

Wilma Avery, Bessie Tomlinson, Janie Mae Muldrow, Almetta Davis, Annie G. Rogers, and Carl Johns, and serve upon the parties a supplemental tally of ballots, including therein the count of the challenged ballots.]

CHAIRMAN LEEDOM and MEMBER BEAN took no part in the consideration of the above Supplemental Decision and Direction.

"M" System, Inc., Mobile Home Div., Mid-States Corporation and Lodge 1243, International Association of Machinists, AFL-CIO.
Case No. 16-CA-1165. May 26, 1959

DECISION AND ORDER

On January 29, 1959, Trial Examiner Ralph Winkler issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

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

The Board has reviewed the rulings of the Trial Examiner made 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,¹ and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

¹ Upon an examination of the entire record in the case, we find without merit the Respondent's allegations of improper conduct and asserted bias on the part of the Trial Examiner. There is no basis for finding that bias or partiality existed merely because the Trial Examiner participated in the examination of witnesses and resolved important factual conflicts arising in the proceeding in favor of the General Counsel's witnesses. Indeed, it is the duty of the Trial Examiner to inquire into the facts, and to call, examine and cross-examine witnesses. See Sec 102.35 of the Board's rules. Cf. *Indianapolis Glove Company*, 88 NLRB 986. The Trial Examiner's conduct herein was not improper. Further, as the Supreme Court has stated, ". . . [T]otal rejection of an opposed view cannot of itself impugn the integrity or competence of a trier of fact." *N.L.R.B. v. Pittsburgh S.S. Company*, 337 U.S. 656, 659. Moreover, as it is the Board's established policy not to overrule a Trial Examiner's resolutions as to credibility except where, as is not the case here, the clear preponderance of all the relevant evidence convinces it that the resolutions were incorrect, we find, contrary to the Respondent's contention, no basis for disturbing the Trial Examiner's credibility findings. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, encl. 188 F. 2d 362 (C.A. 3).

ORDER

Upon the entire record in this case and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, "M" System Inc., Mobile Home Div., Mid-States Corporation, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Lodge 1243, International Association of Machinists, AFL-CIO, or in any other labor organization of its employees by discharging, refusing to reinstate, or in any other manner discriminating against them in regard to hire or tenure of employment or any term or condition of employment.

(b) Threatening discharge for union membership and activities or in any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Lodge 1243, International Association of Machinists, AFL-CIO, 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 as guaranteed in Section 7 of the Act, and to refrain from any and all such activities, except to the extent that such rights 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 James R. Walsh immediate and full reinstatement to his former or a substantially equivalent position without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole for any loss of pay he may have suffered by reason of the discrimination against him, in the manner 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 the amount of back pay due and the right of reinstatement under the terms of this Order.

(c) Post at its Texarkana plant, copies of the notice attached hereto marked "Appendix."² Copies of said notice to be furnished by the Regional Director for the Sixteenth Region, shall, after being duly signed by Respondent, be posted immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter in con-

² 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."

spicuous places where notices to employees are customarily posted. Respondent shall take reasonable steps to insure that such notices are not altered, defaced, or covered by any other material.

(d) Notify the aforesaid Regional Director in writing, within 10 days from the date of this Order, what 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, as amended, we hereby notify you that :

WE WILL NOT discourage membership in Lodge 1243, International Association of Machinists, AFL-CIO, or in any other labor organization of our employees, by discharging or in any other manner discriminating against them in regard to their hire or tenure of employment or any term or condition of employment.

WE WILL NOT threaten to discharge our employees for union membership and activities or 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 the above-named union 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, 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 authorized by Section 8(a) (3) of the Act. All our employees are free to become or remain members of the above-named or any other labor organization.

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

“M” SYSTEM, INC., MOBILE HOME
DIV., MID-STATES CORPORATION,
Employer.

Dated_____ By_____

(Representative) (Title)

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

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

Upon charges filed by the Union (Lodge 1243, International Association of Machinists, AFL-CIO), the General Counsel of the National Labor Relations Board issued a complaint, dated November 6, 1958, against the aforementioned Respondent Company, alleging that Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Labor Management Relations Act, 1947, 61 Stat. 136, herein called the Act. Respondent filed an answer denying the unfair labor practices alleged.

