

filed to the recommendations concerning Weeks, Conterino, Doremus, Mangano, Meeuwisse, and Crossway, we adopt the Regional Director's recommendation as to those challenges. The Employer filed exceptions to the Regional Director's findings and recommendation as to Murphy, Lawrence, and Wanczyk.

The Regional Director found that Murphy, Lawrence, and Wanczyk held the status of laid-off employees on the election date, and that these employees had a reasonable expectancy of future employment by the Employer as of such date, which rendered them eligible to vote. Thus, his investigation disclosed that Murphy and Lawrence had worked for the Employer as machinists, 4½ and 1½ years, respectively, prior to being laid off on November 7, 1958. He found that pursuant to the departmental seniority in force in the plant, Murphy would be entitled to recall first, and Lawrence second, in the event additional machinists were required by the Employer. He found that Wanczyk, a braider, was first employed by the Employer on November 7, 1957; that prior to her layoff for economic reasons on November 7, 1958, she had twice been laid off and later recalled to work; and that her departmental seniority placed her next in line for recall in the event additional braiders were required. We disagree with the Employer's position in its exceptions that the Regional Director's conclusions and recommendations as to Murphy,¹ Lawrence, and Wanczyk are not based upon sufficient evidence. Accordingly, we adopt the Regional Director's findings that they were eligible to vote as of the time of the election, and shall order their ballots opened and counted.

[The Board directed that the Regional Director for the Second Region shall, pursuant to National Labor Relations Board Rules and Regulations, open and count the ballots of Weeks, Conterino, Doremus, Mangano, Murphy, Lawrence, and Wanczyk, and serve upon the parties a revised tally of ballots, including therein the count of said challenged ballots.]

¹ On February 11, 1959, the General Counsel issued a formal complaint based upon a charge filed by Murphy alleging that his November 7, 1958, layoff violated Section 8(a)(3) of the Act. Our finding herein as to Murphy's eligibility to vote in no way affects the issues and the possible disposition of the pending unfair labor practice case.

Wiese Plow Welding Co., Inc. and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO. *Case No. 18-CA-864. April 6, 1959*

DECISION AND ORDER

On September 17, 1958, Trial Examiner W. Gerard Ryan issued his Intermediate Report in this proceeding, finding that the Respondent
123 NLRB No. 73.

had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices and recommended that the complaint be dismissed with respect to such allegations. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief.

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

1. The Trial Examiner found and we agree that the Respondent independently violated Section 8(a)(1) of the Act by interrogating employees Floyd Moore, Glen Caldwell, and Cathleen Noe, and by threatening the assembled employees with a reduction of employment from 12 to 4 months at a meeting called by Respondent on August 16, 1957.

2. We also find, as did the Trial Examiner, and for the reasons stated by him, that Moore was laid off and not recalled by the Respondent in violation of Section 8(a)(1) and (3) of the Act.

3. Caldwell and Moore applied for membership in the Charging Union on July 29, 1957, and both engaged in union activities during the last week of their employment, August 12 through 16, 1957. Around August 1, 1957, Wiese, the Respondent's president, assigned Caldwell the task of inspecting forgings, in addition to his other chores. On August 12, 1957, Miller, Caldwell's immediate supervisor, placed him on a hammer crew. Miller neither told Caldwell to continue inspecting nor to stop, but both Miller and Caldwell testified that the hammer work was considered a fulltime job. On August 16, 1957, Wiese called a meeting of the employees at which time he engaged in activities which the Trial Examiner, and the Board, have found violative of Section 8(a)(1) of the Act. During the course of that meeting Wiese was specifically told by Moore of Caldwell's former union membership at a previous place of employment. Monday, August 19, 1957, Moore and Caldwell were terminated—Caldwell allegedly for failing to perform his inspection functions properly.

