

It is further recommended that unless within 20 days from the date of receipt of this Trial Examiner's Decision, the Respondent shall notify the said Regional Director, in writing, that it will comply with the foregoing Recommended Order,²⁹ the National Labor Relations Board issue an order requiring Respondent to take the aforesaid action.

²⁹ In the event 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 the Respondent has taken to comply therewith."

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, we hereby notify our employees that:

WE WILL NOT discourage membership in International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 377, or United Steelworkers of America, AFL-CIO, or any other labor organization of our employees, by discriminating 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 rights to self-organization, to form labor organizations, to join or assist International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 377, or United Steelworkers of America, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in any other concerted activities for the purpose of collective bargaining or mutual aid or protection or to refrain from any and all such activities, except to the extent that such right 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, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

WE WILL offer to Raymond O. Kuneli, Paul R. Weeden, Philip E. LaCivita, Thomas Kliem, Frank Bartholomew, Vincent P. Chianese, Daniel J. Creatura, Vergil Larson, Joseph G. Shuluga, and Dwight Unger immediate and full reinstatement to the former or substantially equivalent position of each without prejudice to the seniority or other rights and privileges each previously enjoyed and we will make each of them whole for any loss of salary or pay suffered as the result of the discrimination against him.

IRON CITY SASH & DOOR COMPANY OF JOHNSTOWN,
Employer.

Dated _____ By _____
(Representative) (Title)

NOTE.—We will notify any of the above-named employees presently serving in the Armed Forces of the United States of the right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

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 Eighth Regional Office, 720 Bulkley Building, 1501 Euclid Avenue, Cleveland, Ohio, Telephone No. Main 1-4465, if they have any question concerning this notice or compliance with its provisions.

The Lau Blower Company and United Steelworkers of America,
AFL-CIO. Case No. 25-CA-1755. April 30, 1964.

DECISION AND ORDER

On January 7, 1964, Trial Examiner John F. Funke issued his Decision in the above-entitled proceeding, finding that Respondent
146 NLRB No. 146.

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 Decision. He also found that the Respondent had not engaged in other unfair labor practices and recommended that the complaint be dismissed as to them. Thereafter, the General Counsel and the Respondent filed exceptions to the Decision and supporting briefs. The Respondent also filed a reply brief.

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

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

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the Board hereby adopts as its Order, the Order recommended by the Trial Examiner and orders that Respondent, The Lau Blower Company, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

¹ The General Counsel excepts to the Trial Examiner's failure to find the layoff of James Rains on April 12, 1963, discriminatory. The Trial Examiner's failure so to find appears to be based on his erroneous assumption that this action had not been alleged to be violative. As in fact the complaint does include such an allegation, the matter was litigated, and the record fully supports a finding of a violation of Section 8(a)(3) with respect to Rains' layoff from April 12 to June 25, 1963, we find merit in the General Counsel's exception, and hereby modify the section of the Decision entitled "The Remedy," to provide, additionally, that James Rains be made whole for any loss of pay he may have suffered by reason of the discrimination against him from April 12 to June 25, 1963.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

Upon charges filed May 13, 1963, and an amended charge filed July 17, 1963, by United Steelworkers of America, AFL-CIO, herein called the Steelworkers or the Union, against The Lau Blower Company, herein called Lau or the Respondent, the General Counsel issued a complaint alleging Respondent violated Section 8(a)(1), (3), and (5) of the Act. At the hearing the motion of the General Counsel to dismiss the allegations that Respondent violated Section 8(a)(5) and a motion to amend the complaint in other particulars were granted. The answer of Respondent, as amended, denied the commission of unfair labor practices.

This proceeding, with all parties represented, was heard before Trial Examiner John F. Funke at Indianapolis, Indiana, on September 30 and October 1 and 2, 1963.¹ At the conclusion of the hearing the parties were given permission to file briefs and briefs were received from the General Counsel and the Respondent on November 13.

¹ Unless otherwise indicated all dates refer to 1963.

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

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF RESPONDENT

Respondent is an Ohio corporation having a place of business at Indianapolis, Indiana. It is engaged in the manufacture, sale, and distribution of electric fans and blowers and during the past 12 months had sold manufactured products in a value exceeding \$50,000 to points outside the State of Indiana.

