

APPENDIX B

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT unilaterally discontinue the yearend bonuses of our employees in the appropriate bargaining unit, without bargaining collectively with International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, AFL-CIO. The appropriate unit is:

All samplers, weighmasters, and ship inspectors, employed at our New Orleans, Louisiana, operations, exclusive of office clerical employees, licensed grain inspectors, sampler foremen, the chief grain inspector, assistant chief grain inspectors, assistant weighmasters, guards, and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with our employees' rights guaranteed in the Act.

WE WILL, upon request, bargain collectively with International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, AFL-CIO, concerning the payment of yearend bonuses for the year 1963, and on the subject of yearend bonuses generally.

NEW ORLEANS BOARD OF TRADE, LTD.,  
*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, T6024 Federal Building (Loyola), 701 Loyola Avenue, New Orleans, Louisiana, Telephone No. 529-2411, Extension 6396, if they have any questions concerning this notice or compliance with its provisions.

**Ward Manufacturing, Inc. and International Union of Electrical,  
Radio & Machine Workers, AFL-CIO. Case No. 9-CA-3127.**  
*June 8, 1965*

DECISION AND ORDER

On November 25, 1964, Trial Examiner Robert E. Mullin issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices and recommended dismissal of the complaint with respect thereto. Thereafter, the Respondent filed exceptions to the Decision and a supporting brief, and the Charging Party filed cross-exceptions and a brief in support thereof. The Respondent then filed a brief in answer to exceptions of the Charging Party.

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

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions, cross-exceptions, and briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner to the extent consistent herewith.

We agree with the Trial Examiner that the Respondent violated Section 8(a) (1) of the Act in the promulgation and enforcement of its no-solicitation no-distribution rule. Although the rule, on its face, would be presumptively valid because it seeks to regulate employee activity only during working hours,<sup>1</sup> we find that its promulgation rendered it invalid. The Board and courts have consistently held that rules regulating employee activities during their working hours are presumptively valid "in the absence of evidence that the rule was adopted for a discriminatory purpose."<sup>2</sup> Here, however, the evidence leads us to conclude that Respondent's rule was adopted and promulgated for a "discriminatory purpose." The Union held its first meeting with employees on December 11, 1963, and on December 12 filed a representation petition with the Board. The next day, Respondent posted a rule against solicitation and distribution on behalf of outside organizations. This precipitous promulgation and the fact that the rule did not apply to all forms of solicitation and distribution, clearly indicate that Respondent's purpose in adopting its rule was not to prevent disruptions of production and discipline, especially in the absence of any evidence that any disruption had occurred. Therefore, we find that Respondent's sudden adoption of its rule evidenced a concern about union activity among employees and that the rule was posted solely to stifle the Union's organizing campaign. Accordingly, we find that Respondent's adoption and promulgation of its rule was for a discriminatory purpose, and the rule is therefore violative of Section 8(a) (1) of the Act. We further find that Respondent's unlawful application of the rule in the incident involving Foreman Buermier and employee York violated Section 8(a) (1) of the Act.

### 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 with the following additions and modifications, and orders that the Respondent, Ward

<sup>1</sup> We, therefore, do not adopt the Trial Examiner's discussion regarding prior approval by the plant manager for any solicitation or distribution.

<sup>2</sup> *Republic Aviation Corporation v. NLRB*, 324 U.S. 793 (1945); *Walton Manufacturing Company*, 126 NLRB 697, enf. 289 F.2d 177 (C.A. 5); and *The Wm. H. Block Company*, 150 NLRB 341.

Manufacturing, Inc., Cincinnati, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as so modified:

1. Paragraph 1 of the Recommended Order is amended to read: "Cease and desist from discriminatorily promulgating or enforcing a rule prohibiting employees from solicitating or distributing literature on behalf of a union, or in any like or related manner interfering with, . . ."; the remainder of the paragraph to remain the same.

2. Paragraph 2 is amended by adding the following as paragraph 2(a), the present paragraph 2(a) and those subsequent being consecutively relettered:

"(a) Rescind its no-solicitation no-distribution rule posted on December 13, 1963, as it applies to union solicitation or other activities protected by Section 7 of the Act."

