

employees with reprisal if they do not withdraw from the Union, by promising and awarding economic benefits to employees for their withdrawal from or failure to join the Union, and by withdrawing privileges from employees who remained in the Union, Respondent has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed them by 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.

8. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

Ox-Wall Products Manufacturing Co., Inc., Oxwall Tool Co., Ltd., Warren Products, Ltd. and Pioneer Merchandise Corp. and International Association of Machinists, AFL-CIO. *Case No. 22-CA-891. February 5, 1962*

DECISION AND ORDER

On October 25, 1961, Trial Examiner Albert P. Wheatley issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices in violation of Section 8(a)(1) and (3) of the Act, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. Thereafter, the Respondent and the General Counsel filed exceptions to the Intermediate Report and supporting briefs.¹

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].

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

1. We agree with the Trial Examiner that the Respondent interfered with, restrained, and coerced its employees in violation of Section 8(a)(1) of the Act by engaging in unlawful interrogation and threats of economic reprisal against its employees if they joined or assisted the Union.

2. While the matter is not free from doubt in view of the surrounding circumstances, we are constrained to agree with the Trial Examiner that the Respondent would have transferred its shipping, also referred to as assembling and shipping, operations out of the State of

¹ The Respondent's request for oral argument is denied, as the record and briefs adequately present the issues and positions of the parties.

New Jersey by April 30, 1961, at the latest, because of economic considerations, i.e., the need of Ox-Wall Products for the additional space which would have resulted from such transfer and the desire to avoid a substantially increased tax liability which would have become effective after that date.² However, we also find, as did the Trial Examiner, that the Respondent accelerated the transfer to New York City to March 31, 1961, thereby departing from its planned date for the move, because of the union activities of its employees and its manifest union animus.

The Respondent does not deny that it had knowledge of the Union's organizing drive which commenced in November 1960. Indeed, the tentative and preliminary steps taken by the Respondent to find another location for its shipping operations coincided with an active campaign on the part of management and supervisory personnel to discourage union activities among its employees. As part of that campaign, the record establishes that the Respondent threatened its shipping employees that it would move these operations out of New Jersey if the employees continued to support the Union.

Thus, as the Trial Examiner found on the basis of credited evidence that the Respondent's General Manager Joe Blum (1) told shipping department employee Dickson that if "the nonsense [union activity at the plant gate] don't stop with the boys outside [I] will pack up and leave" and, when the move was being made, stated to Dickson, "so you thought I was kidding about packing up and leaving;" and (2) remarked to shipping department employee Patterson that "before the Union gets in here we'll move." In addition, Supervisor Scaroli told shipping department employee Liss that "if the Union got in, Joe Blum would move his machines and everything, the warehouse, back to New York," and indicated to employee Gilby that fooling around with the Union" was causing the Respondent to move; Supervisor Seihs advised shipping department employee Groff that Blum was going to move out the shipping operations because of the "fellows outside the gate," but that after "everything is settled and cleaned up," there is "a possibility that he would move back," and told employee LeBar that the move was only temporary "until this union matter blows over and they would probably bring it back"; and, when employee Patterson indicated to Supervisor Vasco that he was prounion, Vasco stated that "Joe [Blum] is seriously thinking of moving."

When viewed in the context in which Respondent's actual move to New York City took place, the conclusion is virtually irresistible that the

² The Respondent contended that another reason for the move was an alleged 1 cent per 100 pounds increase in 1961 in shipping costs between New York City and Oxford, New Jersey. Although not passed upon by the Trial Examiner, we find no merit to this contention in light of the Respondent's admission that as of March 1961 it was still paying the old rate.

Respondent was motivated by antiunion considerations in accelerating the transfer. Thus, the record shows that it had been seeking at least 25,000 square feet of space to accommodate the removal of its shipping operations. Nevertheless, as part of a clearly makeshift arrangement, the Respondent entered into a lease on March 27, 1961, for considerably less and admittedly inadequate space. Then, within the short period of 3 days it immediately moved these operations to New York City, despite the fact that it could have carried on its function in New Jersey until April 30, 1961, without fear of adding to its tax liability, which represented the only economic problem requiring resolution by a fixed date.

