tinuing, has lost momentum. The union meeting at the American Legion Hall that was held the day after Stevens' discharge seems to have been a rather lugubrious affair. I must conclude also that the burden of proving that Stevens was discharged because of his union membership or activity has not been met.

IV. THE REMEDY

While I have found that the incidents involving Mrs. Davidson and the use of the American Legion Hall represented violations of Section 8(a)(1) of the Act, I believe that they were isolated acts that are not likely to be repeated, since they were not integral parts of an illegal plan to combat the Union. In these circumstances, it seems to me that the condemnation of these acts which I have expressed herein should be sufficient to prevent their recurrence, and that no purpose would be served by invoking the preventive machinery of the Act, and issuing a formal cease-and-desist order.

CONCLUSIONS OF LAW

1. The Respondent, Valley Feed and Supply Co., Inc., is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 445, is a labor organization within the meaning of Section 2(5) of the Act.
3. By requesting a third person to seek to dissuade two of its employees from joining or assisting the Union, and by protesting against the use of a meeting place by its employees, the Respondent has interfered with the rights of its employees in violation of Section 8(a)(1) of the Act.
4. The Respondent has *not* discriminated with respect to the hire or tenure of employment or any term or condition of employment of any of its employees in violation of Section 8(a)(3) of the Act.

[Recommendations omitted from publication.]

Quaker Alloy Casting Company *and* United Steelworkers of America, AFL-CIO. *Case No. 4-CA-2312. February 1, 1962*

DECISION AND ORDER

On August 31, 1961, Trial Examiner George A. Downing 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 Intermediate Report attached hereto. Thereafter, Respondent filed exceptions to the Intermediate Report and a supporting brief and the General Counsel filed a brief in support of the Intermediate Report.

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 the case, and adopts the findings, conclusions, and recommendations of the Trial Examiner except as modified herein.

The Trial Examiner found that Respondent had violated Section 8(a)(3) by discharging two employees, Moyer and Tarantino, for engaging in organizational activities on behalf of the Steelworkers Union, the Charging Party herein, and because of their participation

in an employee representation plan. He also found that they had engaged in protected concerted activities through their participation in a temporary work stoppage and grievance meeting and that their discharge therefor violated Section 8(a)(1). Further violations of Section 8(a)(1) were also found, based on Respondent's interrogation of its employees about the grievance meeting, its threats to discharge the employees who organized the meeting, and urging employees to bring their grievances directly to the plant superintendent, thereby bypassing their shop representative.

1. The Board agrees with the Trial Examiner's finding and his reasons therefor that Moyer and Tarantino were discharged because of their organizational activities on behalf of the Steelworkers Union, in violation of Section 8(a)(3). It does not, however, adopt the Trial Examiner's finding that the discharge also violated Section 8(a)(3) insofar as it was prompted by the participation of these two employees in an employee representation plan, since the complaint did not allege a violation on that ground. The Board therefore finds it unnecessary to consider or adopt the Trial Examiner's finding that the shop representatives or the representation plan constituted a labor organization within the meaning of Section 2(5) of the Act.

2. The Board also affirms the Trial Examiner's finding that Moyer and Tarantino were engaged in a protected concerted activity under the circumstances disclosed in the Intermediate Report when they initiated and participated in the preliminary grievance meeting of March 20 on company time and property. In its view, the meeting to discuss and to formulate a grievance, and the concurrent temporary cessation of work which ensued, were as fully protected as if the employees had called a strike [1] or had walked off the job in order to *present* a grievance to management.[2] Unlike the Trial Examiner it would not assume that Respondent had a plant rule in effect which prohibited meetings or gatherings of employees on working time.

3. Based on its view that the temporary work stoppage and grievance meeting was a protected concerted activity, the Board affirms the Trial Examiner's finding that the Respondent's interrogation, threats to discharge employees who initiated the meeting, and its directions and suggestions to employees that they bring their grievances directly to Respondent's officials, constituted violations of Section 8(a)(1).

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[1] See *N L R B* v *J. I. Case Company, Bettendorf Works*, 198 F 2d 919, at 922 (C A. 8); *Carter Carburetor Corporation* v. *N L R B*, 140 F 2d 714, at 717 (C A 8) *Gullett Gin Company, Inc* v. *N L R B.*, 179 F. 2d 499 (C.A. 5); *N.L R B* v. *Globe Wireless, Ltd*, 193 F. 2d 748 (C A. 9).

