

ing in regard to their hire or tenure of employment, or any term or condition of employment.

WE WILL NOT interrogate our employees concerning their membership, affiliation, or sympathy with the above-named or any other labor organization, in a manner constituting interference, restraint, or coercion in violation of Section 8(a) (1) of the Act.

WE WILL NOT threaten our employees that we will shut down the plant in the event it becomes organized by the above-named or any other labor organization.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any and all such activities.

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

All our employees are free to become, remain, or refrain from becoming or remaining members of United Steelworkers of America, AFL-CIO, or any other labor organization.

BRIDGEPORT BRASS 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.

**Allied Distributing Corporation and Standard Optical Company
and International Union of Electrical, Radio and Machine
Workers, AFL-CIO. Case No. 20-CA-1744. March 15, 1961**

DECISION AND ORDER

On May 26, 1960, Trial Examiner Eugene K. Kennedy issued his Intermediate Report in this 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 affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also recommended that the complaint be dismissed in all other respects except in accordance with the findings and conclusions set forth in the Intermediate Report. 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 brief,² and hereby adopts the

¹ 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].

² The Respondent's request for oral argument and to reopen the hearing is denied as in our opinion the record, exceptions, and brief adequately present the positions of the parties.

findings, conclusions, and recommendations of the Trial Examiner, with the following exceptions, modifications, and additions:

1. The Trial Examiner found and we agree that the Respondent violated Section 8(a)(1) of the Act on or about October 28, 1959, by threatening its employees with loss of work and/or termination of employment if the Union was selected as their bargaining representative.

2. We also find, in agreement with the Trial Examiner, and for the reasons indicated below, that the Respondent discharged Ray Story, Virgil Benton, and Henry Amador in violation of Section 8(a)(1) and (3) of the Act.

3. The Respondent employs about 13 men in its manufacturing operation at Salt Lake City, Utah. During the week of September 11, 1959,³ Story contacted 4 of the 13 men working at the plant for the purpose of stimulating interest in a union organizational meeting which had been arranged for September 11 at the home of Clarence Palmer, an AFL-CIO field representative. Benton was also active in making at least one of these contacts. The meeting was attended by employees Henry Amador and Earl Saltzgiver as well as Story and Benton. Story, Benton, and Amador were subsequently discharged on September 14 and November 6 and 13, respectively.⁴ The Respondent denies any knowledge of the union activity of any of these three employees at the time of their discharges.

In finding that the Respondent was aware of Story's union activity the Trial Examiner relied, *inter alia*, upon the following evidence: (1) The precipitous nature of Story's discharge, occurring as it did, without prior notice or warning on the Monday (September 14) following the Friday (September 11) of the organizational meeting at Palmer's home, and (2) the statement made by Shop Foreman James Vreekin to Benton, on November 6, to the effect that when he (Vreekin) first heard about Story he told Robert Schubach, vice president and general manager of the Respondent, to get rid of anyone who had anything to do with the Union.

The Respondent's knowledge of Benton's union activity is supported by Vreekin's statement to Benton that he would have to "read between the lines" as to the reason for his discharge, and as to Amador by Vreekin's query of Amador asking why he was so "hopped up" about the Union.

In addition, the Respondent's knowledge of these three employees' activities on behalf of the Union is pointed up in the conversation cited by the Trial Examiner in which Robert Schubach told Jack E.

³ All dates refer to 1959 unless otherwise indicated.

⁴ The Trial Examiner's statement appearing *infra* that "Three of the four employees who attended this meeting were terminated within a month," appears to be an inadvertent error.

Machintosh, an employee, that he (Schubach) knew that the "younger men" were responsible for the Union's effort to organize the plant. Benton, Story, and Amador were among the youngest employees in the plant.

It is clear under well-established Board and court precedent that the absence of direct knowledge of an employee's concerted or union activities does not preclude a finding that such employee has been discharged for such activity, when the Respondent's knowledge may be properly inferred.⁵

In view of the above-mentioned statements made to Story, Benton, and Amador; the precipitous nature of the discharges; the smallness of the plant wherein the organizational contacts were made;⁶ and the manifest union animus displayed by the Respondent and illustrated by its threats of reprisal which constituted the independent 8(a)(1) findings in this case, we conclude, in agreement with the Trial Examiner, that an inference of the Respondent's knowledge of the union activity of Story, Benton, and Amador, is warranted.⁷

The Respondent contends that the discharges were an economy measure designed to offset the business slump which occurs annually during the winter season. The record indicates that such a slump may well have occurred, but the record clearly shows that even though such business declines have occurred for the past several years, it had never before been the policy of the Respondent to make layoffs at those times. Apparently, the policy of retaining skilled personnel during slack seasons was due to the Respondent's desire to have a trained work force at its disposal when business was at its seasonal peak during the summer months.