It is apparent that the impetus for this precipitate move arose not from any economic need, but from the fact that on March 15, 1961, the Union advised the Respondent that it represented a majority of its employees and requested recognition and bargaining; and the further fact that shortly thereafter the Board's Regional Office advised the Respondent that the Union had petitioned for an election.

We are persuaded, in agreement with the Trial Examiner, on the basis of the foregoing, and on the record as a whole, that by accelerating to March 31, 1961, the transfer of its shipping operations from Oxford, New Jersey, to New York City, and by discharging almost all of its shipping employees,³ the Respondent engaged in unlawful discriminatory conduct in violation of Section 8(a)(3) and (1) of the Act.⁴

³ Our dissenting colleague, in refusing to find that the Respondent discriminatorily accelerated its move, asserts that the Respondent, for a period of 6 months, "had unsuccessfully tried" to lease adequate space. The record clearly shows, however, that the Respondent did not make any serious effort to obtain space until late March 1961, immediately after it was informed of the Union's demand for recognition and that a petition had been filed.

⁴ See *Brown-Dunkin Company, Inc.*, 125 NLRB 1379, 1386, enfd 287 F.2d 17 (C.A. 10). Two circuit court decisions, with which we respectfully disagree, *NLRB v. Rapid Bindery, Inc. & Frontier Bindery Corp.*, 293 F.2d 170 (C.A. 2), and *NLRB v. J. M. Lassing, et al., d/b/a Consumers Gasoline*, 234 F.2d 731 (C.A. 6), cert. denied 366 U.S. 909, and which are cited by the Respondent, are inapposite and distinguishable. Both cases hold that Section 8(a)(3) is not violated where the preponderant motive for the moving or its acceleration is business necessity, i.e., such action is based upon consideration of existing economic factors indicating reasonably anticipated increased costs, including those costs which may result from imminent unionization of employees. Most significantly, in the present case the Respondent's only immediate economic problem (avoiding a potentially larger tax liability) was not one which would be worsened or affected detrimentally by the advent of the Union so as to justify an acceleration of the move by 1 month. Indeed, the Respondent did not assert that there was any economic causal relationship between the move 1 month in advance of its planned date of April 30, 1961, and the Union's appearance on the scene. On the contrary, that Respondent's preponderant, if not sole, motive for the acceleration was reprisal action against the shipping employees because of their union activities is demonstrated not only by its precipitate move, but also by the fact that it thereby created a new, additional operative and economic problem for itself by leasing extremely inadequate quarters. See *Brown-Dunkin, supra*, where the court, in finding that the employer violated the Act, held that the Board had justifiably concluded that having certain work done through the use of an independent contractor was more costly to the employer than it would have been if the employer had performed it with its own personnel.

ORDER

The Board hereby adopts the recommended Order of the Trial Examiner.⁵

MEMBER LEEDOM, dissenting in part:

Like my colleagues, I agree with the Trial Examiner that the Respondent violated Section 8(a) (1) of the Act. I also agree that the Respondent would have transferred its shipping operations out of the State of New Jersey by April 30, 1961, at the latest, because of valid economic considerations. I cannot, however, agree on this record that the Respondent accelerated this transfer to March 31, 1961, for reasons prohibited by the Act.

There is no question but that Respondent honestly believed it would be faced with a substantially increased tax liability if it did not complete the transfer of its shipping operations by April 30, 1961, *at the latest*. As found by the Trial Examiner, the Respondent began to look for space in New York City to which to transfer these operations, in September 1960, which was before the advent of union activities at the plant. As appears from the record, the Respondent was unable to find space adequate for its needs before the April 30 deadline. It was, however, able to find and on March 27 to lease space which, although inadequate, was capable of serving as a temporary expedient until adequate space could be found; such space was ultimately found in June.

