

I. C. Sutton Handle Factory and United Brotherhood of Carpenters and Joiners of America, Local Union 2746. Case No. 32-CA-560. December 16, 1957

DECISION AND ORDER

On August 2, 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 Respondent 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 objections to the Intermediate Report and supporting briefs,¹ and the General Counsel filed exceptions to the Intermediate Report and rulings of the Trial Examiner 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 [Chairman Leedom and Members Murdock and Rodgers].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed.² The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions, the briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.³

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 I. C. Sutton, Sr., who is doing business at his Harrison, Arkansas, plant under the name of I. C. Sutton Handle Factory, his agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Local Union 2746, or any other labor organization, by discharging any of his employees or

¹ Respondent raises no issues which were not adequately considered by the Trial Examiner. We find the objections without merit.

² The General Counsel excepts to the Trial Examiner's ruling admitting in evidence an affidavit of Sutton, Sr. As we find this ruling not prejudicial to the General Counsel, we overrule the exception.

³ The General Counsel excepts to the Trial Examiner's failure to find certain facts which further substantiate the findings, his finding of certain facts that tend to support the argument of Respondent that Hulsey was discharged for cause, and his failure to find that certain facts constitute additional violations of Section 8 (a) (1) of the Act. As these findings or failures to find facts or violations do not affect the remedy herein, we find it unnecessary to go into them.

otherwise discriminating in regard to his employees' hire or tenure of employment or any term or condition of employment.

(b) Coercively or otherwise unlawfully interrogating employees concerning their membership in, or activities on behalf of, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Local Union 2746, or any other labor organization.

(c) Threatening employees that he will cease or curtail operations, or will discriminate against employees who belong to or support any labor organization or will engage in other reprisals against employees, to discourage their affiliation with or support of United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Local Union 2746, or any other labor organization.

(d) In any other manner interfering with, restraining, or coercing employees in the exercise of the right of self-organization, to form labor organizations, to join or assist United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Local Union 2746, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in any 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 Joe Hulsey immediate and full reinstatement to his former or a substantially equivalent position without prejudice to his seniority or other rights and privileges, and make Joe Hulsey whole in the manner set forth in the section of the Intermediate Report entitled, "The Remedy," for any loss of earnings he may have suffered by reason of respondent's discrimination against him.

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

(c) Post at his plant in Harrison, Arkansas, copies of the notice attached to the Intermediate Report and marked "Appendix."⁴ Copies of said notice, to be furnished by the Regional Director for the Fifteenth Region, shall, after being duly signed by the Respondent, be posted by him immediately upon receipt thereof and maintained by

⁴ This notice is amended by substituting for the words "The Recommendations of a Trial Examiner" the words "A Decision and Order." In the event that this Order is enforced by a decree of a United States Court of Appeals, the notice 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."

him for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

Upon charges duly filed by United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Local Union 2746, herein referred to as the Union, the General Counsel of the National Labor Relations Board, by the Regional Director for the Fifteenth Region (New Orleans, Louisiana), issued a complaint on May 22, 1957, against the Respondent, I. C. Sutton Handle Factory, 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. In substance, the complaint states that on October 24, 1956, Respondent discriminatorily discharged Joe Hulsey because of his membership in, and activities on behalf of, the Union, in violation of Section 8 (a) (3) of the Act, and by this and other conduct Respondent has interfered with, restrained, and coerced employees in the exercise of rights guaranteed in Section 7 of the Act, in violation of Section 8 (a) (1) thereof. Copies of the charges, complaint, and notice of hearing were duly served upon the parties. The Respondent filed a verified answer denying the commission of the alleged unfair labor practices.

Pursuant to notice, a hearing was held on June 18, 1957, at Harrison, Arkansas, before the duly designated Trial Examiner. All parties were represented at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the issues, and to present oral argument at the close of the hearing. A motion made by the General Counsel at the conclusion of the hearing to amend the pleadings to conform to the proof with respect to minor matters such as variances in dates and the spellings of names was granted. Briefs on behalf of the General Counsel and the Respondent were submitted to the Trial Examiner which have been given careful consideration.

