

4. By (a) photographing peaceful picketing, (b) threatening strikers who returned to work with discharge if they struck again, and (c) discharging employees engaged in a lawful strike, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

6. Respondent has not engaged in any other unfair labor practices as alleged in the complaint.

[Recommended Order omitted from publication.]

APPENDIX

1. There will be no smoking on the premises at any time other than 10 minute break periods and then it will be allowed by main entrance door only where extinguishers are readily available.

2. There will be no talking in pairs or groups unless it pertains to the business at hand.

3. There will be no more phone calls made from this station to another station. Any necessary outside calls will be made from the main office at break time only, unless its an emergency.

4. *No one*, will summon *any one* from another department or building without first consulting with me, unless the problem at hand will not keep and I am out of the building.

5. All garbage, such as apple cores, banana peels, bread crusts, etc., will be deposited in available containers.

6. Any one caught participating in dangerous horseplay or practical jokes will be reprimanded just once, throwing putty balls included.

7. Any one caught removing company or another man's property from the premises without explicit permission will be discharged immediately.

MacCollum Paper Co., Inc. and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 135. *Case No. 25-CA-2100. November 16, 1965*

DECISION AND ORDER

On September 1, 1965. Trial Examiner W. Edwin Youngblood issued his Decision in the above-entitled proceeding, finding that the 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 filed a brief in support of the Trial Examiner's Decision.

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 Brown, Fanning, 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 and briefs, and the entire record

in this proceeding, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.¹

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

¹ The 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 a charge filed on December 11, 1964,¹ by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 135, herein called the Union, the General Counsel of the National Labor Relations Board by the Regional Director for Region 25 (Indianapolis, Indiana), issued a complaint on February 11, 1965, alleging the commission of unfair labor practices by MacCollum Paper Co., Inc., herein called Respondent or the Company, in violation of Section 8(a)(1) and (5) of the Act, and affecting commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act, herein called the Act. The complaint was further amended in certain minor respects at the hearing which was held before Trial Examiner W. Edwin Youngblood in Indianapolis, Indiana, on April 19 and 20, 1965. Respondent filed an answer denying the alleged unfair labor practices.² Briefs have been received from the General Counsel and Respondent and have been duly considered.

Upon the entire record, including my evaluation of the witnesses based upon the evidence and my observation of their demeanor, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, an Indiana corporation, is engaged at Indianapolis, Indiana, in the business of selling paper products at wholesale. During the past 12 months, a representative period, Respondent purchased, transferred, and delivered to its Indianapolis plant goods of a value in excess of \$50,000 directly from points outside the State of Indiana.³ Respondent contends that the effect of its operations upon commerce is so insubstantial that the Board should exercise its discretion and refuse to assert jurisdiction in this matter. This contention is based upon the fact that the unit involved herein contains only two men and Respondent's assertion that its sales are all made locally within Marion County, the county in which Respondent is situated. The Board has concluded that it will best effectuate the policies of the Act if jurisdiction is asserted over all nonretail enterprises which receive at least \$50,000 of goods furnished directly to the employer from outside the State in which the employer is located.⁴ As it is clear that Respondent's operations fall within this category, I find Respondent is engaged in commerce within Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction over the operations of Respondent.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of Section 2(5) of the Act

III. THE UNFAIR LABOR PRACTICES

A. *The facts*

The Union and the Respondent entered into a collective-bargaining agreement effective June 14, 1955, to remain in effect until December 14, 1964. The agreement

¹ Unless otherwise indicated, all dates herein refer to the year 1964.

² Prior to the hearing Respondent filed a request for deposition of certain individuals which was opposed by the General Counsel and which request was denied by Trial Examiner Sidney Lindner.

³ The foregoing findings are based upon admissions in Respondent's answer and a stipulation of the parties.

⁴ *Siemons Mailing Service*, 122 NLRB 81, 85

provided for written notice of termination or desired modification at least 60 days prior to the expiration date. Further, the agreement contained what is commonly referred to as a union-shop clause.