As posed by the Trial Examiner, the question is "Why . . . did Respondent accept less space than required and move before April 30, 1961?" The Trial Examiner and my colleagues answer "union activity," relying on Respondent's contemporaneous interference, restraint, and coercion, the timing of the move shortly after the Union's demand for recognition and the speed with which it was consummated, and the inadequacy of the space obtained. Absent other factors, I would agree with my colleagues' answer to the Trial Examiner's question. There are, however, other factors in the case which in my opinion preclude their answer.

Thus, contrary to what the Trial Examiner's and my colleagues' reasoning seems to imply, the Respondent could not be expected to wait until April 30 to lease space in New York City; for no prudent businessman could be expected to wait until the very last minute to make arrangements for action which had to be taken by a certain date. In addition, for 6 months the Respondent had unsuccessfully tried to lease space adequate for its needs, and when it leased the in-

⁵ The notice attached to the Intermediate Report marked "Appendix A" is hereby amended by adding the following paragraph to the bottom of the notice: Employees may communicate directly with the Board's Regional Office, 614 National Newark Building, 744 Broad Street, Newark 2, New Jersey, Telephone Number Market 4-6151, if they have any question concerning this notice or compliance with its provisions.

adequate space on March 27, little more than a month remained before the move had to be completed. Whether or not the efforts to lease space before this time may properly be characterized as "serious," the fact remains that by then, time was running short. In these circumstances, I think it is more reasonable to infer that Respondent took what it could get on March 27, to have assurance that it could transfer the shipping operations out of New Jersey on or before April 30, than to infer that it would not have signed the March 27 lease if it had not been for the advent of the Union. Once having signed the lease, it was logical and reasonable for Respondent to complete the move as rapidly as possible, so as to make the additional space available for the expansion of its production operations, as it had all along intended.

When all of these relevant factors are considered, I do not think there is a preponderance of evidence to support the conclusion that Respondent moved its shipping operations before April 30 for unlawful reasons. Respondent clearly took advantage of the move to create the impression that it was caused by union activities, thereby violating Section 8(a)(1). But in the circumstances here Respondent's 8(a)(1) conduct, in my opinion, no more establishes that the timing of the move was motivated by union activities than it establishes that the move itself was so motivated—which my colleagues agree was not the case. I would, accordingly, dismiss the 8(a)(3) allegations of the complaint.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

Upon charges filed by International Association of Machinists, AFL-CIO, against Ox-Wall Products Manufacturing Co., Inc., Oxwall Tool Co., Ltd., Warren Products, Ltd., and Pioneer Merchandise Corp., collectively called herein Respondent, a complaint was issued on May 26, 1961, alleging violations of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, herein called the Act. This proceeding with all parties represented was heard before me, Albert P. Wheatley, the duly designated Trial Examiner, in Easton, Pennsylvania, on August 15 and 16, 1961, and in Newark, New Jersey, on August 23, 24, and 25, 1961. After the close of the hearing the General Counsel and Respondent filed briefs,¹ which I have considered in the preparation of this report.

Upon the entire record and observations of witnesses, I hereby make the following:

FINDINGS AND CONCLUSIONS

I. THE BUSINESSES INVOLVED

Ox-Wall Products Manufacturing Co., Inc., herein called Ox-Wall Products, a New Jersey corporation having its principal place of business in Oxford, New Jersey, engages in the manufacture and sale of handtools and related products and, occasionally, packages such tools with foreign tools. In the course and conduct of its business Ox-Wall Products annually causes to be manufactured, sold, and distributed products valued in excess of \$50,000 of which, products valued in excess of \$50,000 are shipped from Oxford, New Jersey, in interstate commerce to points and places in States of the United States other than New Jersey. Its principal customers are the corporations named below.

¹ The briefs were received in due course on October 9, 1961.

The officers and directors of Ox-Wall Products are: Max Blum, president, director; Sidney Blum, secretary and treasurer, director; Joseph Blum, acting treasurer; Ida Blum, assistant secretary; Helene Blum,² director.

