

## V. THE REMEDY

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

It having been found that the Respondent discriminated in regard to the hire and tenure of employment of Mary Ann Schmidt, Cora Hensley, Paul Crombie, Elmer Sievers, Alvin Riebold, and Jerome Jennewein by laying off or discharging them on September 28 or October 1, 1954, the Trial Examiner will recommend that the Respondent offer each of them immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make each of them whole for any loss of pay which he may have suffered by reason of the discrimination as to him by payment to him of a sum of money equal to that which he would have earned as wages from the date of the discrimination against him to the date of the offer of reinstatement less his net earnings during such period, in accordance with the formula set forth in *F. W. Woolworth Company*, 90 NLRB 289.

In the opinion of the Trial Examiner, the unfair labor practices committed by the Respondent in the instant case are such as to indicate an attitude of opposition to the purposes of the Act generally. In order, therefore, to make effective the interdependent guarantees of Section 7 of the Act, thereby minimizing industrial strife, which burdens and obstructs commerce, and thus effectuate the policies of the Act, it will be recommended that the Respondent cease and desist from infringing in any manner upon the rights guaranteed in Section 7 of the Act.

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

## CONCLUSIONS OF LAW

1. The International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, Lodge 1012, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.
2. By laying off or discharging Mary Ann Schmidt, Cora Hensley, Paul Crombie, Elmer Sievers, Alvin Riebold, and Jerome Jennewein on September 28 or October 1, 1954, thus discriminating in regard to the hire and tenure of employment of said employees and thereby discouraging membership in International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, Lodge 1012, AFL, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) and (1) of the Act.
3. By interrogating its employees and applicants for employment regarding their membership and interest in the Union thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.
4. The 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.]

**William J. Tillman, Katherine Tillman, and William C. Tillman, a Partnership, d/b/a Tillman Furniture Company and Retail Furniture and Appliance Salesmen's Union, Local No. 981, Retail Clerks International Association, AFL.** *Case No. 9-CA-895. November 16, 1955*

## DECISION AND ORDER

On August 19, 1955, 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. The Trial Examiner also found that the Respondent had not engaged in certain other alleged unfair labor practices and recommended dismissal of these allegations of the complaint. Thereafter, the Union filed exceptions to the Intermediate Report and a supporting brief.

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

### 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, William J. Tillman, Katherine Tillman, and William C. Tillman, a Partnership, d/b/a Tillman Furniture Company, Covington, Kentucky, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees concerning their membership in, or activities on behalf of, Retail Furniture and Appliance Salesmen's Union, Local No. 981, Retail Clerks International Association, AFL, or any other labor organization, in a manner constituting interference, restraint, or coercion in violation of Section 8 (a) (1) of the Act.

(b) Threatening its employees with reprisals for engaging in union activities.

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

(a) Post at its store in Covington, Kentucky, copies of the notice attached hereto marked "Appendix."<sup>1</sup> 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 the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

<sup>1</sup> In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order," the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

AND IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed, insofar as it alleges that the Respondent violated Section 8 (a) (3) of the Act.

MEMBER MURDOCK took no part in the consideration of the above Decision and Order.

## APPENDIX

### NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT interrogate our employees concerning their membership in, or activities on behalf of, Retail Furniture and Appliance Salesmen's Union, Local No. 981, Retail Clerks International Association, AFL, or any other labor organization, in a manner constituting interference, restraint, or coercion in violation of Section 8 (a) (1) of the Act.

WE WILL NOT threaten our employees with reprisals for engaging in union activities.

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

TILLMAN FURNITURE 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

This proceeding, brought under Section 10 (b) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act, was heard before a duly designated Trial Examiner at Cincinnati, Ohio, on July 6 and 7, 1955, pursuant to due notice to all parties. All parties were represented at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence relevant and material to the issues, to argue orally upon the record, and to file briefs and proposed findings. Oral argument was waived. Briefs have been filed with and considered by the Trial Examiner.