Pursuant to notice, a hearing was held on December 2-3, 1958, at Texarkana, Texas, before the duly designated Trial Examiner. All parties were represented at the hearing and were given full opportunity to examine and cross-examine witnesses, to introduce relevant evidence, to present oral argument at the close of hearing, and thereafter to file briefs.¹

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

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is a Mississippi corporation with a plant in Texarkana, Texas, where it manufactures house trailers. During the past 12 months, Respondent's interstate sales and purchases, respectively, exceeded \$50,000. Respondent is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of the Act.

III. THE UNFAIR LABOR PRACTICES

The complaint, as amended at the hearing, alleges that Respondent discriminatorily discharged James R. Walsh on August 27, 1958, and that Respondent further violated the Act in other specified respects through the conduct of Foremen Duke Pettway and Floyd Kelley. Respondent asserts that it discharged Walsh for violating an alleged plant rule reading as follows: "The selling of merchandise, the circulation of petitions, or solicitation of subscriptions or contributions is strictly prohibited on company property except as approved by the Personnel Department."

Walsh was in Respondent's employ from January 1955 until his discharge in August 1958. According to Foreman Earl Williams, Walsh was a "pretty good" employee. Walsh was very active in organizing the employee body. A Board election on the Union's petition was held in June 1956; the Union lost the election and it thereafter filed unfair labor practice charges against Respondent in Case No. 16-CA-906, based on Respondent's alleged interference with the election.² Walsh testified at the hearing in that case held in January 1957; and in preparation for such hearing he met earlier that same month with an attorney (Allen Schoolfield) for the General Counsel at a motel in Texarkana. At work on January 10, Plant Superintendent John Liskay told Walsh that he, Liskay, had been waiting at the motel for 5 hours on the aforementioned occasion to find out whether Walsh "was with the Union or not." Liskay further told Walsh, according to Walsh's undenied testimony, that "he [Liskay] was sorry to discover that [Walsh] had gotten affiliated with the union activities, that the Company had some promotions for me, but inasmuch as I'd gotten mixed up with the Union, that they could do nothing for me from that standpoint."

On or about January 22, 1957, the day after Walsh testified in behalf of the General Counsel at the aforementioned hearing (Case No. 16-CA-906), Liskay summoned Walsh to the office of Respondent's plant manager, Henry Eckstein. According to Walsh's credible testimony, Eckstein thereupon told Walsh in Liskay's presence that he, Eckstein, was not holding it against Walsh for testifying against Respondent, "but that he [Eckstein] did not want me to get in trouble with the Labor Board by signing these [union] authorization cards in his plant." Eckstein told Walsh that such activity was "all right with him [Eckstein], but he [Eckstein] did

¹ The complaint was amended at the hearing by striking all portions thereof referring to overtime work.

² On July 5, 1957, the Board issued its Decision and Order sustaining the complaint in that matter. 118 NLRB 502.

not want me [Walsh] to do it because it was against the NLRB rules."³ I shall refer to this conversation as the alleged reprimand incident.

The Union had an organizing office across the street from Respondent's plant and the union advocates also met at a cafe in the vicinity. Walsh remained active in the Union's organizing drive after the first election. Another election was held in November 1957, which the Union won. Walsh was elected chairman of the Union's negotiating committee at about the same time, and he held such office until his discharge.

Eckstein directed Foreman Earl Williams to discharge Walsh on August 27, 1958, as discussed hereinafter. Eckstein testified that he took such action because of his alleged warning to Walsh in September 1957 (Eckstein had not yet changed the date of the reprimand incident, related above) and because of an incident involving employee Roy D. Jenkins. Apart from these two occasions, according to Eckstein, no one ever informed Eckstein that Walsh had engaged in union activities during working hours.

