

Vargeo, Inc. and Local 222, International Ladies' Garment Workers' Union, AFL-CIO. Case No. 22-CA-950. May 1, 1962

DECISION AND ORDER

On January 26, 1962, Trial Examiner John H. Eadie 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 they cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. He found further that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint, and recommended dismissal of such allegations. Thereafter, the Respondent and the Charging Party filed exceptions to the Intermediate Report and supporting briefs.

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

ORDER

The Board adopts the Recommendations of the Trial Examiner.

¹ As we find that Respondent's failure to recall Torick at the start of the 1961 season was not in line with Respondent's recall policy whether Torick was classified as a "tagger" or a "bagger," we shall dismiss the Charging Party's motion, made in its brief, to correct the record to show that Torick was actually classified as a "bagger."

INTERMEDIATE REPORT

STATEMENT OF THE CASE

This case, with all parties represented by counsel, was heard before me at Newark, New Jersey, on September 18 and 19, 1961. The issues litigated were whether Vargeo, Inc., hereinafter called the Respondent, violated Section 8(a)(1) and (3) of the Act by the conduct described below.¹

¹ The charge in this matter was filed on June 14, 1961. Briefs, filed with the Trial Examiner by the General Counsel and the Charging Party, have been considered

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent is a New Jersey corporation with its principal office and place of business in Union City, New Jersey, and a plant in Secaucus, New Jersey. It is engaged in the manufacture, sale, and distribution of men's and women's knitwear and related products.

During the past year the Respondent caused to be manufactured, sold, and distributed at said plants products valued at in excess of \$50,000, of which products valued at in excess of \$50,000 were shipped from said plants in interstate commerce directly to States of the United States other than the State of New Jersey. The complaint alleges, the answer admits, and the Trial Examiner finds that the Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Local 222, International Ladies' Garment Workers' Union, AFL-CIO, herein called Local 222, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. Background

The Respondent's business is seasonal, with the season commencing about May and ending about November. Local 945, International Brotherhood of Teamsters, has been the bargaining representative for the Respondent's employees since 1959. As a result of a petition filed by Local 222, an election was conducted by the Board on May 9, 1961. Local 945, the Intervenor, thereafter was certified as the bargaining representative by the Board.

Kathleen Boldin, Gertrude Boldin, Concetta Brunelli, Eileen Torick, and Dorothy Dwyer were all employed by the Respondent in 1960, and were all laid off in the latter part of 1960 for lack of work. The Respondent failed to rehire Kathleen Boldin, Gertrude Boldin, Brunelli, and Torick at the start of the 1961 season, and failed to pay Dwyer her holiday pay for Christmas 1960 and New Year's Day 1961 when she returned to work in 1961.

B. The failure to recall

Kathleen Boldin, Gertrude Boldin, Brunelli, and Torick became active adherents of Local 222 after their layoff in 1960. John Miller, the Respondent's plant manager, knew of their activity, as did Jennie Bitritto, a forelady of the Respondent.

Kathleen Boldin, prior to her employment by the Respondent, attended school. The school term started during early September and ended in June. Gertrude Boldin, Kathleen's mother, was employed by the Respondent as a section head. During July 1960 she told Bitritto that her daughter was looking for a job as she was not returning to school, and that Kathleen would be 16 years of age on August 12. Bitritto agreed to employ Kathleen.

Kathleen Boldin was hired as a floor girl by the Respondent on August 31, 1960. For the most part she worked as a bagger until her layoff for lack of work about the middle of October. About a month after she was hired she was required to join Local 945. In March or April 1961, she received a letter from the Respondent inquiring as to whether she was interested in returning to work. Although she replied that she was, she heard nothing further from the Respondent.² She voted in the election held by the Board on May 9, 1961.

During May 1961, the Respondent placed an advertisement in the Hudson Dispatch for floor help. Kathleen Boldin read the ad, and as a result went to the Respondent's plant some few days later or on or about May 17. She spoke to Bitritto who told her that there was no work for her at that time but that she would be called when there was.

During July 1961, Miller sent letters to Kathleen Boldin, Gertrude Boldin, Brunelli, and Torick, requesting them to return to work.³ All but Gertrude Boldin

² Gertrude Boldin, Brunelli, and Torick also received such letters from the Respondent and heard nothing further after they had advised the Respondent that they wanted to return to work.

