

separate craft units may be appropriate.⁸ We shall, therefore, establish separate voting groups for the carpenters and millwrights. Since the Employer does not employ any cabinet-makers at the plant involved herein, we shall not pass upon their unit placement.

Painters' unit (Case No. 17-RC-1717)

Some of the painters are also assigned to work alongside the production lines. A few painters paint signs and others have general painting duties. There is no evidence as to the experience required by the Employer for painters. Accordingly, as the record fails to establish that they are true craftsmen, we shall dismiss the petition.

We shall direct that separate elections be held among the following voting groups at the Employer's Parson, Kansas, plant, excluding from each group all other employees, and supervisors as defined in the Act:

1. All carpenters and carpenter leaders and helpers.
2. All millwrights and millwright leaders and helpers.

If a majority of the employees in either of the voting groups vote for the Carpenters, they will be taken to have indicated their desire to be represented in a separate unit, and the Regional Director conducting the elections directed herein is instructed, in that event, to issue a certification of representation to the Carpenters for such unit, which the Board, under the circumstances, finds to be appropriate for purposes of collective bargaining. If, however, a majority of the employees in either of the voting groups vote for the Intervenor, they will be taken to have indicated their desire to remain part of the existing production and maintenance unit, and the Regional Director is instructed to issue a certification of results of election to such effect.

[Text of Direction of Elections omitted from publication.]

[The Board dismissed the petition in Case No. 17-RC-1717.]

Member Rodgers took no part in the consideration of the above Decision, Direction of Elections, and Order.

⁸International Paper Company, 94 NLRB 500 at 506.

BOWLING GREEN MANUFACTURING COMPANY and INTERNATIONAL UNION, UNITED AUTOMOBILE WORKERS OF AMERICA, AFL. Case No. 9-CA-627. June 30, 1954

DECISION AND ORDER

On December 28, 1953, Trial Examiner Herbert Silberman issued his Intermediate Report in the above-entitled proceed-

ing, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report, and a supporting brief.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the Respondent's exceptions and brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.¹

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 Bowling Green Manufacturing Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in International Union, United Automobile Workers of America, AFL, or any other labor organization of its employees, by discharging employees or in any other manner discriminating in regard to their hire or tenure of employment, or any term or condition of employment.

(b) Interrogating employees concerning their membership in, or activities on behalf of, the International Union, United Automobile Workers of America, AFL, or any other labor organization, in a manner constituting interference, restraint, or coercion in violation of Section 8 (a) (1) of the Act.

(c) In any other 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 Union, United Automobile Workers of America, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

¹Board Member Rodgers would find that under the circumstances of this case the single instance of interrogation herein does not amount to interference, restraint, or coercion within the meaning of the Act.

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

(a) Offer Lera M. Crabtree immediate and full reinstatement to her former or a substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of pay she may have suffered by reason of Respondent's discrimination against her, in the manner set forth in the section of the Intermediate Report entitled "The Remedy."

(b) Upon request, make available to the Board or its agents for examination and copying all payrolls, social-security payment records, timecards, personnel records and reports, and other records necessary or useful to the analysis of the amount of back pay due under the terms of this Order.

(c) Post at its plants in Bowling Green, Kentucky, copies of the notice attached to the Intermediate Report and marked "Appendix A."² Copies of said notice, to be furnished by the Regional Director for the Ninth Region, shall, after being signed by the Respondent's representative, be posted by the Respondent 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 Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

IT IS FURTHER ORDERED that the allegations of the complaint charging that Respondent discriminatorily discharged Raymond Jackson and Vivian V. Crabtree, be, and they hereby are, dismissed.

² This notice, however, shall be, and it hereby is, amended by striking from line 3 thereof 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."

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

Upon a charge duly filed by International Union, United Automobile Workers of America, AFL, herein referred to as the UAW, the General Counsel of the National Labor Relations Board, by the Regional Director for the Ninth Region (Cincinnati, Ohio), on August 21, 1953, issued a complaint against the Respondent, Bowling Green Manufacturing Company, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 61 Stat. 136, herein called the Act. Copies of the charge, complaint, and notice of hearing were duly served upon the parties.

With respect to the unfair labor practices, the complaint, as amended at the hearing, alleges, in substance, that the Respondent: (1) Discriminatorily discharged and thereafter has failed and refused to reinstate Raymond Jackson, Vivian V. Crabtree, and Lera M. Crabtree, in violation of Section 8 (a) (1) and (3) of the Act; and (2) since June 29, 1952, by various acts set forth in the complaint, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act, in violation of Section 8 (a) (1) of the Act. The Respondent in its answer denied that it has committed the alleged unfair labor practices.

