

In the Matter of WILLIAM SPENCER, DOING BUSINESS AS ALLIANCE RUBBER COMPANY and UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, INTERNATIONAL UNION, C. I. O.

*Case No. 8-C-2006.—Decided March 3, 1948*

*Mr. John A. Hull, Jr.*, for the Board.

*Mr. Peter DiLeone*, of Cleveland, Ohio, and *Mr. J. B. Blumenstiel*, of Alliance, Ohio, for the respondent.

*Mr. G. P. Maher*, of Akron, Ohio, for the Union.

## DECISION

AND

## ORDER

On April 25, 1947, Trial Examiner A. Bruce Hunt issued his Intermediate Report in the above-entitled proceeding, finding that the respondent, William Spencer, doing business as Alliance Rubber Company, had engaged in and was engaging in certain unfair labor practices, and recommending that he cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the respondent filed exceptions and a supporting brief.

The Board has considered the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief filed by the respondent, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the additions and modifications set forth below.<sup>1</sup>

The record shows that, shortly after the Union appeared in the plant in June 1946, William Spencer, the principal owner and manager of the business, delivered a speech to all the employees in the plant. Although the precise language used is not in evidence, the record reveals, as the Trial Examiner substantially found, that Spen-

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<sup>1</sup> The provisions of Section 8 (1) of the National Labor Relations Act, which the Trial Examiner herein found were violated, are continued in Section 8 (a) (1) of the Act as amended by the Labor Management Relations Act, 1947.

cer's remarks were calculated to impress the employees with the fact that the Union was an unnecessary "outside influence" which he preferred not to have in his plant. At the end of his speech, Spencer polled the employees on the issue of whether or not he should "step out completely and let the business go on its own power."

On these facts, we agree with the Trial Examiner that respondent's total conduct in this respect was coercive and violative of the provisions of Section 8 (1) of the Act. In our opinion, the poll and Spencer's remarks immediately preceding it could only convey one meaning of the employees, that is, that in the event they chose the union they would be faced with the cessation of operations in the plant, and the consequent loss of employment. Although it is true that an employer may cease operating his business at will, he may not threaten to do so in order to coerce his employees in their decisions regarding union organization. The choice as to whether employees wish to engage in collective bargaining is one for the employees alone; and an employer may not use his economic power to affect the employees' exercise of their independent judgment with respect thereto. As the United States Circuit Court of Appeals for the Sixth Circuit has stated:

. . . a threat of prediction that [a plant] might close if unionized, must necessarily affect the judgment of its employees and interfere with their freedom of choice.<sup>2</sup>

#### THE REMEDY

Because of the respondent's unlawful conduct in threatening its employees with economic reprisals should they join the union, and in interrogating them with respect to their union activities, we are convinced and find that the unfair labor practices found are persuasively related to other unfair labor practices proscribed by the Act, and that a danger of their commission in the future is to be anticipated from the course of the respondent's conduct in the past. The preventive purpose of the Act will be thwarted unless our order is coextensive with the threat. In order, therefore, to make effective the interdependent guarantees of Section 7 to prevent a recurrence of unfair labor practices, and therefore minimize strife which burdens and obstructs commerce and thus effectuate the policies of the Act, we shall order respondent to cease and desist from not only engaging in the unfair labor practices found, but in any other manner infringing upon the rights guaranteed in Section 7 of the Act.

<sup>2</sup> *Atlas Underwear Company v N. L. R. B.*, 116 F (2d) 1020, 1023 (C. C. A. 6). See also *N. L. R. B. v Asheville Hosiery Company*, 108 F (2d) 288, 291, 292 (C. C. A. 4), *N. L. R. B. v Blair Quarries, Inc.*, 152 F (2d) 25, 26 (C. C. A. 4).

## ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the respondent, William Spencer, doing business as Alliance Rubber Company, Alliance, Ohio, and his agents, successors, and assigns shall:

1. Cease and desist from:

(a) Threatening to increase the work load of employees should they join the union; threatening to discharge employees who join labor organizations; threatening to move the operations of the plant to another State should the employees join a labor organization; asking the employees to vote upon the question of whether they prefer to forego their rights under the Act, in order to insure the continued operation of the plant;

(b) In any other manner interfering with, restraining, or coercing his employees in the exercise of the right to self-organization, to form labor organizations, to join or assist United Rubber, Cork, Linoleum & Plastic Workers of America, International Union, affiliated with the Congress of Industrial Organizations, or any other labor organization, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

