Board proceedings. Furthermore, the Board's Advisory Opinion procedures [7] are sanctioned under Section 6 of the Act, wherein the Board is authorized "to make . . . such rules and regulations as may be necessary to carry out the provisions of this Act."

Accordingly, the parties are advised under Section 102.103 of the Board's Rules and Regulations, Series 8, as amended, that, on the facts here present, the Board would assert jurisdiction over the operations of the Employer with respect to labor disputes cognizable under Sections 8, 9, and 10 of the Act.

MEMBER RODGERS took no part in the consideration of the above Advisory Opinion.

[7] See Section 102 98 through Section 102.104 of the Board's Rules and Regulations and Section 101 39 through Section 101 41 of the Board's Statements of Procedure.

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**Extruded Alloys, Inc. and Lloyd J. Scheid *and* Carolyn J. Meadows.** *Case No. 25–CA–1465. March 26, 1963*

## DECISION AND ORDER

On November 27, 1962, Trial Examiner William R. Ringer issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint, and recommending that the complaint be dismissed in its entirety, as set forth in the attached Intermediate Report. Thereafter, the General Counsel 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 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 General Counsel's exceptions and brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

[The Board dismissed the complaint.]

### INTERMEDIATE REPORT

#### STATEMENT OF THE CASE

Upon a charge filed October 13, 1961, and an amended charge filed November 20, 1961, by Carolyn J. Meadows, an individual, the General Counsel of the National Labor Relations Board, herein called the Board, by the Acting Regional Director for the Twenty-fifth Region, issued his complaint dated December 1, 1961, against Extruded Alloys, Inc., herein called the Company, and against Lloyd J. Scheid, individually. The Company and Scheid are herein referred to collectively as the

Respondent. The complaint as amended at the hearing alleges that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the National Labor Relations Act, 61 Stat. 136, herein called the Act. The Respondent's answer to the complaint denies the allegation of statutory violations therein. Copies of the complaint, the charges, and a notice of hearing were duly served upon the parties.

Pursuant to notice a hearing was held at Bedford, Indiana, on February 19, 20, and 21, 1962, before Trial Examiner William R. Ringer. The General Counsel and Respondent were represented by counsel. Full opportunity to be heard, to examine, to cross-examine witnesses, and to introduce evidence was afforded all parties. After the close of the hearing counsel for the Respondent filed a brief which has been duly considered. Upon the entire record in the case, and from my observation of the witnesses, I make the following:

## FINDINGS OF FACT

### I. PERTINENT COMMERCE FACTS, FINDINGS, AND CONCLUSION THEREON

The complaint alleges and the answer admits that the Company is an Indiana corporation engaged at Bedford, Indiana, in the manufacture of aluminum products; that during the 12 months preceding issuance of the complaint the Company manufactured, sold, and shipped from its factory at Bedford products valued in excess of $50,000 to points outside the State of Indiana, and in the same period purchased goods and materials valued in excess of $50,000 which were shipped to its plant directly from points outside the State of Indiana. From these facts I find and conclude that the Respondent is engaged in commerce within the meaning of the Act and that the purposes of the Act will be effectuated by the Board's assertion of jurisdiction over its business in this case.

### II. THE LABOR ORGANIZATION INVOLVED

Local 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Teamsters, is a labor organization admitting to membership employees of the Respondent.

### III. THE ALLEGED UNFAIR LABOR PRACTICES, FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

Specifically the complaint alleges that on or about August 1, 1961, the Respondent laid off 20 named and other unnamed employees and on or about September 25, 1961, discharged all of these employees, and that both these actions were in reprisal for their union activities and to discourage employee support for the Teamsters. By this conduct and its asserted refusal to recall or reemploy the foregoing employees Respondent allegedly violated Section 8(a)(3) of the Act. At the hearing the complaint was amended to allege that the Respondent violated Section 8(a)(3) of the Act by its curtailment of work of employees Carolyn J. Meadows and Charles Alhorn on and after June 15, 1961, and May 1961, respectively, and that these actions also were motivated by the foregoing unlawful reasons. A further amendment alleges that the Respondent for the same reasons engaged in unlawful discrimination against employee Darrell May on a date unknown by refusing to grant his request for time off from work to attend a sick child. The Respondent denies all these allegations and affirmatively defends the August and September layoffs and discharges on grounds that they were lawfully motivated by business necessities wholly unrelated to the union activities of employees.

