

APPENDIX

NOTICE TO ALL OUR MEMBERS AND TO ALL EMPLOYEES OF
SOLO CUP COMPANY

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT threaten employees of Solo Cup Company with bodily injury danger or other reprisals, if they fail to support our strike.

WE WILL NOT intimidate employees of Solo Cup Company because they fail to support our strike.

WE WILL NOT in any like or related manner restrain or coerce employees of Solo Cup Company in the exercise of the rights guaranteed by Section 7 of the Act.

INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE
AND PAPER WORKERS, AFL-CIO,

Labor Organization.

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, Telephone No. 752-8460, Extension 2100, if they have any question concerning this notice or compliance with its provisions.

Arizona Plastic Extrusion Company and International Brotherhood of Pulp, Sulphite and Paper Mill Workers, AFL-CIO.

Case No. 28-CA-911. September 9, 1963

DECISION AND ORDER

On June 7, 1963, Trial Examiner C. W. Whittemore 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 with a supporting brief, and the General Counsel filed a brief in support of the Intermediate Report.

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 Leedom and Fanning].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds no prejudicial error. The rulings are hereby affirmed. The Board has considered the entire record in this case, including the Intermediate Report, exceptions, and briefs, 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.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

Upon an original charge filed on January 21, 1963, and an amended charge filed on March 18, 1963, both by the above-named labor organization, the General Counsel of the National Labor Relations Board on March 19, 1963, issued his complaint and notice of hearing thereon. On March 23, 1963, the above-named Respondent filed its answer. The complaint alleges and the answer denies that the Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended. Pursuant to notice a hearing was held in Phoenix, Arizona, on April 16 and 17, 1963, before Trial Examiner C. W. Whittemore.

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

Disposition of the Respondent's motion to dismiss the complaint, upon which ruling was reserved at the hearing, is made by the following findings, conclusions, and recommendations.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Arizona Plastic Extrusion Co. is an Arizona corporation, with office and principal place of business in Phoenix, Arizona, where it is engaged in the production and sale of plastic pipe.

During the calendar year 1962 it purchased and received in interstate commerce goods and materials valued at more than \$50,000 directly from outside the State of Arizona. During the same period it sold and shipped in interstate commerce, directly to States other than Arizona, products valued at more than \$50,000.

The complaint alleges, the answer admits, and it is here found, that the Respondent is engaged in commerce within the meaning of the Act.

II. THE CHARGING UNION

International Brotherhood of Pulp, Sulphite & Paper Mill Workers, AFL-CIO, is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Setting and issues*

About 36 hours after employees J. O. Allen, Jr., and D. F. Knappenberger on January 17, 1963, began passing out at one of the Respondent's two plants membership application cards for the above-named labor organization, both were summarily and without prior notice discharged by T. W. Kerr, co-owner and plant manager of the Respondent. As a witness Kerr candidly admitted that he was "opposed" to labor unions, had "opposed" an attempt made among his employees to organize another union in 1960, and that of some 50 employees working for him in January 1963, only about a half dozen of them had been on the payroll at the time of the previous attempt in self-organization.

The chief issue raised by the complaint is, of course, the sudden dismissal of Allen and Knappenberger, General Counsel contending that the discharges were unlawful and for the purpose of discouraging union membership and the Respondent claiming that their jobs were "discontinued."

B. *Facts relevant to the discharge issue*

The following facts, based upon credible testimony, tend to support the conclusion of unlawful discrimination sought by General Counsel:

(1) Employee Allen began distributing union cards among his fellow workers early Thursday morning, January 17, on the third shift. (Allen was regularly assigned to the day, or first, shift. On this date, as was frequently the case, extra work brought him to the plant to work the last 4 hours of the night shift and continue for the 8 hours of his day shift, a total of 12 hours.)

(2) It is undisputed that shortly before going to work on the third shift Allen told his foreman, Lloyd Gallagher, of his intent to distribute the cards.¹

(3) Allen continued to distribute cards to employees on his own day shift, and employee Knappenberger, supplied with cards by Allen, distributed some before going on his shift, the second, on the same date, January 17.

(4) As he came to work that afternoon Knappenberger told the first-shift foreman, Aufdenkamp, that he had left a present for him in his truck. An hour or so later (Aufdenkamp's duties covered not only the first shift but part of the second) the foreman came to the employee and said he had been surprised at the present—he had expected to find some cards. Knappenberger asked what he meant. Aufdenkamp replied that he meant cards that had to be filled out—union cards.²

(5) It is undisputed that a few months before his discharge Knappenberger had been told by Aufdenkamp that if he heard of anyone "trying to get the union in, he would throw a wrench in the cogs, like he done before."

(6) It is likewise undisputed that during the day of January 17 Aufdenkamp told employee Wakefield that he thought that if the Union "was in there" Kerr would have to lay some of the "people" off, and said that "some of the men had been laid off . . . the last time that the union had tried to organize at Arizona Plastics."

