

Inland Seas Boat Co., Inc. and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO. *Cases Nos. 8-CA-1924 and 8-CA-2015. August 11, 1960*

DECISION AND ORDER

On April 28, 1960, Trial Examiner Lee J. Best issued his Intermediate Report in the above-entitled consolidated 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 and one of the Charging Parties, the UAW, filed exceptions to the Intermediate Report and supporting briefs.

The Board¹ 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 the briefs, and the entire record in these cases, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions.

1. We find, as did the Trial Examiner, that the Respondent, by the conduct more fully set forth in the Intermediate Report, interrogated its employees concerning their union activities and threatened them with reprisals for engaging in such activities, in violation of Section 8(a) (1) of the Act.²

2. We agree with the Trial Examiner that the Respondent unlawfully discharged Barnhart on January 30, 1959. Like the Trial Examiner, we do not credit the testimony given in support of the Respondent's defense that it initially laid off Barnhart because of a lack of paint and decided not to recall him because he lacked the ability to do his job. The record indicates to us that the Respondent considered Barnhart a satisfactory workman prior to learning of his union activities and that the Respondent used the fact that there was a shortage of paint as a pretext to discharge Barnhart. In view of Barnhart's union activity, the Respondent's knowledge thereof, its conduct manifesting opposition to Barnhart's union activity, the timing of the dis-

¹ Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with these cases to a three-member panel [Chairman Leedom and Members Bean and Fanning].

² We do not read the Intermediate Report herein as finding that the interrogation of Thomas Smith on or about July 1, 1959, was unlawful. Rather, we read the Intermediate Report as finding that Foreman Pisko's threat to Smith made in connection with such interrogation, as set forth in the Intermediate Report, was violative of Section 8(a) (1). So read, we adopt these findings

charge, and the failure to recall Barnhart when paint became available, as more fully set forth in the Intermediate Report, we find that the Respondent, on January 30, 1959, discharged Barnhart because of his union activity, in violation of Section 8(a)(3) and (1) of the Act.

ORDER

Upon the entire record in these cases, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Inland Seas Boat Co., Inc., Sandusky, Ohio its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in the aforementioned labor organizations, or in any other labor organization, by discharging employees or in any other manner discriminating against its employees in regard to their hire or tenure of employment or any term or condition of employment.

(b) Interrogating its employees concerning their membership in or activities on behalf of International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO; International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO; or any other labor organization, in a manner constituting interference, restraint, or coercion in violation of Section 8(a)(1) of the Act.

(c) Threatening to reduce working hours or withhold pay increases unless employees abandoned their union activities.

(d) 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 the above-named labor organizations, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any 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, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

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

(a) Offer to Ralph Barnhart immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges of employment, and make him whole for any loss of pay that he may have suffered by reason of the discrimination against him in the manner and extent set forth in the section of the Intermediate Report entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board and its agents, for examination and copying, all payroll records, time-cards, personnel files, social security reports, and other records necessary to analyze, compute, and determine the amount of backpay and other rights of employment to which the aforesaid discriminatee may be entitled under the terms of this Order.

(c) Post at and in its plant in Sandusky, Ohio, copies of the notice attached hereto marked "Appendix."³ Copies of said notice, to be furnished by the Regional Director for the Eighth Region, shall, after being duly signed by an authorized representative of Inland Seas Boat Co., Inc., 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 employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that such notices are not altered, defaced, or covered by any other material.

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

³ 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."

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 International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO; International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, or any other labor organization, by discriminating in regard to hire or tenure of employment or any term or condition of employment.

WE WILL NOT threaten to reduce working hours or to withhold pay increases as a reprisal for union activities or interrogate employees as to their union membership or 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 or otherwise infringe upon their exercise of the right to self-organization, to form, join, or assist the above-named or any other labor organizations, 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; or to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a) (3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

WE WILL offer to Ralph Barnhart immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority and other employment rights and privileges, and make him whole for any loss of pay he may have suffered by reason of our discrimination against him.

All of our employees are free to become and remain, or to refrain from becoming or remaining, members of the above-named or any other labor organization, 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, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

INLAND SEAS BOAT 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

STATEMENT OF THE CASE

With all parties represented, the proceedings herein, consisting of two cases consolidated pursuant to Section 102.33 of National Labor Relations Board Rules and Regulations, Series 7, were heard before the duly designated Trial Examiner at Sandusky, Ohio, on November 30 and December 1, 2, and 3, 1959, upon complaints filed by the General Counsel of the National Labor Relations Board, separately designated as General Counsel and the Board, and the answers thereto filed by Inland Seas Boat Co., Inc., herein called Respondent or Respondent Employer.

