in small numerals below the "NO" square, the number 30445, which coincides with the badge number of an employee who voted in the election. Having examined the ballot, we find that the markings in question were deliberately made and so unique as to give rise to the possibility of revealing the identity of the voter. For this reason we find the Employer's objection, as did the Regional Director, to be without merit.[3]

As no exceptions were filed to the Regional Director's conclusion that the remaining objections are without merit, we hereby adopt his conclusion on these objections. Having found no merit in any of the Employer's objections to the election or in any of the challenges to ballots, we hereby overrule both the objections and the challenges. As the ballots to which challenges have been made and overruled are sufficient in number to affect the results of the election, we shall direct that they be opened and counted with the other ballots.

[The Board directed that the Regional Director for the Twenty-first Region shall, within ten (10) days from the date of this direction, open and count the ballots of Edward Carrington, Dora Conchola, Eleanor Jaurigi, and P. A. McInturff and serve upon the parties a supplemental tally of ballots.]

[3] *Standard-Coosa-Thatcher Company*, 115 NLRB 1790; *Eagle Iron Works*, 117 NLRB 1053.

Commercial Controls Corporation *and* District Lodge No. 6, International Association of Machinists, AFL-CIO. *Case No. 3-CA-959. September 13, 1957*

DECISION AND ORDER

On January 23, 1957, Trial Examiner Herbert Silberman issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

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

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 Respondent's exceptions and brief, and the

entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

The Trial Examiner found that the Respondent discriminated against Herman Hartman in violation of Section 8 (a) (3) and (1) of the Act. In all the circumstances of the case, we agree. The Respondent demonstrated its opposition to the Union early in the Union's campaign through the coercive conduct of its supervisors as found by the Trial Examiner. Among other things, Department Manager Sauer warned adherents of the Union that they were being watched. And, as further found by the Trial Examiner, during the organizational campaign the Respondent announced a prohibition against the distribution of literature on company property, which was not formally promulgated or generally publicized but was orally announced on a few occasions to certain specific employees who, the Respondent had reason to believe, were about to distribute literature on behalf of the Union. This prohibition was unlawful because, as found by the Trial Examiner, it was not designed for the accomplishment of legitimate objectives such as the prevention of litter in the Respondent's plant, but had as its purpose the deterrence and circumvention of the employees' union organizational activities. The proscription was made applicable to company premises both within and without the plant proper. When employee Hartman joined the Union, about June 13, 1956, he immediately made the fact known to his supervisor, Department Manager Beechey, and stated his intention to do all he could to further the Union. Beechey's reply was that he already knew this. On June 19, Beechey was informed by a number of people that Hartman was planning to pass out literature, and after management representatives conferred, Hartman was called to the office of the factory superintendent and told that "the company policy was that nobody is to pass any printed matter or literature at any time on company property." On July 10, just 2 days before Hartman was discharged, Beechey said to him: "If I were you, whether the union gets in or not, I would get out of this company, because it will get you if it takes ten years, and you're a marked man." This we find, in accord with the Trial Examiner to be a threat of reprisal in violation of Section 8 (a) (1) of the Act. On July 11, Hartman handed out union authorization cards to employees as they were leaving their jobs; and the next morning was discharged for such activity. The testimony of Vice President Kaiser makes clear, despite the Respondent's defense to the contrary that Hartman was discharged for insubordination and misconduct, that Hartman was in fact discharged because he disobeyed the Respondent's unlawful prohibition with regard to distributing literature. Kaiser, who admitted that he knew before July 11 that Hartman was an active union advocate, described in detail

the meeting which he called on July 12 at which time Hartman was discharged. He made no mention of insubordination by Hartman. He testified, in part, as follows:

> I said, [to Hartman] "And did you last night, at 4:42 stand up in front of our time clock and pass out literature?"
>
> And again he tried to tell me they were union cards, and I said I didn't care what it was, I didn't know whether he was a union member or he was not a union member, but he was not to pass out any literature. He admitted he did, and with that I said he was fired.

