HUNTER ENGINEERING COMPANY *and* DISTRICT NO. 9, INTERNATIONAL ASSOCIATION OF MACHINISTS, A.F.L.
Case No. 14-CA-845. May 15, 1953

DECISION AND ORDER

On March 9, 1953, Trial Examiner C. W. Whittemore issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Styles, and Peterson].

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 brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following additions, corrections, and modifications.

1. The Trial Examiner found, and we agree, that the Respondent interfered with, restrained, and coerced its employees in violation of Section 8 (a) (1) of the Act when Vice-President Worthington told employee Roy Wilkinson that Lucas had seen Cella at the tavern meeting[1] and Cella would "have a hell of a long wait" before he got his job back.

The Trial Examiner further found, and we agree, that the Respondent also violated Section 8 (a) (1) of the Act by engaging in surveillance of the union meeting on August 18, 1952. The record shows that Joseph Hunter, the secretary, treasurer, and personnel manager of the Respondent, William Lucas, production superintendent, and Goergen[2] were observed seated for a period of approximately 15 minutes in an automobile which was parked approximately 35 feet from, and facing, the tavern entrance where the union meeting was being held. Hunter ad-

[1] Although from the credible testimony of Wilkinson it appears that Worthington said that Lucas had seen Cella in "this tavern where the union meeting had been held a couple of weeks prior," the clear implication of Worthington's statement was, as the Trial Examiner found, that Lucas had seen Cella at the tavern meeting. To construe the remark as the Respondent impliedly urges, as referring solely to Cella's visit to the tavern and not the tavern meeting is to import into the remark the sense, without basis in the record, that a visit to the tavern, without more, was considered objectionable by the Respondent and to raise for the first time the contention that he was being penalized therefor. Moreover, such a construction overlooks the significant detail that Cella had, in fact, been discharged on August 19, about 2 weeks before Worthington's remarks and on the day after the union meeting at the tavern.

[2] The Trial Examiner found that Worthington, Hunter, and Lucas were in the automobile. However, the Board, on March 25, 1953, after the Intermediate Report issued, granted a motion to correct the record in certain respects. The corrected record shows that Goergen, and not Worthington, was in the automobile.

mitted that he probably parked in front of the tavern on August 18 and that he was accompanied by Lucas and Goergen. However, he testified that he went into the drugstore to purchase some drug supplies, took Goergen home, and returned to the plant. When queried as to why Lucas accompanied him, he said Lucas "went along for the ride." This ride was to be a "short" block from the plant according to Hunter's testimony.[3] Hunter's testimony as to this entire incident was evasive and somewhat equivocal. In addition, Hunter's testimony is controverted in an important respect by Robert Canman's credible testimony. Canman testified, and his testimony is corroborated by that of Paul and Elmer Kaufmann, that he observed Hunter and two others in the automobile for approximately 15 minutes and saw no one enter or leave the automobile during this entire period.

In view of the foregoing, and upon the entire record in the case, we find, as did the Trial Examiner, that Hunter, Lucas, and Goergen parked near the union meeting place for the purpose of observing the union meeting.

2. The Trial Examiner found, and we agree, that the Respondent laid off Clarence W. Chapman, Robert Canman, Paul W. and Elmer J. Kaufmann, and Albert Scheffing on August 18, 1952, and laid off Thomas R. Taylor, G. J. Gyaki, and Andrew J. Cella, Jr., on August 19, 1952, to discourage union membership and activity.[4] The Respondent argues that (1) it had no knowledge of union activity at its plant and (2) business conditions necessitated a reduction in force.

