8. Although served with a copy of the petition for Advisory Opinion, no response as provided by the Board's Rules and Regulations has been filed by the Employer.

On the basis of the above, the Board is of the opinion that:

1. The Employer is a wholesale and retail enterprise engaged generally in the business of buying, selling, and installing rugs and carpets in Everett, Washington.

2. The Board has determined that where a single integrated enterprise encompasses both retail and nonretail operations it will assert jurisdiction if the total operations of the enterprise meet either the Board's retail or nonretail standards.[2]

3. The current standard for the assertion of jurisdiction over nonretail enterprises within the Board's statutory jurisdiction requires an annual minimum of $50,000 out-of-State inflow or outflow, direct or indirect. *Siemons Mailing Service*, 122 NLRB 81, 85, 88. The Employer's more than $50,000 purchases directly from out of the State of Washington constitute direct inflow under the Board's *Siemons* decision and would satisfy the current standard for the assertion of jurisdiction over nonretail enterprises.

Accordingly, the parties are advised under Section 102.103 of the Board's Rules and Regulations, Series 8, as amended, that upon the allegations submitted herein the Board would assert jurisdiction over the Employer's operations with respect to disputes cognizable under Sections 8, 9, and 10 of the Act.

[2] *Harry Tancredi*, 137 NLRB 743; *Indiana Bottled Gas Company*, 128 NLRB 1441; *Man Products, Inc.*, 128 NLRB 546.

Melrose Processing Company *and* United Packinghouse, Food, and Allied Workers Union of America, AFL-CIO. *Case No. 18-CA-1661. April 21, 1964*

DECISION AND ORDER

On December 4, 1963, Trial Examiner Frederick U. Reel 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. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a brief.

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 Jenkins].

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 Respondent's exceptions and brief, and the entire record in this case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations.[1]

ORDER

The Board adopts as its order the Recommended Order of the Trial Examiner.[2]

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[1] Member Jenkins considers that the Trial Examiner's reliance on the small population of the community and the relatively large size of the Employer's work force to impute to the Employer knowledge of the union activity is unnecessary and he would not rely on these circumstances to justify the result here

[2] The Recommended Order is hereby amended by substituting for the first paragraph therein the following paragraph:

> Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, Melrose Processing Company, its officers, agents, successors, and assigns, shall:

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This case, heard at Melrose, Minnesota, on October 10 and 11, 1963, before Trial Examiner Frederick U. Reel, pursuant to a charge filed July 2, 1963, and a complaint issued August 5, 1963, presents only the question whether Respondent's failure to rehire Celesta M. Thielen for the 1963 season at its turkey processing plant was caused by her activities on behalf of the Charging Party.

Upon my consideration of the entire record, including my observation of the witnesses, and upon consideration of the briefs filed by General Counsel and by Respondent, I make the following:

FINDINGS OF FACT

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

The pleadings established and I find that Respondent, herein called the Company, is engaged at Melrose, Minnesota, in the slaughtering, processing, and distributing of turkeys, that it annually ships products valued at over $1,000,000 to points outside the State, and that it is engaged in interstate commerce within the meaning of Section 2(6) and (7) of the Act. Likewise established by the pleadings and found herein is the status of the Charging Party, herein called the Union, as a labor organization within the meaning of Section 2(5) and Section 8(a)(3) of the Act.

II. THE UNFAIR LABOR PRACTICE

The Company's Melrose plant operates on a seasonal basis, and employees are hired anew each year. Thus, the plant operated from September 1961 to June 1962, and from August 1962 to mid-December of that year, and reopened in mid-June 1963. During the first two periods mentioned, Celesta M. Thielen was employed as a neck slitter. The Company's failure to rehire her in June 1963 upon her application gives rise to this case. According to General Counsel, Thielen's leading role in the Union's attempt to organize the plant was the cause of her not being rehired; according to the Company, the cause is to be found in her conduct in the plant during the closing weeks of the 1962 season.

