

ployees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of rights guaranteed by Section 7 of the Act.

ANCHOR MANUFACTURING COMPANY,
A DIVISION OF BASIC PRODUCTS
CORPORATION,

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.

North Texas Producers Association and United Packinghouse Workers of America, AFL-CIO

North Texas Producers Association and Dallas General Drivers, Warehousemen and Helpers Local Union 745. Cases Nos. 16-CA-1388 and 16-CA-1404. April 20, 1961

DECISION AND ORDER

On January 16, 1961, Trial Examiner Fannie M. Boyls issued her 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 alleged in the complaint and recommended dismissal of those allegations. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

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, the exceptions and brief and the entire record in these cases and hereby adopts the findings, conclusions, and recommendations¹ of the Trial Examiner.

¹ The Trial Examiner recommended that the Respondent cease and desist from interfering with its employees' rights through the violations of Section 8(a) (1) and (3) which she found, as well as "in any like or related manner." Because discriminatory discharges evince a studied intent to thwart the rights of employees in freely selecting their collective-bargaining representatives, we shall issue a broad cease and desist order here *Borg-Warner Controls, Borg-Warner Corporation*, 128 NLRB 1035.

ORDER

Upon the entire record in these cases, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, North Texas Producers Association, Muenster, Texas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in United Packinghouse Workers of America, AFL-CIO, or in any other labor organization by discharging, laying off, or in any other manner discriminating against them in regard to their hire and tenure of employment or any term or conditions of their employment.

(b) Sponsoring or circulating petitions for better working conditions or otherwise expressly or impliedly promising employee benefits in order to induce its employees to reject union representation; and threatening employees with loss of employment or other reprisals for selecting a union to represent them.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to join or assist United Packinghouse Workers of America, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, 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 to Frederick Knabe and Cecil W. Cain immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay they may have suffered by reason of the discrimination against them in the manner set forth in the section of the Intermediate Report entitled "The Remedy."

(b) Preserve and, upon request, make available to the National Labor Relations Board or its agents, for examination and copying, all payroll records, timecards, personnel records and reports, and all other records necessary to determine the amount of backpay due under the terms of this Order.

(c) Post at its plant in Muenster, Texas, copies of the notice attached hereto marked "Appendix."² Copies of said notice, to be furnished by the Regional Director for the Sixteenth Region, shall, after

² 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."

being duly signed by Respondent, be posted by it immediately upon receipt thereof and be maintained by it for a period of 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced or covered by any other material.

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

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges that the Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act at its Sulphur Springs plant.

MEMBERS LEEDOM and BROWN took no part in the consideration of the above Decision and Order.

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT discourage membership of our employees in United Packinghouse Workers of America, AFL-CIO, or in any other labor organization by discharging, laying off, or in any other manner discriminating against them in regard to their hire and tenure of employment or any term or condition of their employment.

WE WILL NOT sponsor or circulate petitions for better working conditions or otherwise expressly or impliedly promise employee benefits in order to induce our employees to reject union representation; threaten employees with loss of employment or other reprisals for selecting a union to represent them; or in any other manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed under Section 7 of the National Labor Relations Act.

WE WILL offer to Frederick Knabe and Cecil W. Cain immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay they may have suffered by reason of the discrimination against them.

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

NORTH TEXAS PRODUCERS ASSOCIATION,
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, with all parties represented, was heard before the duly designated Trial Examiner in Gainesville, Texas, on October 11 and 12, 1960, on complaint of the General Counsel and answer of Respondent in the above-entitled consolidated cases. The issues litigated were whether Respondent engaged in unfair labor practices in violation of Section 8(a)(3) and (1) of the National Labor Relations Act at its Muenster, Texas, plant and in violation of Section 8(a)(1) of the Act at its Sulphur Springs, Texas, plant. Counsel for Respondent and for the General Counsel submitted briefs which I have duly considered.

