

to finance his wife's way through beauty school<sup>12</sup> With respect to Dick, there had been a report of a clash between Dick and the Norwood manager, and also there had been a disagreement between himself and Dick on a technical matter.

Viewed in its totality, the evidence does not preponderate in favor of a finding that Welch and Dick were discharged because of their activities on behalf of the Union.<sup>13</sup> I shall, accordingly, recommend dismissal of the allegations under Section 8(a)(3) of the Act.

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

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 thereof.

#### V. THE REMEDY

In view of my finding that Respondent has engaged in certain unfair labor practices I shall recommend that it be required to cease and desist therefrom and take certain affirmative action necessary and appropriate to effectuate the policies of the Act.

On the basis of the foregoing findings of fact, and upon the entire record in this case, I make the following:

#### CONCLUSIONS OF LAW

1. 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 Section 2(5) of the Act.
3. By the acts of Division Manager Henry C. Showalter in threatening employees with economic reprisals if they engage in activities on behalf of the Union, Respondent has engaged in conduct that interfered with, restrained, and coerced employees in the exercise of their rights under Section 7 of the Act, thereby engaging in unfair labor practices as defined in Section 8(a)(1) of the Act.
4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.
5. Respondent has not engaged in unfair labor practices defined in Section 8(a)(3) of the Act.

[Recommendations omitted from publication.]

<sup>12</sup> The evidence herein confirms the impression, conveyed by his bearing at the hearing, of Welch as a person of superior talents and with a zeal to excel and advance but probably not a docile "organization man."

<sup>13</sup> The General Counsel relies in part on the conduct of Jack Ray in offering a responsible assignment to Welch at Collbran on December 15 and in stating to employee Ashby on December 27 that fitters were needed at Delta. I cannot assign any substantial significance to this evidence in view of the clear indications that Ray's authority does not extend to conversion crews. There is no showing that Ray participated in conferences leading up to the layoffs. Nor can I place any controlling significance on Showalter's threats which I have found above to be interference under Section 8(a)(1) since the record indicates that Showalter did not take a controlling part in determination of the number to be laid off nor the selection of those to be retained.

**Champa Linen Service Company and Laundry, Linen and Dry Cleaning Drivers, Local Union No. 905, and Dry Cleaning and Laundry Workers, Local Union No. 304. Case No. 27-CA-1243.**  
*February 11, 1963*

#### DECISION AND ORDER

On November 15, 1962, Trial Examiner William E. Spencer issued his Intermediate Report in the above-entitled proceeding, finding that 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.

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 Rodgers and Fanning].

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,<sup>1</sup> and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

## ORDER

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

<sup>1</sup> Respondent's request for oral argument is denied as, in our opinion, the record and the Respondent's exceptions and brief adequately present the issues and the positions of the parties.

<sup>2</sup> The Appendix attached to the Intermediate Report is amended by deleting the words "60 days from the date hereof," in the penultimate paragraph, and inserting in their place the words "60 consecutive days from the date of posting."

## INTERMEDIATE REPORT AND RECOMMENDED ORDER

### STATEMENT OF THE CASE

This proceeding, involving allegations that the Respondent engaged in conduct violative of Section 8(a)(1) of the National Labor Relations Act, as amended, 61 Stat. 136, 73 Stat. 519, herein called the Act, is based upon a complaint issued by the General Counsel of the National Labor Relations Board, the latter herein called the Board, on August 10, 1962, and a charge filed on June 21, 1962, and an amended charge filed on July 11, 1962, by Laundry, Linen and Dry Cleaning Drivers, Local Union No. 905, and Dry Cleaning and Laundry Workers, Local Union No. 304, herein called the Union or Unions. The Respondent in its duly filed answer denied the commission of the alleged unfair labor practices. A hearing, with all parties represented and participating, was held on September 18, 19, 1962, at Denver, Colorado, before Trial Examiner William E. Spencer. At the close of evidence the parties waived oral argument and subsequent thereto the General Counsel and the Respondent filed briefs.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE RESPONDENT

The Respondent, with its principal office and place of business in Denver, Colorado, is engaged in the business of laundry and linen supply. During the conduct and operation of its business, the Respondent annually purchases and causes to be shipped directly into Colorado from points outside the State, linen supplies and other goods, materials, and products valued in excess of \$50,000. Jurisdiction is not contested.