On the issue of the Respondent's knowledge of union activity, we are satisfied, as was the Trial Examiner, that the Respondent was aware of union activity before laying off the five employees on August 18, 1952. Kenneth Bagley, plant foreman at the time, credibly testified[5] that shortly before the layoffs of the 18th, Lucas[6] told him that "there was a possible union organization being started in the shop and these men were being laid off to circumvent this action." We find this testimony alone sufficient to establish the Respondent's awareness of union activity. However, in addition, Lucas told Bagley that "he was dissatisfied with the way the situation was handled and that he would much rather have the men brought in collectively and hear their grievances and see that it could be settled in a friendly manner." Further, John Jennemann testified credibly that Bagley told him, just before the layoffs of the five employees, that the

[3] Although the fact that Hunter took Goergen home would seem to lend some plausibility to the explanation that Lucas was accompanying them "for the ride," it would appear from Hunter's own testimony that Lucas and even Goergen were unaware, at the time of accepting Hunter's invitation to accompany him, that Goergen would be taken home. Thus Hunter testified as follows: "I told them I was going to Clayton and 'who wants to go with me' and they said they did." (Apparently Clayton is the name of a cleaning establishment near the tavern.)

[4] The Trial Examiner also found that George Wallweber was laid off discriminatorily As this employee was not included in the complaint, and as his layoff was not litigated, we shall not adopt the Trial Examiner's findings with respect to George Wallweber.

[5] We perceive no basis for disturbing the Trial Examiner's finding that Bagley was a credible witness. Standard Dry Wall Products, Inc., 91 NLRB 544.

[6] According to the Respondent, Lucas selected the employees to be discharged.

purpose of the conference in the office on that date was to determine the leader of the union "so they'd know who to fire." In addition, Chapman had informed Worthington at the time of his employment that he was a member of the Union; Chapman had solicited employment for Canman and the Kaufmann brothers at the Respondent's plant; Chapman and Canman had in fact assisted in the organizational campaign; Chapman, Canman, and the Kaufmanns were frequently seen by officials of the Respondent eating lunch together; Canman and Scheffing were laid off out of seniority;[7] and all five employees were laid off without notice in the middle of the afternoon,[8] shortly after they, with the possible exception of Chapman who had been consistently working overtime, had been requested to work overtime that day. All the foregoing, as emphasized by Bagley's statement to Gyaki, made after the layoff on the 18th, wherein Bagley said that he "didn't think the ring leaders were as yet laid off," clearly points to the conclusion that the motivating factor for the layoffs of August 18 was, as the Trial Examiner found, the Respondent's belief that these five employees were active union leaders or adherents.

We also find, as did the Trial Examiner, that the Respondent also believed that Taylor, Gyaki, and Cella, who were laid off on the morning of August 19, were active union leaders or adherents. In reaching this conclusion we note that these employees attended and signed cards at the union meeting which the Respondent had under surveillance, and that Worthington's remark to Wilkinson implied that Cella was being penalized therefor; that they were laid off summarily and without notice in the middle of the day and at a time other than at the end of a payroll period; and that Taylor was laid off out of seniority. Furthermore, the termination of these three employees bore out Bagley's statement to Gyaki, the day before, portending further acts of discrimination, viz, that " [he] didn't think the ringleaders were as yet laid off," and a similar prediction, namely, "they still haven't got the ringleaders," made to Wilkinson by Bagley on the way to work the morning of the 19th.

As to the Respondent's contention that business conditions necessitated a reduction in force, we are satisfied, as was the Trial Examiner, that the employees were not terminated in order to reduce overhead expenses, or because of a shortage of steel or a shortage of orders. As to the Respondent's argument that it laid off these employees to reduce overhead expenses, the record shows that on August 18, the day the five employees were separated, it placed the whole operation on a 9-hour day and continued operating the plant on this increased work schedule and paying overtime rates for a period of approx-

[7] We do not credit the Respondent's contention that Scheffing and Chapman, the most skilled employees in their respective classifications, were laid off to save $2.50 per hour on labor costs.

