Local 222, International Ladies' Garment Workers' Union, AFL–CIO *and* Valley Knitting Mills, Inc. *Case No. 22–CB–159. February 4, 1960*

DECISION AND ORDER

On September 16, 1959, Trial Examiner C. W. Whittemore issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in and was not engaging in the unfair labor practices as alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel filed exceptions to the Intermediate Report, together with a supporting brief; the Respondent filed a brief in support of the Intermediate Report.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed.[1] The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in this case, and finds merit in certain of the General Counsel's exceptions. Accordingly, the Board adopts the findings,[2] conclusions, and recommendations of the Trial Examiner only to the extent consistent herewith.

1. Following an organizational campaign, the Respondent began, on August 5, 1958, to picket the Employer's premises. On August 12, the Employer filed a representation petition. The Board found that the Respondent's picketing and other conduct constituted a demand for recognition and directed an election.[3] Thereafter, the Respondent sent a formal disclaimer of interest to the Employer, and petitioned the Board to reconsider its Decision and Direction of Election; the Board denied this motion.[4] The election was held on February 6, 1959; the Respondent lost decisively.

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[1] At the hearing, the General Counsel sought to introduce, for the purposes of background, evidence of coercive conduct which had allegedly occurred early in the strike. The Trial Examiner rejected this evidence on the ground that the conduct occurred, if it occurred at all, outside the period of limitations prescribed by Section 10(b) of the Act. It is well settled that such evidence is admissible as background in order to evaluate conduct engaged in within 6 months of the filing of a charge. *General Teamsters, Packers, Food Processors and Warehousemen Union Local No. 912, et al. (H. A. Rider & Sons)*, 120 NLRB 1577, 1579. However, in view of our decision herein, we find that the Trial Examiner's ruling, although erroneous, was not prejudicial.

[2] The Trial Examiner found, on the basis of the transcript, that the strikers *twice* sought reinstatement—on January 12 and again on February 9, 1959. In a stipulation signed by counsel for the Respondent, the Employer, and the General Counsel, the parties have moved to correct the transcript to show that there was only *one* request for reinstatement, on January 12, 1959. The motion is granted and the transcript is hereby corrected.

[3] Case No. 22–RM–36, issued December 19, 1958 (unpublished).

[4] Order dated January 7, 1959.

Until 2 weeks before the election, the Respondent's pickets carried signs which plainly reflected the demand for recognition.[5] Thereafter, until the election, no signs were carried. The picketing resumed immediately after the election and was in progress at the time of the hearing. Since the election, only two signs have been carried, reading as follows: "ON STRIKE. We do not represent the majority but we want a UNION CONTRACT FOR OUR MEMBERS ONLY" and "ON STRIKE FOR REINSTATEMENT OF OUR MEMBERS." The picket signs also carried the Respondent's name.

On January 12, 1959, before the representation election was conducted, the striking employees requested reinstatement. On January 19 and 27, the Employer's attorneys sent letters to each of the strikers informing them that operations were slack but that they would be given preference in hiring as soon as openings were available. On March 21, 1959, 6 weeks after the election had been held and picketing resumed with the aforesaid signs, the Respondent sent a telegram to the Employer requesting a meeting "to negotiate an agreement reinstating our striking members in place of employees hired by you as replacements and an agreement fixing terms and conditions of employment for our members only." On March 24, the Employer replied, acknowledging receipt of the telegram and informing the Respondent that all legal matters should be directed to the Employer's named attorneys. Thereafter, the Respondent made no attempt to contact the Employer or its attorneys until July 21, the day before the hearing in this case opened. On that date, the Respondent offered to withdraw its picket line if the Employer would agree to reinstate the remaining strikers and to negotiate for a members-only contract. On July 22, the Employer declined to reinstate the strikers or to negotiate "at this time."

The Respondent concedes that at least one of its purposes in picketing before the election was to obtain recognition, but it contends that after the election, its sole motive was to obtain reinstatement for its striking members, who had been replaced, and a members-only contract. In support of its contention the Respondent points to the change in its picket signs after the election and the telegram in which it set forth its conditions for lifting the picket line. The General Counsel contends that the Respondent's purpose in continuing its picketing after the election was the same as its purpose before the election, i.e., recognition, and that the avowed change in motive was merely a pretext.

