

shows that distance did not prevent Respondents, whose common offices and jurisdictional areas were in Utah, from returning to that State after their secondary activity in New York, to conduct effective primary activity at the real situs of the dispute.

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 Cache and Distributors set forth in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to burden and obstruct commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondents have violated Section 8 (b) (4) (A) and (B) of the Act, I shall recommend that they, and each of them, be ordered to cease and desist therefrom and to take certain affirmative action which is necessary to effectuate the policies of the Act.

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

CONCLUSIONS OF LAW

1. Local 976 and Joint Council 67, both affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, are labor organizations within the meaning of Section 2 (5) of the Act.

2. The above labor organizations have engaged in unfair labor practices within the meaning of Section 8 (b) (4) (A) and (B) of the Act by picketing and otherwise inducing and encouraging employees of N. Dorman & Co., Inc., to engage in a strike or concerted refusal in the course of their employment to use, process, transport, or otherwise handle or work on goods, articles, materials, or commodities, and to perform services for their employer, with the objects thereof being (a) to force or require N. Dorman & Co., Inc., and other employers and persons, to cease using, selling, handling, transporting, or otherwise dealing in the products of, and to cease doing business with, Cache Valley Dairy Association and Dairy Distributors, Inc., and (b) to force or require Cache Valley Dairy Association to recognize or bargain with Local 976, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, as the representative of its employees, although said labor organization has not been certified as the representative of those employees in accordance with the provisions of Section 9 of the Act.

3. 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.]

Wilmington Casting Company and International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, UAW, AFL-CIO. Case No. 9-CA-939. July 23, 1956

DECISION AND ORDER

On April 19, 1956, Trial Examiner James A. Corcoran issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Charging Party filed exceptions and a supporting brief, and the Respondent a reply 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 briefs, and the entire record in this case,¹ and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

[The Board dismissed the complaint.]

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

¹ The Respondent's request for oral argument is hereby denied as the record, exceptions, and briefs, in our opinion, adequately reflect the issues and positions of the parties.

INTERMEDIATE REPORT

STATEMENT OF THE CASE

A charge having been filed by the International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, UAW-CIO,¹ hereinafter called the Union, against Wilmington Casting Company, herein subsequently referred to as the Respondent, the General Counsel of the National Labor Relations Board,² on November 15, 1955, the Regional Director for the Ninth Region, issued and served upon the Respondent a complaint together with notice of hearing. The complaint alleged that the Respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3), and Section 2 (6) and (7) of the National Labor Relations Act, as amended, herein called the Act.

With respect to the unfair labor practices the complaint alleged in material substance that the Respondent (1) on or about January 21, 1955, interfered with, restrained, and coerced its employees in the exercise of their rights under Section 7 of the Act by interrogating Ray C. Adams concerning his membership in, activity in behalf of, and sympathy for, the Union, and threatening his discharge because of such factors, in violation of Section 8 (a) (1) of the Act; and (2) on or about April 4, 1955, did discriminatorily discharge the said Ray C. Adams for his membership in, and activities for, the Union and because he engaged in concerted activities with other employees for the purpose of collective bargaining or mutual aid and protection, in violation of Section 8 (a) (3) and (1) of the Act, and has failed and refused to reinstate him to employment.

The answer of the Respondent denied generally all material allegations of the complaint imputing to it the commission of the unfair labor practices as alleged, and set forth specific grounds for the discharge termination of the employment of Adams.³

Pursuant to notice a hearing was held on January 17, 18, and 19, 1956, at Wilmington, Ohio, before James A. Corcoran, the Trial Examiner duly designated to hold such hearing by the Chief Trial Examiner. All parties were represented and participated in the hearing. Full opportunity to produce, examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded to all parties.⁴ At the close of presentation of evidence by the General Counsel, a motion made by the Respondent to dismiss the complaint, was denied. Opportunity to present oral argument was waived by the parties. The Union and Respondent have filed briefs which have been read and considered.⁵

¹ Name of Charging Party verbally amended at hearing, without objection, to conform title of organization to recent merger of AFL-CIO.

² Referred to herein as the General Counsel and Board respectively.

³ Admitting the discharge . . . says said discharge was for valid cause to wit:

Continued insubordination on job; operating a tapping machine at destructive and forbidden speed, and the continued violation of instructions against bothering employees in other departments in their worktime.

⁴ The General Counsel requested the Trial Examiner to take judicial notice of the representation Case No. 9-RC-2101, 110 NLRB 2114, involving the same parties.