Pioneer Merchandise Corp. controls 64.625 percent of the stock of Ox-Wall Products, and the remaining stock is controlled by Helene and Ida Blum.

Pioneer Merchandise Corp., herein called Pioneer, a New York corporation having its principal place of business in New York City, engages in the import business and the wholesale distribution of mechanic's handtools, of either import origin, domestic origin, or a combination of both. In the course and conduct of its business Pioneer sells and distributes annually in interstate commerce products valued in excess of \$50,000.

The officers and directors of Pioneer are: Max Blum, president, director; Sidney Blum, vice president, director; Helene Blum, treasurer, director; Ida Blum, secretary, director; Samuel Slaff, assistant secretary and assistant treasurer, director.

The stockholders of Pioneer are: Max Blum, 50 percent; Sidney Blum, 45 percent; Elaine and Melvin Merian,³ 5 percent.

Oxwall Tool Co., Ltd., herein called Oxwall Tool, a New York corporation having its principal place of business in New York City, imports and distributes both foreign and domestic handtools. In the course and conduct of its business Oxwall Tool sells and distributes annually in interstate commerce products valued in excess of \$50,000.

The officers and directors of Oxwall Tool are: Sidney Blum, president, secretary, treasurer, director; Max Blum, vice president, director; Ida Blum, director.

Pioneer controls all of the stock of Oxwall Tool.

Warren Products, Ltd., herein called Warren, a New Jersey corporation having its principal place of business in New York City, imports and distributes dogwear—collars, harnesses, chains etc.—and in the course and conduct of its business ships, annually, in interstate commerce products valued in excess of \$50,000.

The officers and directors of Warren are: Max Blum, president, director; Sidney Blum, treasurer, assistant secretary, director; Joseph Blum, secretary.

Pioneer controls all of the stock of Warren.

As noted above, these separate corporate entities constitute a family enterprise in which for the most part Ox-Wall Products performs the needed manufacturing and assembling functions and the other corporations handle the selling operations. For some purposes, for example, payroll and record purposes, a centralized office is maintained. Also the business affairs of these corporations are, at times, handled very informally at family gatherings.

As indicated above and throughout the record, the business and intercorporate relationships of the corporations are closely integrated and the corporations are under common control. In this situation the corporations may be, as contended by counsel for the General Counsel, considered as a single employer. See *N.L.R.B. v. National Shoes, Inc.*, 208 F. 2d 688, 691, and cases there cited.

On the basis of the foregoing findings of fact, I find and conclude that the aforementioned corporations individually and collectively engage in commerce or a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

International Association of Machinists, AFL-CIO, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

In 1958 assembly and shipping operations formerly performed in New York City by Pioneer and Oxwall Tool were transferred to Ox-Wall Products, and thereafter, until March 31, 1961, performed by Ox-Wall Products in Oxford, New Jersey. On or about March 31, 1961, Pioneer and Oxwall Tool again undertook to assemble and ship their products from New York. When this occurred Ox-Wall Products laid off the employees it had employed to handle these products, and the unfair labor practices in this case center around this transfer of activity from one locality to another and the discharges involved.

Beginning in September 1960 and continuing thereafter Respondent was on the lookout for space in the New York City area where assembly and shipping func-

² Max, Sidney, and Joseph Blum are brothers and Ida is the wife of Max Blum and Helene is the wife of Sidney Blum.

³ Melvin Merlan is Max Blum's son-in-law.

tions of Pioneer and Oxwall Tool could be adequately performed thereby relinquishing to Ox-Wall Products the area then in use for these functions but sorely needed by Ox-Wall Products for its own purposes (manufacturing). Before finding the space sought the events involved in this case occurred.

During the latter part of September 1960 Respondent was advised by its tax consultant that under the then recently enacted, or about to be enacted, statute, Respondent's tax burden at Oxford, New Jersey, would be substantially increased unless some of the materials at this location could be moved out of State and Respondent was advised to move the assembly and shipping functions of Pioneer and Oxwall Tool out of State before April 30, 1961 (the end of the fiscal year). Respondent indicated an intention to comply with this recommendation and continued the search for adequate facilities in the New York City area.