The Trial Examiner concluded that the General Counsel had failed to show that one of the Respondent's objects in continuing the picket-

[5] The legends on the picket signs are fully set forth in the Intermediate Report.

ing after the election was to obtain recognition as the exclusive bargaining representative, and recommended dismissal of this allegation of the complaint. For the following reasons, we disagree.

It is well settled that a mere change in the wording of a picket sign,[6] a union's self-serving declaration of disclaimer,[7] or even a combination of both,[8] does not, of itself, suffice to establish that a union's motive in continuing to picket after losing a representation election has been diverted from its original objective of recognition. In the instant case, we note with particular interest that, after the election, the Respondent picketed for about 6 weeks before making known to the Employer its "terms and conditions" for withdrawing the picket line. Further, when the Employer responded by stating that its attorneys should be consulted, the Respondent took no further action, except to continue to picket, until the day before the hearing in this case began, a period of almost 4 months. Under these circumstances, we find it difficult to believe, in the light of our experience in the administration of the Act, that the Respondent's object in continuing to picket after the election had actually changed. We find, instead, that the ostensible change was merely a subterfuge behind which the Respondent sought to conceal its actual motive, the obtaining of recognition as exclusive bargaining representative.

In view of the foregoing, and upon the record as a whole, we find, contrary to the Trial Examiner, that the Respondent violated Section 8(b)(1)(A) of the Act by continuing to picket for recognition after losing the Board-conducted election.[9]

2. The Trial Examiner found, without exception, that the Respondent was accountable for the picket line violence visited upon nonstriking employee Pagano, in violation of Section 8(b)(1)(A) of the Act. We adopt this finding *pro forma*. However, in view of our disposition of this case, we find, contrary to the Trial Examiner, that it will effectuate the policies of the Act to include in our remedial order a section dealing with this violation.

CONCLUSIONS OF LAW

1. Valley Knitting Mills, Inc., is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

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[6] *Joint Council of Sportswear etc., AFL–CIO (Harou, Inc., and En Tour)*, 120 NLRB 659.

[7] *General Teamsters, Packers, Food Processors and Warehousemen Union Local No. 912, et al. (H A. Rider & Sons)*, 120 NLRB 1577.

[8] *Retail Store Employees Union Local 1595, et al., AFL–CIO (J. C. Penney Company, Store No. 309)*, 120 NLRB 1535.

[9] *Drivers, Chauffeurs, and Helpers Local 639, et al. (Curtis Brothers, Inc.)*, 119 NLRB 232, reversed 274 F. 2d 551 (C A., D C.), cert. granted 359 U.S. 965 (1959); *Local 208, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, et al. (Sierra Furniture Company)*, 125 NLRB 159.

2. Local 222, International Ladies' Garment Workers' Union, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By continuing to picket Valley Knitting Mills, Inc., for the purpose of obtaining recognition as exclusive bargaining representative, after losing a Board-conducted election, thereby restraining and coercing 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(b)(1)(A) of the Act.

4. By engaging in violence on the picket line, the Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

5. The Respondent did not violate Section 8(b)(1)(A) except as found in conclusions Nos. 3 and 4, above.

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

THE REMEDY

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

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, Local 222, International Ladies' Garment Workers' Union, AFL–CIO, and its officers, representatives, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Restraining or coercing the employees of Valley Knitting Mills, Inc., in the exercise of the rights guaranteed in Section 7 of the Act by picketing the Company with an object of obtaining recognition as the exclusive bargaining representative of its employees at a time when the Respondent does not represent a majority of such employees.

(b) Restraining or coercing the employees of the said Company by engaging in violence on the picket line.

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

(a) Post at the Respondent's offices and meeting hall at Union City, New Jersey, copies of the notice attached hereto marked "Appendix." [10] Copies of said notice, to be furnished by the Regional

[10] 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."