The General Counsel's allegations are supported by testimony of numerous witnesses to show the Respondent's unremitting hostility to the unionization of its plant and the words and deeds in furtherance of this objective by its president, Lloyd Scheid, named in this proceeding as a Respondent. As related by the General Counsel's witnesses this conduct had its beginning in or about December 1960 at a time when the Teamsters were engaged in a campaign to secure certification through a Board election as collective-bargaining representative of the Respondent's employees.

Pursuant to a representation petition filed by the Teamsters on December 5, 1960, a consent election was held under the auspices of the Regional Director for the Twenty-fifth Region on December 16, 1960, among the Respondent's production and maintenance employees to determine their choice of bargaining representative. Appearing on the ballot with the Teamsters was the United Steelworkers of America, AFL–CIO, which had intervened in the proceeding. The tally of ballots showed that of 68 eligible voters 18 had voted for the Teamsters, 4 for the Steelworkers, and

43 against both labor organizations. On December 22, the Teamsters filed objections to conduct by Scheid and the Respondent's supervisors which coerced employees and prevented the holding of a free election. On January 26, 1961, the Regional Director issued a report finding merit to the objections and ordered the election set aside. A second election was held on February 7, 1961, with only the Teamsters appearing on the ballot. The tally of ballots showed that of 65 eligible voters 23 favored the Teamsters with 39 in opposition. On January 5, 1962, the Aluminum Workers International Union, AFL–CIO, filed another petition for a representation election. No election pursuant to this petition had been held before the hearing in this case.

Among the objections filed by the Teamsters to the December 16, 1960, election was one ascribing to Scheid's threats to employees that if the Teamsters prevailed he would move the plant to another part of the country or would curtail its operations. The coercive impact of such threat on the Respondent's employees need not be elaborated. The General Counsel has not submitted a brief rationalizing the force of this conduct in the case which occurred more than 9 months before the alleged discriminatory mass layoffs and discharges of August and September 1961. Evidently the General Counsel is seeking to establish that Scheid's attitude in December 1960 remained unchanged in August and September 1961, and that this drastic action of these months was consistent with his earlier threat to move the plant and to avoid its unionization. I shall not encumber this report with a needless recitation of all the testimony by the various witnesses relative to Scheid's remarks on this subject for it is conceded that Scheid had told his supervisors during the course of the aforementioned election campaigns that he preferred to shut the doors of the plant and would go out on his own if the employees voted for a union. I find no reason in this record for belief that Scheid's frame of mind was different in August and September 1961 than it had been at this earlier time.[1]

