

the employees. He certainly had a right to make such a review. To claim that isolated sentences or paragraphs of this speech, which in length covers 15, single-spaced, typewritten pages are violated of the Act, is to attribute a false significance to those portions, to ignore the tenor and obvious purpose of the speech as a whole, and to give a distorted meaning to the isolated sentences and paragraphs by divorcing them from their context.

Also, Arnds' speech, and each portion of it, must be viewed with regard to all the circumstances which surrounded the event, including the Union's organizational campaign, and the claims put forth in the union bulletins. In Silver Knit Hosiery Mills, Inc., 99 NLRB 422, the Board characterized statements made in a similar speech by a company official as "privileged electioneering." I find this speech, and the portions thereof herein questioned, to be of the same nature. I find that the Respondent did not violate Section 8 (a) (1) by Arnds' speech, or any portion thereof.<sup>12</sup>

As to the final allegation of the complaint, that the Company made "an anti-union speech on company time and property while failing and refusing to afford the union the same opportunity," there is a complete failure of proof. There is no evidence that the Union wanted or requested such an opportunity. In fact the evidence supports the conclusion that the Union was satisfied in every way with its organizational campaign, and rested its hopes of success in the election on its bulletins and personal solicitations among the employees. Since the Union made no request for an opportunity to address the employees, and the Employer had no rule against solicitation of employees in effect, the principle enunciated in Bonwitt Teller Inc., 96 NLRB 608 is not pertinent.<sup>13</sup>

### CONCLUSIONS OF LAW

1. Joint Local Executive Board of California, A.F. of L., is a labor organization within the meaning of Section 2 (5) of the Act.

2. Sparkletts Drinking Water Corporation, a California corporation, at all times material herein was engaged in commerce within the meaning of the Act.

3. The General Counsel has failed to prove by a preponderance of the credible evidence that the Respondent herein has committed any of the unfair labor practices alleged in the complaint.

[Recommendations omitted from publication]

<sup>12</sup> It should be noted that, according to the record of the representation case, supra, the whole of Arnds' speech was not submitted to the Board.

<sup>13</sup> Silver Knit Hosiery Mills, Inc., supra.

PRICE ELECTRIC CORPORATION *and* INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL. Case No. 5-CA-737. March 4, 1954

### DECISION AND ORDER

On November 5, 1953, Trial Examiner Arthur E. Reyman issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices in violation of Section 8 (a) (1) and (3) of the Act 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 alone filed exceptions to the Intermediate Report and a brief.

The Board 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 finds merit in the exceptions. The Board, accordingly, adopts the findings, conclusions, and recommendations of the Trial Examiner only to the extent indicated below.

We do not agree with the Trial Examiner's conclusion that Jianeeny was discriminatorily laid off in violation of Section 8 (a) (3) of the Act. As set out in detail in the intermediate Report, she was selected for inclusion in the layoff of some 200 employees during the Respondent's retrenchment program of the late spring and early summer of 1953. Superintendent Younkins included her among the large number of employees who had to be released after he had reviewed the employment records of all the employees, which disclosed that Jianeeny had been absent approximately 75 days during her 2 years of employment. Despite this seeming justification for the selection of Jianeeny as one of those to be released, the Trial Examiner believed that there was sufficient evidence to support his inference that Younkins knew of Jianeeny's union membership or activity and that he was antagonistic toward the Union.

We do not believe that the Trial Examiner's inference of the Respondent's knowledge as to Jianeeny's union activity, an essential element in finding a violation, has adequate support in the record. It appears that Jianeeny discussed the Union with other employees in her department, solicited them, and secured about 25 signed cards, and that her union activity was known to her supervisor, Cannon. Jianeeny also had a conversation with another employee named Kaufman. Cannon was asked by Younkins whether she knew anything about that conversation and replied that she did not; nor did she tell Younkins of Jianeeny's union membership or activity. This is the extent of the record evidence which, according to the Trial Examiner, supports an inference of knowledge of Jianeeny's activity and union animus on Younkins' part. In our opinion such evidence gives rise to no more than suspicion and surmise; certainly it does not equal the substantial evidence necessary to support the allegation of the commission of an unfair labor practice. We shall therefore dismiss the allegation of the complaint that the discharge of Jianeeny was unlawful.

