as to whether or not the check should issue. Although Fausett would not, in the first instance, make the decision to prepare the check for issuance, he is under the Employer-imposed responsibility to determine that the facts justify the issuance of the check. He is not, therefore, a mere amanuensis to sign what he is told to sign.

In view of all the circumstances, I conclude that, if not by a sudden stroke, at least by gradual degrees of authority conferred on him, Fausett has crossed the line separating management from the rank-and-file workers and that he would normally be excluded from the appropriate unit as a management representative.

It is therefore recommended that the challenge to Fausett's ballot be sustained.

Camden Lime Company (Flexicore Division) *and* Local 222, International Hod Carriers' Building & Common Laborers' Union of America, AFL-CIO. *Case No. 4-CA-1461. October 4, 1957*

DECISION AND ORDER

On March 8, 1957, Trial Examiner Thomas S. Wilson 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 Rodgers, 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, the brief, and the entire record in this case, and hereby adopts the findings,[1] conclusions, and recommendations of the Trial Examiner.

As set forth in the Intermediate Report, the Respondent and Charles Mims, president of Local 222, after a series of negotiations at which they attempted to work out the terms of a labor contract covering the Respondent's new operation at Kresson, terminated their last meeting on July 6, 1957, without having reached an agreement. At this meeting the Respondent's representative, despite his negotiations with Local 222, questioned Local 222's majority status, stating, "You don't even have my employees [signed up], yet." Up to this time Mims had the Respondent's permission to enter upon the plant property at will. However, on or about July 10, the Respondent informed Mims that in the future he would need the Respondent's permission to talk with the employees.

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[1] The Trial Examiner found that Weiss' announcement to the keymen on July 11, that Basher was fired for purporting to represent the men without an election and for "misrepresenting" the employees, was "tantamount" to telling the employees that discharge was the penalty for engaging in concerted activities on behalf of Local 222, and was therefore a violation of Section 8 (a) (1). We do not pass upon these findings.

Sometime prior to July 9 Mims held a meeting of the Respondent's employees and, at their suggestion, Mims gave Basher a number of Local 222 authorization cards for the employees to sign. Basher thus acted as the head organizer for Local 222 in the plant, talking with and signing up a number of employees. The Respondent knew of this activity on behalf of Local 222.

Basher was peremptorily fired on July 11. The Respondent assigned two reasons for the discharge: (1) Basher, contrary to his instructions, had failed to remain for overtime work; (2) Basher had falsely declared himself to be a representative of all the Respondent's employees.

As for the first reason assigned, the evidence shows, as detailed in the Intermediate Report, that Basher had not been directed to remain for overtime work and that Basher, in fact, had obeyed his instructions completely. As for the second reason assigned, the evidence does not show that Basher in fact made false statements as to his representative capacity.[2] In any event, in view of all the circumstances of this case, and for the reason set forth in the Intermediate Report, we find, and conclude, that the Respondent's asserted second ground for the discharge was merely a pretext, and that the real reason for Basher's discharge was the Respondent's desire to discourage membership in Local 222.[3] In so holding, we do not, of course, say that "cause" for a discharge may not exist when an employee falsely holds himself forth as the representative of his fellow employees, and that conduct of such sort is, necessarily, a protected activity.

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, Camden Lime Company (Flexicore Division) of Camden and Kresson, New Jersey, its officers, agents, successors, and assigns, shall:

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[2] On July 9, after conferring with a number of his fellow employees concerning an overtime grievance, and, with their concurrence, Basher spoke to Plant Supervisor Weiss about the matter. During their discussion Weiss inquired whether Basher "represented the men." Basher answered that he did. Basher testified at the hearing that he assumed Weiss referred in his question only to the men Basher had spoken to, not all the men in the plant. It is apparent that Weiss' question to Basher was ambiguous as he did not explicitly inquire, "Do you [Basher] represent *all* the men in the plant?"

In light of the ambiguity of the situation in which Weiss asked Basher the question, and Basher's uncontradicted testimony concerning this matter, it is clear that Basher did not willfully misrepresent to the Respondent his representative capacity.