More to the point in this case and deserving the greater attention is evidence that Scheid on several occasions had expressed his intent to get rid of the nucleus of union supporters in the plant which he believed was to be found in his complement of female employees, and had proposed accomplishing this result by replacing them with male employees unsympathetic to unionization. Philip Vadeboncoeur had been the Respondent's plant manager from March 15 to July 24, 1961. He testified that in the latter part of March he had discussed with Scheid the discharge of two employees, Bowman and Pool, who had filed charges of discrimination against the Company in violation of Section 8(a)(3) of the Act, and that Scheid had noted they had turned to the Teamsters for help in filing their charges. Thereupon, according to Vadeboncoeur, Scheid remarked "we had and still have twenty or twenty-one pro-union people in the plant and that it was up to us as good managers to get rid of them." Vadeboncoeur further testified that in the latter part of June he conferred with Scheid about the advantage of performing certain plant operations with men rather than the women classified as rackers then employed by the Respondent. Vadeboncoeur assertedly maintained that there were no significant differences in the effectiveness of men or women in these operations but conceded that women rackers required the employment of more "indirect labor." The significance of this term will be explained later. Scheid inquired about the possibility of replacing all the women with men, and Vadeboncoeur insisted that some women would have to be retained. Thereupon Scheid declared that if he could get rid of all the women 90 percent of his problems would be solved and that this would "also help eliminate some of the pro-union people, because in this particular group of women were the primary motivating forces towards getting a union into Extruded Alloys." It was then agreed to eliminate all the female rackers and packers except two in each category. Scheid indicated that by this action he would get rid of employee Reba Wessell who was the most active union protagonist in the plant. In this connection Scheid mentioned the names of five other women employees whom he characterized as "pro-union." In the course of the discussion Vadeboncoeur raised a question about a possible violation of the Act in the proposed termination of the women and Scheid undertook to consult his attorney by telephone. August Weisling, the Respondent's vice president and secretary-treasurer, was directed to call the Respondent's attorney by telephone and Scheid joined in the conversation on an extension. Vadeboncoeur heard Scheid explain that there was a job in the plant which "definitely required male employees to handle, women could not handle it. And that

[1] There is credited testimony that Scheid had declared in the spring of 1961 he would move the plant to avoid reemployment of two discharged employees who had filed unfair labor practice charges with the Regional Director if the Board were to compel their reinstatement.

in procuring male employees that he saw a chance to get rid of the women employees in the plant." Upon conclusion of the telephone discussion Scheid reported to Vadeboncoeur that the attorney had advised that there would be no infraction of the law if termination of the female employees were accomplished on a strict seniority basis. Thereupon Elwood Martin, the Respondent's personnel manager, was summoned to the office and Scheid instructed him immediately to hire 12 young men after a discreet investigation to ascertain whether they or any members of their families had any "pro-union affiliation." Vadeboncoeur testified that before he terminated his employment with the Respondent on July 24, 1961, all these male employees had already been hired.

Cecil Wiggins had worked for the Respondent as a foreman from November 1960 until his termination on January 12, 1961. He testified concerning various conversations with Scheid in which the latter expressed his opposition to the unionization of the plant and directed him and other foremen to curb union activities. He related that in December 1960, before the December 16 election, Scheid had spoken in his office to a group consisting of Wiggins, Day Shift Supervisor Braun, Foreman Brent, and Acting Superintendent Sanders. According to Wiggins, Scheid had expressed his resentment over the union activities in the plant and had said, "I am looking to you fellows, as supervisors, to keep it out." When asked how this was to be accomplished, he directed them to "promise them anything, but keep it out." He added, "if this doesn't work, I will fire the whole damn crew and hire myself all new people because I have a stack of applications over there I don't have to put up with this stuff." In this same period, Wiggins overheard Scheid tell Foreman Sam Foddrill, referring to the Union, "he would fire the whole damn bunch, and he would lock the door and go outside and get himself a job, that he was a $50,000 a year salesman." Wiggins recalled that about this same time he participated in another conversation with Scheid and Foddrill. Referring to Scheid's anger on this occasion, Foddrill had said to Wiggins "these girls are driving him crazy." Thereupon, Wiggins suggested replacing the women with men, but Scheid told him "that would never do, I wouldn't hear that at all."

Kenneth E. Clark had worked as a foreman for the Respondent when he quit in September 1961. He testified that before the December 16 election Scheid had questioned him concerning his union views and those of the men under him and the union attitudes of certain female employees. More significantly, according to Clark, Scheid had then said "If he found out any persons that were, did have, or would have anything to do with the union, that they wouldn't be around there very long, they would be going out the front door."

Thelma Priddy is one of the employees who was laid off on August 1, and discharged on September 25, 1961. She testified that before the December 16 election she heard employee Joetta Moore assure Scheid that despite prevalent rumors she was not working for the Union, and that Scheid told her not to worry because he knew who had signed union cards and who was working for the Union and that "he would get rid of them no matter how long it took." Joetta Moore is one of those who was laid off on August 1, and discharged on September 25. She testified that in the presence of two or three other employees she had told Scheid on December 17, 1960, that she had not been the union organizer as rumored. Whereupon, he told her not to worry about it, that he knew she was not, "that he knew who was in, for the union, and he would settle, or deal with those later."