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

(a) Post at his plant in Alliance, Ohio, copies of the notice attached to the Intermediate Report and marked "Appendix A."<sup>3</sup> Copies of the notice, to be furnished by the Regional Director for the Eighth Region, shall, after being duly signed by the respondent or his representatives, be posted by the respondent immediately upon receipt thereof, and maintained by him for at least 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 Eighth Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

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<sup>3</sup> Said notice, however, shall be, and it hereby is, amended by striking from the first paragraph thereof the words "The recommendations of a Trial Examiner" and substituting in lieu thereof the words "A Decision and Order" and by striking from the last paragraph thereof the word "like" and substituting in lieu thereof the word "other" In the event this Order is enforced by decree of a Circuit Court of Appeals there shall be inserted before the words "A Decision and Order," the words, "A decree of the United States Circuit Court of Appeals enforcing"

## INTERMEDIATE REPORT

Mr. John A. Hull, Jr., for the Board

Mr. Peter DiLeone, of Cleveland, Ohio, and Mr. J. B. Blumenstiel, of Alliance Ohio, for the respondent.

Mr. G. P. Maher, of Akron, Ohio, for the Union.

## STATEMENT OF THE CASE

Upon an amended charge duly filed by United Rubber, Cork, Linoleum & Plastic Workers of America, International Union, affiliated with the Congress of Industrial Organizations, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Eighth Region (Cleveland, Ohio), issued its complaint dated March 14, 1947, against William Spencer, an individual doing business as Alliance Rubber Company, Alliance, Ohio, 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, together with 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 by deprecating the Union and labor organizations in general, by urging, persuading, and ordering the employees to withdraw their union membership and to discontinue their union activity, by threatening to close the plant and to move his operations to the State of Arkansas because of the employees' union membership and activities, by threatening to lay off the employees because of their union membership and activities, by threatening to reduce wage rates and to withdraw other economic benefits and privileges previously enjoyed, by threatening to increase production quotas if the employees continued their union activities, by questioning and polling the employees as to their union membership and activities, and by requiring the employees to listen to an address vilifying and deprecating the Union, the respondent interfered with, restrained, and coerced, and is interfering with, restraining, and coercing his employees in the exercise of the rights guaranteed in Section 7 of the Act.

On March 19, 1947, the respondent filed his answer, admitting certain allegations of the complaint concerning his business activities, but denying that he had engaged in unfair labor practices.

Pursuant to notice, a hearing was held in Alliance, Ohio, on March 31, 1947, before the undersigned, the Trial Examiner designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel, and the Union by a representative, and all 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. At the close of the Board's case, the respondent moved that the complaint be dismissed upon the ground that the evidence of the Board did not establish a *prima facie* case. This motion was denied by the undersigned. At the close of the hearing, the respondent again moved that the complaint be dismissed, and this motion was taken under advisement by the undersigned. It is hereby denied. Counsel for the Board moved to conform the pleadings to the proof as to formal matters, and this motion was granted without objection. The parties did not avail themselves of an opportunity to argue orally before the undersigned after the presentation of all the evidence, but, pursuant to leave granted at the hearing, on April 14, 1947, the respondent filed a brief with the undersigned.

Upon the entire record in the case, and from his observation of the witnesses, the undersigned makes the following :

#### FINDINGS OF FACT

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

The respondent, William Spencer, is an individual doing business as Alliance Rubber Company. He operates a plant at Alliance, Ohio, where he is engaged in the manufacture of rubber bands. During the year 1946, the respondent purchased raw materials, principally rubber, valued in excess of \$75,000, of which more than 70 percent was shipped to the plant from points outside the State of Ohio. During the same year, the respondent manufactured finished products valued in excess of \$250,000, of which more than 90 percent was shipped to points outside the State of Ohio. The respondent concedes that he is engaged in commerce within the meaning of the Act.

##### II THE ORGANIZATION INVOLVED

United Rubber, Cork, Linoleum & Plastic Workers of America, International Union, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the respondent

##### III. THE UNFAIR LABOR PRACTICES

###### A *The chronology of events*

On, or about June 20, 1946, the Union commenced a campaign to organize the respondent's employees. On June 27 and within the next several days, Floyd Bourne, a supervisory employee, made certain remarks to various employees, and on July 10 the respondent, Spencer, made an address to the employees. The problems presented here are to determine what Bourne and Spencer said, whether their remarks were in violation of the Act and, if so, whether the respondent is bound by the remarks of Bourne. The respondent concedes, of course, that he is bound by his own statements to the employees.

