

IN the Matter of A. R. BENUA, LOUIS P. BENUA, A. R. BENUA, TRUSTEE FOR THOMAS R. BENUA, AND A. R. BENUA, TRUSTEE FOR RICHARD S. BENUA, CO-PARTNERS, D/B/A THE EBSCO MANUFACTURING COMPANY and UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, C. I. O.

Cases Nos. 9-C-2096 and 9-R-1744.—Decided April 10, 1946

DECISION
AND
ORDER

On September 25, 1945, the Trial Examiner issued his Intermediate Report in the above-entitled proceedings, finding that the respondent had engaged in and was engaging in certain unfair labor practices and that it had not engaged in unfair labor practices by the discharge of Wilbur Reinier, and recommending that it cease and desist from the unfair labor practices found, that it take certain affirmative action, as set forth in the copy of the Intermediate Report annexed hereto, and that the complaint be dismissed as to Reinier. The Trial Examiner further found that, as alleged in the Union's Objections, the respondent had interfered with the election conducted under the auspices of the Board among the respondent's employees for the purpose of determining a collective bargaining representative, and recommended that the election be set aside. Thereafter, the respondent and counsel for the Board filed exceptions to the Intermediate Report and supporting briefs.

The Board has considered the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. On March 21, 1946, the Board at Washington, D. C., heard oral argument, in which the respondent and the Union participated.

The Board has considered the Intermediate Report, the exceptions and briefs filed by the parties, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner insofar as they are consistent with our Decision and Order hereinafter set forth.

1. The Trial Examiner has found that the respondent violated Section 8 (1) of the Act by the conduct of Foremen Parry and Moore.

As detailed in the Intermediate Report, on the day of the election, Parry removed one of the three pro-union buttons, which employee Faller, who was ineligible to vote in the election, was wearing on his coat, and asked Faller if he wished to change the button to indicate Faller's opposition to the Union. Faller, however, immediately retrieved the button in its original form, replaced it on his coat, and continued to wear it. Shortly thereafter, Parry remarked to a group of employees that if the Union were successful, the employees would have to pay \$25 each to become members thereof. Later, after the Union had lost the election, Foreman Moore remarked to union member Krebs, "Well I guess you will give up your Union activities." While neither we nor the respondent, as stated by its counsel at the oral argument before the Board, condone the conduct of Parry and Moore, the record indicates, and we find, that Parry's indiscretion amounted to no more than friendly "horseplay" and was so regarded, and that the remark by Moore, who had just recently been promoted to the position of foreman, was also made in a jocular spirit. Although we might reach a different conclusion under other circumstances, on the basis of this record, we are unable to find that the conduct in question amounted to interference, restraint, and coercion within the meaning of the Act. The Trial Examiner's finding in this respect is hereby reversed.

2. We agree with the Trial Examiner's finding that the respondent's letter of May 22, 1945, was not *per se* violative of the Act. The Trial Examiner further found that this letter, construed in the light of the above-described conduct of Foremen Parry and Moore, acquired a coercive meaning and hence was violative of the Act. In view of our findings above with respect to the conduct of Parry and Moore, there is no longer any basis for the Trial Examiner's finding and it is hereby accordingly reversed.

3. The Trial Examiner found that the no-solicitation rule promulgated on November 6, 1944, was violative of the Act insofar as it prohibited union activities on the respondent's premises during the employees' non-working time. As set forth in the Intermediate Report, this rule was rescinded by the respondent about 3 weeks before the election and was succeeded by a rule which restricted the prohibition to the employees' working time. While we agree with the Trial Examiner that the November 6 rule constituted an unlawful restraint upon the employees' exercise of the rights guaranteed by the Act, we are of the opinion that, under the circumstances herein disclosed, it would not effectuate the policies of the Act to issue an order with respect thereto.

4. We agree with the Trial Examiner that Reinier's discharge was not discriminatory. In view of our other findings herein, we shall dismiss the complaint in its entirety.

5. In view of the foregoing, we find, contrary to the Trial Examiner, that the record does not sustain the allegations in the Union's Objections that the respondent interfered with the election. We shall accordingly overrule the Union's Objections to the election, and dismiss its petition for investigation and certification of representatives.