During the last week in November 1960 the Union started an organizing campaign among the production and maintenance workers of Ox-Wall Products which was still in progress at the time of the hearing herein. During this campaign the Union, *inter alia*, distributed leaflets at the plant gate of Ox-Wall Products. Between November 1960 and July 1961 these leaflets were distributed on an average of one a week. In July distribution was increased to two a week.

In anticipation of the transfer of assembling and shipping functions of Pioneer and Oxwall Tool and the consequent release of space at Ox-Wall Products, Respondent, in December 1960, placed an advertisement in the New York Times newspaper seeking an industrial engineer. Approximately 16 replies to this advertisement were received. One of the applicants, Sidney Foreman, was employed and started working for Respondent on March 20, 1961.

During December 1960 Shipping Department Supervisor Vito Scaroli took shipping department employee LeBar off to one side and cautioned him that unless he stopped "pushing the Union" he was "going to be out."

In January 1961 Edward Hiduzka was told by Joseph Blum, general manager of Ox-Wall Products, that he (Blum) was "shocked" to see that Hiduzka "was looking for outside help" and that if he (Hiduzka) was "dissatisfied" he should "come and see him [Blum]" that he (Hiduzka) "was part of the family and we tried to all get along together."⁴

On or about February 24, 1961, Joseph Blum, general manager of Ox-Wall Products, was requested to attend a meeting with the employees of the shipping department at Oxford, New Jersey, which he did attend. At this meeting the employees assembled sought pay increases and Blum told them that increases could not be afforded at that time. When asked how long they would have to wait before they could get more money Joe Blum answered "as long as these boys are outside the gate" (while the Union was trying to organize the plant), Respondent was not in a position to discuss pay increases.

Marvin Lance testified that in February 1961 Supervisor Vito Scaroli said to him "if you boys don't stop fooling around, why, Mr. Blum will move the [shipping room] operations back to the city." The record does not reveal the context in which this statement was made and, consequently, the significance of the terms "fooling around" are not apparent. This testimony by Lance is too fragmentary to warrant a finding that thereby Respondent violated the Act or to shed light on Respondent's motive in transferring the shipping department from one locality to another at the time of the transfer and I am not giving any weight to it.

In February or March 1961 Mickey Vasco, a supervisor in the shipping department,⁵ accused Lester Liss of being an "instigator" for the Union. When Liss replied that all he had done was sign a union card and talk about the Union, Vasco said, "Well, if you don't watch out, the same thing is going to happen to you here as happened to you at the last place you worked."⁶ At the last place he worked Liss was laid off and told he was being laid off because of "lack of work."

About 1 or 1½ months before March 31, 1961, Supervisor Vito Scaroli and Lester Liss, a shipping department employee, discussed the advantages and disadvantages of

⁴ The above findings of fact are based upon the testimony of Hiduzka which is not disputed.

⁵ There is a dispute herein as to whether Vasco was a supervisory employee. As noted above, I believe and find that he was a supervisor within the meaning of the Act. The record reveals, *inter alia*, that new employees were brought to Vasco and told that he (Vasco) would tell them "what to do and how to do it," that he responsibly directed other employees in the performance of their duties, and that he directed the time employees "should come in" and when they should work overtime.

