

**Womac Industries, Inc. and Dorothy McKinney and Reginald Beasley and Westside Local No. 174, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW). Cases 7-CA-13787, 7-CA-14187, and 7-CA-14288**

September 8, 1978

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS PENELLO  
AND TRUESDALE

On June 2, 1978, Administrative Law Judge Joel A. Harmatz issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief, and the General Counsel and Charging Party-Union filed cross-exceptions and supporting briefs. The Charging Party-Union also filed a brief in opposition to the Respondent's exceptions.

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

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions of the Administrative Law Judge and to adopt his recommended Order as modified herein.

The complaint alleges, *inter alia*, that the Respondent violated Section 8(a)(5) and (1) by unilaterally establishing a requirement that employees furnish a doctor's excuse for absences from work due to illness. The testimony with respect thereto is uncontradicted.

On or about May 1, 1977, employees Pearl Moore and Valeria White were told by their supervisors that, henceforth, they were required to present a doctor's excuse for absences due to illness.<sup>2</sup> Moore also testified that a sign to that effect was posted above the timeclock. Both employees testified that, prior to that time, neither of them had ever been apprised of such a requirement.

The Administrative Law Judge concluded that this change constituted merely an isolated exercise of the general supervisory function and that it was necessary for the day-to-day maintenance of discipline, thereby removing it from the category of mandatory subjects of collective bargaining. Accordingly, he dismissed

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

<sup>2</sup> The Administrative Law Judge correctly found that, although Moore and White did not qualify the requirement as being limited to absences due to illness, such limitation was obviously intended.

this portion of the complaint. We find merit in the Union's and General Counsel's exceptions to this finding.

Mandatory subjects of bargaining are those which set a term or condition of employment or regulate the relation between the employer and employee.<sup>3</sup> Plant rules clearly affect conditions of employment and are mandatory subjects of collective bargaining.<sup>4</sup> Thus, we have held that the initiation of new and more stringent rules with respect to absenteeism which represent a significant change from prior practice without consulting or bargaining with the Union violates Section 8(a)(5) and (1) of the Act.<sup>5</sup> Here, the record shows that the Respondent's absentee policy was initiated in May and represented a significant change from its prior practice of not requiring written documentation from a physician for all absences due to illness. By implementing this change without consulting or bargaining with the Union, the Respondent violated Section 8(a)(5) and (1) of the Act. We shall, accordingly, amend the recommended Order and the notice to employees.<sup>6</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, Womac Industries, Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(f):

"(f) Refusing to bargain in good faith by unilaterally, and without prior notification and bargaining with said Union, changing terms and conditions of employment, or by refusing, upon request, to provide information relevant and necessary to the Union's ability to perform its duties during the collective-bar-

<sup>3</sup> *International Union of Operating Engineers, Local Union No. 12 (Associated General Contractors of America, Inc.)*, 187 NLRB 430, 432 (1970).

<sup>4</sup> *Murphy Diesel Company*, 184 NLRB 757 (1970), *enfd.* 454 F.2d 303 (C.A. 7, 1971).

<sup>5</sup> *Murphy Diesel Company*, *supra*, fn. 4; *Kroehler Mfg. Co.*, 222 NLRB 1269 (1976).

<sup>6</sup> The Administrative Law Judge found that the Respondent violated Sec. 8(a)(5) and (1) of the Act by unilaterally instituting an incentive award system, whereby individual productivity was rewarded through gifts of savings bonds. To remedy this violation, he ordered the Respondent to cease and desist from effecting unilateral changes in terms or conditions of employment. However, in drafting his recommended Order, he failed to specify that the Order does not require rescission of the award system. Accordingly, we have also revised the Administrative Law Judge's recommended Order to include appropriate language to this effect.

In addition, the General Counsel and the Charging Party, in their exceptions, contend that the Administrative Law Judge inadvertently omitted the name of an individual found unlawfully laid off and included the name of one not intended. As the record supports this contention, we amend the recommended Order accordingly.

gaining process; provided, however, that nothing herein shall be construed as requiring the Respondent to vary or abandon any economic benefit which has heretofore been established."

2. Insert the following as paragraph 2(b) and reletter the subsequent paragraphs accordingly:

"(b) Rescind its absentee policy requiring a doctor's excuse for all absences due to illness."

3. Substitute the attached notice for that of the Administrative Law Judge.

#### APPENDIX (I)

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 were represented and afforded the opportunity to present evidence in support of their respective positions, it has been found that we have violated the National Labor Relations Act in certain respects and we have been ordered to post this notice and abide by the following:

The National Labor Relations Act gives you, as employees, certain rights, including the right: To engage in self-organization; to form, join, or help a union; to bargain collectively through a representative of your own choosing; to act together for collective bargaining or other mutual aid or protection; and to refrain from any or all of these things.