I find Respondent is engaged in commerce within the meaning of the Act.

II. LABOR ORGANIZATION INVOLVED

United Steelworkers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The facts*

1. The discharge of Hargrove

Ronald S. Hargrove was employed as a tool and machine mechanic by Respondent and was earning \$2.62 an hour when he was discharged on May 10. Hargrove had been in the employ of Respondent for about 8 years. Hargrove testified that he did not learn that the Steelworkers were attempting to organize the plant until about April 1. On or about April 8 he had a conversation with another employee named James Rains. In this conversation Rains asked him if he would join the Union and Hargrove replied that he would not and that he did not think a union was needed at Lau. Shortly after this conversation, which took place in the men's restroom, Hargrove had a conversation with Wilbur Pash, the plant superintendent, at his workbench, in which Pash, after discussing a work problem, told him that it "didn't look good for him to be talking to Rains as Rains was a known union member and was pushing the Union." According to Hargrove, Pash went on to say that he would "hang his ass one way or the other" and that Hargrove could tell Rains that. Hargrove told Pash he could tell Rains himself but that he would speak with Rains, tell him conditions were much better than when he started work, that Pash and Bill Cook, plant manager, should be given a fair chance, and that he (Hargrove) would back him 100 percent.² This conversation was not denied by Pash.

On April 27 Hargrove had a conversation with Bill Cook in Cook's office respecting another employee, Willie Savage, who had received a 3-day suspension. In this conversation Cook described the union employees as cancerous³ and told Hargrove it "didn't look good" for him to be talking to them and that "they were jeopardizing my job by my affiliation with them." Cook went on to say that they thought Willie was for the Union and that he was not doing him any favors. On April 29, Hargrove had another conversation with Pash and Dick Russell, foreman in the heat department, respecting Savage in which some strong language was used between Russell and Hargrove before they were both sent back to work by Pash. The Union was not mentioned in this argument and it appears to have no relevancy to the complaint.

Hargrove next testified to a conversation he had with Sam Hipple, vice president of Lau, which took place on April 30 in the toolroom. In this conversation Hipple asked him what he thought the employees' feelings were toward the Union. Hargrove mentioned some complaints about transfers and abolition of overtime and said the Union was gaining votes but that if things were restored to what they had been the "union situation would have been forgotten about by then." Hipple was not called as a witness by Respondent.

About a week later Hargrove had a conversation with James Walls, foreman of the pressroom, in which Walls told him that if the Union got in they would move the plant to Dayton.⁴ This conversation is not denied by Walls.⁵

² On cross-examination Hargrove testified that he never signed a union card and never assisted the Union in any way.

³ Cook specifically denied this remark.

⁴ Respondent's main plant was at Dayton.

⁵ Cook, in his testimony, stated that Hargrove told him that there was a rumor that the plant would be moved to Dayton if the employees became organized and that he not only denied the rumor but explained that Lau had a 10-year lease at Indianapolis.

On May 2 Hargrove had another conversation with Pash concerning Willie Savage. In this conversation Pash told Hargrove that the supervisors thought he was for the Union although not pushing it but that he was sympathetic with the union employees. Hargrove asked him who the supervisors were and Pash told him Bill Biers and David Hawkins, both foremen. Hargrove cursed both Biers and Hawkins and called them liars.

On a day that can best be fixed as May 4, Hargrove had a conversation with James Walls in which Walls allegedly told him that 14 employees were to be fired that day because of their union affiliation. Walls denied making such a statement and it is a fact that 14 employees were not fired that day or as a group at any time. I credit the testimony of Walls.

The next conversation relating to the Union occurred between Hargrove and Pash on May 9. In this conversation Pash allegedly told him that he was not to work any more overtime and when Hargrove asked for an explanation he was told that it was because of his association with the union people.⁶ Hargrove denied having anything to do with the Union and referred to the informants as damned liars. Pash then informed him that his future depended on his activities in the next 10 days. Hargrove protested the imposition of such a condition after 8 years of service and told Pash that if he found out the "damn liar" his "ass belonged to me." Later that same day he passed the desk of Foreman Bill Biers and asked him if he told the Company that he (Hargrove) was for the Union and Biers answered that he had. Hargrove then told him that because of his "damn lies" he had torn down in a matter of minutes what Hargrove had taken 8 years to build up and that if he crossed him one more time he would "stomp your damn brains in." He then asked Biers if he wanted to try him out for size.

