

In the Matter of W. T. SMITH LUMBER COMPANY *and* INTERNATIONAL
WOODWORKERS OF AMERICA, C. I. O.

Case No. 15-C-1065.—Decided September 14, 1948

DECISION

AND

ORDER

On January 8, 1947,¹ Trial Examiner Charles W. Schneider issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, counsel for the Board and the Union, respectively, filed exceptions to the Intermediate Report and supporting briefs, and counsel for the Respondent filed a rebuttal brief.

On July 19, 1948, the Board² rescinded its previous grant of the Respondent's request for a hearing for the purpose of oral argument. At the same time the Board afforded all parties an opportunity to submit within 15 days, if desired, supplemental briefs or written arguments setting forth the matters that would have been covered in the oral argument. No such briefs or arguments have been filed.

The Board has reviewed the rulings of the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor

¹ The Intermediate Report is incorrectly dated January 8, "1946."

² Pursuant to the provisions of Section 3 (b) of the Act, as amended, the Board has delegated its powers in connection with this case to a three-man panel consisting of the undersigned Board Members [Chairman Herzog and Members Murdock and Gray.]

Relations Board hereby orders that the complaint issued herein against the Respondent, W. T. Smith Lumber Company, Chapman, Alabama, be, and it hereby is, dismissed.

INTERMEDIATE REPORT

Mr. Thomas S. Adair, for the Board.

Mr. Bentley Byrnes, of New Orleans, La., and *Mr. Calvin Poole*, of Greenville, Ala., for the respondent.

Messrs. Jerome A. Cooper and *Lucien DeSheles*, both of Birmingham, Ala., for the Union.

STATEMENT OF THE CASE

Upon an amended charge filed by International Woodworkers of America, C. I. O., herein called the Union, the National Labor Relations Board, herein called the Board, by its Acting Regional Director for the Fifteenth Region (New Orleans, Louisiana), issued its complaint dated August 30, 1946, against W. T. Smith Lumber Company, Chapman, Alabama, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and notice of hearing thereon were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged, in substance, that, beginning in July 1945, the respondent: (1) interrogated employees concerning their union membership and activities; (2) promulgated working rules for the purpose of hindering union activities; (3) prohibited conversation and solicitation concerning the Union; (4) prohibited the dissemination of union literature; and (5) about July 26, 1945, discharged and thereafter refused to reinstate Joe Tom Parrett because of his activities on behalf of the Union.

Upon due notice a hearing was held on September 18, 19, and 20, 1946, at Greenville, Alabama, before the undersigned Charles W. Schneider, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, and the Union were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. At the opening of the hearing, over objection by the respondent, the complaint was amended to allege that on September 11, 1945, the respondent discharged and thereafter refused to reinstate Emma Jean Parkman because of her activities on behalf of the Union. During the course of the hearing the respondent filed its answer in which it admitted certain jurisdictional and other allegations of the complaint, but denied the commission of any unfair labor practices.

At the close of the evidence ruling was reserved by the undersigned upon a motion by the respondent to dismiss the complaint. This motion is disposed of by the following findings and recommendations. Counsel for the Board and for the respondent argued the issues orally before the undersigned, and thereafter submitted briefs.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

W. T. Smith Lumber Company is an Alabama corporation having its principal office and place of business at Chapman, Alabama, at which location it is engaged in the manufacture of lumber. During 1945, a representative year, the respondent purchased raw materials and supplies valued in excess of \$500,000, of which approximately 2 percent was shipped to the Chapman plant from sources outside the State of Alabama. During the same period, the respondent manufactured and sold finished products valued in excess of \$1,000,000, of which approximately 60 percent was shipped and transported to points outside the State of Alabama. It is conceded that the respondent is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

International Woodworkers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the respondent.

III. THE ALLEGED UNFAIR LABOR PRACTICES

During the early part of July 1945, the Union began an organizational drive among the respondent's employees. The first meeting was held on July 14. On August 13, 1945, the Union and the respondent entered into an agreement for a consent election. In the election, which was held on September 12, 1945, an overwhelming majority of the employees voted for the Union, and it was thereafter certified by the Board's Regional Director as the representative of the respondent's production and maintenance employees and truck drivers, but excluding, among others, clerical and supervisory employees. Thereafter the respondent and the Union executed a collective bargaining contract which was in effect at the time of the hearing in the instant case.

