

In the Matter of FRUITVALE CANNING COMPANY and FANNY PILLININI,  
AN INDIVIDUAL

*Case No. 20-CA-318.—Decided July 10, 1950*

DECISION AND ORDER

On March 28, 1950, Trial Examiner Isadore Greenberg issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not violated Section 8 (a) (1) and Section 8 (a) (3) of the Act as alleged in the complaint against the Respondent, and recommending that the complaint be dismissed, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief, and the Respondent filed a brief in support of the Intermediate Report.

The Board<sup>1</sup> has reviewed the rulings of the Trial Examiner at the hearing, and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations.

As set forth in the Intermediate Report, on August 12, 1949, this Board directed that a representation election be conducted between two competing labor organizations seeking to represent the Respondent's production and maintenance employees. On August 17, 1949, the Respondent promulgated a rule forbidding its floorladies from engaging in union activity on the Respondent's premises during the pre-election period; it also announced that discharge would be imposed for violation of the rule. Shortly thereafter, Floorlady Pillinini, the complainant herein, who was aware of this rule and the penalty for the breach thereof, asked a nonsupervisory employees whether the latter would care to wear the button of one of the two competing unions. This event took place on the Respondent's premises. When the Respondent learned that the complainant had thus solicited one of its

<sup>1</sup> Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Houston and Styles].

employees, it discharged her for breach of the rule promulgated on August 17.

It is clear that the complainant's conduct constituted an infraction of the Respondent's rule barring union activities by its floorladies during the preelection campaign, and that the Respondent discharged her solely for that reason. It is also true that when the Respondent promulgated, and later enforced, that rule, it acted under the mistaken belief that its floorladies were supervisors. In fact, floorladies, as the Trial Examiner correctly concluded, were not supervisors within the meaning of the Act. Therefore, had there been no rule against union activities by floorladies, and had the Respondent discharged the complainant solely for the reason that she had violated an unstated obligation of neutrality, the Respondent would have assumed the risk of its error, and could not now assert as a defense the fact that it had been mistaken in its belief regarding the complainant's status. But, as noted above, the complainant was not discharged because the Respondent was concerned with her status, but because she had violated the Respondent's rule against solicitation by floorladies. If, therefore, the Respondent was free to promulgate a rule prohibiting solicitation by nonsupervisory employees, it is of no consequence that it promulgated it mistakingly believing that all the individuals encompassed thereby were supervisors.

Like the Trial Examiner, we believe that the then existing collective bargaining agreement privileged the Respondent to promulgate a rule prohibiting union solicitation on the Respondent's premises by nonsupervisory employees.<sup>2</sup> As stated in the Intermediate Report, this Board has previously given its sanction to bargaining contracts which prohibit union activities by nonsupervisory employees on an employer's premises during employees' nonworking hours.<sup>3</sup> The Respondent consequently was privileged to prohibit organizational activities by its floorladies in the manner specified by the rule. As there is nothing in the record to show that the Respondent's rule was discriminatorily promulgated, or applied, so as to favor one of the two competing unions, or to favor antiunion employees as against union adherents, we agree with the Trial Examiner's conclusion that the Respondent did not violate the Act by discharging Floorlady Pillinini.

<sup>2</sup> We find no merit in the General Counsel's contention that the language of the bargaining contract did not authorize the Respondent to apply its rule to the situation presented by the complainant's conduct. As set forth in the Intermediate Report, that contract stated that "... no union campaign or demonstration shall be there [on the Respondent's premises] carried on," and this language, we hold, clearly allowed the prohibition of conduct like that of the complainant's.

<sup>3</sup> *W. T. Smith Lumber Company*, 79 NLRB 606, 616; *May Department Stores Company*, 59 NLRB 976, 981, fn. 17; *North American Aviation, Inc.*, 56 NLRB 959, 962, fn. 2.

## ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint issued herein against the Respondent, Fruitvale Canning Company, Oakland, California, be, and it hereby is, dismissed.