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

I. C. Sutton Handle Factory is solely owned by I. C. Sutton, Sr.¹ Respondent's principal office and place of business is in Harrison, Arkansas, where wood handles and other wood products are manufactured. During the calendar year 1956, which period is representative of all times material hereto, Respondent sold and shipped directly to customers located outside the State of Arkansas finished products manufactured in his Harrison plant valued in excess of \$150,000. The Respondent admits, and I find, that he is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Local Union 2746, is a labor organization within the meaning of Section 2 (5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. Sequence of events

Respondent operates a small woodworking plant wherein, during the times material hereto, he employed 35 to 37 men and 4 supervisors, namely, his sons, Irving

¹ It was stipulated at the hearing that there are "certain equities of ownership yet undetermined in favor of Harry Sutton and Irving Sutton," who are Respondent's sons.

Sutton, Jr., and Harry Sutton, and C. W. Claiborne and Mitchell McCutcheon. The Company has no formal rules or regulations governing employees' conduct other than that smoking is forbidden within the plant premises except in the single restroom for men. There are no restrictions upon the number of visits to the restroom employees are permitted to make and the practice is for employees to make 3 to 5 such visits each day.

An effort towards organizing Respondent's employees was begun by the Union in the spring of 1956. Joe Hulsey, who some years earlier had been a member of a sister local of the Union, joined the Union in April and by the end of the month became its most active protagonist in the plant and its contact with the other employees. About this time I. C. Sutton, Sr., learned about his employees' nascent union interest. He testified that he heard from his supervisors "that they [the employees] had been trying to organize it [the Union] and apparently hadn't went over, everything was quiet. . . ." Therefore, he did not "want to make any trouble about or take it up with any of the men." Mr. Sutton's informants were correct when they advised him in the spring of 1956 that the organizational drive was not making progress. However, in June there was a seasonal layoff which aroused much resentment among the employees because newer personnel was retained during the layoff period instead of men with greater plant seniority. This revived their interest in the Union and, according to Hulsey, "after the layoff, why, they come back and they were wanting [union] cards to sign up." By October 22, 1956, about 25 of Respondent's 37 employees had signed applications for membership in the Union. On his way to work the next morning, Hulsey, who was accompanied by Onas Chaney, mailed the group of cards which he had last received to C. W. Mowery, the Union's representative. After their arrival at the plant, Hulsey and Chaney informed various other employees that a majority had signed union cards and that the cards had been mailed to the Union that morning. Before the day was over, according to Chaney, this information had circulated "pretty well through the plant."

Joe Hulsey was discharged the following afternoon. Two days later, on October 26, C. W. Mowery, the Union's representative, telephoned I. C. Sutton, Sr., and advised him that the employees were dissatisfied and that proceedings under the Taft-Hartley Act were going to be instituted on account of Hulsey's discharge. On October 29, the Union filed with the National Labor Relations Board its initial charge in this case and also a petition requesting a representation election. A hearing in the representation proceeding was set for November 28. However, on December 3, the parties entered into a consent-election agreement and the election was held on January 8, 1957.

B. Interference, restraint, and coercion

Respondent at all times material hereto objected to the organization of his employees. Declarations of such attitude were made to the employees not only by I. C. Sutton, Sr., but also by his supervisors. An employer, of course, may announce his opposition to the unionization of his plant without violating the Act provided that he confines himself to the expression of views, arguments, and opinions which contain no threats of reprisal or force or promises of benefit. However, in this case, the Respondent and his agents overstepped the bounds of permissible action and engaged in conduct which infringed upon the rights of employees guaranteed by Section 7 of the Act.

In the period preceding the June 1956 layoff when employee interest in the Union was small the evidence shows three instances where threats of reprisals were directed to employees. In April, Mitchell McCutcheon said to employee A. J. Yancey, "A lot of the boys around here think they are getting smarter than the Company . . . Mr. Sutton said he was going to fire everyone that had anything to do with the union." The following month McCutcheon told Yancey that he was afraid if the boys went union the Respondent would shut down or would move back to Lurton where the factory had been located originally. During June, in a conversation with employee Leonard McElroy, Foreman C. W. Claiborne said, "Oh, if they found out who was pushing it [the Union] so hard they might lay him off." Because these three incidents are not pleaded in the complaint as unfair labor practices, I do not find they constitute violations of Section 8 (a) (1) of the Act, but do find they indicate that Respondent's antagonism towards the Union dates from the inception of the organizational campaign.

