

In the Matter of BURNSIDE STEEL FOUNDRY COMPANY *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW-CIO

Case No. 13-C-2594.—Decided June 27, 1946

DECISION

AND

ORDER

On April 29, 1946, the Trial Examiner 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. The Trial Examiner also found that the respondent had not engaged in unfair labor practices by the lay-off of Joe Hallamon from April 26 to May 4, 1945, when Hallamon reported back for work, and recommended that the complaint be dismissed with respect thereto. Thereafter, exceptions to the Intermediate Report and a supporting brief were filed by the respondent.

The Board has reviewed the Trial Examiner's rulings 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 of the respondent, 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, the National Labor Relations Board hereby orders that the respondent, Burnside Steel Foundry Company, Chicago, Illinois, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Laying off or otherwise discriminating against any of its employees and thereby discouraging membership in International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, or any other labor organization, because such

employees shall have in the past filed charges, or may in the future file charges with the Board against the respondent;

(b) Interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, 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, by threatening such employees with reprisals of any character if they should form, join, or assist the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, or any other labor organization.

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

(a) Post at its plant in Chicago, Illinois, copies of the notice attached to the Intermediate Report herein, marked "Appendix A."¹ Copies of said notice, to be furnished by the Regional Director for the Thirteenth 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;

(b) Notify the Regional Director for the Thirteenth Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed, insofar as it alleges that the respondent has discriminated against Joe Hallamon, within the meaning of Section 8 (3) of the Act by its lay-off of said Joe Hallamon from on or about April 26, 1945, to on or about May 4, 1945.

INTERMEDIATE REPORT

Gustaf B. Erickson, Esq., of Chicago, Ill., for the Board
Irring Meyers, Esq., of *Meyers and Meyers*, 188 West Randolph St., Chicago, Ill., for the Union
Albert J. Smith, Esq., of *Fuffe and Clark*, 120 South La Salle St., Chicago, Ill., for the respondent

STATEMENT OF THE CASE

On a second amended charge filed October 26, 1945, by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, herein referred to as the Union, the National Labor Relations Board,

¹ Said notice, however, shall be, and it hereby is, amended by striking from the first paragraph thereof the words "RECOMMENDATIONS OF A TRIAL EXAMINER," and substituting in lieu thereof the words "A DECISION AND ORDER."

herein called the Board, on October 26, 1945, by the Regional Director for the Thirteenth Region (Chicago, Illinois), issued its complaint against Burnside Steel Foundry Company of Chicago, Illinois, herein called Respondent, alleging that Respondent had engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1), (3) and (4) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint together with copies of the second amended charge and a notice of hearing were duly served upon the Union and Respondent.

Concerning unfair labor practices the complaint alleges that Respondent, at its plant in Chicago, Illinois, discriminatorily laid off one Joe Hallamon from on or about April 26, 1945 to on or about May 4, 1945, for the reason that he joined and assisted the Union; and that from on or about May 4, 1945 to on or about May 22, 1945, Respondent laid off the same person because he had filed charges under the Act and because he assisted the Union; and that by such conduct Respondent has engaged in unfair labor practices within the meaning of Section 8 (1), (3) and (4) of the Act; that from on or about December 1, 1943 to the date of the issuance of the complaint the Respondent threatened, warned and urged its employees not to become members of the Union and by such conduct interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act and thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

The answer of Respondent duly filed herein admits the allegations of the complaint pertaining to its corporate structure, the nature and character of its business, and the lay-offs of Hallamon, but otherwise denies all the allegations of the complaint pertaining to the commission of any unfair labor practices.

Pursuant to due notice, a hearing on the complaint was held in Chicago, Illinois, on April 4 and 5, 1946, before the undersigned, R. N. Denham, a Trial Examiner duly designated by the Chief Trial Examiner. The Board, the Union and Respondent were represented by counsel. All parties participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and present evidence pertinent to the issues.