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

FINDINGS OF FACT

I. RESPONDENT'S BUSINESS

The Respondent, North Texas Producers Association, is a cooperative, organized under the laws of the State of Texas and having a home office in Arlington, Texas. It is engaged in the processing and distribution of milk and milk products and operates milk salvage plants in Muenster and Sulphur Springs, Texas, where the unfair labor practices are alleged to have occurred.

During the year 1959 milk and milk products valued in excess of \$50,000 were shipped from each of the two plants to points outside Texas. And during the same period milk valued in excess of \$50,000 was shipped to each of the plants from outside the State. The parties stipulated and I find that Respondent is engaged in commerce within the meaning of the Act. I also find that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

United Packinghouse Workers of America, AFL-CIO, is a labor organization admitting to membership employees of Respondent's Muenster plant.

Dallas General Drivers, Warehousemen and Helpers Local Union 745 is a labor organization admitting to membership employees of Respondent's Sulphur Springs plant

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. At the Muenster plant

In about mid-May 1960, two employees (including Knabe, whose discriminatory discharge is discussed *infra*) obtained applications for membership in United Packinghouse Workers of America, AFL-CIO, herein called the Union, and started signing up other employees as members. Beginning in the latter part of May, three or four union meetings were held in the home of employee Cain (whose discriminatory discharge or layoff is treated *infra*). On June 6 the Union sent Respondent a letter, claiming that a majority of Respondent's employees had designated it to represent them and requesting a bargaining conference. On the same date the Union filed a representation petition with the National Labor Relations Board. In an election conducted by the Board on August 20, 1960, a majority of the employees voted for the Union and the Board certified it on August 26 as the employees' representative.

1. Respondent's opposition to the Union

About June 8, after receiving the Union's representation claim and request for a bargaining conference, Rudy Hellman, manager of the Muenster plant, came into the plant coffee shop where 8 or 10 employees were assembled and informed them of the Union's letter. He told the employees that he had been working on a retirement plan which was better than any the Union could get for them and asked them how they felt about it. He also told the employees that the Norris Dairy and Produce Company in Dallas could pick up Respondent's products as cheaply as Respondent itself could deliver them and that if the plant went union, he could get rid of the trucks and contract the work out or that he might let the employees work 2 or 3 hours a day, then send them home.¹

Shortly thereafter, about June 13, Superintendent Larry Yosten prepared and circulated among the employees a petition which read:

We the undersigned employees of the North Texas Producers Assn. hereby petition the management for the following benefits additional to our present compensation.

1. A retirement plan equal or similar to the (3% to 6%) basis.
2. Annual sick leave privilege with pay at least 6 days.
3. Minimum hourly rate of (\$1.60) on Processing & Packaging.
4. Uniforms for regular employees (6 complete per year).
5. Vacation with pay (2 weeks after one year service).

The petition was signed by management representatives, including Manager Hellman and Superintendent Yosten, and by a number of the employees. Other employees, including the most ardent union adherents, refused to sign or were not asked to sign the petition.

The petition, as Yosten explained, was prepared as the result of a conversation he had with two of the employees about the Union. They had suggested that if Respondent offered the employees something concrete in the way of improved working conditions, the employees might not select the Union to represent them. The Muenster management had intended originally to send the signed petition to Respondent's headquarters in Arlington but did not do so. Yosten never in fact asked higher management for a raise for the employees.

During the latter part of June, while the Union's representation petition was pending, Manager Hellman came to employee Cler as the latter was stacking boxes and, according to Cler, said "If this union comes in, why . . . you will get about two hours of work a day boxing and, of course, then you can go home. We will get some high school girls in here to do the work. . . . At least we will have something attractive to look at."² Hellman, while not denying that he made these remarks, testified that he believed someone else made the remark about getting high school girls to do the work and that he stated that "would concur with them that at least we would have something to look at." Assuming as Hellman testified, that he merely concurred in the remark about high school girls as replacements, I find that Hellman's statements nevertheless constituted threats of economic reprisal for the employees' selection of the Union to represent them and that they interfered with, restrained, and coerced the employees in the exercise of rights guaranteed them under Section 7 of the Act.