WE WILL NOT coercively interrogate our employees concerning union activity, nor will we threaten to close the plant or express to employees the futility of union activity while urging them to form their own committee in a manner interfering with their right to engage in activity protected by the Act.

WE WILL NOT discourage employees from appearing in a Board proceeding, or from engaging in activity on behalf of Westside Local No. 174, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), or any other labor organization, by discharging, laying off, or otherwise discriminating against employees with regard to hire, tenure, or any other term or condition of employment.

WE WILL NOT refuse to bargain in good faith with said Union as the exclusive collective-bargaining agent of our employees in the unit defined below:

All full-time and regular part-time employees employed by the Employer at its facility located at 6425 Tireman, Detroit, Michigan, including shipping and receiving employees,

plant clerical employees, quality control clerks, production control clerks and truckdrivers; but excluding office clerical employees, professional employees, confidential employees, guards and supervisors as defined in the Act.

WE WILL NOT refuse to bargain in good faith by failing, upon request, to provide said Union with all information necessary in the performance of its duties in collective bargaining, or by effecting unilateral changes in terms and conditions of work, without first consulting with and affording the Union an opportunity to bargain. However, we are not required to vary or abandon any economic benefit which has heretofore been established.

WE WILL NOT in any other matter interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist Westside Local No. 174, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), or any other labor organization, or bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act, or to refrain from any or all such activity.

WE WILL rescind our absentee policy requiring a doctor's excuse for all absences due to illness.

WE WILL offer immediate reinstatement, if not already provided, to Dorothy McKinney and to the employees listed below, to their former jobs or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and WE WILL make them whole for any loss of pay they may have suffered by reason of our discrimination against them, with interest.

Valerie Murrell	Doris Scott
Edwin Murrell	Robert Ridges
Marie Sims	Jaclyn Gibson
Walter Hayes	Reginald Beasley
Alma Beauford	Angela Sullivan
Therman Glover	Tony Henry
Leslie Wright	William Sanders
Valeria White	Larry Walker
Carleton Vaughn	Wendell Stoutemire
Willie Faye Spibey	Theresa Siminich
Raymond Sawyer	Robert Johnson
Calvin Propst	Michael Erickson
Roy Dawkins	Frazier Abston
	Pearl Moore

WOMAC INDUSTRIES, INC.

## DECISION

## II. THE LABOR ORGANIZATION INVOLVED

## STATEMENT OF THE CASE

JOEL A. HARMATZ, Administrative Law Judge: This consolidated proceeding was heard in Detroit, Michigan, on November 7, 8, and 9, 1977, upon an initial unfair labor practice charge filed on February 17, 1977, and a consolidated complaint issued on August 31, 1977. Said complaint alleges that Respondent independently violated Section 8(a)(1) of the Act by coercively interrogating employees concerning union activity, by threatening plant closure if employees designated the Union, by expressing to employees that supporting the Union would prove futile, and by suggesting to employees that they form their own committee rather than obtain representation by the Union. It is further alleged that Respondent violated Section 8(a)(3) and (1) of the Act by laying off on February 11, 1977, and failing to recall 28 employees, to discourage union membership and Section 8(a)(3), (4), and (1) by on February 15, 1977, discharging Dorothy McKinney, in reprisal for her union activity and participation in a hearing conducted by the National Labor Relations Board. The complaint further alleges that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Union as the certified employee representative in the appropriate unit; by refusing to provide information, requested by the Union, which was relevant and necessary to collective bargaining; and by unilaterally changing terms and conditions of work by establishing a requirement that employees furnish a doctor's excuse for absences, and by instituting a production incentive plan, without bargaining or consulting with the Union. Respondent in its duly filed answer, denied that any unfair labor practices were committed. After close of the hearing, briefs were filed on behalf of the General Counsel, the Charging Party-Union, and the Respondent.

Upon the entire record in this proceeding, including my observation of the witnesses while testifying and their demeanor, and upon consideration of the post-hearing briefs, I hereby find as follows:

## I. THE BUSINESS OF THE RESPONDENT

Respondent is a Michigan corporation, engaged in the manufacture, sale and distribution of tubing and related products, from its plant located in Detroit, Michigan. During the 12-month period prior to September 30, 1976, a representative period, Respondent in the course and conduct of said operation purchased goods and materials valued in excess of \$50,000 which were delivered directly to its Michigan locations directly from points outside the State of Michigan, and manufactured, sold, and distributed from said plants products valued in excess of \$50,000, which were shipped directly to points located outside the State of Michigan.

The complaint alleges, the answer admits, and I find that Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The complaint alleges, Respondent at the hearing admitted, and I find that Westside Local No. 174, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), 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

A. *The Issues*

This case relates to alleged unfair labor practices both during the period prior to an NLRB representation election, and during the aftermath, following the Union's designation as the exclusive representative of employees in the appropriate unit.