#### II. THE LABOR ORGANIZATIONS INVOLVED

The Unions are, each of them, labor organizations within the meaning of the Act.

#### III. THE UNFAIR LABOR PRACTICES

On June 20 and 26, July 10, 19, and 26, and August 2 and 17, all dates in 1962, officers of and organizers for the Union distributed handbills to Respondent's em-

ployees, principally on the public sidewalk in front of Respondent's place of business. Normally, most of Respondent's employees entered and left their place of employment through one or more of the four doors which fronted on this sidewalk. The distribution of the circulars was conducted in an orderly manner and any trespass on Respondent's property was negligible.

During the June 20 distribution, Harry Zimmerman, Respondent's vice president and general manager, and his two sons, Myron, aged 19, and Jerold, aged 15, stood or walked up and down on the sidewalk outside the plant during most or all of the distribution. The distribution occurred between 3:30 and 5 p.m. as the employees were getting off from work. These same Zimmermans were also present on the sidewalk during the June 26 distribution, as was Ben Elderman, Respondent's president and Harry Zimmerman's father-in-law. It appears that the Zimmermans and Elderman were present on the sidewalk during later distributions also, but the complaint alleges unlawful conduct specifically with respect to the June 20 and 26 and July 29 distributions.

Organizer Fred Jones testified that upon employees being given handbills as they left the plant, Jerold Zimmerman physically "grabbed" some of the handbills out of employees' hands and then tore them up. He was corroborated in this by Organizer Edward Hogan who testified that Jerold ran up and down the street taking handbills out of employees' hands, saying, "Give me that handbill. I want that handbill. You don't want it." One of Respondent's employees testified that Jerold, referring to the handbill she had just received, said, "Can I have it?" whereupon she let him have it. Hogan, corroborated by Organizer Donald Sutton, testified that on July 19, Elderman approached a truckdriver who had just been given a handbill by Hogan, and, saying, "Give me that handbill," took the handbill from the driver. The entrance to the garage fronts on the sidewalk on which the handbills were distributed and is normally used by some employees in leaving the plant, as well as the truckdrivers on entering and leaving the plant.

Zimmerman admitted that he was on the sidewalk outside the plant on occasions when the Union was distributing its pamphlets, and that his two sons were also present on some of these occasions, but testified that his duties normally required his presence outside the plant from time to time, and frequently, for checking the trucks in and out. He also testified that the plant was located in a slumlike district and that there had been pilfering by outsiders, a matter requiring vigilance on his part. He denied that it was for the purpose of observing the distribution of union literature that he was present on the sidewalk during the periods alluded to. Elderman gave similar explanations for his presence outside the plant during some of these distributions. On the entire evidence, I am convinced that the presence of Harry Zimmerman and his two sons and Elderman, during almost the entire periods of the distributions of union literature, on the sidewalk outside the plant, was due only partially to the performance of their normal duties, and that their prime purpose for being outside the plant for such extended period was to observe the distribution of pamphlets by the union organizers. Their testimony would have commanded more credence and been given more weight if they had candidly admitted, as I have no doubt was the case, that they posted themselves outside the plant and remained there beyond the time required for the performance of their duties, for the purpose of observing the distribution of the union pamphlets.

When the four organizers present at the plant on June 20 had finished their distribution of pamphlets, the Zimmermans were on the sidewalk outside the plant watching them as they got into their cars and drove away, and on this or a later occasion Jerold Zimmerman took down the license plate numbers of cars driven by union organizers.

On June 20, soon after the organizers began their distribution of pamphlets, Harry Zimmerman locked the main front door of the plant, the door which some of the employees normally use on leaving the plant, whereupon two of the organizers went around to the alley behind the plant and distributed their literature to some 25 to 30 employees who on this occasion left the plant through its rear doors. Normally, only some five or six employees leave the plant through these rear doors. Whereas normally some 40 to 50 employees leave through the main entrances, only some 18 used these entrances on this occasion. Also on June 20, shortly after Harry Zimmerman had locked the main front door, Myron Zimmerman closed the three overhanging garage doors and these remained closed for 15 to 20 minutes except for being raised on two occasions to allow trucks in and out of the garage area. As previously stated, normally some employees leave the plant through these doors. Finally, the door marked "Employees Entrance" was blocked by Myron Zimmerman shortly after the closing of the main door, and there was evidence that one or more female employees were barred from leaving the plant through this door.

