

and maintenance unit. In that case, the Board decided that such individuals must be regarded as falling within the statutory exclusion, although they spent less than half their working time in the excluded category. We believe that the policy which prompted our decision in the Walterboro case, noted above, is equally applicable to a category that is excluded by statute from the definition of "employee" under the Act.⁶ Accordingly, even assuming arguendo that the employees herein involved are partly engaged in a nonagricultural work, we find that those employees who divide their time between agricultural and nonagricultural employment must, to the extent that they spend a substantial part of their time in an agricultural function, be deemed agricultural laborers within the meaning of the Act and are, therefore, to be excluded from the unit.⁷

We find that all truckdrivers at the Employer's Frostproof, Florida, operations, including "semi-drivers," but excluding "goat drivers," "goat-flat drivers," office clerical employees, professional employees, administrative employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[Text of Direction of Election omitted from publication.]

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

⁶This analogy was relied upon by the Board in the Walterboro case wherein the Board referred to its similar treatment of part-time supervisors. The practice of excluding individuals who spend a substantial part of their time in supervisory duties is clearly established. See The Texas Company, 85 NLRB 1211; Phillips Petroleum Company, 97 NLRB 67, 69; Hampton Roads Broadcasting Corporation, 98 NLRB 1090, 1091; Hampton Roads Broadcasting Corporation, 100 NLRB 238, 240.

⁷To the extent that they are inconsistent with this decision, past Board cases holding that truckdrivers dividing their time between agricultural and nonagricultural employment are deemed to be within the unit found appropriate, are hereby overruled.

ENDICOTT-JOHNSON CORPORATION *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, A.F. OF L. Case No. 3-CA-571. March 29, 1954

DECISION AND ORDER

On September 15, 1953, Trial Examiner Ralph Winkler issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that the Re-

spondent had not engaged in certain other unfair labor practices and recommended that the complaint be dismissed in that respect. Thereafter, the General Counsel and the Respondent filed exceptions to the Intermediate Report and supporting briefs.

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.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Endicott-Johnson Corporation, Endicott, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating employees concerning their opinions as to appropriate bargaining units.

(b) Soliciting employees to renounce and announce their position on matters affecting union organization.

(c) Advising employees that future economic benefits are contingent on the organizational defeat of International Association of Machinists, AFL, or any other Labor organization.

(d) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Association of Machinists, A.F. of L. or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any 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 by Section 8 (a) (3) of the Act.

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

(a) Post at all its plants in Binghamton, Endicott, Johnson City, and Owego, New York, copies of the notice attached to the Intermediate Report marked "Appendix A"¹ and which

¹Said notice is hereby amended by deleting the words "The Recommendations of a Trial Examiner" and substituting in lieu thereof the words "A Decision and Order."

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."

shall be furnished by the Regional Director for the Third Region. Said notice shall, after being duly signed by the Respondent, be posted immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

IT IS ALSO ORDERED that the complaint be dismissed insofar as it alleges that the Respondent violated Section 8 (a) (3) and (5) of the Act and also to the extent that it alleges violations of Section 8 (a) (1) predicated on or derived from these alleged violations of Section 8 (a) (3) and (5).

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

Upon charges filed by International Association of Machinists, A.F. of L., a labor organization herein called the Union, the General Counsel for the National Labor Relations Board issued a complaint on September 17, 1952, against the Respondent, Endicott-Johnson Corporation,¹ alleging that the Respondent has engaged in specified conduct violating Section 8 (a) (1), (3), and (5) and Section 2 (6) and (7) of the Labor Management Relations Act, 1947, 61 Stat. 136, herein called the Act. Copies of the complaint and charges were served upon the Respondent, and the Respondent in turn filed an answer denying that it has violated the Act in the respects alleged.

Pursuant to notice, a hearing before the undersigned was held in Binghamton, New York, beginning on December 8, 1952, and concluding on March 19, 1953. The parties were represented at the hearing and all parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The parties were given opportunity to present oral and written argument before the Trial Examiner. Briefs were filed by the General Counsel and the Respondent.

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

FINDINGS OF FACT

I. THE UNFAIR LABOR PRACTICES

A. Introduction

By letters dated February 23 and February 27, 1952, the Union requested the Respondent to recognize the Union as exclusive bargaining representative for separate units of employees of the "Pioneer Machine Shop in Johnson City" and the "Baldwin St. Die Shop." On February 29, 1952, the Union filed representation petitions with the Board, seeking to be certified as statutory representative for these respective groups of employees, and a consolidated hearing on these petitions began on May 8, 1952. The Union withdrew the petitions before the representation hearing concluded, and on May 19, 1952, it filed the charges in the present unfair labor practices case.