[8] Although they were paid through 5:30 p.m., they were informed by Joseph Hunter, at the time they were notified of their layoff, that they did not have to finish the day.

imately 2 months thereafter.[9] In addition, on August 29, the Respondent voluntarily granted an across-the-board wage increase of 8 cents per hour to all employees. And on September 10, 1952,[10] it began a campaign of advertising in the newspaper for general factory workers and punch press operators. As to the Respondent's contention that a shortage of steel was a contributing factor to the layoffs,[11] Lee Hunter, Jr., president of the Respondent, said "the material shortage actually didn't get to a point where it effected (sic) our operation," nor according to this same witness, did the Respondent have an "actual shortage of steel" at that time. Joseph Hunter further testified that near the end of July the Respondent "did have a 45 day steel inventory." As to the Respondent's contention that a sharp drop in orders also contributed to the layoffs, Bagley credibly testified that, as plant foreman, he had no knowledge of a shortage of orders. Significantly, too, Bagley testified that, on August 18, he had a conversation with Worthington and Lucas in which they decided "to put the employees on a nine-hour day until further notice to catch up on a backlog of orders."

For these and other reasons asserted by the Trial Examiner, we find no merit in the Respondent's defense that business conditions necessitated, and were the reasons for, the layoffs of August 18 and 19.

3. We find, in agreement with the Trial Examiner, that the Respondent refused to bargain collectively with the Union in violation of Section 8 (a) (5) and (1) of the Act.

The Trial Examiner found, and we agree, that on August 26, 1952, Union Officials Damon and Redman interviewed Lee Hunter at the plant; voiced the Union's claim of majority representation among the production and maintenance employees, and asked that the Union be recognized as the collective-bargaining representative for such employees. After determining that the union majority included those employees discharged on August 18 and 19, Lee Hunter agreed to recognize the Union and also agreed to bargain with it at the Union's convenience. Like the Trial Examiner, we further find that Hunter neither asked for a show of cards nor challenged the majority claim at the time he agreed to recognize the Union.

---

[9] Although the Respondent contends that by placing the production force on overtime it reduced the unit cost and therefore such payment of overtime was in line with their economy drive, it appears that this practice was in effect for approximately 2 months, at which time it returned to its normal workday. In light of this, Bagley's testimony, set forth elsewhere herein, that the employees were placed on overtime to catch up on a backlog of orders appears to be the real reason why such overtime was ordered.

[10] While the Trial Examiner found that the Respondent began its advertising campaign within a few days after the August layoffs, it appears that this campaign actually began approximately 3 weeks after the discharges.

[11] Many employees testified that they were told by Hunter that the only reason for their layoff was a shortage of steel.

At the hearing 35 union-authorization cards were introduced in evidence.[12] The Respondent takes specific issue with the admission of 11 cards on the ground that such cards were not properly identified, 1 card on the ground that Fred Hurd, the employee signing the card, was uncertain as to what he had signed, and 1 card on the ground that Paul Bridgeman, the signer, could not establish the date on which he signed the card.

As respects the group of 11 cards, the record shows that 8 of them were admitted upon testimony of a union official that he had received them from employees of the Respondent at a union meeting called for organizational purposes, after he had handed the cards out for signature. As to the remaining 3, the same union official testified that they were delivered in the mails to the Union's office. It was not contended at the time these cards were admitted, nor is it now contended, that these cards were not freely passed along to the Union by these employees, or that they were not authentic or that the signatures they bore did not correspond to names of Respondent's employees. In all these circumstances, we are satisfied that all 11 cards were properly admitted into evidence.[13]

As to Hurd's card, Hurd testified that he signed the card at the union meeting and that he was in no way forced to sign it. Although Hurd said that by signing the card he "didn't realize there would be a trial involved," he admitted that he knew it was a "union" card. Furthermore, at no point did Hurd testify, nor does the record otherwise show, that he did not desire the Union to represent him at the time he signed the card, or that he subsequently informed the Union that he did not want the Union to represent him, or that he revoked such authorization card. Under the circumstances, we find, as did the Trial Examiner, that the card was properly admitted into evidence.[14]

As to Bridgeman's card, he testified that he believed that he signed the card "before the layoffs" which occurred on August 18 and 19. His card is dated August 19, 1952. In view of the foregoing testimony, and upon the entire record in the case,[15] we find, as did the Trial Examiner, that this card was properly admitted into evidence.