The only other unfair labor practice found by the Trial Examiner consisted of the remarks of Gross, assistant foreman at one of the Frederick plants, that working conditions would be less favorable if the Union got in. In sharp contrast with Gross' language, the evidence shows clearly that the Respondent had instructed its supervisors not to discuss the Union with the employees and that those instructions were not violated in any other instance. Moreover, as set forth in the Intermediate Report, Gross' remarks were uttered in the course of general conversation with other employees and amounted to no more than idle banter. Even assuming that

this isolated instance of possible misconduct by a single supervisor did constitute an unfair labor practice, we do not believe that it would warrant the issuance of a cease-and-desist order in this case. The record is otherwise completely barren of any evidence of misconduct by the Respondent. Accordingly, we shall dismiss the complaint in its entirety.

[The Board dismissed the complaint.]

Member Beeson took no part in the consideration of the above Decision and Order.

## Intermediate Report and Recommended Order

### STATEMENT OF THE CASE

Upon a charge filed on May 28, 1953, by International Brotherhood of Electrical Workers, affiliated with the American Federation of Labor, and herein sometimes referred to as the Union, the General Counsel of the National Labor Relations Board by the Regional Director for the Fifth Region on July 13, 1953, issued a complaint against Price Electric Corporation, herein sometimes called the Respondent, in which it is alleged that the Respondent, since on or about March 1, 1953, and to the date of the issuance of the complaint, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed to them in Section 7 of the National Labor Relations Act, as amended (61 Stat. 136), herein called the Act, by threatening and warning of reprisals or promises of benefit to its employees, by questioning them, by attempting surveillance of their activities, and by other acts has engaged in activities in violation of the provisions of Section 8 (a) (1) of the Act; and further, in violation of Section 8 (a) (3) of the Act, on or about May 25, 1953, discharged one Francis E. Jianeeny, and has failed and refused since then to reinstate her to her former or substantially equivalent position because of her membership in or assistance to the Union, or because she engaged in concerted activities with other employees of the Respondent for purposes of collective bargaining or other mutual aid or protection. These allegations are effectively denied in a verified answer filed by the Respondent on July 22, 1953.

On the issues framed by the complaint and answer, as supplemented by a bill of particulars to the complaint dated July 30, 1953, the matter came on for hearing at Frederick, Maryland, before the undersigned Trial Examiner on September 9, 1953. After the hearing was closed on September 15, it was reopened on appropriate order and further testimony was taken on October 2, 1953, on which day it was finally closed. At the hearing, the General Counsel and the Respondent were represented by counsel, and the Union was represented by two of its international representatives. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues, to argue orally upon the record, and to file briefs, proposed findings of fact, and proposed conclusions of law was afforded all parties. Briefs filed for the General Counsel and the Respondent have been received and read. Motions to strike and to dismiss made by counsel for the Respondent near the close of the hearing are here resolved by the findings of fact and conclusions of law set forth below.

Upon the entire record of the case, from his observation of the witnesses, and after careful consideration, the Trial Examiner makes the following

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE RESPONDENT

Price Electric Corporation, the Respondent herein, is and at times material hereto has been a corporation duly organized and existing by virtue of the laws of the State of Maryland, having its principal office in Frederick, Maryland, and is and has been at all times material hereto continuously engaged in the manufacture of electronic devices at plants in the State

of Maryland, including a plant at Brunswick and two plants called No. 1 plant and No. 2 plant, respectively, in Frederick. In the course and conduct of its business the Respondent caused and has continuously caused substantial amounts of raw materials used by it in the manufacture of electronic devices to be purchased, transported, and delivered in interstate commerce from and through States of the United States, other than the State of Maryland, to its Brunswick and Frederick, Maryland, plants aforesaid, and causes and has continuously caused a substantial amount of its finished products to be sold, transported, and delivered in commerce to and through the States of the United States, other than the State of Maryland, from its aforesaid plants located in Brunswick and Frederick, Maryland; and, more specifically, the Respondent has during the last calendar year purchased raw materials, equipment, and supplies for its plants aforesaid, valued in excess of \$100,000, 80 percent of which was purchased outside the State of Maryland. During this same period, the Respondent sold from its plants aforesaid, finished products valued in excess of \$100,000, approximately 80 percent of which was shipped to points outside the State of Maryland.

The Respondent is and at all times material hereto has been engaged in commerce within the meaning of Section 2 (6) of the Act.

## II. THE LABOR ORGANIZATION INVOLVED

International Brotherhood of Electrical Workers, AFL, is a labor organization within the meaning of the Act, admitting to membership employees of the Respondent.