¹The Respondent manufactures footwear and is engaged in commerce within the meaning of the Act.

The General Counsel alleges that the Respondent in bad faith failed to recognize the Union for the claimed units and he predicates this contention on certain conduct contemporaneous with the Union's alleged bargaining demands and in connection with the aforementioned representation cases. According to the General Counsel, the Respondent engaged in the conduct in question as a dilatory measure and to undermine the Union and dissipate its representative status.

The Respondent denies that its mentioned conduct was unlawful or otherwise intended as dilatory. The Respondent also contends, among other things, that the Union failed to make proper bargaining requests, that the units requested were insufficiently or ambiguously described and are in any event inappropriate, and that the General Counsel has not proved the Union's majority status in the respective units. The Respondent further asserts that, even assuming proper bargaining requests for appropriate units in which the Union enjoyed majority status, the Respondent nevertheless had a genuine doubt concerning the appropriateness of the claimed units and that it was therefore privileged not to accord statutory recognition to the Union until this doubt was properly resolved.

Because I consider the respective die shop and machine shop units to be inappropriate, I need not resolve various of the related issues tendered by the Respondent in connection with the 8 (a) (5) portion of this case. First, I shall discuss the unit questions, and then the matters covered by the 8 (a) (1) and 8 (a) (3) allegations of the complaint, the latter allegation involving the discharge of Wilmer T. Davey on April 29, 1952.

B. Alleged appropriate units

1. Respondent's overall operations and bargaining history

Respondent is one of the largest shoe manufacturers in the country. With its principal administrative offices in Endicott, New York, and within a radius of approximately 9 miles from these offices, the Respondent has 30 plants in the 4-city area of Binghamton, Johnson City, Endicott, and Owego.² This includes 23 shoe factories and 6 tanneries. Employees working in any one of Respondent's plants live in any 1 of the 4 aforementioned cities and environs. All phases of production in the manufacture of a complete shoe, from the tanning of leather to the processing of shoe polish, are performed within this 4-city area, and the factories and operations within this area are administered as an integrated enterprise. One of Respondent's separate administrative divisions is maintenance and service, which includes the employees of the machine and die shops under consideration, together with all other employees engaged as machinists and/or mechanics or machine operators in other machine shops and in the various factories, as well as all other employees engaged in maintaining and servicing Respondent's operations.

Respondent has a centrally administered companywide welfare program for its normal complement of 18,000 to 20,000 employees, including medical and hospital and related services, legal assistance, housing, insurance and pension plans, recreation facilities, banking services, restaurants, etc. Respondent also has a companywide bonus plan in which all employees share equally, in addition to which it maintains a uniform policy throughout its operations respecting vacations, holidays, and working hours. Respondent also pays the same rates of pay to all employees engaged in comparable job classifications, and when it grants wage increases it does so on a companywide basis. Hiring is not done at the factory level; it is done, rather, at central employment offices in Endicott and Johnson City, where the Respondent makes all employee assignments to its various operations.

Although the Respondent has been involved in at least five reported representation cases³ before the consolidated representation proceeding involved in this case, there has been no collective-bargaining history of any consequence resulting from those proceedings. In the last of these proceedings (71 NLRB 1100, decided December 16, 1946), the Board determined the appropriateness of the same die shop unit which the General Counsel claims to be appropriate in the present case. The Union involved in that earlier case won the election but apparently abandoned negotiations and no collective-bargaining agreement has ever been

² Respondent also owns and operates, through another corporation, shoe factories located in Pennsylvania.

³ Endicott Johnson Corp., 17 NLRB 96; 45 NLRB 1092; 57 NLRB 1473; 67 NLRB 1342; 71 NLRB 1100.

negotiated on such unit basis. Since 1947 no unions have represented, as exclusive bargaining representative, any unit of Respondent's employees and there has been no collective bargaining on any basis since that time.

2. The proposed machine shop unit

The proposed Pioneer machine shop unit occupies, generally, the second floor of a building in Johnson City. These employees make and repair parts for machinery used in all of Respondent's factories, in connection with which these employees use the tools and machines and exercise the craft skills appertaining to machinist employees whom the Board customarily establishes, providing other conditions are met, in separate appropriate units (cf. *Armstrong Tire and Rubber Company*, 104 NLRB 892; *Goodrich Chemical Company*, 101 NLRB 1064). Within 2 blocks of the Pioneer Machine Shop in Johnson City is the Baldwin Street machine shop, and a few miles away in the adjoining town of Endicott is the Endicott machine shop; both of these other machine shops are manned by employees of similar machinist skills and performing substantially the same type of work as is done in the Pioneer machine shop.

