

WE WILL NOT engage in or induce or encourage individuals employed by Ivan Dietz, A. Loreti & Son, Copper Plumbing Company, Henry J. Cooper, and McBride Sign Company, or any other person engaged in commerce or in an industry affecting commerce, to engage in, strikes or refusals in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, materials, articles, or commodities, or to perform any services, where an object thereof is to force or require the aforesaid employers or persons to cease doing business with Bethel Electric.

WE WILL NOT threaten, coerce, or restrain Ivan Dietz, A. Loreti & Son, Copper Plumbing Company, Henry J. Cooper, and McBride Sign Company, or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require the aforesaid employers, or any other employer or person, to cease doing business with Bethel Electric.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, LOCAL No. 5, AFL-CIO,
Labor Organization.

Dated----- By-----
(Representative) (Title)

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

Employees may communicate directly with the Board's Regional Office, 2107 Clark Building, 701-17 Liberty Avenue, Pittsburgh, Pennsylvania, Telephone No. 471-2977, if they have any questions concerning this notice or compliance with its provisions.

Weber Shoe Company and Boot and Shoe Workers Union, AFL-CIO. *Case No. 17-CA-2137. March 17, 1964*

DECISION AND ORDER

On October 25, 1963, Trial Examiner W. Edwin Youngblood issued his Decision 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 Trial Examiner's Decision. He further found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended that such allegations be dismissed. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief.¹

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Leedom and 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 entire record in this case, including the Trial Examiner's Decision and the

¹The Respondent's request for oral argument is hereby denied as, in our opinion, the record, including the exceptions and brief adequately presents the issues and the positions of the parties.

Respondent's exceptions and brief, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner only to the extent consistent herewith.

As found by the Trial Examiner, organizational activities in the Respondent's plant began in June 1962, and culminated in a Board election on November 23, 1962, which the Union lost. James Hayes, one of the three alleged discriminatees, had solicited 30 to 40 employees to sign union cards, and had acted as union observer in the election. The Respondent was aware of this activity by Hayes, but it does not appear that it was aware of the activity of the other two alleged discriminatees, i.e., Hayes' wife, Martha Hayes, who had attended union meetings and distributed cards, and his mother-in-law, Vera Watring, who had signed a card.

Before the election, and more than 6 months before the charge in this case was served on the Respondent,² Plant Superintendent Fisher had issued written warnings to Hayes and employee Williams for posting union notices in the plant, told them they could be discharged for doing so, and warned them not to pass out cards on company property. Foreman Spencer also talked to Hayes many times about why Hayes thought the employees needed a union and what good a union would do. Some of these latter conversations occurred within the 6-month period preceding the filing of the charge.

The Hayeses and Watring lived in Sedalia, Missouri, 28 miles from the plant, and drove to work together in Hayes' car. On January 14, 1963, they did not report for work because Hayes' car would not start. Although the Hayeses did not have a telephone in their home, Watring did, but none of them called the plant. The next morning at 8:45, more than an hour after they were due to report for work, Hayes called and reported that all three would be unable to reach the plant until about noon because of car trouble. When they arrived, Foreman Spencer angrily asked Hayes the reason for his absence and why he had not telephoned. Hayes explained that he had no telephone in his home and would have had to walk uptown to a public telephone. Later in the day, Hayes complained to Assistant Superintendent Wells because Spencer had been angry with him. Wells told Hayes that what had happened was "all right" because Hayes and the others had never made a habit of such conduct and had always been good workers.

All three were absent again on January 23 because of car trouble, and again they failed to notify the plant.

On Monday, January 28, they were again absent. The weather was extremely cold, the Sedalia gas main had broken the night before, and the Hayeses used gas for heating and cooking in their home.

² Like the Trial Examiner, we have considered this conduct as background evidence.

Residents of Sedalia had been requested not to use the telephone except in emergencies to call a doctor or an ambulance, and to stay at home so that gas service could be restored. The Hayeses went out that morning, however, with their daughter, and had breakfast at Mrs. Watring's home. At 7:30 a.m., Hayes picked up the telephone to call the plant, did not hear a dial tone, and hung up. No further effort to call the plant was made that day.

At 8:20 Tuesday morning, Hayes telephoned the plant office and reported that all three would be at work as soon as the gas in their home was turned on. However, Foreman Spencer called Hayes back and told him he was terminated.³ Hayes explained to Spencer the reason for their absence, but Spencer did not revoke the discharge. Hayes then telephoned Superintendent Fisher, who said he had heard about the situation at Sedalia, but he too refused to revoke the discharge. Hayes then asked Fisher if his wife and mother-in-law were also discharged, and Fisher replied that "the same holds with them."

The dischargees went to the plant the next day. Spencer confirmed their discharges and, as the Trial Examiner found, told them that failure to call in within 30 minutes after starting time on the second day of absence resulted in automatic discharge. Hayes said he had never heard of such a rule. The dischargees again appealed to Fisher, who told them the plant had had such a 30-minute rule for a long time, that it had to start enforcing it sometime, and that it was going to start then.

The Trial Examiner found that the Respondent had a rule requiring discharge for not reporting absences from work and the reasons therefor. Although the Trial Examiner found that the Hayeses and Watring had never been informed of this rule, the record establishes that it was the Respondent's practice to discharge employees who were absent three times within a short period without reporting, and that three other employees had been discharged for this reason, one of them on the same day as the Hayeses and Watring.⁴

In March 1963, employee Williams, who had been recalled after a layoff in accord with his seniority, asked Assistant Superintendent Wells about his seniority. Wells remarked during the conversation, ". . . you are going to keep on just like Jimmy Hayes, going to the union and the labor board until you lose your job." Williams then asked if Hayes lost his job because of his union activity, which Wells denied.

³ The record does not show where Hayes was at the time of either of these calls.

⁴ In letters which the Respondent subsequently sent to the Hayeses and Watring offering them reinstatement, the reason given for their discharges was, in effect, failure promptly to notify their supervisors of their unavailability for work and the reasons therefor. As a result of these letters, Martha Hayes returned to work on April 24, 1963; Hayes and Watring, however, rejected the Respondent's offer of reinstatement.

The Trial Examiner found that the Respondent discharged Hayes because of his union activities, not because he was absent three times without reporting, as the Respondent contended; that it discharged Martha Hayes and Vera Watring to be consistent, as the pretextual reason given for the discharge of Hayes applied equally to them; and that all three discharges therefore constituted violations of Section 8(a) (3) of the Act. He also found violations of Section 8(a) (1) in Spencer's interrogation of Hayes "many times" about why he thought the employees needed a union and what good a union would do, and in Wells' statement to Williams that Williams, like Hayes, would continue "going to the union and the labor board until you lose your job." We find merit in the Respondent's exceptions to these findings.

It is clear that the conduct of the three dischargees constituted cause for discharge whether considered as repeated violations of a plant rule⁵ or of generally accepted standards of employee behavior. Thus, these individuals absented themselves from their jobs on three separate occasions within 2 weeks, once for a full day and twice for a day and a half. On none of these occasions did they call the plant to report the reasons for their absence until after work started on the second day of their failure to appear. Moreover, as Hayes' foreman became angry the first time they failed to appear or call, and the incident was excused by the superintendent only because they had not previously engaged in such conduct, they were on notice that such conduct was not tolerated. There is no explanation in the record as to why Hayes or his wife could not have called promptly from a public telephone to explain their failure to appear for work; why Watring, who had a telephone in her own home, never called the plant; or why only one token attempt was made to call on January 28, the day of the third absence within 2 weeks.

Further, the evidence of discriminatory motivation in discharging these three individuals is unconvincing. The Hayeses and Watring were not treated differently from other employees. Three other employees were discharged for the same reason, one on the same day as the complainants. Of the four discharged on January 29, only one, Hayes, was known to the Respondent as an advocate of the Union. Several months had elapsed since the background incidents had occurred; 2 months had elapsed since the plant election, which the Union lost; and there is no evidence of any union activity in the plant since the election, by Hayes or anyone else. Nor does the ambiguous statement which Wells later made to Williams establish that the discharges

⁵ Whether the rule required employees to call the plant on the first day of absence, as implied by the Respondent's witnesses, or within 30 minutes of starting time on the second day of absence, as the dischargees were given to understand at the time of their discharge, they had clearly failed to do either.

were discriminatory. Accordingly, although we accept the credibility findings made by the Trial Examiner, we find, on the record as a whole, that a preponderance of the evidence fails to establish that the discharges of the Hayeses and Watring were discriminatory. We also find that Hayes' testimony as to conversations with Foreman Spencer was too indefinite as to time and content, and the remarks made to Williams by Assistant Superintendent Wells were too ambiguous, to constitute interference, restraint, or coercion within the meaning of the Act, and, further, that the remark to Williams would in any event be too isolated to warrant the issuance of a remedial order in this case. Accordingly, we shall dismiss the complaint in its entirety.

[The Board dismissed the complaint.]

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

Upon a charge filed March 19, 1963, by Boot and Shoe Workers Union, AFL-CIO, herein called the Union, a complaint was issued against Weber Shoe Company, herein called Respondent, on May 3, 1963, alleging violations of Section 8(a)(1) and (3) of the Act, by interrogating employees concerning their union activities, threatening employees with discharge for union activities, prohibiting union activities, on Respondent's premises at any time, and discharging James E. Hayes, Martha A. Hayes, and Vera L. Watring because of their union activities. Respondent denies it has committed the alleged violations. All parties were represented at the hearing held before Trial Examiner W. Edwin Youngblood on July 1 and 2, 1963, at Sedalia, Missouri. Briefs were received from General Counsel and Respondent on August 19 and 16, 1963, respectively, and have been duly considered. Disposition of Respondent's motion to dismiss the complaint and its proposed findings of fact and conclusions of law is made in accordance with the findings herein.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent, a Missouri corporation, is engaged in the manufacture of footwear at its plant in Tipton, Missouri. Respondent annually purchases goods valued in excess of \$50,000 from outside the State of Missouri and annually ships goods valued in excess of \$50,000 to customers outside the State of Missouri. Respondent admits, and I find, that it is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Boot and Shoe Workers Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

Organizational activities on behalf of the Union commenced approximately in June 1962 at Respondent's plant. During the next few months Hayes successfully solicited some 30 to 40 employees to sign union cards.¹

On August 22, 1962, employee Fred Williams was called into Plant Superintendent Fisher's office in connection with union handbills that had been posted in the restroom. During the conversation that ensued, Fisher told Williams that he could be discharged "for having union cards in [his] pocket, in [his] car in the parking lot, or anything on company property." Williams was given an "Employee Warn-

¹ Based on the credited testimony of Hayes.

ing Notice" dated August 22, 1962, (Respondent's Exhibit No. 5) for posting union handbills without permission and warned that he could be discharged for posting handbills on company property. Another employee named Carl Blankenship was also in Fisher's office, and Fisher asked him if he had been at a union meeting the previous Friday night.²

On September 12, 1962, Hayes was called into Fisher's office also in connection with handbills that had been posted in the restroom. Hayes was told that he had been seen posting union literature and that he could be discharged for doing so on company time. Hayes received an "Employee Warning Notice" (Respondent's Exhibit No. 2). During the conversation that ensued, Fisher asked Hayes if Williams had been at the union meeting the previous Friday night. The preceding Friday, Assistant Superintendent Wells had asked Hayes if he was going to attend the union meeting that night. Hayes was instructed by Fisher not to talk union or pass out union cards from the time he reported to work until he left the plant at the end of the workday.³

In November 1962, the Union filed its petition and an election was held on November 23, 1962, during which Hayes served as an observer for the Union. A few days after the election, Wells told Hayes that whereas before the election the "bosses" were certain he was for the Union, since he had been the union observer "everybody" now knew he was for the Union. In addition, Wells said, "As far as I am concerned I would just as soon have you as any other toe laster, but I don't know how the rest feel." Both before and after the election Foreman Spencer talked to Hayes "many times" about why he thought the employees needed a union, and what good a union would do.⁴

Hayes was employed as a toe laster in Respondent's lasting department and had been told by Wells and Foreman Spencer that he was one of the best workers the Company had ever had. Hayes had been in Respondent's employ about 3 years when he was discharged. Hayes and his wife and mother-in-law, Watring, lived in Sedalia, Missouri, and drove back and forth to work in Hayes' car. Respondent's plant at Tipton, Missouri, is approximately 27 miles from Sedalia, Missouri.

On Monday, January 14, 1963, the alleged discriminatees were unable to get to work because Hayes' car would not start due to extremely cold weather. The following morning they started to drive to work in Hayes' car, however, the radiator hose broke which caused a delay. Hayes telephoned Respondent's office about 8:45 a.m. and advised that they would not be able to reach the plant until about noon because of car trouble.⁵ Approximately at noon they reported for work and Spencer asked Hayes why he had been off and why he had not telephoned him.⁶ Hayes told Spencer that he had no telephone at home and the only way he could get to a telephone was to walk "uptown" to a public telephone. Apparently Spencer became angry during this conversation because Hayes then talked to Wells and complained about Spencer having gotten "mad" at him. Wells told Hayes "it was all right," adding that they had never made a habit of "doing anything like that because [they] had always been good help."⁷

On Sunday night January 27, 1963, a main gas line supplying gas to Sedalia ruptured causing a disruption of service in Sedalia. An emergency was declared to exist by the mayor of Sedalia. At that time temperatures were extremely low, in fact, close to zero.⁸

² Based on the credited testimony of Williams. Although Williams did not recall the exact date of the conversation, he placed it as occurring the first week of November 1962. Williams testified that he had written on the back of the warning notice which he received, and identified the handwriting on the back of Respondent's Exhibit No. 5 as his. Assistant Superintendent Wells, who was also present during the conversation, credibly testified he wrote Respondent's Exhibit No. 5 and dated it the same day. Under these circumstances, and since the exhibit is dated August 22, 1962, I have found the conversation occurred on August 22, 1962.

³ Based on the credited testimony of Hayes. Hayes was not sure when this incident occurred but testified he thought it occurred a few weeks before the union election which was held November 23, 1962. Since Respondent's Exhibit No. 2 bears the date of September 12, 1962, and Fisher, Wells, and Foreman Ellis Spencer credibly testified the incident occurred on that date, I have found this conversation took place on September 12, 1962.

⁴ Based on the credited testimony of Hayes.

⁵ Working hours were from 7:30 a.m. to 4:30 p.m.

⁶ According to Spencer's credited testimony, he had no knowledge that Hayes had reported his absence or why Hayes had been absent until he reported for work on Tuesday, January 15, 1963.

⁷ Based on the credited testimony of Hayes.

⁸ Based on the credited testimony of Jack Kraus, director of civil defense for Sedalia.

Hayes' home was heated by gas which was also used for cooking. The telephone system was overloaded, service was slow, and it was necessary to wait from time to time for a dial tone.⁹ Announcements were made both on radio and television pertaining to the situation and residents were advised not to use the telephone except in emergencies to call a doctor or an ambulance. In addition, residents were advised to stay in their homes so as to be present when the gas line was hooked up. Hayes heard these announcements. On Monday morning Mr. and Mrs. Hayes and their child had breakfast at Watring's home. It will be recalled that Hayes had no telephone in his own home, however, he tried to telephone Respondent about 7:30 a.m. to report the situation from Watring's home but did not receive a dial tone. Hayes then returned to his home to wait for the gas to be connected.

Tuesday morning about 8:20 o'clock Hayes telephoned Respondent's plant and talked with a girl in the office. Hayes asked the office girl to tell the foreman that they would not be in until possibly noon when the gas was "turned on."¹⁰ In a few minutes Spencer telephoned Hayes and informed him that he did not need to report for work because his termination papers were already prepared. Hayes told Spencer of the situation but Spencer "didn't say much about it and hung up." Hayes then telephoned Fisher and asked if he was fired which Fisher confirmed. Hayes told Fisher that they were without gas and could not use the telephone to which Fisher replied that he knew what the situation was, adding that they had heard about it. Hayes then inquired if his wife and Watring were also discharged and Fisher said, "As far as I am concerned the same holds with them."¹¹

Wednesday morning Hayes went to the plant and talked with Spencer who reiterated that Hayes was fired. Spencer further said that they were all told when they were hired that the first day of absence was "all right" but if they did not call within 30 minutes of worktime the second day they were automatically discharged. Hayes told Spencer that he had never heard "that" and he had not been told that when he was hired. Mr. and Mrs. Hayes and Watring then went to see Fisher. They told Fisher that they thought that their discharges were very unfair due to the conditions in Sedalia. Fisher said that there had been a rule about calling in on the second day of absence within 30 minutes after working hours started for a long time. Further Fisher said, "As of now they were going to begin to enforce it and they had to start some place and they were going to start then."¹²

Williams was laid off in March 1963 by Spencer who told him that he lacked seniority. Williams was recalled to work in March 1963. At that time he talked with Wells and asked about seniority. Wells said that the Union could not hold his job. Williams replied that the Union could not "but the labor board might have something to say." Then Wells stated, "You are going to keep on just like Jimmy Hayes, going to the union and the labor board until you lose your job." Williams asked if he meant Hayes had been fired because of his union activity to which Wells replied, "Oh, no, no, didn't mean it that way."¹³

It is apparent from the foregoing facts that General Counsel has made out a strong *prima facie* case that Hayes and his wife and Watring were discriminatorily discharged. We turn now to a consideration of Respondent's case.

Respondent contends that Mr. and Mrs. Hayes and Watring were discharged for not reporting their absences from work and the reasons therefor. Fisher credibly testified that Respondent has a rule so requiring. This is supported by Hayes' own testimony that Spencer "got mad" at him on January 14, 1963, for not notifying him of his absence and the reason for it. In addition, about four rank-and-file employees of Respondent credibly testified that they were told by Respondent's supervisors to report their absences and the reasons therefor. Under these circumstances, although I credit the denials of the alleged discriminatees that

⁹ Based on a stipulation received at the hearing.

¹⁰ Gas was turned on in the Hayes home about 10:30 Tuesday morning.

¹¹ Based on the credited testimony of Hayes.

¹² Based on the credited and undenied testimony of Hayes, his wife, and Watring.

¹³ Based on the credited testimony of Williams. Wells testified that the conversation occurred as follows:

Mr. Williams approached me, leaving his place of work, coming to the machine shop and approached me, as to the reasons Mr. Hayes was dismissed. I had been reminded several times about the low earnings of Mr. Williams. And immediately I told Mr. Williams he would be better off if he went back to his job he would raise his earnings if he didn't he would wind up without a job the same as Mr. Hayes.

I do not credit this somewhat vague and confusing testimony insofar as it contradicts Williams' testimony which was given in a convincing manner.

their supervisors ever told them of such a rule, I am persuaded and find that Respondent had such a rule.

But this does not dispose of the matter because the issue is whether these employees were discharged for violating the rule or for discriminatory reasons. Fisher testified that an employee is discharged if absent on three separate occasions within a reasonably short period of time without notifying Respondent of the absences and the reasons therefor. Fisher testified that Respondent discharged employee Alfreda McGinnis on the same day as the alleged discriminatees and for the same reason. Fisher testified that McGinnis was discharged for being absent three consecutive times without reporting the absences and reasons therefor, and that employees Joyce Crider and Edward Jobe were discharged prior to that time for the same reason. Forelady Brooks Burkhart also testified that McGinnis and Crider were discharged for this reason. The record establishes that the alleged discriminatees were absent on January 14, 23, and 28, 1963, without notifying Respondent of their absences or the reasons therefor.

I am unable to conclude from the entire record, however, that Respondent discharged these employees because they were absent three times without reporting their absences and the reasons therefor. Rather I conclude that Respondent discharged these employees for discriminatory reasons. The following named factors are illustrative of my reasons for reaching this conclusion. (1) Neither Spencer nor Wells referred to a "3-times rule" on January 15, 1963, when they talked with Hayes about not reporting his absences. Nor did they warn him of discharge if a third unreported absence occurred. (2) Neither Spencer nor Fisher even mentioned a "3-times rule" on January 29, 1963, when notifying Hayes of the discharges of the alleged discriminatees and the reasons therefor. Rather Spencer and Fisher told Hayes the reason for their discharges was their failure to call within 30 minutes of worktime the second day of absence. Spencer added that failure to comply with this rule meant "automatic discharge." Yet Fisher testified at the hearing that Respondent did not have a rule requiring employees to call in within 30 minutes of worktime the second day of absence from work. (3) Respondent did not refer to a "3-times rule" in any of its letters to the alleged discriminatees which letters purported to give the reason for their discharges.¹⁴ (4) Hayes' outstanding activities on behalf of the Union were well known to Respondent. (5) Respondent's animus to the Union is demonstrated by its threats of discharge of Hayes and Williams if they engaged in union activities in the plant at any time. (6) The emergency situation existing in Sedalia on January 28 and 29, 1963, which was known to Respondent, makes it extremely improbable that Respondent discharged these employees for failing to report their absences and the reasons therefor. (7) Fisher's statement to Hayes on January 30, 1963, that although Respondent had had the rule a long time "they had to start enforcing it some place and they were starting now." (8) Assistant Superintendent Wells' statement to Williams in March 1963 that "you are going to keep on just like Jimmy Hayes, going to the union and the labor board until you lose your job."

Accordingly, I find that Hayes was discriminatorily discharged in violation of Section 8(a)(3) of the Act. Although the union activities of Mrs. Hayes and Watring do not appear to have been outstanding,¹⁵ and there is no direct evidence of Respondent's knowledge of these union activities, Respondent to be consistent had to discharge them along with Hayes because the stated reason for discharge applied equally to all three employees. I have found this reason to be a pretext and that Hayes was discriminatorily discharged. I therefore find that Mrs. Hayes and Watring were discriminatorily discharged in violation of Section 8(a)(3) of the Act.¹⁶

I further find that Respondent violated Section 8(a)(1) of the Act by: (1) Spencer's interrogations of Hayes about why he thought the employees needed a union and what good a union would do; and (2) Wells' statement to Williams that "you are going to keep on just like Jimmy Hayes, going to the union and the labor board until you lose your job." This statement clearly constituted a threat to discharge Williams for engaging in union activities.¹⁷

¹⁴ General Counsel's Exhibits Nos. 6, 7, 8, and 9.

¹⁵ Mrs. Hayes attended union meetings and distributed some union cards. Watring signed a union card.

¹⁶ Cf. *Arnoldware, Inc.*, 129 NLRB 228, 229; and *Fuchs Baking Co.*, 102 NLRB 1350.

¹⁷ Since the charge was filed and served on March 19, 1963, Section 10(b) of the Act precludes a finding of unfair labor practices based on Respondent's conduct prior to September 19, 1962.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

V. THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(3) and (1) of the Act, I will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent discriminatorily discharged James E. Hayes, Martha A. Hayes, and Vera L. Watring, I recommend that they be made whole for any loss of pay resulting from their discharges to the dates on which the offers of reinstatement to them were to become effective, less their net earnings during that period.¹⁸ Such backpay shall be computed on a quarterly basis in the manner prescribed by the Board in *F. W. Woolworth Company*, 90 NLRB 289, and shall include interest at 6 percent as provided by the Board in *Isis Plumbing & Heating Co.*, 138 NLRB 716.

In view of the nature of the unfair labor practices committed, the commission of similar and other unfair labor practices reasonably may be anticipated. I shall, therefore, recommend that Respondent be ordered to cease and desist from in any manner infringing upon rights guaranteed to its employees by Section 7 of the Act.

Upon the basis of the foregoing findings of fact, and upon the entire record, I make the following:

CONCLUSIONS OF LAW

1. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Boot and Shoe Workers Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. 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, 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) of the Act.
4. Respondent did not violate Section 8(a)(1) of the Act by the conduct of its supervisors in prohibiting union discussion and solicitation on its premises at any time.
5. Except as specifically found herein, Respondent has not otherwise engaged in acts or conduct in violation of Section 8(a)(1) of the Act.

RECOMMENDED ORDER

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

1. Cease and desist from:

(a) Interrogating its employees concerning their union activities in a manner constituting interference, restraint, or coercion in violation of Section 8(a)(1) of the Act.

