

the circumstances, as the proposed unit does not include other employees of the Employer who are currently unrepresented, we find that it is inappropriate, and we shall dismiss the petition herein.

[The Board dismissed the petition].

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**Faulhaber Company and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Teamsters Local No. 20.** *Case No. 8-CA-1960. November 3, 1960*

### DECISION AND ORDER

On June 22, 1960, Trial Examiner Leo F. Lightner 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. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices as alleged in the complaint, and recommended that these particular allegations be dismissed. Thereafter, the General Counsel and the Respondent filed exceptions to the Intermediate Report and supporting briefs.

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 [Members Rodgers, Jenkins, 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 briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.<sup>1</sup>

### 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

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<sup>1</sup> Respondent does not question the Trial Examiner's finding that it violated Section 8(a) (1) of the Act, but urges only that because this finding was based on a single act of surveillance no order should issue. We disagree. Surveillance of a group of employees by taking motion pictures is not such conduct which is so limited or insignificant in its effect that it can be regarded as of an isolated nature. Respondent's reliance here upon *Acro Division, Robertshaw-Fulton Controls Company*, 127 NLRB 64, is misplaced. In that case, no exceptions were filed to the Trial Examiner's Intermediate Report and Recommended Order, and the Board merely adopted *pro forma* the Trial Examiner's recommendation that no remedial order issue.

Relations Board hereby orders that the Respondent, Faulhaber Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Photographing its employees while they are engaged in union activity.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights of self-organization, to form labor organizations, to join or assist International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Teamsters Local No. 20, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and 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, 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) Post at its plant at Monroeville, Ohio, copies of the notice attached hereto marked "Appendix."<sup>2</sup> Copies of said notice, to be furnished by the Regional Director for the Eighth Region, shall, after being duly signed by the Respondent's representative, be posted immediately upon receipt thereof, and be maintained by it for 60 days thereafter, in conspicuous places, including all places where notices to employees are customarily posted, and including each of Respondent's bulletin boards. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered, by any other material.

(b) 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.

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges violations of the Act not found herein.

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<sup>2</sup> 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, as amended, we hereby notify our employees that:

WE WILL NOT discourage membership in International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Teamsters Local No. 20, by photographing employees while engaged in union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the right of self-organization, to form labor organizations, to join or assist International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Teamsters Local No. 20, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or mutual aid or protection, or to refrain from any and 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, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

FAULHABER COMPANY,  
*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

This proceeding was heard before the duly designated Trial Examiner in Norwalk, Ohio, on January 5, 1960, on complaint of the General Counsel and answer of Faulhaber Company, herein called the Respondent. The issues litigated are whether the Respondent violated Section 8(a)(1) and Section 2(6) and (7) of the Labor Management Relations Act, 1947, as amended. The parties presented oral argument and briefs filed by the General Counsel and Respondent have been carefully considered.

Upon the entire record,<sup>1</sup> and from my observation of the witnesses, I hereby make the following:

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF THE RESPONDENT

Respondent is an Ohio corporation, maintaining its principal offices and plant at Monroeville, Ohio, engaging in the manufacture, sale, and distribution of bicycle and velocipede accessories and cooler chests. Respondent annually sells, delivers, and transports in interstate commerce to States of the United States other than the State of Ohio, finished products in excess of the value of \$50,000, from its Monroeville, Ohio, plant. I find that Respondent is engaged in commerce within the meaning of the Act.

<sup>1</sup> Respondent's motion to correct the transcript is granted, i.e., page 54, line 8, the word "alignments" is stricken and the words "of liners" inserted; page 82, line 12, the word "liner" is substituted for the words "line or"; page 128, line 20, the word "statement" is inserted after the word "alleged"; page 130, line 20, the word "not" is inserted after the word "did."

## II. THE LABOR ORGANIZATION INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Teamsters Local No. 20, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

## III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background and sequence of events*

The primary issue to be resolved is whether the Respondent violated Section 8(a) (1) by threats and surveillance as alleged in the complaint. Respondent, by answer, denied these allegations.