During the period of time in which the above-related events were taking place, certain incidents occurred which the Board and the Union contend constituted unfair labor practices. Thus, during the month of July the respondent promulgated a set of working rules, allegedly for the purpose of interfering with the Union campaign. On July 26, 1945, Joe Tom Parrett, an employee of the respondent, was discharged for the stated reason that he had violated the rules by engaging in union activity on company time, and on September 11, Emma Jean Parkman was discharged for the stated reason of non-cooperation. The Board and the Union contend that Parrett and Parkman were discriminatorily discharged for union activity, and that these discharges and the enactment and enforcement of the working rules constituted unfair labor practices. The facts with respect to these issues are as follows.

The enactment of the rules

Prior to July 1945, no comprehensive set of rules regarding employee conduct had ever been adopted by the respondent or communicated to the employees.

When it learned of the union drive, the respondent retained John J. Curren, a private labor relations consultant, to advise it. Curren had formerly been a Field Examiner for the Board. Thereafter, meetings of the respondent's super-

visitors were held on several occasions, at which meetings the supervisors were told that the respondent's policy toward the union drive was one of complete neutrality. The supervisors were further instructed to make no statements and take no action which might influence the employees with respect to the Union.

At Curren's first meeting with Floyd McGowan, the respondent's president, about July 12 and 13, McGowan told Curren that the Union campaign was causing a lot of unnecessary talking, and inquired as to how the problem should be handled. Upon Curren's advice a set of rules regarding employee conduct was drafted. These rules, as revised and approved by Curren, were then printed and posted by the respondent. They stated in part as follows:

Violation of any the following regulations will constitute proper cause for severe disciplining which may result in discharge of the guilty employee.

19. NEGLECT OF DUTY

Engaging in activities other than assigned or designated work on company's time, including unnecessary conversation, loitering, unauthorized solicitations, circulation of petitions, balloting, distribution of hand bills, or other literature.

25 SOLICITATION

Solicitation of memberships, pledges, subscriptions, or the unauthorized collection of money or circulation of petitions, or conducting any outside business on the company's working premises

Participation in any organizational activity of any kind on company time without permission of the Superintendent

30 VISITING

Visiting and excessive talking during working hours. Entering departments other than where assigned to work without proper authorization by supervisors.

The purpose of these rules, according to the testimony of McGowan and Curren, was, in substance, to protect company time from inordinate devotion to activity (including union activity) other than work.

Prior to the enactment of the rules the employees had customarily talked about all subjects during working hours, and no restriction had apparently been placed on such conduct. President McGowan's testimony was that there had been no slackening in production or efficiency of the employees prior to the adoption of the rules.

There is conflict in the evidence as to the exact time when the rules were posted in the plant, but they were distributed for posting on July 24, and at least one set was posted near the time clock about noon on that day.

The discharge of Parrett

Joe Parrett, an electrician, was headquartered in the electrical shop. However, his work, which included care of the lights and telephone equipment, required him to cover all parts of the plant. Parrett displayed no interest in the Union before the first meeting on July 14. He attended that meeting, however, became interested, signed an application card, and assisted in securing the applications of others. Thereafter a number of employees requested advice from Parrett about the Union and he recommended that they join it. Following a meeting

on July 21 several employees approached Parrett about becoming a candidate for the office of president. Parrett indicated a willingness to do so.

On Tuesday, July 24, 1945, at around 11 a. m., Parrett appeared at the telephone switchboard in the main office of the plant and asked the switchboard operator, Lucille Walker, to test-ring the phone at the No. 2 mill. Walker did so and found that the phone was operating satisfactorily. Walker and Parrett then had a conversation about the Union which lasted 10 to 15 minutes. Parrett had no work to do at the switchboard at that particular time.¹

During this conversation Parrett explained the benefits of union organization to Walker. He also invited her to attend a union meeting later on in the week and said that he would bring application cards to the office later for the office employees to sign. He further stated that he knew that he should not be talking about the Union during office hours.²

As Walker and Parrett were talking, Olive Spann, the office manager, came out of her office. Either because of Parrett's "furtive" manner, or because she knew that he had previously spoken to other girls, outside the plant, about it, Spann immediately suspected that Parrett was talking to Walker about the Union.