Viewed against this background of interference, restraint, and coercion, consisting of the threats found to violate Section 8(a)(1) of the Act, and upon the entire record, we find that Story, Benton, and Amador were discharged in violation of Section 8(a)(3) and (1) of the Act because of their activities on behalf of the Union.

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, Allied Distributing Corporation and Standard Optical Company, its officers, agents, successors, and assigns, shall:

⁵ For example, see *The Radio Officers' Union of the Commercial Telegraphers Union, AFL (A. H. Bull Steamship Company) v. N.L.R.B.*, 347 U.S. 17; and *Cook Paint & Varnish Company*, 129 NLRB 427.

⁶ In inferring that the Respondent had knowledge of the employees' union activities, Member Rodgers does not rely on the "smallness" of Respondent's plant.

⁷ *Wiese Plow Welding Co., Inc.*, 123 NLRB 616.

1. Cease and desist from:

(a) Discharging, laying off, or otherwise discriminating against employees because of their exercise of the right to self-organization or to join labor organizations.

(b) Threatening its employees with loss of work and/or termination of employment if the Union is selected as their bargaining representative.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or mutual aid or protection as guaranteed in Section 7 of the Act, or to refrain from any or all such activities.

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

(a) Offer Ray Story and Virgil Benton immediate and full reinstatement to their former or substantially equivalent position without prejudice to their seniority or other rights and privileges.

(b) Make whole Ray Story, Virgil Benton, and Henry Amador for any loss of earnings each may have suffered or may suffer by reason of their layoff or discharge in accordance with the formula set by the Board in *F. W. Woolworth Company*, 90 NLRB 289.

(c) Preserve and, upon request, make available to the Board or its agents, for examination or copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts of backpay and rights of reinstatement under the terms of this Order.

(d) Post at its shop in Salt Lake City, Utah, copies of the notice attached hereto marked "Appendix."⁸ Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by the Respondent's authorized representative, be posted by the Respondent immediately upon receipt thereof, and be 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 said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for the Twentieth Region, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be dismissed in all other respects.

⁸ 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 interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist International Union of Electrical, Radio and Machine Workers, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities.

WE WILL offer Ray Story and Virgil Benton immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges.

WE WILL also make Ray Story, Virgil Benton, and Henry Amador whole for any loss of earnings suffered by them as a result of their layoff or failure to be reinstated by Respondent to the extent and in the manner recommended by the Trial Examiner in his Intermediate Report.

ALLIED DISTRIBUTING CORPORATION AND
STANDARD OPTICAL 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 case was tried in Salt Lake City, Utah, on March 9 and 10, 1960. It presents questions of alleged threats by representatives of Respondents and discriminatory discharges of three individuals.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Allied Distributing Corporation and Standard Optical Company, herein called Respondent, are Utah corporations engaged in the manufacture and sale of optical devices, hearing aids, cameras, and equipment in the State of Utah, and annually purchases goods originating outside the State of Utah valued in excess of \$50,000. Respondent is engaged in interstate commerce and its activities affect commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

International Union of Electrical, Radio and Machine Workers, AFL-CIO, herein called the Union, is a labor organization within the meaning of the Act.¹

III. THE UNFAIR LABOR PRACTICES

A. *The issues*

The complaint alleges that Respondent through its vice president and general manager, Robert M. Schubach, threatened employees with economic reprisals and termination of employment and a refusal to bargain if the Union was selected as the bargaining representative of the employees. It also alleges that Jim Vreekin, the shop foreman, threatened employees with termination of employment because of their activities on behalf of the Union.

The complaint further alleges that Respondent discharged Ray C. Story on September 14; Virgil Benton on November 6; and Henry Amador on November 13, 1959, because of their activities on behalf of the Union.

With these above contentions of the General Counsel the Respondent takes issue and offers evidence aimed at supporting the termination of the three employees as having been caused by economic considerations and also offers evidence with respect to conversations Schubach had with employees.

B. *The events*

Robert Schubach, the vice president and general manager of Respondent, and James Vreekin, the shop foreman, are the two individuals alleged to have been acting for Respondent in the commission of unfair labor practices. The shop involved has a normal complement of approximately 13 men engaged in manufacturing optical equipment.

Story, Benton, Amador, and Earl Saltzgiver were among the youngest employees of Respondent from the standpoint of age and seniority. There was a meeting at an AFL-CIO organizer's house named Clarence Palmer on the evening of September 11, 1959. Story had been in touch with Palmer during the preceding week and had invited Benton, Amador, and Saltzgiver along with another employee who did not attend.

When Story appeared for work on the Monday following the meeting, he was given a termination slip dated September 11, and a check dated September 12, 1959, which represented 2 weeks' pay in lieu of 2 weeks' notice.