The complaint in Case No. 8-CA-1924 was based upon a charge filed by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO (herein called the UAW), and in substance alleges that: (1) Respondent Employer on and after January 29, 1959, interrogated its employees concerning their concerted activities on behalf of the UAW for the purpose of collective bargaining and other mutual aid or protection, and threatened to reduce their working hours and wages if they caused a labor organization to become their collective-bargaining representative; and (2) on or about January 30, 1959, the Respondent discharged or laid off, and refused to recall to work its employee, Ralph Barnhart, because he joined and assisted the UAW, or engaged in other concerted activities on behalf of a labor organization for the purpose of collective bargaining or other mutual aid or protection.

The complaint in Case No. 8-CA-2015 was based upon a charge filed by International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO (herein called the Boilermakers), and in substance alleges that on and after July 19, 1959, Respondent Employer interrogated and threatened

its employees concerning their concerted activities on behalf of the Boilermakers, and offered inducements to them in the form of pay raises to withdraw their support from a labor organization.

In its answers to each complaint, the Respondent conceded that it was engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act (herein called the Act), but denied all allegations of unfair labor practices. Hence, the principal issues litigated at the hearing were, as follows:

1. Whether the Respondent on or after January 29 and July 19, 1959, respectively, as alleged in the consolidated complaints, interfered with, restrained, or coerced employees in the exercise of the rights guaranteed in Section 7, within the meaning of Section 8(a)(1) of the Act.

2. Whether the Respondent on or about January 30, 1959, discriminated in regard to hire or tenure of employment to discourage membership in a labor organization by discharging, laying off, or failing and refusing to recall to work its employee, Ralph Barnhart, within the meaning of Section 8(a)(3) of the Act.

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

FINDINGS AND CONCLUSIONS

I. BUSINESS OF RESPONDENT EMPLOYER

Inland Seas Boat Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Ohio, having its principal office and place of business in the city of Sandusky, Ohio, where it is engaged in the manufacture and sale of metal boats. In each of the years 1958 and 1959, the Respondent shipped products valued in excess of \$200,000 directly to customers located outside the State of Ohio. Thereupon, I find and Respondent concedes that it is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

Corporate officials and supervisors of the Respondent include Archie K. Lang, president; Howard E. Beck, plant manager and supervisor of the wood shop; Ernest Gust Pisko, mechanical foreman; and Arthur W. Goetz, welding foreman. Whether or not Michael Wisnowski is a supervisor within the meaning of the Act remains a subordinate issue for determination from the evidence offered in this proceeding.

II. THE LABOR ORGANIZATIONS INVOLVED

International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO, and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act, each of which exists in whole or part for the purpose of representing employees in dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work.

III. THE UNFAIR LABOR PRACTICES

A. *Historical background*

The Respondent Company was organized in Cleveland, Ohio, in the latter part of 1946 or early part of 1947. All stock in the corporation is owned or controlled by Archie K. Lang and Ray McCarty. On or about October 1, 1957, the entire plant was moved to Sandusky, Ohio, where it is now engaged in the manufacture and sale of pleasure watercraft in various sizes and dimensions. The Sandusky plant, as presently laid out, consists of weld shop (50 by 100 feet), paint shop (50 by 40 feet), including engine installation, assembly floor (50 by 100 feet), carpenter shop (50 by 100 feet), concrete apron (60 by 100 feet), for launching purposes, office facilities, and an outdoor parking lot with driveway.¹ Primary operations are subdivided into a welding department, a mechanical department, and a woodworking department. During the busy season from March through July of each year approximately 30 employees work in the plant. All supervisors work along with the employees in addition to directing the overall operations.

Operations begin in the welding department where the hull of each boat is fabricated from sheet steel under the supervision of Foreman Arthur W. Goetz. From there the hull is pushed into an adjoining room where it is steam cleaned, sprayed with a vinyl plastic paint,² and the engine installed therein by the mechanical department under the supervision of Foreman Ernest G. Pisko. From there the

¹ See schematic drawing (Respondent's Exhibit No. 1).