A. *Thielen leads the efforts to organize*

The Union's attempts to organize the Company's employees commenced in November 1962, and continued into the winter months of 1963 after the plant closed. The first employee with whom the union organizers discussed the subject was Thielen, and she immediately thereafter became the leading union protagonist among the employees. The union organizer first spoke to Thielen about the matter on No-

vember 21, when she agreed to form a committee to meet with the organizer. She spoke to several employees at the plant during "break" or lunch periods, or after work, and by November 25 she had formed such a committee. On that day she informed the organizer that they would meet with him on November 28. Thielen arranged to obtain a local clubroom for that meeting, and when on the day in question the clubroom was closed, the meeting was held in a local tavern. At this meeting the employee committee selected Thielen to be its chairman.

On December 11, the Union conducted a meeting at Willmar, Minnesota, a city approximately 50 miles from Melrose, which was attended by employees from the Company's Melrose plant and from two other plants. The union organizer notified Thielen of this meeting, and she in turn notified the other Melrose employees and arranged to transport to and from Willmar the other four who attended with her.

The next union meeting involving the Company's Melrose employees was held in the neighboring village of New Munich on January 14, 1963. Thielen again arranged for the meeting place and notified her fellow committeemen of the meeting. Another meeting was held in the Melrose city hall on January 28, at which Thielen was not present. On this occasion representatives from the chamber of commerce sought to attend, but Eugene Peterson, field representative of the Union, asked them to leave. The chamber of commerce then arranged with Peterson to have an "open-forum type meeting" on February 5 to discuss questions concerning union organization of the Company's employees.

The meeting of February 5 was attended by representatives of the Company and the Union. Thielen came into the meeting hall accompanied by one Don Watson, who had been the union observer at an election in Willmar. Thielen and Watson went over to greet Peterson, who introduced Thielen to Glenn Chinander, the director of the Union; she was the only local employee to be so introduced. She took no active part in the meeting, however.

B. *The Company refuses to rehire Thielen*

The Company advertised in the late spring of 1963 that it was about to reopen, and invited applications from former employees and from new applicants. Company policy is to prefer former employees over new applicants unless some reason exists for not taking back the former employee. In the late spring of 1963, Thielen and many other former employees applied for work, as did a number of new applicants. According to Plant Superintendent Cohrs, Thielen was the only former employee whose application was rejected. For a few days at the opening of the 1963 season in June the Company had two new employees doing the work formerly done by Thielen, and thereafter selected the better of the two to fill the job.

On June 19, 2 days after the plant opened, Thielen went to the office and asked to see Plant Superintendent Cohrs. The office girl called Cohrs on the telephone and then reported that he was too busy to see Thielen, who thereupon talked to Cohrs on the telephone. According to Thielen's testimony:

> I asked him how come he hired everyone else back but me. He said, "No, not everybody." And I said, "Well, how come you have two working in my place?" He said he didn't have room for me. I said, "That sounds funny that you didn't have room for me." And I asked him if I could talk to him in person so then he said he would be down in a few minutes. So then I went and waited and he came down approximately 15, 20 minutes later. And I said, "Well, gee, you must have a reason if you got two working in my place." And he said, "I haven't got anything against you in person." And I said, "There must be something." And I said, "I would have liked to have gone back to work." And he said, "Not now. Later on in the season." He said, "That's it." I said, "That's it." That was all.
>
> Q. At this time did Mr. Cohrs ever give you a reason for not hiring you?
> A. No, he did not.
> Q. Did he ever mention anything about being an unsafe worker?
> A. No, he did not.
> Q. About talking too much on your work?
> A. No, he did not.

Cohrs, called as a witness by Respondent, did not testify concerning this conversation, and I credit Thielen's account thereof.

C. *The Company's alleged reasons for not rehiring Thielen*

The Company introduced evidence that the decision not to rehire Thielen was made in the spring of 1963 by Cohrs and Plant Manager White after consultation

with one Middendorf, who was to become supervisor of the eviscerating room; the views of one Klasen, who had been Thielen's supervisor but who left for 6 months' military service in January 1963, were allegedly also considered. All four of these men were called as witnesses. Their not altogether consistent testimony may be summarized as follows:

1. White testified that Thielen "carried her job well" and was "cooperative" "to an extent" but "her attitude wasn't with [the Company's] ideas." In response to a question from company counsel, White stated that Thielen "has the ability and she done her job well." White explained, however, that he regarded Thielen as a safety risk because of the "commotion" caused by people gathering at her working place. White testified that he had never reprimanded Thielen for this, and that he did not believe her immediate supervisors had reprimanded her, but they had asked the people visiting there (whose names White could not recall) to move away. The employees thus admonished, according to White, disobeyed the admonition but were not penalized therefor and, if they applied, were rehired the next season. White was not sure whether the supervisors had ever reprimanded Thielen for other offenses. At one point in his testimony White referred to reports of "horseplay" on Thielen's part, but it later developed that White had not heard these reports until after the charge was filed initiating this case, and by his own admission they did not enter into his decision not to rehire her. White had heard that other people helped Thielen with her work without taking proper safety precautions,, but he also testified that Thielen did not need help, and had not asked for help, but that he "thought she should explain to them that they were not allowed in there along with other jobs." According to White, he had discussed the possibility of not rehiring Thielen with her supervisor, Klasen, late the preceding fall, but he made the final decision after conferring with Cohrs and the future supervisor, Middendorf, in the spring of 1963. White indicated that decorum had improved in the eviscerating room in the 1963 season, but he also testified that some "horseplay" occurred there in the early part of the 1963 season which caused the Government inspector to complain, and which was thereafter stopped. White was aware of no such complaints from the Government inspector the previous year.

2. Cohrs, as noted above, was not asked to, and did not, deny that in his interview with Thielen he gave no reason for her not being rehired other than that he had no room for her, and that she could return to work "later on in the season." He testified that Thielen did her work in good manner, but that on several occasions he observed gatherings around her workplace, and he also heard reports of horseplay there. He could not remember ever having said anything to Thielen about the matter, but he did remember "a couple of times" telling people gathered there to move on. Cohrs remembered discussing with Middendorf and White the inadvisability from a safety standpoint of rehiring Thielen. Although he testified that other "borderline" cases were discussed, Thielen was the only one denied employment as the result of these discussions.

3. Middendorf testified that during the 1962 season he saw "continuous gatherings" around Thielen's workplace. Pressed by company counsel to identify who was there, he named Toole, Hoff, and Roering, but added that Hoff was not there very often, and that he probably saw Roering there in 1961, not 1962. Later he added that he saw employees Toole and Ostendorf "and other people I don't remember" standing around Thielen. Middendorf did not see Thielen engaging in horseplay, but heard about it from others. He testified that he discussed with both Cohrs and White the question of rehiring Thielen for 1963, and because of the horseplay and the gatherings they "didn't take any long time about deciding" not to rehire her.

4. Klasen admitted that Thielen "did her job right," but observed that "there was always" a gathering of people around there. He identified Toole as one of the gatherers, but named no others. He saw no horseplay, but observed signs such as turkey heads on the floor, which indicated some had occurred. Klasen testified that in the fall of 1962 he discussed this matter with Cohrs and White, and that the question of rehiring Thielen for the next season was left open. Klasen was not involved in the discussions about Thielen in the spring of 1963. When he returned from military duty and resumed his old job, he found that the room was quieter and less things were lying on the floor. On cross-examination Klasen testified that he did not know who had engaged in horseplay, and that he told Cohrs and White horseplay was going on but he could not tell who was doing it. He testified that he spoke to White about the gatherings around Thielen, but never reported her as engaging in horseplay. Klasen recalled asking Toole, who worked in another department, to stay away from Thielen, and that Toole failed to do so. He did not recall mentioning this to Toole's supervisor. He also remembered seeing a certain truckdriver stop and talk to Thielen "not more than once or twice" over a period of several months. Klasen further testified that other people stopped and talked to

Thielen, but he could not say who, or whether he had complained to them or to their supervisors. Klasen admitted that he had not reprimanded Thielen with respect to the gatherings around her, and that he never had any complaints from the employees with respect to these gatherings or the alleged horseplay.