## III. THE UNFAIR LABOR PRACTICES

### A. The Discriminatory Discharge

Mrs. Frances Elaine Jianeeny was first employed by the Respondent at its plant No. 2, Frederick, on April 25, 1951, she later was transferred on or about March 6, 1952, to the Respondent's Brunswick plant. She was employed as an adjustor on a type of electrical relay designated as the 5700 series. After her transfer to the Brunswick plant, her work was the same except that she, with other operators transferred at or about the same time, taught new girls and broke them into the work, in addition to their regular work as adjustors.

On about April 25, 1953, Mrs. Jianeeny signed a card denoting her desire that the Union be certified as her collective-bargaining agent. Prior to that date she had not engaged in union activity, following the signing of that card she solicited signatures from other employees and actually secured about 25 signed cards. On May 25, 1953, she was laid off from her work; subsequent to that time she passed out handbills and otherwise solicited union membership.

At the Brunswick plant, Edgar Younkens was plant superintendent. On May 25, 1953, Mrs. Jianeeny was called into Younkens' office and was told by him that she had missed a lot of time since she had been employed by the Respondent and that her personnel record showed that she had missed approximately 75 days in the 25 months of her employment; that he had received orders to cut down his expenses and to lay off the people who had missed a certain amount of time or a great amount of time, and that he had to have people that he could depend on to be there every day. At that time she told him that she had a good reason for every day she had ever missed work, and he said that he knew that she had but he still had to follow through with his orders. At the end of that day she was given her paycheck.

Mrs. Jianeeny had experienced a series of misfortunes, beginning in July 1952, which resulted in several absences from work. Her mother suffered a nervous breakdown in July 1952 and because Mrs. Jianeeny had no one to take care of her children or her mother, she was away from work during the month of July and for a part of the month of August. She returned to work for only a few days, when her son was stung by a bee resulting in a badly abscessed hand, this accident keeping her from work for approximately a week. About 3 weeks after her return to work, she was again absent as a result of a serious accident suffered by her brother and his wife. Thereafter, after having been at work for about 3 weeks, her sister's home burned down, burning 3 families out, and she was absent for approximately a week. This series of absences extended to about October 1952. At first she adhered to a company rule requiring an employee to report in every other day while absent until she was informed by Younkens that it was not necessary for her to call in during each week because he knew why she was absent, and that if she called at the beginning of every week that would be sufficient. During

March 1953, she was absent for about a week, having been confined by reason of an attack of tonsillitis. Mrs. Jianeeny denies that she was ever spoken to by management concerning her absences or that she was ever warned that she would be discharged in the event of an absence. The Company apparently has no policy with respect to sick leave, she was not paid for the times she was absent from her work.

Mrs. Violet Cannon was transferred from Frederick plant No. 2 to the Brunswick plant in March 1952, at the same time Mrs. Jianeeny was transferred. Mrs. Cannon was the group or line leader of the adjustors working on the 5700 series relay at the Brunswick plant, there being 40 adjustors there employed. Her duties consisted of the teaching of newly employed operators how to adjust and to assist them with the work after they had learned the adjusting process and generally to keep order among the operators on the adjusting line. Her assistant, Mary Webber, engaged in the same type of activity; they both moved among the girls, assisting them with their problems and on occasion admonishing the operators concerning their behavior. Mrs. Cannon attended line leaders' meetings conducted by Younkins and during the spring of 1952, before the discharge of Mrs. Jianeeny, was called upon to rate the performance of the adjustors in her department on the basis of ability and the different types of relays they could adjust. After the conclusion of her preparation of the so-called rating lists, she handed them either to Younkins or his assistant, Wheeler. She testified that Mrs. Jianeeny's name was among the first 3 at the top of the list denoting her comparative ability among the 40 operators employed on the line. Occasionally, Younkins asked Mrs. Cannon's opinion as to whether certain employees were qualified for a raise, at which time she would examine their employment record or performance chart and permit Younkins to see for himself the record of performance so kept. Essentially she must have exercised some independent judgment and discretion in rating the girls on their jobs. She attended line leaders' meetings and was instructed not to discuss the Union with the employees which in itself is grounds for belief that the Respondent regarded her as a supervisor.