The Reverend Thomas Dickson⁵ was employed about August 24 as a papercutter. About a week before he started work, Dickson was interviewed by Respondent's vice president, George Edwin Milhon. Milhon asked Dickson if he had any objection to joining the Union. In addition, Milhon asked Dickson "more or less a leading question what he thought of the Union and heard him out."⁶ Dickson replied that he had pros and cons about the Union and that in some cases unions are good and in other cases that they have not been effective. Milhon then stated that the contract with the Union was up in December of 1964 and "at that particular time he would like to make a change." Milhon also said that he did not think the Union was good for the Company since it was a small company. Milhon told Dickson that he wished "it could be otherwise" but Dickson had to join the Union. Dickson stated that it did not make too much difference to him whether he joined or not, and indicated he had no objection to joining a union if the Company had one and that was the policy.⁷

On September 15, Milhon received a letter from James R. Nolan, business representative of the Union, dated September 14, in which Nolan called attention to the fact that the contract would terminate December 14, and offered to meet and confer with Respondent's representative for the purpose of negotiating a new collective-bargaining agreement.⁸

On a Tuesday night in mid-October about 6 p.m., Dickson received a telephone call from Milhon in which Milhon advised Dickson that he would like to talk to him about his future with the Company and asked Dickson if he could come to his home that night.⁹ Dickson replied that he could not come out that night but could come on Thursday. Arrangements were then made for Dickson and his wife to come to Milhon's home on Thursday.

Those in attendance at Milhon's home on Thursday were Walter Willitts and his wife, Mr. and Mrs. Milhon, and Dickson and his wife. This was the only time that Dickson was ever in Milhon's home. Milhon opened the conversation by asking Dickson if he recalled the employment interview and Dickson's statement at that time that he had pros and cons about the Union, and Milhon asked if Dickson still felt that way or what his feeling was. Dickson replied that he had not "actually" come to any conclusion as yet.¹⁰

Milhon said that the Company was a small company, and a good company, and that they had never fired a man. Milhon further said that the Company always paid employees when they were out or had time off and that he liked a very small company, and since he was vice president and had a personal investment in the Company that he did not want anything to happen to it. Milhon said that the Company was such a small company and they were working on such a small percent that sometimes they even got into the "red" and they did not see how they could possibly pay any more and continue to operate, "they just couldn't do it." Milhon continued by saying

⁵ Dickson is a minister serving a local church

⁶ The quotation is from Milhon's credited testimony

⁷ The foregoing is based on the credited and undenied testimony of Dickson except where otherwise indicated. I reject the testimony of Milhon that Dickson told him during his first 30 days with the Company that he was not real happy about joining the Union because he could not see where the Union was going to do him any good. This testimony is inconsistent both with earlier and subsequent credited testimony of Dickson.

⁸ The foregoing is based on the credited testimony of Milhon.

⁹ Milhon testified that about 3 or 4 days prior to this, Dickson indicated to Milhon that he was unhappy about Farmer and would like to talk to Milhon about Farmer. (Dickson and Farmer worked together in Respondent's warehouse.) Later Milhon was advised by Willitts (Willitts is in charge of Respondent's warehouse) that he had better talk to Dickson because he thought Dickson was going to quit. Milhon then telephoned Dickson to see if they could get together and talk about their "problems." Dickson testified that he had several conversations with Willitts prior to Milhon's telephone call about "Willitts' gripe of no cooperation between Mr. Farmer and himself." Dickson further testified that Willitts was "feeling" him out as to the working conditions between Willitts and Farmer. This testimony is consistent with Dickson's later credited testimony set forth herein that Willitts brought up Farmer's lack of cooperation with him during the meeting at Milhon's home. Accordingly, Milhon's contrary testimony as to the circumstances leading to the meeting is rejected.

