Employees may communicate directly with the Board's 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.

Fabri-Tek Incorporated *and* International Brotherhood of Electrical Workers, AFL-CIO. *Case No. 18-CA-1728. October 9, 1964*

DECISION AND ORDER

On April 17, 1964, Trial Examiner Sidney D. Goldberg 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 Decision. Thereafter, the Respondent filed exceptions to the Decision and a supporting brief. The Charging Party filed a brief in support of the Decision.

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 Trial Examiner's Decision, the exceptions and briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

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, Fabri-Tek Incorporated, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

TRIAL EXAMINER'S DECISION

The sole question in this proceeding is whether Respondent's interference with its employees wearing of oversize "VOTE I.B.E.W" buttons and other union insignia in the plant during the preelection campaign infringed upon rights guaranteed them under the Act.

The complaint herein [1] alleges that Respondent discharged six employees because they wore union insignia in violation of a company rule; that it has refused to reinstate them; and that it thereby violated Section 8(a)(3) and (1) of the National Labor Relations Act, as amended (29 USC Secs. 151-168, herein called the Act).

[1] Issued October 21, 1963, on a charge filed October 3 and an amended charge filed October 8, 1963.

Respondent's answer admits that it prohibited the wearing of "extraordinary" union insignia or the wearing of ordinary insignia "in an extraordinary manner" but contends that such action was necessary to prevent interference with the efficient performance of duties and that the employees involved quit their job rather than observe the company rule.

A hearing upon the issues so raised was held before Trial Examiner Sidney D. Goldberg at Amery, Wisconsin, on December 3 and 4, 1963, at which all parties were present and afforded an opportunity to adduce evidence, cross-examine witnesses, and argue upon the facts and the law. Helpful briefs by the General Counsel and by counsel for Respondent and the Charging Party have been considered.

For the reasons set forth in detail below, I find that Respondent's conduct constituted interference with rights guaranteed employees under the Act, that the discharges were discriminatory, and that Respondent thereby violated Section 8(a)(3) and (1) thereof.

Upon the entire record [2] in the case, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, engaged in the manufacture of memory cores and other computer components, maintains offices and research laboratories in Minneapolis, Minnesota, and the plant involved in this proceeding at Amery, Wisconsin. The computer components are sold to General Electric Co., Radio Corporation of America, and similar organizations. Products valued at more than $100,000 are annually shipped to customers outside the State of Wisconsin. It is admitted, and I find, that Respondent is an employer engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

International Brotherhood of Electrical Workers, AFL–CIO (herein called IBEW or the Union), is a labor organization within the meaning of the Act.

III. THE UNFAIR LABOR PRACTICES

Despite the extraordinarily complex nature of Respondent's product, the facts herein are relatively simple and, in all important elements, undisputed.

A. *Background*

On August 7, 1963,[3] the Union filed a representation petition in the Board's Regional Office [4] and, on September 24, the Regional Director issued his Decision and Direction of Election, holding certain classes of employees included and certain classes excluded from the stipulated production and maintenance employees unit.

Within a day or two after issuance of the Decision, Henry C. Bennett, a "tester" employed by Respondent, began to distribute union buttons which he had been collecting for that purpose. Two of these buttons are the principal subject of contention in this case and, with a third also involved, require description:

(a) A large round button of the type usually used in political campaigns. It is about 3 inches in diameter, made of metal with a white nonmetalic covering, and has a pin and catch on the back. On its face, in red block letters almost three-fourths of an inch tall, are the words "VOTE I.B.E.W." At the bottom edge, also in red, appears the union label of the emblem's manufacturer.

(b) A square 2-inch, emblem enclosed in a slightly larger clean plastic covering with a pin and catch on its back. The top third of the emblem is red, the center third

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[2] Typographical errors in the transcript of testimony are hereby corrected as follows:

(a) Page 168, lines 11 to 18, and page 288, lines 17 to 20, are amended as stipulated by the parties and their stipulation has been marked in evidence as Trial Examiner's Exhibit No. 1.