In view, therefore, of the coercive conduct of Respondent's supervisors generally, the discriminatory motivation indicated by the testimony of its officials, and the illegal character of its no-distribution rule, we concur in the Trial Examiner's finding that Hartman was discriminatorily discharged in violation of Section 8 (a) (3) and (1) of the Act.

ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, Commercial Controls Corporation, Rochester, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in District Lodge No. 6, International Association of Machinists, AFL–CIO, or any other labor organization of its employees, by discriminatorily discharging any of its employees, or by discriminating in any other manner in regard to their hire, tenure of employment or any term or condition of employment.

(b) Threatening employees with reprisals because of their union affiliations and activities.

(c) Prohibiting employees from distributing union literature on company property during nonworking time.

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist District Lodge No. 6, International Association of Machinists, AFL–CIO, or any other labor organization, to bargain collectively through representatives of their own choosing or to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the National Labor Relations Act, as amended.

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

(a) Offer Herman Hartman immediate and full reinstatement to his former, or a substantially equivalent, position without prejudice to his seniority or other rights and privileges and make him whole for any loss of earnings he may have suffered by reason of Respondent's discrimination against him, as herein found, in the manner provided for in the section of the Intermediate Report entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents for examination and copying, all records necessary and useful to determine the amount of back pay due under the terms of this Order, including pertinent social security payment records, timecards and personnel records and reports.

(c) Post at its plant in Rochester, New York, copies of the notice attached hereto and marked "Appendix."[1] Copies of said notice, to be furnished by the Regional Director for the Third Region, after being signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

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

APPENDIX

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 Labor Management Relations Act, we hereby notify our employees that:

WE WILL NOT threaten our employees with reprisals because of their union or concerted activities.

WE WILL NOT prohibit employees from distributing union literature on company property during nonworking time.

WE WILL NOT discourage membership in District Lodge No. 6 International Association of Machinists, AFL–CIO, or any other labor organization of our employees by discriminatorily discharging any of our employees, or by discriminating in any other manner against them in regard to their hire, 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 the right to self-organization, to form labor organizations, to join or assist District Lodge No. 6, International Association of Machinists, AFL–CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, or to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the National Labor Relations Act, as amended.

WE WILL offer Herman Hartman immediate and full reinstatement to his former, or a substantially equivalent, position without prejudice to his seniority or other rights and privileges, and will make him whole for any loss of earnings suffered by reason of his discharge.

All our employees are free to become or remain, or refrain from becoming members of the above-named union, or any other labor organization, 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.

COMMERCIAL CONTROLS CORPORATION,
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 AND RECOMMENDED ORDER

STATEMENT OF THE CASE

Upon a charge duly filed by District Lodge No. 6, International Association of Machinists, AFL–CIO, herein called the Union, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for the Third Region (Buffalo, New York), issued a complaint on October 2, 1956, against the Respondent, Commercial Controls Corporation, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 61 Stat. 136, herein called the Act. Copies of the charge, complaint, and notice of hearing thereon were duly served upon the parties.

With respect to the unfair labor practices, the complaint alleges, in substance, that: (1) The Respondent, on July 12, 1956, discharged Herman Hartman because of his activities on behalf of the Union and since said date has refused to reinstate said employee to his former, or a substantially equivalent, position, in violation of Section 8 (a) (3) of the Act; and (2) the Respondent since May 1956 by reason of the foregoing and other acts set forth in the complaint has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act, in violation of Section 8 (a) (1) thereof. The Respondent duly filed a verified answer denying that it committed the alleged unfair labor practices and affirmatively averring that Herman Hartman was discharged because he had violated a company rule regarding the distribution of literature or printed

matter on company time or on company property, after he had been warned against such conduct, and because of his insubordination at the time he was requested to stop such activities.