## INTERMEDIATE REPORT

*Mr. Benjamin B. Law*, for the General Counsel.

*Hadsell, Sweet, Ingalls & Murman*, by *Mr. Dan Hadsell*, of San Francisco, Calif., for the Respondent.

*Edises & Treuhaft*, by *Mr. Bertram Edises*, of Oakland, Calif., for the Charging Party.

## STATEMENT OF THE CASE

Upon a first amended charge filed January 17, 1950, by Fanny Pillinini, an individual, herein called the Charging Party, the General Counsel of the National Labor Relations Board, herein called the General Counsel and the Board, respectively, by the Regional Director of the Board for the Twentieth Region (San Francisco, California), issued a complaint dated January 23, 1950, against Fruitvale Canning Company, Oakland, California, herein called the Respondent, alleging that the Respondent had engaged and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act as amended, 61 Stat. 136, herein called the Act. Copies of the first amended charge, complaint, and notice of hearing thereon, were duly served upon the Respondent and the Charging Party.

With respect to unfair labor practices, the complaint alleges in substance that during August 1949, the Respondent applied a rule against union solicitation in its plant in an unequal and discriminatory manner in order to discourage employees against membership in and support of Food, Tobacco, Agricultural and Allied Workers of America (herein called the FTA), and that on or about August 26, 1949, the Respondent discharged Fanny Pillinini because of her membership in and activities on behalf of the FTA.

In its answer the Respondent denies the aforesaid allegations of the complaint.

Pursuant to notice, a hearing was held at San Francisco, California, on February 28 and March 1, 1950, before the undersigned Trial Examiner. The General Counsel, the Respondent, and the Charging Party were represented by counsel, and full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the end of the hearing the parties waived the privilege of engaging in oral argument before the Trial Examiner. Opportunity was offered all the parties to submit briefs and proposed findings of fact and conclusions of law. Briefs have been received from counsel for the General Counsel and the Respondent.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

## FINDINGS OF FACT

## I. THE BUSINESS OF THE RESPONDENT

The Respondent, Fruitvale Canning Company, is a California corporation having its principal office and a plant in Oakland, California, where it engages in the business of canning fruits. The Respondent annually sells canned fruit which was processed by it at its aforesaid plant, valued at more than a million dollars, approximately 90 percent of which is sold and shipped to points in the United States outside the State of California, and to foreign countries. The aforesaid data as to the normal annual sales made by the Respondent apply to its operations for the year 1949.

The Respondent does not deny, and I find, that it is engaged in interstate commerce within the meaning of the Act.

## II. THE ORGANIZATION INVOLVED

Food, Tobacco, Agricultural and Allied Workers of America is a labor organization admitting to membership employees of the Respondent at its Oakland plant.

## III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background events*

It is undisputed that during the period encompassed by the complaint there was in effect a collective bargaining contract between the Respondent and FTA which included the following clause:

Section 12 (b)—No Union meetings or meetings of Union members shall be held and no union literature, written or printed, shall be distributed on the Company's premises; no union displays, banners or advertisements shall be placed or carried upon the Company's premises without first receiving the permission of the Company; and no union campaign or demonstration shall be there carried on. This paragraph applies to all unions.

On August 12, 1949, upon petition of an affiliate of the American Federation of Labor, the Board issued a Decision and Direction of Election in which it directed that an election be held to determine whether the Respondent's employees wished to be represented for purposes of collective bargaining by the FTA, the American Federation of Labor affiliate, or by neither.<sup>1</sup> Such an election was, accordingly, conducted on September 7, 1949.

