Although the General Counsel is proposing a rate of 6 percent interest as a uniform practice in backpay cases because that is a common statutory rate, I notice that the Oregon statute does not differ; hence, it is an appropriate rate in this case based both on Federal statutes and on the State statute.

Because the Board usually computes backpay by quarters of a year, the interest payable on backpay should be computed on the same basis. Accordingly, I shall recommend that the Respondent be ordered to pay interest on the backpay due each of the discriminatees at the rate of 6 percent per annum commencing at the end of each quarter of the year for which backpay is shown to be due hereunder.

The nature and scope of the Respondent's conduct discloses a purpose to defeat self-organization among its employees and a disposition to disregard the rights guaranteed to employees under the Act. thus demonstrating an underlying attitude of opposition on the part of the Respondent to the purposes of the Act generally. Because of this, I am convinced that there exists a danger of the commission by the Respondent, in the future, of other unfair labor practices which will defeat the policies of the Act. In order, therefore, to make effective the interdependent guarantees of Section 7 of the Act, to prevent a recurrence of unfair labor practices, and thus to effectuate the policies of the Act, I shall recommend that the Respondent cease and desist from infringing in any manner upon the rights guaranteed in Section 7 of the Act.

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. The Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is, and the Independent was, a labor organization within the meaning of Section 2(5) of the Act.
3. By the discriminations against Leon Wegener, Gilbert Lehr, George Calabro, Alfred Patrick West, Ray Means, Leon Williams, Ervin Dunn, Jacob Hubert, Keith Jackson, Frederick Davis, and Claud Albert Pierce on the dates of their respective discharges herein found, and by failing and refusing to reinstate them . . . thereafter, because of their union membership, activities, or views, thereby discouraging membership in the Union, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.
4. By the aforesaid conduct, and by questioning employees concerning their union activities and sympathies, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
5. 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]

Dura Electric Lamp Co. *and* Teamsters Industrial & Allied Workers Local No. 97, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

Case No. 22–CA–1288. December 31, 1962

DECISION AND ORDER

On November 9, 1962, Trial Examiner Samuel M. Singer 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 attached Intermediate

Report. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.[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 [Chairman McCulloch and Members Leedom 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 Respondent's exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.[2]

ORDER

The Board adopts as its Order the Recommended Order of the Trial Examiner.[3]

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[1] The Respondent's request for oral argument is hereby denied, as the record, including the Respondent's exceptions and brief, adequately presents the issues and the positions of the parties.

[2] Member Leedom, for the reasons stated in the dissenting opinion in *Isis Plumbing & Heating Co*, 138 NLRB 716, would not award interest on backpay.

[3] Immediately below the signature at the bottom of the notice, the following is to be added:

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

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

Upon a charge filed June 27, 1962, by Teamsters Industrial & Allied Workers Local No. 97, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (herein called the Union), the General Counsel of the National Labor Relations Board, by the Regional Director for the Twenty-second Region, issued a complaint on July 31, 1962, against Dura Electric Lamp Co. (herein called Respondent or the Company). The issue litigated was whether Respondent, in violation of Section 8(a)(3) and (1) of the National Labor Relations Act, as amended, discriminatorily discharged one of its employees, Lucille Oliver.

At the hearing before Trial Examiner Samuel M. Singer, which was held in Newark, New Jersey, on October 11, 1962, all parties were represented and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce relevant evidence. Although afforded an opportunity to argue their position orally and to file briefs, the parties did not avail themselves of it.

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

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, a New Jersey corporation, operates a plant in Newark, New Jersey, where it manufactures photoflash bulbs and related products. During 1961, a typical year, the Company sold and delivered from its Newark plant products of a value in excess of $50,000, to points outside the State of New Jersey. During the same year, it received at its plant goods and materials of a value in excess of $50,000 from points outside that State. I find, as Respondent admits, that Respondent is engaged in commerce within the meaning of the Act, and that the assertion of jurisdiction is warranted.