The complaint, issued by the General Counsel of the National Labor Relations Board, the latter herein called the Board, alleges in substance that the above-named Respondent Company: (1) On October 29, 1954, discriminatorily discharged employee George Veeneman because of his activities on behalf of the Charging Union; (2) interrogated employees in regard to their membership in the Charging Union; and (3) by such conduct interfered with, restrained, and coerced employees in the exercise of rights guaranteed by Section 7 of the Act. In its answer the Respondent denied these allegations.

At the conclusion of the hearing the Trial Examiner reserved ruling upon a motion by counsel for the Respondent to strike certain testimony of witness George Porcaro. It is hereby denied. Ruling was also reserved upon a motion by the same counsel to dismiss the complaint. Said motion is disposed of 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

William J. Tillman, Katherine Tillman, and William C. Tillman are copartners of a partnership, doing business under the style and name of Tillman Furniture Company with office and principal place of business at Covington, Kentucky. The Respondent is primarily engaged in the selling of household furniture and appliances.

During the calendar year 1954 the Respondent purchased and caused to be shipped from points outside the State of Kentucky, to its place of business in Covington, goods and materials of substantial value; and sold, shipped, and delivered goods and materials valued at more than \$100,000 from its place of business in Covington, directly to points outside the State of Kentucky.

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

##### II. THE LABOR ORGANIZATION INVOLVED

Retail Furniture and Appliance Salesmen's Union, Local No. 981, Retail Clerks International Association, AFL, is a labor organization admitting to membership employees of the Respondent.

##### III. THE UNFAIR LABOR PRACTICES

The Respondent's dismissal of Salesman George Veeneman on October 29, 1954, is the major issue. Evidence and opposing contentions relating to it will be discussed first.

The fact that Veeneman was let go is not disputed. Claims as to the motive or motives leading to his termination are in sharp controversy. The one man, Tillman senior, who could have testified as to what was in his mind when he decided to and did fire Veeneman, was not called as a witness.<sup>1</sup> All testimony was elicited from others and, at best, may be considered only as tending to reveal certain objective circumstances from which the most probable motive may be inferred.

All the evidence, including affidavits of the two partners introduced by General Counsel, establishes that while Veeneman was discharged in the presence of his son, William C. Tillman, the elder partner was solely responsible for the decision and the action.

General Counsel claims that the employee was discharged because of his union activities. Credible and undisputed testimony supports the finding that Veeneman did engage in such activities 2 days before his dismissal. He obtained signatures upon union membership application cards from his fellow salesmen while at work in the store.

No witness, however, testified as to circumstances warranting a finding that either Tillman saw, or learned about *before* the discharge, this card signing, or overheard any union discussion among the salesmen. To provide ground for an inference, essential to his case, that the employer had knowledge, belief, or suspicion of such activities before the discharge, General Counsel relies upon other factors.

These factors include events both before and after the dismissal. Thus it is undisputed that on 3 occasions, ranging from 6 to 2½ years before the hearing, Tillman senior declined to sign a union agreement upon demand of George Porcaro, a union representative. General Counsel would have the Trial Examiner find, in effect, that Tillman's refusal establishes hostility toward the Union and, derivatively, toward any employee trying to organize. The facts require neither conclusion. Porcaro admitted that his organization, at the times of demand, represented no employee of Tillman. Had Tillman signed a contract, forcing his employees into a labor organization not of their choosing, he would have violated the Act. It therefore seems as reasonable, from the above situation, to infer that Tillman was predisposed to abide by the Act,

<sup>1</sup> Counsel for the Respondent stated that Tillman was not being called upon advice of his doctor

as to conclude that he possessed any deep-seated intent to infringe upon rights guaranteed employees by it. Alternate inferences being equally possible, the Trial Examiner concludes that the refusal to deal with the Union, under the circumstances described, is insufficient evidence to establish hostility toward the Union or toward self-organization of the employees.