[2] *Kennametal, Inc*, 80 NLRB 1481, enfd. 182 F. 2d 817 (C A. 3); *The Office Towel Supply Company, Incorporated*, 97 NLRB 449, enforcement denied 201 F 2d 838 (C A 2) for reasons not apposite here

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, Quaker Alloy Casting Company, Myerstown, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating coercively employees concerning their participation in protected concerted activities and directing and suggesting that employee grievances be submitted directly to Respondent.

(b) Threatening to discharge employees because of their instigation of or participation in protected concerted activities.

(c) Discharging employees because of their participation in protected concerted activities.

(d) Discouraging membership in United Steelworkers of America, AFL–CIO, or in any other labor organization, by discharging employees or by discriminating in any other manner in regard to their hire or tenure of employment, or any term or condition of employment.

(e) In any other manner interfering with, restraining, or coercing their employees in the exercise of their right to self-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 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 to Glenn Moyer and Joseph Tarantino immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, and make each of them whole for any loss of pay he may have suffered by reason of the discrimination against him from the date of the discrimination against him to the date of his offer of reinstatement, less his net earnings during said period. Such backpay is to be computed on a quarterly basis, in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289.

(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, and all records necessary to analyze the amounts of backpay due under the terms of this Order.

(c) Post at its plant at Myerstown, Pennsylvania, copies of the notice attached hereto marked "Appendix."[3] Copies of said notice, to be furnished by the Regional Director for the Fourth Region, shall, after being signed by Respondent's duly authorized representative, be posted by Respondent immediately upon receipt thereof and 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 Fourth Region, in writing, within 10 days from the date of this Order, what steps it has taken to comply herewith.

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

[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."

APPENDIX

NOTICE TO ALL EMPLOYEES

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

WE WILL NOT interrogate coercively our employees concerning their participation in protected concerted activities, nor will we direct or suggest that employee grievances be submitted directly to us.

WE WILL NOT threaten to discharge employees because of their instigation of or participation in protected concerted activities.

WE WILL NOT discharge employees because of their participation in protected concerted activities.

WE WILL NOT discourage membership in United Steelworkers of America, AFL–CIO, or in any other labor organization of our employees, by discharging employees or by discriminating in any other manner in regard to hire or tenure of employment, or any term or condition of employment, to discourage membership in a labor organization.

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

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 modified by the Labor-Management Reporting and Disclosure Act of 1959.

WE WILL offer to Glenn Moyer and Joseph Tarantino 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 pay they may have suffered as a result of our discrimination against them.

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

QUAKER ALLOY CASTING COMPANY,
Employer.

Dated_____ By_____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 1700 Bankers Securities Building, Walnut and Juniper Streets, Philadelphia 4, Pennsylvania (Telephone Number PEnnypacker 5–2612), if they have any question concerning this notice or compliance with its provisions.

INTERMEDIATE REPORT

STATEMENT OF THE CASE

This proceeding, brought under Section 10(b) of the National Labor Relations Act, as amended (61 Stat. 136; 73 Stat. 519), was heard in Harrisburg, Pennsylvania, on July 11 and 12, 1961, pursuant to due notice. The complaint, issued on May 19, 1961, by the General Counsel of the National Labor Relations Board and based on charges duly filed and served, alleged in substance that Respondent had engaged in unfair labor practices proscribed by Section 8(a)(1) and (3) of the Act by interrogating employees concerning their participation in protected concerted activities, by threatening to discharge employees because of such participation, and by discharging Glenn Moyer and Joseph Tarantino on March 22, 1961, because they participated in such activity and/or because of their union membership and activity.

Respondent answered, denying the unfair labor practices as alleged and averring affirmatively that its conduct as complained of was concerned with employee participation in unlawful and/or unprotected concerted activity. The chief issue in the case was whether Respondent unlawfully discharged Moyer and Tarantino because of their conduct in connection with the instigating and holding of an employee meeting on company time to discuss with their employee representative a grievance to be presented to management and/or because of their activities on behalf of the Steelworkers' Union. The interrogation complained of occurred during Respondent's investigation of that meeting, prior to the discharges.

