Westinghouse Electric Corporation *and* United Electrical, Radio & Machine Workers of America. Case 5–CA–8380

March 23, 1978

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND PENELLO

On October 18, 1977, Administrative Law Judge John F. Corbley 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,[1] and conclusions[2] of the Administrative Law Judge, to modify his remedy,[3] and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Westinghouse Electric Corporation, Richmond, Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

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

[2] For the reasons stated in their dissenting opinion in *Essex International, Inc.*, 211 NLRB 749 (1974), Chairman Fanning and Member Jenkins concur in the adoption of the Administrative Law Judge's conclusion that Respondent violated Sec. 8(a)(1) of the Act by maintaining a rule prohibiting employees from soliciting their fellow employees concerning matters relating to their Sec. 7 rights during nonwork times at the plant.

[3] See *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), for rationale on interest payments.

DECISION

STATEMENT OF THE CASE

JOHN F. CORBLEY, Administrative Law Judge: A hearing was held in this case on May 12, 1977, pursuant to a charge filed by United Electrical, Radio & Machine Workers of America, hereinafter referred to as the Union or the Charging Party, on January 24, 1977, which was served on Respondent by registered mail on the same date and on a complaint and notice of hearing issued by the Acting Regional Director for Region 5 of the National Labor Relations Board, which was likewise duly served on Respondent. The remaining portions of the complaint, which were not dismissed by bench order at the hearing,[1] allege that Respondent violated Section 8(a)(3) and (1) of the Act by discharging Kenneth L. Wray, Jr., on or about January 19, 1977, and also violated Section 8(a)(1) of the Act by maintaining and enforcing a certain no-solicitation rule at all pertinent times herein. In its answer to the complaint, Respondent has denied the commission of any unfair labor practices.

For reasons which appear hereinafter, I find that Respondent has violated the Act essentially as charged in these allegations of the complaint.

At the hearing the General Counsel and Respondent were represented by counsel. All parties were given full opportunity to examine and cross-examine witnesses, to introduce evidence, and to file briefs. Briefs have subsequently been filed by the General Counsel, the Charging Party, and Respondent and have been considered.

Upon the entire record[2] in this case including the briefs and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, a Pennsylvania corporation, is engaged in the repair of electrical motors and generators at its Richmond, Virginia, location, the only location involved herein.

During the 12 months preceding the issuance of the complaint, a representative period, Respondent purchased and received, in interstate commerce, materials and supplies valued in excess of $50,000 from points located outside the State of Virginia.

At all times material herein, Respondent is, and has been, an employer as defined in Section 2(2) of the Act, engaged in commerce and in operations affecting commerce as defined in Section 2(6) and (7) of the Act, respectively.

[1] On Respondent's motion at the hearing, and without objection by the General Counsel and the Charging Party, I dismissed a certain allegation of the complaint (par. 5(a)) that Respondent interrogated its employees in violation of Sec. 8(a)(1) of the Act.

[2] Errors in the transcript have been noted and corrected.

II. THE LABOR ORGANIZATION INVOLVED

At all times material herein, the Union is, and has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Respondent's Relevant Hierarchy*

At all times material herein, the following named persons have occupied the positions set opposite their respective names, and have been, and are now, agents of Respondent, acting on its behalf, and are supervisors within the meaning of Section 2(11) of the Act:

Glenn H. Rheinhart	Plant Manager
John Vetsch	First Line Supervisor

B. *Sequence of Events*

In March 1976, Lance Compa, a field organizer for the Union, who also represented it at the hearing, held a union meeting at a local Holiday Inn. About 18 employees of Respondent's Richmond plant attended. This effort to organize the employees at that time however, was, abandoned by the Union shortly thereafter.

In October 1976, Respondent had to complete a large job for the U.S. Army Corps of Engineers. Consequently, Respondent obtained the services of three men from Manpower, Inc., to assist on this project.

One of these three men was Kenneth Wray, the alleged discriminatee herein. Before coming to work with Manpower, Inc., Wray had been employed at Respondent's motor division plant in Buffalo, New York, from October 1974 to October 1975 when Wray was laid off for lack of work.