¹⁰ Milhon's testimony, which Dickson denied, that Dickson threatened to quit during this meeting and said "if things didn't get ironed out and all he wasn't real sure he wanted to stay there and pay the union initiation fee and all," is rejected.

"that with the present set-up and contract that they had with the Teamsters Union that he couldn't see how they could carry on and still be competitive, and that there was a possibility of closing the doors if they continued in the present status." During the conversation Milhon said also that he did not want to be part of any union that Hoffa had charge of because he did not like Hoffa's actions and attitude, and Dickson said that he did not like some of Hoffa's actions either. Milhon said that he would like to have a truck and driver of their own but under the Teamsters contract he could not do it and "still pay the wages and still be competitive." During the meeting, Willitts brought up the subject that he was not getting cooperation from Farmer. Milhon said that he was afraid to go out and talk to his employees because Farmer kept calling union officials down. Milhon said further that he could only do so much and that he had to work through Willitts. Dickson told Milhon that if Farmer or anyone else did anything wrong he (Milhon) had the perfect right to go out and fire the man. Dickson told Willitts about his comments about Farmer, that if he were Willitts he would go out and tell Farmer "these things" and "put him straight" and he thought there would be a big change made. Further Milhon spoke about wanting to put in their own insurance because he did not feel that Teamsters insurance was adequate and that he had another plan that he would like to put in and various other benefits. Milhon said that he felt they could get Blue Cross and Dickson said that he already had that plan and that could not affect him. Dickson also said that he could see Milhon's point about the Union and he could also see the employees' point because he had had the opportunity to be on both ends. Dickson continued by saying that in the past he had been with management and also had been an employee and several times he had gone along with the company "relative to not having a union come in and as a result" had been "kicked in the pants" and "knifed in the back." Mrs. Dickson also commented about Dickson having been a "good joe" to employers and having been always "kicked in the pants."¹¹

A discussion then ensued about how an election could be arranged¹² and Milhon said that one member of the Teamsters Union would have to file for an election claiming that he did not any longer want to be represented by this particular union. Milhon admitted that he asked Dickson if an employee had to sign a decertification petition if he would do so.¹³ Mrs. Dickson then raised the question of the money that Dickson had already put in the Union and Milhon said that he would see to it "personally" that Dickson got all the money back he had spent in the Union. Milhon mentioned also that there was room for advancement for Dickson in the Company, that he did not think Dickson's "caliber would keep [him] as a paper cutter," and that he had "high potential as to advancing further in the company." As the group was breaking up, Milhon said "Well, Tom, I hope you will make the right decision relative to this but either way," he said, "with you or without you I am going to make a change as far as the Union is concerned."¹⁴ Dickson said that he would think about it and let Milhon know his answer later.¹⁵

The following Saturday Milhon told Dickson that he had had a lawyer checking and they had found a way to get rid of the Union and the contract without Dickson's help. Dickson replied that he was glad because he did not like being in the middle or "being on the hook."¹⁶

About a week after the meeting in Milhon's home, Dickson and Milhon had a discussion about the Union. Farmer was also present. Milhon said that he had received threats "more or less" from Martin, of the Union, and because of this he would say that Dickson's car might be bombed.¹⁷ They talked generally along this line and Dickson said that his wife had received a strange telephone call. Dickson testified that his wife told him somebody called her and said that they had heard that her husband was trying to get rid of the Union at MacCollum. Dickson told Milhon that he did not appreciate the call "not knowing who at the time made it or where it come from [he] did not appreciate the call," and Dickson said that he just hoped no

¹¹ Mrs. Dickson also expressed concern about some "girllie" pictures on the walls at the plant and Milhon agreed that they could be taken down.

¹² Mrs. Dickson testified that she did not know but she might have asked how "you could go about striking a contract like that."

¹³ I do not credit Milhon's testimony, however, that Dickson told him it would be better if the Company did not have a union.

¹⁴ Milhon's version of this, which is rejected, is that he said to Dickson "Don't worry about it. You don't have to sign this decertification petition. There are other ways of doing this."

