

**United Telecontrol Electronics, Inc. and Angela Kym Sampoli.** Case 22-CA-8522

September 12, 1979

## DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS PENELLO  
AND TRUESDALE

On June 18, 1979, Administrative Law Judge Elbert D. Gadsden issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions 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 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 brief and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.<sup>2</sup>

## 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, as modified below, and hereby orders that the Respondent, United Telecontrol Electronics, Inc., Asbury Park, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

<sup>1</sup> 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.

In sec. III, B, of his Decision the Administrative Law Judge inadvertently quoted Plant Manager William Larkin as testifying that President Harold Sher talked to employee Angela Kym Sampoli about the latter's use of a yo-yo during working time. There is no indication in Larkin's testimony that Sher raised this subject with Sampoli. Additionally, in sec. III, C, of his Decision, the Administrative Law Judge inadvertently quoted employee Michael McHale as testifying that he admitted his union activities to Plant Manager Larkin in May 12, 1978. McHale in fact testified that he made this admission on May 13, 1978. We hereby correct these inadvertent errors.

<sup>2</sup> The Administrative Law Judge inadvertently failed to include in his recommended Order the cease-and-desist language which the Board traditionally provides in cases involving 8(a)(1) and (3) violations. Under the standards set forth in our recent decision in *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979), we believe that a narrow cease-and-desist order would be appropriate in the present case. Accordingly, we shall modify the recommended Order to require Respondent to cease and desist from in any like or related manner infringing upon employee rights. Additionally, we shall modify the notice to conform to the recommended Order.

1. Insert the following as paragraph 1(e):  
“(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.”
2. Substitute the attached notice for that of the Administrative Law Judge.

## APPENDIX

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

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

WE WILL NOT coercively interrogate employees about their and other employees' union membership, activities, and desires.

WE WILL NOT create the impression that we are surveilling the concerted and/or union activities of our employees.

WE WILL NOT threaten employees with partial or total closure of our plant if our employees organize a union.

WE WILL NOT discourage membership in Local 2066, International Brotherhood of Electrical Workers, AFL-CIO, or any other labor organization, by laying off employees, or otherwise discriminating against them in any manner in respect to their tenure of employment or any term or condition of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise and enjoyment of rights guaranteed them by Section 7 of the National Labor Relations Act, except to the extent that such rights may be affected by lawful agreements in accord with Section 8(a)(3) of the Act.

WE WILL recall, or offer to recall, Angela Kym Sampoli for immediate employment to the job she held on May 16, 1978, or, if such position no longer exists, to a substantially equivalent position without prejudice to her seniority or other rights previously enjoyed, and WE WILL make her whole for any loss of pay suffered by reason of our discrimination against her, with interest.

All our employees are free to become, remain, or refuse to become or remain, members of said Union, or any other labor organization, except to the extent

that such rights may be affected by lawful agreements in accord with Section 8(a)(3) of the Act.

UNITED TELECONTROL ELECTRONICS, INC.

DECISION

STATEMENT OF THE CASE

ELBERT D. GADSDEN, Administrative Law Judge: Upon a charge of unfair labor practices filed on June 13, 1978, by Angela Kym Sampoli, an individual, sometimes herein called the Charging Party, against United Telecontrol Electronics, Inc., herein called Respondent, a complaint and an amended complaint were issued by the Regional Director for Region 22 on behalf of the General Counsel on August 4, 1978, and November 6, 1978, respectively.

The complaint as amended alleges, in substance, that Respondent, on or about May 12 and 13, 1978, through its plant manager, interrogated its employees concerning their sympathies for, membership in, and activities on behalf of the Union; that on or about May 12, 1978, Respondent, through its plant manager, created the impression of surveillance of the activities of its employees concerning their sympathies, membership in, and activities on behalf of the Union; and that on May 16, 1978, Respondent discharged an employee and has since failed and refused to reinstate said employee because said employee organized, joined, and assisted the Union and sought to bargain collectively through representatives of her own choosing, in violation of Section 8(a)(1) and (3) of the Act.

Respondent filed an answer and an amended answer on August 4, 1978, and November 6, 1978, respectively, denying that it has engaged in any unfair labor practices as alleged in the complaint. Briefs have been received from counsel for the General Counsel and counsel for Respondent, respectively, which have been carefully considered.

Upon the entire record in this case and from my observation of the witnesses I hereby make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent is now and has been at all times material herein a corporation duly organized under, and existing by virtue of, the laws of the State of New Jersey. Respondent maintains its principal office and plant at 3500 Sunset Avenue, Asbury Park, New Jersey, where it is, and has been at all times material herein, engaged in the manufacture, sale, and distribution of electronic components, electric barbecue grills and related products.

