But, in any event, Sherrod, who was only a foreman, left the Company's employ over 2 months before the hearing. In my judgment, it would not effectuate the policies of the Act to issue a remedial order based solely on an isolated unauthorized threat by a foreman who is no longer employed by the Respondent.

CONCLUSION OF LAW

Respondent has engaged in no unfair labor practice warranting the issuance of a remedial order.

RECOMMENDED ORDER

The complaint herein should be and hereby is dismissed.

Willard Bronze Company *and* Larry Martin. *Case No. 9–CA–3012. October 15, 1964*

DECISION AND ORDER

On July 22, 1964, Trial Examiner Abraham H. Maller issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Decision. The Trial Examiner also found that the Respondent had not engaged in other unfair labor practices. 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, as amended, 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 the 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, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order as modified as follows: The folowing paragraph shall be added as paragraph 2(b), and the previous paragraph 2(b) and subsequent paragraphs of the Trial Examiner's Recommended Order shall be renumbered accordingly:

(b) 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.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

Upon a charge filed on October 30, 1963, by Larry Martin, the Regional Director for Region 9 of the National Labor Relations Board, herein called the Board, on January 8, 1964, issued a complaint on behalf of the General Counsel of the Board against Willard Bronze Company, herein called the Respondent, alleging that the Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act by unlawfully interrogating employees about their interest in, or sympathy for, International Molders and Allied Workers Union of North America, AFL–CIO, herein called the Union, by threatening an employee that Respondent would cease its operation if the employees selected the Union as their collective-bargaining representative, and by transferring employees to less desirable work assignments because of their interest in, and sympathy for and on behalf of, the Union. The complaint further alleged that on or about October 10, 1963, the Respondent discharged Larry Martin and Raymond Vannoy because of their interest in, sympathy for, and activities on behalf of the Union, in violation of Section 8(a)(3) and (1) of the Act. In its duly filed answer, the Respondent denied the commission of any unfair labor practices. With respect to the alleged discharge of Martin and Vannoy, Respondent alleged that said employees were laid off for lack of work and that they and the Union had been informed that they would be recalled when additional work is available in their department.

Pursuant to notice, a hearing was held before Trial Examiner Abraham H. Maller at Cincinnati, Ohio, on February 18 and 19, 1964. The General Counsel and the Respondent were represented and were afforded full opportunity to be heard, to introduce relevant evidence, to present oral argument, and to file briefs with me. Briefs were received from counsel for the General Counsel and from the Respondent.

Upon consideration of the entire record, including the briefs of the parties, and upon my observation of each of the witnesses,[1] I make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. THE BUSINESS OF THE RESPONDENT

The Respondent, an Ohio corporation, is engaged in the operation of a foundry at Cincinnati, Ohio. During the year preceding the issuance of the complaint, the Respondent had a direct outflow of its products, in interstate commerce, valued in excess of $50,000, which it sold and shipped directly to points outside the State of Ohio. During the same period the Respondent had a direct inflow of goods and materials, in interstate commerce, valued in excess of $50,000 which were purchased and received directly from outside the State of Ohio. In view of the foregoing, I find and conclude that the Respondent is engaging in commerce within the meaning of the Act and that it will effectuate the policies of the Act for the Board to assert jurisdiction here.

II. THE LABOR ORGANIZATION INVOLVED

International Molders and Allied Workers Union of North America, AFL–CIO, is and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

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[1] Unless specifically indicated to the contrary, any credibility evaluation I make of the testimony of any witness appearing before me is based, at least in part, upon his demeanor as I observed it at the time the testimony was given. Cf *Retail Clerks International Association, AFL–CIO, Local 219 (National Food Stores, Inc)*, 134 NLRB 1680, 1683, footnote 3; *Bryan Brothers Packing Company*, 129 NLRB 285. To the extent that I indicate that I do not rely on or reject in part or entirely the testimony of any given witness, it is my intent thereby to indicate that such part or whole of the testimony, as the case may be, is discredited by me. Cf. *Jackson Maintenance Corporation*, 126 NLRB 115, 117, footnote 1, enfd. 283 F. 2d 569 (C.A. 2).

