

Having found that the Respondents discharged Robert A. Cavanaugh on June 15 and Lloyd K. Fowler on June 19, 1959, in violation of Section 8(a)(1) and (3) of the Act, and Charles A. Woodruff on June 15, 1959, in violation of Section 8(a)(1) of the said Act, I shall recommend that the Respondents offer each of these individuals immediate and full reinstatement to his former or a substantially equivalent position,<sup>39</sup> without prejudice to his seniority and other rights and privileges, and make him whole for any loss of pay he may have suffered by reason of his discharge, as found above, by payment to him of a sum of money equal to the amount of wages he would have earned, but for the said discharge, between the date of his dismissal and the date of a proper offer of reinstatement to him as aforesaid; and that the said loss of pay be computed in accordance with the formula and method prescribed by the Board in *F. W. Woolworth Company*, 90 NLRB 289, to which the parties to this proceeding are expressly referred.

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

#### CONCLUSIONS OF LAW

1. General Engineering, Inc. and Harvey Aluminum (Incorporated) are, and have been at all times material to this proceeding, employers within the meaning of Section 2(2) of the Act.

2. United Steelworkers of America, AFL-CIO, and Aluminum Workers Council of The Dalles, Oregon, are, and have been at all times material to this proceeding, labor organizations within the meaning of Section 2(5) of the Act.

3. By discriminatorily discharging Robert A. Cavanaugh and Lloyd K. Fowler, as found above, the Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

4. By discharging Charles A. Woodruff, as found above, the Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

5. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed them by Section 7 of the Act, as found above, the said Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Sections 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

<sup>39</sup> In accordance with the Board's past interpretation, the expression "former or a substantially equivalent position" is intended to mean "former position wherever possible, but if such position is no longer in existence, then to a substantially equivalent position." See *The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch*, 65 NLRB 827

## Minnotte Manufacturing Corporation and United Steelworkers of America, AFL-CIO. Case No. 6-CA-2069. May 19, 1961

### DECISION AND ORDER

On February 16, 1961, Trial Examiner Thomas A. Ricci 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.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-  
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member panel [Chairman McCulloch and Members Rodgers and Leedom].

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 the case,<sup>1</sup> and hereby adopts the findings, conclusions,<sup>2</sup> and recommendations of the Trial Examiner.

### 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, Minnotte Manufacturing Corporation, Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in United Steelworkers of America, AFL-CIO, or any other labor organization of its employees, by discharging or refusing to reinstate them or in any other manner discriminating against them in regard to hire or tenure of employment or any term or condition of employment.

(b) Paying money to employees to influence their union activities, threatening to close its plant, interrogating employees concerning their union activities or the activities of other employees, in a manner constituting interference, restraint, or coercion in violation of Section 8(a)(1) of the Act, promising them preferred employment status, or in any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist United Steelworkers of America, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or mutual aid or protection, or to refrain from any and all such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

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

(a) Offer Robert Pashel immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and make

<sup>1</sup> The Respondent's request for oral argument is denied as the record, including the exceptions and the brief, adequately present the issues and the positions of the parties.

<sup>2</sup> Member Leedom does not agree that the record establishes that Minnotte's payment of the holiday pay to Pashel was for the purpose of influencing Pashel's vote in the election and would therefore not find a violation of Section 8(a)(1) on the basis of that conduct.

him whole for any loss of pay he may have suffered by reason of the discrimination against him, in the manner set forth in the section of the Intermediate Report entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment 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 Pittsburgh, Pennsylvania, copies of the notice attached hereto marked "Appendix."<sup>3</sup> Copies of said notice, to be furnished by the Regional Director for the Sixth Region, shall, after being duly signed by the Respondent, be posted 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 to insure that said notices are not altered, defaced, or covered by any other material.

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

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<sup>3</sup>In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

## APPENDIX

### NOTICE TO ALL EMPLOYEES

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

**WE WILL NOT** discourage membership in United Steelworkers of America, AFL-CIO, or any other labor organization of our employees, by discharging and/or refusing to reinstate them or in any other manner discriminate against them in regard to hire or tenure of employment or any term or condition of employment.