¹⁵ The foregoing, except as otherwise indicated, is based on the credited testimony of Dickson and Mrs. Dickson.

¹⁶ Based on the credited testimony of Dickson.

¹⁷ Robert E. Martin was employed by the Union.

one was trying to get "nasty" in anyway because he would not appreciate it. Further Dickson said that he would not be much inclined to go along with anybody who resorted to that sort of conduct. In fact, Dickson said that he would fight any person who would intimidate his family regardless of who they were.¹⁸

On November 16, Milhon wrote Nolan replying to his letter of September 14 and rejecting the Union's offer to negotiate a new agreement on the ground that Respondent no longer believed that the Union represented a majority of the employees in the unit.¹⁹ Milhon admitted that the reason that a couple of months elapsed between the receipt of the Union's letter and his reply was that he was "merely stalling to see what kind of a pattern was being established in the industry," considering that Respondent was small and larger companies were negotiating for contracts that were "much larger." Milhon admitted that after he wrote this letter Dickson and Farmer both came to him and asked what the Company was going to do about a new contract.

In November a meeting was held in the office of Martin W. MacCollum²⁰ attended by MacCollum, Milhon, Dickson, and Robert Farmer, the other warehouseman.²¹

Milhon opened the meeting by asking the employees what they expected in a job. Dickson replied that they liked security, a congenial and friendly atmosphere, and a good living wage. Milhon then "spoke about how good the Company was and so forth, and that the employees had always been paid, and that as long as we could work together on a friendly basis we could continue, but he said that under the contract we had the situation that the Company actually was a divided company." The pension was brought up that Farmer had, and Farmer said that he did not want to see the Union go because he had too much invested in it. MacCollum said that he was going to check up on this and find out what he could do as far as the pension was concerned and would let them know later. Milhon referred again to his desire to get a truckdriver and his belief that the Company could not do this, and that the Company could not afford these wages that the Union was demanding and still be competitive. Milhon also said that under the union contract they could not come out and talk personally to a man and advance him or give him more of a wage than the Union called for, and that the Union was hindering his personal relationship with the men.²²

On December 7, Dickson and Farmer met again with Milhon and MacCollum. MacCollum handed Dickson and Farmer separate yellow sheets of paper with their names at the top. (General Counsel's Exhibits Nos. 8 and 9) MacCollum said that he had been checking around town with all the other paper companies and had ascertained what the prevailing wage was and these were the figures he had come up with. The top sets of figures on the yellow sheets represent the wages which Farmer and Dickson were receiving under the union contract and with respect to the bottom sets of figures, MacCollum said, "This is what we are prepared to offer you as a

¹⁸ Milhon's version of this conversation is generally the same as Dickson's. Milhon's version differs however in that he testified that Dickson asked him where the "paper" was and said he would "sign anything today." Milhon replied that he had consulted an attorney who felt there was no need to sign a decertification paper because the Union was not certified. Dickson's credited and undenied testimony as set forth above shows that Milhon had already told him on the preceding Saturday in effect that his help was not needed regarding getting "rid of the Union." Dickson's version is credited and Milhon's contrary version is rejected, except the date of the meeting is based on his testimony.

¹⁹ General Counsel's Exhibit No. 5.

²⁰ Respondent's president.

²¹ This meeting was arranged by a salesman, William Flanagan, who suggested to Dickson and Farmer they get together with MacCollum and Milhon and "talk this out." Flanagan was apparently concerned about the possibility of strikes and the Company closing and wanted to avoid this.