Respondent also introduced the testimony of five employees describing Thielen's conduct at work. Each of the five testified that Thielen and other employees engaged in horseplay, that they heard talking, singing, and laughter from Thielen's work area, and that employees from other departments would gather there. One of the witnesses, Adams, testified that she had seen Klasen "many a time" talk to the group around Thielen to break it up. They identified Marvin (Buddy) Ostendorf, whose work station was next to Thielen, as participating with her in the horseplay and singing. There was some testimony that employees in other parts of the room also engaged in horseplay, such as throwing turkey crops, gizzards, or hearts at one another and across the room. Although the employee witnesses testified that the workroom was quieter at the time of the hearing than it had been in 1962, the testimony of Adams corroborated the testimony of Plant Manager White that early in the 1963 season certain employees had continued to engage in horseplay, which management thereafter stopped.

Thielen, called as a witness by General Counsel, did not deny that she and other employees had engaged in some horseplay, in singing, and in conversation. Her testimony was corroborated by Ostendorf, also called by General Counsel, who admitted engaging in these activities with Thielen. On the other hand, Thielen and Ostendorf both testified, and Supervisor Klasen did not deny, that the latter also did not tend strictly to business at all times, and in particular that he liked to pinch one or two of the female employees. Thielen testified that she had never been reprimanded for talking; Ostendorf testified that he had been reprimanded, but he had never seen or heard anyone reprimand Thielen. Ostendorf was rehired at the start of the 1963 season, and was later discharged for excessive absenteeism.

Several other items of undisputed evidence may be relevant in the light of the Company's emphasis on the safety factor as a prime consideration in its failure to rehire Thielen. The record shows that some employee had a radio in the workroom which was audible to other employees there. Several employees who had suffered substantial injuries at work in 1962 were rehired the following year; Thielen had been involved in only one minor accident in which she suffered a slight cut. White testified that the Company placed two employees on probation for throwing snowballs in the plant, and later discharged them for continuing that offense. Cohrs and White testified that two employees engaged in horseplay in another room; one of them was immediately placed on probation and the other was not recalled to work after recovering from the injury sustained in the course of the horseplay. Cohrs also testified that a truckdriver who cut in on another driver forcing the latter off the road was discharged following investigation of the accident. Asked whether other employees had been placed on probation, White testified:

> Oh, they have been warned, different ones have been warned for different things. I can't just come out and say the different ones that were put on probation but we told them if it happened again and according to the rules we handed out to them, we give them written rules, we allow so and so. If you can straighten these young fellows out, it's a lot better than kicking them out of work.

White also explained that the Company could not have replaced Thielen in the middle of a season when the eviscerating line was moving more rapidly than it did at the opening of a new season when some employees were new and inexperienced.

D. *Concluding findings*

Although the record shows, and indeed Thielen admitted, that she engaged in horseplay, such as throwing turkey necks, while at work, the record is equally clear, in my opinion, that this was not the cause of the Company's failure to rehire her. Cf. *David W. Onan et al., d/b/a D. W. Onan & Sons* v. *N.L.R.B.*, 139 F. 2d 728, 730 (C.A. 8); *N.L.R.B.* v. *Solo Cup Company*, 237 F. 2d 521, 525 (C.A. 8); *N.L.R.B.* v. *South Rambler Co.*, 324 F. 2d 447 (C.A. 8). The Company called several employee witnesses who saw Thielen engage in such misconduct, but each of them testified that he had not told any company representative of this until months after the failure to rehire Thielen. Thielen's supervisor, Klasen, testified that he did not know who engaged in that conduct, and that he never reported that Thielen had done so. Middendorf testified that the only "horseplay" in which he saw Thielen engage was "talking with the people." White testified that he did not know of the horseplay at the time a Board representative interviewed him after the

charge was filed, and that the horseplay, which he heard of after that interview, had not been a factor in the decision not to rehire Thielen. Cohrs testified that he had "reports" of horseplay, but he did not know who had made the original reports which had been repeated to him by Klasen and Middendorf. Moreover, Cohrs testified that "primarily" the reason for not rehiring Thielen was her "habit of talking and keeping conversations going." Moreover, the other employees who participated in horseplay, notably Ostendorf and the croppers, were rehired.

On this record it would seem (to double mix the metaphor) that the evidence concerning Thielen's horseplay in throwing turkey necks is a red herring, and we must look elsewhere for the real reason behind the Company's failure to rehire her.