Pash denied telling Hargrove that he would receive no more overtime because of his union affiliation although he admitted telling him that his overtime was to stop. He did state that Biers reported to him that Hargrove had threatened and cursed him on May 9 and that he in turn discussed the matter with Cook. They decided that Hargrove would be discharged for cursing and threatening a foreman in the plant.

The next day, according to Hargrove, Pash told him he would have to discharge him because of his "squabble" with Biers and because of the language used. Despite Hargrove's protest that Biers' "damn lies" had torn him down and that half the plant used similar language the discharge stuck.

2. The termination of Rains

James Rains was employed by Lau from April 14, 1958, until April 12, 1963, when he was laid off. He was reinstated on June 26, and laid off again on August 16 and he was in a layoff status at the time of the hearing. Rains testified that he signed an application-for-membership card with the Steelworkers on February 15⁷ and that thereafter he attempted to induce some 45 other employees to sign. Rains, at the time of both layoffs, was employed as a shear setup man and his foreman was James Walls. Rains stated that about April 1, Walls came to him while he was working at the shear machine and said the Company "was on him because I was talking to other employees, and he told me to stay at my machine and not talk to them." He also told Rains that whatever he did at breaktime and dinnertime was all right with him.

On April 12 at 4:25 p.m. (quitting time was 4:30), Walls came to him, gave him a check, and told him the Company would call him when they needed him. There was no further conversation. After he was recalled on June 25 he was again notified by Walls that he was laid off and told that if there was an opening he would be called back.

Plant Manager Cook testified that back in 1959, the Respondent began converting from "flat stock" in the manufacture of propellers to coiled stock and that while flat stock required shearing the coiled stock did not. The only product Lau produced which required flat stock was its electric heater line and in June the electric heater line was sold to the Cryo-Therm Company of Pennsylvania.⁸ Shortly after the sale Cryo-Therm requested Lau to manufacture a group of heaters in its name and Rains was

⁶ Cook testified that he instructed Pash to stop Hargrove's overtime because he had observed Hargrove spraying oil on weeds at 5:30 and thought that a poor way to be spending overtime money.

⁷ General Counsel's Exhibit No. 2.

⁸ The sale or discontinuance of the electric heater line and the layoff of its employees was discussed at a meeting on March 28. See Respondent's Exhibit No. 2.

recalled to help run this last group of heaters. He was again laid off when the shearing operations on this group was finished in August. This is the economic background which the Respondent asserts justifies the layoff of Rains.

This allegation of solely economic motive, plausible on its face, is weakened by other facts. While Rains was the only shear setup operator he testified without contradiction that he had also worked as setup man in the pressroom so that his experience was not confined to shear setup work. Nevertheless, a new employee was hired to work as setup man in the manifold department the day before Rains was laid off in August. At least one employee in the heater department was transferred to another department at the time of Rains' layoff,⁹ and another employee, James Hawk, testified that he had been employed as setup man in the propeller department for only 6 months when Rains was laid off.

There is further testimony relating to Respondent's layoff of Rains: Apart from Hargrove's testimony as to the threats made by Pash, Geneva Hash, a sister of Rains, testified that about 1 week after her brother was laid off in April Biers called her to his desk and in the course of the conversation told her that it was too bad her brother had been laid off but that he had been flashing union cards and "they" could not permit it. Although this statement was denied by Biers I credit Hash.

3. The discharge of William E. Crist III

Crist testified that he had been employed by Lau as a liner operator on April 1, 1962, and was discharged April 16, 1963. He signed an application for membership with the Steelworkers on March 27, 1963.

