that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the amended Act.

SWISS CHEESE CORPORATION OF AMERICA,
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.

CHUN KING SALES, INC. *and* FLORAANN KOZLOSKY

LOCAL 1116, RETAIL CLERKS INTERNATIONAL ASSOCIATION, A. F. OF L. *and* FLORAANN KOZLOSKY. *Cases Nos. 18–CA–582 and 18–CB–60. December 3, 1954*

Decision and Order

On June 4, 1954, Trial Examiner Max M. Goldman issued his Intermediate Report in the above-entitled consolidated proceeding, finding that the Respondents, Chun King Sales, Inc., herein called the Respondent Company, and Local 1116, Retail Clerks International Association, A. F. of L., herein called the Respondent Union, had engaged in and were engaging in certain unfair labor practices, and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent Company and the Respondent Union each filed exceptions to the Intermediate Report with a supporting brief. In addition, the Respondent Company and the Respondent Union requested oral argument. However, because the record and briefs, in our opinion, adequately present the issues and positions of the parties, the requests for oral argument are hereby denied. 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 cases, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the exceptions, modifications, and additions noted below.[1]

As fully detailed in the Intermediate Report, on January 27, 1954, following a demand by the Respondent Union for Kozlosky's suspension from employment, the Respondent Company suspended the complainant. The Trial Examiner found, and we agree, that in taking this action against Kozlosky, at which time a union-security agree-

[1] Member Murdock would affirm the Intermediate Report without change because he finds it substantially correct and because he believes that the different approach which his colleagues have taken may raise serious problems.

ment was in effect between the Respondents, the Respondent Company was acceding to the Respondent Union's demand for her suspension. Although Kozlosky had been suspended from membership in good standing in the Respondent Union on January 26, 1954, the record shows that this suspension, which was the written reason given by the Respondent Union for its January 27 request, was not due to any failure on the part of the complainant to tender periodic union dues [2] and that the Respondent Company knew or had reasonable grounds for believing that this was so when it suspended Kozlosky.[3] In these circumstances it is plain that the Respondent Company suspended Kozlosky in violation of Section 8 (a) (3) and (1) of the Act, and that the Respondent Union caused Kozlosky's suspension, in violation of Section 8 (b) (2) and 8 (b) (1) (A) of the Act.[4]

In view of all the foregoing, we deem it unnecessary to pass upon the validity of the Trial Examiner's pretext findings or his alternative holdings which assume the enforcement by the Respondents of their collective-bargaining agreement and the Respondent Company's no-solicitation rule against Kozlosky.

THE REMEDY

As recommended by the Trial Examiner, we shall order the Respondents jointly and severally to make whole Floraann Kozlosky for any loss of pay suffered by her from January 27, 1954, the date of the discrimination against her, to March 1, 1954, the date of her reinstatement by the Respondent Company.

Order

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

1. The Respondent, Chun King Sales, Inc., Duluth, Minnesota, its officers, agents, successors, and assigns, shall:

a. Cease and desist from:

(1) Encouraging membership in Local 1116, Retail Clerks International Association, A. F. of L., or in any other labor organization of its employees, by discriminating as to its employees in regard to

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[2] The Respondent Union concedes that Kozlosky was suspended from membership because of her activities on behalf of a rival union.

[3] In this connection, for example, we note that (a) the Respondent Company deducts the union dues of its employees, (b) W. C Olsen, the representative of the Respondent Company who suspended Kozlosky, testified that at the time of the suspension he had no reason to believe that Kozlosky was delinquent in her dues, and (c) it is not contended that Kozlosky was in fact guilty of any dues delinquency during the critical period herein

[4] *Radio Officers' Union of the Commercial Telegraphers Union, AFL* v. *N. L. R. B.*, 347 U S 17; *United Brotherhood of Carpenters and Joiners of America, Local No. 1281*, 109 NLRB 874

their hire or tenure of employment or any term or condition of their employment.

(2) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights 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.

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

(1) Jointly and severally with Local 1116, Retail Clerks International Association, A. F. of L., make Floraann Kozlosky whole for any loss of pay she may have suffered by reason of their discrimination against her, in the manner set forth in the section of the Intermediate Report entitled "The Remedy."