**WE WILL NOT** pay money to employees to influence their union activities, threaten to close our plant, interrogate employees concerning their union activities or the activities of other employees, in a manner constituting interference, restraint, or coercion in violation of Section 8(a) (1) of the Act or promise them preferred employment status.

**WE WILL NOT** in any other 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 United Steelworkers of America, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their

own choosing, or to engage in other concerted activities for the purpose of mutual aid or protection, and to refrain from any and all such activities, except to the extent such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

WE WILL offer Robert Pashel immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and we will make him whole for any loss of pay suffered as a result of the discrimination against him.

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

MINNOTTE MANUFACTURING 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.

## INTERMEDIATE REPORT AND RECOMMENDED ORDER

### STATEMENT OF THE CASE

This proceeding, which all parties represented, was heard before the duly designated Trial Examiner in Pittsburgh, Pennsylvania, on January 4 and 5, 1961, on complaint of the General Counsel and answer by Minnotte Manufacturing Corporation, herein called the Company or the Respondent. The sole issue litigated was whether the Respondent had violated Section 8(a)(1) and (3) of the Act. The General Counsel submitted a brief after the close of the hearing.

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

### FINDINGS AND CONCLUSIONS

#### I. THE BUSINESS OF THE RESPONDENT

The parties stipulated and I find that Minnotte Manufacturing Corporation is a Pennsylvania corporation engaged in the fabrication of stainless and carbon steels and is engaged in a nonretail enterprise. During the 12 months preceding August 18, 1960, the value of materials received directly from outside the Commonwealth of Pennsylvania by the Respondent for use at its Pittsburgh, Pennsylvania, plant was in excess of \$50,000. I find, as the parties also stipulated, that the Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act, and that it will effectuate the policies of the Act to exercise jurisdiction here.

#### II. THE LABOR ORGANIZATION INVOLVED

United Steelworkers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

#### III. THE UNFAIR LABOR PRACTICES

In its steel fabrication plant, a single building about 100 by 250 feet, the Respondent employs approximately 35 workmen. Late in July 1960, Robert Pashel, one of the welders, took it upon himself to prevail upon the employees to join the Steelworkers. By the middle of August he had obtained employee signatures to 15 or 16

cards in favor of the Union, and, in consequence, a Board secret election was held on August 29, in which the Union failed to win a majority. Pashel was discharged on September 9. The complaint alleged that he was discharged because of his union activities; it also charges that during the organizational campaign management representatives made a number of illegally coercive statements to the employees. The Respondent asserts Pashel was discharged for incompetence, and it denies the commission of any unfair labor practices.

#### A. *The union activities*

The record shows clearly that Pashel was the motivating force in the attempt to establish the Steelworkers as majority representative of the Respondent's employees. Pickard, a staff representative of the Union, credibly testified that Pashel telephoned him in late July to say the employees were interested in the Union, and that Pashel arranged a meeting with the employees. Altogether about 16 union membership application cards were signed and delivered to Pashel, who testified he approached all these employees on the subject. Five employees—Rieder, Hulak, Minson, Penatzer, and Dabat—said they signed at Pashel's request. After Pashel delivered the cards to Pickard, the Union filed a petition for an election (Case No. 6-RC-2690) on August 12, 1960; the parties entered into a consent agreement to hold an election; and the employees voted in secret on August 29. Eleven employees voted in favor of the Union fifteen against, and four were challenged. The petition was dismissed because of the Union's failure to win a majority.

#### B. *Management representatives*

William Minnotte is the president and owner of the Company, and Russell Strang is general plant superintendent, both conceded agents authorized to speak on behalf of the Respondent. James Pesce is classified as a layout fitter and welder on the company records, and an issue is raised here as to whether, as alleged in the complaint, he is also a supervisor within the meaning of the Act.

Minnotte said he has been 20 years in steel fabrication, started the Respondent's operations sometime in 1959, and that Pesce has been with him from the start. Pesce also worked for Minnotte's father in the same type of business for 13 years. His rate of pay is \$2.75 per hour, apparently the highest rate, aside from the general plant superintendent, in the plant.

