charging employees or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of employment.

WE WILL NOT interrogate our employees concerning their union activities or views, threaten reprisal if a union is selected by our employees, promise benefits to our employees if they discontinue their support of a union, engage, directly or indirectly, in the surveillance of union meetings, or in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the above-named union, or any labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collecive bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

WE WILL offer Harold Almond immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority and other rights and privileges, and make him whole for any loss of pay suffered as a result of the discrimination against him.

All our employees are free to become, remain, or refrain from becoming or remaining members of the above-named union or any other labor organization except as that right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act. We will not discriminate in regard to the hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

INTERNATIONAL FURNITURE 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.

BOSTON AND LOCKPORT BLOCK COMPANY *and* LODGE 264 OF DISTRICT 38 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, A. F. L. *Case No. 1-CA-894. March 17, 1952*

Decision and Order

On September 28, 1951, Trial Examiner George Bokat issued his Intermediate Report attached hereto, in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief.

The Board [1] has reviewed the rulings of the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.[2] The Board has considered the Intermediate Report, the brief and exceptions, and the entire record in the case and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.[3]

Order

Upon the entire record in this case and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the complaint be dismissed in its entirety.

Intermediate Report

STATEMENT OF THE CASE

Upon a charge duly filed by the International Association of Machinists, A. F. L., herein called the Union, and upon complaint and notice of hearing issued and served by the General Counsel, and an answer having been filed, a hearing upon due notice was held at Boston, Massachusetts, before the undersigned Trial Examiner on July 18, 19, and 20 and August 20, 1951, involving allegations of unfair labor practices in violation of the National Labor Relations Act, 61 Stat. 136, herein called the Act, by Boston and Lockport Block Company, herein called the Respondent. The allegations in substance are that the Respondent discharged Paul G. Gallo because of his union or concerted activities in violation of Section 8 (a) (1) and (3) of the Act, and interrogated its employees concerning their union affiliations in violation of Section 8 (a) (1) of the Act. All parties were represented by counsel and the Union by its representatives, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing on the issues, to argue the issues orally upon the record, and to file briefs, proposed findings of fact, and conclusions of law. The General Counsel and the Respondent filed briefs with the undersigned.

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 is a Massachusetts corporation with its principal place of business in East Boston, Massachusetts, where it is engaged in the manufacture,

[1] Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Murdock, and Styles].

[2] At the hearing, the Respondent moved that the complaint be dismissed on the ground that the General Counsel had failed to adduce any proof that the charging Union had complied with the requirements of Section 9 (f), (g), and (h) of the Act The Trial Examiner denied this motion and we affirm his ruling. The Act does not require that the General Counsel plead and prove as part of his case the compliance of the charging Union. *N. L. R. B.* v. *Greensboro Coca-Cola Co.*, 180 F. 2d 840 (C. A. 4); *N. L. R. B.* v. *Red Rock Co.*, 187 F. 2d 76 (C. A 5); *N L. R B* v. *Vulcan Forging Co.*, 188 F. 2d 927 (C. A. 6). Moreover, we have administratively determined that the Union has satisfied the filing requirements of Section 9 (f), (g), and (h) of the Act.

[3] The Trial Examiner inadvertently gave Tuesday, March 7, 1951, as the date when the Respondent held a safety meeting addressed by a representative of its insurance company. The correct day was Tuesday, March 6, 1951.

sale, and distribution of tackle blocks and related products. During the year 1950 the Respondent purchased raw materials valued in excess of $300,000, of which approximately 75 percent was received from points outside the Commonwealth of Massachusetts. During the same period the Respondent's gross sales exceeded $1,000,000 in value, of which approximately 95 percent was sold and shipped to points outside the Commonwealth of Massachusetts.

The Respondent admits, and I find, that it is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

International Association of Machinists, A. F. L., is a labor organization within the meaning of the Act, admitting to membership employees of the Respondent.

III. THE ALLEGED UNFAIR LABOR PRACTICES

Summary of Events

Until August of 1950, the Respondent's employees had never been organized into a union although an attempt had been made some years previously. At about this time and continuing until March 1951, there was some discussion about unions generally among some of the employees which resulted in the occasional chalking in some parts of the plant of expressions like "Let's Go Union" or "Let's Go CIO." On March 9, 1951, Paul Gallo who had been hired by the Respondent in 1950 and whose discharge on March 13, 1951, is the principal issue herein, and who had actively participated in sympathetically discussing unions with some of the workers, telephoned a representative of the Union. As a result, a meeting took place in Gallo's home the following night, which fell on a Saturday. It was attended by three of Gallo's fellow employees and by two representatives of the Union. Another meeting of the group took place at Gallo's home on Monday evening, March 12. There, Gallo and employee Fred Gavin received union authorization cards which they planned to distribute the next morning.