I find further that Hellman's prior statements to the employees about getting rid of the trucks, contracting out its drivers' work and reducing the employees' working hours to 2 or 3 a day, and his implied promise of a better retirement plan than the Union could get for the employees, constituted interference, restraint, and coercion of the employees in their statutorily protected organizational rights.

I also find that the conduct of Superintendent Yosten in preparing and circulating the petition for better working conditions—admittedly for the purpose of causing the employees to reject the Union—was an unlawful interference with their right freely to select a union to represent them. This petition, signed by top management representatives of the Muenster plant, constituted an implied promise of benefits to the employees. Cf. *N L R.B. v. Electric City Dyeing Co.*, 178 F. 2d 980, 981 (C.A. 3).

¹ The above findings are based on the mutually corroborative testimony of employees Monday, Reiter, and Knabe, substantiated in most respects by Manager Hellman, himself.

² At the time of this remark, Cler was working between 8 and 10 hours a day and averaging about 50 hours a week.

2. The discharge of Frederick Knabe on June 18, 1960

Frederick Knabe was one of the initiators of the union movement at the Muenster plant. He and employee DeBorde, about the middle of May 1960, interviewed a union official in Gainesville, obtained union membership application cards, and secured the signatures of employees thereon. They thereafter had several meetings with union representatives.

Respondent was aware of Knabe's union allegiance. On June 16, a few days after Superintendent Yosten had circulated the petition which requested management, *inter alia*, to pay a minimum wage of \$1.60 to processing and packaging employees—who were then receiving \$1.30 or \$1.35 an hour—an employee reported to Yosten that Knabe, while at his work station, had asked the employee "if he was getting this \$1.60." Yosten thereupon reprimanded Knabe for "taunting and heckling people on the job." He told Knabe, "You have been attending every meeting of the union and I know it and I don't want the union or anyone else to tell me how to run my business." Knabe admitted attending every union meeting and stated that he intended to continue attending them despite rumors he had heard that employees were going to be fired for engaging in union activity. Yosten replied that he knew of no one who was going to be fired; that Manager Hellman would have to decide that. He then admonished Knabe to try to get along and not cause too much friction.

Knabe had been employed by Respondent for about 6 years. His job was to operate the separators and pasteurize the cream. He had been doing this for substantially the entire period of his employment. On June 17, at about 3:30 p.m., he cut off a pump preparatory to emptying the pot through which milk flowed to the separators, in order to prevent the milk from souring. It is important that the pump be turned back on immediately when the pot is empty. Otherwise there will be a stoppage of the flow of skim milk from the separators to a vacuum pan which is heated to dehydrate the milk and convert it into condensed or powdered milk. If the flow of this skim milk stops, the pan will lose its vacuum and the milk will become caked or burn on the coils and pan. It is then necessary to stop the separating and dehydrating process while the pan and tubes are cleaned. This cleanup may take from 45 minutes to 2 hours. This would be in addition to the general cleanup which takes 2 hours at the end of each night shift.

On the occasion in question, Superintendent Yosten interrupted Knabe's work, took him into the adjoining room where the pasteurization took place and told Knabe that he wanted the temperature increased on the cream pasteurizer gauge. Knabe, having in mind Yosten's remarks to him on the preceding day, believed that Yosten was singling him out for criticism. This angered him and, after telling Yosten that the temperature then being used was the same as that always used, he decided to get a cup of coffee while cooling off. He told Yosten that he was going to the plant coffee shop and asked employee Haberkamp in the condenser room next to the separators to watch his separators while he was gone.³ He forgot, however, to tell Haberkamp that the pump had been cut off and remembered this fact while sipping coffee. He rushed downstairs to correct the situation but it was too late. The pan had already lost its vacuum and the operations had to be stopped while a cleanup took place. It took the two condenser room employees about an hour to get the vacuum pan or condenser back into operation.⁴