After Wray had worked as a Manpower employee for about 2 weeks at Respondent's Richmond plant in October 1976, Respondent hired Wray as its own employee at that plant on October 29, 1976. Wray began his employment with Respondent at Richmond as a motor repairman "D," labor grade 3, at the so-called "standard" pay rate.[3]

Meanwhile, in October, November, and early December 1976, Compa, the union organizer, again contacted employees at Respondent's Richmond plant and visited them at their homes.

On January 4, 1977, Respondent rehired a former employee, Clarence Rigsby, as a motor repairman "B." Rigsby thereafter performed a number of the same duties as were being performed by Wray.

On or about January 12, 1977, Wray spoke to his supervisor, Vetsch, about outside school training. Vetsch assured Wray that, on his successful completion of a course, Respondent would reimburse Wray for his course expenses.

A union meeting was held on Sunday, January 16, 1977, at a Holiday Inn. This meeting was attended by Compa and five of the employees, including Wray. Compa passed out union authorization cards and all five employees signed. Compa instructed the employees in the use of a low-key approach whereby they could attempt to organize their fellow employees during breaks and before and after work hours. Compa also gave them enough blank authorization cards for the entire plant unit. Wray took about eight of these blank authorizations.

On the morning of January 17, 1977, Wray approached 10 to 12 of his fellow employees in an effort to get them to sign cards. One of the employees approached by Wray was Ray Preston. When Preston told Wray that Preston was not interested unless the Union could get 85 to 90 percent of the shop employees to join, Wray told Preston that where he, Wray, came from "people got in a lot of trouble and cars got smashed up and stuff like this, and when unions were originated people were in trouble . . . people got in a lot of trouble for not joining the unions."[4] Preston became angry at this and called Wray a radical.

Preston was so annoyed by Wray's remarks that Preston mentioned them to "everyone in the shop," including his supervisor, John Vetsch. Specifically, Preston told Vetsch, within a few minutes after the above conversation with Wray, that Wray threatened to tear up Preston's car if Preston crossed a picket line.

At some point prior to the time Plant Manager Rheinhart told Vetsch, on January 19, 1977, to lay Wray off — an incident which will be described *infra* — Vetsch informed Rheinhart that Wray had had a conversation with Preston on January 17, 1977, about a union in the shop.[5]

On the evening of January 17, Wray telephoned Compa and told Compa that Wray had spoken to several employees including Preston. Wray asked that Compa himself speak to Preston.

Compa telephoned Preston immediately after the conclusion of Compa's call from Wray. Preston told Compa in the ensuing conversation that Preston was concerned about the way Wray approached Preston about the Union. Preston said that, when he did not respond to Wray's request to support the Union, Wray said that people who did not support the Union got their cars torn up. Compa told Preston that Wray was wrong to say this and that the Union did not want that sort of campaign. Compa said rather that the Union sought support only where employees wanted a labor organization to represent them. Compa promised to have Wray speak again to Preston and straighten the matter out.

Compa then telephoned Wray, admonished Wray about what he had said to Preston, and repeated his instructions about a low-key campaign. Compa also requested Wray to speak again to Preston and square the matter away so that there would be no lingering animosity.

[3] As Rheinhart admitted at the hearing, an employee is usually hired at the so-called "probationary rate" — unlike Wray — then moved to a higher "qualifying" rate and, finally, if his work justifies it, to the "standard" rate — the rate at which Wray began.

[4] Wray credibly so testified. In view of some uncertainty demonstrated by Preston in his testimony, I do not credit Preston's somewhat different version of what Wray said. Wray testified in a more certain and straightforward manner than did Preston.

[5] Rheinhart so admitted.

Wray worked on January 18 and, I conclude, spoke to Preston.[6] He likewise spoke to other employees about the Union on that day.

Wray worked the morning of Wednesday, January 19, and continued his organizing efforts at the plant. About 11:45 a.m., on January 19, Vetsch called Wray into Vetsch's office. At that time Vetsch informed Wray that he was being let go because of the lack of work and because Wray was doing too much "bullshitting." Wray asked Vetsch if he was being discharged and, if so, on what grounds. Vetsch stated that Wray could call it what he wanted but that Wray was being let go. Vetsch repeated the reasons he had already given Wray. Vetsch then instructed Wray to return a flashlight and to get his tools and himself out of the plant. Wray complied.[7] He has not been reinstated.