Director for the Twenty-second Region, shall, after being signed by the Respondent's authorized representative, be posted by the Respondent immediately upon receipt thereof and maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members 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.

(b) Mail to the Regional Director for the Twenty-second Region signed copies of the aforementioned notice for posting by Valley Knitting Mills, Inc., the Company willing, in places where notices to employees are customarily posted. Copies of said notice to be furnished by the Regional Director shall, after being signed by the Respondent, as indicated, be forthwith returned to the Regional Director for disposition by him.

(c) Notify the Regional Director for the Twenty-second Region, in writing, within 10 days from the date of this Order, what steps it has taken to comply herewith.

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

APPENDIX

NOTICE TO ALL MEMBERS OF LOCAL 222, INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL–CIO, AND TO ALL EMPLOYEES OF VALLEY KNITTING MILLS, INC.

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 restrain or coerce the employees of Valley Knitting Mills, Inc., in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, as amended, by picketing the Company with an object of obtaining recognition as the exclusive bargaining representative of its employees at a time when we do not represent a majority of such employees.

WE WILL NOT restrain or coerce the employees of Valley Knitting Mills, Inc., by engaging in violence on the picket line.

LOCAL 222, INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL–CIO,
Labor Organization.

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

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

INTERMEDIATE REPORT

STATEMENT OF THE CASE

A charge having been filed in the above-entitled case, a complaint and notice of hearing thereon having been issued and served by the General Counsel of the National Labor Relations Board, and an answer having been filed by the above-named Respondent Union, a hearing involving allegations of unfair labor practices in violation of Section 8(b)(1)(A) of the National Labor Relations Act, as amended, was held in Wanaque, New Jersey, on July 22 and 23, 1959, before the duly designated Trial Examiner.

All parties were present and represented by counsel, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues. Oral argument was waived. At the request of the parties a period of 35 days after the hearing was granted for the filing of briefs. No briefs have been received.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE CHARGING EMPLOYER

Valley Knitting Mills, Inc., is a New Jersey corporation with its principal office, plant, and place of business in Wanaque, New Jersey, where it is engaged in the manufacture, sale, and distribution of ladies' sweaters and related products.

During the year preceding issuance of the complaint this Employer caused finished products valued at more than $250,000 to be shipped in interstate commerce directly to States of the United States other than New Jersey.

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

II. THE LABOR ORGANIZATION INVOLVED

Local 222, International Ladies' Garment Workers' Union, AFL–CIO, is a labor organization admitting to membership employees of the Charging Employer.

III. THE UNFAIR LABOR PRACTICES

A. *Setting and issues*

All issues raised by the complaint involve events occurring during a strike, begun on August 5, 1958, and still in effect at the opening of the hearing, which admittedly has been conducted and sponsored throughout by the Respondent Union and its agents. A single provision of the Act is invoked as having been violated: Section 8(b)(1)(A), which in substance makes it an unfair labor practice for a labor organization or its agents to restrain or coerce employees in the exercise of rights guaranteed by Section 7, and in this case the specific right *not* to engage in "concerted activities" or the strike.

The alleged illegal conduct is of two specific types, according to the complaint: (1) violence and threatened violence, and (2) maintaining a picket line for the purpose of requiring the Charging Employer to recognize and deal with the Respondent Union *after* the Board, on February 16, 1959, had certified that the Respondent was *not* the bargaining representative of the employees.

B. *Nature of the strike after the certification*

In substance, at the hearing General Counsel contended that "the interest of this Respondent from the initiation of the picketing has been to achieve exclusive recognition of the company's employees and . . . that object continues until the present day." At the opening of the hearing he stated that he would "show by certain acts and conduct that their object is to achieve recognition."

In substance, at the hearing counsel for the Respondent conceded that before the Board-conducted election one of the objects of the strike was "the desire that the employer recognize the Union as the exclusive representative." It is his further claim, however, that there was "a change in position" *after* "certification of the results of the election."