The record establishes that machinists of the Pioneer and other machine shops at times perform work on component parts of the same machinery and also sometimes work together as a group on certain projects. Considering these facts of functional integration and of the geographical proximity between the Pioneer and other machine shops, together with the aforementioned centrally controlled uniformity of wages and of other terms and conditions of employment--at least so far as Respondent's machinists are concerned--I find a machinist unit as described by the General Counsel and limited to the Pioneer machine shop to be inappropriate.⁴ *Westinghouse Electric Corporation*, 101 NLRB 441; *Henry Vogt Machine Co.*, 9-RC-1926 (June 29, 1953), *Acme Electric Corporation*, 102 NLRB 1233; *Kearfoot Company, Inc.*, 106 NLRB 1033, *Andrews Company*, 98 NLRB 11. Compare *Continental Baking Company*, 99 NLRB 777, 783-784, *Smith's Transfer Corporation*, 97 NLRB 1456. Although I would find the proposed Pioneer machinist unit to be inappropriate even without regard to the principle of the *Westinghouse* case, *supra*, I also consider such principle to be applicable to the instant situation. The Pioneer and Endicott machine shops, for example, are, in my opinion, but extensions of one machine-shop operation for an integrated enterprise within a fairly circumscribed geographical area in which, at least, all employees engaged in such shops have a community of economic and social interests. Accordingly, I shall recommend dismissing the 8 (a) (5) allegation as to the proposed Pioneer shop unit

3. The proposed die shop unit

The proposed die shop unit was, as already indicated; determined appropriate by the Board in 1946, and the General Counsel contends preliminarily that such unit determination is binding here in view of the fact that there has been no substantial change in the shop's operations since 1946. Although, as I have also stated earlier, a bargaining representative was designated following the election had in that earlier case, negotiations were abandoned by that representative, and no agreement was ever consummated on such unit basis. It appears from the decision in that case that the Board majority invoked the extent of organization theory--to what extent I cannot say--in establishing the die shop unit. With the amendments to the Act in 1947, however, certain changes were effected respecting extent-of-organization as a basis for unit determinations (Section 9 (c) (5)), and the Board's decisional law as to units has also undergone variations since the Board issued its aforementioned decision in

⁴In view of the decisional basis for this unit determination, it is immaterial whether, or how many of, Respondent's 13 other shops are machine shops in the craft sense, as Respondent contends, or whether they merely employ mechanics or machine operators, as the General Counsel asserts. It is also unnecessary to rely on Respondent's further reason for inappropriateness stemming from the fact that the Pioneer machinists use machine tools on the first floor of their building and that there are employees on the first floor not included within the proposed unit who are under the same immediate supervision as, and whom the Respondent claims to be otherwise functionally and administratively integrated with, the proposed machinist unit which is limited to the second floor.

1946. In view of the changes in law, the absence of successful bargaining on the die shop basis, and the long lapse of time, I do not consider the Board's earlier determination to be binding in this proceeding.

The die shop is located on the first floor of Respondent's Die and Foundry Building in Johnson City, and it is the only such shop operated by Respondent where the various dies (clicker dies, sole dies, and perforating dies) are made for use in Respondent's shoe factories. The employees of this shop also repair and maintain these dies, sometimes in the die shop and at times in the factories.

The General Counsel's theory respecting the appropriateness of the die shop unit is that it is a homogeneous and identifiable department having a craft nucleus, the alleged craftsmen being the die benders. The Respondent asserts, among other things, that the die benders are not true craftsmen and do not constitute a substantial nucleus in any event, that the die shop unit does not include all employees who work on dies and is therefore not an all-inclusive homogeneous grouping, and that the alleged high degree of interchangeability between die shop functions and other processes of the Respondent establishes the heterogeneity, as well, of the die shop unit.