Eckstein testified that the aforementioned reprimand occasion arose out of a report from Superintendent Liskay that one of the employees had complained to Liskay that Walsh was "annoying him in trying to get him to sign up in the Union." Testifying that Liskay reported the other employee's name to him at the time, Eckstein further testified that he could not remember the name of this other employee. Liskay, as already stated, did not testify. (It should be stated at this point that Walsh testified that he engaged in no union solicitation on company time and property and that, in so acting, he was following instructions of Union International Representative Harris.) I have searched this record and find only two rank-and-file employees who testified to having spoken to either Liskay or Eckstein concerning Walsh. The first employee, Respondent witness Dewey Roberts, testified that Walsh asked him to join the Union during working hours, that the conversation lasted 2 or 3 minutes, that he reported the conversation to Liskay at the time, and that the incident occurred about 6 or 8 weeks before the November 1957 election. This testimony would place the alleged incident in September or October 1957, and thus would fit in chronologically with Eckstein's discredited original testimony concerning the time of the so-called reprimand incident. Respondent witness David Sumrall, the second employee, testified that about 2 months before the November 1957 election, Walsh asked him to join the Union shortly after the 1 o'clock work whistle, that Sumrall informed Foreman Pettway concerning the incident the same day, that he (Sumrall) was summoned that same or the next day to Eckstein's office on which occasion Eckstein inquired about the conversation with Walsh, and that Eckstein then took a notarized statement from him (Sumrall). Sumrall, on cross-examination, was unable to fix even the year of the 1957 election. It further appeared that the mentioned affidavit placed the conversation on company property but at approximately 10 minutes before working hours. Roberts and Sumrall were wholly discreditable witnesses, whose testimony is worthless.

We consider now the Jenkins' incident. Foreman Earl Williams testified that he observed but did not hear an argument between Walsh and employee Roy

³ Eckstein, on direct examination, denied discussing union solicitation with Walsh in January 1957 and he testified in effect that he first mentioned such matter to Walsh in August or September 1957 in the presence of Superintendent Liskay and Office Manager Richard Curran. Curran was Respondent's first witness on this matter and on direct examination he testified in effect that the only statement Eckstein made to Walsh was that Walsh realized he was not to engage in union solicitation on "company time," after which Walsh allegedly mumbled something in reply. On cross-examination, Curran testified that he was not certain that Eckstein used the words "company time" or "company property." Although not asked, Curran never mentioned in his recital of the matter that Liskay was present. Eckstein was Respondent's next and only other witness regarding this incident, and he testified in effect that he reprimanded Walsh for engaging in union activities in violation of company rules prohibiting such conduct on company time and property and that he warned Walsh that a repetition of such conduct would result in discharge. Respondent did not call Superintendent Liskay as a witness or state any reason for not doing so. Curran denied that this incident occurred in January 1957 and he positively placed the time in August or September 1957 "just before" a particular industry show. Testifying on direct examination after Curran, Eckstein also placed the incident in August or September, as stated above. Eckstein later recanted on this matter on cross-examination and finally admitted to the same approximate date to which Walsh testified. On the basis of their respective testimonies and my demeanor observations of them as witnesses, I am convinced and find that Walsh was an honest, reliable witness and that neither Eckstein nor Curran was. Indeed, I do not believe that Curran was even present on the occasion in question.

Jenkins during working hours on August 27, 1958, that he asked Jenkins what the trouble was, and that the only thing Jenkins told him was that Walsh had asked Jenkins "when was he [Jenkins] going to join [the Union] or something like that." Williams testified that he didn't know whether a no-solicitation rule was in effect and that he thereupon reported the Jenkins incident to Eckstein and asked Eckstein concerning such rule. According to Eckstein and Williams, Eckstein then summoned Jenkins and asked Jenkins what Walsh had said or done and Eckstein then asked Jenkins to execute an affidavit concerning the incident. Jenkins thereupon executed an affidavit in Eckstein's office stating in substance that during working hours that day, Walsh approached Jenkins and asked Jenkins to join the Union and that Walsh advised Jenkins that Jenkins "should not be the last one to join." Eckstein testified that this was the entirety of Jenkins' report on that occasion. Eckstein and Williams testified that Eckstein thereupon instructed Williams to discharge Walsh. After work that day, Williams notified Walsh of the discharge; Williams told Walsh, when the latter asked for an explanation, that Eckstein "knows the answer, I don't." Walsh wrote to Eckstein requesting reasons for the discharge, to which Eckstein replied in writing that "You were discharged for neglecting your work; interfering with the work of others; and, soliciting union memberships during working hours, on company time and company property, all after previous warnings that this practice was in violation of company rules." Eckstein testified that all these reasons related solely to the Jenkins and the aforementioned "reprimand" incident. Eckstein testified that he took the discharge action without discussing the Jenkins matter with Walsh.

