

In the Matter of LEE E. STINE D/B/A FAIRCHILD CAFETERIA and  
UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORK-  
ERS OF AMERICA, UAW, CIO

Case No. 5-CA-161.—Decided December 19, 1950

DECISION AND ORDER

On August 30, 1950, Trial Examiner Lee J. Best issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Murdock, and Styles].

The Board has reviewed the rulings of the Trial Examiner made 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 brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the modification noted below.

The Trial Examiner found, and we agree, that the Respondent,<sup>1</sup> in violation of Section 8 (a) (1) and (3) of the Act, restrained, coerced, and interfered with its employees in the exercise of their rights to self-organization by interrogations and threats of reprisal, and by discharging employees Doyle, Churchey, Daley, and Gorman because of their union activities. We do not, however, subscribe to the remarks in the Trial Examiner's Intermediate Report that when

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<sup>1</sup>The Respondent operates a cafeteria in the basement of the Fairchild Engine and Airplane Corporation, and yearly receives over \$100,000 from the sale of food to employees of the corporation. We have previously determined that both the Respondent and the Fairchild Engine and Airplane Corporation are engaged in commerce within the meaning of the Act. *Lee E. Stine d/b/a Fairchild Cafeteria and Fairchild Engine and Airplane Corporation*, 87 NLRB 667; *Fairchild Engine and Airplane Corporation*, 73 NLRB 154. As the Respondent provides more than \$50,000 worth of food annually to Fairchild's employees we consider that it is furnishing goods and services necessary to the operations of an employer engaged in commerce so as to warrant the assertion of jurisdiction under our new policy. *Hollow Tree Lumber Company*, 91 NLRB 635.

employees are engaged in the lawful exercise of the rights guaranteed to them by the Act, "it is not an opportune occasion to discharge them forthwith in the absence of specific charges of misconduct or inefficiency," whereas, "on a more propitious occasion an employer is free to discharge an employee for any reason whatsoever, or for no reason at all." The employer is at all times free to discharge an employee, for any reason or for no reason, provided only that the discharge is not for the purpose of encouraging or discouraging union membership, or does not have the effect of otherwise interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

### 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 Relations Board hereby orders that the Respondent, Lee E. Stine d/b/a Fairchild Cafeteria, Hagerstown, Maryland, his agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership of his employees in United Automobile, Aircraft & Agricultural Implement Workers of America, UAW, CIO, or any other labor organization, by discriminating in regard to their hire and tenure of employment or any term or condition of employment in any manner whatsoever;

(b) Interrogating its employees concerning their union membership, activities, or sympathies, threatening his employees with reprisal for union activities, or in any other manner interfering with, restraining, or coercing his employees in the exercise of the right to self-organization, to join or assist United Automobile, Aircraft & Agricultural Implement Workers of America, UAW, CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which, it is found, will effectuate the policies of the Act:

(a) Offer individually to Rose Doyle, Harold E. Churchey, Virgie Daley, and Bessie Gorman immediate and full reinstatement to their former positions, or to a substantially equivalent position, without prejudice to their seniority and other rights and privileges; and individually make whole Rose Doyle, Harold E. Churchey, Virgie Daley,

and Bessie Gorman for any loss of pay they may have suffered by reason of the Respondent's discrimination against them, in the manner recommended in Section V of the Intermediate Report entitled "The remedy";

(b) Upon request, make available to the Board or its agents, for examination and copying, all personnel records and reports, and all other records necessary to analyze the amounts of back pay due;

(c) Post at the Fairchild Cafeteria, at present operated by the Respondent in the basement of Plant No. 2 of the Fairchild Engine and Airplane Corporation, Hagerstown, Maryland, copies of the notice attached hereto, marked Appendix A.<sup>2</sup> Copies of said notice, to be furnished by the Regional Director for the Fifth Region, shall, after being duly signed by the Respondent or his representatives, be posted and maintained by the Respondent for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Necessary action shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(d) Notify the Regional Director for the Fifth Region (Baltimore, Maryland) in writing within ten (10) days from the date of this Order what action has been taken to comply herewith.