The Trial Examiner is without benefit either of oral argument or brief from General Counsel as to what precise "acts and conduct" he considers were engaged in by the Union or its agents *after* the certification which support his position as to a continuing object of exclusive recognition. There is *no* evidence of any misconduct

on the picket line or elsewhere *after* the date of the election on February 6, 1959. It appears, then, that General Counsel relies, as support for his contention, upon the mere continuation of the picket line after the certification date. It further appears that General Counsel is urging, in effect, that because the strike continued after the certification one of its earlier purposes—that of obtaining exclusive recognition—must be inferred to have also continued.

The Respondent, on the other hand, adduced direct and affirmative proof to support its claim of "changed position," after the certification.

During the period from the beginning of the strike until about 2 weeks before the election, pickets carried one or more of the following five signs:

WORKERS OF
VALLEY KNIT
ON
STRIKE

Please Respect Our Picket Line
International Ladies' Garment Workers Union
Locals No. 144–166–222 Affiliated with AFL–CIO

WORKERS OF
VALLEY KNIT
JOIN the UNION
AND THEN
STRIKE
FOR UNION AGREEMENT
ILGWU—LOCAL 222
AFL–CIO
3701 Bergenline Ave Union City, N.J.

JOIN the
UNION for
PAID VACATION
Int. Lad. Garment Wkrs. U.

JOIN the UNION
AND
THEN
STRIKE
FOR
PAID HOLIDAYS
Int. Lad. Garment Wkrs. U.

KNITGOODS WORKERS
JOIN THE
N.J. KNITGOODS
WORKERS UNION LOCAL 222
Int. Ladies Garment
Workers Union
AFL–CIO

No signs were carried during a period of 2 weeks before the election. After the election pickets began carrying the following two signs:

ON STRIKE
We do not represent
the majority but
we want a
UNION CONTRACT
FOR OUR
MEMBERS ONLY
Local 222, International Ladies
Garment Workers Union, AFL–CIO

ON STRIKE
FOR
REINSTATEMENT
OF OUR MEMBERS
Local 222, International Ladies
Garment Workers Union, AFL–CIO

That the openly published demand for reinstatement of strikers was not merely a legendary pretext to circumvent the Act is established not only by the undisputed testimony of a union agent, but also by the testimony of Irving Pilcer, secretary of the Charging Party, to the effect that he was informed by his brother, Sam Pilcer, one of the partners, that "on or about February 9, 1959," the striking employees had sought reinstatement. There is also documentary evidence in the record which, coupled with Pilcer's testimony, establishes that after a previously made request for reinstatement, on or about January 12, 1959, company counsel sent each of the striking employees a letter stating that they would be "rehired" as needed.

On March 21, 1959, furthermore, an official of the Respondent Union wired Irving Pilcer as follows:

> WE ARE PREPARED TO MEET WITH YOU AT ANY TIME TO NEGOTIATE AN AGREEMENT REINSTATING OUR STRIKING MEMBERS IN PLACE OF EMPLOYEES HIRED BY YOU AS REPLACEMENTS AND AN AGREEMENT FIXING TERMS AND CONDITIONS OF EMPLOYMENT FOR OUR MEMBERS ONLY WE SUGGEST YOUR PLANT IS THE BEST PLACE TO NEGOTIATE THE QUESTION OF REINSTATEMENT BECAUSE THE NECESSARY INFORMATION IS MORE READILY AVAILABLE THERE IF YOU ARE WILLING TO MEET WITH US FOR THAT PURPOSE CALL ME AT MY OFFICE MARKET 2-1704 TO FIX THE TIME AND PLACE IF WE CAN REACH AGREEMENT ON REINSTATEMENTS AND IF YOU ALSO AGREE TO IMMEDIATELY NEGOTIATE FOR A CONTRACT WITH US COVERING OUR MEMBERS WE ARE PREPARED TO TERMINATE THE STRIKE PENDING NEGOTIATIONS FOR THE MEMBERS ONLY CONTRACT

Two days later the above text was confirmed in a letter to Pilcer from the union counsel. The only reply made by Pilcer was dated March 24. It read:

> We are in receipt of your telegram of March 21st. Inasmuch as our legal matters are being handled by Lorentz & Stanley, Raymond Commerce Building Newark 2, New Jersey; therefore we deem it adviseable that you direct all future correspondence or requests directly to them.