Walsh and Jenkins gave somewhat different versions of their aforementioned discussion. Walsh testified that Jenkins approached him at work and expressed disappointment at the Union's failure to send flowers on the recent death of Jenkins' mother. According to Walsh, this was the only subject of the conversation and it ended with Walsh's statement of regret at the omission. As long before this incident as July 1957, Jenkins had signed a union application card and paid his initiation fees. Jenkins, on the other hand, testified that he had never been initiated in the Union and that Walsh, on this occasion, approached him to "come and join" the Union and that Walsh called him "two-faced" during the conversation. Jenkins testified that he expressed his "hurt" to Walsh concerning the flowers during the discussion and that, in view of this neglect, he didn't consider it appropriate for Walsh to mention his, Jenkins', union membership. Jenkins testified that he related this entire conversation, including the flowers matter, to Williams and Eckstein. (Williams and Eckstein both deny, it is recalled, that Jenkins mentioned anything about flowers.) I am satisfied that Walsh was a truthful witness and that Jenkins is unreliable.⁴

On the day following Walsh's discharge, according to the testimony of employees Bennice Ramsey and William Sanders who were working together at the time, Ramsey told Sanders and another employee something to the effect that the Union would strike if Respondent did not recall Walsh. Foreman Floyd Kelley approached them at that point and exclaimed, according to their credible testimony, "you better shut up and go to work and quit talking about the Union strike or you're liable to get what your friend James Walsh got."⁵

Also on the day after Walsh's discharge, according to the credible testimony of employees Johnny Davis and Donald Smith, Davis asked Smith during working hours whom to contact in order to join the Union and Smith replied that he, Smith, wouldn't belong to it but would find out for Davis during the noon hour. Foreman Duke Pettway approached Davis and asked what Davis was doing with Smith. Davis informed him, whereupon Pettway told Davis, according to the credible testimony of Davis and Smith, that Davis wasn't going to join the Union and that Pettway would discharge Davis if he did so.⁶

⁴ Jenkins, on a related issue, testified for example that he saw a particular set of rules on the plant bulletin board when he joined Respondent in or about December 1956. Eckstein testified that such alleged rules have not been posted since the spring of 1956.

⁵ Kelley testified on direct examination that his entire statement to Ramsey was "to stop talking and go to work," and he denied the other statements attributed to him. On cross-examination, Kelley testified that he "probably" didn't remember everything he said on that occasion.

⁶ I reject Pettway's denial. Pettway was an incredible witness, on the basis of his testimony and demeanor. Although it was stipulated, for example, that Pettway had been interviewed by John Cosmic (attorney of record for the General Counsel) in Respondent's office about 5 weeks before Pettway testified, Pettway testified that he did not recall ever talking to Cosmic.

The Alleged Rule

Plant Manager Eckstein testified that he came to the plant in October 1955 and that on or about November 1955 he caused to be distributed to all plant employees and posted on the plant bulletin board a 1-page set of rules, including the alleged rule set forth above which prohibits "solicitation of subscriptions or contributions on company property except as approved by the Personnel Department." (I shall refer to this alleged set of rules as The Rules.) Eckstein testified that The Rules remained posted for about 6 months (which would be in or about April or May 1956), and that Respondent has not since posted The Rules or otherwise distributed them to old or newly hired employees. Eckstein further testified that since May 1956, Respondent has published to its employees, by posting and distributing, other bulletins dealing with various company rules but none dealing with solicitation.