The reason emphasized by the Company is that other employees tended to gather around Thielen's workplace, and that the "commotion" there tended to distract other workers and raised a safety hazard. I am convinced, however, that this also was not the real cause for the Company's failure to rehire Thielen.

This is not to say that the Company's version is made up out of whole cloth, for the record does indicate that employees had some tendency to congregate near Thielen's workplace. To some degree, at least, this may have resulted from the fact that she worked at the corner of the room facing toward, and almost directly opposite, the stairway, and not far from the "break" room to which the employees would go on their free time.[1] As employees in other departments had "breaks" at times different from the eviscerating room employees, it was by no means unusual for employees to pass near Thielen's workplace on their way to and from the "break" room. This circumstance goes far to explain why both Klasen and Cohrs would have told other employees to move on but would not have reprimanded Thielen. It also explains why none of the witnesses were able to identify any particular employee, except one Toole, as frequently in the area near Thielen's workplace in 1962; the group was apparently a shifting one. I am satisfied, in short, that there was some tendency among the employees to pause at Thielen's workplace and to engage her in conversation.[2] But conceding that this would have been "a proper cause" for not rehiring her, the question remains, "conceding such cause, whether the [Company] acted upon it or for reasons prohibited by the Act." *D. W. Onan & Sons, supra;* see also *Solo Cup Company, supra.*

In considering whether the Company acted upon this cause, it is significant that Cohrs made no mention of it when Thielen asked the reason for her rejection. Likewise noteworthy is the failure of Klasen or any other supervisor ever to reprimand or warn Thielen. This factor assumes further significance in view of the Company's practice of putting on probation employees guilty of far more serious infractions of safety regulations than are involved in Thielen's case Indeed, a glance at the sketch (Appendix B) suggests that only the employees in Thielen's immediate area and those opposite or adjacent to her work area (points D, E, and F on the sketch) could have been disturbed by seeing the "gatherings" (at point O). To be sure it is not the function of the Board to pass on the wisdom of an employer's business judgment, but it strains credulity too far to believe that an employer (who apparently tolerated the playing of a radio in this room) decided not to rehire an experienced and concededly capable worker, notwithstanding a general policy to hire former employees, because unidentified persons tended to gather near her workplace, particularly as the employer had theretofore never warned or admonished the employee, and had merely placed on probation employees guilty of far more serious offenses. Cf. *N.L.R.B.* v. *Fisher Governor Company*, 163 F. 2d 913, 196 (C.A. 8). Finally, note should be taken of Plant Manager White's curious expression that Thielen was not rehired because "Her attitude wasn't with our ideas." This choice of words suggests some fault other than engaging in conversation with bystanders, and White's effort to explain it as referring to Thielen's having people help her in her work was totally unconvincing.

Finally, the Company urges that it took back other employees whom it knew to be union members, and that it had no awareness that Thielen's role in the Union was more than that of a mere supporter. Again the testimony strains credulity too far. Thielen was the head of the union movement in the plant, notified employees in and out of the plant of union meetings, arranged for their transportation, and even made the arrangements for the use of the meeting places. Such activity in a town of approximately 2,000 involving the principal employer in the town (the Company employs approximately 200 people; the record is clear that no other employer has over 50, and suggests that none has over 14) could scarcely be unnoticed. Interest

[1] A diagram of the room is in evidence. For the convenience of reviewing authorities I am appending a rough sketch of the work area as Appendix B to this decision

[2] Plant Manager White testified that the corner at which Thielen worked was a place where he and other supervisors would meet and talk.

in the Union, pro and con, was widespread, as evidenced by the action of chamber of commerce representatives in attempting to attend a union meeting, and in arranging an open forum to discuss unionization of the Company—a meeting at which "the Company presented their case." There is some evidence that company officials saw Thielen associating with out-of-town union leaders at this meeting. Moreover, White admitted having heard "a rumor she was at [union] meetings," admitted seeing her in the company of Eugene Peterson, a prominent union leader, and "did not know" that he had ever seen any other of his employees in Peterson's company.

