

organizations, to join or assist the above-named labor organization, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

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

TIDEWATER EXPRESS LINES, INC.,
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, Sixth Floor, 707 North Calvert Street, Baltimore, Maryland, 21202, Telephone No. 752-8460, Extension 2100, if they have any questions concerning this notice or compliance with its provisions.

**W. Ralston & Co., Inc., and Technical Tape Corporation and
Local 145, International Display and Miscellaneous Workers
Union, AFL-CIO. Case No. 22-CA-1408. June 13, 1963**

DECISION AND ORDER

On April 16, 1963, Trial Examiner William J. Brown 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.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Leedom, Fanning and Brown].

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

¹ We agree with the Trial Examiner that the record supports the conclusion that the Employer had knowledge of Zdep's union activities; indeed, the record gives stronger support to this conclusion than was indicated by the Intermediate Report. Thus, in finding that the Employer was aware of Zdep's support of the Union, we find the following facts to be especially significant: (1) The small number of employees (47) at the plant; (2) the fact that Zdep was active in the Union's drive to organize the plant; (3) the timing of the discharge, which took place the day after Slater, the plant manager, received the Union's representation petition; (4) Zdep's strong defense of the Union's right to file the petition when Slater criticized the action in Zdep's presence; (5) Slater's statement to Zdep when he discharged Zdep: "Let's see what the Union can do for you now"; and (6) the pretextual nature of the discharge. As to this last factor, although the Employer claims that Zdep was fired because he failed to complete production reports, it is clear from the record that the operators were primarily responsible for recording this informa-

ORDER

The Board adopts as its Order the Recommended Order of the Trial Examiner.²

tion and, if they failed to do so, there was no way by which Zdep could obtain it. Furthermore, the record shows that Foreman Geipel, who was the supervisor on the night shift and who also was responsible for seeing that operators recorded the necessary information, was never reprimanded although operators under his supervision did not record information which the Employer considered to be essential.

²The Appendix attached to the Intermediate Report is amended by substituting the following immediately below the signature at the bottom of the Notice:

NOTE.—We will notify the above-named employee if presently serving in the Armed Forces of the United States of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

This proceeding arises under Section 10(b) of the National Labor Relations Act, as amended, hereinafter sometimes called the Act. It was initiated by a charge filed November 1, 1962, by the above-indicated Charging Party, hereinafter sometimes called Local 145 or the Union. The complaint was issued by the General Counsel of the National Labor Relations Board, acting through the Regional Director for the Twenty-second Region, on December 21, 1962. It alleged, in addition to jurisdictional matters, that the above-indicated Companies, constituting a single employer, engaged in unfair labor practices within the scope of Section 8(a)(1) and (3) of the Act by warning and threats to employees in connection with their union activities and by discharging employee John Zdep on or about November 1 because of his union or concerted activities.

The hearing on the issues raised by the complaint and Respondent's answer was held before Trial Examiner William J. Brown at Newark, New Jersey, February 4-5, 1963. The parties were allowed full opportunity to present evidence and argument on the issues. Subsequent to the hearing briefs were received from the General Counsel and the Companies. They have been fully considered.

Upon the entire record herein and on the basis of my observation of the witnesses, I make the following:

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF RESPONDENT

As appears from the complaint and answer and from a stipulation entered into at the outset of the hearing, W. Ralston & Co., Inc., and Technical Tape Corporation constitute a single employer, hereinafter sometimes referred to as Respondent. They are corporations organized under the laws of the State of New York, maintain their principal office at New Rochelle, New York, and are engaged in the manufacture of industrial adhesive tape and related products. During the year preceding the issuance of the complaint Respondent manufactured products valued in excess of \$500,000 of which it shipped products valued in excess of \$50,000 in interstate commerce from New York and New Jersey to other States of the United States. It appears from the evidence and Respondent admits that it is and has been at all material times engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that the assertion of the Board's jurisdiction is warranted.