II. THE LABOR ORGANIZATION INVOLVED

The Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Union's organizational drive and employee Oliver's role in the campaign*

On or about June 15, 1962, the Union inaugurated an organizational campaign at the Company's Newark plant. The campaign was an extensive one, being conducted by eight business agents. One of these agents, Chester Holmes, normally visited the plant during the employees' 12 to 12:30 lunch period and also after quitting time, 4:30 p.m. Holmes succeeded in enlisting the aid of three company employees, one of whom—Lucille Oliver—proved to be the most active one. Oliver agreed to sign a union authorization card and to distribute cards to fellow employees. She signed up 15 to 18 employees in the Union and was instrumental in securing the help of another employee who likewise solicited memberships. Oliver would meet Holmes at the gate near the plant, during the lunch period, to report on the organizational progress and to hand over the signed union cards to Holmes. At times Holmes would accompany Oliver on her way to lunch or they would walk around the plant building to discuss the union campaign.[1]

There is no dispute that the Company was fully aware of Oliver's association with Business Agent Holmes, as well as the Union's organizational campaign in general. Both Plant Manager Cummis and Company President Portnow conceded at the hearing that they could readily see, and did see, from company office windows, certain union organizers conversing with employees in front of the plant. Cummis identified Oliver as one of the employees he had seen with Holmes. On June 25, 2 days before the discharge of Oliver discussed below, Cummis, as he was going out of the building, "came face to face" with Oliver and Holmes as they were transacting union business during the lunch hour in front of the building.

B. *The discharge of Lucille Oliver*

Lucille Oliver worked for the Company from September 1961 to June 27, 1962, the date of her discharge. After working 4 or 5 months as an assembly girl she was promoted to a "scope operator." At the hearing Arthur Keenan, the Company's quality engineer and Oliver's immediate superior or foreman, described Oliver's job as a most important and difficult one, entailing the testing of flashbulbs for defects, including possible defects in the timing of the lights. No company official ever criticized her work. On the contrary, she was often complimented on her performance and at the hearing Plant Manager Cummis characterized her work as "good." She was also entrusted with the task of training another employee as a scope operator.

The record establishes, however, and I find, that Oliver was frequently tardy in reporting to work in the morning and also was absent on some occasions. Thus, company time records produced at the hearing disclosed that Oliver was tardy on eight occasions in the month of June; however, on four of these occasions the lateness did not exceed 3 minutes. During the preceding month of May, Oliver was tardy on four occasions—for 1, 3, 11, and 14 minutes, respectively. She was absent 1½ days in June and 3½ days in May. The time records for preceding months dating back to December 1961 disclose a similar pattern of latenesses and absences.

The credible evidence establishes that while Plant Manager Cummis never spoke to Oliver about her attendance record, Oliver's immediate supervisor, Keenan, did.[2]

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[1] Apparently during the period here involved another union, not identified in the record, also sought to organize the plant. According to Plant Manager Cummis, various unions had attempted to organize the plant during the past 8 years but without success. The plant was last organized 10 years previously when, according to Cummis, the employees "voted [the union involved] out of existence."

[2] The above finding is based on the testimony of Keenan. Although Oliver generally impressed me as a credible witness, I do not credit her testimony that Keenan never spoke to her about her tardiness. It is hardly likely that Oliver's frequent latenesses—though often only for 3 minutes or less—would escape management attention and comment. Keenan further testified that it was company policy to discharge employees after two warnings for lateness and it was pursuant to this policy that he requested Oliver's discharge after giving her a second warning. At one point Keenan testified that he had actually warned Oliver on at least three occasions. Cummis produced at the hearing a written

However, tardiness was a common occurrence at the plant and admittedly no employee, other than Oliver, was ever terminated for this reason or for absenteeism. It was the Company's policy to dock 15 minutes pay for lateness exceeding 3 minutes—a policy which was uniformly applied to Oliver and other employees who reported late in the morning.

Oliver was 15 minutes late to work on Monday, June 25. According to Keenan, he reported the lateness to Cummis, stating that he wanted a replacement for Oliver as "she had now been late so often that he really must take action" in order to avoid interference with production.[3] Cummis confirmed Keenan's testimony that Keenan reported Oliver's tardiness on Tuesday, June 26, but Cummis testified that he did nothing about it. He stated that the next day, June 27, "while going over to the timeclock and just running through the cards to see what time people punch out and punch in," which is "a habit" he followed "once in a while," he noticed that Oliver had been late again[4] and, recalling that Keenan had told him that "as far as he was concerned, we could let her go," he had the office make out Oliver's final paycheck and then called Oliver to his office and discharged her.

On July 13, 1962, Plant Manager Cummis executed an affidavit for a Board agent in which he recited the events leading to the discharge of Oliver.[5] In explaining his reasons for discharging Oliver, Cummis stated:

> A quality control inspector is in my opinion in a semisupervisory capacity although such an inspector has no right to hire & fire or recommend such hiring or firing. I feel that Oliver in such capacity owed her loyalty to the company not any union.
>
> Frankly her activities with the union together with her continued absences got me pretty sore.
>
> In my opinion Oliver had given the Company ample grounds for discharge because of her continued absences.
>
> I may have overlooked it but when in my opinion when she became active with the union she was disloyal to the company who had been lenient with her.