In support of the complaint, Rieder testified he was hired by Strang at \$2.30 per hour as a roll operator, and that at that time Strang said to him Pesce was the "shop boss." He continued to testify that 3 days later Pesce said to him he was not qualified as a roll operator and "would I take laboring. He [Pesce] said 'you would be a good man.' He said 'I will give you \$2 an hour, that is 25 cents an hour more than the others on that are getting, but don't say anything about it.'" On this basis Rieder continued on the job.

The laborer classification is regularly paid \$1.75 per hour.

Penatzer, another employee, testified that on hiring him, Strang said "he [Pesce] was the shop foreman in charge of the shop." And Dabat, hired in July 1960, testified Strang told him the first day to look for Pesce, "he would tell me what to do."

Pashel was first hired on April 1, 1960. He testified that on April 29 he was laid off by Pesce, who then said to him: "I don't want you to think you are being laid off because there is anything wrong with your work, it is just that things are slack."

None of the foregoing testimony, quoting Pesce and the plant superintendent, was contradicted.

In addition, the employee witnesses testified consistently that Pesce assigns work to them. They said that when they finish one job, they go to him for more work, and that he puts them on something else. Hulak said he goes to Pesce first, and only if Pesce is not available does he go to the superintendent. Minson instead said, "If Russell is not around, you contact Jimmy." It was quite the agreement of all of the witnesses that Pesce does not have direct authority to hire or discharge employees. It also appears that he is skilled in all trades in the shop, that he reads blueprints and helps other layout men when blueprint problems arise, and that he does a "little of everything," including checking on arriving materials and loading of trucks. He also substitutes for the superintendent when the latter is out of the shop for any reason.<sup>1</sup>

<sup>1</sup> From Pesce's testimony.

Q Do you take Russell Strang's place when he is away?

A. When Mr. Strang was absent those 2 days Mr. Minnotte told me what he wanted done and I passed it on.

Both Minnotte and Strang testified that although he assigns people to particular jobs, Pesce does not have "any supervisory duties"; Strang called him a "shop pusher, not boss." Although the Respondent did not so articulate its precise contention, I believe its argument essentially is that Pesce's conceded authority to make work assignments involves only routine decisions, and does not rise to any degree of discretion or judgment such as to make him appear a representative of management in the eyes of the rank-and-file employees. On the other hand the General Counsel would have it that the record as a whole requires a finding that the Respondent in fact so uses Pesce's services that the employees necessarily look to him as their day-to-day "boss." Considering all the evidence, I think the General Counsel is correct, and I believe Pesce exercises enough authority to fall within the statutory definition of the term "supervisor."

The testimony of both Strang and Pesce belie any suggestion that the "shop pusher" makes only routine assignments. Asked what Pesce's duties are, Strang said: "To execute an order I give him . . . if I say get somebody to weld on the trusses, he will get somebody to weld on the trusses." Strang said he does not tell Pesce who to put on any job. Pesce described his cooperation with the superintendent as follows: "If he tells me he wants a job done I put the men here and there on the jobs he wants done. . . . He will give me the blueprint. I give orders to the men to get the steel." Pesce even conceded that if work is not done satisfactorily he tells the men—any one of the welders—to do the work over again.

With the uncontradicted evidence that the plant superintendent introduced at least three new employees into the plant by telling them Pesce was in charge of the shop, these admissions of the extent of Pesce's authority in the plant gain added significance. When to this is added the fact he set the wage rate of at least one man, instructs employees and has power to order them to undo unacceptable work, and is in the highest wage rate bracket below the plant superintendent, I think it clear that Pesce "responsibly directs" the work of other employees and is therefore a supervisor within the meaning of Section 2(11) of the Act.<sup>2</sup> I so find.