³ Miller testified that he made the above offers of employment upon the advice of counsel.

reported for work on July 31, 1961. Bitritto told Kathleen Boldin to work as a tagger. When Boldin replied that she did not want to do that type of work for the reason that she did not know how to do it, Bitritto assigned her to bagging. At the time there were at least two employees who were bagging and who had been hired during May and June 1961, namely, Beatrice Jones and Joyce Todesco. Boldin, Jones, and Todesco were listed on the Respondent's "Seniority List as of July 29, 1961" under the classification of "Floor Help." Two other employees were hired during May and June 1961 as floor help. In addition, the Respondent's seniority list contains the names of two employees under the classification of "Bagger." One of these employees, Florence Mae Olsen, was hired on May 17, 1961.

Gertrude Boldin began her employment with the Respondent in May 1959 as a button girl. During June 1959 she became a bagger and worked at this job for about 1 year. She also examined and tagged during this time. About June 1960, Bitritto made her a section head of the Merrow department. She worked at this job until her layoff for lack of work on or about December 2, 1960. At the time of her layoff Bitritto told her that she would be recalled to work when five Merrow operators were working.

During May 1961, when she saw the Respondent's advertisement for help in the newspaper, Boldin called Bitritto and told her that she would like to return to her job as section head. Bitritto told her that there was no work for her at the time, but that she would be called back when the plant got busy.

The record indicates that more than five Merrow operators were at work before May 22, 1961. As stated above, Gertrude Boldin was recalled to work on July 31, 1961, but did not report.

Brunelli was hired as a tagger by Bitritto in March 1959. She worked as a tagger for a few days and then was assigned to bagging. She worked as a bagger until July 1960, at which time she was made section head of the cutting department. She was working at this job when she was laid off for lack of work at the end of December 1960.

During February and March 1961, Brunelli called Bitritto on several occasions and asked her for work. On each occasion Bitritto told her that she had no work available for her. When Brunelli read the Respondent's advertisement for floor help in May, she again called Bitritto and inquired whether there was work for herself and Torick. Bitritto replied that she did not have work for either of them, and that she would contact them when the plant got busy.

When Brunelli returned to work on July 31, 1961, Bitritto told her that her job as section head had been abolished, but that she should continue to perform the same work as she had before her layoff, which was "distributing the work" to the cutters.⁴ She worked at this job for only 1 day, and then was assigned to distributing work to the "Singer operators."

Eileen Torick (Hafin) was hired as a floor girl by the Respondent in May 1959. She worked as a tagger for about 2 months and then was assigned to bagging. She was working at this job when laid off for lack of work about the middle of December 1960.

When Torick returned to work on July 31, 1961, Bitritto assigned her to her "old job" of bagging. As stated above in connection with the case of Kathleen Boldin, during May and June 1961 the Respondent hired four new employees as "floor help." At least two of these employees were bagging, as was Olsen, who also was hired during May of 1961. In addition to these, both Torick and Kathleen Boldin testified without contradiction that employee Eileen McClugage was performing bagging work when they were recalled on July 31. McClugage had less seniority than Torick, but more than Boldin. Torick was listed on the Respondent's seniority list of July 29, 1961, as a "Tagger." In a seniority or eligibility list which was submitted to the Board at sometime prior to the election held on May 9, 1961, Torick was classified as a tagger.

Miller testified that the 1961 season was an "exceptionally" poor one; and that the employees were not recalled until May or June, or about 2 or 3 months later than usual. He testified, in substance, that it was the Respondent's practice in recalling employees to "fill up the various departments as they are needed, going down our seniority list," with seniority counting in the department only; that when the seniority list is exhausted in a particular classification, the Respondent "usually" advertises for help rather than offer jobs to unemployed employees in other job classifications; and that when job classifications were abolished, the employees involved were not recalled or offered jobs which paid a lower rate. Concerning

⁴ Brunelli testified that when she returned to work on July 31, she observed that Marlon Ciasca, a supervisory employee, was performing this work

