

able request, make available to the Board and its agents, all payroll and other records pertinent to an analysis of the amount due as backpay.

Since I have found that Respondent, by various acts, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in the Act and particularly because the discriminatory discharge found herein goes "to the very heart of the Act" (*N.L.R.B. v. Entwistle Mfg. Co.*, 120 F. 2d 532, 536 (C.A. 4)), and indicates a purpose to defeat the self-organization of its employees, I am convinced that the unfair labor practices committed are related to other unfair labor practices proscribed and that the danger of their commission in the future is to be anticipated from Respondent's conduct in the past. Accordingly, in order to make effective the interdependent guarantees of Section 7 and thus effectuate the policies of the Act, I will recommend that the Respondent cease and desist from in any manner infringing upon the rights of employees guaranteed by the Act. *May Department Stores v. N.L.R.B.*, 326 U.S. 376, 386-392.

During the hearing, Respondent took the position, because of Gaines' insubordination, that "under no circumstances should the company be required to put him back to work." The circumstances under which that insubordination occurred have already been considered. I find that the threats directed to Gregg do not exceed the bounds of resentment which could normally be aroused in a moment "of animal exuberance." *Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc.*, 312 U.S. 287, 293. It should also be recalled, that Gregg is no longer in Respondent's employment. I conclude that Gaines' insubordination is not sufficient to bar his reinstatement. *Efco Manufacturing, Inc.*, 108 NLRB 245, 250, 261 (Charles Arnold).

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. Respondent is engaged in commerce and the Union is a labor organization, all within the meaning of the Act.

2. By discriminating in regard to the hire and tenure of George W. Gaines, 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) of the Act.

3. 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 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.

5. Respondent did not discriminate against Walter H. Hughes, or Chester H. Bridges, as alleged in the complaint.

[Recommendations omitted from publication.]

Whitelight Products Division of White Metal Rolling and Stamping Corp. and United Electrical, Radio and Machine Workers of America, Local 218. Case No. 1-CA-3266. June 27, 1961

DECISION AND ORDER

On January 5, 1961, Trial Examiner C. W. Whittemore issued his Intermediate Report in the above-entitled proceeding finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent and the General Counsel filed exceptions to the Intermediate Report and briefs in support thereof.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with

this case to a three-member panel [Chairman McCulloch and Members Rodgers and Fanning].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in this case,¹ and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following modifications:²

Contrary to the conclusion of the Trial Examiner, we find that the General Counsel failed to meet his burden of proof in establishing that Respondent discharged Donald Belden for a discriminatory reason. In filling out his job application in June, Belden falsified his military experience and the fact that he was not honorably discharged, and left blank the request for information relative to his record for arrests. At the bottom of this page on the application form there appears the following statement:

The information on this application is accurate and subject to check. I understand that any misleading or incorrect statements may render the application void and would be cause for immediate dismissal in the event of employment.

Although Respondent discharged Belden on the day following the Union's appearance and demand for recognition, the discharge occurred on the very day Respondent confirmed the fact that Belden had an undisclosed criminal record. Absent a showing that Respondent condoned the above-noted misrepresentations, in the circumstances here we cannot say that Belden was discharged for other than a valid reason. Accordingly, we shall dismiss that portion of the complaint which alleges a Section 8(a)(3) violation with respect to Belden.

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, Whitelight Products Division of White Metal Rolling and Stamping Corp., North Walpole, New Hampshire, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in United Electrical, Radio and Machine Workers of America, Local 218, or in any other labor organi-

¹ The request by Respondent for oral argument is hereby denied because, in our opinion, the record and the briefs adequately present the issues and the positions of the parties.

² The Trial Examiner found, and it is herein adopted, that Respondent, through its agent, Records, engaged in unlawful surveillance within the meaning of Section 8(a)(1). This violation was not remedied in the recommended order and notice to be posted by Respondent. The General Counsel excepted to this omission. We find merit in the exception and shall therefore amend the order and notice to conform with this finding of violation.

zation, by discharging, laying off, refusing to reinstate, or in any other manner discriminating in regard to hire or tenure of employment, or any term or condition of employment.