Respondent's principal line of business is the manufacture of saddles for bicycles and tricycles. In March 1959, they began producing coolers for Hamilton-Scotch Corporation. The production of coolers, and the liners contained in the coolers, was a single contract which was discontinued or substantially discontinued at the time of the hearing.

During the period of time with which we are here concerned, June and July 1959, Respondent had approximately 300 employees in 5 departments, and had 3 shifts. There were two superintendents and five department foremen. Roland Faulhaber is and was executive vice president and general manager of Respondent.

Respondent was first advised of the efforts of the Charging Party to engage in organizational activities at the Respondent's plant about June 11, 1959. On that date the Charging Party requested the chief of police and the mayor of Monroeville, Ohio, to grant permission for the distribution of handbills at Respondent's plant. The reason this request was essential is obscure and unimportant herein. Roland Faulhaber acknowledged that he was advised of the Union's request by the mayor of Monroeville about June 11. There had been no previous organizational effort at Respondent's plant.

B. *Alleged threats*

The complaint alleges that Robert Tupps, from on or about June 1, 1959, to date, and Howard L. Landoll from on or about July 1, 1959, to date, threatened employees with loss of employment, shut down of the plant, removal of the plant, and other reprisals because of their union activities, etc.

It is undisputed that Robert Tupps and Howard L. Landoll were supervisors, within the meaning of the Act, in June and July 1959. Robert Tupps was employed by Respondent on March 5, 1959, as a quality control man, promoted to night superintendent on April 1, then promoted to day superintendent commencing the third week in April 1959, working from 7 a. m. until 3:30 p. m. However, during a portion of July 1959, he worked from 6 a. m. until 6 p. m. being relieved by Howard L. Landoll, the night superintendent. Tupps acknowledged that he would stay until relieved by Landoll, sometimes involving a half hour or 45 minutes, and there were times when he would be in the plant as late as 9 or 10 p. m.

Larry Holbrook was employed by the Respondent from March until July 1959, being at that time 17 years of age. He worked on the day shift. Holbrook testified that he was working with another boy, identified as Ed Dialo, also not 18 years of age, on a Saturday about June 15 (June 15, 1959, was a Monday) when they had a conversation with Robert Tupps. They advised him that they wanted to work on Sunday and he advised them that they could not work on Sunday because they were too young. According to Holbrook, Dialo said, "Well, that is why we need the Union," and Tupps replied, "Well, if you got a Union in, it would mean my job and everybody else's."

Tupps testified that the only time he discussed the Union with Larry Holbrook was at the time of the discharge of the latter. Tupps credibly testified that Larry Holbrook was laid off due to a violation of company policy. Tupps found that someone else had punched in Holbrook's timecard at 7 o'clock, starting time, and that Holbrook did not show up for work. Whether this was a single incident, or several, is not clear. Tupps further related that Holbrook, at the time of discharge, told him there was a certain boy back in the cooler assembly area who was the boy that was instigating the union activity on the cooler assembly line. Tupps stated this was the only conversation he had with Holbrook in which the Union was mentioned. Tupps could not recall any conversation with Holbrook relative to working on Sundays or any specific Sunday, and specifically denied stating that if the Union got in it would mean "all of our jobs."

Dialo was not called as a witness. Larry Holbrook was not recalled, hence did not deny the testimony of Tupps. Under these circumstances, and with particular refer-

ence to the demeanor of these two witnesses, I credit the testimony of Tupps. Accordingly, I find Tupps did not make the statement Larry Holbrook attributed to him.

