

of the contract, the Employer prevented the renewed contract from becoming a bar as to him.<sup>6</sup>

4. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All employees engaged in the repair, maintenance, and servicing of automotive equipment at the Employer's Everett, Washington, plant, excluding new- and used-automobile salesmen, office clerical employees, guards, professional employees, and supervisors as defined in the Act.<sup>7</sup>

[Text of Direction of Election omitted from publication.]

Chairman Farmer and Member Beeson took no part in the consideration of the above Decision and Direction of Election.

<sup>6</sup>Nor do we find merit in the Employer's contention that the resignation was not effective with regard to withdrawal from group participation in collective bargaining because the resignation did not specifically mention collective bargaining. We find that a resignation of the type herein involved constitutes an effective withdrawal for all purposes unless an intention to continue in some phase of group activity is expressed therein. Moreover, the Association's president testified without contradiction that the Association had never bargained on behalf of nonmembers.

<sup>7</sup>The unit is substantially as agreed upon by the parties.

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MAURICE EMBROIDERY WORKS, INC. *and* UNION GENERAL DE TRABAJADORES DE LA INDUSTRIA DE LA AGUJA INDEPENDIENTE. Case No. 24-CA-390. March 4, 1954

### DECISION AND ORDER

On November 13, 1953, Trial Examiner Thomas N. Kessel 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 Intermediate Report attached hereto. The Trial Examiner also found that the Respondent had not engaged in certain other alleged unfair labor practices and recommended a dismissal of those allegations. Thereafter, the Respondent filed exceptions.

The Board has reviewed the Trial Examiner's rulings 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 the entire record in the case and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.<sup>1</sup>

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<sup>1</sup>In the absence of an exception thereto, we adopt, without passing thereon, the Trial Examiner's conclusion that the Respondent did not engage in surveillance, and his subordinate finding that, as a matter of law, the agency of Balines had not been established by competent proof.

**ORDER**

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that Maurice Embroidery Works, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Union General de Trabajadores de la Industria de la Aguja Independiente, or any other labor organization of its employees, by discriminating in regard to hire or tenure of employment of its employees,

(b) By threat of reprisal, or in any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist Union General de Trabajadores de la Industria de la Aguja Independiente, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid and protection, or to refrain from engaging in such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as authorized in Section 8 (a) (3) of the Act, as guaranteed in Section 7 thereof.

2. Take the following affirmative action which it is found will effectuate the policies of the Act;

(a) Offer to Reinaldo Rodriguez immediate and full reinstatement to his former or substantially equivalent position without prejudice to seniority or other rights and privileges, and make him whole for any loss of pay suffered, in the manner set forth in the section entitled "The Remedy" in the Intermediate Report.

(b) Post at its plant in Mayaguez, Puerto Rico, copies of the notice attached hereto and marked "Appendix."<sup>2</sup> Copies of said notice, to be furnished by the Regional Director for the Twenty-fourth Region, shall, after being duly signed by an authorized representative of the Respondent, be posted by the Respondent immediately upon receipt thereof and maintained by it for a period of 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.

(c) Upon request, make available to the Board or its agents for examination and copying, all payroll, social-security,

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<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."

time, and personnel records necessary to determine the amount of back pay due.

(d) Notify the Regional Director for the Twenty-fourth Region in writing within ten (10) days from the date of this Order what steps he has taken to comply therewith.

IT IS FURTHER ORDERED that those portions of the complaint which allege that the Respondent engaged in surveillance and made promises of benefit to its employees to restrain their union activities in violation of Section 8 (a) (1) of the Act, be, and they hereby are, dismissed.

Member Beeson took no part in the consideration of the above Decision and 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, we hereby notify our employees that:

WE WILL NOT discourage membership in Union General de Trabajadores de la Industria de la Aguja Independiente, or in any other labor organization of our employees, by discriminating in any manner in regard to hire, tenure, or any other term or condition of employment.

WE WILL NOT threaten employees with loss of employment because of their activities in behalf of Union General de Trabajadores de la Industria de la Aguja Independiente, or any other labor organization.

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

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 the above-named 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 engaging in any or 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 in conformity with Section 8 (a) (3) of the Act.

