

(b) Post at its several district headquarters, Crossett Forestry Division, copies of the notice attached hereto marked "Appendix."<sup>4</sup> Copies of said notice, to be furnished by the Regional Director for the Twenty-sixth Region, shall, after being duly signed by the Respondent, be posted immediately upon receipt thereof, and be maintained 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 to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the said Regional Director, in writing, within 20 days from the date of the service of this Intermediate Report and Recommended Order, what steps the Respondent has taken to comply herewith.<sup>5</sup>

<sup>4</sup>In the event that this Recommended Order be adopted by the Board, the words "Pursuant to a Decision and Order" shall be substituted for the words "As Recommended by a Trial Examiner" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Circuit Court of Appeals, the words "Pursuant to a Decree of the United States Circuit Court of Appeals, Enforcing an Order" shall be substituted for the words "Pursuant to a Decision and Order."

<sup>5</sup>In the event that this Recommended Order 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

### NOTICE TO ALL EMPLOYEES

As recommended by a Trial Examiner of the National Labor Relations Board and in order to conduct our labor relations in compliance with the National Labor Relations Act, we notify our employees that:

WE WILL NOT ask employees to withdraw their dues deduction authorizations or to withdraw their membership in Local Union 5-475, International Woodworkers of America, AFL-CIO, or promise them benefits to do so.

WE WILL NOT violate any of the rights you have under the National Labor Relations Act to join or remain in a union of your own choice or not to engage in any union activities.

WE WILL, upon request, bargain with the above-named Union as the representative of all employees in the unit described in the contract which expired in March 1962, and if agreement is reached we will sign a contract.

All our employees are free to become or remain members of the Union named above, or any other union, and they are also free to refrain from joining any union.

GEORGIA-PACIFIC CORPORATION, CROSSETT  
DIVISION—FORESTRY,

*Employer.*

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

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

Employees may communicate directly with the Board's Regional Office, 714 Falls Building, 22 North Front Street, Memphis, Tennessee, Telephone Number, Jackson 7-5451, if they have any question concerning this notice or compliance with its provisions.

**Active Mobile Homes Corporation and International Union,  
United Automobile, Aircraft and Agricultural Implement  
Workers of America, (UAW) AFL-CIO. Case No. 7-CA-3568.  
September 24, 1962**

## DECISION AND ORDER

On June 15, Trial Examiner C. W. Whittemore issued his Intermediate Report in the above-entitled case, finding that the Respondent  
138 NLRB No. 99.

had engaged in and was engaging in certain unfair labor practices violative 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 attached Intermediate Report. The Trial Examiner also found that the Respondent had not engaged in an unfair labor practice violative of Section 8(a)(4) of the Act and recommended that the complaint with respect thereto be dismissed. Thereafter, the Respondent and the General Counsel filed exceptions to the Intermediate Report and supporting briefs.<sup>1</sup>

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 Rodgers, 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.<sup>2</sup> The rulings are hereby affirmed. The Board has considered the entire record in this case, including the Intermediate Report and the exceptions and briefs,<sup>3</sup> and hereby adopts the findings,<sup>4</sup> conclusions, and recommendations of the Trial Examiner, with modifications noted herein.

#### THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act, as recommended by the Trial Examiner, with the following modification: The Remedy section of the Intermediate Report is amended by providing that backpay obligations of the Respondent shall include the payment

<sup>1</sup> Following transfer of the case to the Board, the Respondent's general manager sent to the Board a letter containing his request to "talk to (the) Board in person." We shall construe this as a request by Respondent for oral argument. As the record, including the exceptions and briefs, adequately present the issues and positions of the parties, this request is denied.

<sup>2</sup> Upon a review of the entire record in this case, we find no merit in the contentions of Respondent that the Trial Examiner was biased and prejudiced and that it was not accorded a fair hearing.