Calvin Holbrook was employed by the Respondent from March 5 until July 24, 1959. He testified that he worked on the day shift the first 2 months and then the midnight shift, 10 p.m. to 7 a.m. He related a conversation with Tupps about 10 days before he was laid off. The conversation allegedly occurred in the punch press department where the liners (inserts in the coolers) were made. He set the time of the conversation as about 7:30 p.m., lunchtime for the second shift which started at 3:30 p.m. Others present were identified as Robert Pfeiffer (or Phiffer), Farmer Duff, and Alfred Duff. The machinery was shut off and the boys were wiping and washing their hands for lunch when Tupps came through from the paintroom and stopped and talked to them. Tupps first advised them that they were not getting as much production as they should, due to some troubles, and the conversation arose about the cost of the liners, the cost of the cooler that they were building. "Then one of the fellows, I'm not sure which one it was, mentioned something about a union, and he (Tupps) says, 'If the Union gets in, we will all be out of a job, including me, and Mr. Faulhaber says he will move the plant to Tennessee.'" Holbrook was certain that the first mention of the Union was initiated by one of the employees. Holbrook quoted the employee as asking, "Do you think we will get a Union?" thus provoking the alleged reply. Holbrook was not certain if anyone said anything after that as "we were washing up and I didn't particularly listen to every word of the conversation—I think I walked away to get some thinner to put on my hands to wipe that off—if there was more said, I didn't hear it."

Alfred Duff was employed by the Respondent as a press operator on the second shift. He was hired March 6, 1959, and furloughed on July 23, 1959. Duff related that about 3 or 4 days before his layoff, "after we had our supper," about 9 p.m., three employees were putting liner bodies together (Duff, Holbrook, and Pfeiffer) when Tupps walked up and started talking to them. Tupps is quoted as starting the conversation by saying, "Duff, do you know if this Union was to go in here, we would be walking the streets. You wouldn't have a job, I wouldn't have a job, none of us would have a job." Tupps is quoted as saying "We are running these coolers so cheap that we couldn't pay it. We are running these coolers for a \$185 a thousand." Duff acknowledged that they ate supper about 8 p.m. on that shift. Duff was certain that the remark by Tupps with reference to the cost of the assembly did not come up until after Tupps' remarks about the Union. He was also certain that Tupps just walked up and began talking to them without anyone in the group asking any questions, he could not recall anyone in the group saying anything.

Robert Tupps denied making a statement to Calvin Holbrook at the time specified to the effect that, if the Union was successful in organizing the plant, the plant would either shut down or move. He also denied ever being told by Mr. Faulhaber that if the Union was successful, he would move the plant or close it down. He denied telling Calvin Holbrook that Mr. Faulhaber had made such a statement. Tupps denied telling Alfred Duff that if the Union were successful all of them would be out of a job. He also denied ever discussing the Union or union organizational activities with any employee, other than a member of management, other than the recitation of his conversation with Larry Holbrook, set forth above.

That the ostensible conversation related by Holbrook and Duff involved a single conversation is clear from the record. General Counsel does not otherwise contend. The alleged conversation is alleged to have taken place in the presence of four employees, two of whom, Robert Pfeiffer and Farmer Duff, were not called as witnesses. There are substantial discrepancies between the testimony of Holbrook and Alfred Duff as to the time of the alleged conversation; as to whether Farmer Duff was or was not present; as to whether a discussion of production preceded or followed a discussion of the Union; and as to whether Tupps' alleged statements about the Union resulted from a question by an employee (Holbrook's version), or was initiated by Tupps with no question having been directed by any employee (Duff's version). Holbrook recalled the conversation as occurring as he was washing up preparatory to eating supper about 7:30 p.m.; Duff was equally certain that the conversation took place at 9 p.m. after the supper break and while they were engaged at work.<sup>2</sup>

<sup>2</sup> General Counsel urges that Tupps did not deny specifically the statement attributed to him, "If the Union got in, we would all be out of a job, etc." I disagree that he denied that he ever discussed the Union or union organizational activities with any employee. True, he used the phrase "not that I know of," however, a review of his testimony indicates a frequent use of that phrase. Having carefully observed the witness, I do not deem the use of this phrase, by him, as evasiveness.

I do not consider the conflicts in the testimony of Holbrook and Duff inconsequential. Rather, they raise a substantial doubt of the probative value of the testimony of either. Two other alleged witnesses to the alleged conversation, presumably available, who might have corroborated one version or the other, if true, were not called. In addition, the demeanor of Tupps was such as to cause me to credit his denials. A review of his testimony reflects his candor and his effort to be meticulously accurate. Accordingly, I find Tupps did not make the statements attributed to him by Calvin Holbrook and Alfred Duff, relative to the loss of jobs or moving or closing of the plant.