Spann then went into the office of Auditor Shepard, to whom she voiced her suspicions. When Parrett left, Spann called Walker into Shepard's office and asked her whether Parrett had been talking to her about the Union. Walker told Spann that he had, and related the conversation. In answer to a question by Spann as to what business had brought Parrett to the switchboard, Walker said that she did not know, since there was nothing wrong with the telephones to her knowledge.

On the following day Spann reported the incident to President McGowan, who said that he would consult Curren. On the next day, July 26, when Curren visited the plant, McGowan related the occurrence to him and asked what action should be taken. At Curren's suggestion Spann secured an affidavit from Walker,

¹ The finding that Parrett had no work to do at the switchboard is based on a resolution of conflicting evidence. Parrett's testimony was that he was working there. Thus he testified that, at the request of Chief Engineer Thesing, his supervisor, he repaired the line to the No. 2 mill telephone, which was out of order, that he then went to the office and had Walker test-ring the phone, which she found in order; that, as he was leaving, Walker asked him to repair a plug on the switchboard; and that while he was attempting to make this repair something was said about the Union which led into a conversation. Thesing, Walker, and Office Manager Spann denied that the No. 2 phone was out of order that morning. Thesing denied assigning Parrett to repair the phone line. Spann (who witnessed the conversation) and Walker denied that Parrett did any work on the switchboard. Parrett's daily work reports, which were later introduced in evidence, do not disclose that he did any work either on the No. 2 phone or on the switchboard on July 24, the only day on which the incident could have occurred. The undersigned concludes that the weight of the evidence is contrary to Parrett's testimony.

² The findings in this paragraph are based on the testimony of Walker. There is little material conflict between Parrett and Walker as to the substance of the conversation, the differences being mainly as to which of them initiated it, and whether Parrett's role was an aggressive one, as Walker testified, or, as Parrett testified, purely passive in that he merely answered questions put by Walker. While Parrett denied that he asked Walker to join the Union, and also denied telling her that he had been warned about discussing the Union on company time, Walker did not testify that he had; and her testimony as to the statements related in the text is not specifically denied. Insofar as the differences in their versions may be material, it is likely that Walker's version is more accurate, since, despite his contrary testimony, Parrett had no apparent reason to go to the switchboard except to talk to Walker about the Union. In addition, as is disclosed hereinafter, 2 days later Walker made a written statement of the occurrence. This statement is in accordance with the above findings.

who was assured that Parrett would not be informed of it. The affidavit stated as follows:

Tuesday morning about 11:15 Joe Tom Parrett came in the office and asked me to ring the #2 yard telephone to see if it rang hard. I told him I did not know that anything was wrong with it, as I had not reported anything and Mr. Waller had not tried to get me.

He then asked me what I thought about the Union. I told him I didn't know anything about it but Emma Jean³ had mentioned it to me. He went on to ask me if I was satisfied and told me all about how it would help me. He told me there was going to be a meeting at some school house Saturday night and asked me if I would be interested in going. He told me this was not supposed to be discussed during office hours and that he would bring some cards to the office for everybody to fill out. He also told me that if I didn't join now I would eventually have to, and it would cost more.

Curren advised the discharge of Parrett, telling McGowan that if he did not enforce the rules on this occasion he would be unable to do so thereafter.

Either on that day or later McGowan asked Chief Engineer Thesing whether Parrett had been sent to make any repairs on the telephone lines. Thesing told McGowan that he had not.