² For the sake of clarity no trade name for such products will be used throughout this report.

hull with engine is pushed to the assembly room of the woodworking department in close proximity to the carpenter shop, wherein the cabins are built and installed under the overall supervision of Plant Manager Howard E. Beck. Responsibility for the construction of 35-, 36-, and 40-foot cabins is delegated to Michael J. Wisnowski; the construction of 32-foot cabins to Jim Wonder; and the construction of 29-foot cabins to Luke Mears and Mike Geretz. Jim Ryant is responsible for the work of fitting the cabins into the hulls. These men are highly skilled senior employees who direct the work of other employees, and receive higher rates of pay than the average employee. Operations in the woodworking department include the installation of all interior fixtures and equipment, such as berths, seats, galleys, and dinettes. Final painting, varnishing, sanding, and finishing of the entire boat is completed in the woodworking department. Finishing coats of white are applied to the hull and cabin with a roller and brush. Mahogany wood parts are sprayed with varnish before installation. Several employees including Barnhart, Farrar, Hughes, and Albert performed roller and brush painting, but prior to the summer of 1959 all spraying of varnish was performed by President Archie K. Lang himself, because of the higher degree of skill required for such work. When all work on the boats is completed they are moved to the concrete apron for delivery to customers either by launching in the bay or by means of transportation on an overland carrier.

B. Organizational activities of UAW (interference, restraint, and coercion)

Thomas L. Smith was first employed by the Respondent on June 4, 1958, and worked as a mechanic in the mechanical department under the supervision of Foreman Ernest G. Pisko until laid off on July 19, 1959. Since that time the Respondent has agreed to rehire this employee as a replacement for Joe Pisko (mechanic), who is expecting to quit and move to California within the near future. Ralph Barnhart submitted a written application for employment to the Respondent on November 3, 1958, showing previous experience with *Apex* as a spray painter. As directed, he reported for work to Foreman Ernest G. Pisko in the mechanical department at 7 a. m. on November 4, 1958, and was assigned to duties in the paint shop to steam clean and spray the hulls of boats with vinyl plastic paint. When not engaged in cleaning and painting a hull he performed other duties such as cleanup work, sanding, roller painting, and brush painting in the woodworking department under the supervision of Plant Manager Howard E. Beck, but was not qualified to perform the job of spraying varnish. Duties assigned to Barnhart were the same as those performed by his predecessor, Robert C. Walton, who quit the job on October 29, 1958. Paul A. Farrar, Jr. was first employed by Plant Manager Beck as a carpenter apprentice in the woodworking department in November 1958. Upon reporting for work on the day after Thanksgiving Day, Beck assigned him to work with and take instructions from Michael J. Wisnowski (alias "Big Mike"), who was thereafter considered by Farrar to be his immediate supervisor.

Plant Manager Howard E. Beck has been a member of Local No. 182 of the Carpenters Union in Cleveland, Ohio, for 14 years, and professedly is not opposed to labor organizations. Admittedly, he has on many occasions discussed unionization with the employees of the Respondent Company, including Paul Farrar, Jr., and Ralph Barnhart, telling them that they did not need a union in Respondent's plant because the shop was too small, but if a majority of the fellows wanted a union in there it was up to them. Beck admits that he engaged in such discussion with Ralph Barnhart soon after his employment, about the middle of December 1958, and that Barnhart told him he had been a union steward in the plant of his former employer (*Apex*). Thereupon, Beck replied: "Well, I belong to the union myself. There is nothing wrong with that." But when Barnhart suggested organization of Respondent's plant, Beck said he did not think it would be a good thing, because the shop was not large enough and they did not need a union. Later in December 1958 or January 1959, Ralph Barnhart and Thomas L. Smith interviewed Representative Kinney of the UAW, obtained a supply of authorization cards, and began to solicit membership in that labor organization. Shortly thereafter, at the request of Foreman Ernest G. Pisko, the Respondent granted a wage increase to Foreman Pisko, Joe Pisko, and Thomas L. Smith, effective January 18 or 19, 1959, which was reflected for the first time in paychecks issued on Friday, January 30, 1959, but Ralph Barnhart was not included therein as an employee in the mechanical department. The increase was not announced until delivery of the paychecks reflecting that fact. Prior to distribution of paychecks reflecting the aforesaid increase in pay, Thomas L. Smith was called into the plant office and questioned concerning union activities in the plant. His recollection as to the date on which this incident occurred was refreshed from the fact that on the next day (January 30, 1959), thereafter, he received increased wages and at the same time Ralph Barnhart was laid off.