In the course and conduct of its business operation during the preceding 12 months, a representative period, Respondent caused to be manufactured, sold, and distributed at said plant products valued in excess of \$50,000, of which said products valued in excess of \$50,000 were shipped from said plant in interstate commerce directly to States of the United States other than the State of New Jersey.

The complaint alleges, Respondent admits, and I find that Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, Respondent admits, and I find that Local 2066, International Brotherhood of Electrical Workers, AFL-CIO, herein called the Union, is and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

The record shows that Respondent carried out its manufacturing, selling, and distributing electronic components, electric barbecue grills, and related products under the direction of the following named persons, who have occupied the positions with Respondent set forth opposite their names as follows: Harold T. Sher, President; William Larkin, Plant Manager.

Respondent admitted that at all times material herein the above-named persons have been and are now supervisors within the meaning of Section 2(11) of the Act and have been and are now agents of Respondent acting on its behalf.

During the hearing, upon motion of counsel for the General Counsel, paragraph 9 of the complaint was amended to become paragraph 9(c), thus alleging that on or about May 13, 1978, at the Asbury Park plant Respondent, by its Plant Manager William Larkin, threatened its employees with partial shutdown of the plant, and loss of jobs because of their membership in, activities on behalf of, and sympathies for the Union.

*A. The Organizing Activities of Kym Sampoli and Her Fellow Employees, and Respondent's Knowledge Thereof*

Angela Kym Sampoli was employed by Respondent in December 1976 as a memory repair person. She was advised and laid off on a Friday in June 1977 for lack of work. She was rehired in August 1977 as a shipping clerk (permanent). While in the latter job capacity Sampoli testified that she also performed screwing screws for heads, core, and Char-B-Que in the machine shop when the work in shipping was slow. In January 1978 Sampoli said that she had a conversation with fellow employee Michael McHale, a painter for U.T.E., about employees' raises and the advantages of unionization. She said that she held other such conversations with McHale between January and May 1978. However, prior to May 1978 she said that she also held such conversations with fellow employees Steve Oliver, Pat Johnson, and Ann Pardue, as well as with other employees.

Sampoli further testified that as a result of the above-described conversations with fellow employees she and fellow employee McHale went to the I.B.E.W. in Wall Township in May 1978. At that time McHale talked to one of the presidents there who referred them to Bill Donovan of Local 200 of the I.B.E.W., who later got in touch with them. Consequently, they had a meeting with Larry Hilliard at the Hilton on May 10, 1978, at which time Hilliard gave them pamphlets and union authorization cards. Present at that meeting were Kathleen McHale, wife of Michael McHale, McHale, and Sampoli. After the meeting she said

that she and McHale went to her house where they signed the union cards.

When she (Sampoli) went to work the next day McHale gave her some union authorization cards to distribute, which she gave out and talked about to fellow employees Steven Oliver and Pat Johnson.

On Friday, May 12, 1978, Sampoli said that she talked to Richard Kittell, the receiving clerk, who had told her that he had not received a raise in quite a while, and that he desired to sign a card. On that afternoon she had a conversation with William Larkin, plant manager, when he asked her had she heard anything about a union. She said that she asked, "What union?" and he said "someone said somebody was distributing union cards." She said that she replied, "No," and Larkin then said he knew who "he" was, and she asked how do you know its a "he" instead of a "she." Larkin said that he knew it was Louie Pagan because somebody had so informed him. He then said, "Here I do you favors and let you work overtime on Saturdays when I don't have to. How can somebody lie to my face?" Sampoli said that she asked Larkin again how do you know its a "he" and not a "she," and he said that he did not and walked away.

Subsequently, on the same afternoon, Sampoli said that she asked employee Jimmy Moye if he would like to sign a union card, and Moye said "yes." He signed the card and returned it to her. Shortly thereafter Ann Pardue came into the bank, and she asked her if she would like to sign a union card. Pardue said, "No, I'm too close to management and I don't want to get hurt. But I wish you luck." Employee Elizabeth Doyle came into the bank and Sampoli asked her if she would like to sign a union card, and she said "No." Fellow employee Michael McHale was with Sampoli at the bank during these conversations and his, as well as Ann Pardue's, testimony corroborates Sampoli's testimony in this regard.

Based upon the foregoing undisputed and credited testimony, I conclude and find that employees Angela Kym Sampoli and Michael McHale, along with other fellow employees, commenced an organizing campaign for the Union on or about May 12, 1978; that McHale and Sampoli were the leading organizers of the campaign; that Plant Manager William (Bill) Larkin admitted that he learned about the employees' organizing activity prior to Sampoli's layoff by Respondent on May 16, 1978; that the testimony *infra*, of leadgirl Ann Pardue established that the latter advised Respondent, through its foreman and supervisor, Cliff Streuble, that Sampoli had asked her to sign a union card on Friday, May 12, 1978; and that Respondent laid off Sampoli on Tuesday, May 16, 1978, allegedly for lack of work in the shipping department.

