IV. THE REMEDY

Having found that there have been violations of the Act by Respondent Wear Ever, it will be recommended that Respondent Employer cease and desist therefrom. Although there is no reinstatement or backpay involved in this case, it will be recommended that the employes be advised by their employer, by means of a notice, of the basic provisions of the Act, namely, that employees are free to exercise the rights guaranteed under Section 7 of the Act without reprisal and that the employer will not interfere therewith by discrimination or otherwise. The circumstances are such that I shall recommend that the notice be in both English and Spanish.

CONCLUSIONS OF LAW

1. Respondent Employer is an employer engaged in commerce within the meaning of the Act.
2. Respondent Local 98 is a labor organization within the meaning of the Act.
3. By discriminating against Luis Yeras by terminating his employment because of his union activities, Respondent Employer engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act
4 By conveying to employee Eddie Ramos the reasonable impression and belief that the destruction of Local 424 employee cards was relevant and material to the matter of employee Luis Yeras' reinstatement and was a factor in such reinstatement and by effectuating the reinstatement under such circumstances, Respondent Employer engaged in unfair labor practices within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.
5. Respondent Employer has not otherwise violated the Act.
6. Respondent Local 98 has not violated Section 8(b)(1)(A) of the Act as alleged.

[Recommended Order omitted from publication.]

Alsar Manufacturers, Inc. ***and*** **Roosevelt Holloway and Samuel L. Kelly.** *Cases Nos. 7-CA-3947 and 7-CA-3947(2). June 28, 1963*

DECISION AND ORDER

On April 11, 1963, Trial Examiner A. Bruce Hunt issued his Intermediate Report in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Intermediate Report. He also found that the Respondent had not engaged in other unfair labor practices and recommended that the complaint be dismissed as to them. Thereafter, the General Counsel and the Respondent 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 these cases to a three-member panel [Chairman McCulloch and Members Rodgers and Fanning].

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 Interme-

diate Report, the exceptions and briefs, and the entire record in these cases, 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

STATEMENT OF THE CASE

This proceeding, in which charges were filed on October 17 and November 19, 1962, and in which the complaint was issued on January 3, 1963, involves allegations that the Respondent, Alsar Manufacturers, Inc.,[1] violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, 29 U.S.C., Sec. 151, *et seq.* On March 4 and 5, 1963, Trial Examiner A. Bruce Hunt conducted a hearing at Detroit, Michigan, at which the General Counsel and the Respondent were represented. Upon the entire record, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE RESPONDENT

The Respondent, a Michigan corporation, is engaged at Southfield, Michigan, in the manufacture, sale, and distribution of aluminum siding and related products. During 1962, the Respondent purchased aluminum and other materials exceeding $50,000 in value which were shipped to its plant directly from points outside Michigan. During the same year, the Respondent shipped directly to points outside Michigan products valued in excess of $50,000. There is no dispute, and I find, that the Respondent is engaged in commerce within the meaning of the Act.

II. THE UNIONS

Two labor organizations, neither of which is a party to this proceeding, are mentioned frequently below. They are Local 458, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Sheet Metal Workers International Association, Local Union 566, AFL–CIO, herein respectively called the Teamsters and the Sheet Metal Workers.

III. THE UNFAIR LABOR PRACTICES

A *Background*

In *Applicators, Inc.* (the Respondent's former corporate name), 136 NLRB 1017, decided April 13, 1962, the Board found that the Respondent violated Section 8(a)(1) during a period when the Teamsters sought to displace Sheet Metal Workers as the employees' bargaining representative. To some extent, the facts disclosed in that case appear also in the record in this case.

B. *The issues*

The principal issue is whether the Respondent invalidly discharged Roosevelt Holloway. Another issue is whether the Respondent invalidly laid off Samuel Kelly for 1 week. A final issue is whether a management representative, Robert Rogers, violated Section 8(a)(1) during a conversation with an employee.

C. *The discharge of Holloway*

1. The facts

During 1960 and 1961, Holloway was a steward for the Sheet Metal Workers, then the bargaining agent. On July 20, 1961, two employees, Kelly and Ward

[1] In the pleadings, the Respondent's name appeared as "Applicators, Inc." Sometime following the filing of the initial charge, the corporate name was changed to "Alsar Manufacturers, Inc.," and the style of the case has been corrected by a motion at the hearing.

Washington, filed a decertification petition in an effort to have the Sheet Metal Workers removed as the employees' representative. Sometime thereafter, activity in behalf of the Teamsters began. Kelly was the most instrumental employee in inducing his coworkers to join the Teamsters, and Holloway helped him. On October 12, 1961, the Sheet Metal Workers' contract expired. An election on the decertification petition was delayed, and for some months the employees were not represented by a union.[2] During that period Kelly handled their grievances, and in some instances Holloway participated.[3]

Holloway was discharged following his appearance at a conference at the Board's Regional Office in Detroit on July 23, 1962. The conference related to the decertification petition. A question is whether Holloway was discharged because of his activities in behalf of the Teamsters or because of deceitful tactics which he used in order to obtain time off from work during the hours that the conference was held.

On April 13, 1962, the Board issued its decision in the earlier case, 136 NLRB 1017. On July 11, a representative of the Board in the Regional Office wrote a letter in which he fixed Monday, July 23, at 1:30 p.m. as the time for a conference in that office on the petition to decertify. Among the persons to whom the letter was sent are Kelly and Washington, who had filed the petition, the Respondent, the Teamsters, and the Sheet Metal Workers. A copy of the letter was not sent to Holloway. The Regional Office and the Respondent did not suggest that he attend the conference, nor, insofar as appears, did any party to the decertification case.

During the workweek preceding the Monday conference, Kelly obtained the Respondent's permission to be off from work in order to attend the conference Kelly's workday normally ended at 3 o'clock, at which time a second-shift employee named John Cole took Kelly's place. The Respondent arranged for Cole to report to work at noon on July 23 Also during that preceding workweek, Kelly showed to Holloway the letter which he had received from the Regional Office, and Holloway decided not to work during the afternoon of the 23d and to drive Kelly to the conference. Holloway waited until the 23d to ask the Respondent for the afternoon off, however, and shortly before noon a second-shift employee, John Alston, appeared at the plant, to the Respondent's surprise, and began working in Holloway's place The contradictory testimony of the General Counsel's witnesses concerning the circumstances under which Alston reported to work more than 3 hours early is set out in the footnote.[4]

We turn to events early on July 23 and to the circumstances under which Holloway obtained the Respondent's permission not to work that afternoon. He had several conversations that morning with Rogers, the plant superintendent In the first conversation, according to Holloway, he asked Rogers if he could get off from work at noon because he "had some business downtown," and Rogers immediately granted the request. On the other hand, Rogers testified that when Holloway made the request, saying that he "had some personal business to attend to that day," Rogers answered that it was "short notice" and that Rogers would "have to see."

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[2] In *Applicators, Inc., supra,* it is said that the delay was occasioned by the filing of charges in that case

[3] The transcript, at page 20, indicates that Holloway testified that the employees, by voice vote, selected him and one Cole as their representatives. It may be that Holloway's reference was to himself and Kelly, not to himself and Cole, but in their briefs the parties do not say that the transcript is in error. On the other hand, Kelly, who also was a witness for the General Counsel, testified that after expiration of the Sheet Metal Workers' contract he and Holloway presented employees' grievances to management, but that he and Holloway assumed the function and were not selected by employees to represent them

[4] Alston performed the same type of work on the second shift which Holloway performed on the first shift. Ordinarily, Alston began work at 3 o'clock. Holloway testified that on July 20, shortly before the change of shifts at 3 o'clock, Alston overheard Holloway say to Kelly that Holloway intended to be absent from work during the afternoon of the 23d in order to attend to a personal matter and that Holloway would drive Kelly to the Board's Regional Office. Holloway testified also that on the 20th Alston volunteered to report to work early in order to substitute for Holloway. On the other hand, Kelly testified that no one else was present on July 19 or 20 when Holloway spoke to him of having to be in downtown Detroit on the afternoon of the 23d and offered to drive him to the Regional Office. Next, Alston testified that he overheard a conversation between Kelly and a representative of management in which Kelly spoke of having to attend the conference, that Alston supposed that Holloway would drive Kelly because Kelly did not own an automobile, and that Alston came to work early on the 23d to replace Holloway although he did not know that Holloway would not work that afternoon and also did not know that Holloway "was going to go any place" that afternoon

Rogers testified also that he inquired if Holloway could postpone the personal business until after 3 o'clock, Holloways' usual quitting time, and that Holloway answered in the negative. As we shall see, Holloway was not frank when he spoke to Rogers of having personal business to attend to, and I cannot credit his testimony that Rogers promptly granted his request for time off. It is more reasonable to conclude that Rogers, who did not know that Alston would report to work early to replace Holloway, would have inquired whether Holloway's business could be postponed until after 3 o'clock and would have deferred a decision on the request for time off until he could arrange for a replacement.[5]

Later that morning, Rogers mentioned the matter to a foreman, Ralph Shotwell, who suggested that perhaps Holloway had to attend the conference at the Regional Office. Rogers inquired of his superior, Plant Manager Allen L. Grant, whether Holloway "had any connection with" the conference, explaining that Holloway had asked for time off. Grant answered in the negative and suggested that Rogers pointedly ask Holloway. Rogers again talked with Holloway, who insisted that his request for time off was unrelated to the conference but refused to disclose the nature of the "personal business" that made it necessary for him to be excused from work at noon. Later, when Rogers noticed that Alston had begun to work in Holloway's place without first obtained management's approval, Rogers spoke to Alston who said that Holloway had told him to report to work early, but who explained to Rogers somewhat later that he had merely overheard a conversation during the preceding week between Kelly and Holloway in which they had spoken of going downtown during the afternoon of July 23. Rogers gave Holloway permission to clock out at noon to attend to personal business which could not be postponed and which had no connection with the conference at the Regional Office.[6] About noon, when Holloway and Kelly were at the timeclock, Rogers expressed to Holloway doubt that Holloway had been thruthful, and Holloway said that he would "take a lie detector test." Rogers replied that Holloway might have to take one.

Holloway and Kelly left the plant together in the former's automobile. Their testimony concerning events before the conference began is conflicting. The conference was held in the Industrial Building. Kelly testified that before the conference began, he and Holloway went into a coffee shop in that building, stayed there from 10 to 15 minutes, and then went upstairs together to the conference room. Support for Kelly's version is found in the testimony of Grant that he arrived at the conference room 15 minutes or more early and that he noticed Kelly and Holloway standing outside the room. On the other hand, Holloway's testimony is that he attended to personal business before and during the conference. According to Holloway, he had seen an advertisement for laborers which the Detroit Civil Service Commission (herein called the Commission) had published in a newspaper, and his personal business was to obtain an application from the Commission.[7] Holloway testified further that after he and Kelly left the plant in his automobile, he drove to the Industrial Building where Kelly got out of the automobile, he then drove to the Commission's offices where he obtained an application, and he then returned to the Industrial Building, arriving outside the conference room about 1:30, the time the conference was to begin. There is no dispute that several representatives of management saw Holloway as they arrived for the conference. When the conference began, an employee of the Board spoke to Holloway concerning his presence there, but the details of the conversation are not disclosed in the record. Holloway did not enter the conference room.

While the conference was in progress, Holloway sat outside the conference room for some time. He testified that he filled out the application while he awaited the

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[5] Holloway's job required skills, and it was not a simple matter to obtain a replacement. This fact is demonstrated by events after Holloway's discharge The plant was operated on a three-shift basis. After the discharge, the two men who performed the work on the second and third shifts were assigned to 12-hour shifts for some time. Surely the Respondent would not have paid overtime rates for one-third of each 12-hour shift if a qualified person had been available to do the work on the first shift

[6] Rogers so testified for the Respondent. Kelly testified for the General Counsel that Kelly heard Holloway say to Rogers that he wanted to go downtown "for personal business," that Rogers asked if Holloway was sure that he was not "going down just to be at" the conference, that Holloway said that he was sure, repeating that "it was personal business," and that Rogers said that Holloway would be permitted to leave work "for personal business . . . [but] not to attend" the conference

[7] One may wonder why Holloway, who had worked for the Respondent in more than one capacity and whose last job was skilled, would apply for employment as a laborer. His reason, so he testified, was the large "number of people out of work in" Detroit.

end of the conference and an opportunity to drive Kelly home. He testified also that shortly before 4 o'clock he had completed the application and decided to take it to the Commission, that the Commission's offices closed at 4, that he arrived there too late to file the application, and that he returned to the Industrial Building where he waited on the sidewalk for Kelly. After the conference ended, but before Kelly came downstairs, Grant and another representative of management left the building and saw Holloway outside. Later Kelly came down, and Holloway drove him home. Grant went to the plant where he told Rogers that Holloway had been outside the conference room, and asked Rogers whether Rogers had made it clear to Holloway that permission to be off from work that afternoon had been given on the basis of personal business unconnected with the conference. Rogers answered affirmatively. He and Grant decided that disciplinary action was appropriate, and Holloway was sent a telegram reading, "Do not report to work balance of week pending decision re: your status as employee." The Respondent did not have Holloways correct residence address, however, and the telegram was not delivered. The next morning, Holloway reported for work as usual. Rogers asked him if he had received the telegram, learned that he had not then told Holloway its substance, and directed that Holloway leave the plant. Rogers did not explain to Holloway the reason why disciplinary action was being taken. Holloway did not tell Rogers that his personal business of the day before had been to obtain a civil service application although, according to Holloway, he filed the application with the Commission on the day of this conversation with Rogers. On the next day, Grant sent to Holloway's correct address a telegram which read: "This is official notification of your dismissal for cause." Holloway telephoned Grant and asked why he had been discharged. Grant refused to discuss the matter on the telephone. Holloway did not tell Grant that he had obtained time off from work in order to file an application with the Commission.

Subsequent developments need not be detailed. It suffices to say that on August 10 a grievance procedure was utilized, that, insofar as appears, on that day Holloway told the Respondent for the first time that his "personal business" on July 23 had been to obtain an employment application from the Commission, that the discharge was upheld, that the Respondent offered to arbitrate the matter and to pay all costs regardless of the arbitrator's decision, that Holloway accepted the offer but asked for a delay because of personal matters, that during September the Respondent wrote Holloway that it considered the matter closed because it had not heard from him, that Holloway protested, that the Respondent again offered to arbitrate but not at its own expense if it should win, and that Holloway rejected the new offer and filed the charge which initiated this proceeding.

2. Conclusions

The first question is the weight to be given to Holloway's testimony concerning an application for civil service employment. As recited, he testified that he filed it on July 24, presumably after he was sent from the plant by Rogers. On the other hand, there is testimony by Rogers and Grant, contradicted by Holloway, that at the grievance proceeding on August 10 Holloway told three representatives of management and two employees that he still had not filed the application. At the time of the hearing herein, the records of the Commission were in such condition that the Commission could not locate the application if it had been filed. On these facts, and bearing in mind that it appears to have been August 10 when Holloway first told the Respondent of an alleged application to the Commission, I cannot credit Holloway's testimony concerning such application. I do find, however, that, assuming that Holloway wanted to apply to the Commission for a job as a laborer, he could have left the Respondent's plant at his usual quitting time, 3 o'clock, and have obtained the application before the Commission closed its offices at 4. I find also that, assuming that Holloway obtained an application from the Commission on July 23, he could have filed it that day by remaining in the Commission's offices to fill it out. Obviously, Holloway's principal, if not his only, objective in being off from work on the afternoon of July 23 was to accompany Kelly to the conference although he might be unable to attend.

The General Counsel, pointing to Holloway's activity in behalf of the Teamsters, and to *Applicators, Inc., supra,* as proof of the Respondent's opposition to the Teamsters, argues that the Respondent granted Holloway time off for the afternoon of July 23 promptly upon Holloway's request therefor, that thereafter the Respondent sought to condition the time off upon Holloway's not appearing at the conference, and that Holloway was discharged for his appearance there, not because of any false reason he may have given to get the time off.

I do not doubt the Respondent's hostility toward the Teamsters during 1962. And I agree with the General Counsel that, under some circumstances, an employee has a Section 7 right to attend conferences at an office of the Board. But I have discredited Holloway's testimony that he was given time off before the Respondent began to suspect that he was being untruthful in his request therefor. Too, I have been unable to credit Holloway's testimony that he wanted to apply for a civil service job as a laborer. As I see it, Holloway, not having been invited to the conference, and not believing that he could satisfy the Respondent that his presence there was needed, decided that he could not reasonably expect the Respondent to give him time off if he should tell the Respondent that he wanted to attend the conference. Therefore, Holloway's judgment was to use undisclosed "personal business" as the basis of his request for time off. When the Respondent suspected that he had not been truthful, and when the Respondent expressed its suspicion to him, he continued his attempted deception. Hopeful of being convincing, he ultimately said that he would take a lie detector test. One would suppose that Holloway might have known that his falsehoods would become apparent upon his being seen later at the conference, but unimaginative liars are not unique.

I find that Holloway was discharged because he proved himself to be untrustworthy, not because he appeared at the conference. It is true, as the General Counsel says, that when Holloway was discharged the Respondent did not tell him precisely why, but waited until the grievance proceeding on August 10 to particularize. I see no reason to draw an inference adverse to the Respondent. Holloway himself appears to have waited until the grievance proceeding to tell the Respondent that his "personal business" on July 23 had been to file an application for a civil service job and, according to the Respondent, at that proceeding Holloway said that he still had not filed it. When Holloway was discharged, the Respondent reasonably could have assumed that Holloway knew the reason. In my opinion, Holloway needed no enlightenment I should think too that, if a reasonable explanation of his "personal business" had occurred to him when he talked with Grant as late as July 25, he would have offered it. When Grant talked with him, Grant had no reason to believe that Holloway had applied for a civil service job. Instead, Grant had reason to regard him as a deceitful employee and to discharge him as such. I find that the Respondent did not violate the Act in discharging Holloway.

D. *The 1-week layoff of Kelly*

Kelly began work for the Respondent in 1957. The Respondent concedes that he is a capable employee. The Respondent concedes too that it was aware that Kelly was a "spokesman" for the employees, and we have seen that Kelly processed their grievances following the termination of the Sheet Metal Workers' contract and that Kelly and another employee filed the petition to decertify that labor organization. Thereafter, Kelly was the most active employee in behalf of the Teamsters, which was certified following an election on the petition, and at the time of Kelly's layoff during November 1962 he was a member of the Teamsters' bargaining committee.

Kelly's work is in connection with certain tanks which contain a liquid. By means of pumps and sprays, aluminum articles are sprayed with the liquid as the articles move along a production line. The liquid falls back into the tank. There is uncontradicted testimony that the #3 tank is about 10 feet in length, 4 feet in width, 5 feet in depth, and contains 500 gallons of liquid which measure in depth about 3 feet. My computation, set out in the footnote, shows an inaccuracy in those figures.[8] During the night before Kelly's layoff, the #3 and other tanks were cleaned by Harry Bowman, an employee. During the next morning, November 16, when Kelly was at work, a rag was found in the plumbing attached to the #3 pump. According to the Respondent, Kelly was careless in allowing the rag to get into the tank, from which place it was drawn by suction into the plumbing, causing the pump to become inoperative, and Kelly was laid off therefor.

Kelly testified that on November 16 he began work as usual at 7 o'clock, and turned on the pumps in three tanks, including #3. Kelly may not have put the pumps in operation promptly after that hour, however, because Rogers testified for the Respondent that the #3 pump was started about 8 o'clock. About 9, the #3 pump ceased pumping the liquid into the spray properly. Kelly and another employee noticed it and summonded Rogers and a maintenance employee, Carroll

[8] Five hundred gallons would have a depth of only 1 foot 8 inches If the liquid has a depth of 3 feet, nearly 900 gallons would be required in a tank of the dimensions listed

Potter. As the pump was removed from the tank for inspection, Kelly, a member of the Teamsters' bargaining committee, was called to the office where negotiations were to take place. After the pump was taken from the tank, the rag was discovered and removed. The pump was replaced in the tank. It did not operate properly, however, and again it was removed. It was taken apart and throughly cleaned, but the cleaning did not disclose why the pump had not functioned properly. Again the pump was installed in the tank, and again it did not function properly. This time it was determined that Potter, the maintenance man, had rewired improperly. The wiring was corrected and the pump was in working order. Preparations were made to start the production line again. About 1.30 p.m. the bargaining session in the office ended and Kelly returned to his place of work. About 2, the production line was started. Kelly worked until his usual quitting time, 3 o'clock, and went home. Upon his arrival there, he was told that Rogers had sought to reach him by telephone. He called Rogers who told him that a rag had been discovered in the pump, that he had been careless, and that he was being laid off for a week. On the next workday, a Monday, Kelly nevertheless reported for work. Rogers referred him to Grant, Rogers' superior. Grant said that Kelly had been responsible for the rag's being in the tank and that it may have dropped from Kelly's pocket, but Kelly insisted that he had not been at fault and that he did not carry rags in his pockets. Grant said that the layoff would remain in effect. Within about 1 day, Rogers learned that during the night of November 15 the tanks had been cleaned by Bowman. Robert Kabeth, Bowman's supervisor, informed Rogers that it was possible that Bowman had dropped the rag in the tank, but Bowman denied having done so and Rogers accepted his denial. According to Rogers, the suction from the pump is so great that the rag must have been drawn into the pump within 15 minutes after the rag got into the tank. On the other hand, there is testimony to the contrary by witnesses for the General Counsel, and the findings in connection with the footnote next preceding, read in the light of the testimony concerning the suction power of the pump, do not enlighten one who would determine how long the rag could have remained in the tank without being drawn into the plumbing.

I cannot credit the defense that Kelly was careless in allowing the rag to get into the tank, nor do I believe that the Respondent thought that Kelly had been careless. The Respondent contends that Kelly was careless, but not deliberately so, and that the rag somehow must have gotten into the tank after Kelly began work that morning. The Respondent's contention is based on the proposition that the rag must have been drawn into the plumbing within about 15 minutes after it got in the tank. The record, however, will not support a finding that the rag could not have been in the tank longer than 1 hour before it was drawn into the plumbing, and we have seen that the pump became inoperative about 9 o'clock and that Rogers testified that Kelly started the pump about 8. Moreover, after the rag had been removed, the pump remained inoperative and was thoroughly cleaned. Too, the maintenance man rewired incorrectly, extending the delay. In short, the fact that the production line was not in operation from 9 to 2 o'clock can be attributed only in small part to the rag, and even so the rag's presence in the tank cannot be attributed definitely to carelessness by Kelly. Under these circumstances, and bearing mind Kelly's prominent part in the activities of the Teamsters and the Respondent's opposition to that labor organization during 1962, I conclude that the presence of the rag in the tank was seized upon by the Respondent as an excuse to lay off the strongest Teamsters' adherent. I find a violation of Section 8(a)(3) and (1) in the layoff.

E. *Interference, restraint, and coercion*

The complaint alleges that the Respondent violated Section 8(a)(1) in two respects involving Holloway's time off on July 23: (1) by conditioning the time off upon Holloway's not attending the conference at the Regional Office, and (2) by advising Holloway that he would be disciplined if he should attend the conference With respect to the first allegation, Holloway, unlike Kelly, had not been invited to the conference, which was not open to the public. Therefore, whatever right Holloway may have had to seek admission to the conference was subordinate to his employer's right to require that he work a full day. The Respondent yielded its right because of Holloway's plea of urgent personal business, and, therefore, the Respondent could reasonably limit the use of the time off to the condition which caused it to be granted. This case is distinguishable from one in which an employer, in granting an employee a general time off, seeks to restrict the employee's use of the time to nonunion matters. Turning to the Respondent's threat to discipline Holloway if he should attend the conference, this was a threat to discipline

him if it should develop that he was lying in order to obtain time off; it was not a threat to discipline him if he should exercise a Section 7 right. I find no violation of the Act in these allegations of the complaint.

The complaint alleges also that the Respondent violated Section 8(a)(1) by a conversation which Rogers had with an employee, Elisha King. On an undisclosed date following the conference on July 23, but before the layoff of Kelly in November, an election was conducted at which the employees selected the Teamsters as their representative. Two weeks or so before the election, Rogers said to King *inter alia* that if the Teamsters should win the election, management might find it necessary, in the interest of efficient operations, to hire men off "the street" in order to obtain "the best man" for any particular job. The hiring of new employees, without first affording old employees the opportunity to upgrade to a vacancy, would have been contrary to the Respondent's practice at the time of the conversation between Rogers and King.[9] I find that Rogers' remark was a threat to induce King to vote against the Teamsters. Such threat is consistent with the Respondent's hostility to the Teamsters as recited in 136 NLRB at 1020–1021. It also is consistent with the hostility as reflected in the layoff of Kelly. I find a violation of Section 8(a)(1) in Rogers' remark.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The unfair labor practices set forth 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 certain unfair labor practices, I shall recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act. I have found that Kelly was laid off for 1 week in violation of Section 8(a)(3) and (1). Ordinarily, I would recommend that the Respondent give Kelly backpay for the period of the layoff and that the Board issue a broad cease-and-desist order, *N.L.R.B.* v. *Express Publishing Co.*, 312 U.S. 426; *N.L.R.B.* v. *Entwistle Mfg. Co.*, 120 F. 2d 532 (C.A. 4). I shall not so recommend, however, because on undisclosed dates following Kelly's reinstatement the Respondent entered into a 3-year contract with the Teamsters and gave backpay to Kelly. Indeed, in view of the nature of the unfair labor practices found, and the fact that the major one has largely been remedied, I should be inclined to grant the Respondent's request that I recommend dismissal of the complaint were it not for the fact that the Respondent engaged in unfair labor practices after issuance of the Order in *Applicators, Inc., supra.*

Upon the basis of the above findings of fact, and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. The Teamsters and the Sheet Metal Workers are labor organizations within the meaning of Section 2(5) of the Act.
2. By discouraging membership in a labor organization through discrimination in employment, and by interfering with, restraining, and coercing employees in the exercise of their rights under the Act, the Respondent has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7).
3. The allegation of the complaint that the Respondent violated the Act by discharging Roosevelt Holloway has not been sustained.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and pursuant to Section 10(c) of the Act, I hereby recommend that the Respondent, Alsar Manufacturers, Inc., its officers, agents, successors, and assigns, shall:

[9] The findings are based upon the credited testimony of King. On the other hand, Rogers testified that King inquired "what type of seniority" Rogers thought King "would have after the Teamsters were in the picture," and that Rogers answered that he did not know but that management would seek a contract which would allow it "the opportunity to increase the efficiency of the plant, placing the right men on the right jobs." I cannot credit Rogers' testimony that the conversation was so brief or innocuous as he indicated.

1. Cease and desist from:

(a) Discouraging membership in Local 458, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or in any other labor organization, by laying off any of its employees because of their union or concerted activities, or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of employment.

(b) Threatening employees concerning union activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Post at its place of business, copies of the attached notice marked "Appendix."[10] Copies of said notice, to be furnished by the Regional Director for the Seventh Region, shall, after being duly signed by the Respondent's representative, be posted by it immediately upon receipt thereof, and be maintained by it for at least 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees customarily are posted. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Notify said Regional Director, in writing, within 20 days from the receipt of this Intermediate Report, what steps the Respondent has taken to comply herewith.[11]

It is further recommended that the complaint be dismissed insofar as it alleges that the Respondent engaged in unfair labor practices by discharging Roosevelt Holloway.

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[10] If this Recommended Order should be adopted by the Board, the words "As Ordered by" shall be substituted for "As Recommended by a Trial Examiner of" in the notice In the further event that the Board's Order be enforced by a United States Court of Appeals, the words "A Decree of a United States Court of Appeals, Enforcing an Order of" shall be inserted immediately following "As Ordered by."

[11] If this Recommended Order should be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

As recommended by a Trial Examiner of the National Labor Relations Board we are posting this notice to inform our employees of the rights guaranteed them in the National Labor Relations Act:

WE WILL NOT lay off or otherwise discriminate against any of our employees because they engage in union activities.

WE WILL NOT threaten you about your union membership or activities.

WE WILL NOT violate your rights under the National Labor Relations Act to join a union of your own choice and to engage in union activities, or not to join a union and not to engage in such activities.

WE HAVE given Sam Kelly full backpay for the week that he was laid off. Kelly's reinstatement to his job has been without loss of any seniority or other rights or privileges.

ALSAR MANUFACTURERS, 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.

If the employees have any questions concerning this notice or whether the Employer is complying with its provisions, they may communicate with the Labor Board's Regional Office, Fifth Floor, Book Building, 1249 Washington Boulevard. Detroit, Michigan, 48226, Telephone No. 963–9330.