Respondent is a minority employer, whose customers consist of the "big three" automobile producers—General Motors, Ford, and Chrysler. Joe Mallory is its president and chief operating officer. At the outset of organization activity, which commenced in mid-January 1977, Respondent's rank-and-file work force numbered about 60 employees. In the course of that campaign, the Union on January 18 and 20, 1977,<sup>1</sup> submitted letters to the Respondent advising that employees had designated the Respondent as their representative. In these letters, the names of 42 employees were specifically listed and identified as union supporters. During the ensuing period, Mallory conducted a meeting with employees on plant premises, at which he engaged in an antiunion discourse, with certain of his statements being the subject of independent 8(a)(1) allegations. Following this meeting, Mallory instructed his supervisors to lay off all employees with a seniority date on or after December 14, 1976. The mass layoff which occurred on February 11, 1977, was allegedly violative of Section 8(a)(3) and (1) of the Act. Thereafter, on February 14, a preelection hearing was conducted, and on the next day, Dorothy McKinney, an employee who had attended that hearing on behalf of the Union was discharged. It is claimed by the General Counsel that this discharge violated Section 8(a)(1), (3), and (4) of the Act.

Previously, a representation petition had been filed by the Union on January 24 in Case 7-RC-14073. The election was conducted on April 7, and in consequence of the Union's designation by a majority of the employees the Union was certified by the Regional Director for Region 7 of the National Labor Relations Board on May 20.

Following the certification, based upon evidence generally to the effect that efforts were made by the Union to request negotiations, but ignored by the Respondent, as well as evidence generally to the effect that Respondent made certain unilateral changes in terms and conditions of employment without bargaining, and also failed to respond to a request for information, it is alleged that Respondent refused to bargain in good faith with the certified representative in violation of Section 8(a)(5) and (1).

<sup>1</sup> Unless otherwise indicated all dates herein refer to 1977.

## B. Concluding Findings

### 1. Interference, restraint, and coercion

The allegations that Respondent independently violated Section 8(a)(1) of the Act during the preelection period, focus primarily upon Mallory's antiunion speech. Apart from this, a single instance of interrogation is alleged, which was imputed to James Jones, an admitted supervisor. According to the credited uncontradicted testimony of Dorothy McKinney, she reported for work on the day after a union meeting, whereupon James Jones asked her if she had attended such a meeting. McKinney responded by asking Jones if another employee had informed him that she went to the meeting; Jones denied that this had occurred. The conversation was apparently ended when McKinney informed Jones that they were not supposed to discuss the Union. From McKinney's testimony, it appears that following the union meeting in question, and indeed on this very day, she wore a union button to work on the lapel of her jacket. It is unclear, however, that she was wearing this jacket or the button at a visible location, prior to her confrontation with Jones that morning. In any event, the fact that an employee might openly acknowledge support of a union does not make said employee fair game for inquiry as to other forms of union activity, not within the knowledge of supervision. The Jones inquiry was unaccompanied by any apparent legitimate purpose and since it had a tendency to impede employees in the exercise of their organizational rights, I find that Respondent thereby violated Section 8(a)(1).

With respect to the Mallory speech, uncontradicted testimony establishes that Mallory himself addressed the employees on the occasion in question.<sup>2</sup> Excepting Supervisor Ben Streeter, who admittedly was present for only a portion of the talk, no other member of the management team attended that meeting. Former employees Dorothy McKinney, Gabriel Sims, and Reginald Beasley testified on behalf of the General Counsel as to Mallory's comments on that occasion. Based upon a composite of their credible testimony, I find that Mallory opened the meeting by expressing his understanding that it was improper under the law for him to talk about the Union, while stating that he would do so anyway. He indicated that if employees would give him a year, he would welcome a union of their choice. He urged, however, that at this time the employees should select their own committee, as an alternative to representation by the UAW. He cautioned employees that the Union could get them no more money than they already had, stating "... you can't squeeze blood out of a turnip," adding that if the Union came in, he would have to close the plant because he was not making money, and that he would fight the Union for 15 years if necessary.

The foregoing substantiates that Mallory attempted to impress employees with the futility of union activity by threatening plant closure in the event of designation of the

<sup>2</sup> A dispute exists as to when the speech was given. Employees McKinney and Beasley testified that it occurred the day before the layoff on February 11. Latrician Watts, an employee called by the Respondent, places the meeting "at least a week or so" prior to the layoff. This variance in the testimony need not be resolved, for it is clear that the speech was given at some time between January 24 and the February 11 layoff.

Union, while encouraging employees to form their own committee as an alternative.<sup>3</sup> Respondent thereby violated Section 8(a)(1) of the Act.

### 2. The alleged discrimination

#### a. *The layoff of February 11*

The complaint, as amended, names 28 employees allegedly laid off on February 11 for antiunion reasons. Mallory, who claims that he alone decided to take this action, admittedly knew that 16 of the employees affected had been identified as union supporters.