II. THE LABOR ORGANIZATION INVOLVED

It appears from the evidence, including a stipulation of the parties entered into at the outset of the hearing, that Local 145 is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Synoptic view; introduction to the issues*

This case is concerned with occurrences at Respondent's Old Bridge, New Jersey, manufacturing facility in the fall of 1962. At all material times John Slater has

been the plant manager in charge of Respondent's operations at Old Bridge. Jack Lulla, a vice president of Respondent with his office at the New Rochelle headquarters, has been acting director of manufacturing since sometime about the end of October 1962. He was in charge of quality control throughout Respondent's seven manufacturing facilities during the 6-month period prior to November 1962. During the last week of October 1962, Harvey Wacks, previously a group leader in the New Rochelle laboratory, became acting director of quality control.

At the Old Bridge plant, the production facilities operate on a three-shift basis—7 a.m.—3 p.m., 3 p.m.—11 p.m., and 11 p.m.—7 a.m. John Zdep was hired for work at Old Bridge on October 10, 1960. At that time the plant superintendent was Pat Pacyna; he hired Zdep for quality control work on a weekly rotating, night-shift basis. Zdep's starting pay was \$1.60 per hour. He received pay increases bringing his pay up to \$1.76 per hour by January of 1962, at which time he was transferred to quality control on the day shift following the departure of Louis Vetro who had been in general charge of quality control at the Old Bridge facility and who had trained Zdep in quality control.

In February 1962, Pacyna was transferred to another plant and Slater came to Old Bridge as plant manager. In the period between February and June or July 1962, Zdep received pay increases, both on a general basis and on an individual or merit basis; notwithstanding the increases, he repeatedly pressured Slater for more money contending that the nature of his assignments should command a higher rate than that given him. Although Zdep throughout his employment was continuously being increased, his rate at all times remained substantially below that paid operators of the production machines. Vetro had received an operator's rate while he had been in charge of quality control, the justification therefor being that prior to his quality control assignment he had been an operator.

Commencing in June of 1962 and continuing through the early fall, Respondent's New Rochelle headquarters stepped up its concentration on quality control improvements at Old Bridge. Technicians Kraft and Balato came to Old Bridge and revised quality control reporting procedures. Later in the summer, Lulla had occasion to warn Zdep by telephone that Respondent was insisting upon improved reporting procedures in connection with quality control operations. Also at about the same time Slater assigned additional office duties to Zdep, including the entry in Slater's personal master list of some of the items which were contained in reports prepared for transmission to New Rochelle, copies of which were kept in the Old Bridge quality control files.

In the early fall of 1962, the Union commenced organization among employees of the Old Bridge plant; Zdep assisted in the organizational efforts by passing out cards throughout the plant. On October 13 he signed a card and thereafter attended union meetings. On one occasion in early of mid-October Zdep asked Slater what he knew about the Union. According to Zdep, he received the reply that if the Union came in the plant would be moved to Carbondale. Slater, according to his account, merely said that he knew about the Union and could do nothing about it.

On October 26, the Union filed a representation petition and the Regional Office mailed a copy to the Company. On the morning of Tuesday, October 30, the petition came to Slater's office and, according to Zdep who was in the office at the time it was received there, resulted in an outburst from Slater, including a threat to "fix these guys" and to eliminate overtime.

The following day, Wednesday, October 31, Slater discharged Zdep but agreed to let him work until the next day when his final paycheck would be available. Zdep called Lulla on the telephone and according to Zdep, Lulla denied that he had asked Slater to discharge him; according to Zdep Lulla said that he was then and there reinstated. Zdep worked out the balance of that day and in fact worked overtime into the night, after requesting Slater's permission to do so, in order that he might observe some experimental work being performed on the night shift.

On Thursday, November 1, as they met while crossing between buildings, Slater gave Zdep his final check. Zdep, astounded at this, according to his testimony, asked if this had not been straightened out by Lulla. Slater agreed that it had but added that he was acting on his own and the reason for the discharge would be the same as that previously given. Zdep immediately tried to reach Lulla by telephone and finally talked to Lulla's assistant, Wacks. Wacks, according to Zdep, told him that he understood the situation had been fixed up and he would again talk to Slater about it. Slater then entered and talked to Wacks. Finally Slater told Zdep that Wacks could do nothing for him; Zdep testified and Slater denied that he suggested Zdep "see what the Union could do."

