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, 500 Book Building, 1249 Washington Boulevard, Detroit, Michigan, Telephone No. 226–3244, if they have any question concerning this notice or compliance with its provisions.

Louisville Cement Company *and* United Cement, Lime and Gypsum Workers International Union, AFL–CIO and Committee (Plant Interrelations Committee, Plant Grievance Committee, and/or Employee Problem Committee), Party of Interest. *Case No. 25–CA–2021. May 5, 1965*

DECISION AND ORDER

On February 1, 1965, Trial Examiner C. W. Whittemore issued his Decision in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a brief in support thereof. The General Counsel also filed limited exceptions to the Trial Examiner's Decision, and separate briefs in support of his exceptions, in support of the Decision, and in reply to the Respondent's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations 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 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, the briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner as modified herein.[1]

[1] Although the Trial Examiner recommended that Respondent be ordered to cease and desist from unlawfully interrogating employees as to their own or other employees' union activities, he did not specify the instances of interrogation on which he relied We find, as the basis for adopting his recommendation, that the questioning by Superintendent Ridenour of Funderok, one of the members of the Committee, as to whether "he knew who was trying to get the union in, or agitating . " was interrogation which tends to interfere with, restrain, or coerce employees, in violation of Section 8(a)(1).

ORDER

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

Add the following after the first indented paragraph of the Appendix attached to the Trial Examiner's Decision:

> WE WILL NOT unlawfully interrogate our employees as to their own or other employees' union activities.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

Upon a charge filed August 19, 1964, by the above-named labor organization the General Counsel of the National Labor Relations Board on October 27, 1964, issued his complaint and notice of hearing. Thereafter the Respondent filed an undated answer. The complaint alleges and the answer denies that the Respondent has engaged in and is engaging in unfair labor practices in violation of Section 8(a)(1), (2), and (3) of the National Labor Relations Act, as amended. Pursuant to notice, a hearing was held in Logansport, Indiana, on December 9 and 10, 1964, before Trial Examiner C. W. Whittemore.

At the hearing all parties were represented and were afforded full opportunity to present evidence pertinent to the issues, to argue orally, and to file briefs. Briefs have been received from the Respondent and General Counsel.

Upon the record thus made, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Louisville Cement Company is a Kentucky corporation with places of business in Louisville, Kentucky, and at Speed and Logansport, Indiana. It is engaged in the business of producing cement and related products.

During the 12 months before the hearing the Respondent produced, sold, and shipped from its Logansport plant finished products valued at more than $50,000 directly to points outside Indiana. Only the Logansport plant is here involved.

The Respondent is engaged in commerce within the meaning of the Act.

II. THE CHARGING UNION

United Cement, Lime and Gypsum Workers International Union, AFL–CIO, is a labor organization admitting to membership employees at the Respondent's Logansport plant.

III. THE UNFAIR LABOR PRACTICES

A. *Chief issues*

The chief issues involved here are (1) the alleged domination by the Respondent of a committee of its employees in violation of Section 8(a)(2) of the Act; and (2) the alleged discharge of one employee, William A. Strantz, to discourage membership in the above-named Union and in violation of Section 8(a)(3).

There is no evidentiary dispute as to the facts that a company-dominated "committee" was in existence at material times and that Strantz was discharged on August 7, 1964. (The answer merely denies all allegations of the complaint except those relating to service of the charge and the nature of the Respondent's business.)

B. *The "Committee"*

Although the complaint alleges that the Respondent initiated and formed a committee of employees to deal with it concerning grievances and other matters "on or about February 19, 1964," the evidence shows that, whatever management's part in

forming it, the Committee was in existence and functioning long before the date alleged. The testimony of employee Gifford is undisputed that when management appointed him to serve on the Committee, in September 1963, it was already in operation.

The following findings rest upon uncontradicted testimony:

(1) When appointed to this Committee Gifford and two other employee members were told by management representatives that if employees could not settle grievances directly with their supervisor they (the committee members) were to bring such grievances before a meeting of management personnel.

(2) Pursuant to such instructions the Committee brought a number of grievances to management at a number of meetings after February 1964 on time for which they were paid. No limitation was placed by management upon the types of grievances the Committee could submit to it at these meetings.

