

The service mechanics perform the usual duties incidental to the maintenance and repair of trucking equipment. All their work is done in the repair shop at Richmond and they do not interchange with the drivers. We find that their interests are different from those of the drivers and, in accord with established Board practice, we shall exclude them.⁷

There are four lease drivers who operate out of the Employer's Richmond terminal. The Employer contends that these men are "employees" within the meaning of the Act, and should therefore be included in the unit. The Petitioner contends that they are "independent contractors" and should therefore be excluded or, at best, should be allowed to vote subject to challenge. The record shows that these drivers own their own tractors, that the tractors carry the name and "colors" of the Employer, and that the owner-drivers and the Employer have written agreements for the exclusive use by the Employer of these tractors. The owner-drivers are subject to all the Employer's rules and regulations. They cannot haul for anyone else; they garage their tractors at the Employer's terminal; and they receive the same rate of pay and same benefits as the other drivers. It is clear that the four lease drivers have no control over the manner and means of accomplishing their work, but are subject in all material respects to the Employer's control. In view of these facts, we conclude that the lease drivers are employees of the Employer within the meaning of the Act, and we shall include them in the unit.⁸

Accordingly, we find that the following employees at the Employer's terminals at Richmond and Franklin, Virginia, constitute an appropriate unit for the purposes of collective bargaining within Section 9(b) of the Act:

All over-the-road drivers, including the lease drivers, but excluding service mechanics, the bookkeeper, office clerical employees, guards, professional employees, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

⁷ See *Standard Trucking Company, supra*; *Frederickson Motor Express Corporation, supra*.

⁸ See *Golden Age Dayton Corporation, 124 NLRB 918*.

Baltimore Binding and Waistband Corp. and Textile Workers Union of America, AFL-CIO, CLC. Case No. 5-CA-1733. March 31, 1961

DECISION AND ORDER

On October 11, 1960, Trial Examiner Louis Plost issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in and was not engaging in the unfair labor

practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief.¹

The Board 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,² the exceptions and brief, and the entire record in the case, and finds merit in one of the General Counsel's exceptions. Accordingly, the Board adopts the findings, conclusions, and recommendations of the Trial Examiner, with the additions and modifications set forth below.

1. We agree with the Trial Examiner that General Manager Wendell's refusal to lend money to employee Dorsey, on May 11, 1960, did not violate the Act. Wendell had frequently made loans to employees, but these loans clearly were personal loans from Wendell and in no way involved the Respondent's funds. Consequently, we find that, regardless of Wendell's motivation, his refusal to lend his own money to Dorsey did not constitute the withdrawal of a privilege granted by the Respondent or discrimination by the Respondent with regard to any term or condition of employment.

2. Contrary to the Trial Examiner, and in agreement with the General Counsel, we find that Wendell's interrogation of the employees as to whether they had signed union cards tended to interfere with and restrain the employees in the exercise of rights guaranteed in Section 7 of the Act. Accordingly, we find that by this conduct the Respondent violated Section 8(a) (1) of the Act.³

ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Baltimore Binding and Waistband Corp., Baltimore, Maryland, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees in a manner constituting interference, restraint, or coercion concerning their membership in or activities on behalf of Textile Workers Union of America, AFL-CIO, CLC or any other labor organization.

¹ In the absence of exceptions thereto, we adopt *pro forma* the Trial Examiner's recommended dismissal of the allegations in the complaint regarding the discharge of employee Robbins.

² We correct a minor error in the Intermediate Report: contrary to the Trial Examiner's statement in section III, A, of the Intermediate Report, Board procedure does not require the representation petition previously filed by the Union to be withdrawn before the instant charge may be processed.

³ *Blue Flash Express, Inc.*, 109 NLRB 591; *Ballas Egg Products, Inc.*, 121 NLRB 873.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist the Union named above, or any other labor organization, 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 such activities.

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

(a) Post at its plant at Baltimore, Maryland, copies of the notice attached hereto marked "Appendix."⁴ Copies of said notice, to be furnished by the Regional Director for the Fifth Region, shall, after being duly signed by the Respondent's 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 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 Fifth 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 that Respondent withdrew privileges customarily granted to employees in violation of the Act and that the discharge of Charles Robbins was violative of the Act.

