed me as trustworthy and reliable witnesses. As noted, Snodgrass did not controvert much of the testimony of Keller and Metzger. Insofar as the testimony of Keller and Metzger differs with the testimony of Snodgrass, I am persuaded here that the testimony of Keller and Metzger is more detailed, complete, and reliable.

Discussion

A. *The Firing of Keller and Transfer of Metzger*

Keller credibly testified, as recited *supra*, that on April 4, 1980, Company Assistant Treasurer Snodgrass summarily fired her and "told [her] that the reason for [her] dismissal was [her] position of supervisor of the payroll office. [Snodgrass] said, counsel had decided that . . . as part of Management [she] could get the Company into a lot of trouble by attending these union meetings . . . ." Indeed, Snodgrass admitted apprising Keller on April 4 "that she was being terminated because she was attending Union meetings and she was a supervisor and she wasn't allowed to do that." Snodgrass further admitted that no "other reasons" were given to Keller for her firing.

The protective provisions of the National Labor Relations Act extend only to "employees"—a term which excludes "any individual employed as a supervisor." Thus, since Keller was admittedly fired for "attending Union meetings," the principal question raised here is her alleged supervisory status. A "supervisor" is defined in Section 2(11) of the Act, as:

> . . . any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Actual existence of true supervisory power is to be distinguished from abstract, theoretical, or rulebook authority. It is well settled that a rank-and-file employee cannot be transformed into a supervisor merely by investing him or her with a "title and theoretical power to perform one or more of the enumerated functions." *N.L.R.B.* v. *Southern Bleachery & Print Works, Inc.*, 257 F.2d 235, 239 (4th Cir. 1958), cert. denied 359 U.S. 911 (1959). What is relevant is the actual authority possessed and not the conclusory assertions of a company's officials. And while the enumerated powers listed in Section 2(11) of the Act are to be read in the disjunctive,[6] the section also "states the requirement of independence of judgment in the conjunctive with what goes before." *Poultry Enterprises, Inc.* v. *N.L.R.B.*, 216 F.2d 798, 802 (5th Cir. 1954). Thus, the individual must consistently display true independent judgment in performing one of the functions in Section 2(11) of the Act. The exercise of some supervisory tasks in a merely "routine," "clerical," "perfunctory," or "sporadic" manner does not elevate a rank-and-file employee into the supervisory ranks. *N.L.R.B.* v. *Security Guard Service, Inc.*, 384 F.2d 143, 146-149 (5th Cir. 1967). Nor will the existence of independent judgment alone suffice; for "the decisive question is whether [the individual involved] has been found to possess authority to use [his or her] independent judgment with respect to the exercise by [him or her] of some one or more of the specific authorities listed in Section 2(11) of the Act." *N.L.R.B.* v. *Brown & Sharpe Mfg. Co.*, 169 F.2d 331, 334 (1st Cir. 1948). In short, "some kinship to management, some empathetic relationship between employer and employee must exist before the latter becomes a supervisor for the former." *N.L.R.B.* v. *Security Guard Service, Inc.*, 384 F.2d at 149.

Applying these principles to the evidence of record here, I find and conclude that Keller was, at all times pertinent to this case, an employee and not a supervisor as claimed. Keller credibly testified that she never hired, fired, or disciplined employees; that she never recommended such action; that she was never told that she had such "authority"; that she was never asked to grant employees time off; that she never assigned "any work or overtime to" Metzger; and that she never attended

[5] On cross-examination, Snodgrass recalled that Metzger had asked him "what [he] thought of the Union . . ." and he told her "that Brodart may have some problems . . . but . . . I did not believe a Union was the way to solve them . . . ." On redirect examination, Snodgrass was asked if he "ever ask[ed] either [Keller or Metzger] what went on at the Union meetings they had attended?" Snodgrass answered in part: ". . . I really can't ever recollect the direct question . . . . I can't really ever recollect asking that question directly. I may have, but I don't think so." Snodgrass, however, acknowledged that Metzger disclosed to him "that they were just gripe sessions . . . ."

[6] Cf. *West Penn Power Co.* v. *N.L.R.B.*, 337 F.2d 993, 996 (3d Cir. 1964).

"management meetings." Keller explained that she was receiving $4.57 an hour and $182.70 each week. Metzger was "paid the same way."[7] When Keller "wanted time off," she went to Snodgrass, and Snodgrass signed the timesheets for both Keller and Metzger.

Keller explained that she shared an office with Metzger; that they each had desks there; that she has never signed a timesheet; that she was never asked to grant and she has never granted Metzger time off; that she never "requested" Metzger to work overtime—"we went to Mr. Snodgrass and asked him for approval"; that she "did not review" Metzger's job "performance" and "did not know" she had such authority; and that she believed that Snodgrass had in fact "reviewed" Metzger's work performance. Keller further explained that "if there was a mistake in the payroll," the people "would come either to me or Mary Ann" depending upon which one was available at the time. Keller, as she stated in her affidavit and at the hearing, ". . . supervised pieces of paper . . ."—she "really didn't deal with people that much."