Events preceding the layoff reflect that the Union filed its representation petition on January 24. Thereafter, a preelection hearing was scheduled for February 7. That hearing was postponed upon request of Respondent's attorney, Ralph H. Richardson, who by letter to the NLRB dated February 7, advised that "the employer, Womac Industries, was engaged in a possible layoff system involving thirty (30) employees which situation has now been corrected and no layoff is to be effected at this time."<sup>4</sup> Notwithstanding counsel's representation to the NLRB, the layoff was made effective 4 days later, at the close of work on Friday, February 11. Subsequently, on February 14, at the preelection hearing, Respondent, through Mr. Richardson, in effect sought to forestall the election proceeding on a contention that the showing of interest offered by the Union in support of the petition was no longer sufficient because of the reduced size of the work force.<sup>5</sup>

The defense is based entirely on Mallory's sworn explanation, which is summarized in the following segment of his testimony:

I decided Womac Industries had to have a lay-off by verbal communication with my supervisors, by visual inspection of the [raw material] inventory on the floor, and by a general feeling on my part as to how to run the business—that a layoff was in order. And by the reviewing of the day-to-day operation of our business.

Thus, Mallory reversed the expressed position by Respondent's counsel on February 7, with the sole justification for this action resting upon an alleged decline in work due to a drop in raw material inventory. That this actually occurred was not subject to verification through business records because, according to Mallory, raw material records were not maintained by this firm at that time.<sup>6</sup> Further-

<sup>3</sup> It is noted that on the day after the Mallory speech, a notice was posted on the bulletin board informing employees that three volunteers were required to serve on such a committee, and defining the areas in which the committee would act. See G.C. Exh. 5. Although no direct evidence exists as to who posted the notice, considering its appearance on Respondent's stationery together with the credible testimony as to the timing of its appearance, a circumstantial chain exists, which necessarily supports the inference that it was posted in implementation of the suggestion made by Mallory in his speech of the preceding day.

<sup>4</sup> See C.P. Exh. 3.

<sup>5</sup> When this plea was rejected Mallory and his attorney walked out of the hearing. Mallory explained that they took this course because "... we felt we were not capable of getting justice done at that hearing."

<sup>6</sup> It is noted, however, that Mallory testified that bills of lading, copies of which would be among Respondent's records and within its possession, reflected the delivery date of raw materials. No such documents were offered into evidence.

more, although Mallory testified that he discussed such condition with the supervisors prior to making the decision, not a single supervisor was called to substantiate that such conversations occurred, or that inventory levels had in fact declined to an extent requiring the layoff in question. Mallory was an unconvincing witness.<sup>7</sup> Apart from his adverse demeanor, however, my disbelief of his testimony is enforced by other considerations as well.

At the outset, it is necessary to observe that the cutback in the work force in question here was not required by a need to curtail production in the light of reduced sales or profits, but, according to Mallory, was solely because raw material inventory as of February 11 was depleted to a level depriving employees of sufficient work. This, however, was clearly a temporary condition. For Respondent's obligation to furnish finished products to its customers remained as a constant. Indeed, as Mallory's own testimony makes clear, only through continuous production and deliveries to customers on a timely basis could Respondent hope to extricate itself from any adverse financial position existing at relevant times.

These considerations contrasted with the means by which the layoff was implemented, as well as its aftermath, raise serious questions concerning the bona fide nature of the defense. First, it is noted that steps taken by Respondent on February 11 were more in consonance with a predisposition to eliminate personnel permanently than a desire to alleviate a temporary crisis. Thus, employees were informed of their cutback through distribution of "separation" notices, which simply indicated that there was no work and that the employee was being laid off by reason of a "reduction in force." It does not appear that any of those affected were informed that raw material shortages warranted the action taken against them or that the layoff was only temporary until such time as such inventories were replenished.

Furthermore, while it would seem that in the circumstances presented here one responsible for the layoff of half of the work force on a Friday would act only with reasonably accurate information that the reduced employees would not be needed by the following Monday, Mallory's testimony suggests no serious exploration of this possibility. When examined as to whether on February 11 he expected that materials would be available within the next few days, Mallory simply testified that supervisors informed him that there were materials coming, but that they did not know exactly when. Mallory went on to explain that since raw materials are supplied by Respondent's customers and Respondent had no control over their delivery, he was, "... at the mercy of the people supplying and the ability of the vendors—their vendors—at that point—to ship it to me." When questioned as to whether the suppliers of the raw materials had been contacted in order to determine whether needed raw material was in transit Mallory responded:

<sup>7</sup> His testimony included contradictions, shifting explanations, and self-serving attempts to pass on as fact matters later admitted to be beyond his knowledge. He was evasive and argumentative, and his frequent claims of lack of knowledge and lack of recollection as to matters pertinent to the layoff were difficult to reconcile with his own admission that at the time of the layoff he was sensitive to the possibility that such action might be construed as an unfair labor practice. His inability to testify directly and with clarity as to highly material items struck me as a calculated effort to deceive.