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

WE WILL rescind our no-solicitation no-distribution rule promulgated on December 13, 1963, as it applies to union solicitation or other activities protected by Section 7 of the Act.

#### TRIAL EXAMINER'S DECISION

##### STATEMENT OF THE CASE

Upon a charge filed on March 6, 1964, by International Union of Electrical, Radio & Machine Workers, AFL-CIO (herein called Union, or IUE), the General Counsel of the National Labor Relations Board, by the Regional Director for Region 9 (Cincinnati, Ohio), issued a complaint, dated April 28, 1964, against Ward Manufacturing, Inc. (herein called Respondent, or Company). The complaint sets forth the specific respects in which it is alleged that the Respondent violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, herein called the Act. The Respondent duly filed an answer in which it conceded certain facts with respect to its business operations, but denied all alleged unfair labor practices with which it is charged.

Pursuant to due notice, a hearing was held before Trial Examiner Robert E. Mullin at Cincinnati, Ohio, on July 1 and 2, 1964. All parties appeared at the hearing and were given full opportunity to examine and cross-examine witnesses, to introduce relevant evidence, to argue orally at the close of the hearing, and to file briefs. The parties waived oral argument. After the hearing, the Charging Party and the Respondent filed briefs with me which have been fully considered.<sup>1</sup>

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

##### FINDINGS OF FACT

###### I. THE BUSINESS OF THE RESPONDENT

The Respondent, an Ohio corporation, is engaged in the manufacture of camping trailers at plants located in Cincinnati, Elmwood, and Hamilton, Ohio. Only the factory in Cincinnati is involved in the present proceeding. During 1963, a representative period, Respondent had a direct outflow, in interstate commerce, of products valued in excess of \$50,000 which were shipped directly from the aforesaid plants

<sup>1</sup>An examination of the exhibit file subsequent to its receipt from the official reporter disclosed that, through inadvertence, one of the Respondent's exhibits had not been included in the folder. The exchange of correspondence between the Trial Examiner, the reporter, and counsel, a stipulation of counsel as to the exhibit, and a copy of the exhibit in question have been marked as Joint Exhibit No. 1 and are hereby made a part of the record.

to points outside the State of Ohio. During that same period Respondent had a direct inflow of products, in interstate commerce, valued in excess of \$50,000, shipped directly from points outside the State of Ohio to the Respondent's plants. Upon the foregoing facts the Respondent concedes, and I find, that Ward Manufacturing, Inc., is engaged in commerce within the meaning of the Act.

## II. THE LABOR ORGANIZATION INVOLVED

The Respondent concedes and I find that the Union is a labor organization within the meaning of the Act.

## III. THE ALLEGED UNFAIR LABOR PRACTICES

### A. Introduction

In December 1963 the Union began an organizational campaign at the Respondent's factory in Cincinnati. In March 1964 the Union filed a charge with the Regional Office alleging that the Respondent had discriminatorily discharged Hiram Broshears, Harold York, Murphy Webb, Jr., and Charles Webb, all of whom were employed at the Cincinnati plant. The complaint in the present case alleged only that the last three named had been dismissed for their union activities. Apart from the discharges, the only independent act of interference, restraint, or coercion attributed to the Respondent was the posting of a no-solicitation notice in December 1963.

On March 13, 1964, the Regional Director held a representation election at the Respondent's plant which the Union won.

### B. Union activity at the plant

After some preliminary efforts to contact employees of Ward Manufacturing, representatives of the Union sponsored a meeting for all those interested in an organizational campaign. This was held on December 11, 1963, at the R & B Cafe, a restaurant located a short distance from the plant. About 25 employees were present, almost all of whom signed authorization cards in the IUE during the course of the evening. Among those in attendance were Harold York,<sup>2</sup> Murphy Webb, Jr., Charles Webb, and Hiram Broshears. All present at the meeting received IUE badges of one type or another, and about seven or eight of those present received badges which read "IUE organizing committee."