All our employees are free to become or remain, or to refrain from becoming or remaining, members of any labor organization, except to the extent above stated.

MAURICE EMBROIDERY WORKS, 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.

**Intermediate Report and Recommended Order**

**STATEMENT OF THE CASE**

Upon a charge filed by Union General de Trabajadores de la Industria de la Aguja Independiente, herein called the Union, the General Counsel for the National Labor Relations Board, by the Regional Director for the Twenty-fourth Region (Sanurce, Puerto Rico), issued his complaint dated June 8, 1953, against Maurice Embroidery Works, Inc, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (3) and (1) and Section 2 (6) and (7) of the National Labor Relations Act, 61 Stat 136, herein called the Act. Copies of the complaint, the charge, and a notice of hearing were duly served upon the Respondent and the Union.

With respect to the unfair labor practices, the complaint alleged that on or about November 10, 1952, the Respondent discharged its employee, Reinaldo Rodriguez, because of his activities in behalf of the Union and has since refused to reinstate him, thereby violating Section 8 (a) (3) and (1) of the Act. The complaint also alleged that the Respondent had by surveillance, threats, or promises of benefit sought to restrain its employees in their union activities thereby violating Section 8 (a) (1) of the Act. The Respondent failed to file an answer to the complaint in accordance with the provisions of Section 102 20, et seq., of the Board's Rules and Regulations. At the opening of the hearing held in this proceeding, counsel appearing for the Respondent orally admitted all allegations of the complaint except those relating to commission of conduct violative of the Act. Counsel also affirmatively offered as Respondent's defense to the allegation of violation of Section 8 (a) (3) of the Act that Rodriguez had been discharged "for cause."

Pursuant to notice, a hearing was held at Mayaguez, Puerto Rico, on July 7 and 8, 1953, before Thomas N Kessel, the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The General Counsel and the Respondent were represented by counsel, and an appearance was entered by an official of the Union. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence was afforded all parties. After the hearing the General Counsel filed a brief with the undersigned which has been carefully considered.

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

**FINDINGS OF FACT**

**I. THE BUSINESS OF THE RESPONDENT**

The Respondent is a Puerto Rico corporation with its principal office and plant at Mayaguez, Puerto Rico, where it manufactures khaki and wool caps for the United States Army

Quartermaster Corps. During a recent 12-month period the Respondent produced more than 1 million caps valued at approximately \$50,000 which were shipped to the Quartermaster Corps in the United States. The Respondent admits and it is hereby found that it is engaged in commerce within the meaning of Section 2 (6) of the Act.

## II. THE LABOR ORGANIZATION INVOLVED

Union General de Trabajadores de la Industria de la Aguja Independiente is a labor organization admitting to membership employees of the Respondent.

## III. THE UNFAIR LABOR PRACTICES

### A. The pertinent evidence

Reinaldo Rodriguez worked for the Respondent as a sewing machine operator from 1947 until he was discharged on November 10, 1952. According to Rodriguez, he joined the Union on October 28, 1952, and then began his activities on its behalf among the Respondent's employees. On that day the Union held a meeting at its headquarters to which the Respondent's employees had been invited by circulars distributed at the plant earlier in the day by officials of the Union. About 60 of the Respondent's approximately 100 employees then employed attended the meeting over which Union President Antonio Cuebas presided. Employees were enrolled as members and Rodriguez was selected as the Union's representative in the Respondent's shop.