Similar losses of vacuum in the condenser pan, causing cleanups of the condenser occur from time to time in the operation of Respondent's plant. They occurred four or five times in 1960 (prior to the hearing in October), according to employee Reiter. They occur six or seven times a year, according to employee Stoffels. Sometimes the losses of vacuum and resulting cleanups are caused by some mechanical defect and sometimes by the negligence of an employee or by a combination of these circumstances. Such a cleanup had occurred two nights in succession several weeks before the one in question when Stoffels was in charge of the separators. The first of these two had been caused by Stoffels' negligence in failing to open a valve. Manager Hellman had merely remarked to him that he had caused a cleanup but did not otherwise reprimand him. The second occasion, according to Stoffels, had not been his fault,

³ The coffee shop was maintained for the employees' benefit and Respondent did not object to their leaving their work to get coffee so long as their absence did not interfere with operations.

⁴ The finding that it took about an hour is based upon the credited testimony of Memard Stoffels, who arrived at about 3 30 p.m., to relieve Knabe at the end of his shift. Knabe and employee Reiter estimated that it takes from 45 minutes to an hour to clean up after the vacuum pan has gone dry. Yosten estimated that it takes from 1½ to 2 hours. He did not know how long it took on June 17.

for he had merely been watching the separators while the regular operator, Davidson, had gone to get coffee.

When Knabe informed Superintendent Yosten of the cause of the cleanup on June 17, Yosten remarked, "Well, I don't know what's going to become of it." At the end of Knabe's shift on the next day, Yosten discharged him, telling him that he would receive 3 weeks' pay. Knabe expressed resentment that Yosten would not "hold up" for him and contended that what had happened on the preceding day "shouldn't be cause to fire anybody."⁵ Shortly after punching out on his timeclock, Knabe returned and apologized to Yosten for having become angry when he was discharged. He told Yosten that he had always tried to do his job the best he could but acknowledged responsibility for the mistake on the preceding day. Yosten agreed that Knabe had done a good job but stated, "I have to do it because Mr. Hellman is over me."

On June 19, the day following Knabe's discharge, William (Nick) DeBorde who, with Knabe, had initiated the union movement at Respondent's plant, asked Yosten why Knabe had been discharged. Yosten referred him to Manager Hellman for an answer. Hellman at first told DeBorde, "I don't know as I have to give you a statement on it." When DeBorde stated that he would like to know the reason because he "had to report it," Hellman replied that he "didn't intend for the Government or the union or Washington to tell him how to operate his milk plant" and added, "If you boys don't get out of that [the Union] you are going to get fired." He nevertheless assigned to DeBorde as the explanation for discharging Knabe that the latter "had been neglecting his separators and his tests on his condense cream wasn't right and that he had caught him asleep in the lab."⁶ At the hearing, Knabe denied, and Respondent did not contend, that Knabe had ever been asleep in the laboratory.

3. The discharge or layoff of Cecil W. Cain on June 24, 1960

Cecil W. Cain became active in the Union's behalf during the latter part of May 1960. Thereafter three or four of the union meetings were held in his home. He also signed up some of the Muenster employees in the Union and accompanied Union Representative Mauser to Sulphur Springs "to see about the organizing" of Respondent's plant there.

Cain had been working for Respondent as a truckdriver ever since Respondent started operating the Muenster plant in January 1954 and had been similarly employed by Respondent's predecessor, the Farmers Market Association.

On June 24 Cain went to the plant to ascertain whether he was scheduled to drive on the following day. Manager Hellman summoned Cain to his office and, according to Cain the following took place: Hellman said, "Cain, I am going to let you go." Cain asked, "Mr. Hellman, do you mean I am fired?" Hellman replied, "Cain, I am going to give you a break. I am going to pay you through the 30th and then you are gone." Cain then asked, "Mr. Hellman, why are you picking on me? Do you have any complaints on my work?" Hellman said, "No. I have no complaints on your work or no one has called in any complaints on your work." At that moment the telephone rang and as Hellman answered it, Cain walked over to the plant coffee shop nearby. Hellman followed him into the coffee shop and said, "Cain, I guess I am going to teach you not to try to organize a union in this plant. Sherrill told me about those meetings at your house. . . . I will not have anyone working for this company that is not working for the interest of this company. . . . Furthermore, it will be a long time before you and Fred Knabe find a job around here."⁷ At that point the telephone rang again and Hellman left the coffee shop.