At the close of the presentation of all evidence the motion of counsel for the Board to conform the complaint to the proof with respect to the correction of names, dates, and other matters not going to the material allegations of the complaint, was granted without objection and was made applicable to all pleadings herein. Counsel for the Respondent made separate motions to dismiss the complaint in its entirety and to dismiss that portion thereof which alleges a violation of Section 8 (4) of the Act. These motions were taken under advisement by the undersigned and are hereby denied. Argument by counsel for the Board and for Respondent was made on the record. A brief for Respondent has been received from its counsel.

Upon the basis of the foregoing and on the entire record, after having heard and observed the witnesses and considered all the evidence offered and received, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is an Illinois corporation with its principal office and place of business in Chicago, Illinois, where it is engaged in the production of steel castings. In the operation of its plant, Respondent, during the last fiscal year purchased raw materials consisting of steel scrap, ferro-alloys, sand and binders valued at more than \$100,000.00, of which more than 30% were transported in commerce

through the States of the United States to its plant in Chicago, and during the same period, produced finished products consisting chiefly of steel castings valued at more than \$150,000.00 of which more than 50% were sold and transported in commerce from its plant in the State of Illinois through other States of the United States to their various points of destination. Respondent concedes that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

International Union, United Automobile, Aircraft and Agricultural Implementation Workers of America, PAW-CIO, is a labor organization admitting to membership the employees of Respondent at its plant in Chicago, Illinois

III THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Rule Against Solicitation on Company Time*

In the latter part of April 1943, the Union participated in an election at Respondent's plant in which it was the only contender. It was successful by a vote of approximately 217 to 203 and, on May 10, 1943 was certified by the Board as the exclusive bargaining representative of certain of the employees in Respondent's plant. At about that time, H F Wardwell, president of Respondent, called into his office a number of the men who had been the leaders in the union organizational campaign and who also represented the majority of the officers of the local, and told them that since the organizational campaign was now over and the Union had won the election, he expected them to "get down to work," called their attention to the fact that the company had a rule prohibiting the solicitation of union memberships on company time which, he advised them would now be enforced, and instructed them, as the leaders who knew the union members, to "tell everybody." Wardwell testified that in 1939 or 1940 the company had instituted a rule prohibiting solicitation of union membership or union activity on company time and property, and that the rule had been reduced to writing, signed by him, and posted on the bulletin board where it remained for at least a month to his certain knowledge. He further testified that in late 1942 or early 1943, he dictated, signed and had posted another notice of the same nature, which, to his knowledge, remained posted for at least 6 weeks during the organizational campaign of the Union. Respondent, however, was unable to produce any copies of either of these notices, and the testimony of a number of witnesses who had been employed during the time when they were supposed to have been posted, was to the effect that at no time had they ever seen such a notice on any of the bulletin boards. It is not essential to a determination of this controversy to resolve this conflict but under all the circumstances it is found that Respondent has made no substantial and reliable showing that such notice ever was posted for the information of all its employees, notwithstanding that the supervisory employees were advised from time to time that solicitation of union memberships on company property would not be permitted.

In January 1943, Joe Hallamon was employed by Respondent as a sand grinder. About June 1943 he became a member of the Union and in December 1943 was appointed steward, which office he continued to hold through the entire period that is pertinent herein¹. At the time Hallamon joined the Union, one King L Mock was the recording secretary of the local and was one of the group

¹ In July 1945, Hallamon participated in a strike and did not return to work at its termination.

called into Wardwell's office following the certification and warned about solicitation on company time. To what extent the rule was circulated by the union members who had composed the group that met with Wardwell is not revealed, but it is conceded by Mock and Hallamon that shortly after Hallamon became a member of the Union, and at about the time Mock was discharged,² Mock told Hallamon that he would be discharged if he solicited union membership on company time. Hallamon testified that he was aware, at all times, that solicitation on company time would not be permitted.