At the hearing Cummis did not contest the truth of the allegations in his prehearing affidavit, although he indicated that the "choice of words" were the Board agent's and not his. Referring to Oliver's conversations with union business agents in front of the plant, he testified, "Well, I didn't think it was proper for her to engage in conversations with them." Elaborating further, he stated that although "anybody has a right to talk to anybody they please"—and he himself had said "hello" to a union organizer—Oliver went much further. Cummis then stated:

> If Lucille had said hello and walked by, that would have been that . . . . As an operator in the particular department that she was in, I feel that she is or was semi-management and wasn't even—couldn't enjoy a union, in my opinion, and I could see no need for her engaging in lengthy conversations. But as for her wanting to do it, that was her right.

"notice" which, he asserted, was posted on the bulletin boards of the plant 4 or 5 years previously; the notice stated that employees would be discharged after three absences or latenesses in any given month. Oliver categorically denied that any company official had ever warned her that her job was in jeopardy because of her attendance record Oliver and another employee likewise denied that they had ever seen the "notice" posted on any bulletin boards On cross-examination Cummis conceded that the "notice" appeared only on the first floor of the plant and did not appear on the third floor where Oliver worked or the second floor where the other employee worked. In view of the findings and conclusions hereafter made, particularly with respect to Cummis' own admissions as to the reasons which motivated his discharge of Oliver, I do not find it necessary to resolve the conflicting testimony as to the claimed company policy regarding discharges after warnings and as to whether Oliver had in fact received two or more warnings prior to her discharge.

[3] Although Keenan in his direct examination indicated that the interference in production was occasioned by the fact that the scope machine operation required constant attention, he admitted on cross-examination that Oliver was not in fact working at this operation for some time prior to her discharge, the operation then being performed by another girl whom Oliver had trained for this job.

[4] In a prehearing statement made by Cummis, referred to *infra*, Cummis alleged, "I had no particular reason for doing it [pulling Oliver's card]."

[5] The affidavit was admitted into the record as a party's admission against interest. Cummis had been called by the General Counsel as an adverse witness under Rule 43(b) of the Federal Rules of Civil Procedures; later he was called as a witness for Respondent.

Concluding Findings

In view of the admissions of Plant Manager Cummis as to the reasons which motivated his discharge of employee Oliver—as set forth above—a detailed analysis of the evidence and conclusions is superfluous. I have no doubt, as Cummis emphasized in his prehearing affidavit, that the Company had "ample grounds" for discharging Oliver because of excessive tardiness and some absences. Cummis' admissions establish, however, that Oliver's attendance record was not the sole reason for her discharge.[6] Cummis regarded Oliver as a valuable and skilled employee and almost part of management—which, of course, she was not. As Cummis testified, Oliver had not been discharged earlier because she "was doing a good job when she was in." When, however, Cummis discovered that Oliver had aligned herself with the Union, he took a more serious view of her derelictions. It is clear from Cummis' admissions, as well as other evidence in the record "that, until the union issue arose, these complained of acts . . . were all condoned and would have been continued to be condoned; and the straw that broke the back of [Respondent's] tolerance and condonation was the union activity" of Oliver. *Magnolia Petroleum Company* v. *N.L.R.B.*, 200 F. 2d 148, 149 (C.A. 5). In short, Oliver's discharge was directed more at her unionism than at her peculiarities.

In view of the foregoing, and the entire record, I find and conclude that the discharge of Lucille Oliver on June 27, 1962, was discriminatorily motivated in violation of Section 8(a)(3) and (1) of the Act.

IV. THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Having found that Respondent discriminatorily discharged Lucille Oliver on June 27, 1962, I will recommend that Respondent offer her immediate and full reinstatement, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of earnings that she may have suffered by payment to her of a sum of money equal to that which she normally would have earned from the aforesaid date to the date of Respondent's offer of reemployment, less net earnings during said period. The backpay provided for herein shall be computed in accordance with the formula stated in *F. W. Woolworth Company*, 90 NLRB 289. Further, it will be recommended that Respondent pay interest on the backpay due Oliver, such interest to be computed at the rate of 6 percent per annum and, utilizing the *Woolworth* formula, to accrue commencing with the last day of each calendar quarter of the backpay period on the amount due and owing for each quarterly period and continuing until compliance with this recommendation is achieved. *Isis Plumbing & Heating Co.*, 138 NLRB 716.