⁵ On application of the Respondent, time of filing briefs was extended by the Chief Trial Examiner to February 24, 1956.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Wilmington Casting Company is an Ohio corporation having its principal office and place of business in Wilmington, Ohio, and is engaged in the manufacture of iron castings, plumbing fittings, and related products. In the performance of its work during 1954, the Respondent had purchased materials, supplies, and equipment valued in excess of \$200,000, of which over 90 percent was shipped to it from points in States of the United States outside of the State of Ohio. In the course of its operations in such period, the Respondent manufactured, sold, and shipped products valued in excess of \$200,000 to points in the United States outside of the State of Ohio.⁶ I find that the Respondent is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, UAW, AFL-CIO, admits persons employed by the Respondent to membership, and is a labor organization within the meaning of the Act.⁷

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. General

Adams had been operating a threading machine in the tap machine department for about 10 years without any known or recorded complaints as to his work ability.⁸ On occasions he acted as foreman and participated in training of new workers in operation of the tap machine. He gave me the impression of one consciously and boastfully proud of his work ability and knowledge. Yet, in answering a question regarding his machine operation and the use or function of a handle used in controlling machine speeds, he stated "he was not interested in what the handle was for." Despite his long service under the same foreman, it is clear that there was no great friendship or amity between them. Bosier told of Adams frequently going over his head and questioning his authority relative to his orders given in regard to anything new or a departure from existing routine.⁹

Adams had been active in promoting the union organization work in the shop since late 1953. There is no doubt from the testimony herein that his union activity was concededly known at all times to the supervisors of the Respondent.¹⁰

As the discharge of Adams appeared to be based primarily on the running of the particular job at excessive machine speed, testimony was given to show the expensive cost results which could ensue from such practice in the breaking of certain parts of the gear machinery. Such damage would not necessarily be immediately

⁶ The answer of Respondent admits that the Company is engaged in commerce within the meaning of the Act, and the parties have also so stipulated in the record.

⁷ The Respondent has so admitted in its answer and the parties so stipulated on the record.

⁸ Bosier, his foreman for over 6 years, stated his work was all right. Plant Manager Vance believed his work was satisfactory, although he characterized it as of medium caliber or average.

⁹ Horney, previously his direct superior also, attested to the same condition existing with him too, although qualifiedly stating that "most of the time he was an obedient employee." Vance in terming him of "troublesome nature" based it on Adams' persistence in arguing with and questioning the authority of his supervisors. Bosier frankly stated "I did not like his attitude and I don't think he liked mine very well." From my observation of Adams throughout the hearing, I can readily accord some validity to those assertions. The General Counsel in posing a question to Bosier regarding his not liking Adams' attitude, in parenthetical manner added "and no one could blame you for it."

¹⁰ Specific instances of his activity will not be set forth. He was also the union observer in the first election of February 15, 1954, subsequently set aside by the Board, and again in the second election of January 14, 1955, in which the Union prevailed. Incidentally, the supervisory force remained about the same when there was a change in ownership of the Company in August 1954, a change occurring however in the office of the president. The new sole owner of the company stock was the Institution Divi Thomae Foundation, a tax free medical foundation, located at Cincinnati, Ohio.

noticed and the machine could continue to operate for weeks (unless opened to ascertain damage), making it difficult to know under most circumstances just when the damage was suffered. In this particular instance it has not been demonstrated that any damage to the machine did result from Adams' high-speed operation of it. No repair of such machine has been required. Comparative production figures were offered for Adams and other similar workers. It is indicated by them that Adams on the night of discharge did average considerably higher than for a previous period selected for consideration, the increase assumedly resulting from running at the high-speed rate. I find nothing conclusive from such testimony, as without details of such prior period operations and full knowledge of the size and type of fittings and the production runs involved, deductions would be hazardous and not well founded.

B. Collateral matters raised

1. The big-stick incident

The Respondent questioned Adams regarding this matter which it developed actually occurred some years ago, and which testimony of Adams and Bosier indicated was about 1948-50. Others testifying (Horney and Warren) estimated it as being 3 to 6 years ago. The initial questioning related to Adams having the stick (pickax handle) available for use on Bosier or Horney. Adams categorically denied having it for such purposes, also denied that Horton (former company president) had spoken to him at the time regarding the existence or presence of the club, and then specifically answered in the negative the inquiry as to whether he ever had such an implement in his department. Horney testified to seeing it leaning up against the wall behind the machine of Adams. He complained to the office regarding it and was advised by Horton (then president of the Company) that it would be taken care of. Warren (cost accountant) testified he also saw it in the place above described as also did Bosier. The latter states Horton spoke to Adams and him regarding it, inquiring of Adams regarding his intentions in having it present, and telling him to get it out and if it happened again he would be discharged.