<sup>3</sup> We correct, as follows, errors of fact to which Respondent has taken exception, and which we find do not affect materially or substantially the Trial Examiner's findings, conclusions, or recommendations: It is true that Wesolowski did not confirm Brown's testimony in all respects but testified only that Brown had asked him to have someone punch him out. Nor was it undisputed that Brown was out seeking work on April 2, 1962, as Brown alone testified to this effect and his wife testified that on that day Brown was working on her father's farm. Finally, it is not correct that Wesolowski's brother had quit, as the record shows that he had received a leave of absence.

<sup>4</sup> The Respondent has excepted to the credibility findings of the Trial Examiner. As the clear preponderance of all the relevant evidence does not persuade us that the resolutions were incorrect, we find insufficient basis for disturbing the credibility findings. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enf'd. 188 F 2d 362 (C.A. 3). In adopting the finding of the Trial Examiner that Brown was discriminatorily discharged, we do not rely on his finding that the testimony of Stewart and Adair makes it plain that punching out by other employees was not an uncommon practice. Also, in adopting the finding of the Trial Examiner that Brown did not receive an offer to return to work, we do not rely on the Trial Examiner's finding that the practice of enclosing advertising material in all regular mail is common knowledge.

of interest at the rate of 6 percent to be computed in the manner set forth in the *Isis* case.<sup>5</sup>

### 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, Active Mobile Homes Corporation, Marlette, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership of any of its employees in International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, (UAW) AFL-CIO, or in any other labor organization, by discharging or laying off any employee, or in any other manner discriminating against any employee in regard to hire, tenure of employment, or any term or condition of employment, except as authorized in Section 8(a) (3) of the Act.

(b) Interrogating employees regarding their union adherence in a manner violative of Section 8(a) (1) of the Act.

(c) Threatening employees with economic reprisals to discourage membership in any labor organization.

(d) Interfering with, restraining, or coercing employees in any other manner in connection with the exercise of the right to self-organization, to form labor organizations, to join or assist International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, (UAW) AFL-CIO, or any other organization, to bargain collectively through representatives of their own free choice, 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.

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

(a) Offer Jay Brown immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him and John Ciochan, Leo Wesolowski, and Edward Gerlach whole in the manner set forth in the section entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social

<sup>5</sup> *Isis Plumbing & Heating Co*, 138 NLRB 716.

For reasons set forth in his dissent in the *Isis* case, Member Rodgers dissents from the majority's decision to award interest in this case.

security payment records, timecards, personnel records and reports, and all other records necessary to analyze and compute the amounts of backpay with interest due under the terms of this Decision and Order.

(c) Post at its plant in Marlette, Michigan, copies of the notice attached hereto marked "Appendix."<sup>6</sup> Copies of said notice, to be furnished by the Regional Director for the Seventh Region, shall, after being duly signed by Respondent, be posted by it 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 Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

---

<sup>6</sup>In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

## APPENDIX

### NOTICE TO ALL EMPLOYEES

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

**WE WILL NOT** discourage membership of any employee in International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, (UAW) AFL-CIO, or in any other labor organization, by discharging or laying off any employee, or in any other manner discriminating against any employee in regard to hire, tenure of employment, or any term or condition of employment, except as authorized in Section 8(a) (3) of the Act.

**WE WILL NOT** interrogate employees regarding their union adherence in a manner violative of Section 8(a) (1) of the Act.

**WE WILL NOT** threaten employees with economic reprisals to discourage membership in any labor organization.

**WE WILL NOT** interfere with, restrain, or coerce employees in any other manner, in connection with the exercise of the right to self-organization, to form labor organizations, to join or assist International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, (UAW) AFL-CIO, or any other organization, to bargain collectively through representatives of their own free choice, and to engage in other con-

certed 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, authorized in Section 8(a)(3) of the Act.

WE WILL offer Jay Brown immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his rights, and we will make him, John Ciochan, Leo Wesolowski, and Edward Gerlach whole for any loss of pay suffered as a result of our discrimination against them.

All our employees are free to become, remain, or refrain from becoming or remaining members of any labor organization, except to the extent that the right may be affected by a lawful agreement requiring membership in a labor organization as a condition of employment.