Apart from the discharge of Hulsey on October 24, there is no further evidence of antiunion conduct by the Respondent until October 26, 1956. Following his telephone conversation with Mowery, I. C. Sutton, Sr., separately interviewed five

employees in his office. Present during each of these conversations, in addition to the employee interviewed and I. C. Sutton, Sr., were Harry Sutton and Irving Sutton, Jr. According to I. C. Sutton, Sr., because Mowery had told him that the employees were dissatisfied he spoke with "some of the newer employees and some of the older ones to find out what they were dissatisfied with." He testified that he also told the employees that Mr. Mowery had accused him of discharging Hulsey for union activities, but he made it clear to the men that his reason for discharging Hulsey was "for visiting and interfering with others' work."² Sutton admitted that he also asked the employees whether they had signed union cards. According to the unrefuted testimony of the employees who were interviewed, Sutton, in addition to questioning them about their job complaints and interrogating them concerning their membership in the Union, also sought to dissuade some of them from supporting the Union. In so doing he made a number of predictions as to the consequences which would attend the unionization of his plant.³

Onas Chaney testified that Sutton asked him what he knew about the Union and whether he had signed a union card. Sutton then said that he was unable to raise prices for his products and, therefore, if the Union were voted in he would be forced to shut down. Sutton also said that with a union in the plant whenever an employee ran out of work on his assigned job he would be laid off rather than be shifted to another task. Sutton suggested that Chaney study the problem posed by union representation before voting in favor of the Union. Sutton also said that he paid the taxes on his property and did not want union men running around over it; if the Union wanted to run the plant he would sell it to them.

Carl Claiborne, a brother of Foreman C. W. Claiborne, testified that after Sutton told him about the telephone conversation with Mowery, Sutton asked him whether he had signed a union card and how many others had done so. After Claiborne told Sutton he had signed a union card Sutton said that Claiborne "was a good hand" and would not be fired.

Grover Breedlove testified that Sutton, after referring to a telephone call from Mowery, asked whether he had signed a union card. When Breedlove acknowledged that he had done so, Sutton asked him when.

Leonard McElroy testified that Sutton began their conversation by saying that he had received a telephone call from Mowery in which he was advised that some of the boys were dissatisfied with working conditions and wanted to form a union. Sutton asked whether McElroy had any complaints and suggested if McElroy was not satisfied he should quit. Sutton inquired whether McElroy had signed a union card. When McElroy admitted that he had, Sutton asked whether he had received the card from Joe Hulsey. McElroy denied that he had received it from Hulsey. Sutton asked again, "You didn't get it from Joe Hulsey in the toilet." McElroy again denied the fact. Sutton then asked, "Well, you did see Joe Hulsey in the toilet handing out those union cards and smoking cigarettes, didn't you?" Sutton also said, "Well, I am not going to shut down but if the union comes in I won't be able to operate near as much due to the high wages I will have to pay under the union."

Finally, Walter Davis testified that Sutton began their conversation by saying he had been accused of firing Hulsey because of the latter's union activities. Sutton asked whether Davis had signed a union card. Sutton then said that factories are moving south to get away from unions. Irving Sutton, Jr., remarked that, "You ought to go to our side of this. If the union goes through you can't keep on one job all the time. If the Union takes over and you get the job done you will have to go home." Sutton, Sr., suggested to Davis that he "think it over and see if you won't be better off without the union."

Respondent's purposeful questioning employees as to whether they had signed applications for membership in the Union, in the context of a series of private interviews during which he also indicated his opposition to the Union, would cause the

² Onas Chaney, Leonard McElroy, and Walter Davis testified without contradiction that I. C. Sutton, Sr., told them he had discharged Hulsey for wasting time while engaged in organizational work for the Union.