MEMBER LEEDOM, dissenting in part:

I agree with my colleagues that Wendell's refusal to lend money to Dorsey did not violate the Act, but I cannot agree with them that in the circumstances of this case Wendell's interrogation of the employees did violate Section 8(a)(1). I would therefore adopt the findings, conclusions, and recommendations of the Trial Examiner and dismiss the complaint in its entirety.

CHAIRMAN McCULLOCH took no part in the consideration of the above Decision and Order.

⁴In 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 Textile Workers Union of America, AFL-CIO, CLC, by interrogating employees in a manner constituting interference, restraint, or coercion concerning their membership in or activities on behalf of Textile Workers Union of America, AFL-CIO CLC, or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Textile Workers Union of America, AFL-CIO, CLC, 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 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.

BALTIMORE BINDING AND WAISTBAND CORP.,
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

STATEMENT OF THE CASE

On a charge filed by Textile Workers Union of America, AFL-CIO, CLC, herein called the Union, on June 24, 1960, alleging that Baltimore Binding and Waistband Corp., herein called the Respondent, has been engaging in and is engaging in unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act, as amended, 61 Stat. 136, 73 Stat. 519, herein called the Act, the General Counsel of the National Labor Relations Board, by the Regional Director for the Fifth Region, on July 28, 1960, issued a complaint and notice of hearing pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, as amended, alleging that the Respondent was violating Sections 8(a)(1) and (3) and 2(6) and (7) of the Act.¹

With respect to the unfair labor practices the complaint alleged that the Respondent engaged in conduct violative of Section 8(a)(1) of the Act in that:

On or about May 10, 1960, and on various dates thereafter, Martin Wendell, President of Respondent interrogated employees with respect to their membership in and activities on behalf of the Union. On or about May 10, 1960, and on various dates thereafter, Respondent withdrew privileges customarily granted to employees because of their membership in or activities on behalf of the Union.

The complaint further alleged that the Respondent engaged in conduct violative of Section 8(a)(3) in that:

On or about May 20, 1960, it discharged Charles Robbins and has at all times since said date failed and refused to reinstate said employee to his former

¹ A copy of the charge filed in this matter was served on the Respondent on or about June 27, 1960.

or substantially equivalent position because of his membership in, assistance to, or activity on behalf of the Union, or because he engaged in concerted activities with other employees of Respondent for the purpose of collective bargaining or other mutual aid or protection.

The Respondent duly filed an answer on August 11, 1960, in which it denied that it had engaged in any of the alleged unfair labor practices, admitted that it had discharged Charles Robbins, but averred that the discharge was made for cause.

Pursuant to notice, a hearing was held before Louis Plost, the duly designated Trial Examiner, on September 7, 1960, at Baltimore, Maryland.

At the hearing all the parties were represented and were afforded full opportunity to be heard on the issues, to argue orally on the record, and to file briefs and/or proposed findings and conclusions. The parties did not argue orally. A date was fixed for the filing of briefs and/or proposed findings and conclusions, with the Trial Examiner. A brief was received from the counsel for the General Counsel on September 29.

Upon the entire record in the case, the Trial Examiner makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The complaint alleged and the answer admitted that the Respondent is, and has been at all times material herein, a corporation duly organized and existing by virtue of the laws of the State of Maryland, operating its place of business in Baltimore, Maryland, where it is engaged in the business of manufacturing bindings and waistbands; that during a representative 12-month period, the Respondent, in the course and conduct of its business operations as described above, received shipments in its place of business in Baltimore, Maryland, valued at in excess of \$50,000 directly from points located outside of the State of Maryland; and that the Respondent is, and has been at all times material herein, engaged in commerce within the meaning of Section 2(6) of the Act.

II. THE ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Alleged interference, restraint, and coercion*

Robert Donkis, the Union's representative, testified that "on or about the first week in May" (1960) he met Charles Robbins, then employed by the Respondent, in front of the Respondent's plant. Donkis testified he had never met Robbins before and further that:

A. . . . I asked Charlie whether he wanted to join the union, after explaining the benefits that a union would enable him to receive.

Q. What did he tell you?

A. Charlie told me he would sign.

Q. Did he sign?

A. He did.

After ascertaining from Robbins that the Respondent had "actually four or five" employees, according to Donkis:

So, I asked Charlie whether he would get me two more cards. That is all the cards I wanted. Charlie said he would talk to the people. He would talk to each of them. And so I gave Charlie two cards.