In the opinion of the Trial Examiner the direct evidence of the Union's publicly displayed picket signs after the election and the telegram's clearly enunciated conditions under which the strike would be terminated overcomes and rebuts the inference and presumption sought by General Counsel as to "an object" of the strike after the certification.

In short, the Trial Examiner concludes and finds that General Counsel has failed to sustain the allegation that the strike, after the certification, had as an object recognition as the exclusive bargaining agent. This factor failing, it follows that in this respect there is no foundation for the additional inference of restraint and coercion of employees.

C. *Violence and threats of violence*

The record contains a good deal of confused and even contradictory testimony concerning a number of incidents, off and on the picket line, minor even if occurring, and alleged to have taken place over a period of 4 or 5 months. At most, even if the denials of the union witnesses are to be wholly discredited the "violence" occurring within the 6-month period before the charge was filed, consisted of one woman picket kicking a woman nonstriker as she passed through the line, and a male nonstriker being punched in the nose at some distance from the picket line.

There were no disinterested witnesses on all these matters, although it appears from Pilcer's testimony and that of others that local police officers were present at all times.

The alleged incidents of violence and threats will be considered separately.

Pagano incident: According to this employee, a nonstriker, on September 6, 1958, as she was walking through the picket line "an elderly woman with gray hair" kicked her "three or four times." Pagano could not identify this "elderly woman," although she said she had seen her on the line before but not after the occurrence. Pagano further claimed that also on the picket line at the time, about 5 feet away, was Walter DeYoung, an official of the Union, and that a policeman there ordered the "elderly woman" to stop kicking her. The only other witness on this matter was DeYoung, who denied seeing the event and said he was "fairly certain" he was in another New Jersey town on September 6.

The testimony of both Pagano and DeYoung is without corroboration. While not free of doubt, The Trial Examiner is persuaded that in substance Pagano's account is to be believed. Had the event occurred only in her imagination and spite it is reasonable to suppose that she would have directed that spite against some identifiable person. On the other hand, while DeYoung's denial that he actually saw the kicking may well have been truthful, his own uncertainty as to whether or not he was there on September 6, and Pagano's testimony that after this date the "elderly picket was no longer present, opens the way to the reasonable inference, here made, that DeYoung at least became aware of the conduct upon interference of the police and that he promptly took steps to make certain that the offending "elderly woman" was not again on the picket line. Mere removal of the picket, however, could not have expunged whatever coercive effect there may have been as a result of the act itself, or mitigate the Respondent's accountability for it.

Rieves incident: That nonstriker Rieves had his nose punched by striking employee Goins the day before Christmas 1958 is not disputed. There is a dispute, however, as to whether or not the blow was provoked by Rieves' first calling Goins a "son-of-a-bitch"—a term which, as is commonly known, frequently precipitates action of an almost reflex nature.

It appears that on December 24 Irving Pilcer was giving a Christmas party for nonstriking employees at the plant. On the picket line were striking employees Walter Paradies and Kirk Goins. At about noon Rieves came out of the mill and started through the adjacent parking lot toward his car. According to the testimony of Paradies and Goins,[1] the latter called out to Rieves, "How are you doing, Charlie" and Rieves replied, "None of your business, you son-of-a-bitch." When Goins countered with, "You don't call me no names like that," Rieves challenged, "Well, if you don't like it, I'll punch you in the nose." At this point Goins jumped over the hedge and did, in fact, punch Rieves in the nose.

On the other hand, according to Rieves, on direct examination, when he came out of the plant and walked toward his car he heard Goins call out, "I am going to punch you in the nose." Rieves made no reply, continued toward his car, upon reaching it was caught up with by Goins, and without further preliminaries was punched in the nose. Rieves' story on direct raises doubt; it depicts a scene far from usual. The doubt is increased by his added details on cross, as well as by a number of inconsistencies in his testimony. Having testified on direct that Goins made the threat and *then* jumped over the hedge, saying nothing at the car, where the blow was delivered, on cross he at first said that he was already *at* his car when Goins came up and said he was going to punch him, and then said that Goins *twice* voiced the threat *before* jumping the hedge and repeated it upon reaching him. When asked on cross-examination why, after these threats, and "during the time that you saw a man advancing on you and you saw him attempt to strike you . . . you stood there with your hands at your sides" and "didn't . . . do something to protect yourself," Rieves replied, "I didn't think he would do it."