Rodriguez testified that when he reported for work the next morning Maurice Ades, the Respondent's president, took him aside and told him that he had learned about the union meeting and knew that he had been elected as shop representative. Ades further told him that he did not want a union either inside or outside the shop and gave Rodriguez till the end of the week to quit the Union or leave his job. This issue was next raised on November 7, 1952, when at 10 a. m. Ades summoned Rodriguez to his office. There Ades asked Rodriguez for his decision and the latter replied that he would remain in the Union. He added that anything further to be said by Ades should be in the presence of witnesses and with this comment returned to the shop. Ades followed and speaking loudly repeated, this time before employees working at their machines, that if Rodriguez persisted with his union activities he would have to quit his job. At this point a person described by Rodriguez as an army supervisor but identified by Ades as an industrial engineer intervened and sent Rodriguez to his machine. He worked the remainder of that Friday and reported on the succeeding Monday, November 10, the next working day. Upon arriving at the plant at 8:30 a. m. he was unable to locate his timecard in the rack where it was customarily kept. He inquired about his card from one of the office girls and was informed that Ades wished to speak to him. Ades then appeared and asked Rodriguez for his decision about the Union. Rodriguez said he was not leaving the Union, whereupon Ades told him he was discharged, again expressing his opposition to a union either inside or outside his shop. Rodriguez requested a letter from Ades stating that he was discharged, but this request was refused with the comment that he could go to the "Department of Labor, to the Police, or to the Board." Rodriguez asked if he were fired and Ades replied, "right now." This exchange took place at the entrance to the shop where several employees were standing waiting to punch their timecards.

Employee Francisco Yournet and former employees Rafael Bonilla and Adrian Tirado testified that they were at their machines on the morning of November 7 when Ades, in their presence, threatened Rodriguez with discharge if he did not abandon the Union. Bonilla and Tirado also testified that they were present when Ades discharged Rodriguez on November 10 and confirmed the latter's testimony as to what occurred on that occasion. Employee Carmen Rodriguez (not related to Reinaldo) testified that on November 10 she had heard the conversation in the shop which, as related by the foregoing witnesses and by Reinaldo Rodriguez, occurred on November 7, when Ades threatened Reinaldo with discharge if he persisted in his union activities. On cross-examination she affirmed her certainty as to the date, but fixed it as the day on which she last saw Reinaldo at the plant. The undersigned is satisfied that she was referring to the incident which occurred on November 7.

Reinaldo Rodriguez also testified that during the October 28 union meeting he had observed Felicidad Balines, one of Respondent's employees, penciling notes on a pad, and that as the names of various persons were called she would look at them and make notations. At the conclusion of the meeting Antonio Cuebas, the aforementioned union president, questioned

her as to her purpose in taking notes and Balines replied that she was recording the names of those in attendance as well as the names of persons elected officers. Cuebas testified that he had observed her note-taking during the meeting, and that when questioned her at its conclusion she told him that she had been ordered by her employer to take notes of persons in attendance and those elected to office. Francisco Younret testified that he also had seen her taking notes at the meeting. Balines was called as a witness by the Respondent and denied that Ades had instructed her to go to the meeting, or that she took notes. She admitted that she had held a pencil during the meeting because it would not fit in her purse. Ades also testified for the Respondent and denied that he had instructed her to go to the meeting and to report back to him. No evidence appears in the record to warrant a conclusion that Balines is a supervisor within the meaning of the Act. Her unrefuted testimony shows that her duties consist merely of keeping records of production by the machine operators. She performs these duties by going to the operators at their machines and making notations on cards kept by them.

Maurice Ades was initially examined by the General Counsel as an adverse witness and testified that he had not been aware of union activity in his shop before he received letters from the Union requesting recognition as collective-bargaining representative. These letters were dated October 29 and November 6, 1952. He also denied knowing about Rodriguez' activities in behalf of the Union until he caused "scandals" in the shop and proclaimed his status as the Union's representative. Letters, however, were received in evidence showing that on November 6, 1952, Rodriguez, in his official capacity as union representative, had requested time off for all employees to hold a union meeting, and that on the same day Ades had refused the request pointing out that he had nothing to substantiate Rodriguez' claim that he was the Union's representative. At first Ades could not recall whether Rodriguez' scandalous conduct occurred in October or November 1952, but then testified that it happened on the day when he was discharged after he had come yelling and shouting to the office with other employees whom he had pulled from their machines ostensibly in protest over an admonition from Ades about holding up production. He could not recall the time of day when this incident took place, and remembered only the name of Francisco Younret as one of the employees who had been present.