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

FINDINGS OF FACT

I. RESPONDENT'S BUSINESS; THE LABOR ORGANIZATION INVOLVED

I find on facts alleged in the complaint and admitted by answer that Respondent, a Pennsylvania corporation engaged at Myerstown in the manufacture of steel and

alloy castings, is engaged in interstate commerce within the meaning of the Act (by direct sales and shipments to extrastate points of products valued in excess of $50,000 annually), and that the Charging Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE UNFAIR LABOR PRACTICES

A. *The evidence*

The facts in this case are undisputed. Respondent employed a total of some 500 employees in 3 different shops (the old, the new, and the development company), but the activity with which this proceeding is concerned occurred in and was confined to the cleaning department in the new shop, in which Moyer and Tarantino were employed, and it involved, more particularly, only some 30 chippers and weld dressers, divided equally among 3 shifts.

The employees were not organized by any union, though there existed some form of employee representation plan under which the employees in each shop periodically elected one of their number to represent them with management, at least so far as grievances were concerned. However, the Company had given no instructions as to how the representation system was to operate, and no regular time or place was provided for the employees to meet with their representative. Grievances were presented by the aggrieved employee or employees going to see their shop representative if he was on the same shift. There was no collective-bargaining agreement, and the record is silent as to the manner in which the plan functioned and as to the circumstances under which the representative and/or the employees were permitted to confer with management.

Because the issue presented here requires a balancing of employee rights to engage in concerted activities against the employer's right to maintain production during worktime and to impose appropriate rules to that end, it is necessary to consider the nature of the operations performed in the cleaning department.

Respondent produces steel and special alloy castings which vary in weight from a pound up to several tons, and they are brought into the cleaning department for cleaning and preparation for shipment. The job classifications of the employees involved there are laborers, acetylene burners, arc burners, wheelabrator operators and blast operators, inspectors, chippers, weld dressers, welders, and the operator of the Magnaflux machine.

Moyer and Tarantino were weld dressers. The weld dressers select from a stockpile in front of their benches the next casting to be cleaned (except where the foreman may make the selection), and either carry it to the workbench or, depending on the size and weight of the casting, call the operator of the overhead crane to move it. Thereupon, the weld dressers grind down the parting line on the casting, grind and weld up the defects to blend them in with the casting, and clean it up so as to ready it for shipment. The time spent on a single casting varies widely from 15 minutes up to 2, 3, or 4 days, depending on the condition of the casting. When the weld dresser's work is finished, he notifies the crane operator if the casting is too heavy, and it is then again put in a stockpile preparatory to going into the furnace for heat treatment.

Prior to January 1961 the normal working schedule was five or six 8-hour days, with the sixth day (which normally fell on Saturday or Sunday) calling for overtime pay. Sometime early in the year Respondent began gradually to require employees in some departments to lay off a day during their first 5 working days, but to return for their fifth day on Saturday or Sunday without the payment of overtime. That change began to affect the chippers and weld dressers sometime in February, and employee dissatisfaction with it constituted the grievance which ultimately precipitated the discharge situation.

Moyer and Tarantino were the leaders in the movement to correct the grievance. They first went to the Lebanon office of the Steelworkers' Union for relief, but were informed that the Union could offer no help unless the plant were organized. They were given authorization cards and thereafter solicited signatures at the homes of the employees, having been warned by the Union not to solicit on company time. There was no evidence of company knowledge of those activities save that which may be inferred from certain remarks made by Plant Superintendent R. L. (Dick) Miller, later to be referred to.

On March 17 Moyer complained about the change in the work schedule to his foreman, Cyril Feathers, who suggested that Moyer see Miller about it. However, Moyer informed Feathers that "the rest of the men" were going to see their shop representative, Charlie Behney, to "hand in a complaint," and that he would go with them. On Monday, March 20, at their 8 p.m. lunch break, Moyer and Tarantino spoke to Behney concerning the complaint, and Behney stated that he would

talk with Miller the next morning. When they told Behney that the other men in their department also wanted to see him about the matter, Behney instructed them to tell the others he would be in the plant until 1 a.m., and that they could talk to him at any time.

Upon returning to work Moyer and Tarantino informed their fellow workers of Behney's message, and discussions among the men evolved the thought that it would be a good idea to include simultaneously members of the incoming shift, who customarily reported early.

Normally the employees were granted 5 minutes within which to put away their tools and to prepare to leave. On that evening, the men on the 3 p.m. to 11 p.m. shift began spontaneously to stop work around 10 minutes of 11 and to head for the toilet. Feathers and another foreman were seen in a nearby area, but neither spoke to the men about leaving their jobs. Moyer and Tarantino joined the group, and Tarantino went back outside the toilet door and called in Behney, who was working nearby. Some 15 to 20 employees from both the outgoing and the incoming shifts were present and participated in discussion of the grievance with Behney, who agreed to take it up with Miller the next morning. The actual meeting lasted from 5 to 7 minutes; and after putting their tools away, the employees on the outgoing shift checked out around 3 or 4 minutes after 11.