(7) In the midafternoon of Friday, January 18, while Wakefield and Allen were working on a disabled machine, Foreman Aufdenkamp broached the subject of union organization, told them he was against it and explained why. He declared that Kerr would no longer "stock pile," as he had in the past when work was slow, and "if the Union was brought in Kerr would go to California and "get qualified set-up men." (Both Allen and Wakefield did setup work on the machines part of their time.) He declared that there also would be "lay offs," and said that he had "cleared the deal" once before when the Union tried to get in and would do it again "if he got the chance."³

(8) Shortly after this incident Kerr, without previous notice or warning, dismissed both Allen and Knappenberger, the former as he was leaving his shift and the latter as he was reporting for the second shift. Each was told that his job was being eliminated and his services would no longer be required.

(9) Wakefield rode with Allen as they left the plant that day. Some distance from the plant they met Knappenberger. They got out of the car and talked in a group. Kerr and Finn, the company president, drove by. As a witness Kerr admitted that he saw Wakefield on this occasion in discussion with the two discharged employees.

(10) The next day, Saturday, Kerr called Wakefield into his office. In the presence of Finn and Aufdenkamp, Kerr lectured the employee severely on "loyalty" which he expected from him. He declared that he had kept "mediocre" men at work who were loyal, made it plain that he disliked "two-faced" employees, and did not want employees who were "smiling to his face and stabbing him in the back at the same time." He told Wakefield that "if the shoe fit, wear it," and insisted that he tell him whether he would be "loyal" or "two-faced" and "if the latter," there would be a "parting of the way." Wakefield apparently convinced Kerr of his "loyalty," for the next working day he was promoted to the assistant foreman's job with a pay raise.⁴

(11) On January 21, as noted, the original charge was filed concerning the two discharges. It was received by the Respondent on January 23. Upon receipt of

¹ As a witness Gallagher was not questioned about this incident of late January 16 or early January 17. He did state, however, that he had been told by Allen on January 14 of his intent to organize and said that he had asked the employee "what union" he was getting.

² The employee's account of this incident is not contradicted.

³ The quotations are from Allen's credible testimony. The foreman admitted the occasion and the fact that he had told the employees: "I will fight you tooth and toe nail."

⁴ Kerr admitted the substance of Wakefield's testimony, from which the above quotations are drawn. He explained this strange demand for loyalty as having occurred because he had seen Wakefield with Allen and Knappenberger, shortly after he had "let" them "go," and because the following day employees in the plant had stopped talking as he approached them, which had given him "a little bit of a queasy feeling."

the charge, according to his own testimony, Kerr asked "several" employees how they felt about the Union and if they had signed union cards.

The foregoing having been established by credible and largely undisputed testimony, it is clear that General Counsel has made out a strong *prima facie* case of unlawful discharge.

C. Kerr's claims as to the discharges

Kerr not only denied that he had any knowledge of union activity in the plant or of the participation in it of Allen and Knappenberger, but affirmatively contended that the discharges had been made necessary because of reorganization of the entire plant.

Circumstances admitted by Kerr himself deprive his claim of lack of knowledge of merit or credibility. If, as he conceded, mere reorganization brought about the discharges, then his berating Wakefield for simply talking with the two employees lacks credible explanation. And his aggressive opposition to employees exercising their statutory right to organize is candidly admitted by him.

Nor does his claim of "reorganization" bear scrutiny. In substance, he said that earlier in January he had learned that Aufdenkamp, then foreman of the second shift, probably would have to be hospitalized in a few weeks. At that time Kerr himself had been acting as foreman of the first shift. According to him he decided to put Aufdenkamp on the first shift, so that when he had to leave temporarily he, himself, could take over as supervisor. A week or more before union organization began he decided to put this "reorganization" into effect, appointing a new third-shift foreman, transferring the third-shift foreman to the second shift, and Aufdenkamp to the first. The shifting and transfers became effective January 14.

Kerr further claimed that since these foremen, as shifted, could take care of the "set up" work, he no longer needed Allen as a setup man on the first shift or Knappenberger on the second. For this reason, he said, he dismissed the two.

While there is no doubt that both Allen and Knappenberger were capable of doing, and did do, setup work, even Kerr's own testimony establishes that their chief duties were to operate machines. When asked if Knappenberger ever operated a machine or was "just a setup man," Kerr replied: "He operated a machine." Asked if he operated a machine as often as Allen, Kerr replied, "Not a great deal of difference." And Kerr also admitted that setup work occupied only the early part of the first shift, on which Allen worked.

Both Allen and Knappenberger were capable operators, both having received merit increases. (Kerr stated flatly that all raises were based upon "merit entirely.")

New employees were hired just before the discharges and shortly thereafter. Kerr admitted that some 20 job vacancies had occurred since January 18 and that since that date he has had openings for jobs which both men were fully qualified to fill. As a matter of fact Kerr did make Knappenberger an offer to return to work about 2 weeks after his discharge, but the employee did not accept the offer. (General Counsel conceded at the hearing that the date of this offer, February 4, 1963, is the appropriate cutoff date for backpay, if any, due Knappenberger.)