The following morning, March 13, at 7 a. m., Gallo and Gavin stationed themselves at the main entrance to the plant used by the production and maintenance workers and their supervisors for entrance into the plant. The working day began at 8 a. m. and ended at 4:30 p. m. Gallo and Gavin openly handed out union authorization cards to the employees at the plant gate. At about 4:25 p. m. of the same day, Assistant Foreman William Leonard handed Gallo his pay and told him he was discharged because of his past record and because of his bad accident record.

The General Counsel contends that the cause alleged for Gallo's discharge is a pretext and that he was fired for the union activities which he openly engaged in the same morning of his discharge or because the Respondent believed prior to March 13 that Gallo was interested in and sympathetic to unionization in general.

The Respondent contends that Gallo was discharged because of the frequency of his accidents in the plant and lack of interest in his work. The Respondent further contends that it had no knowledge of Gallo's union activities or sympathies and that, in fact, the decision to discharge Gallo was made on the Thursday or Friday preceding his discharge, to wit, March 8 or 9. If in fact the decision to discharge Gallo took place when the Respondent did not have any knowledge of Gallo's union activities, or sympathy for unions in general,

the General Counsel's case must fail. In view thereof, I will first examine the evidence adduced by the Respondent.

The key witness to Respondent's defense is Wilfred Anderson, Respondent's superintendent. Anderson testified that he wanted to discharge Gallo about a month prior to March 8 or 9 because Gallo lacked interest in his work. This stemmed, according to him, from an incident involving Gallo's girl friend, Jean Maguire, who had been discharged by the Respondent without notice on January 12, 1951. While Gallo testified that he felt no resentment about her discharge, it is obvious that he was put out about it: "I just felt it was a pretty bad way of letting anyone go at 25 minutes after 4 on Friday, without notice." A rumor got back to Superintendent Anderson that Gallo was thinking of quitting. Anderson suggested to Gallo's foreman, Robert V. Campbell, that Gallo be discharged because he was a disgruntled employee and seemed to lack interest in his work but Campbell felt that Gallo would be all right when he got over the way he was feeling. Anderson did not press for Gallo's discharge and the matter was dropped.[1]

On Tuesday, March 7, 1951, A. Knight, safety engineer for the Liberty Mutual Insurance Company, which insured the Respondent for industrial accidents, addressed a meeting of the Respondent's supervisory personnel, warning them that if the Respondent's accident frequency rate continued to increase the Respondent's premium rate might be increased. Knight referred to the case histories of accidents sustained by some of Respondent's employees without naming them, and expressed some concern over the increase in eye injuries.

It happens that Gallo had an eye injury in the plant on September 7, 1950, and visited the Insurance Company's eye doctor on several occasions for medical treatment. On October 26, 1950, Gallo sustained an injury to his foot for which he received medical treatment and compensation On October 13, according to Gallo, he had a reoccurrence of his eye difficulty and visited the eye doctor for further treatment. According to the records of the Insurance Company, however, the October 13 visit was reported as a new eye injury and not a reoccurrence of the September 7 accident.

In any event, shortly following the safety meeting, the Respondent decided to tighten up on its accident prevention measures. Accordingly, Campbell, as foreman of the machine shop, made a survey of the employees in his department the following morning to find out "the men who were wearing goggles and the men who were not wearing goggles, and who were thought should wear goggles." Previously, the machine shop employees were not required to wear safety glasses while working on the polishing machines. Campbell testified that he informed Gallo the morning following the safety meeting "that it would be necessary for him to wear goggles" while working on the polishing machine, particularly in view of his previous eye injury. Gallo "remonstrated" that it was unnecessary to wear glasses on this machine but Campbell retorted that the Company would make that decision. It is evident that Gallo received this direction because he