Hattie Logie was also laid off on August 1, and discharged on September 25. She testified that in a conversation with Scheid in November 1960 she had volunteered the information she had signed a union card and that he had told her he knew who had signed cards but that if he were to fire all who did he would not have any workers in the plant. Logie related that on February 7, 1961, the day before the second election, the aforementioned Sam Foddrill said to a group of employees of which she was one, that "after the union talk died down that Scheid was going to have to get rid of about 13 of them around there."

Betty Lessig, who was laid off on August 1 and discharged on September 25, 1961, testified that at sometime between the December 16 and February 7 elections she heard Scheid tell a group of employees that "he knew the people as individuals that voted for the union, and he would get rid of them."

Gail Bowman had been discharged by Respondent on February 24, 1961, and had thereafter filed a charge with the Regional Director claiming that the Respondent had violated Section 8(a)(3) of the Act by its action against him. This charge was subsequently disposed of by settlement in which the Respondent did not acknowledge any liability. Bowman testified that in February 1961 he had heard aforementioned Superintendent Sanders tell an employee whose name Bowman did not know, "that he knew who 18 of the people were that voted for the Union and as soon as they

found out who the other 5 were they were going to open the door and kick them all out."

Horace Hamilton had worked for a period of 35 days for the Respondent from a date in the latter part of June 1961. He testified that on August 1, 1961, Foreman Lovelass told employee Harold Sanders in his presence, referring to the layoff of that day, that four or six of the oldest female employees were being retained and that after 30 days the layoff of all the female employees would be permanent "and then the remaining women will be laid off and that way we will do away with all the women in the plant." Hamilton further related that Lovelass had said on this occasion that all these employees could not be laid off at once "because of the law which the Labor Relations Board had, if they did they would be in a mess."

Before proceeding to other aspects of the case it is here appropriate to note that I credit the foregoing testimony by the aforementioned witnesses. Apart from the favorable demeanor impressions of these witnesses while testifying which influenced my belief they were truthful, there is no convincing refutation of the statements ascribed by them to Scheid and the Respondent's supervisors. Superintendent Sanders and Foreman Lovelass were not even called to testify. Foreman Foddrill was a witness for the Respondent but was not interrogated about the remarks attributed to him. Scheid's testimony may be regarded as a denial that he had said what was attributed to him, but these denials were indirect and lacked force. In crediting Vadeboncoeur I took account of his admitted interest in the outcome of the case. After carefully weighing all the circumstances I am satisfied, despite his unconcealed animus toward Scheid for requesting his resignation which he deemed unjustified and his active support of the General Counsel to help secure a finding of statutory violation against Scheid, that Vadeboncoeur was a truthful witness. Even if he were "out to get" Scheid, which he admitted was his feeling, it was his intention, as I see it, to harm Scheid only with the truth and not otherwise. Similarly, I credit Wiggins' although he, too, had strong animus against Scheid for his demotion from foreman and his ultimate termination.

Thus, on the basis of these credibility resolutions I find that up to and at the time of the August and September 1961 layoffs and discharges Scheid was predisposed to defeat further attempts at unionization by weeding out the female employees who he believed were the main source of union support in the plant. I do not believe, however, that the layoffs and subsequent discharges resulted from such motivation, but am convinced that these actions were impelled by lawful reasons related exclusively to economic necessity.

The Respondent's operations consist of the fabrication and coating by chemical and mechanical processes of aluminum parts ordered by various industrial customers. These parts are produced only on customer order. Nothing is fabricated and stored in inventory. If there are no current orders to be completed there is no work for the Respondent's employees.