---

[12] The Trial Examiner found that there were 62 employees in the appropriate unit on August 26, 1952. Of the 35 cards submitted, 1 bears the signature of a person whose name does not appear on the payroll, and 1 bears the signature of a person who voluntarily left the employ of the Respondent before August 26. We, like the Trial Examiner, do not consider these 2 cards in determining majority. As we have rejected the Trial Examiner's findings that Wallweber was discriminatorily discharged, we shall not count him among the employees in the unit on August 26, 1952, and shall not count his card in determining majority However, this does not affect the Union's majority status, as the Union would then be designated by 32 employees in a unit of 61 employees.

[13] Cf. Heilig Bros. Co., 32 NLRB 505, where the Board held that where an employee delivered a signed application card to another person for the purpose of having the card turned in to the Union, he employed a suitable method of designating the union as his representative. Metal Textile Corporation of Delaware, 47 NLRB 743.

[14] Cf. Kelly A. Scott, 93 NLRB 654.

[15] In this regard we note that James Redman testified that on August 25 the Union determined that it "had a majority." All the cards in evidence were dated on August 25, or earlier.

As to whether all the cards, including the aforementioned 13, are probative of the Union's majority on August 26, 1952, we note that the Respondent does not question the authenticity of the signatures on the cards or that they were delivered, without coercion, into the Union's possession before that date. In these circumstances, and upon the entire record in the case, we find, as did the Trial Examiner, that the Union was designated as bargaining representative by a majority of the employees in the appropriate unit at all times on and after August 26, 1952.

Accordingly, in view of the Respondent's recognition of the Union on August 26, 1952, as the collective-bargaining representative of its production and maintenance employees, its failure thereafter to respond to the Union's letter of August 27, with respect to fixing a date for negotiations, its unilateral grant of a wage increase to its employees on August 29,[16] and the antiunion conduct above described, we find that the Respondent's course of action was not prompted by a good-faith doubt of the Union's majority, but by a fixed determination not to deal with the Union. We therefore find further that the Respondent refused as of August 29, 1952, and thereafter, to bargain in good faith with the Union and thereby interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed by Section 7 of the Act, in violation of Section 8 (a) (5) and (1) of the Act.

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 the Respondent, Hunter Engineering Company, Ladue, Missouri, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Engaging in surveillance of union meetings.

(b) Discouraging membership in District No. 9, International Association of Machinists, A.F.L., or any other labor organization of its employees, by discriminatorily laying off, discharging, or refusing to reinstate any of their employees or by otherwise discriminating in regard to their hire or tenure of employment or any term or condition of employment.

(c) Refusing to bargain collectively concerning wages, hours, and other conditions of employment with District No. 9, International Association of Machinists, A.F.L., as the exclusive representative of all production and maintenance employees at the Ladue plant, excluding office and clerical employees, executive and professional employees, guards, and supervisors as defined in the Act.

[16] There is no indication in the record that this wage increase was the result of any prior commitment or understanding with its employees, as the Respondent implies

(d) In any other manner interfering with, restraining, or coercing their employees in the exercise of the right to self-organization, to form labor organizations, to join or assist District No. 9, International Association of Machinists, A.F.L., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in 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.

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

(a) Upon request, bargain collectively concerning wages, hours, and other conditions of employment with District No. 9, International Association of Machinists, A.F.L., as the exclusive representative of all employees in the aforementioned appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Offer to Clarence W. Chapman, Robert Canman, Paul W. Kaufmann, Elmer J. Kaufmann, Albert Scheffing, Thomas R. Taylor, G. J. Gyaki, and Andrew J. Cella, Jr., immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights or privileges, and make them whole in the manner set forth in the section of the Intermediate Report entitled "The Remedy," for any loss of pay they may have suffered by reason of the Respondent's discrimination against them.

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

(d) Post at its plant in Ladue, Missouri, copies of the notice attached hereto marked "Appendix A."[17] Copies of such notice, to be furnished by the Regional Director for the Fourteenth Region, shall, after being duly signed by the Respondent's authorized representative, be posted by the Respondent immediately upon receipt thereof and be 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 the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

[17] 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."