In his rebuttal testimony Adams related how the stick came into his possession from a maintenance man, who jokingly gave it to him. He testified he immediately placed it near a trash barrel in back of his machine. He could not recall any supervisor or Horton ever discussing it with him.¹¹ He stated he did not remove it and did not know how long it remained there, in fact it could be there yet as far as he knew.

I regard his entire testimony and answers in respect to this "ancient" matter as less than frank, evasive, and fencing in nature, and not tending to enhance his credibility generally. Particularly improbable of belief in his confident assertion that such stick might still be there, as it would appear improbable he could make the number of visits to the rear of his machine required in the operation of it in the intervening years and also to dispose of trash, and still be oblivious to the presence of it and without knowing whether or not it still remained there.¹²

2. Out of department

The answer of Respondent contended that Adams in violation of rules and supervisors' instructions continually bothered during working hours other employees at work. Ostensibly, the subject of the conversations was union activities. Adams in his testimony denied the allegation as made, and also denied he was warned repeatedly regarding the practice by foreman and other plant supervisors. It does appear that employees were allowed to go to a coke or candy machine located in the pattern department without any definite time restrictions, and to do so Adams would have to go through the molding department, likewise in going to toilets. It also appears that in the changing of the tap machine for a new job, the setup of machines was performed by the worker, if the foreman was not available, but in many instances the foreman performed the necessary work. Horney estimated he saw Adams out of his department about a dozen times in the 3- to 6-month period prior to the discharge, and particularly at the time of setup of his machine. He states he criticized Foreman Bosier for not having Adams present on such setup operation, and that Bosier told him Adams "just walked out" or "went away." Horney stated also that he talked to Adams 2 to 3 times regarding his visiting in

¹¹ I credit the testimony of Horney as to his reporting it, and that of Bosier as to Horton discussing it with Adams and him.

¹² His denial of his having testified directly as to never having had the stick in his department is also noted.

other departments, with a warning of possibility of being fired for it, about 2 months before his discharge, and with Adams promising to cease doing it, but quickly resuming the practice thereafter in certain cited instances. Horney admitted that other workers also did such visiting or being absent from their department but would quit it after usual warnings.¹³ Bosier, his immediate foreman, testified that in the last 1½-year period he never had caught Adams in any other department, but that he did have complaints regarding it from other foremen (Pobst and Fowler). He admitted Adams would leave his machine while setup would be in progress (and in which time worker is on day-rate time pay) but ordinarily that he would not stay away too long, although on several occasions he did not return until after such setup operation was completed (20 to 25 minutes). Although he would mention the fact to Adams, the latter would have little to say about it. Bosier did not recall ever complaining to Vance regarding such conduct of Adams.¹⁴ Bosier however did observe Adams leave his machine and engage in talking to other men at their machines in his own department and talked to him about it. Adams allegedly would be all right for several days and then start again.¹⁵

The only tangible testimony presented regarding the alleged practice was an occasion when Foreman Pobst saw Adams talking to Thompson of his department, and "took" or accompanied Adams back to his department. He was unable to establish the date of this occurrence. Reynolds, a coemployee with Adams, noticed their return to his department (Foreman Bosier being out) and states it was during lunch hour, at a time he would place "in the summer" although unable to say how long it was before the time of termination of employment of Adams.¹⁶ Pobst admitted he saw Adams in his department "a lot of times," and just like some others with the purpose to "get candy, stop over or talk a little," but that he reported such conversations to "his foreman and Vance also," although he had no instructions to so report regarding seeing Adams talking.

No evidence was presented to show the existence of any validly established rule against solicitation in the shop, or even of general applicability as to plant visits or wanderings, prior to November 10, 1954.¹⁷ It is significant though that if the infractions were as repeated and serious as now alleged, no distinct punitive action was taken or apparently appeared warranted at the time to the Respondent. Although the extent to which Adams may have indulged in this practice might be an annoyance perhaps, I hardly credit it as having been considered by the Respondent as sufficient in itself to warrant discharge. In fact, there is nothing to establish conclusively that his visits were in connection with union activity or promotion, except surmise from the people he talked to on occasions.

C. The discharge and events preceding

Adams usually worked on the day shift and the circumstances surrounding his working on the night shift on April 4, 1955, have been extensively set forth in the record. About a week before April 4, the Respondent wished to break in a new man on the tap machine work and to expedite his training requested the 3 regular day operators to each take 1 night shift, leaving a machine available each day for the training work. The idea was not acceptable to any of them, they objected to Bosier and went then to Horney allegedly wanting to get overtime work to supply any needed extra production, but finally agreed to do as proposed. The other two operators worked their assignments of Wednesday and Thursday nights. Adams

¹³ He stated however that only once was Adams called to the office to his certain knowledge, and from the evidence presented, I accept that that occasion was in reference to the Banks affidavit, not the general visiting violation alleged.