Pursuant to notice, a hearing was held on October 23, 1956, at Rochester, New York, before Herbert Silberman, the duly designated Trial Examiner. The General Counsel and the Respondent were represented at the hearing by counsel and the Union was represented by a business representative and a Grand Lodge representative. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues was afforded all parties. Decision was reserved on Respondent's motion to dismiss the complaint, made at the close of the hearing. The motion is disposed of in accordance with the findings of fact and conclusions of law made below. The parties waived the opportunity afforded them to engage in oral argument at the close of the hearing. Briefs were duly filed with the Trial Examiner by the General Counsel and by the Respondent which have been carefully considered.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Commercial Controls Corporation, a Delaware corporation which maintains its principal office and place of business in Rochester, New York, is engaged in the manufacture and sale of business machines, electric heaters, and component parts for business machines. During the year 1955, which is representative of all times material hereto, Respondent manufactured and sold products having a value of approximately $9 million, and about 80 percent of these products was sold directly to purchasers located outside the State of New York. I find that the Respondent is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

District Lodge No. 6, International Association of Machinists, AFL-CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The essential facts in this case are not in dispute. In April 1956 the Union began a campaign to organize the employees at Respondent's Rochester plant. As part of its organizing effort the Union from time to time distributed leaflets and handbills at the entrances to the plant. On May 23, 1956, a leaflet was handed out which named those of Respondent's employees who were members of the Union's organizing committee. Following this distribution a number of the committeemen, to wit, Henry Muhs, Charles L. Froyd, George J. Lawn, Floyd L. Donaldson, and Robert George Burgholzer, were interviewed by their supervisors and other management officials with regard to their reasons for seeking union representation. The General Counsel's position is that during these conversations Respondent's representatives made statements which infringed upon the employees right to self-organization. Respondent denies this and avers that the only purpose its representatives had for speaking to the committeemen was "to inform the Company of possible employee dissatisfaction, and the basis of the Union's appeal."

Henry Muhs testified that on May 24, Jerome Richard Ahrns, the assistant manager of the department to which he was assigned, asked him what advantages he expected from union representation. When Muhs stated his views Ahrns argued that the employees could not possibly gain the benefits Muhs anticipated.[1] During this conversation Ahrns voiced his opinion that the International Business Machines Company, one of Respondent's principal customers, "would pull their work out as soon as Commercial Controls went union." Muhs also testified that 2 or 3 days later he had a similar conversation with his department manager, Joseph E. Eisenhart, and at the latter's suggestion the discussion was continued with Respondent's vice president and general works manager, William John Kaiser. Respondent's objective, as testified to by Eisenhart, was "to sell him on the company's policy," that is to convince Muhs he would not gain through union representation.

A few days after the May 23 union leaflet was distributed Frank A. Sauer, manager of the toolroom, questioned Charles L. Froyd as to what he expected to gain from

[1] Ahrns testified that he also explained to Muhs that the employees already enjoyed many benefits which Muhs hoped to obtain through the Union's intercession.

promoting the Union's organizational campaign.[2] Subsequently, Ernest Francis Ghedi, an assistant foreman, mentioned to Froyd the possibility that IBM would withdraw its work if Respondent's employees selected the Union as bargaining representative.

On May 24, 1956, Frank Sauer asked Floyd L. Donaldson why he had aligned himself with the Union and whether he was dissatisfied with working conditions at the plant. Sauer told Donaldson that "IBM is not union and if the union got in here IBM would be liable to take all the work out." Donaldson testified that on another occasion Sauer repeated his prediction that unionization of Respondent's employees might result in Respondent's loss of IBM work. Sauer also said that if this occurred it would necessitate a substantial layoff and Sauer insinuated that Donaldson, who had less than 3 years' seniority, might be caught in the layoff.

George J. Lawn testified that in the latter part of May his department manager, George F. Merritt, questioned him as to what he hoped to gain from union representation.