⁵ This conversation took place in the separator room. Yosten testified that as Knabe was leaving the plant after his discharge, he pulled a plug in the pasteurizer room, spilled some cream on the floor, then replaced the plug. He testified that he did not know whether Knabe deliberately spilled the cream but contended that Knabe had no business touching any of the equipment after being fired. Knabe testified, on the other hand, that as he left the plant through the pasteurizer room, he noticed that a valve had jarred loose and was leaking cream and that he merely closed the valve and stopped the leak. I credit Knabe's explanation, although Yosten, who came into the room as Knabe was touching the valve, may well have believed that Knabe spilled the cream.

⁶ The above account is based upon DeBorde's credited testimony.

⁷ Sherrill, also one of the truckdrivers, lived across the street from Cain. He used to sit on his porch and watch the employees attending the union meetings at Cain's home. On one of these occasions, May 20, DeBorde invited him to the meeting. According to the undenied and credited testimony of DeBorde, Sherrill replied that he "didn't want

Hellman's version of the conversation is as follows: He told Cain, "Cecil, I am going to have to lay you off for awhile." Cain said, "I think you are being unfair to me." Hellman replied, "No, I don't want to criticize your work. . . . You are the least desirable of the ones I have and I am going to have to lay you off for awhile because our work don't justify keeping four truck drivers." Cain then reiterated, "I think you are very unjust picking on me" and added, "I just want to know are you firing me or laying me off." Hellman again stated, "No, I am laying you off." The telephone then rang and Cain left. Hellman denied that he followed Cain into the coffee shop or had any further conversation with him.

The drivers were paid a base rate of \$362 a month and, in addition, a bonus of 5 cents a mile for all over 5,000 miles driven in 30 days, with this extra pay broken down into 2-week periods. Beginning in December 1959 and during most of 1960 there was not always enough driving available to afford extra mileage bonuses for the drivers and some of them complained about it.⁸

Hellman testified that he decided to lay off one of the drivers in order to permit the others to earn larger bonuses, that all of his four regular drivers and his part-time driver were performing their work efficiently but that he believed Cain to be less efficient than the others and selected him for that reason.⁹ In selecting Cain, Hellman did not follow his usual policy of laying off single men before married men, for Cain was married and one of the other drivers, Pick, was single.

4. Conclusions with respect to Knabe and Cain

An employer, of course, need not, during a union's organizational campaign or the pendency of a representation petition, refrain from taking personnel action which he otherwise would normally take. And no employee is protected against such action merely because he is a leader in the union movement. But where, as here, the employer has openly opposed the union and threatened reprisals against employees for selecting it, his personnel action, though on its face seemingly plausible, will be closely scrutinized in an attempt to determine whether it may have been motivated, at least in part, by the union movement or the employee's part therein.

Knabe's discharge occurred on June 18, within less than 2 weeks after Respondent received the Union's representation claim and notice that a representation petition had been filed with the Board. The action against Cain occurred less than a week later. The terminations occurred during the period when Respondent was threatening to hire an independent trucking contractor for its deliveries, reduce the employees' hours of work to 2 or 3 a day and obtain high school girls as replacements; and during a period when Respondent through promises of a better retirement plan than the Union could obtain for them and through the petition for increased wages and other better working conditions circulated by Superintendent Yosten, was attempting to induce employees to reject the Union in the scheduled election.

nothing to do with that damn union bunch and as quick as he told Rudy Hellman what was going on [those attending] was all going to get fired" Sherrill, although not denying that he made the statements attributed to him, testified that he never in fact talked to Hellman about the meeting, and for the reasons stated *infra* I make no finding against Respondent based on this incident.