D. Conclusions

The Trial Examiner concludes and finds that there is no merit in the Respondent's claim that Allen and Knappenberger were dismissed because of "reorganization." Their positions remained, the machines continued to be operated. Others were transferred to or hired to fill their jobs.

It is therefore concluded and found that the real reason for the summary discharges was Kerr's discovery, either in person or through one of the foremen, that both Allen and Knappenberger were attempting to organize the employees, an effort which both Kerr and Aufdenkamp conceded they opposed.

By discharging Allen and Knappenberger to discourage membership in a labor organization, by Aufdenkamp's threats of economic reprisals, and by Kerr's interrogation of employees as to whether or not they had signed union cards, the Respondent has interfered with, coerced, and restrained employees in the exercise of rights guaranteed by Section 7 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.

V. THE REMEDY

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

It will be recommended that the Respondent offer Allen immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges. Since it appears that Knappenberger was offered but, in effect, declined an offer of reinstatement to his job as operator on or about February 4, 1963, the Respondent will not be required to repeat the offer. It will be recommended, however, that both Allen and Knappenberger be made whole for any loss of earnings they may have suffered by reason of the unlawful discrimination against them, by payment to each of them of a sum of money equal to that which he would have earned as wages, absent the discrimination against him, from January 18, 1963, to February 4, 1963, in the case of Knappenberger, and from January 18, 1963, to the date of offer of reinstatement in the case of Allen, in the manner prescribed by the Board in *F. W. Woolworth Company*, 90 NLRB 289. The backpay obligations of the Respondent shall include the payment of interest at the rate of 6 percent to be computed in the manner set forth in *Isis Plumbing & Heating Co., Inc.*, 138 NLRB 716.

In view of the serious and continued nature of the Respondent's unfair labor practices, it will be recommended that it cease and desist from in any manner infringing upon the rights of employees guaranteed by Section 7 of the Act.

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

CONCLUSIONS OF LAW

1. International Brotherhood of Pulp, Sulphite & Paper Mill Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
2. By discriminating as to the tenure of employment of J. O. Allen, Jr., and D. F. Knappenberger, to discourage membership in and activity on behalf of the above-named labor organization, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.
3. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed by Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, the Trial Examiner recommends that Arizona Plastic Extrusion Co., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:
 - (a) Threatening employees with economic reprisals to discourage membership in and activity on behalf of any labor organization.
 - (b) Interrogating employees as to their union membership or adherence in a manner violative of Section 8(a)(1) of the Act.
 - (c) Discouraging membership in and activity on behalf of International Brotherhood of Pulp, Sulphite & Paper Mill Workers, AFL-CIO, or any other labor organization, by discharging, laying off, or refusing to reinstate any of its employees or in any other manner discriminating in regard to hire or tenure of employment, or any term or condition of employment.
 - (d) In any other manner interfering with, restraining, or coercing employees in the exercise of the right to self-organization, to form labor organizations, to join or assist any 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, or to refrain from any or all such activities.
2. Take the following affirmative action, to effectuate the policies of the Act:
 - (a) Offer immediate and full reinstatement to J. O. Allen, Jr., to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him and D. F. Knappenberger whole for any loss of pay they may have suffered by reason of the discrimination against them, in the manner set forth in the section above entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll and other records necessary for the determination of the amount of backpay due and the right of reinstatement under terms described herein.

(c) Post at its plant in Phoenix, Arizona, copies of the attached notice marked "Appendix."⁵ Copies of said notice, to be furnished by the Regional Director for the Twenty-eighth Region, shall, after being duly signed by the Respondent's duly authorized representative, be posted immediately upon receipt thereof and maintained for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for the Twenty-eighth Region, in writing, within 20 days from the date of the receipt of this Intermediate Report and Recommended Order, what steps have been taken to comply herewith.⁶

⁵ In the event that this Recommended Order be adopted by the Board, the words "A Decision and Order" shall be substituted for the words "The Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "A Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "A Decision and Order."

⁶ In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify the 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 Recommended Order of a Trial Examiner of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT threaten our employees with economic reprisals to discourage membership in or activity on behalf of any labor organization.

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

WE WILL NOT discourage membership in and activity on behalf of International Brotherhood of Pulp, Sulphite & Paper Mill Workers, AFL-CIO, or any other labor organization, by discharging, laying off, or refusing to reinstate any employee, or in any other manner discriminating in regard to hire, tenure of employment, or any term or condition of employment.

WE WILL NOT in any manner interfere with, restrain, or coerce employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

WE WILL offer J. O. Allen, Jr., immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him and D. F. Knappenberger whole for any loss of pay suffered by them as the result of our discrimination against them.

ARIZONA PLASTIC EXTRUSION Co.,
Employer.

Dated _____ By _____
(Representative) (Title)

NOTE.—We will notify Allen 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.

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, 1015 Tijeras Street NW., Albuquerque, New Mexico, Telephone No. 243-3536, if they have any question concerning this notice or compliance with its provisions.