York and Charles Webb thereafter actively solicited their fellow employees to sign authorization cards. York testified that he induced about 40 of his coworkers to sign cards and Webb claimed to have secured about 25 signatures among his fellow employees. Murphy Webb, Jr., also testified that he had been active in the organizational campaign. He, however, could recall only one particular fellow worker whom he had persuaded to sign a card, and his recollection as to any other union solicitation in which he purportedly engaged was very hazy. All three of these employees testified to having worn not only an "organizing badge" on their work clothes from the time of the December meeting, but also numerous other large and ostentatious union emblems. Murphy Webb, for example, testified that subsequent to December 12, he had consistently worn three IUE badges while on duty, one of which was about 5 inches in diameter. In a prehearing affidavit, however, he averred only that he had worn "a badge" while at work. His brother, Charles Webb, gave similar testimony as to having worn numerous badges and buttons at the plant, including an "organizing committee" badge which he claimed had been given him at the union meeting in December. In a pretrial affidavit, however, Charles Webb stated that at the meeting in question there had not been enough such badges for everyone and that it was not until later that he was given an organizer's badge.

Harold York and Charles Webb were unquestionably active in the union campaign. From the testimony as to Murphy Webb, on the other hand, there is little to indicate that he played any significant role. In any event, as to the matter of badges, by the early part of February almost half of the work force at the plant was wearing one or another type of IUE badge. York conceded that by the first week in February about 30 different employees were wearing "organizing committee" badges and that by February 10 over half of the employees were wearing various kinds of union badges or buttons.

<sup>2</sup> York had signed an authorization card on December 2, 1963.

*C. The discharges; contentions of the parties;  
conclusions with respect thereto*

The General Counsel offered the testimony outlined above and concluded with the suspension and discharge of York and the Webb brothers during the week of February 10, 1964. He offered no testimony as to the reasons which were given by the Respondent for their dismissal. In its answer, the Respondent averred that these three employees, along with their coworker, Hiram Broshears, had been discharged for having engaged in a conspiracy that was totally unrelated to their union activity. At the hearing, the Respondent offered a substantial volume of testimony to substantiate its affirmative defense.

Plant Manager Ritchie testified that early on the morning of February 10, he was called to the plant by Louis J. Nemcic, foreman of the welding department, who told him that Hiram Broshears had threatened to beat up Paul Schurick, a fellow employee, and that only the intervention of one of the other workers had prevented a fight from materializing.

Ritchie testified as follows: On arriving at the plant he called Schurick to his office. The latter told him that when he reported for work in the welding department that morning, Broshears told him that the current company goal of 60 camping trailers a day was too high, that the fast pace which Schurick had been setting had to stop, that he (Broshears) had been offered money to beat up Schurick, and that he thereupon threatened Schurick that he would bash his head in. Schurick told Ritchie that he did not care to keep on working at a plant where he had to fight to keep his job and that he wanted to quit immediately. Ritchie urged the employee to reconsider and thereafter conducted an investigation of the incident.

According to Ritchie: Immediately after questioning Schurick, he went to the welding department and talked with Broshears. In this conversation Broshears told Ritchie that Harold York, Murphy Webb, and Charles Webb had offered him money if he would beat up Schurick. Although Broshears conceded that there were other employees who had participated in the offer, he declined to reveal their names to Ritchie. After concluding the conversation with Broshears, Ritchie began an investigation of the incident with the assistance of Hulse Hays, an attorney with the law firm of Taft, Stettinius and Hollister. During the course of the day, Broshears and many of the employees on that shift were called in for questioning. Broshears repeated the story that he had told Ritchie earlier. The questioning of other employees developed that Broshears, York, and the Webb brothers had expressed resentment at the Company's aim to manufacture 60 trailers a day and for some while had been trying to induce their fellow workers to slow down on their production in order to make the work season last longer. Clarence Baker, a welder, told Ritchie and Mays that on the morning in question Broshears had threatened him at the same time that he had threatened Schurick, and that the preceding week York had told him that he had better slow down or the season would end too soon. Bill Nordmeyer, another employee in the welding department, told them that the Webb brothers and York had told him that "if they didn't slow up the season would be over quicker and they would be laid off."