⁸ Pursuant to permission granted at the hearing, the parties, subsequent to the hearing, have furnished a stipulation to which is attached Respondent's time sheets showing the biweekly pay of the drivers, including the extra mileage bonuses, from January 15, 1959, through September 15, 1960. (Respondent's Exhibit No 4) This exhibit shows that with the exception of the pay period ending December 15, 1959, mileage bonuses were paid to the drivers consistently during 1959, and usually in substantial amounts, whereas during the year 1960 they received substantially less in bonuses, except sporadically, and on a number of paydays received no bonuses at all. In January 1960 the bonuses of all the men totaled \$300.75; in February they received none; in March \$355.75; in April \$100; in May \$150, in June \$176.50; in July \$464, and in August \$302.15.

⁹ Hellman testified that in coming to this conclusion, he had in mind that about 2 months earlier a customer had reported to Hellman that Cain had become angry when there was a delay in the unloading of his truck and that about 1 month earlier at about 2:30 on a Saturday afternoon, he had observed Cain's truck parked beside an eating place in Denton. Hellman acknowledged that he had never given the drivers any instructions not to stop in Denton on their return trip from Dallas, but it was his opinion that a driver—particularly on a Saturday afternoon when the maintenance crew, which must service a truck after each run, likes to leave early—should have taken the bypass through Denton and had no business stopping to eat there at that time of the day. Hellman did not, however, consider either of the above incidents of sufficient importance to mention them to Cain.

Respondent does not contend that it considered Knabe's negligence in letting the vacuum pan go dry in June 17 as warranting his discharge but rather, that this was the "last straw" in a series of complaints against him. Hellman testified that during the fall of the preceding year, when the plant was operating without a superintendent, there was general sloppiness in the handling of equipment at the Muenster plant and that the Arlington management had complained that too much butterfat was being lost in the skim milk. As a result, Hellman admonished Knabe as well as the other employees who operated the separators to watch the butterfat tests and keep the separators clean.¹⁰ Thus, the complaint against Knabe was only a general complaint against all the operators and the situation improved after Hellman talked to the employees about it. I cannot believe that this stale general complaint against all the separator operators had anything to do with the decision to discharge Knabe. Yosten testified that, in addition to the matters mentioned by Hellman, he took into consideration Knabe's overly sensitive attitude about taking orders, or being corrected, in recommending his discharge. I am convinced that Knabe was a conscientious worker and may have been unduly sensitive to criticism but that this characteristic had been displayed throughout his long tenure with Respondent and that it was not a motivating factor in Respondent's determination to discharge him. I find that the assigned reasons for his discharge were mere pretexts and that the motivating reasons were his ardent support of the union movement, of which Respondent was admittedly aware, its resentment against his disparagement of Respondent's attempt, by circulating the petition for better working conditions, to lure the employees away from the Union, and its desire to bring about a defeat of the Union in the pending representation proceeding. Hellman's outburst against the Union and his threat to fire others if they did not get out of the Union—in response to employee DeBorde's inquiry as to why Knabe was fired—further convinces me of Respondent's antiunion motivation.

I am likewise convinced and find that the layoff or discharge of Cain was discriminatorily motivated. In reaching this conclusion, I find it unnecessary to decide whether Cain was discharged, as he testified, or was merely laid off, as Hellman testified. In view of Respondent's assurance at the hearing that Cain was in layoff status and would be recalled, I shall assume for present purposes that he was merely laid off.

Nor do I find it necessary to resolve the conflict in testimony as to what was said at the time of Cain's layoff, for even accepting Hellman's version of the incident, I would nevertheless find that Respondent laid Cain off as a part of its drive to defeat the Union. Respondent has never contended that it needed to reduce the number of its truckdrivers to avoid economic loss to itself but only to afford larger earnings in the form of extra-mileage bonuses to the remaining drivers. Hellman testified: "Our drivers, very few of them, were receiving mileage over their base pay of the previous year and we needed to reduce our force so the rest of them would receive better pay for their services." Thus, Respondent resorted to the harsh measure of depriving one driver of all earnings for a prolonged period merely for the purpose of awarding its other drivers greater earnings during that period, a step which Respondent had apparently never before taken in the entire history of its operations.¹¹ This action, like Hellman's promise of a better retirement plan than the Union could obtain for the employees and like local management's petition for better working conditions in other respects, was taken, I am convinced, for the purpose of forestalling the remaining drivers from voting for the Union in the scheduled election. I am fortified in this conclusion by Hellman's testimony that he had been thinking about reducing the number of drivers only for 2 or 3 weeks before actually doing so, that is, only after the Union's organizational campaign was well under way. During those