[3] The Trial Examiner found that Basher's discharge constituted a violation of Section 8 (a) (3) of the Act, asserting that the complaint so alleged. In fact the complaint alleged that Basher's discharge constituted a violation of Section 8 (a) (1) only. The issue of Basher's discharge was fully litigated at the hearing, and the Respondent did not except specifically to the misstatement of the Trial Examiner as to the allegation in the complaint; nor does it now assert that the Board is precluded from finding that Basher's discharge was a violation of Section 8 (a) (3). In the circumstances, we hold that the Board is not so precluded.

1. Cease and desist from:

(a) Discouraging membership in and activities on behalf of Local 222, International Hod Carriers' Building & Common Laborers' Union of America, AFL–CIO, or any other labor organization of its employees, by discriminating in regard to hire and tenure of employment of its employees, or in any other manner discriminating with respect to any term or condition of employment in order to discourage such activity or membership.

(b) Interrogating its employees concerning their membership in, or activity on behalf of, any labor organization, in a manner constituting interference, restraint, or coercion in violation of Section 8 (a) (1) of the Act.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, and 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 Act.

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

(a) Offer to George Basher immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay suffered as a result of the Respondent's discrimination against him, as set forth in the section of the Intermediate Report entitled "The remedy."

(b) Preserve and make available to the Board or its agents upon request, for examination and copying, all payroll records, social-security payment records, timecards, personnel records and reports, and all other records necessary to analyze and compute the back pay and reinstatement rights due to George Basher under the terms of this Order.

(c) Post in conspicuous places in the Respondent's plant in Kresson, New Jersey, including all places where notices to employees are customarily posted, copies of the notice attached hereto as Appendix.[4] Copies of said notice to be furnished by the Regional Director for the Fourth Region, shall, upon being duly signed by the Respondent's representatives, be posted by it, as aforesaid, immediately upon receipt thereof, and maintained for at least sixty (60) consecutive days there-

[4] 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."

after. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

APPENDIX

NOTICE TO ALL EMPLOYEES

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

WE WILL NOT interrogate any of our employees concerning membership in, or activities on behalf of, any labor organization, in a manner constituting interference, restraint, or coercion in violation of Section 8 (a) (1) of the Act.

WE WILL offer to George Basher immediate and full reinstatement to his former or substantially equivalent position without prejudice to any seniority or other rights and privileges previously enjoyed, and make him whole for any loss of pay suffered as a result of the discrimination.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Local 222, International Hod Carriers' Building & Common Laborers' Union of America, AFL–CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

All our employees are free to become or remain members of the above-named Union or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

CAMDEN LIME COMPANY (FLEXICORE DIVISION),
Employer.

Dated---------- By----------
(Representative) (Title)

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

INTERMEDIATE REPORT

STATEMENT OF THE CASE

Upon charges duly filed on November 7, 1956, by Local 222, International Hod Carriers' Building & Common Laborers' Union of America, AFL–CIO, hereinafter called Local 222 or the Union, the General Counsel of the National Labor Relations Board, herein called the General Counsel [1] and Board respectively, by the Board's Regional Director for the Fourth Region (Philadelphia, Pennsylvania), issued a complaint dated November 9, 1956, against Camden Lime Company (Flexicore Division), hereinafter called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Labor Management Relations Act, 1947, as amended, 61 Stat. 136, herein called the Act. Copies of the complaint, the charge and amended charge, and the notice of hearing thereon, were duly served upon the Respondent and the Union.

With respect to the unfair labor practices the complaint alleged that the Respondent: (1) by various enumerated actions interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act; and (2) by discharging and refusing to reinstate employee George Basher on July 11, 1956, because said employee had engaged in concerted activities for the purposes of collective bargaining or other mutual aid or protection of employees at the Respondent's plant at Kresson, New Jersey, thereby engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) of the Act.

The Respondent duly filed its answer wherein it admitted the discharge of George Basher on July 11, 1956, but denied the commission of any unfair labor practices.