III. THE ISSUES

1. Whether the Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act by any of the following acts:
(a) Unlawfully interrogating employees about their interest in or sympathy for the Union.
(b) Threatening an employee that Respondent would cease its operation if the employees selected the Union as their collective-bargaining representative.
(c) Transferring employees to less desirable work assignments because of their interest in, and sympathy for and on behalf of, the Union.
2. Whether Larry Martin and Vannoy were separated by the Respondent because of their interest in, sympathy for, and activities on behalf of, the Union.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

Respondent employs approximately 125 employees at its foundry. For the past 30 years the Union has been the exclusive bargaining agent of the employees, except those in four departments: cleaning, plaster, machine, and patternmakers.[2] The relationship between the Respondent and the Union has been good.

B. *The alleged discriminatees*

Larry Martin, who was employed in the plaster department [3] as an apprentice molder, had been employed by the Respondent for approximately 20 months His starting salary was $1.25 per hour. At the time of the events involved herein his pay was $1.80 per hour.
Vannoy had been employed by the Respondent for approximately 4 years. He started in the cleaning department but was transferred to the plaster department where he worked for about a year until he was hospitalized as a result of an accident in the foundry. Upon his return he was transferred back to the cleaning department because his hands were too tender to work in the plaster department. Approximately a month or two before the events detailed below, Vannoy was again transferred to the plaster department.

C. *Sequence of events*

On September 27, 1963, all of the eight employees in the cleaning department and Larry Martin and Vannoy, two of the six employees in the plaster department, met with a representative of the Union. All except one employee in the cleaning department joined the Union that evening. The new members were issued union badges and were instructed to wear them at the foundry. The following Monday, September 30, all reported to work as usual, wearing their union badges. That day, Arlen Cantrell, one of the employees in the cleaning department, was approached by Chief Engineer Wernke who, observing the union button, said, "You have joined the Union? You have wrecked your ass up. You can mark it down in your book as me saying so." [4]
On the same day Chief Engineer Wernke approached Foreman Art Morris and told him that "he didn't want the bastards over there working in the plaster department, that belonged to the Union." According to Foreman Morris' credited testimony, Wernke was highly perturbed and said he would not allow a union man to work in the plaster department.[5] Foreman Morris opposed the transfer of Vannoy and Larry

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[2] The patternmakers have been represented by the Patternmakers Union

[3] The employees in the plaster department make molds for castings

[4] The foregoing was corroborated by Chester E Martin, a brother of the Charging Party and an employee in the cleaning department. According to Cantrell and Chester Martin, Foreman Art Morris was present when this conversation occurred. Foreman Morris, however, was not interrogated regarding this incident. Chief Engineer Wernke did not categorically deny making the statement He testified that he did not think that he made the statement. In general, Chief Engineer Wernke appeared to be a rather vague and evasive witness. I credit the testimony of Cantrell and Chester Martin and find that Chief Engineer Wernke make the statement attributed to him.

[5] Respondent attacks the credibility of Foreman Morris, pointing out, *inter alia,* that he was discharged by the Respondent prior to the hearing because of his inability to control the horseplay in his department, and is therefore a disgruntled employee. In assessing Foreman Morris' credibility I have taken this circumstance into consideration. How-

Martin from the plaster department because he needed them in that department. Wernke then instructed Foreman England to transfer Larry Martin and Vannoy to the cleaning department.[6] According to Larry Martin's credited testimony, Wernke told England that Respondent did not want any union people in the plaster department and directed him to transfer Larry Martin and Vannoy to the cleaning department. Foreman England testified that he did not initiate the conversation with Wernke regarding the transfer; that Wernke told him to send Larry Martin and Vannoy "over there where they belonged in the cleaning room."