²² The foregoing is based on the credited testimony of Dickson and Farmer. Milhon's version of this conversation is generally the same as that of Dickson's and Farmer's. However, Milhon added that Dickson and Farmer wanted to know what the Company could pay and what the Company could offer them. Milhon testified that Dickson and Farmer asked him to gather figures for their perusal. Milhon further stated that Dickson and Farmer asked him to determine what was going on at the bargaining tables with other companies. Dickson and Farmer specifically denied, as rebuttal witnesses, that they asked Milhon or MacCollum to compile or gather figures. Both Dickson and Farmer impressed me as sincere and honest witnesses with generally good recollections of what they testified to, whereas Milhon's recollections were at times vague and indefinite. Accordingly, I have credited Dickson's and Farmer's denials of Milhon's testimony. I am also unable to credit MacCollum's testimony, which Dickson denied, that Dickson said during this meeting that he "did not see what the Union had to offer him." It is not in accord with other credited testimony herein of Dickson.

company.”²³ MacCollum said this was the best that they could offer and that it was competitive, and Milhon said that if the Company had to do anything more than this or meet any higher demands they would have to close the shop. The yellow sheet with respect to Dickson reflects that he was receiving an hourly rate of \$2.65 and a weekly wage of \$106, and after deductions his average weekly take-home pay was \$87.71, whereas under the Company’s offer his hourly wage would be \$2.80 and his average weekly take-home pay after deductions would be \$91.16. The yellow sheet with respect to Farmer reflects that his hourly rate was \$2.50 and his weekly wage was \$100 and his take-home pay after deductions was \$86.96. Under the Company’s offer, his hourly wage would go up to \$2.65 and his weekly wage to \$106 with take-home pay of \$90.42. MacCollum indicated that the \$2.65 hourly rate could be obtained without the Union. MacCollum explained that the Company could give them an increase of 15 cents an hour and that this would be competitive with the other companies. In addition, although the employees were not presently covered by Blue Cross, under the Company’s offer they would be and the Company would pay the cost. MacCollum stated that there would be Blue Cross insurance and there would not be any union dues. The yellow sheets also reflect that life and disability insurance was offered at no cost to the employees. Farmer brought up the subject of pensions and MacCollum said that he had checked on this, and they could not adequately give a pension plan, but that they were thinking of one in the future. MacCollum also mentioned that because Farmer was receiving a pension no other company would come in because they wanted to cover all employees, and the Teamsters contract and separate pension plan for Farmer was denying other employees a pension plan which caused hard feelings in the office and plant. Farmer stated that he would not like to lose his pension. During the meeting Milhon again referred to his desire to hire a truckdriver and his belief that under the present contract this could not be done. Farmer and Dickson said that they would take these papers and look them over and sleep on them and then let MacCollum know what they thought of them.²⁴

Farmer signed a union checkoff authorization on July 14, 1960, and through November 19 Respondent transmitted his dues to the Union. Dickson signed a union checkoff authorization on September 24 and Respondent transmitted his initiation fees and dues to the Union through November 19.²⁵ Neither Farmer nor Dickson has since that time revoked his checkoff authorization or asked the Union to cancel his membership.

On December 29 Nolan wrote to Milhon again requesting a meeting for negotiations for a contract.²⁶ Milhon did not reply to this request either orally or in writing

B. Analysis, findings, and recommendations

1. Interference, restraint, and coercion

I find Respondent violated Section 8(a) (1) of the Act by:

(a) The interrogation of Dickson by Milhon in the employment interview as to what Dickson thought of the Union. It has long been established that applicants for employment occupy the status of employees within the meaning of the Act. *Phelps Dodge Corp. v. N.L.R.B.*, 313 U.S. 177. Accordingly, I must reject Respondent’s contention made in its brief that no violation occurred because Dickson was not yet an employee within the meaning of the Act. Cf. also *Florida Sugar Corporation*, 142 NLRB 460, 461.

(b) The interrogation of Dickson by Milhon at Milhon’s home as to Dickson’s feelings about the Union.

(c) Milhon’s statement to Dickson at Milhon’s home that “with the present setup and contract that they had with the Teamsters Union that he couldn’t see how they could carry on and still be competitive, and that there was a possibility of closing the doors if they continued in the present status.” This constituted a thinly veiled threat that if the Union stayed as bargaining representative the plant might close and as such, reasonably tended to be coercive.