The Trial Examiner cannot accept Rieves' account as reasonable or true, despite his recognition of the fact that not all that is unreasonable is necessarily untrue. Although Rieves' demeanor on the stand was more surly than aggressive, he appeared well, healthy, and clearly neither craven nor of passive resistance persuasion. And plainly he was not the professional pugilist who harbors no need, as most of us do, to exhibit on such occasions of challenge something generally termed as manliness. Yet if he is to be believed, he stood mute, waiting, and without even lifting his arms in self-protection. Since there is no evidence that he was either assaulted or threatened with assault while crossing the picket line during the preceding several months, the Trial Examiner is more inclined to believe that Rieves brought about the punch in the nose by first making some surly remark to Goins. In any event, there is nothing in Rieves' story to indicate that the blow had anything to do with his working during the strike. It did not occur on the picket line. And even according to him, nothing was said but "I am going to punch you in the nose." It is specifically found that Goins' conduct on this occasion was not coercive within the meaning of the Act.[2]

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[1] Goins was not a witness. General Counsel conceded, however, that if he were called his testimony would be the same as that given by Paradies on this incident.

[2] The Trial Examiner can place no reliance upon Irving Pilcer's account of this event, which he claimed he saw. It became apparent during his cross-examination, and was

Alleged spitting incident: According to the testimony of nonstriking employee Rozalia Otten, on some uncertain date as she was driving her car over the sidewalk near the plant into the parking lot, two picketing women at the same moment spat through her car window at her. She was unable to identify them by name, but described them as both being "tall," "one . . . prematurely gray and one . . . blond," and both having "page boys." She also said Union Official DeYoung was nearby. Her testimony is undisputed, no women meeting her description being called by counsel for the Respondent and DeYoung, although a witness, not being asked about the event. Ordinarily uncontradicted testimony deserves credence, but the Trial Examiner is not aware that it is an inviolable rule.

Other parts of Otten's testimony detract measurably from the weight to be accorded her account of the happening. On direct examination, having said that she had seen the same two women on the picket line during the first "couple of weeks" after the strike began, she testified that she saw only the blond one *after August 18.* Yet she also placed the spitting event "during the first week in September." On cross-examination, also, she placed it most positively as in September, and insisted that it could not have occurred in October or later. She admitted that her sworn affidavit, however, given before a Board agent, fixed the incident as occurring on "November 4, 1958, at about 7:25 a.m."

The Trial Examiner cannot rely upon Otten's testimony as to this alleged incident. Furthermore, even if it occurred, it could hardly be considered as "violence" serious enough to warrant a cease and desist order of a Government agency.

David Thompson incident: This employee was hired in September after the strike began. At a witness he told of but one event, occurring on November 5, after many weeks of crossing the picket line without threat so far as the record shows Thompson's crisp and scene-evoking description of what happened after he had driven without incident through the picket line into the parking lot is as follows:

> I got out of my car, my wife and another lady. There were at least two fellows, Mr. DeYoung and another fellow, was there on the sidewalk. Then he said, "Hey, come here." So I did not pay no mind. And I looked out "Come here. Hey, come here." He says, "You." So I went over there by the loading platform. I started to go in. I stopped. I said, "What do you want?" "Come here. Come here," he says. So I went a little bit further. So I get up there. I did not go no farther than 10 feet. He kept saying, "Come on. Come on." And he had the other fellow there. I got up a little closer. I went three times a little closer, a little closer each time. I says, "What do you want?" "Come here." I said, "Look, I've got to go to work." So I started back to work. He said, "All right, you scab, we know how to take care of you " I did not say no more. I said, "Well, look, I've got to work like anybody else." So I walked on in the mill. That's all.