Finally, Robert George Burgholzer testified that on May 24, 1956, his department manager, Larry Francis Verwulst, said to him that when the latter saw Burgholzer's name on the Union's May 23 leaflet "it was just like a slap in the face." [3]

I agree with the Respondent that the foregoing does not establish any invasion of their employees' statutory rights. Each employee who was interviewed had advertised himself as an organizer for the Union. The evidence shows that in the described conversations they freely presented to Respondent's officials their views as to the benefits expected from unionization, they were subject to no restraints and their freedom of expression was in no way circumscribed. The predictions voiced by Department Managers Ahrns, Ghedi, and Sauer that Respondent might lose its IBM work with a consequent layoff if the plant were to become unionized was only prophetic speculation such as the Board has held lies within the employer's area of free expression. *Morganton Full Fashioned Hosiery Company,* 107 NLRB 1534, 1537; *Lily-Tulip Cup Corporation,* 113 NLRB 1267, 1268; *N. L. R. B.* v. *Associated Dry Goods Corporation,* 209 F. 2d 593 (C. A. 2).

Other Conduct on the Part of Sauer

Although I do not find the foregoing interviews violated protected employees' rights, other conduct by Department Manager Frank A. Sauer was unlawfully coercive. In June 1956, Sauer warned Donaldson and employees Grafton Thomas Houser and Vincent J. O'Neill, all of whom wore union buttons in the plant and worked near one another, that they should stay close to their machines because they were being watched and they should not mention the warning to anyone. The implication of Sauer's warning was that Respondent was seeking reason to discharge them in reprisal for their open advocacy of the Union.

About July of the same year Sauer told Donaldson and O'Neill that if he had his way he would fire all the men wearing union buttons. Sauer testified he made the remark in jest. However, Sauer also testified that he "felt bad" about the fact that they were active in behalf of the Union because he believed the employees had a "good deal" with the Company and he was unable to understand what they expected to gain through union representation. Thus, despite the fact that he may have made the remark objected to with a pretense at banter, when it is related to his chagrin occasioned by Donaldson's and O'Neill's union activities and his warning to them that they were being watched, his statement that if he were free to do so he would discharge all employees wearing union buttons conveyed a clear threat that he was disposed to take reprisals against them for supporting the Union. *Monarch Foundry Company,* 106 NLRB 377. Similarly, I find Sauer's questioning Houser on several occasions in July as to when Houser intended to take off the union button he was wearing was unlawfully coercive. It may be presumed that Houser was acquainted with Sauer's expressed attitude toward employees who wore union

[2] I credit Sauer's testimony that he did not speak to Froyd about the IBM.

[3] Verwulst substantially agreed with Burgholzer's version of their conversation. Although Verwulst denied having used the expression, "it was like a slap in the face," he admitted he said to Burgholzer, with regard to the latter having become a member of the Union's organizing committee, that "it surprised me, it made me feel bad to think that, after all, I was his boss and we were trying to do everything we could to help people in there, and by him joining the Union it made me feel as though I wasn't doing my job right."

buttons.[4] Therefore, the interrogation of Houser with regard to how long he planned to support the Union, in the circumstances, was a veiled threat that Houser's continued union support might result in reprisals being taken against him.

I find that Respondent violated Section 8 (a) (1) of the Act by reason of Sauer's threats of reprisal against employees subject to his direction, who had advertised their union allegiance, as evidenced by his warning to them that they were being watched, his statement that he would discharge union supporters if he had his way, and his interrogation of Houser with regard to how long the latter was going to support the Union.

On the other hand, I find nothing objectionable in Sauer's having refused to recommend a raise for Houser in July 1956 for the expressed reason that Houser's attitude was wrong in view of Sauer's credible explanation that he was not referring to Houser's union allegiance but to the fact that Houser "would always gripe." Also, I do not spell out a violation of the Act from O'Neill's uncontradicted testimony that, in July 1956, Sauer said to him, "I think that everybody that belongs to the Union is a Communist." Statements disparaging unions and union members which contain no threats of reprisal or promises of benefit are considered by the Board as permissible expressions of opinion. *General Shoe Corporation,* 77 NLRB 124, 125.