Upon the direction of McGowan, Parrett was given a discharge notice by Superintendent Adams, who told him that he was being discharged for union activity, and that affidavits had been secured against him. Parrett asked Adams for the affidavits. Adams replied that they were in the office. Parrett then saw the paymaster who denied knowledge of the affidavits. From there Parrett went to the main office where he asked Spann whether she knew anything about them. Although she had secured the statement from Walker, Spann told Parrett that she knew nothing about it. Parrett then saw President McGowan and Curren and asked for an explanation of his discharge. They told him that he had violated a company rule forbidding organizational activity on company time. Parrett denied the accusation, inquired where and how the violation had supposedly occurred, and asked to see the affidavits. Curren and McGowan refused to give him any details, stating that the affidavits were confidential. After some argument Parrett finally said that he guessed that he had "stuck [his] neck out," and asked for a recommendation. McGowan replied that since his work was excellent he would be given one—which Parrett later received. Curren told Parrett that the respondent had "nothing against" either him or the Union, but that it expected a full day's work for a full day's pay, and that if Parrett felt that he had been wronged, he could file a charge with the Board. The interview then terminated.⁴

Parrett's separation notice gave rule 25 as the reason for his discharge, "Participation in organizational activity on company time without permission from the superintendent."

The warning to Parkman

Emma Jean Parkman was a friend of Parrett's. Walker's affidavit, which has been set out above, referred to the fact that Parkman had mentioned the

³ A reference to Emma Jean Parkman whose discharge is discussed hereinafter.

⁴ The finding as to Parrett's statement that he had "stuck [his] neck out" is based on the testimony of Curren and McGowan. Parrett's testimony was that he said that if he had stuck his neck out he "should pay for it". Otherwise there is no substantial conflict as to the gist of the conversation.

Union to Walker. Following the discharge of Parrett, and on the same afternoon, Parkman was called into the office of Curren and questioned as to the extent of her conversation with Walker. Parkman said that she had merely mentioned the Union in passing. Curren then told Walker that she was free to join the Union or not to join it, but that it was contrary to company rules to talk about the Union on company time. Curren further said, in substance, that Parkman was subject to discharge for her offense, but that she was only being warned, because it was deemed that a warning would be sufficient. Parkman replied that she had not known that the rules were applicable to office employees.⁶

On August 13 the respondent and the Union executed a consent election agreement which excluded clerical employees, among others, from the election unit. On the same day Curren again called Parkman into the office. According to her testimony, Curren told her that she was a confidential employee; that she was not eligible to join the Union even if the office force was organized; and further told her that any information she acquired in the office was confidential and not to be disclosed. Parkman replied that she understood the latter.

Curren's testimony as to this interview was that certain information respecting a check for an insurance claim had "leaked out" of the office, and that Parkman and the respondent's cashier were the only persons who could have been the source of the leak; that he told Parkman of the incident; that Parkman became angry at the suggestion that she might be involved, and stated that the respondent was "after her" because of the Union; and that in denying the latter accusation he pointed out that Parkman was not eligible to vote in the coming election because clerical workers were excluded. Curren further testified that Parkman was called in "because the Union organizational drive was going on and we didn't want company information going into that plant. We didn't want the Union to get a look at the books". The cashier was not questioned.

Both Parkman and Curren impressed the undersigned as inherently truthful. It seems unlikely, however, that Curren, in view of his background, would have stated categorically that Parkman was ineligible to join the Union. Parkman, in her anger, could readily have misunderstood or failed to recollect accurately the precise context of Curren's statements with respect to eligibility. It is therefore found that Parkman was mistaken in her testimony to the effect that Curren told her she was permanently ineligible to join the Union because of her confidential position.

The discharge of Parkman

On September 11, 1945, the day before the consent election, Parkman was discharged for the stated reason of non-cooperation. The circumstances under which the discharge occurred were as follows:

The respondent operates a hotel or rooming house in Chapman, in which a number of employees reside. Parkman had lived in the hotel for some 4 years, occupying the same room. This room and the one adjacent to it had a connecting bath. They were the only rooms in the hotel so situated. Parkman did not occupy her room on week-ends, however. On Friday she customarily went to her home, some 20 miles away, returning to Chapman on Sunday night.