³ Neither I. C. Sutton, Sr., nor his two sons who were present during the interviews specifically contradicted any of the facts set forth below relating to the October 26 conversations. Harry Sutton did not testify. Irving Sutton, Jr., with respect to these conversations, testified only that his father in mentioning Hulsey's discharge made it clear to the men that Mowery had made the accusation that it was for union activities. The reliability of the General Counsel's witnesses was not impeached, their testimony was not specifically denied and in large measure is consistent with I. C. Sutton, Sr.'s version of the events. Accordingly, I find no reason to discredit the testimony of the employees concerning their conversations with I. C. Sutton, Sr., on October 26, 1956.

employees reasonable apprehension that the Respondent might engage in reprisals against those who were members of, and continued to support, the Union. Furthermore, such fears of reprisal would be intensified when related to the evidence of Respondent's other infringements upon employees' right to engage in self-organizational activities. I find, therefore, that the interrogation of employees by I. C. Sutton, Sr., on October 26, 1956, constituted violations of Section 8 (a) (1) of the Act.⁴ Because it is not clear from the evidence that Mr. Sutton's remarks to the employees on October 26 concerning possible reductions in employment and earnings opportunities were not in the form of forecasts as to the consequences which would flow naturally from the unionization of the plant rather than threats of action which Respondent would take in such event, I shall not base any unfair labor practice findings upon those statements.

In addition to the unlawful interrogation of employees on October 26, 1956, I find further violations of Section 8 (a) (1) of the Act by reason of threats made to employees by Respondent's agents, C. W. Claiborne and Irving Sutton, Jr., that if the Union should succeed in organizing the plant Respondent would either cease operating entirely or would limit operations to 6 months each year and would show favor to the nonunion men. In this regard I find that:

On October 26, 1956, C. W. Claiborne said to Walter Davis, "This Union is going to mess us up. Don't you think we would be better off without the Union? . . . Mr. Sutton said if the Union went through it was going to run six months out of the year. The ones that voted against the union would get a better deal than the ones that vote with it."

On November 14, 1956, C. W. Claiborne said to employee Lafayette McElroy, "I believe you boys ought to think this over and give it serious thought because I think this union would be a hindrance to the factory. . . . The old man said that he is going to favor all the boys that didn't vote for the union."

On November 21, 1956, C. W. Claiborne said to Loy T. Hill, "He didn't think the union would be the thing for us. He thought it would go against us because . . . he thought if the Union went through that the old man would shut the plant down at least six months out of the year, not work more than six months out of the year and probably cut it down to a smaller crew and . . . he thought he might take some hands out to Lurton and work out there."

On November 22, 1956, C. W. Claiborne said to employee Billie Joe Henson, "We ought to all get together and decide if we want the union in here or not. . . . If it did go union we would only work six months out of the year. . . . That is what . . . the old man said."

About November 26, 1956, C. W. Claiborne said to employees Leonard McElroy and Otis Wells, "He knew what would happen if it went union, . . . he thought the old man would just close her down for about six months."

In December 1956, C. W. Claiborne said to Boyd Davis, "I believe Mr. Sutton will shut this plant down if it goes union."

In January 1957, C. W. Claiborne told employee Samuel Smith that if the plant went union I. C. Sutton, Sr., would favor the nonunion men more than he would the union men.

Towards the latter part of November 1956, Irving Sutton, Jr., said to a number of employees that the Union would not work out well in the plant, that the old man could shut the plant down if he wanted to because he had enough other income.

C. The discharge

Joe Hulsey was discharged by I. C. Sutton, Sr., on Wednesday, October 24, 1956. The complaint alleges that the reason for Hulsey's discharge was his union activities. The Respondent denies this and asserts that Hulsey's employment was terminated for cause.

Respondent knew or suspected that Hulsey had been actively assisting the Union with its organizational drive. Grover Breedlove testified without denial that in June 1956 he called Foreman C. W. Claiborne's attention to the fact that Hulsey "is working for the Union." Leonard McElroy's testimony is uncontradicted that in the same month Foreman Clairborne said to him, "Oh, if they found out who was pushing it [the Union] so hard they might lay him off. I think it was Joe Hulsey." Finally, there is in evidence the admission of Harry Sutton that "we knew there was some union activity but we did not know who was engaging in this union activity. We

⁴I shall not pass upon the testimony of Boyd Davis that on April 28, 1957, I. C. Sutton, Sr., also questioned him concerning whether he had signed a union card because this incident is not alleged in the complaint as an unfair labor practice.