## APPENDIX A

### NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT discourage membership in UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW, CIO, or any other labor organization of our employees, by discharging or refusing to reinstate any of our employees or by discriminating in any other manner concerning their hire and tenure of employment, or any term or condition of employment.

WE WILL NOT interrogate our employees concerning their union membership, activities, or sympathies, threaten our employees with reprisal for union activities, or in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW, CIO, or any other labor organization, to bargain

<sup>2</sup> In the event this Order is enforced by decree of a United States Court of Appeals, there shall be inserted before the words "A Decision and Order" the words "A Decree of the United States Court of Appeals Enforcing."

collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, is authorized in Section 8 (a) (3) of the Act.

WE WILL offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination :

Rose Doyle  
 Harold E. Churchey  
 Virgie Daley  
 Bessie Gorman

All our employees are free to become or remain members of the above-named union or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

FAIRCHILD CAFETERIA,  
*Employer.*

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

*Charles B. Slaughter, Esq.*, 37 Commerce Street, Baltimore, Md., for the General Counsel.

*Bruce C. Lightner, Esq.*, Hagerstown, Md., for the Respondent.

*Glenn R. Brayton*, Hagerstown, Md., for the Union.

STATEMENT OF THE CASE

The proceedings herein were initiated by a charge filed on February 7, 1949, by United Automobile, Aircraft & Agricultural Implement Workers of America, UAW, CIO, herein called the Union, against Lee E. Stein d/b/a Fairchild Cafeteria, herein called the Respondent. The original charge was served by registered mail on February 10, 1949. An amended charge in which the name of the Respondent was corrected to read Lee E. Stine d/b/a Fairchild Cafeteria was filed on May 17, 1950, and therein the name of Ethel Jones was eliminated as one of the discharged individuals. The amended charge was served by registered mail on May 18, 1950. Thereupon, the General Counsel of the National Labor Relations Board,<sup>1</sup> through the Regional Director for the Fifth Region

<sup>1</sup> Herein respectively designated as the General Counsel and the Board.

at Baltimore, Maryland, issued a complaint which was also served by registered mail on May 18, 1950. Both the original charge and the amended charge alleged that the above-named Employer has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the National Labor Relations Act,<sup>2</sup> and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

The complaint alleged in substance that the Respondent has continuously since on or about November 15, 1948, engaged in certain specified activities constituting unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the Act by (1) interfering with, restraining, and coercing his employees in the exercise of the rights guaranteed in Section 7 of the Act, and (2) by discharging the employees whose names are listed below on or about the dates appearing opposite their respective names, and has at all times since said date failed or refused to reinstate the said employees to their former or substantially equivalent employment because they joined or assisted the Union or engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection:

Rose Doyle, December 18, 1948.

Harold E. Churchey, January 19, 1949.

Virgie Daley, January 19, 1949.

Bessie Gorman, January 19, 1949.

Charles (Don) Hovermale, January 19, 1949.

The Respondent filed an answer in which he denied all material allegations of the complaint with respect to commerce and engaging in unfair labor practices. Averring that the above-named employees were discharged for cause in that they arbitrarily refused to perform the duties of their job classifications and refused to carry out the fair and reasonable instructions of management, the Respondent denies any discrimination in regard to tenure of employment to discourage membership in any labor organization.

Pursuant to notice to all parties, a hearing was conducted in Hagerstown, Maryland, on June 26, 27, 28, and 29, 1950, before the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The General Counsel and the Respondent were represented by counsel, and a representative of the Union was present. Full opportunity was afforded all parties to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues involved.

At the close of the hearing opportunity for oral argument was afforded to all parties. The parties were advised of their right to file proposed findings of fact, conclusions of law, and briefs. Due consideration has been given to briefs filed.

Motion by counsel for the General Counsel to correct a typographical error in the date of filing shown on copies of the charge to conform with the original charge was allowed.

Without objection by the Respondent, counsel for the General Counsel was allowed to amend the complaint by deleting from paragraph VI thereof the name of Charles (Don) Hovermale including the date following his name. The effect of this amendment was to withdraw any allegation as to the discriminatory discharge of Charles (Don) Hovermale.