During that period the plant was engaged in some work on Saturdays. Herman Jones, an employee in the welding room, told Ritchie and Hays that on Friday, February 7, Murphy and Charles Webb had accosted him at the R & B Cafe, a tavern near the plant, and asked whether he planned to work the next day. When Jones replied in the affirmative, Murphy Webb told him that it would be better if he did not report to the plant on Saturday "because somebody is going to get their head split open if they come in. . . ." Frederick L. Stuard, a welder, told Ritchie that on that same Friday afternoon Broshears and Murphy Webb endeavored to discourage any assembly room employees from coming to work in the welding department the following morning by threatening to fight any man who reported for such duty. Lastly, Willie Mason, a sheet metal worker in the welding department, and Bob Burns, a coworker, reported to Ritchie and Hays that Broshears told them that he had been offered \$60 to \$65 if he would beat up Schurick.

Ritchie testified that after he and Hays concluded their investigation on February 10, he issued suspension notices to Broshears and York immediately. Similar notices to the Webb brothers were not given to them until the following morning when they reported for work after having been absent on Monday. According to Ritchie, within the following 2 days he called in York and the Webb brothers, individually, to secure their side of the story.<sup>3</sup> Ritchie testified that in their meetings

<sup>3</sup> Ritchie testified that he did not have any further meeting with Broshears because he had already met with him on Monday.

with him they denied any responsibility for the alleged attempt to keep their shift from making 60 trailers a day and that the Webbs and York denied having offered Broshears any money to beat up Schurick. Ritchie testified, however, that he was convinced that the other employees had told him the truth and that for this reason on February 14 he discharged all four men on the ground that they had engaged in a conspiracy to beat up Schurick and to curtail production.<sup>4</sup>

At the hearing before me the Respondent called as witnesses most of those employees whom Ritchie had interviewed on February 10. Louis Nemcic, foreman of the welding and finishing department, testified that when he gave Broshears his weekly paycheck on Friday, February 7, the employee told him that if there was no raise reflected in his check the Company would never make its quota of 50 or 60 campers per shift.<sup>5</sup> Nemcic testified that the following Monday morning when the incident occurred between Broshears and Schurick he was not in the immediate vicinity, but that he came up to the two men just as they were being separated by Robert Epps, another employee. According to Nemcic, Broshears greeted him with the statement that he "would knock anybody in the head that fooled with him the rest of the day or anytime."<sup>6</sup> Nemcic testified that Schurick thereupon came to him and stated that he was sick about arguments with Broshears over the output of campers, that he could not endure the strain of working at the plant any longer, and that he wanted his paycheck. Nemcic refused to let Schurick quit and thereupon called Ritchie who came to the plant and began the investigation described above. Clarence Baker, who was present during the dispute in question, testified that at the outset of the encounter, Broshears told Schurick "if we run sixty trailers, he wasn't going to run them," and that "he was going to bust some heads if we did."

Paul Schurick was the one and only leadman in the welding department. He was also an active supporter of the union movement. Along with Broshears, York, and the Webbs, he had attended the original organizational meeting in December and had signed an authorization card at that time. He had also received an IUE badge at this meeting which he thereafter wore while at work in the plant. He was, in fact, wearing this badge on the morning of February 10. Schurick testified that when he came to work that morning both Broshears and York were already in the welding shop and talking together. According to Schurick, shortly thereafter, Broshears spoke to him in a loud voice and declared that "if there was any fast running done" that day "he was going to bust some heads." Schurick testified that he started to walk away but that Broshears came toward him and said, as he did so, that some of the others in the welding department had offered him \$60 if he would whip Schurick. According to Schurick, his only reply was to the effect that he would try to run his share of the 60-camper quota and that Broshears could run whatever he cared. Schurick testified that Broshears then started to move toward him and declared, as he did so, that "if he was going down the drain he was going to take some of the others with him." It was at this point that Epps, another employee, came between Broshears and Schurick and Foreman Nemcic arrived on the scene.