Mrs. Cannon, who testified under a subpoena issued at the instance of General Counsel, said that in March 1952, during the course of a morning on which union handbills had been distributed, she was asked by Mr. Younkins about a conversation reported to have been held "down the street" between one Estelle Kaufman, an adjustor, and Mrs. Jianeeny, the inference being that the conversation had to do with the Union and that Younkins desired to know or have confirmed to him the import of that discussion between the two operators. When Younkins instructed Mrs. Cannon to find out from them what their conversation had been, Mrs. Cannon remarked that the girls did not tell her anything; that concluded the conversation, and the subject was dropped.

Mrs. Jianeeny testified that there were adjustors, or operators, with more absences than herself who were retained after she was discharged, and Mrs. Cannon confirmed her testimony in this respect. Mrs. Cannon regarded Mrs. Jianeeny as one of the best adjustors she had in that she was capable and fast and had had more experience with the work and the different types of relay. Mrs. Jianeeny was the oldest adjustor in point of seniority working under the supervision of Mrs. Cannon at the time of her discharge. Immediately following the discharge or layoff of Mrs. Jianeeny, Mrs. Cannon discussed with Wheeler, the assistant superintendent, the possibility of attempting to retain Mrs. Jianeeny by reviewing her case with another higher member of management. They felt Mrs. Jianeeny should be kept on for 2 good reasons--first, she was a capable worker and second, she was charged with the support of her 3 children.

In May 1953, the total number of employees of the Respondent was approximately 850, as a result of 3 general layoffs, some of which were made in May and the heavier ones made in June and July, the number of employees was reduced to about 650 presently employed. Of the approximately 190 reduction in force, some 75 employees were laid off at the Brunswick plant, the decrease in employment there being primarily due to a reduction in manufacture or elimination of the 5700 series type of relay. The work done on that series at Brunswick was brought over or transferred to the No. 2 Frederick plant. This change was made for reasons of economy and also because it is said the Frederick plant is better capable of handling that particular series because it was in operation before that type of work was done at the Brunswick plant. According to the testimony of the Respondent's comptroller the "bulk of the layoffs" occurred at the Brunswick plant and the plant No. 2, Frederick, and not the other Frederick plants, and the greater part at the Brunswick plant.

On May 5, 1953, the Respondent promulgated regulations relating to reduction of productive work force, which superseded regulations which had been made effective July 15, 1949; the 1953 regulations read in part:

The following procedures will be the policy normally pursued by the corporation in the event of a lay-off, or reduction in productive work force.

In the event of a lay-off, the following will be the determining factors in our screening procedures:

#### GENERAL WORK HISTORY

1. Attendance record from time of employment.
2. Length of service and/or experience.
3. Ability to produce quality and quantity of work on a various types.

#### GENERAL ATTITUDE

1. Ability to get along with other employees and supervisory personnel.
2. Willingness to carry out instructions in detail.
3. General interest in work or work assignments

#### LAY-OFF PROCEDURES

\* \* \* \* \*

It will be the responsibility of all the supervisory personnel to carry out their screening procedures in a methodical and unbiased manner, and to endeavor to retain only employees with the highest qualification ratings. The recommendations of a Departmental Foreman or Supervisors will be final. However, in the event of misunderstanding, the circumstances will be investigated and discussed with all parties concerned.

The form of record designated "employee separation notice" for Mrs. Jianeeny marks her as not qualified and the cause for her discharge as "general attendance record."<sup>1</sup>

The question of whether the real reason for the discharge of Mrs. Jianeeny was given to her by the Respondent was discussed among certain operators in the ladies' lounge in the Brunswick plant on the afternoon of her discharge while she was waiting to receive her pay, and there is testimony in the record to the effect that Jean Whipp, secretary to Younkins, had expressed her surprise that "general attendance record," or absenteeism, had been given to Mrs. Jianeeny as the reason for her termination. The inference expected to be drawn from this testimony, the questioning of Mrs. Cannon by Younkins concerning the purported conversation between Mrs. Jianeeny and Estelle Kaufman, together with the solicitation of signatures to union-authorization cards by Mrs. Jianeeny and her conversations with employees in her department concerning the Union, is that the Respondent well knew of Mrs. Jianeeny's activities in support of the Union.