Crist testified to two conversations with Biers in which the Union was mentioned. The first took place at Biers' desk in the presence of employees Dale Sparks and William VanMeter. Biers asked Crist what he thought of the Union and Crist told him that the Union could provide security for the employees and the supervisors. Biers then told VanMeter that if the Union got in there could be a raise in wages but that eventually the Company would have to move or fold. The second occurred about 3 days after Crist attended a union meeting when Biers asked him how the union meeting had been. Crist's answer was that he did not fully understand it.

Crist stated that on Wednesday, April 16, he was suffering from an abscessed tooth and told another employee, Jim Hawks, to tell Biers he had to make a dentist's appointment. Hawks returned to Crist and told him Biers wanted the name of the dentist and the time of the appointment before he left. Crist told Hawks he would make the appointment and then notify Biers.¹⁰ Crist went home and tried to make an appointment but, since it was Wednesday afternoon, he was unable to make one. He then telephoned Biers that he was returning to work and was told by Biers that his card had been pulled for leaving the plant without permission. Biers claimed he had told Hawks to instruct Crist to report to him before he had punched out at noon and Crist claimed he had never received the message. At 4 o'clock Crist again called Biers and asked to discuss the discharge. The request was refused.

Three or four weeks later Crist called Plant Manager Cook and asked for his job back. Cook told him he would investigate. Cook testified, however, that he told Crist he would not interfere with a supervisor and that Crist should go directly to Biers. There were no further contacts.

4. The discharge of Ann Bray

Ann Bray was employed by Lau from November 2, 1961, until she was discharged on May 9, 1963. She signed an application-for-membership card with the Steelworkers on February 18. She testified that she worked as a propeller balancer under Bill Biers and that about May 1 she had a discussion with him in which he stated the Company's rules must be observed. They had some discussion about grievances in the plant, including work assignments and cursing, and Biers then told her that she had made her mistake in joining the Union. They then discussed whether or not Bray had joined and Biers told her she should be on one side of

⁹ The testimony does not establish whether this referred to the April or August layoff.

¹⁰ On recall Crist testified that 10 minutes before he clocked out Biers passed his desk and he told Biers he would make the appointment and notify him when and where it was. According to Crist, Biers merely grunted. This conversation was corroborated by employee Dale Sparks, to the extent that he testified that he had overheard Biers tell Crist that he was to make the appointment and notify him of the name of the dentist and the time.

the fence or the other and that he was going to fire her, union or no union, because she had gone to a union meeting. He then told her he would get her and that if she went to the Labor Board and told them what he had said he would swear she was a liar.

On May 9, Bray was working at her machine when Pash and Biers approached her and said there was a rumor that she had a weapon in her possession and told her they were going to search her and her locker.¹¹ Bray stated that she had been threatened with a gun and a razor and asked Pash if he had heard of that and Pash admitted he had. Bray refused to submit to any search and was told to check out. This terminated her employment with Lau.

Marylin Hanson, called by the Respondent, testified that on the night before Bray was discharged she had a conversation with her in which Bray told her she was in a quarrel and that Hargrove was going to make her a blackjack, slip it into her car, and get "them" the next day. When she left work that night she saw Hargrove putting something in Bray's car. She asked him what it was and was told it was a flashlight.¹² The next day she told different employees, including Bill Biers, about her conversation with Bray.

Marcella Dianne White, called by Respondent, testified that on the day of Bray's discharge she overheard a conversation between Bray and Bobbie Williams, another employee, and that during the conversation Bray pulled a blackjack out of her purse and showed it to Williams. White told Dave Hawkins, a setup man, of the incident.¹³ Hawkins testified that he reported this to Bill Biers.¹⁴

5. The quitting of Betty Waggoner

Betty Waggoner was employed by Lau on November 21, 1961, signed an application for membership in the Steelworkers on February 20, 1963, and quit her employment on April 29. Waggoner testified that about a week before she signed her card she had a conversation with Personnel Director Dawson Price in which Price asked her if she knew anyone at the Company who had signed a union card. She testified she had many conversations with Biers in which the Union was discussed. In one of them Biers had a copy of a notice sent by the Steelworkers to the employees.¹⁵ He told Waggoner that he "didn't give a damn what law he was breaking, he had better not see any union cards on the premises, at break time, lunch time, in the locker room, that he would fire every damn one of them."¹⁶ In a subsequent conversation which took place about April 1 or 2 Biers told her he understood there was going to be another union meeting and that he would like her to attend and report to him what took place, that he wanted to find out what "they were up to." He told her he had had three people go to a previous meeting and that "they have been spotted, and I don't want anyone to get hurt." Waggoner told him she could not go and at the close of the day she again told him so and Biers told her to forget it, that he had plenty of friends. Waggoner further testified that after this conversation she received no more overtime whereas prior to the conversation she had received as much as 12 to 18 hours a week.