Pursuant to notice, a hearing was held before the Trial Examiner on December 17, 1956, at Philadelphia, Pennsylvania. The General Counsel, the Union, and the Respondent were represented at the hearing by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. The parties were advised of their right to argue orally at the hearing, which was waived, and to file briefs with the Trial Examiner thereafter. Briefs were received from the General Counsel and the Respondent on January 4, 1957. Respondent also filed 45 Proposed Findings of Fact and 5 Proposed Conclusions of Law. Of these Proposed Findings of Fact the Trial Examiner denies Nos. 5, 6, 14, 16, 17, 18, 26, 27, 29 and Nos. 4 and 5 of the Proposed Conclusions of Law.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Camden Lime Company, a corporation duly organized under and existing by virtue of the laws of the State of New Jersey, with its principal place of business at Camden, New Jersey, is engaged at its Flexicore Division plant located at Kresson, New Jersey, in the manufacture of concrete slabs. In the last 12-month period prior to the hearing Respondent has received, and is receiving, cement, sand, and gravel from sources outside the State of New Jersey in excess of the sum of $500,000.

The Trial Examiner finds that the Respondent is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATIONS INVOLVED

Local 222, International Hod Carriers' Building & Common Laborers' Union of America, AFL–CIO; United Mine Workers, Independent; and Local 172, International Hod Carriers' Building & Common Laborers' Union of America, AFL–CIO, are labor organizations admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The discharge of George Basher*

1. The facts

The Respondent has three plants where it manufactures construction materials in the Camden area.

In 1955 the Respondent decided to open what it calls its Flexicore Division which now manufactures long, hollow, reinforced concrete slabs which it prefabricates for

[1] This term includes the counsel appearing for the General Counsel at the hearing.

flooring or roofing on various construction jobs. These slabs are manufactured by pouring wet concrete into a steel mold in which a form of reinforcing steel and long air-filled rubber hoses have previously been placed. After the cement has been dried and hardened, the air-filled rubber hoses are deflated and removed leaving the concrete with a hollow center. The concrete slab is then removed from the steel mold which, after cleaning, will be used again in the manufacture of more cement slabs.

The Flexicore Division, the only operation of the Respondent of interest in the present controversy, is now located at Kresson, New Jersey, where the construction of the Flexicore Division plant began about October 1955. Actual manufacturing operations began at Kresson about May 15, 1956.[2]

Before actual operations began at the Flexicore Division plant, Frank Budd Hineline, Jr., Respondent's vice president and production manager, sought out Charles Mims, president of Local 222, and requested him to supply the plant with labor upon its opening. Mims was agreeable. The Respondent and Mims then had about three formal meetings at which they attempted to work out the terms of a labor contract covering the operation. The last meeting over these contract terms was held on July 6 when, as Mims testified, "We disagreed on wages, working hours, and we didn't get very far." It is undisputed that this meeting broke up with Hineline telling Mims, "You give us an argument about working conditions and hours and pay, etc. You don't even have my employees [signed up], yet."

Sometime prior to July 9, probably as a result of this last statement by Hineline, Mims, who had been given permission by the Respondent to come on plant property at will, held a meeting of the employees in the plant one noon hour. At the suggestion of the men Mims gave Basher a number of authorization cards in Local 222 for the employees to sign. Basher thus acted as the head organizer for Local 222 in the plant, talking with most of the employees and actually signing up a number of them. Basher and some of the other employees attended meetings of Local 222 at the union hall where Basher acted as the informal spokesman for the employees. The Respondent knew of this activity for and on behalf of Local 222 although Hineline testified that he did not know "exactly" what Basher had been doing.

On July 9, after first conferring with a number of his fellow employees about the Respondent's failure to rotate the employees used on work performed on the extra paid holidays of July 4 and 7, Basher spoke about the matter to the outside erection foreman, Raymond Curry. Curry agreed with Basher that the holiday work should be distributed evenly among the employees but, as he could do nothing about it in the absence of Plant Superintendent Weiss, agreed to get Basher an appointment with Weiss to discuss the matter. About 4 p. m. that same day Basher was called to the office of Superintendent Weiss where Basher told Weiss about the grievance. Weiss also agreed with Basher and stated that in the future such holiday work would be equalized among the employees. During this interview Weiss inquired whether Basher represented the men. Basher answered that he did.[3]

Approximately 10 minutes after having left Weiss' office following this interview, Basher was called back to the office where Weiss requested Basher's advice as to which employees should be listed as keymen in the various departments in the plant. Basher stated that he thought that that was a matter for management alone to decide.

