

rate and apart from those of the employees of the administrative offices.

It has long been established that a single-plant unit is presumptively appropriate under the Act. Therefore, unless a plant has been merged into a more comprehensive unit by bargaining history, or is integrated in such a manner with other plants as to effectively negate its separate identity, it remains an appropriate unit even though a more comprehensive unit might also be appropriate. Moreover, even assuming that the unit urged by the Employer may be an appropriate unit, this does not establish it as the only appropriate one. It has not been the Board's policy to compel labor organizations to seek representation in a larger unit unless the smaller unit requested is inappropriate. The facts here do not reveal such a degree of integration or merger of operations as would make the separate unit requested by Petitioner inappropriate.³

In view of the foregoing and upon the entire record in this case, especially the degree of autonomy reserved to the P. & H.T. division through its separate supervision, its separate personnel offices, separate hiring and firing of employees, the lack of substantial interchange, the lack of a bargaining history, and the fact that no labor organization seeks to represent a larger unit, we find that the unit requested by Petitioner will assure to the employees the fullest freedom in exercising the rights guaranteed by the Act and is therefore appropriate.⁴

Accordingly, we find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All office clerical, plant clerical, and technical employees in Employer's pump and heat transfer division located in Harrison, New Jersey, excluding production and maintenance employees, patternmakers, powerhouse employees, engineers, professional employees, nurses, salesmen, confidential employees, managerial employees, guards, and supervisors as defined by the Act.

[Text of Direction of Election omitted from publication.]

³ See *Dixie Belle Mills, Inc.*, 139 NLRB 629, and cases cited therein.

⁴ See *Temco Aircraft Corporation*, 121 NLRB 1085; *Gordon Mills, Inc.*, 145 NLRB 771.

**White Furniture Company and Industrial Union Department,
AFL-CIO and United Furniture Workers of America, AFL-
CIO. Cases Nos. 11-CA-2577 and 11-CA-2620. October 8, 1965**

DECISION AND ORDER

On May 21, 1965, Trial Examiner C. W. Whittemore issued his Decision in the above-entitled proceeding, finding that Respondent has 155 NLRB No. 16.

engaged in and is 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, both the Respondent and the Charging Parties filed exceptions to the Decision and supporting briefs.

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 [Members Fanning, Brown, and Zagoria].

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 and the entire record in the case, including the exceptions and briefs, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations.¹

[The Board adopted the Trial Examiner's Recommended Order.]

¹ Respondent's request for oral argument is hereby denied as, in our opinion, the record, including the exceptions and briefs, adequately presents the issues and the positions of the parties.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

Upon charges duly filed (in Case No. 11-CA-2577 on November 2, 1964, and in Case No. 11-CA-2620 on January 12, 1965), the General Counsel of the National Labor Relations Board on January 29, 1965, issued an order consolidating the two cases, a consolidated complaint, and a notice of hearing. The Respondent filed an answer dated February 5, 1965. 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) and (3) of the Act. Pursuant to notice, a hearing was held in Graham, North Carolina, on April 7 and 8, 1965, before Trial Examiner C. W. Whittemore.

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

Disposition of the Respondent's motion to dismiss the complaint, upon which ruling was reserved at the hearing, is made by the following findings, conclusions, and recommendations.

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

White Furniture Company is a North Carolina corporation with place of business at Mebane, North Carolina, where it is engaged in the manufacture of furniture. During the year preceding issuance of the complaint it purchased and received, directly from points outside the State of North Carolina, raw materials valued at more than \$50,000. During the same period it shipped, directly to points outside the State of North Carolina, finished products valued at more than \$50,000.

The complaint alleges, the answer admits, and it is here found that the Respondent is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

United Furniture Workers of America, AFL-CIO, is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Setting and chief issues*

The chief issues raised by the complaint stem from admittedly summary action taken against three known union leaders and/or stewards, shortly after the Union had won a Board election, by one Phonse Bean, a vice president of the Respondent in charge of production.

The election was conducted on October 20, 1964. The following day Bean laid off for 1 week employee Larry Squires. Two days after Squires was permitted to return to his job, a union steward, Robert Solomon, was laid off by Bean for 4 weeks. And on December 31, 1964, Union Steward James Faulk was discharged and has not been reinstated.