While Ades was still testifying as his witness, counsel for the General Counsel introduced in evidence a document dated December 1, 1952, signed by Vicente Pales Matos of Mayaguez, Puerto Rico, who designated himself therein as attorney for the Respondent. Counsel appearing for the Respondent at the hearing acknowledged that Mr. Matos then was and still is attorney for the Respondent. In the foregoing document Mr. Matos denied, as alleged in the charge filed in this case on November 24, 1952, that the Respondent had coerced or restrained its employees in the exercise of their rights guaranteed by Section 7 of the Act, and asserted with respect to the alleged discriminatory discharge of Rodriguez,

The Company terminated Reinaldo Rodriguez employment because; on or about November 10, 1952 (emphasis of this date supplied), he, maliciously and wilfully, disturbed the peace and quiet of the Company's shop by loud and unusual noise and tumultuous and offensive conduct,

This document was apparently filed with the Regional Director of the Board after the filing of the charge but before the issuance of the complaint in the mistaken belief that the charge was in fact a complaint and that this was an answer thereto.

When called as a witness for the Respondent, Ades testified that in November 1952 the plant was pressed for production and that an industrial engineer was then installing a new method of production. During this period he had received several reports from Plant Manager Dora Bravo, Rodriguez' immediate supervisor, that Rodriguez had been leaving his machine and had been going around whispering to other employees. Gilberto Ramos, whose duties were to distribute work to the employees, had also given him such reports. Ades claimed himself to have observed such conduct by Rodriguez. He further testified that beginning with a date in November 1952 he spoke several times to Rodriguez about his conduct before he discharged him. Concerning what happened on the first of these occasions, Ades related that he informed Rodriguez of the reports from his supervisor about his conduct and his lagging production, and directed him to cease interrupting work in the plant, whereupon Rodriguez called 5 or 6 operators from their machines and walked out with them to an alley. When Ades asked them whether they were walking out or intended to work, they returned to their machines. On other occasions Ades assertedly told Rodriguez that he was not con-

cerned with his union activities provided they were conducted outside the shop, but warned that if he continued to interrupt operations he would be suspended

Ades testified concerning a final conversation with Rodriguez in which he again reminded him of his disruption of plant operations and warned him once more of suspension. Rodriguez defied Ades to discharge him or to curb his activities and remarked, "I will do what I please and I will continue doing it and if you want to throw me out...." Continuing with his account of this incident Ades testified, "When he [Rodriguez] came to work I told him: 'I cannot use your services any more.'" Rodriguez replied, "As long as I am here, I will continue, as I am a delegate of the Union." Ades then told him that he "would not use his services." Ades specified no date for this incident, but as it appears from the fact that he was here testifying concerning the circumstances of Rodriguez' discharge, he must have had November 10, 1952, in mind

On cross-examination Ades affirmed that he had discovered that not only Rodriguez' production "but everybody's" had dropped as a result of Rodriguez' interference with their work. Thereupon the General Counsel produced a summary of Rodriguez' production extracted from the Respondent's payroll records during the investigation of this case. This summary covering the period from September 29, 1952, through November 7, 1952, was received in evidence by stipulation of the parties and contained the following information:

## DAILY PRODUCTION RECORD OF REINALDO RODRIGUEZ

	<u>Day</u>	<u>Date</u>	<u>Production</u>	<u>Hours Worked</u>
September 1952	M	29	2000	8
	T	30	2000	8
October	W	1	2000	8
	T	2	2000	8
	F	3	2000	8
	M	6	2000	8
	T	7	2000	8
	W	8	2000	8
	T	9	1300	6
	F	10	-	-
	S	11	-	-
	M	13	1800	8
	T	14	2000	8
	W	15	2000	8
	T	16	2000	8
	F	17	2000	8
	S	18	1000	4
	M	20	2000	8
	T	21	2000	8
	W	22	2400	8
	T	23	600	2½
F	24	2400	8	
S	25	800	3	
M	27	2200	8	
T	28	1760	8	
W	29	1900	8	
T	30	2000	8	
F	31	2100	8	
November	S	1	1900	8
	M	3	2100	8
	T	4	-	-
	W	5	2100	8
	T	6	2100	8
	F	7	2036	8

All operations reflected by the figures in the column headed "Production" were repetitive and consisted of sewing by machine the curtain to the crown of the military overseas caps produced by the Respondent.