### C. The discharge of Pashel

About a week after the election lost by the Union, during the workday of September 7, Pesce assigned Pashel to work on a job calling for 16 steel roof trusses. These are 20-foot long and 8-foot high steel triangles used for roof supports in building construction. When Pashel started to weld on that particular job, about 7 of the total order of 16 trusses had been completed; he found Hulak and Mrozek, other welders, working on the steel triangles. As the work continued, Pesce removed Hulak from the assignment and replaced him with Pajak, who also did welding. Pashel worked at one end of each truss, Hulak—and later Pajak—at the other end, and Mrozek worked the center. The steel was joined by arc welding with tacks being made at regular spaced distances. The job was completed on September 9, Friday.

On inspection it was discovered some welds had been skipped and others incorrectly made because not staggered on all 16 of the group of trusses; in consequence, chalk marks were made where corrections had to be made, and Pesce told Pashel to go to the trusses where they stood waiting to be shipped and repair them. It took Pashel about an hour to make the necessary welds. According to Pashel's testimony, when Pesce first showed him the defective work, Pashel pointed out the nature of the errors and explained how the welds that he had made were right. Pesce, still according to Pashel, answered "that was the way they should be, that he didn't think that the bad welds were mine." Pesce did not deny this conversation.

While Pashel was making the repairs Superintendent Strang approached him and said he believed the bad welds had been made "purposely," and "by 4:30 somebody was going to be out." Pashel replied, according to his testimony, he "wasn't worried about it because it wasn't mine." The job was duly finished and shipped out. At 4:30 p. m. that day Strang handed Pashel his pay envelope and said, "They are laying you off as of today."

Strang's testimony relating to the discharge is essentially in accord with Pashel's. According to him when he said someone would "be out at 4:30," Pashel replied: "What are you telling me for, I didn't do it," and to this Strang made no response. As to the discharge itself, Strang said his only words were: "I am letting you go tonight."

When Pashel reached home he discovered he had been erroneously paid 1 day's pay too much. He returned to the office Monday and spoke to Minnotte, the owner of the Company. The matter was straightened out, Pashel returned the overpayment,

<sup>2</sup> *Armstrong Tire and Rubber Company, Tire Test Fleet Branch*, 111 NLRB 708.

and Minnotte thanked him for his honesty. At this point there is disagreement between the two men as to the rest of the conversation. Pashel said that, believing he had been temporarily laid off, as he had been before, he asked Minnotte did he think the layoff would be long and the owner replied he did not think so. Minnotte denied the layoff was mentioned at all.

Three days later, Thursday, Pashel appeared at the office of the USES to apply for unemployment benefits and was told the Respondent had reported him dismissed instead of laid off. He quickly called Minnotte on the telephone to complain. His testimony is that when he asked Minnotte about it the president said he could do nothing because the matter concerned Strang's department and the superintendent had said Pashel's work was unsatisfactory. Again Minnotte's testimony differs from Pashel's. According to him Pashel did say he had just learned he had been discharged and asked would the Respondent change the action to a "layoff" so the employee could collect unemployment compensation. Minnotte continued to testify that he promised to ask the superintendent would he be agreeable to the suggestion, that he did so ask Strang, but that Strang refused to oblige him.

In the total circumstances of Pashel's employment with the Respondent, the inherent probabilities of what would more likely occur in the conversations he had with Minnotte, and the general attitude of the witnesses on the stand, I find Pashel's testimony to be the more reliable evidence on this record. I think both Strang and Minnotte tended to color their testimony and to deviate from truly precise recollection.

Strang testified flatly he discharged Pashel because of unsatisfactory work. Yet Pashel said, without contradiction, he had never been given any indication his job was in danger for such deficiency. He was by far more experienced than Mrozek or Pajak, who had also worked on the same trusses, and who started doing welding in 1960. Almost half of the trusses requiring repair had been completed before he was transferred to the job; more important, he told Pesce and Strang, at that very time, he was not responsible for the error, and they did not gainsay him. I think their silence at that moment to be very revealing; certainly with any thought of holding Pashel responsible to the point of outright discharge, one of them would at least have accused him. When Strang insisted from the witness stand that he had accused Pashel of being the guilty one, and then explained he had done so "indirectly" by saying "someone" would pay, he showed himself less than candid.