In short, we have here a case in which 2 weeks before the end of an operating season union activity commences, openly and notoriously led by an employee whose competence at her job is unquestioned. When the next season starts, the Company follows its usual policy of rehiring all former employees who apply—except for this one. When she asks the reason, she is given none. The reason finally advanced does not appear to show serious fault on her part, and she had never been admonished or reprimanded or placed on probation for it, although other employees had been so treated for more serious misbehavior. On these facts one may well wonder whether White's comment that "her attitude" and the Company's "ideas" differed does not approach that "direct evidence of a purpose to violate the statute" which "is rarely obtainable." *N.L.R.B.* v. *International Union of Operating Engineers, Hoisting and Portable Local No. 101 (Sub Grade Engineering Co.)* 216 F. 2d 161, 164 (C.A. 8), quoting *Hartsell Mills Company*, v. *N.L.R.B.*, 111 F. 2d 291, 293 (C.A. 4). At the very least, in the language of those cases, there is "circumstantial evidence . . . from which the conclusion of discriminatory discharge may legitimately be drawn." I find that Thielen's leadership of the Union was, at the least, a contributing factor to the Company's failure to rehire her, and that the Company therefore violated Section 8(a)(3) and (1) of the Act. *N.L.R.B.* v. *Minnesota Mining & Manufacturing Company*, 179 F. 2d 323, 327 (C.A. 8); *N.L.R.B.* v. *Jamestown Sterling Corp.*, 211 F. 2d 725, 726 (C.A. 2); *Marshfield Steel Company* v. *N.L.R.B.* 324 F. 2d 333 (C.A. 8).

THE REMEDY

Because discrimination for union activity "goes to the very heart of the Act" and suggests a predisposition to invade employee rights thereunder, I shall recommend a broad cease-and-desist order, embracing not only discrimination but also any other violation of the rights guaranteed employees in the Act. *N.L.R.B.* v. *Entwistle Mfg. Co.*, 120 F. 2d 532, 536 (C.A. 4). I shall also recommend that Respondent offer Thielen employment at her former position and make her whole in accordance with the formulas set forth in *F. W. Woolworth Company*, 90 NLRB 289, and *Isis Plumbing & Heating Co.*, 138 NLRB 716. I shall also recommend the posting of an appropriate notice.

Certain aspects of the proposed order and notice call for further discussion. In view of the seasonal operation of the plant, it may be that at the time Respondent is prepared to comply with this order (either at this date, or at some later date when an order is entered by the Board, or at some still later date when a court decree is issued, or at some still later date if contempt proceedings should be required) the plant will not be operating. Another possibility is that at such time the then current operating season will be nearing its conclusion, so that the normal requirement of 60 consecutive days' posting of the notice will be less meaningful than is normally contemplated. The Board's method of dealing with situations of this type, as exemplified in such cases as *Southern Cotton Oil Crude Mill, Division of Hunt Foods and Industries, Inc.*, 144 NLRB 959, has been to gear its order to a specified season (in that case the 1963–64 season, which immediately followed its order), but I respectfully suggest that to incorporate specific years into the order and notice leads to technical difficulties if compliance is not promptly achieved. I shall, therefore, frame the Recommended Order to cover this possibility. My proposed *notice* contains the usual phrase about offering "immediate employment" because I have provided that the 60-day notice posting period shall not include any period in which the plant is seasonally shut down. The "cease and desist" provision, of course, protects Thielen from the possibility of being reinstated at the end of one season and being denied employment in the next for unlawful reasons.

I am also excluding from the proposed notice the conventional "note" relating to notification of employees serving in the Armed Forces. I omitted this provision from the notice I recommended in *Production Engineering Company*, where the Intermediate Report showed on its face that the sole discriminatee was a woman who had a son employed at the same plant. The Board, *sua sponte*, supplied the customary note, 144 NLRB 197, footnote 1, but without explanatory rationale. Although I recognize that the framing of a notice is part of the remedial order in which the Board possesses particular expertise, and that it is for Trial Examiners

to follow rather than to lead (cf. *Insurance Agents International Union (The Prudential Insurance Company of America)*, 119 NLRB 768, reversed 361 U.S. 477), I nonetheless deem it appropriate to raise certain considerations to which the Board may wish to address itself in the event it desires to require inclusion of the note.

In the first place I observe that the "note" is customarily part of the notice, but not of the order. This means that an employer is legally required to include the note in the notice; but if he in fact fails to do what the note says, he is not violating the order, and contempt would not lie. (The order is *to post* the notice, not—except as specified in the order—*to do* what the notice directs.) This is not of itself inappropriate, for the notice, and hence the note contained therein, is not directed specifically to the discriminatee, but rather to all employees. Yet one may well wonder why the Armed Forces note is of significance to the other employees. It may serve, perhaps, to explain why a person ordered reinstated has not returned to work. But any employee who notes the continued absence of such a person would have little difficulty ascertaining that the employee is in the Armed Forces. In any event, it would seem that the failure of the beneficiary of a reinstatement order to return to work is more often attributable to his or her declination of the offer than to service in the Armed Forces. And the remedial purpose of the *notice,* so far as employees in general are concerned, would seem to be served by the employer's statement that he will *offer* reinstatement, whether or not such offer eventuates in immediate reemployment.

So far as the discriminatee is concerned, the statement in the *notice* is not directed to him or her. In the ordinary case, if a discriminatee entitled to reinstatement is in the Armed Forces, notice of his or her rights under the appropriate Federal statutes may be furnished by the Regional Office in helping effectuate compliance, or by the Charging Party. But, if the Board desires to impose this burden upon the Respondent, the appropriate place to do so would seem to be the affirmative section of the order, not the notice. Putting the requirement in the order would compel the employer to *take* the action, not merely to say that he will take it.

Finally, in my understanding of the matter, notices are addressed to employees to apprise them of their rights. To serve that purpose, notices should be concise, clear, and written in laymen's language. Sesquipedality and technical terminology should be avoided, eschewed, and/or eliminated when possible, feasible, and/or practicable. Statutory language should be simplified, whenever possible. A notice is not a statute, or a pleading, or even an order; it is a *notice.* To encumber a notice with caveats, notes, and other similar matter tends to discourage its being read.

What I have said is applicable to *all* cases in which the Armed Forces note is involved. In the instant case we have the additional fact that the discriminatee is a woman who at the time of the hearing already had reached the maximum age for enlistment in the Women's Army Corps. (She may, so far as I am aware, be eligible for enlistment in other branches of the Armed Forces, and I would expect the Board to verify that fact in the event it desires to include the note in question.) To include the Armed Forces note in such a case is, in my opinion, to raise unnecessarily a question as to the good judgment of the Agency.

For these reasons, I am not including any reference to the Armed Forces in the Order or the notice. I urge the Board to reconsider its policy and to eliminate the note in question altogether, or at the very least to transfer the matter to the Order. I fear that such cases as *Production Engineering Company, supra,* reflect a mechanistic approach which should be avoided, particularly in framing remedies and notices. As the late Learned Hand once stated in an appearance before a subcommittee of the Senate Committee on Labor and Public Welfare, June 28, 1951, reprinted in Hand, "The Spirit of Liberty" (edited by Irving Dillard, Knopf, 1952, pp. 241–242):

> . . . I believe that the history of commissions is very largely this: When they start, they are filled with enthusiasts, and they are flexible and adaptive. Like all of us—and that is the fault charged, and properly charged, against courts—after they have proceeded a while they get their own sets of precedents, and precedents save "the intolerable labor of thought," and they fall into grooves, just as the judges do. When they get into grooves, then God save you to get them out of the grooves.

CONCLUSIONS OF LAW

By refusing to hire Celesta M. Thielen for the 1963 season because of her union activity, the Company engaged in an unfair labor practice affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the foregoing findings of fact and conclusions of law, and upon consideration of the entire record in this proceeding, it is hereby ordered that Respondent, Melrose Processing Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from discriminating against any employee or any applicant for employment becaue of activity on behalf of United Packinghouse, Food & Allied Workers Union of America, AFL–CIO, and from in any other 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 necessary to effectuate the policies of the Act:

(a) Offer Celesta M. Thielen immediate employment (or, if the plant is not operating at the time of effectuation of this order, employment when the plant reopens) at her former position (or, if her former position no longer exists, a substantially equivalent position), even though this may necessitate displacement of a present incumbent, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of earnings suffered by reason of the discrimination against her, in the manner set forth in the section of the Trial Examiner's 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, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms hereof.