The next day Moyer and Tarantino were called into Miller's office as they reported to work, where they found Miller, Feathers, Joe Progin, general foreman in the new shop, and Robert Boyer, employee representative for the old shop. Miller stated he was informed that Moyer and Tarantino were the instigators or ringleaders of an uncalled for and improper meeting held in the toilet the preceding night, and that they had left their jobs without proper authority of a foreman. They admitted their participation in the meeting, but denied being the instigators of it. When Miller asked why they did not bring their complaint to him, Moyer stated he thought they had a right to see their committeeman. Miller pursued the point, asking if Feathers had not told Moyer to come direct to Miller. Moyer replied that he had informed Feathers that he and the other employees were going to hand in their complaint to their committeeman.

Miller questioned their right to see their representative and their right to question the manner in which he scheduled the work, and he spoke disparagingly of Behney as a committeeman and of Tarantino as a workman. Following words on the latter score between Miller and Tarantino, Miller referred to Tarantino and Moyer as being professional union organizers and stated that he was holding them responsible for instigating the meeting in the toilet and that they would be subject to dismissal because of having held that meeting without obtaining authority from a foreman. Miller added that he had met with the day shift, none of whom knew anything about the meeting, that he proposed to hold further meetings with the other shifts, and that if no one spoke up to defend them, he would make a complaint to management, who would then decide on their jobs.

Thereupon Miller called the incoming shift together and repeated the substance of his former statements. He also defended his changing of work schedule on the ground that it was necessary to meet competition, explaining that Respondent's plant was the only one on the east coast which was working steadily and that union activities would have taken it out of the competitive field. Miller covered the same ground again in a meeting with the third shift.

The following day Moyer and Tarantino were called into Miller's office where each was given a termination letter dated March 22, which read as follows:

> You are hereby terminated on the above date for active participation in scheduling and conducting a meeting of your own choice at 10:50 P.M. on Monday, March 20, 1961, at which time men were pulled off their jobs and the meeting was conducted on company property.
>
> This company has in the past given due notice that anyone soliciting or agitating on company time and property is subject to dismissal. This is general policy in any company.
>
> No attempt for approval from any foreman to conduct this meeting was made.

There was also evidence that on the same day Miller called in an employee, questioned him about how he knew the meeting was to take place, and suggested that he bring his "gripes" to Miller.

B. *Concluding findings*

The legal issue in this case is a close and difficult one, though it involves simple facts and a familiar situation which has formed the subject matter of many unfair labor practice proceedings during the past two decades. The applicable law has been exhaustively reviewed by the Board (see, e.g., *Doyle W. Terry, d/b/a Terry Poultry*

Company, et al., 109 NLRB 1097, particularly the dissenting opinion at page 1101 and cases there cited; and *Harnischfeger Corporation*, 103 NLRB 47, at pages 59–61) and by the courts, (see, e.g., *N.L.R.B.* v. *Washington Aluminum Company, Inc.*, 291 F. 2d 689 (C.A. 4), and cases there cited at footnote 10). It is thus appropriate to begin by calling attention to the apt comment, made in 1950 by the court in *N.L.R.B.* v. *Kennametal, Inc.*, 182 F. 2d 817, 819 (C.A. 3)—itself a leading case in this field—in adopting an early holding of another court, that:

> What the Ninth Circuit said a decade ago is even clearer now. ". . . the time has come when the fundamentals underlying the Wagner Act need not be the subject of treatises in every opinion . . . of enforcement . . ." *N.L.R.B.* v. *Tovrea Packing Co.*, 9 Cir., 1940, 111 F. 2d 626, 630.

Nevertheless, the closeness of the present case, coupled with the present status of Board law [1] and a somewhat uncertain record on enforcement, dictates that more than summary treatment be given to the important question involved.

Section 7 of the Act guarantees to employees the right to engage in "concerted activities for the purpose of collective bargaining or other mutual aid or protection." The holding of the meeting between the employees and their representative under the recognized employee representation plan for the purpose of formulating a grievance to be presented to management protesting the change in the work schedule plainly constituted concerted activities which are protected by the Act. Without more, it would be elementary to conclude that the discharge of employees for engaging in such activities was a violation of the Act. We consider, however, various facets of the evidence to determine whether they support Respondent's contention that the activity was in fact unlawful and unprotected because the meeting was held in part on company time without obtaining prior approval.