During June 1946, the respondent operated three shifts. On June 27, Bourne, whose duties and position are discussed below, called to a small office in the plant the 10 to 12 women on the second shift and talked to them about the Union. They ceased work to listen to his remarks and were compensated for the time so spent. Bourne told the employees that he had heard of the organizing activity and that such activity would be unsuccessful "so long as he had anything to do with it." He stated also that, if the activity were successful, he would "ride" the employees and work them "to death," that the employees who joined the Union would be discharged and replaced by individuals who would work for a lesser wage, or that the plant would be moved to Arkansas, where the respondent maintains executive offices and engages in certain experimental work. He suggested that, if the employees desire to organize, they should consider the formation of a "shop union." His language, at times, was profane.

Within several days after the above event, Bourne called the same employees to the office and conferred with them individually. He polled them as to their attitude toward the Union and made written notes on their responses. Bourne,

a witness for the respondent, testified that his conduct on this occasion was to ascertain whether the employees had applied for membership in the Union.<sup>1</sup>

At the time of Bourne's acts above described, and for approximately 2 months prior thereto, the respondent, Spencer, was in Arkansas. He returned to the plant about July 2. His arrival there followed within a day or two the receipt by the respondent's officials of a letter from the Board's Regional Office informing them that charges had been filed by the Union. On July 10, Spencer addressed the employees, who were assembled in the plant to hear him and who were paid their regular wages for the time so spent. Although a shorthand reporter was present and recorded Spencer's remarks, the respondent's counsel stated at the hearing that there was no transcript of the address, and it is necessary, therefore, to consider the testimony.

According to Harold Newshutz, an employee who testified for the Board, Spencer commenced his address by mentioning the Act and the fact that it contains certain penal provisions in Section 12, remarking that "if he went to jail, why, he hoped one of the girls would bring him some coffee . . ." Newshutz testified further that Spencer told the employees that during the depression he had endeavored "to keep the factory going" in order that the employees might not be on "the bread lines," that he would "put forth his best efforts to build the business up," that he had made provisions in his will so that the employees would be protected upon his death, that he had been a member of several labor organizations, that he "starts to rebel" when he is told "what to do" by someone who does not keep as many notes on the business as he keeps, and that he asked for a vote by the employees at the end of the address. Newshutz understood from Spencer's address that Spencer meant to inform the employees that the business had progressed well in the past and that, in the absence of "outside interference" in the form of a labor organization, similar progress could be made in the future.

Spencer's testimony varies from that of Newshutz. He testified that he made a few preliminary remarks to the employees, expressing pleasure at having returned to the plant, that he spoke of his interest in their welfare and of their cooperation with him, of the difficulties in securing raw materials and producing

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<sup>1</sup> The findings respecting the remarks of Bourne to the employees as a group are based upon the reliable testimony of witnesses for the Board. Bourne's testimony is in conflict therewith, but is unreliable and not of such probative value as to warrant rejection of the Board's evidence. Bourne testified that the employees regarded him as an "advisory committee or something," that a number of them had come to him for advice about the Union, that he had informed them that he was without "authority" and could not tell them what to do, and that he had told them also that he had gained nothing from his own membership in labor organizations on earlier occasions. Bourne testified also that the employees were spending so much time in discussing the Union that he believed a meeting should be called so that they could "have it out, and go back to work." Having called the meeting for this purpose, according to Bourne, he tried to explain "the good points" and "the bad points" to the employees. Bourne did not relate what he told the employees in that connection, however, but he denied that he told them to resign from the Union, or not to join it, and that he told them that the operations would be moved to Arkansas, that those who joined the Union would be laid off or given wage reductions, and that their work loads would be increased. The undersigned is unable to accept these denials. In view of Bourne's failure to relate his own version of the remarks to the employees, his admission that he did not regard the Union with favor, and the fact that he thereafter polled the employees to ascertain their attitude, it is clear that he was not a disinterested supervisor who sought only to give the employees "the good points" and "the bad points." The undersigned must reject Bourne's testimony in favor of that given by the Board's witnesses, who created trustworthy and credible appearances.

a satisfactory product, of the national debt, and of "outside influences" <sup>2</sup> Spencer testified also that he made reference to the various written notes which he had made in connection with the business and "for the benefit of the employees," and that he told them of his prior connections with labor organizations. He acknowledged that he "asked for a vote of confidence," the employees to vote by a show of hands upon the question of whether they wished him "to go ahead and manage the situation"