It is undisputed that at the period above discussed, the Respondent's foreladies and floorladies were freely engaging in union activities in the plant. Many, if not most, of these employees customarily wore union buttons on their outer clothing while at work. Admittedly, so far as the Respondent had knowledge, Floorlady Fanny Pillinini was the only employee in such a category who displayed the insignia of the FTA; all the other foreladies and floorladies who wore any union button, wore A. F. of L. buttons.<sup>2</sup>

On August 17, 1949, Personnel Manager Mabon of the Respondent's plant addressed meetings of the foreladies and floorladies employed in the plant,<sup>3</sup>

<sup>1</sup> *Fruitvale Canning Company*, 85 NLRB 684.

<sup>2</sup> Based on the testimony of Mahon, Forelady Thomas, and Night Foreman Luengo.

<sup>3</sup> Separate meetings were held on the aforesaid date for the day and night shifts. Floorlady Pillinini, whose subsequent discharge is here in issue, was employed on the night shift, and therefore attended the meeting held for the employees of that shift.

during which he told the assembled employees that the Respondent considered them to be supervisors, called their attention to the forthcoming election, and warned them that they must remain impartial, must desist from activity on behalf of either of the competing unions, and that any infraction of this rule would be punished by discharge.<sup>4</sup>

No mention was made at the August 17 meetings of the wearing of union buttons by foreladies and floorladies, and, as the record indicates, they continued to wear them for a day or so thereafter.<sup>5</sup> On the day following these meetings, the question was raised with Personnel Manager Mabon by one of the affected employees as to whether or not they could continue to wear union buttons. Mabon thereupon discussed the matter with Superintendent Angus, decided that the wearing of buttons by foreladies and floorladies should be prohibited, and within a day or two issued instructions to that effect to the employees involved. Thereafter, to all intents and purposes, foreladies and floorladies ceased wearing union buttons in the plant.<sup>6</sup> So far as the record shows, no forelady or floor-

<sup>4</sup> The above findings are based on the composite testimony of all the witnesses who testified with respect to the meetings, and on a memorandum which is in evidence, made by Mabon at about the time it took place. The evidence pertaining to this subject contains no conflict of any significance, except, perhaps, the variance between the testimony of Pillinini and Mabon regarding the date of the meetings. Pillinini testified that it was held on August 19, 1949; Mabon, that it took place on the 17th. Since Mabon's recollection of the date is based on his written memorandum, I consider his testimony to be more accurate and accept August 17 as the correct date.

<sup>5</sup> All the witnesses except Silva were in agreement that the wearing of union buttons was not mentioned at the meetings of foreladies and floorladies. Silva's testimony was generally vague, confused, and in conflict with that of all other witnesses (on both sides) as to various details. No reliance is therefore placed on it.

<sup>6</sup> Mabon testified that after he had issued the aforesaid instructions, he did not observe any foreladies or floorladies wearing union buttons, and that he took pains to check this matter on his usual walks through the plant. He further testified that following the discharge of Pillinini, the FTA made the charge that Forelady Thomas was continuing to wear an A. F. of L. button and to carry on pro-A. F. of L. activities; that he (Mabon) checked on this charge; and that he found it to be untrue. Forelady Thomas testified that she discontinued wearing her A. F. of L. button after receiving Mabon's instructions, and that so far as she observed, so did all the other foreladies and floorladies in her department. She also testified that she carried on no union activities after the August 17 meeting. Pillinini testified that she continued to wear her FTA button up to the time of her discharge (August 26) and that after the meeting of August 17 "the rest of the floorladies and foreladies kept right on wearing their A. F. of L. buttons." I credit the testimony of Mabon and Thomas, and find that after Mabon's instructions to that effect were issued, all foreladies and floorladies, so far as the Respondent observed, discontinued their wearing of union buttons. It is to be noted that aside from Pillinini's testimony that *she* continued to wear an FTA button until the date of her discharge, Pillinini's testimony is not necessarily in conflict with that of Mabon and Thomas. It is quite likely that Pillinini did see A. F. of L. buttons worn by other floorladies and foreladies for a day or two after the August 17 meeting, since the record shows that the rule prohibiting such conduct was not announced until 1 or 2 days following the meeting. In view of the credible testimony of the Respondent's witnesses, I conclude, however, that such wearing of buttons by foreladies and floorladies did not, to any observable extent, continue after the prohibition was announced. Mabon testified that he had not observed Pillinini wearing her union button after instructions to the contrary were issued, and that no report was made to him that any floorlady had violated his instructions in that regard. I credit Mabon's aforesaid testimony. As I have noted above, I do not consider Silva's testimony reliable. I therefore disregard her testimony to the effect that she had reported to the Respondent that Pillinini was continuing to wear her FTA button, and that this matter was discussed as part of the basis for Pillinini's subsequent discharge. All the other evidence in the record is to the contrary.