The town of Chapman has a community church, with a non-resident pastor who comes to the town monthly to hold services. On these visits the pastor is

⁶ The above findings as to Curren's warning to Parkman are based on the testimony of both, which is substantially in agreement.

housed at the hotel. Sometime prior to September 1945, the incumbent minister had died and a new pastor, a Reverend Knost, was appointed. His first service in the new pastorate was held on September 9. Sometime during the week of September 2, Parkman and the occupants of the adjoining room were asked whether they would mind being moved to other quarters in the hotel over Saturday night, September 8, in order to accommodate Reverend Knost and his family. The occupants of the other room acquiesced. Parkman, however, convinced that the request was made in order to inconvenience her, announced her intention of giving up residence in the hotel and moving to her home. On Friday afternoon Parkman did move. As she was carrying her belongings from the hotel she voiced some angry comments concerning the request for her room. In particular she said that if the other rooms in the hotel were not good enough for the minister they were not good enough for her. These comments were overheard by a group of people sitting on the porch, among whom was Reverend Knost, who had arrived that afternoon. He approached Parkman and apologized, stating that he had not wanted to inconvenience anyone. She replied that she hoped that he'd enjoy the room since he was putting her out. She further said, however, that she didn't blame Reverend Knost, but intimated that President McGowan was deliberately attempting to inconvenience her by requiring her to give up her room. All the witnesses to the scene testified that Parkman was angry and her manner sarcastic, and that the incident caused considerable embarrassment. On the following Monday, it was reported to President McGowan by the manager of the hotel. McGowan thereupon called in Parkman and discharged her.

On the day that Parkman was discharged three employees were called to the office and told by Curren that reports had been made to the effect that they had been threatening other employees unless they voted for the Union. The three denied these reports. They were then told that they were free to join the Union or to vote for it and that their rights in that respect would not be interfered with, but that the respondent wanted to be sure that all employees were afforded a free choice.

On the following day the election was held. At the request of the respondent the Board agent conducting the election addressed the employees, telling them that the election was by secret ballot; that no one would know how they voted; and that they were free to vote as they pleased.

The Union won the election by a majority of over 90 percent.

Subsequently the respondent and the Union negotiated a collective bargaining contract which was in effect as of the time of the hearing. In this contract the company rules referred to above were incorporated, and the Union therein agreed to cooperate in their enforcement.

Conclusions

As has been indicated, the Board alleged that the plant rules were adopted and enforced by the respondent for the purpose of interfering with the Union's organizational drive. In the alternative, the Board contends that the rules were, in any event, unreasonable impediments to legitimate union activity. Finally, the Board contends that Parrett and Parkman were discharged for their union activity.

There are factors which suggest the correctness of the Board's assertions. These are the following.

One of the reasons for the enactment of the rules was admittedly to limit union discussions. Although there are vague assertions in the record to the effect that unnecessary conversation on company time was always understood

to be prohibited; it is clear that no such restrictions had ever been announced to the employees. The rules were not published until the Union began to organize. The organizational drive did not adversely affect production. There was no apparent turmoil. In short, as President McGowan testified, the situation was entirely normal. Two days after the rules had been posted, and without other warning, Parrett was subjected to the drastic penalty of discharge for a violation of the rules which had occurred only several hours after they had first been posted. That Parrett's union activities, however unpronounced, had been sufficient to attract some attention, is evident from Spann's immediate suspicion as to the subject of his conversation with Walker; apparently based on her knowledge of prior solicitation by him on his own time. In discharging Parrett no hearing was afforded him. He was given no opportunity to defend himself or to advance an explanation, although he denied the charges against him. The respondent refused even to inform him specifically of what he had done that had constituted a violation of the rules. Walker's statement, made *ex parte*, and upon assurances that its contents would not be revealed to Parrett, was accepted as the sole basis of the discharge. The arbitrary manner in which the discharge was effected is alone sufficient to make it highly suspicious. At best the procedure does not reflect a personnel policy of high order.

Immediately after Parrett's separation, Parkman, against whom the only charge was that she had "mentioned" the Union to Walker, was called into the office and warned by Curren about talking about the Union on company time. Nothing was said to Walker. Other employees who, according to Parkman, had spoken unfavorably about the Union on company time were not warned. While it is not shown that these latter comments were brought to the attention of the respondent, so far as the record discloses only those persons who had spoken in favor of the Union were questioned, or warned.