Ritchie's testimony to the effect that Broshears had stated that York and the Webbs had offered him money to beat up Schurick was corroborated by two other witnesses, Willie Mason and Robert E. Burns. Both of these last named were employees in the welding department. Both testified that while they were at work on the afternoon of February 10, Broshears told them that the Webbs and York, as well as nine other employees in the welding room, had hired him to whip Schurick. Burns testified that at this time Broshears showed them the money he had in his billfold and told them that he could add at least \$50 or \$60 more to the amount "if he would beat the \_\_\_\_\_ out of Paul Schurick. . . ." Mason further testified that earlier that day, Broshears told him that he and York and the Webb brothers would probably be fired.

Several of these same witnesses also testified about efforts which Broshears and the Webbs had made to discourage any of the employees from coming into the plant for Saturday work. Thus, Mason testified that on Friday, February 7, Murphy Webb

<sup>4</sup> Separate telegrams sent to each of the four employees read as follows:

Our investigation discloses that you have participated in a conspiracy to slow down production at the Ward Manufacturing Company which also involved threat of personal injury to Ward employees. Your employment is hereby terminated for cause, effective immediately.

Ward Manufacturing, Inc., David W. Ritchie

<sup>5</sup> Broshears' check did not have a raise for him

<sup>6</sup> According to Nemcic, he walked away from Broshears at this point. He conceded that he was very nervous. Nemcic testified, "When Broshears made that statement he would knock anybody in the head, that quite upset me, too, because he'll make four of me."

told him that if some of the men came down from the second floor to work in the welding room the next day, "there might be trouble." Mason's testimony was corroborated in large part by Robert Burns, who also testified that that Friday, Murphy Webb told him and Mason that the welders "didn't appreciate it if somebody came from the second floor down to do their work." Clarence J. Baker, one of the welders, testified that on February 7 he was asked by his foreman to work the following day and that after he had promised to do so, he was accosted by Broshears. According to Baker, Broshears questioned him about what he intended to do the next day and threatened that he (Broshears) was "going to bust some heads" if anyone from the second floor worked on Saturday. Herman Jones, an employee on the first floor in the welding and finishing department who was asked to report for duty that same Saturday, testified that after work that day Murphy Webb sought him out and questioned him about his plans. According to Jones, Webb told him that "There is going to be a fight up there tomorrow. . . . There was going to be some heads beat in." Frederick Lee Stuard, another employee in the welding department, testified that on February 7, and after he had been asked to work the next day, Murphy Webb first urged him not to do this, and then, later in the day, returned to Stuard's work station accompanied by Broshears. According to Stuard, at this time, Broshears told him that "if any of the employees off the second floor came in to work in the welding department on Saturday, that we'd have to fight going in and fight going out . . ." and that he (Broshears) and eight other men would be there.

Broshears, York, Murphy Webb, and Charles Webb were called by the General Counsel in rebuttal. All denied having participated in any conspiracy to slow down production or to arrange that Schurick be subjected to a beating. Their denials were unconvincing to me. Most unpersuasive was Broshears. When confronted with a prehearing affidavit which contradicted his testimony on direct examination, Broshears offered as an explanation for the discrepancy the incredulous testimony that the field examiner who took his affidavit would not allow him to make corrections in his statement. Even as a witness, Broshears displayed the belligerence about which the Respondent's witnesses testified. He conceded that on the day in question he and Schurick had an argument over the way the latter worked. When asked if by that he meant that Schurick was working too fast he replied, in a very arrogant manner, "Yeah. He'd just pile it right on top of you whether you wanted it or not, see." The Webb brothers and York categorically denied having had the conversations attributed to them and denied having participated in any plot with Broshears to have Schurick beaten. As compared with their coworkers who testified in the manner set forth earlier, however, none of these three witnesses was persuasive. For this reason I accept as the more credible the testimony of Schurick, Mason, Baker, Jones, Burns, Stuard, and Nemcic, as well as that of Ritchie,<sup>7</sup> set forth above.

Apart from the matter of the no-solicitation rule, discussed below, the General Counsel was unable to marshal any evidence of alleged independent violations of Section 8(a)(1) of the Act which would establish any union animus on the part of the Respondent. While it is clear that York and Charles Webb were active on behalf of the IUE, the participation of Murphy Webb in the organizational effort was very limited. For a long while these three had openly worn union badges, but so, too, had over 50 percent of the employees, including Schurick.