Following the introduction in evidence of the foregoing production summary, Ades was again questioned by counsel for the Respondent. He now explained that his dissatisfaction with Rodriguez' production stemmed from his failure progressively to increase his daily output during the period covered by the summary. This, according to Ades, had been a period in which Rodriguez and his fellow employees were learning a new sewing operation and he was expected to increase his output to more than 3,000 units daily. On the other hand, Ades pointed out, Rodriguez had attained a daily peak of 2,400 units which he failed to maintain. Ades remembered that other employees who performed the same operations as Rodriguez during the time in question had increased their production at a faster rate and at the time of Rodriguez' discharge were out-producing him. Ades admitted that there were no more than 2 or 3 employees performing the same operations as Rodriguez, but could not recall any of their names.

Questioned by the Trial Examiner, Ades testified that his examination of Rodriguez' production records had led to the conclusion that he was unwilling to learn and was holding up his work. He first testified that he formed this conclusion "When I saw his record and saw him advising other people to hold production," and that he warned Rodriguez that unless he improved he would be replaced. Ades then testified that this discussion and several more had occurred in September. He had said to him at that time, "You are holding up production and you are not increasing the amount of work you are supposed to produce, according to the industrial engineer you can produce over 3000." Rodriguez allegedly replied "that he was not going to kill himself that he could only make 1400." As to the time when he next spoke to Rodriguez concerning this matter, Ades testified, "There were so many I cannot tell you which was one and which was another." He was then asked to state Rodriguez' production figure on the occasion when he next warned him that failure to improve would result in his discharge, and Ades responded, "When he was producing 1600 then he went up to 1900 and then up to 2200 and then to 1900 I called his attention again."

During examination of Ades by counsel for the Respondent concerning the production records of employees other than Rodriguez, counsel for the General Counsel remarked that the best evidence as to these matters was the Respondent's records, a view shared by the undersigned. Accordingly, a recess was declared to provide Ades and Respondent's counsel with an opportunity to examine these records at the plant and to produce them at the hearing. At the conclusion of the recess, counsel for the Respondent indicated that the desired records had been sent by the Respondent to New York for auditing and were therefore not available. Consequently all of Ades' testimony as to the production records of employees other than Rodriguez was based on his recollection. No evidence was presented to show when Ades had last referred to these records.

Felicidad Balines testified as a witness for the Respondent. She performed her duties in the same area where Rodriguez had worked and claimed she could therefore observe him. She recalled an incident when Ades had sent for him, whereupon Rodriguez arose and called 2 or 3 of the workers interrupting their work. She specified no date for this occurrence. Balines also saw him "during those days" get up "many times to talk to some of the workers." She admitted that she did not hear what he said to them, but asserted she saw him interrupting their work. On cross-examination she limited the number of times when she saw Rodriguez talk to other employees to 2 or 3 occasions on different days when he spoke to them for 5 or 10 minutes. These other employees were Baudilia, Younnet, and Tirado. Such conduct, Balines stated, was forbidden by company rules which were verbally explained to employees by Dora Bravo, the manager. Once she saw Bravo speak to Rodriguez and tell him to sit down. Another time she saw Gilberto Ramos speak to him. She admitted she did not hear what Bravo or Ramos told Rodriguez on either occasion.

Gilberto Ramos was called by the Respondent and testified that he had observed Rodriguez get up from his machine a number of times to talk to other employees, and heard Rodriguez tell them "to hold back the operations because the employer was demanding too much and no wage had been fixed," and "that they were organizing a union and that he needed the cooperation of all the workers." The employees to whom Rodriguez spoke on these occasions included Younnet, Tirado, Bonilla, Baudilia, and others whose names Ramos could not recall. Ramos reported Rodriguez' conduct to Ades and Bravo and recalls various times when Ades asked Rodriguez to stop it. He could not, however, specify dates, except that this happened "around those months [October or November]." He specifically recalled an occasion when Ades summoned Rodriguez to the office, whereupon the latter stood up and shouted for other employees to accompany him. Ades met the group on the way to the office and harsh words

