an employee to dismissal. The record shows that Vaughn had not even had one written reprimand. Respondent contends, however, that the provision concerning reprimands applies only to minor or unintentional infractions of company rules and not to willful violations such as those engaged in by Vaughn.[6] This provision regarding reprimands and a list of 24 rules in the employees' handbook, the infraction of which is said to constitute cause for termination of employment, appear to be confusing if considered as guides for determining whether employees will merely be reprimanded or otherwise disciplined for infraction of company rules. However, even if Respondent did not follow what might be considered a correct interpretation of the provisions of the handbook, this fact would not prove that Respondent was discriminatorily motivated in discharging Vaughn.

Vaughn appeared to be an overly sensitive and hot-tempered employee and I have no doubt that he sincerely believed that he was being mistreated in various ways subsequent to his testimony in the case involving employee Cox. Nevertheless, the record does not warrant a finding that he was in fact discriminatorily treated. Nor does it warrant a finding that he was denied the right to talk to General Manager Hart on August 24. The matter about which he wished to consult Hart was not of such an urgent nature as reasonably to excuse him for walking off his job prior to the arrival of a regular relief man, or for his insubordinate conduct toward Foreman Wyatt. I am convinced from all the testimony, and find, that Vaughn was discharged for cause and not because of his prior testimony.

IV. THE REMEDY

There is now outstanding against Respondent a Board order in Cases Nos. 9–CA–3015 and 9–CA–3115 (150 NLRB 998) which requires Respondent to cease and desist from prohibiting the solicitation of union membership on company property during nonworking hours, and to post an appropriate notice. That order is broad enough to cover the violation found in this case. Accordingly, whether or not Respondent has posted the notice required in that case and revised its no-solicitation rule to conform to that order—as Respondent says in its brief it has done—no useful purpose would be served by again issuing a cease and desist order and requiring another notice to be posted. Compliance with the order already issued would remedy the violation herein found. There is therefore issued the following:

CONCLUSIONS OF LAW

1. By maintaining and giving effect to a no-solicitation rule which prohibits employees from soliciting for the Union during nonworking time, except with Respondent's permission, Respondent has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1).
2. The aforesaid unfair labor practice affects commerce within the meaning of Section 8(a)(1) of the Act.
3. The General Counsel has not established by a preponderance of the evidence that Respondent discharged or otherwise discriminated against employee Vaughn in violation of Section 8(a)(4) of the Act, or that it has violated Section 8(a)(1), except in the respect above mentioned.

RECOMMENDED ORDER

It is hereby ordered that Respondent's motion to dismiss the complaint be, and it hereby is, granted, and the complaint is accordingly dismissed.

[6] Referring to rule 5 which covers "Walking off the job" and rule 6 which covers "Insubordination."

A. Joseph Faro d/b/a Yankee Lobster Co. *and* Seafood Workers Union, ILA, Local 2, Series 1572, AFL–CIO. *Case No. 1–CA–4545. September 24, 1965*

SUPPLEMENTAL DECISION AND ORDER

On October 14, 1964, Trial Examiner Rosanna A. Blake issued her Decision in the above-entitled proceeding, finding that Respondent

had engaged in and was engaging in certain unfair labor practices and ordering that it cease and desist therefrom and take certain affirmative action, and recommending that the complaint be dismissed in all other respects. Respondent failed to file timely exceptions thereto, and on December 3, 1964, the National Labor Relations Board issued an Order adopting the findings, conclusions, and recommendations of the Trial Examiner, ordering Respondent to reinstate Joseph Fallon, and to cease and desist from interrogating employees about union activities and from threatening to close the plant if it became unionized.

Thereafter, on a petition by the Board for summary entry of an enforcement decree, the United States Court of Appeals for the First Circuit issued a decree on February 23, 1965, enforcing the Board's Order. Upon Respondent's petition for rehearing, alleging that it had newly discovered evidence bearing upon the credibility of Arthur Osborne, a witness for the General Counsel, the court vacated its decree on March 4, 1965, and remanded the case to the Board "to consider whether, in its discretion, it wishes to reopen the matter and reconsider its decision leading to its order of December 3, 1964."

In finding that Respondent knew of Fallon's union activities prior to his layoff, the Trial Examiner had relied principally on employee Osborne's testimony that Faro had admitted to Osborne that he had laid Fallon off partly because Fallon had passed out union cards. On this crucial issue of whether Faro had learned of Fallon's union activities before the layoff, as well as on several other matters, Osborne, in three posthearing affidavits, first admitted having misstated material facts at the hearing, then retracted his admission, and later admitted again making such misstatements. It was on the basis of Osborne's first two posthearing affidavits that Respondent petitioned the court to have the case remanded to the Board for further consideration.

Following the remand from the court, the Board, on July 28, 1965, issued and caused to be served upon the parties a notice to show cause, in which the Board stated that it appeared from Osborne's conduct, both at and after the hearing, that his hearing testimony was unreliable, and that, without his testimony, the evidence in the record might be insufficient to support the Board's finding that Respondent knew of Fallon's union activity before his layoff. Therefore, the Board requested that the parties show cause on or before August 9, 1965, why the Board should not treat Osborne's testimony as unworthy of credence, and why, in that event, it should not dismiss the complaint in its entirety.

Both Respondent and the General Counsel filed timely replies to the notice, with Respondent supporting the proposed Board action. The General Counsel did not take issue with the Board's view of Osborne's credibility, but did object to dismissal of the complaint. He argued

that the Trial Examiner's findings could be affirmed without relying on Osborne's testimony. In the alternative, he requested that the Board reopen the hearing or remand the matter to the Trial Examiner for supplementary action. However, the General Counsel did not specify what evidence he would introduce at a reopened hearing.

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 entire record in this case, including the Trial Examiner's Decision, the testimony given at the hearing, the affidavits and brief submitted by Respondent to support its petition to reopen the hearing, the answering affidavit and papers in opposition submitted by the General Counsel, the notice to show cause, and the replies thereto submitted by Respondent and the General Counsel.

In the absence of a showing of cause to the contrary, the Board finds that Osborne's hearing testimony must be completely discredited for the reason stated in the notice.

The General Counsel argues that in lieu of dismissing the complaint, the Board should either reopen the hearing or remand the case to the Trial Examiner. We disagree. The General Counsel has submitted no offer of proof to show that a reopened hearing would serve a meaningful purpose. Nor do we believe that any purpose would be served by remanding the case to the Trial Examiner for supplementary findings. We are adopting the Trial Examiner's evidentiary findings except to the extent that they rest on Osborne's testimony, and the basic issue now before us is whether, without his testimony, there is substantial evidence in this case to support a finding of an 8(a)(3) violation.

We are satisfied there is not. Without Osborne's testimony, the record neither supports the Trial Examiner's subsidiary finding that Respondent knew of Fallon's union activity before his layoff, nor her ultimate finding, which is substantially predicated thereon, that Fallon was laid off because of such activity in violation of Section 8(a)(3). Consequently, we reverse the Trial Examiner's 8(a)(3) finding. Further, aside from Osborne's discredited testimony, there is no evidence to support the Trial Examiner's finding that Respondent interrogated Osborne in violation of Section 8(a)(1). We therefore reverse that finding as well.

Accordingly, we shall set aside that part of our original Order which adopted the Trial Examiner's findings and recommendations with respect to the interrogation of Osborne and the discriminatory practices against Fallon. The Trial Examiner's remaining Section 8(a)(1) finding, concerning Faro's statement to Fallon that he would close the plant if it were ever organized, a statement made several months before union activity began, is unaffected by the discrediting of

Osborne's testimony. However, we do not believe that this isolated incident is sufficiently serious, standing alone, to warrant a remedial order.

In view of the foregoing, we shall dismiss the entire complaint in this case.

[The Board dismissed the complaint.]

White Consolidated Industries, Inc. *and* United Steelworkers of America, Local 3700, AFL-CIO. *Case No. 13-CA-6099. September 24, 1965*

DECISION AND ORDER

On May 10, 1965, Trial Examiner C. W. Whittemore issued his Decision in the above-entitled proceeding, finding that Respondent had not engaged in unfair labor practices as alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel and the Charging Party filed exceptions to the Trial Examiner's Decision and supporting briefs. The Respondent filed a brief in support of the Trial Examiner's Decision and later filed an answering brief.

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 Jenkins and Zagoria].

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 Trial Examiner's findings, conclusions, and recommendations.[1]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its

[1] The principal issue in the case involves the Trial Examiner's recommended dismissal of Section 8(a)(5) violation allegations of the complaint predicated upon a *Fibreboard* theory. *Fibreboard Paper Products Corp.* v. *N.L.R.B.*, 379 U.S. 203. We adopt the Trial Examiner's recommendation upon the grounds that after the Union received notice of Respondent's decision to terminate operations at the Chicago plant—the timeliness and adequacy of which is not before us for consideration as it occurred more than 6 months before the filing of the charge—the Union did not object to Respondent's plans or request bargaining with respect to either the decision or its impending effect upon unit employees, but instead raised issues only as to certain contractual benefits it claimed unit employees to be entitled to upon discharge. *Motoresearch Company and Kems Corporation,* 138 NLRB 1490, 1493.