This is not the conventional case in which a leader of the prounion group in a plant is involved in a dispute with a member of an antiunion faction. Schurick, the target of Broshears' threats, was himself one of the first to sign a union card and on the day in question he was still wearing the IUE badge which he received at the original union organizational meeting in December. Schurick was also the leadman, and the only leadman, in the welding department. In carrying out his duties as leadman and encouraging the other employees to meet the Respondent's goal of 60 campers a day, he had obviously incurred the enmity of Broshears, as well as that of other welders in the department. At the hearing, it was apparent from the testimony of the witnesses that Broshears' threats to "bust some heads" uttered to Schurick and others were taken seriously by the employees who heard them. Broshears was a tall, heavy-set figure, far larger, physically, than either Schurick or any of his coworkers who appeared as witnesses. Nemcic, the foreman, who was not much smaller than Schurick, characterized Broshears' size as being the equivalent of "four of me." Ritchie and Nemcic both testified that after his encounter with Broshears, Schurick, in a state of great alarm and trepidation, told them that he wanted to quit immediately.

<sup>7</sup> Ritchie's testimony as to one of the conferences with Broshears was corroborated by Herbert Hinson, vice president in charge of manufacturing for the Respondent. Hinson impressed me as a completely frank and credible witness.

Ritchie testified that to reassure the employee as to his personal safety the Respondent hired a detective to guard Schurick's home for several days thereafter. Schurick's apprehension about Broshears, both on February 10 and later, was borne out by his testimony and by the fact that at the hearing he declined to give his home address when sworn as a witness.

Finally, some further evidence to support the Respondent's affirmative defense that Broshears, York, and the Webb brothers were participants in a slowdown is provided by the production statistics which were offered at the hearing. In the period from January 2 to February 10, 1964, Broshears, York, and the Webbs were 4 of the 10 welders in the welding department. From January 2 to 14, these 10, all of whom were experienced welders, produced 4.46 trailers per hour. From January 15 to 31, they produced 4.83 trailers per hour. From February 3 to 10, however, the production dropped to 4.77 per hour. February 10 was the last day that any of the four employees in question worked at the plant. Ritchie testified that the Respondent hired only three welders to replace them, of which number two were completely inexperienced. Thereafter, the production rate in the welding department rose steadily, notwithstanding the fact that it had only 9 men as compared with the 10 on the payroll prior to the discharges here involved. Thus, from February 11 to 28, the trailer production per hour was 5.10. From March 2 to 31, the rate was 5.36 and from April 1 to 30 it was 6.13. In its brief the Charging Party assails the validity of this data on various grounds, all of which were pursued, without effect, by the General Counsel in his cross-examination of the Respondent's plant manager. Moreover, no affirmative evidence was offered by either the General Counsel or the Union to establish that the facts as to the Respondent's production were other than as presented through Ritchie. Whereas all of the Company's production problems in January and February 1964 might not have been attributable to Broshears and his cohorts, the statistics presented by the Respondent tend to prove that subsequent to their termination, the production of the welding department improved significantly, notwithstanding the fact that it had fewer men and that several of these were inexperienced welders.

To accept the General Counsel's theory as to the real reason for the discharge of York and the two Webb brothers would require that their testimony and that of Broshears be accepted as worthy of belief and that of all the witnesses for the Respondent be discredited. On the basis of the record developed in this case, and, most particularly, because of the demeanor of the witnesses on the stand, I cannot accept the thesis of the General Counsel. Accordingly, it is my conclusion that the General Counsel has failed to establish by a preponderance of the evidence that Harold York, Charles Webb, and Murphy Webb, Jr, were discriminatorily terminated. For this reason it will be recommended that the complaint be dismissed insofar as it alleges that by the discharge of these three employees that Respondent violated Section 8(a)(3) and (1) of the Act.

#### D. *The no-solicitation rule*

The parties stipulated that on December 13, 1963, the Respondent posted the following notice on the plant bulletin board:

#### NOTICE

All forms of solicitation and the distribution of literature or other material for any *outside organization* is prohibited during working hours unless prior written approval has been obtained from me.