(b) Pursuant to said stipulation, Respondent's Exhibit No. 16 for identification is received in evidence

(c) On page 48, line 25, between "that" and "a", insert "it was"; on page 86, line 3, strike out "not"; on page 96, line 17, change "you are" to "I were"; on page 222, line 7, change "technical" to "typical"; on page 251, line 10, strike out "TRIAL EXAMINER".

[3] All dates, unless otherwise specified, are in 1963.

[4] Case No. 18–RC–5640.

is white, and the bottom third is blue. The device is called, in the advertising novelty trade, a "vari-vue" because two different representations appear in the same space, depending upon the angle from which it is viewed. In the center of the device, in black letters almost 1½ inches tall, appear "VOTE" and "I.B.E.W." If rotated on a horizontal axis, the letters visible change back and forth several times.

(c) The customary union button, about an inch in diameter. This one has a narrow blue border with the letters "I.B.E.W." in white on its upper part and "AFL–CIO" in small black letters on its lower half. The center is white and displays a clenched hand from which extend the jagged lines which conventionally represent electricity.

Bennett received a supply of all three of these buttons from International Representative Young with instructions to hand them out on nonworking time and this was done. During coffee breaks in the cafeteria on Friday, September 27, Bennett gave one or more buttons to fellow employees, mostly those who worked with him in the inspection department, asking that they wear them. He testified that Young had told him the employees had the right to wear the buttons at work and that he probably passed along that information with the buttons. The employees put on the buttons as they left the cafeteria to return to work.

B. *The wearing of the emblems*

1. *Henry C. Bennett*: As stated, Bennett was employed in the inspection department. There are 25 to 30 testers working on the 2 shifts; each one works alone at a testing station, consisting of groups of instruments set against the wall of the electrical inspection room. These stations are separated from 4 to 30 feet from each other. In testing the memory frames,[5] the tester first inspects the frame visually, sometimes with the aid of a magnifying glass, then clamps it into a holder (called a "jig"), and applies low electrical currents to it in various ways. The effects of these electrical "drives" are registered on various instruments [6] and are read by the tester to determine whether the frame is operating properly as of that stage of its fabrication.

On Friday, September 27, Bennett was on the day shift and, as stated, passed out union buttons at the 9:15 a.m. coffee break. He also wore one himself—the large round button—all day at work and, although his supervisor saw it, nothing was said. Between 6 and 10 other employees in the inspection department also wore similar buttons all day Friday.

On Monday, September 30, Bennett rotated as scheduled to the night shift and reported for work at 4:30 p.m. He wore the same union button he had worn on Friday but, as he went to his post in the inspection department, Night Foreman Aus told him he could not wear the button and ordered him to take it off. Bennett said he believed he had the right to wear the button but Aus said the order had come from Department Foreman Beyl; Bennett turned to Beyl, who was nearby, and Beyl said, "That's right, you'll have to take it off." At this time Walter Skoug, Respondent's quality assurance manager and Beyl's superior, came over and said that Bennett would have to remove the button because it was "soliciting" and contrary to company policy; that if he were wearing a button saying "don't vote I.B.E.W." he would also be asked to take it off. Bennett insisted he had a right to wear the button and Skoug escorted him to the office of the personnel manager, Walter R. Olsen. Skoug told Olsen that Bennett refused to remove the button; Olsen ordered Bennett to take it off,

[5] These frames consist of sheets of plastic ranging in size from 2 inches square to 2 feet square. The center portion of the sheet is cut out so that only a frame is left: Across this open space are strung, horizontally, vertically, and diagonally, many fine insulated wires, each fastened to the frame by being soldered to a terminal which looks like a metal eyelet. Suspended at many points on the wire mesh thus created are tiny doughnut-shaped bits of ferrite called "memory cores" In very general terms, it seemed that these, when magnetized by applied electrical impulses, vary or affect current passing through them to register or effect predictable results There is no doubt that these memory frames are intricate and complex in construction and operation; that their fabrication requires care and concentration; that they must be frequently tested and repaired as they go through the process of manufacture and that, unless perfect, they cannot be used.

