

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

WE WILL NOT interrogate our employees concerning their union activities, threaten to shut down the plant or other reprisals, promise economic benefits to discourage union affiliation and activities; or in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

WE WILL bargain collectively upon request with the above-named labor organization as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All ready-mix truckdrivers of Respondent employed at its Dallas plant, exclusive of all others including supervisory employees.

All our employees are free to become, remain, or refrain from becoming members of the above-named union, or any other organization except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the Act.

DALLAS CONCRETE COMPANY,  
Employer.

By -----

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.

THE DEVILBISS COMPANY and INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO. Case No. 6-CA-501. February 12, 1953

**Decision and Order**

On October 15, 1952, Trial Examiner Ralph Winkler 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 has reviewed the rulings made by 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 brief, and the entire record in the 102 NLRB No. 133.

case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.<sup>1</sup>

### 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, The DeVilbiss Company, Somerset, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating employees or prospective employees concerning their union membership and activities.

(b) Prohibiting employees from wearing union insignia which bears the legend "vote," or similar legends.

(c) Supporting and attempting to form labor organizations.

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, or any other labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities 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 such rights 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.

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

(a) Post at its plant at Somerset, Pennsylvania, copies of the notice attached hereto marked "Appendix A."<sup>2</sup> Copies of such notice, to be furnished by the Regional Director for the Sixth Region, shall, after being duly signed by the Respondent's authorized representative, be posted by the Respondent immediately upon receipt thereof, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Re-

<sup>1</sup> We find no merit in the Respondent's contention that Section 10 (b) of the Act requires dismissal of certain allegations of the complaint. See *Cathey Lumber Company*, 86 NLRB 157, enforced 185 F. 2d 1021 (C A 5).

Regardless of the Respondent's purposes in supporting and attempting to form a labor organization, we agree with the Trial Examiner that it thereby violated Section 8 (a) (1) of the National Labor Relations Act

The first paragraph of the Intermediate Report states erroneously that the complaint contains an 8 (a) (3) charge. We hereby correct this error.

We also agree with the Trial Examiner that the Respondent violated Section 8 (a) (1) by its prohibition against the wearing of union T-shirts and buttons. See *Gates Rubber Company*, 40 NLRB 424, 438-441.

<sup>2</sup> 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."

spondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for the Sixth Region, in writing, within ten (10) days from the date of this Order what steps the Respondent has taken to comply herewith.

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Order.

**Appendix A**

**NOTICE TO ALL EMPLOYEES**

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

WE WILL NOT interrogate employees or prospective employees concerning their union membership and activities.

WE WILL NOT prohibit the wearing of union buttons, T-shirts, or other union insignia.

WE WILL NOT support labor organizations.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to from labor organizations, to join or assist the UAW-CIO or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and 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 National Labor Relations Act.

Our employees are at liberty to wear T-shirts, buttons, or other insignia of the UAW-CIO or of any other union even though such insignia also says "vote" or "join."

THE DEVILBISS 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

Upon charges filed by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, a labor organization herein

called the UAW-CIO, the General Counsel for the National Labor Relations Board, by the Acting Regional Director for the Sixth Region (Pittsburgh, Pennsylvania), issued a complaint on August 8, 1952, against The DeVilbiss Company, herein called the Respondent, alleging that the Respondent had engaged in specified conduct violating Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the Labor Management Relations Act, 1947, 61 Stat. 136, herein called the Act. Copies of the complaint and charges were served upon the Respondent, and the Respondent in turn filed an answer denying the commission of the unfair labor practices alleged.

Pursuant to notice, a hearing was held in Somerset, Pennsylvania, on September 11 and 12, 1952, before the undersigned Trial Examiner. The General Counsel, the Respondent, and the UAW-CIO were represented at the hearing and all parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The parties were given opportunity to present oral argument before the Trial Examiner and also to file briefs and proposed findings of fact and conclusions of law. The Respondent has moved to dismiss the complaint, which motion is disposed of in accordance with the following findings of fact and conclusions of law.

Upon the entire record in the case, and upon observation of the demeanor of witnesses, I make the following:

#### FINDINGS OF FACT

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

The Respondent is an Ohio corporation with plants in several States including a plant at Somerset, Pennsylvania, where the present action arose. During the 12-month period ending August 1952, the interstate purchases of materials and sale of finished products of the Somerset plant were valued at \$250,000 and \$700,000, respectively.

I find that the Respondent is engaged in commerce within the meaning of the Act.

##### II. THE UNFAIR LABOR PRACTICES

###### A. *Advent of organizational activities*

The UAW-CIO began organizing the Respondent's employees in June 1951 and its organizational techniques included circulation of literature, solicitation of union-designation cards, meetings, and distribution of various items bearing union insignia.