(2) Upon request, make available to the Board or its agents, for examination and copying, all pertinent records necessary to analyze the amount of back pay due under this Order.

(3) Post at its offices and place of business in Duluth, Minnesota, copies of the notice attached hereto marked "Appendix A."[5] Copies of said notice, to be furnished by the Regional Director for the Eighteenth Region, shall, after being duly signed by the Respondent Company's representative, be posted immediately upon receipt thereof, and be maintained by it for a period of at least 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 Company to insure that said notices shall not be altered, defaced, or covered by any other material.

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

2. The Respondent, Local 1116, Retail Clerks International Association, A. F. of L., its officers, agents, representatives, successors, and assigns, shall:

a. Cease and desist from:

(1) Causing or attempting to cause Chun King Sales, Inc., Duluth, Minnesota, its officers, agents, successors, and assigns to discriminate against its employees in violation of Section 8 (a) (3) of the Act.

(2) Restraining or coercing employees of Chun King Sales, Inc., its successors or assigns, in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organiza-

[5] 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."

tion as a condition of employment, as authorized by Section 8 (a) (3) of the Act.

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

(1) Jointly and severally with Chun King Sales, Inc., make Floraann Kozlosky whole for any loss of pay which she may have suffered by reason of their discrimination against her, in the manner set forth in the section of the Intermediate Report entitled "The Remedy."

(2) Post at its offices and meeting halls in Duluth, Minnesota, where notices to members are customarily posted, copies of the notice attached hereto marked "Appendix B."[6] Copies of said notice, to be furnished by the Regional Director for the Eighteenth Region, shall, after being duly signed by the Respondent Union's representative, be posted by it immediately upon receipt thereof, and be maintained by it for a period of at least sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Union to insure that such notices are not altered, defaced, or covered by any other material.

(3) Mail to the Regional Director for the Eighteenth Region signed copies of the notice attached hereto marked "Appendix B," for posting, the Respondent Company willing, at its place of business at Duluth, Minnesota, in places where notices to employees are customarily posted. Copies of said notice, to be furnished by the Regional Director for the Eighteenth Region, shall, after being signed as provided in the preceding paragraph of this Order, be forthwith returned to the Regional Director for posting.

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

[6] *Ibid.*

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, as amended, we hereby notify our employees that:

> We will not encourage membership in Local 1116, Retail Clerks International Association, A. F. of L., or in any other labor organization of our employees, by discriminatorily suspending any of our employees or by discriminating in any other manner in regard to their hire and tenure of employment, or any term or condition of employment.

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 join or assist any 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 8 (a) (3) of the Act.

WE WILL make Floraann Kozlosky whole for any loss of pay suffered as a result of the discrimination against her.

All our employees are free to become, remain, or to refrain from becoming or remaining members in good standing of the above-named Union or any other labor organization, except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the Act.

CHUN KING SALES, INC.,
Employer.

Dated_____ By_____
(Representative) (Title)

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

Appendix B

NOTICE TO ALL MEMBERS OF LOCAL 1116, RETAIL CLERKS INTERNATIONAL ASSOCIATION, A. F. OF L., AND TO ALL EMPLOYEES OF CHUN KING SALES, INC.

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, as amended, we hereby notify you that:

WE WILL NOT cause or attempt to cause Chun King Sales, Inc., its officers, agents, successors, and assigns, to suspend or otherwise discriminate against employees in regard to their hire or tenure of employment, or any term or condition of employment, in violation of Section 8 (a) (3) of the Act.

WE WILL NOT in any other manner restrain or coerce employees of Chun King Sales, Inc., its successors or assigns, in the exercise of their right to self-organization, to form labor organizations, to join or assist any 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 condition of employment as authorized in Section 8 (a) (3) of the Act.

WE WILL make Floraann Kozlosky whole for any loss of pay suffered as a result of the discrimination against her.

LOCAL 1116, RETAIL CLERKS INTERNATIONAL ASSOCIATION, A. F. OF L.,
Labor Organization.