suspected Hulsey from the start because we knew that he had been in a union before he came to work for us." Since I. C. Sutton, Sr., testified that his supervisors carried to him the rumors they had heard about the Union's organizational efforts, it is a reasonable inference that they also reported to Respondent their information and suspicions concerning Hulsey's participation in such activities. Thus, Claiborne denied that he had neither received reports about Hulsey working for the Union nor that he had transmitted such information to the Respondent. Harry Sutton's statement that "we suspected Hulsey from the start" indicates that his father also shared this suspicion. Finally, the testimony of several employees is uncontroverted that shortly following Hulsey's discharge I. C. Sutton, Sr., explained to them that Hulsey had been fired for wasting time while trying to "form a union," which also suggests that Respondent had knowledge of Hulsey's union activities when the decision to terminate his employment was made.⁵

Respondent's expectations that his employees' interest in the Union would "die a natural death"⁶ were not realized. In the morning of October 23, Hulsey mailed the last group of signed application cards to the Union's representative and before the day was over the information had circulated through the plant that the Union had been successful in winning the support of a majority of Respondent's employees. The following day, Wednesday, October 24, 1956, Hulsey was discharged.

It is Respondent's position in this case that Hulsey's union activities did not influence his decision to discharge Hulsey. I. C. Sutton, Sr., testified that about 11 a. m., on October 24, he went to the restroom where he saw Hulsey talking with four other employees. Upon Sutton's entering the room all the employees left except Hulsey who remained another minute and a half. Sutton then went to Foreman Claiborne and inquired how much time Hulsey had been losing lately. Claiborne replied that Hulsey spent considerable time visiting. According to Sutton, "I had had other complaints for about the last month or six weeks. I more or less ignored them, from the foremen and my two sons who are closely associated with me. This, Mr. Hulsey's actions confirmed my sons' and my foreman's opinion. I figured a man as intelligent as Joe was and as much as he knew about the business there was no use arguing. I told Mrs. King to have his check written up. Instead of discharging him at noon we let him work till night and paid him off in full. When Joe came in we had his time card pulled out of the clock. I had it in my office. The checks were written up. I told Mr. Hulsey that we were discharging him for losing too much time visiting. I asked him if he had anything to say. He said no. There was no discussion regarding the Union."

C. W. Claiborne and Irving Sutton, Jr., were called as witnesses by Respondent to corroborate I. C. Sutton, Sr.'s testimony. Foreman Claiborne testified that in the morning of October 24 he was talking with Harry Sutton who mentioned that Hulsey had been in the restroom three times that morning.⁷ They noticed Hulsey coming

⁵ I. C. Sutton, Sr., did not testify he had no knowledge of Hulsey's union activities when that employee was discharged. Respondent's counsel introduced in evidence an affidavit by I. C. Sutton, Sr., in which, among other things, the affiant stated, "We didn't know anything about Hulsey's union activities until after he was fired." However, the affidavit cannot substitute for the absence of Sutton's testimony to this effect. The affidavit was referred to by the General Counsel during his cross-examination of Mr. Sutton. For this reason the Trial Examiner received it in evidence for the limited purpose of correcting any possible misleading impressions which might arise from the use made of the affidavit by the General Counsel and to support the credibility of the witness. Since the affidavit is otherwise a self-serving declaration, the Trial Examiner specifically ruled that it was not received for the truth of its contents.

⁶ In this regard I. C. Sutton, Sr., testified, as follows:

Q. All right, sir. Mr. Sutton, you said when you heard these rumors you didn't want to make any trouble about it. What do you mean by trouble, sir?—A. Well, when you start arguing the thing in there it starts getting bigger, so I kept still about it and figured I would let it die a natural death.

⁷ There is no competent evidence in the record to contradict Hulsey's testimony that he visited the restroom only once in the morning of October 24. Claiborne's information with respect to the number of visits Hulsey made to the restroom that morning is based upon the report he received from Harry Sutton. Harry Sutton was not called by the Respondent to testify at the hearing although he was available. Respondent's unexplained failure to call upon Harry Sutton to testify, "is itself persuasive that . . . [Harry Sutton's] testimony, if given, would have been unfavorable to [Respondent]. The production of weak evidence [C. W. Claiborne's testimony as to what he was told by Harry Sutton] when strong is available can lead only to the conclusion that the strong would have been adverse." *Interstate Circuit, Inc. v. United States*, 301 U. S. 208, 226.

through the door and Claiborne then remarked, "that makes the fourth time." I. C. Sutton, Sr., approached them and, according to C. W. Claiborne, "We just told him, and he said, well, he had saw . . . [Hulsey] in [the restroom] that morning. . . . Send . . . [Hulsey] in this evening and we will pay him off." Claiborne further testified that "Joe [Hulsey] was a pretty fair hand," but on several occasions during the month preceding Hulsey's discharge he had recommended to I. C. Sutton, Sr., that Hulsey be fired "for wasting time, talking, visiting in the toilet." Claiborne did not testify that he ever had reprimanded Hulsey for such dereliction.