[6] Principally an oscilloscope, which looks like a small television tube having several horizontal and vertical lines etched on a clear plastic screen set in front of the tube. During testing, a light pattern appears on the face of the oscilloscope which, by reference to the etched lines, indicates the effect of the current. As long as the current is applied to the device, the oscilloscope will register the distinctive pattern and the frame being tested is not harmed or affected by such testing.

stating that it was "soliciting" and against company policy; Bennett repeated that he had a right to wear it; and Olsen instructed him to remove it or punch out and leave, saying that his status was "unknown." Before leaving, Bennett asked Olsen to show him the company policy on soliciting. Olsen showed it to him and Bennett left

About a week later, Bennett received his final paycheck and accrued vacation pay with a letter dated October 7, stating:

> On Monday, Sept. 30, 1963 you left work at the company's request because you refused to remove from your person a large campaign emblem that was designed to attract to yourself attention and to distract your fellow workers from their normal work duties. Since you have made no attempt to return to work or to contact the company and explain your absence nor have I been successful in contacting you, we must assume that you have terminated your employment.

Bennett returned to work about a month later, after the charges herein had been filed and the complaint issued, pursuant to an agreement between the Union and Respondent whereby the employees involved would forgo wearing the large union buttons and this proceeding would be maintained.

Ollie May Dewey: Employed in soldering memory boards, she is 1 of about 100 employees in that department and her supervisor is Forrest Hermann. On September 27 she received two large union emblems from Henry Bennett, one of each kind, and she wore the round one on her blouse—high up near her shoulder—during the afternoon of that day. No one said anything to her about it and five or six other employees in her soldering area also wore the same buttons.

She wore the same button again on Monday all morning without comment, as did several others in her area. Right after lunch, however, Hermann told her that he had been informed by the "front office" that those pins could not be worn in the plant but he was unable to say why. He asked her to take it off and she did so.

The next morning Dewey came to work wearing a sleeveless white cotton blouse, on the back of which she had painted, in black letters half an inch thick and 2½ inches high, "VOTE IBEW." Ten minutes after she had seated herself at her work station her foreman sent her to the personnel office. Olsen, after looking at her blouse, pointed out that on the previous day she had been asked not to wear the union button and that she had removed it without protest. He also said that she knew it violated the rules to wear them, but Dewey denied that she knew about the rule. Olsen then asked her if she had a jacket with her and, upon receiving an affirmative answer, asked her whether she wanted to wear it all day. Mrs. Dewey said she did not, noting that it was too hot in the plant for a jacket and that Olsen was not wearing one. Olsen then asked her whether she wished to go home and change her blouse and she said that was up to him. Olsen told her to punch out and go home and change her blouse She went home and did not return to work that day but during the afternoon she telephoned Olsen and said she had been advised that she had a right to wear the blouse because she was doing her work and not disturbing anyone else at work. Olsen conceded that she was one of his best workers. Later that same day Olsen called her, read a notice concerning solicitation which had been posted that day in the plant, and asked her whether she would take "their word instead of our word." She answered in the affirmative and Olsen then asked her if her "status" was the same. This, also, she answered affirmatively and Olsen told her that she was "terminated" as of that date. Shortly thereafter she received a paycheck bearing the statement:

> Terminated Oct 1 '63—refusal to obey company rules regarding employee solicitation

Dewey also went back to work November 8 pursuant to the agreement between Respondent and the Union.

Clarence Heacock: Employed in the inspection department to build and wire testing apparatus, he worked in the same area as Henry Bennett. At the morning coffee break on September 27, Bennett gave him one of the large round buttons and he wore it at work all that day Although his foreman, Paul Besonen, saw him wearing it, nothing was said. He again wore it on September 30 until after the late coffee break when Besonen came to him and said "the word was out" that they had to take the buttons off, and he took it off without comment.