(b) Threatening employees with economic reprisals or promising benefits to discourage membership in any labor organization, or engaged in surveillance of employees' union activities, or interrogating employees regarding their union membership or activities in a manner violative of Section 8(a) (1) of the Act.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or 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 by 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) Upon request, bargain collectively with United Electrical, Radio and Machine Workers of America, Local 218, as the exclusive representative of the Respondent's employees in the appropriate unit described in the Intermediate Report and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Offer employees Sylvester Smith, Maurice Brodeur, Clinton Pecor, Roland Prouty, and Bernard Smith immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings they may have suffered by reason of the discrimination in the manner set forth in the section of the Intermediate Report entitled "The Remedy."

(c) 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 analyze the amount of backpay due and the rights of reinstatement under terms of this Order.

(d) Post at its plant in North Walpole, New Hampshire, copies of the notice attached hereto marked "Appendix."³ Copies of said notice, to be furnished by the Regional Director for the First Region, shall, after being duly signed by the Respondent, be posted imme-

³ 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"

diately upon receipt thereof, in conspicuous places, and be maintained for a period of 60 consecutive days. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for the First 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 the Respondent violated Section 8(a)(3) of the Act by the discharge of Donald Belden.

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 you that:

WE WILL NOT discourage membership in United Electrical, Radio and Machine Workers of America, Local 218, or in any other labor organization of our employees, by discharging, laying off, refusing to reinstate or in any other manner discriminating in regard to hire or tenure of employment or any term or condition of employment.

WE WILL NOT threaten employees with economic reprisals or promise them benefits to discourage membership in the above-named or any other labor organization or engage in surveillance of employees' union activities, or interrogate employees regarding their union membership or activities in a manner violative of Section 8(a)(1) of the Act.

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

WE WILL offer Sylvester Smith, Maurice Brodeur, Clinton Pecor, Roland Prouty, and Bernard Smith immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings they

may have suffered by reason of the discrimination against them.

WE WILL, upon request, bargain collectively with the above-named labor organization as the exclusive representative of our employees in the appropriate unit described below and, if an understanding is reached, embody such understanding in a signed agreement. The unit is:

All production and maintenance employees at our North Walpole plant, exclusive of office clerical employees, professional employees, guards, and all supervisors as defined in the Act.

WHITELIGHT PRODUCTS DIVISION OF WHITE
METAL ROLLING AND STAMPING 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

Charges having been filed and duly served, a complaint and notice of hearing thereon having been issued and served by the General Counsel of the National Labor Relations Board, and an answer having been filed by the above-named Respondent, a hearing involving allegations of unfair labor practices in violation of Section 8(a)(1), (3), and (5) of the National Labor Relations Act, as amended, was held in Bellows Falls, Vermont, on November 14, 15, and 16, 1960, before the duly designated Trial Examiner.

At the hearing all parties were represented, and were afforded full opportunity to present evidence pertinent to the issues, to argue orally, and to file briefs. Oral argument was waived. Briefs have been received from General Counsel and the Respondent.

After the hearing was closed, and pursuant to an understanding reached by the parties at the hearing, a stipulation of fact, relating to certain telephone records, was received by the Trial Examiner. Said stipulation is hereby made a part of the record in these proceedings.

Disposition of the Respondent's motion to dismiss the complaint, upon which ruling was reserved at the hearing, is made by the following findings, conclusions, and recommendations.

Upon the record thus made, and from his observation of the witnesses, the Trial Examiner makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent is a New York corporation. Its principal office and place of business is in Brooklyn, New York, with a division located in North Walpole, New Hampshire, which plant is here involved. At this plant the Respondent is engaged in the manufacture, sale, and distribution of extruded, rolled, and finished products of magnesium and aluminum alloy and related products.

In the course of its operations at the North Walpole plant the Respondent received materials valued at more than \$50,000 annually from points outside the State of New Hampshire, and has shipped products valued at more than \$50,000 annually to points outside that State.

The complaint alleges, the answer does not deny, and the Trial Examiner concludes and finds that the Respondent is engaged in commerce within the meaning of the Act.

II. THE CHARGING UNION

United Electrical, Radio and Machine Workers of America, Local 218, is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Setting and issues*

The chief items of conduct claimed by General Counsel to be violative of the Act occurred during the week beginning August 15, 1960. In substance it is his contention that almost immediately upon being confronted with a request for recognition, submitted by a representative of the Charging Union which at the time represented a majority of the Respondent's employees, the plant manager unlawfully discharged two employee leaders of the organizational movement and laid off four other employees. By such unlawful discrimination and by other interference, restraint, and coercion, General Counsel urges, the Respondent also violated Section 8(a)(5) of the Act in refusing to bargain collectively with the Union as the majority representative of all employees in an appropriate unit.