#### B. Respondent's Discharge of Employee Angela Kym Sampoli

Sampoli further testified that she did not report for work on Saturday, May 13, or on Monday, May 15, 1978, but instead reported for work on Tuesday, May 16. At about 2:30 or 3 p.m. she said that group leader Al Murray came to her and gave her a slip for unemployment. She asked Murray if this was a layoff and did anyone else know about

it, and he said, "Yes, Ann Pardue." Sampoli said that she then went to the office of Plant Manager Bill Larkin. Michael McHale was present, and she told Larkin that she had been laid off. McHale reacted by breaking his pencil and exclaiming, "Oh, good faith," and Plant Manager Larkin responded, "he took it harder than you did."

On October 1, 1978, Sampoli said that she received a telegram from the Company asking her to return to work on a Friday morning at 8 o'clock. She reported for work as requested and was given a different job in the Char-B-Que department for the same rate of pay, \$2.90 per hour. Sampoli said that she asked Laurie Kurdy about Blue Cross-Blue Shield, and Kurdy said that no she would not receive such coverage. She then asked Kurdy about a raise, and the latter said that she was receiving maximum salary, \$2.90, for Char-B-Que work. Sampoli said that she then asked Plant Manager Larkin about Blue Cross-Blue Shield, and he said that he would talk to Laurie Kurdy. He later returned and advised her that she would receive insurance coverage after 30 days, but \$2.90 per hour was the maximum salary. In this regard, Sampoli said that she recalled when she was laid off in 1977 that she had insurance coverage immediately upon her return to work. With respect to the Char-B-Que salary, she said that her boyfriend, Raymond Robinson, worked in Char-B-Que for \$3.15 per hour, and that there were others earning more than \$2.90 per hour.

Sampoli also stated that she previously worked as a shipping clerk but had been assigned to Char-B-Que on occasions; and that basically the jobs were unskilled, but you would be given a brief training period. When she was asked about prior layoff practices of Respondent Sampoli said that about 15 employees were laid off on Friday, January 13, 1978, because the core area had reduced their hours of work.

Just prior to her layoff Sampoli said that work was very slow (15 to 20 hours a week). She had asked management about work on several occasions but received no response. She came to work on May 16, 1978, with a yo-yo, with which she played after she was laid off. Even though Plant Manager Larkin asked her to put the yo-yo away, she acknowledged that she still played with it in her area and that other employees saw her. She said that McHale was more active in the union drive than she was. She had requested to be laid off on many occasions, but a layoff did not occur until after the card signing incident at the bank with Ann Pardue, subsequent to the yo-yo incident. She said that she played with the yo-yo in the morning and received notice of her layoff about 2:35 p.m. to 2:45 p.m. on May 16, 1978.

William Larkin, plant manager for Respondent for 5 years who has been in its employ for 10 years, testified that he has control over the daily operations of the plant. He said that he sometimes hires employees and first learned of the employees' organizing activity in May 1978, shortly before Sampoli was laid off. He learned from employee Louie Pagan that employee Michael McHale was involved.

Plant Manager Larkin further testified that aside from lack of work he said that he observed Kym Sampoli playing with a yo-yo, and he reported such fact to her supervisor, Harold Sher. He said that Sher had talked to Sampoli before about playing with the yo-yo because it was disruptive

to other workers. On three prior occasions Plant Manager Larkin said that he asked Sampoli not to play with the yo-yo, and that on each occasion she said she would stop. He acknowledged that he did not ever issue a written warning to her, and that no record of either incident was placed in her personnel file. Correspondingly, he acknowledged that whenever an employee is discharged for cause such fact is indicated in his or her personnel file.

Employee *Ann Pardue*, leadgirl for Respondent, corroborated Sampoli's and McHale's testimony to the effect that she was approached by Sampoli in the bank and asked to sign a union card on a Friday afternoon. On that Monday she said that the union representative was at the plant's gate. She said that when she went to work on Monday she told Supervisor Cliff Streuble, foreman, that they were approached in the bank by Mike McHale and Kym Sampoli, who asked them to sign a union card, and that she told her "no." She said that she advised Sampoli she did not want to get involved because she was leadgirl. Streuble did not respond.

Pardue further testified that on Tuesday, May 16, Sampoli did not appear with a yo-yo and a fire hat.

Larkin denied ever having had a discussion with Sampoli about the Union. He said that Sampoli was recalled by Respondent in September 1978, and that when she returned they had the following conversation:

A. Yes, she asked me if she would be—if she was being brought back, if she would get an increase and if she was getting benefits.

I told her I did not know the answer at that time, but I would find out and get back to her.

This was sometime in the morning, approximately.

Later on that afternoon I got back to her and told her that she was coming back at the rate that she had left at and that she was being reinstated with full benefits.