(d) Milhon’s statements at his home about the Teamsters’ insurance being inadequate and his desire to put in another insurance plan and other benefits. In these statements, Milhon, by implication, promised benefits to Dickson if he would refrain from supporting the Union.

²³ MacCollum’s testimony that he told Farmer that the Company could not do anything “until this whole problem with the Union had been resolved, that [Respondent’s] hands were tied” is rejected.

²⁴ The foregoing is based on the credited testimony of Dickson and Farmer except where otherwise indicated.

²⁵ General Counsel’s Exhibits Nos. 6 and 7.

²⁶ General Counsel’s Exhibit No. 4.

(e) In context with the above, Milhon's soliciting of Dickson at Milhon's home to sign a decertification petition.

(f) Milhon's promise at his home to refund to Dickson all the money he had paid the Union.

(g) Milhon's statements to Dickson at Milhon's home about advancement with the Company constituted promises of benefit if he would refrain from supporting the Union.

(h) MacCollum's offer at the December 7 meeting of a 15-cent hourly raise to Dickson and Farmer together with health, life, and disability insurance benefits was part and parcel of Respondent's attempts to bargain individually with its employees at a time when they were represented by the Union and Respondent was refusing to negotiate with the Union. This is clearly illustrated by MacCollum's statement at the time that "this is what we are prepared to offer you as a Company."

(i) Milhon's statement at the December 7 meeting that if the Company had "to do any more than this or meet any higher demands they would have to close the shop" was reasonably calculated to impress on Dickson and Farmer that if the Union remained as bargaining representative, the plant would close.²⁷

2. The refusal to bargain

I find that all warehousemen, truckdrivers, order fillers, parters, packers, wrappers, and cutting machine operators employed at Respondent's Indianapolis, Indiana, plant, exclusive of all office clerical employees, guards, professional employees, and supervisors as defined in the Act constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.²⁸

Respondent contends that Walter Willitts is not a supervisor, and therefore should be included in the unit. General Counsel contends that Willitts is a supervisor. Willitts, the assistant purchasing agent, reports directly to Vice President Milhon and has responsibility for the direction of the work of Dickson and Farmer. Dickson and Farmer are the only employees regularly working in the warehouse. As Milhon testified, Willitts' responsibility is "to see that everything gets done in the warehouse, whatever it takes to get it done." Willitts is responsible for the operation of the warehouse on a day-to-day basis. In addition, as Milhon testified, Willitts can move Dixon and Farmer around. It is clear, and I find, that Willitts has the authority to responsibly direct employees and to move employees around as the circumstances require and therefore is a supervisor within the meaning of Section 2(11) of the Act. It is not without significance to note that Willitts, who had been employed at least 3 years by Respondent, was not requested to join the Union under the union-shop clause in the contract. Respondent's contention first raised at the hearing that Willitts is not a supervisor is rejected.

The complaint alleges a refusal to bargain commencing on or about September 16 and continuing at all times thereafter. It will be recalled that the Union wrote a letter to Respondent dated September 14 requesting a meeting with Respondent for the purpose of negotiating a new collective-bargaining agreement. It will further be recalled that Respondent received this letter on September 15. On September 15 there were two employees, Dickson and Farmer, in the appropriate unit as found above. It is clear that Farmer was a dues paying member at that time. There is no showing, however, that Dickson had designated the Union to represent him on September 15. Rather the evidence demonstrates that Dickson did not execute a checkoff authorization card until September 24, 1964. I cannot find that the Union represented a majority of the employees on September 15 on these facts, and therefore cannot find a refusal to bargain on September 16. I find, however, that commencing September 24 and continuing thereafter²⁹ the Union did represent a majority of employees in the unit.