Since the discriminatory discharge found herein goes "to the very heart of the Act" (*N.L.R.B.* v. *Entwistle Manufacturing Co.*, 120 F. 2d 532, 536 (C.A. 4)), and reflects an attitude of opposition by Respondent to the self-organization of its employees, the commission of the unfair labor practice committed and other unfair labor practices in the future is reasonably to be anticipated from Respondent's past conduct. Accordingly, in order to effectuate the policies of the Act, I will recommend that Respondent cease and desist from in any manner infringing upon the rights of employees guaranteed by the Act.

CONCLUSIONS OF LAW

1 The Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of the Act.

3. By discriminating in regard to the hire and tenure of employment of Lucille Oliver, thereby discouraging membership in the Union, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

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

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

[6] It is well settled, that even "If employees are discharged partly because of their participation in a campaign to establish a union and partly because of some neglect or delinquency, there is nonetheless a violation" of the Act. *N.L.R.B.* v. *Jamestown Sterling Corp.*, 211 F. 2d 725, 726 (C.A. 2).

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record of the case, I recommend that the Respondent, *Dura Electric Lamp Co.*, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Teamsters Industrial & Allied Workers Local No. 97, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization of its 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.

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

2. Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Offer Lucille Oliver, immediate and full reinstatement to her former or a substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of pay she may have suffered as a result of her discharge, in the manner set forth above 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 security payment records, timecards, personnel records and reports, and all other data necessary to analyze and compute backpay.

(c) Post at its plant in Newark, New Jersey, copies of the attached notice marked "Appendix."[7] Copies of said notice, to be furnished by the Regional Director for the Twenty-second Region, shall, after being signed by a representative of Respondent, be posted by it 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 by 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 receipt of this Intermediate Report and Recommended Order, what steps it has taken to comply herewith.[8]

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[7] In the event that this Recommended Order be adopted by the Board, the words "A Decision and Order" shall be substituted for the words "The Recommended Order 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."

[8] 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 Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order 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 discourage membership in Teamsters Industrial & Allied Workers Local No. 97, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or in any other labor organization of our employees, or in any other manner discriminate in regard to their hire or tenure of employment, or any term or condition of their employment.

WE WILL offer to Lucille Oliver immediate and full reinstatement to her former or substantially equivalent position, without prejudice to any seniority or other rights previously enjoyed, and make her whole for any loss of pay suffered as a result of the discrimination against her.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the above-named Union, or any other labor

organization, to bargain collectively through representatives of their own choosing; to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection; or to refrain from any or all such activities.

DURA ELECTRIC LAMP CO.,
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, 614 National Newark Building, 744 Broad Street, Newark, New Jersey, Telephone No. Market 4-6151, if they have any question concerning this notice or compliance with its provisions.

Waiters & Bartenders Local 500, Cooks & Waitresses Local 402, Local Joint Executive Board of San Diego Comprising Waiters & Bartenders Local 500 and Cooks & Waitresses Local 402 *and* Mission Valley Inn. *Case No. 21-CP-13. January 2, 1963*

DECISION AND ORDER

Upon charges duly filed by Mission Valley Inn, herein called Mission or MVI, the General Counsel of the National Labor Relations Board, by the Regional Director for the Twenty-first Region, on April 5, 1960, issued a complaint alleging that Waiters & Bartenders Local 500, Cooks & Waitresses Local 402, Local Joint Executive Board of San Diego Comprising Waiters & Bartenders Local 500 and Cooks & Waitresses Local 402, herein collectively called the Union, had engaged in and were engaging in unfair labor practices within the meaning of Section 8(b)(7)(B) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing were duly served upon the parties.

With respect to the unfair labor practices, the complaint alleges in substance that on and after March 11, 1960, although within 12 months of a valid election under Section 9(c) of the Act which did not result in certification of the Union, the Union picketed Mission, an object thereof being to force and require Mission to recognize and bargain with the Union as the collective-bargaining representative of its employees, and to force and require the employees to accept and select the Union as their collective-bargaining representative.

On May 5, 1960, all parties to this proceeding filed a stipulation of facts, and a motion to transfer this proceeding directly to the Board for issuance of a Decision and Order after the filing of briefs and without further hearing. The stipulation states in substance that the parties waived their rights to a hearing before a Trial Examiner, and to the issuance of an Intermediate Report, and that the charges, complaint, and stipulation of facts should constitute the