Palmer telephoned Schubach in mid-September requesting recognition of the Union which Schubach refused but he did consent to have the NLRB conduct an election which was held on November 2, 1959. This election resulted in an 8 to 5 vote against the Union.

In the week preceding the election, and in the case of one employee, on the morning of the election, Schubach talked to the employees in the shop concerning the forthcoming election. They were spoken to individually by Schubach in a room adjoining the shop except that in the case of Amador and Benton they were called in by Schubach together for the purpose of having this discussion concerning the Union and the forthcoming election.

Benton was terminated on November 6, although he continued to work for an additional 2 weeks as a favor to Vreekin. Amador was terminated on November 13. The Union filed unfair labor practice charges on November 25, 1959. Amador was rehired in mid-December 1959.

C. *Interference, restraint, and coercion*

Vice President and General Manager Schubach gave the following version of his talk with the shop employees preceding the NLRB election:

I believe that I would start the conversation with each employee in this manner. I would say to them, "I presume that the Union people have talked to you and that they must certainly have told you some of the advantages of belonging to a union. I would like to give you our viewpoint on the matter." I said that every business and every department in our business had to be run on an economic basis, that if there was no—if the Union had said they were going to get them more money, that that money couldn't come out of my

¹ The complaint alleges and the answer admits that the activities of Respondent affect commerce and that the Union is a labor organization within the meaning of the Act.

pocket, that it had to be economically sound, and that regardless of what the Union told them, or if we had to deal with the Union, what the Union got for them that if it wasn't economically sound that there were other alternatives that we could take; that we didn't have to run a shop. If we could send our work to Texas or Chicago or anyplace else and get it done cheaper than what we could do it ourselves, that's what would happen; and that the Union or anyone else couldn't get them what wasn't there. I believe it was Earl Saltzgeber said to me, "You might be doing yourself a favor to join the Union. You could advertise to Union people that you were a Union shop such as King Optical does and gets Union work by doing that." And I reminded him that King Optical doesn't hire a single shop man in Salt Lake City; that all their work is sent to Chicago. And I further explained to them that our pay scales, while they might not be hourly as high as some other crafts, that our work was more steady, that they had more weeks' work per year. I also explained to them that I had always considered my relationship with the men in the shop to be of a personal nature and a desirable relationship, and that I would rather deal with them individually than with some third party stranger that didn't know anything about their problems or our problems, and I would rather deal with them.

Schubach's own version of his talk with the various employees would appear to reasonably support a finding itself that the employees addressed would interpret his remarks as containing threats of sending the work elsewhere and laying them off during the slack period if the Union were selected as their bargaining representative. Buttrressing this finding is the credited testimony of Amador that Schubach told him that in slack periods he would not carry the men if the Union were in, that he would throw his equipment out in the street before he would let the Union tell him how to run his business, and that he would be meaner in dealing with the Union than with individual employees. Employee Saltzgeber credibly testified that in his interview Schubach stated that "I don't want the goddam thing in here," referring to the Union.

Employee Benton related that Schubach told him that he knew someone had to sign cards in order to have an election and that if a union came in the men would not be carried during slow time and that he would not deal with the Union and would give them the nastiest deal possible.²

There is no evidence that Vreekin threatened termination of employees supporting the Union as alleged in the complaint.

D. Alleged discriminatory discharges

In making a resolution as to whether the three discharges here involved were actuated by antiunion considerations, the record evidence offered by Respondent will first be summarized. It is aimed at demonstrating these discharges were unrelated to the Union's organizational efforts and were based on purely economic considerations.

Vreekin and Schubach testified that in July 1959, Schubach asked Vreekin how he could save money in the shop since Respondent had heavily obligated itself in connection with the acquisition and remodeling of retail outlets. Vreekin said that during the slack season he could lay off employees, which occurs in the late fall and winter months.

There is no direct evidence that Respondent had knowledge of union organizational activity at the time Story was terminated. There had been no employees hired to replace Story and Benton as of the date of this hearing. Respondent also reduced its working force in November 1959 and February 1960, by terminating two doctors, two optometrists, two shopmen, two photomen, one cashier, and two dispensers.

Amador, Benton, and Story were junior employees in the shop and Vreekin regarded Story as a "smart-aleck" type, which he said entered into his determination to select Story as the first man to be terminated. The record of Story's testimony indicates some justification for Vreekin's characterization.

The gross receipts derived from the sale of optical products in 1959 and for January 1960 by Respondent were as follows:

² Respondent contends Benton's testimony should be rejected because it was incoherent and disconnected and because Benton ascribed to Schubach a statement that he had written a letter to Palmer in the East. It is true that Benton's testimony was not always couched in polished language but he impressed the Trial Examiner as a truthful witness. Whether or not Schubach wrote a letter to Palmer in the East or whether Palmer made a trip to the East cannot be determined from the record. Benton's testimony as related above is credited.