The Respondent's answer merely enters a general denial. At the hearing and through its witnesses the Respondent claimed certain affirmative reasons for its actions which will be discussed below.

B. *Facts*

Because of the interrelationship both of the issues here presented and the pertinent events, the Trial Examiner will summarize in this section and in chronological order certain findings of fact relating to General Counsel's case. Discussion of evidence adduced by the Respondent to support its affirmative claims will be reserved for a later section.

The Trial Examiner finds as follows:

(1) On Monday, August 15, employee Donald Belden met with Organizer Hugh Harley, Jr., of the Charging Union, and from him obtained union authorization cards. He distributed them among the production and maintenance employees during the next 2 days.

(2) The Respondent concedes, and it is found, that on August 15, 16 and 17, eighteen of the employees in a unit admitted to be appropriate signed cards authorizing the Union to represent them in collective bargaining.

(3) While the record reveals a minor dispute as to whether there were 24 or 25 employees on the payroll in the unit on August 17, there can be no dispute that 18 cards established a majority representation as of that date.

(4) During the lunch period on Wednesday, August 17, many of the employees who had signed cards met and selected a committee of seven to accompany Harley to demand recognition from Plant Manager Records. Donald Belden was selected as chairman of the employee group.

(5) That noon, Harley and the committee went to Records' office. Harley introduced himself as the union representative and Belden as head of the employee committee.

(6) Harley claimed majority representation, and offered to prove this claim by the cards then with him, by a community election, or any other suitable method. He demanded recognition. Records raised no question indicating doubt of such claim, but said he would not grant recognition then. He promised to give Harley his answer the following Friday.¹

(7) At the same meeting Harley asked Records not to interfere with the employees' right to organize and the plant manager promised that he would not.

(8) Shortly after Records had given this promise, however, Belden was sent into his office, where the plant manager warned the employee that the Union was Communist and he would be branded for life if he continued in it. Records also insisted that there was no need for a union in the plant, and threatened that if it came in the

¹The findings as to this interview rest upon the credible testimony of Harley and Belden which in large part is corroborated by Records. For reasons set out at length in a later section, however, the Trial Examiner can place no reliance upon any of the plant manager's testimony. Such unreliability is also made plain by the fact that on direct examination Records admitted that Harley "had cards to show that the UE represented a majority," but on cross-examination, when asked if Harley had cards, he replied "I would say no . . . I don't remember" In any event, he finally admitted, in effect, that he had no doubt of the union majority that day.

employees would no longer receive monthly raises and all would have to go through another 30-day trial period. The manager also told Belden that he had "a fairly decent potential" and "had qualities for a good worker." Records obtained Belden's agreement that he would reconsider and would present the manager's point of view to the employee committee which was to meet that night at the home of Sylvester Smith, an employee.

(9) Late the same afternoon Foreman Lemp interrogated employee Benjamin about his union sympathies, and warned him that if the Union got in he thought the plant would close.

(10) That night, having previously been informed where the meeting was to be held, and within a period of some 15 or 20 minutes, Records twice drove slowly by Smith's home, each time looking in.

(11) The next morning, Thursday, August 18, a number of employees informed Belden that Foremen Lemp and Humphrey were calling them aside and interrogating them about the Union. As spokesman for the union committee Belden went into Records' office and protested against this conduct which the manager had promised would not be engaged in.

(12) Records gave the employee this reply only: "Do you realize you are jeopardizing your job by coming in here?" He ordered the employee back to work.

(13) Later during that day Harley returned to the office, asked for but was denied permission to have Belden accompany him, and then voiced his protest against Records' failure to comply with his promise of the day before. He again asked for recognition. Records denied that there had been any interference, and told Harley he would get his answer on recognition the following day.

(14) Also on Thursday employee Benjamin went in to ask Records for a raise. Records told him that if the Union got in "there wouldn't be but one raise a year."

(15) The same day Foremen Humphrey and Lemp interrogated employee LaDuke regarding his feelings about the Union. Lemp told him that if he would vote "No," they would be "better off in the shop," and warned that if "the Union comes in" they would be working only 8 months a year. Lemp asked the employee to give him his answer that night.

(16) Late that afternoon both Donald Belden and Sylvester Smith were summarily and without previous warning discharged, and employees Maurice Brodeur, Clinton Pecor, Roland Prouty, and Bernard Smith were laid off until further notice.