Another factor bearing upon Tillman's motive in dismissing Veeneman consisted of remarks, attributed by the latter to Tillman senior, and claimed to have been made at various times between 1952 and early 1954. As the record stands—containing no specific denial by Tillman as a witness—it would appear that in November 1952, the employee was told flatly that “if you join the Union you can't work for me.” Had this threat actually been made, it would at least remotely support a finding of continued hostility toward self-organization in 1954, and permit an inference of continued intent to discriminate in violation of the Act. Despite the lack of contradiction in the record, however, the Trial Examiner is far from convinced that Veeneman's quotation is accurate. In the first place, had so simple and direct a threat been made to him, it is reasonable to believe that during the prehearing investigation of the case the employee would have revealed it to some Board agent and that General Counsel would have called for testimony about it during his case-in-chief. Yet on direct examination no questions were asked him about any such remarks.<sup>2</sup> On redirect, when the employee was asked specifically to relate any conversations he had had with Tillman senior about the Union, his version of this 1952 remark was different from that quoted above, which finally emerged on recross examination. On redirect, Veeneman said that in a conversation with Tillman concerning the rumor of union organization the Employer asked him how he felt about it, and that when he replied that he would do what the others did, Tillman commented, “Well, you can't work for the Union and work for me,” whereupon he had replied, “Well, as long as I am working for Tillman, I am for Tillman.” On recross, after substantially repeating his previous testimony on the point, and although such testimony had contained no direct reference to “joining,” he was asked by counsel for the Respondent:

Q. He said if the men joined the Union he would what?

It was not until then that Veeneman testified:

A. He said, “If you will join the Union—if you join the Union—you can't work for me.”

Because of the circumstances, above described, and because of his observation of Veeneman as he testified on this matter, the Trial Examiner is unable to believe that Tillman uttered any threat, real or implied, to discharge Veeneman or any other employee, if they joined the Union.<sup>3</sup> The only other instance related in detail by Veeneman, as to conversations with Tillman about the Union—although he said he had had several—is to the effect that in early 1954, he, himself, called Tillman's attention to a union sign at the store of another dealer across the street and reminded his Employer that he had said he would “sign up” with the Union if that dealer did. Veeneman quoted Tillman as replying: “That is Mr. Ostrow's business. What I want to do is my business. And before I go into the Union I will close the door.” In view of Porcaro's testimony that he had sought not to organize employees, but employers, Veeneman's version of the 1954 incident, even if believed, is open to different interpretations. In any event it does not soundly establish, in the opinion of the Trial Examiner, hostility toward self-organization among employees.

Relative to the factor of employer knowledge, the record provides evidence that: (1) About or shortly after noon on October 27 Veeneman was in a tavern or cafe drinking with 2 union representatives; (2) that when the 3 came out Veeneman and 1 representative saw Tillman across the street; and (3) that before they came out Tillman saw Veeneman in the cafe “taking a drink of beer,” according to Tillman's affidavit to a Board agent and introduced in evidence by General Counsel. Accepting Tillman's statement as true, to the effect that he saw the employee *inside* the tavern,

<sup>2</sup> It is possible, of course, that failure to query Veeneman on this point during direct was an inadvertent oversight on General Counsel's part. Even in this event the credibility finding would not be altered. The circumstance is noted, but is not determinative.