ORDER

Upon the basis of the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the complaint issued against the respondent, A. R. Benua, Louis P. Benua, A. R. Benua, Trustee for Thomas R. Benua, and A. R. Benua, Trustee for Richard S. Benua, Co-Partners, d/b/a The Ebco Manufacturing Company, Columbus, Ohio, be, and it hereby is, dismissed in its entirety.

IT IS FURTHER HEREBY ORDERED that the petition for investigation and certification of representatives of employees of A. R. Benua, Louis P. Benua, A. R. Benua, Trustee for Thomas R. Benua, and A. R. Benua, Trustee for Richard S. Benua, Co-Partners, d/b/a The Ebco Manufacturing Company, Columbus, Ohio, filed by United Electrical, Radio and Machine Workers of America, C. I. O., in Case No. 9-R-1744, be, and it hereby is, dismissed.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Order.

INTERMEDIATE REPORT

Messrs James A. Shaw and Herbert J. Nester, for the Board.

Mr. Carl Tangeman and Mr. W. I. Vorys, of Vorys, Sater, Seymour & Pease, of Columbus, Ohio, for the respondent.

Mr. Paul Dunman, of Columbus, Ohio, for the Union.

STATEMENT OF THE CASE

On February 22, 1945, United Electrical, Radio & Machine Workers of America, C. I. O., herein called the Union, filed with the Regional Director for the Ninth Region a petition¹ alleging that a question affecting commerce had arisen respecting the representation for the purpose of collective bargaining of the employees of A. R. Benua, Louis P. Benua, A. R. Benua, trustee for Thomas R. Benua, and A. R. Benua, trustee for Richard S. Benua, co-partners, d/b/a The Ebco Manufacturing Company, Columbus, Ohio, herein called the respondent, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Pursuant to a hearing on the petition, held on March 26, 1945, the National Labor Relations Board, herein called the Board, on May 5 issued its Decision and Direction of Election in which it directed that an election by secret ballot be held to determine whether or not certain of the respondent's employees desired to

¹ *The Ebco Manufacturing Company and United Electrical, Radio and Machine Workers of America, C. I. O., Case No. 9-R-1744*

be represented for the purposes of collective bargaining by the Union. On May 25, an election was conducted at the respondent's plant in Columbus, Ohio, among the production and maintenance employees, excluding office and clerical employees, foremen, assistant foremen or group leaders, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action. A tally of votes showed that a majority of these employees voted against the Union.²

On June 1, the Union filed objections to the election, and on June 5, filed a second amended charge³ alleging that the respondent, by the conduct referred to in its objections, and by other acts, had committed unfair labor practices within the meaning of Section 8 (1) and (3) of the Act.

The Regional Director's Report, dated June 29, found that certain of the objections raised substantial and material issues with respect to the election, and recommended that the Board direct a hearing thereon. On July 18, the Board issued an order directing a hearing on the objections and consolidating Case No 9-R-1744 with Case No. 9-C-2096 for the purposes of the hearing. On July 25, the Board, by the Regional Director, issued a complaint⁴ 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 Act. Copies of the complaint, accompanied by notice of hearing thereon, and on the objections, were duly served upon the respondent and the Union.

With respect to the unfair labor practices the complaint alleged, in substance, that the respondent (1) from on or about August 19, 1944, questioned employees concerning their union affiliation, urged them to refrain from joining the Union, promulgated a discriminatory rule regarding solicitation in the plant, distributed printed matter opposing the Union, and permitted the preparation and distribution in the plant of anti-union placards and printed matter, and (2) on or about November 2, 1944, discharged Wilbur Reinier and thereafter refused to reinstate him, because of his membership in and activities in behalf of the Union.

On August 17, 1945, during the course of the hearing, the respondent filed its answer admitting some of the allegations of the complaint but denying that it had engaged in any unfair labor practices.