James L. Williams was employed by the Respondent from the middle of April until the last part of July 1959. He was a press operator on the second shift. He related an alleged conversation with Howard Landoll which occurred "sometime in July, I believe." His testimony was "I asked Howard what the benefits of the Union were. Howard said that before Mr. Faulhaber would allow a union to come into the factory there, he would either move the plant or would shut down. Howard also stated that if the Union was to get in to the shop, each man would have a specific job to do and that if he was running a machine and it broke down, it was a major breakdown and would take all day to repair it, he would be sent home without pay." He was uncertain if the conversation took place early in July or late in July and could not relate it to the time of his layoff, he did not know what time of the day it took place, except it was during the second shift. He was uncertain if it was before or after he had taken his break to eat. He related that the conversation took place at his machine but acknowledged that it was not a normal thing for the supervisor to interrupt his operation to hold a conversation. He was uncertain how the conversation began and did not recall what if anything was discussed previous to the conversation stated. He acknowledged he could recall nothing other than the quoted conversation.<sup>3</sup>

Howard Landoll, acknowledged having a conversation with James Williams during the night shift, in July, while night superintendent. His version of the conversation was, "Well, Red asked me what I thought of the Union, and I just told him I didn't know nothing about it and I just told him the benefits of the Company, and that was it." He denied having advised Williams that before Faulhaber would let the Union into the plant he would move or shut down. He also denied making any statement to any employee to the effect that if the Union were successful in its organization of the employees, the Company would shut down or move the plant. He was asked if he made any statement to the effect that the Union would insist on rigid job descriptions, and responded, "No, I said maybe, I didn't make no specific statements, I just said, maybe, I don't know." On cross-examination Landoll became confused and vague.

I find it appropriate to note Respondent's characterization of James Williams' testimony as "so vague and uncertain as to any of the details of the alleged conversation that his credibility must be seriously questioned" The same observation would attach equally to the testimony of Howard Landoll, if anything to only a slightly lesser degree. The Board has found that where testimony is vague and inconclusive, and unsupported by any corroborative evidence, there is no sufficient basis for finding a violation of the Act.<sup>4</sup> I, therefore, find an absence of the requisite proof that Landoll made the statement relative to the removal or closing of the plant. In so finding, I am not unmindful of the fact that Landoll acknowledged that he did have a conversation with Williams, however, he denied having uttered the alleged threat.

The burden of proof is upon General Counsel to show by substantial evidence of probative value the occurrence of the conduct alleged. Such proof is not present in the form of credible testimony in this record. Accordingly, for the reasons stated, I do not find the requisite preponderance of evidence essential to support the allegations that the enumerated threats were made by Robert Tupps and Howard Landoll. I will recommend dismissal of that portion of the complaint.

### C. Surveillance

Marcus Barnett has been employed by the Respondent for 6 years as a punch press operator, working on the first shift. He attended a meeting of the Union on July

<sup>3</sup> I do not consider the testimony of Williams relative to a portion of a conversation between Mr. Faulhaber and some unidentified employees, he overheard, as constituting an additional specification of interference, restraint, or coercion. It is not specified in the complaint, and was not fully litigated. Accordingly, I have not elaborated upon it.

<sup>4</sup> See *Hadley Manufacturing Corporation*, 108 NLRB 1641, 1646, 1647.

25, 1959, with some 10 or 15 other employees of the Respondent. The meeting was held in the Teamsters union hall on State Street in Freemont, Ohio. He credibly testified that as he left the union hall he stopped to talk with Wallace Wright and Vern Lazar. They started east on State Street and noticed a car parked and a camera pointed toward them or toward the union hall. Those in the car seemed to notice the three looking at them and hurriedly drove away. He could not identify the occupants of the car, which was on the other side of Route 20 some 30 or 35 feet away, but testified there were two people in the car and gave the license number carried by the car.