Respondent maintains an "Industry Services Division Employee Handbook," which has been distributed to all employees at its Richmond plant. At all pertinent times herein the following language has appeared on an unnumbered page of that handbook under the title "Collections and Donations":

> For reasons you can well understand and appreciate, taking or accepting collections or donations from other employees or non-employees is not permitted during working hours. This rule applies to any fund used for charitable or benevolent reasons. Occasionally plant management may waive this rule. The Company at times makes contributions to selected causes on behalf of the Plant, and provides a payroll deduction plan as a convenient way for employees to contribute to the United Fund on a regular basis. This is the only solicitation allowed in the plant.

In or about May 1975, Respondent permitted solicitors from the United Givers Fund to speak at an employee meeting and to show a movie about the Fund.

No other solicitation was shown to have occurred at the plant for the following year and a half until Wray began soliciting employees to join the Union on January 19, 1977.

IV. CONCLUDING FINDINGS

A. *The Separation of Wray*

Respondent denies that Wray was discharged for union activities. It says that it had no knowledge of such activities and further contends that, even if it did, the General Counsel's case must fail because there is no showing that Respondent maintained any animus against union activities by its employees.

I reject each of these contentions.

Wray was very active in the Union's brief organizing campaign, as has been recounted. Respondent knew of these activities — at least insofar as Wray's efforts at the plant to solicit employees to sign union authorization cards were concerned. For Preston so advised Vetsch and Vetsch informed Rheinhart — prior to Wray's discharge — that Wray had spoken to Preston about a union in the shop. Thereafter when Vetsch told Wray that Respondent was separating Wray, one of the reasons Vetsch gave Wray was that Wray was doing "too much bullshitting." The only "bullshitting" — i.e. talking — in which Wray was shown to have engaged at the time was his effort to solicit his fellow employees to join the Union. Hence, I find that this is the "bullshitting" to which Vetsch had reference.

I, accordingly, conclude from the foregoing facts that the General Counsel has established a *prima facie* case that Wray was separated from employment because of his union activities. That is, Wray was involved in such activities and Respondent's Richmond plant officials were aware of such involvement. The precipitate manner in which Wray was let go after Respondent became so aware and Vetsch's remark that one cause for separation was "too much bullshitting" — his organizational activities, as I have found — are evidence not only of Respondent's animus against such activities but, perforce, of its motive in ending Wray's services.[8]

Inasmuch as the General Counsel has established a *prima facie* case, the burden of the proceeding shifted to Respondent.

Respondent defends that Wray was laid off on January 19 for economic reasons and was given 3 days paid notice at that time consistent with its layoff policy. It says that the decision to lay off Wray was based on a consensus of Respondent's supervisory hierarchy (including Rheinhart and Vetsch) which had been reached on or about January 13 or 14 (i.e., prior to the union meeting of January 16).[9] Respondent avers that this consensus of supervisory opinion was founded on the circumstance of declining customer orders which left employees with insufficient production work to do. Wray was selected for layoff, Respondent claims, as the least senior employee at the plant and the only one who had not completed his probationary period.

I also reject these contentions by Respondent.

The only witness to testify in support of Respondent's case was Rheinhart, the Richmond plant manager. Rheinhart testified that there was little work for Wray to do from Christmas through January. Rheinhart also testified that in the first part of January the amount of available customer work for all hourly employees in the shop was at a low point. (Customer work is production work for which one of Respondent's clients can be charged directly.) Rheinhart discussed this problem, he says, with his three foreman, one of whom was Vetsch, on January 13 or 14. The foremen, per Rheinhart, told him that there was not enough production work to keep the men on the floor busy, hence furloughs were discussed. Rheinhart stated that it was mentioned at the time that there was one probationary employee who had not served out his probation and this

[6] Preston stated that Wray spoke to him about the Union two or three times before Wray's separation, including the conversation in which the possibility of car damage was mentioned.