Pursuant to notice, a hearing was held on August 14, 17, 18, and 20, 1945, at Columbus, Ohio, before Horace A. Ruckel, the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel, and participated in the hearing. The Union was represented by an organizer. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. At the conclusion of the Board's case the undersigned denied a motion by counsel for the respondent to dismiss the complaint in its entirety, but granted, over objection by Board's counsel, a motion to dismiss the

² The vote was as follows :

Approximate number of eligible voters.....	166
Votes cast for the Union.....	73
Votes cast against the Union.....	79
Valid votes counted.....	152
Challenged ballots.....	2
Valid votes cast plus challenged ballots.....	154

³ The original charge was filed on November 10, 1944

⁴ A previous complaint had been issued on May 23, 1945. The complaint issued on July 25 was in the nature of an amended complaint

allegations of the complaint insofar as they alleged that the respondent inspired the activities of the Employees Protective Association.⁵ During the course of the hearing the undersigned reserved ruling on the admission of an exhibit⁶ offered by the Board which was offered to show that the respondent assisted in the preparation of an anti-union slogan on election day. The exhibit is hereby rejected. At the close of the hearing, the undersigned advised the parties that they might argue orally, and might file briefs with the undersigned within 14 days from the close of the hearing. None of the parties engaged in oral argument. Subsequently, the undersigned extended the period within which briefs might be filed to September 10, 1945. On September 10 the respondent filed a brief.

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

The respondent is a co-partnership composed of A. R. Benua, Louis P. Benua, A. R. Benua, trustee for Thomas R. Benua, and A. R. Benua, trustee for Richard S. Benua, d/b/a The Elbco Manufacturing Company. It has its principal plant and place of business at Columbus, Ohio, where it is engaged in the manufacture of electric water coolers. During the 12 months immediately preceding the hearing, the respondent purchased raw materials valued in excess of \$500,000, of which approximately 75 percent was shipped to the respondent from points outside the State of Ohio. During the same period, the respondent sold finished products in excess of \$1,000,000, of which approximately 80 percent was shipped to purchasers outside the State of Ohio. The respondent, at the time of the hearing, employed approximately 220 employees.

II. THE ORGANIZATION INVOLVED

United Electrical, Radio, and Machine Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting employees of the respondent to membership.

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*

The Union began organizing the respondent's employees in August 1944, and, as has been stated, on February 22, 1945, filed its petition for certification as representative of the respondent's employees for the purposes of collective bargaining. The organizational campaign and the ensuing election on May 25, were attended by certain events which the Board contends constituted interference, restraint, and coercion, within the meaning of Section 8 (1) of the Act. These events are hereinafter considered.

On October 2, 1944, the respondent convened a meeting in the shipping room where A. R. Benua, its general manager, addressed the employees. Benua stated that it was the respondent's policy not to interfere with the union activities of its employees, and that membership in a union would not prejudice the standing of any employee. Referring to a union leaflet which attacked the

⁵ While the allegations of the complaint in this respect were general, the Employees Protective Association not being mentioned by name, the evidence showed the existence of the Association and that its members engaged in anti-union activity. This was done off the respondent's time, and there was no evidence of inspiration or assistance by the respondent.

⁶ Board's Exhibit 15

respondent's wage scale as inadequate, Benua entered into an exposition of the scale and described unsuccessful attempts to obtain from the War Labor Board permission to increase wages in certain categories. Benua made no reference to the Union other than identifying it as the author of the leaflet in question. The undersigned does not find Benua's remarks to constitute interference, restraint, or coercion.

On October 12 the respondent posted the following :

Notice

No solicitation or promotion of any kind for any purpose will be tolerated during working hours.

On November 6 the respondent posted the following notice, which extended the prohibition against solicitation to include any solicitation on the respondent's property.

Notice

No solicitation or promotion of any kind for any purpose will be tolerated during working hours nor at any hour on company premises.

The rule, as extended, is discriminatory in that it serves to prohibit solicitation during the lunch and other free periods, which have been held to be the employee's own time.⁷ There is no evidence, however, that the rule as posted on November 6 was enforced as to any employee.⁸

On May 22, 1945, 3 days prior to the election, the respondent mailed copies of the following letter to all its employees :⁹

To all EBCO employees.