During the period from the time when Wardwell stated that the first notice was posted about 6 years ago up to April 1945, there had been no instances where any employee had been reprimanded, warned or disciplined by any of the supervisory employees or the officers of Respondent because of violation of the rule above referred to. It was conceded that Respondent placed practically no limitations on the conduct of its employees in the foundry with reference to "idle" conversation during working hours, beyond the generally accepted rule that such conversations should not be allowed to interfere with production. In this manner it was a common practice for the employees to discuss baseball games, politics, religion, the activities of their team in the bowling league and such other matters as might be of interest to them, including, according to Wardwell's testimony, general "idle talk" about the Union, without being subject to reprimand or other discipline. Thus, according to Wardwell, there would be no objection to the men discussing the merits of the Union or its functions or what it stood for. Such conversations would not get into the proscribed area of discussion until they became direct solicitation for membership in the Union.

B *Hallamon's lay-off of April 26, 1945*

During the 2 years following the certification in May 1943, for reasons not disclosed in the record, although there were some negotiations in the very early days immediately following the certification, there appear to have been few if any negotiations between the Union and Respondent and no contractual relations whatsoever. Hallamon was an active and enthusiastic proponent of the Union at all times and overlooked no opportunity to interest the other employees in it. It was his testimony that he confined all his conversations with reference to the Union to the period before and after his work and during his lunch period. However, the testimony of the other witnesses is of such a character that Hallamon's statement that he confined his solicitation to his free time and on no occasion approached any employee to become a member of the Union during working hours cannot be credited. The testimony of three credible witnesses is to the contrary.

Fred W. Klopla, an inspector in the cleaning room and in no respect a supervisor, who had been employed by Respondent for about 10 years, testified that on one day in April 1945 which the witness was unable to fix definitely, as he went by Hallamon's machine the latter stopped his work, approached him and solicited him to join the Union, stating at the same time that the CIO expected to sign a contract with Respondent in a few days and that if he did not sign up with the Union at that time he would have to pay back dues later on. Klopla expressed no interest and walked away from Hallamon and some time later in the day reported the incident to Walter Valentine, his foreman. Valentine advised Klopla that he would report the incident to Walter Moore, the superintendent. Hallamon denied having had this conversation with Klopla or having had any

² For reasons not pertinent herein.

conversation soliciting union membership from him during working hours. His denial is not credited.

Virgil Berry is employed by Respondent as a maintenance man charged with responsibility, among other things, for keeping the various machines and equipment greased. This ordinarily is done while the operators are on their lunch period and the machines are not in operation. He stated that on or about the 18th of April 1945, while he was greasing one of the screw cutters about 25 or 30 feet from Hallamon's place of work, Hallamon came to him and asked him when he was going to join the Union. When Berry replied that he was not ready to join, Hallamon asked him what was the matter with his department; that it was the only department not yet signed up. There was some considerable further conversation between Hallamon and Berry in which Hallamon stated that he had heard that Berry's foreman, one Ernest Willings, foreman of the maintenance crew, had threatened to discharge any of the members of his crew who joined the Union. Berry defended Willings and stated he did not think that Willings would make such a statement. Later he reported the entire incident to Willings. At that time, Berry did not know Hallamon's name and did not identify him to Willings but in repeating the conversation, elicited the information from Willings that he had made such statements but that he was just "kidding around" when he was making them. Berry further testified that he was never warned by any officer or supervisor not to talk about the Union and that in fact he knows of no rule against talking on the job, since, during working hours, they frequently talk about baseball and other things and nothing is said about it. He further testified that he had received no instructions from Willings or anyone else to report conversations about the Union and that he went to Willings with the report about the Hallamon conversation entirely on his own initiative. Hallamon confirmed that such a conversation had taken place but denied it was in working hours. It might be drawn from the evidence that, at the time, Hallamon was at lunch while Berry was working, but Hallamon's statement that neither he nor Berry was working is not credited.