lady except Pillinini engaged in any union activity in the plant subsequent to the meetings of August 17.<sup>7</sup>

### B. *The discharge of Fanny Pillinini*

During the period here in question, until her discharge on August 26, 1949, Pillinini was employed as a floorlady in the Respondent's plant. She became affiliated with the FTA in July or August 1949, and after about August 15, 1949, while at work, wore a button denoting her adherence to that organization.

At some time after the meetings of August 17, at which the prohibition against union activities on the part of foreladies and floorladies was announced by the Respondent, Pillinini admittedly approached employee Garlock in the plant, during either a supper or rest period, and asked Garlock whether the latter would be willing to wear an FTA button.<sup>8</sup> Garlock, who favored the A. F. of L., declined to do so.

On August 26, Pillinini was summoned to the office of Personnel Manager Mabon, where in the presence of several other people, including Garlock, she was asked by Mabon whether the incident above described had taken place. Pillinini admitted that it had. Pillinini was then sent back to work. Shortly thereafter, on the same day, she was recalled to Mabon's office and informed that in view of her admission that she had asked Garlock to wear a union button, she was discharged.

Pillinini thereafter filed a grievance with the Respondent against her discharge, which was acted upon unfavorably by the Respondent.<sup>9</sup>

<sup>7</sup> Pillinini testified that at a grievance meeting held to discuss her subsequent discharge, one of her union representatives handed Personnel Manager Mabon a list of A. F. of L. adherents among the floorladies who were carrying on activities in the plant on behalf of that union, and that Mabon promised to investigate the matter. Mabon denied that he had been given such a list, but testified that the FTA representative had orally stated that Forelady Thomas continued to carry on A. F. of L. activity in the plant after such activity was prohibited; he further testified that an investigation of that charge made by him failed to substantiate its truth. In view of the complete lack of evidence supporting the allegation that pro-A. F. of L. activities were continued in the plant after August 17 by foreladies and floorladies, I find that no such activities were thereafter continued, and that the Respondent reasonably believed that such conduct by foreladies and floorladies had ceased.

<sup>8</sup> Whether Pillinini's solicitation of Garlock to wear an FTA button occurred before or after the August 17 meetings is not free of some doubt. Pillinini testified that the episode occurred "somewhere along the 18th of August." When directly questioned whether it took place before or after the meeting of alleged supervisors, she testified that she could not recall the sequence of events. However, at another point in her testimony, when relating a discussion which took place on August 26, when she was questioned about the Garlock incident by the Respondent, she asserted that she "did say that it happened after a meeting of all floor ladies—I didn't say anything in regard to when I discussed that with Janet [Garlock] at all, because I didn't remember the exact date. It was several days prior to this meeting, the 26th of August." Though it is not entirely clear, I interpret the foregoing testimony as saying that though Pillinini could not give the Respondent the exact date of the Garlock incident, she did say (on August 26) that it had occurred after the meeting of floorladies, and within "several days" prior to August 26. Garlock testified that she started to work for the Respondent on August 16, 1949, and that Pillinini asked her to wear an FTA button about "four or five, six days, something like that," later. On the basis of the record as a whole, I conclude and find that the incident in question occurred after the meeting of foreladies and floorladies which was held on August 17.