Dated_____ By_____
(Representative) (Title)

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

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

Upon charges duly filed, the General Counsel by the Regional Director for the Eighteenth Region (Minneapolis, Minnesota), of the National Labor Relations Board, herein called the Board, issued his complaint dated March 2, 1954, against Chun King Sales, Inc., herein called the Respondent Company, and Local 1116, Retail Clerks International Association, A. F. of L., herein called the Respondent Union, alleging that they had engaged in and were engaging in unfair labor practices within the meaning of Section 8 (a) (3) and (1) and 8 (b) (2) and 8 (b) (1) (A), respectively, 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 the charge together with notice of hearing and an order consolidating the cases were duly served upon the Respondent Company, the Respondent Union, and the Charging Party.

With respect to unfair labor practices, the complaint alleges in substance that on or about January 27, 1954, the Respondent Union, for the reason of suspension from membership, caused the Respondent Company to discharge or to terminate the employment of Floraann Kozlosky in violation of the Act. The answers of the Respondent Union and the Respondent Company deny the commission of unfair labor practices.

Pursuant to notice, a hearing was held at Duluth, Minnesota, on March 22 and 23, 1954, before the duly designated Trial Examiner. The General Counsel, the Charging Party, and the respective Respondents were represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded the parties. Counsel for the Respondent Union presented oral argument at the close of testimony. The General Counsel, the Respondent Company, and the Respondent Union submitted briefs.

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

FINDINGS OF FACT

1. THE BUSINESS OF THE RESPONDENT COMPANY

The Respondent, a Minnesota corporation, is engaged in the processing and distributing of American-Chinese foods at Duluth, Minnesota, and employs a normal complement of about 200 persons. In 1953, the Respondent Company purchased foodstuffs, packing, and canning materials valued in excess of $1,000,000, of which more than 75 percent was shipped to it from points outside the State of Minnesota. During the same period, the value of the Respondent Company's sales of finished products was $5,000,000, of which 85 percent was shipped from its plant in the State of Minnesota to points outside the State. It is found that the Respondent Company is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent Union, Local 1116, Retail Clerks International Association, A. F. of L., is a labor organization admitting to membership employees of the Respondent Company.

III. THE UNFAIR LABOR PRACTICES

A. *The events*

For the past several years the Respondent Union has represented the Respondent Company's employees in collective bargaining. In the middle of January 1954, some of the employees developed an interest in and engaged in activities on behalf of the International Brotherhood of Teamsters, hereinafter referred to as the Teamsters. W. C. Olsen, in charge of labor relations and personnel for the Respondent Company, learned of these activities from some of the other company officials. Among the employees who became interested in representation by the Teamsters was Floraann Kozlosky, an employee of several years of service and the alleged discriminatee here involved.

On January 25 and 26, Elmer M. Foster, business representative of the Respondent Union, appeared at the plant and informed Olsen that he had reports that there were several individuals running around the plant engaging in solicitation and complained that this was in violation of the collective-bargaining agreement and the Company's rules. Foster explained in his testimony that the Respondent Union had desired to engage in solicitation but had been denied that privilege and further that he pointed out to Olsen that he did not like the situation where people were leaving their jobs to engage in soliciting. Olsen declared that he was unaware of any solicitation.

On the first of these 2 days, Foster named only one employee, Margaret Mulzak, as having engaged in soliciting and asserting that she was distributing Teamsters' cards during working hours. Olsen thereafter called Mulzak to his office and confronted her with Foster's accusations. Mulzak denied having engaged in this conduct. Olsen accepted Mulzak's denial and nothing further was done as to her.

On the second day, January 26, Foster named in addition to Mulzak, Kozlosky and employee Mildred Saari as having engaged in solicitation. Olsen made no inquiry of either Kozlosky or Saari because he explained at the hearing that he had no evidence to substantiate the accusations and if the employees had merely engaged in conversation he did not want anything to do with it. During the evening of January 26, the Respondent Union suspended Kozlosky from membership in good standing.

The following day, January 27, Foster again called on Olsen with a letter of that date on the Respondent Union's stationery, addressed to the Respondent Company, which read as follows:

> Please be advised that Florann Koslosky [sic] is not in good standing with our Union, and we demand her immediate suspension.