And I said, "I will stop back here tomorrow approximately the same time to see you."

Charles Robbins, whom Donkis so enlisted to aid in the organizing campaign, did not quite agree with Donkis' testimony. Although Donkis was quite positive as to the date, Robbins testified he "signed a card for the Union" at Donkis' request "around the early part of April." When the card was produced and identified, but not offered in evidence, it showed both men to be mistaken, as it was dated April 25, 1960. Robbins testified he filled in the date at the time of signing and although Donkis' testimony clearly leaves the impression that Robbins signed the Union's card when it was first given to him, and as above set out, Donkis testified "that the

following day I returned" and received two more signed cards from Robbins and the latter first testified that after signing the card on April 25, he "came back upstairs" with the cards:

A. . . . And later on that day I asked them [Charles Dorsey and Vernon Shelton] would they sign the cards. So they said they would.

Q. Did they sign?

A. Yes.

However on cross-examination Robbins testified he met Donkis *the day before* he signed the Union's card. It was then pointed out to Robbins that April 24 (the day before his card was dated) fell on Sunday. Robbins then changed his testimony to be that he first met Donkis on Thursday, April 21, carried the cards in his pocket over the weekend, and that he and Charles Dorsey then signed their cards at the same time.

This testimony led to another contradiction.

Charles Dorsey testified:

Well, I came to work that Monday and Charles told me he was talking to a representative from the union that Friday and asked me would I sign it. And I told him if the rest of them signed it I would go along with them. And I signed it.

Dorsey further testified he affixed his signature to the card Robbins gave him "on Monday," while he was talking to Robbins *the first time* the card was tendered him. However, the card, produced but not put in evidence by the counsel for, the General Counsel, is dated April 26, 1960, which fell on Tuesday, 1 day later than the date of Robbins' card. Dorsey also testified he filled in the date when he signed the card.

Despite the faulty memories of the three witnesses as to the date the three employees "signed cards" for the Union, the Trial Examiner is persuaded by the date appearing on Dorsey's card that the Union received its authority to represent at least two of the Respondent's employees no earlier than April 26, 1960.²

The Union lost no time in asserting its claim to representation before the Board. The parties stipulated:

On April 28th, 1960, a petition was filed by Textile Workers Union of America naming American Waistband Company and Baltimore Binding and Waistband Company as the employer, and that this petition was subsequently withdrawn and a petition naming just Baltimore Binding and Waistband Company was filed on May 9th, 1960.

The record is clear that the Respondent has no connection with American Waistband Company.

The petition filed May 9 was docketed as Case No. 5-RC-3122. Although not shown by the record Board procedure would require that Case No. 5-RC-3122 be withdrawn before the instant matter was processed. As herein found the charge in the instant matter was filed June 24.

The above is of course a recital of trivialities having little or no bearing on the facts upon which the complaint is based being recited by the Trial Examiner, with apology to the reader, for the reason (1) they constitute "background," an "item of proof" always dear to the heart of most counsel for the General Counsel, and (2) perhaps the recital may be of some value in gauging the reliability of the witnesses.

1. The alleged illegal interrogation

The complaint alleges that on or about May 10, 1960, and on various dates thereafter, the Respondent interrogated employees with respect to their union membership in violation of Section 8(a)(1) of the Act.

Charles Robbins (employed by the Respondent from some time in March 1960 until May 20, 1960) testified that on *May 17, 1960*, a full week after the date alleged in the complaint, he, together with two other employees, Charles Dorsey and Vernon Shelton, were questioned with respect to their union membership by Martin Wendell, the Respondent's president. According to Robbins they were spoken to "as a group" by Wendell. Robbins testified:

He wanted to know which one of us signed cards. I didn't say anything at first. Then Charles spoke up and said—he said he signed, and Vernon signed. and then I said myself.

Then he went on to say he don't want any union up there; that he think it is no good. And, so—well, he went on and said a couple of other things.

²The third employee to sign a card for the Union was not called.

TRIAL EXAMINER: What did he say?

The WITNESS: Well, he said that the Union wasn't any good, and he didn't think it was right for anyone to come in on his business.