We were certainly doing that, but they were not in transit at that point to the *best of my knowledge*. I was not involved in that part of it.

The employee that was involved in that before me, he had no certain idea for sure that it would be coming in. A lot of times promises are made in our industry, but not necessarily kept. [Emphasis supplied.]

Mallory's testimony hardly reflects that he knew in making his decision that raw materials would not be received by February 14 in sufficient quantity to warrant a return to full-scale production. At the very least, curiosity is aroused by the fact that Mallory, rather than hedge against this possibility, would effect a layoff without notice of its temporary nature, and with only casual information as to whether that step might hamper renewed opportunity for maximum production in the immediate future.

In any event, ensuing developments reflect with greater clarity the real motivation for the layoff. Thus, beginning during the week following the layoff, Respondent began recalling employees. Of the 16 employees whose names appear on the Union's January 18 and January 20 letters, 13 were never offered recall. The sole explanation for this appears in Mallory's testimony that he instructed supervisors on February 11 to decide for themselves who should be recalled based on the supervisors' own discretion and that they should do so as their judgment indicated that recall was required. Here again not a single supervisor was called to confirm that such authority was conferred or to explain in probative fashion,<sup>8</sup> the reason for the failure to recall the 13. The unexplained failure to recall such a high percentage of the union supporters stands in stark contrast with the treatment accorded other victims of the layoff whose union sympathies were unknown. Thus of the 12 laid-off employees in this latter category, all were offered recall except Robert Johnson, who was in prison at times material.<sup>9</sup> Re-

<sup>8</sup> No weight is given to Mallory's initial testimony that this group was denied recall because they did not satisfactorily complete their probationary period, for he subsequently admitted that he did not know this as a fact.

<sup>9</sup> I find merit in Respondent's contention that Cedric Hill, who also was denied recall, was not laid off on February 11. The record indicates that Hill's reduction occurred on February 18. Contrary to the General Counsel, as there was no litigation of the immediate circumstances surrounding this layoff, and Hill was not even shown to have been suspected of union activity, the only fair assumption is that his termination rested upon considerations collateral both to the mass layoff of February 11 and to the allegations of the complaint. I find no basis for concluding that Respondent violated Sec. 8(a)(3) and (1) in this instance.

However, Respondent's contention that Ray Sawyer quit his job prior to the February 11 layoff is rejected. I discredit the testimony of Mallory that Sawyer did not report for work on February 11 and never again returned. Although Sawyer did not testify, a separation slip was prepared on Sawyer, evidencing a February 11 layoff, and Respondent's payroll records reflect that he worked 40 hours straight time, with no overtime, during the payroll period in question.

Also rejected is the like contention by Respondent with respect to employees Jaclyn Gibson and Walter Hayes. As to Hayes, his separation slip indicates that he was laid off on February 11. Nonetheless, Mallory testified that Hayes last worked on February 4 and thereafter did not return again. Contrary to Mallory, Hayes testified that he last worked on February 11 and on that day, Stanley Cobb, an admitted supervisor, personally provided him with his layoff slip. Between Mallory and Hayes, I credit Hayes. Respondent's payroll records substantiate Hayes by indicating that during the payroll period beginning February 7 and ending February 13, Hayes worked 25.3 hours. See G.C. Exh. 4(a), p. 24. I further credit the testimony of Hayes

(Continued)

spondent's failure to recall a proportionately high number of union supporters was compounded also by the hiring of new employees. Thus, a comparison of G.C. Exh. 4(a) with Resp. Exh. 3 discloses that during the payroll period ending February 20, the week immediately after the layoff, Respondent hired five new employees. In the next succeeding week, namely the payroll period ending February 27, Respondent hired 14 additional employees.

In conclusion, it is first noted that the testimony of Mallory that the mass layoff was justified by the decline in available raw material is rejected. Instead, it is concluded that the mass layoff shortly after the commencement of organization activity, and in the midst of a preelection campaign, without advising employees as to either the expected duration thereof, or the reason for said action, was predicated upon Respondent's previously expressed hostility to the organization activity by its employees. The foregoing, together with the absence of competent explanation as to the disproportionate failure to recall known union supporters, contrasted with the recall of all others available for work, together with hiring of new employees in substantial numbers shortly after the layoff, convincingly points to the conclusion that the layoff of February 11 was no less than a ploy calculated to weaken the organization effort through elimination of union adherents in substantial numbers. Accordingly, I find that Respondent thereby violated Section 8(a)(3) and (1) of the Act.

b. *The discharge of Dorothy McKinney*

Prior to her discharge, Dorothy McKinney was a quality control clerk. Her initial date of hire was March 5, 1973, and her service with Respondent outdated all unit employees other than Lucille Canto, also a quality control clerk.