And that is all there was to the "threat of violence," even if Thompson's testimony is to be given face value.

DeYoung's version, after denying that he told Thompson "we know how to take care of you," is as follows:

> He called me a racketeer, communist and said I should be in jail or that I would end up in jail . . . I called him a scab and said the same thing would happen to him.

To the Trial Examiner DeYoung's version is the more credible. The spectacle described by Thompson—step by step inching his way toward two men only to

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further established by another witness later, that he had previously, at a police court hearing, given a somewhat different version of where he was when witnessing the happening As the Charging Party and a witness in a Government proceeding against the Union which had struck his plant, Pilcer displayed an attitude on the stand lacking in persuasive dignity, as indicated by the following colloquy Having been asked by union counsel if it was not true that he had told a police court judge that he was *inside* the plant, looking out a window while Rieves was walking toward his car, he replied

> A That is part of it I was outside
>
> Q That is what you told the judge. Isn't that true?
>
> A. No
>
> Mr MASTRO Mr Trial Examiner I think that the witness can answer the questions without Mr Reitman raising his voice to him.
>
> The WITNESS : Scared shit out of me.

receive the message, "We know how to take care of you"—falls short of reasonable belief. And in any event, it is clear that he was not prevented from crossing the picket line, or from working, then or at any other time. What DeYoung knew about "how to take care of you" was not revealed—it may have been either legal or illegal action. In short, the Trial Examiner is unable to find that this incident was coercive within the meaning of the Act.

Alleged Charlotte Thompson incident: This nonstriking individual was ill at the time of the hearing. No postponement was requested for the taking of her testimony. Counsel for the Respondent and General Counsel joined in a stipulation to the effect that had she been called she would have testified in substance:

1. That on the night of November 4 she and a male employee, while driving home, were followed a distance of about 3½ miles by a car containing Walter Paradies and Otto Hauck, both conceded to have been pickets at times.

2. That the next day she and the other employee were told by DeYoung: "We did not get you the first time but we will follow you tonight and get you for sure."

Paradies denied following Thompson. DeYoung denied making the remark attributed to him.

Under the circumstances, the Trial Examiner does not believe General Counsel has met his burden of proof in establishing an incident of "threat of violence." Not only, as General Counsel conceded, could not Thompson's "credibility . . . be weighed" as a witness on the stand, since she did not appear, but counsel for the Respondent had no opportunity to cross-examine her.[3]

DeMarco incident: According to Irving Pilcer's testimony sometime in October, after working hours, when he drove out of the parking lot in his panel truck, loaded with merchandise and with employee DeMarco as a passenger, his truck was followed by two cars containing striking employees from the plant to a nearby town where he left DeMarco and was thereafter followed until he called the police.

Paradies admitted that one car did follow the truck on this occasion, but only for the purpose of seeing where Paradies delivered the merchandise.

The Trial Examiner perceives nothing coercive within the meaning of the Act in the mere following of Pilcer's truck on this occasion. There is no evidence that the strikers were aware of DeMarco's being in the truck, and no evidence that they said anything to DeMarco when he was deposited by Pilcer. Pilcer's own account is consistent with Paradies' explanation of the purpose of following.

Alleged Yatman incidents: Nonstriking employee Evlyn Yatman testified as to three different incidents, one which she placed as during the week of August 18, a second on November 4, and a third on December 24.

Yatman was far from being a convincing witness. She displayed confusion and uncertainty from the moment she took the stand. And early in her testimony she stated frankly: "My mind is blank right now."

It is plain from the record that no reliance can be placed upon her testimony as to the first incident. Having repeatedly directed the witness' attention to the "week of August 18," General Counsel asked Yatman what happened when she drove to the company premises. Yatman replied, "That is the morning that Carrie blocked me and told me that—she stood right in the way." General Counsel interrupted and the following colloquy occurred:

> Mr. MASTRO: Just a moment, now. I'm directing your attention to the week of August 18.
>
> A. I don't know.
>
> Q. All right, I'll go on to something further. Directing your attention to November 4th, 1958——

The witness then interrupted and said that this was the day—of which she was sure because it was her grandson's birthday—striking employee Carrie Hojnacki stood for a moment or two on the sidewalk at the entry of the driveway into the parking lot. She had to stop her car, Yatman said, or she would have run over Hojnacki. She also said that Hojnacki called her "pumpkin face"—which General Counsel promptly conceded was not being claimed as a violation of the Act. It appears that Yatman told Hojnacki that if she did not get out of the way she would run over her, and a cop nearby made the same demand, and Hojnacki moved aside.