Robins further testified:

He said, "Nobody will get fired, and everybody will continue on working like they have been working." He wanted to know who signed the cards.

Charles Dorsey testified with respect to the alleged "interrogation" as follows:

Q. Charles, do you recall being questioned by Mr. Wendell with respect to who had joined the union?

A. Yes, I do.

Q. Do you recall when that was?

A. Not the exact date.

Q. The day of the week?

A. It was on a Tuesday.

Q. On a Tuesday?

A. Yes.

The above is the extent of the Counsel for the General Counsel's examination of Dorsey on the subject.

Martin Wendell, the Respondent's president, testified that after he received notice from the Regional Office of the Board that the petition in Case No. 5-RC-3122 had been filed, he called the Board's office at once and that on the same day:

Well, it seems to me around noontime, or a little past noontime possibly, I called all my help together and asked them if they had signed—I asked them if any of them had signed union cards.

Q. Yes. What response did you get?

A. Well, the three boys that worked for me said that they had.

Q. Was there any further conversation at that time?

A. Not at that time there wasn't.

On the entire record, and from his observation of the witnesses, the Trial Examiner is convinced that Robbins again failed to place the correct date of a relevant event. Robbins placed the time as "on or about May 17." The counsel for the General Counsel repeated the date "May 17, 1960?" and closed his examination on the subject with "That was on Tuesday, May 17, is that right?" receiving "Yes" as the reply.

Dorsey testified only that the event was on "Tuesday," he was asked in closing "On a Tuesday?" and answered "Yes."

The Respondent's manager testified that when he received notice of the petition which was filed on May 9, he called the Regional Office and then interviewed his employees.

The Regional Office would in good practice have sent out the notice of the petition's filing promptly, which means the same day. The Respondent would ordinarily have received the petition on the following day, May 10.

Dorsey's testimony that the occurrence was on Tuesday is probably correct as far as it goes as May 10 as well as May 17, 1960, fell on Tuesday.

The Trial Examiner is convinced that the allegation of the complaint, that the occurrence was on May 10, is correct, therefore on the entire record, and from his observation of the witnesses, the Trial Examiner finds that Wendell questioned the three employees regarding their signing cards for the Union on May 10, 1960.

The Trial Examiner does not credit Robbins' testimony to the contrary and is of the opinion that the record discloses that Robbins had a motive for putting the date of the interview as late as possible.

Inasmuch as Wendell testified that the entire conversation regarding the employees signing union cards consisted of his questions and the affirmative responses and as Robbins testified that Wendell said, "He didn't want any union up there," but that Wendell also said, "Nobody will get fired, and everybody will continue on working like they have been working," and further as Dorsey did not testify to any conversation other than that he was questioned on Tuesday, the Trial Examiner credits Wendell and accepts his version as being the more accurate, but assuming Robbins' version to be accurate it cannot be said that Wendell's questioning was conducted in an "aroma of coercion," intended to coerce, restrain, and interfere with employees in the exercise of rights guaranteed by the Act.

2. The alleged illegal withdrawing of privileges

The complaint alleges that on *March 10, 1960, and on various dates thereafter*, the Respondent engaged in conduct violative of Section 8(a)(1) of the Act by with-

drawing privileges customarily granted employees because of their union membership and activities.

In support of this allegation Robbins testified that the day following Wendell's questioning them with respect to their having signed cards for the Union, the three employees so questioned "walked up" to Wendell to ask for a loan. Robbins testified "we are used to asking for a loan of a little money every Wednesday." He testified:

Q. Was that a normal practice for the boys to ask Mr. Wendell to borrow money before pay day to tide them over?

A. Yes, it was.

Q. Did Mr. Wendell normally lend them the money?

A. Yes. If he had it to spare.

Robbins further testified he did not ask Wendell for a loan on this occasion but: "Charles Dorsey asked him for the money. So, he said no, he wasn't going to loan us any money."

After Dorsey was refused a loan the three employees went to the elevator, Wendell following them, and according to Robbins:

He said, "You know why I am not going to lend you any money?"

I spoke up and said, "I know why." I said, "Because we went over your head and signed the cards."

So, he said, "Well, you go to the union and get money."

I spoke up and said, "Well, we are working for you, Mr. Wendell. And I think it is right for us to come ask you for money."