On the afternoon of the day Zdep was discharged, Slater, according to evidence introduced by the General Counsel, talked about the advent of the Union to employee Talisheski and referred to the possibility of the plant closing with resultant

layoff of Talisheski as a junior employee. Shortly thereafter, according to the General Counsel's evidence, Slater informed employee Gabriel that if the Union came in, as a junior employee he would be one of the first to leave. Slater denied making these statements.

B. *The discharge of John Zdep*

The General Counsel's brief asserts that the record evidence as a whole preponderates in favor of the conclusion that Zdep was discharged because of his activities on behalf of the Union. According to the General Counsel, this conclusion clearly results from the demonstrated antiunion animus of Respondent, knowledge on the part of Respondent of the sympathies and activities of Zdep with respect to the Union, and the clearly unacceptable account given by Respondent of the reasons for Zdep's discharge. Respondent's brief, on the other hand, pictures Zdep as an unsatisfactory employee, disgruntled about wages and work assignments, who was finally discharged for failure to complete reports on production. Respondent emphasizes its claimed ignorance of Zdep's union activity or sympathies.

Zdep was hired, as noted above, for quality control work. Up until January 1962, he performed his duties on the night shifts on a rotating basis; when Vetro left in January 1962, Zdep was transferred to the day shift. His duties included the laboratory testing of adhesive mixtures, and the submission of his report thereon to the production personnel in charge of mixing the adhesives. He also sampled and tested tapes as they came off the production machines; the testing process included a comparison of weight between the dry and the coated tape to determine the amount of adhesive being applied to the tape in the operating process. His reports would be furnished to the operators for the making of necessary adjustments.

The operators' reports of the preceding day's operations would be assembled by Zdep in the morning and copies sent by him to New Rochelle; the original of each report was filed in the Old Bridge office. In the course of examining these reports prior to transmitting and filing them Zdep's duties included analysis for the purpose of reporting on any unusual occurrences to Slater. His duties included also the testing of incoming latex for solids content. He had other duties of a similar nature, as set forth in the record.

Jack Lulla assumed responsibility for quality control throughout Respondent's operations in July of 1962. At that time Respondent was experiencing difficulties with quality of its manufacture throughout its entire operations and the evidence appears to indicate that there was a particular problem with the quality of the Old Bridge production. In July of 1962, Lulla dispatched two men, an engineer and a technician, Kraft and Balato, to the Old Bridge plant. They spent a full 2 weeks working around the clock, splitting shifts, and devising procedures both of inspection and of reporting to improve the quality control at Old Bridge.

For a substantial period prior to July 1962, as much as 8 or 9 years, Respondent's procedures had included the preparation of documents labeled "coating inspection report." The explanation furnished by Respondent as to the nature and purpose of these reports is somewhat less than complete, but it does appear that they were designed to summarize the results of the production of a particular machine for a particular day of a particular type of tape. These reports were prepared by the machine operators in the first instance. It was part of Zdep's duty to assemble them, send copies to New Rochelle, and file in the Old Bridge files the original.

The emphasis from New Rochelle headquarters on quality control apparently spurred Slater to require additional reports from Zdep in the nature of entries in a masterbook, kept for Slater's own use, of the batch numbers and results of adhesive material tested by Zdep for solids and viscosity. This information was available in the reports in the files but Slater instructed Zdep to enter it in the masterbook so that Slater would have it available for immediate reference in the event of inquiry. While it appears that Zdep was delinquent in performing this duty, this failure on his part does not appear to have played any part in the decision to terminate him.