According to Foster, he told Olsen that this action by the Respondent Company was sought because Kozlosky had engaged in solicitation and thereby had violated the Company's no-solicitation rule and the collective-bargaining agreement.[1] Olsen declared that he had no knowledge of Kozlosky's conduct in this respect. Foster stated that he would have affidavits to establish his accusations and demanded Kozlosky's immediate suspension until he could produce substantiating affidavits. Olsen thereupon called Kozlosky into the office and without making any independent inquiry—as was Olsen's practice before taking disciplinary action—informed Kozlosky that he had a letter from the Respondent Union demanding her suspension and that she was suspended from employment. Olsen also stated to Kozlosky that her suspension would be effective until the Respondent Company could get clarification from the Respondent Union as to the charges and until further action was taken by the Respondent Company as to her status. Kozlosky asked Foster why she was suspended from the Respondent Union and Foster replied that she was suspended on the basis of charges filed by a fellow employee and that she would be notified of the charges and have an opportunity for a hearing. Foster stated further that if the charges were not substantiated Kozlosky would be reinstated in the Respondent Union and would be paid for time lost.

A few days later Foster furnished Olsen with an unsworn statement dated January 29, by employee Aireal Williams, vice president of a division of the Respondent

[1] The text of pertinent provisions of the collective-bargaining agreement and the Company's rules is set forth in the section entitled, *"The conclusions"*

Union. Foster also talked with Respondent's attorneys about Kozlosky's soliciting on company property. The Williams' statement was the only document which the Respondent Union supplied to the Company. The statement recites that when Williams went to the plant on January 22, to get her check while Kozlosky was on duty, Kozlosky called to and walked toward Williams and asked Williams to join Kozlosky; the two thereafter talked at Kozlosky's place of work in the labeling department, Kozlosky asked Williams what Williams thought about joining the Teamsters; Kozlosky stated that they could get a wage increase with the Teamsters; Williams declared that she was not interested; and Kozlosky then stated the girls in the labeling line were interested and in a few days they were going to start talking to the other employees.

The record shows the statement represents an accurate portrayal of the event The distance between the labeling department, where Kozlosky worked, and the plant office is about 45 feet. The conversation took about 5 minutes. It appears that although Kozlosky was on duty at the time she was waiting for someone to place labels in the machine. The record also shows that another employee who was present with Williams, also to obtain her check, engaged in a conversation unrelated to labor organizations with still another employee in the labeling department while the latter was working.

In the middle of February, Kozlosky appeared at an executive committee meeting of the Respondent Union. Sometime prior to this meeting, when Kozlosky and Foster had talked on the telephone and Kozlosky had indicated a lack of interest in attending the meeting, Foster had stated to Kozlosky, "You are not very interested in getting your job back." Kozlosky attended this meeting and admitted having solicited on behalf of the Teamsters on the job, and Foster admitted that Kozlosky had been suspended from the Respondent Union for that reason.

Thereafter by letter dated February 17, the Respondent Union advised the Respondent Company that Kozlosky had been reinstated in good standing. The Respondent Company took no action until February 25. Olsen explained, however, that the delay was because he wanted first to consult the president of the Company who was then out of town. After the president of the Company read the Respondent Union's letter of February 17, he told Olsen that so long as the suspension was lifted that they would call Kozlosky back to work. In explaining the Respondent Company's decision to return Kozlosky to work, Olsen testified, "Well, it was reached because we got a letter that she was reinstated in good standing for the violations that had happened, and that is why we returned her to work, lifted the suspension." Olsen testified also that he and the president decided that sufficient disciplinary action had been taken.

By letter dated February 25, the Respondent Company advised Kozlosky that the Respondent Union had notified the Company that she had been reinstated in good standing, that her suspension with the Company was accordingly discontinued, and that she should report to work on March 1.[2] Kozlosky did resume employment on that date doing her usual work and reassumed such seniority rights as she had prior to her suspension.

It was developed during the course of the hearing that prior to her suspension Kozlosky not only contacted about 50 employees on behalf of the Teamsters at the plant during nonworking time, but, in addition to talking to Williams, as already described—the incident upon which the Respondent Union and Company proceeded—also during working time talked in furtherance of the Teamsters to 6 or more other employees in the labeling department, some of whom worked by her side. Kozlosky did not have any Teamsters' cards with her at the plant. It appears that the Teamsters' union was a topic of conversation at the plant. It appears also that there have been 1 or 2 occasions in the past year when with Olsen's permission the president of the Respondent Union obtained from new employees their signatures to membership and dues deduction authorization cards during the union president's working time or the working time of the other employees. Employees have been solicited by the Respondent Company during working time for such civic fund raising drives as the Red Cross and the Community Chest.