Another witness who testified for the respondent concerning Spencer's address is Joseph J. Kunes, the personnel director, purchasing agent, and administrative assistant to Spencer. Kunes testified in general about the remarks and, in particular, that Spencer's reference to his will was a statement that he had made provisions for the continued operation of the business after his death "so that somebody else couldn't move in and perhaps take over and throw them [the employees] out of jobs," that Spencer made a reference to his union membership in days past, that he may have "said he hoped he wasn't violating the Act by talking to employees," and that there was a "vote of confidence" after Spencer "asked if they wanted him to step out completely and let the business go along on its own power, or whether they wanted him to remain at the helm"

Upon all the evidence, and particularly upon that detailed above, the undersigned finds that Spencer talked to the employees about the operation of the business and the difficulties incident thereto, that he spoke of "outside influences," saying that he "starts to rebel" when he is told "what to do" by someone who does not make as many notes on the business as he makes himself, and that the reference to "outside influences" clearly was a reference to the organization of the employees then under way. The undersigned finds further that Spencer, the sole owner and operator of the business, expressed to the employees an interest in their welfare, saying that he had provided for such interest to be manifested in the form of job security even after his death, and that he asked the employees to vote upon the question of whether they wished him to step aside as the operator of the business.

### B *Conclusions*

As stated above, the first issue presented is whether the remarks of Bourne and Spencer are proscribed by the Act. In the instance of Bourne, the answer is manifest. His remarks to the employees as a group were patently anti-union and coercive, and the law is so well settled and voluminous as not to require citation of authority. Moreover, his questioning and polling of employees individually as to their attitude toward the Union is a type of conduct by employers which the Board and the Courts have never condoned. Therefore, the real question as respects Bourne is whether the respondent is chargeable with his conduct, and a determination of this issue requires a discussion of (1) Bourne's various duties and responsibilities at the plant, and (2) whether there is merit in the respondent's contention that Bourne was disciplined for said conduct so that the respondent has purged himself of any unfair labor practices which Bourne may have committed.

<sup>2</sup> Spencer testified, however, that in speaking of "outside influences" he had in mind that certain trade secrets and articles of the business had been stolen, that he had experienced domestic difficulties, that certain persons favored the operation of the business by his wife, and that the nation might be "captured" by "Joe Stalin." Spencer acknowledged that he did not inform the employees of what he had in mind in referring to "outside influences" since, as he testified, he "felt" that because of past remarks the "older employees" would understand him. There were present, however, "very many new employees"

The respondent asserts that at the time of Bourne's conduct he was a working foreman in charge of the "mill room," a division within the plant, that he had no supervisory authority over the girls to whom he spoke, and that he was without authority to hire or discharge or to recommend such action. For a period during the war the plant was closed, but it was reopened during August 1944. During the following October, Bourne was employed. He was given complete supervision of production operations and he exercised the authority to hire. About 13 or 14 months later, in late 1945, certain foremen were employed, and they assumed some of the duties which had been performed by Bourne. During April 1946, about 2 months before the conduct of Bourne considered herein, the respondent employed Kunes as personnel director, purchasing agent, and administrative assistant to Spencer. At that time, according to Spencer, Bourne became a working foreman in the mill room.

Kunes testified that Bourne was a working foreman in the mill room when he, Kunes, was employed, and that he assumed "full authority over hiring and firing, layoffs, and everything pertaining to personnel." His testimony as to his duties is supported by that of Spencer, who testified that Kunes was "Personnel director and in charge of employees." It appears, therefore, that Kunes assumed certain personnel duties formerly handled by Bourne, but it does not appear that Kunes relieved Bourne of the latter's production duties. Indeed, Newshutz, a witness who testified credibly for the Board, testified that he was employed subsequent to the employment of Kunes, that at an indefinite time after his employment a "supervision chart" bearing the approval of Spencer was placed upon the bulletin board, that the chart remained posted for a period of at least 4 weeks, that the name of Bourne appeared on the chart as "Works manager," and that the name of Kunes appeared thereon with authority over the office principally. The respondent offered no evidence to establish that Newshutz's recollection of the chart was in error, nor did the respondent produce the chart itself, but Kunes testified that on July 19, subsequent to the return of Spencer from Arkansas, a notice was placed on the bulletin board to the effect that Spencer was assuming charge of operations and that the "chart" was thereby canceled. In addition to the credible and uncontradicted evidence that the respondent held out Bourne to the employees as "Works manager" during the period in question, there is the reliable evidence of witnesses for the Board that they regarded Bourne as superintendent of the plant and that he informed one of them, Joan Ruhl, that "he was taking Mr. Spencer's place, and he just had full charge of the entire plant."<sup>3</sup>

The undersigned finds that at all times material herein the respondent held out Bourne to the employees as "Works manager" with authority over production operations, and that Bourne was a supervisory employee of such status as to make his anti-union conduct attributable to the respondent. We turn, therefore, to the question of whether the respondent has absolved himself of responsibility for Bourne's conduct.