were exchanged including an assertion by Rodriguez that they would not continue to work "for those wages." Ramos heard Ades order Rodriguez back to his machine, but he refused to comply. Then Ades and Rodriguez entered the office and Ramos heard no further conversation as he returned to his work. Rodriguez and 5 other employees left their jobs that day and did not return to work until the next day or 2 days later. Ramos was uncertain whether this incident occurred on November 7 or 10, and made several estimates of the period elapsing from the date of this incident until the date when Rodriguez was discharged ranging from "something like five, seven or ten days" to "about two weeks more or less." On cross-examination Ramos specifically testified that while he saw Rodriguez engage in conversations at work with other employees, he did not hear what was said. However, further examination along this line by counsel for the Respondent elicited from Ramos testimony that he "did hear some" including advice from Rodriguez to employees to stop work or to slow down. Ramos conceded that he knew "from the very beginning" that Rodriguez was the leader of the Union and its representative in the plant. The Respondent stipulated that it was well known among the employees in the plant, including Ramos, that Rodriguez was the union leader.

Adrian Tirado, called as a rebuttal witness by the General Counsel, denied that Rodriguez had ever come to his machine to talk to him during work hours. The parties stipulated that if called as a rebuttal witness Rafael Bonilla would similarly have testified.

## B. Findings

Essentially, the issue to be decided depends on a resolution of the conflicts in the testimony of the General Counsel's witnesses on the one hand and the Respondent's witnesses on the other. If the former group of witnesses deserve credit then the allegations of the complaint as to the unlawful discharge of Rodriguez and the Respondent's coercive threats have been sustained. If, however, the Respondent's witnesses are to be credited, the complaint must be dismissed.

In substance the General Counsel's evidence shows that on October 29, 1952, the very next day after the Union started to organize Respondent's employees, Ades served an ultimatum on their leader, Rodriguez, to either quit the Union or be discharged. On November 7, 1952, he repeated this ultimatum in the presence of other employees, and finally, on November 10, 1952, having pressed Rodriguez for his decision and having been informed of the latter's intention to continue with his union activities, he discharged him for this reason in the presence of other employees. This is the account contained in the testimony of Reinaldo Rodriguez, Youmet, Bonilla, Tirado, and Carmen Rodriguez.

The Respondent's evidence consists of a denial that Rodriguez' discharge was related to his union activities, but asserts that it resulted instead from a disturbance caused by him in the plant, his failure to meet the Respondent's production standards, and his interference with the production of other employees. This evidence is derived from the testimony of Ades, Balines, and Ramos.

Upon consideration of the testimony of all the above-named witnesses and their demeanor while testifying, the undersigned credits the version by the General Counsel's witnesses as to Rodriguez' discharge and the attending circumstances, and rejects the account by the Respondent's witnesses as to these circumstances. In crediting the General Counsel's witnesses the undersigned was particularly influenced by the fact that their testimony, both on direct and on cross-examination, was consistent, clear, definite, and mutually corroborative. None of these witnesses attempted at any time to give his testimony new direction or emphasis to meet situations developed on cross-examination or as a result of afterthoughts brought to mind by questions of counsel. The same cannot be said of the Respondent's witnesses.

Ades was the Respondent's principal witness. A proper evaluation of his testimony compels reference first to the position taken by the Respondent on December 1, 1952, in the document filed by its attorney with the Regional Director in answer to the charge filed in this case. There the Respondent unqualifiedly asserted that Rodriguez had been discharged because of the alleged disturbance created by him in the shop on or about November 10, 1952, the day of his discharge. It is noted that no cause other than the alleged misconduct of that day was assigned as a reason for the discharge. The undersigned is mindful of the fact that this document was prepared when the events in question were still relatively recent. At the hearing approximately 7 months later, Ades, for the first time in this proceeding, expanded the Respondent's reasons for the discharge by adding dissatisfaction with Rodriguez' production

As Ades developed his testimony in this respect it appeared that his dissatisfaction originated around November 1952, after the Union started its organizing drive. Thus on direct examination by counsel for the Respondent, Ades introduced his narrative of the crucial events by emphasizing the production pressure under which the plant was operating in November 1952, and further related to this period the complaints received from Supervisors Bravo and Ramos concerning Rodriguez. He testified that he had several conversations with Rodriguez concerning these matters "in the beginning of November," and that he had admonished him on these occasions about permitting union activities to interfere with production. The undersigned is convinced from Ades' testimony at this stage that he was justifying Rodriguez' discharge on the ground that his production had fallen off in November 1952 after the advent of the Union because of his activities in its behalf, and that when he warned him on or about November 10, 1952, about his lagging production and interference with the work of other employees by diverting them with union activities, Rodriguez created the "scandals" which, assertedly, was the immediate cause of the discharge.