In the performance of its operations the Respondent before August 1961 employed both men and women. Essentially, the female employees, working in two shifts, were employed in the anodizing and packing departments where they were classified as rackers and packers. One woman worked in the fabricating department operating a drill or punch press. Before 1960 all rackers, numbering 12 per shift, were women. There was one male employee called a setup man who worked with these women. Only women, of whom there were 5 per shift, worked in packing. Except for two senior female rackers and two senior female packers all women employed by the Respondent on August 1, 1960, were laid off that day. The notice to them of this action was posted in the plant that day and given orally by Scheid. In substance the notice and his comments explained that the layoffs were compelled by the replacement of women by men who would be able to perform the more arduous tasks involved in the Company's new operational procedure. The notice also stated that two female rackers and two packers were being retained on a departmental seniority basis and that if additional female employees were needed as the new program developed they would be recalled in accordance with their departmental seniority. Finally, the notice provided that if the Company's new operations were successful that all employees not recalled after 45 days would then receive notification of their permanent terminations. Five female rackers were recalled on August 7 and two packers were recalled on August 9, 1961. In each case the recall was on the basis of departmental seniority. All others laid off on August 1 received letters dated September 25 informing them of their permanent termination.

Scheid's testimony and supporting documentary evidence reveals that the Company had sustained a financial loss from its inception in 1959 to August 1961. The Company's financial condition had been further aggravated by loss of its credit standing with its bank and the necessity of obtaining capital from other sources which charged a high interest rate. To alter the picture a change in the Company's operations had

to be made. Accordingly, in May 1961 Scheid hired a salesman, Sorenson, with the expectation that he would bring the Company business from the building industry. One of the customers in the building industry with whom the Company established relations was Klemp Corporation of Chicago from whom the Respondent obtained an order before August 1, 1961, for the anodizing of a quantity of outside architectural gratings. These gratings were approximately 13 by 4 feet in size and weighed about 300 pounds. To anodize them required first that they be lifted and attached to racks which held the grates in position as they were transported to the anodizing tank and immersed in the chemical solution. This racking procedure involved the kind of work which had previously been performed by female rackers working with extruded parts of manageable size and weight. It was Scheid's considered judgment that these women could not perform the job of racking the Klemp gratings and that men had to be substituted for them. He so testified and in this respect was supported by Vadeboncoeur who, as noted, was the General Counsel's witness and admittedly hostile to Scheid. Vadeboncoeur admitted that he had discussed with Scheid the possibility of employing a predominantly male force of rackers in place of women, particularly in view of the expected Klemp business, and that he had believed that "it was inevitable that it would have to take place over a period of time." The Company actually began processing the Klemp gratings in mid-August 1961 with an all male second shift of rackers under the personal charge of Scheid who was so deeply concerned that he took time from his executive responsibilities to assure the success of the venture.

While the Klemp business eventually petered out because of that concern's failure promptly to pay its bills, the Company's orders for extrusions used in the building industry increased substantially after August 1961. Thus, the Company statistics show that before then the high point in the production of these parts was in April 1961 when 108,150 pounds were shipped to customers. In July 1961 the shipment of building parts totaled 101,891 pounds. In August there was a jump to 168,717 pounds and for the balance of the year the monthly shipments ranged between 145,000 to 200,000 pounds. The anticipated increase in this business was also discussed before August 1961 by Scheid and Vadeboncoeur. The latter acknowledged that with more building orders to fill there would be a corresponding increase in the handling of larger and heavier parts by the female rackers and packers. He conceded that the physical tasks of the packers would become harder and that some would be too difficult for women to perform. Thus the building extrusions which ran from 18 to 21 feet in length when taped and packed in bundles would weigh from 125 to 250 pounds. Vadeboncoeur testified that these bundles were too heavy even for two girls to lift and that he had ordered them not to make the attempt. This necessitated that male employees working in other departments be taken from their duties and brought to the packing department to do the heavy lifting. This is an example of the "indirect labor" referred to earlier in this report which had to be utilized in connection with the employment of female workers. Vadeboncoeur agreed that the inability of the female packers to lift these heavy bundles was a valid argument for replacing them with men and that he had discussed this with Scheid before August.