Shoe dies are used to cut out the various leather and fabric parts of shoes, which parts are assembled and joined together in fashioning the completed shoe. The dies are made to fit the contours of patterns which are prepared, first of cardboard, by patternmakers employed in the various shoe manufacturing departments. These patternmakers are not within the proposed unit. Next is the grading process, wherein a complete set of cardboard patterns for each shoe size is prepared by employees who also are not within the proposed unit. When the grading is completed, the patterns are transferred from cardboard to metal template or junk board and this transference is done by employees within the die shop unit as well as by pattern shop employees who are not included in such unit. The first phase in making the actual die is done, in the case of clicker dies, by the die benders whom the General Counsel claims to constitute the craft nucleus. The bender bends a strip of low grade carbon steel to conform to the outline of the template or junk board pattern. This bending is at times done with heat. From the die bender, the rough die goes to other die shop employees for further operations and finishing processes, including welding, heat-treating, rough and finish filing, grinding, sandblasting, stamping and notching, buffing and polishing, painting, fitting, and inspecting--these various processes being performed by employees, not die benders, who are regularly engaged in these respective operations.

Perforating dies are used to make the various perforation designs on footwear. Employees who fabricate these dies in the die shop are under their own separate subforeman, and their work is substantially akin to that of semiskilled machine shop operators using, among other things, milling machines and drill presses. Die benders do not contribute to the production of perforating dies. Sole or walker dies are fashioned by forging employees, also under a separate subforeman, with a blacksmith classification, not by die benders. (Wilmer Davey, formerly a die bender, testified as a witness of the General Counsel that such forging requires greater skill than die bending.)

The involved skills of many of the die shop employees, other than die benders, are similar to those found in Respondent's various machine and/or maintenance shops and elsewhere in Respondent's organization. For example, there are employees in these other shops performing operations similar to those involved in making the perforating dies; and there are blacksmiths in a foundry adjoining the die shop and also on the first floor of the Pioneer machine shop. Also included in the claimed die shop unit is an employee who grinds knives on a power machine for use in production plants; Respondent has other such employees elsewhere in its operations. Respondent also has employees permanently situated in its factories whose job it is, entirely in some cases and partly in others, to maintain and repair dies; some of these employees have been trained in various of the aforementioned finishing operations, including filing, grinding, welding, and polishing of dies. (Not all repairs can be performed by these employees; some defects can be remedied only in the die shop.) The record also shows that some machinists make repairs on dies, presumably of the perforating variety, in the machine shops.

Now to discuss the question respecting the craft character, or lack of it, of the die benders. When the Union requested the Respondent to recognize it as exclusive bargaining representative for the die shop in February 1952, there were approximately 6 die benders in the proposed unit of approximately 60 employees. If these die benders are not craftsmen, the General Counsel does not sustain his contention that the die shop is an appropriate bargaining unit on a

craft nucleus basis. But even if the die benders are craftsmen, it must also appear as a condition of establishing the appropriateness of the unit that the die benders constitute a "substantial nucleus of craftsmen in a homogeneous department" Sullivan Mining Company, et al, 101 NLRB 1366.

It should be stated, before further discussion, that the bending of shoe-cutting dies is not at all similar to the making, by machinist craftsmen, of conventional industrial dies. On this point there is no disagreement between the parties. Nor is there any question that the wide range of craft skills of the conventional die maker, an advanced form of the machinist trade, need not be possessed or exercised by a proficient die bender. There are no schools of die bending so far as the record shows, and Respondent does not have a formal apprenticeship program for the development of die benders, nor does the United Shoe Machinery Corp which latter company has an entire plant apparently wholly devoted to producing shoe-cutting dies for the industry. Rather, employees learn to bend dies by on-the-job training, first working under supervision on the simpler dies and observing and otherwise learning from experienced benders, and then gradually acquiring the techniques for bending the more difficult items.

The General Counsel's witnesses claim that a bender requires 3 or 4 years' experience and training before attaining the degree of proficiency to bend the more complex dies fashioned in the Respondent's die shop. I was particularly impressed, however, with one of Respondent's expert witnesses, Harold A. Latham, who has had many years of supervisory experience in die-making work in the shoe industry and whose own trade is that of a machinist. It was Mr. Latham's opinion that "the bending of pre-formed section of steel to the outline of a metal template is not precision work" as the term is used in the machinist trade. According to Latham, an individual with ordinary aptitude for die bending can produce usable dies of the simple variety shortly after beginning his bending employment and that such individual can become sufficiently proficient within 1 year to 18 months to bend any shoe-cutting die produced in Respondent's die shop.

On the basis of the entire record, I find that die bending is not a craft, at least for purposes of establishing a unit on a craft nucleus basis. Without minimizing the skills involved, the die bending function does seem to be a speciality of fairly narrow scope--in contrast, for example, to the broad range of required knowledge and highly developed skills of the conventional die maker. I conclude, therefore, that the die shop is lacking in a craft nucleus. And while I am also inclined to the view that the proposed die shop unit is a heterogeneous grouping, it is unnecessary to determine this finally or to resolve Respondent's additional contentions regarding the inappropriateness of this unit. Accordingly, I shall recommend that the 8 (a) (5) allegation be dismissed as to the die shop unit.