[1] While Campbell corroborated Anderson's testimony that the latter wanted to discharge Gallo on this earlier occasion, Campbell supplied a specific incident which he said gave rise to Anderson's desire to get rid of Gallo. Campbell testified that in February 1951 Gallo had left the plant during working hours, contrary to shop rules, to speak to a woman outside the plant. As a result Anderson thought it best to discharge Gallo. Campbell, however, spoke to Gallo, saying "If you want the job and you will turn over a new leaf, and you will tend to business and let the women folks alone, I will go up and talk to Mr Anderson." Campbell then spoke to Anderson and they decided to give Gallo another chance

testified that he asked Campbell whether he had to wear safety glasses even while painting sheaves. Campbell said "I did" testified Gallo. "I thought it kind of funny, even when I painted."[2] According to Anderson, he learned from Campbell that Gallo was not following instructions about wearing the safety glasses.[3] "It made me decide right then and there we'd discharge him" testified Anderson, and he so notified Campbell and Personnel Manager Willis. This was on Thursday or Friday, March 8 or 9. The Respondent's workweek ends on a Tuesday although the employees are paid on the Friday following. Willis suggested that Gallo be permitted to finish the workweek and that he be given notice of his discharge on that day which would be Tuesday, March 13. Anderson agreed. This procedure while not customary was not unusual. Gallo was not given notice of his impending discharge.

To corroborate the testimony of Anderson that the decision to discharge Gallo was made on March 8 or 9 to become effective on March 13, the Respondent presented the testimony of Personnel Manager Willis, Foreman Campbell, and Paymaster Richard Gilliland. Pertinent parts of the testimony of Willis and Campbell have already been discussed. Gilliland testified that on Monday, March 12, 1951, Willis told him to make up Gallo's pay effective quitting time on the following day. On Tuesday morning, March 13, Willis reminded Gilliland to have Gallo's pay ready. On the same day at 3:30 p. m., Gilliland handed Gallo's pay envelope to Willis. The latter called in Leonard, assistant foreman in Gallo's department, since Foreman Campbell was home sick and instructed Leonard to inform Gallo of his discharge. As mentioned above, Leonard carried out these instructions.

There is another incident that occurred on the afternoon of Gallo's discharge worthy of mention. Employee Fred Gavin, who, it will be remembered, assisted Gallo in distributing union authorization cards on the morning of March 13, worked in a department other than Gallo's. Gavin noticed Superintendent Anderson, Willis, and his foreman conversing in his department for about 5 minutes on the afternoon of Gallo's discharge. During this conversation Gavin went to sharpen a tool and this task took him within a few feet of the trio. Gavin testified he overheard Anderson say "Get rid of him" and heard nothing more. Even if I credited Gavin's testimony I could not give it any probative value because it refers to a fragmentary bit of conversation taken out of context, without reference to any specific individual, even though as it turned out Gallo was the only employee discharged that day. I am therefore unable to infer from Gavin's testimony that Superintendent Anderson necessarily referred to Gallo when he allegedly said "Get rid of him." Gavin, it must be remembered,

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[2] According to Campbell, he did not instruct Gallo to wear glasses while painting the sheaves Anderson testified that following the safety meeting "we decided [Gallo] should wear glasses on any machine he was on "

[3] Gallo testified that he followed the instructions to wear his goggles Campbell testified that Gallo "was very stubborn" about wearing the glasses Gallo "I don't think, had them on for the balance of the week at any time" while on the polishing machine, testified Campbell. The Respondent's personnel manager, Andrew Willis, also testified that he personally observed that Gallo did not obey the instructions to wear his safety glasses.

I am satisfied that Gallo did not wear his safety glasses at all times while on the polishing machine within the next day or two after receiving such advice from Campbell. In any event, his reluctance to wear them which he made known did not sit too well with Campbell I am satisfied that at the very least, Campbell reported Gallo's reluctance to wear safety glasses on the polishing machine to Anderson. The latter, who several weeks before wanted to discharge Gallo, now definitely made up his mind to do so. This time, according to Campbell, he made no effort to intercede in Gallo's behalf. "I put up with quite a lot from Mr. Gallo" due to the labor shortage testified Campbell. "I told Mr. Willis and Mr. Anderson if they wanted to let him go, it was all right with me."

was just as likely a victim for potential discrimination as Gallo, since Gavin had also openly distributed union cards that morning.

