CONCLUSIONS OF LAW

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

2. By discharging Erma Wright on September 28, 1951, in order to discourage membership in International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW–CIO, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of 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 (a) (1) of the Act.

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

5. By laying off Helen Shippey on February 25, 1952, the Respondent did not commit an unfair labor practice.

[Recommendations omitted from publication in this volume.]

F. W. WOOLWORTH COMPANY *and* RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL. *Case No. 9–CA–495. January 27, 1953*

Decision and Order

On November 13, 1952, Trial Examiner A. Bruce Hunt issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report, and a supporting brief.

The Board [1] has reviewed 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, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.[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

[1] 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 Murdock].

[2] *Bonwit-Teller, Inc.* v. *N. L. R. B.*, 197 F. 2d 640, enforcing 96 NLRB 608.

Relations Board hereby orders that the Respondent, F. W. Woolworth Company, Springfield, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Retail Clerks International Association, AFL, 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, by discriminatorily applying its rule prohibiting union activities on its premises.

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

(a) Post in conspicuous places in its offices and place of business in Springfield, Ohio, including all places where notices to employees are customarily posted, copies of the notice attached hereto as Appendix.[3] Copies of said notice, to be furnished by the Regional Director for the Ninth Region, shall, after being duly signed by the Respondent's representative, be posted by it immediately upon receipt thereof, and maintained by it for at least sixty (60) consecutive days thereafter. 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 Ninth Region in writing, within ten (10) days from the date of this Decision and Order, what steps the Respondent has taken to comply herewith.

[3] In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

Appendix

Notice to All Employees

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

> We will not discriminatorily apply our rule prohibiting union activities on our premises, or in any like or related 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 Retail Clerks International Association, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, or to engage in concerted activi-

ties for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the National Labor Relations Act.

F. W. WOOLWORTH COMPANY,
Employer.

Dated_____ By _____
(Representative) (Title)

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

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

A charge having been duly filed, a complaint and notice of hearing thereon having been issued and served by the General Counsel, and an answer having been filed by the above-named Company, a hearing involving allegations of unfair labor practices in violation of the National Labor Relations Act, 61 Stat. 136, herein called the Act, by the above-named Company, herein called the Respondent, was held upon due notice at Springfield, Ohio, on October 6, 1952, before the undersigned Trial Examiner. The allegations in substance are that the Respondent, while maintaining a rule prohibiting all solicitation of its employees upon its premises, addressed the employees on company time and premises prior to an election to be conducted by the Board and denied the Union's request that it be afforded a like opportunity to address the employees, thereby violating Section 8 (a) (1) of the Act. All parties were represented by counsel or other representative, were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the issues, to argue orally upon the record, and to file briefs and proposed findings and conclusions. Briefs were received from the General Counsel and the Respondent, and have been considered.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, a New York corporation, operates a chain of more than 200 retail stores in various States of the United States, the volume of business therein exceeding $10,000,000 annually. Store No. 157 in Springfield, Ohio, is the only store involved in this proceeding. During 1951, the Respondent's purchases for that store included toys, perfumes, soft goods, and other merchandise, at costs exceeding $200,000, of which approximately 75 percent was shipped to the store from points outside the State of Ohio. During the same year, sales at the store exceeded $250,000 in value, of which less than 1 percent was shipped to points outside the State of Ohio. There is no dispute, and I find, that the Respondent is engaged in commerce.

II. THE LABOR ORGANIZATION INVOLVED

Retail Clerks International Association, AFL, herein called the Union, is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Chronology of events*[1]

At all times material, the Respondent has enforced a rule prohibiting all solicitation of its employees at all times upon the premises of its store in Springfield, Ohio. It has also maintained a notice to employees as follows:

> We are governed by the Business Protective Board of the Springfield Chamber of Commerce for the year ending December 31, 1952. Solicitations of all things must have the approval of the Board.

About August 1951, the Union began an organizational campaign among approximately 150 employees of the store. Representatives of the Union contacted employees at various places outside the store. On September 10, the Union filed with the Board a petition for certification of representatives of employees. On December 20, in Case No. 9–RC–1344, the Board issued its Decision and Direction of Election. On or about January 4, 1952, representatives of the Respondent, the Union, and the Board met to discuss details of the election. It was set for January 19.

On January 9, the store manager, J. H. Shannon, held meetings of two separate groups of employees during working hours in the store. On one of these occasions, the entrances to the store were closed earlier than usual because of the address. Shannon read to the employees a prepared address which is discussed below.

On January 10, Donald A. Filmer, a representative of the Union, orally asked Shannon to permit an address to be made in the store during working hours in response to Shannon's addresses. On the same or the next day, Shannon wrote to Filmer and denied the latter's request, saying *inter alia* that certain local union facilities were available to the Union for purposes of addressing employees.

On or about January 12, Shannon again spoke to a group of employees during working hours in the store. He read to them the same address which he had delivered several days earlier. Also on that day, Shannon again refused to permit a representative of the Union to make an answering address to the employees during working hours in the store.

At the election on January 19, a majority of the voting employees cast their ballots against representation by the Union.