The next day, Willard Grueneberg, president of the Respondent, and Chief Engineer Wernke approached Cantrell in the cleaning department. According to Cantrell's credited testimony, President Grueneberg said, "I hear you are dissatisfied and you joined the Union." Wernke then cut in and said, "I told him he wrecked his ass up." President Grueneberg continued and asked Cantrell what the Union was going to do for him. Cantrell replied that the Union might do something about senority and might keep them from getting fired President Grueneberg then asked, "Do you think you can't be fired, now?" Cantrell answered, "No, I don't think that." [7]

Two weeks later Larry Martin and Vannoy were laid off. The reason ascribed for the layoff was lack of work. Foreman Morris testified without contradiction that he laid off Vannoy and Larry Martin on the orders of Plant Superintendent Ralph Timmers; that he had told Timmers, "We need men over in the plaster department, the work is not getting through. We are not getting anything out. We need the men over there, and we haven't got enough to hold them here, on this side, in the cleaning room"; and that the only answer he got from Timmers was to lay the men off and that he would hire some men in their place. Foreman Morris' testimony is corroborated by the fact that the week following the layoff of Vannoy and Larry Martin, the Respondent hired two new employees for the plaster department, and the plaster department went on overtime. Timmers did not testify.

On November 6, 1963, the Union wrote the Respondent requesting the reinstatement of Larry Martin and Vannoy and a contract to cover the employees in the cleaning department. Under date of November 19, 1963, the Respondent replied with certain counterproposals and stated that Martin and Vannoy "were dismissed from our employ due to lack of work, and that we will put them on when additional work is required in that Department."

On February 17, 1964, the day before the hearing in the instant proceeding, Larry Martin and Vannoy were reinstated as employees in the cleaning department. According to Larry Martin's credited testimony, Foreman England stopped him before he went to work and said, "You sure got in a mess by joining that Union, didn't you?" To this, Martin replied, "Yes, I guess I did." Vannoy also had a similar conversation with Foreman England, although in this instance it was Vannoy who initiated it. According to Vannoy's credited testimony, "I told him we sure got screwed up by joining the Union, and he said yes, we did." [8]

Concluding Findings

1. Alleged interrogation and threats

Chief Engineer Wernke's statement to Cantrell on September 30: "You have wrecked your ass up. You can mark it down in your book as me saying so," fol-

ever, I observed carefully his demeanor while he was testifying and am satisfied that he was a credible witness. Moreover, Foreman Morris' testimony is substantially corroborated by Cantrell who testified that Chief Engineer Wernke told Foreman Morris: "We have got one guy working over there that belongs to the Union" Morris replied, "No, you have got two" Thereupon, Wernke said, "Well, get them out of there."

[6] Foreman England was in charge of the plaster department under the direction of Foreman Morris who supervised both the cleaning and plaster departments

[7] The foregoing conversation between President Grueneberg and Cantrell was corroborated by Chester Martin (except as to Chief Engineer Wernke's interjection) and is credited. I do not credit President Grueneberg's denial that he asked Cantrell why he had joined the Union I do not credit the further testimony of Cantrell that President Grueneberg threatened to close the plant Considering the fact that the Respondent had had a contract with the Union for some 30 years during which time it had an amicable relationship with the Union, I consider it extremely unlikely that President Grueneberg would have threatened to close the plant because the employees in the cleaning department joined the Union.

[8] The foregoing incidents occurring the day before the hearing are not considered to be independent violations of the Act. They do, however, represent the attitude of management toward the union membership of Larry Martin and Vannoy.

lowing Wernke's reference to the fact that Cantrell had joined the Union, was clearly a threat and as such violative of Section 8(a)(1) of the Act[9] I do not regard Chief Engineer Wernke's opening statement: "You joined the Union?" as interrogation. Cantrell was at the time openly wearing a union badge. Wernke's question must therefore be regarded as a rhetorical one. Quite obviously, Wernke did not expect an answer, as he followed this question with his threat without waiting for an answer.