⁶ The findings of fact made above were based upon the testimony of Liss. Vasco did not testify in this proceeding.

employees joining a union. After agreeing that there were certain advantages Scaroli remarked "but if the Union got in, Joe Blum would move his machines and everything, the warehouse, back to New York. He could get cheaper help down there. He wouldn't have to cart the stuff up in the trucks."⁷

About 2 weeks before March 31, 1961, Joe Blum approached shipping department employee James Dickson and asked him how he felt about the Union. When Dickson indicated he "was for it" Joe Blum asked how the "boys felt about it." Dickson replied he did not know and Joe Blum then told Dickson Respondent had gotten "along without the Union for 20 years and they won't get in now. If the nonsense⁸ don't stop with the boys outside [I] will pack up and leave." On another occasion Joe Blum referred to the aforementioned conversation by remarking to Dickson as the shipping department employees were cleaning out the warehouse and loading cases on the truck for shipment to New York, "so you thought I was kidding about packing up and leaving."⁹

At the time of the transfer of assembling and shipping operations from Oxford, New Jersey, to the vicinity of New York City, Dickson, a longtime employee, was given a choice (by Joe Blum) of taking another job at 31 cents per hour less than he was then earning or "going down the river with the rest of the boys."

During February 1961 and before the meeting on February 24 where the employees requested pay increases, Joe Blum interrogated Robert L. Groff as to how he "felt about the Union" and whether he had signed a union card. A similar interrogation was made by Blum of employee Arthur Gilby, Jr., in February or March 1961.¹⁰

During the early part of March 1961 George Seihls, a supervisor, was asked by shipping department employee Robert Groff "what Mr. Blum was going to do about moving the shipping department" and Seihls answered that Mr. Blum is going to move it out because of the "fellows outside the gate" but that after "everything is settled and cleared up" there is "a possibility that he would move back."¹¹

Sometime in late February or early March 1961 Joe Blum remarked to shipping department employee Edward Patterson "before the Union gets in here we'll move."¹²

Around the middle of March 1961 Supervisor Vasco took Patterson away from his assigned work and interrogated him about his (Patterson's) "viewpoint on the Union." When Patterson indicated he was pronoun Vasco stated that "Joe [Blum] is seriously thinking about moving."¹³

During the latter part of February or early part of March 1961 Supervisor Vasco engaged employee Bosco in a conversation about the Union and cautioned him to keep his "nose clean," that he was going to go to school and would only "be working here for a short while," and that he should keep his "nose clean and stay out of the union business altogether if I [Bosco] wanted to stay here any longer."¹⁴

In March 1961 Supervisor Scaroli indicated to employee Gilby that "fooling around with the Union" was causing Respondent to move.¹⁵

On the day that Respondent transferred its assembling and shipping facilities employee Leroy LeBar asked Supervisor George Seihls what was going to happen to the shipping department, remarking that he heard it was moving out, and was told

‡ The findings of fact made above are based upon the testimony of Liss. Scaroli did not testify in this proceeding.

⁸ At the meeting where the employees requested pay raises, Joe Blum referred to the activity at the plant gate as nonsense.

⁹ Joe Blum denied "he ever asked any employee in the plant whether he or she signed a union card," denied he ever had a conversation with Dickson concerning the Union, denied telling Dickson "we got along without the Union for 20 years and they won't get in now," denied telling Dickson "that if the nonsense don't stop with the boys outside" he would "pack up and leave," and denied saying to Dickson "so you thought I was kidding about packing up and leaving." In the light of the entire record and probabilities in the light thereof and on the basis of observations of witnesses, I accept the testimony of Dickson and find the facts to be as noted above.

¹⁰ Based upon the testimony of Groff and Gilby. Blum denied asking any employee whether he or she signed a union card and denied he ever asked Groff if he had signed a card.

¹¹ The findings of fact made above are based upon the testimony of Groff. Seihls did not testify in this proceeding.

¹² Based upon the testimony of Patterson. Blum denied that he ever had a conversation with Patterson concerning the Union and denied that he ever told Patterson that before the Union gets in "we will move."

¹³ Based upon the testimony of Patterson. Vasco did not testify in this proceeding.

¹⁴ Based upon the testimony of Bosco. Vasco did not testify herein.

¹⁵ Based on the testimony of Gilby. Vasco did not testify herein.

by Seihls the move was only temporary "until this union matter blows over and they would probably bring it back."¹⁶

By letter dated March 15, 1961, the Union advised Respondent that a majority of the production and maintenance employees employed at Oxford, New Jersey, had authorized the Union to represent them for collective-bargaining purposes and requested that Respondent recognize the Union as the bargaining agent and set a date for negotiations.