On or about April 19 or 20 Biers took her to his desk and said he had received a petition which stated at least 30 percent of the people wanted a union and that he wanted to find out why. Waggoner told him that she was not receiving enough money, that Hawkins had taken the stop off her machine¹⁷ and had not replaced it, and that if her harassment did not stop she was quitting.

¹¹ I credit the testimony of Pash and Biers that they asked only to search her locker and her purse.

¹² Hargrove and Bray both testified it was a flashlight.

¹³ Williams denied that Bray ever showed her a blackjack.

¹⁴ Biers testified that Hawkins told him that White had reported to him that Bray had a blackjack in her possession.

¹⁵ General Counsel's Exhibit No. 6.

¹⁶ Later in her testimony Waggoner testified to a conversation with Biers which took place before she signed her card and in which Biers told her that if the Union came in he would quit, that he would do anything to keep the Union out, and that he was going to fire "every damn" employee who was for the Union. It is not clear that this was part of the conversation recited above but it took place, apparently, about the same time.

¹⁷ There is interminable testimony as to whether the stop was a safety device. On the basis of the testimony of Plant Superintendent Pash and other operators, I conclude that it was not, at least primarily, a safety device. Respondent offered in evidence a film, Respondent's Exhibit No. 4, showing the operation of this machine. The offer was rejected.

Waggoner also testified to a conversation with Plant Manager Cook in early April in which he told her that he and Biers drank at the corner several times, that they tried to figure out who was for the Union and who was against it, and that if the Union came in the prop department would be moved to Dayton.

On April 29 about 10:40 a.m. Waggoner left her post and went to the office of Personnel Director Price, told him she had punched out, laid her card on his desk, and told him she had quit. When asked the reason she told him she did not have to work with "the scum of the earth." She was then told she could talk to Plant Superintendent Pash to whom she repeated her grievances, particularly the removal of the stop. On May 3, she called Cook, made an appointment, and again repeated her grievances. Cook sympathized with her and told her he was equally opposed to such things.

Dawson Price, called by Respondent, testified that Waggoner told him she was quitting for personal reasons and that no specific reasons or grievances were mentioned. Respondent offered in evidence timecards from the first week in January until April 28 as evidence of her overtime.¹⁸ These cards indicate that the amount of overtime varied from week to week and followed no consistent pattern. (For the first 3 weeks in January Waggoner earned no overtime at all.) In the week of March 31, the week immediately preceding the conversation with Biers which allegedly stopped her overtime, Waggoner received no overtime. The week ending April 7 she received 12 hours, in the week ending April 14 she received 13 hours, in the week ending April 21 she did not work the first 2 days but received 1 hour overtime on the third day and 4 hours on the sixth day. The week of April 28 she worked 2 hours overtime on the first day.

Pash and Cook also testified to the termination and posttermination interviews and disagreed with Waggoner to the extent that they did not recall that she recited any specific grievances. Cook stated that in his interview with Waggoner on May 3 she told him, "I am not going down there," and that there was some discussion concerning a subpoena or an affidavit and that he assumed it had something to do with the Labor Board.

Waggoner's testimony respecting her conversations with Biers is almost entirely uncontradicted.

6. Other evidence of violation of Section 8(a)(1)

There is testimony by other witnesses of violation of Section 8(a)(1) on the part of supervisory employees of Lau. Since, for the most part, it is merely cumulative it will be summarized as briefly as possible.

James C. Finn testified that Foreman Walls told him that if the Union got in "they" would have to pay union wages and that they could send the heat line to Dayton.