Nor do I regard the conversation which Cantrell had with President Grueneberg the following day as constituting interrogation. In the context in which it was put, the question: "Well, what good do you think that is going to do you?" was merely discussion rather than an attempt to elicit information from Cantrell. Cf. *Murray Ohio Manufacturing Company,* 128 NLRB 184, 189. Indeed, but for the setting in which they occurred, I would be inclined to consider Grueneberg's remarks as innocuous discussion. However, the facts are: (1) This conversation occurred the day following Chief Engineer Wernke's threat; (2) Wernke accompanied Grueneberg when the latter approached Cantrell; (3) Wernke injected himself into the conversation, repeating the threat he had previously made; and (4) Grueneberg did not disassociate himself with the threat. These circumstances, in themselves, could reasonably lead Cantrell to believe that he was being considered unfavorably because he had joined the Union. But more significantly, in this posture, even though it was Cantrell who had raised the issue of firing, Grueneberg's question: "Do you think you can't be fired, now?" took on added significance and could reasonably be understood by Cantrell as an affirmation of Wernke's earlier threat. As the Court of Appeals for the Fifth Circuit pointed out in *N L.R.B.* v. *W. C. Nabors Co.,* 196 F. 2d 272 at page 276:

> When statements such as these are made by one who is a part of the company management, and who has the power to change prophecies into realities, such statements, whether couched in language of probability or certainty, tend to impede and coerce employees in their right of self-organization, and therefore constitute unfair labor practices.

See also *N L R.B* v. *Kropp Forge Co.,* 178 F. 2d 822, 828–829 (C.A. 7). In sum, I find that Grueneberg's conversation with Cantrell constituted restraint and interference, in violation of Section 8(a)(1) of the Act.

I have heretofore indicated that I do not credit Cantrell's testimony that President Grueneberg threatened that Respondent would close its plant. This was the only evidence presented by the General Counsel in support of the allegation to that effect in the complaint. Accordingly, I shall recommend that so much of the complaint as alleges that the Respondent threatened that it would cease its operation if the employees selected the Union as their collective-bargaining representative be dismissed.

2. The transfer and layoff of Larry Martin and Vannoy

The complaint alleges and the General Counsel contends that Larry Martin and Vannoy were discharged on October 10, 1963. The allegation is not supported by a preponderance of the evidence. Rather, I find that these men were laid off on that date. However, whether they were laid off or discharged is of no consequence in this case, since in either event the Respondent violated the Act if its action was motivated by their membership in the Union. Cf. *Thomason Plywood Corporation,* 109 NLRB 898. The transfer of these employees from the plaster department to the cleaning department and their ensuing layoff were intimately connected and constituted one continuing action.

There can be no doubt that Larry Martin and Vannoy were transferred from the plaster department and laid off 2 weeks later because of their membership in the Union. Not only is this evident from the striking sequence of events, but it is fully supported by the conduct and statements of Chief Engineer Wernke. It is more than a mere coincidence that Larry Martin and Vannoy were transferred from the plaster department on the very first day that they appeared at the plant wearing union badges. And they were transferred to the cleaning department which already had a full complement of employees—a fact which made their layoff shortly thereafter

[9] Although the complaint did not charge a threat by the Respondent, the issue with regard to Chief Engineer Wernke's statement quoted above was fully litigated. See, e.g., *Granada Mills, Inc.,* 143 NLRB 957.

inevitable. Chief Engineer Wernke's statement to Foreman Morris that he would not allow a union man to work in the plaster department clearly establishes the reason for the transfer.

Respondent points to its long history of amicable relationship with the Union and the speed with which it acceded to the Union's demand to include the cleaning department in the contract as evidence of the absence of union animus on its part. These are indeed circumstances to be considered, and I have taken them into account in arriving at my conclusion. However, these considerations cannot prevail against the clear and convincing evidence, exemplified by Chief Engineer Wernke's statements when he directed the transfers and the threats made to Cantrell. *Murray Golub et al., d/b/a Golub Bros Concessions,* 140 NLRB 120, 129; *Cook Paint & Varnish Company,* 129 NLRB 427, 435. Although Respondent had a good relationship with the Union, the plaster department was unorganized, and Respondent apparently preferred that it remain so. By transferring Larry Martin and Vannoy from the plaster department, Respondent might prevent that department from becoming organized.[10] And transferring them to the cleaning department could do no harm, as that department was almost completely organized. Moreover, it made the eventual layoff of these employees appear reasonable, as there would now be a surplus of workers in the cleaning department.

Respondent argues further that with the transfer of Larry Martin and Vannoy, there was a shortage of help in the plaster department and that it would not deliberately create such a situation without good economic reason. The argument is not persuasive. It may well be that Respondent was willing to risk this situation if it resulted in keeping the plaster department unorganized.