On March 27, 1961, Respondent leased a loft in New York City which did not even approach the square footage of floor space Respondent had been searching for, or needed, to handle the assembling and shipping of merchandise of Pioneer and Oxwall Tool and on March 31, 1961, Respondent transferred these functions from Oxford, New Jersey, to New York City and discharged the employees who had been performing this work at Oxford, New Jersey (the employees involved herein).¹⁷

Conclusions

As noted above, the primary issue in this case concerns the transfer of activity from one locality to another and the discharges resulting therefrom. Respondent asserts the discharges were motivated by legitimate economic considerations, that it planned to move by April 30, 1961, at the latest, and earlier if space became available; that space did become available earlier. However, the space which became available was considerably less than Respondent required and had been seeking and a makeshift arrangement was used between March 31 and June 1961, when adequate space became available. Why then did Respondent accept less space than required and move before April 30, 1961? The record reflects that it was because of the union activity of its employees. This explanation is supported by the evidence of antiunion attitude (the interrogations and threats previously mentioned) and by the sequence of events—especially the timing of the transfer in relation to the Union's demand for bargaining.

In the light of the foregoing I find and conclude that Respondent accelerated the transfer because of the union activities of its employees, that the employees lost their jobs on March 31, 1961, because they joined the Union, and that they would not have lost their jobs on that date but for this fact.

IV. THE REMEDY

Having found that Respondent engaged in unfair labor practices in violation of the Act, I recommend that Respondent, to effectuate the policies of the Act, cease and desist therefrom and take the affirmative action hereinafter specified.

As the record demonstrates that Respondent would have transferred its shipping operations by April 30, 1961, at the latest, for economic reasons and there is no evidence that the employees involved herein would have been reassigned rather than terminated I am not recommending that Respondent be required to reinstate the employees discharged. However, to remedy the discrimination against the discharges and to dissipate the coercive effects of the discharges upon Respondent's other employees it is recommended that Respondent make whole the discharges for any loss of wages they may have suffered as a result of the discriminations against them. The backpay due shall run for the period from March 31 to April 30, 1961. Since Respondent planned to transfer its assembling and shipping operations for economic reasons by April 30 at the latest depending upon whether it found adequate space prior to that date and since the record reveals that Respondent did not find the required or needed space until after April 30 I have selected this date as the cutoff date insofar as backpay is concerned.

ULTIMATE FINDINGS AND CONCLUSIONS

In summary, I find and conclude:

1. The evidence adduced in this proceeding satisfies the Board's requirements for the assertion of jurisdiction herein.

¹⁶ Based upon the testimony of LeBar. Seihls did not testify herein.

¹⁷ The layoffs were on the basis of seniority. As noted above one longtime employee (Dickson) was offered a job at a substantially lower rate of pay. He accepted the job. There is no evidence that there were other job openings at that time. However, subsequent to March 31, 1961, Respondent hired 22 female and 5 male workers. All but one, a skilled machinist, were hired at rates substantially lower than the rates of the shipping clerks discharged. The discharged employees were not offered these jobs. In the light of the request for higher pay than they were getting (made on February 24, 1961), Respondent believed it a useless act to offer these new jobs to the discharged employees.

2. Ox-Wall Products Manufacturing Co., Inc., Oxwall Tool Co., Ltd., Warren Products, Ltd., and Pioneer Merchandise Corp., constitute a single employer under the Act.

3. International Association of Machinists, AFL-CIO, is a labor organization within the meaning of the Act.

4. The evidence adduced establishes that Respondent interfered with, restrained, or coerced employees in the exercise of the rights guaranteed in Section 7 of the Act and thereby violated Section 8(a)(1) of the Act by interrogating employees concerning their union activities and by threatening employees with reprisals because of union activities.