Further amendment of the complaint was allowed to allege the discharge of Rose Doyle on December 14, 1948, instead of December 18, 1948.

At the hearing the Respondent filed a written motion to dismiss the complaint, alleging that the unfair labor practices occurred more than 6 months

<sup>2</sup> Herein referred to as the Act.

prior to the filing of the charge and service of a copy thereof upon the person against whom such charge is made, as required by Section 10 (b) of the Act. In support of that motion, Lee E. Stine and his wife, Agnita M. Stine, each testified that a copy of the original charge was never delivered to or received by them prior to service of the complaint, the amended charge, and the charge on May 18, 1950. Ruling on the motion was reserved.

#### Ruling on the Motion to Dismiss

The original charge brought against Lee E. Stein d/b/a Fairchild Cafeteria was filed with the Regional Director of the Fifth Region at Baltimore, Maryland, on February 7, 1949. The basis of the charge was the same as that contained in the amended charge against Lee E. Stine d/b/a Fairchild Cafeteria filed on May 17, 1950. No merit is found in contentions of the Respondent that the process was invalidated or that he was prejudiced by the typographical error in date of filing or misspelling of his name.<sup>2</sup> The basis of the motion to dismiss is therefore narrowed to whether service of a copy thereof was properly made within 6 months after the occurrence of the alleged unfair labor practices.

From the record and uncontradicted testimony of witnesses at the hearing, it is found that a copy of the original charge was dispatched from the Regional Office of the Fifth Region by postpaid registered mail on February 9, 1949, as registered article No. 498263, to Lee E. Stein d/b/a Fairchild Cafeteria, Hagerstown, Maryland. It was delivered to L. L. Steiger, mail messenger of the Fairchild Engine and Airplane Corporation, who signed a receipt therefor bearing the postmark and official stamp of the post office at Hagerstown, Maryland, dated February 10, 1949. L. L. Steiger signed the receipt in the name of Lee Stine by himself as the addressee's agent, and wrote in pencil the date of receipt as "2/10/48." The last-named date was clearly an error in view of the date officially stamped thereon by the post office. The receipt was returned to National Labor Relations Board, 37 Commerce Street, Baltimore 2, Maryland, under postmark dated 10 p. m. February 10, 1949.

L. L. Steiger delivered registered article No. 498263 to the mail room at Plant No. 2 of the Fairchild Engine and Airplane Corporation. In the usual distribution of mail it was delivered to the Fairchild Cafeteria by Edward C. Weigand on February 10, 1949, who obtained a written receipt therefor from Grace Schmidt, the chief supervisor in charge at the cafeteria. The receipt signed "Grace" was identified in evidence.

Agnita M. Stine, manager of the cafeteria, testified that she customarily received mail addressed to the Fairchild Cafeteria through the facilities of the aforesaid mail room, and that during her absence Grace Schmidt customarily received it for her. It appears from the record that other registered mail pertaining to these proceedings was later received by the Respondent through the same facilities. Service of copies of the charge, amended charge, complaint, and notice of hearing was made by registered mail in a similar manner through the Fairchild mail room on May 18, 1950. At that time H. E. Brandenburg, mail messenger, receipted the registered article at the post office in Hagerstown, Maryland, and in due course delivered it to the Respondent or his agent at the cafeteria.

Section 11 (4) of the Act provides that "complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person to be served." Inasmuch

<sup>2</sup> *Norfolk Southern Bus Corporation*, 83 NLRB 115.

as the Regional Director of the Fifth Region, as a matter of course, forwarded a copy of the charge to the Respondent by registered mail and it was left with his chief supervisor and authorized agent at his place of business on February 10, 1949, the Trial Examiner holds that service was made in accordance with the provisions of the Act.<sup>4</sup> The motion to dismiss the complaint is therefore denied.

