

In the Matter of VAN RAALTE, INC. and AMERICAN FEDERATION OF
HOSIERY WORKERS, C. I. O.

Case No. 10-C-1594.—Decided August 9, 1946

Messrs. Albert D. Maynard and Paul S. Keulthau, for the Board.

*Messrs. R. M. McConnell and H. M. Harton, of Knoxville, Tenn.,
for the respondent.*

*Mr. Herbert G. B. King, of Chattanooga, Tenn., and Messrs. John
W. Seltzer and Sonnie Davis, of Knoxville, Tenn., for the Union.*

Mr. Ben Grodsky, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon an amended charge duly filed on September 7, 1944, by American Federation of Hosiery Workers, C. I. O., herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Tenth Region (Atlanta, Georgia), issued its complaint dated October 14, 1944, against Van Raalte, Inc., Athens, Tennessee, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by notice of hearing thereon, were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance that the respondent from about July 1, 1944, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, by (a) urging, persuading, threatening, and warning its employees to refrain from joining or remaining members of the Union, (b) urging union members and adherents to resign their positions with the respondent, (c) questioning its employees regarding their union membership and activities, and (d) interfering with the use of a meeting place by the Union's adherents in Athens, Tennessee.

On October 24, 1944, the respondent filed an answer in which it denied that it had engaged in the unfair labor practices alleged in the complaint.

Pursuant to notice, a hearing was held at Athens, Tennessee, on October 30, 1944, before Louis Plost, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, and the Union were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues, was afforded all parties. The deposition of Jack P. Elrod, which was taken at Knoxville, Tennessee, on October 24, 1944, pursuant to a stipulation entered into between counsel for the Board and counsel for the respondent, was admitted in evidence by the Trial Examiner. On objections by the respondent, the Trial Examiner subsequently struck from the record certain of the testimony appearing in the deposition.¹ At the close of the hearing, counsel for the respondent moved to dismiss the complaint. The motion was denied. At the close of the hearing, counsel for the Board moved to conform the pleadings to the proof. The motion was granted. The Board has reviewed the rulings on motions and on objections to the admission of evidence made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. At the close of the hearing, counsel for the Board and the respondent argued orally before the Trial Examiner. Counsel for the respondent submitted a brief to the Trial Examiner on November 12, 1944.

On November 29, 1944, the Trial Examiner issued his Intermediate Report, copies of which were duly served upon the respondent and the Union. In the Intermediate Report the Trial Examiner found that the respondent had engaged in and was engaging in certain unfair labor practices, within the meaning of Section 8 (1) and Section 2 (6) and (7) of the Act, and recommended that the respondent cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act. Thereafter, the respondent filed exceptions to the Intermediate Report and a brief in support of its exceptions. Oral argument was held before the Board at Washington, D. C., on March

¹ Elrod testified, *inter alia*, regarding the speech, set forth below, which was delivered to the respondent's employees on July 19, 1944, by H. A. Vestal, the plant manager. Over objection by the respondent's counsel, Elrod answered questions as to what certain expressions used in the speech meant to him. The Trial Examiner sustained the objection and struck from the record all of Elrod's testimony regarding his understanding of the meaning of any portion of Vestal's speech. Were we to agree that the speech was "ambiguous," as it was characterized by counsel for the respondent at one point in his oral argument, we should not be prepared to say that Elrod's testimony as to its meaning was inadmissible. However, since we are satisfied and hereinafter find that the speech plainly was directed to the employees' union membership and activity, as admitted by counsel for the respondent at a subsequent point in his oral argument, we shall not disturb the Trial Examiner's ruling.

27, 1945. The respondent appeared and participated in the argument; the Union did not appear.

The Board has considered the Intermediate Report, the respondent's brief and exceptions, and the entire record of the case, and finds that the exceptions are without merit insofar as they are inconsistent with the findings, conclusions, and order hereinafter set forth.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent is a corporation organized under the laws of the State of New York. This proceeding involved only its plant at Athens, Tennessee, where the respondent is engaged in the manufacture of hosiery. During 1943, the respondent purchased for use in its Athens plant \$335,000 worth of raw materials, 70 percent of which was shipped to the plant from points outside the State of Tennessee. During the same period the respondent shipped from its Athens plant finished materials valued at \$1,250,000, of which 99 percent was shipped to points outside the State of Tennessee. The respondent has a total of 243 employees at its Athens plant.