That the concerted activities involved a work stoppage does not affect the question, for it is well settled that both work stoppages and strikes in protest of working conditions fall within the protection of Section 7. *N.L.R.B.* v *Southern Silk Mills, Inc.*, 209 F. 2d 155 (C.A. 6), rehearing denied 210 F. 2d 824, cert. denied 347 U.S. 976; *Modern Motors Incorporated* v. *N.L.R.B.*, 198 F. 2d 925, 926 (C.A. 8). It was not necessary, to qualify for the Act's protection, that the dissatisfied workmen exert the maximum economic pressure by calling a strike. *N.L.R.B.* v. *Kennametal, Inc., supra.* Cf. *N.L.R.B.* v. *J. I. Case Company, Bettendorf Works*, 198 F. 2d 919, 922 C.A. 8).

The record suggests no basis for Miller's insistence that Moyer and Tarantino should have presented their grievance directly to him, particularly in view of the representation plan, and the fact that Foreman Feathers suggested that they do so is without consequence. Indeed, the real significance of the conversation with Feathers is that Respondent thereby became apprised of the nature of the grievance that existed and that the men were going to see their representative about it.[2] Thus, contrary to Respondent's contention, Respondent in fact had knowledge before the meeting both of the concerted activity and the nature of the grievance behind it. Furthermore, before Respondent actually made the discharges, it became fully apprised through Miller's exhaustive investigation of all the circumstances surrounding the meeting and the activity.

Under the foregoing circumstances it is not material that the employees did not lodge a formal grievance with Respondent just prior to walking off the job, and, contrary to Respondent's contention, their failure to do so did not remove their action from the protection of the Act. It is also immaterial that the employees might have taken other alternative courses, such as conferring on separate shifts with Behney, during their lunch breaks or after checking out. "The wisdom or unwisdom of the men, their justification or lack of it" is immaterial to the determination of their rights under the Act. *N.L.R.B.* v. *Mackay Radio & Telegraph Co.*, 304 U.S. 333, 344; *Firth Carpet Company* v. *N.L.R.B.*, 129 F. 2d 633, 636 (C.A. 2); *Cusano d/b/a American Shuffleboard Co.* v. *N.L.R.B.*, 190 F. 2d 898, 902 (C A. 3). To similar effect is *N.L.R.B.* v. *Solo Cup Company*, 237 F. 2d 521, 526 (C.A. 8), where the court held protected the action of a group of employees who, suddenly and without prior warning, shut down their machines to protest to management the discharge of a coworker, commenting that:

> The employees might well have exercised better judgment by sending a committee to the management at a more convenient time for making their protest and

[1] See *infra*, where *Terry Poultry Company, supra*, is compared with *Office Towel Supply Company, Incorporated*, 97 NLRB 449.

[2] Though the employees might have dealt directly with the Company concerning the grievance, without the intervention of their representative, they were not required to do so; and even if they did, their representative was also entitled to be present Section 9(a).

demand, but we are unable to conclude that ill judgment or lack of consideration add up to illegality.

But aside from the question of knowledge, Respondent argues that to be protected the concerted activity must involve the presentation, or attempted presentation, of the grievance *to management,* citing in part *Terry Poultry Co.,* 109 NLRB 1097. As the General Counsel also relies on that case, which was decided by a sharply divided Board, it is necessary to consider its holding carefully.

As the dissenters pointed out (*supra,* at page 1101, and cases there cited), it has long been recognized that the right to stop work concertedly to present a grievance is not lost simply because permission is not first obtained from the foreman, or the aggrieved employees are otherwise insubordinate, or violate a plant rule. The leaving of the job, under that view, is as much a part of the concerted activity as the actual presentation of the grievance to management, for a contrary view would leave little to the employees' statutory right to engage in a temporary work stoppage for mutual aid and protection.[3] Interference with production from such stoppage is purely incidental, as it is in the case of a strike, and may not afford a legal basis for denying the employees protection from discharge. The only exception recognized under that view is that where, in stopping work, employees fail in their "duty to take reasonable precautions to protect the employer's physical plant from such imminent danger as foreseeably would result from their sudden cessation of work" *Marshall Car Wheel and Foundry Co. of Marshall, Texas, Inc.,* 107 NLRB 314, 315.