The Trial Examiner found that the General Counsel failed to prove that Caldwell's discharge was violative of the Act because the evidence does not establish that the Respondent had direct knowledge of Caldwell's activities on behalf of the Union and his applica-

tion for membership therein. We disagree with the Trial Examiner that direct knowledge of an employee's concerted or union activities is a *sine qua non* for finding that he has been discharged because of such activities. On the contrary, there is well established Board and court precedent that such knowledge may be inferred from the record as a whole.¹

On the basis of the entire record in this case and particularly the following points in the record we conclude that such an inference should and must be drawn: (1) the small number of employees at the plant (approximately 13); (2) the fact that Caldwell spoke in favor of the Union to other employees during the last week of his employment;² (3) Wiese's knowledge that Caldwell had been a union member at a previous place of employment; (4) the timing of the discharge, which took place immediately after union activity became apparent; (5) the fact that the only two men who were active on behalf of the Union were simultaneously discharged; and, (6) the abrupt discharges without prior warning such as had been given to employees in the past. Indeed, in light of the specific information given Wiese by Moore at the August 16 meeting, with regard to Caldwell's prior union membership, we think direct knowledge of Caldwell's activities may be imputed to the Respondent.

Respondent contends that Caldwell was discharged because he failed to perform his inspection duties properly, thereby necessitating the regrinding of approximately 700 defective plow points.

However, we find this asserted reason was not the real one in view of the fact that Caldwell was summarily discharged, although: (1) Caldwell told Wiese in Miller's presence that he had been reassigned by Miller to the fulltime job with the hammer crew and had not done any inspecting during the period when the defective plow edges had been made; and (2) the cost of repair of the parts found defective was admittedly small (\$7.20 to \$7.50).

Viewed against the background of interference, restraint, and coercion, consisting of interrogation and threats of reprisal found to be violative of Section 8(a)(1) of the Act, and of the Respondent's discrimination in violation of Section 8(a)(3) with respect to employee Moore, and upon the entire record, we find that Caldwell was discharged in violation of Section 8(a)(3) because of his known interest in, and activities in behalf of, the Union.

ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the Labor Management Relations Act the National Labor Rela-

¹ For example see *Radio Officers' Union of the Commercial Telegraphers Union, AFL v. N.L.R.B.*, 347 U.S. 17 (1954); and *Pyne Moulding Company, Inc.*, 110 NLRB 1700.

² Contrary to the finding of the Trial Examiner, the record discloses that Caldwell engaged in such activity more than once.

tions Board hereby orders the Respondent Wiese Plow Welding Co., Inc., Perry, Iowa, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in and activities on behalf of International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO, or any other labor organization by laying off employees, discharging employees, or in any other manner discriminating against its employees in regard to their hire or tenure of employment.

(b) Threatening its employees with loss of employment, bonuses, paid holidays, paid vacations, or other benefits if they engage in union activities or interrogating its employees as to their union activities, 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 labor organizations, to join or assist International Union, United Automobile, Aircraft and Agricultural Implement Workers 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 and protection, or to refrain from engaging in such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization 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 Floyd Moore and Glen Caldwell immediate and full reinstatement to their former or substantially equivalent positions and make them whole for any loss of earnings suffered as a result of the discrimination against them in the manner provided in "the Remedy" section of the Intermediate Report.³

(b) Post at its plant at Perry, Iowa, copies of the notice attached hereto marked "Appendix."⁴ Copies of said notice, to be furnished by the Regional Director for the Eighteenth Region, shall, after being duly signed by an authorized representative of the Respondent, be posted by the Respondent immediately upon receipt thereof and maintained by it for a period of 60 consecutive days thereafter in conspicuous places, including all places where notices to employees

³ In accordance with our usual practice, the period from the date of the Intermediate Report to the date of this Decision and Order will be excluded in computing the amount of back pay due Glen Caldwell since the Trial Examiner did not recommend reinstatement or an award of back pay as to him.

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."

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.

(c) 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 records necessary to analyze the amount of back pay due and the rights of Floyd Moore and Glen Caldwell under the terms of this Order.

(d) Notify the Regional Director for the Eighteenth Region in writing within 10 days from the receipt of this Decision and Order, what steps it has taken to comply therewith.