Based upon the entire record in the case and his observation of the witnesses, the undersigned makes the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE RESPONDENT

The Respondent is an individual independent contractor operating a cafeteria in the basement of Plant No. 2 of the Fairchild Engine and Airplane Corporation about 4 miles from Hagerstown, Maryland. That corporation is engaged in interstate commerce within the meaning of the Act.<sup>5</sup> Under contract with the Respondent it regulates the prices, profits, and policies of the cafeteria through the Fairchild Cafeteria Committee, which is composed of officials and other representatives of the corporation. The cafeteria is operated for the convenience and benefit of the Fairchild employees, but Lee E. Stine retains exclusive control over his own employees.

The Respondent devotes a minor part of his efforts to the Fairchild Cafeteria, and the conduct of its business affairs is delegated to a manager. Mr. Stine maintains an office in Hagerstown and engages in a variety of business enterprises. Chief among them are real estate, farming, a golf driving range, a popcorn processing company, and vending machine concessions throughout the States of Maryland, Pennsylvania, Virginia, and West Virginia.

Because of the relationship existing between the Respondent and Fairchild Engine and Airplane Corporation, the Board previously held that he is engaged in commerce within the meaning of the Act.<sup>6</sup> There has been no change in that relationship, and it will effectuate the policies of the Act for the Board to assume jurisdiction in this case.

##### II. THE LABOR ORGANIZATION INVOLVED

United Automobile, Aircraft & Agricultural Implement Workers of America, UAW, CIO, is a labor organization within the meaning of Section 2 (5) of the Act, admitting to membership employees of the Respondent.

##### III. THE UNFAIR LABOR PRACTICES

###### A. Management of Fairchild Cafeteria<sup>7</sup>

At all times pertinent to these proceedings, Agnita M. Stine, wife of the Respondent, was manager of the Fairchild Cafeteria. She was assisted by 2 supervisors, Grace Schmidt and Nora Hawse. She maintained an office on the premises, received mail through the facilities of Fairchild Engine and Airplane Corporation, handled the correspondence, did the buying, hired and fired employees, and generally conducted all operations. She employed from 35 to 40 workers, and operated in 2 shifts for the convenience of the plant employees. She spent much time at the cafeteria, but because of household duties at home, she did not customarily arrive early in the morning or remain throughout the

<sup>4</sup> *The Ann Arbor Press*, 85 NLRB 58.

<sup>5</sup> *Fairchild Engine and Airplane Corporation*, 73 NLRB 154.

<sup>6</sup> Case No. 5-RC-303, 87 NLRB 667.

<sup>7</sup> Deduced primarily from testimony of Agnita M. Stine.

evening meal to closing time. During her absence either the chief supervisor, Grace Schmidt, or Nora Hawse was in charge. Because of the narrow margin of prices and profits permitted by the contract, strict supervision was maintained at all times in the serving of food. A full-time butcher was employed to cut and weigh the individual servings of meat allotted to the patrons. Measurements were prescribed for the serving of all food. Consequently, the dispensers of food were frequently warned not to exceed the prescribed measure. Dipping too heavily and favoritism to particular customers was frowned upon by the management.

In October 1948, Mrs. Stine promoted a campaign among her employees to raise funds for the Community Chest. The drive was somewhat unpopular and difficulties arose in obtaining the desired response from the employees. Because of her zeal during the campaign and other factors, the relationship between management and employees became strained. Thereafter, Mrs. Stine experienced a lack of cooperation and a spirit of unrest and dissension throughout her organization. Indirectly, she learned that the employees were trying to organize a union, and two union cards or notices were slipped under the office door; but she disclaims any definite knowledge of what was happening with respect thereto.