Darrel Jones, also a member of the maintenance crew, testified that on or about April 24, 1945, while he was at his work hauling sand out of the foundry, Hallamon who was going from the washroom in the general direction of his machine, stopped him and asked him to join the Union, at the same time telling him that if he did not join at that time, later on it would cost him \$35. This conversation extended itself until Jones stated that one of the reasons for not joining the Union was that he might be fired by his foreman. Hallamon replied that he had heard remarks like that before but that there was no occasion to be afraid of Willings since the Union had him "tamed." Hallamon denied that this took place during working hours. His denial is not credited.

This approach to Jones by Hallamon was the third time Hallamon had urged Jones to join the Union. On the last preceding occasion Jones, who had no inclination to join the Union, reported it to Willings but refused to point out the man who had accosted him. On the last occasion, however, still not knowing Hallamon's name, Jones pointed out Hallamon at Willings' request and also evidenced his displeasure at having been approached by Hallamon by the statement that he was getting tired of being urged to join the Union and felt like "punching him in the nose." Following this conversation with Jones, Willings complained to Valentine about Hallamon's interference with his men and at Valentine's suggestion, he and Willings reported the incident to Moore. At that time Willings told Moore about the reports he had received from both Jones and Berry, and Valentine told about the incident reported to him by Klopla. At the

close of business on April 25, 1945, Moore called Hallamon to his office, told him of the complaints about soliciting for the Union on company time, explained to him that there was a strict rule against it, and informed him that he was suspending him for 1 week as a disciplinary measure. He told Hallamon that he wanted this to serve as a warning to him and to the other employees. Hallamon was not relieved of his badge or any of his identification, was not paid off and clearly understood that this was a disciplinary lay-off of 1 week and no more. He returned to work on May 4, at which time he found his card in the rack, punched it as usual and went to his machine as he had in the past.

It is unquestioned that shortly following the election and certification in 1943, Respondent notified the responsible officers and leaders of the Union of the existence of a rule prohibiting solicitation of union memberships on company property during working hours. There is no evidence of any relaxation of this rule or of any instances where employees were active in soliciting during working hours under circumstances that would bring their activity to the attention of the supervisory personnel until the case of Hallamon developed in April 1945. Furthermore, Hallamon knew of the prohibition.

The fact that Respondent permitted its employees to engage in conversation on almost every subject except such as involved solicitation of union memberships, is indicative of a desire and intent to impose a discriminatory restriction upon proselyting for the Union, but in the operation of its business and in its regulation of the conduct of the employees when they are on company time, it should be and is a prerogative of management to set up whatever rules it may desire to make to govern the conduct of its employees during their working hours so long as such rules are fairly applied to all employees and do not restrict or interfere with the exercise of the rights guaranteed in Section 7 of the Act at those times when freedom to so exercise such rights is generally recognized. Working time is for work. It was within the province of Respondent to promulgate and enforce a rule prohibiting union solicitation during working hours, and such a rule must be presumed to be valid in the absence of evidence that it was adopted for a discriminatory purpose. Although some effort was made to show that the rule prohibited solicitation on company property as well as on company time, the record as a whole reflects only a prohibition of soliciting on company time. There is no showing that Respondent objected to the employees discussing union membership and soliciting for the Union on their own time, nor was there any objection to general discussions short of solicitation, concerning union matters along with the various other things that were permitted to be discussed during working hours. The single prohibition on the other general discussions was that they not interfere with production. Such rules are not unreasonable and, so long as they follow that pattern, are within the discretion of Respondent.