The following day, July 10, the Respondent posted in the plant a list of those keymen with their departments. At the bottom of this list Basher's name appeared as "Company Representative."

That same afternoon Weiss informed Basher out in the plant that there would have to be some overtime work done in the plant that night and asked Basher to have one man from the cleaning department work overtime. The cleaning department then consisted of three employees, Dwier, Adams, and Basher. Basher spoke to Dwier about the overtime work but discovered that Dwier had already been excused so as to be able to manage his baseball team in the Babe Ruth League that evening. Basher then talked to Adams who agreed to work overtime. At 4:30 p. m. Basher checked out of the plant and quit work for the day.

While the overtime work was going on, Weiss and Curry went into the plant where the pouring crew was working and inquired of employee Harry Dreyer, Jr., if he had voted for a company representative. When Dreyer answered "No," Weiss said, "That is all I want to know."

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[2] All dates herein are in the year 1956 unless otherwise noted.

[3] A number of the employees had previously agreed that Basher should approach management about this alleged grievance—but not all of the employees.

At the end of the overtime work about 5:30 p. m., Weiss called about 14 of the employees to his office where he inquired if they had ever elected Basher to represent them. The answer was "No," as no such election had ever been held in the plant.

Subsequently that evening Weiss telephoned Hineline to tell him that he, Weiss, had decided to discharge Basher. Hineline agreed.

At starting time on July 11, Basher entered the plant, discovered that his time-card was missing from the rack and so went into Weiss' office. Weiss and Hineline were present while Curry came in a few minutes thereafter. Weiss told Basher that he was "Done." When Basher asked why, Weiss told him that it had not been "nice" of him not to work overtime the previous evening and that he had just taken it upon himself to walk in and declare himself to be the representative of the employees. Basher answered that Weiss had only requested "one man" from the cleaning department and that Adams had worked the overtime. Basher also denied claiming that he represented all of the employees. Without more Weiss reiterated that Basher was discharged. After claiming that the decision was unfair, Basher departed.

Within an hour thereafter the Respondent called in the keymen listed the previous day and Hineline asked a number of them if they had ever elected Basher as their representative which all denied. Weiss stated that Basher had declared himself to be the representative of all the employees "like Hitler" and that he would not tolerate such activity. Weiss also stated that Basher had "misrepresented" the men and so he had been discharged. It is undisputed that this question of representation was the only reason Respondent gave the keymen for the discharge of Basher.

By letter apparently written prior to, but dated, July 12, Respondent's then attorney wrote Local 222 regarding certain matters relating to the proposed contract between the Union and the Respondent.[4]

Under date of July 14, Respondent's attorney again wrote Mims as follows:

> DEAR SIR: When you called me the other day and asked about a man being "discharged" as you called it, I told you I knew nothing about it and would get the facts, and while I was doing so you immediately sent out your untrue, false letter and threats on July 11th.
>
> As you and the man concerned well know we handle concrete which must be used immediately or it becomes "waste" with extra cost to dispose of it and all men are required—when needed—to work overtime to use up the concrete that needs go be worked into a finished product.
>
> This man refused to complete using materials on hand that needed to worked on because it would be overtime and he himself voluntarily terminated his employment with us thereby. That is a provision in all of our union contracts and will also be in any that is signed by us in the future, or any renewals.
>
> You may proceed without a gun or club at our heads, in your negotiations and meetings with us for getting to base terms for a contract, which you will have to procure by complying with all necessary government procedures and regulations and showing us that the men have been contacted and know the terms of the contract and desire affiliation with you.
>
> However in the meantime, because of your threatening letter and attitude, you will not be permitted to trespass on company property during company time, or after work, and must meet the men at their homes or some other common meeting place so as to make sure you do not get yourself involved with any of our present employees, or officers or management.
>
> Very truly yours,

Basher has never been reinstated.