B. *Conclusions*

The initial question involves the content of Shannon's address to the employees, which was the same upon each occasion. It is set out in full in the record and need not be reproduced here. Shannon spoke of the employees' existing working conditions, such as their paid vacations and holidays, the sick leave plan, and the Respondent's policy of adjusting salaries upward. He spoke also of advantages, according to his point of view, of not being represented by a labor organization. His remarks admittedly were intended to influence the employees to vote against representation by the Union. A careful study of the remarks shows, however,

[1] There is no dispute concerning the essential facts To a substantial extent, they were stipulated.

that they were within the protective language of Section 8 (c) of the Act.[2] I so find.

We turn to the principal issue, the Respondent's refusal to allow the Union to respond, on company time and property, to Shannon's addresses. We have seen that the Respondent had a rule prohibiting solicitation of employees for any purpose at any time within the store and that the rule applied to the Union's efforts to organize the employees. Since the Respondent operates a retail store, special considerations warrant its promulgation and enforcement of a broad no-solicitation rule.[3] We have seen too that Shannon, in disregard of the rule, addressed the employees on 3 occasions within 10 days of the election, and that he rejected the Union's request for an opportunity to address them under like conditions. The issue is whether the Respondent's rejection of the Union's request, under the particular circumstances present here, was an unfair labor practice. The Respondent asserts that Section 8 (c), quoted above, renders its conduct immune. According to the Respondent, the right granted to it by Section 8 (c) to address its employees during working hours upon its premises "was not proscribed directly or indirectly by any no solicitation rule." The Respondent's contention is not meritorious. As was said by the court in *Bonwit Teller, Inc.* v. *N. L. R. B.*, 197 F. 2d 640 (C. A. 2), enforcing 96 NLRB 608, "neither § 8 (c) nor any issue of 'employer free speech' is involved in this case." The issue is not what the Respondent said to the employees, nor the manner in which the audiences were assembled. Nor is it the validity of the Respondent's no-solicitation rule. It is instead the Respondent's act of refusing the Union's request for an opportunity to address the employees, after having itself disregarded that rule. By that refusal, the Respondent applied its rule against union activities on its premises in a discriminatory manner. This case is governed by *Bonwit Teller, Inc.*, cited above, and I find that by said refusal the Respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by the Act, thereby violating Section 8 (a) (1).[4]

---

[2] Section 8 (c) reads:

The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

[3] The first floor of the store consists of the selling area, and there appears to be no dispute that the application of the rule thereto was consistent with applicable decisions of the Board. *Marshall Field & Company*, 98 NLRB 88. On the second floor are located the offices, restrooms, and a lounge. While that floor is entirely a nonselling area, the record does not disclose whether the restrooms and lounge fall within the category of *"nonselling public areas,"* or *"nonselling closed areas,"* as those terms are defined in the *Marshall Field* case. The General Counsel contends in his brief that the Respondent's "promulgation and enforcement of an extremely broad and pervasive no-solicitation rule" was an unfair labor practice. This contention is not spelled out in the complaint, nor was it stated orally at the hearing. It was not briefed by the Respondent. In my judgment the issue was not litigated and, under the circumstances and for the limited purpose of deciding the principal issue here, I assume that the rule was validly applied to the nonselling areas of the store.

[4] The Respondent points out that the Union possessed other means of communication with the employees. This fact is not controlling, however. *Republic Aviation Corporation* v. *N. L. R. B.*, 324 U. S. 793. The Respondent also asserts that the issues here are governed by the *Babcock & Wilcox Co.*, 77 NLRB 577, and *S & S Corrugated Paper Machinery Co., Inc.*, 89 NLRB 1363. The former case, dealing with the "compulsory audience" doctrine, is inapposite. The latter case may also be distinguished on factual grounds, but this is unnecessary because it was expressly overruled by the *Bonwit Teller* case to the extent that it might "be deemed to be inconsistent with" the *Bonwit Teller* holdings. The Respondent also asserts, in attacking *Bonwit Teller*, that "two wrongs" do not "make a right," and that if "it is wrong initially for an employer to address his employees on his property and time, it is equally wrong for a union to address the employees on the employer's property and time." The answer to this contention is that it misconceives the issue. I do not find that the Respondent's address to the employees constituted an unfair labor practice. I find instead that the unfair practice lies in the discriminatory application of the no-solicitation rule.

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, I shall recommend that it cease and desist therefrom and that it 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, I make the following:

CONCLUSIONS OF LAW

1. The Union is a labor organization within the meaning of Section 2 (5) of the Act.

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

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

[Recommendations omitted from publication in this volume.]

EDWIN D. WEMYSS, AN INDIVIDUAL, D/B/A COCA-COLA BOTTLING COMPANY OF STOCKTON *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL NO. 439, AFL *and* STOCKTON BEVERAGE EMPLOYEES ASSOCIATION, SOMETIMES KNOWN AS STOCKTON BEVERAGE ASSOCIATION, PARTY TO THE CONTRACT.
Case No. 20–CA–626. January 27, 1953.

Decision and Order

On July 10, 1952, Trial Examiner Howard Myers issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent and the Association filed exceptions to the Intermediate Report and supporting briefs.

The Board[1] has reviewed the rulings made by the Trial Examiner

[1] 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 Murdock].