<sup>9</sup> Although the grievance form filed on Pillinini's behalf states on its face that she was discharged "for wearing a CIO button," Pillinini disclaims making any such statement, and the record as a whole makes it plain that her wearing a union button was at no time advanced by the Respondent as a reason for her discharge.

C. *The contentions of the parties, and concluding findings with respect thereto*

The General Counsel contends that the discharge of Pillinini constituted an unfair labor practice because the union activity for which she was discharged (namely, the solicitation of Garlock to wear an FTA button) took place outside the working hours of both employees involved, although on the Respondent's premises. In support of this contention, he cites the rule laid down by the Board in *Peyton Packing Company, Inc.*, 49 NLRB 828. In sum, that principle, which has been sustained by the courts, provides that "time outside working hours, whether before or after work, or during luncheon or rest periods, is an employee's time to use as he wishes without unreasonable restraint, although the employee is on company property. It is therefore not within the province of an employer to promulgate and enforce a rule prohibiting union solicitation by an employee outside of working hours, although on company property."

There is no doubt that the act for which Pillinini was discharged constituted a form of "union solicitation," nor is it disputed that it took place outside of the working hours of both Pillinini and Garlock.

The Respondent advances two defenses. First, that as a floorlady, Pillinini was employed in a supervisory capacity, and, consequently, the Respondent was privileged to enjoin her, in order to protect its own neutrality as between the FTA and the A. F. of L., from engaging in activities on behalf of either rival union. Second, that Section 12 (b) of the contract between the FTA and the Respondent constituted an agreement whereby the FTA waived the right of its members employed by the Respondent to carry on union activities *at any time* on the premises of the employer.

With respect to the duties and powers of the Respondent's floorladies generally, and of Pillinini specifically, the record is substantially free from dispute. At the peak of the canning season in 1949, the Respondent employed approximately 1,600 employees, of whom roughly 900 were women. The women and men employed by the Respondent were assigned to different jobs, and were supervised by separate staffs.

As for the women, each shift was under the general supervision of a head forelady, under whom were employed about 6 department heads, called foreladies. Within each department, the production employees were divided into crews of approximately 6 to 10, to each of which was assigned a crew leader, called a floorlady. The foreladies and floorladies wore identical uniforms, different from the work clothing worn by the production employees.

Foreladies, whose supervisory status is not in dispute, can and do recommend the discharge of employees, and have the power to adjust minor grievances in their departments. Employees are assigned to the department in which they are to work by the head forelady, and to their particular crew by the forelady of the department.

Floorladies have the duty of overseeing the work of the employees in their crew, and do so by moving about from work station to work station of the crew members, watching to see that each operation is properly performed. For example, Pillinini, who was a floorlady on the peach-preparation line, was assigned to a crew of about 10 employees. Her primary duty was to see to it that these employees placed the peaches properly on the knives of the machines for slicing, to correct any errors being made in this respect, and to instruct newly hired employees in their duties. The number of operations performed daily by each employee was recorded by a meter attached to her machine. It was the floorlady's duty to stand near the machines at the end of each work period until all employees

had left, and to see to it that no employee tampered with these meters so as to falsify the record of piecework production. In addition, at the end of each shift, the floorlady recorded each employee's production for that day on individual cards. The floorlady also acted as a relief operator for those employees in her crew who had to leave the line occasionally for one purpose or another.

It is undisputed that floorladies did not have authority to transfer or discipline employees. They were not consulted as to changes in rates of pay (which, in fact, were determined by the collective bargaining contract) nor, in the ordinary course of business, as to the hire or discharge of employees. Admittedly, if an employee in a given crew proved to be recalcitrant with respect to following the instructions passed on to her by her floorlady, the latter would so inform the forelady, who, after investigation, might recommend the employee's discharge to the personnel office. In the case of a machine breakdown, or similar trouble, the matter would be reported by the floorlady to her forelady.