ACTIVE MOBILE HOMES CORPORATION,  
*Employer.*

Dated----- By-----  
(Representative) (Title)

NOTE.—We will notify any of the above-named employees presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act after discharge from the Armed Forces.

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

Employees may communicate directly with the Board's Regional Office, Industrial Building, 232 West Grand River, Detroit, Michigan, Telephone Number, Woodward 2-3830, if they have any question concerning this notice or compliance with its provisions.

#### INTERMEDIATE REPORT AND RECOMMENDED ORDER

##### STATEMENT OF THE CASE

An original charge, an amended charge, and a second amended charge were filed, respectively, on February 2 and March 20 and 23, 1962, by the above-named labor organization. Upon such charges the General Counsel of the National Labor Relations Board issued and served his complaint and notice of hearing thereon on March 23, 1962. Thereafter, the Respondent filed its answer, dated March 30, 1962. The complaint alleges and the answer denies that the above-named Respondent has engaged in and is engaging in unfair labor practices in violation of Section 8(a)(1), (3), and (4) of the National Labor Relations Act, as amended. Pursuant to notice, a hearing was held in Lapeer, Michigan, on May 2 and 3, 1962, before Trial Examiner C. W. Whittemore.

At the hearing, General Counsel and the Respondent were represented by counsel and were afforded full opportunity to present evidence pertinent to the issues, to argue orally, and to file briefs. A brief has been received from the Respondent.

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

## FINDINGS OF FACT

## I. THE BUSINESS OF THE RESPONDENT

Active Mobile Homes Corporation is a Michigan corporation, with its principal office and place of business in Marlette, Michigan, where it is engaged in the manufacture, sale, and distribution of "mobile homes" and related products.

During the year ending December 31, 1961, the Respondent purchased and caused to be delivered to its Marlette plant goods and materials valued at more than \$50,000 directly from points outside the State of Michigan. And during the same period it distributed from this plant manufactured products, directly to points outside the State of Michigan, valued at more than \$50,000.

The Respondent is engaged in commerce within the meaning of the Act.

## II. THE CHARGING UNION

International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, (UAW) AFL-CIO, is a labor organization admitting to membership employees of the Respondent.

## III. THE UNFAIR LABOR PRACTICES

A. *Setting and issues*

The major events claimed as unfair labor practices in this case all occurred within a brief period in January 1962: The layoffs of employees Ciochan, Gerlach, and Wesolowski on January 18, and the discharge of employee Jay Brown on January 19. It is General Counsel's contention that General Manager Hill brought about both the layoffs and the discharge to discourage employees from joining the Charging Union. The Respondent disclaims any unlawful motive but admits the action taken.

There is no dispute that organizational efforts were begun at the plant by Brown on the morning of January 17. It is likewise undisputed that later the same day Hill asked Don Fritz, in charge of the plant during Hill's absence, if he was aware of the union activities and that when Fritz replied that he "believed" there were such activities, Hill asked him where Brown was.<sup>1</sup>

It is thus established, at the outset, that the layoffs and discharge took place not only after union activities began but also after management became aware of them. Lesser issues arise from remarks made by Hill to employees within the next few days.

B. *The discharge and layoffs*

## 1. Brown

On January 16, Brown and four other employees drove into Marlette to consult a union representative regarding self-organization. Brown was given application cards.

Before work and at break time the next morning, January 17, Brown distributed the cards among fellow employees. It is his credible testimony that shortly before lunch he began feeling ill, and that when the noon whistle blew he decided to go outside the plant for fresh air. As he left, he called to two employees and asked that in the event he did not come back, one of them punch out his timecard. Brown went to a nearby store, obtained some medicine, but felt no better and went home. He remained at home that afternoon and the next day.

As a witness, employee Wesolowski confirmed Brown's testimony that he had asked someone to punch him out if he did not return, but apparently this employee did not accept the designation, and Brown's card was not punched out that afternoon. It is Brown's reasonable explanation that he did not communicate with the plant the following day because he had no telephone on his farm and that he would not permit his wife, 7 months' pregnant, to drive over the icy roads to reach a telephone.