The respondent concedes, and we find, that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

American Federation of Hosiery Workers, affiliated with the Congress of Industrial Organizations, is a labor organization which admits to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

On July 7, 1944, an organizer of the Union met with one of the respondent's employees in Athens and left authorization cards with him for distribution. The ensuing organizational activities of the employees were conducted openly; signatures to the cards were at times solicited within the plant during working hours. H. A. Vestal, the manager of the plant, learned that the employees were conducting union meetings in a filling station operated by a former employee of the respondent. He discussed these meetings with the filling station operator, with the operator's grandfather, and with the local manager of the oil company whose products were being distributed at the filling station.²

² Counsel for the Board sought to prove that Vestal had attempted to influence the filling station operator not to permit the employees to hold union meetings on his premises. We

On July 19, 1944, at 3:30 p. m., at which time the work shifts changed in the respondent's plant, the power was shut off and all the employees were assembled in the knitting room. Vestal then delivered the following speech:

Please get as close up as you can now for I can't talk very loud. I wish to call your attention to the coal situation. As you know this firm has always tried to take care of you on coal, and although we tried very hard last year we failed. For three months I have been trying to get coal for you for next winter, but they say we have no priority on lump or egg coal, and it looks as though I'm not going to be able to get lump coal for you again this year.

I can get mine run coal for you at a cost of \$5.50 a ton delivered. It is like what is on the yard and if you are interested in it then put your name on a knitter ticket and turn it in within the next two weeks.

I have also talked with McMillan several times, and asked him to see what he could do for us. I told him we had stayed with him pretty close in the past, but two weeks ago he said coal was very hard for him to get and that he had more orders than he can fill, but said he would let us know. So I would suggest that you place your orders anywhere you can get coal, or if you want the mine run let me know at once. I want you all to have coal this winter.

And I know more than anything we are all wanting the war to be over. I really feel it will partly be over within sixty days, however, those who give it much thought say Christmas. We would all rather the war be over than anything for we know what it is doing for us and what it will mean to us all later. All of us are paying and will continue to pay. Some are paying heavier than others, but we all pay for war. I believe business will hold up for a few years after the war, but those who have jobs now should to my opinion hold on to them. There are ten to eleven million people who will be coming back from service, and with defense plants going down it will create a great unemployment with many millions out of work. The Van Raalte Company plans to take care of every person going into military service from this plant, and I believe will. But there are going to be lots of others out hunting jobs, and that is not hard to see with millions back from the service and millions turned out of defense work. I wish you would think this over seriously. I am talking for your own good and from the heart.

We heard of high wages elsewhere, but too often when people get there the wages are not as high or the jobs not desirable. I

find, as did the Trial Examiner, that the evidence fails to establish this. Accordingly, we shall dismiss the allegation that the respondent interfered with the use of a meeting place by the Union's adherents.

feel safe in saying that 98 percent of those who have left here have asked for work again, and some of them have cried for jobs back with us. This leads me to believe the Van Raalte Company is as good a place to work as anywhere in Tennessee or anywhere else. Van Raalte regards their employees very high. They want to do everything they can. I realize 20 percent is taken out of your check but this is income tax. If you do anything at all you have to pay it. This is a credit you get and it goes to the Government, so you have to consider it as earnings.

As to pay the Van Raalte Company is willing to pay and wants to pay but pay is frozen and you have to show just cause to the War Labor Board before you can give any advances. They have tried to get advances and have had experts to try, but if the request is for over 50¢ an hour they will not grant it unless it is in a war zone, and, of course, Athens does not have war plants. Every one in Athens should be thankful there is no defense plants here for they cause mushroom growth and undesirable living conditions, then when it leaves, a town is dead. I remember after the World War and the Spanish-American War and it will happen again for it follows a war.