(3) Plant Manager Riggle presided at these meetings, attended both by other management officials and the employee Committee.

(4) On July 29, 1964, top company officials and management representatives assembled all employees, informed them concerning the "company's policy" for the next year concerning wages and other matters, and announced a change in its method of appointing employee members to their Committee. Management thereupon posted three separate lists of employees, told employees to select one name from each list, handed out slips of paper upon which such selections should be written, collected them, and, apparently, announced who would be on the Committee for the next year. The meeting and "election" was under the direction of Vice President Crowther, and employees were paid for their time in attendance.

Upon the foregoing findings I conclude that the Respondent has dominated and interfered with the administration of this Committee, its own creation. It is further concluded that by its nature and function the Committee is a labor organization within the meaning of Section 2(5) of the Act.[1] By dominating and interfering with the administration of a labor organization the Respondent is violating Section 8(a)(1) and (2) of the Act.

C. *The discharge of Strantz*

Although the Respondent continued to dominate its own employee committee, set up to deal with it concerning matters properly within the scope of collective bargaining through a freely chosen representative, employee William A. Strantz, early in April 1964, became an active leader in supporting an organizational campaign being conducted at the plant by the Charging Union.

That top management at least by mid-June had become concerned with the employee efforts to have their own bargaining agent is established by the testimony of Superintendent Ridenour, who admitted that he then queried one Funderok, a management-appointed committee member, and told him that he wanted "to know what the rumble is, why employees seem to be dissatisfied, . . . who was the most upset on the thing, and what the problems were in general with the employees." He did not deny, but merely said, he did not recall asking Funderok, as the latter credibly testified, if "he knew who was trying to get the union in, or agitating . . . ."[2]

And that the same superintendent was made aware at or about the same time of Strantz' union adherence is shown by the former's own testimony that on or about June 10 Strantz approached him and Vice President Crowther, while the latter two were dining at a local restaurant, and offered to tell them whatever they wanted to know about the Union's organizing efforts.[3]

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[1] Section 2(5) of the Act states: "The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

[2] I cannot accord sufficient weight to the testimony of employee Wagoner, as urged by General Counsel, to find that this employee was unlawfully interrogated by Foreman Lewellen shortly before the above-described incident The statements in two affidavits, one for a Board agent and one for the Respondent's counsel, are seriously inconsistent.

[3] I consider incredible Ridenour's further testimony that on this occasion Strantz also stoutly and repeatedly denied being active or interested in the Union or that he had any "connection" with it. The superintendent admitted that the only reply given Strantz, after his offer of information, was that all they wanted was "eight hours' work for eight hours' pay." Strantz was not questioned as to why he made this strange proffer of information about the Union. It may well be that Funderok had reported to him that the superintendent had said he wanted to talk to the one who was "agitating" for the Union and decided that he would declare himself openly, but no finding is made upon such speculation.

At a June 11 union meeting, Strantz spoke openly for the organization and, among other things, declared his belief that he had not been properly paid for 2 hours' work on one occasion. From the reluctantly given testimony of employee Gifford, a member of the company-dominated Committee, it appears that he told Ridenour of Strantz' remark at the union meeting about his alleged short pay. In any event, whether learning about it from Gifford or some other employee, the superintendent, a few days later, according to his own testimony, reprimanded Strantz in the mill office for "spreading stories like this." According to the employee's credible account, the superintendent asked what he "meant by rousing the men up at the meeting."

The foregoing facts, in my opinion, amply support the conclusion, here made, that management was well aware of, and resented, Strantz' union leadership before his discharge.

And that management, at the time of Ridenour's reprimand to Strantz, was preparing to discharge him is reasonably inferred from the testimony of Plant Manager Riggle, who admitted that at a Committee meeting, fixed by one of its members as having been held shortly after the June 11 union meeting, he informed his appointed Committee that "one man" in the plant would be dismissed if he did not perform his work better. Riggle admitted that he had Strantz in mind at the time.

Strantz was hired in 1962 as a maintenance employee. That his 1½ years of service was satisfactory to management in December 1963 was reluctantly admitted by Riggle, who admitted that he then promoted the employee to serve, in addition to his repair duties, as an extra crane operator on weekends, bringing him added pay. He completed his 30-day training period on this equipment to the full satisfaction of management, apparently, since he was then placed on regular weekend duty.