Metzger corroborated Keller's testimony with respect to Keller's nonsupervisory status. Metzger credibly testified that Snodgrass was her "immediate supervisor"; that Keller did not "assign [her] work"; that the two workers "split [the work] up according to [their] abilities"; that Keller never "reprimanded" her; that Snodgrass signed her timesheets; that Snodgrass granted her time off; and that Snodgrass summarily evaluated her work performance.

Former Assistant Treasurer Snodgrass generally asserted that Keller, in his view, possessed various indicia of supervisory authority. Snodgrass, however, explained that the so-called payroll supervisor was the lowest paid of the six department "supervisors" under his authority; that there was a period of time when he "watched overtime [assignments] more closely"; that "they [Keller and Metzger] came to me [with respect to permission for time off] more as a courtesy than anything else"; that he could not "recall any discussions" with Keller pertaining to Metzger's work performance; that "if they had a problem where they needed some more punch in getting a problem solved then they would come to me . . ."; and that the other five department heads under his control, unlike Keller, were in the Employer's "exempt payroll." Thus, Snodgrass added, the other five department heads, unlike Keller, had "set salaries" and were not paid overtime.[8]

In sum, on this record, I find and conclude that Keller did not possess the authority to use her independent judgment with respect to the exercise by her of one or more of indicia of supervisory authority listed in Section 2(11); the title of "payroll supervisor" is not, without more, determinative of this issue; and here there is no "kinship to Management" or "empathetic relationship between employer and employee" so as to regard Keller as the Employer's "supervisor." Accordingly, since Keller was an employee when she was terminated and since she was terminated for attending union meetings, Respondent thereby violated Section 8(a)(1) and (3) of the Act.[9]

Counsel for Respondent, in his answer to the complaint, alleges that "Metzger was transferred because Respondent wished to quell rumors that she had disclosed confidential information to the Union." The credible evidence of record here does not support this assertion. Indeed, the credible evidence of record establishes that Metzger was given no "reason" for her transfer; that management's treatment of Metzger was motivated by the same antiunion purpose which resulted in the termination of Keller on that same day; and that Metzger, like Keller, was being punished for attending union meetings. Thus, as Snodgrass acknowledged, Metzger was transferred "because of all the problems that had blown up over the thing"; "Upper Management was very upset about . . . the supervisor . . . attending the meetings and they just wanted the whole thing cleaned up because it was in the payroll department"; and "I didn't want anything left in the payroll department . . . any kind of remnant of this whole thing . . . ." Elsewhere, Snodgrass acknowledged that, during his conversation with his superior prior to the April 4 disciplinary action, he apprised his superior that Keller "had been attending Union meetings" and

> . . . that was one of the things that really concerned him about it because he was not aware at that point *they* had been attending Union meetings and this was the first thing that really came to his attention. I told him yes apparently *they* had been attending because *they* told me that . . . . [Emphasis supplied.]

In sum, I find and conclude here that Metzger, like Keller, was disciplined solely for attending union meetings, in violation of Section 8(a)(1) and (3) of the Act.[10]

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[7] Metzger was paid about $40 less each week than Keller. As noted above, Keller had worked for the Company some 11 years; Metzger had worked for the Company about 18 months. Keller also explained that she never discussed with Snodgrass the subject of Metzger's wages.

[8] Peter Lupacchino, a tax accountant for the Employer, testified that he served as "payroll supervisor" prior to Keller's assignment to that job. At that time, according to Lupacchino, Metzger worked in the payroll office only 2 or 3 days a week on loan from another department. Lupacchino had no other employees in the payroll office. I am not persuaded here that Lupacchino's earlier limited working relationship with Metzger in the payroll office sufficiently establishes any supervisory authority in Keller after she subsequently was assigned that job.

Also see the testimony of Company Personnel Director Jack Hampton concerning the difference between "exempt" and "non-exempt" personnel.

Insofar as the testimony of Keller and Metzger differs from the testimony of Snodgrass and Lupacchino, as recited above, I am persuaded here that Keller and Metzger have more accurately and reliably related their authority and job duties for the Employer.

[9] As noted *supra*, counsel for Respondent alleges in his answer that Keller was terminated because she had "disclosed information concerning Respondent to the Union." The credible evidence of record, as recited above, including the admissions of Snodgrass, makes it clear that this was not a reason for Keller's, or for Metzger's, disciplinary action.

[10] Counsel for Respondent asserts that Metzger was a "confidential" employee beyond the protection of the Act. However, the Board has held that the "mere fact that" a payroll employee "has access to personnel records and to raw financial data, which might eventually be used by the Employer in a more composite form to determine the nature of its economic package offerings in labor negotiations, is insufficient to constitute her as a confidential employee." *Victor Industries Corporation of California*, 215 NLRB 48 (1974). Also see *Kleinberg, Kaplan, Wolf, Cohen & Burrows, P.C.*, 253 NLRB 450 (1980). The record here establishes that