Larkin said that Sampoli was recalled as an assembler and assigned to a different position from her original position, shipping clerk, which still existed but was not filled and was being performed by another employee who always worked as a shipping clerk. He said that the assembly work for which Sampoli was recalled ended in July and picked up in mid-September 1978. He acknowledged that Sampoli had receiving as well as shipping experience. With respect to layoffs, he said that a substantial number of Respondent's employees who perform seasonal work were laid off in July.

*Clifford Streuble*, a supervisor for Respondent, testified that on Monday, May 15, 1978, the day the Union commenced leafleting the plant, employee *Ann Pardue* came to him and told him that she was asked by *Michael McHale* to sign a union card. Streuble's testimony in this regard partially confirms the testimony of employee *Ann Pardue*. On the day that *Angela Kym Sampoli* was laid off Streuble said that Sampoli was walking down the aisle working a yo-yo and snapping bubble gum. He said that he later reported the incident to *Sher*. His position with Respondent is product manager of military contracts, and he supervises six employees. He acknowledged that he hires and fires employees.

The parties herein stipulated as follows:

The stipulations are that on July 1, 1976 a Thursday, one employee was laid off. That on July 2, 1976, a Friday, four employees were laid off.

That on July 7, 1976 a Wednesday, five employees were laid off.

That on April 20, 1976, a Friday, one employee was laid off.

That on 10/29/76 one employee was laid off.

MR. BROOKS: What day was that?

MS. GREENFIELD: 10/29/76.

MR. BROOKS: What day?

MS. GREENFIELD: Friday, I'm sorry. Thank you.

That on 10/12/76, a Friday, one employee was laid off.

That on 1/7/77, a Friday, one employee was laid off.

Then on 1/21/77, a Friday, one employee was laid off.

That on 3/14/77, a Monday, one employee was laid off.

That on 4/16/77, a Saturday, one employee was laid off.

That on 8/18/77, a Thursday, three employees were laid off.

That on 8/19/77, a Friday, five employees were laid off.

That on 8/26/77, Friday, one employee was laid off.

That on 9/30/77, a Friday, one employee was laid off.

That on 11/11/77, a Friday, one employee was laid off.

That on 11/30/77, a Friday, one employee was laid off.

That on 1/13/78, a Friday, five employees were laid off.

That on 7/19/78, a Wednesday, one employee was laid off and that on 7/21/78, a Friday, eighteen employees were laid off.

This list represents all employees laid off from the period 7/1/76 to the present and that all those employees were laid off for the reason that there was a lack of work, that they were laid off by the employer.

*Harold Sher*, president of Respondent, testified that several weeks before Sampoli's layoff he was informed by Larkin that there was not much business in his area. More specifically, he said that on Tuesday, May 16, he was approached by Larkin and one of two supervisors; they complained that Sampoli was disrupting people in the work area by playing with a yo-yo, and that since they did not have much work in that area he felt that the best thing to do was to terminate her. He gave instructions to terminate Sampoli. When he was asked did he mean layoff he said yes.

In this regard, President *Sher* said that he saw the Union leafleting the plant on Monday, May 15, 1978. He said that layoff for lack of work was the official reason given Sampoli for her layoff, but that another reason was disrupting the work force with a yo-yo. He also said that layoffs are gener-

ally issued on Friday, but there have been layoffs issued on other days for lack of work.

*C. Respondent's Interrogation of Employee Michael McHale About His Union Activities*

*Michael McHale* testified that on the day the plant closed because of snow he spoke with Sampoli about working conditions in the plant. As a result of that conversation and other conversations with her Sampoli accompanied him to the I.B.E.W.'s office in Wall Township in May 1978. He corroborated Sampoli's testimonial account of their organizing efforts. He further testified that he drove Sampoli to work on the day after their visit to the Union and gave Sampoli a couple of cards, which she returned to him that afternoon unsigned. However, on that same morning, while he was in the paint room with his helper John Mitchell, McHale said that Larkin came in and asked him, "Are you passing a petition to organize a union?" and he replied, "No. I am not." Larkin then said, "Well, I heard you were—someone told me my painter was passing a petition." McHale said that he denied it, and Larkin left.

McHale further testified that later in the afternoon of May 12 the following occurred:

I approached Bill, walked over to him and he said, "If you're not passing a petition, you better straighten out Louie Pagan, because he told me you approached him and asked him to sign a card."

And I still denied at this point that I was passing a petition. . . .

Manager Larkin testified in this regard as follows:

A. (Continuing) I went to Mike and I had just related to Mike that an employee, meaning Louis, had come to me and stated that he was being intimidated by Mike into signing a card, and I went to Mike, I related to Mike, and I said to him, are you doing this? And he denied it.