The majority in *Terry* held, however, that two employees who had left their workplace to present a grievance to management concerning working conditions were lawfully discharged for violating a reasonable plant rule, i.e., against leaving the production line without notifying a foreman or any fellow employee; and it rejected the General Counsel's contention that the employees were engaged in protected concerted activities and were not vulnerable to discharge. The majority likened the employer rule to the familiar one of a no-solicitation rule prohibiting union solicitation during working hours, and pointed out that in such cases the Board has balanced the right of the employer to manage his business against his employees' right to engage in union or concerted activity to determine whether the questioned rule unreasonably interfered with the employees' exercise of their statutory rights. It found the employer rule to be necessary to insure orderly and efficient operation of the production line and not designed to limit an employee's union or concerted activity, being simply to control absences from the line.

Being unreversed, the majority opinion in *Terry* constitutes Board law and is binding on the Trial Examiner. It does not, however, control the result in the present case, because in balancing here the Company's rules [4] against employee rights, the circumstances weigh heavily in favor of the latter. Initially, it is plain that there was nothing inherent in the nature of the operations which would endanger them in any manner in event of a sudden cessation or which would require precautions to protect the plant or other property. Secondly, the brief invasion of worktime (5 minutes earlier than the normal stoppage by a total of 11 employees, including Behney) was not shown to have had substantial effect on the plant operations; on the face of

[3] Such was the precise holding in *Office Towel Supply Co., Incorporated,* 97 NLRB 449, 451, where the Board was considering a discharge because of complaints concerning working conditions which one employee expressed to a group of others. Citing *Root-Carlin, Inc.,* 92 NLRB 1313, the Board held that:

> Such activity . . . was an "indispensable preliminary step to employee self-organization," and therefore enjoyed the protection accorded concerted activity under the Act Any other view concerning [the] discharge would permit an employer to frustrate concerted activity at its inchoate stage and make a mockery of the guarantees of Section 7 of the Act.

Though enforcement was denied (201 F. 2d 838 (C.A. 2)), the result was based on the court's view that the employer was wholly ignorant *at the time of the discharge* that the critical remarks were made in a context of concerted activity. The court accordingly distinguished *Cusano, d/b/a American Shuffleboard Co.* v *N.L.R.B.,* 190 F. 2d 898 (C.A. 3), on the ground that the employer in the latter case knew that the discharged employee had participated in protected activities.

[4] It is assumed from the language of the termination letter (there being no evidence to refute it) that Respondent had a rule against holding employee meetings on company time without prior approval.

Though Respondent argues that it is unnecessary to reach the question of its rules because its position must be upheld on the antecedent points, I have rejected its contentions on those points.

it the effect could only have been negligible at worst. That there was actually *no* effect seemed clearly indicated by the fact that two foremen viewed the stoppage without trying to halt it and without directing a return to work.

Thus here, as in *N.L.R.B.* v. *Morris Fishman and Sons, Inc.*, 278 F. 2d 792, at 795–796 (C.A. 3), enforcing 122 NLRB 1436, there was no evidence that the work stoppage endangered the Company's property, that it created potentially or peculiarly dangerous conditions, or that it was deliberately timed so as to cause maximum damage. Cf. *Valley Die Cast Corp.*, 130 NLRB 508. To the contrary, the spontaneous idea of having both the outgoing and incoming shifts meet with Behney in a single meeting tended to minimize any disruption which might normally have resulted from individual employees or groups of employees seeking out their representative from time to time. Here, therefore, as in *Kennametal, Inc., supra,* ". . . what the workmen did was more reasonable and less productive of loss to all concerned than an outright strike"—or than resort to other alternative courses of action. Thus Respondent's characterization of the situation in its brief as "anarchic" is plainly a gross exaggeration.

Finally, Miller's repeated statements, made during his investigation and after he was fully apprised of the nature of the meeting and of Moyer's and Tarantino's connection with it, showed that he was concerned, not with any claimed interference with production, but with the following facts: (1) Behney was not bypassed and the grievance brought directly to him; (2) Moyer and Tarantino were professional union organizers; and (3) union activity would have adverse effects on the Company's competitive position and its ability to keep the plant open.