During the past several months, a question has been created at Ebco. A CIO Union organizer has made persistent efforts to have his Union recognized as the sole bargaining agency for Ebco employees. To accomplish his purpose, it was first necessary to obtain signatures on cards, signifying such a desire on the part of a majority of the employees. In order to persuade you to sign these cards and to vote for the Union in the coming election, the organizer has made promises of many advantages and benefits (too numerous to mention) that you do not have now. Now it becomes necessary for a majority of the eligible employees to confirm this desire by secret ballot in an election, before the Union can become the exclusive bargaining agent for EBCO employees

The election will be held May 25th, 1945. Others will doubtless tell you about the details of the election. I will confine my remarks to the issues.

The best way to predict the future is on the basis of the past. Let's look at the record and truthfully answer the following questions:

1. Does the management have a reputation for honesty, capability and consideration for its employees?

⁷ See *Republic Aviation Corp v N L R B*, 324 U S 793, affirming 142 F (2d) 193 (C C A 2), enforcing 51 N L R B 1186

⁸ There is considerable evidence in the record of solicitation for the Union during lunch periods

⁹ In addition, on March 22, the respondent sent letters to its employees in which it explained the provisions of a profit sharing plan, and on April 2, Benua made another speech in which he explained the respondent's vacation plan. In neither the letter nor the speech was there any reference to the Union or to the organization of the respondent's employees, and the undersigned finds them both to be innocuous

2. Has the EBCO Company lived up to the confidence and trust placed in it by the late Federal Judge Hough—whose chief reason for selling it, the bankrupt Ebinger Company, was that the new company would furnish steady employment to an increasing number of workers and would in time become a well established Columbus enterprise?

3. Have foremen, superintendents, and executives been advanced from the ranks of EBCO employees, according to the initial announcement of company policy? Are the opportunities for advancement good at EBCO?

4. Has it been possible for employees who suffered misfortune and disability to get help from the Company, when needed?

5. Has the management sympathetically considered the welfare and future of EBCO employees in all actions throughout ten years they have been in existence?

6. Is the management in daily attendance and in close contact with all plant operations and employees, or is it done by remote control for some outside owner?

7. What assurance have you that the Union can make good its promises if you vote it in? If the Union does not make good, what comeback have you?

8. If you vote the Union in—can you ever vote it out afterward?

9. Has the Union made you feel confident of its honesty and dependability? Is the Union unselfish, or is it not? Is it interested in your personal, individual welfare and future, or is it self-seeking? On the basis of its past record, is it open and above-board and dependable, or don't you know?

These are the questions you must answer for yourself before you vote. If you do not know the truth, it will pay you to discuss the questions with others who do know.

A "Yes" vote means you wish to turn over to a Union, exclusively, and indefinitely, your rights in dealing with the EBCO Company in all matters affecting your rates of pay, wages, hours of work, and other conditions of employment.

A "No" vote means you wish to retain for yourselves those rights in dealing with the Company individually, or in employee groups, as in the past. A "No" vote is for continuing the practice where any individual employee or group of employees, may at any time discuss such matters directly with any of the supervisory force or management.

Some of you may wonder if your preference, stated any time in the past, must govern how you vote on May 25th. It does not. This election is by secret ballot so that you can vote as you feel now, without fear or favor from any source. Whether or not you have signed anything or whether or not you belong to any group or organization, you have the right to vote according to your wishes.

The growth and progress at EBCO has been built up over the years, by faithful service to its customers. It has been built with the EBCO organization operating as a team, with each member interested in and dependent upon the work of all the others. Hearty cooperation and mutual confidence and respect have enabled us to progress to the place of being the largest producer in our industry.

Our prospects for future growth and progress are bright. Our plans have been unfolded to you as fast as they have been developed. Their accomplishment will require some time and the continued cooperation of every employee.

If the Union is voted in, the Company will faithfully carry out its obligations under the law, and will do its best, under existing conditions, to make its plans work out successfully.

Again, I urge you to consider every issue carefully before you vote. Again, I urge every one to vote. The outcome of the election will be determined not by a majority of all the employees entitled to vote, but by a *majority of those who do vote*. This means that if only half of you vote, the majority of those voting will decide for all.

The decision is in *your* hands. (All italics in original.)

This letter is similar to the letter wherein the Court in the *American Tube* case¹⁰ held not to be violative of the Act in the circumstances therein obtaining.

On May 25, the day of the election, the respondent caused to be passed out to employees lists of eligible voters, headed by a statement that a failure to vote was "about the same as giving a vote for the result you do not want."