Irving Sutton, Jr., testified that prior to October 24, he also had recommended to his father that Hulsey should be discharged for "visiting on the job."⁸ However, I. C. Sutton, Sr., refused to take any action against Hulsey. Like Claiborne, Irving Sutton, Jr., did not testify that he ever had criticized Hulsey.

I find Respondent's asserted reason for Hulsey's discharge is not persuasive. Joe Hulsey had been employed by Respondent for 3½ years when he was discharged. He testified he had never been criticized for his work but had been complimented several times. The evidence shows that I. C. Sutton, Sr., considered Hulsey a good worker. It is contended that for a period of a month to 6 weeks preceding his discharge Hulsey had been wasting time. Foreman Claiborne and Irving Sutton, Jr., testified that they had complained about this to I. C. Sutton, Sr., and had recommended Hulsey's discharge. However, the Respondent took no action whatsoever. I. C. Sutton, Sr., did not warn Hulsey about the matter, did not instruct any of his supervisors to warn Hulsey and testified that to his knowledge Hulsey was never warned. If, in fact, Claiborne and Irving Sutton, Jr., had complained to the Respondent about Hulsey wasting time and I. C. Sutton, Sr., had believed that there was any merit to these charges, it is not natural that Respondent would continue Hulsey in his employ without taking any steps to remedy the fault and, nevertheless, 4 to 6 weeks later would discharge Hulsey for the very same offense without any preliminary warning. Likewise, it is illogical that Foreman Claiborne and Irving Sutton, Jr., should have made repeated recommendations that Hulsey be discharged for wasting time without once admonishing Hulsey about his alleged misconduct. Also, inconsistent with Respondent's explanation is that when Hulsey was discharged Respondent was being pressed to get out an order which required the manufacture and delivery of a product on which Hulsey was working. At the beginning of the week two men were assigned to assist Hulsey expedite production of the item. In these circumstances, it is unlikely that the Respondent would discharge Hulsey, except for an aggravated offense, before the rush order was completed. However, according to I. C. Sutton, Sr., the incident which prompted his decision to discharge Hulsey on October 24 was that he came upon Hulsey in the restroom talking with four other employees. He did not testify that Hulsey had been in the restroom for an unduly long time, that Hulsey had been responsible for the presence of the other employees, or had been detaining them. In this regard, I. C. Sutton, Sr., testified, "I didn't pay attention to who the others were. I didn't care about causing any trouble." Yet, he "went to the foreman and asked him how much time Joe [Hulsey] had been losing lately." Claiborne replied that Hulsey spent considerable time visiting. This was merely a reiteration of similar complaints about Hulsey which had been made to Respondent within the past month or 6 weeks. Nevertheless, Sutton then and there decided to discharge Hulsey at the end of the day. Since neither Hulsey's behavior in the restroom nor Claiborne's report furnishes sufficient reason for Sutton's precipitant decision to discharge Hulsey in the middle of a workweek when Respondent was being rushed to fill an order with respect to which Hulsey was working, the explanation for his action lies elsewhere.

Impinging further upon the validity of Respondent's defense are the explanations I. C. Sutton, Sr., made to five employees shortly following Hulsey's discharge which indicate that he gave prominent consideration to Hulsey's union activities in reaching his decision. Reference has been made hereinabove to conversations I. C. Sutton, Sr., had with several employees on October 26. He testified that during these discussions he mentioned to the employees that the union representative, Mowery, had accused him of discharging Hulsey for his union activities. Three of the employees who were interviewed that day testified that Sutton volunteered his reasons for having discharged Hulsey.