¹⁴ Vance stated he never did confer with Adams regarding the complaints he received from other foremen. Vance related an occasion when he saw Adams talk to employee Thompson in the department of the latter, and Vance then talked to Adams regarding it, with the latter agreeing not to do so again. On such occasion, Adams at the time was on his lunch hour, but due to overlapping lunch periods Thompson allegedly had resumed his work.

¹⁵ The men in his department had complained directly to Horney regarding it but Bosier indicated he could not say how long it was previous to the discharge.

¹⁶ Adams testified when Bosier returned, he told him of Pobst wishing to see him and accompanied him to the department of the latter. Pobst at such time admitted that Adams was not bothering anyone but that his mere presence in his department was a rule violation. Adams claims he was not reprimanded by Bosier.

¹⁷ Subsequent to such date rules 4 and 9 would be applicable. Rule 4 is ambiguous as of whether applying to nonworking time also.

was scheduled for Friday night work. However, on Friday he appeared complaining of a shoulder neuritis attack on Thursday night. The Respondent concurred in his inability to work in such condition, but asked him to get medical attention. He brought in on Saturday morning a doctor's certificate indicating he might be out several days.¹⁸ Adams appeared for work on Monday morning but was informed by Bosier that under orders he received Adams could not start until he had first worked a night shift.¹⁹ Adams then spoke to Horney and Vance about the matter without changing the position the Respondent had taken regarding his doing a night shift the same as the other two operators.²⁰ Adams worked the night shift on Monday, April 4, 1955, starting on 1½-inch gray cast iron fittings, which were run on intermediate machine threading speed. Bosier directed him to finish up by doing certain 1½-inch galvanized fittings when he concluded the gray iron work. No other instructions were given him regarding the work.

Considerable testimony was presented regarding the custom and practice, termed as rules, for the proper speed setting of gears for the respective size threads.²¹ I am satisfied that all new workers were instructed regarding this feature of operation in the beginning of their work by the foreman, and in some instances even by Adams. The whole history of operation shows that the custom or practice was also known to Adams over the years, at least since 1948, and also regularly observed by him and others prior to the April 4 occurrence, with no known prior violations, and the regular carrying on of the work in accordance with it, with the individual worker setting the gear to the required speed necessary.²² Although the rules posted in November 1954 did not specifically refer to the use of factory recommended speeds in carrying on the work in the tap department there is nothing to show or cause me to believe that existing custom and practice in such work was in any way abolished by the later regulations. The workers carried on their work making the proper gear changes required as had been the known practice for years.

Adams had not run galvanized fittings before this night. However he had decided ideas regarding them. He was firmly of the belief that the galvanizing process softened the casting material and that galvanized fittings were softer than those of similar size gray cast iron. He based his opinion on being able to tell by the vapor coming off the taps while being worked, and also the sound and vibration of the machine. He believed such material softening would extend inward as far as the depth of a thread (three-sixteenths of an inch). The galvanized fittings he was running on the night of April 4 were similar to the No. 402 cast iron fitting in size, namely 1½ inches. He did not ask any authorization to run them at high speed, making the change to high speed from the prescribed intermediate speed for 1½-inch

¹⁸ Adams claims he told Vance if he was not in Monday morning, the illness would be the reason, without getting any reply. Bosier said in view of the medical certificate, he was not figuring on Adams being back for 1 or 2 days.

¹⁹ Adams testified his machine was not in use that day, but Bosier stated that although the trainee West did not work, it was used with employee Aker detailed to it.

²⁰ Adams stated he complained to Horney regarding a man "getting sick and you still expect him to work," that there was nobody working on his machine and the Respondent needed castings, and that allegedly Horney advised him "You don't bother nobody and nobody will bother you." Adams likewise interpreted the position of Vance stated as "make up your mind and let me know by noon [if he was coming in that evening] or if you don't we will get someone else in your place" as a threat that he would likely forfeit his job for nonappearance. Vance testified that he believed Adams was unhappy on Monday at the thought of having to come in for the night shift and "thought we were pushing him around," but that he told Adams in view of the other men working their night shift he knew of no reason why he should not do so too. Bosier denied that any insistence on Adams doing the night shift work was to punish him for going to Horney on the matter.

²¹ Two-inch pipe fittings were threaded on low, 1½-inch on intermediate and 1¼-inch on high speed.