[7] These findings as to Wray's discharge are based on the credible and undisputed testimony of Wray in this regard. Vetsch did not testify.

[8] It is well settled that the element of animus can be established on the basis of circumstantial evidence. *Ri-Del Tool Mfg. Co., Inc.*, 199 NLRB 969 (1972). And the timing of a discharge or separation abruptly after an employer has learned of an employee's union activities, as here, is one instance of such probative circumstantial evidence. *N.L.R.B.* v. *Montgomery Ward & Co.*, 242 F.2d 497, 502 (C.A. 2, 1957), cert. denied 355 U.S. 829.

[9] Respondent's brief erroneously says that the supervisory decision was reached on "July 13 or 14." However, its evidence, as will appear, would tend to show that the meetings occurred on January 13 or 14, 1977.

employee would be the first to go. The alleged probationary was Wray. Rheinhart responded to the foreman — in the same manner he said he responded to them a few days before January 13 or 14 — that he, Rheinhart, was optimistic about a business upturn and was unwilling to release any employees, hence he would not do so at the time.

A sales meeting was held on Monday, January 17, attended by Rheinhart, salesmen, and the foremen on the day shift (Romisher and Vetsch). The conclusion reached at this meeting was, according to Rheinhart, that things had gone from bad to worse. The situation did not improve on January 18. Accordingly, said Rheinhart, he had another meeting with Romisher and Vetsch on the morning of January 19, reviewed the production situation with them, found it no better, and told Vetsch to lay off Wray. Rheinhart also claims he told Vetsch to let Wray go home at noon on January 19, if there was no work for Wray to do, and to pay Wray through Friday.

I believe only so much of Rheinhart's testimony that indicates Rheinhart was in constant touch with his foremen about the production situation in the shop and that Rheinhart made the decision to release Wray. For both activities were part of his function as plant manager. In the light of all the surrounding circumstances, the confusion demonstrated by Rheinhart on the stand (particularly in reference to Respondent's summaries of employee hours worked) and certain inconsistencies in his testimony,[10] I do not credit any other aspect of his testimony in respect to the release of Wray.

Wray, as I have already found, was not told by Vetsch that he was being laid off. Moreover, Wray's employment records show that he was discharged. Wray's records also reflect that he was paid only through Wednesday noon on January 19, and, curiously, for Friday, January 21. Hence, he was not awarded 3 days' layoff pay as is customary under Respondent's layoff policy.[11]

Further, Wray was never told he was a probationary employee.[12] Rheinhart rather informed Wray, as Rheinhart admitted, that, after 30 days, Wray would be qualified for sick days, vacation, and holiday pay. As Rheinhart further admitted at the hearing, Wray would also — after 30 days' employment at Richmond — receive credit for Wray's prior employment at Buffalo, which would entitle Wray to a vacation.

Wray took 1 week's vacation in 1976, and when released on January 19, 1977, he was awarded 2 weeks' further vacation at that time, according to his separation record as prepared at that time.[13]

An employee in his first year receives a 1-week vacation and in his second year — 2 weeks — according to Respondent's "Industry Services Division Employee Handbook," which was received in evidence. If Wray was given credit for his prior year with Respondent at Buffalo he would be in his second year of employment with Respondent.

Further, Wray was not hired at the Richmond plant at a probationary pay rate — nor even at the qualifying rate which is the next rate following the probationary rate. He was hired in the so-called standard rate (the highest of these three rates). When Rheinhart took Wray on, Rheinhart told Wray that Wray would begin at the standard rate because of his prior employment with Respondent.[14] Respondent's "Industry Services Division Employee Handbook," in effect at all times herein, states that "an employee laid off (as Wray was from Respondent's Buffalo plant) will receive credit for former service when rehired."[15]

On the basis of the foregoing, I conclude that Wray was hired by Respondent in October 1976 as a permanent employee (as Rheinhart, in any event, admitted at one point in his testimony) for whom full employment benefits would vest after 30 days' continuous employment on rehire and that Wray was not serving in a probationary period on January 19, 1977, the day of his separation from the Richmond plant. I further conclude on the basis of the above-mentioned corporate policy that, as of January 19, 1977, Wray possessed 1 year and 2-1/2 months' accumulated seniority. This means, therefore, that as of that date Wray was not the least senior employee of the Richmond plant. Thornton (who like Wray was a repairman "D") was the least senior at that time with less than 10 months' service.[16]

But even assuming, *arguendo*, that my conclusions are erroneous that Wray was not a probationary employee and not the least senior employee in the shop on January 19, 1977, I would still conclude that he was not released from employment on that date for economic reasons.