The No-Distribution Rule; Hartman's Discharge

Respondent contends that it discharged Herman Hartman for violation of a rule prohibiting the distribution of literature or printed matter on company property. This alleged rule was never posted or circulated to the employees or department managers,[5] nor was any general announcement of the rule ever made to the employees. The rule, according to Respondent's witnesses, was developed in June 1956 during the Union's organizational campaign. It's first appearance occurred early in the month after it had been reported to Vice President William John Kaiser that some employees intended to pass out an antiunion piece of literature. Kaiser had the three men involved brought to his office and told them, "it was against the company rules to pass out literature of any kind without our permission." [6] The only other pronouncements of the rule were made on June 19 to employees Burgholzer and Hartman under the circumstances described below.

On the evening of June 18 Department Manager Verwulst noticed union authorization cards [7] in a drawer of Burgholzer's work bench. The next morning Verwulst told factory superintendent Elmer F. Abell that he "had found literature in one of the drawers" and asked for advice as to what to do about it.[8] Abell asked Verwulst to bring Burgholzer to his office. With respect to the meeting between Burgholzer and Abell, the latter testified:

> Well, I said—Mr. Verwulst come into my office and indicated that he, Burgholzer, had brought literature into the plant and had it in his bench drawer, and I asked whether he intended to pass it out. To that I don't have an answer, but I said, "I want to make clear to you what the company policy is on passing out literature," and I told him it was against Company policy to pass out literature of any kind on company property, and that included our parking lot, at any time. . . . He agreed that he would not.

Herman Hartman, unlike the other members of the organizing committee, did not become active in the Union's campaign at Respondent's plant until June 13, 1956. He attended a union meeting that night at which time he signed an authorization card and volunteered to organize the employees in his department. The next morning Hartman informed his department manager, Ernest G. Beechey, that he had joined the Union and intended "to do everything I can to further the union in this department." Beechey merely replied that he already knew this. Several days later, on the morning of June 19, a number of people informed Beechey

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[4] "Expressions of Company attitudes, even to small groups of individuals, were likely to be rapidly disseminated around the plant during the struggle of organization." *Bausch & Lomb Optical Company* v. *N. L. R. B.,* 217 F. 2d 575 (C. A. 2).

[5] The department managers are issued copies of a Standard Practice Book containing information and instructions for their guidance. Although this manual includes detailed instructions with regard to posting notices on plant bulletin boards, it makes no mention of the purported no-distribution rule.

[6] It is uncertain whether the rule, as thus expressed, applied to nonworking time and to the Company's parking lot.

[7] These were 3 inches by 5 inches in size.

[8] Verwulst testified, "I had never seen them pass any out."

that "Herman Hartman is planning on passing out some literature." Beechey decided to speak to Factory Superintendent Abell about the matter. Beechey testified that until then he had received no instructions regarding the distribution of literature by employees and he "wanted to know whether passing out literature on company property was permissible." Beechey went to Abell and the latter said that "he would have to confer and that he would let [Beechey] know." [9] Later that morning, upon Abell's instructions, Beechey brought Hartman to Abell's office.

Abell testified that when Beechey told him Hartman had brought printed matter into the plant, "I said 'I will confer with Mr. Kaiser' which I did.[10] I went to Mr. Kaiser's office and I said, 'we believe'—it was very informal—'we believe that Herman has brought in some printing matter in the plant and probably intends to pass it out. What is our decision?' We had a session on it, and the decision was no printed matter was to be passed out at any time on company property, and Mr. Kaiser said, 'You call Herman into your office and make that clear to him.'" [11] Abell further testified that when Hartman came to his office that morning he advised him that "the company policy was that nobody is to pass any printed matter or literature at any time on company property." Hartman had with him several union publications and said he would not pass them out.[12] There is no evidence in the record of any further enunciation of Respondent's alleged no-distribution rule prior to Hartman's discharge on July 12, 1956.