<sup>1</sup>The finding rests upon the testimony of Fritz, a management representative called by General Counsel. When Hill was first asked by his own counsel if he had queried Fritz about the Union on January 17, 18, or 19, Hill replied: "I am sure we have had conversations about the Union. I can't begin to tell you on what date." Counsel again asked him if he had talked to Fritz on the 17th about the Union. Hill replied, "Not to my knowledge." Counsel then bluntly inquired, "Do you know whether you did not?" This time Hill said, "No, I don't."

As noted in the preceding section, soon after Brown left the plant at noon on the 17th, Hill asked his next in command if he was aware of the "union activities" and if he knew where Brown was.

According to Group Leader Stewart, early that afternoon he had a special job for Brown to perform, but could not locate him. Stewart said he "thought possibly he had gone home" and went to the timeclock to check his card. At the clock he met Adair, maintenance head, and asked him if he had seen Brown. Hill came up. Stewart asked him if Brown had been shifted "outside." When Brown was not located, Hill started to "pull" his timecard. Suspecting that Hill intended to fire the employee, both Stewart and Adair urged Hill to wait and see if some other employee would "punch him out." Their testimony makes it plain that such "punching out" by other employees than the individual involved was not an uncommon practice.

When Brown reported for work the morning of January 19, he found attached to his timecard a note stating that he was "terminated for leaving plant without punching out in working hours." He went to see Hill and asked why he was fired. Hill told him he was a "trouble maker." He asked what kind of trouble. The manager replied, "Union trouble," and asked how he got "messed up" in it, reminding him he had a wife and family to think of. Finally, after accusing the employee of being the "ring leader," and warning him he would be unable to obtain a job in nearby trailer factories, Hill told him to "think it over," and if he "wanted to tell him anything" to come back the next Monday and "talk it over." (The quotations are from Brown's credible testimony.)

Brown returned on Monday. Hill asked him if he had changed his mind. Brown replied that he had "nothing to change to change my mind about." The manager then said, "You tell me what I want to know, and you can have your job." Brown replied that he could not do that. Hill said, "Think it over, Jay, and come back and see me after four-thirty." Under the conditions imposed, Brown did not return, and at the time of the hearing had not been reinstated.<sup>2</sup>

Hill was an unrestrained and aggressive witness. As the record reveals, he interrupted his own counsel's presentation of evidence. While on the witness stand, and apparently piqued because the Trial Examiner suggested to his counsel that he not go into a matter not in issue, Hill remarked caustically, "I realize this is a kangaroo court."

Before Hill was called to the stand to testify regarding Brown's discharge and other matters, a valiant effort was made to lay a foundation of previous derelictions by the employee, not only at the Respondent's plant, but during his employment at other plants by other employers. As to the latter point, it developed that no inquiry concerning Brown's records at other plants had been made by the Respondent until shortly before the hearing, or during the hearing, in this case. Obviously, whatever such records, they had no relevancy to the issue of Brown's discharge in January. Through testimony of a cattle auctioneer an effort was made to have it appear that Brown had falsified his testimony about being at home ill on the afternoon of January 17, and that in fact he had attended an auction. The auctioneer, however, admitted that he knew no "Jay Brown," but only that from his records it appeared that some transaction had occurred sometime during the day in this name. And counsel for the Respondent, much to his own apparent discomfort, punctured the inference he sought to have drawn from the auctioneer's testimony when he also called, as his own witness on this point, one McConnell, a hired man on the farm of Brown's mother-in-law. The brief colloquy is quoted:

Q. Do you know whether Jay Brown went to the auction on January 17th?

A. No, he didn't go, because I helped Don Sullivan load the cows

Finally, the laborious effort to lay foundation for a claim that Hill discharged Brown for many reasons went a-glimmering when the manager himself testified that he had told a gathering of employees after the event that he had discharged Jay Brown "for one reason only—that he had left the plant without punching out." Hill was then asked: "Was that the truth?" He replied, "It certainly was." Thus the issues were narrowed by the witness himself to a question as to whether Brown was fired for union activities or for not punching out.