McKinney was one of the employees identified to the Respondent as a union supporter in the Union's letter of January 18. She also credibly testified that after a union meeting in late January, she wore a union button to work. On Monday, February 14, McKinney attended the preelection hearing and sat with the representative of the Union at "counsel table." Mallory, together with his attorney was also in attendance; it will be recalled that both left the hearing abruptly out of indignation at the hearing officer's refusal to authorize reinvestigation of the showing of interest supporting the Union's petition.

McKinney returned to work the next day. Benjamin Streeter, her supervisor, discharged her that morning, providing a termination slip, which stated: "Employee absent from work without official excuse."

The preelection hearing in question was originally scheduled for February 7 but was postponed. McKinney sought to attend at that time. On February 6, she informed Streeter as to her intentions in that regard, and he acknowledged that she could do so. As heretofore indicated, that hearing was cancelled and rescheduled for February 14. On Friday, February 11, the last working day prior to the hearing, McKinney inquired of Stanley Cobb as to the whereabouts of

while aware that she was in the hospital, and told Hayes to deliver it to her. There was no evidence that Respondent previously had taken action to sever Gibson's employment, I find that Jaclyn Gibson and Walter Hayes were included in the group unlawfully laid off on February 11.

Streeter. Cobb advised that Streeter had left early that day and was unavailable. McKinney told Cobb that she had to go to the NLRB hearing on Monday, that she would not be at work and that Cobb should so advise Streeter. McKinney also credibly testified that she also informed James Mills, an admitted supervisor, that she would not be in Monday, because she would attend the NLRB hearing. Mills indicated "allright."<sup>10</sup>

Respondent elected not to call either Cobb or Mills as witnesses, but elected to stand solely upon the uncorroborated testimony of Streeter. Streeter had been quality control manager for less than 2 weeks at the time of the McKinney discharge.<sup>11</sup> He testified that well prior to February 14, while McKinney worked under his supervision on the night shift, she was problematical, as evidenced by her propensity to criticize the work of other employees, her nosiness, and the bickering she caused.<sup>12</sup> Parenthetically, it will be recalled that the discharge slip makes no reference to such charges. Indeed, when examined as to the cause of the discharge, Streeter afforded the following response:

Because without any prior warning, and no knowledge on my part, she [McKinney] did not come to work that day. . . . I had no idea where she was and *nobody else did*. [Emphasis supplied.]

Though Streeter, on the one hand, testified that no one else knew of McKinney's whereabouts that day, he at the same time denied consulting with any one prior to the discharge, and further denied discussing the discharge with Mallory. Specifically he testified "I never discussed Dorothy McKinney with any one until after she was fired."

Streeter was another unbelievable witness. Particularly suspicious was his claim that he did not learn of McKinney's union activity until 2 weeks after her termination,<sup>13</sup> and that he did not even learn that the Union had been engaged in organization activity until March.<sup>14</sup>

Insofar as Streeter's testimony supports Respondent's claim that McKinney was discharged for cause, it is rejected. Instead, I find that McKinney was discharged in

<sup>10</sup> Gabriel Simms, a former employee of the Respondent, testified that he observed McKinney inform Cobb and Mills that "she would be in late Monday. . . . She had some business to take care of." Simms denied that he heard McKinney inform Mills or Cobb as to just what that business was. As between Simms and McKinney, I regarded McKinney as the more reliable witness as to the precise words she expressed to the two supervisors.

<sup>11</sup> Previously, Streeter had been night shift foreman.

<sup>12</sup> Streeter described only one specific incident supporting his characterization of McKinney in this regard. He claims that McKinney informed him that a day shift quality control inspector had permitted production employees to do a job incorrectly. Relying upon McKinney's representation, Streeter claims that he demanded the discharge of the day shift inspector. Later, however, Streeter claims to have been embarrassed upon learning that the information furnished him by McKinney, and on which he acted, was incorrect.

<sup>13</sup> The charge relative to the McKinney discharge was filed on February 17, 1977. A return receipt, which is in evidence, reflects a delivery date of February 22, and bears what purports to be the signature of Leona F. Shemwell, whose name appears on Resp. Exh. 3, which identifies her as Respondent's bookkeeper. Furthermore, Streeter while admittedly having asked McKinney at the discharge interview where she had been the previous day, persisted in his assertion that he did not learn of her union activity until March 1, and then, from "one of the workers."

<sup>14</sup> Streeter testified that he was aware that Mallory held a meeting of employees, and that he was present for a portion thereof. He claims, however, that said meeting involved a discussion as to the deteriorating financial condition of the Company.

reprisal for her attendance at the NLRB preelection hearing, as well as her other equally overt activity in support of the Union. Respondent thereby violated Section 8(a)(4), (3), and (1) of the Act.