After the inception of these organizational activities, Group Leader Eleanor Lowery (a supervisor within the meaning of the Act)<sup>1</sup> asked several employees under her supervision whether a UAW-CIO organizer had been to see them and whether they were for the Union. Lowery told one of these employees (Mary Lambert) that Plant Manager Kotcher was "afraid" Lambert "might be for the union." Samuel Salkel, supervisor in the shipping department, also told employee Donald Will that "the company was just getting started [the plant had been in operation only a few months at the time] and we would be just as well off if we didn't organize right then." The record further shows

<sup>1</sup> As a group leader Lowery has authority to make effective recommendations as to hiring and firing, to make reports on infractions of rules, and otherwise to responsibly direct employees. The record in a current representation case is incorporated by reference in the present matter and it is noted, as the Respondent states in its brief, that the Board has determined in its decision in this R-case that group leaders are supervisors within the meaning of the Act (unpublished decision, issued September 15, 1952).

that when Personnel Manager Martin Markel interviewed Homer Burkett for a job in 1951, Markel inquired whether Burkett had been a union member at Burkett's former place of employment.

Among other things, the UAW-CIO distributed T-shirts to employees during its campaign. These shirts bore the UAW-CIO's name and insignia and also contained either the word "vote" or "join" above the inscribed name of the Union. The employees who wore these shirts at work in July 1952 were promptly instructed by their supervisors on orders from Kotcher that they should not wear the shirts in the plant.<sup>2</sup> Kotcher testified that he also advised his supervisors that employees might wear shirts bearing the UAW-CIO's insignia but without the words "join" or "vote" on them; he also testified, however, that he did not direct that employees be advised to this effect.

Kotcher asserted that the Respondent has a policy against solicitation of any kind on company property and that he interpreted this policy to prohibit the wearing of the shirts under consideration. The record establishes, however, that employees had never before been instructed to refrain from solicitation on company property. It appears, moreover, that employees have frequently and openly solicited money on company property to purchase gifts for departing employees, that Supervisor Lowery has contributed to such funds, and that a collection of this sort occurred as recently as in the spring or summer of 1952.

Apart from characterizing the shirts as a form of solicitation, the Respondent does not contend that they were otherwise improper; nor does it claim that the wearing of such apparel by some employees either caused or tended to cause any disruption in plant operations or any friction in the plant relationship of employees.

It appears, therefore, and I find, that the Respondent has unlawfully interrogated employees and prospective employees concerning their union membership and activities in violation of Section 8 (a) (1) of the Act. *Joy Silk Mills v. N. L. R. B.*, 185 F. 2d 732, 743 (C. A. D. C.), certiorari denied, 341 U. S. 914.

I also find that the Respondent unlawfully prohibited the wearing of union buttons and T-shirts. It appears that the Respondent permitted and in fact instigated and otherwise participated in and supported activities to form a rival labor organization on company time and premises, as discussed hereinafter. Without anything more, such disparate treatment is unlawful. *Salant & Salant, Inc.*, 92 NLRB 417, 446; *Standard-Coosa-Thatcher Company*, 85 NLRB 1358, 1364. I am of the opinion, moreover, that even in the absence of the unequal treatment factor the Respondent may not bar the wearing of union insignia on company premises, whether or not such articles also contain the legends "vote" or "join" or "support." Employees generally have a right under the Act to wear union insignia on company property,<sup>3</sup> and the words "join" or "vote" or "support" do not destroy the essentially protected character of the insignia and convert such insignia into the kind of solicitation which is otherwise amenable to proper rules under proper circumstances. Most, if not all, insignia, union or otherwise, have certain propaganda effects, and the words "vote" or "join" on union insignia during a union campaign convey no additional ideas not implied in a button or T-shirt which contains only the union name. Moreover, there was no littering of production premises or other disruption of plant production or plant

<sup>2</sup> The Respondent also prohibited the wearing of union buttons, about the size of a half-dollar, which said "support your union, vote yea."

<sup>3</sup> *Republic Aviation Corp. v. N. L. R. B.*, 324 U. S. 793, 802, quoting approvingly from the Board's decision in that case (51 NLRB 1187-1188) that "the right of employees to wear union insignia at work has long been recognized as a reasonable and legitimate form of union activity, and the Respondent's curtailment of that right is clearly violative of the Act."

discipline. Under the circumstances I am convinced that the Respondent's only reason for barring the T-shirts and buttons was their relationship to the UAW-CIO's campaign. Whatever the reason, however, I find that the Respondent violated Section 8 (a) (1) of the Act by its prohibition against the T-shirts and buttons. *Republic Aviation Corp. v. N. L. R. B., supra.*

The General Counsel also alleges that the Respondent deprived Donald Will of overtime work because one day in the plant Will wore one of the afore-described T-shirts. There were three employees and Supervisor Salkel in Will's shipping department and Will was the only employee in the department to wear such shirt. Salkel advised Will at the time that it was against company rules to wear the shirt in the plant and that he must not do so again. Will replied that he would follow Salkel's instructions. That same evening the two other employees in the department worked overtime. According to Will's credible testimony, this was the only occasion, before or since, that some employees in his department received overtime work and he did not. Salkel testified that the number of employees assigned to overtime work varied with the workload, that he selected employees for such extra work on the basis of departmental seniority when fewer employees than the entire department's complement were needed, that Will had the least seniority on that basis, and that only two employees were required for overtime work the day in question.