Rheinhart admitted that Wray was hired at the Richmond plant because Respondent was impressed with Wray's attitude, eagerness, and work during Wray's stint with Manpower at the plant in October 1976. Rheinhart also admitted that he was impressed with Wray's prior efforts (before Manpower) to get a job working at the Richmond plant. Indeed, it was Rheinhart who helped Wray get Wray's job with Manpower. Only a week before Wray's release on January 19, Wray was told by Vetsch that Respondent would reimburse Wray for the successful

[10] E.g., when called by the General Counsel, Rheinhart testified that Wray became a permanent employee of Respondent in October 1976. In Respondent's case in chief Rheinhart took the position Wray was a probationary employee. When called by the General Counsel, Rheinhart said Wray qualified for holidays on the basis of Wray's prior employment with Respondent. In Respondent's case, Rheinhart testified Wray became so qualified after 30 days' employment at the Richmond plant.

[11] While Respondent did not subsequently contest Wray's application for unemployment compensation, any issue as to such contest would not, I conclude, have ripened until after the charge herein was filed. For the charge was filed promptly on January 24, 1977, only 5 days after Wray's release. Respondent's declination to contest layoff is therefore entitled to little, if any, weight in this circumstance.

[12] Wray credibly so testified without dispute.

[13] Rheinhart testified that the copy of this separation record which was sent to Respondent's home office was later corrected to show 5 days' vacation and, indeed, Wray was only paid for 5 days. However, significantly, at the time of Wray's release, the entry shows 2 weeks, and hence indicates the belief at the time that he was a second-year employee.

[14] Wray credibly so testified without dispute. While Rheinhart claimed that Respondent did not consider Wray's prior service with Respondent when deciding on Wray's pay rate, Rheinhart did not deny telling Wray, when Wray was hired, that the standard rate was awarded on the basis of Wray's prior service.

[15] I do not credit Rheinhart's contrary testimony that the Richmond plant has a different policy when hiring a former employee of another plant. No documentation of such policy was produced at the hearing.

[16] I, accordingly, reject the statement to the contrary on G.C. Exh. 12, which purported to give the seniority dates of all shop employees.

completion of an outside training course which Wray began on January 17. And there is no indication that Wray's performance between October 1976 and January 1977 was inadequate.

Yet Respondent's attitude — including that of Vetsch — changed towards Wray immediately after Wray's union support became known to Respondent. Significantly, even though Respondent claims it marked Wray for economic layoff on January 13 or 14 (i.e., before Wray's first union activity at the union meeting of January 16) it significantly made no decision and took no action until January 19, which was, again, after Wray's union allegiance and active support became known to Respondent.

Further, and totally aside from the foregoing, I would not conclude that the evidence supports Respondent's defense that the economic picture compelled the release of a shop employee in Wray's classification. For here again the total picture painted by the evidence is at odds with Respondent's defense.

Thus, as I have mentioned, Rheinhart claimed that there was little for Wray to do from Christmas into January. Yet Respondent on January 4, 1977, rehired Clarence Rigsby, an employee who then and thereafter engaged in much of the same type work performed by Wray. And Rigsby was rehired in early January 1977 despite Rheinhart's claim that the economic picture looked poor at that time.

Nor, consistently, can Respondent find any comfort in the evidence Respondent introduced to show certain categories of labor performed by shop employees and their total hours worked at the times in question here. These figures, Respondent contends, indicate an increase in *nonproduction work* (work for which a customer cannot be directly billed) in January 1977.