He said, "Well, if you are going to have the union in here, you had better get it from the union."

Robbins further testified that Wendell then said, "Well I could fire you," mentioned the benefits he gave them such as holidays with pay "and different things," and stated, "I just don't want a union in here," and:

Then he mentioned about our work. He asked me, he said, "Do you know your work over on your table?"

I said, "No, I don't know my work like I should, but I am learning it."

He said, "Well, there is Charles." He said, "His work is not satisfaction [sic]." He said, "Vernon do all right."

He further testified:

Q. (By Mr. GUTMAN.) Did he discuss with you your work on the delivery truck?

A. Yes. He also spoke of that I take longer than usual on some deliveries.

Charles Dorsey who requested the loan testified:

Q. Did you ask Mr. Wendell for money the following day, on Wednesday of that week?

A. Yes.

Q. Did Mr. Wendell lend you the money?

A. No, he didn't.

Q. What did he say to you?

A. I went up to him and asked him could I borrow five dollars. He said no I couldn't.

TRIAL EXAMINER: Is that all he said?

The WITNESS: That is all.

Dorsey further testified:

I walked towards the elevator. He said, "Do you know the reason why?" I said, "No."

Charles Robbins said, "Yes, I think I do."

So, Mr. Wendell says he don't think we will give him a fair shake by joining this union without coming to him first and discussing it with him.

According to Dorsey, Manager Wendell also said that "he wasn't obligated to give us the money. That was money coming out of his pocket" and also "he told us he wasn't interested in the union itself" and that:

He said he thought he had been pretty fair to us during the time we have been there and we should have come to him and discussed it with him.

Even the most cursory reading of the transcript shows that Robbins, who had such difficulty in recalling the dates on which he aided in the organization of the plant, remembered clearly that Wendell said to him (at the elevator), "Well, you

go to the union and get money," while Dorsey, the disappointed would-be borrower makes no mention of this statement, which would surely have been remembered as a cruel insult to human dignity.

Neither did Dorsey mention the statement attributed to Wendell by Robbins that he [Wendell] "could fire you," nor is Dorsey's version of Wendell's expressed disinterest in a union at all similar to Robbins' either in quotation or possible meaning.

General Manager Martin Wendell testified that on the day he questioned the three employees, as herein found, or on the next day, employees Charles Dorsey and Vernon Shelton came to him regarding a loan. He testified:

Q. What was the conversation?

A. Well, Charles came over and told me he needed some money.

Q. Relate the entire conversation.

A. Well, he said—he wanted to borrow some money. I said to him, "I don't think I ought to lend you any."

He said, "Why not?"

I said, "Because I don't think I have to. When I lend you money, it is because you want to borrow it and I am willing to lend it to you. And in this particular case if I am not willing to lend it, I just don't have to do it."

Wendell continued:

Well, before they got to the elevator, I stopped them and said, "I want you to understand why." And I explained to them that I thought I was giving them certain things that I didn't have to, and I was giving it to them of my own free will.

Q. What things were those? Did you state them specifically to them?

A. I think I did. I told them they got vacations with pay, and paid holidays, and what other benefits a little company can possibly give without straining too much.

Q. All right. Go ahead with the conversation.

A. And that I wasn't happy about their being involved with the union. I think I told them that I personally was against the union. But I also told them that it is their choice; it is not mine; and I don't want to change their choice; I wanted to explain to them what I think they are getting without the union and let them decide if they thought the union was a necessity, whether the union would get them that much more.

I also told them that this was—the reason I said I didn't have to lend them money was because, well, I just didn't have to. It was an option of my own.

Wendell further testified that "Robbins got into the conversation" by asking what had to be done to get a raise and was told he had to ask for it and had to deserve it, and that:

I asked him if he thought his work was good, was he doing good work, he said "No."

I said, "Well, you don't deserve a raise."

Q. Was that all the conversation with him?

A. Pretty much so, yes.

Wendell denied making any statements to the effect he could cut off the extra benefits granted the employees. He testified:

Q. You heard Robbins testify on the stand that you said you could cut off these benefits if you want to. Did you make that statement?

A. I don't believe I made it. I believe what I did was impress upon them that I was giving it to them where basically I may not have had to.

But I was not threatening to cut them off. I never have cut any benefits off.