Onas Chaney testified that I. C. Sutton, Sr., said, "Three wasn't any use of him telling me how he had to release Joe Hulsey because of him organizing a toilet

⁸ Irving Sutton, Jr., testified that he had also complained to his father that Hulsey had been breaking too many handle tops. However, I. C. Sutton, Sr., did not testify that this in any way influenced his decision to discharge Hulsey.

union against the company . . . [Hulsey's] work was satisfactory; not enough of it. He got where he visited, hung around too much at other machines and in organizing the toilet union and that was more than he could stand."

Leonard McElroy testified that I. C. Sutton, Sr., said to him, "Joe Hulsey was a helluva good worker but he got to where all he would do was stand in there in the toilet and hand out union cards and smoke cigarettes."⁹

Walter Davis testified that during his interview with I. C. Sutton, Sr., on October 26, Sutton said, "Joe made a good hand and he worked hard but tried to organize that goddam . . . union and I had to fire him."

Furthermore, Otis Wells testified that about October 26 he noticed that Joe Hulsey had not been in the plant for 2 or 3 days and asked I. C. Sutton, Sr., what had happened to Hulsey. Mr. Sutton replied, "You take Joe Hulsey, he made more money in the last year than he ever did in his life. If he had done what he ought to do, he got off and in the toilet and started organizing the union."

Grayson Manes testified that a week or two following Hulsey's discharge in a conversation with I. C. Sutton, Sr., the latter said, "Joe Hulsey was a good guy, good worker, but he got in the toilet and tried to form a union. I had to let him go. I would any other boy."

I have found the explanation advanced by the Respondent for discharging Hulsey on October 24, 1956, insincere. However, the absence of a credible reason for the discharge does not alone establish that it was discriminatorily motivated. On the other hand, "direct evidence of a purpose to violate the statute is rarely obtainable"¹⁰ and, therefore, "the evidence to support [a] finding of . . . [discrimination] is necessarily circumstantial."¹¹ In this case, it is undisputed that Respondent was opposed to the unionization of his employees. During the early stage of the organizational campaign Respondent was content to adopt a passive role because he anticipated that the Union's drive would be unsuccessful. This expectation proved wrong. On October 23 Hulsey mailed to the Union's representative the final group of application cards which he had received from the employees and the news circulated generally through Respondent's plant that a majority of the employees had signed such cards. The next day Joe Hulsey, who was known or suspected by Respondent to be the Union's principal advocate in the plant, was summarily discharged without preliminary warning and without having been guilty of any contemporaneous misconduct sufficient by itself to precipitate the sudden decision. Respondent assigns as the reason for his action that Hulsey had been guilty of wasting time during the preceding month.¹² However, "if the Employer had really been disturbed by the circumstances it assigned as . . . [reason] for . . . [the discharge], and had had no other circumstance in mind, some word of admonition, some caution that the offending lapse be not repeated, or some opportunity for correction of the objectionable practice, would be almost inevitable." *E. Anthony & Sons, Inc. v. N. L. R. B.*, 163 F. 2d 22, 26-27 (C. A., D. C.), certiorari denied, 322 U. S. 773. This suggests that a more compelling consideration motivated Respondent's decision to terminate Hulsey's employment, namely, the latter's membership and activity in the Union. "For the Union was not welcomed by the persons having authority to discharge and employ. If no other reason is apparent, Union membership may logically be inferred." *N. L. R. B. v. Tex-O-Kan Flour Mill Company*, 122 F. 2d 433, 438-439 (C. A. 5). Such inference finds added support in this case from the fact that Respondent in his contemporaneous explanations of his action linked Hulsey's suspected organizational activities with his alleged practice of wasting

⁹ McElroy also testified that, in December 1956, I. C. Sutton, Sr., said to him, "If a man wanted communism he didn't have to go to Russia to get it, just get into the union. . . . Union or no union, said Joe Hulsey and Tom Cox wasn't going to come back there and run his business for him."

¹⁰ *Hartsell Mills Co. v. N. L. R. B.*, 111 F. 2d 291, 293 (C. A. 4).

¹¹ *N. L. R. B. v. Lund*, 103 F. 2d 815, 819 (C. A. 8).