²² The so-called Vance memo (to Horney) issued on December 8, 1954, soon after the advent of new company ownership (stated to be "cost conscious"), relating to calling for operation of tap machines only at factory recommended speeds in accordance with the recognized previous practice, in order to hold down maintenance costs to a minimum, and the contents of which were communicated by Horney to Bosier and his workers, recommended that any violation of the practice be ground for discharge. Bosier testified he never did catch anyone running the work in the wrong speed until the night of April 4, although Horney alleged that while he was foreman, before 1948, he personally caught new men attempting to experiment in the matter of machine speed, in deviating from the accepted routine until they were corrected.

fittings, entirely on his own volition and responsibility.²³ Carson, a metallurgist and consultant, described the galvanizing process as an immersion of the casting in the molten zinc having a temperature of 800° to 825° for about a 10-minute period until the casting reaches the temperature of the zinc, and then removing the casting with the zinc coating on it. He definitely stated that a casting is not softened or affected structurally in the process as to its characteristics of machinability and hardness.²⁴ He did not believe the threading would be made any less resistant to cutting bars by the galvanizing process. I do not believe it incumbent on the Trial Examiner to determine the merits of this technical question, but as far as it may be so, I accept and credit the testimony of Carson as being better founded and more reliable.

Bosier left the plant about 5 p. m. on April 4. Blair and West were there working with Adams on the night shift. Adams states his machine was set for No. 402 fitting (1½ inches) in intermediate speed when he started work on the shift, and he continued it, and that he ran out the balance of such gray cast iron fittings (about 350) before working on the cutting of about 3 barrels of the same size fitting in galvanized iron. Based on his judgment as to proper speed for the item, he shifted to the high speed gear for such galvanized work.²⁵ Bosier made an unannounced and unexpected visit to the plant about 10:35 p. m. to check up on the work being done, in accordance with a custom he observed. He denies such visit was made pursuant to any instruction from other management officials.²⁶ The versions of what then occurred do not differ too greatly in any material aspect. Bosier spoke to Blair and then Adams. Adams alleges that Bosier then noticed the machine of West working in high gear and questioned Adams, who informed him that he too was running the galvanized fittings in high gear without any trouble. Allegedly Bosier told him that he had better not run them fast and upon such insistence Adams then changed the gear speed to intermediate. Adams states Bosier then told him, "You had better punch out, this is it. You have had it." He alleges Bosier then told him that he was not afraid of him and would "meet you anytime at any place anywhere." Adams allegedly assured him that he was not looking for trouble with anybody but not "to get it in his head for a minute that I am afraid of you."²⁷ Following which Bosier allegedly told him to go home and we will talk it over in the morning. Adams punched out his clock and went home.

Bosier stated that while standing looking over the work of West he noticed the Adams machine in high gear while running the No. 402, 1½-inch casting. Allegedly he asked Adams why, and states he was told by Adams, "they have been wanting production. I am trying to give it to them."²⁸ Bosier claims he replied, "yes but not

²³ Assertions of Adams as to certain fittings with brass bolts in them having had the brass melted in the galvanizing process, I believe were plausibly refuted by Bosier, whose testimony in that regard I credit. He examined the particular fittings at the time and found the brass did not melt but that the galvanizing material had filled the brass screw heads, making it necessary to cut out some of the screws.

²⁴ If fitting were immersed for a 10-hour period at 1000° temperature, the drop in hardness of metal would be negligible, and it would require 1300° temperature to make any appreciable difference. Horney who alleged he ran galvanized castings in period 1930-41 stated you could not run galvanized as fast as ordinary castings of same size.

²⁵ Adams alleges he saw worker Blair put the machine of worker West in high gear just prior to Adams making change of his own machine. Blair denies it and West testified he did not see any change made by Blair in his machine and he did not remember running his machine in high gear at any time that night. Incidentally, he did not note Adams change his machine either. There is no other evidence to show the West machine was in high gear at any time. I do not credit this allegation of Adams. Blair alleged Adams changed his gear to high at 7 p. m. while still working on gray castings, which Adams denies. Blair stated Adams started work on galvanized castings at 9:30 p. m. after working on gray castings until 9 p. m. I do not credit the testimony of Blair as to the change being made while working on gray castings, and as to the time of finishing same, in view of total time worked and volume of production of each kind of item shown for the total period. I accept Adams' testimony that he changed to the high speed gear while making the galvanized fittings.

²⁶ Regarding allegations he was then under influence of liquor, I do not credit such, accepting the denial of Bosier and the complete statement of his activities from time of leaving plant until his return, and the testimony of Blair and West, of failing to note any indication of such condition.

²⁷ Bosier denied making the original remark to Adams, and stated he did not remember Adams making any reply as related by him.