Dorsey testified that the week after Wendell's refusal to loan him any money he again asked Wendell for a loan and that without any comment "he gave it to me," and that he has borrowed from Wendell "just about every week" since.

Wendell testified:

Q. Now, since the one day when you refused to loan them money, have you loaned money to your employees?

A. Yes, I have.

On cross-examination he testified:

Q. You did, in fact, refuse to lend them money that day?

A. At that very moment I refused to lend them money.

Q. That is all I wanted to know.

On the entire record as a whole, the Trial Examiner credits Wendell as to his conversation with the employees.

Conclusion

It appears to the Trial Examiner that one need not be labeled an unduly severe critic of the General Counsel in concluding that when he selected and advanced for processing in a formal complaint as an unfair labor practice within the meaning of Section 8(a)(1) the above-related "withdrawal of benefits" he was not so much considering his duty to "effectuate the policies of the Act" but was seeking rather to bolster other changes in the complaint with exceedingly thin material. This conclusion cannot, in the opinion of the Trial Examiner, be avoided when it is recalled that the preliminary investigation of the charges must have disclosed, as did the hearing, that although the refusal to make the loan came fast on the heels of the Employer's learning that his employees had signed applications for a union, which admittedly he did not wish to welcome into his plant, it was followed by loans to employees on subsequent applications when made, beginning with the first application made after the refusal alleged as an 8(a)(1) violation.

The Trial Examiner finds the allegation in the complaint that "On or about May 10, 1960 and on various dates thereafter, Respondent withdrew privileges customarily granted to employees because of their membership in or activities on behalf of the Union," is without merit, and will recommend that the complaint be dismissed insofar as it so alleges.

For the reasons hereinbefore set out in his discussion thereof, the Trial Examiner finds without merit the allegation in the complaint that "On or about May 10, 1960 and on various dates thereafter, Martin Wendell, President of Respondent interrogated employees with respect to their membership in and activities on behalf of the Union," and will recommend that the complaint be dismissed as to this allegation.

B. *The alleged discriminatory discharge of Charles Robbins*

Charles Robbins was discharged May 20, 1960.³

Manager Wendell testified that Magdelene Seibert is the Respondent's forelady⁴ who directed Robbins' work and had frequently complained to him regarding Robbins. Wendell testified:

Mrs. Seibert had said many times "He is not worth keeping. Why don't you get rid of him and get someone else in his place?"

My answer had always been "Give him a chance, give him a little bit more time, and he will work out."

Wendell further testified:

It just so happened that on this particular day—this was a Friday—he went on deliveries. And after he left, we noticed a roll of goods laying on the floor that belonged to a package. Now, this sounds like nothing, but it happens to be a very serious thing. If a customer gets a package marked "30 rolls" and it only had 29 in there, I am a crook. This is very serious.

There was also a package left out of a delivery, which is just as bad. So, Mrs. Seibert said to me, "How can you possibly put up with it? There it is. It is right in front of you."

And I agreed with her. She was right. When he came back, at the end of the day I told him I didn't need him anymore.

Robbins' discharge took place practically 2 working weeks *after* the questioning and the refusal to loan money to Dorsey but *after* a subsequent request for a loan by Dorsey had been granted by Wendell who admittedly has continued to loan money to employees on request without any comment whatever. Wendell, of course, knew on May 10 that three employees including Robbins had signed cards for the Union. He testified that *the first time he had ever heard that Robbins "had brought cards to the other boys" was from testimony at the instant hearing.*

³ The Trial Examiner is mindful that the complaint alleges conduct violative of the Act on May 10, by interrogation and withdrawal of benefits. The petition in Case No. 5-RC-3122 was filed May 9. Robbins' testimony that Wendell questioned the employees on May 17 puts this disclosure of the Respondent's knowledge of their union adherence 3 days before the discharge. The timing if accepted might bolster the charge, however, the Trial Examiner did not credit Robbins on this point and found the questioning to have been on May 10.

⁴ Robbins informed Seibert he had the Union's cards on the day he received them, April 25. He was not discharged until May 20.