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

APPENDIX

NOTICE TO ALL EMPLOYEES

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

WE WILL NOT discourage membership in or activities on behalf of International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO, or any other labor organization, by laying off or discharging employees or in any other manner discriminating against our employees in regard to their hire or tenure of employment.

WE WILL NOT threaten our employees with loss of employment, bonuses, paid holidays, paid vacations or other benefits if they engage in union activities, or interrogate our employees as to their union activities, in a manner constituting interference, restraint, or coercion in violation of Section 8(a)(1) of the Act.

WE WILL NOT in any other 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 International Union, United Automobile, Aircraft and Agricultural Implement Workers 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 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.

WE WILL offer to Floyd Moore and Glen Caldwell immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of our discrimination against them.

All our employees are free to become or remain or to refrain from becoming or remaining members of International Union, United Automobile Aircraft and Agricultural Implement Workers of America, AFL-CIO, 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.

WIESE PLOW WELDING Co., INC.,
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

A charge and an amended charge having been filed and served, a complaint having been issued and an answer having been filed in the above-entitled case, a hearing pursuant to notice was held before W. Gerard Ryan, the duly designated Trial Examiner.

The issues presented by the pleadings are whether Wiese Plow Welding Co., Inc., herein referred to as the Respondent, violated Section 8(a)(1) of the Labor Management Relations Act, 1947, herein referred to as the Act, by unlawful interrogation and threats of reprisal; and Section 8(a)(3) and (1) of the Act by discharging employee Glen M. Caldwell and laying off employee Floyd Moore. The above-named Union is herein referred to as the Union.

At the hearing all parties were represented, were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the issues, to argue orally upon the record, and to file briefs and proposed findings of fact and conclusions of law. The parties waived oral argument. The Respondent has filed a motion to dismiss the complaint and a brief.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The complaint alleged, the answer admitted, and I find that the Respondent, at all times herein material, has been and now is a corporation located in Perry, Iowa, where it is engaged in the manufacture of tillage tools and repair points. In the calendar year 1957, the Respondent's sales of its products shipped to points outside the State of Iowa were valued in excess of \$50,000. It is conceded and I find that the Respondent at all times material herein is and has been engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

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

III. THE UNFAIR LABOR PRACTICES

A. *The violation of Section 8(a)(1)*

The complaint alleged that the Respondent since on or about August 16, 1957, has interfered with, restrained, and coerced its employees in violation of Section 8(a)(1) of the Act, by its president, Lee O. Wiese, on or about August 16, 1957, interrogating its employees regarding their union activities and membership; and threatening them with reprisals if they engaged in concerted union activities or designated a union as their bargaining representative.

The Respondent's supervisors are Lee O. Wiese, president; Martin J. Miller, superintendent of the plant; and Dude Rector (supervisor of employee Colleen Noe) who, for purposes of brevity, will be referred to by their surnames.

In the summer of 1957, the Union herein was engaged in organizing activities at the plant of the Osmonson Manufacturing Company in Perry, Iowa. That company was engaged in the same line of business as the Respondent herein.

On July 29, 1957, Floyd Moore and Glen M. Caldwell, employees of the Respondent, went together to a hotel in Perry and signed cards applying for membership in the Union. Neither informed Wiese or Miller that they had signed cards. Moore did not tell any employees that he had signed a card and there is no evidence that Caldwell ever told any employees that he had signed a card.