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<sup>3</sup> The respondent argues that on April 26 a notice was posted for the attention of the employees, informing them of Kunes' employment as personnel director "in full charge of employees." Kunes' testimony that the employees "should have known" that Bourne "had no more authority" thereafter is a conclusion which is unsupported by the testimony concerning the notice. Kunes testified that he could not recall that the employees were informed at that time of any specific reduction in Bourne's duties, and it is clear that the chart remained posted. Moreover, Spencer testified that the notice of April 26 was to the effect that Kunes had been employed, and that the next notice to the employees was that of July 19 in which Spencer informed the employees that he was taking "complete charge" and that Kunes would remain as personnel manager and purchasing agent.

Kunes, who testified that Bourne earned \$460 per month as a working foreman in the mill room at the time of Kunes' employment, testified also that he remonstrated with Bourne for having talked with the employees, that he did not have authority to decrease Bourne's remuneration, that Spencer "resented" the occurrences, and that, after the return of Spencer, Bourne was reduced to the status of an ordinary employee at \$1.35 per hour. At an undisclosed date thereafter, according to Kunes, Bourne again was made a working foreman in the mill room and his remuneration was increased to \$1.60 per hour. The reason for the demotion, so Kunes testified, was that Bourne had talked to employees outside his jurisdiction, i. e., to girls who were not employed in the mill room, and that Bourne was without authority to discuss the Union with them. Bourne's demotion, according to Kunes, was made known to the employees in the notice of July 19 in which Spencer informed them that he was taking charge of operations, but the employees were not informed of the reason for Bourne's demotion. Kunes testified that Spencer told him the reason for the demotion, but that he believed it was sufficient to notify the employees of the fact without the necessity of informing them of the reason.

Spencer's testimony does not support that of Kunes. Spencer did not testify, for instance, that he "resented" Bourne's conduct and consequently demoted him with a decrease in salary. Instead, Spencer testified that he was advised that Bourne "had stepped out of bounds to talk to the employees," that he did not know, however, that Bourne had talked to them about union activities, although he thought that such had been the subject, and that he did not confer with Bourne about the matter. Spencer testified further that the decrease in salary had been a matter "left over from" Spencer's previous visit to the plant at the time of Kunes' employment in April, which he had not handled then because he had been "rushed to leave." In addition, Spencer did not testify that Bourne was reduced to the status of an ordinary employee at any time.

The respondent's position is that Bourne was disciplined for having talked with the employees about their union activities and having polled them on their attitude toward the Union, and that the respondent thereby absolved himself of responsibility for Bourne's conduct. The record does not support this contention. It is clear from Spencer's testimony, for instance, that the decrease in salary for Bourne from \$460 per month to \$1.35 per hour, which became effective on July 15, 1946, was not a matter arising from Bourne's conduct, but instead was a matter "left over" from the time of Kunes' employment. Too, Spencer could not have demoted Bourne for talking with the employees about the Union since he testified that he did not know, but only thought, that such had been the subject matter of Bourne's remarks. Finally, the employees were not advised of the alleged reason for Bourne's demotion and decrease in salary, and the respondent took no steps to inform them that he repudiated Bourne's conduct and that they could exercise their rights under the Act without fear of discrimination at his hands. The undersigned finds that the respondent has not absolved himself of responsibility for Bourne's conduct<sup>4</sup> and that it is immaterial that Bourne was without express authorization from the respondent to so conduct himself<sup>5</sup>

<sup>4</sup> Cf. *H J Heinz Co v. N L R B*, 311 U. S. 514, 521, 61 S. Ct. 320, 323, wherein the Court said: "petitioner, when advised of the participation of his supervising employees in the organization campaign, took no steps, so far as appears, to notify the employees that those activities were unauthorized, or to correct the impression of the employees that support of the Union was not favored by petitioner and would result in reprisals."