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In addition, it is settled law that an employer violates Section 8(a)(1) of the Act by creating among its employees an impression that their union activities are under surveillance (see, generally, *Brown Manufacturing Corporation*, 235 NLRB 1329, 1331 (1978), and *N.L.R.B.* v. *Rich's of Plymouth, Inc.*, 578 F.2d 880 (1st Cir. 1978)); and by coercively interrogating employees about their union activities (see, generally, *N.L.R.B.* v. *Camco, Inc.*, 340 F.2d 803 (5th Cir. 1965)). And, as the court noted in *Time-O-Matic, Inc.* v. *N.L.R.B.*, 264 F.2d 96, 99 (7th Cir. 1959):

> A violation of Section 8(a)(1) of the Act was complete when the statements were made to prospective employees . . . . No proof of coercive intent is necessary under Section 8(a)(1) of the Act, the test being "whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act." *N.L.R.B.* v. *Illinois Tool Works*, 153 F.2d 811, 814.

The credible evidence of record shows that Snodgrass apprised employees Keller and Metzger that "he knew [they] were attending the Union meetings . . ."; and that "there was a nasty rumor floating around that . . . some confidential booklets had been stolen . . ." and the two employees were being accused of "passing them around at the [Union] meeting . . . ." Snodgrass also questioned the two employees about ". . . what goes on at these Union meetings?" Snodgrass admittedly disclosed to his superior the union activities of these two employees. As Snodgrass testified, ". . . I told him, yes, apparently they had been attending because they told me that and that pretty much was it." Employee Keller was summarily terminated and employee Metzger was summarily transferred shortly thereafter.

I find and conclude that Snodgrass, by the foregoing conduct, unlawfully created the impression of surveillance of employee union activities and coercively interrogated the employees. Although the Employer, in furtherance of legitimate business objectives, could instruct employees about the confidentiality of its records and could take necessary steps to ensure the confidentiality of such information, it went beyond these legitimate purposes when it told the two union supporters that "he [Snodgrass] knew [they] were attending the Union meetings . . ." and questioned the employees, "what went on at the Union meetings?" The two employees were not given any assurances against reprisal. Indeed, they were later disciplined for attending union meetings. Such conduct tends to impinge upon employee Section 7 rights.

CONCLUSIONS OF LAW

1. The Union is a labor organization as alleged.
2. Respondent is an employer engaged in commerce as alleged.
3. Respondent violated Section 8(a)(1) and (3) of the Act by coercively interrogating employees and creating the impression that their union activities were under surveillance, by discriminatorily discharging employee Keller, and by discriminatorily transferring employee Metzger.
4. The unfair labor practices found above affect commerce as alleged.

REMEDY

Having found that Respondent engaged in certain unfair labor practices, I find it necessary to recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. It has been found that Respondent, in violation of Section 8(a)(1) and (3) of the Act, unlawfully terminated employee Keller. It will therefore be recommended that Respondent offer to employee Keller immediate and full reinstatement to her former or substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of earnings suffered by reason of her unlawful termination, by payment to her of a sum of money equal to that which she normally would have earned from the date of Respondent's discrimination to the date of Respondent's offer of reinstatement, less net earnings during such period, with backpay and interest thereon to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[11] Further, it will be recommended that Respondent preserve and make available to the Board, upon request, all payroll records and reports, and all other records necessary and useful to determine the amount of backpay due and the rights of reinstatement under the terms of these recommendations. Respondent will also be ordered to post the attached notice.

Although I have found that Respondent's transfer of employee Metzger was also unlawful, the record makes clear that she suffered no monetary loss as a result of the transfer. Metzger has since left the Company's employment and there is no claim of unlawful discharge. Under the circumstances, in my view, it would not effectuate the purposes of the Act to recommend make-whole or restoration of *status quo ante* remedial provisions with respect to Metzger.

Upon the foregoing findings of fact and conclusions of law, and upon the entire record of the case, I hereby issue the following recommended:

ORDER[12]

The Respondent, Brodart, Inc., Williamsport, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

Metzger is not such a "confidential" employee. Counsel for Respondent, in his post-hearing brief, also claims that Keller was a "confidential" employee. The record here similarly establishes that Keller is not such a "confidential" employee.

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

[12] 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.

(a) Coercively interrogating employees about protected union activities.

(b) Creating among employees the impression that their union activities are under surveillance.

(c) Discouraging membership in District 65, United Automobile Workers, or any other labor organization, by discriminatorily discharging or transferring any of its employees or in any other manner discriminating against them with respect to their hire or tenure of employment or any terms or conditions of employment.

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

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

(a) Offer employee Carol Keller immediate and full reinstatement to her former job or to a substantially equivalent position without prejudice to her seniority or other rights and privileges, and make her whole for the loss of earnings in the manner set forth in this Decision.

(b) Preserve and make available to the Board or its agents all payroll and other records, as set forth in this Decision.

(c) Post at its offices and facility in Williamsport, Pennsylvania, copies of the attached notice marked "Appendix."[13] Copies of said notice, on forms provided by the Regional Director for Region 4, after being duly signed by Respondent, shall be posted immediately upon receipt thereof, in conspicuous places, and be maintained by it for a period of 60 consecutive days. Reasonable steps shall be taken to insure that copies of said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 4, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[13] 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."