Subsequently, Larkin admitted that he stated in his affidavit submitted to the Board that the same day Pagan told him McHale had approached him Larkin went to McHale and asked him if he had asked Pagan to sign a card. McHale denied that he had asked Pagan to sign.

Subsequent to his return from the bank later on May 12 McHale said that Larkin came back to the paint shop, and he McHale told Larkin that he wanted to talk to him. Larkin said, "Yes, I figure you would." McHale said that he then pulled Plant Manager Larkin aside and told him that he was passing a union petition, that he had lied yesterday when he denied it because he was not sure of his legal rights and how well he was protected. Larkin said, "Well, I'm glad you came to me."

McHale continued to testify as follows:

And we went back into the paint room because I had to start the washers and I said, how did you find out I was passing the petition.

And he said he got called into the office and Ray Herter said to him—Ray Herter's the vice president of the company. . . .

A. (Continuing) *Mr. Larkin told me that Mr. Herter*

*had told him his painter was passing a petition and to put a lid on it.*

He then went and talked to—he told me he talked to Louie Pagan who had given Bill the union card that I had given him, to Louie, and told him I had approached him and asked him to sign a card.

I asked Bill about whether—what his opinion was, whether the company could handle the union financially? And he told me absolutely not because we'd already been underbid by another company on the Char-B-Que contract and the only reason contempor let us keep it is because we could do a better job than this company.

He also explained we had lost a few government contracts to, I think it was, Motorola.

I don't know what other companies. That's why the government sales were down and he said that if Char-B-Que was to be organized or U.T.E., that Char-B-Que would definitely close next year. . . .

He asked if Ray and Kym were in on it and I said yes. Then he asked me why didn't I go to management before I went to the union, and I said I didn't, because I didn't think management would be very responsive to us, probably just push us off and I said it doesn't really matter, because Monday morning the union reps are going to be here leafleting.

He said well, is there any way you can hold them off? At least until I get in touch with Mr. Sher and Mr. Herter?

HEARING OFFICERS: Who is Mr. Sher and Mr. Herter?

THE WITNESS: President and vice president of the company.

I said well, if Mr. Sher and Mr. Herter want to sit down and talk to us, I could go to the union and say they really didn't have enough support as they thought they did, and at least hold them off a couple of days.

Bill said he would call me before the weekend, before the weekend was over. . . .

Q. In the course of this conversation, did Mr. Larkin discuss personal subjects?

A. Yes, he went on to explain that if Char-B-Que closed—no, he said if you don't want to do it for the company, do it at least for me.

He was referring to me going to the union and calling them off.

He said he just bought a new house, and "if Char-B-Que closed I would be probably laid off," because that was a major function of his job.

McHale further testified that he received a telephone call from Larkin when he returned and was advised by Plant Manager Larkin that he was not able to get in touch with Sher and Herter. McHale said that he told him the Union would be there in the morning. He said that there were 30 employees at char-b-que.

McHale reported to work on Monday, May 16, and after lunch he said that he passed Plant Manager Larkin's office and the latter said to him, "I see your boys are still outside" (referring to the union representatives), and McHale said, "Yes, and they plan to be here for a while." Larkin then

tried again to impress upon him that the Company could not handle the Union financially, and that the Company or a particular section thereof would close. He continued to testify as follows:

In talking about Mr. Sher and Mr. Herter, I said, if they're really willing to sit down and talk, maybe I will call off the union, and Bill said, well, they can't—they have been advised by their lawyer they can't sit down and talk to you, they cannot promise or threaten, or anything. You just have to rely on their good faith.

At that point Kym Sampoli came into the office and said, Michael, I've just been laid off, and I got mad—.

In early July, one morning at about 9 a.m., McHale said that he told Larkin that he had a job offer which would pay him 35 cents an hour more than he was receiving, and he wanted to give Respondent reasonable notice since he was the only painter. Larkin said, "I'll submit your resignation." At 2 p.m. Larkin came to the paint room and said, "I have some good news and I have some bad news." McHale continued to testify as follows:

I said, Wait a minute, and I called my helper, John Mitchell over and I wanted somebody there to hear.

He said, Harold and Ray have accepted your resignation, only they want to you leave today and they'll pay you for another extra week, which they did.

He said that he advised Plant Manager Larkin that he was not going to accept money for days he was not working. Larkin said, "Well, I don't think you have a choice." when he attempted to explain why he decided to withdraw his resignation Larkin said, "Well, it really doesn't matter."

McHale said that he kept insisting he did not want to resign now, and about 2 hours later Laurie Tracal brought him his checks. After continued insistence that he did not want to resign Larkin said, "Well, okay, I guess we don't have a choice," and he took back the checks. McHale said that he then went outside to his car and reconsidered whether he should take the job offer in view of what Larkin had said about him making a big mistake by remaining. A few minutes thereafter he decided to withdraw his resignation.