Thomas L. Smith credibly testified in substance that on January 29, 1959, Foreman Pisko escorted him into the plant office, where President Archie K. Lang and Plant Manager Howard E. Beck were waiting to see him. Upon his arrival, Beck inquired whether he had been passing out cards. At first he denied it, but when Beck said that two other employees had reported his solicitation of their signatures, he admitted it to be true. Beck then inquired who else assisted him in such activities, but he refused to tell, because he did not want to get the other guy in trouble. Beck said he would find out anyway, and did not think the fellows wanted a union in there. Foreman Pisko said, "We don't want a union in here. The . . . union never did anything for me." President Lang said "Well, if you get a union in here, the first thing we will do is go to 40 hours a week. You fellows asked for a raise here. The payroll checks are made out. We are satisfied with your work. We don't know what to do with the checks until we get this union business straightened out." Beck then inquired, "Well, are you going ahead with this union business or are you going to drop it." Thereupon, he (Smith) agreed to drop the Union, and went back to his work in the shop. Later that afternoon he observed Foreman Pisko making inquiries of other employees in the shop; and then came to him and said, "Well, Tom, they are all pointing a finger at you. I don't want to see you hang by yourself. You got a family and kids. You better tell him. It won't make any difference anyway, as they will find out." Thereupon, he finally told Foreman Pisko that the other fellow was Ralph Barnhart. Foreman Pisko said, "O.K. that is all I want to know," and went directly to the office. Within a few minutes, thereafter, Plant Manager Beck came out of the office and engaged in a conversation with Barnhart.

With respect to the foregoing conduct of Respondent, I credit the testimony of Thomas L. Smith as to the substance of the interrogation to which he was subjected and the date on which it occurred. Testimony of Archie K. Lang, Howard E. Beck, and Ernest G. Pisko to the contrary was indefinite, uncertain, and incredible. Except as to the date and references to Ralph Barnhart there was little conflict in testimony pertaining to the interviewing of Smith by officials of the Respondent.

C. Discharge of Ralph Barnhart

From the credible testimony of Ralph Barnhart, it appears that Plant Manager Howard E. Beck came to him at work in the plant during the afternoon of January 29, 1959, and said: "Barney, some of the men tell us that you are trying to organize a union in this plant. We don't want no union in this shop. It is not big enough for a union. Everybody got to work in this plant to make a go of it." Barnhart was at that time performing general cleanup duties under the supervision of Beck, because the spraying of hulls had been suspended for lack of vinyl plastic paint until the arrival of a new supply (then on order). At approximately 3:30 p.m. the next day (January 30, 1959), Beck again approached Barnhart, handed him two paychecks, and said: "Barney, I have orders to let you go." Thereupon, Barnhart went to Foreman Ernest G. Pisko and expressed the opinion that he was being discharged. Foreman Pisko replied: "Yeah? Well, I suppose the . . . bulldog got a burr under his tail again." Barnhart then went into the office and inquired of Plant Manager Beck why he was being discharged. Beck replied: "I am not firing you. We are just laying you off. We don't have no paint. We will call you back in a week or 10 days. I have your telephone number. When it comes in we will call you."

Approximately 10 days later Respondent received a new shipment of the vinyl plastic paint, but did not recall Barnhart to work. In lieu thereof, Plant Manager Beck requested Foreman Ernest G. Pisko to utilize the services of a laborer named Joe Smith to steam clean a hull, and then spray paint the hull himself. Joe Smith worked 1 day at the job, and failed thereafter to show up for work any more. Thereupon, Plant Manager Beck transferred Paul A. Farrar, Jr., from his job in the carpenter shop to the paint shop, and requested Foreman Pisko to teach him the job of steam cleaning and spray painting the hulls. Since that time Farrar has continued to perform all duties formerly assigned to Ralph Barnhart.

Respondent contends that Barnhart was laid off solely for economic reasons, and admits its intention to recall him to work upon the arrival of materials required to spray the hulls. In the meantime, however, President Lang and Plant Manager Beck reviewed his qualifications and decided to replace him with a more versatile painter.

Archie K. Lang incredibly testified in substance that, when interviewed for employment, Barnhart represented himself to be an all-round painter capable of spraying paint and varnish and painting with a brush; but later demonstrated that the only job he could perform satisfactorily was spray painting with the fast-drying vinyl

plastic paint, and with respect to the latter he was sloppy and slow—that on one occasion he tried to teach Barnhart how to spray varnish, but he did not seem to have a knack for that type of work. After discussing the subject with Plant Manager Beck and Foreman Pisko, they decided not to recall Barnhart to work, but to find another painter who was more versatile and capable of doing better work; whereupon, they found such an employee in Paul A. Farrar, Jr.