(17) As noted heretofore, Belden was the employee leader of the organization—admittedly known to be such by Records. Sylvester Smith was on the employee committee and it was by his house which Records had driven slowly the night before, an act of surveillance. Employees Pecor, Prouty, and Bernard Smith were on the employee committee which had been in Records' office Wednesday noon. Although Brodeur was not a member of the committee, he had signed a union card and had recently been employed at a nearby plant which had been organized by the same union local.

(18) These six employees (except Prouty, who was not a witness) were told upon their discharge or layoff, as follows:

(a) Belden was first asked by Records: "Do you remember what I told you early this morning about jeopardizing your job?" Belden conceded his recollection. Records then said: "As of this moment you are fired." He gave the employee two reasons: "(1) you haven't been attending to your work and (2) . . . you falsified your application form." The plant manager then ordered Foreman Humphrey to escort Belden off the premises within 10 minutes and not to permit him to return to the shop.

(b) Sylvester Smith, the first employee hired by the Respondent when opening the plant in the late fall of 1959, was told as he came from the toilet by Plant Engineer Wickberg to "keep on going"—out of the shop. When Smith asked why, Wickberg replied that he was spending too much time in the toilet and his work was unsatisfactory. As the two proceeded to the office, apparently to get the employee's discharge check, Wickberg said: "You know what Mr. Lawson (general manager of the Respondent) said about the union business? . . . His first words were, 'Ha, Ha, Ha!'"

(c) Bernard Smith, who had told Records that he would continue to "go along" with the others despite the manager's effort to dissuade him, was merely informed by Foreman Lemp that he was laid off "due to production"

(d) Maurice Brodeur, also laid off by Lemp, was told by this foreman "we are cutting production" and while he was satisfied with his work he had "got to lay" him off. The foreman added, "Probably, when this blows over, they will hire you back."

(e) Clinton Pecor, upon being laid off by Lemp, was told it was "due to things that are happening here."²

(19) On Friday, August 19, Foreman Lemp asked employee Shafer, while at work, what he thought of the Union. Shafer evaded the question. Lemp then told him that if the Union came in the employees would have to pay the cost of insurance then being borne by the Company. The foreman also told Shafer: "I hate to fire anybody, but when I get the word from the bigger boss, I got to do it. You see what happened here yesterday." He also said there were "7 or 8 people out on the street now that would vote for the Union."

(20) Also on Friday, Records told employee A. Fair that if the Union came in the employees would get but one raise a year, and asked him to change his mind about the organization.

(21) At noon that day when Harley returned for Records' answer to his demand for recognition, the plant manager dismissed him by refusing recognition and pointing out that the organizer had provided his own answer by filing a petition with the Board for an election.

C. Conclusions

The foregoing facts, based upon credible testimony largely unchallenged or undisputed, establish a *prima facie* case supporting all allegations of the complaint and which, in the opinion of the Trial Examiner, may successfully be counterpoised only by a most convincing presentation of credible evidence warranting other conclusions.

In quick summary, the Respondent would have it found that: (1) Belden was discharged because he "falsified" his application for employment several weeks' earlier; (2) Sylvester Smith was discharged because he had been an unsatisfactory employee ever since he had been employed; and (3) the four layoffs were made necessary because of an accident at the Brooklyn plant on August 15, where certain materials were prepared for shipment to the New Hampshire plant and assembled there.

By a considerable measure, in the opinion of the Trial Examiner, the Respondent has failed to provide the necessary counterbalance to General Counsel's case on each of the issues.

As to the layoffs, the testimony of General Manager Lawson and Plant Manager Records is not only mutually contradictory on essential points but lacks support in company records. The following examples of contradiction are noted:

(1) Lawson testified that following an accident to a Brooklyn press the morning of August 15 he telephoned to Records and instructed him to "cut his immediate work force 25 percent." Records, however, has flatly denied that Lawson so instructed him.³

(2) Records testified that Lawson "knows every single person up here" and that through him "tries to be acquainted with the individuals and skills of the people up here in North Wapole." Lawson, however, declared: "I don't know the situation with respect to the qualifications of the individuals."