General Counsel alleges, and the Respondent denies, that these layoffs and discharge were discriminatory, and designed to discourage union membership and activity. In its answer, however, the Respondent offers no specific affirmative reason, or reasons, for its actions against these employees.

B. *Interference, restraint, and coercion*

Late in August 1964, during the Union's preelection campaign, employee C. H. Burgess was telephoned at his home by his foreman, Oscar Neighbors. It is reasonably inferred that Neighbors well knew that Burgess was then serving on the employee organizing committee, since on July 23 Bean had been informed of the fact by letter.

Neighbors asked Burgess if he had received a company letter that day. Burgess said he had. The foreman asked what he thought about it. The employee said he had not given it much thought. Neighbors then declared that the letter meant just what it said—and asked: "Do you see where they will take the Christmas bonus away, and they would close the plant down before they would have a union."

Neighbors then expressed surprise that an employee named Huntley was in the Union, and that he had not reached the "top of the rate." Burgess commented that he, himself, had not yet reached the top of his rate either, although he had been working 17 years, and asked the foreman why. Neighbors told him it was because he was "in the union in 1956."¹

Early in November, after the Union had been certified by the Board, Vice President Bean refused to meet with Union Steward Vance Faulk and other stewards "until after the contract was signed." The occasion arose at a time when Faulk had been summoned to Bean's office and had been severely rebuked for taking up a grievance with Foreman Neighbors. Bean accused him of "running around telling the foreman everything," of acting like a school child, and of having a "Big badge, big badge." It was after this display of marked displeasure at discussing matters with a mere employee that Faulk asked Bean to meet with him and the other stewards "and let's have a talk," in an obvious effort to arrange some method by which grievances could be discussed amicably. It was then that Bean rejected any such meeting until a contract was signed. (As a witness, Bean admitted that he had refused to "sit down" with the committee until a "procedure" was set up. He did not deny making the disparaging remarks attributed to him by Faulk.)

Shortly before this incident, and after inserting himself into a discussion between Foreman Grubb and two union stewards, Crisp and Solomon, Bean declared that he did not have to listen to the stewards since there was no contract, accused them of "meddling" in his business, and threatened that before he would "stand" for such, he would sell the business to a "bunch of Jews."²

I conclude and find that by the clearly implied threats of reprisals by Neighbors to Burgess, and of Bean's threats to sell the plant, as well as by the latter's refusal to meet with the stewards concerning grievances until a contract was signed, the

¹ The findings as to this telephone call rests upon the employee's credible testimony. On direct examination Neighbors flatly denied that he had had any "such a telephone call" to Burgess. On cross-examination he admitted that he "could have" talked to Burgess by telephone "about this time" as described by the employee.

² On direct examination Bean denied ever telling stewards he did not have to deal with them until a contract was signed. On cross-examination, however, when confronted with admissions previously made in a sworn statement to a Board agent, he finally, in effect, admitted that he had told the stewards on this occasion that they had no contract, and that he might have referred twice to "the Jews." Solomon's layoff, which immediately followed this incident, is described more fully in a later section. The findings rest upon the credible testimony of Crisp and Solomon, as well as the admissions of Bean.

Respondent interfered with, restrained, and coerced employees in the exercise of rights guaranteed by the Act. Since it is not alleged in the complaint, no conclusion is made as to whether or not such open discouragement of discussing grievances is also a violation of Section 8(a)(5) of the Act.

C. *The layoff of Squires*

On October 21, the day after the employees at a Board election selected the Union as their bargaining agent, employee Larry Squires was summarily laid off for 1 week, being told by Bean that the action was because he had obtained a cake out of the vending machine during working hours in violation of a company rule. The record is without any credible evidence that any such rule actually existed on October 21. On the contrary, the testimony of several employees called by General Counsel and at least one foreman called by Respondent established that it was far from an uncommon practice for foremen as well as employees to get various items from the vending machine during working hours. No written rule or printed rule was produced by the Respondent. After Squires was laid off it appears that some rule to this effect was posted near the machine, although in a statement given to a Board agent in November 1964, Bean admitted that he did not know whether any such rule was posted either at the time of Squires' layoff or at the time he gave the statement. Bean also admitted that no one but Squires had ever been disciplined for such claimed infraction. And Foreman Allison, a witness for the Respondent, not only admitted that he had utilized the machine's services on a number of occasions, but also that as late as January 1965 he had merely warned an employee whom he had seen obtain candy from the machine during working hours.