I find no support for Respondent's defense in such evidence because I am at a loss to understand how these figures buttress Respondent's contention that Wray was laid off because of a slowdown in *production* work. No figures in respect to *production* work were offered. Further, *nonproduction* work, as those records show, is something that Respondent performs on a continuing basis obviously as a necessary part of its operations. In fact the figure for nonproduction work in March 1977 was higher than that for nonproduction work in January. Since Respondent continually performs such work and since, indeed, it was higher in January 1977 than it had been in December 1976, there was even a greater need in January 1977 for Wray's services than there had been earlier. For, as a repairmen "D," Wray was primarily engaged in nonproduction work, e.g., sweeping, cleaning floors, washing down equipment, and other related work.

I conclude, therefore, that Wray was discharged[17] by Respondent on January 19, 1977, and that Respondent has subsequently failed to reinstate him because of Wray's support for the Union and that Respondent thereby violated, and is violating, Section 8(a)(1) and (3) of the Act.[18]

B. *The Alleged No-Solicitation Rule*

Respondent's rule against employee solicitation is set forth, *supra.* As can readily be seen from an examination of it, the rule prohibits the taking up of collections or donations during working hours, but permits the Respondent to waive the prohibition, the United Fund being given as an example of such a waiver. The rule concludes that a solicitation under such a waiver is the only solicitation allowed in the plant. Since there is no qualification limiting this last statement to fund solicitations, it necessarily bars by implication all other solicitations of any kind including, for example, an employee solicitation of a fellow employee to join a union. The entire rule then, reasonably construed, prohibits any type of solicitation in the plant during "working hours" except, on occasion, solicitation for the United Fund, with management's permission.

In its decision in *Essex International Inc.*, 211 NLRB 749 (1974), the Board held that a rule prohibiting solicitation during "working hours" is *prima facie* invalid because it is susceptible of being interpreted to bar solicitations from the beginning to the end of the work shift including breaktime or other periods when employees are not actively at work. While the Board in *Essex* concluded that an employer could defeat such a *prima facie* showing by extrinsic evidence that, in the particular case, the rule was communicated to employees or applied in such a way as clearly to convey the intent to permit solicitation at breaktime or other nonwork periods during the normal working hours, no such demonstration is present in this record.

I, therefore, conclude that by maintaining the aforementioned no-solicitation rule, at all pertinent times herein, Respondent has violated Section 8(a)(1) of the Act.[19]

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

[17] I conclude that Wray was discharged because he was separated without explanation of the action (i.e., was not told he was laid off), his personnel action forms were so marked, *ab initio,* and he was not given 3 days' pay upon notice of layoff as Respondent's admitted layoff policy requires.

[18] *Ri-Del Tool Mfg. Co., supra.* I do not credit Rheinhart's various denials that he separated Wray because of Wray's union activities, because Wray attended union meetings or other related reasons. See *Shattuck Denn Mining Corporation, (Iron King Branch)* v. *N.L.R.B.,* 362 F.2d 466, 470 (C.A. 9, 1966) where the court, in speaking of the evaluation of an employer's motive for discharge, stated:

> Actual motive, a state of mind, being the question, it is seldom that direct evidence will be available that is not also self-serving. In such cases, the self-serving declaration is not conclusive; the trier of fact may infer motive from the total circumstances proved. Otherwise no person accused of unlawful motive who took the stand and testified to a lawful motive could be brought to book. Nor is the trier of fact — here the trial examiner — required to be any more naif than is a judge [Footnote omitted]. If he finds that the stated motive for discharge is false, he certainly can infer that there is another motive. More than that, he can infer that the motive is one that the employer desires to conceal — an unlawful motive — at least where, as in this case, the surrounding facts tend to reinforce that inference.

[19] *Trailmobile, Division of Pullman, Incorporated,* 221 NLRB 1088 (1975).