Howard E. Beck testified in substance that Barnhart did a fair job on the hulls, but was not satisfactory at brush painting and spraying varnish—that he spent approximately 2 or 3 days each week with Foreman Pisko at work on the hulls, and thereafter worked in the woodworking department at cleanup jobs, rolling on the white coats and sanding the hulls between the finishing coats. When the supply of vinyl plastic paint was exhausted in January 1959 they decided to lay off Barnhart pending arrival of a new supply. Thereupon, he told Barnhart that he was being laid off because they had no material for him to work with, and that he would be called back to work when needed. It was his intention at that time to lay Barnhart off until the paint arrived, but did not know when they were going to get it. The paint came in about 10 days later, and Foreman Pisko began performing some spray painting himself. Then he hired Joe Smith to do cleanup work, sanding woodwork, etc., and requested Foreman Pisko to use him to steam clean a hull. Joe Smith worked 1 day, and thereafter failed to show up for work. He then requested Foreman Pisko to try out Paul A. Farrar, Jr., on the spray painting job; and Farrar performed so well that they decided to keep him on that job. Farrar worked much faster and was better adapted for the work, so he just overlooked Barnhart and did not bother to recall him to work.

Ernest G. Pisko credibly testified in substance that Ralph Barnhart worked under his supervision only when boat hulls were ready for steam cleaning and spray painting. At other times Barnhart worked with Michael J. Wisnowski in the woodworking department, and at the time of his layoff was doing cleanup work under the supervision of Plant Manager Beck because the supply of vinyl plastic paint had been exhausted. President Archie Lang told him that Barnhart had to be laid off until they got some more paint, so he expected him to be recalled to work when the paint came in on order from Woolsey Paint Company of New York City. When the paint arrived, Joseph Smith worked 1 day cleaning a hull, but was not tried on spraying paint. Next day, Plant Manager Beck asked him to take Paul A. Farrar, Jr., so he taught Farrar how to do spray painting and steam cleaning work. Pisko further testified that Barnhart's work in his department was satisfactory—that there was no complaint—and he had complimented Barnhart on his work. Indirectly he heard that Barnhart was a union man, and that he had been a steward while working at Apex. On one occasion he heard Barnhart say to Plant Manager Beck: "If you ever want a union in here, I'm the guy that just will get it in here for you."

D. Alleged interrogation of Dana Jeffers

Official records of the Respondent show that on or about February 24, 1959, it employed a man named Dana Jeffers, who worked in the Sandusky plant for approximately 10 days and then quit. Dana Jeffers incredibly testified that in the course of interviewing him and one Blue Byrd Bowen, President Archie K. Lang inquired of each of them whether they had ever belonged to a union—that Bowen told Lang that it was none of his business and consequently was not hired; but that he (Jeffers) was hired after telling Lang that he had been a union member while working for another employer but had lost his seniority and good standing by failure to pay his union dues during a layoff.³ Jeffers further testified that when he reported for work, Michael J. Wisnowski came up to him and said: "I'm your foreman. I'll give you a guy for you to work with", that 2 or 3 days later he applied to Wisnowski for time off to attend an unemployment hearing as witness for a friend who had been discharged for union activities; whereupon Wisnowski voluntarily told him in substance that Respondent had been having trouble with a union, had fired one guy about it, and had straightened out another guy by taking him to the office and reaching an agreement to let him keep his job and give him a second chance, if he would quit organizing the place; but they were not giving anybody else a second chance.⁴

³ President Archie K. Lang credibly denied any such interrogation; and Bowen was not called as a witness to corroborate Jeffers.

⁴ Michael J. Wisnowski credibly denied making such statements to Dana Jeffers

Having discredited the uncorroborated testimony of Dana Jeffers, and crediting the denials of Archie K. Lang and Michael J. Wisnowski with respect thereto, I find that Respondent did not interfere with, restrain, or coerce its employees by reason of any interrogation of Dana Jeffers and Blue Byrd Bowen or by other statements to Dana Jeffers with respect to union activities in its plant. There being no other evidence in the record of conduct by Michael J. Wisnowski tending to show that he participated in unfair labor practices of the Respondent, it will not be necessary to determine whether he is a supervisor within the meaning of the Act, which is denied by the Respondent.