The next incident relating to Hartman's union activities occurred on July 10, 1956. Hartman, believing that his job was being speeded up, protested the fact to Beechey. In voicing his complaint, he said, "I don't intend to be pushed around and overburdened with work because I'm a union man." Beechey denied that any attempt was being made to retaliate against Hartman because of his union activities. Beechey then said, "If I were you, whether the union gets in or not, I would get out of this company, because it will get you if it takes ten years, and you're a marked man." I find Respondent violated Section 8 (a) (1) of the Act by reason of this threat of reprisal against Hartman for having engaged in union activities.

The events which led to Hartman's discharge took place on July 11 after quitting time. Hartman stationed himself at the time clock and handed out a total of 8 or 9 union authorization cards to employees as they were leaving their jobs. Before he had finished doing so Beechey approached Hartman and asked him to go to Abell's office. Hartman replied, "Mr. Beechey, I have already punched out. I am on my own time, and I will not go with you. . . . Don't interfere with me." Beechey remained near Hartman. At one point Hartman gave Beechey one of the cards to show Beechey what he was passing out. Then, according to Hartman, "As I was leaving, I said, 'I will see you in the morning,' meaning that I would see him in the morning and go with him to see Mr. Abell, on the company's time."

Beechey's version of the incident coincides with Hartman's. Beechey further testified that before quitting time on July 11 several employees told him that Hartman had some literature with him. Beechey relayed this information to Abell who then conferred with Kaiser. Finally, Beechey received instructions to see whether Hartman was going to pass out literature and, if he did, to ask him to stop and bring him to the office. After Hartman left the plant that night, Beechey took the union authorization card which he had been given to Mr. Abell.

Vice President Kaiser testified that the next morning he met with several other company officials and they decided to terminate Hartman's employment. Hartman was summoned to the meeting. Kaiser asked him whether he had been instructed on June 19 not to pass out literature of any kind. Hartman replied in the affirma-

[9] Although Kaiser testified that he told three employees earlier in the same month that it was against company rules to pass out literature, he did not testify that the rule was promulgated generally. Beechey's testimony indicates that the rule was never brought to the attention of other rank-and-file employees or the department managers. Abell testified that the no-distribution rule was formulated in the morning of June 19, 1956.

[10] This conference also preceded Abell's interview with Burgholzer.

[11] Thus, the rule as formulated at this conference was broader than when it was first voiced by Kaiser earlier the same month because it was now made applicable to non-working time, as well as working time, and to Respondent's parking lot, as well as to the plant proper.

[12] Hartman testified that he had only single copies of several publications with him which were for his personal use and he had no intention of giving away any. Although Hartman testified that he was never advised that there was a company rule forbidding employees to pass out literature he testified that Abell had said to him that he was not to distribute literature on company property.

tive. Kaiser then asked whether he had passed out literature the previous evening. Hartman said he had not passed out literature but that he only had passed out union authorization cards.[13] Kaiser then informed Hartman that he was fired for disobeying a company order.[14]

The first question relative to Hartman's discharge is whether he disobeyed a lawfully imposed order. The evidence does not establish that there was any effective company rule of general applicability relating to the distribution of literature by employees. But the evidence shows that five employees,[15] including Hartman, were individually advised of a prohibition against the distribution of literature. First, early in June, three unidentified employees who were active in opposing the Union were told by Kaiser that "it was against company rules to pass out literature of any kind without permission." I will pass the question as to whether this instruction was an unlawful infringement upon the right of those three employees to engage in concerted action with the object of preventing the Union's designation as their statutory representative because Kaiser's instruction to them was ambiguous in that it could be interpreted to apply to working time only. However, the instructions given Burgholzer and Hartman on June 19 were significantly broader. They were told that they were prohibited from distributing literature at any time, including non-working hours, and at any place on company property, including its parking lot.