Not only for the reasons noted above, but also because of his observation of the demeanor of both Hill and Brown on the witness stand or while in the hearing room, the Trial Examiner is convinced that Brown, not Hill, was telling the truth as to

<sup>2</sup> The findings as to the discharge interview rest upon the credible testimony of the employee, many details of which are not specifically contradicted by Hill although his version of them was different

the interview of January 19 and the following Monday. As noted, Hill was prone to voice his opinions as to the conduct of the hearing without reservation, yet when Brown, General Counsel's first witness, related in detail his discharge interview with Hill, the latter, at counsel's table, batted not an eyelash.

In short, the Trial Examiner is convinced that the real reason for Brown's dismissal was his failure to recant his open effort to organize his fellow employees, and that his failure to punch out was not the cause, but raised as a mere pretext. As noted above, the testimony of two of the Respondent's own witnesses, Stewart and Adair, establishes that it was not uncommon for other employees to punch out when one left the plant. And counsel for the Respondent himself established that the so-called rule posted at the timeclock read: "If leaving the building please punch out." This was clearly a request—and although a reasonable one—it was not a rule calling automatically for discharge if not observed.

Brown was given no opportunity to explain his absence. It appears plain to the Trial Examiner that Hill was anxious only to rid the plant of its union leader, not to discipline an employee for not observing a posted request.

The discharge of Brown, for the purpose of defeating union organization, was unlawfully discriminatory, and interfered with, restrained, and coerced employees in the exercise of rights guaranteed by the Act. There is no substantial evidence in the record, however, to support General Counsel's additional allegation that Brown was refused reinstatement because he filed charges, and it will be recommended that the allegation of violation of Section 8(a)(4) be dismissed.

On the point of reinstatement, an unusual conflict across during the hearing. According to Hill and his secretary, the manager dictated a letter to Brown on March 28, 1962, a few days after the complaint in this case was served upon the Respondent. A carbon, which the secretary testified was a copy of such letter, reads:

Jay: Please report for work at the Active Mobile Homes Corp. plant in Marlette at your old job within 48 hours. Failure to report or call us within 48 hours will be considered by this Company a voluntary quit on your part.

The secretary also said she placed the original of this letter in an envelope addressed to Brown and took the document to the post office, where she had the mailing certified. The Company received from the post office a return receipt showing that the piece of mail was received and signed for by Majorie Brown, Jay Brown's wife, on April 2.

There is no dispute that the envelope was received by Majorie Brown on April 2. According to her testimony, however, and that of her husband, upon returning home on Sunday, April 1, they found in their mailbox a notice stating that a registered letter awaited them at the Sandusky Post Office. On Monday, April 2, she went to the post office, signed for the document and on her way home stopped in at her mother's home. Her testimony is fully corroborated by that of her mother and the previously identified "hired hand" McConnell to the effect that in their presence and at her mother's suggestion she opened the envelope. Its only contents were two advertising "stuffers" for one of the Respondent's products. These she presented to her husband when he called for her later at the same home.

While there are minor discrepancies in the accounts of Hill and his secretary (he claiming that he dictated several letters at the time and she recalling but one, the postal receipts showing that the envelope and its contents, whatever they were, were not mailed until March 29, instead of the 28th, as her testimony indicates, and the stamping on the envelope showing that it was misaddressed), the Trial Examiner believes that Hill in fact did dictate the letter to Brown and that the secretary intended to and believed she had placed the original letter in the envelope. On the other hand, the Trial Examiner believes the testimony of Mrs. Brown, her mother, and McConnell as to the actual contents of the envelope. The wrong address finds explanation in Mrs. Brown's testimony that they had but recently moved to a new address.