With respect to the coating inspection reports which are in evidence as Respondent's Exhibits Nos. 2, 3, and 4 and which, according to Respondent's theory, were the immediate cause of Zdep's discharge, Slater testified (and Zdep conceded) that these reports are deficient in that there is no recording of roll numbers on the sheets. Zdep's responsibility in connection with these particular coating inspection reports is considerably cloudy, particularly since the uncontroverted evidence indicates that while these reports covered operations for six night shifts they covered only two day shifts, on which Zdep worked. Also the undisputed evidence indicates that the operators, who have a primary responsibility for entering in the first place the number of the roll used on their machine, follow the practice of destroying the roll wrapper immediately after the roll is put on the machine. Thereby they remove permanently any means

of checking back on the roll number. Yet there is no indication of their being disciplined for this or for their reporting failures.

Crucial to the resolution of the instant case insofar as it concerns the discharge of Zdep is analysis of the events transpiring at Old Bridge in the week of October 29, 1962. It appears from a stipulation of the parties that the Union's representation petition filed with the Board's Regional Office on Friday, October 26, was received in Slater's office on the morning of Tuesday, October 30.

According to Zdep's testimony he was in Slater's office when the petition arrived and, after examining it, Slater said that he would fix "these guys" and he produced a schedule of a proposed change to four shifts which would eliminate overtime. Slater then said to Zdep, "You think you can get rid of me," and when Zdep denied that was the intention of the men, Slater accused the men of not discussing difficulties with him.

That night, according to the testimony of Ronald Zdep, John Zdep's cousin who was employed on the second shift, he observed Slater in the plant checking charts on the machines until 1 or 2 o'clock in the morning. According to Ronald Zdep, this was the first time he had observed Slater in the plant that late at night. Ronald Zdep testified that he saw Slater in John Zdep's office. According to John Zdep's testimony, when he arrived at work on the following morning, October 31, and went to the lab his records were all disarranged.

Later in the day on October 31, Zdep was discharged by Slater; when he asserted that he did not have to leave unless he was given his pay it was agreed that he could work until the following day. There is a difference in the accounts as to the circumstances immediately surrounding the discharge. Zdep testified that Slater told him that Lulla had complained to Slater about the incomplete reports, in evidence as Respondent's Exhibits Nos. 2, 3, and 4, and had instructed Slater to discharge Zdep because of his delinquency with respect to those reports. Slater, while testifying that Lulla had talked to him on the preceding day, October 30, concerning the reports, did not assert that he acted under Lulla's instructions; his testimony would indicate that he made the decision on his own account and that he did not say otherwise to Zdep.

In any event Zdep, immediately following the discharge by Slater, attempted to reach Lulla at the New Rochelle headquarters on the telephone but was unable to reach him because Lulla was not at the office. It appears from the accounts both of Zdep and of Lulla that Zdep did talk to Lulla on the telephone sometime later on the day of his discharge. According to Zdep, he asked Lulla why Lulla had ordered him discharged, whereupon Lulla denied that he had ordered the discharge of Zdep and professed to know nothing about it. Zdep's account of this conversation is further to the effect that Lulla did say that he had discussed the reports with Slater the preceding night and had chastised Slater for it; that it might be that Slater was taking this out on Zdep, but in any event Lulla did not order him fired and that he was reinstated as of that moment and Lulla would call Slater back and straighten it out. Lulla's account of this conversation is confirmatory of Zdep's, insofar as it denied knowledge of the discharge. According to Lulla he referred to the quality control problems and said that he had discussed this matter with Slater; Lulla conceded that in this conversation he told Zdep that he would talk to Slater and see what he could do.

There were no further conversations between Zdep and Lulla on that day. Zdep, however, testified that he talked during the afternoon to Foreman Geipel who said that he listened in on one side of a telephone conversation between Lulla and Slater and understood that Slater was told that Lulla did not want Zdep fired. Geipel, according to Zdep, expressed pleasure that Zdep was reinstated. Although Geipel denied having any conversation with Zdep on the day of his discharge, I credit Zdep's testimony. Lulla's account of his conversation later that day with Slater is that he referred to his earlier telephone conversation with Zdep and told Slater that he would leave the decision up to him.