The evolution of the Respondent's defense, however, was not yet complete. When on cross-examination Ades was confronted with the summary of Rodriguez' production record which reveals that his average productivity after October 28, 1952, the starting date of his union activities, was at least equal to his average before then,<sup>1</sup> Ades proceeded on another tack. His dissatisfaction with Rodriguez' production now antedated the Union's advent by approximately 2 months, and was based in important measure on his failure progressively to increase his output. It is here observed that Ades had been repeatedly vague and uncertain as to particulars concerning events about which he had testified, such as dates, times of day, and names of persons present. His memory for details now remarkably improved. Without benefit of records and with no indication that he had consulted company records in preparation for the hearing, he facetiously testified concerning Rodriguez' daily production for August and September 1952. He could even recall that other employees whose work operations had been identical to Rodriguez' had not only out-produced him but had been progressively increasing their production. Curiously, however, Ades could not remember the names of these employees although he conceded that there had only been 2 or 3 of them. Significantly, too, Ades had previously testified that Rodriguez' interferences had caused "everybody's production to fall, and no exception had been made at that point as to these 2 or 3 employees or as to any others. Now, in response to the leading question of Respondent's counsel, he affirmed that he had observed "the records of each and every worker at that time to see whether the number of operations were increased" and had ascertained that they had increased. Ades offered no explanation to reconcile these conflicting positions.

Conceivably the several shortcomings in Ades' testimony, including its internal contradictions, shifting positions, and general vagueness and lack of clarity are attributable to confusion and faulty memory rather than to an inclination to improvise defenses to the General Counsel's evidence as it unfolded at the hearing. In any event, his testimony is sufficiently defective to preclude reliance thereon. Nor does the testimony of Balines or Ramos give valid support to Ades' explanation for Rodriguez' discharge. Balines, who according to her testimony, was in a favorable position to see what went on in the shop, testified to but three occasions when Rodriguez left his machine to talk to other employees, and then she did not hear what was said. This presents a far different situation than that depicted by Ades' portrayal of frequent whisperings and interference by Rodriguez with the work of others to the end that "everybody's" production fell off. Her testimony that she once saw Bravo speak to Rodriguez, and on another occasion saw Ramos speak to him presumably to warn him about speaking to other employees, seems to belie Ades' testimony as to numerous warnings given by him to Rodriguez. In this respect her testimony differed from Ramos' who recalled that Ades had spoken to Rodriguez on several occasions. Ramos' testimony, as hereinabove related, was uncertain and vacillatory as to critical events and is regarded by the undersigned as unreliable.

The undersigned is satisfied that on October 29, 1952, Ades demanded that Rodriguez quit his union activities or give up his job; that on November 7, 1952, Ades called for his decision and when Rodriguez announced his intention to continue his union activities Ades threatened him in the presence of employees with loss of his job if he persisted with these

<sup>1</sup>Statistical analysis of the summary in evidence of Rodriguez' production shows that for the entire period covered, his hourly average production was 253.2, that his hourly average before the advent of the Union based on the period September 29 through October 28, 1952, was 253.1, and that his hourly average thereafter was 253.7.

activities; and, finally, that Ades discharged Rodriguez on November 10, 1952, in the presence of employees because of his refusal to quit the Union. Respondent's discharge of Rodriguez under these circumstances plainly discourages employees in the exercise of their rights guaranteed by Section 7 and is violative of Section 8 (a) (3) and (1) of the Act. Ades' ultimatum to Rodriguez to quit the Union and his threat to discharge him for failure to comply therewith constitutes conduct by the Respondent which is independently coercive and violative of Section 8 (a) (1) of the Act.