The General Counsel contends that Respondent never did publish or promulgate The Rules and the General Counsel's witnesses uniformly testified to such effect as well as testifying that they had not otherwise been instructed to the effect of the alleged no-solicitation rule. Respondent's witnesses supported Respondent's version, thus throwing the matter into the credibility arena. Respondent witness David Sumrall was first employed at the plant in December 1956. Sumrall testified that he saw The Rules on the bulletin board in December 1956. Not only is this inconsistent with Eckstein's aforesaid testimony as to when The Rules were removed, but it further appears that Sumrall can neither read nor write. When Sumrall was shown three separate 1-page documents, he was unable to designate the one he had previously identified as The Rules. Respondent witness Dewey Roberts, an employee, testified that he had received The Rules in his pay envelope in 1957 and that his wife read them to him because he, too, cannot read or write. Roberts testified that the only one of The Rules he could remember was one prohibiting conversations during working hours. He further testified that he did not know whether soliciting was against company rules and that he didn't know whether company permission was necessary in order to take up collections. Additionally, of course, the aforementioned 1957 date is inconsistent with Eckstein's testimony. Respondent witness Roy Jenkins, we have already mentioned. Jenkins also testified, inconsistently with Eckstein, that he saw The Rules on the bulletin board in December 1956. Respondent witness Milton Smith testified that Respondent distributed The Rules in or about 1957 and that The Rules were on the bulletin board in or about November 1958. Respondent witness Freddie Ray Cornelius identified The Rules as having been posted and distributed 2½ or 3 years ago and that The Rules prohibited "talking" and "smoking." When given The Rules and asked to designate which particular one of The Rules says "no talking," Cornelius testified that he couldn't tell "if that's on there or not." Respondent witness Carl Mahon, an employee, identified The Rules as having been distributed when he first went to work for Respondent in February 1955. Eckstein was not with the plant until the latter part of 1955 and his signature appears on The Rules. Respondent witness C. J. Bourgoyne, an employee, identified The Rules as the same shown to him that same day by Foreman Ed Hart, and as having been distributed to employees and posted on the bulletin board. When asked to read the first word on The Rules, Bourgoyne stated that he could not, his explanation being that "I don't ever read small print." Respondent witness Howard Doolin, an employee, testified that he received The Rules 2 or 3 years ago and he identified it as the same document "they" showed to him in the plant that morning. Doolin testified that he had not read the paper shown him that morning. Respondent witness Earl Nevil, an employee, identified The Rules as having been distributed and posted several years ago and shown to him by Foreman Hart that same morning. When later asked to read The Rules, Nevil said he could not do so without his glasses, and he further testified that he had no glasses when Hart showed him The Rules. Respondent witness Luther Ellison, testified that Eckstein became plant manager about 3 years before the hearing (which would be about December 1955), that Respondent distributed The Rules about 2 years ago and that one of The Rules prohibited any "business transaction taking place in the plant at working hours." Ellison further testified that he saw The Rules on the bulletin board in 1957 and even as recently as 6 months before the hearing date. Ellison testified that he hadn't seen The Rules "in a good while" and that no one had shown him The Rules within several weeks of the hearing; then, when asked on direct examination whether he had seen The Rules that same morning, he replied that Foreman Hart had inquired about it that day. Respondent witness John Howard, an employee, testified to receiving written rules on various occasions but that he wouldn't remember what they said. Respondent witness Norman Williams, an employee, testified that he received written rules on various occasions, one occasion being the distribution of a long list of rules shortly after Eckstein came to

the plant. Williams further testified that Foreman Hart showed him The Rules at the plant that morning but that The Rules was not the aforementioned "long list of rules" issued by Eckstein. Foreman Earl Williams testified that The Rules were posted and distributed about 2 years ago, but that he did not know, as indicated above, whether the no-solicitation rule was in effect at the time of the Jenkins' incident.

The record further shows that open solicitation did occur during working hours in the plant, some with and some without company permission. In fact, Walsh himself had, with supervisory knowledge, openly collected funds during working hours on occasions in December 1956 and December 1957 for a gift for one of the foremen; and two supervisors had themselves asked Walsh during working hours to obtain membership cards for them in a local nonlabor organization and they also gave him funds at the time with which to obtain such membership.

Further Findings and Conclusions

A preponderance of credible testimony and other evidence fails to establish the existence of the claimed no-solicitation rule in 1958. The claimed rule, even if it did exist, would have been unlawful in that it purported to prohibit solicitation, not only during working time, but also during employees' free time on company property, as well. Such latter proscription is an "unreasonable impediment to self-organization" absent "special circumstances," and no special circumstances were either alleged or proved here. *Republic Association Corporation v. N.L.R.B.*, 324 U.S. 793, 803-804; *N.L.R.B. v. Avondale Mills*, 242 F. 2d 669 (C.A. 5), affd. 357 U.S. 357; *N.L.R.B. v. The Babcock & Wilcox Company*, 351 U.S. 105, 112-113. Even where there is a proper no-solicitation rule, an employer may not apply such rule disparately by barring union solicitation while permitting or condoning solicitation for other purposes; and a discharge for union solicitation in such circumstances is illegal. See cases cited above.

