

shall instead apply our new election rule enunciated in Peerless Plywood Company.<sup>3</sup>

In this case, we recognize that the Employer's speech antedated the decision in Peerless Plywood, and therefore we do not, of course, attach to the Employer's conduct any intent to violate our new rule. However, the Regional Director recommended that the election be set aside under Bonwit Teller, and while we find it unnecessary to determine whether the prior rule was violated, we believe that the freedom of choice guaranteed to employees will be better served by setting aside this election and holding a new election under our new rule. The resulting inconvenience to the Employer is overbalanced by the interests of the employees in expressing their choice in a poll entirely free of interference from any source.

[The Board set aside the election held on April 21, 1953.]

[Text of Second Direction of Election omitted from publication.]

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<sup>3</sup>107 NLRB 427, Member Murdock, while adhering to the views expressed in his dissenting opinion in the Peerless Plywood case, considers himself bound by the majority opinion

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DETERGENTS, INC. *and* UNITED GAS, COKE, AND CHEMICAL WORKERS, C. I. O. Case No. 9-CA-668. February 26, 1954.

### DECISION AND ORDER

On October 30, 1953, Trial Examiner C. W. Whittemore 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 General Counsel and the Union filed no exceptions.

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 Respondent's exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following modification:

We find, in agreement with the Trial Examiner, that the Respondent violated Section 8 (a) (1) of the Act. In doing so,

however, we do not rely, as did the Trial Examiner, on Production Manager Erickson's speeches and Erickson's refusal to grant the Union's requests to address the employees under like circumstances. Although the Trial Examiner found that the Respondent's speeches were not coercive, he concluded that the Respondent's refusal to grant the Union's requests was violative of Section 8 (a) (1) of the Act under the Bonwit-Teller doctrine as applied in complaint cases.

In Livingston Shirt Corporation, 107 NLRB No. 400, a Board majority<sup>1</sup> held that, in the absence of either a privileged or an unlawful broad no-solicitation rule, an employer does not commit an unfair labor practice if he makes noncoercive speeches to his employees on company time and property and denies the union an opportunity to reply under similar circumstances.

As the record does not reveal that the Respondent promulgated either a privileged or an unlawful broad no-solicitation rule, we find that the denial of the Union's requests was not violative of Section 8 (a) (1) of the Act, and we shall dismiss this portion of the complaint.

### ORDER

Upon the entire record in this 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, Detergents, Inc., Columbus, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with economic reprisals because of their union affiliations or activities, and interrogating them as to their activity on behalf of any labor organization.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights to self-organization, to form labor organizations, to join or assist United Gas, Coke, and Chemical Workers, C.I.O., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective 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) of the Act.

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

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<sup>1</sup>Although Member Murdock dissented therein from the reversal of the Bonwit-Teller doctrine, he now deems himself bound by the majority decision.

(a) Post at its Columbus, Ohio, plant copies of the notice attached to the Intermediate Report and marked "Appendix."<sup>2</sup> Copies of said notice, to be furnished by the Regional Director for the Ninth Region, shall, after being duly signed by the Respondent or its representative, be posted by it immediately upon receipt thereof and be maintained by it for a period of 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 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 Order, what steps it has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges that the Respondent has violated Section 8 (a) (1) of the Act by refusing the Union's requests to speak to its employees on company time and property.

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<sup>2</sup> This notice is hereby amended by substituting the words "A Decision and Order" for the words "The Recommendations of a Trial Examiner." 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."

## Intermediate Report

### STATEMENT OF THE CASE

Charges having been duly filed and served, a complaint and notice of hearing thereon having been issued and served by the General Counsel of the National Labor Relations Board, and an answer having been filed by the above-named Respondent, a hearing involving allegations of unfair labor practices in violation of Section 8 (a) (1) of the National Labor Relations Act, as amended (61 Stat. 136), herein called the Act, was held in Columbus, Ohio, on September 9, 14, 15, and 16, 1953, before the undersigned Trial Examiner.

In substance the complaint alleges and the answer denies that the Respondent since April 1953, through a number of named officials and agents and by interrogation, threats, and disparity of treatment has interfered with, restrained, and coerced employees in the exercise of rights guaranteed by Section 7 of the Act.

At the hearing all parties were represented by counsel, 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. Brief oral argument was held at the close of the hearing and a brief has been received from the Respondent.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE RESPONDENT

The Respondent is a wholly owned subsidiary of Monsanto Chemical Company. It is an Ohio corporation, maintaining its principal office and place of business at Columbus, Ohio, where

it engages in the manufacture, sale, and distribution of a detergent product. In the course of its business it annually purchases raw materials, supplies, and equipment valued at more than \$750,000, of which more than \$500,000 is shipped to the Columbus plant from points outside the State of Ohio. It sells and ships finished products valued at more than \$750,000 outside the State of Ohio.

The Respondent is engaged in commerce within the meaning of the Act

## II. THE LABOR ORGANIZATION INVOLVED

United Gas, Coke, and Chemical Workers, C.I.O., is a labor organization admitting to membership employees of the Respondent.

## III. THE UNFAIR LABOR PRACTICES

At the time of the events here involved the Respondent had about 100 employees on its payroll. Most of the conduct at issue occurred during a period of organization among the Respondent's employees, from its beginning in March 1953 to the holding of a Board election on May 28, 1953.<sup>1</sup>

Without exception, the findings as to events herein described are based upon testimony uncontradicted by the management representatives involved Counsel for the Respondent apparently rested his case upon (1) the testimony of Production Manager Robert M. Erickson to the effect that on or about April 26 he told his subordinate supervisors not to interrogate, threaten, or discriminate against employees for joining the Union, and (2) the fact that in most cases General Counsel's witnesses were unable to fix the precise date of events concerning which they testified. The first point requires little discussion. The issuance of instructions, alone, is questionable proof that the instructions were followed. For some years there has been a Federal statute prohibiting interference, restraint, and coercion of employees in matters of their union activity, but court records are replete with instances of violations, both by employers and by unions, of such governmental instructions. As to point (2), the Trial Examiner is of the opinion that uncertainty as to the exact date of an exchange of words is a common human experience, and that a witness' candid admission that he cannot fix the precise day and hour of an event of this nature is not, at the same time, a confession that the event did not occur.