Again, with respect to the racking operations performed by women before August 1961, the evidence of several witnesses, particularly Scheid and Vadeboncoeur, is in agreement that from time to time assistance had to be given to the women both in transporting carriers from the storage area to the place where the racking was done and then from there to the anodizing tanks. A loaded carrier would sometimes weigh as much as 1,600 pounds and four women would have to team up and move it to the tanks and this they could do only with difficulty. At times it was necessary for the setup man, male employees from the fabrication department, and even Vadeboncoeur himself to get the carrier moving. This, too, he conceded, was "less than completely satisfactory utilization of female personnel in the racking department." He recognized that the Company's operations "would not support any additional indirect labor" and that "we had to get along as best we could" which necessarily meant interrupting his own duties and those of other male employees to help the women. This was another basis for his belief expressed to Scheid of the inevitability that men would have to replace the women.

As to the female operator of the punch or drill press, Scheid testified that she also needed indirect labor to bring her material and to remove it after completion of her work. In addition, there were five or six daily breakdowns on her machine which required the assistance of a male employee who also had to bring heavy dies to her machine and to install them and make necessary adjustments. During intervals when the press was being repaired or adjusted the female operator had no alternative but to stand idly by. The male employee who replaced her is now self-sufficient and performs all these tasks himself with no lost idle time by anyone.

Scheid claimed that an additional factor which led to the replacement of the women was his desire, not only to eliminate the interruption of work by male employees to provide indirect labor for the women, but also to enable foremen and management personnel to concentrate on their supervisory and management functions without the interruption of manual labor. This he felt would contribute to greater efficiency in the plant.

In deciding to effectuate the Company's reorganization and shift from female to male employees, Scheid had some reservations as to the success of his actions. He watched the plant operations closely from the moment the new plans were put into practice and soon was convinced that some of the laid-off female employees could be recalled to duties which were within the limits of their abilities and which they could perform without assistance. Accordingly, seven women were recalled in about a week and these were selected on a seniority basis. As evidence that no union considerations were involved in the layoff or recall of female employees the Respondent emphasizes what the record shows that 13 of the laid-off employees had signed cards for the Teamsters and that of the 7 employees who were recalled 5 had signed such cards. One of them was Reba Wessell who, as shown by the record, had been the leader and most active female supporter of the Teamsters in the plant. When, a few days after her recall, Wessell had become disturbed with certain conditions in the plant, she was encouraged by Scheid to continue her employment and not to quit, notwithstanding her known union sympathies.

As I stated earlier, I am persuaded that Scheid was lawfully motived by the reasons he gave at the hearing for the layoff and discharges of the Respondent's female employees. I credit his testimony in these respects especially as it is so consistent with the evidence of his greater detractor in this case, Vadeboncoeur. Scheid's testimony was all the more believable because of its plausibility. It seems clearly obvious that the situation in the Respondent's plant before and at the time of the August 1961 layoffs demanded the very action which Scheid took. While the success of the reorganization is not dispositive of the issue, it does contribute to the logic of the action and lends to the acceptance of Scheid's explanation. The Company's statistical analysis of its anodizing costs for 1961 reflect the greater efficiency of the Respondent's operations after the changes despite increases in labor costs due probably to the higher wages paid male employees. Thus, during the months from January to July inclusive, the average productivity figures per shift were $651. For the remaining months of that year this average figure was raised to $795. I am satisfied that this improvement was the objective sought by Scheid and that union considerations were not therein involved.