On November 16 Respondent replied to the Union's letter of September 14 by asserting a doubt of the Union's majority on that date and rejecting the Union's offer to negotiate a new contract. The Respondent therefore treated the Union's request of September 14 as being a live and continuing request at least as late as its letter of November 16, and I so find. Cf. *Burton-Dixie Corporation*, 103 NLRB 880, 882, enf. 210 F. 2d 199 (C.A. 10). Indeed Respondent does not deny it has refused to

²⁷ The complaint also alleges in effect that Milhon threatened employees with loss of their pension rights if they engaged in union activities. I do not find the evidence establishes this allegation.

²⁸ There is no issue as to the appropriateness of the unit.

²⁹ Both Dickson and Farmer credibly testified that since signing the union checkoff authorizations after their employment by Respondent, they had not revoked them or asked to cancel their union memberships.

bargain.³⁰ Rather it defends its refusal to bargain on the ground that it had a good-faith doubt of the Union's majority status. If this is so, the allegations of the complaint must fall. The facts however belie this contention. As far back as Dickson's employment interview, Milhon interrogated him about his union sentiments and told him that the union contract was up in December of 1964 and "at that particular time he would like to make a change," pointing out that he did not think the Union was good for the Company. On September 15, as noted above, Milhon received a written request to bargain from the Union and waited about 2 months to reply to this letter. In the meantime, he commenced a campaign designed to insure that the Union did not represent a majority. As set forth above, Milhon called Dickson out to his house and again interrogated him about his union sentiments, threatened him with the closing of the plant if the Union stayed in, promised him a better insurance plan, advancement with the Company, and a refund of all the money he had paid the Union if the Union lost its representative status, and, in context with all this, solicited Dickson to sign a decertification petition. In that regard Milhon told Dickson that he was going to "make a change as far as the Union is concerned" with or without his help. It is significant to note that Milhon accounted for the 2 months' delay in replying to the Union's request by stating he "was merely stalling to see what kind of a pattern was being established in the industry. . . ." I cannot find in the fact of all this conduct that Respondent's questioning of the Union's majority status on November 16 was made in good faith. Surely even if Dickson had firmly and unequivocally advised Respondent that he did not want the Union to represent him, as he did not do, under these circumstances Respondent could not be held to have lawfully raised the question of the Union's majority. Moreover Respondent knew by virtue of the checkoff authorizations that both Dickson and Farmer were union members on November 16. It is clear that Respondent's failure to reply to the Union's letter of September 14 until November 16 was to gain time to undermine the Union's majority by the illegal methods set forth above. Respondent's purpose of undermining the Union is also shown by its conduct subsequent to its November 16 letter. It will be recalled that Respondent thereafter at the December 7 meeting bargained directly or at least sought to do so with its employees in an effort to rid itself of the Union by offering them wage increases and health, life, and disability insurance at no cost to them coupled again with threats to close the plant if the Union remained bargaining representative of the employees. Respondent's conduct in dealing directly with its employees on December 7 and its efforts to obtain their defection from the Union violated not only Section 8(a)(1) of the Act, as found above, but also violated Section 8(a)(5) of the Act. Cf. *Orange Premium Stamps (Division of Alfred M. Lewis, Inc)*, 127 NLRB 1491, 1501. I therefore find under all the circumstances that Respondent has since November 16 and thereafter refused to bargain collectively with the Union in violation of Section 8(a)(5) and (1) 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 certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action, which I find necessary to effectuate the policies of the Act.

Having found that the Respondent engaged in unfair labor practices by refusing on November 16, 1964, and at all times thereafter, to bargain with the Union as the exclusive representative of its employees in an appropriate unit, I shall recommend that the Respondent cease and desist therefrom, and, upon request, bargain collectively with the Union and, if an understanding is reached, embody such understanding in a signed agreement.

The unfair labor practices found to have been engaged in by Respondent are of such a character and scope that in order to insure the employees here involved their full rights guaranteed by the Act, I shall recommend that the Respondent cease and desist from in any manner infringing upon the rights of its employees guaranteed in Section 7 of the Act.

³⁰ Milhon admitted that Respondent has consistently refused to bargain with the Union

Upon the basis of the above findings of fact and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. MacCollum Paper Co. Inc., is engaged in commerce within the meaning of Section 2(6) and (7) of the Act

2. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 135 is a labor organization as defined in Section 2(5) of the Act

3. All warehousemen, truckdrivers, order fillers, porters, packers, wrappers, and cutting machine operators at the Respondent's Indianapolis, Indiana, plant, exclusive of all office clerical employees, guards, professional employees, and supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since September 24, 1964, the Union has been and now is the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act

5. By refusing, since on or about November 16, 1964, and at all times thereafter, to bargain collectively with the Union as the exclusive representative of the employees in the aforesaid appropriate unit, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a) (5) and (1) of the Act.

6. By interfering with, restraining, and coercing employees in the exercise of their rights under the Act, Respondent has engaged in unfair labor practices within the meaning of Section 8(a) (1) of the Act.

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

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, I recommend that Respondent, MacCollum Paper Co., Inc., Indianapolis, Indiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning wages, rates of pay, hours of employment, or other conditions of employment with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 135, as the exclusive representative of all its employees in the following appropriate unit:

All warehousemen, truckdrivers, order fillers, porters, packers, wrappers, and cutting machine operators at the Respondent's Indianapolis, Indiana, plant, excluding all office clerical employees, guards, professional employees, and supervisors as defined in the Act.

(b) Interrogating employees concerning their union membership, activities, or sympathies in a manner constituting interference, restraint, or coercion within the meaning of Section 8(a) (1) of the Act

(c) Threatening its employees with closing the plant if the Union remained as their collective-bargaining representative; soliciting its employees to sign decertification petitions; promising its employees better insurance programs, the refund of union dues; advancement with the Respondent; and other benefits if they would refrain from supporting the Union; and bargaining directly with its employees by offering them wage raises and health, life, and disability insurance benefits if they would refrain from supporting the Union.

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

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

(a) Upon request, bargain collectively concerning wages, rates of pay, hours of employment, and other conditions of employment with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 135, as the exclusive representative of all employees in the above-described unit, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its plant in Indianapolis, Indiana, copies of the attached notice marked "Appendix"³¹ Copies of said notice, to be furnished by the Regional Director for

³¹ If this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. 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"

Region 35, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and be maintained by it 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 by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the said Regional Director, in writing, within 20 days from the date of the receipt of this Trial Examiner's Decision, what steps the Respondent has taken to comply herewith.³²

It is further recommended that unless on or before 20 days from the date of the receipt of this Trial Examiner's Decision, the Respondent notifies the said Regional Director, in writing, that it will comply with the above Recommended Order, the National Labor Relations Board issue an Order requiring it to take such action.

³²In the event that this Recommended Order is 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 National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL, upon request, bargain with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 135, as the exclusive representative of all the employees in the bargaining unit described below with respect to wages, rates of pay, hours of employment, and other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All warehousemen, truckdrivers, order fillers, parters, packers, wrappers, and cutting machine operators at Respondent's Indianapolis, Indiana, plant, excluding all office clerical employees, guards, professional employees, and supervisors as defined in the Act.

WE WILL NOT interrogate our employees concerning their union membership, activities, or sympathies in a manner constituting interference, restraint, or coercion within the meaning of Section 8(a) (1) of the Act.

WE WILL NOT threaten our employees with closing the plant if the Union remains as their collective-bargaining representative; solicit our employees to sign decertification petitions; promise our employees better insurance programs, the refund of union dues, advancement with the Respondent, and other benefits if they refrain from supporting the Union; or bargain directly with our employees by offering them wage raises and health, life, and disability insurance benefits if they refrain from supporting the Union.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed to them in Section 7 of the Act.

All our employees are free to become or remain, or to refrain from becoming or remaining, members of the above-named Union or any other union.

MACCOLLUM PAPER CO., 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.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 614 ISTA Center, 150 West Market Street, Indianapolis, Indiana, Telephone No. Melrose 3-8921.