On the day prior to the election, the Union distributed to its members and supporters large red, white, and blue buttons bearing the inscription "Vote U. E.-C. I. O." These were freely worn in the plant on the day of the election. A few came into the possession of employees opposed to the Union, some of them pasted tape with the legend "NO" over the initials "U. E.-C. I. O.," so that the button, thus altered, read "Vote No." Other anti-union employees wore other improvised badges bearing "Vote No" in colored crayon.

The appropriation by some employees opposed to the Union of union badges, and their alteration in such a way as to convert them into anti-union slogans, led to an incident upon which, together with other incidents, it is contended that the election should be set aside. James Thompson, a union adherent, on the morning of election day removed altered union buttons from the coats of three other employees as they passed his place of work. It does not appear from the record that any altercation, much less any physical encounter, eventuated. Thompson's actions, however, came to the attention of Buck Sherman, foreman of the machine department in which Thompson worked, who reported them to James Coulter, plant superintendent. About noon, Coulter called Thompson and Sherman to his office, where he told Thompson that he had no right to remove the buttons from other employees, adding that anyone who engaged in violence was subject to dismissal. Thompson denied that he had engaged in any violence. Coulter then instructed Thompson to return the buttons to the employees who had been wearing them, which Thompson refused to do until he had consulted with Duman, organizer for the Union. It was finally arranged that Thompson, in the presence of two witnesses, should give the three badges to Sherman for return to the employees in question, and this was done.

At another time during the day of the election, Elmer Faller, an employee who had not been employed long enough to be able to vote under the Board's Direction of Election, was approached by his foreman, Dave Parry. Parry told Faller,¹¹ in the presence of two other employees, that, in view of the fact that Faller could not vote, there was "no use" in his wearing C. I. O. buttons. Parry's reference was to three union buttons which Faller wore, two on the front of his coat and the third on the back. Parry took the button from the back of Faller's coat and asked Faller if he wanted Parry to paste over the words "U. E.-C. I. O." a piece of tape which Parry had in his hand, and which had "No" printed on it. The tape was similar to that previously described as being worn by anti-union employees on election day. Faller jerked the button from Parry and replaced it on his coat, saying that the Union was going to win the election even though he himself couldn't vote, to which Parry replied: "Maybe so; maybe no." Later

¹⁰ *N. L. R. B. v. American Tube Bending Co., Inc.*, 134 F. (2d) 993 (C. C. A. 2), setting aside 44 N. L. R. B. 121, cert den 320 U. S. 768.

¹¹ The findings as to the events in which Faller and Parry participated are based upon Faller's credible and uncontradicted testimony. Parry was not called as a witness.

the same day, Parry approached the crew of which Faller was a member, some of whom were wearing "Vote UE-CIO" badges and others of whom were wearing "Vote No" slogans, and stated to the group that if the Union came into the plant the employees would have to pay \$25 to join it.

Rudolph Krebs, employed in the shipping room, testified that on the day following the election he was approached by Russell Moore, shipping room foreman, who said to him with obvious reference to the Union's loss of the election: "Well, I guess you'll give up your union activities." Moore, while testifying, denied making this statement. The undersigned, however, credits Krebs' testimony and does not credit Moore's denial.

Conclusions

The undersigned finds that by the acts and statements of Parry and Moore, related above, the respondent interfered with, restrained and coerced its employees. Under the circumstances herein prevailing, the undersigned cannot dismiss as innocuous or as privileged, the respondent's letter of May 22, 1945. The letter occurred in close conjunction with the election day activities of Parry and Moore, and must be construed in the light thereof. Parry's statements to Faller and other members of his crew that the Union would demand a \$25 membership fee if it came into the plant, coupled with Parry's removal of a union button from Faller's coat in the presence of other employees, and his attempt to substitute an anti-union slogan in its place, had the effect of demonstrating to the employees the respondent's opposition to the Union, and were in sharp contradiction to the respondent's statements, expressed in its letter of May 22, that the employees might vote "without fear or favor from any source." The undersigned believes that the employees who viewed Parry's anti-union activities on the day of the election, as well as those employees who learned about them, could not have but interpreted Benua's statements in the light of Parry's acts, and concluded that the respondent was prepared to reinforce by its active intervention in the election its expressed opposition to the Union as representative of its employees.

