

1. Cease and desist from:

(a) Failing and refusing to bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit with respect to any decision to sell or otherwise terminate its operations.

(b) Refusing to bargain with the Union about the effects on employees in the appropriate unit of any sale or other termination of operations.

(c) Refusing to supply the Union with information necessary for collective bargaining.

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action which will effectuate the policies of the Act.

(a) Bargain, upon request, with the Union concerning the effects of the sale of its Wheeling and Wellsburg plants on the employees in the bargaining unit.

(b) Notify the Regional Director for the Sixth Region, in writing, within 20 days from the receipt of this Intermediate Report and Recommended Order, what steps Respondent has taken to comply herewith.¹⁴

¹⁴ If this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for the Sixth Region, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

Samuel Rafowitz and Chaim Bonk, d/b/a Northern Cap Manufacturing Co. and United Hatters, Cap and Millinery Workers International Union, AFL-CIO. *Case No. 18-CA-1624.*
February 27, 1964

DECISION AND ORDER

On November 15, 1963, Trial Examiner Stanley N. Ohlbaum issued his Decision in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the attached Trial Examiner's Decision. Thereafter, the Charging Party filed exceptions to the Trial Examiner's Decision.

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

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

[The Board dismissed the complaint.]

¹ The Charging Party has excepted to the credibility findings made by the Trial Examiner. It is the Board's established policy, however, not to overrule a Trial Examiner's resolutions with respect to credibility unless, as is not the case here, the clear preponderance of all the relevant evidence convinces us that the resolutions were incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enfd. 188 F. 2d 362 (C.A. 3).

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

Upon a charge filed May 9, 1963, by United Hatters, Cap and Millinery Workers International Union, AFL-CIO, herein called the Union, the General Counsel of the National Labor Relations Board, by the Regional Director of the Eighteenth Region, on August 21, 1963, issued a complaint against Samuel Rafowitz and Chaim Bonk, d/b/a Northern Cap Manufacturing Co., herein called the Respondent or Employer, alleging violations of Section 8(a)(1) and Section 2(6) and (7) of the National Labor Relations Act, as amended, herein called the Act, by reason of interrogations of employees concerning union membership applications, and threats of discharge for union activity. Respondent's denial of these allegations resulted in issues litigated fully before Trial Examiner Sidney N. Ohlbaum at a hearing on October 14, 1963, in Minneapolis, Minnesota, throughout which all parties participated by counsel. Although given the opportunity to submit proposed findings, conclusions, and briefs, counsel elected not to do so. At the conclusion of the hearing, closing argument was made by Respondent's counsel but not on behalf of General Counsel.

Upon the entire record, and from my observation of the witnesses, I make the following:

FINDING AND CONCLUSIONS

I. THE BUSINESS OF RESPONDENT

At all material times, Respondent has maintained its principal office and place of business in Minneapolis, Minnesota, engaged in manufacturing and jobbing caps, involving, during the 12-month representative period prior to issuance of the complaint, sales of \$325,000, of which \$235,000 were interstate, and also purchases upwards of \$200,000, of which \$195,000 were interstate. Respondent has at all such times been and is an employer engaged in commerce within the meaning of Section 2(6) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

At all material times, United Hatters, Cap and Millinery Workers International Union, AFL-CIO, and Cap Makers Union Local 38, of United Hatters, Cap and Millinery Workers International Union, AFL-CIO,¹ have been and are labor organizations within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES—ALLEGED INTERROGATIONS AND THREATS OF DISCHARGE

A. Evidence adduced by General Counsel

Paragraph 6 of the complaint alleges that "On numerous occasions beginning on or about May 3, 1963, the Respondent, by its partners, agents, and supervisors, has interrogated its employees concerning their applications for membership in the Union and has threatened to discharge its employees who desired to have the Union as their collective bargaining agent."

Of Respondent's total of approximately 20 employees (including 10 to 12 sewing machine operators, of whom 9 are said to have signed union membership application cards prior to the events with which we are here concerned), 4 testified. Of these four, one (Pomeranc) in effect denied knowledge of any material facts, thereby for practical purposes reducing the number of General Counsel's witnesses to three; namely, Juanita Leon, Ana Torrico, and Feliksa Mazurek.²

1. Juanita Leon

Juanita Leon, a sewing machine operator in Respondent's employ for over 2 years, speaking in broken English and qualifying her testimony by the statement, "I don't

¹ The latter was added without opposition at the hearing, upon motion by General Counsel to amend the complaint. As in the complaint as thus amended, these two entities are collectively referred to herein as the "Union."

² Respondent Bonk was also called as a witness by General Counsel, as were Drucker, a union official, and Abels, a local organizing aid. Abels merely testified to her organizing activities. The testimony of Bonk and Abels is alluded to below.

remember too well," testified that on a morning 2 or 3 days after she signed a union membership application card,³ Respondent Bonk asked her at her machine in the shop whether she had signed an application to join the Union, and she told him that she, as well as other girls, had, whereupon Bonk remarked, "Well, I can't stop you to join the Union if you want. But if you sign the application, you can't work in this shop."⁴ She further testified that 2 or 3 days later—subsequently, saying she "got mixed up," she corrected this so as to state it was the same day as the conversation at her machine—Bonk addressed some remarks to a group of employees, including herself, in the shop. When she was asked on direct examination what Bonk said, she stated, "Well, I was there, but I was very upset, and I couldn't remember what." On cross-examination, this witness conceded that there have been occasions when she has become so nervous, ill, and upset that her employer has had to send her home in a taxicab. She admitted that on the occasion when Bonk spoke to her as described, she was also overcome with this same extreme nervousness. Asked whether Bonk had not then as on previous occasions said to her—rather than what she had testified to on direct examination—merely that she could not work in that condition, she conceded, "I don't remember" and admitted (as was apparent to the Trial Examiner during the course of her testimony) that when she becomes nervous and upset she has difficulty in understanding and following a conversation. She admitted that because of her extreme nervousness at the time in question she might have misunderstood what Bonk was driving at.

It was apparent to the Trial Examiner that although this witness is able to read English satisfactorily, she speaks a broken English and her comprehension of the spoken language leaves much to be desired. It was also obvious to the Trial Examiner that this witness does indeed appear to be afflicted with extreme nervousness and discomfiture of such overwhelming degree as for practical purposes to be inconsistent with normally meaningful interaction or communication, or reliable recollective processes.⁵

2. Nathan Pomeranc

Also called as a witness by General Counsel was Nathan Pomeranc, who, testifying through an interpreter, stated that he is employed by Respondent as an operator, and that on several occasions around May 1963 he was visited at home by union emissaries, at whose behest he signed a union membership application card. He swore that he had no conversation with Respondent relating to the Union. He also swore that although he was present on the occasion when Bonk directed some remarks to employees in the shop, "I didn't hear, because I don't understand English, but my ears heard, but I didn't understand. . . . The shop is large, and I was at another end of the shop, and I didn't understand." At this point, counsel for the General Counsel excused this witness.

3. Ana Torrico

Ana Torrico, recently from Bolivia and another operator in Respondent's shop, testified that after numerous visits by organizers to her home she signed a union membership application card 3 or 4 days after which Bonk called her to his office and asked her whether the Union had visited her at her home and whether she had signed some papers, to which she replied in the negative, ending the conversation.

³ She testified she signed the card on the day it is dated, i.e., May 2, 1963. Since that was a Thursday, her recollection as to a conversation with Bonk at the plant 2 or 3 days thereafter was imprecise, since that would have been on Saturday or Sunday. Her recollection as to the card she signed was also faulty. She described it as "a small card" which she thought was "yellow or pink." The card (General Counsel's Exhibit No. 2) may or may not be what most people would consider to be small, but it is certainly neither yellow nor pink.

⁴ It is undisputed that at this time she had already signed the application. It is further undisputed that at no time has she (or any other employee who signed a union application card) been discharged or in any way discriminated or retaliated against by reason thereof.

⁵ In fact, she was so overcome with nervousness at the hearing, among other things literally "shaking like a leaf," that at the suggestion of counsel for the General Counsel a recess was essential in order to afford her an opportunity to attempt to regain sufficient composure to be able to continue with her testimony.

She then testified that she was confused as to whether Bonk spoke to employees in the shop before or after this conversation with her, first stating it was before, then after, then the same day (a Monday), and then that she did not know. The flavor of this witness' testimony may be assayed from the following colloquy on her direct examination:

Q. Were you present at the meeting?

A. Yes.

Q. Did you hear Mr. Bonk speak? Did you hear him speak?

A. Yes, I hear him speak. I don't understand the all when I speak to Mr. Bonk.

TRIAL EXAMINER: You don't understand what?

A. The all talk about the Union—about Mr. Bonk I don't understand the all—no.

She then stated that although Bonk said to this group in the shop, with herself at her machine 18 to 20 feet from him, that "When the people belong the Union, don't work any more in my factory," he also said many other things which she was unable to understand.

It was apparent to the Trial Examiner that the knowledge of English of this witness was quite limited in all aspects, including speaking and comprehension. Her testimony was to an extent characterized by contradictions and inconsistencies, which the Trial Examiner is willing to ascribe in whole or in part to her poor comprehension of English, although, to be sure, with a degree of reservation as to her credibility because of certain answers to questions which it seems reasonable to assume she understood.⁶

4. Feliska Mazurek

Feliksa Mazurek, also one of Respondent's operators, testified for the most part in Polish, through her son-in-law, a trade unionist who had filled out the blanks and participated in procuring her signature on a union membership application which she testified she could neither read nor recognize, and which she swore variously that she signed at home or at work. She testified that she did not speak with Bonk after signing this card, but that 3 or 4 days later Respondent's supervisor, Sherman, said to her that everybody had told him that she signed a union card and was it true, to which she replied she had not. She further stated that she was present, also 3 or 4 days after she signed the card, when Bonk spoke to some employees in the shop, and that "As far as I was able to understand, Mr. Bonk stated whoever wants to belong to the Union can go where there is Union. However, he says, whoever does not want to belong to the Union is quite welcome to remain to work for me; that is, Mr. Bonk." She testified that other than calling for questions (and that there were none) Bonk said nothing else at this "meeting."

It was apparent from the testimony of this witness at the hearing that not only is her understanding of English extremely limited, but that she is illiterate or substantially so. This being the case, her testimony with regard to Bonk's alleged statements in English to his employees must be treated with a high degree of reserve and her general credibility assessed correspondingly. There was no Polish interpreter present when Bonk spoke in the shop, and according to this witness nobody told her in Polish what Bonk had said, and she herself limited her understanding of what he said, or rather of what she thought he said, to only "I understand a little bit"; and she later testified (spontaneously in English) that Bonk's words were, "Like this. Who wanted belong to Union can fight this place or this Union. Who wanted to work here, can work here."⁷ She further testified that at this "meeting" Bonk did not say that he could not stop his employees from joining the Union if they wanted to but that if they signed the application they could not work in that shop. She, like the others, is still working there.

⁶ Such as that nobody spoke about what Bonk had said; and (at first) that she did not know what she was going to testify about.

⁷ This attempted or approximate recreation of Bonk's precise words has great potential significance in this case, particularly in the context of the English language shortcomings of the speaker as well as the audience, since such a statement—as thus quoted or recreated by Mazurek—by Bonk to his employees is consistent with the version or interpretation advanced by Respondent; namely, that Bonk conveyed to his employees their right to join or not join the Union, without fear, and that all who wished to could continue to work there whether or not they joined.

B. Respondent's version of events

Respondent Bonk testified that on his return on a weekend in early May 1963 from an out-of-town business trip, his partner and others apprised him of union organizational activity.⁸ He stated that on the following Monday morning, while in the shop taking a pill, he observed his employee Juanita Leon "just sit[s] by the machine, and kind of sinking a little back" and that she appeared to be "very nervous, but at the machine she was sitting and shaking."⁹ I asked her how she feels, and "what makes you so nervous." Then she told me that the Union was in her place, and she signed a card, and she started to get so nervous I stopped talking to her.¹⁰ I said: "You can't work in that condition. You had better take a rest." . . . That's the entire conversation."¹¹ Bonk unequivocally denied that he on this or any other occasion told Juanita Leon that she could not work in his shop if she joined the Union; and he insisted that on this occasion—as well as in similar instances in the past—he merely indicated to her that she was in no physical condition to work at the time, because she was in the throes of an attack of her nervous affliction. He testified that he had been warned by her physician and her family to be on the lookout for these nervous attacks, manifested by throwing the head to one side and the other; that on previous occasions she had been placed on a couch or sent home in a taxicab upon her exhibiting these manifestations of her malady; that on this particular occasion she was made to lie down in his office for an hour "while she had the attack to quiet her down"; and that because these attacks, which were recurrent and frequent, were frightening spectacles to other employees in the shop, he had decided to dispense with her services, but upon the intercession of her physician and daughter he had continued to keep this apparently disabled person on the payroll for compassionate reasons. "And that's the reason why I came to her machine and asked her how she feel, and I saw that she is a little bit kind of nervous."

With regard to Ana Torrico, Bonk testified that she had been after him for another raise, and he called her into the office to discuss it. Having noted her evident discomfiture over something while sewing at her machine, he said, ". . . what's wrong with you? You just trembling by the work. I don't know what is going on," to which she replied that the "Union is after [me]" and that the "Union bothered [me] for signing a paper,¹² but [I] didn't sign."¹³

On the subject of the remarks addressed by him to some of his employees in the shop, Bonk testified that he did indeed speak to about 10 of them there among their machines,¹⁴ because of an observed restlessness which was interfering with their work. As he put it, "They was kind of afraid of something. The reason I said, well, I will just talk to them and I will straighten them out. They shall go back to the machinery, and not to get running around and talk each to the other, and not to get nervous about it." He told these employees that he was aware that union representatives were calling on them at home to organize a union shop,¹⁵ not to

⁸ The union organizational activity was so open, undisguised, and relatively widespread, that there is no doubt in my mind that it was a matter of common knowledge, and I so find.

⁹ As already indicated in another connection, this employee (Juanita Leon) gave a convincing demonstration of this behaviorism at the hearing, under observation of all, at one point necessitating suspension of her testimony.

¹⁰ See footnote 9, above

¹¹ It will have been noted that under Bonk's version of this episode, which I credit for reasons detailed below, employee Leon of her own accord volunteered the information about having joined the Union, without "interrogation" by her Employer

¹² I am convinced, and find, that in the particular idiom quoted, "for signing a paper" means "to sign a paper."

¹³ Here again, it will have been noted that under this version, which Bonk adhered to consistently on cross-examination, and which for reasons explained below I credit, the information on the subject of union membership was volunteered by the employee, rather than elicited through interrogation by the Employer.

¹⁴ Bonk speaks a broken English of an idiomatic and dialect variety (Yiddish) different from that of Juanita Leon and Ana Torrico (Spanish) and that of Feliksa Mazurek (Polish). When Bonk made his remarks to this group in the shop, as he expressed it: "I speak in some English language." The basic, first, or customary language of most of the employees is other than English

¹⁵ He testified that he had learned this from Juanita Leon and Ana Torrico, as above described, as well as from his partner Rafowitz.

be afraid, but let them in;¹⁶ that all in the shop used to belong to the Union, and that it was no crime to belong to the Union; and that they should make up their own minds what to do,¹⁷ "but if they call on you, just let them in and don't be afraid." It is not questioned that this was the one and only occasion on which he, or anybody else on behalf of Respondent, spoke to the employees on this subject.

C. Resolution of credibility

The testimony adduced in support of the complaint in this case was for a variety of reasons unimpressive. Perhaps prominent among these reasons was the language factor, resulting in an unsuccessful effort by witnesses to recreate words, turns of phrase, and meanings conveyed by an employer speaking in his particular variety of English dialect to employees either ignorant of that language, untutored in that dialect, or versed in their own particular varieties of miscellaneous English dialects.

Although in the case of all of the employee witnesses this language factor was overriding and in itself sufficient to persuade me to view their statements with grave reserve, in the case of each there were additional reasons for rejection of their testimony. Thus, as has already been sufficiently indicated, employee Juanita Leon is unquestionably the victim of some form of "nervous" affliction impeding her capacity to communicate, cerebration, and remember. Other things being approximately equal, I cannot regard the testimony of such a witness in quite the same way as that of a witness not so afflicted. Since she concededly suffered a total lapse of recollection as to Bonk's remarks to the grouped employees, her contribution to General Counsel's case was limited to her attempted reconstruction of her selectively recollected conversation with Bonk at her sewing machine, with no other person present. But this must be evaluated within the frame of reference of her testimonial concessions that she cannot remember well, was confused, and might indeed have misunderstood what Bonk said or meant. Even had she not made such significant concessions, I could not possibly be justified in preferring the uncorroborated testimony of such a witness to that of Bonk, seemingly a normal person, who impressed me as candid and straightforward under oath, and much of whose testimony was neither contradicted nor disputed. I accordingly credit and believe Bonk's testimony that on the Monday early in May 1963, when he returned from an out-of-town business trip, while in the shop he observed Juanita Leon in or about to go into one of her usual nervous attacks, and that he approached her for that reason; that, without being asked, she volunteered the information to him that she had joined the Union; that, since she appeared to be on the verge of one of her recurrent nervous seizures, he told her she was not in a condition to work at that particular time, and—as on previous occasions—he arranged for her to lie down until she recovered. I find that the credible evidence fails to establish that Bonk, or anybody else on Respondent's behalf, at any time interrogated or threatened Juanita Leon with discharge on account of or in relation to union membership.

Since, in the case of employee Nathan Pomeranc, his own uncontroverted testimony establishes that at no time did he have a discussion with Respondent about the Union, and that he either did not hear or did not understand, or that he neither heard nor understood, Bonk's remarks to the grouped employees in the shop, I find that the evidence likewise fails to establish any interrogation or threat of discharge of Pomeranc by Respondent at any time.

Although employee Ana Torrico's comprehension of English appeared to me to be considerably more limited than even that of Juanita Leon, her testimonial quality was further impaired by inconsistencies and, it seemed to me, her significant concession that of many things which Bonk said to his shop employees at the "meeting," she could understand only the one to which she testified, and her possible

¹⁶ He testified that some of the employees said, "They was in my house. I didn't even want to let them in" and "eight of them was in my house, and they forced me to sign." He further testified that when "Some people [i.e., his employees] saying they close the door, and they were afraid," he told them "they should not get scared and shall let in the Union If the Union calls on them, they shall let them in." This testimony was not disputed.

¹⁷ He volunteered spontaneously at the hearing that he also told this group—as he had his employees on previous occasions—that if any of them had bad working conditions, didn't feel like working there, or felt mistreated, he was free to leave. Of this freely and candidly volunteered remark, uttered in his characteristic loose idiom, he said in a way which while under my close observation I found convincing, "And maybe they understand me a different way. This is not my—the way that they blamed I said."

further qualification that (as she expressed it), "They all talk about the Union—about Mr. Bonk I don't understand the all—no." Her credibility was further impaired in my eyes because of answers, which I cannot credit, to certain questions which I believe she understood.¹⁸ Comparing her testimonial quality with that of Bonk, I have no hesitation in preferring Bonk. I accordingly find that, as testified by Bonk, Ana Torrico of her own accord, without being questioned on that subject by Respondent, volunteered the information to Bonk that she had been solicited to join the Union but had not joined; and that the credible evidence fails to establish that she was at any time interrogated or threatened with discharge by Respondent on account of or in relation to union membership.

So far as employee Feliksa Mazurek is concerned, I was supremely unimpressed with her quality as a witness. Testifying through her son-in-law (who had filled out her union membership application card—she is for practical purposes illiterate) as a Polish interpreter, and insisting she could not understand English, she nevertheless purported to have been able to understand and remember what Bonk said to his employees in that language (and particularly in his mangled dialect thereof). However, when she testified (in English, spontaneously) to her best approximation of his exact words, the sense of those words—as indicated above—was not inconsistent with Bonk's testimony as to what he said and meant; namely, that his employees should make their own choice as to whether to join the Union or not, but that all could continue to work there regardless of the choice made. I find that the credible evidence fails to establish that Feliksa Mazurek was at any time interrogated¹⁹ or threatened with discharge by Respondent for or in connection with union membership.

In contrast to these employee witnesses, I was favorably impressed by Respondent Bonk as a witness. Notwithstanding his linguistic imprecision—which was very much less than that of the employee witnesses—he testified with an assurance, consistency, and outspokenness which carried conviction. Faced with the alternatives of crediting the employee witnesses or Respondent Bonk, I do not find it possible to accept these employees' version²⁰ (or interpretation, as linguistically articulated)²¹ of what took place. Issues of credibility are therefore resolved in favor of the version of the events testified to by Respondent Bonk.²²

¹⁸ See footnote 6, above.

¹⁹ Although employee Mazurek testified that she had not discussed the Union with Bonk, she stated that a few days after she signed the union membership application card, Respondent's shop foreman, Sherman, remarked to her that "Everybody tells me you signed the card to join the Union. Is that true?" to which she replied that she had not. Although in the overall context of the case as a whole, I would not be disposed to regard as unlawful "interrogation" this random, isolated remark relating to a fact which was common knowledge throughout the shop, nevertheless, still more basically, because of my evaluation of the testimonial demeanor of this witness as closely observed by me, I cannot accept and therefore discredit her testimony in this regard.

²⁰ Since, observing their department and demeanor while testifying, and on the whole record of their testimony, I found them to be unreliable witnesses, I am unwilling to accord probative value to those portions of their testimony which are denied and uncorroborated by objective circumstances or the testimony of other credible witnesses. Cf. *Hot Point Co., a Division of the General Electric Company*, 120 NLRB 1768, 1772; *Standard Dry Wall Products, Inc.*, 91 NLRB 544, 545.

²¹ "The final stage at which the witness' account may be distorted is in its articulation. After he has seen, interpreted, and recalled the incident, he must convert his mental image into words that will communicate this image to his hearers. This translation of images into words leads to two kinds of distortion: the use of words creates a compulsion to fill in the gaps in a narrative, and gives no indication to the listener of how clear to the witness is the image that he is reporting. Words fail to describe accurately the strength of perception of what they describe. For instance, if the witness says, 'It was raining and I wore my rubbers,' we cannot know whether he recalls one of those facts and infers the other, recalls both, or has deduced both from a third recollection, e.g., that he saw people carrying umbrellas." Marshall, *Evidence, Psychology, and the Trial: Some Challenges to Law*, 63 Colum. L. Rev. 197, 217-218 (1963). ". . . the facts disputed in litigation are not random unknowns in isolated equations—they are facets of related human behavior, and the chiseling of one facet helps to mark the borders of the next. Thus, in the determination of litigated facts, the testimony of one who has been found unreliable as to one issue may properly be accorded little weight as to the next." *N.L.R.B. v. Pittsburgh S.S. Company*, 337 U.S. 656, 659.

²² This result is unaffected by the testimony of General Counsel's witnesses other than employees of Respondent; namely, Abels and Drucker. Abels merely testified to union organizational activities at the homes of Respondent's employees. Drucker, a union

D. CONCLUSIONS

In view of my findings rejecting the version of events put forward by General Counsel's witnesses and accepting, instead, that of Respondent, I am compelled to the conclusion that General Counsel has failed to sustain the burden of proof, which is his,²³ of establishing the allegations of the complaint by a preponderance of the substantial²⁴ credible evidence. In the aggregate, the slender reeds of weak, conflicting, equivocal, and linguistically inept testimony of his witnesses, each of dubious credibility, are insufficient to support the superstructures of the allegations of the complaint.²⁵ In the context of the situation as a whole, neither interrogation, nor threat of discharge or reprisal, nor coercion, nor a background of unfair labor practices is revealed. Two employees of their own accord spontaneously conveyed to the Employer the fact that they had joined the Union, which he anyway knew since it was common knowledge. It is not violative of the Act for an employer to listen to or receive information from the employees indicating that they have joined a union, where, as here, the information is not conveyed as a

executive, testified to an alleged conversation with Respondent's shop foreman, Sherman, who I find was at all material times a "supervisor" of Respondent within the meaning of Section 2(11) of the Act. According to the testimony of Drucker, who appeared formally at the hearing as the representative of the Charging Party, while in Minneapolis on the evening of May 13, 1963, he visited the home of Sherman, introduced himself, ascertained that Sherman was still a member of the New York City local of the Charging Party and still considered himself a union man, and elicited from him an admission that he (Sherman) was present when Bonk spoke with a group of employees in the shop "threat[ening] the jobs of the people who remained loyal to the Union." In evaluating the foregoing in its context, however, it is to be noted that the characterization of Bonk's remarks as quoted from Drucker's testimony (i.e., as "threat[ening] the jobs of the people who remained loyal to the Union") was that of *Drucker* and not of Sherman; and, further, that Sherman's response thereto, according to Drucker's testimony, was that although Bonk allegedly "did" (in any event, a conclusion on somebody's part), "but he [Bonk] didn't mean anything" [gesturing]. In the context of the credible proof as a whole, I am unable to base any finding or conclusion as to interrogation, threats, or violation of the Act upon speculation concerning such testimony as this.

Respondent's counsel moved to strike from the record Drucker's testimony regarding this alleged conversation with Sherman on the grounds that it was hearsay, irrelevant, and immaterial, without proper foundation, unconnected, and because there was no proof that Sherman had authority to make such alleged admissions on behalf of Respondent. The testimony was received subject to connection, and decision on Respondent's motion was reserved. The testimony, which is clearly relevant and material, was connected by proof of Sherman's supervisory status vis-a-vis Respondent and his presence at the place and time in question. I am well aware of the principle so aptly expressed by Morgan that "It is necessary to distinguish sharply between authority to do an act or to deal with a specified matter and authority to talk about it. The latter is usually a requisite of admissibility of statements made by the agent." (2 Morgan, *Basic Problems of Evidence* 272 (June 1961 ed.); see also Restatement (Second) Agency sec. 288(1).) However, overlooking for the moment the possibility that Drucker was quoting a conclusion on Sherman's part as to what Sherman thought Bonk did or did not mean, if Sherman—whose supervisory status was, as I have found, established—was merely stating what he himself had heard, it is not clear that there is necessarily involved a question as to the authority of an agent to make admissions on behalf of his principal. In view of the mootness of the question resulting from my findings that Drucker's testimony would in any event leave my other findings and conclusions, and of course my decision, unchanged, Respondent's motion to strike from the record his testimony, so far as it pertains to this alleged conversation with Sherman, is denied.

²³ Administrative Procedure Act, 79th Cong., P.L. 404, ch. 324, sec. 7(c); Attorney General's Manual on the Administrative Procedure Act 75 (1947); 2 Davis, *Administrative Law Treatise* sec. 14.14 (1958); *Consolidated Edison Co. of New York, Inc. v. N.L.R.B.*, 305 U.S. 197, 230; *Blue Flash Express, Inc.*, 109 NLRB 591, 592.

²⁴ Administrative Procedure Act, *supra*, footnote 23, secs. 7(c) and 10(e); 4 Davis, *op. cit. supra*, footnote 23, secs. 29.01 and 29.02; IX Wigmore, *Evidence* sec. 2494, p. 300 (3d ed. 1940); *Consolidated Edison Co. of New York, Inc. v. N.L.R.B.*, *supra*, footnote 23, at 229, 230; *Willapont Oysters v. Ewing*, 174 F. 2d 676, 690, 691 (C.A. 9); *N.L.R.B. v. Bell Oil & Gas Co.*, 98 F. 2d 406, 410 (C.A. 5); *N.L.R.B. v. A. S. Abell Co.*, 97 F. 2d 951, 958 (C.A. 4).

²⁵ Cf. *Interstate Hosts, Inc.*, 130 NLRB 1614, 1619; *Blue Flash Express, Inc.*, 109 NLRB 591, 592, 594.

result of interrogation by the employer.²⁶ The Employer's statement to the group of employees to whom he directed some remarks in the shop to the effect that the decision was theirs to make as to whether or not to join the Union, indicates, at worst, ambiguous expression consistent with noncoercive intentions on the part of the Employer.²⁷ There is no evidence of any general, systematic, frequent, or widespread interrogation; there is no credible evidence of threats of discharge for union activity; there is no background or climate of unfair labor practices; and there is no claim that there has at any time been even a single instance of discharge, reprisal, or discrimination because of union membership or activity.²⁸ It might additionally be considered that the alleged employer action which could be pieced together from the weak testimony of the witnesses may be viewed as hardly more than isolated and therefore either not unlawful or as a practical matter not warranting issuance of a cease-and-desist order,²⁹ in the total texture of the cease.³⁰

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Hatters, Cap and Millinery Workers International Union, AFL-CIO, and Cap Makers Union Local 38, of United Hatters, Cap and Millinery Workers International Union, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

3. Respondent has not engaged in any of the unfair labor practices alleged in the complaint.

RECOMMENDED ORDER

It is recommended that the complaint be dismissed.

²⁶ Cf. *True Temper Corporation*, 127 NLRB 839, 842. As indicated, this information was a matter of common knowledge around the shop. Cf. *Charlton Press, Inc.*, 129 NLRB 1352, 1357. Improper motivation on the part of the employer may not be inferred from the mere fact that he knew of union activity by his employees. *Lucille of Hollywood*, 93 NLRB 37, 38.

²⁷ Cf. *Acme Boot Company, Inc.*, 131 NLRB 1371.

²⁸ Nor is there reason to believe that the same would not be true for other of Respondent's employees who might elect to join the Union.

²⁹ Cf. *Interstate Hosts, Inc.*, 130 NLRB 1614, 1619; *Charlton Press, Inc.*, 129 NLRB 1352, 1357; *The Great Atlantic & Pacific Tea Company, Inc.*, 129 NLRB 757, 760; *Gibbs Automatic Division, Pierce Industries, Inc.*, 129 NLRB 196, 198; *Lenox Plastics of P.R., Inc.*, 128 NLRB 42, 44; *Hot Point Co., a Division of the General Electric Company*, 120 NLRB 1768, 1772; *Haleyville Textile Company, Inc.*, 118 NLRB 1157, 1158; *Blue Flash Express, Inc.*, 109 NLRB 591. The foregoing cases involved isolated interrogations. The same is true of an isolated veiled threat. *The Frohman Manufacturing Co., Inc.*, 107 NLRB 1308, 1315.

³⁰ A case of unfair labor practices cannot be made out through cannibalizing a patchwork from among the defective recollections, contradictions, and conflicting equivocations of unsatisfactory witnesses. Cf. *Interstate Hosts, Inc.*, *supra*, footnote 29, at 1619; *Blue Flash Express, Inc.*, *supra*, footnote 29, at 591, 592, 594.

Square Binding and Ruling Co., Inc. and New York Paper Cutters and Bookbinders Union No. 119, International Brotherhood of Bookbinders, AFL-CIO. *Case No. 2-CA-9299. February 28, 1964*

DECISION AND ORDER

On October 28, 1963, Trial Examiner Samuel M. Singer issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action,