The next morning when he came to work at 7.30, however, he again wore the button. At 8:30 Besonen, accompanied by Skoug, came to his bench and Skoug asked him whether he had not been told the previous day to take the button off. Heacock said he had, Skoug asked him whether he was going to do so and Heacock said he would not. Skoug then told Heacock he would have to leave because it was

"against company policy to wear a button like that." Heacock asked if he was fired and Skoug said if he took the button off he could continue to work. Heacock punched out and left.

Late that evening Olsen telephoned and asked him whether his "status" was the same. Heacock answered that he had been advised to say that he would be glad to return to work as long as he could wear the button. Olsen then read to him a company statement about solicitation and the wearing of buttons [7] and asked Heacock if he was taking "their word," meaning the Union's, against that of the Company. Heacock said he was and Olsen told him he was "terminated" as of that day.

Heacock subsequently received a final paycheck bearing the same notation as that on the one sent Dewey and he returned to work on November 8 under the same agreement.

James R. Mitchell: Employed in the inspection department and working in the same area as Bennett and Heacock, he received one of the square union buttons from Bennett on September 27 and wore it the rest of that day. He forgot it at home on September 30 but reported for work wearing it at 7:30 a.m. on October 1. About 45 minutes later Skoug asked him whether he had been told the Company's policy on solicitation; he said he had not. Skoug explained it to him and asked whether he was going to take the button off. Mitchell declined and Skoug directed him to punch out; he did so and left. Two days later Olsen telephoned him, explained the company policy on solicitation, i.e., that it had no objection to the small buttons but would not permit the wearing of the large ones, and asked him what his "status" was. When Mitchell said his status was the same, Olsen told him he was terminated. By letter dated October 7, Respondent stated that he had terminated his employment by his refusal to remove the emblem and enclosed his final paycheck. He returned to work November 8 under the agreement.

Lynn Gale: Also employed in the inspection department with Bennett, Heacock, and Mitchell, he received one of the large round buttons from Bennett at the morning coffee break on September 27 and wore it the rest of that day. On September 30 he again wore it until 2:30 p.m. when Besonen told him he had "orders from the front" that the buttons had to be removed. With the statement that he would comply until he found out otherwise, Gale removed the button for the balance of the day. The next morning he reported for work at 7:30 wearing the button; about 45 minutes later Besonen brought Skoug over and they asked whether he knew that wearing it was against company policy. Gale answered, "If you say so," and they told him to take it off or punch out. He punched out and left. A few days later Olsen telephoned him and asked whether he insisted on continuing to wear the button at work; Gale said he did and Olsen said he was terminated. Gale insisted upon a written notice of termination and was invited to pick it up at the plant the next morning. Gale, wearing one or more union buttons, picked up his final paycheck and a letter similar to that sent Mitchell. Gale also returned to work November 8 under the agreement.

Theron Seydel: Employed as a solderer in the memory frame section with Dewey, she wore one of the square union buttons during the final hours of work on September 27. It was accidentally destroyed at home over the weekend and she did not again wear a large button. On Thursday, October 3, she reported for work at 7:30 a.m. wearing a pair of small union buttons as clip earrings. After lunch that day, she and Dorothy Donohue, a fellow employee also wearing small union buttons as earrings (since Donohue's ears were pierced, hers were hanging from small wire hooks), were summoned to the personnel office. When they came in, Olsen remarked upon their unusual earrings. Mrs. Seydel's hair fell below her ears, but it was gathered slightly and the earrings were partly visible. Donohue's were clearly visible. To read the buttons, however, Olsen had to come to a point about a foot from them. Olsen then said there was no objection to their wearing the small union buttons in the "usual" way but since those they were wearing were "not designed" as earrings, he would have to ask them to remove them.