Pursuant to notice, a hearing was held on November 9, 1953, at Bowling Green, Kentucky, before Herbert Silberman, the undersigned Trial Examiner. The General Counsel and the Respondent were represented by counsel and the UAW was represented by an official representative. Full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the issues, and to present oral argument was afforded all parties. The General Counsel's motion, made at the hearing, to amend the pleadings to reflect the correct name of the Respondent, was granted. The parties waived their right to submit briefs and proposed findings of fact and conclusions of law to the undersigned.

Upon the record in the case and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Bowling Green Manufacturing Company, a corporation organized and existing under the laws of the State of Kentucky, is a wholly owned subsidiary of the Holley Carburetor Company, which operates plants in the States of Michigan, Tennessee, and Kentucky. Bowling Green Manufacturing Company, at its two plants located in Bowling Green, Kentucky, is engaged in the manufacture, sale, and distribution of carburetors, distributors, heat regulators, and other automotive accessories. During the 12 months preceding the hearing in this case, which period is representative of all times material herein, the sales of products manufactured by the Bowling Green Manufacturing Company at its plants in Bowling Green, Kentucky, exceeded \$500,000, and 50 percent of such products was shipped from Bowling Green, Kentucky, to points outside the State of Kentucky.

Respondent admits that it is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

International Union, United Automobile Workers of America, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

About November 1951, the UAW began a drive to organize the employees at Respondent's Bowling Green plants. However, it has succeeded in enlisting the support of only a relatively insignificant number of Respondent's 500 to 650 employees. Also, it appears from the record that the Respondent has been hostile towards the unionization of its employees. Mrs. Francis Still, a regional representative of the UAW, testified that in December 1951 Elmer Jones, Respondent's personnel director, during a conversation with her said, "Mrs. Still, why don't you get out of Bowling Green and leave these employees alone. You ran us out of Holland, Michigan."¹ Earl E. Boyles, a former employee of Respondent, testified that in May 1952, during a telephone conversation with Elmer Jones, the latter stated that the reason Boyles would not be recalled to work by the Respondent was that the Respondent had been informed that Boyles "was on the side of labor agitators, and that they [the Respondent] weren't going to have any union out here." Raymond Jackson testified that when he was hired by the Respondent in March 1952, Elmer Jones said to him that a union ran the Company out of Michigan, that the Respondent just could not afford to pay union wages at Bowling Green, and

¹ Prior to beginning operations in Bowling Green, the Respondent, or a predecessor company, operated a plant in Portland, Michigan, not Holland, Michigan.

that the Respondent would close its plants and move from Bowling Green before it would tolerate a union in its plants Jackson further testified that, on one occasion, Foreman Raleigh H. Shelton said to him, "That's one thing we're not going to have and that's a union here at the plant." Jones and Shelton testified on behalf of the Respondent at the hearing, but neither denied having made any of the foregoing remarks attributed to them.

B. The discharges

1. Raymond Jackson

Raymond Jackson was hired by Elmer Jones, Respondent's personnel director, on March 18, 1952, as a machine operator in the machining department. During the employment interview Jones asked Jackson whether the latter had belonged to a labor organization at his previous place of employment. Jackson admitted that he had been a member of the UAW-AFL, but stated he was not in favor of a labor organization at Respondent's plant. In May 1952, Jackson joined the UAW. He assisted the Union in its organizational activities by inducing several employees to join and by advising 8 or 10 employees to attend a union meeting on June 19, 1952.

The only evidence indicating that the Respondent may have had knowledge of Jackson's union membership and activities consists of Jackson's testimony with respect to a conversation he had with an employee, Paul Kincheloe. According to Jackson, about June 23, 1952, Kincheloe told him that he was in danger of being fired for signing up union members and if he was not guilty he should tell Elmer Jones.

Kincheloe is an hourly rated employee classified as a setup man. Jackson testified that Kincheloe gave instructions to the machine operators, assigned them to machines, inspected their work, and he was told by Elmer Jones that Kincheloe had recommended his discharge. On the other hand, Raleigh H. Shelton, the foreman of the machining department, and Elmer Jones testified that Kincheloe had no supervisory authority and specifically did not have authority to hire, discharge, or assign work to employees. Although Jones did not deny Jackson's testimony that Kincheloe had recommended Jackson's discharge, Jones testified that his decision to discharge Jackson was based upon Shelton's recommendation. There is no real conflict between the testimony of Jackson and that of Jones and Shelton concerning the status of Kincheloe. Kincheloe, as a setup man in the machining department, was one of the most skilled employees in the department who in the performance of his duties was required to give routine instructions and directions to the less skilled employees. Contrary to the contention of the General Counsel, the evidence does not establish that Paul Kincheloe, during the times material herein, was a supervisor within the meaning of the Act.² Therefore, knowledge on the part of Kincheloe concerning Jackson's union membership and activities may not be imputed to the Respondent merely because of the position occupied by Kincheloe. Jackson's testimony to the effect that he was told by Kincheloe that Jones knew of his union activities is hearsay and not competent evidence of the fact.