<sup>3</sup> Nor can the Trial Examiner overlook the fact that 2 of the 3 other salesmen called as witnesses by General Counsel flatly denied that Tillman senior had had any conversation with them about the Union in 1952, and the third was not questioned on the subject. The two denials contradict Veeneman's testimony: “He had talked to the rest of them, first, and then he got me on the end, see?” in reference to his claimed conversation. Nor is there any evidence in the record to show that there was any organizing effort in November 1952 which might have given rise to any such conversation.

it is reasonable to consider Veeneman's testimony as equally true that when he came out Tillman was looking at him. And the inference is reasonable that if he recognized him inside, he also recognized him outside on the street. It does not follow, however, that even if Tillman also recognized Porcaro, a not infrequent visitor according to his own testimony in this neighborhood and at Tillman's store, that the Employer construed the occurrence as one indicating organizational activity on the part of the employee. As described more fully below, Veeneman visited this tavern often during the day. Had Tillman been particularly disturbed by seeing him in Porcaro's company, it is reasonable to believe that he—being the highly excitable person all witnesses, including his own son, described him to be—would have wasted no time or words in confronting the salesman with his thoughts. General Counsel specifically disclaimed any wish to have it found that Tillman was engaged in illegal surveillance on this occasion. Under these circumstances the Trial Examiner is unable to conclude (particularly in view of another event, occurring the next afternoon and just before the discharge, described below) that Tillman gained either knowledge or suspicion on October 27, of the employees' union activities, from seeing him in Porcaro's presence.

In summary, the evidence is insufficient to support findings as to any action, or utterance, by Tillman senior before the discharge of Veeneman from which it must follow that he knew, or believed, the employee had had cards signed on October 27 or that he intended to discharge any employee engaging in such activities.

#### The dismissal and later events

Upon reporting for work Friday morning, October 29, the day before his regular payday, Veeneman was called to the back of the store by Tillman senior and, in the presence of the younger partner, summarily discharged. In substance details of the final interview were as follows:<sup>4</sup> The elder Tillman told the employee that they were going to have to let him go because: (1) they had decided to reduce the sales force by 1, there not being enough work for 3 full-time salesmen; (2) of lack of harmony among them; and (3) of the salesmen's complaints of not enough customers to go around. Veeneman protested that he should not be selected since he had seniority, and named another with less service who should be chosen for lay-off. Tillman replied that seniority was not involved, and asserted that it was a question of sales records and Veeneman's sales records had been lowest all along. Veeneman then asked about notice and a Christmas bonus. He was told then he would be given a week's pay in lieu of notice and that if he were not employed there at Christmas he would not receive a bonus. He was also told he would be given a recommendation in seeking other work, and might be called back. As the employee left Tillman added that a customer had complained about liquor on his breath, and his son agreed.

At the time of the hearing Veeneman had not been recalled and no other person had been hired in his place.

The foregoing findings as to the discharge interview reveal no statement by either Tillman indicating knowledge or suspicion on their part that 2 days earlier Veeneman had distributed union cards. (The Trial Examiner specifically does not believe Veeneman's testimony to the effect that the elder Tillman remarked, upon firing him, that there was "something going on around here" he didn't like but would not tell him what it was. Veeneman's attributing this remark to Tillman was, in the opinion of the Trial Examiner, a gratuitous effort to color the interview. On cross-examination the employee admitted having been told that the primary reason he was being let go was reduction in force and his low sales record—an item which he had significantly omitted in his direct examination although being specifically asked by General Counsel if his preceding account was "the extent of the conversation.")

After the discharge, however, both partners interviewed the other salesmen, and their interrogations were of a nature permitting a not unreasonable inference, in the absence of other explanation, that management had been aware of, or suspected, some union activity before the discharge, which would provide some support for a further inference that motivation for the act was as General Counsel claims.

In substance, these material events were as follows:

On October 29, after the discharge, the younger Tillman called Salesman Lauterbach to an upper floor of the store and among other questions asked him if he had signed a union application, stating that he had heard some union talk.

<sup>4</sup> The findings as to this interview are based upon what the Trial Examiner considers to be the credible portions of the testimony of Veeneman and the younger Tillman.

On November 1, the Monday following the discharge, during working hours Tillman senior told Part-time Salesman Hartman that he had heard "we were trying to organize the store," according to the employee's testimony, and asked him if he had joined or intended to join. When the salesman replied that he had not signed, and did not know whether he would, Tillman said that the Union would not be a good thing for the type of operation in the store.