It appears here, in addition to disparate application of an alleged no-solicitation rule, that Walsh is kept under surveillance in connection with the first election and later told that his union activities would deprive him of job opportunities with Respondent. Then on the occasion of the discharge incident, Eckstein did not even give Walsh an opportunity to give his version of the Jenkins incident; rather, Foreman Williams notified Walsh of the discharge without stating reasons therefor except that it was Eckstein's direction. Only after Walsh wrote for an explanation, did Respondent reply by Eckstein's aforementioned letter. Considering all the foregoing, and mindful of the plethora of unreliable and indeed dishonest testimony offered here, I find that this is hardly a case where Eckstein honestly believed Walsh to have violated a company rule which Respondent was applying to union and nonunion matters like. If there was a valid rule, and I have found there was not, I find, rather, that such rule, as in the case of Jones in the *Avondale Mills* case, was "invoked or applied for a discriminatory anti-union purpose" (242 F. 2d 671). See, also, *Arrow Press*, 122 NLRB 890.

I accordingly conclude that Respondent discriminatorily discharged Walsh in violation of Section 8(a)(1) and (3) of the Act and that Respondent further violated Section 8(a)(1) of the Act by Foreman Petway's and Kelley's threats of discharge for union membership and activities.

IV. CONCLUSIONS OF LAW

1. Lodge 1243, International Association of Machinists, AFL-CIO, is a labor organization within Section 2(5) of the Act.

2. Respondent has violated Section 8(a)(1) and (3) of the Act by discriminatorily discharging James R. Walsh and has further violated Section 8(a)(1) of the Act by threats of discharge for union membership and activities.

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

V. THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

Having found that Respondent has discriminated in regard to the hire and tenure of James R. Walsh, I shall recommend that Respondent offer immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority and other rights and privileges, and make him whole for any loss of pay he may have suffered as a result of the discrimination against him by payment

to him of a sum of money equal to that which he would have earned as wages from the date of such discrimination to the date of offer of reinstatement, less his net earnings during such period, the back pay to be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company* (90 NLRB 289). It will also be recommended that Respondent preserve and upon reasonable request make all pertinent records available to the Board or its agents.

In view of the nature of the unfair labor practices committed, I shall also recommend that Respondent cease and desist from infringing in any manner upon the rights guaranteed in Section 7 of the Act.

[Recommendations omitted from publication.]

The Baltimore Luggage Company and International Leather Goods, Plastics & Novelty Workers Union, AFL-CIO, Petitioner. *Case No. 5-RC-2342. May 26, 1959*

SECOND SUPPLEMENTAL DECISION AND CERTIFICATION OF REPRESENTATIVES

After investigation of the Employer's timely objections to conduct affecting the results of the election held herein, the Regional Director issued and duly served upon the parties his report on objections, a copy of which is attached hereto,¹ in which he found that the objections did not raise substantial and material issues affecting the results of the election, and recommended that they be overruled and that the Petitioner be certified as the collective bargaining representative of the employees in the unit. The Employer filed timely exceptions to the Regional Director's Report.

The Board² has considered the Employer's objections, the Regional Director's report, and the Employer's exceptions thereto, and hereby adopts the findings and recommendations of the Regional Director with the additions and modifications discussed below.

In its objections the Employer asserts that the Petitioner exceeded the permissible limits of campaigning by making certain misstatements, inaccuracies, and exaggerations in discussing the following subjects: the Board's order, a court opinion, and the Employer's piece rates, layoffs, vacation pay, and profit sharing plans. The Regional Director found no merit in the objections. The Employer's exceptions raise no material issue of fact requiring resolution. For assuming that the Petitioner's propaganda did contain some misstatements and exaggerations, we nevertheless agree that it does not warrant setting aside the election. The assertions did not involve matters peculiarly within the knowledge of the Petitioner and in our opinion

¹ Since we feel that the Regional Director's report has adequately summarized their contents, we are omitting the letters and circulars: Appendixes 1 through 9.

² 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 Rodgers and Jenkins].