APPENDIX A

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 engage in surveillance of union meetings.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to form or assist District No. 9, International Association of Machinists, A.F.L., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in 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, as guaranteed in Section 7 thereof.

WE WILL offer all employees named below immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to any seniority or other rights and privileges previously enjoyed, and we will make them whole for any loss of pay suffered as a result of the discrimination against them.

Clarence W. Chapman	Albert Scheffing
Robert Canman	Thomas R. Taylor
Paul W. Kaufmann	G. J. Gyaki
Elmer J. Kaufmann	Andrew J. Cella, Jr.

WE WILL bargain collectively, upon request, with District No. 9, International Association of Machinists, A.F.L., as the exclusive representative of the employees in the bargaining unit described below with respect to rates of pay, wages, hours of employment, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees at our Ladue, Missouri, plant, excluding office and clerical employees, executive and professional employees, guards, and supervisors as defined in the Act.

All of our employees are free to become or remain or to refrain from becoming or remaining members of District No. 9, International Association of Machinists, A.F.L., or any other labor organization. We will not discriminate in regard to hire

or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

HUNTER ENGINEERING 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.

Intermediate Report

STATEMENT OF THE CASE

Charges having been duly filed and served, a complaint and notice of hearing thereon having been issued and served by the General Counsel of the National Labor Relations Board, and an answer having been filed by the Respondent Company, a hearing involving allegations of unfair labor practices in violation of Section 8 (a) (1), (3), and (5) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act, was held in St. Louis, Missouri, on January 19, 20, 22, and 23, 1953, before the undersigned Trial Examiner

In substance the complaint alleges and the answer denies that (1) Since on or about August 26, 1952, the Respondent has refused to bargain collectively with the charging Union, although at all material times that labor organization has been the exclusive bargaining representative of all employees in an appropriate unit; (2) on August 18 and 19, 1952, the Respondent discriminatorily laid off eight named employees to discourage union membership; (3) the Respondent, through certain representatives, engaged in surveillance of a union meeting, made threatening and coercive remarks, and granted a wage increase unilaterally at a time when the Union represented all employees in an appropriate unit, and (4) by such conduct the Respondent has interfered with, restrained, and coerced employees in the exercise of rights guaranteed by Section 7 of the Act.

At the hearing all parties were represented, were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the issues, to argue orally upon the record, and to file briefs and proposed findings of fact and conclusions A brief has been received from the Respondent and from General Counsel

Disposition of motions to dismiss, made at the close of the hearing, is made by the following findings, conclusions, and recommendations

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Hunter Engineering Company is a Missouri corporation with its principal office and place of business in Ladue, Missouri, where it is engaged in the manufacture, assembly, and sale of automotive equipment, parts, and accessories During 1952 it made, assembled, sold, and shipped such products valued at more than $100,000, of which more than 50 percent was shipped and transported from its plant to and through States other than the State of Missouri.

The Respondent concedes and it is found that it is engaged in commerce within the meaning of the Act

II. THE LABOR ORGANIZATION INVOLVED

District No 9, International Association of Machinists, A.F.L., is a labor organization admitting to membership employees of the Respondent

III. THE UNFAIR LABOR PRACTICES

A. The major issues

Events here at issue occurred within a period of about a month during the summer of 1952, after the Union began an organizing campaign among the Respondent's production and maintenance employees

Late the afternoon of August 18, just before the first open meeting of the Union at a tavern near the plant, several employees were summarily laid off. Three plant officials, later the same day, were seen parked near the tavern. The next morning another group of employees was laid off without notice.

About a week later union representatives called upon a management official seeking union recognition. Following the meeting they sent a confirming letter, asking for a specific date to begin negotiations. The Respondent ignored that letter Two days later it unilaterally gave all employees still on the payroll an hourly increase in wages.

From this pattern of events, General Counsel claims, stem the issues of discrimination, refusal to bargain, surveillance, and other acts of restraint and coercion.