5. The evidence adduced establishes that Respondent discriminatorily discharged the following:

Charles Archoff	Robert Groff	Kenneth Miller
David Armbrecht	Carl Hess	Edward Patterson
Gerald Bertholf	Allen Hiner	Paul Rebner
Alfred Bosco	Frank Hiner	George Reeder
John Clawson	Fred Kane	Lawrence Richards
Andre DeMund	Michael Kupchack	John Romanowitch
Paul Farence	Marvin Lance	Stephen Romanowitch
Wayne Gero	Leroy LeBar	George Vasco
Arthur Gilby	Lester Liss	Antoni Wachelka

and thereby engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

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

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record herein, it is recommended that Respondent Ox-Wall Products Manufacturing Co., Inc., Oxwall Tool Co., Ltd., Warren Products, Ltd., and Pioneer Merchandise Corp., their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act by interrogating employees concerning their union or concerted activities or by threatening employees with reprisals because of union or concerted activities.

(b) Discouraging membership in International Association of Machinists, AFL-CIO, or in any other labor organization, by discriminatorily discharging employees or by discriminating in any other manner with respect to their hire or tenure of employment or any term or condition of employment.

(c) In any manner interfering with, restraining, or coercing employees in the exercise of their right to self-organization, to form labor organizations, to join the above-named labor organization, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection, or to refrain from engaging in any or all of 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 designed to effectuate the policies of the Act:

(a) Make whole Charles Archoff, David Armbrecht, Michael Kupchack, Marvin Lance, Gerald Bertholf, Alfred Bosco, John Clawson, Andre DeMund, Paul Farence, Wayne Gero, Arthur Gilby, Robert Groff, Carl Hess, Allen Hiner, Frank Hiner, Fred Kane, Leroy LeBar, Lester Liss, Kenneth Miller, Edward Patterson, Paul Rebner, George Reeder, Lawrence Richards, John Romanowitch, Stephen Romanowitch, George Vasco, and Antoni Wachelka for any losses they may have suffered by reason of Respondent's discrimination against them, in the manner set forth above in the section entitled "The Remedy." The loss of pay shall be computed in accordance with the customary formula of the National Labor Relations Board.

(b) Preserve and, upon request, make available to the National Labor Relations 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 in accordance with the terms of this Recommended Order.

(c) Post at its place of business in Oxford, New Jersey, copies of the notice attached hereto marked "Appendix A."¹⁸ Copies of said notice, to be furnished by the Regional Director for the Twenty-second Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for the Twenty-second Region, in writing, within 20 days from the date of the receipt of this Intermediate Report, what steps have been taken to comply with the recommendations herein made.¹⁹

¹⁸In the event that these Recommendations be adopted by the Board, the words "A Decision and Order" shall be substituted for the words "The Recommendations of a Trial Examiner" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "Pursuant to a Decision and Order."

¹⁹In the event that these Recommendations be adopted by the Board, this provision shall be modified to read "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the Labor Management Relations Act, we hereby notify our employees that:

WE WILL NOT interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act by interrogating employees concerning their union or concerted activities or by threatening employees with reprisals because of union or concerted activities.

WE WILL NOT discourage membership in International Association of Machinists, AFL-CIO, or in any other labor organization of our employees, by discharging, or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of employment.

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

WE WILL make whole the employees named below for any loss suffered as a result of the terminations of their employment.

Charles Archoff
David Armbrrecht
Gerald Bertholf
Alfred Bosco
John Clawson
Andre DeMund
Paul Farence
Wayne Gero
Arthur Gilby

Robert Groff
Carl Hess
Allen Hiner
Frank Hiner
Fred Kane
Michael Kupchack
Marvin Lance
Leroy LeBar
Lester Liss

Kenneth Miller
Edward Patterson
Paul Rebner
George Reeder
Lawrence Richards
John Romanowitch
Stephen Romanowitch
George Vasco
Antoni Wachelka

OX-WALL PRODUCTS MANUFACTURING CO., INC.,
OXWALL TOOL CO., LTD., WARREN PRODUCTS
LTD., AND PIONEER MERCHANDISE 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.