Miller's statements thus showed that Respondent had knowledge of, and was concerned about, the organizational activities in which the two men were engaged. They showed as well that Respondent's real concern was not the work stoppage for if such had been the case, Miller's remarks would have been plainly out of place and outside the context of his investigation. Indeed, except for Miller's reference to union activities and to Moyer and Tarantino as union organizers, there was no evidence which would explain the choice of the language in the termination letters concerning company policy against "soliciting and agitating on company time and property." That an organizational drive was in fact pending, that Moyer and Tarantino were leading it, that Respondent had knowledge of those facts, and that it discharged the two leaders are circumstances which add strong support to my conclusion that in making the discharge Respondent was motivated, certainly in part, by the union activities of the two men.

I therefore conclude and find, under all the circumstances of the case, that the employee meeting with their representative, Behney, though held partially on company time and without obtaining prior approval, constituted lawful concerted activities, protected by Section 7 of the Act, and that Respondent's discharge of Moyer and Tarantino, made with full knowledge of the facts, was an unlawful invasion of the rights guaranteed by that section, thereby violating Section 8(a)(1). I also conclude and find that by Miller's repeated interrogations concerning the instigation of the concerted activities, by his repeated threats to discharge the instigators, and by his directions and suggestions that the employees bypass their representative and bring their grievances directly to him, Respondent engaged in further interference, restraint, and coercion of employees in the exercise of their Section 7 rights, thereby further violating Section 8(a)(1).

I find further that the discharge of Moyer and Tarantino also constituted a violation of Section 8(a)(3) of the Act on the following bases:

I conclude and find that by meeting with Behney, the employees were participating in a representation plan for the purpose of dealing with Respondent concerning a grievance involving hours of employment or conditions of work, thereby constituting a labor organization within the meaning of Section 2(5) of the Act. *N.L.R.B.* v. *Kennametal, Inc., supra; N.L.R.B.* v. *Cabot Carbon Company, et al.*, 360 U.S. 203, 212–213. Since Respondent discharged Moyer and Tarantino because of their participation in said meeting and in said plan, its action plainly constituted discrimination to discourage membership in or adherence to a labor organization. *The Radio Officers' Union of the Commercial Telegraphers Union, AFL (A. H. Bull Steamship Company)* v. *N.L.R.B.*, 347 U.S. 17, 51.

I further conclude and find, for the reasons stated *supra*, that Respondent also discharged Moyer and Tarantino because of their activities on behalf of the Steelworkers' Union and to discourage membership in that labor organization.

III. THE REMEDY

Having found that Respondent engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and that it take certain affirmative

action of the type conventionally ordered in such cases, which I find necessary to remedy and to remove the effects of the unfair labor practices and to effectuate the policies of the Act. For reasons which are stated in *Consolidated Industries, Inc.*, 108 NLRB 60, 61, and cases there cited, I shall recommend a broad cease-and-desist order.

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 Steelworkers of America, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.
2. The employee representation plan constituted a labor organization within the meaning of Section 2(5) of the Act.
3. By interfering with, restraining, and coercing their employees in the exercise of rights guaranteed in Section 7 of the Act, Respondent engaged in unfair labor practices proscribed by Section 8(a)(1).
4. By discharging Glenn Moyer and Joseph Tarantino because of their participation in concerted activities protected by Section 7 of the Act, Respondent engaged in unfair labor practices proscribed by Section 8(a)(1).
5. By discharging Glenn Moyer and Joseph Tarantino because of their participation in the employee representation plan, Respondent engaged in discrimination to discourage membership in a labor organization, thereby engaging in unfair labor practices proscribed by Section 8(a)(3) and (1) of the Act.
6. By discharging Glenn Moyer and Joseph Tarantino because of their activities on behalf of the Steelworkers' Union, Respondent engaged in discrimination to discourage membership in a labor organization, thereby engaging in unfair labor practices proscribed by Section 8(a)(3) and (1) of the Act.
7. The aforesaid unfair labor practices having occurred in connection with the operation of Respondent's business as set forth in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and substantially affect commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

Cleveland Pneumatic Tool Company, Div. of Cleveland Pneumatic Industries, Inc., Petitioner *and* Aerol Aircraft Employees Association [1] and Metal Polishers, Buffers, Platers, and Helpers International Union, AFL–CIO, and its Local No. 3.[2] *Case No. 8–RM–271. February 1, 1962*

DECISION AND ORDER

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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].

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

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

[1] Hereinafter referred to as the Association
[2] Hereinafter referred to as the Metal Polishers Union.