It is undisputed, and is found, that sometime in April Harry Koppenhaver, admitted by the Respondent to be a supervisor within the meaning of the Act, told a minor supervisor, Irene Nichols, in the presence of employee Opal Harrison, to go around among the girls and tell them, while he would tell the men, that if the Union came in the bonus would be taken away, wages would be cut, and free uniforms and other privileges would be withdrawn. Koppenhaver told Nichols on this occasion that Erickson had instructed him to pass this information along to the employees. Thereafter, on a number of occasions, Koppenhaver told Harrison, who wore a union button in the plant, that he wished she would reconsider "the union" because if the Union got in she "would get hurt," and that if Erickson found out who started the Union, they would be fired.

The testimony of Beatrice Theis is undisputed, and it is found, that following Koppenhaver's instructions, above described, Nichols came to her and to other girls and told them that if the Union came in their privileges would be removed, and that Koppenhaver had instructed her to tell them so.

The testimony of Nellie Bright and Ruth Tramel is undisputed and it is found that their supervisor, Nellie Batory (admitted by the Respondent to be a supervisor within the meaning of the Act), interrogated them about the Union in April. Batory queried Bright as to her "beliefs" about the Union, asked her if she had attended a union meeting the night before, and then told her that "if this foolishness doesn't stop they are going to take your bonus away from you." Batory asked Tramel, also, if she knew anything about the union meeting, and then told her that Erickson had said that if the Union got in the bonus and uniforms would be taken away.

The testimony of Phyllis Tramel is undisputed and it is found that in April, Robert Owen, conceded by the Respondent to be a supervisor within the meaning of the Act, came to her machine and said that he had heard that she and her husband had started the Union. She denied

<sup>1</sup>Case No. 9-RC-1934. Objections to this election are pending before the Board.

it He asked her if she had not worked at another plant and belonged to the union there. She admitted this.

The testimony of John Wiggins is undisputed, and it is found, that Koppenhaver queried him about the Union on two occasions, told him that Erickson was "mad as hell" about it and would take away various privileges.

The testimony of various present and former employees is undisputed, and it is found, that upon an undetermined number of occasions Erickson himself called the employees together during working hours and voiced his antiunion opinions. Early in April he told them he never wanted a union in the plant. Early in May he cited the benefits the employees were then receiving from the Company, without a union in the plant. Just before the election Erickson again called the employees together and urged them to "vote right."

Although there is insufficient evidence to establish that Erickson actually threatened or coerced employees by the remarks made at any of these meetings, the record plainly establishes that by disparity of treatment the Respondent, by Erickson's speeches, interfered with, restrained, and coerced employees. On April 29 a union representative, by letter, after stating that it had come to his attention that "an antiunion speech" had been given to employees on company time the day before, requested as follows:

So that your employees hear both sides of the story regarding the union and the employees's rights guaranteed in Section 7 of the National Labor Relations Act, as amended, the union hereby requests that right to address the employees of your company with similar circumstances to talk to workers on company time and property

On May 6 Erickson bluntly denied the request. On May 19 the Union repeated its request, citing occasions of other speeches on May 1 and May 11 by company representatives to the employees. On May 21 Erickson again denied permission.

In summary, the Trial Examiner concludes and finds that by the foregoing incidents of interrogation and coercive threats, and by its refusal to grant the Union the privilege of answering its antiunion speeches under like circumstances, the Respondent has interfered with, restrained, and coerced employees in the exercise of rights guaranteed by Section 7 of the Act.<sup>2</sup>

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES

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 in 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 unfair labor practices, the Trial Examiner will recommend that it cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the Trial Examiner makes the following:

### CONCLUSIONS OF LAW

1 United Gas, Coke, and Chemical Workers, C.I.O., 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 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.]

<sup>2</sup> The record contains evidence as to an incident when the union representative was ordered from a driveway near the plant. Although such testimony is undisputed, the circumstances are such--the question not being wholly resolved as to whether or not the representative was on company property--that the Trial Examiner makes no finding as to whether or not the event constituted an unfair labor practice.

**APPENDIX**

**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, as amended, we hereby notify you that:

WE WILL NOT threaten our employees with reprisals because of, or interrogate them as to, their membership in or activities on behalf of any labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights to self-organization, to form labor organizations, to join or assist United Gas, Coke, and Chemical Workers, C.I.O., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other 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.

All our employees are free to join or assist any labor organization, and to engage in any self-organization or other concerted activities for the purposes of collective bargaining or other mutual aid or protection or to refrain from such activities except to the extent that such right is affected by an agreement made in conformity with Section 8 (a) (3) of the Act.

DETERGENTS, INC.,  
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.

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H. R. VANOVER d/b/a H. R. VANOVER COAL COMPANY  
*and* ALEX EVANS, STEVE GRAY, CLAUDE LEVEL, and  
TRUMAN SMITH, Individuals. Case No. 9-CA-564. February  
26, 1954

**DECISION AND ORDER**

On July 31, 1953, Trial Examiner Samuel Binder 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 General Counsel filed a brief in support of the Intermediate Report.

The Respondent's request for oral argument is denied as the record, including the exceptions and briefs, adequately presents the issues and positions of the parties.