Jackson was laid off together with most of the employees at Respondent's Bowling Green plants on July 3, 1952. On July 28 and also in October or November 1952, Elmer Jones advised Jackson he would not be recalled because his work had been unsatisfactory. Foreman Shelton testified that between March and July he had assigned Jackson to various machines in the department, but because Jackson's work had been unsatisfactory on all these machines he finally had assigned Jackson to handtool work which was principally being performed by women. Elmer Jones testified that after the July 3 layoff, he decided not to recall Jackson and five other employees in the machining department upon the advice of Shelton that their work had been unsatisfactory.

In view of the absence of competent evidence that the Respondent had knowledge of Jackson's union membership and activities and the testimony of Shelton and Elmer Jones that Jackson had proved unsatisfactory as a machine operator and was discharged for that reason, I find that the General Counsel has not established by a preponderance of the evidence that Jackson was discriminatorily discharged.

²United Screw and Bolt Corporation, 106 NLRB 1308; Meier Electric & Machine Co., Inc., 107 NLRB 143.

2. Lera M. Crabtree

Lera M. Crabtree was hired on September 17, 1952, as a machine operator in the breaker arm and bracket assembly department. William Jones was foreman of that department. Lera Crabtree joined the UAW about October 18 or 19, 1952, and solicited 7 or 8 other employees to join the Union. Miss Crabtree testified that during lunch hour 1 day, in the presence and hearing of William Jones, she had stated that the "Union lady" was at her house and was her good friend. Lera Crabtree further testified that on November 6, 1952, she had had a conversation with William Jones about persons who had worked at the General Electric plant at the same time that Crabtree and Jones had worked there. A remark made by Crabtree to William Jones, during this conversation, about her foreman at that plant prompted Jones to say to her, "I forgot you were a union steward in that department." Lera Crabtree was discharged the next day by Elmer Jones. At the time of her discharge according to Crabtree's testimony, Elmer Jones stated she was not being fired because of her work. All Jones told her with respect to the reason for her discharge was that he had obtained her record from General Electric and she could "put two and two together." Elmer Jones testified that he discharged Lera Crabtree on the recommendation of William Jones and told her he was doing so because her foreman was dissatisfied with her work and her behavior at the plant. To the extent that there is conflict between the testimony of Lera Crabtree and Elmer Jones concerning their conversation on November 7, 1952, I credit Miss Crabtree's version of their conversation.

The Respondent contends that Lera Crabtree was discharged because she was an unsatisfactory employee. Lera Crabtree testified that she had been complimented with respect to her work at Respondent's plant and had never been reprimanded about her work or her behavior at the plant. Elmer Jones admittedly had no personal knowledge of Lera Crabtree's suitability as an employee. William Jones, who recommended her discharge and who was foreman of the department in which she worked, was still employed by the Respondent at the date of the hearing herein. The Respondent offered no explanation for its failure to call upon William Jones, or any other employee with personal knowledge of the facts, to testify concerning Lera Crabtree's work and behaviour at the plant. In contrast, it is significant that Foreman Shelton was called by the Respondent to testify concerning Jackson's unsatisfactory performance when working for the Respondent. There is, therefore, no competent evidence in the record herein to support Respondent's contention that Lera Crabtree was an unsatisfactory employee.

In view of Respondent's undisputed antipathy towards the Union, Respondent's knowledge of organizational activity among its employees,³ Respondent's knowledge that Lera Crabtree had been a union steward when employed at the General Electric plant and was friendly with the "Union lady" who was attempting to organize Respondent's employees, and its failure to offer evidence in support of its contention that Crabtree was an unsatisfactory employee, I conclude that the Respondent discharged Lera Crabtree not for the reason asserted by it but in order to discourage membership in any labor organization, in violation of Section 8 (a) (1) and (3) of the Act.⁴

3. Vivian V. Crabtree

Vivian V. Crabtree was discharged by Foreman William Jones on November 6, 1952. She testified that Jones told her that her work had been unsatisfactory. She also testified that the day before her discharge William Jones, the foreman in the department in which she had been working, asked her if she had been solicited to sign a union card. She admitted that she had, but stated she had not decided whether she would sign the union card. William Jones also

³I do not credit Elmer Jones' testimony that prior to December 29, 1952, he never heard of nor knew of any organizational campaign or other types of union activity at Respondent's Bowling Green plants. The uncontradicted testimony of Vivian Crabtree, discussed below, is evidence of the fact that Foreman William Jones, at least by November 5, 1952, was aware that employees were being solicited to join in a union. William Jones' knowledge of union activity among Respondent's employees is imputed to the Respondent.