There was also evidence, in large part uncontroverted, that Elderman used offensive language in addressing union organizers, and that Myron Zimmerman, on several occasions during the distribution of union pamphlets, used the loudspeaker located inside Respondent's plant for broadcasting inflammatory antiunion remarks, all plainly heard outside as well as inside the plant.

With respect to the closing of the several doors fronting on the sidewalk while the distribution of union pamphlets was taking place, the Respondent offered various explanations. Harry Zimmerman admitted that he caused the garage doors to be closed on the occasion of the first distribution of union pamphlets, according to him for only some 10 or 15 minutes. His explanation for this action was that he did not know the identity of all the organizers who were distributing pamphlets and that in some instances this distribution interfered with the truckdrivers in the performance of their duties. He testified, and was corroborated by his son, Myron, that the door to the main plant office was locked for a time on June 20 because its controlling mechanism had been broken earlier that day during a rest period. Myron further denied testimony of General Counsel witnesses Fred Jones, an organizer, and Robert L. Hooks, a former employee of the Respondent, that for a time on the occasion of the first distribution of union pamphlets he barred female employees from leaving the plant through the employee's entrance door. These various explanations and denials do not add up to make a convincing defense to the action complained of.

There were only four organizers on hand during the first distribution of union literature and since Zimmerman saw and read at least one of their pamphlets, he could hardly have doubted their identity as union organizers. Further, closing the garage doors was a dubious measure to take if intended to put an end to alleged interference with Respondent's truckdrivers, since the pamphlets were being distributed on the public sidewalk and not on the inside of the garage. If the closing of the door to the plant office was necessitated by damage to its controlling mechanism, and such damage admittedly was not repaired, why did it remain closed for only some 20 minutes on the occasion of the first distribution, and not thereafter? As to Myron's alleged blocking of female employees from egress through the employees' entrance, there is hardly any other acceptable explanation of the failure of a majority of employees who normally made their exit from the plant through this door, to use it on this single occasion. On the entire evidence, I am convinced that the closing of these several means of egress from the plant represented an effort by the Respondent to block or impede its employees in their access to the organizational material being distributed outside the building.

Jerold Zimmerman denied that he snatched any pamphlets from the hands of employees or received any except on request or voluntary action of employees handing them to him. I expect that this personable 15-year old was a little too excited on this occasion to observe all the amenities in receiving and destroying union pamphlets, and may have a less clear recollection of his conduct than those who observed him. I am convinced that he did a little snatching and taking as well as receiving, all under the watchful but not disapproving eyes of Papa. And while he and his brother, Myron, occupied no job status as such which would constitute them supervisors within the meaning of the Act, as sons of the plant manager, acting within the range of his observation and without hindrance from him, they would reasonably be understood by the employees to have his consent and approval in their conduct during the distribution of the union pamphlets. With respect to Myron, who broadcast over the plant's loudspeaker, obviously with Respondent's consent and approval, there can be no doubt of representative status, and to some lesser degree, as observed above, this is true also of Jerold. Elderman's denial that he took a pamphlet from a truckdriver was accompanied by an admission of a conversational exchange with Organizer Hogan, an exchange which would have been meaningless had not Elderman actually taken the handbill. I find that Elderman took the handbill pursuant to his direction to the truckdriver to let him have it.

In summation, I agree with Respondent's counsel that there is no rule of law which required Respondent's officers and supervisory personnel to retreat to their respective offices and pull down the shades during the distribution of union literature. This distribution was taking place on public property, immediately outside the plant, and these officers had a natural and reasonable interest in seeing, within proper bounds, that their property rights were not infringed on or violated, as well as any ordinary citizen's right to observe what was going on in a public place and in the vicinity of business operations. There was nothing in any way clandestine in their observance of the union distribution; there is no evidence that they took down the name of any employee receiving or rejecting union pamphlets or addressed any

remarks to them with respect to their receipt or rejection of the pamphlets. Nor do I see anything improper in the taking of the license plate number on one, or more, of the organizers' cars. In short, if the observation of the distribution of union literature occurring on the public sidewalk stood alone in the evidence, I would find little reason for characterizing this as interference, restraint, and coercion within the meaning of the Act. It did not stand alone.