Respondent emphasizes the fact that these employees received the same rate of pay after their transfer to the cleaning department; hence, it argues that its action was not motivated illegally. The contention is without merit. As previously noted, their transfer to the cleaning department made them vulnerable to the ensuing layoff, a result which would not have occurred had they remained in the plaster department. Moreover, even if they had not been laid off as a result of the transfer, they sustained a financial detriment, as the transfer limited their future earning potential. The maximum pay they could receive in the cleaning department was $2.12 per hour, while the maximum in the plaster department was $2.55 per hour.

Respondent also points to the fact that the other men who had joined the Union were not discharged. The short answer is that this "does not exculpate . . . [Respondent] from the charge of discrimination as to those discharged." *N.L.R.B.* v. *W. C. Nabors Co., supra.* See also *Golub Bros. Concessions, supra.*

Respondent has presented a number of reasons to justify transferring Larry Martin and Vannoy out of the plaster department: Larry Martin's production was not up to standard and he showed no promise of becoming a journeyman molder; both he and Vannoy were guilty of horseplay, i.e., throwing plaster at other men; Larry Martin held another job while working for the Respondent; Vannoy was a laborer who "belonged" in the cleaning department and was merely transferred back; and did not show promise of becoming a journeyman molder.[11] The very multiplicity of defenses urged by Respondent raises the suspicion that Respondent is grasping at every possible pretext to justify its action. More importantly, an analysis of these defenses demonstrates that each is without merit.

In support of the defense that Larry Martin's production was not up to standard and that he did not show promise of becoming a journeyman molder, Respondent called Chief Engineer Wernke who testified that the reports he received from Foreman England indicated that Larry Martin's production got progressively worse.[12] However, Foreman England did not corroborate Wernke. He testified that the only complaint he made to Wernke about Larry Martin was the fact that Larry Martin

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[10] Although these men were reinstated to jobs in the cleaning department the day before the hearing, President Grueneberg testified that he would not return them to the plaster department His stated reason—that their superiors did not deem them qualified—is not supported by Respondent's other witnesses. This is more fully discussed *infra*

[11] The foregoing reasons are presented in Respondent's brief and/or were offered to the Union in Respondent's letter as justification for the transfer.

[12] Although Wernke testified that daily written production records are maintained, none was produced

was working on another job while employed by Respondent.[13] On the other hand, Foreman Morris testified that both Larry Martin and Vannoy were satisfactory employees, that their work was good and their attendance regular. Furthermore, the admitted fact is that Larry Martin was employed in the plaster department for some 20 months. It seems strange that if his production deteriorated progressively, as claimed by Chief Engineer Wernke, Respondent would have retained him in the plaster department for so long a time. Moreover, it is an odd coincidence that Respondent should suddenly become concerned with his alleged lack of production on the very day when he appeared at the foundry wearing a union badge. In sum, I am satisfied and find that Larry Martin was a satisfactory employee and that the foregoing reason advanced by Respondent for transferring him from the plaster department is merely a pretext.

So, also, is the claim that Larry Martin and Vannoy were transferred because they engaged in horseplay consisting of throwing plaster. The record is clear that all employees in the cleaning and plaster departments, Foreman England included, engaged in this indoor sport. There is no showing that Larry Martin's and Vannoy's conduct in this regard was any worse than that of the other employees.[14] Moreover, Foreman England testified that he never reported the horseplay that went on in his department. Also, Chief Engineer Wernke admitted: "I am not associating the horseplay too much with Martin. I couldn't tie him into that too well." Obviously, the transfer of Larry Martin and Vannoy to the cleaning department where horseplay was rife could hardly be calculated to eliminate or lessen horseplay. For if Respondent genuinely felt that they were principal culprits in this regard, moving them to the cleaning department would solve nothing. Only the discharge of the offending employees would solve the problem. Indeed, this is precisely the action which Respondent took several months later when it discharged Cantrell and Chester Martin. In sum, the contention that Larry Martin and Vannoy were transferred because they engaged in horseplay is merely another of several pretexts now advanced in an attempt to justify Respondent's action.