Nell Hargis testified that her foreman, Bill Biers, asked her how she felt about the Union; that Foreman Dick Russell asked her why she was for the Union, told her the Company could not afford a union and would move to Dayton if the Union came in. Russell also told her that some of the things the Company was doing might be illegal but that the employees might "jerk them down before the Labor Board two or three times, but that the Board wouldn't believe us people." A few days later Foreman Walls was teasing her about her muscles and Foreman Russell said, "Yes, Nell is my girl. I am going to work the hell out of her and then fire her damn ass." Later she was transferred to another machine and Walls remarked to Russell about the operation being easier and Russell told him that she had signed a union card and that he didn't want to make it easier, but that if Walls could think of a way to make it harder to let him (Russell) know. Subsequently, Hargis was transferred back to her original job.

Geneva Hash testified that Foreman Biers asked her why the girls wanted a union and told her, respecting union cards, that if she brought anything "in here, written or typed, you will be fired on the spot." He also told her that she could get a raise, as high as 30 cents, depending on which way she turned. She further testified that she and Yvonne Mosely were warned that they could not talk at their machines but that two other employees were permitted to talk, and that when Yvonne made inquiry she was told by Biers that "the rules are made for some people. We will do anything to keep strangers out."¹⁹ The firing and pay raise offer were denied by Biers; I credit Hash.

¹⁸ Respondent's Exhibits Nos. 3a-3g.

¹⁹ Corroborated by Mosely.

Yvonne Mosely testified that Biers called her to his desk, told her he knew she had signed a union card; that the Company could have fired her because she signed a false application card; that the Company would move to Ohio if the Union got in; asked her to think it over about joining the Union and that thereafter he would poke her in the ribs and ask her if she was thinking things over. Biers denied telling Mosely he knew she had signed a card. I do not consider it necessary to resolve this conflict.

Margaret Rose Parsley testified that Foreman Biers called her to his desk one day in May and told her that "the ones" that were fighting for the Union "he was going to get rid of." He also told her that the employees were up for a raise in January but that the Company had canceled it because the employees would think it was to keep them from joining the Union.²⁰

Wanda Rager testified that Foreman Biers told her there would not be a union election and that by that time "none of us would be there." Biers denied making this statement; I credit Rager.

B. Conclusions

1. Violations of Section 8(a)(1)

Based on testimony which I credit or which is uncontradicted, I find that Respondent violated Section 8(a)(1) of the Act by the following statements made by its supervisory employees:

1. Pash's comment to Hargrove that it did not look "good" for him to be talking to a union man who was pushing the Union. His further comment that he would "hang his [Rains'] ass one way or the other."
2. Cook's statement to Hargrove that Hargrove was jeopardizing his job by affiliation with the union employees.
3. Walls' statement to Hargrove that if the Union got in the plant would be moved to Dayton. (Other instances of similar threats by supervisors will not be set forth since they would be cumulative.)
4. Biers' statement to Hash made after her brother, James Rains, had been laid off to the effect that Rains had been flashing union cards and the Company could not permit that.
5. Bier's interrogation of Crist as to what he thought of the Union and how the union meeting had been.²¹
6. Biers' statement to Ann Bray that she had made a mistake in joining the Union and that he was going to fire her because she had gone to a union meeting. His further statement that if she went to the Labor Board he would swear she was a liar.
7. Biers' statement to Betty Waggoner that he had better not see any union cards on the premises and that he would fire every one of them.
8. Biers' request to Waggoner to attend a union meeting and report what took place, and his statement that he had had three people go to a previous meeting and report back to him.
9. Russell's statement to Nell Hargis that some of the things the Company might be doing were illegal but that the Board would not believe the employees.
10. Biers' threat to Hash to fire her on the spot if she brought any union cards or literature into the plant.
11. Biers' offer of a 30-cent pay raise to Hash depending on which way she turned.
12. Biers' statement to Mosely that the company rules could be discriminatively enforced.
13. Biers' statement to Margaret Rose Parsley that the employees who were fighting for the Union were the ones he would get rid of.
14. Biers' statement to Wanda Rager that none of the prounion employees would be there when the election was held.

2. Violations of Section 8(a)(3)

The complaint, as amended, alleges the discriminatory discharge or termination of employment of five employees, William E. Crist III, Betty J. Waggoner, Ann Bray, Ronald S. Hargrove, and James Rains.