#### *B. The discriminatory discharge of Rose Doyle*

Following a turmoil in the cafeteria during the latter part of November or early December 1948, Rose Doyle became the leader of a movement to organize the employees. Prior to her employment by the Respondent in July 1948, Doyle had been a member of the Union while working for the Fairchild Engine and Airplane Corporation. On the occasion in question she remonstrated with the supervisor, Grace Schmidt, for throwing a knife at Pauline Hampshire, and aroused a discussion among the employees concerning the formation of a union. At various times thereafter she advocated self-organization under observation of the supervisors. Supervisor Nora Hawse inquired whether she had been going to the union hall. Upon admission that she had been going there and intended to continue doing so, the supervisor stated "you better get yourself straightened out with Mr. Stine, because if you don't you're going to get fired."<sup>8</sup> On December 13, 1948, Rose Doyle received a supply of union-membership cards from a steward of the Union upstairs, and began passing them out to employees of the cafeteria. That day she gave cards to Helen Neal and Dorothy Ebersole. On December 14, 1948, she handed cards to Edna Tepper, Bessie Gorman, Virgie Daley, and a girl named Groves. She also delivered a batch of the cards to Harold E. Churchey for distribution. About 4 o'clock that afternoon a group of employees assembled around a table in the cafeteria to sign the union cards, while awaiting transportation home. Among them was Churchey, who passed out and gathered up the signed cards. Nora Hawse, the supervisor, passed near the table while this meeting was in progress. A short time later Nora Hawse remarked to Doyle, "I bet those damn people out there are signing union cards, and if they were, they'll all be fired. . . . Rose, I don't know what in the hell you meant, because you'll be fired too, because they tried it here before and they didn't get away with it, and they won't get away with it this time. . . . I just have a notion to call Mrs. Stine and tell her what is going on out here." Contrary to her usual custom, Mrs. Stine returned to the cafeteria for the evening meal that day, and at closing time about 9 p. m. called Rose Doyle into her office and discharged her.

<sup>8</sup> Neither of the supervisors testified at the hearing. The uncontradicted testimony of Rose Doyle is credited.

Mrs. Stine attributed the discharge to heavy dipping of food, and especially to an incident which occurred on December 13, 1948, when Rose Doyle was reprimanded for serving two pieces of liver to a plant guard contrary to instructions to serve only one piece to a customer. Rose Doyle disclaimed any knowledge of the incident, and only Mrs. Stine testified concerning that incident.

C. *Interference, restraint, and coercion*

1. Meeting of December 15, 1948

Following the discharge of Rose Doyle, the manager called a meeting of all her employees at the cafeteria on December 15, 1948, ostensibly for the purpose of making wage adjustments. Each employee was separately interviewed and questioned about working conditions in the cafeteria and whether they were satisfied with their employment. Mrs. Stine had a short chat with each one to find out what each was doing and to explain the adjustment of wages. Her bookkeeper, Mr. Hammaker, took notes and reduced the statement of each employee to writing. At this meeting Virgie Daley was granted a wage increase of 10 cents per hour when she asserted that an offer of 7 cents increase was not sufficient. Adjustment in hours of work for some employees was also made to eliminate a waiting period in the cafeteria for transportation to their homes after quitting time.

Bessie Gorman credibly testified that on December 15, 1948, the chief supervisor, Grace Schmidt, told her that those who signed union cards would not have a job, and that there would never be a union in there. The other supervisor, Nora Hawse, informed her that Rose Doyle had been fired for bringing union cards into the cafeteria. The statements of the supervisors were not made at the aforesaid meeting:

2. Interrogation of Harold E. Churchey<sup>9</sup>

On December 13 and 14, the Respondent, Lee E. Stine, was in Chicago on a business trip. He testified that Mrs. Stine either called him by telephone or told him immediately upon his return that there was trouble and dissension among the cafeteria workers. On December 16, 1948, he appeared at the cafeteria and called Harold E. Churchey into the stockroom for an interview. There Churchey was reminded of his past shortcomings in carelessly breaking dishes and setting off a firecracker in the cafeteria. He was questioned about union activities and his distribution of union cards. He was warned that the same thing might happen to him that happened to Rose Doyle, and he was told that he would not be fired provided he furnished information concerning the activities of himself and other employees. Mr. Stine requested permission to search him, but refrained from doing so when consent was given. Churchey confessed that he had presented union cards to Virgie Daley and others.<sup>10</sup>

2. Interrogation of Virgie Daley<sup>11</sup>

Immediately following his interrogation of Harold E. Churchey on December 16, 1948, the Respondent drove in his automobile to the house of Virgie Daley at Shady Grove, Pennsylvania. There he told about his conversation with Churchey, and questioned Mrs. Daley about her financial situation and union activities. She was informed that Rose Doyle had been discharged for being

<sup>9</sup> Deduced from credible testimony of Harold E. Churchey.