Equally without merit is the argument that Larry Martin was transferred because he was working on another job while employed by Respondent.[15] Foreman England admittedly knew that Larry Martin had another job a few weeks after he was hired and informed Chief Engineer Wernke to that effect. Wernke, however, did nothing about it. On the other hand, President Grueneberg testified that he did not find out about Larry Martin's other job until after Larry Martin had been laid off. Clearly, this circumstance had nothing to do with his transfer and subsequent layoff.

Nor can the other reasons advanced for the transfer of Vannoy withstand scrutiny. Respondent urges that Vannoy "belonged" in the cleaning department and performed only labor work in the plaster department and that he showed no promise of becoming a journeyman molder. Aside from the fact that these reasons are inconsistent, they are contradicted by the record. Vannoy, while in the plaster department, performed the same work that was done by Larry Martin, admittedly an apprentice molder. President Grueneberg testified that Vannoy and Larry Martin were transferred because he had been informed by Chief Engineer Wernke that "their workmanship was slipping" and that it would be foolish to put them back in the plaster department when their supervisors did not think they were qualified. Chief Engineer Wernke, however, refused to criticize Vannoy's work and testified that the quality of his work had nothing to do with the transfer; that the only reason for transferring Vannoy was simply that he belonged in the cleaning department. Foreman England's testimony also contradicted that of Grueneberg. England testified that he never complained of Vannoy to his superiors and that, with the right training, Vannoy would have made a good molder eventually. The foregoing discussion demonstrates, and I find, that the reasons advanced by the Respondent constitute a series of pretexts without factual foundation.

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[13] Foreman England also testified that Larry Martin lacked initiative. On cross-examination, he denied that he had so stated

[14] Both Larry Martin and Vannoy admitted that they sometimes threw plaster. Larry Martin testified that when someone threw plaster at him, he threw back.

[15] Larry Martin, who appeared to be a rather serious young man, testified that for the past 3 years he had been employed as an attendant at Longview State Hospital, a hospital for the mentally ill, working 3 nights a week and weekends from 11 p m to 7 a m.

It is clear from the record, and I find, that Larry Martin and Vannoy were transferred and subsequently laid off because of their membership in the Union, in violation of Section 8(a)(3) and (1) of the Act.

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section IV, above, occurring in connection with the business operations of the 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 thereof.

VI. THE REMEDY

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

Since I have found that the Respondent transferred Larry Martin and Vannoy from the plaster department and then laid them off because of their membership in the Union, I shall recommend that the Respondent be required to offer them immediate and full reinstatement to their former or substantially equivalent positions in the plaster department, without prejudice to their seniority or other rights, dismissing if necessary any employees hired after their transfer. The fact that the Respondent has reinstated them to jobs in the cleaning department does not remedy its discrimination against them in view of their greater earning potential in the plaster department. Respondent should also be required to make them whole for any loss of earnings they may have suffered because of the discrimination against them, with backpay computed in the customary manner.[16] I shall further recommend that the Board order the Respondent to preserve and make available to the Board, or its agents, on request, payroll and other records to facilitate the computation of the backpay due and the right of employment.

As the unfair labor practices committed by the Respondent are of a character striking at the root of employee rights safeguarded by the Act, I shall recommend that it cease and desist from infringing in any manner upon the rights guaranteed in Section 7 of the Act.

RECOMMENDED ORDER

Upon the basis of the above findings of fact and conclusions of law and upon the entire record in the case, I recommend that the Respondent, Willard Bronze Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in International Molders and Allied Workers Union of North America, AFL–CIO, or in any other labor organization of its employees, by transferring, laying off, or in any other manner discriminating against employees in regard to hire and tenure of employment or any term or condition of employment, except as permitted by the proviso to Section 8(a)(3) of the Act.

(b) Threatening employees with discriminatory action because of their membership in the Union.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist any 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 and all such activities, except to the extent that such right is affected by the proviso to Section 8(a)(3) of the Act.