1959	
January -----	\$56,656
February -----	54,754
March -----	53,798
April -----	56,990
May -----	56,889
June -----	65,611
July -----	61,255
August -----	72,882
September -----	64,409
October -----	53,326
November -----	49,871
December -----	43,370
1960	
January -----	48,437

Amador, according to Vreekin, was replaced in favor of a man with 16 years' experience who had been terminated by one of Respondent's competitors. However, after about a month, the replacement proved unsatisfactory and Amador was recalled.

There are also record facts on which a finding of discriminatory discharges can be based. The record is clear that Respondent acting principally through Vice President and General Manager Schubach was strongly opposed to the idea of collective bargaining by his shop employees.

Story was terminated in an apparently precipitous manner on Monday morning following the union meeting at Palmer's house which Story had arranged with Palmer and the three other employees who attended. Three of the four employees who attended this meeting were terminated within a month. An inference of Respondent's knowledge of the meeting on Friday night, September 11, 1959, may be derived from the following facts. Schubach signed Story's termination slip although the record shows that Vreekin usually did this in the course of his ordinary duties. Schubach told employee Machintosh, prior to the NLRB election, that he knew "the younger men had gotten this thing together" referring to the Union. Benton testified that when he was terminated on November 6, 1969, Vreekin attributed his termination to Schubach and Vreekin told Benton that he (Vreekin) had advised Schubach to get rid of anyone who had anything to do with the Union when he had heard about Story.

When Benton was discharged and he asked Vreekin the reason for it, Vreekin told him that he would "have to read between the lines."

The replacement of Amador by an employee terminated by a competitor, while it may have been an error as Vreekin testified, would seem more likely to reflect that Vreekin was implementing Respondent's policy in terminating the employees who participated in the initial organizational meeting. Although Amador was rehired, it was not until after the replacement had proved unsatisfactory and after unfair labor practice charges had been filed on November 25, 1959. A few days before the NLRB election Vreekin asked Amador why he "was so hopped up over the Union."

The record is clear that it was an established practice of Respondent to retain its employees throughout the year including the period when the business fell off and which was characterized in the record as the slack season. In addition to any benevolent motivation Respondent may have had in connection with this practice, it would also appear advantageous to Respondent to be assured of having trained employees available when they were needed. Also, in view of the substantial capital expenditures reflected in the record that Respondent had made, it would not appear that there was an anticipation of a contraction in Respondent's business. Further there is nothing in the record to indicate that there would not be the seasonal upturn in business commencing in the spring of 1960 following the hearing in this matter, requiring additional shop employees.

It is found that the evidence preponderates in support of a finding that Respondent threatened its employees with economic reprisal and termination of employment if the Union was selected as their bargaining representative.

It is also found after weighing the opposing considerations that the evidence adequately preponderates in support of a finding that Story, Benton, and Amador were terminated because of their activities on behalf of the Union, on September 14 and November 6 and 13, 1959, respectively.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operation of Respondent as set forth in section I, above, have a close,

intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

CONCLUSIONS OF LAW

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

1. Respondent Allied Distributing Corporation and Standard Optical Company is engaged in commerce within the meaning of the Act.

2. International Union of Electrical, Radio and Machine Workers, AFL-CIO, is a labor organization within the meaning of the Act.

3. The Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act by:

(a) On or about October 28, 1959, threatening its employees with loss of work and/or termination of employment if the Union was selected as their bargaining representative.

(b) Terminating Ray Story, Virgil Benton, and Henry Amador on September 14 and November 6 and 13, 1959, respectively, because of their activities in behalf of the Union.

[Recommendations omitted from publication.]

Becker-Durham, Inc. and International Union of Electrical, Radio and Machine Workers, AFL-CIO. *Case No. 3-CA-1428.*
March 15, 1961

DECISION AND ORDER

On September 8, 1960, Trial Examiner C. W. Whittemore issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

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 and brief, and hereby adopts the findings,¹ conclusions, and recommendations of the Trial Examiner with the modifications indicated herein.

1. We agree with the Trial Examiner that the Respondent's production manager, McQuillen, knew about the meeting which the three alleged discriminatees had attended with a union organizer the night before their layoff, and that the layoffs were prompted by McQuillen's opposition to the Union's organizational efforts. The Trial Examiner found that McQuillen had admitted to Mrs. Lobdell that he knew

¹In affirming the Trial Examiner, we find it unnecessary to, and accordingly do not pass upon, the Trial Examiner's finding that McQuillen displayed an antiunion attitude by his statement that "if the union came in they would not be able to come to him on a semi-personal basis as before."