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[2] The body of the letter follows:

CHUN KING has now received a letter from the Retail Clerks Union Local 1116 A. F. L. notifying us that you have been reinstated in good standing, and a copy of their letter to the National Labor Relations Board notifying it of the release of your suspension.

Your suspension by CHUN KING is accordingly discontinued immediately. Please report to work at the plant to resume employment on March 1 at 7 00 A. M.

There have also been a few occasions when employees have been solicited during working hours to contribute for flowers for certain funerals or similar situations.

B. *The conclusions*

The complaint alleges that on or about January 27, 1954, the Respondent Union in violation of Section 8 (b) (2) and 8 (b) (1) (A) caused the Respondent Company to discharge Kozlosky for the reason that she had been suspended from membership in the Respondent Union although such suspension had not resulted from her failure to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the Respondent Union. The complaint further alleges that on or about the same date, the Respondent Company in violation of Section 8 (a) (3) and 8 (a) (1) terminated the employment of Kozlosky at the request of the Respondent Union, although she had paid her periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the Respondent Union. The complaint does not allege any independent violations of Section 8 (a) (1) or 8 (b) (1) (A).

The Respondent Union concedes that Kozlosky was suspended from membership in good standing because of her activities among the employees of the Respondent Company on behalf of a rival labor organization, the Teamsters. The Respondents urge that each acted independently and that each acted for proper reasons, the Union suspending Kozlosky from membership in good standing for the dual unionism just mentioned, and the Company suspending Kozlosky from employment for the reason that the Union brought to the Company's attention that Kozlosky was violating both the collective-bargaining agreement and the Company's no-solicitation rule. The General Counsel, on the other hand, contends that the reasons offered are pretexts.

The provisions of the collective-bargaining agreement which relate to the controversy appear under the title, Union-Management Relationship, and read as follows:

> The Employer recognizes the established rights, responsibilities and values of the Union and has no objection to its employees becoming members of the Union, responsible in conjunction with the Employer for making and keeping this Agreement. The Employer will not tolerate on the part of its representatives any discrimination or activity whatsoever against the Union and will discipline any employee who, on the Employer's time, carries on anti-union activity or who seeks, directly or indirectly, to interfere with the status, membership or responsibilities of the Union.
>
> The Union agrees to do all in its power to discourage and prevent any irregular interruptions in the efficient operation of the Employer's business and agrees that the Employer has the right to take appropriate disciplinary action against any employee or employees participating in or responsible for such interruptions. Any complaints as to the propriety of any disciplinary action taken by the Employer in such cases shall be taken up through the grievance procedure outlined herein.

The Respondent Company's posted rules regarding solicitation which announce that violation is cause for dismissal or other disciplinary action provide that:

> No solicitation by *anyone* for *any purpose* will be permitted during working time or any place in the plant or on company property where work is being performed. No solicitation which in any way interferes with plant production or efficiency will be tolerated.

It is found that although Kozlosky had no Teamsters' cards with her at the plant and merely asked Williams what Williams thought about the Teamsters and mentioned a possible wage increase through the Teamsters, that Kozlosky's activities, when viewed with the other circumstances, constituted solicitation in violation of both the contract and the rule. Kozlosky, who engaged in widespread activity on behalf of the Teamsters among the Respondent Company's employees, left her place of work to do more than engage in idle conversation. Kozlosky spoke to Williams for the purpose of interesting Williams in the Teamsters but was unsuccessful because of Williams' declared opposition to that organization. It is further found that Kozlosky knew or should have known of the Respondent Company's posted rule against solicitation.

With reference to the motivation issue—whether the Respondents' respective explanations of independent action are pretexts—the Respondent Union admittedly suspended Kozlosky from membership in good standing because of her activity on behalf of the rival labor organization. The Respondent Union in opposing rival organization made complaints to the Respondent Company of violations of the

contract and the no-solicitation rule under which the Respondent Company was expected to take disciplinary action. The Respondent Union explains that in doing so it was merely seeking uniform enforcement of the contract and the rule because it was not permitted to engage in soliciting during working hours. The record, however, shows that there had been occasions, although they were few, when the Respondent Union's president with the Respondent Company's consent had solicited membership in the Respondent Union during her own or the other employees' working time in violation of the rule and contract. The day after the Respondent Union suspended Kozlosky for rival union activity it wrote the Respondent Company advising that Kozlosky was not in good standing and demanding her immediate suspension from employment It is therefore concluded that the Respondent Union, in demanding the immediate suspension of Kozlosky and in making complaints of violations as to other employees it believed had also engaged in rival activities, was seeking not uniform but disparate enforcement of the contract and the rule for its own benefit and to the detriment of rival organization and was urging the violations merely as a pretext to bring about the disciplining of employees engaged in dual unionism.