Section 7 of the Act guarantees employees "the right to self-organization . . . to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and . . . the right to refrain from any or all of such activities. . . ." The protection of the statute envelops all lawful conduct in furtherance of these guarantees. On the other hand, the employer in the exercise of his right to control the use of his property and to obtain the benefit of his employees' productive efforts during the times for which they are paid to work may impose reasonable rules relating to their behavior for the purpose of preserving his property and maintaining good order, discipline, and efficiency in the plant. When a conflict occurs between the employees' statutory rights and the employer's property rights a sensible adjustment must be made to achieve maximum harmony between the two with the minimum impairment of the rights of each.

As a derivative of their statutory right to self-organization employees have the right to disseminate information in written form, as well as orally, relative to such matters.[16] On the other hand, an employer has a legitimate interest in keeping his plant clean and orderly. In striking a balance between these two sometimes conflicting rights the Board had held that an employer can lawfully prohibit distribution of literature in the plant proper at all times.[17] Because the problem of litter is less significant outside the plant premises, it has been held that, absent unusual circumstances, the employer may not forbid employees the privilege of distributing organizational literature outside the plant proper, as for instance in a company-owned parking lot.[18] Furthermore, an otherwise valid no-distribution rule if promulgated or utilized to impede the employees in the exercise of their statutory rights, rather than for the legitimate business reason of maintaining plant cleanliness and order-

[13] Because I find that the alleged no-distribution rule in this case was unlawful, it is unnecessary to determine whether merely passing out union authorization cards would be a violation of a valid no-distribution rule.

[14] It is clear from Kaiser's testimony that Hartman was discharged because he had disobeyed Abell's June 19 instruction with regard to passing out literature and for no other reason.

[15] The charge indicates that Respondent employs 1,100 persons at its Rochester plant.

[16] Equally protected is the right of employees through concerted action to oppose the designation of any union as their collective-bargaining representative and in aid thereof to distribute explanatory literature.

[17] *Monolith Portland Cement Company,* 94 NLRB 1358, 1366. See *United Steel Workers of America, CIO* v. *N. L. R. B. (Nutone Incorporated)*, 243 F. 2d 593 (C. A., D. C.).

[18] *Monarch Machine Tool Co.,* 102 NLRB 1242, 1248, enfd. 210 F. 2d 183 (C. A. 6). In *N. L. R. B.* v. *LeTourneau Company of Georgia,* 324 U. S. 793, the Supreme Court affirmed the Board's ruling that it was an unlawful infringement of employees' rights for the employer to ban distribution of union literature in the company's parking lot. The Supreme Court specifically noted that the rule was adopted to control littering and petty pilfering from parked autos and that the Board had determined there was no union bias or discrimination in the enforcement of the rule. The Court also noted that it cannot "properly be said that there was evidence or a finding that the plant's physical location made solicitation away from company property ineffective to reach prospective union members."

liness, is an unlawful infringement on employees' rights and violates Section 8 (a) (1) of the Act.