As recounted above, Zdep worked throughout the remainder of the day, and, in fact, overtime into the night, on October 31. When he reported on November 1 and met Slater he was handed his final check. I credit Zdep's testimony that on the occasion of that meeting, Slater, in response to Zdep's question, admitted that Lulla had straightened out the discharge of the preceding day but that he (Slater) was now acting on his own. In accordance with Zdep's testimony, which I believe, Slater, asked the reason, gave Zdep the retort, "Well, for right now we will use the same reason as before." Subsequently, after talking with Wacks, Slater, I find, told Zdep that he (Wacks) couldn't do anything for Zdep and said, "Why don't you see what the Union can do?" then laughed and walked out.

I find Zdep's account of the events immediately preceding and immediately following his discharge by Slater to be clear, consistent, and convincing. I also was im-

pressed with his demeanor throughout the course of his testimony. On the other hand the Respondent's witnesses do not have the ring of truth in their accounts.

Since I credit Zdep in his account of the circumstances surrounding his discharge, I find in accordance with his testimony that on October 31, Slater informed Zdep that he was discharged by virtue of orders from Lulla. The evidence plainly indicates that there were no such orders and that in fact Slater was acting on his own in discharging Zdep. The conclusion is inescapable that the reason underlying Slater's action is to be found in something other than that which, according to testimony I credit, Slater gave at the time of the discharge on October 31.

In crediting Zdep's account attributing statements to Slater and Lulla on the days in question I am influenced also by the concession made by Lulla that Zdep attended quality control meetings at New Rochelle, that there may have been such a meeting on October 26, 1962, and that Zdep might have attended it without Lulla recalling it. I find, in accordance with Zdep's testimony, that he did attend that meeting and that no questions were raised concerning Zdep's work. At that time the coating inspection reports for October 22-24, which according to Slater were the reason why Lulla ordered Slater to discharge Zdep, were available in New Rochelle.

The evidence indicates that in 1962, Respondent was concerned with quality control and with the reporting procedures. Yet the primary responsibility for reporting on the operations of the machines is in the hands of the operator and in fact once the operator fails to record such an item as the roll number of tape or liner, the information is lost due to disposal of the roll. Yet no indication appears in the evidence of disciplinary action taken against operators for their failure to note roll numbers. Furthermore, in the course of the telephone conversation on October 31 between Lulla and Zdep, Lulla's own testimony concedes that he promised Zdep he would talk to Slater and see what he could do. This is scarcely consistent with Respondent's contention that Zdep was seriously deficient on his quality control work; particularly since Lulla, rather than Slater, was the person primarily concerned with quality control.

My conclusion as to Zdep's discharge is that he was in fact discharged because of his activities for the Union. I am convinced that Respondent, through Slater, knew of his support of the Union's campaign, which Slater could easily have discovered because of his solicitation in the plant, and discharged him on account of it. The remark, which I find Slater made, to the effect that Zdep should see "what the Union can do" confirms this conclusion.¹

The evidence indicates to me that Slater was fearful that if the Union succeeded in organizing at Old Bridge it would mean his dismissal or transfer. This is indicated by the remarks he made to Zdep and Talisheski, a machine helper, on October 31. To Zdep he said, referring to the union petition, "You think you can get rid of me," and later on the same day to Talisheski that if the union agitators succeeded he would "have to work for the Company at a different plant."

I conclude that Slater discharged Zdep because of Zdep's leadership in union activities thereby discriminating against him within the meaning of Section 8(a)(3) of the Act.

C. Interference, restraint, and coercion

The complaint alleges that Respondent, through Plant Manager Slater, threatened employees of the Old Bridge plant with economic reprisals if the Union succeeded in its campaign and became the collective-bargaining representative.