<sup>5</sup> *International Association of Machinists, etc v. N L R B*, 311 U. S. 72, 61 S. Ct. 83; *H J Heinz Co v. N L R B*, footnote 4.

Turning next to Spencer's address to the employees, it is clear that he did not utilize the occasion as one in which to repudiate the recent conduct of Bourne, or in which to assure the employees of his willingness to abide by the requirements of the Act. Instead, he expressed the hope that his remarks would not be in violation of the Act's provisions and, after making known his objection to "outside influences," he asked the employees to vote upon the question of whether they wished him to step aside as the operator of the business. The respondent argues that his remarks were in the realm of free speech. The undersigned does not agree. No doubt many of his individual statements were privileged, but not his conduct in asking the employees to vote. That issue, whether he should "step out completely and let the business go along on its own power," when raised under the circumstances present here where union activities were under way and the respondent was the sole operator of the plant, was clearly to pose the question of whether the employees preferred to forego their rights under the Act in order to assure the continuance of their jobs. Such conduct on the part of an employer is patently coercive. It is not an appeal to reason, but to fear.<sup>6</sup> Therefore, it is not privileged, and, contrary to the respondent's contention, it is immaterial that the employees were not actually subjected to discrimination, or were not told in exact and precise language that they were not free to join the Union.

The undersigned finds that by the remarks of Spencer and Bourne to the employees, and by Bourne's polling the employees on their attitude toward the Union, the respondent interfered with, restrained, and coerced the employees in the exercise of the rights guaranteed 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 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

Having found that the respondent has engaged in certain unfair labor practices, the undersigned will recommend that he cease and desist therefrom and that he take certain affirmative action designed to effectuate the policies of the Act.

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

#### CONCLUSIONS OF LAW

1. United Rubber, Cork, Linoleum & Plastic Workers of America, International Union, affiliated with the Congress of Industrial Organizations, is a labor organization within the meaning of Section 2 (5) of the Act.

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

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<sup>6</sup> *N. L. R. B. v. West Kentucky Coal Company*, 152 F. (2d) 198 (C. C. A. 6)

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

#### RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, the undersigned hereby recommends that the respondent, William Spencer, an individual doing business as Alliance Rubber Company, his officers, agents, successors, and assigns shall:

1. Cease and desist from threatening to increase the work load of employees, to discharge employees who join labor organizations, and to move the operations of the plant to another State, from asking the employees to vote upon the question of whether they prefer to forego their rights under the Act, in order to assure the continued operation of the plant, and in any like manner interfering with, restraining, or coercing his employees in the exercise of the right to self-organization, to form labor organizations, to join or assist United Rubber, Cork, Linoleum & Plastic Workers of America, International Union, affiliated with the Congress of Industrial Organizations, or any other labor organization, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act

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

(a) Post at its plant in Alliance, Ohio, copies of the notice attached hereto and marked "Appendix A" Copies of the notice, to be furnished by the Regional Director for the Eighth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by him for at least 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 materials; and

(b) File with the Regional Director for the Eighth Region within ten (10) days from the receipt of this Intermediate Report, a report in writing, setting forth in detail the manner and form in which the respondent has complied with the foregoing recommendations

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

As provided in Section 203.39 of the Rules and Regulations of the National Labor Relations Board, Series 4, effective September 11, 1946, any party or counsel for the Board may, within fifteen (15) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.38 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; and any party or counsel for the Board may, within the same period, file an original

and four copies of a brief in support of the Intermediate Report Immediately upon the filing of such statement of exceptions and/or briefs, 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. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203 65. As further provided in said Section 203 39, 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

A BRUCE HUNT,  
*Trial Examiner.*

Dated April 25, 1947

APPENDIX A

NOTICE TO ALL EMPLOYEES

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

WE WILL NOT threaten to increase the work load of employees because of their union membership or activities, nor will we threaten to discharge employees who join labor organizations, nor will we threaten to move the operations of this plant to another State

WE WILL NOT ask the employees to vote upon the question of whether they are willing to forego their rights under the National Labor Relations Act in order to assure the continued operation of the plant.

WE WILL NOT in any like manner interfere with, restrain or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, INTERNATIONAL UNION, affiliated with the CONGRESS OF INDUSTRIAL ORGANIZATIONS, or any other labor organization, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

ALLIANCE RUBBER COMPANY,  
*Employer.*

By -----  
(Representative) (Title)

Dated -----

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