It is quite plain from the foregoing that floorladies in the Respondent's plant, during the period here in question, had no authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them or to adjust their grievances.<sup>10</sup> Nor did the floorladies have authority effectively to recommend any of the above actions; the foreladies were the lowest level of employees with authority effectively to make such recommendations.

I conclude and find that floorladies in the Respondent's plant, including Floorlady Fanny Pillinini, were not supervisory employees within the meaning of the Act.<sup>11</sup>

We come now to the second defense raised by the Respondent, namely, that Section 12 (b) of the contract between it and the FTA (which has been set forth above), gave the Respondent the right to prohibit union activity in its plant at any time.

The Board has held that notwithstanding the general principle that an employer may not prohibit union activities by employees on company premises during such nonworking time as rest or lunch periods, a union can "effectively bargain away the employees' right to engage in self-organizational activities on the employer's premises during nonworking hours." *May Department Stores Company*, 59 NLRB 976, 981, footnote 17; cf. *North American Aviation, Inc.*, 56 NLRB 959.

I am persuaded that the aforesaid clause in the contract between the Respondent and the collective bargaining representative of its production and maintenance employees, did have the effect of bargaining away such employees' rights to carry on union activities on the Respondent's premises, even during their "free time," such as luncheon or rest periods. The crucial portion of the contract

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<sup>10</sup> Quite clearly, such direction over other employees as was exerted by the floorladies was simply to see to it that the employees followed instructions which were in turn laid down for the floorladies. The latter had no area of discretion within which they could reasonably be said to exercise independent judgment; on the contrary, their authority over the employees in their crews was of a routine nature, and they performed certain clerical duties in connection with their work.

<sup>11</sup> In two preceding representation proceedings, the Board included the Respondent's floorladies in units of those employees of the Respondent held eligible to vote in elections, and in one of these, specifically held that this category of employees did not occupy supervisory status. In the latter case, floorladies are referred to as "assistant foreladies," but the record herein establishes that the terms are synonymous, and refer to the same group of employees. *Fruitvale Canning Company*, Case No. 20-RC-16, 78 NLRB 152, at p. 154, footnote 11; *Fruitvale Canning Company*, Case No. 20-RC-586; 85 NLRB 684. There has been no change in the duties and powers of floorladies since the time of these decisions.

provides that "no union campaign or demonstration shall be there [i. e., on the Company's premises] carried on." At first glance this clause might be taken to prohibit only a demonstrative form of union campaigning, or one involving concerted activity by groups of the Respondent's employees. Reasonably construed, however, the language is broad enough to contemplate such a union "campaign" as customarily precedes the holding of an election for the determination of a collective bargaining representative. And in the context of this case, that is precisely the kind of activity which the Respondent enjoined on the part of its foreladies and floorladies. Moreover, I conclude and find, the act for which Pillinini was discharged, which was, during the preelection period, soliciting another employee to wear the button of one of the contending unions, constituted part and parcel of such union "campaigning."

It follows, therefore, and I find, that the collective bargaining contract then in effect conferred the right on the Respondent to prohibit the kind of solicitation in which Pillinini admittedly engaged, at any time on its premises.

The question arises whether the Respondent effectively made use of that right by limiting the prohibition, as it did, to union activity on the part of its foreladies and floorladies. There is no doubt that the Respondent based this action upon its belief, which I have hereinabove found to be mistaken, that its floorladies were, like its foreladies, supervisory employees. It did not prohibit union activities generally by the rank-and-file employees.