²⁸ Regarding an assertion made by counsel that when beginning work on April 4, Adams had told the boys going off the previous shift that "you were going to show them how to

that way," the machine is not supposed to run that way and that he knew that, and it was the rule ever since Bosier returned as foreman (1948). That he then informed him that as Adams had been a part-time supervisor, and would do something like that, he thought that was immediate discharge. Thereupon Adams changed the gear where it was supposed to be and started the machine up again. Bosier states he then told him, "No, just clock out" which Adams did leaving at 10:50 p. m. They went out the side door together without further conversation and each left in his own car.

Adams testified he came in the next morning and found his card was out of the rack. Bosier told him to stay around till the office opened for his check which was given to him by Horney with nothing being said by either one.

Bosier called Vance on the phone at his home getting him about 12:30 a. m. and informed Vance "what I caught him doing" and that he had discharged Adams. He stated Vance approved his action. Vance testified he informed Bosier that considering all other things that had built up to the whole situation in past years, and a violation like that, "I would verify his discharge and stand behind it."²⁹

Allowing for what I regard as slight variance in the testimony of the kind to be expected in recollection of controversial matters, it still appears significant that in the actual episode of the whole discharge incident, nothing was referred to in their testimony by the parties directly involved other than the actual facts relating to the running of the galvanized fitting at high speed as the motivating and discussed cause of the action taken. Certainly none of the other incidents and occurrences referred to in the testimony in this record were mentioned or advanced in any way, or apparently understood by the parties directly involved to be entering into the action then taken. I am constrained therefore to give credence to the denials in the testimony of Bosier that any of these other matters entered into the decision of discharge which he independently arrived at, based entirely on discovering Adams running the machine at the wrong and prohibited speed.³⁰ I was impressed with the frank, nonevasive and clear-cut testimony of Bosier and credit it as more dependable than the contents of the impeaching affidavit presented, executed by him on April 25, 1955, even though such latter document might indicate he had light regard for the taking of any oath to state the truth. The contents of such instrument accord largely with the notation as to the cause of discharge placed by Horney on the record card of Adams several days after the event, which action I construe as being that of Horney only, based on a request made by Pobst as to what the latter wanted recorded as to the alleged out-of-department visits of Adams, Horney's own idea of what he considered Adams' continued insubordination in constantly questioning the authority of his immediate superiors, together with the sole cause for which Bosier stated he actually fired him. These grounds as stated are similar to those also set up in the answer of the Respondent, amplifying the general denial of discharge for union membership and activity and on which evidence was offered herein. Their assertion has clouded the real issue presented in the question of discharge for cause, although it may easily be understood how they could also be an underlying or provoking cause for desiring generally to secure the termination of Adams' employment before the event of April 4. But something more has to be established, in the face of the actual and admitted violation of proper working procedure found here and on which the discharge action was clearly based at the instant, to pull them in and by inference determine that such other alleged causes were the actual motivating major factor in effecting the discharge when made, I cannot so infer. It is necessary to do so to accept the claim of the General Counsel that the action of the Respondent in immediately discharging Adams for the machine-work violation was only a pretext, and that the real reason was actually an antiunion motivation and reprisal for his union activities.

On the record presented, I find that the General Counsel has not sustained the burden of proof to show that the action of the Respondent was essentially so founded. Despite the statements in the affidavit, the card record of Horney and the

run production that night," Adams denied it. No evidence was presented to show he did make any such statement. However, Adams admits he did say he "was going to give them a day's work" as he had done ever since working there. A strange remark it seems to be voluntarily offered for no apparent reason.

²⁹ Bosier stated that prior to Vance becoming superintendent he did not have any authority to discharge, but that he did have authority since such time. Horney, a superior of Bosier, stated that Bosier had power to discharge for any violation of rules without consulting anybody regarding it.

³⁰ Bosier testified "he wouldn't have been discharged and probably would still be there, if not caught breaking the rule." The final decision was "because I caught him."

contents of the answer of Respondent, I do not consider that we are faced here with any situation requiring the weighing of *two equally conflicting inferences* as to the motivation of the Respondent in making the discharge of Adams. Rather, to accept the contention of the General Counsel would be to give preference to inference over fact. I find the Respondent discharged Adams for sufficient and proper cause in violating the work regulations necessary to efficient, safe, and economical conduct of their machine production. Whether the exercise of judgment in imposing the punishment meted out for the violation committed was too severe or excessive in view of the long years of service of Adams, is not deemed to be a matter for consideration by me. The course of conduct of Adams over the years was not quite the type to "win friends" or conducive to generating any sympathetic consideration and extension, when he either deliberately, rashly, unsuspectingly, or unknowingly by his personal election and act presented a clear-cut violation of established and recognized work procedure as the basis for the disciplinary action taken.³¹ Under all the circumstances I cannot find that the discharge was discriminatory and based on his union membership or activities. I recommend that the complaint be dismissed as to the allegations in paragraph 4.