Roland Faulhaber, executive vice president and general manager of Respondent, acknowledged moving pictures had been taken of people attending or leaving this union meeting. He acknowledged having advance knowledge of the meeting and that he had a discussion with a Mr. Freeze of Mid-West Consultants, Inc., concerning the same. Faulhaber testified that it was Freeze who suggested that moving pictures be taken of people attending or leaving the union meeting, Faulhaber approved, and Freeze took the pictures. The pictures were subsequently exhibited to Faulhaber, Mr. Persons, identified as president of the Respondent also its parent company, and a Mr. Bechtel, a stranger to both companies. The film ran approximately 2 minutes and Faulhaber identified four employees of the Respondent but knew only Marcus Barnett by name.

Faulhaber testified that Respondent had previously retained Mid-West Consultants, Inc., for the purpose of developing a house organ or factory newspaper for the employees. He identified Freeze as a former general manager of the Medusa Cement Plant at Bay Bridge, Ohio, in which capacity he ran the plant and negotiated labor contracts with a labor union. Faulhaber testified that Freeze did not give any specific reason for the taking of the pictures but did say "it will give you a chance to see who is attending the union meeting." Faulhaber had no prior experience with organizational activities of a union and was relying on the experience of Mr. Freeze.

Barnett acknowledged that he was never approached by any supervisor relative to his attendance at the meeting, and that no one ever said anything to him about joining the Union or not joining the Union, or attending union meetings or not attending union meetings. He is still employed and has not been threatened with possible loss of his job by reason of any union activity.

No conflict appears in the related testimony, nevertheless, to avoid doubt, I credit both witnesses on the testimony recited.

There is no other evidence relating to surveillance, accordingly, to the extent the complaint alleges surveillance in any other form or at any other time I will recommend that it be dismissed.

In view of the admission of the Respondent that it had advance knowledge of the time and place of the union meeting and authorized the taking of the moving pictures apparently to provide Faulhaber with "a chance to see who is attending the union meeting," and the uncontradicted testimony of Marcus Barnett that the employees of the Respondent were aware of the fact that their union activities were being observed, a *prima facie* case of surveillance appears. The Board, in noting the express purpose of the Act is to protect the "exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection," has held: In banning "interference" Congress clearly meant to proscribe any employer activity which would tend to limit employees in the exercise of their statutory rights. Inherent in the very nature of the rights protected by Section 7 is the concomitant right of privacy in their enjoyment—"full freedom" from employer intermeddling, intrusion, or even knowledge. *Standard-Coosa-Thatcher Company*, 85 NLRB 1358, 1360.

The Board found the taking of pictures of union organizers distributing leaflets to employees, by foremen, "for the purpose of ascertaining the identity of the union organizers with whom the Respondent would have to deal," constituted interference, restraint, and coercion. *Tennessee Packers, Inc.*, 124 NLRB 1117. The Board found the taking of pictures of employees peacefully picketing constituted an act of surveillance, hence a violation of the Act. *Radio Industries Inc.*, 101 NLRB 912. See also *Hudson Hosiery Company*, 109 NLRB 1410. If the taking of pictures of union organizers distributing leaflets to employees at the plant gate and employees peacefully picketing adjacent to the plant constitutes an act of surveillance, *a fortiori*, taking of pictures of employees attending a union meeting, in another city 25 miles away, to give Respondent a memorial of who was attending the union meeting is surveillance.

It does not avail the Respondent to attempt to show that its observation of its employees meeting did not result in any retaliatory action against those attending

"even though there may be no testimony that the Respondent intended to coerce employees and the record does not disclose that in fact employees were coerced, the test of interference, restraint, and coercion does not turn on the employer's motive, on whether the coercion succeeded or failed, but rather on whether the employer engaged in conduct which it may reasonably be said tends to interfere with the free exercise of the employees rights under the Act." *N.L.R.B. v. Illinois Tool Works*, 153 F. 2d 811 (C.A. 7).