While Curren testified that the rules were not intended to prohibit mere talking about the Union unless it interfered with production, there was nothing in Walker's affidavit to indicate that Parkman's statement to Walker interfered with production or, indeed, even indicating that it was made on the respondent's premises.

In addition, while Curren also testified that the rule against excessive talking applied equally to all subjects of conversation, several of the respondent's supervisors testified that they interpreted it as applying only to union conversation.⁶

Further supporting the Board's theory is Curren's action in calling in Parkman in August and warning her about the disclosure of confidential information. Curren's testimony makes it clear that Parkman was selected for the warning partially because he suspected that she was interested in the Union.

All these factors cast suspicion upon the respondent's motives in establishing and enforcing the rules, in questioning Parkman about union activity, and in discharging her and Parrett. However, there is also evidence that the respondent's motives were legitimate.

Thus, President McGowan and his two brothers (also officers in the firm) testified that they decided upon a policy of neutrality as soon as they learned of the union drive, that they scrupulously endeavored to follow this policy, and that Curren was retained in order to insure full compliance with the law. As has been related, the supervisors were specifically instructed on several occasions to make no statements or to take any action which might influence the employees. The absence of contrary evidence suggests that these instructions were followed.

⁶ Supervisors Davis and Thesing. There are, however, no apparent instances of actual enforcement of this interpretation by these supervisors.

The rules were enacted upon Curren's advice and collaboration; Parrett was discharged and Parkman warned upon his recommendation. The undersigned sees no substantial basis for discrediting the testimony of the McGowans, and there is no apparent basis for concluding that Curren was actuated by a desire to interfere with the union's activities.

Probable cause existed for the discharge of both Parrett and Parkman. The Board has held that an employer may, provided his motives are non-discriminatory, prohibit union activity on working time.⁷ In the instant case the respondent did prohibit such activity. Parrett left his place of work to solicit Walker during the working time of both. Although Parrett testified that he went to the switchboard on an assignment, the undersigned has found, to the contrary, while it is probably literally true that Parrett did not ask Walker, in so many words, to join the Union, it seems clear that he left his place of work and went to the switchboard for the sole purpose of interesting Walker in the Union, and that he was engaging in solicitation. Had Parrett been unaware of the rule, it could not have been validly enforced against him. An employer may not discipline employees for union activity even on company time without reasonable notice that such activity is prohibited.

While Parrett denied knowledge of the rule, the undersigned infers the contrary. Thus, Parrett did not specifically deny having stated to Walker that he should not be discussing the Union on company time. Although informed by Curren that he had been discharged for violation of the rule prohibiting union activity on company time, the testimony does not reveal that he denied knowledge of such a rule. He merely denied the truth of the accusation. In addition, he ultimately admitted to McGowan and Curren that he had "stuck [his] neck out," which the undersigned construes as an admission that he had engaged in organizational activity on company time with knowledge that it was prohibited. Whatever the validity of other portions of the rules and the methods of enforcement, Parrett engaged in union activity on company time though aware that it was forbidden. The circumstances of his discharge, while suspicious, do not warrant the inference that this conduct was seized upon as a pretext for separating him because of his union activity.⁸

Persuasive ground also existed for the discharge of Parkman. The request for the use of her room was not, under the circumstances, unreasonable, since it was the most adequate accommodation for the minister and his family. The supposition that the request was made for the deliberate purpose of inconveniencing Parkman and provoking resentment which might lead to an incident providing pretext for her discharge, is not persuasive. The occupants of the adjoining room had likewise to be discommoded. Parkman's room was required for only 1, or at the most 2, nights. She would not have used the room in any event, since she intended in accordance with her usual custom to spend the week-end at her home. Similar provision has been made for the minister on his subsequent visits to Chapman. Parkman's resentment of what she, undoubtedly honestly, regarded as a discrimination directed at her, resulted in a scene at the hotel which, according to the witnesses, created considerable embarrassment and was humiliating to the Reverend Knost. In any event it was so reported to McGowan, who testified that it was solely because she had created this scene

⁷ *Peyton Packing Company*, 49 N. L. R. B. 828.