D. *The particular 8 (a) (1) violation alleged*

The Conference with Vance

Eugene Banks, employed as a shipping clerk helper, testified that while washing up at the wash fountain at or about a regular eating period time, he was discussing with fellow employees whether or not they would have to join the Union, and allegedly learned that Adams had told some of them that if they did not do so they would be discharged in 30 days. He states that he said nothing to Adams, who was evidently present, but that Adams told him then (without the particular occasion for his doing so being outlined) that if he did not join the Union, dues would be taken out of his paycheck, and if they were not so taken out, he could be fired in 30 days. Following this, after talking to unnamed employees in his department, Banks, while in the plant office, wrote out a statement of the alleged event, dated January 14, 1956, which was witnessed by Vance and Chief Engineer Young and is in evidence. He denies they told him what to put in it.³² He believed Vance and also Young may have read it after Banks had written it out. Both Vance and Young told him that if the contract when executed did not require joining of the Union, he could not be fired.

Adams declared he did have a conversation with Banks (a few days before a conference with Vance and other company officials) which occurred at the machine of Adams, when Banks came to him and asked him "if you do not join the Union are you fired?" Allegedly, Adams told him, "I don't think so," that there was no such provision that he knew of or proposed. He said the conversation and his statements were audible to the other workers nearby on the tap machines and that they had said to him that they had heard it. Regarding such coworkers, Lewis did not testify and Reynolds who was produced by the Respondent was not questioned about the incident. Young and Vance stated that in the meeting held (discussed later herein) Adams alleged that Banks approached him and also denied making the statements attributed to him by Banks. It is significant also as bearing on the credibility question involved that none of the other employees alleged by Banks to have been present at the wash fountain when Adams (allegedly without being directly addressed by Banks) is claimed to have spoken to Banks as alleged, were produced on such question and on the further question of having given advice to Banks to make the statement which he furnished to the Respondent.³³

It appears that it would have been a simple matter to secure and present evidence which would have materially aided in solving the credibility question presented as between Adams and Banks, through testimony of the workers at the tap machine location, or from some of those allegedly present at the wash fountain. In the absence of it, I accept and credit the testimony of Adams regarding the whole incident and alleged conversation.

On January 21, 1956, Adams was directed by Horney to attend an unusual meeting in the office of Vance, with Young present and the company president, Vangrow,

³¹ *White Motor Co.*, 111 NLRB 1272; *N. L. R. B. v. Blue Bell, Inc.*, 219 F. 2d 796 (C. A. 5); *Huber & Huber Motor Express Inc.*, 223 F. 2d 748 (C. A. 5).

³² Vance testified that when he talked to Banks he asked Banks if he would want to make a statement in his own handwriting to which inquiry Banks willingly acceded.

³³ Adams also specifically denied telling Young that he had refused to advise Banks until the contract was made.

also attending at least for a part of the time. The purpose apparently was to question him regarding the Banks affidavit allegations. Young testified that "my interest" was to find out if Adams was a bona fide union member and was soliciting membership on company time prior to the certification of the Union. Vangrow states the meeting was scheduled after he consulted counsel in regard to the Banks affidavit. Adams testified he told them he definitely did not make the statement alleged in the affidavit. The testimony of the others present supports him in such statement of his position. The meeting proceeded from that point to other questioning of Adams by Young regarding his union membership, payments, official status if any, and union activities of Adams in the plant.³⁴ According to Adams, Vangrow at the meeting informed him that they were not going to have any hotheads in this union, and further that if Adams "did anything to further the Union, I would be discharged." Vangrow denied making such statements. I credit his disavowal.³⁵ Adams attributes to Vance a caution to him not to take any part in union activities in the shop, which they would not permit. These alleged statements are denied by Vance, who in addition says he did not hear either of the others present make them. However, he did believe something was said regarding any union activities in the shop would be a violation of company rules, and discharge would result from such violation.

The summoning of Adams and questioning of him by officials of the Respondent relative to the affidavit furnished to them voluntarily by Banks, is not directly alleged to be violative of Section 8 (a) (1). In view of the statements in the affidavit (and the plant situation then existing following the representation election) the procedure of the Respondent in investigating the allegations made was warranted, and as a step in it the questioning of an accused employee in an endeavor to ascertain the truth or falsity of allegations made, when kept within the reasonable limitations indicated in the testimony here, I find would not abridge the rights of an employee under Section 7, and could not constitute such inquiry into his union activities as to be the basis of an alleged violation. But we must consider what happened thereafter in the same extended meeting or conference.