Also on November 1, after working hours, while Lauterbach, Hudson, and Hartman were at the tavern bar above identified, in company with the union representative, Porcaro, and Veeneman, Tillman senior came in and asked them to return to the store. Upon arriving there Tillman told the three salesmen that he "would not have a union in the store, that he would sell out first," to quote Salesman Hudson.<sup>5</sup> He then asked the employees if they had joined. They said they had signed applications but were not dues paying members.

As suggested above, the interrogation by both Tillmans and the elder partner's threat to close the store are persuasive indicia that management somehow learned of Veeneman's union activity before the discharge and dismissed him because of it. Both Tillmans displayed concern about self-organization among the remaining salesmen, and with no intervening event otherwise explaining such concern it would be reasonable to infer that Veeneman's activity had aroused it, since there is no evidence that any other employee had passed out cards. In the opinion of the Trial Examiner, however, the record reveals other events which, if not fully explaining subsequent acts, at least deprive the inference as to illegal motivation of any logical compulsion.

The younger Tillman's testimony has support in his father's affidavit to the effect that both partners were first prompted to suspect self-organization among the salesmen by Veeneman's vigorous protest, upon being told he was through, that his seniority should protect him. Realizing that seniority is a provision commonly sought by unions, young Tillman said, their suspicions were thus aroused and he thereafter interrogated Lauterbach the same day. There can be no question that Veeneman did raise the seniority point—he emphasized the fact in his testimony. As such it was an event immediately preceding the first interrogation of employees by Tillman junior.

And the most immediately preceding events of a union character before the elder Tillman's interrogation of the three men on Monday, November 1, were: (1) A telephone call of a union representative to the store earlier that day (young Tillman's affidavit, introduced by General Counsel, refers to a telephone call from Porcaro inquiring about Veeneman's discharge); and (2) the elder Tillman's observation of his employees in the company of union representatives at the nearby bar before he called them back to the store.

Only by inference, even in subjective confession, may one conclude that a known effect stems from a certain cause. Here, as the Trial Examiner interprets General Counsel's argument, he would have it inferred that the known effect—the interrogation of the salesmen—must have been the result, partly at least, of management's knowledge of Veeneman's union activity before the discharge. It appears that this would be an unnecessary and arbitrary exercise of speculation. As noted before, there is no credible evidence of company knowledge before the discharge. There is substantial evidence of events both during and after the discharge which, in the opinion of the Trial Examiner, may well have caused management's concern as expressed in its interrogations.

In short, the Trial Examiner is not convinced that events after the discharge were so unreasonably explained as to make it logically mandatory to find that another explanation—company knowledge or suspicion of Veeneman's activity—must have existed before the discharge.

In the absence of a finding of company knowledge or suspicion before the event at issue, the allegation of a discriminatory discharge must fall.

Nor is the record without credible evidence indicating that the facts to support the reasons given Veeneman at the time of his dismissal actually existed, whether such reasons were the real motivation or not. Company records were introduced showing that he was the low man in sales. The sales force was in fact reduced by one—no one has been hired to take his place. After being pressed on cross-examination, Veeneman finally admitted having been previously warned about his mistakes, his forgetfulness, and his frequent visits to the nearby bar. And the younger Tillman's testimony, while not at all points consistent or in agreement with

<sup>5</sup> The quotation is from Hudson's affidavit to a Board agent, which he said at the hearing set forth the truth. Hudson was a most reluctant witness on this point, obviously hesitant to testify thus against his Employer.

his father's affidavit, nevertheless does agree that for a considerable period before October 29 only his intervention had prevented his father from discharging the salesman long before that date.