Witnesses on both sides of this case are in agreement that there was a conversation between Zdep and Slater in the plant about 2 weeks before Zdep's discharge. Zdep's version of this conversation is as follows: One Saturday in October he wanted to find out exactly what Slater knew about the Union, so he asked him point blank: "What is this about the Union," whereupon Slater said, "Well, you know what's going to happen if it comes in? The plant will move out to Carbondale. On cross-examination, Zdep's account was that Slater said, "Well, if the union gets in the plant *could* easily move out to Carbondale." He conceded that his recollection was inexact as to the precise words used. In any event Zdep's testimony is to the effect that Slater said either that the plant *would* move or that it *could* easily move if the Union came in.

Slater's account of this conversation is that Zdep related that he had something private to talk about so they went into a private room and Zdep said, "They are trying to start a union here." Slater replied, according to his testimony, that he knew all about it but that he could not do anything about it. Nothing further was said by Slater according to his testimony.

¹ I do not, however, rely on the "private room" conversation between Zdep and Slater as evidencing knowledge on the part of Slater of Zdep's activity for the Union. To me it had no probative value on the issue of such knowledge.

I credit Zdep's account of the conversation occurring in the private room adjoining Slater's office on the Saturday morning about 2 weeks before Zdep's discharge. In accordance with his account I find that Slater told Zdep either that the plant would definitely move to Carbondale or that it could easily move to Carbondale, if the Union organized the plant. Either version contains the threat of reprisal if the Union succeeded in organization. *Wilder Finishing Co., Division of Jervis Corporation*, 138 NLRB 1017.

On the morning of October 30, when the union petition was received in Slater's office, there was, according to Zdep, an outburst from Slater in the course of which he pulled out a schedule of four shifts. Slater denied having any discussion with Zdep concerning the petition filed by the Union. I credit Zdep's testimony and find that on the occasion of the receipt of the Union's representation petition in his office he engaged in the outburst contributed to him by Zdep and in the course thereof, by demonstrating a proposed four-shift schedule which would result in the elimination of overtime, threatened reprisals in the event the Union succeeded in organizing. See *Savoy Leather Mfg. Corp.*, 139 NLRB 425.

Sylvester Talisheski, a machine helper who was laid off on November 9, 1962, testified that on the day after receipt in Slater's office of the union petition Slater came up to him at work and said that there were six agitators for the Union and that if they succeeded, Slater would have to be moved to a different plant and Talisheski, because of his lack of seniority, would be the first laid off. Also John Gabriel, a machinist's helper laid off November 9, after only about 3 weeks' employment most of which was spent on sick leave, testified that sometime in November in the course of a conversation in Slater's office, Slater said to him that he was one of the most recent hires and would be one of the first to leave if the Union got into the plant. Slater denied these statements attributed to him but I find Talisheski and Gabriel to be credible and I find that Slater did make the statements attributed to him by them. They constituted unfair labor practices under Section 8(a)(1).

The preponderance of the testimony indicates that Slater threatened shutdown, layoff, and loss of overtime as consequences of union success in organizing. These threats clearly constitute interference, restraint, and coercion as defined in Section 8(a)(1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

V. THE REMEDY

In view of the findings detailed above that Respondent engaged in unfair labor practices, I shall recommend that Respondent be required to cease and desist from such unfair labor practices and take such affirmative action as appears necessary and appropriate to effectuate the policies of the Act. In view of my findings that Respondent not only engaged in several acts of interference, restraint, and coercion but also discriminatorily discharged employee Zdep in reprisal for his activities on behalf of the Union, I shall recommend that Respondent be required to cease and desist from interfering in any way with employees' protected activities.

The evidence tends to indicate that subsequent to the discharge of Zdep, Respondent upgraded the position of quality control work at Old Bridge and hired a chemical engineer. It may be that there has been a bona fide reclassification of the position, and I do not intend to require that Zdep replace the person in the upgraded position. But plainly he is entitled to be reinstated in work for which he is qualified. If in fact there is no such work now available he should be placed on a preferential hiring list. His reinstatement rights would include the right to displace any person hired subsequent to October 31, 1962, in work for which he is qualified. Zdep is to be made whole for loss of wages for the period from the date of his discharge to the date of a bona fide offer of reinstatement less net interim earnings, computed in accordance with the rule of *F. W. Woolworth Co.*, 90 NLRB 289, with interest determined as in *Isis Plumbing & Heating Co.*, 138 NLRB 716. Backpay shall not be required for any period in which no work for which he was qualified was available.