<sup>10</sup> Lee E. Stine made no denial of this interview.

<sup>11</sup> Deduced from credible testimony of Virgie Daley.

a troublemaker, and that the Respondent had no use for people who were interested in the Union. It was the first and only time Mr. Stine had visited her home. She was requested not to tell other employees about the visit. The daughter of Mrs. Daley was present and corroborated her version of the conversation. On the next day Mr. Stine called Virgie Daley into the office at the cafeteria and accused the daughter of reporting his visit to her home on the day before. He again asked how she felt about the situation. In his own testimony at the hearing, Lee E. Stine made no denial of the conversation, but testified that he made no threats or promises.

### 3. Meeting of January 17, 1949

Following the interviews and adjustments effected at the meeting on December 15, 1948, the strained relationship between employees and management continued unabated. Evidence of this is found from the fact that Mrs. Stine failed to attend the annual Christmas party at the cafeteria and refused to accept the customary gift tendered to her by the employees during the holiday season. Gifts to employees were distributed as usual by the Respondent. Another meeting of the employees was called on January 17, 1949. Practically all of the employees attended, and both Mr. and Mrs. Stine were present. Lee E. Stine first addressed the gathering, and then attempted to elicit individual discussion from the assembled group. Little or no response was received. In substance, he stated that they were no longer a happy family, and that he was preparing to take action to remedy the unfavorable situation. Then he called upon Mrs. Stine to make a statement. She declared that the employees were acting like a bunch of grizzly bears. Following the meeting, approximately one-half of the group of employees attended a meeting of the Union in the union hall that night.

### 4. Getting rid of the troublemakers

Professing no knowledge of union activities and the causes of dissatisfaction, the Respondent adopted the expedient of discharging certain employees suspected of being the troublemakers. The selection was made in consultation between Mr. and Mrs. Stine. Mrs. Stine explained that they were trying to weed out those cafeteria workers whose jobs were not too important and that could be quickly replaced. They picked out those who were most unsatisfactory and had demonstrated limited ability in performing their work. It was recalled that numerous complaints had been received against these employees and they had been repeatedly warned about their shortcomings. For instance, Virgie Daley improperly dipped too heavily in serving the food, and Bessie Gorman had shown favoritism towards particular customers in the food line. Harold E. Churchey, in addition to setting off a firecracker in the cafeteria about October 1948, had been careless in racking dishes in the automatic dishwasher and caused excessive breakage of chinaware. They had shown an unfavorable attitude toward their employer. Their inefficiency was determined from an accumulation of complaints rather than any specific charge of misconduct. Consequently, Harold E. Churchey, Virgie Daley, and Bessie Gorman were selected for discharge in an effort to remedy the intolerable situation that existed in the cafeteria.

### 5. The discriminatory discharges of Harold E. Churchey, Virgie Daley, and Bessie Gorman

Both Mr. and Mrs. Stine were present in the cafeteria office when Harold E. Churchey, Virgie Daley, and Bessie Gorman were called in for discharge on

January 19, 1949. Mrs. Stine did most of the talking. She stated to them, "I guess this is a surprise to you, but we have asked for reason about contention out here and dissension among our employees. We have not been able to put our finger on it, and now I am going to clean house." Mr. Stine declared, "I've got to get rid of some of you. It comes to this—you're not a happy family and I cannot keep you." No further explanation was given to these employees for their discharges on that occasion.

*Harold E. Churchey* had been employed by the Respondent since April 17, 1946. As part of his duties he handled the chinaware, racked dishes in the automatic washing machine, and swept and scrubbed the floor. In December 1948, he actively participated in the campaign of self-organization among the employees by distributing the union-membership cards received from Rose Doyle, and after obtaining signatures thereon turned them in to a steward of the Union. Thereby he incurred the disfavor of his employer, as evidenced by his interrogation on December 16, 1948, in the stockroom.