2. Conclusions

The facts of the instant case prove without dispute that the Respondent discharged Basher on the morning of July 11 and that, when Basher inquired as to the reasons for that action, the Respondent gave him two: (1) That Basher had failed to work overtime the evening before; and (2) that Basher had taken "it upon himself to come in there and represent all the men, without a vote," in dealing with the Respondent in regard to the terms and conditions of the employment of the men.

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[4] As all references to contract articles in this letter appear to be to some Teamster contract not in evidence rather than to the proposed contract of Local 222 which is in evidence, this letter is practically unintelligible. The Trial Examiner is unable to say, therefore, whether Respondent made any objection to the proposed closed-shop clause in the proposal of Local 222 or not.

Let us take up these alleged causes for the discharge in order.

The testimony adduced at this hearing permits only the finding, which has been made above, that on July 10 Weiss ordered Basher to have "one man" from the cleaning department work overtime that evening. The only probative evidence produced at the hearing is to this effect. Basher, Dwier, and Maxvitat, the only persons present except Weiss at the time the order was given, were all specific and definite in their testimony that Weiss asked Basher for but "one man." As Weiss was not called as a witness to testify at the hearing, there is no probative evidence regarding his order to Basher on July 10 to the contrary.

In making the above statement the Trial Examiner has not overlooked Hineline's testimony that on the evening of July 10, Weiss telephoned and told him, Hineline, that he, Weiss, had "assigned different men or the whole crew was supposed to work overtime"[5] and that one unidentified employee had complained later that evening to Weiss that he, the employee, was unable to do his job because Basher had not been present.[6]

Hineline's testimony as to his telephone conversation with Weiss on July 10 was admissible and probative as to the fact of the telephone call and as to the statements made by each during that call. But Hineline's testimony is no more than hearsay without probative value as to the events transpiring between Weiss and Basher about which Weiss purported to report to Hineline. As Weiss was the only person present during the conversation between himself and Basher about which he purported to describe during his conversation with Weiss,[7] it was Weiss alone who could be cross-examined as to the truth or falsity of those events transpiring during the Weiss-Basher conversation. Hineline, not having been present at the Weiss-Basher conversations, could only be cross-examined as to the truth or falsity of statements during the Hineline-Weiss telephone conversation—not as to the truth or falsity of events occurring during the Weiss-Basher conversation. Therefore, if the Respondent intended to contravert the testimony of Basher, Dwier, and Maxvitat to the effect that Weiss had only asked Basher for one cleaner, then it became incumbent upon the Respondent to produce Weiss or anyone else who might have heard the order or request Weiss made of Basher. This Respondent did not do. In the absence of such probative contradictory testimony the Trial Examiner must accept the only probative testimony on the subject, to wit, that Weiss ordered Basher to assign "one man" for overtime work on July 10.[8]

Lest the Trial Examiner be understood to be basing this finding on a pure legal technicality, let it be said here that the Trial Examiner was impressed by the obvious sincerity and honesty of all three of the witnesses relied on above. As noted herein, Hineline varied his testimony considerably from time to time.

As therefore Weiss' order to Basher was only to have "one man" work overtime on July 10 and as it is admitted that Al Adams, 1 of the 3 men in the cleaning department, did in fact work overtime as per Weiss' order, it is obvious that Basher not only did not refuse or fail to work overtime on July 10, as claimed, but did, in fact, obey his instructions to the letter. It is also clear that the Respondent's first purported reason for the discharge of Basher was, in fact, untrue—even as Basher contended at the time of his discharge.

Respondent introduced evidence at the hearing of a policy or a custom in the cement business which required employees to work overtime while there was still wet cement to be poured. A notice to such effect had been posted in Respondent's plant. There can be little, if any, doubt that this requirement is observed throughout the industry. But, even as Hineline acknowledged, this policy applies only to the number of employees needed or necessary in order to make proper use of the wet cement in order to prevent loss or spoilage. There is no blanket custom or policy in the industry that the *whole* crew is required to work overtime. On July 10 it is apparent that Weiss only required one man from the cleaning department

[5] The above quotation is from Hineline's original testimony on the subject which Hineline subsequently modified by testifying that Weiss had told him over the telephone that he, Weiss, had specifically ordered Basher to work overtime on July 10, and that he, Weiss, "wanted Basher to work overtime, along with the other men."