I shall recommend the posting of an appropriate notice at the Old Bridge Plant. 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. The operations of Respondent affect 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 threatening employees with the closing of the Old Bridge plant, layoffs, and loss of overtime opportunities as consequences of union organization of the plant, Respondent has engaged in unfair labor practices within the scope of Section 8(a)(1) of the Act.
4. By discharging its employee John Zdep because he participated in organizing activities on behalf of the Union, thereby discouraging membership therein, Respondent has engaged in unfair labor practices defined in Section 8(a)(3) of the Act.
5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record in this case, I recommend that Respondent, its officers, agent, successors, and assigns shall:

1. Cease and desist from:

(a) Threatening employees with layoff, loss or diminution of overtime opportunities, or the closing of the Old Bridge plant as a consequence of activities on behalf of the Union or as a consequence of the Union's succeeding in organizational efforts.

(b) Discouraging membership in Local 145, International Display and Miscellaneous Workers Union, AFL-CIO, or any other labor organization of its employees, by discharging or laying off employees, or in any other manner discriminating, as to any term or condition of employment, against them because of their Union activities.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of the right to self-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, except insofar as employee rights may be affected by agreement pursuant to Section 8(a)(3) of the Act.

2. Take the following affirmative action which appears necessary and appropriate to effectuate the policies of the Act:

(a) Offer to John Zdep reinstatement to his former or a substantially equivalent position without prejudice to his seniority or other rights and privileges and make him whole for any loss of pay suffered by reason of Respondent's discrimination against him as provided in the section above entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or to its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due and the rights of reemployment under the terms of this Recommended Order.

(c) Post at its plant at Old Bridge, New Jersey, copies of the attached notice marked "Appendix."² Copy of said notice, to be furnished by the Regional Director for the Twenty-second Region, shall, after being duly signed by the authorized representative of Respondent, be posted by Respondent immediately upon the receipt thereof, and be maintained by it for 60 consecutive days thereafter in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director, in writing, within 20 days from the receipt of this Intermediate Report and Recommended Order, what steps Respondent has taken to comply herewith.³

² In the event that this Recommended Order shall be adopted by the Board, the words "Pursuant to a Decision and Order" shall be substituted for the words "Pursuant to 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 the 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"

³ In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for the Twenty-second Region, in writing, within 10 days from the date of the receipt of this Order, what steps the 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 threaten employees with loss of overtime, layoff, or the closing of the Old Bridge plant as consequences of activities on behalf of Local 145, International Display and Miscellaneous Workers Union, AFL-CIO, or as a consequence of that Union's succeeding in organizational efforts.

WE WILL NOT discourage membership in Local 145 or any other labor organization of our employees by discharging or laying off employees or in any other manner discriminating against them because of their union activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the right to self-organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, except insofar as may be required under an agreement conforming to Section 8(a)(3) of the Act.

WE WILL offer to John Zdep reinstatement to his former or a substantially equivalent position, without prejudice to his seniority and other rights and privileges, and make him whole for any loss of pay suffered by reason of our discrimination against him.

W. RALSTON AND CO., INC. AND
TECHNICAL TAPE CORPORATION,
Employer.

Dated _____ By _____
(Representative) (Title)

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

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

Employees may communicate directly with the Board's Regional Office, Room 614, National Newark Building, 744 Broad Street, Newark, New Jersey, 07102, Telephone No. Market 4-6151, if they have any questions concerning this notice or compliance with its provisions.

Local 542, International Union of Operating Engineers, AFL-CIO and R. S. Noonan, Inc. Cases Nos. 4-CP-39-1 and 4-CP-39-2. June 14, 1963

DECISION AND ORDER

On October 1, 1962, Trial Examiner George A. Downing 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, Respondent filed exceptions to the Intermediate Report and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Rodgers and Leedom].