Although one of the recalled female packers, Betty Neal, testified categorically that the female employees on her shift after her recall did all the packing operations which they had formerly done, I do not regard this testimony as indicative of the fact that the male employees who replaced women were brought in for reasons other than efficiency. Neal conceded that she does not pick up completed bundles and take them to the shipping department. Nor does she stack the carts with bundled materials. All this heavy work is done by the male replacements who now work in the department without the necessity of bringing in employees from other departments for these tasks. Recalled female rackers Betty Kendall and Marguerite Cain also sought by their testimony to establish that things are still the same for female employees in the racking department despite the reorganization. From their own testimony this is evidently not so, for the setup man and the supervisor who formerly had to do the heavy pushing of racks from storage and from work areas to the anodizing tanks no longer have to stop their regular duties to perform these tasks. Now this work is done by male rackers in the department. Thus, the testimony of these witnesses serves to confirm that the self-sufficiency objectives sought by Scheid were accomplished by the reorganization, and that he was not motivated in his actions by unlawful considerations.

The allegations that the Respondent violated Section 8(a)(3) of the Act by deliberately curtailing the work of Carolyn Meadows and Charles Alhorn to induce them to quit their jobs are mainly supported by the testimony of Vadeboncoeur. Concerning Alhorn, Vadeboncoeur related that "at the end of the second week of May we engaged in a campaign to permit him to get enough hours per week to prevent him from drawing unemployment and still not take home a full week's pay, and thus hoping to, in light of low income, why he would become disgruntled and leave the organization." This campaign, Vadeboncoeur testified, went on for 3 weeks and ended at that point, because of an increase in rack building work in which Alhorn was engaged which necessitated giving him full employment. Alhorn did not quit and is still employed by the Respondent. According to Vadeboncoeur, Scheid had told him Alhorn was prounion and should be watched and that he should try to get

rid of him. Vadeboncoeur had advised Scheid in May when the production backlog had dropped that he would try to reduce indirect labor costs which necessarily involved cutting cost of rack repair. Because there was also a program for replenishment of usable racks he explained to Scheid that he could not dispense entirely with Alhorn's services. However, by cutting his weekly hours to 16 or 24 there would be both a saving for the Company of indirect labor costs and Alhorn would be harassed to the point where he might quit. Scheid replied that "it would be nice to be able to lay off Alhorn for good, and then we would have another prounion individual out of the plant." Vadeboncoeur testified that Vice President Weisling was present during this latter discussion.

Weisling was called as a witness by the Respondent but was questioned concerning the discussion relative to Alhorn. Scheid, who testified at great length, was also not questioned about the conversation regarding Alhorn with Vadeboncoeur as described by the latter. Thus Vadeboncoeur's testimony concerning his conversations with Scheid are unrefuted.

In March 1961 Alhorn had transferred from his job in fabrication as a buffer to work in rack repair where he started with the least departmental seniority of the three employees on his shift. So far as the record shows such seniority governed the assignment of work in the various departments of the plant. Up to the week ending May 14, 1961, Alhorn, according to the Respondent's records, worked the same number of hours weekly as the other two men on his shift. During the 3-week period starting with the pay week ending May 21 Alhorn worked successively 16, 16, and 8 hours. Thereafter he resumed a 40-hour week. In the foregoing 3-week period the man first in seniority worked successively 38.5, 27.1, and 32 hours. The man second in seniority worked 38.5, 10.1, and 24 hours. Thereafter, these employees like Alhorn, resumed full 40-hour weeks. These statistics and Vadeboncoeur's credited testimony, do not permit a finding that Alhorn was denied more work than he would have received absent discrimination for in one of the weeks in question he received approximately 6 hours more work than the second man in order of seniority As each of the two senior employees on Alhorn's shift worked less than 40 hours weekly, theoretically he could, in accord with the prevailing seniority system, have been assigned even less hours than he actually worked. My impression of the situation is that Vadeboncoeur had not undertaken to harass Alhorn by depriving him of hours of work, but instead intended to give him extra hours of work so that his earnings would be too high to permit him to claim unemployment compensation from the appropriate governmental agency and thereby to compel him to quit. As I find there was no deprivation of employment, and Alhorn did not quit it follows that the allegation of discrimination against him in violation of Section 8(a)(3) of the Act is not sustained.