baggers, he testified that there were two baggers on the seniority list (of July 29, 1961); that both of these employees were rehired;⁵ that he did not recall any other baggers being hired at the start of the season; and that the Respondent "probably" did hire other baggers during June and July 1961.⁶ As for the recall of taggers in 1961, Miller testified that Fannie Bruzzelli, a section head during the 1960 season whose job had been abolished, was recalled and made a tagger because she "had a great deal of seniority . . . came around after pleading with us for work, because not only she but her husband was very sickly"; that Torick, the only employee listed on the seniority list as a tagger, was not recalled at the start of the season for this reason; and that this was against the Respondent's usual custom and policy. As for section heads, Miller testified that "in the beginning of the season," in order to alleviate the poor economic situation, it was decided to "eliminate various section head jobs and have individuals try to pick up the load,"⁷ that only those section heads were recalled who could do the production work of the employees whom "they were previously supervising"; that Brunelli was not recalled because she could not perform as a cutter; that the section head of "brushing" was recalled because she was able to perform the job of brushing; that as for the section head of pressing, "she was in charge of not only the pressing department but also the department, what we call assembly, when the work came back for dyeing, so we recalled her to do assembly"; that the section head of "looping" was recalled and "given a chance to learn a different job which is called Rimoldi" because "the looping job in our plant was more or less abolished"; that Bruzzelli, the section head for "buttons," was not recalled for that department;⁸ and that the section head of "Singer" who was unable to operate a Singer machine was recalled for the reason that "she is the section head with the lowest seniority [hired January 2, 1948] of any in the plant, and we felt that perhaps she could handle both Merrow⁹ and Singer, plus the fact you have to have a girl there to cut ribbons for the Singer department and get them their supplies. And so we kept her on to try and do both jobs." Concerning the work of Brunelli when she was recalled on July 31, 1961, Miller testified, "Concetta Brunelli, as I recall, we just left on the floor, and Phyllis was quitting, Phyllis Fascio, who was the section head [of Singer during 1960], so we immediately gave [Brunelli] the job as section head if she wanted it in Singer, which she did accept at the time." He also testified to the effect that Kathleen Boldin would not have been recalled except for the advice of counsel and normally would not have been recalled "unless I was really desperate for help" because of her poor record of attendance.¹⁰

Bitritto testified at length concerning the reasons why Kathleen Boldin, Gertrude Boldin, Brunelli, and Torick were not recalled at the start of the 1961 season. Excepting for Kathleen Boldin, her testimony was substantially the same as Miller's in this connection. With respect to Kathleen Boldin, Bitritto testified to the effect that Boldin was not recalled in 1961 because she was slow in her work and was absent too much; that she complained to Gertrude Boldin, Kathleen's mother, about this, telling her that if she expected her "to keep her there, she would have to improve";¹¹ that about 2 or 3 weeks before Labor Day 1960 she told Kathleen that her work was not good;¹² that thereafter her work improved only "slightly"; and that "being that

⁵ As stated above, the list shows that Olsen was a new employee who was hired on May 17, 1961.

⁶ As found above, four new employees who were classified as floor help on the seniority list were hired during May and June.

⁷ Brunelli testified that when she was recalled on July 31, 1961, she observed Supervisor Marion Clasca performing the work that she formerly had done as section head of the cutting department.

⁸ As related above, Bruzzelli was recalled for tagging. The evidence discloses that she was rehired on May 13, 1961.

⁹ As found above, Gertrude Boldin was section head of Merrow during the 1960 season. Boldin admitted that she was unable to perform the work of a Merrow operator.

¹⁰ Kathleen Boldin testified that she did not "recall" taking any days off. Gertrude Boldin testified that her daughter was absent from work "maybe one or two days if she was sick or something, she stayed home." The Respondent's records, which were received in evidence, show that Kathleen Boldin was hired on August 31, 1960, a Wednesday that she did not work over 8 hours a day; and that her weekly hours were 23, 31, 31, 40, 39½, 39¼ and 38¾.

¹¹ Gertrude Boldin denied that Bitritto complained to her about her daughter's work, and testified that about a week after Kathleen was hired Bitritto told her that Kathleen was "doing very good." I credit Gertrude Boldin's testimony in this connection.

¹² As found above, Boldin was hired on August 31, 1960. She denied that Bitritto complained to her about her work. I credit her denial.

I had wasted four weeks already of [the Respondent's] money, and I knew it was only going to be another couple of more weeks of this rush, I beared with her."

In its answer the Respondent states:

Its employees were recalled strictly in accordance with past practice and seniority requirements of the Collective Bargaining Agreement in effect between the Respondent and the Collective Bargaining representative of its employees.

The evidence clearly shows that the Respondent did not follow such practice, particularly in the cases of Kathleen Boldin and Torick. Both of these employees actually were baggers, although one was classed as floor help and the other as a tagger on the Respondent's seniority list. As found above, three employees were hired in May and June 1961 who worked as baggers; and another employee with less seniority that Torick was recalled as a bagger on June 24. However, accepting the Respondent's classifications, the seniority list shows that the Respondent hired four new employees as floor help during May and June 1961;¹³ and that Torick was the only employee classified as a tagger. Nevertheless, an exception admittedly was made in the case of Bruzzelli, a section head whose job had been abolished. She was recalled and given work as a tagger in place of Torick, contrary to the Respondent's alleged policy. In addition to showing that the Respondent did not follow the practice of seniority in the cases of Kathleen Boldin and Torick, in my opinion the above facts put in question the Respondent's defense in the cases of Gertrude Boldin and Brunelli.