About the time the Union herein began its organizing activities in the plant of the Osmonson Company, Moore was also speaking to his fellow employees in the Respondent's plant about the advantages of the Union. Moore had formerly been a member of a union during the 7½ years he worked at the packinghouse of Swift & Company in Perry, Iowa, until it closed, prior to the time of his employment with the Respondent. Moore spoke to his fellow employees, including Eldon Rex and August Frantz, in the plant about the Union during lunch hours for 6 or 7 times in a period of 3-4 weeks, prior to August 19. On August 15 or 16, when Moore was returning to the plant, Wiese was talking to August Frantz across the street from the plant; and when Moore approached, Wiese asked him what he thought about the Union after Wiese had remarked that he did not think the Union would be good enough in the Respondent's plant. Moore replied that he thought so. On the morning of August 16, 1957, employee Colleen Noe was told by Rector, that Wiese wanted her to go to Wiese's office. She went as directed. Noe, who was a reluctant witness, testified that Miller and Rector were present in Wiese's office; that Wiese asked her what she thought about the Union to which she replied that she did not like a union because of her past experience with one. Wiese asked her if she had heard of a union and she replied that she had heard rumors. When Wiese asked her who had talked to her about the Union she named Floyd Moore. Her memory failed her when she was asked if she named any other employees and she did not think she named Glen M. Caldwell. Wiese testified that in that interview, Noe told him that Moore had belonged to a union at the Swift & Company packinghouse in Perry; that Noe told him the boys were talking among themselves about the Union and that she mentioned Moore when she was mentioning all the rest of the group. Wiese further testified that Noe told him that Floyd Moore was talking over on the bench with other employees in discussion of the Union. Caldwell testified there was a lot of union talk going on among the employees around the plant and he stated his views to them as part of it on one occasion at break time around 3 p.m. during the week beginning August 12 to August 16, when he spoke to some of the employees at the plant about the advantages of a union. During the morning of August 16, about 9 a.m., Wiese questioned Caldwell, asking him if he had heard any of the "guys" talking about the Union. Caldwell said he had not. Caldwell said further to Wiese, "The only thing here is naturally guys talking union about another plant as being organized." When Wiese said he recalled only two employees who had been members of a union, Caldwell asked who they were and Wiese named Floyd Moore and Rex Knight. Caldwell did not enlighten Wiese then that he, too, had been a member with Moore. During the conversation, it was also brought out that only about two or three votes would be necessary to get the Union into the Respondent's plant.

Miller testified that prior to August 16, he had never heard the employees "talking union" among themselves at the plant; but that, through hearsay, he heard there had been talk of the Union—that he could not help but know.

On Friday, August 16, 1957, Miller notified the employees that Wiese would speak to them at break time (3 p.m.). The employees gathered together at the time appointed. Wiese informed them they could join the Union if they wanted

to—that he could not stop them from joining; but if the Union did organize the plant he would add another shift and thereby operate the plant 4 months instead of 12 months per year; and there would be an end to their bonuses, paid vacations, and paid holidays. During the discussion, Wiese inquired from Moore about vacations, paid holidays, and paid vacations at Swift & Company, above referred to, when Moore had been employed there. Once or twice before answering, Moore turned to Caldwell for confirmation of his answers, whereupon Wiese asked Caldwell directly if he, too, had been a member of the union. When Caldwell replied that he had been when he worked at the packinghouse, Wiese remarked, "I didn't know that."

The foregoing interrogation by Wiese of Moore, Caldwell, and Noe as to their opinions concerning the Union, added to further questioning of Noe concerning the activities of all the rest of the employees, coupled with Wiese's threats to reduce employment from 12 months to 4 months per year and to eliminate bonuses, paid holidays, and paid vacations if the Union succeeded in organizing the employees far exceeded the limits of free speech; and I accordingly find constituted interference, restraint, and coercion by the Respondent in violation of Section 8(a)(1) of the Act.

B. *The violation of Section 8(a)(3)*

The complaint alleged and the answer denied that on or about August 19, 1957, the Respondent terminated the employment of Glen M. Caldwell and laid off Floyd Moore, and at all times since has failed and refused to reinstate them for the reason that they joined and assisted the Union and otherwise engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection, all with the intent thereby to discourage membership in the Union and the concerted activities of Respondent's employees.