William Larkin also testified that he had a second conversation with Michael McHale on Saturday, May 13, 1978, during which time McHale approached him and informed him that he had solicited applications for a union. He told McHale that as far as the Union is concerned, he would like to talk over the pros and cons with him. McHale said that he was bringing in the Union to seek better wages, benefits, etc. Larkin denied that he discussed the financial status of the Company or that he said the Company would close down if the Union were selected. He denied that he discussed any other employees who were active in the Union.<sup>1</sup>

<sup>1</sup> I do not credit Plant Manager Larkin's denial that he discussed the financial status of the Company with McHale, not only because I was not persuaded by his demeanor on the witness stand, but more importantly because such denial is contrary to the overwhelming weight of the evidence in this record. The credited evidence of record shows that Plant Manager Larkin was making many efforts to prevent McHale from unionizing Respondent's employees.

Thereafter, Plant Manager Larkin said that he did discuss the McHale conversation with Sher, president of the Respondent, with respect to what McHale had told him. He continued to testify in this regard as follows:

Q. What, if anything, did Mr. Sher respond to you?

A. Well, one of the things that Mike had indicated was that he would be interested in sitting down with management and discussing his demands, and he wanted to know if management would be interested, and I discussed it with Mr. Sher and he told me that he would be receptive to hearing Mike's demands.

Q. Did they sit down?

A. No.

Sher further testified that he first learned about the union activity of the employees over the weekend prior to May 16 when Larkin telephoned him and told him about the conversation which Sher described as follows:

Q. Can you remember specifically when he called you?

A. Well, he said that—with the conversations he had with Mr. McHale that Mike McHale was going to pull a union in, and I just asked him, "What are the problems? Perhaps if he came to us and discussed the problems, we could discuss what the problems were."

President Sher further testified that he has been aware of McHale's union activity since he has been in the employ of Respondent, but that he has never taken any action against McHale. After observing the union organizers on Monday, May 15, Sher said that the Company called its attorney, Brooks, and May 16 Brooks met with management and the supervisors and advised them of their rights and obligations. He said that this meeting took place before the layoff of Sampoli. Moreover, he testified that the company auditors had advised it that the business year appeared to be turning out to be a poor one, and that Respondent should take measures to reduce costs. He said that this financial report of the Company occurred at a point in time when the Company had a loss of \$400,000 for the year ending March 31, 1978, out of a gross volume of \$2.2 million. He acknowledged that Sampoli's gross weekly income was based on a rate of \$2.90 per hour for a 40-hour week.

President Sher identified Respondent Exhibit 1, annual report for the year ending 3-31-78, published August 1978. He said that he was advised of the financial picture by his auditors in May or June 1978. However, he contends that the Company knew the situation from the loss of business for about 9 months prior thereto and had quite a layoff in January of 1978, that it laid off about 20 people after January, and that other small groups were laid off prior to May of 1978.

#### Analysis and Conclusions

It is well established by the undisputed, corroborated, and credited evidence of record that in early May 1978 Respondent's employees Michael McHale and Angela Kym Sampoli commenced organizing a union among Respondent's employees. On or about May 12-13, 1978, Re-

spondent (by Plant Manager William Larkin), through its own admission, learned about the organizing activities of its employees, at least those of Michael McHale, on May 13, 1978. Respondent's Plant Manager William Larkin also acknowledged that he learned about the employees' organizing effort through employee Louie Pagan on or before May 12, 1978.

On May 12, 1978, Respondent (through Larkin), asked employee Charging Party Kym Sampoli if she had heard anything about a union, that Sampoli said "No," that Larkin said someone informed him that an employee was distributing union cards, and that he knew who "he" was. When Sampoli asked how did he know it was a "he" instead of a "she" Larkin said that he had been informed that it was Louie Pagan, and that here he was doing Sampoli favors by allowing her to work overtime, and she was there lying to his face. I find that such inquiries of an employee by such a high ranking managerial official as Plant Manager Larkin without any assurances against reprisals by management constituted coercive interrogation of employees about their union interest and activities in violation of Section 8(a)(1) of the Act.

The undisputed and credited evidence of record further shows that on Friday, May 12, 1978, employees Sampoli and Michael McHale engaged in a union card solicitation campaign in the plant, about which Respondent, through Supervisor Cliff Streuble, acknowledged it was informed on Monday, May 15, 1978, by leadgirl Ann Pardue. Sampoli did not report for work on Monday, May 15, but she did report on Tuesday, May 16, 1978. About 2:30 p.m. or 3 p.m. on that afternoon Sampoli was given an unemployment slip by group leader Al Murray. When Sampoli asked Murray was the slip notice of a layoff and who else knew about it Murray said, "Yes, Ann Pardue." When Sampoli went to Larkin's office and announced that she was laid off, he reacted to the surprised reaction of fellow employees McHale by simply saying that McHale took it harder than she did. Both the unemployment slip (G.C. Exh. 5), and the employee's confidential history (G.C. Exh. 6) indicated the reason for Sampoli's layoff was "lack of work."