Kozlosky, an employee of several years' standing with the Respondent Company, has had her dues checked off by the Respondent Company since her hiring pursuant to a written authorization and there is no contention that she was delinquent in her dues. There appears to be no question that the Respondent Company knew from the course of Foster's complaints of solicitation in which Kozlosky was named among others that the Respondent Union's underlying objection was that the activity was on behalf of the Teamsters. It is thus found that the Respondent Company knew or had reason to believe that Kozlosky's membership in good standing in the Respondent Union was suspended or temporarily terminated because of her activities among the employees on behalf of the Teamsters and not for any matter relating to dues or fees. If the Respondent Company entertained any doubt at the time of Kozlosky's suspension from employment, the doubt was removed a few days later when it received the Williams' statement which made it perfectly plain that the Respondent Union was relying upon Kozlosky's activities on behalf of the Teamsters and the Respondent Company did not then do anything to restore Kozlosky's employment.

The Respondent Company is shown to have yielded control over Kozlosky's employment relationship to the Respondent Union and to have suspended her because the Union so requested by (1) suspending Kozlosky immediately upon the Union's demand without so much as informing her of the charges and asking her or any of the other employees about the matter, when it was Olsen's practice to investigate alleged violations of the rules before taking disciplinary action, (2) informing Kozlosky that she was suspended from employment until the Respondent Company could get clarification from the Respondent Union as to the charges, (3) not reemploying Kozlosky until after the Respondent Union declared Kozlosky to be in good standing, (4) deciding to reemploy Kozlosky admittedly, at least in part, because the Respondent Union had "lifted" the suspension, and (5) in notifying Kozlosky to report for work after reciting that the Respondent Union had reinstated her in good standing and that her suspension from employment was "accordingly" discontinued.

The no-solicitation rule and the contract, as already mentioned, were not uniformly enforced against the Respondent Union in its activities as was shown by the solicitation engaged in by the Respondent Union's president with the Respondent Company's consent. The Respondent Company itself did not adhere to its no-solicitation rule on such matters as civic drives and certain personal situations arising among its employees

It is accordingly found that Kozlosky's violation of the no-solicitation rule and the contract was not the cause but a pretext for the Respondent Company's suspension of Kozlosky at the Union's request. It is further found that the Respondent Union caused the Respondent Company to suspend or temporarily terminate Kozlosky's employment on January 27, 1954, because of dual unionism.

The General Counsel urges in the alternative, in the event the pretext analysis of the case should not prevail, that Kozlosky was discriminated against in violation of the Act by disparate enforcement of the no-solicitation rule. The Respondents defend their conduct in suspending Kozlosky on the basis of the no-solicitation rule urging that the rule is valid and proper. The rule quoted in full above prohibits solicitation ". . . during working time or *any place in the plant* or on company property where work is being performed." [Emphasis supplied.] The rule is written in the disjunctive and hence prohibits solicitation "any place in the plant," and in each of the other instances described. In view of the next instance described prohibiting solicitation "on company property where work is being performed,"

the term "plant," when used in the instance involved, is found to be equivalent to prohibiting solicitation anywhere or in any part of the plant facilities including nonworking areas In this respect the rule as promulgated, although not so enforced as for example in the cafeteria where solicitation was permitted, is too broad thus placing an unreasonable restriction on self-organization and hence invalid. It appears moreover, as shown by the treatment accorded the president of the Respondent Union in contrast with treatment accorded Kozlosky, that the rule was enforced to the advantage and assistance of the Respondent Union and to the disadvantage and detriment of the rival union although both individuals solicited in working areas on working time. In view of the limitation on self-organization in the rule itself and the disparate enforcement of the rule, the Respondents can find little comfort in the defense that Kozlosky was suspended from employment under the no-solicitation rule.[3]