1. Glen M. Caldwell

From December 1, 1952, to January 2, 1957, Caldwell worked as a forgerman (also referred to as a hammerman) for the Respondent. A crew of three men worked on the 2,000-pound hammer, and a crew of two men worked on the 1,500-pound hammer. Up to January 2, 1957, Caldwell worked about equally on both hammers, usually working 1 day on the 2,000-pound hammer and the next day working on the 1,500-pound hammer. From January 2, 1957, until the latter part of May 1957, Caldwell was out because of illness which necessitated the removal of a kidney. He returned to work in the latter part of May and until August 12, 1957, did odd jobs, running the rattler, working in the machine shop, grinding dies, and cleanup work, including sweeping the house of Wiese. On August 1, 1957, Caldwell was called to the office of Wiese. Wiese asked him if he would be interested in doing inspecting work as Wiese was concerned by the number of defective items that were being manufactured. It was understood that this inspection work would take not more than 45 minutes in the morning and the same in the afternoon during which times Caldwell was to inspect the furnace, hammers, and shears to see that they were in proper working condition and to see that the dies were set and that the points were coming out in first-class condition. Caldwell accepted that assignment and his pay was increased from \$1.25 to \$1.30 per hour. In addition to the inspection work, Caldwell continued to do odd jobs working in the machine shop on dies from August 1 to August 12.

On August 12, 1957, Miller told Caldwell that employee Lester Pohl had quit, leaving him short one man, and asked Caldwell if he thought he could stand the heat working with the crew on the 2,000-pound hammer. Caldwell said he would try the job. He was given an increase in pay from \$1.30 to \$1.40 per hour for that work assignment. Miller did not tell him he was to continue inspecting work when he assigned him to the hammer crew on August 12. Caldwell worked 32 hours during the 5-day week beginning Monday, August 12, as a member of the hammer crew on the 2,000-pound hammer with employees Rex and Knight. Rex and Knight did the forging and Caldwell took the forged edges from the trimming die and stacked them on a cart. For the 32 hours that Caldwell worked on the hammer crew he was paid \$1.40 per hour and for the remaining 8 hours during which he did factory labor work he was paid \$1.15 per hour.

It has been shown, *supra*, that Caldwell went to a hotel in Perry, Iowa, with Floyd Moore and both signed application cards to join the Union on July 29;¹

¹ I find no merit to the Respondent's contentions that it is necessary for the General Counsel to prove that as a result of the signed applications the applicants thereafter were admitted to membership in the Union.

that Caldwell on one occasion in the week beginning August 12 spoke to fellow employees about the advantages of a union during the break time at 3 p.m.; his interrogation by Wiese on August 16 and later during Wiese's remarks to the employees at 3 p.m. on the same day informing Wiese when asked that he had belonged to a union prior to his employment by the Respondent in 1952.

On Monday, August 19, 1957, when Caldwell reported for work, Miller informed him that Wiese wanted to see him in the office. Miller went to the office where Wiese had some defective plow edges that were made during the previous week on his desk which he showed to Caldwell. Wiese said he would hire and fire until he could find someone to look after the job of inspecting properly. Caldwell told Wiese he had not done any inspecting that week because he was part of the hammer crew. Wiese said to him: "You're through." The record contains conflicting testimony as to whether Caldwell or anyone else did any inspecting work that week. Miller testified that he (Miller) did not make any inspections, but Caldwell later testified that he (Caldwell) had shut down the hammer once during that week because it was producing faulty work. Caldwell testified that during that week Miller and employee Zimmerle did inspection work.

The record shows that approximately 700 defective plow points were reground as a result of their faulty manufacture in the week beginning August 12. The Respondent has introduced into the record evidence tending to support its defense that Caldwell was discharged for cause and not for the reasons alleged in the complaint. There is no doubt that the discharge of Caldwell was abrupt and without prior warning such as had been given to some employees in the past; that no complaints had ever been made about Caldwell's other work which had not included inspection duties; all of which evidence may support, in a proper case, an inference that a discharge was violative of the Act. It is a necessary prerequisite before a violation of Section 8(a)(3) can be found to establish that the Respondent knew of Caldwell's signing an application card for membership in the Union and had knowledge of his union or concerted activities. When that has been established, the question then arises as to whether the real and motivating reasons for Caldwell's discharge were discriminatory reasons violative of the Act. If it *cannot* be established that the Respondent had knowledge of Caldwell's signing the union card and of his activities on behalf of the Union, it is unnecessary to examine further; because an employer may discharge for any cause or no cause provided only the discharge be not for reasons violative of the Act. If the Respondent had no knowledge of Caldwell's concerted activities, it follows that it could not have discharged him because of such activities.