During the course of the hearing counsel for the Respondent was specifically requested to produce any written rules covering the point. Counsel agreed to do so. None were produced.

Apparently realizing the plain inadequacy of the vending machine incident as a valid reason for the layoff, Bean claimed, in effect, that the real reason for his action was the accumulation of rule violations by Squires. He repeatedly declared that he had "records" of "prior instances of work rule violations and warnings," regarding Squires. He insisted that he made such records at the "time of these incidents." Bean was given an opportunity to leave the stand to obtain such records. They were not produced, and when putting his witness back on the stand counsel for the Respondent conveniently abandoned the subject.

Foreman Neighbors also claimed he had made a written report concerning Squires. No such report was produced.

I conclude that no reliance can be placed upon any part of Bean's testimony, where not supported by more credible evidence. And as to Squires, it is concluded and found that the employee on October 21 violated no posted rule, and that the incident was used as a pretext on Bean's part, while the real motive was retaliation and resentment at the fact that the day before this, employees had voted to have the Union represent them. A document in evidence shows that in mid-July management was informed that Squires was a member of the employee organizing committee.

It is concluded and found that Squires' layoff was discriminatory, for the purpose of discouraging union membership and activity, and that it thereby interfered with, restrained, and coerced employees in the exercise of rights guaranteed by the Act.

D. *The layoff of Robert Solomon*

Despite his some 14 years of satisfactory service with the Respondent, Solomon was summarily laid off for a month a few days after the Respondent was formally notified that this employee, together with others, had been selected as a union steward.

The incident from which the layoff stemmed has been partly described above. On October 30, Solomon and Crisp, another steward, were discussing with Foreman Grubb, at the drinking fountain, a grievance which had shortly before this been brought to Solomon's attention by another employee, relating to the transfer of an employee to another job. Bean approached the group and after first talking with the foreman asked Solomon what the "story" was. Solomon told him. Bean became incensed, told the stewards they were "meddling" in company business, declared he did not have to listen to them since no contract had been signed, and threatened to sell the business to "a bunch of Jews." It may well have been, as Bean claimed, that at some point during his own tirade and threats, as admittedly by himself, Solomon "smiled." Having previously found Bean's entire testimony to be untrustworthy, I do not credit his contention that Solomon "sneered" at him in an "insulting" manner, and that such conduct was the reason for the layoff.

I am convinced and find that Solomon was laid off for a full month to discourage union membership and activity, and in retaliation for a union steward's attempt to handle a grievance. Such discrimination interfered with, restrained, and coerced employees in the exercise of rights guaranteed by the Act.

E. *The discharge of James Faulk*

This employee, of long service with the Respondent, was summarily discharged on December 31, 1964. He was well known to Bean as an active union steward.

There is little dispute as to the actual event which precipitated the discharge. In going through the plant Bean observed Faulk talking with another employee. He told Foreman Neighbors to ask Faulk not to talk and kill time. Neighbors approached Faulk and told him, according to the employee's own testimony, that he would "rather" he not talk to this employee, who was in another department. Also, according to Faulk's own testimony, he replied, "Neighbors, I will talk to who I damn please when I damn please when I get damn ready."

After lunch that day, Bean asked Neighbors if he had spoken to Faulk as requested. Neighbors said he had, and showed him a piece of paper upon which he had noted Faulk's reply. Faulk was called into Bean's office, admitted having made the above-quoted remark to his foreman, and was fired.

General Counsel would have it found that because Faulk had not previously been fired for much more serious conduct—it being undisputed that the employee had twice threatened to kill a foreman, once with a chisel and on another occasion with an iron bar, it would be unreasonable to hold that his remark on December 31 was the real reason for his discharge.

I cannot agree. It is clear that Faulk precipitated his own discharge. The fact that he is a union steward provides no employee, in any plant, in my opinion, with the protected right to tell his foreman, under circumstances such as exist here, that he will "talk to who I damn please when I damn please and when I get damn ready."

I conclude and find that Faulk was not discharged in violation of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

Certain of 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 make whole employees Squires and Solomon for any loss of earnings suffered by reason of the discrimination against them, by payment to each of them of a sum of money equal to that which he normally would have earned, absent the discrimination, during the respective layoff, and 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., Inc.*, 138 NLRB 716.

Finally, in view of the serious and extended nature of the unfair labor practices, it will be recommended that the Respondent 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 Furniture Workers of America, 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 employees, as found 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 interfering with, restraining, and coercing employees in the exercise of rights guaranteed by 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.

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

5. The Respondent has not engaged in unfair labor practices in the discharge of James Faulk.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, it is recommended that the Respondent, White Furniture Company, Mebane, North Carolina, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in and activity on behalf of United Furniture Workers of America, AFL-CIO, or by discriminating against employees in any other manner in regard to their hire or tenure of employment or any term or condition of employment.

(b) Threatening employees with economic reprisals or refusing to deal with representatives of the above-named labor organization concerning grievances.

(c) 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 to effectuate the policies of the Act:

(a) Make whole employees Squires and Solomon for any loss of earnings suffered by reason of the unlawful discrimination against them, in the manner set forth above in the section entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to determine the amounts of backpay due.

(c) Post at its plant in Mebane, North Carolina, copies of the attached notice marked "Appendix."³ Copies of this notice, to be furnished by the Regional Director for Region 11, shall, after being duly signed by an authorized representative of the Respondent, be posted immediately upon receipt thereof, and be maintained for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the said Regional Director, in writing, within 20 days from the date of the receipt of this Trial Examiner's Decision, what steps have been taken to comply herewith.⁴

Finally, it is recommended that the complaint be dismissed as to the discharge of James Faulk.

³In 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."

⁴In 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 effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT unlawfully discourage you from being members of United Furniture Workers of America, AFL-CIO, or any other union.

WE WILL NOT threaten you with economic reprisals to discourage union activities.

WE WILL NOT refuse to discuss grievances with your union stewards.

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 any union activities.

WE WILL give employees Larry Squires and Robert Solomon backpay.

WHITE FURNITURE COMPANY,
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.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 1831 Nissen Building, 310 West Fourth Street, Winston-Salem, North Carolina, Telephone No. 723-2911.

N. J. MacDonald & Sons, Inc. and Local 3126, United Brotherhood of Carpenters and Joiners of America, AFL-CIO. *Case No. 1-CA-4896. October 8, 1965*

DECISION AND ORDER

Upon a charge duly filed on February 16, 1965, by Local 3126, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, herein called the Union, against N. J. MacDonald & Sons, Inc., herein called Respondent, the General Counsel for the National Labor Relations Board, by the Regional Director for Region 1, issued and served upon the parties a complaint and notice of hearing. The complaint alleges that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a) (5) and (1) of the National Labor Relations Act, as amended.

With respect to the unfair labor practices the complaint alleges, in substance, that on or about May 18, 1964, a majority of the employees of Respondent in an appropriate unit designated the Union as their representative for the purposes of collective bargaining with Respondent; that, at all times since, the Union has been the collective-bargaining representative of the unit employees; and that on February 16, 1965, and at all times thereafter, Respondent did refuse and continues to refuse to bargain with the Union.

On May 27, 1965, Respondent filed its answer to the complaint admitting certain jurisdictional and factual allegations and the refusal to bargain with the Union, but denying that the Union represents a majority of the unit employees and that it has committed any unfair labor practices. Respondent's answer alleges affirmatively that on or about January 25, 1965, it received a written statement signed by a majority of the employees in the unit stating that they did not want the Union to represent them as their bargaining agent, and that in view of this fact Respondent refused thereafter to recognize and bargain with the Union as the exclusive representative of the employees in the unit.