[6] This unidentified employee was not called as a witness at the hearing either.

[7] Exclusive of those who had already testified by the General Counsel: Basher, Maxvitat, and Dwier.

[8] There is no showing that Weiss was unavailable to the Respondent even though he had been dismissed a month prior to the hearing. In fact General Counsel offered to give Respondent Weiss' present address in Allentown, Pennsylvania.

in order to use the cement available. That July 10 was one of those occasions when the whole crew was not necessary is attested by the fact that 5 men, almost 25 percent of the employees, were permitted by Respondent to go home that evening without working overtime.

We come now to the Respondent's second reason for the discharge: that Basher had taken it upon himself to represent the men without any voting or election. In Hineline's own phraseology, ". . . we [Respondent] certainly, *in the beginning,* were not against" having Local 222 represent Respondent's employees. In fact the evidence proves that the Respondent sought out Local 222 for this purpose. However this friendly attitude changed radically at and after the last negotiation meeting between the two on July 6 when Local 222 and Respondent disagreed on wages, hours, and working conditions and when the meeting ended with Hineline saying to Mims: "You give us an argument about working conditions and hours, and pay, etc. You don't even have my employees, yet." That Respondent intended to prevent such representation by Local 222, if possible, was further attested by the fact that after Mims had met with the employees one noon about July 10 [9] on company property, Foreman Curry informed Mims that in the future, if Mims ever wanted to say anything to Respondent's employees, Mims would have to consult Curry first. Obviously the honeymoon between the Respondent and Local 222 had ended. In other words, the "beginning" had passed and Respondent had begun to take steps to prevent Local 222 from organizing its employees.

The Respondent knew from the fact that Basher had been handling various employee grievances about coffeebreaks and the coke machine on behalf of the employees that Basher had become the leader of its employees.

Furthermore the Respondent knew that Local 222 was then engaged in organizing the Respondent's employees into that Union. Although Hineline knew that Respondent had been negotiating with Local 222 and that there was activity on behalf of Local 222 in the plant, he testified that he did not then know "exactly" what Basher was doing. Both Weiss and Currey knew of Basher's leadership among the men and his acting in concert with at least a number of the employees in representing them on grievances with the Respondent. It is, therefore, reasonable to conclude that the Respondent knew or reasonably suspicioned that Basher was busily engaged in organizing the employees into Local 222. Especially is this so when, on July 9, Basher again represented a number of the employees in protesting to the Respondent the uneven distribution of holiday and overtime work on July 4 and 7.

The very next day, July 10, the Respondent inquired of its pouring crew during the overtime period as to whether or not the employees had elected Basher to represent them. This inquiry possibly preceded Respondent's knowledge that Basher was not working overtime. That same evening after the conclusion of the overtime work 14 employees were called to Weiss' office where Respondent made further inquiry as to whether Basher had been elected to represent them.

Indeed, on July 11, after the discharge had been accomplished, the Respondent continued the same inquiry when it called in its keymen and asked them the same question. It is particularly significant that the Respondent purported to explain Basher's discharge to these keymen as resulting exclusively from the fact that he purported to represent them without having been elected and that Basher "misrepresented" the employees. That the Respondent failed to even suggest as a cause of the discharge of Basher the fact that he had not worked overtime the previous evening is rather conclusive that his alleged failure to work the previous evening had nothing to do with his discharge.

The natural and probable consequence of the Respondent's explanation of Basher's discharge as having been caused by his attempted representation of the employees was to create fear of the consequences of concerted activity to their own job tenure and security. As such Respondent's action was a violation of Section 8 (a) (1) of the Act and the Trial Examiner so finds.