C. Interference, restraint, and coercion--8 (a) (1)

The General Counsel contends that the Respondent engaged in certain unlawful conduct during the pendency of the aforementioned representation petitions and that it otherwise has violated Section 8 (a) (1) of the Act. The petitions, it is recalled, were filed in February 1952 and hearing thereon was held on May 8, 1952.

Respondent conducted a meeting at one of its recreation halls during the working day of April 16, 1952. Several hundred employees, including supervisors, from Respondent's various operations attended the meeting and were paid their regular wages for doing so. The assemblage was addressed by Respondent's president, Charles Johnson, and its secretary and counsel, Howard Swartwood, and its labor counsel, Benjamin Seligman. Swartwood testified that the meeting was called upon Seligman's advice in order to "be prepared to produce witnesses in the representation hearing which was to be held on May 8th, [who] would testify as to what their opinion was as to the appropriateness of a unit for collective bargaining." According to Seligman's testimony Johnson told the employees in substance:

that the International Association of Machinists had filed representation petitions seeking to have established as separate collective bargaining units the workers in the die department and the workers in the Pioneer Machine Shop, that the company . . . was going to appear at these representation hearings and oppose the position taken by this union in that the company believed, and as it always believed, that the only proper unit for collective bargaining was the overall company unit, the overall company because all its operations were integrated and you couldn't separate one of its operations from another, that in the

manufacture of shoes they were all tied in together and to separate them would make it very difficult if not impossible to produce the shoes as was necessary.

He (Johnson) also pointed out that that has been the company's position for many years and the company believes it to be a sound position. He told them also that the reason they were assembled was because their Labor Counsel . . . had requested that the company obtain witnesses for the representation hearing in order to have the National Labor Relations Board informed as to the wishes of the workers in the separation of this company into separate small units for collective bargaining.

Respondent at this same meeting distributed certain petitions⁵ among the assembled employees for circulation among the entire employee body. Johnson told the employees, according to employee Benjamin Webb's testimony, that he "didn't want anybody to use any force, that he wanted everybody who would sign [the petitions] to sign them." Also, according to Webb, Seligman stated in his remarks at this meeting that Respondent didn't object to a union but only to "small units."

The petitions were thereupon circulated among Respondent's employees in all departments and more than 14,000 employees, or approximately 94 percent of the personnel then working, signed the documents. The signed petitions were thereafter retained by Respondent. Among the supervisors who actively circulated the petitions during the working hours was Maintenance Superintendent Stanley Stevens. While so engaged and also during this period, Stevens told employee John Ahrens, of the Pioneer machine shop, that he (Stevens) "needed a few more signatures" and "wouldn't (Ahrens) think it over". Stevens asked Kenneth Hoffman whether Hoffman "would sign a loyalty pledge" and he told Hoffman together with several other employees of the Pioneer machine shop that he needed only 2 or 3 more signatures for a "majority"; Stevens asked Raymond Mahoney, then employed in the Pioneer machine shop, what Mahoney thought of the Union and he told Mahoney that he, Stevens, would "like to get some other cards signed to cut that vote for the Union down". Stevens told Herbert Robbins of the Pioneer machine shop that he "would like to see some more names on that petition," and he asked why Robbins "wanted a union", Stevens told machine shop employee Robert Riek, who had previously refused to sign the petition, that he wished Riek would change his mind and sign the petition. Stevens also told Kenneth Vail, an employee in the Pioneer machine shop, that Respondent "had done a lot of things for [Vail], and that [Vail] was one man that had a lot of influence with some fellows and that they only needed a few to overthrow this Union, the Company couldn't operate with a Union, especially little individual units, and the things that they had done for [Vail], [Vail] should do something for them."⁶ Vail told Stevens that he was for the Union if it could get him more money, to which Stevens replied, according to Vail's uncontradicted testimony, that there would be no money for anyone until the Union "was broke up." A week later, Stevens asked Vail whether Vail had changed his mind about signing the petition and Stevens told Vail at the time, according to Vail's uncontradicted

⁵ The heading on these petitions reads as follows:

We, the workers in the _____ (Plant and Room) of Endicott Johnson Corporation, have learned that a Union has petitioned the National Labor Relations Board to represent workers in the Pioneer Machine Shop and in the Die Shop at Johnson City.