Will discussed the matter with Salkel the following day, at which time Salkel stated that Will's work was satisfactory and that Will would continue to receive overtime work. In a later conversation, Salkel told Will, as stated above, that "we" are just as well off without a union.

Mere coincidence may explain the fact that Will did not receive overtime work on the single occasion during his employment since 1951, although I am inclined to doubt it. Without finally resolving this issue, however, and considering that the alleged discrimination occurred but once and to only one employee, I shall recommend dismissing this allegation as to Will with a cautionary statement to the Respondent that it is unlawful to deprive employees of overtime compensation or otherwise to discriminate against employees because of their participation in protected concerted activities, including the wearing of union insignia.

#### B. *The Gripe Committee*

In August 1951, shortly after the UAW-CIO began its organizing campaign, Plant Manager Kotcher convened a meeting of employees during working time on company premises, and plant operations were halted during the meeting. Employees were instructed to attend this meeting by their supervisors and they suffered no loss of earnings for the time spent away from their work. In his speech to the employees, Kotcher suggested among other things that the employees form a "Gripe Committee" for "suggestions, gripes, or anything to better the working conditions," including "entertainment" as well, and that if anything did not "suit" the employees they should present such matters to the Committee which in turn would take them up with management. Kotcher then left the meeting room and slips of paper were distributed on which the employees designated their choice of representatives on the Committee. After indicating their respective selections, the employees left their ballots on the desk used by Supervisor Lowery. Lowery and Manager Kotcher were standing at the desk at the time and Lowery then tallied the ballots. The Committee was called the "Gripe Committee," the name suggested by Kotcher. (Kotcher testified, among other things, that he called the meeting in order to relieve the stresses of a new operation, and thereby to put the employees at greater ease in their relationship with management and in regard to their own work performance.)

In February 1952 the employees held a meeting during a rest period on company premises to select new members for the Gripe Committee. Lowery was present. Carmel D'Arrigo, a rank-and-file employee, conducted the meeting and nominations were made. When employees returned to their work stations, ballots which had been prepared in the office were distributed during working hours by Supervisor Lowery and Foreman Robert Morgan in their respective departments and the ballots also were filled out during working hours. Lowery observed that Mary Lambert, one of the employees in her department, had not cast her ballot whereupon Lowery advised Lambert that "you are supposed to vote, because . . . it is Mr. Kotcher's idea." The results of the election appeared on the company bulletin board.

The committee has held monthly meetings on company premises after plant production hours. However, committee member Mary Rush, of the office staff, has been attending these meetings during office time which extends beyond the plant production hours. The Committee also has been using the plant bulletin board for its notices. The Gripe Committee was renamed the Entertainment Committee about March 1952 because, according to one employee, the Committee was principally engaging in social activities.

I conclude that the Respondent attempted to establish the Gripe Committee as a substitute for a *bona fide* collective-bargaining representative, more particularly as a means of combating the UAW-CIO's organizational drive. The Gripe Committee was intended to function, in part at least, for the discussion, consideration, and improvement of the employees' working conditions, and as such it would have been a labor organization within the meaning of Section 2 (5) of the Act. *Indiana Metal Products Corp.*, 100 NLRB 1040; *General Shoe Corp.*, 90 NLRB 1330, 1332-1333, enforced 192 F. 2d 504 (C. A. 6), certiorari denied 343 U. S. 904; *Raybestos-Manhattan, Inc.*, 80 NLRB 1208; *Wrought Iron Range Company*, 77 NLRB 487. However, I do not believe the evidence substantial enough to find that the Gripe Committee, after it came into being, regularly functioned as a labor organization within the contemplation of Section 2 (5). I conclude, therefore, that the Respondent violated Section 8 (a) (1) of the Act by its support and other conduct in attempting to form, although I do not find that it succeeded in forming, a labor organization.

### III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section II, 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.

### IV. THE REMEDY

Having found that the Respondent has engaged in unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

### CONCLUSIONS OF LAW

1. The Respondent has violated Section 8 (a) (1) of the Act by interrogating employees and prospective employees concerning their union membership and activities, by prohibiting employees from wearing union insignia, and by supporting and engaging in other conduct in attempting to form a labor organization.

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

[Recommendations omitted from publication in this volume.]