During this proceeding Respondent (through Plant Manager Larkin and President Sher), for the first time added to its reason for Sampoli's layoff the contention that Sampoli was spinning a yo-yo during working time on the morning of May 16, 1978. Respondent also contended that it had spoken to Sampoli on prior occasions about spinning the yo-yo, but admitted that it did not issue a formal warning to her which was inserted in her personnel file. It was Respondent's practice to indicate in the personnel file the reasons for the layoff of any employee. Sampoli acknowledged that work was slow (15-20 hours a week), prior to her layoff, and Respondent presented evidence that the Company sustained a loss of \$400,000 for the year ending March 31, 1978.

Hence, while it is well established that Respondent had a lack of work in the shipping department in May 1978, the crucial question presented for determination is whether Respondent laid off Sampoli on May 16 for lack of work and for her spinning a yo-yo or for her participation in the unionization of Respondent's plant. With respect to the yo-yo incident, Sampoli admitted spinning the yo-yo after she

was laid off. Respondent contends that she was spinning it during work hours, disrupting the work of other employees, but leadgirl Ann Pardue, who refused to sign a union card, credibly testified that Sampoli did not appear on May 16 with a yo-yo. Consequently, I credit Sampoli's and Pardue's version, because if Sampoli were disrupting the workers with her yo-yo as Respondent contends Pardue, in all probability, would have seen her. So it is probably true that Sampoli spun her yo-yo after she was laid off. Moreover, Respondent had never issued a formal warning to Sampoli about her yo-yo nor inserted a notation to that effect in her personnel file. Thus, I am persuaded by the credited versions of Sampoli and Pardue, as well as the circumstantial evidence discussed herein, that Sampoli and Pardue were telling the truth, and Plant Manager Larkin and President Sher were not.

As to whether Respondent laid off Sampoli on May 16 because of lack of work, I am persuaded by a composite of the credited evidence of record that Respondent laid her off for her union activities of which Respondent was well aware on May 15, 1978, and not because of a lack of work. This position is amply supported by the evidence for the following reasons:

1. On Friday, May 12, 1978, Sampoli was coercively interrogated by Plant Manager Larkin about the employees' organizing effort, and she was accused by him of lying to his face because she denied any knowledge of union activity.

2. Respondent acquired definite knowledge of Sampoli's organizing activities through leadgirl Ann Pardue on Monday, May 15, 1978.

3. Although work was slow in the shipping department for some time, Respondent nevertheless tolerated the lack of work by allowing Sampoli to work 15-20 hours a week until it learned of her union activity on Monday, May 15, and it precipitously laid her off when she returned to work on Tuesday, May 16.

4. When Sampoli asked group leader Al Murray did the unemployment slip he gave her mean she was laid off and who knew about it Murray replied, "Yes, Ann Pardue" (who had reported Sampoli's soliciting her signature for the Union to Foreman Cliff Streuble on Monday, May 15, 1978). Larkin's remark about how Sampoli took her notice of layoff better than McHale who exclaimed, "Oh! good faith," when Sampoli announced that she had been laid off also supports this position.

5. Sampoli's union activity was the real and substantial motivating reason for Respondent laying her off on May 16. The lack of work and her spinning a yo-yo before or after her layoff were merely a pretext to conceal Respondent's unlawful layoff of Sampoli in violation of Section 8(a)(3) and (1) of the Act.

6. Sampoli was the only employee laid off on May 12. In fact, the record indicates that she was the only *identified* employee laid off since January 1978.

It is therefore obvious that Respondent's economic defense is pretextual.

Re: Michael McHale

The evidence of record is also undisputed and acknowledged by Plant Manager Larkin that he approached em-

ployee Michael McHale on May 12, 1978, 1 day or so after McHale and Sampoli consulted the Union, and asked him if he was distributing union authorization cards. Although McHale answered in the negative, Larkin nevertheless told McHale that employee Louie Pagan had told him that McHale was distributing union cards. During further discussion between them Larkin told McHale that he learned about McHale's involvement in the union drive from Respondent's Vice President Ray Herter, who told him to put a lid on the union drive. Plant Manager Larkin did not deny that he told McHale about the conversation with Herter, and Herter did not testify to deny or confirm the statement attributed to him.

The credited evidence further shows that Plant Manager Larkin tried to persuade McHale to call off the union drive until McHale and other employees could talk with management about their problems. In response to questions by McHale, Larkin also told McHale that in his opinion Respondent could not handle the Union financially and if the plant were unionized, and that the char-b-que department would definitely close next year. During further discussion on May 16, 1978, Larkin again told McHale that the Company could not financially endure unionization and would close its doors.