The activities of the Union in attempting to organize the Respondent's plants at Frederick and Brunswick must have been well known to the Respondent. A representative of the American Federation of Labor, in March 1953, undertook an organizing campaign on an understanding previously reached with representatives of the Union (IBEW) that the AFL would start the campaign and distribute handbills at the plant of the Company at Frederick and later at Brunswick. Immediately thereafter, the Union received a number of authorization cards signed by employees of the Respondent, the first of which was dated March 30, 1953. The Union then carried on the organizing campaign. During the course of this campaign Mrs. Jianeeny secured some 25 signatures of employees in support of the Union as their collective bargaining representative.

On the basis of the description of her duties and responsibilities as contained in the record herein, Mrs. Cannon must be found to have been a supervisor at the time she was line leader over Mrs. Jianeeny, the activities of Mrs. Jianeeny on behalf of the Union are presumed to have been known to the Respondent, since it was generally known in her department among

<sup>1</sup>On an application filed by Mrs. Jianeeny with the Maryland State Department of Employment Security, in answer to the question "why did you leave," the answer is given "lack work." The Trial Examiner places no weight upon the answer to that question and does not believe, as the Respondent contends, that that answer represents an admission by Mrs. Jianeeny as to why she believed she was laid off, nor does it bear in the least on her credibility as a witness

the employees there and by Mrs. Cannon that she was active on behalf of the Union. Also, it fairly may be inferred that Younkins was aware of her union membership and activities. These facts taken in connection with her length of service, which was long as compared to other operators in the Brunswick plant, and her acknowledged ability to do the work required of her, two of the criteria set forth by the Respondent relating to reduction in force, together with the fact that the Respondent did not rebuke her for her absences in 1952, or her absence in March 1953, demonstrates that her attendance record as such was a fortuity available to the Respondent at the time of the May layoffs as the stated ground for her dismissal. Had the Respondent shown that in addition to her absences from work, her ability was not up to that of other operators, these 2 of the 3 criteria might have proved persuasive against any claim of discriminatory discharge. However, when it is considered that other girls with records of more absences were retained at the time of the layoffs, while Mrs. Jianeeny was discharged, it is indeed questionable that her general attendance record was the real cause of her discharge. On the contrary, the preponderance of the evidence herein shows, and the Trial Examiner finds, that her last absence during her illness in March 1953, added to her 1952 record, was seized upon as an excuse to separate her from service with the Respondent; and that the real reason for her discharge was because of her activities on behalf of the Union, or her membership in the Union, or both.

### B. Other discriminatory acts

The plating department at the No. 1 plant at Frederick is comprised of three rooms--the room where the zinc plating is done, a sanding room immediately adjacent thereto, and a small room called the degreasing room which is separated from the sanding room by a partition. Elias Wastler is foreman of the plating department and Gross is assistant foreman there. Some four girls or women--Mrs. Dodson, Mrs. Waltz, Miss June Lancaster, and Mrs. Merca, were employed in the plating room together with Madeleine Snyder, Wastler's secretary, at the time or times Gross is alleged to have made certain statements attributed to him by Mrs. Waltz and Lewis Keeney.

Lewis Keeney, employed in the plating department at Frederick plant No. 2, related a conversation in the plating room between 9 a.m. and 9:30 a.m., which he thought occurred about the middle of May 1953, between Austin Gross, assistant foreman, and Mrs. Louise Waltz and June Lancaster,<sup>2</sup> and several other employees in the plating room. According to Keeney, the girls were getting ready to make coffee when Gross told them that if a union got in they would not be able to make coffee any more, that later in the morning he told them that they would not be able to go to the restroom so frequently; and that they would have to work piecework and probably would not make as much money. Further, according to Keeney, Gross accused Mrs. Waltz and Miss Lancaster of having joined the Union. Mrs. Waltz testified that at a time around the first of June 1953, at about 9:15 a.m., after she had left her work to prepare coffee, two other girls were talking about the Union, that Gross told them that if the Union gets in "you girls will have a belly full of it--you won't want the Union in"; that he said, "this is another thing that will have to be stopped if the Union gets in", that she, Mrs. Waltz, asked, "What do you mean, the Union"; that Gross then said, "Yes. If the shoe fits, you put it on"; that Gross said, "You will have to sit in your seats and won't be allowed to go to the rest room--run in and out to the rest room every time you want to"; that he remarked, "You will all be on piece work"; and that he turned to Miss Lancaster while talking about the Union and she told him, "Well, you have no room to talk. Your wife signed a card", that Gross denied this but Miss Lancaster said that she knew she had because his wife had told her so. Gross testified that on the particular morning referred to by Keeney and Mrs. Waltz, that at about "break time" when some of the employees were joking and talking about making coffee someone said, "when the Union gets in, we will have free coffee, and at all times", and that he said, "and you may not have coffee at all during working hours." He denied absolutely that he made any further statements either to the effect that if the Union got in there would be piece rates and the employees would make less; or that there would be no more rest periods or there would be shorter rest periods; or that he ever interrogated or accused any of the employees concerning union membership. He said that Miss Lancaster asked him how his wife felt about the Union--"Is she going to join?" and that he answered, "June, you will have to ask Irene. That is up to her. I have nothing to do with what she does."