(S) David W. Ritchie  
DAVID W. RITCHIE  
*Plant Manager.*

The General Counsel offered testimony as to only one incident involving the foregoing notice. This occurred, according to Harold York, on about January 29, 1964. York testified that on the day in question he was not on duty, having been told by the plant doctor to stay off from work for 3 days because of an infected hand. According to York, notwithstanding his affliction, he went to the plant entrance that afternoon to pass out IUE literature on the sidewalk. At some time during the course of the afternoon he entered the plant and proceeded to the second floor, where he was accosted by Art Buermier, foreman in the assembly department. York testified that at this point he was in the vicinity of the timeclock and that Buermier declared, "There will be no passing out of literature in this building. Can't you read the sign on the bulletin board." When on duty, York was employed on the first floor, rather than the second. He testified that when stopped by Buermier, a second floor foreman, he was on the way to a restroom. At the hearing, York denied that he had been passing out any literature on the second floor. On the other hand, he conceded that during the encounter with the foreman, he did have some pamphlets in his hand. Accord-

ing to York, at the moment the foreman appeared he was endeavoring to shove these handbills into his pocket. His testimony in this connection, however, was not very convincing, in view of the fact that York conceded that these were handbills which he had carried with him from the sidewalk in front of the plant and up the stairs to the second floor. However, there was no further testimony with respect to this incident from any other witnesses. For this reason, and on this record, I conclude and find that when York, an off-duty employee, was stopped by Foreman Buermier and reminded of the no-solicitation rule, he was in the vicinity of the timeclock and was not, at that time, passing out any union campaign literature, although he had some in his hand.

The Board and the courts have held that an employer may not prohibit his employees from distributing union literature on their own time in nonworking areas of the plant unless he can show special circumstances making the rule necessary in order to maintain production or discipline. *Stoddard-Quirk Manufacturing Co.*, 138 NLRB 615-623; *Walton Manufacturing Company*, 126 NLRB 697, 698-699, enf. 289 F. 2d 177 (C.A. 5); *Southwire Company*, 145 NLRB 1329; *N.L.R.B. v. United Aircraft Corp.*, 324 F. 2d 128, 130-132 (C.A. 2), cert. denied 376 U.S. 951.

The Respondent does not contend that special circumstances justified the imposition of the rule in question. Standing by itself, the prohibition in the rule against employee solicitation or distribution during working hours is, of course, valid. From the findings set forth above, however, it appears that Foreman Buermier admonished York about the rule when the latter was off duty and near the timeclock, a nonwork area. Buermier's action would tend to prove that *working hours*, as that phrase is used in the rule, includes employee activity during *nonworking time in nonworking areas*. Viewed in this light, such an application of the rule renders it invalid. *Stoddard-Quirk Manufacturing Co.*, *supra*; *Harold Miller et al., d/b/a Miller Charles and Company*, 148 NLRB 1579; *Minneapolis-Honeywell Regulator Company*, 139 NLRB 849, 851-852. On the other hand, even if this reads too much into the action of the foreman on the occasion in question, the rule must fall on another ground. This is the requirement that the approval of the plant manager be secured for any form of solicitation or distribution. The Board has held that such a limitation is invalid because "it proceeds on an erroneous assumption that an employer can predicate the exercise of a Section 7 right upon its own authorization." *J. R. Simplot Company Food Processing Division*, 137 NLRB 1552, 1553; *General Aniline & Film Corporation*, 145 NLRB 1215, *Idaho Potato Processors, Inc.*, 137 NLRB 910, 912. For this reason, it must be held, and I so find, that the rule in question violates Section 8(a)(1) of the Act.<sup>8</sup>