From the foregoing therefore, it is found that Respondent had promulgated a rule prohibiting solicitation for the Union on company time; that such rule was directly brought to the attention of the employees after the Union had completed its organizational campaign and had been certified; that there was a close division among the employees between those who favored and those who opposed the Union, and that feelings were inclined to run high between members of the two groups; that the purpose of the rule was to preserve the operations of the foundry from interruptions growing out of this highly controversial question; that Hallamon was at all times aware of the existence of the rule and that on at least four occasions, he had violated it by soliciting union memberships from Klopla, Berry and Jones during working time. By this conduct, which was promptly brought to the attention of Respondent, he subjected himself to dis-

cipline by Respondent for the violation of the rule and was accorded such discipline in the form of a lay-off for 1 week Throughout industry, this is not an unusual punishment for rules violators. It is found that by the lay-off from April 26 to May 4 when Hallamon reported back for work, Respondent engaged in no unfair labor practice within the meaning of the Act.

D. The lay-offs between May 4 and May 22, 1945

During the period of Hallamon's disciplinary lay-off above referred to, he reported the matter to the International Representative of the Union. No complaint appears to have been made to Respondent by the Union or any of its representatives but on May 3, 1945, the Union, through its attorney, filed a charge with the Regional Office of the Board for the Thirteenth Region, charging Respondent with having discharged Hallamon because of union activities. The Regional Director promptly advised Respondent by mail that it had been charged with having discriminatorily discharged Hallamon When this letter was received on May 4, Wardwell sent for Hallamon who had just returned to work, showed him the letter and reprimanded him for having filed a charge with the Board accusing Respondent of having "discharged" him whereas all that had been done was to lay him off for a week. Wardwell told Hallamon that he (Hallamon) knew he had never been discharged, and that while Respondent was willing to assume the responsibility for the lay off, it would not tolerate having a clearly false charge filed against it. Wardwell then instructed Hallamon to leave his work forthwith and take whatever steps were necessary to have the "discharge" charge either withdrawn or amended to conform to the facts which he, Hallamon, knew were true, i e that he had been laid off and not discharged Hallamon washed up and left the shop. He had advised Wardwell that he could do nothing without getting in touch with his International Representative and that he could not see him before the following Monday. He apparently intended, however, to attempt to get in touch with the International Representative of the Union but was unable to do so Next morning he reported to work again as usual but was called into the office by Moore to ask him what he had done about getting the matter of the charge "straightened out" Hallamon said he had not been able to do anything Whereupon Moore told him to get out and get the matter "straightened out" and not to come back until it had been "straightened out" Hallamon again left, but what he did is not clear. He appears to have reported several times for work but each time was again sent out to "straighten out" the matter. Finally he stopped reporting for work and apparently was idle for several days.

Shortly after the charge was filed, it was assigned to one of the Field Examiners in the office of the Thirteenth Region who communicated with Respondent and requested an interview to discuss the facts of the case On May 15 the Field Examiner met with the officers of Respondent at Respondent's office At that time the nature of the charge was discussed with Wardwell, who was then advised, for the first time, that Hallamon could have done nothing about either withdrawing the charge or amending it since it had been filed by the Union and only the Union could do anything about it Following this conference, Wardwell had the timekeeper send for Hallamon As soon as Hallamon returned to work Wardwell sent for him, told him that he had been acting under a misapprehension as to the facts when he ordered Hallamon to go out and have the matter of the charge "straightened out", that he was sorry he had sent him on a "wild goose chase" and that he would be compensated for all the time he had lost during the period from the date of his return to work on May 4 up until that time. Thereafter, Hallamon was paid for the full working time between May 4 and

May 22 whether he had actually worked or not, such payment being based upon the average work production of the shop. As a result of this incident Hallamon lost no time for which he was not fully compensated by Wardwell immediately upon the latter's learning of his previous error.