As to company records—or documents purporting to be such (no primary records were produced at the hearing) the Trial Examiner is at a loss to determine which of two documents, if either, is correct and accurate. Both were prepared by the Respondent, one being submitted to the Regional Office before the hearing and the other introduced by the Respondent at the hearing. Variances are not minor, as the following comparison shows. The items purport to be the total poundage of "extrusions" received at the North Wapole plant from Brooklyn during the months noted:

<i>General Counsel's Exhibit No. 4</i>		<i>Respondent's Exhibit No. 3</i>
June.....	33, 284	44, 711
July.....	36, 738	43, 330
August.....	25, 463	21, 398

² Lemp was not a witness, and all remarks attributed to him are uncontradicted. Plant Engineer Wickberg, a witness, did not dispute Smith's account of the discharge interview, although he gave a somewhat different version which the Trial Examiner does not credit.

³ It would appear to be difficult to conceive of a more direct denial than here quoted from Records' testimony:

Q. For that matter, didn't Mr. Lawson tell you on Monday to reduce the force by 25 percent?

A. No.

Q. Didn't he?

A. No.

It appears to be Lawson's claim that because of the breakdown at Brooklyn, no more than 40,000 pounds of "extrusions" could be provided monthly to New Hampshire for some months after August 15. Since one set of figures produced by the Respondent shows that in neither of the two preceding months had the receipts attained this figure, it cannot be reasonably maintained, in the opinion of the Trial Examiner, that a reduction in force was required to assemble 40,000 pounds.

Finally, Lawson admitted that there was no reduction in force at the Brooklyn plant, where the accident occurred.

The Trial Examiner concludes and finds that there is no merit to the Respondent's claim that the accident made necessary reduction in force at the New Hampshire plant and that that was the reason for the layoff of the four employees.

As to Sylvester Smith, it appears needless to review in detail the plainly exaggerated and colored testimony of both Records and Wickberg regarding their dissatisfaction with him. According to them he had been a poor workman and wholly unsatisfactory ever since he had been hired. He was the first employee at this plant, and it is undisputed that he had received two raises within the period of somewhat less than a year of his employment. Both Records and Wickberg finally admitted that Smith had never been warned or cautioned that unless he did better work he would be either discharged or suspended. Under such circumstances, the Trial Examiner finds no merit in the Respondent's contentions as to Smith.

As to Belden, only Records testified as to the claimed reason for his discharge. The manager's insistence that he had taken this action because of "falsification" of the employee's application for employment appeared early in his testimony to have some degree of merit. While examination of the document, in evidence, shows that "falsification" is an unduly strict characterization, it is established, and Belden did not dispute the fact, that he accredited himself with some 2 years more of military service than he actually had. He did *not* "falsify," but merely left blank, a portion of the application calling for a listing of "arrests." Connotation of the word is not in issue here, however, but only Records' testimony as to what he did about it.

The manager repeatedly stated that during the few weeks of Belden's employment he had queried local insurance and real estate agents, a police chief, and a judge, concerning "rumors" of Belden's character and past. Although he said it had "occurred" to him to ask the employee himself, he admitted that he had never done so. Finally, he claimed, he telephoned to a Vermont probation officer in a nearby town, on the morning of August 16, and learned from this official that the young man (only 23) was on probation from an offense committed in the State of New Hampshire sometime before his employment by the Respondent. Records was not only emphatic in his claim that this telephone call was made on August 16, but insisted that the information he then received caused his immediate decision to discharge Belden.

None of Records' testimony regarding his previous "investigation" has the slightest corroboration in the evidence. J. V. Moeykens, probation officer called as a rebuttal witness by General Counsel, admitted that someone at the plant had called him, but he could not accurately fix the date.

As a witness Records attempted to bolster his recollection of the precise date by testifying that he had a diary which contained an entry refreshing his recollection. The diary was not produced.

Shortly before the hearing closed General Counsel applied for a subpoena calling for telephone records. It was granted. Counsel for both parties then agreed that within a specified period a joint motion for reopening of the hearing would be submitted to the Trial Examiner or a stipulation of fact as to what such records disclosed would be forwarded.

Bearing in mind the obvious point that if Records had in fact made the call on August 16—the day before he had knowledge of Belden's union leadership, the Respondent's contentions as to his discharge might have possessed some merit, the following stipulation is revealing:

It is hereby stipulated by and between the Counsel for the General Counsel and Counsel for Whitelight Products Division of White Metal Rolling and Stamping Corp. that the records of the New England Telephone and Telegraph Co. indicate that on Thursday, August 18, 1960 a telephone call was placed from Whitelight Products Division of White Metal Rolling and Stamping Corp., North Walpole, New Hampshire, whose telephone number is Hillcrest 5-5511 to Mr. Julius V. Moeykens, Brattleboro, Vermont, whose telephone number is Alpine 4-5911 at 9:35 A.M. Said telephone call was of nine (9) minutes duration. The above telephone numbers are the respective and only numbers for each party. No other telephone calls were placed between the above-two numbers in the month of August.