As to Hargrove, who was neither a member of the Steelworkers nor a sympathizer with it, I find that he was discharged because he threatened to assault a foreman. I believe that Respondent suspected that Hargrove was sympathetic with

²⁰ The evidence indicates, however, that the Union did not begin its organizing until February.

²¹ I also find as violations, again cumulative, Dawson's interrogation of Betty Waggoner and Biers' interrogation of Hargis.

the union employees and I have credited Hargrove's testimony that he was told he was jeopardizing his job because of his affiliations. Nevertheless neither union sympathy nor membership establishes an immunity against discharge for cause and I believe that a threat made to a foreman to "stomp his brains in" is sufficient cause for discharge.

⁶ Similarly, I find that Ann Bray was discharged for cause. Lau had a rule (and the necessity for it seems surprising) against employees possessing weapons in the plant. On the basis of testimony which I credit, the Respondent's supervisors did have reason to believe that Bray might have a blackjack in her purse or in her possession. Her refusal to let the officials examine her purse without a search warrant could serve to confirm that suspicion. The discharge was peremptory and there was a previous threat to discharge her because she had attended a union meeting, facts which surely could sustain an inference of discrimination. Discipline, however, appears to have been a serious problem in the plant²² and I would consider the refusal to permit an examination of her purse, under the circumstances of this case, sufficient to warrant a discharge, although I admit the issue is a close one.

Betty Waggoner is alleged to have been constructively discharged on April 29 and to have received less than her normal or average amount of overtime since April 3. I think the payroll records previously recited are sufficient to rebut the latter charge. The voluminous evidence with respect to the removal of the stop on her machine proves little. I cannot sustain the General Counsel's contention that the removal of the stop made her work more hazardous and the removal of the stop, on the evidence, was due to the negligence of a fellow employee and not an act of management. The testimony does sustain the theory that Waggoner was disgusted with the conditions of her employment and voluntarily quit but I cannot find that these conditions were imposed by management for discriminatory reasons.

I shall recommend that the complaint be dismissed insofar as it alleges that the discharges of Hargrove and Bray violated Section 8(a)(3) of the Act and that Waggoner's quitting was a constructive discharge in violation of Section 8(a)(3).

I reach a different conclusion with respect to the layoff of Rains. Rains was an experienced setup operator but he was known to be organizing for the Union and Pash had threatened Hargrove that he would "hang his ass" for that. After his first layoff Biers told Rains' sister that he (Rains) had been flashing union cards in the plant and that the Company could not stand for that. It is true that the specific job Rains was performing was eliminated or about to be eliminated but there appears to have been no reason, except for his union activity, why he would not have been transferred to another setup operation over employees junior in experience. I therefore hold his layoff in August in violation of Section 8(a)(3) and (1) of the Act.²³

In view of the established pronounced hostility of management at the Indianapolis plant and particularly the animosity of Biers to union organization, I make a similar finding with respect to the discharge of Crist. Although Biers attempted to fortify his reasons for discharging Crist with allegations which were admittedly afterthoughts, I can only conclude that his alleged reason was pretextuous. Biers admittedly knew that Crist was suffering from a toothache and that he intended to seek dental attention on the afternoon of his discharge, yet his only reason for discharge was the fact that Crist did not report to him before he left. Whether or not Crist did report to him is inconsequential. Crist did report when he found he could not obtain dental care on a Wednesday afternoon; he was absent for a period of only 2 hours when he reported and Biers refused to discuss the situation with him. Again, reviewing the numerous threats attributed to Biers to engage in reprisals, including discharge, for union activity and membership, I find his explanation unconvincing. I conclude that Crist, like Rains, was discharged in violation of Section 8(a)(3) and (1) of the Act.

IV. THE REMEDY

Having found the Respondent has engaged in and is engaging in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

Having found that the Respondent discriminated against James Rains by laying him off for discriminatory reasons on August 16, I shall recommend that the Respondent make an immediate offer of reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges. Having

²² The Company not only had a rule against carrying weapons but also found it necessary to impose a rule against cursing. A reading of the record will indicate that the Company found it impossible to enforce this rule even among its female employees.