The undersigned makes no finding that the Respondent engaged in surveillance, as alleged in the complaint. The proof in support of this allegation consists of the testimony regarding an admission by Balines to Union President Cuebas at the October 28, 1952, union meeting that she was recording the names of employees at the meeting at the behest of Ades. No other proof was presented to establish this fact. Balines denied in her testimony that Ades had instructed her to attend the meeting, and also denied the admission ascribed to her. Ades also denied in testimony that he had engaged Balines to spy for him. Apart from Balines' extrajudicial admission, the record is barren of any evidence from which her agency to engage in surveillance for the Respondent may be inferred. It is true, as found herein, that Ades had acquired knowledge of Rodriguez' designation as shop representative at the meeting by the very next morning, from which it might be inferred that Balines had transmitted this information to him. The further inference, however, may not legally be drawn therefrom that she had reported such information in furtherance of an agency not yet shown to exist. Moreover, it is equally possible that Ades learned of the events of the meeting from other sources, particularly as the record shows that it was well known in Respondent's relatively small plant that Rodriguez was the union leader of the employees. It is well settled that the admissions, statements, and declarations of an agent, other than his testimony in the case in which the issue arises, are not admissible to prove agency.<sup>2</sup> Accordingly it is unnecessary to decide whether Balines had made the admission attributed to her, for even if true, it does not standing alone constitute evidence to support a finding that she in fact was the Respondent's agent engaged to spy on her fellow employees. It will, therefore, be recommended that the allegation in the complaint as to the commission by the Respondent of acts of surveillance be dismissed. It will also be recommended that the allegation of the complaint as to promises of benefit to employees by the Respondent to restrain them in the exercise of union activities be dismissed as the record is devoid of evidence to sustain such allegation.

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

The activities of Respondent, set forth in section II, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and Territories and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

#### V. THE REMEDY

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

It has been found that the Respondent discriminated in regard to the hire and tenure of employment of Reinaldo Rodriguez. It will therefore be recommended that the Respondent be ordered to offer to Reinaldo Rodriguez immediate and full reinstatement to his former or substantially equivalent position without prejudice to seniority or other rights and privileges. See The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch, 65 NLRB 827. It will further be recommended that Respondent make Rodriguez whole for any loss of pay suffered by reason of the discrimination against him. Said loss of pay, based upon earnings which he would normally have earned from November 10, 1952, the date of the discrimination against him, to the date of the offer of reinstatement, less net earnings, shall be computed on a quarterly basis in the manner established by the Board in F. W. Woolworth Company, 90 NLRB 289; N. L. R. B. v. Seven-Up Bottling Co., 344 U. S. 344.

<sup>2</sup> American Jurisprudence, vol. 2. sec. 445.

The Respondent's violations of the Act, found herein, disclose a fixed purpose to defeat self-organization by its employees and its objectives. Because of the Respondent's unlawful conduct and its underlying purposes, I am persuaded that the unfair labor practices found are related to other unfair labor practices proscribed by the Act, and that the danger of their commission in the future is to be anticipated from the Respondent's past conduct. The preventive purposes of the Act will be thwarted unless the remedial order is coextensive with the threat. In order, therefore, to make effective the interdependent guarantees of Section 7, to prevent a recurrence of unfair labor practices, and thus to effectuate the policies of the Act, it will be recommended that the Respondent be ordered to cease and desist from infringing in any manner upon the rights guaranteed by Section 7 of the Act.

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

### CONCLUSIONS OF LAW

1. Union General de Trabajadores de la Industria de la Aguja Independiente is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating with regard to the hire and tenure of employment of Reinaldo Rodriguez, thereby discouraging membership in the Union, the Respondent 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 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.

4. The allegations of the complaint that the Respondent has engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act by acts of surveillance and promises of benefit to employees to restrain them in the exercise of rights guaranteed by Section 7 of the Act, have not been sustained.

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

[ Recommendations omitted from publication. ]

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SPARKLETT'S DRINKING WATER CORPORATION *and* JOINT  
LOCAL EXECUTIVE BOARD OF CALIFORNIA, A.F. OF L.  
Case No. 21-CA-1333. March 4, 1954

### DECISION AND ORDER

On July 31, 1953, Trial Examiner David F. Doyle issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in certain unfair labor practices and recommending that the complaint be dismissed, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the charging Union and the General Counsel filed exceptions to the Intermediate Report and supporting briefs, and the Respondent filed a reply 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 briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following modifications and additions: