

that the employees involved were an accretion to the contract unit and were therefore covered by the contract.¹⁶ In addition, the arbitration proceeding was fair and regular and free from any procedural infirmity which might render the award unacceptable.¹⁷

In view of the foregoing, we find it will effectuate the policies and purposes of the Act to honor the arbitration award. We, accordingly, find that the contract between the Employer and the Intervenor covers the employees sought herein, and that, since the petition is untimely with respect to such contract, the contract is a bar to the petition.

[The Board dismissed the petition.]

MEMBERS RODGERS and BROWN took no part in the consideration of the above Decision and Order.

¹⁶ See, for example, *Simmons Company*, 126 NLRB 656, where the Board held that employees in the employer's new mattress department were an accretion to a contract unit covering all production and maintenance employees working in the employer's "Living Room Division" because both groups of employees were engaged in the "same functional activity" and the two operations were "closely integrated." Here, as noted, clerks who are covered by the contract perform and have performed work identical to that performed by janitors and bottle sorters, and, in addition, the record establishes that janitors and bottle sorters are under the same supervision as clerks. While the terms of the multiemployer contract had not been applied to janitors and bottle sorters, as noted, as soon as the Intervenor discovered that the Employer was hiring these employees on a full-time basis, it sought to have these employees covered by the contract. The principle of *North American Aviation, Inc.*, 127 NLRB 356, and similar cases, would therefore be inapposite.

¹⁷ While the Petitioner was not a party to the arbitration, as already indicated, its position was vigorously defended by the Employer, which at all times maintained, in agreement with the Petitioner, that the contract did not cover the employees sought herein. See *International Harvester*, *supra*.

Although Member Fanning dissented in *International Harvester* because of his agreement with the Trial Examiner, who had relied, *inter alia*, on the absence of the alleged discriminatee from the arbitration proceedings even though his position had been vigorously espoused by the company, he is of the view that the circumstances of this case are so different from *International Harvester* that the absence of the Petitioner from the arbitration proceeding here does not bar its acceptance by the Board.

Allied Chemical Corporation, National Aniline Division (Columbia Plant) and District 50, United Mine Workers of America.
Case No. 11-CA-2043. June 27, 1963

DECISION AND ORDER

On March 11, 1963, Trial Examiner Frederick U. Reel issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in unfair labor practices as alleged in the complaint, and recommending that the complaint be dismissed, as set forth in the attached Intermediate Report. Thereafter, the Charging Party 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 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 brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

[The Board dismissed the complaint.]

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

This case was heard before Trial Examiner Frederick U. Reel at Columbia, South Carolina, on January 29 to 30, 1963, pursuant to a charge filed October 5, 1962,¹ a complaint issued November 30, and an answer filed December 7. The basic issues are whether Respondent, herein called the Company, violated Section 8(a)(3) and (1) by discharging one Garland G. (Red) Williams, and violated Section 8(a)(1) by certain statements allegedly made to Williams or (on one occasion) to his wife. The Company urged that Williams was discharged for proper cause, and denied that its supervisors made the intimidatory statements attributed to them. Upon consideration of the entire record, including my observation of the witnesses, and after due consideration of the briefs filed by the Company and by General Counsel, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY AND THE LABOR ORGANIZATION INVOLVED

The pleadings establish and I find that the Company, a nationwide producer of chemicals and related products, is engaged at its Irmo, South Carolina, plant in manufacturing goods for interstate commerce, and annually both receives and ships goods in interstate commerce valued in excess of \$50,000. I find, in accordance with the pleadings, that the Company is engaged in commerce within the meaning of Section 2(6) of the Act. Uncontradicted testimony establishes that District 50, United Mine Workers of America, herein called the Union, is a labor organization within the meaning of the Act, and I so find.

II THE ALLEGED UNFAIR LABOR PRACTICES

General Counsel's entire case except in one minor respect was presented through the testimony of Williams, whose discharge on October 3 gives rise to the main issue.² Williams' testimony, uncorroborated and in many respects sharply contradicted by company witnesses, would, if credited, establish violations of Section 8(a)(1) and (3) of the Act.

From November 1961 until his discharge Williams was employed as a maintenance mechanic, responsible for the repair and upkeep of certain large draw twist machines. He became active in the Union in March, distributing union cards and soliciting for the Union on company time until early June when he learned that such solicitation was not protected by the Act. At that time Williams was suspended for 7 days for violating a company rule against interfering with production; the preceding April he had received a written warning for "leaving job and conducting personal business [not a union matter] on company time." According to Williams, Maintenance Superintendent Todd told Williams at the time of the June suspension that Williams would be terminated immediately in the event he was guilty of any infraction of the rules.

¹ Unless otherwise indicated all dates herein refer to 1962.

² In addition to calling Williams as a witness, General Counsel called only Williams' wife, who testified as to a single episode allegedly violative of Section 8(a)(1), and one other witness solely to establish that the Union is a labor organization.

Williams testified to a conversation he allegedly had with Todd early in August in which Todd berated him for his stupidity in continuing his union activity and told him he was sure to "get caught" and was "going to be fired." Todd, according to Williams, advised him to "quit that foolishness," and added that he (Todd) would call a meeting of the employees at which he would announce revocation of their coffee breaks and cafeteria privileges and advise them that these "strenuous conditions" were being imposed because of Williams.

Williams also testified to a conversation later in August with one Ben Redfearn, who at the time was Williams' supervisor, but who at the time of hearing was employed by another concern in another State. According to Williams, Redfearn advised him to remove union literature from his toolbox, told him to quit the union activity and mind his own business, and warned him that the supervisors were watching him and waiting for him to make a mistake which would result in his discharge. Redfearn further stated, according to Williams, that if Williams would "quit this foolishness," Redfearn would speak to the supervisors, get Todd to remove the condition that Williams would be discharged for his next infraction of rules, and try to get Williams' record "wiped clear in the Personnel Office."

Turning to the events of October 2 and 3 which culminated in his discharge, Williams testified that on October 2 in the course of performing maintenance work on the machines, he found it necessary on two occasions to delay the work of one of the production crews. He also testified that while he was working, one member of the crew, Frances Bright, mentioned to him that her car had broken down on the highway the night before. According to Williams, he replied only that she should have called for help as it was dangerous for a woman to stand on the highway at night for 2 hours, and "that is about all that was said."

The next morning, October 3, Williams was again checking one of the machines which was being operated by the same crew he had delayed the day before. According to Williams, he said "good morning" to two of the girls on the crew, Bright and Sherry Free. He testified that he then asked Free certain necessary questions concerning the manner in which the machine was operating, but she replied in a loud voice that she could not talk to him. When he replied, according to his testimony, that he needed this information to effect the repairs, she again "hollered" that she could not talk to him as management had been complaining over low production. Williams testified that he then went to work on the machine, and was busily so engaged when Bob Jones, supervisor of the crew, told him to accompany Jones to the production office.

According to Williams, he waited outside the production office while Jones conferred with Richard Beals, superintendent of production, and with Ray Wood, Williams' supervisor. Williams testified that he was then summoned into the office, where Jones accused him of talking to a girl for 5 minutes at her machine. Williams testified that he denied the accusation, that Wood said it was sometimes necessary for his men to talk to the girls, and that Beals refused to hear Williams' explanation but ordered him back to work and asked for a written report to be placed in Williams' personnel folder. Later that day Williams, at the direction of his supervisor, went to the office of Industrial Relations Superintendent Coffin, where Coffin notified Williams he was discharged. According to Williams, Coffin stated that he had a report on Williams' having talked to a girl 5 minutes that morning, brushed aside Williams' statement that the conversation lasted only 1 minute, and stated that he neither knew nor wanted to know what had been the subject matter of the conversation. Williams further testified that Maintenance Superintendent Todd, who was present in Coffin's office, reminded Williams of the numerous warnings to cease his activities which Williams had ignored, and that on their way out of the office Todd reminded Williams of their August conversation in which Todd had told Williams he was "stupid." Finally Williams testified that "quite a few times" he had seen foremen engage in apparently idle conversation and laughter with the girls while the latter were engaged in production work.

Redfearn and Todd, called as company witnesses, substantially contradicted Williams' testimony with respect to the alleged August conversations, except that Redfearn admitted telling Williams and other mechanics not to bring any literature of any kind into the plant, as he wanted them to work, not to read. With respect to the discharge, the Company introduced evidence that on October 2, Doff Crew Instructress Bickley had complained that Williams had interfered with the work of her crew by talking to members, and that the next morning Foreman Jones saw Williams talking to Frances Bright, a trainee member of the crew, and timed the conversation as lasting 5 minutes. Jones made a written report of this infraction of company

rules, and after the matter was reviewed by various officials in the company hierarchy, Williams was discharged in view of his repeated offenses of this nature.

As the foregoing summary indicates, what is involved here is fundamentally a question of credibility. Upon careful consideration of the entire record, I credit the testimony of the company officials and former officials insofar as they testified that Williams was discharged for repeated infractions of company rules, and insofar as they denied the intimidatory antiunion statements he attributed to them. In making this resolution of credibility I have been motivated by the following considerations: the demeanor of the witnesses; the comparatively disinterested character of the testimony of Redfearn and Coffin, both of whom were no longer employed by the Company at the time of the hearing; the inherent improbability that Redfearn and Todd made certain statements Williams attributed to them;³ the documented nature of the Company's difficulties with Williams in the months preceding his discharge; and the absence of any other evidence of antiunion activity by the Company, particularly in the light of evidence that Williams was by no means the only active union adherent and that the Union had filed a representation petition only 2 weeks before the hearing.

The most suspicious circumstance tending to support General Counsel's case is the Company's failure to investigate carefully the Williams-Bright episode on October 3 before discharging Williams. The failure of either party to call as witnesses either Bright or Doff Crew Instructress Bickley leaves the episode in some obscurity,⁴ particularly as I was not favorably impressed with the credibility of Sherry Free, who testified for the Company as to the conversation between Williams and Bright. But it was not altogether unreasonable, especially in the light of recent complaints against Williams, for the Company to rely on the report of Foreman Jones, and there is considerable merit to the Company's point that as Bright was a mere trainee, Williams would scarcely have singled her out for a discussion as to the performance of the machine. There is evidence, or more accurately, testimony which was not objected to, that after the charge was filed Bright told Coffin that Williams had interrupted her work and that she had complained about the interruption.

In essence, General Counsel's case is that Williams became a target after he started union activity, and that all his difficulties with the Company, culminating in discharge, were the result of company hostility to the Union and to Williams in his role as a union protagonist. At most, this record gives rise to mere suspicion that this occurred. I find that General Counsel failed to establish his case by a preponderance of the evidence, but this, of course, is because of the credibility resolutions made above.

There is evidence, which I credit over the partial denial of Foreman Richardson, that in May he asked Williams' wife and another employee, who were coming to work together, what they thought of the Union, and asked Mrs. Williams what the Union would do for them that the Company could not do. Assuming *arguendo* that this interrogation, apparently engaged in contrary to company directions to its foremen, violated Section 8(a)(1) of the Act, it was too isolated to warrant the issuance of a remedial order. See *American Gilsonite Company*, 122 NLRB 1006; *Canton Carp's, Inc.*, 130 NLRB 1451; *International Ladies Garment Workers Union, AFL-CIO (Twin-Kee Manufacturing Co., Inc.)*, 130 NLRB 614; *International Woodworkers of America, AFL-CIO (Central Veneer, Incorporated)*, 131 NLRB 189, 190, 196; *The Great Atlantic & Pacific Tea Company, Inc.*, 129 NLRB 757, 760.

CONCLUSIONS OF LAW

1. Respondent is engaged in commerce within the meaning of the Act.
2. The Union is a labor organization within the meaning of the Act.

³ Particularly, Redfearn's alleged offer to get Williams' personnel records "wiped clear," and Todd's alleged references to cancellation of all coffee and cafeteria privileges and to Williams' being so "stupid" that Todd did not see how Williams' wife could stand him.

⁴ General Counsel in his brief argues that Respondent's failure to call these and certain other witnesses gives rise to an inference that their testimony would have been adverse to Respondent. I draw no such inference. The four cases cited by General Counsel are plainly distinguishable in that three deal with a failure to produce certain business records of which the respondent in each case had knowledge and which could have documented its defense, and the fourth (*Satilla Rural Electric Membership Corporation*, 129 NLRB 1084, 1091) deals with a respondent's failure to call witnesses whose testimony, had it been elicited by General Counsel and been favorable to him, "would have been cumulative."

3. Respondent has not engaged in the unfair labor practices alleged in paragraphs 7(b) to (e), and 9 of the complaint.
4. Respondent has engaged in no unfair labor practices which would warrant the issuance of a remedial order.

RECOMMENDED ORDER

The complaint herein should be, and hereby is, dismissed.

Texas Boot Manufacturing Company, Inc. and Boot and Shoe Workers' Union, AFL-CIO. *Case No. 26-CA-1345. June 27, 1963*

DECISION AND ORDER

On February 26, 1963 Trial Examiner James T. Barker 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. He also found that the Respondent had not engaged in certain other unfair labor practices and recommended dismissal of the complaint as to them. Thereafter, the Respondent and the General Counsel filed exceptions to the Intermediate Report and supporting briefs.

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

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 entire record in this case, including the Intermediate Report, the exceptions, and briefs, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions and modifications.

The Trial Examiner found that on March 28 and 29, 1962, President Vise read a prepared speech to employees containing the following remarks:

This is the reason that I am against the Union and that Texas Boot Company is against the Union. It is simply this. I don't believe that we can do business with the costs the Union will demand. The only way the Union can enforce its demands on Texas Boot Company is by calling you out on a strike to enforce its unreasonable demands. This is the history of Unions. So

I want you to know that I am not going to close down this

143 NLRB No. 17.