⁸ There was dispute as to whether the rules were posted in the electrical shop on July 24 or on July 25. This dispute need not be resolved. The rules were posted elsewhere on July 24, Parrett having admittedly seen them at noon. In any event, it is inferred that Parrett must either have seen or been informed of them prior to his conversation with Walker.

that he discharged Parkman. Under the circumstances the undersigned is not prepared to say that the incident was seized upon by McGowan as a pretext.

It is therefore found that the evidence does not support the allegation that Parrett and Parkman were discharged because of their activity on behalf of the Union.

While the questioning of, and warnings to, Parkman are also suspicious, they do not, standing alone, warrant the conclusion that they constituted unfair labor practices. The questioning of the three employees who were alleged to have made threatening remarks is not susceptible of the construction that it interfered with their organizational rights. While, as has been indicated, only persons who spoke favorably of the Union were questioned and warned, there is no evidence that expressions of contrary sentiment were brought to the attention of the respondent. There is thus no substantial evidence of discriminatory enforcement of the rules. As has been seen, Curren's testimony was that the rules were not intended to inhibit casual conversation, but only such conversation as interfered with production, and there is no evidence that it was otherwise enforced.⁹

Under other circumstances, certain of the rules might, as contended by the Board, have constituted unreasonable impediments to self-organization and consequently been invalid. Thus rule 25 prohibited the following:

Solicitation of membership, pledges, subscriptions, or the unauthorized collection of money or circulation of petitions, or conducting any outside business on the company's working premises.

Participation in any organizational activity of any kind on company time without permission of the Superintendent.

Without reference to other possible objections, such as the fact that it enables the superintendent to enforce restrictions selectively, this rule would appear, on its face, to prohibit union solicitation and dues collection on the employees' own time—an invalid restriction in the normal circumstance. The respondent contends, however, that both paragraphs of this rule are to be read together and that, thus construed, the rule is entirely inapplicable to the employees' own time.

But the undersigned finds it unnecessary to construe any of the rules at the present time. As has been indicated, following the election the Union executed a collective bargaining contract with the respondent in which the above rules were included and in which the Union agreed to cooperate in their enforcement. It is found that the rules are enforceable as presently interpreted.¹⁰ Whether rule 25 would be plainly invalid, or invalid because of ambiguity, if charges were filed by a labor organization which did not contract for its enforcement, need not be determined here since the issue is not presented. Similar observations are applicable with respect to rule 19, which has been set out heretofore.¹¹

It is found that the evidence does not sustain the allegations of unfair labor practices, and it will therefore be recommended that the complaint be dismissed in its entirety.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following.

⁹ It is to be assumed that the mistaken interpretations of Davis and Thesing to the effect that union conversation was singled out for prohibition, while conversation on other topics was tolerated, have now been corrected.

¹⁰ See *Famous Barr Co.*, 59 N. L. R. B. 976; *North American Aviation, Inc.*, 56 N. L. R. B. 959.

¹¹ *Burroughs-Wellcome & Company*, 68 N. L. R. B. 175.

CONCLUSIONS OF LAW

1. The operations of the respondent, W. T. Smith Lumber Company, constitute trade, traffic, and commerce among the several States, within the meaning of Section 2 (6) and (7) of the Act.
2. International Woodworkers of America, C. I. O., is a labor organization, within the meaning of Section 2 (5) of the Act.
3. The respondent has not engaged in unfair labor practices, within the meaning of Section 8 (1) and (3) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends that the complaint against W. T. Smith Lumber Company, Chapman, Alabama, be dismissed in its entirety.

As provided in Section 203.39 of the Rules and Regulations of the National Labor Relations Board, Series 4, effective September 11, 1946, any party or counsel for the Board may, within fifteen (15) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.38 of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof; and any party or counsel for the Board may, within the same period, file an original and four copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.65. As further provided in said Section 203.39, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

CHARLES W. SCHNEIDER,

Trial Examiner.

Dated January 8, 1946.