The Trial Examiner discerns no good reason why any of the witnesses on this point should have knowingly given false testimony. It is reasonable to believe that Hill, having received the formal complaint, wished to toll any backpay which he might have to pay Brown. Even if it be suspected that by mailing the letter on March 29, thereby cutting the 48 hours to 24, Hill hoped that he would not hear from Brown but that the gesture of sending the letter would be sufficient to cover his obligation that suspicion does not detract from the reasonableness of his desire that Brown actually, even if late, should receive the offer of reinstatement. And it is equally reasonable to believe that, had Brown actually received an offer, he would promptly have responded to it. It is undisputed that on April 2 he was out

seeking work. The testimony of both Laura Davis (Mrs. Brown's mother) and the hired man was simple and forthright. The former said:

She (her daughter) said, "I don't know whether to open it now or wait until Jay comes," and I said, "You are his wife, and you should open it up," so she opened it, and she looked in it, and she couldn't figure out—she shook the envelope, and there was nothing—just them two papers. And she couldn't figure that out, and we couldn't either, why it was registered.

The hired man's relevant testimony is to the effect that he saw Mrs. Brown take out of the envelope just "them two green papers, and I thought they were an April Fool joke."

Although neither Hill nor his secretary were recalled to testify about the "stuffers," the practice of enclosing such advertising material in all regular mail is common knowledge.

In short, and under the described circumstances, the Trial Examiner believes that the secretary merely made an inadvertent error. In the opinion of the Trial Examiner, however, Hill's intentions are insufficient to establish that on March 28, 1962, or at any other time since then, Brown was offered reinstatement by the Respondent.

## 2. Leo Wesolowski, Edward Gerlach, and John Ciochan

Since the layoffs of these three employees are similar in nature, they will be described together. When each of them came to work the morning of January 18, the day after organization at the plant began, he found attached to his timecard a slip stating, in effect, that due to present business conditions he was laid off. Each, separately, went to Hill to find out why.

According to Ciochan's credible testimony, when he asked the reason for his sudden layoff Hill declared: "John, Jay Brown is a trouble maker." Ciochan asked if he meant the "Union." Hill said, "Yes," pounded the desk, and declared that he was not going to let anything "jeopardize" himself, and if he had to lay off every man in the plant and start "brand new . . . they will do like I want them to do." Ciochan, although he had signed a union card, insisted that he had nothing to do with it. Hill said he did not believe him, and told him to "take a couple days off" until the following Monday to "think it over." As Ciochan left, Hill asked him if they had a "union election tomorrow how would you vote?" The employee said he had not made up his mind. Ciochan returned the following Monday and was permitted to work.<sup>3</sup>

According to Wesolowski's credible testimony, Hill told him he was being laid off because his work was not up "to par," because he believed his brother (who had quit a few weeks earlier) was the "No. 1" instigator of the Union, and because he figured Wesolowski himself would be causing him trouble. He told the employee to "take off until Monday" and come back and talk with him. When Wesolowski reported on Monday, Hill told him "maybe" he had made a mistake in laying him off, but his name had been on an "instigator list." He told the employee to go back to work and keep his "mouth shut."<sup>4</sup>

According to Gerlach's credible testimony he was one of the employees accompanying Brown on January 16 to visit the union representative. When he saw Hill the morning of January 18 the manager opened the conversation by asking, "Ed, what's wrong?" Gerlach countered by asking him, "Is this union deal bothering you?" Hill did not reply. Gerlach then admitted that he had "approached people on this," but was not the instigator. Hill then said he thought Wesolowski's brother, Richard, was one of the instigators and told Gerlach to go home and "think it over" until Monday.

On Monday, Gerlach reported for work. Hill asked him how he "felt" about the Union. Gerlach said he did not know "right now," but would vote as he thought "correct" when the time came. Hill then said he believed Jay Brown was the instigator. Gerlach said he did not know, but would not tell even if he did know. He was then permitted to return to work.<sup>5</sup>

The Trial Examiner is unable to find merit in Hill's testimony that material shortages required these three layoffs on January 18. It is established that such a shortage

<sup>3</sup> For reasons set forth earlier in this report, the Trial Examiner cannot accept as true Hill's denial that he mentioned the Union to this employee or his version of the interview. The remarks attributed to him by Ciochan were consistent with the volatile and unrestrained nature Hill displayed during the hearing.

<sup>4</sup> Hill admitted talking about Wesolowski's brother on January 18, but denied mentioning the Union. His denial is not credited.