B. The discrimination

Clarence W. Chapman, Robert Canman, Paul W. and Elmer J Kaufmann, and Albert Scheffing, all production workers, were summarily and without notice laid off by Joseph Hunter on August 18. Hunter holds titles as secretary, treasurer, and advertising and personnel manager of the Respondent When hired in 1952, Chapman had informed George Worthington, operating vice president, that he was a member of the I.A.M. Chapman, Canman, and Scheffing aided the union representatives in organizing interest in the campaign, and one meeting was held at Chapman's home. Scheffing, like Chapman, was a skilled machinist and had been a member of I.A.M. before the campaign at the plant began. Chapman, Canman, and the two Kaufmann brothers customarily ate lunch together and it is unchallenged that they were seen together by Worthington and Production Superintendent William T. Lucas.

The first general meeting of employees was scheduled for late in the afternoon of August 18, at a tavern near the plant Word as to the meeting was passed by Chapman. All five employees, except perhaps Chapman who had customarily worked overtime, were specifically asked by Foreman Kenneth Bagley to work overtime that afternoon. Each of the five, however, was separately called to the office by Joseph Hunter during the middle of the afternoon, given a check covering an hour's overtime, and immediately laid off Hunter told each of them that the layoff was made necessary by a shortage of steel

Later that day these five employees and others gathered at the tavern While they were there Joseph Hunter, Worthington, and Lucas parked in an automobile for several minutes near the tavern entrance Hunter admitted being there at that date and at that time, and gave no specific reason at first except that he "may have" gone into a drugstore. Later he said he went for drug supplies and "some cleaning." Worthington and Lucas, he said, just went "along for the ride,"--a "short block," according to his own testimony, from the plant. The Trial Examiner is convinced, and finds, that Hunter, Lucas, and Worthington parked near the union meeting place for the purpose of spying upon the employees.

Early the next morning three more employees,[1] Thomas R. Taylor, G. J. Gyaki, and Andrew J. Cella, Jr., each of whom had attended the tavern meeting, were called into Hunter's office and immediately paid and laid off. They also were told that the action was because of steel shortage. Gyaki expressed doubt that a "shortage" was the real reason. Hunter made no comment. Nor did Hunter reply directly when Cella told him "you don't have to kid me, Joe. I know why I am here. I am not 18 years old."

Foreman Bagley, who had direct supervision over all the employees laid off, was not consulted by higher management in advance of the action. Shortly before being given a list of employees to be sent to Hunter's office during the afternoon of August 18, however, he was told by Lucas that he would soon be given the list. Lucas, according to Bagley's credible testimony, expressed himself at the time as being dissatisfied with the way the situation was

[1] Another employee, George C. Wallweber, was also laid off that morning. Undisputed evidence shows that he customarily lunched with the group laid off August 18, and signed a union card that day, thus establishing grounds for the reasonable inference that he was laid off for the same reason as the others. His name is not included in the complaint, he was later rehired, and since then has joined the Armed Forces. Although the Trial Examiner specifically finds that Wallweber, like the others on August 18, was laid off discriminatorily, no remedy will be recommended under the circumstances.

being handled He said that he would have preferred to "have the men brought in collectively and hear their grievances" Lucas further told Bagley that "there was a possible union organization being started in the shop and these men were being laid off to circumvent this action"

Although Hunter, as a witness, admitted having told the men when laid off that they might be recalled "if conditions warranted," none of the complainants has been reinstated. Within a few days after the August layoffs, however, the Respondent began a campaign of advertising in a St Louis newspaper for general factory workers and punch press operators. In September 8 new employees were hired, and 5 were hired the following month. No credible evidence was offered by the Respondent to show that the experienced employees laid off in August were incapable of performing the work for which new employees were hired

Of additional bearing upon the real reason for the layoffs was a statement made by Worthington to employee Roy Wilkinson, about 2 weeks after Cella was terminated. Worthington told Wilkinson, according to the latter's credible testimony, that Lucas had seen Cella at the tavern meeting and Cella would "have a hell of a long wait" before he got his job back