(b) Threatening its employees with discharge or other reprisals for engaging in union activities.

(c) Discouraging membership in and activities on behalf of Boot and Shoe Workers Union, AFL-CIO, or any other labor organization of its employees, by discharging any employee or in any other manner discriminating in regard to hire or tenure of employment, or any term or condition of employment.

¹⁸ General Counsel does not seek an order requiring that Mr. and Mrs. Hayes and Watring be offered reinstatement because they received such offers on April 3 and 15 and June 10, 1963, respectively, which were to become effective on April 10 and 24 and June 17, 1963, respectively.

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the above-named Union, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as authorized in Section 8(a)(3) of the Act.

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

(a) Make James E. Hayes, Martha A. Hayes, and Vera L. Watring whole for any loss of earnings they may have suffered as a result of the discrimination against them in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to ascertain any backpay due under the terms of this Recommended Order.

(c) Post in its plant at Tipton, Missouri, copies of the attached notice marked "Appendix."¹⁹ Copies of said notice to be furnished by the Regional Director for the Seventeenth Region, shall, after being duly signed by a representative of the Respondent, be posted by Respondent immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for the Seventeenth Region, in writing, within 20 days from the date of receipt of this Decision, what steps the Respondent has taken to comply therewith.²⁰

It is further recommended that the complaint be dismissed in all other respects.

¹⁹ In the event that this Recommended Order be adopted by the Board, the words "A Decision and Order" shall be substituted for the words "The Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "A Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "A Decision and Order."

²⁰ In the event that this Recommended Order 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 Respondent has taken to comply herewith"

APPENDIX

NOTICE TO ALL EMPLOYEES

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

WE WILL NOT interrogate our employees concerning their union activities in a manner constituting interference, restraint, or coercion in violation of Section 8(a)(1) of the Act.

WE WILL NOT threaten our employees with discharge or other reprisals for engaging in union activities.

WE WILL NOT discourage membership in or activities on behalf of Boot and Shoe Workers Union, AFL-CIO, or any labor organization, by discharging any of our employees or in any other manner discriminating against our employees in regard to their hire or tenure of employment, or any term or condition of employment.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the above-named Union or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

WE WILL make James E. Hayes, Martha A. Hayes, and Vera L. Watring whole for any loss of pay suffered as a result of the discrimination against them.

WEBER SHOE COMPANY,
Employer.

Dated..... By.....
(Representative) (Title)

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

Employees may communicate directly with the Board's Regional Office, 1200 Rialto Building, 906 Grand Avenue, Kansas City, Missouri, Telephone No. Baltimore 1-7000, Extension 2732, if they have any questions concerning this notice or compliance with its provisions.

Belber Manufacturing Corporation and International Leather Goods, Plastics & Novelty Workers' Union, AFL-CIO. *Case No. 5-CA-2181. March 17, 1964*

DECISION AND ORDER

On October 12, 1962, Trial Examiner Thomas N. Kessel issued an 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. Thereafter, the Respondent filed exceptions to the Intermediate Report which, in the opinion of the Board, raised issues which could best be resolved after a supplemental hearing. Accordingly, on January 14, 1963, the Board remanded this proceeding to the above-named Trial Examiner for issuance of a Supplemental Intermediate Report. On May 21, 1963, the above-named Trial Examiner issued his attached Supplemental Intermediate Report, reaffirming his findings and conclusions, as set forth in the Intermediate Report issued October 12, 1962, and recommending that the Board order the Respondent to comply with the recommendations set forth in the initial report for action to remedy its unfair labor practices found therein. Thereafter, Respondent filed exceptions to the Supplemental Intermediate Report and a supporting brief.¹

Pursuant to Section 3(b) of the National Labor Relations Act, the Board has delegated its powers herein to a three-member panel [Members Leedom, Fanning, and Brown].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Supple-

¹ In its brief, Respondent moved to include in the record a letter dated March 12, 1963, from the Board's Associate Executive Secretary to the Charging Party's attorney. Respondent's motion is hereby granted and the above-described letter is hereby incorporated into the official record of this case.