I also credit Pashel's testimony that the following Monday Minnotte told him the "layoff" would not last long. Pashel had been laid off only a few months before for lack of work and then recalled. It was entirely reasonable for him to understand Strang's statement "They are laying you off" as again having its literal meaning and intended to place him in a temporary nonwork status, as, apparently, the same words had been used to him before. Particularly must Pashel so have understood in view of the failure on the part of anyone in the Company either to have complained to him during his employment or to give him any stated reasons to believe otherwise when he left on Friday. That she should then ask Minnotte, at the very moment when, on a friendly basis, he returned an overpayment to him, how long it would be before work picked up, is the most logical conversation that could ensue. In view of the circumstance that brought the two together that day in the Employer's office, I find Minnotte's insistence that nothing at all was said about Pashel's recall far less credible than Pashel's testimony. Minnotte's continued story of his telephone talk with Pashel a week later similarly lacked the timber of absolute sincerity. As he put it, he lead Pashel to believe he, Minnotte, was willing to call the separation a layoff, as distinguished from an outright discharge, but that such a question rested in the discretion of the plant superintendent. Aside from imputing an illegal motive to Pashel, upon whom the Respondent had belatedly sprung the discharge idea through the USES office, Minnotte was saying that matters of this type are not decided by him but by his subordinate. Yet the picture of the entire operation reveals a rather small and intimate business, one in which it is far more reasonable to believe that a favor of this kind, even assuming Pashel had asked it, would be decided by Minnotte himself. When to this more likely probability I add the relative demeanor of the witnesses—Pashel's straightforward and direct, against the management representatives evasive and summary manner—I credit Pashel's story of his separation from the Company.

To the extent that the Respondent's testimony was intended to establish affirmatively that Pashel was discharged because of unsatisfactory work, and only for this reason, I find it insufficient to support the assertion.

#### D. Coercive statements and conclusions as to the discharge of Pashel

Witnesses for the General Counsel, present and former employees of the Respondent, testified concerning interrogations of them by management representatives con-

cerning union activities and statements of threats of reprisals in the event the Union should succeed in the election. Virtually all of these alleged illegal statements by company representatives were denied on behalf of the Company. There is thus again presented a direct question of credibility on an essential element of the case.

Rieder, who worked from July through September, testified that about a week before the union election of August 29, Pesce asked how long he had been out of work before being hired by the Respondent and then inquired whether Rieder was going to vote for the Union. Rieder was noncommittal and said he was glad to have the job, and Pesce then continued with: "If they get a union in here they will close these doors."

Hulak, who started with the Company in 1959 and was still in its employ at the time of the hearing, said that a few days before the election Minnotte asked him "if Bob Pashel was still pushing for the Union."

Penatzer, a fitter employed by the Company who went on sick leave in the end of September, testified that late in August, Superintendent Strang said to him he was "surprised to see the names on the list of fellows who had signed up for the Union." According to Penatzer, Strang then added that Minnotte had said he "would just as soon close the doors as have the CIO, but any other union you want would be okay." Penatzer also testified that about the same time Pesce told him: "It looks pretty bad, like Mr. Minnotte will close the doors of the shop."

Dabat, who also worked for the Company only about 2 months ending September 9, 1960, testified that when he was hired Strang told him "he didn't want no union men in the shop." Dabat also testified that about 2 weeks before the election Minnotte said to him in the shop that if he "would help him with the election and the Union didn't go through, he would guarantee me a lifetime job." Minnotte then added, still according to Dabat, that "if the Union did get through, he would close the shop down immediately, the next day."

Respecting events after the election, Dabat continued to testify that a few days later he overheard a conversation between Strang and another employee, Nuss. He said Strang, while speaking to Nuss, pointed to Dabat and said: "There is another man that signed a union card." Dabat also testified that during the first week after the election as asked Minnotte what would happen now that the Union had lost, and that Minnotte replied he could not understand why "these 11 men" were dissatisfied with their work. Minnotte then asked him why he, Dabat, had signed up, why he had voted for the Union. Dabat asked how did Minnotte know who had voted for the Union, and Minnotte replied that inasmuch as 11 had signed cards it followed that 11 had so voted. Dabat said the conversation concluded with Minnotte saying he could not understand why Pashel "would ever want to start a union in the shop" after Minnotte had been considerate by hiring him despite his poor leg. (Pashel limps because of a leg infirmity.)