We believe that these units are not appropriate for collective bargaining and if established would be detrimental to our interests and to the interests of the Company and community.

We hereby urge the management to oppose the Machine Shop and Die Shop petitions and to use every legal means to establish that if a majority of Endicott Johnson Workers want Union representation for collective bargaining, the appropriate unit is a company-wide unit, consisting of all production and maintenance workers in all plants and departments throughout this valley.

We should be pleased to support our contentions by appearing and testifying at any hearing called by the National Labor Relations Board in connection with Union representation.

⁶ Vail also attributed statements of a similar nature to Superintendent Leonard Steed, who was too ill to appear at the hearing. While I consider Vail an honest witness, I find it unnecessary and shall not, under the circumstances, make findings respecting Steed.

testimony, that he (Stevens) had been doing a lot of things that the men had requested and that he "would do more when this Union was broke up "

Another item of alleged misconduct involves the open circulation during working hours of cards dated March 17, 1952, which state that the signatory thereto "does not want the [Union] or any other union to represent me " The cards were distributed in the Pioneer machine shop by nonsupervisory employees Reford Button and Harold Doty, Button also having been particularly active in circulating Respondent's aforementioned petition in the machine shop. The record does not show Respondent to have conceived, prepared, or paid for these cards, but the General Counsel would hold Respondent responsible for the cards in view of their open distribution during working hours in a small department and therefore under circumstances which may establish Respondent's knowledge of, and support for, such solicitation.

The next item of conduct, relied upon by the General Counsel, involves a speech which Respondent's president, Charles Johnson, made at an employee meeting during working hours on June 17, 1952. The occasion of the meeting was an attempt to enlist employee support in a local civic celebration. During the course of his remarks, Johnson (who did not testify) told the several hundred employees in attendance, according to Anthony Launkites' credible testimony, that there were "some units in Endicott Johnson Corporation that were a little selfish that he thought and they wanted to join some union, and he didn't see any reason for these selfish units to join any union because he thought that E. J. was taking pretty good care of us and he didn't want to see no outside representation taking care of these small selfish units by joining a union, and . . . if these small units got into a union why it would spread all over the Endicott Johnson Corporation and that would be the beginning and the end of Endicott Johnson Corporation." Another honest version of the same speech is that of Edward Pratt who testified that Johnson said,

we have a few selfish workers here in the company -- that are upsetting the company by becoming organized, and he said they are not thinking of the fact that there is about 20,000 other workers and along with also this same group were under the service department there is many groups and if each group of workers throughout the company was to want a different union he said how do you think that we are going to operate under those circumstances through the fact that work more or less depends upon each group. It is sort of on production you might say and if strikes was to come and work stoppage here and there it upsets everybody throughout the company.

According to the credible testimony of Kenneth Hoffman, Johnson also stated that "he wanted all workers to be loyal and keep on with the policy as it has been doing and not anything to disrupt it that he had a great concern and he didn't want anything to change that."

The General Counsel also contends that Respondent violated Section 8 (a) (1) by posting the following notice to its employees on May 21, 1952:

We have today been advised by the National Labor Relations Board that the Union has withdrawn its petitions for elections, and that an order to that effect has been issued by the Board.

Conclusions--8 (a) (1)

Employers, as a general rule, may not interrogate employees respecting their union activities or opinions, particularly where the employers have manifested hostility to the matters in question. Syracuse Color Press, Inc., 103 NLRB 377; compare Industrial Stationery & Printing Co., 103 NLRB 1011. However, there is a privilege to interrogate employees concerning matters normally denied an employer where the information sought is relevant to trial issues. See Joy Silk Mills, Inc., 85 NLRB 1290, enfd as mod. 185 F 2d 732 (C. A., D. C.), cert. denied 341 U. S. 914, Mississippi Products, Inc., 103 NLRB 1388. The petitions in the present case were not circulated by Respondent in order to assist it in formulating its own position on the unit question. The Respondent had already decided to oppose the Union's proposed units, as it had so advised the employees, and it resorted to the petitions to strengthen its position in the then pending representation case. But the opinions of employees, either within or without proposed units, are irrelevant to the Board's determination that units are or are not appropriate. Such opinions or preferences of employees do become material after the Board has decided that a given unit may be appropriate, but the only employees whose

desires are material for this purpose are those within the permitted unit and their desires are to be expressed through an election under the statutory representation procedures invoked, as in the present case, by the aforementioned representation petitions. In the instant case, for example, the proposed units would be no more appropriate had the 14,000 employees, instead of opposing the 2 proposed units in question, indicated their preference for these proposed units.⁷