*Virgie Daley* had been employed by the Respondent since March 22, 1946. She assisted in the preparation and cooking of food, especially potatoes, and also dispensed food to customers. During the period of her employment she received several raises in pay, the last being an increase of 10 cents per hour on December 15, 1948. On December 14, 1948, she applied for membership in the Union by signing a union card given to her by Rose Doyle. She solicited the membership of other employees in the Union on December 16, 1948, by passing out cards given to her by Harold E. Churchey. She thereby incurred the disfavor of her employer, as evidenced by her interrogation by Mr. Stine at her home that same day.

*Bessie Gorman* had been employed by the Respondent since June 1, 1945. She was a close friend of Virgie Daley, and when approached by the supervisors had not denied that she applied for membership in the Union and participated in union activities. She was told by the supervisors that Rose Doyle was fired for bringing union cards into the cafeteria and that those who signed them would lose their jobs. The general attitude of Bessie Gorman was not pleasing to Mrs. Stine, and it is evident that she had incurred the disfavor of the management.

#### 6. Concluding findings

From the evidence in this case, there is no mistaking the fact that from October 1948 through January 1949, the management and employees of Fairchild Cafeteria were not a happy family. The manager attributes the origin of discord to the Community Chest drive in October, but the Trial Examiner attaches little importance to that event. The unhappiness really began in December when Rose Doyle initiated a campaign of self-organization among the employees. The record reveals that employees of the Fairchild Engine and Airplane Corporation were represented by the Union, but previous efforts of the cafeteria workers to organize had failed.

It is clear from all of the evidence that the Respondent, his manager, and supervisors were bitterly opposed to self-organization of the cafeteria employees. Their efforts to organize were openly conducted, and the supervisors vigorously attempted to suppress the union activities. The warning of Nora Hawse that all who signed union cards would be fired, and her threat to inform the manager as to what was going on out there constituted interference, restraint, and coercion of the employees in the exercise of the rights guaranteed in Section 7 of the Act. The declaration of Grace Schmidt that there would never be a union in there and that those who signed union cards would not have

a job was likewise interference, restraint, and coercion, which was calculated to discourage self-organization among the employees. Because of the position held by supervisors as the representatives of management, an employer is generally responsible under the Act for the conduct of his supervisors.<sup>12</sup>

It is reasonable to believe that the manager of the cafeteria was fully informed of the organizational activities of Rose Doyle both from her own observation and by reports from the supervisors. In the light of impending events the justification now asserted by the Respondent for summarily discharging the leader of the movement for self-organization appears superficial and unconvincing. Had Mrs. Stine in fact reached her decision to discharge Rose Doyle for serving an extra piece of liver to the plant guard, it was not then pertinent or necessary to immediately report to her husband, Lee E. Stine, that trouble and dissension had arisen among the employees as a group. Under the existing circumstances the gravamen of such an offense was insignificant in comparison with other activities more obnoxious to the Respondent. It is found, therefore, that the Respondent engaged in an unfair labor practice by discriminating in regard to the tenure of employment of Rose Doyle to discourage membership in a labor organization.

Having acknowledged that he was informed either by telephone in Chicago or immediately upon his return that discord existed among the cafeteria employees, the Respondent himself proceeded to make an investigation. His interrogation of Churchey on December 16, 1948, indicates an awareness and abhorrence of the union activities of his employees. His threat to fire the boy for past misdoings and promise to retain him upon disclosure of information pertaining to the dissemination of union cards constituted interference, restraint, and coercion of the employees in the exercise of rights guaranteed by Section 7 of the Act. Throughout the ensuing interview of Virgie Daley the Respondent sought to discourage membership in a labor organization by inquiring into her union activities, expressing his intolerance of those who were interested in the Union, and threatening to discharge the troublemakers. Thereby the Respondent likewise engaged in an unfair labor practice which is condemned by the Act.