Mrs. Seydel asked Olsen if there was any regulation in the plant about earrings and he said there was not but "it had become a thing in the plant that he felt it was distracting to wear those earrings." She then asked what would happen if they did not take them off and Olsen said he would have to ask them to "punch out." Seydel punched out, Donohue removed her earrings. On October 7 Olsen telephoned Seydel at home and asked her whether she felt the same as she had when she left his office and that her job was waiting if she wished to return. She said she would be glad to return, with her earrings, and Olsen said he could not permit it and he had no choice

[7] To the effect that there was no objection to wearing small buttons but that the large buttons tended to "distract" fellow workers

but to terminate her employment. A few days later she received her final paycheck with a letter stating that because she had offered to return to work if ". . . permitted to wear the earrings and or the large badge which were both designed to call attention to yourself and distract fellow employees from their work concentration . . . ." she had made a decision to terminate her employment. She returned to work November 8 under the agreement.

Doris Heacock: In October she was working in the nuclear data department (also called card assembly). On October 3 she came to work at 7:30 a.m. wearing a square union button on her blouse. Shortly after work began, her foreman noticed her "adjusting" the sweater she was wearing so that the button showed for an instant and two women at the next table, who had turned around, laughed. Pricilla Petersen, a coworker, was also wearing a similar button on her blouse but a corner of it was visible at the edge of the sweater she was wearing. Their foreman noticed the occurrence and took them both to the personnel office. Olsen told them that they could not wear these large buttons visibly on the premises because it amounted to "campaigning" and was against company policy. He said that whether buttons of that size were for or against the Union or even if they were presidential campaign buttons, they could not be worn anywhere on the premises, and that the rule was applicable whether they were at work or not. Olsen said they could wear small union buttons and both women moved the large buttons so that they could not be seen, put small buttons on their sweaters and went back to work.

C. *Discussion and conclusionary findings*

The right of employees to display union insignia at work has long been recognized as a reasonable and legitimate form of union activity [8] and an employer's prohibition thereof—in the absence of special considerations relating to employee efficiency and plant discipline—is an unwarranted interference with the employees' right to engage in organizational activities.[9]

The nature of the union insignia involved, moreover, does not affect this right and the Board, with court approval, has sustained it in cases involving unusual emblems as well as articles of clothing.[10]

The wearing of union insignia is *not* a form of solicitation [11] and, therefore, the cases cited by Respondent involving solicitation, as well as Respondent's rule on this subject,[12] are inapplicable.

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[8] *Republic Aviation Corporation* v. *N L.R.B.*, 324 U.S. 793, 801–803; *Kimble Glass Company*, 113 NLRB 577, enfd 230 F 2d 484 (C.A. 6); *Mayrath Company*, 132 NLRB 1628, enfd 319 F. 2d 424 (C A. 7); *Brewton Fashions, Inc., a Division of Judy Bond*, 145 NLRB 99.

[9] *Mayrath Company, supra.*

[10] Buttons inscribed "UAW–CIO STEWARD", although the union was not recognized: *Republic Aviation Corporation* v. *N L R.B.*, 324 U.S. 793, 802; streamers inscribed "I AM LOYAL TO 751" and steward and committeeman buttons: *Boeing Airplane Company*, 103 NLRB 1025, enfd. (as to the buttons but, in view of the dual-union situation and the strike background, set aside as to the streamer) 217 F. 2d 369 (C A. 9); bowling shirts or blouses for men and women, inscribed, in letters 2½ to 3 inches high, "U A W" across the back at the shoulders, and novelties such as pocket pencil holders, pencils, and combs, all bearing the UAW insignia: *Power Equipment Co.*, 135 NLRB 945, enfd. as modified 313 F 2d 438; 318 F. 2d 717; 319 F. 2d 861 (C.A. 6); large badges inscribed "I U E–C I O": *Kimble Glass Company*, 113 NLRB 577, enfd. 230 F. 2d 484 (C.A. 6); badges 3 by 4 inches inscribed *"Support Your Committee*/Vote Yes/For Better Wages/Vacations—Holidays/Insurance, Etc.": *Standard Fittings Co., et al*, 133 NLRB 928; T-shirts inscribed "JOIN UAW–CIO" or "VOTE UAW–CIO" and buttons about the size of a half-dollar inscribed "SUPPORT YOUR UNION, VOTE YES": *The DeVilbiss Company*, 102 NLRB 1317; T-shirts inscribed "VOTE UAW" and buttons the size of a half-dollar inscribed "VOTE UAW–CIO": *Murray Ohio Manufacturing Company*, 128 NLRB 184; buttons inscribed "I'M A/UNION MEMBER/DIST, 50, U.M W.A /ARE/YOU?": *Stewart Hog Ring Company, Inc*, 131 NLRB 310, 329, 339.