A little further about wages—I spoke of the tax of 20 percent, over which Van Raalte has no control, but some of your vacation pay and bonus checks amounts to 6¢ an hour, so I am afraid some do not give Van Raalte credit for that. Some figure 6.3 cents an hour where they have been over two years, others figure 4¢ to 6¢. Seniority gives more vacation pay and bonus, and this is something to work for.

The first year you are with Van Raalte you are not worth very much to the firm, and there are jobs where for several weeks the person is really in the way, so you see all who work only six months and quit are just a loss to the firm. The Van Raalte stock is on the exchange. The people who run Van Raalte Company receive only 50¢ a quarter or \$2.00 a year a share on their investment when the firm is making money. Last year the firm did not make the money they did the previous year, and year before last they did not make the money they did the year before that. But the person who is making ordinary money is the person who is content. It seems it is the person making the big money who is talk-in the most and Van Raalte can't be made to do anything any more than you can. They can quit any time. The stockholders are scattered to the four winds, and if you had Van Raalte stock you would not be willing to just take \$2.00 a share a year. Of course, some years they have a little accumulation but they have to keep a reserve for the years they lose money. This is necessary and before they will be driven they will go down. Be sure

you get this in your minds. They are willing to put faith in you and give you what they can, and if you are not satisfied, don't try to tear up the organization, for there are many honest people here who want to hold it together for the present and the future. We have a few who are looking out only for themselves, and who haven't thought of you or of me, and you folks know what to do with that kind of fellow. You know what you have here and you know how to keep it. We have one of the finest plants anywhere and where one is not willing to cooperate then he is your enemy and a bad enemy. If there is anyone not thoroughly satisfied come on in and get your release, for we don't want this torn up, and I don't believe it will be torn up.

I have confidence in most everyone here. There are some newcomers who do not understand it and who do not understand me, but I do not believe anyone who has been here for two years fails to have confidence in me, or that I do not have confidence in. If you will come one at a time, I will talk with you, and will give you all the time you want. I am your friend and I want you to do well. Every man who has been here ten years is doing well. He has his home, his car and is doing well by his children, and when he is really interested in that way, he is happy. I don't want to be where I am not happy, and if you are not happy and satisfied we don't want you to be with us.

The hardest work I ever did in my life was ten months' work in Knoxville. I wouldn't leave it until I got a man to take my place. I told the firm I wanted to quit and why. They wanted to raise my pay, but I told them I didn't want a raise, I didn't want the job—I wanted to quit, and I did quit. Life is too short to stay where one is not happy. Go some place and get another job if you are not happy—and if you are not satisfied there then learn to adjust yourself. If you try here and there and are not satisfied, then just admit it is yourself who is wrong and get yourself straightened out. Don't try to put it on someone else. I am telling you this from the heart and if you will try it you will thank H. A. for it some day.

If you cannot adjust yourself get somewhere else, for as I stated, you are an enemy to the rest of us and we don't want that. We want this to be the best place to work, made up of good people and all getting along. We want you to want to be here, and if you don't then something is wrong. See if you can correct it, and if you can't, then no one can. You needn't ask for help for it is up to each individual. Work on yourself and fix it if you can. If you can't, then do something else.

I'll be glad to talk with anyone singly. I believe every foreman will help you if you ask him. I know the machines are kept

in good shape and we try to get the best yarn on the market. The yarn we have now is as good or better running than any we have ever had, with the exception of some cotton yarn but we should congratulate ourselves on getting cotton yarn at all for it is very hard to get. Many places machines are down on account of yarn, but Van Raalte has spent much time and scoured the country trying to keep yarn for full time, and they are going to try to continue giving you fifty weeks of work and two weeks with pay as they have been doing. We try to give you as much time as you want. We have given you longer hours than we are right now, but yarn is hard to get now. When yarn is a little easier to secure and when the weather gets cooler we will try to give you 48 hours if you want it.

I got a letter from my son this week and he said they are working seven days a week and 10 hours a day. That is 70 hours a week. Many would much rather be at home working 48 hours a week. We should be more thankful for what we have.