E. Organizational activities of the Boilermakers (interference, restraint, and coercion)

On or about April 24, 1959, an organizer for the Boilermakers, James J. Bareiter, visited the parking lot outside Respondent's plant in Sandusky, Ohio, and placed under the windshield wipers of employees' cars printed authorization cards with envelopes addressed to the International Brotherhood of Boilermakers and Iron Ship Builders Local #85. These cards when completed and signed would indicate selection of that labor organization as collective-bargaining agent for the signers thereof. During the course of this activity, President Archie K. Lang came out from the plant and told Bareiter to remove this literature and get off the private property of the Respondent. Thereupon, the union representative complied with Lang's instructions, but remained in the public street about 100 feet from the plant exit and distributed the cards to employees in automobiles leaving the plant at closing time after 5 p.m. on that date. Some of these cards were signed and mailed to the addressee thereon; and at a later date, on or about June 12, 1959, Representative Bareiter held a conference with two employees (Mears and Thomas L. Smith) in the Eagles Hall at Port Clinton, Ohio. Following this conference, a union meeting was held on or about July 21, 1959, at the hall of Sandusky Building Trades in Sandusky, Ohio, which was attended by approximately 13 employees of the Respondent. Several employees were thereafter interrogated by supervisors of the Respondent concerning the attendance at this meeting.

Paul A. Farrar, Jr., credibly testified in substance that upon the invitation of Thomas L. Smith he attended the aforesaid union meeting and was thereafter questioned by Plant Manager Beck, who inquired whether he went to the meeting and who was there; but he refused to tell him.

Kenneth Ray Gwinner (welder) credibly testified that he also attended the union meeting; and was thereafter questioned about it in the weld shop by Foreman Arthur W. Goetz. Goetz told Gwinner that he had heard that he attended the meeting, and inquired why he wanted a union. Gwinner's reply was, "Better wages." Several days later Foreman Goetz reported in substance that he was trying to get a raise and had talked to the boss about it, but admonished Gwinner not to say anything to the other employees because it was not yet assured.⁵

Arthur W. Hoffstetter (welder) credibly testified in substance that he *did not* attend the Boilermakers meeting in July 1959; nevertheless, Foreman Arthur Goetz approached him and inquired "What I knew about the meeting?" Goetz further said that "The guys who were at the meeting might be laid off."

F. Renewed interrogation of Thomas L. Smith

After waiting in vain for several weeks to be recalled to work by the Respondent, Ralph Barnhart sought the assistance and advice of Thomas A. Kinney, International representative of the UAW. Thereafter, on June 24, 1959, the original charge in Case No. 8-CA-1924 was filed against Respondent, alleging unfair labor practices in violation of Section 8(a)(1) and (3) of the Act. Respondent was served with a copy of the charge by registered mail on June 25, 1959. Thereupon, Thomas L. Smith was called into the plant office to confer with President Archie K. Lang and Attorney Richard R. Kruse, confronted with the charge, and requested to relate his recollections of incidents referred to in the charge. Having done so, President Lang explained that a representative of the National Labor Relations Board was coming down to investigate, and that Respondent wanted him to know what was going on so that he would not be in the dark about the situation. On

⁵ Employees in the welding department thereafter received an increase in wages on or about September 21, 1959.

the next day, President Lang approached Smith in the plant, and told him that the lawyer had prepared a statement for him to sign. Thereupon, Smith went into the office, read the prepared statement in the presence of Office Manager Walbeck, but refused to sign the document, which reads, as follows:

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AFFIDAVIT

THOMAS SMITH, being first duly sworn, deposes and says that he resides at Sandusky, Ohio, and that he is employed as a mechanic by Inland Seas Boat Co., Inc.; that he has read the "Charge Against Employer" made by Thomas A. Kinney of the UAW-AFL-CIO against Inland Seas Boat Co., Inc.; he has worked for the Company a little over a year and is familiar with the fact that Ralph Barnhart was laid off on February 6, 1959; that he knows that no new man has been hired to replace Barnhart since he left; that to the best of his knowledge there were no reports by him or any of the other employees regarding union discussions, meetings or activities reported to the officers, plant manager or other members of the Management of the Company; that he did attend the meeting referred to in the "Charge Against Employer" but that he did not report the same to the Company.

Thomas Smith

Sworn to before me and subscribed in my presence this day of July 1959.