[11] *The DeVilbiss Company, supra; Avildsen Tools and Machines, Inc, et al.*, 112 NLRB 1021

[12] The "no solicitation" rule dated July 11, 1962, posted October 1, and, presumably, the one shown or read to certain of the employees in connection with their wearing of union buttons, is far from clear in distinguishing between working and nonworking time (see *Solo Cup Company*, 144 NLRB 1481). The validity of this rule, however, was not put in issue by the pleadings nor was it litigated herein and I make no finding concerning it.

In view of the foregoing, we now reach the question to be determined in this case: namely, whether Respondent has proved its contention that wearing of union insignia by the employees involved had the effect of distracting the attention of other employees from their work and disrupting their work concentration. Rephrased in the terms of the law on this subject, has Respondent established special considerations relating to employee efficiency or plant discipline that would justify its refusal to permit the wearing of union insignia in the plant? [13]

As indicated above, there is no doubt that Respondent's finished product is extraordinarily complex and that each item must operate perfectly to enable the ultimate mechanism to function. It is also undisputed that each step in the fabrication of a memory frame is done by hand and requires a high degree of concentration during its performance. The production process, however, has been broken down into a great number of simple steps punctuated by frequent inspections. Indicative of this result is the fact that 80 percent of the 350 employees engaged in fabrication are women from the area who have no particular technical qualifications, experience, or training other than that received in a 2-week period on the job.[14]

Haselhorst [15] testified at some length concerning the Company's efforts to minimize interference with the employees' concentration, such as reducing the noise level and improving the lighting in the plant, installation of "kick boards" under the worktables and "sneeze boards" in front of the operators above the tables, and shifting of employees' work stations to avoid personal antagonisms and overtalkativeness. He conceded, however, that there were still many problems in this area still unsolved and that their solutions are affected by "Company economics." He admitted that the noise level was still too high; that there are no separated corridors and that, therefore, employees on their way to the cafeteria, to their work stations, and to other parts of the plant pass through work areas; and that while some of the noisy and vibrating areas have been enclosed, there are no rules requiring that the doors be closed and considerable noise and vibration still comes through. It also appears that the several coffee breaks and lunch periods are announced by the sounding of buzzers throughout the plant; that people are constantly being paged through the plantwide sound system; and that employee solicitations by the passing of collection boxes is at least a weekly occurrence.

Respondent's testimony in support of its position included one witness, a "lead technician" (excluded from the unit as a supervisor by the decision of the Regional Director), who testified that he "looked up" from his work when employees wearing

[13] If I am correct in holding that the employees were entitled to wear union insignia even while at work, it is unnecessary to decide whether Respondent's interference with this right was limited to working time or whether it extended throughout the plant premises Assuming without granting, however, that Respondent could properly prohibit the wearing of union insignia during actual working time, I find that Respondent made no distinction along those lines. The testimony on this point is in conflict: Olsen testified that in his discussions with the employees there was no mention of nonworking time or nonworking areas but Priscilla Petersen and Doris Heacock clearly and positively testified that Olsen told them that the buttons were not to be worn at *any* time or place in the plant. Dewey was told by Supervisor Herrman that she could not wear her button "at the plant" and Olsen, in support of his ban on Seydel's earrings, said it had become "a thing in the plant" Olsen used the expression "during working hours," which also appears in both the memorandum and the rule posted October 1 to which he referred and MacAloon, who prepared this material and from whom Olsen received his directions, testified that he explained to Olsen that there would be no objection to the large union buttons if the employees took them off in the locker room or left them there and pinned them on as they were leaving the plant The rule itself, as pointed out in the foregoing footnote, is not clear Based, therefore, upon the credited testimony of the employees and upon the equivocal use of the phrase "working hours," I find that Respondent's prohibition of union insignia extended to all parts of the plant and all times between reporting and quitting.