The undersigned finds that by issuing its letter of May 22, 1945, as well as by the acts and declarations of foremen Parry and Moore, by promulgating a rule which has the effect of prohibiting solicitation during the employees' free time and by the totality of these events, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.¹²

B. *The discharge*

Wilbur Reinier came to work for the respondent in May 1944, in the shipping department. In August, he was transferred to the first assembly department, under the foremanship of Virgil Echelbarger, where he continued to work until his discharge on November 2, 1944. Reinier joined the Union on September 6, 1944.

On November 2, Echelbarger approached Reinier while at work and told him to report to Coulter in the latter's office. Coulter told him that he had been informed that he had been soliciting members in the Union, when he should have been working and threatening them with discharge if they did not join. Coulter, according to Reinier, told Reinier that although his work was good and although Coulter hated to see him go, Coulter would have to discharge him, adding that

¹² The effect of the unfair labor practices upon the election is hereinafter discussed under the section entitled "The remedy," where it is found that the Union's objections to the election should be sustained.

when "the Union matter straightens up" he could perhaps return to the respondent's employ Reinier asked Coulter who had complained of him and Coulter refused to give him the information. Coulter testified that the reason for his refusal was that he was afraid it might cause trouble in the shop and impair plant discipline.

Coulter denied while testifying that he mentioned the Union when he discharged Reinier. Reinier impressed the undersigned as an unreliable witness, and he accepts Coulter's denial as being true. Reinier denied, while a witness, that he ever solicited anyone for membership in the Union during working hours. His testimony on this point was contradicted by that of Barbara Freeland and Frank Meyers, the testimony of whom the undersigned credits. Freeland, who came to work for the respondent in October 1944, related that shortly after she began her employment Reinier approached her while she was working and asked her to sign up in the Union. When Freeland refused to do so, Reinier told her that when the Union came in she would lose her job if she wasn't a member. Freeland reported this conversation to Clara Casto, an older employee, and asked her if this was true. Casto reported the matter to Coulter, at the same time asking him for verification of Reinier's claim.

Meyers testified that on November 2, the day of Reinier's discharge, while he was getting a drink at the water fountain, Reinier told him that if he and the other "older timers" did not join the Union they would lose their jobs. Meyers immediately reported this conversation to Coulter. His testimony as to his conversation was as follows:

Q. Where did you tell Mr. Coulter about it?

A. I went down to his office.

Q. What did you tell Mr. Coulter?

A. I told him just what had happened. When he told me that, you know, I walked away and I went back to my job. Then I thought a little bit about it; and I just thought, "Well what's he got to do with my job?" I thought a little bit more about it; and I thought, "I guess I'd better go down and see what he has to do with it." And so then I looked for the boss of the lowside department, Joe Coulter; and he was busy. I couldn't find him. So then I went down to Jim Coulter's office.

Q. What did you tell Jim?

A. I told Jim just what had happened. I was taking a drink of water; and Wilbur Reinier was standing there; and he said to me, he said, "You old-timers," he says, "if you don't sign a Union card," he says, "you'll be losing your job. Then you'll be sorry."

Q. Did you tell Mr. Coulter why he had told you that?

A. Yes. I told him I asked Mr. Coulter; inquired to find out what Wilbur Reinier had to do with my job.

Q. What did Mr. Coulter tell you?

A. He told me that he didn't have anything to do with my job at all.

Q. Did he tell you anything else?

A. No, he didn't.

Q. Had anybody ever asked you to report such incidents to Jim Coulter?

A. No, I don't think they did; but I took it on my own initiative, because they had a notice up on the bulletin board, there would be no solicitation of any kind during working hours.

Coulter testified that after his conversation with Casto, he asked Echelbarger if he knew of any solicitation in his department by Reinier or any other employee. Echelbarger told Coulter that on one occasion he had to send Reinier back to work when he had found him talking to Freeland in another department.