THE REMEDY

The recommended Order will contain the conventional provisions for cases involving unlawful discharge in violation of Section 8(a)(3) and (1) of the Act and the maintenance of an unlawful no-solicitation rule in violation of Section 8(a)(1) of the Act. This will require Respondent to cease and desist from the unfair labor practices found and to post a notice to that effect which will also state the affirmative action Respondent will be required to take to remedy these violations. Thus, Respondent will be required to offer Kenneth Wray, Jr., immediate and full reinstatement to his former position, or, if such position no longer exists, to a substantially equivalent position without prejudice to his seniority or other rights and privileges. He will be made whole for any loss of earnings he may have suffered by reason of the discrimination against him by payment to him of a sum of money equal to that which he would have earned[20] from the date of his discharge to the date of the offer of reinstatement, less net earnings, if any, to be computed in the manner prescribed in *F. W. Woolworth Company,* 90 NLRB 289 (1950), with interest thereon as prescribed by *Florida Steel Corporation,* 231 NLRB 651 (1977). Respondent will also be required to rescind its unlawful no-solicitation rule.

It will be further recommended, in view of the unfair labor practices in which Respondent has engaged (see *N.L.R.B.* v. *Entwistle Mfg. Co.,* 120 F.2d 532, 536 (C.A. 4, 1941)), that Respondent be ordered to cease and desist from infringing in any manner upon the rights guaranteed employees by Section 7 of the Act.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce and in operations affecting commerce within the meaning of Section 2(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. By discharging Kenneth Wray, Jr., on January 19, 1977, and by failing to reinstate him because of his union activities Respondent has violated, and is violating, Section 8(a)(1) and (3) of the Act.
4. By maintaining a rule prohibiting employees from soliciting their fellow employees concerning matters relating to their Section 7 rights during nonwork times at the plant Respondent has violated Section 8(a)(1) of the Act.
5. The above-mentioned unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

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

ORDER[21]

The Respondent, Westinghouse Electric Corporation, Richmond, Virginia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in, or activities on behalf of, United Electrical, Radio & Machine Workers of America, or any other labor organization, by discriminating in regard to the hire or tenure of employment or in any other manner in regard to any term or condition of employment of any of Respondent's employees in order to discourage union membership or other concerted activities.

(b) Maintaining a plant rule which prohibits employees from soliciting during nonworking time concerning matters relating to their Section 7 rights or in any other manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

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

(a) Offer Kenneth Wray, Jr., immediate and full reinstatement to his former position or, if such position no longer exists, to a substantially equivalent position without prejudice to his seniority or other rights and privileges and make him whole for any loss of pay he may have suffered as the result of his discharge in the manner set forth in "The Remedy" section of this Decision.

(b) Revoke the rule which prohibits the employees from engaging in any solicitation during nonwork time except occasionally for the United Fund.

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

(d) Post at its plant in Richmond, Virginia, copies of the attached notice marked "Appendix."[22] Copies of said notice, on forms provided by the Regional Director for Region 5, after being duly signed by Respondent's representative, 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 insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 5, in writing, within 20 days of the date of this Order, what steps Respondent has taken to comply herewith.

---

[20] Pay he received for Friday, January 21, 1977, will be an offset against Respondent's backpay obligation.

[21] 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.

[22] 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."

APPENDIX

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

After a hearing at which all sides had the chance to give evidence, it has been decided that we have violated the National Labor Relations Act and we have been ordered to post this notice.

The National Labor Relations Act gives you, as employees, certain rights including the rights:

To self-organization
To form, join, or help unions
To bargain collectively through a representative of your own choosing
To act together for collective bargaining or other mutual aid or protection
To refrain from any or all said activities.

WE WILL NOT maintain a plant rule which prohibits employees from engaging in union solicitation during nonwork time at the plant.

WE WILL NOT discharge you or take any other reprisal against you because you join, support, or engage in activities in behalf of United Electrical, Radio & Machine Workers of America, or any other labor organization.

WE WILL NOT in any other manner interfere with any of your rights set forth above.

WE WILL offer to reinstate Kenneth Wray, Jr., to his former position, or if such position no longer exists, to a substantially equivalent position with full seniority and all other rights and privileges, as the Board has found that he was discharged because of his union activities.

WE WILL make up all pay lost by Kenneth Wray, Jr., as the result of his discharge, plus interest.

WE WILL revoke the rule contained in our "Industry Services Division Employee Handbook" which prohibits its employees from engaging in union solicitation during nonwork time at the plant.

WESTINGHOUSE ELECTRIC CORPORATION