[14] In this connection it is also relevant to note that the wage rate of Dewey and Seydel who, with a hundred others, work as "solderers," is $1 51 per hour. Even among the men working in the inspection department—with the exception of Henry Bennett, who had 6 years' experience testing for A.T. & T. and had been an Air Force radar technician—there was no evidence of specialized skill and their wage rates were $1 50 for Mitchell (employed 6 months) ; $1.77 for Heacock (employed 20 months) ; and $2 05 for Gale (employed 3 years). These comments are no reflection upon these employees or upon the Respondent but require consideration, together with other evidence detailed herein, in deciding whether the production process was of such delicacy that the mere wearing of union emblems interfered with its efficient performance by these employees.

[15] Respondent's vice president of engineering.

union buttons passed through his area and that he saw several of the women under his supervision also look up, but he conceded that he often looks up briefly when people pass near him. Another testified that, after hearing about the union buttons being worn in the inspection department, he and several others walked over to see them. A third simply testified that he saw the buttons. This evidence—so laboriously adduced—is too trifling to merit serious consideration. The supervisor who took Heacock and Petersen to the personnel office after Heacock "flashed" her button as she adjusted her sweater, admitted that the incident was over in a moment and that his reason for taking the women to the office was that they were wearing the buttons.

Respondent introduced no evidence to show that there was any diminution in employee output or efficiency when the buttons, blouse, or earrings were being worn. Had any of this been apparent, the line supervisors would undoubtedly have taken steps on September 27, the first day the buttons were being worn, or at least testified to such interference with production. Instead, it was not until Olsen's return to the plant on the following Monday and his telephone conversations with MacAloon [16] that steps were taken against employees wearing union insignia—and then on the basis of the no-solicitation rule. It was also not until noon of the following day, October 1, when the MacAloon-Olsen memorandum was posted, that the first reference was made to disruption of work concentration and even thereafter the no-solicitation rule was cited as justification for the prohibition at least as often as the claim of work disruption.

The Board's statement in *Stoddard-Quirk Manufacturing Co* [17]—albeit in connection with a slightly different problem in this area; *viz*, that of oral solicitation versus distribution of union literature—that ". . . what is basically involved in each case arising in this area is the necessity of striking a proper adjustment between conflicting rights against the background of particular fact situations" is, in my opinion, applicable here. As indicated above, Respondent has failed to prove its contention that the wearing of union insignia in the plant had an effect of distracting the attention of other employees or disrupting their work concentration. It follows, therefore, and I find, that Respondent's prohibition of the wearing of such insignia was not justified for the maintenance of employee efficiency or plant discipline; that by prohibiting employees Bennett, Dewey, Clarence, Heacock, Mitchell, Gale, Seydel, Donohue, Petersen, and Doris Heacock from wearing union insignia, Respondent interfered, and continues to interfere, with the organizational rights of these and other employees in violation of Section 8(a)(1) of the Act and that, by discharging employees Bennett, Dewey, Clarence Heacock, Mitchell, Gale, and Seyedel for wearing union insignia, Respondent discriminated against them to discourage their membership in the Union, thereby violating Section 8(a)(3) and (1) of the Act.

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 set forth 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 and is engaging in unfair labor practices burdening and obstructing commerce, I shall recommend that it cease and desist therefrom and take affirmative action in order to effectuate the policies of the Act.

Having found that Respondent discriminated in regard to the tenure of employment of Henry C. Bennett, Ollie May Dewey, Clarence Heacock, James R. Mitchell, Lynn Gale, and Theron Seydel in violation of Section 8(a)(3) and (1) of the Act, I shall recommend that Respondent make these employees whole for any loss of earnings suffered because of the discrimination against them, with interest thereon at 6 percent per annum, in the manner prescribed in *Isis Plumbing & Heating Co.*, 138 NLRB 716.