Dorsey testified he told Wendell that Robbins obtained the signatures to the Union's cards. He testified:

Q. (By Mr. GUTMAN.) Did you tell Mr. Wendell that Charles Robbins had brought you the card?

A. Yes, I did.

Q. Before Charlie was fired?

A. Sir?

Q. Before Charlie was fired?

A. Yes.

However, Dorsey testified on cross-examination:

Q. (By Mr. PERRY.) When did you tell him?

A. I told him *about three days afterwards*.

Q. What did you tell him?

A. I told him—I just told him—I can't tell you the exact words—that I didn't know nothing about the union, but Charles Robbins brought us the card.

Q. *Was this before this conversation took place with everybody there?*

A. *This was afterwards.*

Q. Oh, this was afterwards?

A. Yes.

The testimony is confusing in that if Dorsey told Wendell "about three days afterwards," *meaning 3 days after he signed the card*, the date would be on or about April 29. If he imparted the information *after the questioning* it would have been about May 13. If Robbins' date for the interviews were accepted Dorsey's disclosure came on the day of Robbins' discharge, however, the Trial Examiner was impressed that Wendell was a reliable witness worthy of belief and therefore credits his testimony to the effect that he had no knowledge that Robbins obtained the signatures to the Union's cards prior to Robbins' discharge although he did know that Robbins had signed a card.

Magdalene Seibert testified that she is the plant's forelady, has supervisory duties, and checks the work of other employees. Manager Wendell testified Mrs. Seibert is "supervisor of the floor" and that he gave "quite a bit" of weight to her recommendations.

The counsel for the General Counsel stated that Mrs. Seibert was considered by the Union to be among the five employees within the unit claimed in case No. 5-RC-3122.⁵

Mrs. Seibert testified as to Robbins' duties:

He was packing and chauffeuring and then when I didn't have work for packing, I used to ask him to sweep the floor.

In detail as to Robbins' work she testified:

I would cut the work, have a slip for the customer, and I would cut it a certain size and put it on the table. He was to take the slip and check it by the slip. And we have a little label that goes on. He was to fill that label out after he packed it, and put it on the package, and also the customer's name.

Mrs. Seibert further testified that Robbins mislabeled and miscounted packages and that sometimes he left rolls out of a package which I found on the floor; he couldn't learn the work." She further testified:

Well, he couldn't write on the package. He would have one thing on one package, and the other package would be something different.

The customers would call me and complaint [sic] about it. Like it would be leather goods; he would have rayon on the leather and leather on the rayon.

According to Mrs. Seibert she told Robbins his work was at fault "almost every day" testifying:

Q. When did these errors about which you complained begin, Mrs. Seibert?

A. Well, from the first day he came there. I gave him a chance. I give anybody a chance. In two weeks, my Heaven, you should learn that little bit of business we have. It is the same thing over and over.

I helped him along all I could. But it got on my nerves, because I have other work to do.

⁵ The record is clear that the total of all employees, save Wendell, was five at the time the petition was filed. Two cards were produced and identified, but not put in evidence. It may well be that an investigation in Case No. 5-RC-3122 would decide Mrs. Seibert out of the unit.

That she complained to Wendell and:

Well, I will be frank with you; I told Mr. Wendell that I couldn't stand it any longer. I told him he would either have to let him go or I was going, because I couldn't stand that day in and day out. I had my own work to attend to.

Manager Wendell corroborated the testimony.

According to Mrs. Seibert on the day Robbins was discharged, "he had left a package that a customer called for and had not received, and that he had to take it back."

Employee Dorsey (the other proven card signer) testified that he worked "five or six feet" from Robbins, observed his work, that Robbins made errors that caused trouble and:

A. . . . Sometimes Mrs. Seibert would come over there and straighten it out.

Q. Did he ever—did you ever hear Mrs. Seibert warn Charles about his errors?

A. Yes.

Robbins admitted that he put the wrong numbers of rolls in packages *several times*, but "I never kept no record of that"; that he forgot to deliver packages, but "not too many times," that Mrs. Seibert "told me I had to pay more attention," and admitted that he "sort of," had trouble with his work all through his employment by the Respondent. However, Robbins testified with respect to his last day with the Respondent:

Q. Did you forget to deliver a package on that day?

A. I can't remember. I think I took everything that was on the floor, which I asked.

In his brief the counsel for the General Counsel admits Robbins' derelictions and the warnings by Mrs. Seibert but argues in answer thereto, apparently intended as a complete refutation of the Respondent's right to discharge Robbins that:

However, he denies that he had failed to carry out his work assignments properly on the day of his discharge. Furthermore, he testified that although he had been warned about the quality of his work, he had never been threatened with discharge.