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

(a) Offer to Larry Martin and Raymond Vannoy immediate and full reinstatement to their former or substantially equivalent positions in the plaster department, without prejudice to their seniority or other rights and privileges, dismissing if necessary any employees hired subsequent to their transfer, and make them whole for any loss of pay they may have suffered as a result of the Respondent's discrimination against them in the manner set forth in the section of the Decision entitled "The Remedy."

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[16] *F. W. Woolworth Co*, 90 NLRB 289; *Isis Plumbing & Heating Co*, 138 NLRB 716.

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payments, timecards, personnel records and reports, and all other records necessary for the determination of the amount of backpay due.

(c) Post at its plant in Cincinnati, Ohio, copies of the attached notice marked "Appendix."[17] Copies of such notice, to be furnished by the Regional Director for Region 9, shall, after being duly signed by an authorized representative of the Respondent, be posted by the Respondent immediately upon receipt thereof in conspicuous places, including all places, where notices to employees are customarily posted, and maintained by it for a period of 60 consecutive days. 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, in writing, within 20 days from the date of the receipt of this Decision, as to what steps the Respondent has taken to comply herewith.[18]

It is further recommended that so much of the complaint as alleges that Respondent interrogated employees about their interest in or sympathy for the Union, and that Respondent threatened to cease its operation if the employees selected the Union as their collective-bargaining representative, be dismissed.

[17] 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. If the Board's Order is enforced by a decree of a United States Court of Appeals, the notice will be further amended by the substitution of the words "a Decree of the United States Court of Appeals, Enforcing an Order" for the words "a Decision and Order"

[18] If this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 9, 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, we hereby notify our employees that:

WE WILL NOT discourage membership in International Molders and Allied Workers Union of North America, AFL–CIO, or in any other labor organization of our employees, by transferring, laying off, or in any other manner discriminating against employees in regard to hire and tenure of employment, or any term or condition of employment, except as permitted by the proviso to Section 8(a)(3) of the Act.

WE WILL NOT threaten our employees with discriminatory action because of their membership in the Union.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form a labor organization, to join or assist any 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 and all such activities, except to the extent that such right is affected by the proviso to Section 8(a)(3) of the Act.

WE WILL offer to Larry Martin and Raymond Vannoy immediate and full reinstatement to their former or substantially equivalent positions in the plaster department, without prejudice to their seniority or other rights and privileges, dismissing if necessary any employees hired subsequent to their transfer, and make them whole for any loss they may have suffered as a result of our discrimination against them.

WILLARD BRONZE 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, Room 2023, Federal Office Building, 550 Main Street, Cincinnati, Ohio, Telephone No. 381–2200, if they have any question concerning this notice or compliance with its provisions.

Elmira Machine and Specialty Works, Inc.; Youngstown Steel Door Company; Elmira Machine and Specialty Works, Inc., subsidiary of Youngstown Steel Door Company *and* District No. 58, International Association of Machinists, AFL–CIO.

Case No. 3–CA–1793. October 15, 1964

SUPPLEMENTAL DECISION AND ORDER

On March 18, 1963, the Board issued a Decision and Order in the above-entitled case,[1] finding that the Respondent had discriminated against certain employees because of their concerted activities, and directing the Respondent to offer them immediate and full reinstatement and to make them whole for any loss of pay caused by the Respondent's discrimination against them.

On August 16, 1963, the Board's Regional Director for Region 3 issued and served on the parties a backpay specification and notice of hearing, setting forth the names of the employees to be reinstated and the amounts of backpay due each of them. On September 6, 1963 the Respondent filed an answer thereto. Pursuant to notice, a hearing was held before Trial Examiner Abraham H. Maller for the purpose of determining the Respondent's reinstatement and backpay obligations. The amounts of gross backpay, as computed in the backpay specifications and amended at the hearing, for the periods set forth therein, were stipulated by the parties at the hearing to be accurate.

On March 5, 1964, the Trial Examiner issued his Supplemental Decision, attached hereto, in which he found certain of the claimants listed therein to be entitled to reinstatement and/or specified amounts of backpay. Thereafter the Respondent filed exceptions to the Trial Examiner's Supplemental Decision and a brief in support thereof.

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].

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[1] 138 NLRB 1393.