The closing of the main entrance door and shortly thereafter of the three garage doors and the blocking of the door marked "Employees Entrance" on June 20, all coming shortly after the distribution of union pamphlets began and at a time when employees were beginning to leave the plant, was an unlawful interference with employee rights guaranteed in Section 7 of the Act, not balanced by any considerations of employer rights with respect to protection from abuse of his own property. The closing of these doors, in all probability, was action taken impulsively and therefore without full realization of its implications and consequences, as shown by the brevity of its duration, but its impact was nevertheless registered on the minds of employees seeking egress through these doors, and was not then or thereafter erased by conduct of the Respondent or environmental circumstances. The action of young Zimmerman in taking union handbills from the hands of female employees, without as well as with their permission—a permission which could hardly have been withheld from the son of the plant manager who stood nearby—as well as Elderman's taking a handbill from a truckdriver, also constituted interference with employee rights guaranteed by the Act, for employees may not lawfully be molested in such manner in their access to and receipt of organizational material. While abusive remarks made by Elderman to union organizers, possibly provoked to some degree, and the inflammatory antiunion broadcasts made by Myron Zimmerman over Respondent's loudspeaker, are not alleged to have constituted violations of the Act, such expressions of extreme animus, undoubtedly heard by most or all of the employees in the matter of the broadcasts, contributed to the coercive impact of other conduct alluded to, including the unremitting observation of the distribution of union handbills by Respondents two leading officials. In such a context, it can hardly be doubted that this observation, or surveillance,<sup>1</sup> prolonged beyond any reasonable requirements of normal business operations, restrained employees in receiving, or rejecting, according to their own uncoerced choice, the proffered organizational pamphlets.

It is found that by its surveillance of, and interference with, the distribution of union literature, its molestation of employees in receiving or rejecting such literature, and interference with their freedom of access to the distribution of said literature, the Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, thereby engaging in conduct violative of Section 8(a)(1) of the Act.

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

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.

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. Laundry, Linen and Dry Cleaning Drivers, Local Union No. 905, and Dry Cleaning and Laundry Workers, Local Union No. 304, are, each of them, labor organizations within the meaning of Section 2(5) of the Act.

2. Champa Linen Service Company, an employer within the meaning of Section 2(2) of the Act, is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. By engaging in unlawful surveillance of, and interference with, the distribution of union literature to its employees, the Respondent interfered with, restrained, and coerced its employees in violation 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.

<sup>1</sup> Surveillance," in the sense of "constant guard; close watch," as defined in Webster's New Collegiate Dictionary.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, it is recommended that the Respondent, Champa Linen Service Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Engaging in unlawful surveillance of, and interference with, the distribution of union literature to and among its employees.

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

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Post at its Denver, Colorado, place of business, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of said notice, to be furnished by the Regional Director for the Twenty-seventh Region, Denver, Colorado, shall, after being duly signed by a representative of the Respondent, be posted by the Respondent 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 to insure that such notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for the Twenty-seventh Region, in writing, within 20 days from the date of the receipt of this Intermediate Report and Recommended Order, what steps the Respondent has taken to comply herewith.<sup>3</sup>

<sup>2</sup> 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 Recommendations of a Trial Examiner" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "Pursuant to a Decision and Order"

<sup>3</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

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, we hereby notify our employees that:

WE WILL NOT engage in unlawful surveillance of, nor interference with, the distribution of union literature to our employees, by Laundry, Linen and Dry Cleaning Drivers, Local Union No. 905, and Dry Cleaning and Laundry Workers, Local Union No. 304, or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the 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, and to engage in collective bargaining or other mutual aid or protection.

CHAMPA LINEN SERVICE COMPANY,  
Employer.

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

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

Employees may communicate directly with the Board's Regional Office, 609 Railway Exchange Building, 17th and Champa Streets, Denver 2, Colorado, Telephone No. Keystone 4-4151, Extension 513, if they have any question concerning this notice or compliance with its provisions.