The Trial Examiner does not specifically find, however, that the elder Tillman actually fired Veeneman, early the morning of October 29, because the long accumulation of derelictions had become unbearable, as the younger Tillman in effect declared. The timing of the dismissal—the day before regular payday without previous notice—reasonably requires a more immediately precipitating motive, as General Counsel argues. The testimony of young Tillman fails to reveal anything convincing. But the elder partner's affidavit contains a significant possibility which neither counsel touched upon at the hearing, and no witness testified about. Despite counsel for the Respondent's objection to its introduction, this document reveals a point most favorable to his case. The relevant part reads as follows:

As near as I can recall, on the two days previous to his discharge, I had also seen him in Greisler's Cafe in the afternoons taking a drink of beer. On one of these occasions (the last one) he looked out at me standing outside looking in and laughed at me. This made me angry and I decided at that time to let him go.

Later in the same affidavit:

In looking back, I have figured that might have been the reason that he was so fresh with me, the day before he was discharged, [sic] when he was drinking openly in the cafe, and just laughed at me.

Anger is an emotion likely to precipitate action of a retaliatory nature, particularly on the part of a man as excitable as all parties urge the Trial Examiner to believe he was. His son had been away on a trip for the preceding few days and upon his return to the store the next morning—it is established that he did not come back that afternoon—he promptly dismissed Veeneman. Under the circumstances depicted by undisputed testimony and by the admissions of Veeneman himself, the statements in the elder Tillman's affidavit appear to provide the most reasonable motive suggested by the entire record—for the sudden dismissal. The Trial Examiner realizes, of course, that had Tillman senior been called as a witness, his testimony might have varied from affidavit, or might have been broken down by cross-examination. Reasonable and logical enough as it stands, the motive as advanced in the affidavit has not withstood the test of such examination and thus lacks full weight. In the opinion of the Trial Examiner it is unnecessary, however, to find as a fact that Veeneman, having a long record of unsatisfactory service, was finally discharged because he laughed at his Employer while in the tavern the day before the dismissal.

The burden in this case was upon General Counsel to prove a discriminatory motive. This burden, in the opinion of the Trial Examiner, has not been met by a preponderance of the evidence. It will therefore be recommended that allegations in the complaint as to Veeneman be dismissed.

On the other hand, credible and substantial evidence shows that the remaining salesmen were, shortly after Veeneman's dismissal, subjected not only to individual interrogation but also to the threat of economic reprisal. Here the Employer has no extenuating excuse for such interrogation. The Respondent does not claim that it sought thereby to ascertain whether or not the Union actually represented a majority. The facts outlined above show that the purpose of the questioning was to discourage organization and, accompanied by the threat to close the store, was coercive. Although an employer may have a legal right to go out of business at any time, the Act does not permit him to threaten such an expedient in order to discourage the exercise of the employees' legal rights. The threat was not isolated. It was uttered to all assembled salesmen. The interrogation was not isolated. It occurred at the same interview as the threat.

The Trial Examiner concludes and finds that the Respondent, by the threat of economic reprisal and the interrogation of its employees as above described, interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by the Act. (*Blue Flash Express, Inc.*, 109 NLRB 591; also *Grabber Manufacturing Company, Inc.*, 111 NLRB 167.)

#### 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 certain unfair labor practices affecting commerce, the Trial Examiner will recommend that it cease and desist therefrom and take affirmative action designed to effectuate the policies of the Act.

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. Retail Furniture and Appliance Salesmen's Union, Local No. 981, Retail Clerks International Association, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed by 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.

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

4. The preponderance of evidence does not sustain the allegations of the complaint that the Respondent has engaged in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

[Recommendations omitted from publication.]

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**H. H. Erikson and Erik E. Erikson, Co-partners, d/b/a Detroit Plastic Products Company and Rosella Katulski.** *Case No. 7-CA-1157. November 16, 1955*

#### DECISION AND ORDER

On April 19, 1955, Trial Examiner James A. Shaw issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner further found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended dismissal of those allegations. Thereafter, the General Counsel and the Respondent filed exceptions to the Intermediate Report and supporting briefs.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and the 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, the National Labor Relations