I am not persuaded that the Respondent, by prohibiting only a certain category of its nonsupervisory employees, its floorladies, from engaging in the preelection campaign, thereby committed an unfair labor practice, or waived its right, under the contract, to prohibit such activities by employees on its premises. The prohibition announced by the Respondent, limited though it was, was not discriminatory within the meaning of the Act. Participation in the preelection campaign was forbidden both as to followers of the A. F. of L. and of the FTA among the foreladies and floorladies. And there is no evidence in the record that despite the impartiality of the rule as announced, it was enforced in such a manner as to assist the A. F. of L. as against the FTA. There is no showing that any activities on behalf of the A. F. of L., after the rule was announced, were carried on by foreladies or floorladies in the plant; the act of solicitation by Pillinini for the FTA is the only instance of union activity by a forelady or floorlady established by the record as occurring after August 17. Under these circumstances, the evidence fails to support the allegation of the complaint that the Respondent "applied a rule against union solicitation on its plant premises in an unequal and discriminatory way in order to discourage employees against membership in and support of the FTA."

Indeed, as the Respondent points out in its brief, the evidence is quite to the contrary. Since, so far as appears, Pillinini was the sole FTA adherent among the foreladies and floorladies, while all the others were supporters of the A. F. of L., the Respondent's rule against union activity by these employees necessarily bore more heavily against the A. F. of L. than against the FTA. And if the Respondent had permitted Pillinini's infraction of the rule to go unpunished, it would hardly have been in a position to enforce it against the A. F. of L. foreladies and floorladies.

I therefore conclude and find that neither by its promulgation of the rule against union activities by the foreladies and floorladies, nor by its enforcement of the rule through the discharge of Pillinini, did the Respondent commit unfair

labor practices. I shall, consequently, recommend that the complaint be dismissed in its entirety.<sup>12</sup>

On the basis of the foregoing and upon the entire record in the case, I arrive at the following:

#### CONCLUSIONS OF LAW

1. The operations of the Respondent constitute trade, traffic, and commerce among the several States, within the meaning of Section 2 (6) and (7) of the Act.

2. Food, Tobacco, Agricultural and Allied Workers of America is a labor organization within the meaning of Section 2 (5) of the Act.

3. The floorladies employed at the Respondent's plant during the canning season of 1949, including Floorlady Fanny Pillinini, were not supervisors within the meaning of the Act.

4. The Respondent has engaged in none of the unfair labor practices alleged in the complaint.

#### RECOMMENDATIONS

It is recommended that the complaint be dismissed in its entirety.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board any party may, within twenty (20) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.45 of said Rules and Regulations, file with the Board, Washington 25, D. C., an original and six 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 an original and six copies of a brief in support thereof; and any party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other parties. Proof of service on the other parties of all papers filed with the Board, shall be promptly made as required by Section 203.85. Statements of exceptions and briefs shall designate by precise citation the portions of the record relied upon and shall be legibly printed or mimeographed, and if mimeographed, shall be double spaced. As further provided in said Section 203.46, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

<sup>12</sup> I find no merit in the General Counsel's contention that the Respondent's discharge of Pillinini for engaging in union activity *after* such activity was prohibited, was discriminatory because Foreladies Thomas and Silva had engaged with impunity in such activity during the period *before* the prohibition was announced. The contract provision which I have found permits the Respondent to announce and enforce such a rule, does not *require* it to do so. The failure of the Respondent to exercise that right when conditions in the plant did not, in its judgment, require such a rule, did not have the effect of nullifying the contract provision, so as to prevent the Respondent from invoking it when the preelection campaign, and the attendant intensification of union campaigning in the plant, did make such a rule desirable. Nor does it seem to me decisive that the contract provision in question was not referred to at the time of Pillinini's discharge. Concededly, at the time of the discharge, the Respondent was acting on the erroneous assumption that floorladies were supervisors. What does seem to be decisive is that the rule prohibiting floorladies from engaging in the election campaign while on plant premises was promulgated for nondiscriminatory reasons, was impartially enforced, and was permitted by the Respondent's contract with the FTA.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations, and recommended order herein contained shall, as provided in Section 203.48 of said Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections and exceptions thereto shall be deemed waived for all purposes.

Dated at Washington, D. C., this 28th day of March 1950.

ISADORE GREENBERG,  
*Trial Examiner.*