Thus the underlying question presented is what union activities did Caldwell participate in that were known to the Respondent and which could have motivated the Respondent to discharge him on August 19, 1957. Caldwell signed a card for the Union away from the plant on July 29, but there is no evidence that the Respondent knew it. By his own testimony, Caldwell's other union activity took place on only one occasion in the week of August 12, during break time (3 p.m.) when he discussed the Union with other employees. There is no evidence in the record that the Respondent knew of that isolated instance. The only evidence suggesting a discriminatory motive for his discharge is that Wiese learned from Caldwell on August 16 that Caldwell had formerly been a member of a union prior to his employment in 1952 by the Respondent. In the absence of any knowledge by the Respondent that Caldwell had signed a union card or had engaged in any concerted activities while employed by the Respondent, I find that the Respondent's knowledge acquired on August 16 that Caldwell had been a member of a union prior to December 1952, is insufficient to sustain an inference that his discharge on August 19 was discriminatorily motivated in violation of the Act. Accordingly, I find that the General Counsel has failed to prove by the required preponderance of evidence that Caldwell was discharged for the reasons alleged in the complaint. I shall recommend that the complaint with respect to the discharge of Caldwell be dismissed.

2. Floyd Moore

Moore was employed by the Respondent from July 9, 1956, until he was laid off on August 19, 1957. From July 9, until November 1956, Moore did outside work and from November he worked on the edge furnace until August 19, 1957. Before Moore began work on the edge furnace, Wiese told him he did not think he could work with the hammer crew because of Moore's arm which had been

injured in the Service. On the edge furnace work, steel is heated in a furnace and then run through an edge roller.

Moore signed an application card for membership in the Union on July 29, at a hotel in Perry, Iowa. He was accompanied by Glen M. Caldwell who also signed a card at the same time. Moore did not inform Wiese or any of his fellow employees that he had signed a card. He discussed the Union in the plant with other employees during lunch hours, six or seven times, over a period of 3 to 4 weeks prior to August 19, 1957. Wiese learned from questioning Colleen Noe, as set forth *supra*, that Moore had belonged to a union at the packinghouse of Swift & Company in Perry, Iowa, prior to his employment with the Respondent. Noe also told Wiese that Moore had talked with other employees in discussion of the Union and that Moore had also talked to her about the Union. The questioning by Wiese as to what Moore thought of the Union on August 15 or 16, and the events on August 16 at 3 p.m. when Moore spoke to the employees have been set forth above.

Following the meeting on Friday afternoon August 16, in which Wiese threatened the employees with reprisals if the Union organized the plant, on the next working day, Monday, August 19, Moore was summoned to Wiese's office and laid off. Wiese told him at the time that he would have to lay him off because the hammermen were griping that Moore was making more money than they were. Wiese said in answer to Moore's inquiry that Moore's work had been "okay."