The circulation of the petitions constituted unlawful interrogation concerning a matter vital to Union activities, there being no relevance to the petitions in the representation case. And I also find that the manner of Superintendent Stevens' conduct respecting these petitions in the Pioneer machine shop was tantamount, in the present case, to unlawful inducement of employees to vote against or withdraw from the Union. Accordingly, I find that the Respondent has thereby violated Section 8 (a) (1) of the Act. Monarch Foundry Co., 106 NLRB 377, Burlington Mills Corporation, 102 NLRB 252, Continental Desk Company, 104 NLRB 912

I do not, however, consider Charles Johnson's statements at the meeting of June 17, 1952, as threatening reprisal or promising benefits. Nor do I consider the posting of the May 21, 1952, notice to be unlawful, for which proposition the General Counsel cites Mellin-Quincy Mfg. Co., Inc., 53 NLRB 366. The principle of this cited case--"Whether employees select a bargaining representative, or what bargaining representative they select, is the exclusive concern of the employees and is not a matter with respect to which an employer is legally permitted to interfere under the Act" (53 NLRB, at 367)--has been so greatly modified in subsequent decisions of the Board and under the present Act, that I must reject it as a correct statement of present law, at least in its application to the instant case. Finally, I find it unnecessary to determine Respondent's responsibility for the cards circulated by Button and Doty. The 8 (a) (1) findings already made and the order to be recommended thereon are of the same nature as the General Counsel seeks as to these cards.

D. Alleged discrimination

The Respondent discharged Wilmer T Davey, a die bender, on April 29, 1952, purportedly for "insulting and belittling foreman [Hrncirik] in front of help." Davey had joined the Union or or about February 25, 1952, but had not otherwise engaged in any activities in behalf of the Union. Davey had refused to sign Respondent's aforementioned petition, as employee Benjamin Webb's behest, sometime before his discharge, other employees of the die shop who were active Union members also had refused to sign the petition.

The die benders worked on a so-called point system at the time in question. Each die had a stated point value based on the time within which the particular die should be made, and benders were expected to turn out a certain number of points each day. The benders were paid on an hourly basis, irrespective of the number of work points they accumulated, and the Respondent asserts that the sole purpose of the point system was to inform the benders "what their productivity could be and what it was reasonably expected of them."⁸ The point value of each item was listed in a book in the die shop and Superintendent Leonard Steed (Hrncirik's superior) had informed the benders that they should work in accordance with these stated point values.

On the morning of April 29, 1952, one of the benders learned that Die Shop Foreman Steven Hrncirik had reduced the point value on a particular die despite the fact that the stated book value of the item had not been changed. The benders, including Davey, protested the point reduction to Hrncirik, stating that Hrncirik was without authority to make the change. In the ensuing discussion Hrncirik finally told them that three benders would retime the die to determine a new point value for it. Davey thereupon stated that there was no need to retime the die because its point value had been long established in the book and that Leonard Steed had

⁷Pittsburgh Plate Glass Company v. N. L. R. B., 313 U. S. 146, cited by Respondent, is inapposite here. The court held in that case that the desires of employees within a proposed unit were relevant to unit and certification questions involved there. Under the present Act, however, the Board is required to hold an election before certifying a representative in a representation case and may not also, as it could under the predecessor Act, certify a representative on the basis of a card check at a hearing. (Compare Section 9 (c) of the present Act with Section 9 (c) of the former Act).

⁸Respondent now uses the point system solely for purposes of scheduling its work and not as a production quota for employees.

said to "work from the book." Hrnčirik then said that the die would nevertheless be retimed, to which Davey retorted that "We are not going to time that die. It is already in the books" and that "You can't do anything about it because Leonard Steed is a bigger man than you are, and what he says goes." "Besides that," Davey added, "I don't think you can do anything about it because we are organized." Davey turned to go to his bench, whereupon Hrnčirik called to him. Davey told Hrnčirik, "Now, look here, I don't want to argue with you no more about this . . . We will work at the prices that are in the books." Davey declared, upon being asked by Hrnčirik why he didn't want to continue the argument, that Hrnčirik was "too ignorant to argue with." Hrnčirik then said, "That is it, you are through," and the employees, including Davey, returned to work.

Hrnčirik reported the incident to Assistant General Manager Frank Johnson, who was Hrnčirik's immediate superior in Superintendent Leo Exlie's absence. Johnson then checked Davey's employment record and learned that the year before, in April 1951, Foreman Hrnčirik had issued a discharge notice to Davey for "insulting and belittling foreman in front of workers." This notice had been rescinded before Davey was discharged, as Johnson advised in checking Davey's record.