⁴The circumstance that Lera Crabtree may not have completed an alleged probationary period of employment on the date of her discharge does not excuse Respondent's discriminatory conduct. Probationary employees, as well as other employees, are entitled to the protection of the Act. Horn Manufacturing Company, Inc., 83 NLRB 1177.

inquired who had asked her to sign the card and whether that person worked for Respondent. Although this uncontradicted testimony considered together with the fact that Vivian Crabtree and Lera Crabtree, her aunt through marriage, were discharged on successive days and the absence of testimony that Vivian Crabtree's work was unsatisfactory raise a suspicion that Vivian Crabtree was discharged to discourage union membership and activities, nevertheless, I do not find that the General Counsel has sustained the burden of proving by a preponderance of the evidence that Vivian Crabtree was discriminatorily discharged.

C. The alleged acts of interference

Vivian Crabtree testified without contradiction that on November 5 Foreman William Jones asked her whether she had been solicited to sign a union card and who was the solicitor. Such attempt to elicit information in regard to an employee's union activities and to discover who had been soliciting the employees to join a union, especially in the light of Respondent's background of hostility towards the organization of its employees, constitutes interference with, restraint, and coercion of employees in the exercise of rights guaranteed them by Section 7 of the Act, in violation of Section 8 (a) (1).⁵ The complaint alleges other independent violations of Section 8 (a) (1) of the Act by the Respondent. However, there is no evidence showing that any such alleged conduct on the part of the Respondent occurred within the period of limitations embraced by the charge and complaint herein.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

V. THE REMEDY

Having found that the Respondent has engaged in and is engaging in 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.

Having found that the Respondent discriminatorily discharged Lera M. Crabtree on November 7, 1952, it will be recommended that the Respondent offer Lera M. Crabtree immediate and full reinstatement to her former, or a substantially equivalent, position without prejudice to her seniority or other rights and privileges, and make her whole for any loss of pay she may have suffered by reason of said discrimination by payment to her of a sum of money equal to that which she normally would have earned from the date of her discharge to the date of Respondent's offer of reinstatement, less her net earnings during said period. Said loss of pay shall be computed on a quarterly basis in the manner established by the Board in F. W. Woolworth Company, 90 NLRB 289. It will also be recommended that the Respondent, upon request, make available to the Board payroll and other records to facilitate the determination of the amount due.

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

CONCLUSIONS OF LAW

1. Bowling Green Manufacturing Company is, and at all times relevant herein was, engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. By discharging Lera M. Crabtree and thereafter failing and refusing to reinstate her to her former or a substantially equivalent position, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act.

3. By questioning Vivian Crabtree as to whether and by whom she was solicited to sign a union card, the Respondent has interfered with, restrained, and coerced its employees in the

⁵Jackson Press, Inc. v. N. L. R. B., 201 F. 2d 541 (C. A. 7); Stokely Foods, Inc., v. N. L. R. B., 193 F. 2d 736 (C. A. 5); Armour and Company 104 NLRB 92; Syracuse Color Press, Inc., 103 NLRB 377; Pacific Mills (Carrboro Woolen Mills Division), 102 NLRB 385.

exercise of rights guaranteed them in Section 7 of the Act, and thereby has engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

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

[Recommendations omitted from publication.]

APPENDIX 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 regarding their union membership, sympathies or activities.

WE WILL NOT discourage membership in International Union, United Automobile Workers of America, AFL, or any other labor organization of our employees, by discharging any of our employees, or in any other manner discriminating against them in regard to their hire, tenure of employment, or any term or condition of employment.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Union, United Automobile Workers of America, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

WE WILL offer Lera M. Crabtree immediate and full reinstatement to her former or a substantially equivalent position without prejudice to her seniority or other rights and privileges, and make her whole for any loss of pay suffered by reason of her discharge.

BOWLING GREEN MANUFACTURING COMPANY,
Employer.

Dated By.....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

S. H. KRESS & CO. and RETAIL CLERKS UNION, LOCAL
1167, A.F.L. Case No. 21-CA-1703. June 30, 1954

DECISION AND ORDER ¹

On October 9, 1953, Trial Examiner William E. Spencer 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

¹ Member Beeson joins in this decision, being bound by the majority decision in the previous case of Whitin Machine Works, 108 NLRB 1537.