No motion for reopening the hearing has been received. Further comment upon Records' credibility as a witness appears hardly necessary.⁴

In final summary, the Trial Examiner concludes and finds as follows:

(1) All production and maintenance employees of the Respondent employed at its North Walpole plant, exclusive of office clerical employees, professional employees, guards, and all supervisors as defined in the Act constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

(2) On August 17, 1960, and at all times since that date, the Charging Union has been and is now the exclusive representative of all employees in the said unit for the purposes of collective bargaining.

(3) On August 17, 1960, and at all times since then, the Respondent has refused to bargain collectively with the said Union, not only by refusing to recognize it as the representative of its employees but also by its discharge and layoff of the employees named herein and the interference, restraint, and coercion herein described.

(4) On August 18, 1960, the Respondent discriminatorily, and to discourage membership in the Charging Union, discharged and laid off the six employees as found above.

(5) Under the circumstances found herein, the interrogation of employees as to their union sympathies and the surveillance engaged in by Records constituted coercion within the meaning of Section 8(a)(1) of the Act.

(6) By such interrogation and surveillance, by the threats of reprisals and promises of benefit as described herein, by the discriminatory discharges and layoffs, and by the refusal to bargain with the Charging Union, the Respondent interfered with, restrained, and coerced employees in the exercise of rights guaranteed by the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent, set forth in section III, above, occurring in connection with the 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 of commerce.

V. THE REMEDY

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

It will be recommended that the Respondent offer to each of the six employees named herein and found to have been discriminated against immediate and full reinstatement to his former or substantially equivalent employment, and that the Respondent make each of them whole for any loss of pay suffered by reason of the discrimination by payment to him of a sum of money equal to that which he would normally have earned as wages since August 18, 1960, to the date of the offer of reinstatement, less his net earnings during said period and in a manner consistent with Board policy set out in *F. W. Woolworth Company*, 90 NLRB 289, and *Crossett Lumber Company*, 8 NLRB 440.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1. United Electrical, Radio and Machine Workers of America, Local 218, is a labor organization within the meaning of Section 2(5) of the Act.

2. By discriminating in regard to the hire and tenure of employees, thereby discouraging membership in the above-named labor organization, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

3. All production and maintenance employees of the Respondent employed at its North Walpole plant, exclusive of office clerical employees, professional employees, guards, and all supervisors as defined in the Act constitute a unit appro-

⁴ The Trial Examiner notes here that he does not believe that either of the Respondent's two counsel—Robert Abelow or his son William—were aware of Records' obvious alteration of dates. Abelow, senior, readily agreed to join in the proposed stipulation as soon as he had an opportunity to check the Respondent's own telephone records—records which of course had been available to Records since August 1960. In short, the Trial Examiner attributes no bad faith to either counsel.

appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times since August 17, 1960, the above-named labor organization, by virtue of Section 9(a) of the Act, has been and is now the exclusive representative of all employees in the said unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

5. On August 17, 1960, and at all times since then, the Respondent refused and continues to refuse to bargain collectively with the said labor organization within the meaning of Section 8(a) (5) of the Act.

6. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a) (1) of the Act.

7. 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.]

Southern Wyoming Utilities Company and Pacific Power & Light Company¹ and International Brotherhood of Electrical Workers, AFL-CIO, Petitioner. Case No. 27-RC-1982. June 27, 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 Allison E. Nutt, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error, and are hereby affirmed.²

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

Upon the entire record in this case, the Board finds:

1. The Employers are engaged in commerce within the meaning of the Act.

2. The Petitioner and Intervenor are labor organizations within the meaning of the Act, claiming to represent certain employees of the Employers.

3. A question affecting commerce exists concerning the representation of employees of the Employers within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act.

The instant petition was filed on December 22, 1960, requesting a unit of employees in the electric and water departments of Southern Wyoming Utility Company, herein called Southern Wyoming, in Rock Springs, Wyoming. The Intervenor and Pacific Power contend that a contract between them is a bar to this petition.

¹ The names of the Employers appear as corrected on the record.

² For reasons given below, the motions to dismiss made by Pacific Power & Light Company, herein called Pacific Power, and Utility Workers Union of America, Local 127, AFL-CIO, the Intervenor, are hereby denied.