I have confidence in most of you. I am sorry I have had to lose confidence in any, but I'm sure those I have lost confidence in are less than two percent, and they are the ones who have not thought. I hope they will come in and see me and apologize. They are welcome and we will forget the past. If I do you wrong I am willing to apologize and if a fellow on one machine does another fellow wrong then I hope he will apologize. I want us all to feel that way. I want to be your friend, and I believe you all know I am your friend. Please believe that until you find it different, then if you find it different come and tell me and I will appreciate it. Come to see me individually if I have done you wrong. Is there a question? (No response).

Hubert, do you have anything to say? ³

HUBERT. Nothing at this time but I'll be glad to talk with any who cares to come to me, one at a time.

Mr. VESTAL. Thank you for your attention. You are dismissed.

A few days after his speech, Vestal summoned Jack Elrod, a knitter, to his office. Vestal told Elrod that he understood that Elrod had signed a card for the Union and, upon Elrod confirming this, told him that he ought to think over carefully what he went into. Vestal then said that Athens was not a union town; that although unions might be all right in the North, they were not all right for the South; that the respondent's plant in New Jersey was organized but the Union did not work so well there; that the respondent had brought its plant to Athens in order to get away from unions; and that a union

³ This question was addressed to Hubert Vestal, the plant superintendent.

would ruin the respondent's business and all other business in Athens. Vestal showed Elrod the drawings of a proposed addition to the respondent's plant and stated that now he did not know if it would be built. He also told Elrod that the respondent would not work "under organized labor" and that it "didn't have to work" since it "could quit any time." Vestal closed the interview by telling Elrod to discuss his union membership with his father.⁴

About the same time, Foreman Grant Thompson on separate occasions approached helpers Edward Harrod and William Elrod⁵ while they were at work and stated that if the Union came into the plant it would be 4 years before they could become machine operators.⁶ On a different occasion Thompson told another helper, Auda Lee Marler, who had signed an authorization card a few days before, that if the Union came into the plant she would not be permitted to turn a switch on any of the machines.⁷

Conclusions

The respondent has engaged in a coercive course of conduct designed to discourage its employees from becoming or remaining members of the Union.

On July 19, 1944, shortly after the start of the Union's organizational effort, all the employees were assembled during working hours and addressed by Plant Manager Vestal, who had learned of the employees' union activity. Although Vestal did not specifically advert to the Union or its activities as such during his speech, we are satisfied and find that the timing and content of the speech were such as to make plain that Vestal intended to and did direct his words to the employees' attempt at self-organization.⁸ We are further convinced

⁴ The findings as to the conversation between Vestal and Jack Elrod are based on the uncontradicted testimony of the latter.

⁵ Harrod and Elrod, who were respectively 16 and 18 years of age, had been given union cards which Thompson had suggested they take home and discuss with their parents.

⁶ Machine operators or knitters are among the highest paid production employees of the respondent.

⁷ The findings as to Thompson's statements are based upon the testimony of Harrod, William Elrod, and Marler, who impressed the Trial Examiner as credible witnesses. Thompson denied that he had made such statements to Harrod and Elrod; he testified that he thought they had overheard a conversation in the washroom between him and employee Lawson, in which Thompson had related what had occurred at the plant of a former employer with respect to the time required to become a machine operator. Thompson did not recall the conversation with Marler. Upon the entire record, including the similarity of the statements concerning which Harrod, Elrod, and Marler each testified, we find, as did the Trial Examiner, that Thompson made the statements set forth above.

⁸ Counsel for the respondent conceded this during his oral argument before us. He stated, *inter alia*:

. . . I think that this speech should be construed as an argument by the plant manager against the organizational efforts that were being carried on. And I don't see how it could be given any other construction.

* * * unquestionably . . . Vestal had reference to the Union . . . in his speech. I don't think there is any doubt about that.

that Vestal's statements to his involuntary audience⁹ exceeded the limits of free expression protected by the First Amendment.