There is only one other item of evidence that might indicate an antiunon bias on the part of the Respondent. On March 14, 1951, the day following Gallo's discharge, the Union wrote to the Respondent requesting recognition as the bargaining representative of the employees. On May 18, a Board-conducted election took place. Sometime in April 1951, before the election, Willis asked employee Frank Pecora, according to the latter's testimony, whether he was "the leader of the Forge shop." Later in the day Willis told Pecora "It was just a mistake"; that it was Pecora's brother "they were talking about." Pecora was confused and contradictory as to whether the word "union" was used by Willis but there appears to be no question but that Pecora reasonably interpreted Willis' question regardless of the exact terminology used, as an inquiry, so intended, about the Union This is the only evidence adduced by the General Counsel in support of his allegation that the Respondent independently violated Section 8 (a) (1) of the Act.

Concluding Findings

The General Counsel makes out a fairly strong *prima facie* case based primarily on circumstantial evidence. On the issue of whether Respondent had knowledge of Gallo's union activities on the morning of March 13, the day of his discharge, I am constrained to find that it did have such knowledge despite the Respondent's denial. In a plant relatively small, employing about 150 employees, with the production and maintenance workers as well as the supervisory force using the same entrance to the plant where Gallo openly handed out union authorization cards, it would be flying in the face of all practical experience and expertise to find that knowledge of Gallo's activity that morning was unknown to Respondent. On the other hand, contrary to the contention of the General Counsel, I am unable to find sufficient proof in the record to warrant the inference that prior to March 10, 1951, Respondent had knowledge of Gallo's sympathy for unions generally. From the various prounion signs chalked throughout the plant it is clear that the Respondent knew that some of its employees were in favor of unionization. Before communicating with the Union, Gallo participated in discussions with some of his fellow workers about unions in general. There is no proof in the record that Gallo's activity in this respect came to the attention of management nor proof of any circumstances that would justify such an inference.

On the issue of whether Respondent came to a decision to discharge Gallo before March 13, I am constrained to find that based on a preponderance of the credible evidence that the Respondent did decide to discharge Gallo on Thursday or Friday, March 8 or 9, before it became aware of or suspected Gallo's union sympathy or activity. While there are some variances between the testimony of Anderson, Willis, and Campbell on this issue, the main thread of their testimony that a decision to discharge Gallo was made prior to March 13 hangs together, and is in my opinion, on the whole credible. By so finding I do not mean to imply that I fully credit the testimony of these three witnesses. I am persuaded, however, that on an earlier occasion Anderson did want to discharge Gallo and decided to do so on March 8 or 9 when Campbell reported Gallo's reluctance and failure to wear safety glasses, as found above.

Some of the other reasons asserted by Respondent for Gallo's discharge, such as the frequency of his accidents in the plant I do not credit. The shifting nature of Respondent's reasons for discharging Gallo has, of course, given me pause for thought. It is possible, of course, that Gallo was discharged because

of his union activity or sympathy, but given the quite adequate basis presented by the Respondent that it had decided to discharge Gallo for a reason I believe to be credible and before the Respondent had reason to believe or suspect that Gallo was active on behalf of the Union or sympathetic to unions generally, is there a sufficient basis, based upon the record as a whole, upon which a dispassionate mind can ripen this possibility into a finding? I believe not. Or put another way—if the state of the record is such that it permits nothing better than a suspicion of discrimination, the General Counsel has not sustained his burden of proof—there is not substantial evidence sufficient to sustain a finding of discrimination. I therefore find, on the basis of the entire record, that the General Counsel has not persuaded me by a preponderance of the substantial evidence that the Respondent discharged Gallo for his union activity or sympathy.

On the remaining issue of whether the Respondent violated Section 8 (a) (1) of the Act by Personnel Manager Willis' interrogation of Pecora which I find to be that type of inquiry normally found by the Board to be *per se* violative of the Act, I do not think it would effectuate the policies of the Act to recommend that a cease and desist order issue against the Respondent for a single, isolated incident of the kind described. I will therefore recommend that the complaint be dismissed in its entirety.

Upon the basis of the above findings of fact and upon the entire record of the case, I make the following:

CONCLUSIONS OF LAW

1. The Respondent is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. International Association of Machinists, A. F. L., is a labor organization within the meaning of Section 2 (5) of the Act.

3. The Respondent has not engaged in any of the unfair labor practices alleged in the complaint.

[Recommendations omitted from publication in this volume.]

AMERICAN SUPPLIERS, INCORPORATED *and* TRUCK DRIVERS UNION LOCAL NO. 89, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, PETITIONER. *Case No. 9–RC–1424. March 17, 1952*

Decision and Order

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Lloyd R. Fraker, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Murdock, and Styles].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.