The Respondent contends that it is its policy that when jobs are abolished, it does not recall the employees involved or offer them other work. I am unable to believe this testimony of Miller, especially in view of the exceptions made in the cases of Bruzzelli, Ranuro, the section head of Looping, and Fascio, the section head of Singer. Both Gertrude Boldin and Brunelli asked for work, as did Bruzzelli.¹⁴ However, Boldin and Brunelli, experienced workers and admittedly known leading adherents of Local 222,¹⁵ were not offered work, whereas Bruzzelli, Ranuro, and Fascio were made exceptions and retained. From this it appears that the only section heads whom this alleged policy of the Respondent affected were Boldin and Brunelli.

From the undisputed evidence there can be no doubt but that the 1961 season was a poor one and was late in starting. However, in my opinion, the General Counsel made out a *prima facie* case, which the Respondent failed to rebut.¹⁶ Accordingly, I find that the Respondent's defenses to the cases of Kathleen Boldin, Gertrude Boldin, Brunelli, and Torick are mere pretenses; and that by failing to recall these employees to work at the start of the 1961 season the Respondent discriminated against them within the meaning of Section 8(a)(3) and (1) of the Act.

C. Dorothy Dwyer

Dwyer was hired by the Respondent on May 31, 1955, as a Merrow operator. After her layoff in December 1960, she became active on behalf of Local 222. This activity was known to the Respondent prior to the election held on May 9, 1961.

Dwyer was recalled to work on or about May 1, 1961. About this time Dwyer got into a dispute with an assistant forelady about some work. Dwyer said to the assistant forelady, in the presence of Bitritto, "Well, you don't have to try to get rid of me in this way. When the election comes and if the ILG does not win, I'll not be here."

The Respondent's contract with Local 945¹⁷ contained a clause for paid holidays, including Christmas Day and New Year's Day, provided "Employees must have worked for the Company within thirty (30) days prior to the holiday." It was stipulated by the parties that "Dorothy Dwyer did in fact work at least thirty days prior to Christmas and New Year's in the year 1960."

¹³ Bitritto testified, contrary to the above, that no new floor help was hired during 1961.

¹⁴ It is indicated that Fascio was not laid off during 1960, and that Ranuro was recalled on March 25, 1961.

¹⁵ In her affidavit, dated June 26, 1961, Bitritto states, "I do recall having conversations with John Miller prior to the NLRB election this year during which time it was mentioned that the girls who have not been recalled Boldin, Turak [sic] and Brunelli were active for the ILGWU"

¹⁶ Since there are numerous contradictions and conflicts in the testimony and affidavits of Bitritto, I do not regard her as a reliable or credible witness.

¹⁷ The contract was entered into on June 26, 1956, and had an expiration date of March 16, 1961.

When Dwyer received her pay for the first week of work, she noticed that pay for the two holidays had not been included. She called this to the attention of the office, and was told that a mistake had been made and that she would receive it the following week.

Dwyer voted in the election. At sometime prior to the election, Dwyer also told Miller that she would quit her job if Local 222 lost the election. Dwyer quit her job with the Respondent after the election. Thereafter, she returned to the plant to get her pay. The holiday pay still was not included. She was told by an office employee that "it was an oversight on their part" and that she should return the following night. Dwyer returned to the plant the next night as directed, and had a conversation with Miller. As to this conversation, Dwyer testified credibly as follows:

. . . First he came to the office and he looked at me and said, "Dorothy, when are you coming back to work?" . . . I said, "John, I'm not coming back to work because my children eat twelve months a year, not six months." I said, "With the Teamsters, I know I cannot get that kind of work."

He . . . said, "I hear you are here for your vacation pay?" I said, "John I'm not here for my vacation pay because I left, but I am here for my holiday pay that I feel I am entitled to."

He said, "You are not entitled to it because we have no union here." I said, "You are still governed by the rules of the old contract."

He said, "No, that's not true. You are not entitled to it."

Concerning the reason why Dwyer did not receive her holiday pay, Miller testified, "She already told me she was leaving, and I felt I can't see why I should pay for holiday pay when a person is not coming back to work for me. She was leaving, leaving our organization."