### 3. The refusal to bargain

#### a. *The alleged 8(a)(5) violations*

##### (1) The general refusal to bargain; the refusal to provide requested information

The Union was certified on May 20, following its designation by a majority on April 7 pursuant to a Board-conducted election. Thereafter, a representative of the Union made several attempts to contact Mallory by telephone, in each instance leaving messages requesting that Mallory return his call.<sup>15</sup> Finally by letter dated July 6, the Union wrote Respondent requesting a meeting for the purposes of collective bargaining and attaching in clear, unambiguous, and detailed form a request for information as to employee job classifications, duties, rate ranges, hire dates, job evaluation plans, fringe benefits, overtime premium pay, and all terms and conditions of work then in effect. As of the date of the hearing, the Union received no response from Respondent as to the request for bargaining nor was the requested information submitted in any form. As the requested information was necessary and relevant to performance of the Union's duties in the bargaining process, and as the Respondent's failure to respond to the request for recognition and bargaining was tantamount to outright rejection of the principles of collective bargaining in the face of a legitimate and unchallenged union certification, I find that in each of these separate instances, Respondent refused to bargain in good faith in violation of Section 8(a)(5) and (1) of the Act.

##### (2) The alleged unilateral action

The complaint, as amended, alleged that Respondent also violated Section 8(a)(5) and (1) by unilaterally, and without affording the Union opportunity to consult and bargain, instituting an incentive award program in June, and announcing in May a requirement that employees, following absences, would have to furnish a doctor's excuse or face disciplinary action for failure to do so. Employees Pearl Moore and Valeria White testified that on or about May 1, Willie Sanders, an admitted supervisor, advised them that they would have to bring in a doctor's excuse if they missed work, and directed attention to a notice posted on the timeclock to the same effect. Aside from my reservations as to whether Moore and White were in a position to testify that this was not merely a republication of preestablished company policy, in dismissing this allegation, I rely upon other grounds. Thus, the requirement of a medical excuse for absences due to sickness—<sup>16</sup> even if a change pertaining to conditions of work—merely constituted an

<sup>15</sup> Based upon the credited testimony of Forest Hudson, a service representative of the Union.

<sup>16</sup> Although Moore and White did not qualify the requirement as limited to absences due to sickness, this obviously was the case.

isolated exercise of the general supervisory function, sufficiently reasonable and necessary to day-to-day maintenance of discipline to remove it from the spectrum of mandatory subjects of collective bargaining which could not be implemented without first consulting with the Union.<sup>17</sup>

With respect to the alleged monetary incentive program, undisputed credible testimony was offered to the effect that in July Foreman James Mills addressed a group of employees advising them that the individual with the highest production at the end of the month would receive a \$25 savings bond. Former employee Gabriel Sims confirms to a similar discussion with Mills, and indicates that he saw Supervisor Willie Sanders subsequently give savings bonds to two employees. The General Counsel's witnesses attest to the fact that prior to the election no such award system had been in effect. As Respondent's answer admits that no bargaining took place, I find that by rewarding production through the grant of savings bonds, Respondent altered a condition of work without negotiation and thereby acted in derogation of the Union's status as exclusive representative in a manner constituting a refusal to bargain in good faith violative of Section 8(a)(5) and (1) of the Act.

#### CONCLUSIONS OF LAW

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

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent independently violated Section 8(a)(1) of the Act by coercively interrogating employees concerning union activity, by urging employees to establish their own committee as an alternative to the Union, and by impressing employees with the futility of union activity by threatening to close down the plant should employees designate the Union.

4. Respondent violated Section 8(a)(1), (3), and (4) of the Act by discriminatorily discharging Dorothy McKinney on February 15, 1977, in reprisal for her attendance at an NLRB representation hearing, and in reprisal for her union activity.

5. Respondent violated Section 8(a)(3) and (1) of the Act by discriminatorily laying off employees listed in Appendix (ii) on February 11, 1977, in order to discourage activity on behalf of the Union.

6. Respondent violated Section 8(a)(5) and (1) of the Act by refusing since July 6, 1977, to bargain, upon request, with the Union as exclusive representative of employees in the unit set forth below. The appropriate unit is as follows:

All full-time and regular part-time employees employed by the Employer at its facility located at 6425 Tireman, Detroit, Michigan, including shipping and receiving employees, plant clerical employees, quality control clerks, production control clerks and truckdrivers; but excluding office clerical employees, professional employees, confidential employees, guards and supervisors as defined in the Act.

7. Respondent has violated Section 8(a)(5) and (1) of the Act by refusing, since July 6, 1977, to provide the Union,

<sup>17</sup> See, e.g., *Sharkey's Tire & Rubber Co., Inc.*, 222 NLRB 261, 268 (1976).

upon request, with information relevant and necessary to the Union's performance of its obligations in collective bargaining.