Direct interference, restraint, and coercion

The complaint alleges that from on or about December 1, 1943, to the date of the complaint Respondent threatened, warned and urged its employees not to become members of the Union. The only evidence in support of this pertains to Foreman Willings, of the maintenance crew, who admitted having made the statement, at some undisclosed time and place, that he would fire any member of his crew who joined the C. I. O. The testimony of the single witness who said he had heard Willings make such a statement indicates that it was made in the course of some off-the-job conversation when he and Willings were riding to or from work and was in the nature of a jest. If this were all, the statement well might be disregarded as an isolated incident of "loose talk" by a supervisor, not chargeable to Respondent. However, it is uncontradicted that Hallamon stated in his conversations with Darrel Jones and Virgil Berry that he had heard such statements attributed to Willings. Willings also stated that he had been "on the carpet" before Moore for making such statements. On this basis, it must be and is found that Willings, a responsible supervisor, was reputed among the employees to have said, and did, in fact, say that he would discharge any man in his crew who joined the C. I. O. It is also found that the knowledge that Willings was engaging in such conduct came to the attention of Respondent, and that, notwithstanding Willings was warned against such conduct, as were the other supervisors, Respondent at no time took any steps to disabuse the minds of the employees of the impression they well might have gained, that Willings' conduct and statements were indicative of Respondent's attitude on the same subject. It is therefore found that by Willings' unrepudiated statements, Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

Conclusions

Section 8 (4) of the Act provides that it shall be an unfair labor practice for an employer "to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act." Respondent is charged with a violation of this Section by its conduct toward Hallamon when the initial charges herein were filed on May 3, 1945. The question was not directly raised by counsel for Respondent at the hearing but was indirectly adverted to in the argument that in this case Hallamon had not filed the charges and therefore Respondent could not be held to have violated the provision of Section 8 (4) of the Act. It is a fact that the charges were not actually signed and filed by Hallamon in his own name, but it is clear that he procured them to be filed on his behalf by the Union, as his representative for collective bargaining purposes and for the other purposes stated in the Act. Under these circumstances, although the charges were actually signed by Ben Meyers in the name of the Union as the Union's attorney, it is found that for the purposes of this case, the Union was acting for and on behalf of Hallamon, and that such being so, the effect was the same, for the purposes of Section 8 (4) of the Act, as if the charges had been filed in person by Hallamon.

It is conceded that when notice of the filing of charges came to the attention of Wardwell on May 4, he relieved Hallamon of his employment and ordered him to proceed, at his own time and expense, to either have the charges with-

drawn or amended to show that the act complained of was the previous disciplinary lay-off; that on the following day Hallamon was ordered not to return to his work until he had accomplished the directions previously given him by Wardwell; and it is further conceded that Hallamon did actually remain away from his work, pursuant to these orders, until he was later sent for and directed to return to his regular occupation. There is no controversy over these facts.

The foregoing facts permit of no finding other than that Hallamon was discriminated against by Respondent because he had filed the charges with the Board. The fact that later, after Wardwell had discovered his mistake he attempted to cure it by paying Hallamon for the time he had lost, might mitigate to some extent the damage done, but does not cure it. The commission of any of the unfair labor practices proscribed in the Act is an act in violation of the established public policy of the United States which it is the duty of the Board to prevent or to remedy in such manner as will effectuate the policies of the Act. Private rights are not involved under the orders of the Board but such orders are pronouncements on behalf of the public, and here, in the first instance, there was a clear violation of Section 8 (4). It would have been within the power and would have been a duty of the Board to direct Respondent to cease and desist from such conduct and to make Hallamon whole for any loss he had incurred by reason thereof. Respondent already has anticipated that part of such remedial order as would be applicable to making Hallamon whole; but unless appropriate action is taken by the Board to prevent a recurrence and to assure Respondent's employees that there will be no such recurrence, there is always a danger that such conduct might be repeated. Should such danger not be removed by the Board's injunction, it, together with the Hallamon incident, well could serve to deprive the employees of their full freedom to act within the protected area laid out for them in Section 8 (4) of the Act.