Manager Wendell testified no one has been hired to replace Robbins he testified:

For one thing we ran into a slow season which was to be expected. I felt it wasn't worthwhile until business picked up sufficiently to hire somebody.

Robbins was discharged May 20, the testimony was offered September 7.

Upon the record as made, and from his observation of the witnesses, the Trial Examiner credits Wendell with respect to the reasons advanced for Robbins' discharge.

Conclusion

The Trial Examiner believes the summary of the case as it appears in the argument advanced in the brief, although of course intended otherwise by the writer, supports a contrary conclusion to that sought. The brief reads:

Although Respondent claims that *Robbins, the leading Union adherent*, was discharged because of the poor quality of his work, the evidence belies such a defense. In addition to its knowledge that Robbins had joined the Union, there is evidence that Respondent was aware of the role that Robbins played in the organization of Respondent's employees. This was revealed to Respondent through employee Dorsey, and, *assuming her supervisory status, through the knowledge of Seibert*. While the testimony discloses that Robbins received a number of warnings about the quality of his work, dating back to the very beginning of his employment, Respondent tolerated the situation until it was discovered that a majority of its employees had joined the Union and that Robbins had been responsible for this situation. According to Wendell's conception of who was entitled to vote, *the elimination of Robbins destroyed the Union's majority, there remaining two for and two against. That Respondent may have ridded itself of the least desirable employee in so doing, its conduct nonetheless remains indefensible. Also of significance is the fact that no one has been hired to replace Robbins*. Although Respondent had always had an employee to do the type of work that Robbins performed, Wendell himself is now doing this work. While this would be consistent with a discharge for economic reasons, it tends to be irreconcilable with a discharge for cause. *It appears reasonable to infer that having created by its unlawful discharge of*

Robbins, a balance between potential votes for and against the Union, Respondent chose not to risk upsetting this balance by the employment of another employee. [Emphasis supplied.]

The Trial Examiner has no quarrel with the common conception that an attorney is merely an advocate whose duty is to present his client's cause in the best possible light. In the instant matter the counsel for the General Counsel very ably brought forward such facts as he had available in the case he had been assigned to try. This was perhaps his sole duty as a Government attorney. Again in his brief he marshalled the facts to seek a conclusion favorable to his assignment, however in the opinion of the Trial Examiner the conclusions advanced in the brief are not warranted by a disinterested study of the facts.

The brief pictures Robbins as "a leading union adherent" whose "role" was both outstanding and known to the Respondent and argues that because of Robbins' testimony that he made no errors on the day he was discharged (he merely testified *he remembered no errors*) and because when previously told of his faults he was not threatened with discharge, the Respondent could not discharge him. Even if bolstered by the allegations of "interrogation" and "withdrawal of benefits" this argument remains merely wishful thinking, bringing to mind the story attributed to Lincoln regarding a meal consisting entirely of soup made by boiling the shadow of a sparrow which had starved to death.

Mrs. Seibert may not be within the unit once sought in Case No. 5-RC-3122, and perhaps the Respondent has not destroyed the Union's two to one majority status. But this has no place in this report.

Final Conclusion

Upon a review of the entire record in the case, and upon all the evidence considered as a whole, the Trial Examiner is persuaded that the evidence adduced by the Counsel for the General Counsel does not sustain the allegations of the complaint that the Respondent has engaged in unfair labor practices within the meaning of the Act. The Trial Examiner will therefore recommend that the complaint be dismissed in its entirety.

Upon the basis of the foregoing findings, the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1. The Respondent is, and has been at all times material herein, engaged in commerce within the meaning of Section 2(6) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent, Baltimore Binding and Waistband Corp. of Baltimore, Maryland, has not engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

S. S. Burford, Inc. and International Union of Operating Engineers, Local 132, AFL-CIO, International Hod Carriers', Building and Common Laborers' Union of America, Local 714, AFL-CIO, and United Brotherhood of Carpenters and Joiners of America, Local 428, AFL-CIO, Joint-Petitioners. Case No. 6-RC-2772. March 31, 1961

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Sidney Lawrence, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.