<sup>2</sup>Between this time and time of hearing, Miss Lancaster was married. She was sworn to testify herein as Violet June Virts.

He denied absolutely that he had urged or persuaded or warned any of the employees of the Respondent in connection with their union activities or that such activities on their part would jeopardize their employment and the employment of other employees of the Respondent or that he ever threatened any employee with discharge or other reprisals or loss of benefits if they joined or assisted the Union, or continued their activities on behalf of the Union. Mrs. Jennie Lee Dodson, one of the female employees in the plating room, substantially confirmed Gross' testimony as to his comments regarding coffee being made during the morning break period. She said that "they was up there cutting up around Madeleine's desk" (Madeleine Snyder being Wastler's secretary) when Gross said something about their not having coffee if the Union got in. She denied that she heard any of the other statements attributed to Gross by Keeney and Mrs. Waltz; she did say that she had heard the Union discussed in the plating room. Madeleine Snyder, also called as a witness on behalf of the Respondent, failed to remember anything about the incident. Miss Lancaster's version of the discussion was to the effect that she asked Gross if his wife was going to join the Union, and he replied that she would have to ask his wife, he didn't know. She denied that Keeney had correctly reported the conversation between her and Gross. On cross-examination, Gross adhered to his story that the only remark he made in the plating room was that "you may not be able to make coffee during working hours"; that it was directed to all the employees in the plating room; that he could not recall who had said that if the Union came in there would be free coffee; nor could he recall that any other remarks were made concerning the Union or anything connected with it after he had directed his comment to the employees in the plating room. He did not remember whether Wastler's secretary was there. The incident stood out in his mind, he said, because the making of coffee during working hours was "absolutely" against company rules. He said, however, that both he and Wastler were accustomed to drinking coffee in the morning when it was made at recess time. In direct conflict to Gross' testimony concerning a company rule against the making of coffee, Mrs. Waltz testified that she had Wastler's express permission to make coffee before she started to make it, that Wastler drank coffee with the employees in the plating room during those periods, that Wastler among others would take turns in buying the ingredients for the coffee, and that she always made the coffee during the morning recess during the 2-year period of her employment except the last 2 times when Mrs. Dodson made it.

Before Mrs. Merca was called to rebut the testimony of Miss Lancaster (Mrs. Virts), the Trial Examiner was inclined to accept in substance the positive testimony of Keeney and Mrs. Waltz regarding Gross' statements, over the recollection of Mrs. Dodson and Miss Lancaster as to what actually was said by Gross and the others. She resolved any remaining doubt the Trial Examiner may have had in this regard. Her testimony was clear and direct and she confirmed the import of the discussion, or conversation among the people in the plating room, as reported by Keeney and Mrs. Waltz.

The allegations of the complaint respecting alleged violations of Section 8 (a) (1) of the Act are laid to Younkins, Mrs. Cannon, and Gross, as representatives in a supervisory capacity. That the Respondent had knowledge of union organizing activities is clearly shown: Younkins at several line leaders' or supervisors' meetings cautioned the supervisors against taking any side in connection with the Union and not to try to influence employees one way or another in connection with their union activities, at a meeting held at the house of the president of the Respondent during the course of the union organizing campaign, the attorney for the Respondent explained to all of the foremen and assistant foremen from all of the plants, their duties and responsibilities in connection with the Taft-Hartley Act and the union activities of the employees of the Respondent; and, according to the testimony of Mrs. Cannon, Younkins showed his knowledge of union activities through his questioning of her of the conversation concerning the Union between Mrs. Janeeny and Estelle Kaufman.<sup>3</sup>

In reviewing the testimony heard in this case, the Trial Examiner can find nothing in the record to support the allegations of the complaint concerning illegal activities on the part of Mrs. Cannon--nowhere has it been said that she urged, persuaded, warned, or questioned employees, or engaged in any of the other specific acts attributed to her by the complaint herein. The questioning of Mrs. Cannon by Younkins can hardly be considered a direct questioning of an employee, she being a supervisor, nor can it be regarded as constituting any one of the violations attributed to Younkins as stated in the complaint.