Notary Public

Thereafter, when Foreman Pisko inquired why he would not sign the document, Smith told him that he did not agree with two parts of the statement. One was the part about no one being hired to replace Barnhart; and the other was that the Company did not know anything about union activities in the shop. Thereupon, he was recalled to the office, and made a similar explanation to President Archie K. Lang, who agreed to have his lawyer make necessary changes therein, but never did so. Smith also admittedly told Foreman Pisko in substance that even if he signed the statement, the Company might throw him out after they got through with him, and that the Union surely would not back him up, but would hang him to the highest tree. Thereupon, Foreman Pisko said: "Well, if you're for the Union, you're hanged anyway."⁶ In this latest interrogation of Thomas L. Smith, I find a continued interference, coercion, and restraint of its employees in the exercise of the rights guaranteed in Section 7 of the Act, because the aforesaid statement of Foreman Ernest G. Pisko contained a threat of retaliation if he did not sign a statement exonerating Respondent of unfair labor practices or continued to engage in concerted activities on behalf of a labor organization.

Concluding Findings

From the foregoing findings of fact based upon a preponderance of the evidence and the entire record in the case, I find that on or about January 29, 1959, and in the latter part of June 1959, Respondent through its officers and agents, President Archie K. Lang, Plant Manager Howard E. Beck, and Foreman Ernest G. Pisko, interrogated its employee, Thomas L. Smith, concerning the activities of himself and other employees on behalf of a labor organization, threatened to reduce working hours to 40 hours per week and withhold a pay increase from its employees if they designated the UAW as their representative for the purposes of collective bargaining; that on or about July 22, 1959, Plant Manager Howard E. Beck interrogated Paul A. Farrar, Jr. (employee), concerning the attendance of himself and others at a meeting of the Boilermakers Union; that on or about July 22, 1959, Foreman Arthur W. Goetz interrogated employees Kenneth R. Gwinner and Arthur W. Hoffstetter concerning attendance at a meeting of the Boilermakers Union; thereby interfering with, restraining, and coercing its employees in their exercise of the rights guaranteed in Section 7 of the Act.

I find also that on or about January 30, 1959, the Respondent discharged or laid off Ralph Barnhart (employee) and thereafter failed or refused to recall him to work because he engaged in concerted activities with other employees on behalf

⁶I do not credit the denial of Foreman Pisko that he made such statement.

of the UAW; thereby discriminating in regard to hire or tenure of employment to discourage membership in a labor organization.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The conduct of Respondent set forth in section III, above, occurring in connection with the operations described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in certain unfair labor practices, it will be recommended that it cease and desist therefrom and take affirmative action herein designed and designated to effectuate the policies of the Act. It will be recommended that Respondent offer to Ralph Barnhart immediate and full reinstatement to his former or substantially equivalent position⁷ without prejudice to his seniority and other rights and privileges of employment, discharging or transferring to other employment, if necessary, any person hired or transferred to replace him, and make him whole for any loss of pay suffered as a result of the discrimination against him by the payment to him of a sum of money equal to the amount he would normally have earned as wages from the date on which his employment was terminated by the Respondent on January 30, 1959, to the date on which Respondent shall offer to him proper reinstatement as herein provided, less net earnings,⁸ to be computed on a quarterly basis in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 287, and *N.L.R.B. v. Seven-Up Bottling Company of Miami, Inc.*, 344 U.S. 344. Earnings in one particular quarter shall have no effect upon the backpay liability for any other such period. By reason of the recurrent nature of conduct heretofore engaged in by the Respondent, which demonstrates its hostility toward the principles of collective bargaining and the likelihood that such conduct may continue unless effectively restrained, it will also be recommended that Respondent refrain from in any manner infringing upon the rights of its employees to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act.

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

CONCLUSIONS OF LAW

1. International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO, and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

2. By interrogating its employees concerning their concerted activities on behalf of labor organizations, threatening to reduce their working hours, and withholding pay increases or other benefits if they designated a labor organization as their representative for the purposes of collective bargaining, the Respondent interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

3. By discriminating in regard to the hire and tenure of employment of Ralph Barnhart (employee) to discourage membership in a labor organization, the Respondent engaged in 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.]

⁷ See *The Chase National Bank of the City of New York, San Juan, Puerto Rico*, Branch, 65 NLRB 827.

⁸ See *Crossett Lumber Company*, 8 NLRB 497-498.