¹⁰ Hellman testified that he told Knabe, in Yosten's presence, that the separators should be cleaned every 4 hours. Yosten testified that Hellman "might have" told Knabe to clean the separators every 4 hours but that he, Yosten, did not issue any such instructions until September 1960, after Knabe's discharge, and that the frequency with which separators should be cleaned depends upon the amount of milk flowing through the separators and the season of the year, which affects the content of the milk. According to Knabe, whose testimony I credit, he was instructed when he first started working for Respondent that the separators should normally be cleaned every 8 hours, that he was never instructed to the contrary and that was the practice he followed.

¹¹ Although specifically asked how long ago it had been since he had laid off a truck-driver for lack of work, he could cite no such instance and related, instead, an occasion when one relatively new driver, Hacker, was transferred to another department, then laid off for inefficiency, and his replacement, Stewart, was laid off for inefficiency. Incidentally, Respondent's time sheets (submitted pursuant to stipulation as Respondent's Exhibit No. 4) show that Stewart was hired and continued as a replacement during a period when the drivers were receiving little or no extra-mileage bonuses.

last few weeks, moreover, the amount of extra mileage bonuses for the drivers had not decreased over that received in the past 2 months but, rather, had increased slightly.¹²

But even if, contrary to my finding, Respondent was not unlawfully motivated in deciding to reduce its truck-driving force, I would nevertheless find Cain's layoff to be discriminatory for I am satisfied that Hellman was motivated by a desire to rid the plant of one of the most active union protagonists, at least during the preelection period, in selecting Cain rather than one of the other drivers for this reduction. I do not credit Hellman's testimony that he did not know that Cain was involved in union activities. According to the denied and credited testimony of employee Reiter, Hellman, after receiving the Union's representation claim about June 7, remarked to him that it seemed "funny" that despite the large number who had signed union cards, everyone he had asked about the matter purportedly knew nothing about it. Respondent's attempts to learn of the union activities later obviously achieved results, for Yosten by June 16 admittedly knew that Knabe had attended all the union meetings—which would include those held at Cain's home. Accordingly, whether employee Sherrill informed Hellman, as he threatened to do,¹³ and as Hellman allegedly told Cain that Sherrill had done, or whether Hellman learned of Cain's activities in some other way, I find that he did know of them prior to selecting Cain for the layoff.

The fact that Respondent departed from its usual criteria for the selection of employees for layoff and chose Cain, a married man, while retaining Pick, a single man, persuades me, under all the circumstances, that Hellman was seeking to eliminate Cain because of his prominence in the union movement. I am not impressed with Hellman's explanation that although Cain as well as all the other drivers were efficient, Cain was selected because he was less efficient than the others. The petty and inconsequential nature of the alleged complaints against Cain, admittedly not of sufficient seriousness to warrant even a reprimand, convinces me that they were mere pretexts for selecting Cain and did not in fact motivate Hellman in departing from his usual practice in making selections for layoff.

I find, on the basis of the entire record, that in deciding to reduce its truck-driving force as well as in selecting Cain as the victim, Respondent was motivated, as in the case of Knabe, by antiunion considerations and that the discrimination against these two employees was in violation of Section 8(a)(3) and (1) of the Act.

B. *At the Sulphur Springs plant*

Respondent also operates a milk salvaging plant at Sulphur Springs, Texas. Another union, Dallas General Drivers, Warehousemen and Helpers, Local Union No. 745, herein called Local 745, started organizing employees at that plant in the spring of 1960. The complaint alleges that Respondent violated Section 8(a)(1) of the Act at that plant in that its plant manager, Roy R. Bellville, told an employee that he would probably be laid off if Local 745 won an election at the plant and upon another occasion engaged in surveillance of a union meeting.