The preponderance of credible evidence plainly points to the inescapable conclusion that the Respondent precipitated the August 18 and 19 layoffs for the sole purpose of discouraging union membership and activity The evidence adduced by the Respondent to support other claims is confused, contradictory, and does not withstand the light of scrutiny and reason In summary, it appears that the Respondent would have it believed that: (1) Just before the layoffs its business was "miserable" and that orders had fallen off 70 to 80 percent, while at the same time it was begging the National Production Authority in Washington for more raw materials, (2) there was a dire necessity for cutting down overhead, yet immediately after the layoffs it not only voluntarily gave all employees a substantial wage increase, but also put all employees on overtime and hired new employees; and (3) from the testimony of Lee Hunter that at the same time the Company "had no allocation at all on steel," yet there was "no actual shortage of steel." The Respondent's case falls attempting to bestride too many stools. There is no merit in it

The Trial Examiner concludes and finds that on August 18, 1952, the Respondent, aware of the union organizational activity at the plant, discriminatorily, and to discourage such activity, laid off employees Chapman, Canman, Paul and Elmer Kaufmann, and Scheffing, and on August 19 employees Taylor, Gyaki, and Cella, all of whom it believed to be active leaders or adherents By such discrimination, by engaging in surveillance of the union meeting on August 18, and by Worthington's statement to Wilkinson about Cella's layoff, the Respondent interfered with, restrained, and coerced employees in the exercise of rights guaranteed by the Act.

C. The refusal to bargain

The complaint alleges, the answer admits, and the Trial Examiner concludes and finds that a unit of the Respondent's employees appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act is composed of all production and maintenance employees at the Ladue plant, excluding office and clerical employees, executive and professional employees, guards, and supervisory employees as defined in the Act.

The number of employees in the above-described unit on the August 26 payroll, including the 9 individuals[2] discriminatorily laid off on August 18 and 19, totals 62.[3] At the hearing General Counsel introduced into evidence 35 cards signed by individuals on various dates shortly before August 26, authorizing the Union to represent them. Of these cards, 1 bears the signature of Glenn Seemiller, whose name does not appear on the August 26 payroll in evidence, another the signature of Howard Spurgin, who voluntarily left the Company on August 22 It is concluded and found that the remaining 33 authorization cards of individuals in the appropriate unit as of August 26, establish that on and after that date the Union had been designated by a majority as their collective-bargaining representative. Since August 26, 1952, therefore, the Union has been the exclusive bargaining representative of all employees in the above-described appropriate unit

Credible evidence establishes and the Trial Examiner finds that on August 26 Union Officials Charles W. Damon and James Redman interviewed Lee Hunter at the plant, voiced the Union's claims of majority representation among the production and maintenance employees, and asked that the Union be recognized as such representative. Hunter told them

[2] Wallweber is included. See footnote 1, above.

[3] This total includes Gordon Acklin, as to the nature of whose work there is some dispute in the record, but excludes Howard Spurgin, who voluntarily left the Company's employment on August 22.

he would gladly recognize the Union, and would bargain at its convenience Hunter asked if they included in their majority claim the individuals laid off on August 18 and 19, and they answered in the affirmative. Hunter asked for no show of cards, nor did he challenge the majority claim. The union representatives indicated that they would approach him again after their return from a union convention early in September. After return to the union hall, another union official advised Damon to obtain, in writing, confirmation of Hunter's surprising and apparent willingness to bargain. Damon thereupon sent to Hunter, on August 27, a registered letter reading in part as follows:

> This is in regard to the meeting that Mr. Redman and I had with you at your office August 26, 1952 whereby you granted District No 9, I.A.M. recognition and agreed to bargain with us as representatives of your employees for wages, conditions, etc
>
> After looking over my appointment book I find I have Tuesday, September 23rd open either 10:00 A.M. or 2:00 P.M. for this purpose I would like an early reply so that I can arrange my schedule after returning from our convention.

Hunter did not reply to this letter. On August 29, however, within 24 hours after receiving it, the Respondent unilaterally gave all production and maintenance employees a substantial hourly wage increase. On September 24 the Respondent was served with an amended charge, filed with the Board by the Union, alleging refusal to bargain.