The next time that Reinier came to Coulter's attention was on November 2, the day of his discharge, when Meyers complained about him. Coulter again got in touch with Echelbarger and asked him if he knew of any additional instances of union solicitation in his department, since their previous conversation on that subject. Echelbarger stated that there had been one other occasion that he found Reinier talking to a girl in another department, as a result of which he sent Reinier back to his own department.

Coulter reported Meyers' complaint to Louis Benua, and related the previous complaint concerning Freeland, and asked Benua what should be done about Reinier. Benua gave it as his opinion that Reinier should be discharged.

Both Coulter and Benua testified that their decision to discharge Reinier was based partly on Reinier's previous record, including the recommendation of his first foreman, Slagle, who had wanted to discharge Reinier shortly after he was hired, because of inefficiency as well as on the incident of solicitation by Reinier on the respondent's time. The undersigned credits the testimony of Coulter and Benua in this respect. He believes and finds Reinier was discharged because of repeated violations of the rule against solicitation during working hours, and because of threats to employees that if they did not join the Union they would lose their jobs, and not because of Reinier's activity on behalf of the Union.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III-A, above, occurring in connection with the operation of the respondent set forth in Section I, above, have a close, intimate, and substantial relation 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.

V. THE REMEDY

Since it has been found that the respondent has engaged in and is engaging in certain unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found above that Foreman Parry on the day of the election engaged a group of employees in a conversation during which he stated in effect, that if the Union won the election the employees would have to pay 25 dollars each to join the Union, and that at another time on the same day, Parry approached a group of three employees and attempted to substitute an anti-union badge in place of the union badge one of them was wearing. It has also been found that on the same day, when a pro-union employee, Thompson, took anti-union badges from other employees, he was called to the office and ordered to make restoration of the badges under threat of discharge.¹³ These instances, in the opinion of the undersigned, occurring in conjunction, must have had the effect of convincing the employees not only that the respondent did not want the Union to win the election, but that it was prepared to take steps to see that it did not. In view of these activities, and in further view of the closeness of the election results, the undersigned will recommend that the Union's objections to the election be sustained and that the result of the election be set aside.

¹³ The undersigned does not find that the incident pertaining to Thompson of itself constituted an unfair labor practice.

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

CONCLUSIONS OF LAW

1. United Electrical Radio and Machine Workers of America, affiliated with the C. I. O., is a labor organization within the meaning of Section 2 (5) of the Act

2. By interfering with, restraining, and coercing its 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 (1) of the Act.

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

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends that the respondent, A. R. Benua, Louis P. Benua, A. R. Benua, trustee for Thomas R. Benua, and A. R. Benua trustee for Richard S. Benua, co-partners, d/b/a The EBCO Manufacturing Company, Columbus, Ohio, its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Interfering with, restraining, or coercing its employees in the exercise of the rights of self-organization, to form labor organizations, to join, or assist United Electrical Radio and Machine Workers of America, C. I. O., 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 as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Rescind immediately the rule against solicitations insofar as it prohibits union activity in the plant except during working hours.

(b) Post at its Columbus, Ohio, plant copies of the notice attached hereto, marked "Appendix A". Copies of the said notice, to be furnished by the Regional Director for the Ninth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Ninth Region in writing within ten (10) days from the date of the receipt of this Intermediate Report what steps the respondent has taken to comply therewith.

It is further recommended that, unless on or before ten (10) days from the date of the receipt of the Intermediate Report the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

It is further recommended that the objections of United Electrical Radio and Machine Workers of America, C. I. O., to the election of May 25, 1945, in conformity with the findings made herein be sustained, and that the results of said election be set aside.

It is further recommended that the complaint be dismissed insofar as it alleges that the respondent discriminatorily discharged Wilbur Reinier.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, effective July 12, 1944, any party or counsel for the Board may, within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, 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. Immediately upon the filing of such statement of exceptions and/or brief, 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. As further provided in said Section 33, 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 the order transferring the case to the Board.

HORACE A. RUCKEL,
Trial Examiner.

Dated September 25, 1945.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner 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 in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist United Electrical, Radio and Machine Workers of America, C. I. O. 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. All our employees are free to become or remain members of this union, or any other labor organization. The rule against solicitation in the plant is hereby rescinded except as it prohibits solicitation during working hours.

THE EBCO MANUFACTURING COMPANY,
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.