8. Respondent has violated Section 8(a)(5) and (1) of the Act by unilaterally, and without notice to and bargaining with the Union, changing terms and conditions of employment, by implementing an incentive award system whereby individual productivity was rewarded through gifts of savings bonds.

9. 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, it shall be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. As the unfair labor practices committed by the Respondent, particularly the mass discriminatory layoff and discharge of McKinney, strike at the heart of the Act, a broad cease and desist order shall be recommended requiring Respondent to cease and desist from "in any other manner" interfering with the rights of employees guaranteed by Section 7 of the Act.

Having found that Respondent violated Section 8(a)(3) and (1) of the Act by discriminatorily laying off employees listed in Appendix (ii), it shall be recommended that Respondent offer them immediate reinstatement to their former positions, or if not available, to a substantially equivalent position, displacing, if necessary, employees hired since February 11, 1977,<sup>18</sup> and make whole said discriminatees for any loss of earnings by virtue of the discrimination against them by payment of a sum of money equal to the amount each would have earned from February 11 to the date of a valid offer of reinstatement, less net interim earnings, with interest as described below.

Having further found that Respondent discriminatorily discharged Dorothy McKinney, it shall be recommended that she be offered her former job, or if not available, a substantially equivalent position, discharging any employee hired since February 15, 1977, as a replacement, and without loss of seniority and other privileges, and make her whole for any loss of earnings she sustained by payment of a sum of money equal to what she would have earned between the date of her discharge and the date of a bona fide offer of reinstatement, less net interim earnings, with interest. All backpay due under the terms of the recommended Order shall be computed with interest thereon in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).<sup>19</sup>

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

<sup>18</sup> The obligation to offer reinstatement shall not apply to discriminatees who were either lawfully restored or recipients of bona fide offers of reinstatement following their unlawful layoffs.

<sup>19</sup> See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

#### ORDER<sup>20</sup>

Respondent Womac Industries, Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Coercively interrogating employees concerning their union activity, and urging employees to form their own committee as an alternative to representation by the Union.

(b) Impressing employees with the futility of union representation by threatening a closedown of the plant if they designate the Union.

(c) Discouraging membership in a labor organization by discharging, laying off, or in any other manner discriminating against employees with regard to their hire, tenure of employment or any term or condition of employment.

(d) Discouraging employees from participating in a proceeding before the National Labor Relations Board, by discharging or otherwise discriminating against employees in regard to their hire, tenure of employment or any other term or condition of employment.

(e) Refusing, upon request, to bargain in good faith with the exclusive representative of employees in the unit found appropriate below for purposes of collective bargaining. The appropriate bargaining unit is:

All full-time and regular part-time employees employed by the Employer at its facility located at 6425 Tireman, Detroit, Michigan, including shipping and receiving employees, plant clerical employees, quality control clerks, production control clerks and truckdrivers; but excluding office clerical employees, professional employees, confidential employees, guards and supervisors as defined in the Act.

(f) Refusing to bargain in good faith by unilaterally, and without prior notification and bargaining with said Union, changing terms and conditions of employment, or by refusing, upon request, to provide information relevant and necessary to the Union's ability to perform its duties during the collective bargaining process.

(g) In any other manner interfering with, restraining, or coercing employees in the exercise of their right to self-organization, to form, join, or assist the aforesaid Union, or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

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

(a) Offer immediate reinstatement to the employees listed in Appendix (II) and Dorothy McKinney to their former positions, or if not available, to a substantially equivalent position, discharging replacements if necessary, and make them whole for all earnings lost by reason of discrimination against them as set forth in the section of this Decision, entitled "The Remedy."

<sup>20</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.

(b) Upon request, bargain with the aforesaid Union, as the exclusive representative of all employees in the appropriate unit described above, and, if an understanding is reached, embody such understanding in a signed agreement.

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

(d) Post at its place of business in Detroit, Michigan, copies of the notice attached hereto, and marked "Appendix (I)."<sup>21</sup> Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by a representative of the Respondent, shall be posted by it immediately upon receipt thereof and be maintained by it 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 ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 7, in writing, within 20 days of the date of this Order, what steps it has taken to comply herewith.

#### APPENDIX (II)

Valerie Murrell	Doris Scott
Edwin Murrell	Robert Ridges
Marie Sims	Jaelyn Gibson
Walter Hayes	Reginald Beasley
Alma Beauford	Angela Sullivan
Therman Glover	Tony Henry
Leslie Wright	Cedric Hill
Valeria White	Larry Walker
Carleton Vaughn	Wendell Stoutemire
Willie Faye Spibey	Theresa Siminich
Raymond Sawyer	Robert Johnson
Calvin Propst	Michael Erickson
Roy Dawkins	Frazier Abston
	Pearl Moore

<sup>21</sup> In the event that this Order is enforced by a judgment of the 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."