The speech was not "an argument, temperate in form, that a union would be against the employees' interests"; it contained, on the contrary, "a covert threat to recalcitrants" and a plain "intimation of reprisal" for the exercise of their statutory rights.¹⁰ In the course of his speech, Vestal dwelt at length upon the probability of widespread unemployment in the post-war era, which, according to Vestal, was not far distant. He recounted the advantages of employment with the respondent, in connection with which he injected the warning that the respondent "can't be made to do anything anymore than you can," that it "can quit any time," and that "before [it] will be driven [it] will go down." Vestal then cautioned those who were "not satisfied" against trying "to tear up the organization" and asserted that there were in fact "a few who are looking out only for themselves." In the circumstances, and in the absence of any alternative showing or explanation,¹¹ we construe, and we are satisfied that the employees construed, this statement to denote those who sought to improve their economic position through organization in the Union. Vestal characterized them as enemies of the respondent and of the other employees; he urged them—"anyone not thoroughly satisfied"—to obtain a release, since the respondent did not want any person "not happy and satisfied . . . to be with us"; he invited them—"the ones who have not thought"—to apologize and promised to "forget the past" if they would do so. We think it plain from the foregoing and from the speech in its entirety that Vestal sought to and did create the impression that the union adherents were enemies of the respondent, that union membership and employment with the respondent were incompatible,¹² and that persistence in their organizational efforts would result in loss of employment or other economic detriment.

Our conclusion concerning the coercive nature of Vestal's speech is corroborated by Vestal's intimidatory statements to Jack Elrod a few days later. On this occasion Vestal questioned Elrod about his union membership and cautioned him to weigh the matter carefully. He stated that the respondent had brought its plant to Athens to avoid unions and that a union would ruin the respondent's business. He

⁹ In *Matter of Thompson Products, Inc., et al.*, 60 N. L. R. B. 1381, we stated:

In view of the economic dependence of the listeners upon [the respondents], a factor which rendered the employees unduly responsive to the slightest suggestions of the speakers, and in view of the compulsion of the listeners to give heed, the adjurations of the speakers passed the realm of the free competition of ideas envisaged by the First Amendment into that of coercion.

¹⁰ The quotations are from the decision of the Circuit Court of Appeals for the Second Circuit in *N. L. R. B. v. American Tube Bending Co., Inc.*, 134 F. (2d) 993 (C. C. A. 2), cert. den. 320 U. S. 768.

¹¹ See footnote 7, *supra*.

¹² *Matter of L. H. Hamel Leather Co.*, 45 N. L. R. B. 760, 766, enfd *N. L. R. B. v. Hamel Leather Co.*, 135 F. (2d) 71 (C. C. A. 1).

emphasized his statements by showing Elrod plans for a proposed addition to the plant, which, asserted Vestal, might not "now" be built. The inference, which we draw from these statements, that unionization of the employees would result in removal or closing of the respondent's plant became explicit in Vestal's further statement that the respondent would not work "under organized labor" and that it "didn't have to work" since it "could quit any time." Any doubt which may have existed as to the coercive intent and meaning of Vestal's speech of July 19 was dispelled by his statements to Elrod.¹³

Finally, we are satisfied that the statements of Foreman Thompson to Harrod, William Elrod, and Marler formed part of the pattern of the respondent's coercive conduct. Thompson told these employees, in effect, that in the event the Union became the employees' bargaining representative, they would not obtain promotions which they otherwise might receive. The respondent contends that these statements merely "were the opinions of Thompson as to the effect unionization of the plant would have upon [the employees'] work, and did not constitute interference, restraint, or coercion." We do not agree. There is nothing in Thompson's statements themselves which made clear to the employees that he intended to convey the idea that the Union would demand any restriction upon promotions. Nor was any showing made that the Union had made such a demand of the respondent or of other employees in the industry. In view of this, and in the light of the respondent's concurrent intimidatory conduct discussed above, we are of the opinion that the employees reasonably understood Thompson's statements to mean that if they joined or assisted the Union, the respondent would impose the penalty of denying promotions which they otherwise might secure.¹⁴

Upon the entire record in the case, we are convinced and find that by Vestal's speech of July 19, 1944, by Vestal's statements to Jack Elrod, by Thompson's statements to Harrod, William Elrod, and Marler, and by the totality of such conduct, the respondent engaged in a course of conduct which interfered with, restrained, and coerced