When Pashel received his first pay following the Fourth of July, he learned he was not paid for the holiday. A notice on the bulletin board advised employees that anyone having 60 days' employment would be paid holidays, and Pashel read this to mean 60 "total" as distinguished from 60 "consecutive" days. Pashel brought the matter to the attention of Pesce who then spoke to Strang about it. Strang then told Pashel Minnotte had agreed to pay him for the day. When the next pay-day came, with the money not yet forthcoming, Pashel asked the girl in the office if she had been instructed to pay it to him.

Nothing happened for some time, until, about 3 days before the election of August 29, Minnotte called Pashel into his office and paid him \$18.40 for the Fourth of July holiday. There is no disagreement as to what conversation took place respecting this money. Minnotte explained that Pashel misread the bulletin board announcement, but that notwithstanding, in view of Strang's apparent promise, he would nevertheless pay the money to Pashel. Pashel also testified, however, that in this conversation Minnotte also said to him that he "could not understand why the boys in the shop were wanting to do this to him . . .," that Pashel was doing a "darned good job," and that Minnotte was satisfied with his work.

All three of the Respondent's witnesses, Minnotte, Strang, and Pesce, denied any of them had any knowledge of Pashel's union activities. They also denied they questioned anyone concerning union activities, voiced any threats of reprisals, or passed on any notice that Minnotte would close the plant or discontinue activities in retaliation for their union activities. Respecting Dabat's testimony, Minnotte also denied having promised him any job assurance at all; his testimony was that about a week after the election Dabat came to him to say, "I did not sign or vote for the Union." Minnotte also denied having discussed Pashel's limp with Dabat at all.

I credit the testimony of the employee witnesses generally as to the conversations they say they had with management officers. Their testimony was given in a frank,

direct, and clearly consistent manner. As to Penatzer and Dabat, it was shown, by reference to their earlier affidavits, that their spoken words varied somewhat from the interviews they gave the Board agents on earlier dates. Thus, at the hearing Penatzer said Strang quoted Minnotte as having said he would "close" the shop, but his affidavit read: "Strang said Bill would go for a union but Bill wouldn't want the CIO." And Dabat testified Minnotte promised him a "life" job if he helped defeat the Union. His affidavit, which was received in evidence, on this point reads: "He said that if I would stick with him to help him win, that I wouldn't have to worry about a job, that I would have a steady job there." In all other respects Dabat's affidavit, a lengthy one, conforms with his extended testimony at the hearing. I do not deem these variances in words of sufficient substance to impair the total testimony of these witnesses, particularly in view of the consistent pattern revealed by the testimony of all the employee witnesses.

Plant Superintendent Strang did not deny he told Dabat, when he was hired, Minnotte wanted no union men in the shop. Dabat's employment application showed he had worked at the Alloy Company, a concern of which Minnotte had been an owner and where Minnotte knew a union had achieved representative status. Moreover, both Strang and Minnotte revealed, in the totality of their testimony, a tendency to strain their stories, as shown by their versions of the terminal conversations with Pashel. Further, when explaining his belated payment of \$18.40 to Pashel on about August 25, Minnotte said he was only implementing a decision to cover Strang, who had promised to pay Pashel for the holiday. He also said, however, he decided to make the payment "a week or 10 days" after talking to the office girl and learning Pashel still felt aggrieved. But that conversation occurred only a week or two after the holiday. Minnotte did not attempt to explain why, although he had then decided to satisfy Pashel at "the first opportunity," he nevertheless waited well over a month, and to the brink of the election, before making the payment. In view of his insistence that payment violated company rules and that Strang, in the end, concluded Pashel should *not* receive it,<sup>3</sup> and the thus unexplained delay and timeliness of the payment to the election, I can only conclude Minnotte did not give a reliable version of the incident. I find, instead, in the total circumstances, that he made the payment to influence Pashel's vote in the election and thereby violated Section 8(a)(1) of the Act.