<sup>5</sup> Hill said he did not have the "slightest recollection" about a "union" discussion with Gerlach on January 18.

did develop on Monday, January 22, and that most of the plant employees were then laid off for a few days—a layoff which General Counsel does not contend was unlawful.

The credible testimony of these three employees, when considered in the light of the concurrent discharge of Jay Brown, leads to the conclusion, here made, that each of them was laid off on January 18 for the sole purpose of discouraging union membership and activity, thereby interfering with, restraining, and coercing employees in the exercise of rights guaranteed by the Act.

### C. Other interference, restraint, and coercion

On January 18, the day after Brown distributed union cards and Hill became aware of the organizational move, the manager called together all employees working and told them he was “surprised” and believed he could do as much for them as the Union. He told them he could not compete with “big wages” and would have to shut down the plant and move South.

Later the same day and on several occasions thereafter, during the same month, he likewise called the employees together. Credible testimony establishes that at some of them the manager declared that he could not afford to have a union in the plant, and that if “this disturbance continued on and if the union came in there, if this continued on, then the company would be forced to shut down here and go elsewhere.”<sup>6</sup>

Although at these meetings it appears that Hill also made privileged comments and suggestions—such as his wish for an immediate Board election—the Trial Examiner believes that under the concurrent conditions of unlawful discrimination Hill’s clearly implied threat to close the plant if the Union were selected as the bargaining agent must be found to be coercive in nature, and uttered for the purpose of discouraging union membership and activity.

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

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

## V. THE REMEDY

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

As the Respondent’s continued unlawful activities indicate a purpose to defeat self-organizational rights of its employees, the Trial Examiner is convinced that they are potentially related to other unfair labor practices proscribed by the Act and that the danger of their commission in the future is to be anticipated from the Respondent’s conduct in the past. The preventive purposes of the Act will be thwarted unless the remedy is coextensive with the threat. Accordingly, in order to effectuate the policies of the Act, it will be recommended that the Respondent cease and desist from in any manner infringing upon the rights of employees guaranteed in the Act.

It will be recommended that the Respondent offer Jay Brown immediate and full reinstatement, without prejudice to his seniority and other rights and privileges, to his former or substantially equivalent position, and make him and employees Ciochan, Wesolowski, and Gerlach whole for any loss of earnings they may have suffered by payment to each of them of a sum of money equal to that he would normally have earned as wages from the date of the discrimination to the date of the offer of reinstatement, less his net earnings during said period. The backpay provided for herein shall be computed in accordance with the Board formula set out in *F. W. Woolworth Company*, 90 NLRB 289.

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

## CONCLUSIONS OF LAW

1. International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, (UAW) AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

<sup>6</sup>The quotations are from the credible testimony of employee Ciochan.

2. By discriminating against employees Brown, Ciochan, Wesolowski, and Gerlach to discourage membership in the above-named labor organization, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of section 8(a) (3) of the Act.

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

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

[Recommendations omitted from publication.]

---

**Royal School Laboratories, Inc. and United Brotherhood of Carpenters and Joiners of America, AFL-CIO.** *Case No. 5-CA-2082. September 24, 1962*

DECISION AND ORDER

On July 9, 1962, Trial Examiner Louis Libbin issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent has engaged in and is engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Intermediate Report. The Trial Examiner also found that Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended that such allegations be dismissed. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief. The General Counsel filed exceptions to the Intermediate Report.<sup>1</sup>

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, the brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner as modified herein.

ORDER

The Board hereby adopts as its Order the Recommended Order of the Trial Examiner with the following modifications.<sup>2</sup>

---

<sup>1</sup> No exceptions were filed to the Trial Examiner's finding that Foreman Underwood's interrogation of employee Peak was not violative of the Act. We adopt that finding *pro forma*.

<sup>2</sup> The backpay obligations of the Respondent with respect to the discriminatees shall include the payment of interest at the rate of 6 percent to be computed in the manner set forth in *1818 Plumbing Co., Inc.*, 138 NLRB 716 Member Leedom, however, for reasons stated in the dissent of the aforementioned case would not grant such interest.