The record in this case is barren of evidence indicating that the warnings issued to Hartman, Burgholzer, and the three unidentified employees about distributing literature was prompted by considerations of plant cleanliness, while the preponderance of testimony shows that the purpose of the warnings was to limit the employees' opportunities to circulate information relative to organizational matters. First, the purported no-distribution rule was announced to only five rank-and-file employees. If Respondent's real interest was to avoid litter on its property it would have publicized such rule generally. Instead Respondent notified only those employees whom it knew were active in the organizational campaign, either in favor of or in opposition to the Union, and whom it suspected might attempt to influence other employees through the distribution of propaganda expressing their views. This was a most effective means of interfering with and restraining these employees from engaging in union activities or other concerted action. Second, the rule was invoked for the first time during the period of heightened organizational activity at the plant.[19] Since no evidence was introduced showing any increase in plant litter because of the organizational campaign, it would appear that the purported rule was not inspired by reasons of plant cleanliness but to inhibit organizational activities. Third, singling out Burgholzer, who had union authorization cards in his bench drawer, on June 19 for explication of Respondent's prohibition when he had given no overt indication of an intent to distribute them indicates a purpose to impede employees' opportunities to engage in lawful solicitation of union members rather than to take protective measures in anticipation that they might cause litter in the plant. This inference is supported by Beechey's testimony that he was requested by Abell to report the presence of union literature in the plant.[20] Fourth, the rule was made applicable to the Company's parking lot. Thus, even were the alleged no-distribution rule otherwise lawfully promulgated, its application to company premises outside the plant proper would have been unlawfully broad. Finally, no witness for Respondent testified that the purpose of the alleged rule was to prevent litter.

Upon the basis of the foregoing, I find that on June 19, when Burgholzer and Hartman were warned not to distribute printed matter at any time on company property, Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed them by Section 7 and thereby violated Section 8 (a) (1) of the Act.[21] In consequence, Hartman's discharge for having failed to observe such rule was likewise unlawful. I find, therefore, that Hartman was discharged for having engaged in union activity protected by Section 7 of the Act.[22] By thus discharging Hartman and thereafter failing to reinstate him, Respondent discriminated with regard to his hire and tenure of employment, thereby discouraging membership in the Union and interfering with, restraining, and coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act, in violation of Section 8 (a) (1) and (3) thereof.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

V. THE REMEDY

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

Having found that the Respondent discriminatorily discharged Herman Hartman on July 12, 1956, it will be recommended that the Respondent offer Herman Hartman

[19] Respondent's announcement of the rule to employees who opposed the Union as well as to employees who supported the Union would be as much an infringement upon the protected rights of the former as of the latter.

[20] See *Morehead City Garment Company, Inc.*, 94 NLRB 245, 247, enfd. 191 F. 2d 1021 (C. A. 4).

[21] *Glen Raven Silk Mills, Inc.*, 101 NLRB 239, enfd. 203 F. 2d 946 (C. A. 4); *Delta Finishing Company*, 111 NLRB 659, 661.

[22] *Avondale Mills*, 115 NLRB 840; *Republic Aviation Corporation* v. *N. L. R. B.*, 324 U. S. 793.

immediate and full reinstatement to his former, or a substantially equivalent, position without prejudice to his seniority or other rights and privileges, and make him whole for any loss of earnings he may have suffered by reason of said discrimination by payment to him of a sum of money equal to that which he normally would have earned from the date of his discharge to the date of Respondent's offer of reinstatement, less his net earnings during said period. Said loss of earnings shall be computed in accordance with the customary formula of the National Labor Relations Board. See *N. L. R. B.* v. *Seven-Up Bottling Company of Miami, Inc.*, 344 U. S. 344, and *F. W. Woolworth Company*, 90 NLRB 289. It will also be recommended that the Respondent preserve and, upon request, make available to the Board or its agents for examination and copying all records necessary and useful to determine the amount of back pay due under the terms of this Recommended Order, including pertinent social-security payment records, timecards, and personnel records and reports.

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

CONCLUSIONS OF LAW

1. By discharging Herman Hartman and thereafter failing and refusing to reinstate him to his former, or substantially equivalent, position, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act.
2. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed them 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.
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.]

Fleetwood Trailer Co., Inc. ***and*** **Amalgamated Local No. 990, International Union, Allied Industrial Workers of America, AFL-CIO.** *Case No. 21-CA-2527. September 13, 1957*

DECISION AND ORDER

On March 18, 1957, Trial Examiner Wallace E. Royster issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

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

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