Strantz was summarily discharged by Riggle on August 7, 1964. Their testimony is in substantial accord to the effect that all the manager said on this occasion was that he had, some time in the past, warned Strantz that he had one more chance, and "This is it. We're letting you go."

According to Riggle, he had decided to fire Strantz on August 4, while the employee was still, by doctor's orders, on "light duty," as a result of an industrial accident suffered several days earlier. The manager said that his decision was based upon a report from Strantz' foreman, one Lewis, who had assigned the employee to help lift a section of air-slide, to the effect that after the job was completed another employee, one Pugh, had approached Lewis and said he would not work with Strantz any more.

Since this incident of August 4 constitutes the basis for Riggle's asserted reason for deciding to discharge Strantz, the evidence concerning it warrants scrutiny. It is apparent from the manager's own testimony that he made no personal investigation of it. Pugh was not called as a witness. Lewis, a witness for the Respondent, said that he had Strantz helping two other employees reassemble the air-slide section that day, and testified as to no fault he found with Strantz' performance. He said. "As the job was being completed, I came on the job to see how they were getting along, and Joe Pugh came to me at that time and said, 'I don't want to work with Bill Strantz any more.' " Strantz' testimony is undisputed to the effect that Lewis said nothing to him regarding his work on this occasion, and that he "put the bolts in around the edge of this air slide while the other men held it up, because I wasn't supposed to lift anything." There is no dispute that, as a fact, Strantz was then under doctor's orders to be kept on light duty because of the injury received from overlifting.

I am convinced, and find, that Riggle's claimed reason for deciding upon the discharge is without merit. His failure to make even the slightest inquiry into the incident warrants the reasonable inference that he designedly accepted the hearsay report as a ready pretext for discharging this known union "trouble" maker.

It is considered unnecessary, here, to set out in detail Riggle's other testimony, extravagantly exaggerated, as to claimed minor derelictions occurring previous to the August 4 incident. I can rely upon no part of it. The fact is that Strantz had not been discharged before, nor laid off, nor even given a written warning, as had at least one other employee

Further support for the conclusion that the discharge was discriminatory is revealed by events immediately following the discharge. After dismissing Strantz, Riggle called his employee Committee together and told them of his action. Although, as found, this group was under management's domination, they protested the severity of such discipline, even upon Riggle's unilateral explanation. He remained adamant, however, but agreed to set up, thereafter, a system whereby employees would first receive a written warning, next be given "time off without pay, possibly up to one week," and finally would be "considered" for discharge. Notice to this effect was posted a few days after Strantz' dismissal, with the preliminary statement that "We want to clarify the Company's position on working rules and regulations" If, indeed, as thus announced the specific procedure set out was actually mere "clarifica-

tion" of an already existing policy, then plainly the Respondent discriminated in the application of its policy in the case of Strantz, for he had been given neither a written warning nor disciplinary time off.

In short, I conclude, and find, that Strantz was discharged unlawfully in order to discourage union membership and activity, and that by such discrimination and by Ridenour's query of Funderok as to the identity of the employee trying to "get the union in," the Respondent interfered with, restrained, and coerced employees in the exercise of rights guaranteed by Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

V. THE REMEDY

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

It will be recommended that the Respondent offer employee Strantz immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of earnings he may have suffered by reason of the discrimination against him, by payment to him of a sum of money equal to that which he would normally have earned as wages, absent the discrimination, from the date of discharge to the date of offer of full reinstatement, in the manner prescribed by the Board in *F. W. Woolworth Company*, 90 NLRB 289, and with interest as prescribed in *Isis Plumbing & Heating Co*, 138 NLRB 716.

It will also be recommended that the Respondent disestablish and cease to recognize the Committee, described herein, as the representative of any of its employees in dealing with it regarding wages, hours of employment, grievances, or any term or condition of employment.

In view of the serious and extended nature of the Respondent's unfair labor practices, it will be recommended that it cease and desist from in any manner infringing upon the rights of employees guaranteed by Section 7 of the Act.