The Respondent offered evidence that Moore was laid off because there was no further edge furnace work then to be done and that Moore had refused to do hammerwork because of an injured arm; and that Wiese further told him that if the Respondent ever started operations using a hammer smaller than the 1,500-pound hammer, Moore should drop back to see if it was to be operated and that Wiese would give him an opportunity to try it. The Respondent thereafter did not put that hammer in operation. The Respondent introduced evidence that there was no edge furnace work after Moore's layoff until sometime in October and that no one was hired until October 25, 1957, when Russell Strait was hired. Wiese denied that Strait was hired as a replacement for Moore pointing out that Strait was also working on the hammer and he could not qualify as a hammerman unless he had first worked 40 hours on the hammer. It was then stipulated that Strait worked from October 25, 1957, until May 5, 1958, during which time he worked a total of 1,045 hours of which 490 hours represented edge furnace work and 538½ hours represented labor work, and 16½ hours represented hammerwork. The work on the hammer was intermittent over a period of 4 days. Thus it is clear that Strait did the same work as Moore had done, with the exception of 16½ hours of hammerwork. As an added reason for laying off Moore, Wiese and Miller testified that Moore had declined to do hammerwork because of his injured arm. Moore testified that he had told Wiese he would have to try the hammerwork first in order to see if he could do it and was never given the opportunity. Moore denied Miller's testimony that he could not or would not go on the hammerwork. I credit Moore's denials. Employees King, Rex, and Frantz who did hammerwork all testified that they had never complained to Wiese that Moore was making more money than they were.

The issue presented by the layoff of Moore is not whether there existed on August 19, 1957, some justifiable ground for his layoff but whether the reasons now advanced were actually those which led to his layoff and were not based on any ground condemned by the Act. The existence of some justifiable ground for discharge or layoff is no defense if it was not the "moving cause." (*Wells, Incorporated v. N.L.R.B.*, 162 F. 2d 457, 460 (C.A. 9)).

The asserted reason given by Wiese to Moore when laying him off that the hammermen were griping that he was earning more money than they did is without substance. The hammer crew testified they had never made such statements. While the record shows that the Respondent hired no one until October 25, when it hired Strait, it is also true that Strait did the same work that Moore had done with the exception of 16½ hours of intermittent work over a period of 4 days on the hammer.

Notwithstanding the evidence relating to the curtailment of the edge furnace work and Moore's possible inability to work as a hammerman, there is substantial evidence in the record to establish that the "moving cause" and the real reason for Moore's layoff was an intent by the Respondent to forestall and discourage organizational activities by its employees and membership by them in the Union.

The meeting of the employees called by Wiese on August 16, followed quickly his questioning of Colleen Noe as to the extent of union activities at the plant, wherein he ascertained that Moore was identified as talking to her and stating to other employees his views concerning the Union. In his talk to the employees, Wiese left little to their imagination as to what would happen if the Union organized the plant.

Viewed against the background of interference, restraint, and coercion consisting of interrogation and threats of reprisal found to be violative of Section 8(a)(1) of the Act, above, and upon the entire record, I find that the layoff of Floyd Moore on August 19, 1957, and subsequent failure to recall him were motivated by Moore's interest in, and activities on behalf of, the Union, which were known to the Respondent and which precipitated his layoff, thereby constituting discrimination with respect to his hire and tenure of employment to discourage membership in the Union in violation of Section 8(a)(3) 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 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 certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent has engaged in interrogation of employees concerning the Union, and has interfered with, restrained, and coerced its employees in derogation of their rights secured by Section 7 of the Act, I shall recommend that it cease and desist therefrom.

Having found that the Respondent on August 19, 1957, discriminatorily laid off employee Floyd Moore and has since failed to reinstate him, I shall recommend that the Respondent be ordered to offer him immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority and other rights and privileges, and make him whole for any loss he may have suffered because of the discrimination against him by payment of a sum of money equal to the amount he normally would have earned as wages from the date of the discrimination to the date of the offer of reinstatement, less his net earnings during said period, with back pay computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth*, 90 NLRB 289.

In view of the nature of the unfair labor practices committed, the commission of similar and other unfair labor practices reasonably may be anticipated. I shall therefore recommend that the Respondent be ordered to cease and desist from in any manner infringing upon rights guaranteed to its employees by Section 7 of the Act.

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

CONCLUSIONS OF LAW

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

2. By interfering with, restraining, and coercing its employees in the exercise of 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. By discriminating with respect to the hire and tenure of employment of Floyd Moore, thereby discouraging the free exercise of the rights guaranteed by Section 7 of the Act and discouraging membership in and activities for the above-named labor organization, the Respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

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

[Recommendations omitted from publication.]