The summary discharge of a group of employees of long standing deserves more than casual scrutiny and consideration. Harold E. Churchey, Virgie Daley, and Bessie Gorman were not newcomers at Fairchild Cafeteria. Each of them has been employed there for approximately 3 years or longer. Because of a situation intolerable to the Respondent, and now attributable to self-organization and union activities, the management determined that they were unsatisfactory employees and troublemakers. When employees are actually engaged in the lawful exercise of the rights guaranteed to them by the National Labor Relations Act, it is not an opportune occasion to discharge them forthwith in the absence of specific charges of misconduct or inefficiency. On a more propitious occasion an employer is free to discharge an employee for any reason whatsoever, or for no reason at all. Under the circumstances here, the summary procedure of the Respondent in determining that Harold E. Churchey, Virgie Daley, and Bessie Gorman were unsatisfactory employees because of an accumulation of trivial shortcomings over a period of months or years must be regarded askance. The only evidence of their being troublemakers was their activities in behalf of self-organization and the Union. It is therefore found that the Respondent engaged in an unfair labor practice by discriminating in regard to their tenure of employment to discourage membership in a labor organization.

<sup>12</sup> *J. S. Abercrombie Co.*, 83 NLRB 524.

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

The discriminatory discharges of Rose Doyle, Harold E. Churchey, Virgie Daley, Bessie Gorman, and other activities of the Respondent, his manager, and supervisors, in questioning, warning, and threatening employees with loss of employment because of participation in union organization and other concerted activities for their mutual aid and protection, which occurred in connection with the operation of Respondent's business, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to bring about labor disputes burdening and obstructing commerce and the free flow of commerce.

## V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, it will be recommended that he cease and desist from the conduct herein found to be a violation of the Act, and that he take certain affirmative action designed to effectuate the policies of the Act.

Because of the discrimination in the tenure of employment of Rose Doyle, Harold E. Churchey, Virgie Daley, and Bessie Gorman, it will be recommended that the Respondent offer to each of said employees immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and that the Respondent make each of them whole for any loss of pay suffered by reason of the discrimination against them, by payment to the individual of a sum of money equivalent to that which he or she would have earned as wages since the date of their discharges. The loss of pay will be computed on the basis of each separate calendar quarter or portion thereof during the period from Respondent's discriminatory action to the date of a proper offer of reinstatement.<sup>13</sup> The quarterly periods, herein called "quarters," shall begin with the first day of January, April, July, and October. Loss of pay shall be determined by deducting from a sum equal to that which these employees would normally have earned for each quarter or portion thereof, their net earnings,<sup>14</sup> if any, in other employment during that period. Earnings in one particular quarter shall have no effect upon the back-pay liability of any other quarter. The Respondent will make available to the Board upon request his payrolls and other necessary records to facilitate the checking of the amounts of back pay due.<sup>15</sup>

The past conduct of the Respondent and the unfair labor practices described herein reveal a determined and continuing effort to suppress and defeat the self-organization of his employees. Finding from past conduct a propensity on the part of the Respondent to continue such efforts in the future, it will be recommended that the Respondent cease and desist from in any manner interfering with, restraining, or coercing his employees in the exercise of the rights guaranteed by Section 7 of the Act.<sup>16</sup>

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

<sup>13</sup> *F. W. Woolworth Co.*, 90 NLRB 289.

<sup>14</sup> The term "net earnings" means gross earnings less expenses such as transportation, room, and board incurred by an individual employee in connection with obtaining work and working elsewhere, which would not have been incurred but for this unlawful discrimination and the consequent necessity of seeking employment elsewhere. *Crossett Lumber Company*, 8 NLRB 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered earnings. *Republic Steel Corporation v. N. L. R. B.*, 311 U. S. 7.

<sup>15</sup> *F. W. Woolworth Co.*, 90 NLRB 289; *Pratt, Read & Co., Inc.*, 90 NLRB 1499.

<sup>16</sup> *May Department Stores v. N. L. R. B.*, 326 U. S. 376.

## CONCLUSIONS OF LAW

1. United Automobile, Aircraft & Agricultural Implement Workers of America, UAW, CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire or tenure of employment or terms or conditions of employment of Rose Doyle, Harold E. Churchey, Virgie Daley, and Bessie Gorman, to discourage membership in a labor organization, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

3. By interfering with, restraining, and coercing his employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommended Order omitted from publication in this volume.]