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. United Cement, Lime and Gypsum Workers International Union, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.
2. By discriminating in regard to the hire and tenure of employment of employee Strantz, as described herein, to discourage membership in and activity on behalf of the above-named labor organization, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.
3. By dominating, assisting, and interfering with the administration of the Committee, described herein, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(2) of the Act.
4. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
5. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (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, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, I recommend that the Respondent, Louisville Cement Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in and activity on behalf of United Cement, Lime and Gypsum Workers International Union, AFL–CIO, or in any other labor organization, by discharging, laying off, or refusing to reinstate any of its employees because of their union membership or activities, or in any other manner discriminating in regard to hire or tenure of employment, or any term or condition of employment.

(b) Recognizing or dealing with the Committee as the representative of any of its employees for purposes of collective bargaining regarding grievances or any term or condition of employment.

(c) Dominating, assisting, or interfering with the formation or administration of any labor organization.

(d) Unlawfully interrogating employees as to their own or other employees' union activities.

(e) In any other manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

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

(a) Offer employee Strantz immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay he may have suffered by reason of the discrimination against him, in the manner set forth, above, in the section entitled "The Remedy."

(b) Disestablish the Committee as the representative of any of its employees in dealing with it regarding grievances, hours of employment, or any term or condition of employment.

(c) Preserve and, upon request, make available to the Board or its agents all records necessary to determine the amount of backpay due and the right of reinstatement under terms of this Recommended Order.

(d) Notify employee Strantz if presently serving in the Armed Forces of the United States of his 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.

(e) Post at its Logansport, Indiana, plant copies of the attached notice marked "Appendix." [4] Copies of said notice, to be furnished by the Regional Director for Region 25, shall, after being signed by the Respondent's authorized representative, be posted by it immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by any material

(f) Notify the said Regional Director, in writing, within 20 days from the receipt of the Trial Examiner's Decision, what steps it has taken to comply herewith.[5]

[4] In the event that 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 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"

[5] In the event that this Recommended Order is adopted by the Board, this provision shall read: "Notify the 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 conduct our labor relations in compliance with the National Labor Relations Act, we notify you that:

WE WILL NOT unlawfully discourage you from being members of United Cement, Lime and Gypsum Workers International Union, AFL–CIO, or any other union.

WE WILL NOT recognize the Committee as the representative of any of you in dealing with us concerning grievances or any term of your employment.

WE WILL NOT violate any of the rights you have under the National Labor Relations Act to join a union of your own choice or not to engage in union activities.

WE WILL offer reinstatement to William A. Strantz, and will give him backpay from the time of his discharge.

LOUISVILLE CEMENT COMPANY,
Employer.

Dated_____ By_____
(Representative) (Title)

NOTE.—We will notify Strantz if presently serving in the Armed Forces of the United States of his 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.

J. Ziak & Sons, Inc. *and* Al Cantu

Milk Drivers' Union, Local 753, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (J. Ziak & Sons, Inc.) *and* Al Cantu

Local No. 753, Milk Wagon Drivers' Union, International Brotherhood of Teamsters (Rueter's Dairy) *and* Peter J. Farrell

Local No. 753, Milk Wagon Drivers' Union, International Brotherhood of Teamsters, Thomas J. Haggerty, Secretary-Treasurer (Hawthorn-Mellody Farms Dairy) *and* Irving Sherman. *Cases Nos. 13-CA-6056, 13-CB-1573, 13-CB-1540, and 13-CB-1547. May 5, 1965*

DECISION AND ORDER

On September 21, 1964, Trial Examiner George J. Bott issued his Decision in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices within the meaning of the Act, and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent Union filed exceptions to the Trial Examiner's Decision [1] and a supporting brief, the Respondent Employer filed exceptions, and the General Counsel filed a brief in support of the Trial Examiner's Decision, an addendum to this brief, and a brief in answer to the Respondent Union's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with these cases to a three-member panel [Members Fanning, Brown, and Jenkins].

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[1] The Respondent Union has excepted to the Trial Examiner's credibility resolutions, but the clear preponderance of all the relevant evidence does not persuade us that the Trial Examiner's credibility findings were incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enfd. 188 F. 2d 362 (C.A. 3). We also find no merit in the Respondent Union's claim of bias and prejudice by the Trial Examiner nor in its exception to the Trial Examiner's refusal to sever. See Rules and Regulations of the National Labor Relations Board, Series 8, as amended, Sections 102.33 and 102.26.