Concerning Meadows, Vadeboncoeur testified he had explained to Scheid "placing her in the role of an alternate in the racking department, and through this maneuver to harass her by giving her 2, 2-and-a half day's work a week and thereby trying to get her disgruntled or unhappy with the amount of money that she was making at the plant and thereby leave." According to Vadeboncoeur, Scheid replied, "he was glad to know it." Scheid denied that he had participated in any action deliberately to cut Meadow's hours of work or that he knew of any intention by anyone to curtail working time. I credit Vadeboncoeur's account of his conversation with Scheid. I nevertheless do not find record support for a conclusion of discrimination against Meadows in the manner alleged. Meadows had worked as a night shift racker and pursuant to her request had been transferred to a job as alternate racker on the day shift. While she believed that this change occurred on May 10, 1961, she had signed a Company "Request to Bump" form on April 4, 1961, for the foregoing transfer. Whatever the date when she started as an alternate racker the form she signed provided that she would be entitled to work if there were vacancies on the first shift due to the absence of regular employees in the racking or packing departments. Her time record in evidence shows that between the pay periods ending April 16, and August 6, 1961, she worked 467 3 hours as compared with 490.4 hours worked by the employee on her shift who was ahead of her in seniority. The comparison of the weekly hours worked by Meadows and by that same employee shows no marked difference during any sustained period sufficient to reveal a plan of discriminatory curtailment of Meadows' work. Whatever may have been Vadeboncoeur's intention regarding Meadows, I am satisfied that it was not implemented in such manner as to sustain the allegation of unlawful discrimination with respect to her.

Finally, there is the allegation that the Respondent discriminated against employee Darrell May by denying his request for time off from work to attend a sick child. The credited testimony of his foreman, Foddrill is that he denied May's request for

time off from his night shift so he could be rested for a national board meeting the next morning. May later informed Foddrill his wife had called to tell him of his baby's illness. Foddrill, who needed his services that night, told May to bring back a doctor's certificate upon his return from home where he went for his evening meal. May reported back 18 minutes late without a certificate and worked the remainder of his shift. He was not reprimanded for coming back late. There is no suggestion in the record that Foddrill denied May's request for unlawful reasons. May's father is an official of a union which had nothing to do with the Respondent's employees. It would be sheer speculation to find that for this reason he was denied time off. The allegation of discrimination against him is not sustained.

In sum, while the record is replete with evidence of the Respondent's hostility to unionization and its coercive efforts to prevent the Teamsters or the Steelworkers from winning the December 1960 or February 1961 elections I am convinced, find, and conclude that the record does not preponderate in favor of a finding that the Respondent committed any of the unlawful actions described in the complaint. I therefore recommend dismissal of the complaint in its entirety.

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## Sohio Chemical Company, Acrylonitrile Plant *and* Oil, Chemical and Atomic Workers International Union, Local 7-626

## Sohio Chemical Company, Nitrogen Plant *and* Oil, Chemical and Atomic Workers International Union, Local 7-626. *Cases Nos. 8-CA-2682 and 8-CA-2683. March 26, 1963*

### DECISION AND ORDER

On August 14, 1962, Trial Examiner Stanley Gilbert issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, but recommending that no remedial order issue, as set forth in the attached Intermediate Report. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended dismissal of these allegations. Thereafter, the General Counsel filed exceptions to the Intermediate Report together with a supporting brief, and the Respondent filed a brief.

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

[The Board dismissed the complaint.]

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[1] Contrary to our dissenting colleague, the issue here is not whether the Union had a statutory right to grieve, but whether the Union had a right to invoke the grievance procedure *set forth in the contract* between the Union and the Respondent Company. Everyone, including our dissenting colleague, seems to agree that the Respondent was not required "to deal with such grievances through the grievance procedure." Yet what is overlooked by our dissenting colleague is the fact that the Union here sought to process the grievances *under the contract.* Accordingly, this decision does not represent a departure from established precedents, and we also believe that it will promote rather than discourage collective-bargaining practices. The Union's presence at later stages in the