The provable falsity of the Respondent's first alleged reason for the discharge together with the timing of the discharge of Basher to coincide so exactly with the growth of the Respondent's animosity towards Local 222 and its representatives along with the undenied explanation of the Respondent to its keymen lead the Trial Examiner irresistibly to the conclusion that the Respondent discharged Basher, a man

[9] This was possibly the same meeting which Mims held with Respondent's permission in the plant washroom at which he gave Basher the Local 222 cards for distribution to the other employees. However the record is not clear as to this.

known to be engaged in concerted activities and to be organizing on behalf of Local 222, in order to discourage union membership in its plant in violation of Section 8 (a) (3) of the Act.

B. *Interference, restraint, and coercion*

As found heretofore about an hour after Basher's discharge on July 11, Weiss called the keymen into his office and explained that Basher had been fired for purporting to represent the men without an election and for "misrepresenting" the employees. This announcement was tantamount to telling the employees that the penalty for engaging in concerted activities or activities on behalf of Local 222 was discharge from the Respondent's employ. Such discouragement of concerted activities or union membership is obviously a violation of Section 8 (a) (1) of the Act, and the Trial Examiner has so found.

After the discharge of Basher the attempt of Local 222 to organize the Respondent's employees was unsuccessful.

About August the United Mine Workers began an attempt to organize the Respondent's employees and at one time appeared to have signed up approximately 100 percent of the employees. One evening about quitting time Weiss called employee Alfred Maxvitat into his office where Weiss said, "I hear you boys got a meeting with District 50." After Maxvitat agreed to the correctness of the statement, Weiss told Maxvitat that Hineline would like to have the meeting held off for about 24 hours and that Hineline would get the men another union.

Despite this conversation Maxvitat attended the UMW meeting. The following morning Weiss and Hineline again called him to Weiss' office where they asked Maxvitat how many employees attended the meeting and how many of them had voted. Maxvitat evaded any direct answer to the interrogation. Whereupon Hineline stated, "Well, we can't fire you on account of union activity, but we can fire you for anything else."

Also on the afternoon of the evening of the first scheduled District 50 meeting with the Respondent's employees, Weiss asked employee Kenneth Jones if he was going to the District 50 meeting and where the meeting was to be held.

It is too clear to require comment or citation of authorities that the above interrogation of employees regarding their concerted activities by representatives of the Respondent would naturally tend to interfere with, restrain, and coerce the employees in the exercise of their rights guaranteed to them by Section 7 of the Act in violation of Section 8 (a) (1) thereof, and the Trial Examiner so finds.

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, substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

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

It having been found that the Respondent discriminated in regard to the hire and tenure of employment of George Basher by discharging him on July 11, 1956, the Trial Examiner will recommend that the Respondent offer George Basher immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges and make him whole for any loss of pay he may have suffered by reason of said discrimination by payment to him of a sum of money equal to that which he would have earned as wages from the date of the discrimination against him to the date of the offer of reinstatement less his net earnings during such period, in accordance with the formula set forth in *F. W. Woolworth Co.*, 90 NLRB 289.

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

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

CONCLUSIONS OF LAW

1. Local 222, International Hod Carriers' Building & Common Laborers' Union of America, AFL–CIO; United Mine Workers of America; and Local 172, International Hod Carriers' Building & Common Laborers' Union of America, AFL–CIO, are labor organizations within the meaning of Section 2 (5) of the Act.
2. By discharging George Basher on July 11, 1956, thus discriminating in regard to his hire and tenure of employment because he had engaged in concerted activities for the purposes of collective bargaining or other mutual aid or protection of employees and because of his activities on behalf of Local 222, International Hod Carriers' Building & Common Laborers' Union of America, AFL–CIO, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) and (1) of the Act.
3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, Respondent has committed unfair labor practices within the meaning of Section 8 (a) (1) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication.]

Mine and Mill Supply Company, Petitioner *and* Local #35, International Chemical Workers Union, AFL–CIO.[1] *Case No. 12–RM–7. October 4, 1957*

DECISION AND ORDER

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

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

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

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent employees of the Employer.

3. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act, for the following reasons:

On June 1, 1956, Local #35, was certified as bargaining representative of employees at the Employer's Lakeland, Florida, plant. The Employer and Local #35 engaged in bargaining negotiations for a period of approximately 5 months and on October 15, 1956, Local #35

[1] Hereinafter called Local #35.