The Trial Examiner concludes and finds that at all times since August 27, 1952, the Respondent has refused to bargain with the Union as the exclusive bargaining representative of all employees in the appropriate unit. The conclusion rests upon: (1) Hunter's failure to reply to the union letter of August 27, requesting setting of a date for negotiations; (2) the unilateral wage increase of August 29; and (3) the refusal of the Respondent to reinstate the employees discriminatorily laid off on August 18 and 19 By thus refusing to bargain collectively, the Respondent has engaged in and is engaging in interference with, restraint, and coercion of its employees in the exercise of rights guaranteed by the Act.

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 of commerce.

V. THE REMEDY

Having found that the Respondent has engaged in unfair labor practices, the Trial Examiner will recommend that it cease and desist therefrom and take certain affirmative action which will effectuate the policies of the Act.

Having found that the Respondent has discriminated in regard to the hire and tenure of employment of eight named employees, the Trial Examiner will recommend that it offer them immediate and full reinstatement to their former or substantially equivalent positions,[4] without prejudice to their seniority and other rights and privileges, and make them whole for any loss of pay they may have suffered by reason of the discrimination against them by payment to each of them of a sum of money equal to that which he would have earned as wages from the date of the discrimination to the date of offer of reinstatement, less his net earnings during said period.[5] Back pay due shall be computed in accordance with Board policy set out in F. W. Woolworth Company, 90 NLRB 289.

It has also been found that the Respondent, from August 27, 1952, has unlawfully refused to bargain with the Union as the exclusive representative of employees in an appropriate unit. The Trial Examiner will therefore recommend that the Respondent, upon request, bargain collectively with the Union as such representative and, in the event that an understanding is reached, embody such understanding in a signed agreement.

In view of the nature of the unfair labor practices committed, the commission by the Respondent of similar and other unfair labor practices may reasonably be anticipated. The remedy should be coextensive with the threat. It will therefore be recommended that the Respondent cease and desist from infringing in any manner upon the rights guaranteed in Section 7 of the Act

---

[4] The Chase National Bank of the City of New York, San Juan, Puerto Rico Branch, 65 NLRB 827.

[5] Crossett Lumber Co., 8 NLRB 440.

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

CONCLUSIONS OF LAW

1. District No. 9, International Association of Machinists, A.F.L., is a labor organization within the meaning of Section 2 (5) of the Act.
2. All production and maintenance employees at the Respondent's Ladue, Missouri, plant, excluding office and clerical employees, executive and professional employees, guards, and supervisory employees within the meaning of the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.
3. The above-named Union was on August 26, 1952, and at all times since then has been, the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.
4. By refusing on August 27, 1951, and at all times thereafter to bargain collectively with the aforesaid Union as the exclusive bargaining representative of its employees in the aforesaid appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.
5. By discriminating in regard to the hire and tenure of employment of Clarence W. Chapman, Robert Canman, Paul W. and Elmer J. Kaufmann, Albert Scheffing, Thomas R. Taylor, G. J. Gyaki, and Andrew J. Cella, Jr., and thereby discouraging membership in the above-named labor organization, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.
6. By interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.
7. 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.]

WAYSIDE PRESS *and* LOS ANGELES BOOKBINDERS AND BINDERWOMEN'S UNION NO. 63, INTERNATIONAL BROTHERHOOD OF BOOKBINDERS, AFL, Petitioner. Case No. 21-RC-2984. May 15, 1953

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Max Steinfeld, hearing officer.[1] The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.[2]

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Styles and Peterson].

Upon the entire record in this case, the Board finds:

[1] The request for oral argument by the Employer is hereby denied as the record and the briefs, in our opinion, adequately present the issues and positions of the parties.

[2] At the hearing the Employer moved to dismiss the petition on various grounds. For the reasons expressed below, the motion is denied.

We have repeatedly held that showing of interest is an administrative matter, not subject to direct or collateral attack. Miller Electric Company, 103 NLRB 1492. Moreover, we are administratively satisfied that the Petitioner has made an adequate showing in the unit found appropriate.