¹² Respondent did not offer evidence of a single specific instance where Hulsey had been found visiting, spending an excessive amount of time in the restroom, or otherwise wasting time. Respondent's proof in this regard is limited to the mere statements of C. W. Claiborne and Irving Sutton, Jr., that Hulsey had been guilty of such misconduct. The reliability of their conclusions is suspect in view of the fact that neither had ever cautioned Hulsey about wasting time. It is not natural for supervisors to recommend the discharge of an employee with more than 3 years' seniority in the plant for such offense without any prior warning.

time.¹³ The inference of discrimination arising from the circumstances summarized above is further strengthened by the fact that immediately following Hulse's discharge Respondent began to exert other efforts to discourage employee support for the Union¹⁴ and in so doing unlawfully interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them by Section 7 of the Act.

I conclude and find that Joe Hulse was discharged on October 24, 1956, because of his union membership and activities and that Respondent by thus discharging Hulse, and by his failure thereafter to reinstate him, discriminated with regard to his hire and tenure of employment, thereby discouraging membership in the Union and interfering with, restraining, and coercing his employees in the exercise of the rights guaranteed in Section 7 of the Act.

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 and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

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

It has been found that the Respondent unlawfully discriminated in regard to the hire and tenure of employment of Joe Hulse. It will be recommended that the Respondent offer Joe Hulse immediate and full reinstatement to his former or a substantially equivalent position¹⁵ 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 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 the Respondent's offer of reinstatement, less net earnings during said period.¹⁶ Said loss of earnings shall be computed on a quarterly basis in accordance with the customary formula of the National Labor Relations Board.¹⁷ 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 terms of this recommended order, including pertinent social-security payment records, timecards, personnel records, and reports.

The Respondent's violations of the Act, found herein, disclose a fixed purpose to defeat self-organization by his employees. Because of Respondent's unlawful conduct and its underlying purpose the Trial Examiner is persuaded that the unfair labor practices found herein are related to other unfair labor practices proscribed by the Act, and that the danger of their commission in the future is to be anticipated from Respondent's conduct in the past. The preventive purposes of the Act will be thwarted unless the remedial order is coextensive with the threat. In order, therefore, to make effective the interdependent guarantees of Section 7 of the Act, to prevent recurrences of unfair labor practices and thereby to minimize industrial strife which burdens and obstructs commerce, and thus to effectuate the policies of the Act, it will be recommended that Respondent cease and desist from infringing in any manner upon the rights guaranteed employees by Section 7 of the Act.

¹³ The incriminating character of Respondent's explanations of Hulse's discharge is heightened by the fact that the evidence offered by Respondent to prove Hulse had been guilty of wasting time was of a vague and general nature and there was no evidence whatsoever that Hulse had been discovered promoting the Union's campaign during such periods as he was alleged to have been wasting time.

¹⁴ I have not summarized in this report the evidence of all the activities of I. C. Sutton, Sr., and his supervisors designed to persuade employees to withhold their support from the Union because the recitation thereof would be unnecessarily cumulative.

¹⁵ *The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch*, 65 NLRB 827.

¹⁶ See *Crossett Lumber Co.*, 8 NLRB 440.

¹⁷ *F. W. Woolworth Company*, 90 NLRB 289.

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. By discriminating in regard to the hire and tenure of employment of Joe Hulsey to discourage membership in and activity on behalf of the Union, the Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

2. By interfering with, restraining, and coercing his employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

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.]

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, I hereby notify my employees that:

I WILL NOT discourage membership in United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Local Union 2746, or any other labor organization, by discharging any of my employees, or in any other manner discriminating against them in regard to their hire or tenure of employment, or any term or condition of their employment.

I WILL NOT question my employees concerning their union membership or activities in a manner constituting interference, restraint, or coercion in violation of Section 8 (a) (1) of the National Labor Relations Act.

I WILL NOT threaten my employees that I will curtail operations, or will discriminate against employees who belong to or support any labor organization or will engage in other reprisals against employees to discourage their affiliation with or support of United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Local Union 2746, or any other labor organization.

I WILL NOT in any other manner interfere with, restrain, or coerce my employees in the exercise of the right to self-organization, to form labor organizations, to join, or assist United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Local Union 2746, or any other 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 National Labor Relations Act.

I WILL offer Joe Hulsey 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 he may have suffered by reason of his discharge.

All my employees are free to become or remain, or refrain from becoming or remaining, members of United Brotherhood or Carpenters and Joiners of America, AFL-CIO, Local Union 2746, or any other labor organization, except to the extent that this 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.

I. C. SUTTON HANDLE FACTORY,
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.