<sup>3</sup>Counsel for the Respondent argues forcefully in brief that no inference can be drawn from the Younkins-Cannon conversation; the Trial Examiner disagrees.

With respect to Gross, there is clear proof in the record that he engaged in the illegal activities attributed to him. On the occasion when he was discussing the Union with Mrs. Waltz in the presence of other employees, he in effect interrogated one or more of the employees as to their union membership; his reference to the loss of coffee time, curtailment of restroom privileges, and possible reduction in amount of pay constituted threats of reprisals and possible loss of benefits.<sup>4</sup> The testimony of Mrs. Waltz, Mrs. Merca, and Keeney with respect to the conversation between Gross and Mrs. Waltz in the presence of other employees in the plating room is clear and distinct as compared to that of Gross. Gross was an unsatisfactory witness--his memory was at fault in almost every respect except that he was sure that someone else had mentioned that they would have free coffee if the Union came in and he said that perhaps they would not be permitted to make coffee if the Union came in. Mrs. Dodson's testimony in support of Gross' recollection on this point is equally unsatisfactory. Neither Gross nor Mrs. Dodson could remember whether Wastler's secretary, Miss Snyder, was present during the course of the conversation--Miss Snyder herself did not remember anything having been said about the Union, at this or any time, even though her desk was placed within a few feet of where the employees customarily congregated during the morning coffee break. Other employees in the plating department<sup>5</sup> denied that they had ever heard Gross mention the Union, and some of them testified that they had no knowledge of union activities at the Respondent's plant except that they had heard about the Union. One of these employees worked in the degreasing room, while the others worked in the sanding room which, as above noted, is separated by a partition from the plating room. Individually the Trial Examiner was not impressed with the testimony of these witnesses, it being too general to constitute proof of the essential fact in issue and collectively amounting only in substance to the fact that each of them might have had the opportunity to hear Gross make the statements attributed to him but actually had not heard them. The testimony of these nine employees, therefore, has been almost totally discounted in the resolution of this particular issue.

#### Concluding Findings

The soundness of the economic reason advanced for the layoffs in May, June, and July, and the wisdom of management decision to remove certain work from the Brunswick plant to another plant, which resulted in the ultimate layoff or discharge of approximately 190 or 200 employees out of some 850 employed by the Respondent, are not here questioned. However, that Mrs. Jianeeny was a consequent casualty when layoffs occurred through the application of the Respondent's regulations relating to reductions in force cannot be accepted as a fact. Two of the three important criteria to be applied, which the record shows Mrs. Jianeeny has satisfactorily met, were ignored, and the other ostensibly applied as the deciding or impelling reason for her termination. If the criteria had been uniformly applied to determine the status of other operators holding the same or similar jobs, then those other operators would or should have been terminated--this, however, is not the case here. The criteria were applied by the Respondent to suit its own purposes in the case of Mrs. Jianeeny; the criteria were rendered flexible enough as to other employees with less seniority and experience and less ability and as many or more absences so that they retained their jobs. The Trial Examiner therefore finds that Mrs. Jianeeny was discharged, not because of an unsatisfactory general attendance record, but because of her activities for and on behalf of the Union and her membership therein; and that in so discharging her the Respondent has discriminated against her in regard to hire and tenure of employment.

Knowledge of the organizing activities of the Union and some of its employees must be presumed for the Respondent during the times pertinent hereto. The Respondent has shown that it attempted to instruct its supervisory personnel with respect to their obligations to

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<sup>4</sup> The General Counsel does not contend that Gross engaged in surveillance. However, at the hearing he did argue that the request of Younkins to Cannon to find out "what the girls are doing" constituted surveillance; the Trial Examiner does not agree, basing this negative finding on the fact that Mrs. Cannon was a supervisor within the meaning of Section 2 (11) of the Act.