In *N.L.R.B. v. Collins & Aikman Corp.*, 146 F. 2d 454 (C.A. 4), the court held any real surveillance by the employer over union activities of employees, whether frankly open or carefully concealed, falls under the prohibitions of the Act.<sup>5</sup> A contention similar to that made herein that there was no proof that any of the employees were intimidated or coerced was considered by the Board in the *Premier Worsted Mills*, 85 NLRB 985, 986. Therein the Board said: "Although the Respondent admits most of the acts of surveillance as found by the Trial Examiner, it contends in its exceptions that there is no proof that any of its employees were intimidated or coerced thereby, and that in such circumstances this conduct cannot be found violative of Section 8(a)(1). There is no merit in this argument. The Board has held that secret surveillance interferes with, restrains, and coerces employees in the exercise of their rights under Section 7 of the Act (citing *Virginia Electric and Power Company*, 44 NLRB 404). *A fortiori* the type of surveillance presented here, the existence of which is known to the employees, exerts a coercive influence (citing *Schramm and Schmieg Company*, 67 NLRB 980; *Raybestos-Manhattan, Inc., the Raybestos Division*, 80 NLRB 1208.) And as we have noted on many occasions, surveillance, like interrogation and similar conduct, is illegal without regard to whether it succeeds in its purpose."

Respondent urges that an isolated incident of a technical violation of the Act is not sufficient to sustain a cease-and-desist order. Respondent cites *N.L.R.B. v. Falls City Creamery Company*, 207 F. 2d 820 (C.A. 8). The language of the court's decision unquestionably lends support to Respondent's contention, however, the factual situation in that case is clearly distinguishable from the circumstances under consideration herein.<sup>6</sup> In fact, the court, in the cited case, stated:

If there had been union hostility or there was evidence of planned espionage, the conduct of [Respondent] might constitute sufficient evidence to justify the conclusion that it would have caused employees concern and interfered with their freedom in engaging in union activities, as we have held [cited cases omitted].

In the instant case "planned espionage" was acknowledged.

Respondent also urges that the isolated incident of picture taking, done at the suggestion of and in reliance on a labor relations consultant, hardly establishes a pattern of antiunion activity. The defense of poor advice is rejected.

There can be no question that such open surveillance of a union meeting would have the natural effect or tendency of interfering with, restraining, and coercing employees in the exercise of rights guaranteed by the Act, and therefore the intention or motivation of Respondent in engaging in such conduct would be immaterial in view of such effect.<sup>7</sup>

I find, for the reasons stated, that the Respondent by its surveillance of the union meeting, and of its employees while they were engaged in concerted activities for the purpose of collective bargaining or other mutual aid and protection, on July 25, 1959, interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act, thereby committing unfair labor practices as defined in Section 8(a)(1) of the Act.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

<sup>5</sup> See cases cited in the opinion

<sup>6</sup> The other cases cited by Respondent relate to isolated statements, isolated comments in casual conversation with no showing they were authorized, innocuous statements and inquiries, etc., as distinguished from unquestionably authorized surveillance by taking moving pictures. Accordingly, I deem them neither pertinent nor germane.

<sup>7</sup> *The Radio Officers' Union of the Commercial Telegraphers Union, AFL v. N.L.R.B.*, 347 U.S. 17.

## V. THE REMEDY

Although I have recommended dismissal of those portions of the complaint alleging that Robert Tupps and Howard Landoll threatened employees, in the manner specified in the complaint, I have found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It having been found that surveillance of the employees of Respondent attending a union meeting interfered with, restrained, and coerced employees, I recommend that Respondent be ordered to cease and desist from in any like or related manner infringing upon rights guaranteed to its employees by Section 7 of the Act.

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

## CONCLUSIONS OF LAW

1. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Teamsters Local No. 20, is a labor organization within the meaning of Section 2(5) of the Act.

3. By taking moving pictures of employees attending or leaving a union meeting, the Company has engaged in surveillance and has thus interfered with, restrained, and coerced employees in the exercise of rights guaranteed by Section 7 of the Act, and has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. Respondent has not threatened its employees with loss of employment, shut down of the plant, removal of the plant, or other reprisals because of their union activities, sympathies, affiliation, and membership.

5. 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.]

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**Corning Glass Works and Anthony Kabbaze.** *Case No. 1-CA-3046. November 3, 1960*

## DECISION AND ORDER

On July 15, 1960, Trial Examiner James F. Foley 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 brief in support thereof.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Jenkins, 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 entire record in this case, including the Intermediate Report, the exceptions,