#### 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 thereof

<sup>8</sup> In its brief the Charging Party argues that the rule was adopted for a discriminatory purpose, in that it limited solicitation or distribution on behalf of an "outside organization" and that it did so at the outset of an organizational campaign in which the IUE, an "outside organization," was pitted against an "inside organization" known as the Ward Employees Independent Union. In support of the argument, so advanced, the Charging Party has asked that I take judicial notice of the Board Decision in *Ward Manufacturing, Inc.*, Case No 9-RC-5701, wherein the Board directed an election in which the names of both of the aforesaid unions were ordered to appear on the ballot. I can, of course, take judicial notice of any Board or court decision. In fact, however, the Charging Party seeks more. In its brief, the latter makes reference not only to the above-cited Decision but also to the *transcript* of that representation proceeding in an effort to establish that the Ward Employees Independent Union was an "inside organization." There is no warrant for any such resort to that transcript in this case. In this connection it should be noted that no allegation appeared in the complaint with respect to the Ward Employees Independent Union, no mention of it was made at any time during the unfair labor practice hearing, and neither the General Counsel nor the Charging Party sought to secure a stipulation which would permit the incorporation by reference into the present record of the R case transcript. Had the issue been raised, the Respondent, for any of several reasons, might have refused to accede to the request for such stipulation. In the absence of such a stipulation, and under the circumstances present here, I consider myself foreclosed from any review of the aforesaid transcript, and, for that reason, have not considered it in any way.

## V. THE REMEDY

Having found that the Respondent promulgated and enforced an invalid no-solicitation rule, it will be recommended that the Respondent be ordered to cease and desist from maintaining such a rule and that it post an appropriate notice to so inform its employees.

## CONCLUSIONS OF LAW

1. The Respondent is engaged in commerce and the Union is a labor organization, all within the meaning of the Act.

2. By promulgating and enforcing an invalid no-solicitation rule the Respondent interfered with, restrained, and coerced employees in the exercise of rights guaranteed them by Section 7 of the Act and by such conduct has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a) (1) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

4. The Respondent has not violated Section 8(a)(3) of the Act as alleged in the complaint.

## RECOMMENDED ORDER

Upon the foregoing findings and conclusions and the entire record and pursuant to Section 10(c) of the Act, it is recommended that the Respondent, Ward Manufacturing, Inc., Cincinnati, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from promulgating, maintaining, or enforcing any rule prohibiting employees during their nonworking time from distributing union literature in nonworking areas on company property, or in any like or related manner interfering with, restraining, or coercing employees in the exercise of their right to self-organization, to bargain collectively through representatives of their own choosing, or 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.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Post in conspicuous places at its plant in Cincinnati, Ohio, including all places where notices to employees are customarily posted, copies of the attached notice marked "Appendix."<sup>9</sup> Copies of said notice, to be furnished by the Regional Director for Region 9, shall, after being duly signed by the Respondent's representative, be posted by it immediately upon receipt thereof, and maintained by it for 60 consecutive days thereafter. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify said Regional Director, in writing, within 20 days from the receipt of this Decision and Recommended Order, what steps the Respondent has taken to comply herewith.<sup>10</sup>

The complaint, insofar as it alleges that the Respondent discriminatorily discharged Harold York, Murphy Webb, Jr., and Charles Webb, is hereby dismissed.

<sup>9</sup> In the event that this Recommended Order be adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "a Decision and Order."

<sup>10</sup> In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

## APPENDIX

## NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the Labor Management Relations Act, as amended, we hereby notify you that:

**WE WILL NOT** promulgate, maintain, or enforce any rule prohibiting our employees during their nonworking time from distributing union literature in nonworking areas of the plant.

**WE WILL NOT** in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of

their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

WARD MANUFACTURING, INC.,  
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, 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.

**Local 18, Bricklayers, Masons and Plasterers' International Union of America, AFL-CIO and Jesse Bulle and Union County Building Contractors Association and the Johansen Company, Parties to the Contract.** *Case No. 22-CB-784. June 8, 1965*

### DECISION AND ORDER

On March 30, 1965, Trial Examiner Thomas F. Maher issued his Decision and Order on Motion To Dismiss in the above-entitled proceeding, finding that the General Counsel has failed to establish a *prima facie* violation of Section 8(b)(1)(A) and (2) of the National Labor Relations Act, as amended, as alleged in the complaint, and granting the Respondent's motion that the complaint be dismissed in its entirety, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel filed a request for review thereof, and the Respondent filed a brief in opposition to such request for review.

Pursuant to the provisions of Section 3(b) of the Act, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel [Members Fanning, Brown, 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 request for review and the brief in opposition to review, and the entire record in this case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations.

### 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 of the Trial Examiner, and orders that the complaint herein be, and it hereby is, dismissed.