In support of the first allegation, employee Robert Weir testified as follows with respect to what Plant Manager Bellville told him when he applied for employment on or about June 3, 1960:

He asked me if I knew anything about the union and I told him I didn't know very much about it, and then he said there was a union drive going on at the plant and that if the plant went union that me being the last man that was hired at the plant that because of the union seniority I would probably be laid off.

This testimony stands uncontradicted but, in my view, it is somewhat ambiguous and may well be interpreted as a prediction of what Local 745 might cause to happen and not as a threat of reprisal by the employer. Standing alone, it does not warrant a finding that Respondent engaged in the unfair labor practice alleged in the complaint.¹⁴

¹² I note that after eliminating Cain, Respondent started assigning full-time work and extra mileage to a part-time driver, Brewer, who, because of stomach ulcers, had for a long time been unable to do as much driving as the other men that Brewer resigned his job on September 15, just prior to the hearing, and that Respondent, allegedly because it did not need Cain, did not recall him even then.

¹³ Sherrill, while denying that he told Hellman about the meetings at Cain's home, was not asked and did not testify as to whether he told any other representative of management.

¹⁴ Since the complaint does not allege that Bellville's interrogation of Weir constituted an unfair labor practice, I make no finding in that respect.

In support of the allegation that Manager Bellville engaged in surveillance of a union meeting, the General Counsel introduced evidence that Bellville on the morning of August 1, 1960, came into the plant office shop and remarked to employees present that he was surprised and disappointed to see so many employees at the union meeting on the night before. Bellville testified, however, and I find, that on the night in question he had visited a friend and when returning home by the route he normally took on such occasions, he saw cars parked near the motel at which employees had informed him a union meeting was to be held and also saw lights on in the meeting room in the motel. From this, he concluded that the meeting was still in progress. His remarks to the employees on the following morning was based solely on the coincidence just described. I find that Respondent did not engage in surveillance in violation of the statute.

IV. THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(3) and (1) of the Act, my recommended order, among other things, will direct that Respondent cease and desist from engaging in the unfair labor practice found, or in any like or related unfair labor practices, and that it take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent discriminated in regard to the hire and tenure of employment of employees Knabe and Cain, in violation of Section 8(a)(3) and (1) of the Act, my recommended order will require Respondent to offer each of them immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights or privileges. It will also require Respondent to make Knabe and Cain whole for any loss of pay suffered by reason of the discrimination against them by paying each a sum of money equal to that which he normally would have earned in the employ of Respondent from the date of his discharge or layoff to the date of Respondent's offer of reinstatement, less his net earnings elsewhere, in accordance with the formula established by the Board in *F. W. Woolworth Company*, 90 NLRB 289.

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

CONCLUSIONS OF LAW

1. United Packinghouse Workers of America, AFL-CIO, and Dallas General Drivers, Warehousemen and Helpers Local Union No. 745 are labor organizations within the meaning of Section 2(5) of the Act.
2. Respondent is, and has been at all times material herein, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
3. By discriminating in regard to the hire and tenure of employment of Frederick Knabe and Cecil W. Cain, thereby discouraging membership in the Union, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.
4. By interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.
5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.
6. The evidence does not establish that Respondent, at its Sulphur Springs plant, engaged in any of the unfair labor practices alleged in the complaint.

[Recommendations omitted from publication.]

**Brunswick-Balke-Collender Company and Frederick G. Barden
Local Union 65, United Brotherhood of Carpenters and Joiners
of America, AFL-CIO and Frederick G. Barden. Cases Nos.
22-CA-510 and 22-CB-219. April 20, 1961**

DECISION AND ORDER

On June 17, 1960, Trial Examiner John C. Fischer issued his Intermediate Report in the above-entitled proceeding, finding that Re-
131 NLRB No. 30.