(c) Post at its plant at Melrose, Minnesota, copies of the attached notice marked "Appendix A."[3] Copies of such notice, to be furnished by the Regional Director for the Eighteenth Region, shall, after being duly signed by an authorized representative of the Respondent, be posted upon the first working day following receipt thereof, and be maintained by it for a period of 60 consecutive days thereof (excluding any period in which the plant is shut down between operating seasons), in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for the Eighteenth Region, in writing, within 20 days from the date of the receipt of this Decision, what steps the Respondent has taken to comply herewith.[4]

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[3] If this 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 the United States Court of Appeals, Enforcing an Order of" shall be inserted immediately following "As Ordered by"

[4] In the event this Order is 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 A

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 refuse to hire, or refuse to rehire, or discharge, or take any other action against, any employee because he is a member of or supports United Packinghouse, Food, and Allied Workers Union of America, AFL–CIO.

ALL OUR EMPLOYEES have the right to form, join, or assist any labor union, or not to do so. We will not interfere with our employees in the exercise of these rights.

WE WILL offer immediate employment to Celesta M. Thielen and we will give her whatever backpay she lost as a result of our not having rehired her in June 1963 or thereafter.

MELROSE PROCESSING COMPANY,
Employer.

Dated_____ By_____
(Representative) (Title)

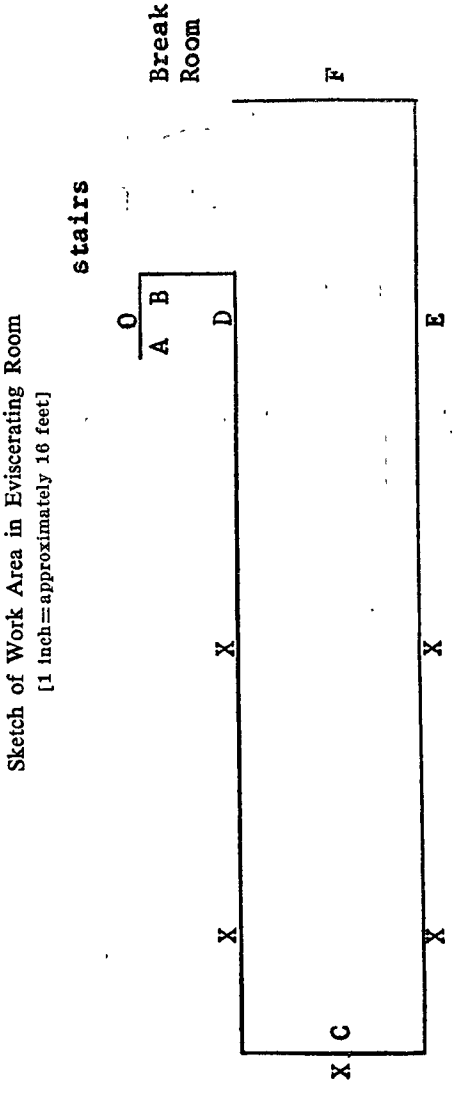
This notice must remain posted for 60 consecutive days from the date of posting, excluding any period in which the plant is shut down between seasons, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 316 Federal Building, 110 South Fourth Street, Minneapolis, Minnesota, Telephone No. 339–0112, Extension 2601, if they have any question concerning this notice or compliance with its provisions.

APPENDIX B

Sketch of Work Area in Eviscerating Room

[1 inch=approximately 16 feet]



The letter "A" represents Thielen.

The letter "O" represents the area where employees allegedly gathered.

The line represents the eviscerating line along which the turkeys moved. Approximately 60 employees, when a single line was operating, would be outside the line facing into the room (for example, at the points marked "X," "D," "E," and "F") except for Thielen and the employee at B, both of whom faced away from the interior of the room. Apparently when two lines were operating, some employees would be stationed on the "inside" of the line, e.g., at point C.