[16] MacAloon's alleged consultations with Board personnel are irrelevant and Respondent's "good faith," even if established, would be no defense. (See *International Ladies' Garment Workers' Union* v *N L R B* (*Bernard Altman Texas Corp*), 366 U S. 731, 738–739.)

[17] 138 NLRB 615, 616, footnote 2.

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

CONCLUSIONS OF LAW

1. Fabri-Tek Incorporated is an employer within the meaning of Section 2(6) and (7) of the Act.
2. International Brotherhood of Electrical Workers, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. By compelling employees to remove and by prohibiting the wearing of union insignia by employees in the plant, and by threatening employees with loss of employment if they wore union insignia in the plant, Fabri-Tek Incorporated has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act and has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
4. By discrimination in regard to the tenure of employment of Henry C. Bennett, Ollie May Dewey, Clarence Heacock, James R. Mitchell, Lynn Gale, and Theron Seydel, to discourage membership in a labor organization, Fabri-Tek Incorporated has engaged in and is engaging in an unfair labor practice within the meaning of Section 8(a)(3) and (1) of the Act.
5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the entire record in this case, and upon the foregoing findings of fact and conclusions of law, it is recommended that Respondent, Fabri-Tek Incorporated, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Requiring its employees to remove and prohibiting its employees from wearing union insignia or threatening its employees with suspension or discharge for wearing union insignia in its plant at Amery, Wisconsin.

(b) Discouraging membeship in International Brotherhood of Electrical Workers, AFL–CIO, or in any other labor organization of its employees, by compelling employees to remove union insignia, by prohibiting employees from wearing, or by suspending or discharging employees for wearing, union insignia in said plant or by discriminating in any like or related manner in regard to their hire or tenure of employment, or any term or condition of employment.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their right to self-organization, to from, join, or assist International Brotherhood of Electrical Workers, AFL–CIO, or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in other 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 is affected by the provisos in Section 8(a)(3) of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Make whole Henry C. Bennett, Ollie May Dewey, Clarence Heacock, James R. Mitchell, Lynn Gale, and Theron Seydel for any loss of pay any of them suffered as a result of the discrimination against them, in the manner set forth above in the section 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 personnel records and reports, and other records necessary to determine the amount of backpay due under the terms of this Recommended Order.

(c) Post at its plant at Amery, Wisconsin, copies of the attached notice marked "Appendix." [18] Copies of said notice, to be furnished by the Regional Director for

[18] If this Recommended Order is 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 is 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."

Region 18, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and be maintained by it for a period of at least 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 such notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 18, in writing, within 20 days from the date of receipt of this Decision, what steps Respondent has taken to comply herewith.[19]

[19] If this Recommended 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 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, we hereby notify our employees that:

WE WILL NOT require our employees to remove, or prohibit them from wearing, union insignia in our plant.

WE WILL NOT discipline or discharge, or threaten to discipline or discharge, any of our employees to compel them to remove or to prevent them from wearing union insignia in our plant.

WE WILL make whole Henry C. Bennett, Ollie May Dewey, Clarence Heacock, James R. Mitchell, Lynn Gale, and Theron Seydel for any loss of wages they may have suffered by reason of their discriminatory discharge for wearing or refusing to remove union insignia in our plant.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist International Brotherhood of Electrical Workers, AFL–CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other 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 the provisos in Section 8(a)(3) of the Act.

FABRI-TEK INCORPORATED,
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, 316 Federal Building, 110 South 4th Street, Minneapolis, Minnesota, Telephone No. 339–0112, Extension 2601, if they have any question concerning this notice or compliance with its provisions.

Nelson Manufacturing Company *and* International Union, Allied Industrial Workers of America, AFL–CIO.

Case No. 8–CA–2569. October 12, 1964

SUPPLEMENTAL DECISION AND ORDER

On September 25, 1962, the National Labor Relations Board issued a Decision and Order in the above-entitled case,[1] directing, *inter alia*, that the Respondent reinstate and make whole 10 employees who the

[1] 138 NLRB 883.