The questioning of Adams by Young as to the union affiliation of Adams, appears to be perhaps extended beyond the limit to which inquiry should ordinarily be made, but it was also linked to some consideration of finding out whether Adams was in fact, knowingly or otherwise, pursuing activities in violation of rule 9 of the new regulations in effect since November 1954. Such inquiry would have justification in order to warn him to cease if so doing. The subsequent conversation of Young with Adams about a week later with the alleged warning to "watch your step" could easily be interpreted to refer to the same question of limitation of his activity to not violate such reasonable plant rule. At best, I do not believe anything more than a mere technical violation of the section could be found in the Young aspect, and not sufficient as an isolated instance to warrant becoming the basis of any prohibitory order.

In the main I credit the testimony of Vangrow and Vance as to their denials of any threat to discharge him if Adams persisted in his union activities. In view of the accepted denial of Vangrow, I am constrained to accept and credit also the testimony of Young and Vance to the effect that any reference to discharge was only in connection with any union activities in the shop being in contravention or violation of rule 9 of the newly promulgated rules covering the carrying on of such activities in or during working hours. Considering the record as a whole and all the circumstances involved, with the nature of the inquiries then made, I find that the General Counsel has failed to sustain the burden of proof as to the allegations of paragraph 3 of the complaint, and I further find that the Respondent through Messrs. Vangrow, Young, and Vance did not, as alleged in paragraph 3 of the complaint, interfere with, restrain, and coerce its employees in the exercise of rights guaranteed by Section 7 of the Act by interrogating Adams in the meeting of January 21, 1955, relative to his union membership and activities or by threatening

³⁴ Adams also alleges a conversation with Young about 1 week later taking place at his machine, when Young referred to his questioning of Adams at the previous meeting as probably not being liked by Adams and asked Adams not to be mad at him. Adams states the occasion ended by Young telling him to "just be careful and watch your step" Young admits such conversation in the main, denying the "watch your step" allegation, and limiting his final expression to "why don't you behave yourself." Young denies that he was instructed to talk to Adams on this occasion. I credit Adams in this matter generally as to what was said.

³⁵ Young testified he did not hear any such statements made either by Vangrow or Vance but that they did use words similar to "stay on job and stop bothering other men."

him with discharge because of such factors. I shall recommend that the complaint be dismissed to the extent of the allegations of paragraph 3 thereof.

Upon the basis of the above findings of fact, and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. Wilmington Casting Company is an Employer within the meaning of Section 2 (2) of the Act and is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-AFL-CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

3. The allegations of the complaint that the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act have not been sustained.

[Recommendations omitted from publication.]

Mohawk Business Machines Corporation and United Electrical, Radio and Machine Workers of America, Independent, Local No. 430¹ and United Brotherhood of Carpenters & Joiners of America, AFL-CIO, Local No. 3127.² Case No. 2-CA-4365. July 23, 1956

DECISION AND ORDER

On December 13, 1955, Trial Examiner Thomas N. Kessel issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged 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 and the Carpenters filed exceptions to the Intermediate Report and the Respondent also filed a supporting brief.³

¹ Herein called the UE.

² As the AFL and CIO have merged, we are taking notice thereof and are amending the designation of the Carpenters accordingly.

³ Subsequent to the hearing, the Respondent in briefs filed with the Trial Examiner and the Board, and the Carpenters in its exceptions, raised for the first time an issue relating to the compliance status of the UE and requested the dismissal of the complaint on the basis of *Goodman Manufacturing Company v. N. L. R. B.*, 227 F. 2d 465 (C. A. 7), wherein the Court of Appeals for the Seventh Circuit held that the UE was not in compliance. Alternatively, the Respondent and the Carpenters requested that the record be reopened to take evidence on the UE's compliance status. The Respondent also cited *N. L. R. B. v. Coca Cola Bottling Co. of Louisville, Inc.*, 219 F. 2d 441 (C. A. 6), in support of its position. For the reasons given in *Desaulniers and Company*, 115 NLRB 1025, we hereby deny the foregoing requests.

The Respondent in its brief also contends that we should withhold our decision in the instant case until the Subversive Activities Control Board determines whether the UE is Communist-infiltrated and not entitled under the Communist Control Act of 1954 (68 Stat. 775, enacted August 1954), to the benefits of the National Labor Relations Act. Section 13 A (h) of the Communist Control Act provides in pertinent detail that "When there is in effect a final order of the [Subversive Activities Control] Board determining that . . . [a] labor organization is . . . a Communist-infiltrated organization," such labor organization shall be ineligible to receive the benefits provided by the National Labor Relations Act. We find that the pendency of a proceeding before the Subversive Activities Control Board without a "final order" by that Board as to the UE's status does not furnish a basis under the terms of the Communist Control Act for delaying the decision herein.