Johnson met with Hrnčirik in the die shop office on the afternoon of the 1952 incident under consideration, and Assistant Foreman Arthur Knickerbocker (Davey's immediate supervisor) and Walter Komar (a die shop employee) were summoned, as was Davey. Johnson testified that he desired Knickerbocker and Komar to be witnesses to the discussion. Johnson asked Davey whether he had told Hrnčirik that Hrnčirik "was too damn ignorant to run the room or to do anything about anything that went on in that department" and Davey replied unhesitatingly that "I said it and I will stand back of it." Johnson then directed Davey's discharge.

Later that afternoon a committee of die shop employees met with Johnson and sought to have him reconsider Davey's discharge. Johnson advised the group that Davey had defied Johnson to fire him and that this was not the first time Davey had insulted Hrnčirik, referring in this connection to the 1951 incident.⁹

The General Counsel claims that Respondent discharged Davey because of his Union membership and failure to sign Respondent's petition. The General Counsel further claims that, even apart from the matter of such membership and petition, Respondent was in any event not permitted to discharge Davey because of the die shop incident, the argument being that the entire incident was a concerted activity protected under Section 7 of the Act. Among other things in support of these contentions, the General Counsel also points to various alleged inconsistencies and improbabilities in Respondent's testimony.

The record does establish, in my opinion, that Respondent was strongly opposed to the Union's objectives in organizing the die shop and I am also satisfied that it knew Davey had not signed its petition. However, Davey was not at all active in Union matters, apart from joining the Union, and there were many others in the die shop who also had not signed the petition. Moreover, the 1951 incident with Hrnčirik arose at a time when there was no Union campaign. Mindful of the matters of alleged inconsistency and improbability referred to by the General Counsel, I am nevertheless unable to find by a preponderance of evidence that Respondent discharged Davey for reasons relating to his Union membership or to his refusal to sign the petition.

Respondent contends that the discussion concerning points was not a protected concerted activity because the points had no effect on the employees' wages. This factor is not essential, however, in order that concerted activity be protected under Section 7 of the Act, and I find that the employees' concerted protest concerning points did involve terms and conditions of employment and therefore was within the scope of statutory protection. But conduct is not necessarily removed from lawful disciplinary action by an employer merely because such conduct arises in a context of concerted activity.¹⁰ Davey not only called Hrnčirik "ignorant" and later "[stood] back of it" but he also declared his refusal to accept Hrnčirik's instruction that the die be retimed. It may be that Hrnčirik was overbearing and tactless in handling the situation; nevertheless, such circumstance afforded Davey no statutory warrant for "flouting of [Hrnčirik's] managerial authority." Briggs Manufacturing Company, 75 NLRB 569, 585.

⁹Although one witness testified that Johnson mentioned, as a reason for the discharge, that Davey was involved in Union organization, the record in this particular regard is too insubstantial and lacking in corroboration to permit me so to find.

¹⁰See Mackay Radio and Telegraph Company, Inc., 96 NLRB 740; Titan Metal Manufacturing Company, 99 NLRB 872; Briggs Manufacturing Company, 75 NLRB 569, 584.

See also Shedd-Brown Mfg. Co., 102 NLRB 742 (as to Kromrey), Crucible Steel Casting Co., 101 NLRB 494.

I find, therefore, that Davey was discharged for cause, and I shall therefore recommend that the complaint be dismissed as to him.

II. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section I, above, occurring in connection with the operations of the Respondent, 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 thereof.

III. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and that it take certain affirmative action in effectuation of the policies 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. The Respondent has engaged in unfair labor practices within the meaning of Section 8 (a) (1) and Section 2 (6) and (7) of the Act by interrogating employees concerning their opinions on appropriate bargaining units, soliciting employees to renounce and/or announce their position on matters affecting Union organization, and advising employees that future economic benefits were contingent on the organizational defeat of the Union.

2 The Respondent has not violated Section 8 (a) (3) and (5) of the Act

[Recommendations omitted from publication.]

APPENDIX A

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 interrogate our employees concerning, or solicit them to renounce or announce, their position on matters affecting Union organization.

WE WILL NOT advise employees that future economic benefits are contingent on the cessation of organizational activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Association of Machinists, A.F. of L., 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 or protection or to refrain from 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 as authorized in Section (a) (3) of the Act.

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

ENDICOTT JOHNSON 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