²³ The complaint, as amended, does not allege the April layoff violated the Act.

found that the Respondent discharged William E. Crist III, for discriminatory reasons on April 16, I shall make the same recommendation with respect to Crist. I shall further recommend that Respondent make both Rains and Crist whole for any loss of pay they may have suffered by reason of said discrimination by the payment to them of a sum each would have earned from the dates of layoff as to Rains and discharge as to Crist, less interim earnings, said sums to be computed in accordance with the *Woolworth* formula²⁴ plus interest at the rate of 6 percent in accordance with the Board's decision in *Isis Plumbing*.²⁵

Upon the foregoing findings of fact and upon the entire record in this case, 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. United Steelworkers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act, as found in paragraph B, 1, herein, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
4. By discriminating against James Rains and William E. Crist III, with respect to their hire and tenure of employment, thereby discouraging membership in a labor organization, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.
5. The aforesaid labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the foregoing findings of fact and conclusions of law, and upon the entire record in this case, it is recommended that The Lau Blower Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:
 - (a) Telling its employees they should not talk to union employees; telling its employees they would "get" union employees; interrogating its employees as to their union activities and membership; threatening to move its plant or any division thereof; telling its employees it could not permit union cards or literature on the premises and that an employee had been fired for this; threatening to fire union employees; offering pay raises to employees to discourage union membership; informing employees that the rules could be discriminatively enforced against union members; telling employees it would get rid of union members before an election could be held.
 - (b) Discouraging membership in and activity on behalf of United Steelworkers of America, AFL-CIO, by discharging or laying off any of its employees, or discriminating against them in regard to hire or tenure of employment, or any term or condition of employment.
 - (c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act.
2. Take the following affirmative action designed to effectuate the policies of the Act:
 - (a) Offer James Rains and William E. Crist III immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay each may have suffered as a result of the discrimination practiced against them, as provided for in the section entitled "The Remedy."
 - (b) Preserve and, upon request, make available to the National Labor Relations Board or its agents, for copying and examining, all payroll and other records necessary for the computation of backpay due as herein provided.
 - (c) Post at its plant at Indianapolis, Indiana, copies of the attached notice marked "Appendix."²⁶ Copies of said notice, to be furnished by the Regional Di-

²⁴ *F. W. Woolworth Company*, 90 NLRB 289.

²⁵ *Isis Plumbing & Heating Co.*, 138 NLRB 716.

²⁶ 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."

rector for the Twenty-fifth Region, shall, after being duly signed by a representative of the Respondent, be posted by it immediately upon receipt thereof and be maintained by it for 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 other material.

(d) Notify said Regional Director, in writing, within 20 days from the date of this Decision and Recommended Order, what steps the Respondent has taken to comply herewith.²⁷

It is further recommended that the complaint be dismissed as to all allegations not specifically found herein to have been in violation of the Act.

²⁷ 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 the 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 you that:

WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed by Section 7 of the Act.

WE WILL NOT discourage membership in the United Steelworkers of America, AFL-CIO, or any other labor organization, by discharging or otherwise discriminating against any employee in regard to his hire or tenure of employment because he joined the United Steelworkers of America, AFL-CIO, or any other labor organization.

WE WILL make whole James Rains and William E. Crist III for any loss of pay suffered by them and we will offer full and immediate reinstatement to James Rains and William E. Crist III.

THE LAU BLOWER COMPANY,
Employer.

Dated _____ By _____
(Representative) (Title)

NOTE.—We will notify the above-named employees if presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

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, 614 ISTA Center, 150 West Market Street, Indianapolis, Indiana, Telephone No. Melrose 3-8921, if they have any questions concerning this notice or compliance with its provisions.

Wallace Press, Inc. and District No. 123, International Association of Machinists, AFL-CIO. *Case No. 13-CA-5779. April 30, 1964*

DECISION AND ORDER

Upon the filing of a charge and amended charges by District No. 123, International Association of Machinists, AFL-CIO, herein called the Union, the General Counsel of the National Labor Relations Board, by the Regional Director for the Thirteenth Region, issued a complaint on September 30, 1963, alleging that Wallace Press, Inc.,