In the case of *In re Louis Kramer, et al*, 29 N. L. R. B., 921 at 935, the Board said on this subject:

Section 8 (4) of the Act expressly prohibits discharge or any other form of discrimination against an employee "because he has filed charges or given testimony under the Act" We have found that the respondents determined not to reemploy Silvick because she had filed charges which the respondents deemed "false". The prohibition of the statute against discrimination is effective irrespective of whether the employer believes the charges to be false or whether the ultimate proof sustains their validity. To hold otherwise would be to subject an employee, who invoked the protection of the Act, to the peril of discrimination without redress in every case where the employer considered the charges false or where, for whatever reason, the entire proof after a trial upon the merits failed to sustain the validity of the charges filed. To that extent such holding would nullify the express statutory protection afforded employees against the unfair labor practice condemned by Section 8 (4) of the Act

The foregoing language of the Board adapts itself entirely to this case and it is accordingly found that Respondent has discriminated against Hallamon because he filed charges and thereby has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in Section III above, occurring in connection with the operations of the Respondent described in Section I above, have a close, intimate and substantial relation to traffic, trade and commerce

among the several States and to the extent it has been found that they are in violation of the rights guaranteed Respondent's employees in Section 7 of the Act, 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 Respondent has engaged in an unfair labor practice by discriminating against one of its employees who filed charges against Respondent with the Board, and has also threatened its employees with discharge if they should join the Union, and thereby has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, it will be recommended that Respondent cease and desist from said conduct and, in order to further effectuate the policies of the Act, that it post an appropriate notice to its employees within the plant assuring them that it will not in the future engage in the same course of conduct.

The conduct of Willings in making intimidating statements, while chargeable to Respondent, does not carry an implication that Respondent threatens general violations of the Act. The same is true concerning the Hallamon incident. Since there appears to be no evidence that danger of other unfair labor practices is to be anticipated from the Respondent's conduct, no general recommendation will be made that the Respondent cease and desist from the commission of any other unfair labor practices than those described above.³

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

CONCLUSIONS OF LAW

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

2. By discriminating against Joe Hallamon because he filed charges against Respondent with the Board, Respondent has engaged in and is engaging in an unfair labor practice within the meaning of Section 8 (4) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act through the conduct of Foreman Willings and through its discrimination against Joe Hallamon, above described, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

4. By laying off Joe Hallamon between April 26, 1945 and May 4, 1945, as a disciplinary measure because of his breach of the rule against solicitation on company time, Respondent has engaged in no unfair labor practice within the meaning of the Act

RECOMMENDATIONS

On the basis of the above findings of fact and conclusions of law and upon the entire record in the case, the undersigned recommends that Respondent, Burnside Steel Foundry Company, of Chicago, Illinois, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Laying off or otherwise discriminating against any of its employees and thereby discouraging membership in International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, or any other labor organization because such employees shall have in the past filed charges, or may in the future file charges with the Board against Respondent.

³The case of *In Re Burnside Steel Foundry Company*, 7 N. L. R. B. 714, has not been ignored in arriving at this conclusion

(b) Interfering with, restraining or coercing its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, 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, by threatening such employees with reprisals of any character if they should form, join or assist the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, or any other labor organization.

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

(a) Post at its plant in Chicago, Illinois, copies of the notice attached hereto marked "Appendix A." Copies of said notice, to be furnished by the Regional Director of the Thirteenth Region, shall, after being duly signed by Respondent's representative, be posted by 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 Respondent to insure that said notices are not altered, defaced, or covered by any other material ;

(b) Notify the Regional Director for the Thirteenth Region in writing, within ten (10) days from the date of receipt of this Intermediate Report and recommendations, what steps the Respondent has taken to comply therewith.

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

It is also further recommended that the allegations of the complaint with reference to the lay-off of Hallamon from on or about April 26, 1945, to on or about May 4, 1945, be dismissed.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, effective November 27, 1945, 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 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. 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.

R. N DENHAM,
Trial Examiner.

Dated April 29, 1946

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to 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 :