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[3] While it might be argued that cross-examination was waived by entering into the stipulation, counsel for the Respondent stated specifically that he was not "conceding the veracity" of her stipulated testimony Nor does the Trial Examiner consider himself bound by stipulated testimony

Hojnacki denied the event Despite Yatman's general confusion, an admitted "blankness of mind," the Trial Examiner is inclined to believe that Hojnacki did briefly stand on the public sidewalk in front of the driveway. The incident may have been an irritant—and the witness on the stand plainly displayed a tendency toward easy irritation—but the Trial Examiner cannot consider that Yatman on this occasion was physically barred from entering the plant and going to work, or find that the incident was serious enough to warrant a finding of coercive action.

As to the third incident, which occurred the day before Christmas, Yatman said she "worked all morning until about quarter of 12," and then left the plant, and went to get into "someone else's car" near the road "but towards Ringwood Avenue," and as she was trying to get into the car "Walter—whatever his name is there—he jumped over, tried to jump over the hedge or was going to jump over the hedge, and called her a son-of-a-bitch," adding, "I'll get you yet." She said that having made that remark, he got into a car with two other pickets. She further said that Paradies was "very angry" although she had said nothing to him. On cross-examination, Yatman added that Paradies also said, "I'm going to poke you and I'm going to get even with you."

Paradies flatly denied the incident. The Trial Examiner is unable to determine precisely what happened, if anything, on this occasion. There can be no doubt that Paradies was somewhere in the vicinity at about this time, but at almost the precise time that Yatman says he was in a car near Ringwood Avenue, Rieves and Pilcer place him near the hedge while Goins was punching Rieves in the nose. The record does not show the distance between the two points. By strange coincidence, also, Yatman on cross-examination declared that Paradies threatened to "poke" her, without provocation, as did Rieves with respect to Goins. And Yatman agreed that although she had come through the picket line from the beginning of the strike, in August, and had seen Paradies many times, he never before had threatened her with such language.

In short, the Trial Examiner is not convinced by Yatman's testimony that any threat of violence was made on this occasion by Paradies.

Alleged mass picketing· The complaint alleges "mass picketing" from August 18 through November 1958. The credible evidence fails to support the allegation that such "mass picketing" prevented "ingress and egress" to and from the plant. Pilcer was the chief witness on the subject, and the Trial Examiner has above found him to be an unreliable witness. Police were there at all times, according to him. Pilcer's claim that sometime in early September or late August he saw Rozalia Otten, Charles Rieves, and Grace Rieves prevented from entering the plant is not only without detailed description but finds no corroboration from any of the three employees named—although both Otten and Charles Rieves were witnesses. Moreover, the one photograph placed in evidence by General Counsel showing pickets walking on the sidewalk at the entry to the parking lot reveals but *one* picket within the driveway area which tire marks indicate is at least wide enough for two cars to pass easily.

D. *Conclusions*

As noted above, on the basis of credible testimony the Trial Examiner has found that but a single incident of actual physical contact has occurred in the period of nearly a year of strike—and that this so-called violence was prepetrated by an unidentified "elderly woman." In consonance with the Board majority's reasoning in footnote 1, *Ready-Mixed Concrete Company,* 117 NLRB 1266, the Trial Examiner does not believe that "to issue an order based thereon would effectuate the policies of the Act." Accordingly, the Trial Examiner will recommend dismissal of the complaint in its entirety.

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

Conclusions of Law

1. Local 222, International Ladies' Garment Workers' Union, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.
2. The Charging Employer is engaged in commerce within the meaning of the Act.
3. The Respondent Union has not engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

[Recommendations omitted from publication.]