The Respondents stand in no better position in their further defense that Kozlosky was suspended from employment pursuant to the collective-bargaining agreement. All of the related provisions of the agreement have already been given. The pertinent parts of the specific provision directly involved is repeated here: "The Employer . . . will discipline any employee who, on the Employer's time, carries on antiunion activity or who seeks, directly or indirectly, to interfere with the status, membership or responsibilities of the Union." The effect of this provision, although in practice it was not carried out during nonworking time such as break periods, is to prohibit self-organizational activities during employees' nonworking time such as luncheon and rest periods and in that respect would be invalid.[4] This provision also by implication does not prohibit activities by employees on behalf of the Respondent Union during the Respondent Company's time while it expressly forbids such activities against the Respondent Union. In practice this interpretation was demonstrated to the employees as beng correct as shown by the Respondent Company's permitting the president of the Respondent Union to solicit on behalf of that organization during working time and prohibiting solicitation on behalf of a rival union by suspending Kozlosky from employment for her activity [5]

It is accordingly found that by Floraann Kozlosky's temporary termination or suspension from employment on January 27, 1954, the Respondent Union violated Section 8 (b) (2) and thereby Section 8 (b) (1) (A), and that the Respondent Company violated Section 8 (a) (3) and thereby Section 8 (a) (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondents set forth in section III, above, occurring in connection with the operations of the Respondent Company 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 a free flow of commerce.

V. THE REMEDY

Having found that the Respondents have violated the Act, the Trial Examiner shall recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. The Trial Examiner will thus recommend, among other things, that the Respondents, jointly and severally, make Floraann Kozlosky whole for any loss of pay suffered by reason of the discrimination against her, by payment to her of a sum of money equal to that which she would have normally earned from January 27, 1954, the date of the discrimination against

[3] See *Republic Aviation Corp* v *N L R. B*, 324 U. S 793, 805.

[4] See *N. L R B* v *Monarch Machine Tool Co*, 210 F. 2d 183, 187 (C A. 6), cert denied 347 U. S. 967

[5] Relying upon (1) the contract provision quoted above relating to antiunion activities or activities on behalf of a rival organization on the Respondent Company's time which was found not to have been the cause but a pretext for the suspension, and (2) testimony by the Respondent Union's president that it was her practice in accordance with her interpretation of the contract—which in another provision requires new employees to report to the Respondent Union's office within 24 hours after hire—to inform new employees that there is a closed shop requiring them to join the Respondent Union within 24 hours, the General Counsel asserts for the first time in his brief that the Respondents have thereby been engaging in independent violations of Section 8 (a) (1) and 8 (b) (1) (A). The complaint, as already noted, does not allege any independent violations of this section of the Act. No amendment of the complaint was made at the hearing. No notice was otherwise given the Respondents that reliance would be placed upon these matters to support such allegations. The Trial Examiner will accordingly make no findings in these respects.

her, to March 1, 1954, the date of her reemployment by the Respondent Company, less her net earnings during this period. Back pay shall be computed in accordance with the formula stated in *F. W. Woolworth Company*, 90 NLRB 289.

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. Local 1116, Retail Clerks International Association, A. F. L., is a labor organization within the meaning of Section 2 (5) of the Act.
2. By discriminating in regard to the hire and tenure of employment of Floraann Kozlosky, thereby encouraging membership in the Respondent Union, the Respondent Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) and 8 (a) (1) of the Act.
3. By causing the Respondent Company to discriminate against Floraann Kozlosky in violation of Section 8 (a) (3) of the Act, the Respondent Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (2) and 8 (b) (1) (A) 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.]

SEARS ROEBUCK AND COMPANY *and* SEARS ROEBUCK EMPLOYEES COUNCIL LOCAL 1635, RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL. *Cases Nos. 1–CA–1562 and 1–CA–1577. December 3, 1954*

Decision and Order

On July 16, 1954, Trial Examiner David London issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices with respect to the discharge of Roy W. Webber 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 Respondent had not engaged in any unfair labor practices alleged in the complaint with respect to the discharge of Bernice R. King and recommended that such allegations be dismissed. Thereafter, the Respondent and the General Counsel 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, Sears Roebuck