I believe and find that on the basis of the above facts the General Counsel has failed to sustain the burden of proving that the Respondent failed and refused to pay Dwyer holiday pay because of her activities on behalf of Local 222. Accordingly, it will be recommended that this allegation of the complaint be dismissed.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES

The activities of the Respondent set forth above, occurring in connection with its operations 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 unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative and remedial action designed to effectuate the policies of the Act. Having found that the Respondent discriminatorily failed and refused to recall for employment Gertrude Boldin, Kathleen Boldin, Concetta Brunelli, and Eileen Torick during the period from the start of 1961 season¹⁸ until July 31, 1961, I recommend that the Respondent make them whole for any loss of pay each may have suffered by reason of said discrimination by payment to each of them of a sum of money equal to that which each would have earned as wages during the above period of time, less net earnings during such period, in accordance with the formula set forth in *F. W. Woolworth Company*, 90 NLRB 289. I further recommend that the Respondent, upon reasonable request, make available to the Board and its agents all payroll and other records pertinent to an analysis of the amount due in backpay.

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. Vargeo, Inc., is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

¹⁸ The dates when these employees would have been recalled but for the discrimination are not clearly established by the evidence since the Respondent's payroll records were not adduced in evidence. This is so particularly in the cases of Gertrude Boldin and Brunelli. The Respondent's "Seniority List as of July 29, 1961" indicates the dates of recall for Torick as May 13, 1961, the date that Bruzzelli was recalled as a tagger, and for Kathleen Boldin as May 17, 1961, the date that Olsen was hired as a bagger.

2. Local 222, International Ladies' Garment Workers' Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By discriminatorily failing and refusing to recall for employment Kathleen Boldin, Gertrude Boldin, Concetta Brunelli, and Eileen Torick, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act, and thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

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

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, it is recommended that Vargeo, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from discouraging membership in Local 222, International Ladies' Garment Workers' Union, AFL-CIO, or in any other labor organization of its employees, by failing and refusing to recall employees for employment or otherwise discriminating in regard to their hire or tenure of employment, or any term or condition of employment.

2. Take the following affirmative action which the Trial Examiner finds will effectuate the policies of the Act.

(a) Make Kathleen Boldin, Gertrude Boldin, Concetta Brunelli, and Eileen Torick whole in the manner set forth in the section above entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms hereof.

(c) Post at its plants in Union City and Secaucus, New Jersey, copies of the notice attached hereto marked "Appendix."¹⁹ Copies of such notice, to be furnished by the Regional Director for the Twenty-second Region, shall, after being duly signed by an authorized representative of the Respondent, be posted immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by 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 the Respondent has taken to comply herewith.²⁰

It is further recommended that the complaint be dismissed insofar as it relates to Dorothy Dwyer.

¹⁹ If these recommendations are 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 event that the Board's 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."

²⁰ If these recommendations are adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for the Twenty-second Region, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

APPENDIX

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 National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT discourage membership in Local 222, International Ladies' Garment Workers' Union, AFL-CIO, or in any other labor organization of our employees, by failing and refusing to recall them for employment, or otherwise discriminating in regard to their hire or tenure of employment or any term or condition of employment.

WE WILL make Kathleen Boldin, Gertrude Boldin, Concetta Brunelli, and Eileen Torick whole for any loss of earnings suffered by reason of discrimination.

All our employees are free to become, remain, or refrain from becoming or remaining members of any labor organization.

VARGEO, INC.,
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 (614 National Newark Building, 744 Broad Street, Newark, New Jersey; Telephone Number MArket 4-6151) if they have any question concerning this notice or compliance with its provisions.

**United Wire and Supply Corporation and United Steelworkers
of America, AFL-CIO. Case No. 1-CA-3474. May 1, 1962**

DECISION AND ORDER

On February 27, 1962, Trial Examiner Eugene E. Dixon 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, exceptions to the Intermediate Report and supporting briefs were filed by the Respondent and the General Counsel.

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, and hereby adopts the findings,¹ conclusions, and recommendations of the Trial Examiner with the exceptions and modifications herein noted.

Contrary to the Trial Examiner,² we do not find that the Respondent demoted and constructively discharged Subforeman Adams because of his failure or refusal to follow orders and engage in the unlawful surveillance of employee Squillante.

Upon the entire record, we are not satisfied that the General Counsel has established by a preponderance of the evidence that Adams was

¹ The General Counsel excepted to the Trial Examiner's failure to find that Supervisor Rogers unlawfully interrogated employee Martin on May 15, 1961, and that Supervisor Canario unlawfully threatened employee Squillante on May 22, 1961. These exceptions appear to raise issues of credibility which were not resolved by the Trial Examiner. In view thereof, and as the resolution of these issues would not affect the Order, we make no findings of these matters.

² Member Brown would affirm the Trial Examiner's findings and conclusions that Respondent violated Section 8(a)(1) of the Act respecting Adams. He accordingly does not join the majority's reversal in this regard.