¹³ At no time did Vestal state to the employees that they were free to join a union, that benefits which they enjoyed or would enjoy would not be withdrawn if they should do so, or that the respondent would deal with them collectively if they so desired. Compare *N. L. R. B. v. American Tube Bending Co., Inc.*, 134 F. (2d) 993 (C. C. A. 2). Indeed, Vestal's statements were the antithesis of such assurance. *Matter of Peter J. Schweitzer, Inc.*, 54 N. L. R. B. 813, enfd as modified, *Peter J. Schweitzer, Inc. v. N. L. R. B.*, 114 F. (2d) 520 (App. D. C.). In this regard, the respondent contends in substance that any coercive effect of its conduct was neutralized by statements to employees by Foreman Thompson to the effect that they were free to join or not to join the Union. We do not agree with this contention. Thompson did not so inform the employees as a whole; he testified merely that he had made this statement to every "helper in the house." But even if it were shown that Thompson so informed all the employees, we are satisfied that these statements did not counteract his more specific statements, discussed below, and certainly did not neutralize the more authoritative statements of his superior, Plant Manager Vestal.

¹⁴ See *Matter of American Laundry Machinery Company*, 57 N. L. R. B. 25.

its employees in the exercise of their rights guaranteed in Section 7 of the Act.¹⁵

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 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 unfair labor practices, we shall order it to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

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

CONCLUSIONS OF LAW

1. American Federation of Hosiery Workers, 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 affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Van Raalte, Inc., Athens, Tennessee, and its officers, agents, successors, and assigns shall:

1. Cease and desist from interfering with its employees in the exercise of the right to self-organization, to form labor organizations, and to join or assist American Federation of Hosiery Workers, C. I. O., or any other labor organization, by directly or indirectly warning or

¹⁵ *N. L. R. B. v. Mt. Clemens Pottery Co.*, 147 F. (2d) 262 (C. C. A. 6); *Matter of Peter J. Schweitzer, Inc.*, 54 N. L. R. B. 813, enfd as modified, *Peter J. Schweitzer, Inc. v. N. L. R. B.*, 144 F. (2d) 520 (App. D. C.).

threatening its employees with economic reprisal because of their membership in, or other activities on behalf of, the above-named 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 copies of the notice attached hereto, marked Appendix "A." Copies of said notice, to be furnished by the Regional Director for the Tenth 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 Tenth Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

AND IT IS FURTHER ORDERED that the complaint, insofar as it alleges that the respondent has interfered with the use of a meeting place by adherents of the Union, in Athens, Tennessee, be, and it hereby is, dismissed.

MR. GERARD D. REILLY, concurring separately :

Although I do not believe that certain comments in the majority decision can be supported, I concur with the ultimate conclusion reached by my colleagues that the utterances of the respondent company's officials violated subsection 8 (1) of the Act and cannot be defended as mere incidents of the exercise of free speech.

In reaching this result I am not impressed with the narrow construction which my colleagues place upon the doctrine of the *American Tube Bending* case,¹⁶ or such metaphors as "involuntary audience" or "pattern of the respondent's coercive conduct." It seems to me that it is unnecessary to resort to such strained rationalization in view of the fact that the speech delivered by Vestal was calculated to intimidate rather than to appeal to reason. Although the record contains a concession that the speech was directed at the organizational drive going on (and it seems reasonably clear that the employees so must have understood), there is no specific mention made in it of the charging union or labor organizations generally. An argument couched even in bitter terms, if specific, would be permissible. This employer, instead, chose to implant fear in his audience for a Spenglerian at-

¹⁶ *N. L. R. B. v. American Tube Bending Co., Inc.*, 134 F. (2d) 993 (C. C. A. 2), cert. den. 320 U. S. 768.

mosphere of approaching doom characterized the entire address, culminating in a warning that workers unmindful of their employer's forebodings should seek employment elsewhere.

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 interfere with our employees in the exercise of the right to self-organization, to form labor organizations, and to join or assist American Federation of Hosiery Workers, C. I. O., or any other labor organization, by directly or indirectly warning or threatening our employees with economic reprisal because of their membership in, or other activities on behalf of, the above-named or any other labor organization. All our employees are free to become or remain members of this Union, or any other labor organization.

VAN RAALTE, INC.
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.