<sup>5</sup> These employees were Gladys V. Bengle, Glenn John Wingett, Florence Clark, Marvin Clay, Harvey Cutsaj, Lewis M. Fleming, Clarence Phillip Handley, James Washington Sexton, and Stewart Lester Sexton. Counsel for the Respondent was prepared to call others to testify to the same effect.

observe the rights of the employees in their union organizing activities. This effort, in itself, does not constitute a defense to acts constituting interference with or coercion of employees in the exercise of their rights guaranteed in Section 7 of the Act. The Trial Examiner finds that the Respondent, through Gross, engaged in acts of constituting interference, restraint, and coercion of its employees, proscribed by the Act, in that he warned employees by threats of reprisals to refrain from union activities, that he questioned employees concerning their membership in or sympathies with or activities on behalf of the Union and concerning the union membership and sympathies of others of its employees, and threatened employees with reprisals or loss of benefits if they joined or assisted the Union or continued their activities on behalf of the Union.

The Trial Examiner at first thought that perhaps too much emphasis was placed on the Gross episode in the plating room, and that it might be such an isolated instance of forbidden activity as to not warrant the recommendation of a Board order. However, Gross, as assistant foreman, was in a position to effectively discourage union membership and activity at a time when the employees' interest in the Union was apparent to management. He cannot plead ignorance of the limitations the Act places upon the activities of supervisors with respect to interference by members of management in the organizing activities of employees.

The Trial Examiner further finds that the Respondent did not request its employees to engage in surveillance of the organizational activities of its employees, or of the union membership, assistance, sympathies, and activity of its employees, and of their concerted activity for the purposes of collective bargaining or other mutual aid or protection.

In the opinion of the Trial Examiner, the discharge of Mrs. Jianeeny, in contravention of Section 8 (3) of the Act, and the statements and actions of Gross in contravention of Section 8 (a) (1) of the Act constitute sufficient grounds for the issuance of an order directed to the Respondent, ordering it to cease and desist from these and similar unfair labor practices. In whole context, and upon the preponderance of the evidence herein, the Trial Examiner finds a substantial basis of fact showing that the Respondent has engaged in the activities found to be in contravention of the Act, as above set forth.

#### 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 Respondent described in section I, 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 is engaged in unfair labor practices, the Trial Examiner will recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

The Trial Examiner has found that the Respondent has discriminated in regard to the hire and tenure of employment of Frances Elaine Jianeeny. It will be recommended that the Respondent offer to her full and immediate reinstatement to her former or a substantially equivalent position and make her whole for the loss of pay she may have suffered as a result of the discrimination against her by payment to her of a sum of money equal to that which she would have earned as wages from on or about May 26, 1953, to the date of the offer of reinstatement, less her net earnings during this period; and that the loss of pay shall be computed on a quarterly calendar basis, in accordance with the formula adopted by the National Labor Relations Board in F. W. Woolworth Company, 90 NLRB 289. It is further recommended that the Respondent make available to the Board, or its authorized agent or agents, upon request, payroll and other pertinent records to facilitate the computation of such back pay as may be due.

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

#### CONCLUSIONS OF LAW

1. International Brotherhood of Electrical Workers, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire or tenure of employment of Frances Elaine Jianeeny, the Respondent, Price Electric Corporation, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

3. By such discrimination and by otherwise interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed to them in Section 7 of the Act, the Respondent, Price Electric Corporation, 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.

[Recommendations omitted from publication.]

## 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, we hereby notify our employees that:

WE WILL NOT discourage membership in International Brotherhood of Electrical Workers, AFL, or discourage activity in support of that organization, or any other labor organization, or discourage any employee from exercising the right secured to him under the National Labor Relations Act by means of discriminatory discharge or discriminating in any manner in regard to hire or tenure of employment, or any term or condition of employment.

WE WILL NOT in any 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 International Brotherhood of Electrical Workers, AFL, or any other labor organization, to bargain collectively through representatives of their choosing, and to engage in collective bargaining or other mutual aid or protection, or to refrain from any and all 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, as guaranteed in Section 7 thereof.

WE WILL offer Frances Elaine Jianeeny immediate and full reinstatement to her former position and make her whole for any loss of pay suffered.

PRICE ELECTRIC CORPORATION,  
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.

**COLLINS RADIO COMPANY, WESTERN DIVISION and INTERNATIONAL ASSOCIATION OF MACHINISTS, FOR AND BEHALF OF DISTRICT NO. 727, LOCAL 1600, Petitioner.**  
Case No. 21-RC-3420. March 4, 1954

### DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Max Steinfeld, hearing officer.<sup>1</sup> The hearing officer's rulings made at the

<sup>1</sup>At the hearing, the petition was amended to show the correct name of the Employer.