In making this credibility resolution I have taken into consideration that some of the employee witnesses are no longer in the Respondent's employ. This fact is, of course, offset by the management status of the Respondent witnesses, who naturally also have a direct interest in the outcome of the case. Hulak, however, is still in the Company's employ, and I have no reason to discredit him. His direct testimony clearly indicates Minnotte well knew of Pashel's "pushing" activities for the Union before the discharge. When to all the foregoing I add the demeanor of the witnesses, which indicated strongly to me that the employee witnesses were making their best efforts to recall the truth and to be completely candid, I have no hesitancy in believing their stories. Accordingly, I find that the Respondent violated Section 8(a)(1) of the Act in Pesce's statement to Rieder and to Penatzer that Minnotte would close the plant, Pesce's inquiry of Rieder whether he intended to vote for the Union and Minnotte's question to Hulak on whether Pashel was still pushing for the Union, and Minnotte's offer of permanent employment to Dabat if the latter would assist the Respondent to defeat the union campaign.

The Respondent's antiunion animus thus clear on the record, Minnotte's knowledge of Pashel's outstanding union activities also directly revealed by his questioning of Hulak, and the defense assertion that Pashel was discharged because of unsatisfactory work not supported by the evidence, I also conclude that he was discharged because of his outstanding activities on behalf of the Steelworkers. The discharge came without notice. There is no indication of what could have led Strang to believe Pashel, 20 years a welder, and not either of the less experienced welders had made the errors, he was sent to make the repairs—strong implication that he was the more able man, and not a thing was said to him about his work performance. I think it clear that the matter of the defective welding of the roof trusses was used as a pretext to cover the illegal motivation that otherwise stands affirmatively shown by the record as a whole. I find that by discharging Pashel on September 9, 1960, the Respondent violated Section 8(a)(3) and (1) of the Act.

<sup>3</sup> As to Strang's final attitude about Pashel's claim, Minnotte testified as follows:

So after talking to Miss Brucci [the office girl] about the holiday pay, then I went back to Russell and talked with Russell and Russell said he thought at one time he thought he had it coming to him and told him he would get it on the next pay, but after talking to Miss Brucci, he found out he was not entitled to it.

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

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

## V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent discriminated against Robert Pashel with respect to his hire and tenure of employment, I will recommend that it be ordered to offer him immediate and full reinstatement to his former position, without prejudice to any privileges or prerogatives previously enjoyed and to make him whole for any loss of earnings he may have suffered because of the discrimination against him, by payment to him of a sum of money equal to the amount he would normally have earned as wages from the date of the discharge to the date of reinstatement, less his net earnings during said period, with backpay computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289. I will also recommend that the Respondent make available to the Board, upon request, payroll and other records to facilitate the determination of the amount due under this recommended remedy.

As the discharge of an employee because of his union activities goes to the very heart of the Act, the commission of similar and other unfair labor practices reasonably may be anticipated. I shall therefore recommend that the Respondent be ordered to cease and desist from in any manner infringing upon the rights guaranteed to its employees by Section 7 of the Act.

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

## CONCLUSIONS OF LAW

1. The Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. By discharging Robert Pashel the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.
3. By the foregoing conduct, by paying money to employees to influence their union activities, by threatening to close its plant, by interrogating employees concerning their union activities and the activities of other employees, and by promising them preferred employment status, the Respondent has interfered with, restrained, and coerced employees in the rights guaranteed in Section 7 of the Act and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

**United Marine Division of the National Maritime Union, AFL-CIO, Local No. 333 and D. M. Picton & Co., Inc.**

**United Marine Division of the National Maritime Union, AFL-CIO, Local No. 333 and Dixie Carriers, Inc. Cases Nos. 23-CC-74 and 23-CC-75. May 19, 1961**

## DECISION AND ORDER

On November 14, 1960, Trial Examiner George J. Bott issued his Intermediate Report in the above-entitled proceeding, finding that the 131 NLRB No. 91.