When McHale informed Plant Manager Larkin in early July that he had received a better job offer and wanted to give Respondent adequate notice thereof since he was Respondent's only painter Larkin not only had McHale's resignation immediately accepted by Respondent, but also he requested McHale to leave immediately with a gift of an additional week's salary. McHale then changed his mind and notified Larkin that he would not resign. Larkin then said to McHale that he would be making a mistake to remain in Respondent's employ. Such conduct on the part of Respondent further demonstrates animus towards McHale's organizing activity.

Based upon the foregoing credited evidence I conclude and find that Respondent, through its *Plant Manager* William Larkin, did, on May 12, 1978, coercively interrogate employees Angela Kym Sampoli and Michael McHale about their interest, and other employees' interest in and activities on behalf of the Union, creating the impression of surveillance of those activities in violation of Section 8(a)(1) of the Act. I further conclude and find that the record evidence established that Plant Manager Larkin also threatened employee McHale with shutdown of the Char-B-Que section and/or the plant if the employees organized the Union. The record is replete with evidence of Respondent's knowledge of Sampoli's and McHale's organizing activities and of its animus towards such activity.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

#### V. THE REMEDY

Having found that Respondent has engaged in unfair labor practices warranting a remedial order, I shall recommend that it cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

It having been found that Respondent interfered with, restrained, and coerced its employees in the exercise of their Section 7 protected rights by coercively interrogating them about their union interests, activities, and desires, by creating the impression of surveilling their organizing activities, by threatening its employees with the shutdown of its plant or a portion thereof if the employees organized the Union in violation of Section 8(a)(1) of the Act, and by discriminatorily laying off employee Angela Kym Sampoli and thereafter failing and refusing to reinstate her to her employment because she was engaged in union activities and refused to reveal her knowledge thereof to Respondent in violation of Section 8(a)(3) of the Act, the recommended Order will provide that Respondent recall Angela Kym Sampoli to the position she held on May 16, 1978, and make her whole for any loss of earnings within the meaning and in accord with the Board's decision in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977),<sup>2</sup> except as specifically modified by the wording of such recommended Order.

Because of the character of the unfair labor practices herein found the recommended Order will provide that Respondent cease and desist from or in any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act. See *N.L.R.B. v. Entwistle Mfg. Co.*, 120 F.2d 532, 536 (4th Cir. 1941).

Upon the basis of the above findings of fact and upon the entire record in this case I make the following:

#### CONCLUSIONS OF LAW

1. Respondent United Telecontrol Electronics, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Local 2066, International Brotherhood of Electrical Workers, AFL-CIO, is and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.
3. By coercively interrogating employees Angela Kym Sampoli and Michael McHale about their activities and other employees' union activities and by creating the impression that Respondent was surveilling their union activities Respondent violated Section 8(a)(1) of the Act, except to the extent that such rights may be affected by lawful agreements in accord with Section 8(a)(3) of the Act.
4. By threatening employee Michael McHale with the shutdown of a portion of the plant or the entire plant Respondent violated Section 8(a)(1) of the Act.
5. By discriminating in regard to tenure of employment of Angela Kym Sampoli in an effort to discourage membership in the Union, a labor organization, Respondent has

<sup>2</sup> See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

engaged in unfair labor practices condemned by Section 8(a)(3) and (1) of the Act.

6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act. I hereby issue the following recommended:

#### ORDER<sup>3</sup>

The Respondent, United Telecontrol Electronics, Inc., Asbury Park, New Jersey, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Coercively interrogating its employees about their concerted and/or union desires and activities.

(b) Creating the impression that it is surveilling the union activities of its employees.

(c) Threatening its employees with closure of a portion of the plant or the entire plant if the employees organized a union.

(d) Discouraging membership in or activities on behalf of Local 2066, International Brotherhood of Electrical Workers, AFL-CIO, or any other labor organization, by laying off employees or otherwise discriminating against them in any manner with respect to their tenure of employment or any term or condition of employment in violation of Section 8(a)(3) and (1) of the Act.

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

(a) Recall or offer to recall Angela Kym Sampoli to immediate and full employment in her former position held on May 16, 1978, or, if such position no longer exists, to a substantially equivalent position without prejudice to her seniority or other rights previously enjoyed and make her whole for any loss suffered by reason of the discrimination against her, with interest, in the manner described in the section 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 recommended Order.

(c) Post at Respondent's office and plant located at 3500 Sunset Avenue, Asbury Park, New Jersey, copies of the attached notice marked "Appendix."<sup>4</sup> Copies of said notice, on forms provided by the Regional Director for Region 22, after being duly signed by Respondent's authorized representative, shall be posted by it immediately upon receipt thereof, and be maintained by Respondent for 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.

(d) Notify the Regional Director for Region 22, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

<sup>3</sup>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.

<sup>4</sup>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."