

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

NEW STAR MARKETS, INC.,  
Employer.

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

NOTE.—We will notify the above-named employee if presently serving in the Armed Forces of the United States of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, after discharge from the Armed Forces.

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 849 South Broadway, Los Angeles, California, Telephone No. 688-5204.

**American Sanitary Products Co.,<sup>1</sup> d/b/a American School Supply Company and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 905.** *Case No. 27-CA-1790. March 8, 1966*

### DECISION AND ORDER

On November 26, 1965, Trial Examiner E. Don Wilson issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging 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. Thereafter, the Respondent and the General Counsel filed cross-exceptions to the Trial Examiner's Decision and supporting briefs and the Respondent filed an answering brief to the General Counsel's cross-exceptions.

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 [Chairman McCulloch and Members Brown 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 the briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following modifications and additions.

We find, in agreement with the Trial Examiner, that the Respondent violated Section 8(a) (1), (3), and (5) of the Act by engaging in the

<sup>1</sup>The name of the Respondent appears as amended at the hearing.

conduct described more fully in the Trial Examiner's Decision. The General Counsel excepts to the failure of the Trial Examiner to find that the Respondent further violated Section 8(a)(5) of the Act by affording employees an opportunity to be paid weekly rather than every other week, by establishing an employee suggestion award program, and by granting employees an additional holiday, all without consulting with the Union. We find merit in these exceptions.

As described more fully in the Trial Examiner's Decision, on March 12, 1965, the Union, which was the designated representative of the Respondent's employees in an appropriate unit, demanded recognition. The Respondent, by letter on March 15, informed the Union that it would not meet with it. On March 16, the Respondent's president, Kamm, announced to employees that they had the option to change their payday from every other Monday to every Friday. Most employees took advantage of the option. The Respondent, on March 18, announced that it was adopting an employee suggestion program under which employees would be paid for suggestions and, on March 24, it announced that retroactive to the first of the year each employee would have his birthday as a paid holiday. These changes in terms and conditions of employment had not been announced, or promised, to employees prior to the advent of the Union. They were instituted by the Respondent without prior notice to or consultation with the Union. In view of the foregoing and the record as a whole, we find that the Respondent also violated Section 8(a)(5) by instituting these changes in working conditions without prior notice to or consultation with the collective-bargaining representative of its employees.<sup>2</sup>

#### CONCLUSIONS OF LAW

Upon the basis of the foregoing and the entire record in the case, we hereby substitute the following conclusions of law numbered 6 and 7 for the Trial Examiner's conclusions of law numbered 6 and 7:

6. By changing terms and conditions of employment of its employees without consulting with the Union and by refusing to bargain with the Union as the exclusive bargaining representative of its employees in the above-described appropriate bargaining unit, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

<sup>2</sup> *Crown Tar and Chemical Works, Inc.*, 154 NLRB 562; *Automotive Supply Co., Inc.*, 119 NLRB 1074, 1094; cf. *T. L. Lay Packing Company*, 152 NLRB 342

In view of our findings that the Respondent violated Section 8(a)(1) of the Act in numerous respects, we find it unnecessary, since it would not affect the remedy in this case, to decide whether the Respondent also violated Section 8(a)(1) by instituting an employee suggestion program and an additional holiday because of the advent of the Union.

7. By telling employees to withdraw from the Union, changing employees' pay periods, interrogations, threats, and promises, the Respondent interfered with, restrained, and coerced employees and committed unfair labor practices within the meaning of Section 8(a)(1) of the Act.

[The Board adopted the Trial Examiner's Recommended Order, with the following modifications:

[1. Substitute the following for paragraphs 1(a) and (c) :

["(a) Interrogating, changing any term or condition of employment, threatening, or making promises to its employees to discourage their membership in, sympathies for, or other concerted activities on behalf of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 905, or any other union."

["(c) Changing terms and conditions of employment of its employees without consulting with the above-named Union, or refusing to bargain collectively with the above-named Union as the exclusive bargaining representative of its employees in the following appropriate unit: All employees employed at the Respondent's Denver, Colorado, warehouse; excluding office clerical employees, salesmen, guards, professional employees, and supervisors as defined in the National Labor Relations Act, as amended, and all other employees represented by other labor organizations."

[2. Substitute the following for paragraph 2(b) :

["(b) Upon request, recognize and bargain collectively with the above-named Union, as the exclusive representative of the employees in the above-described appropriate unit, and embody in a signed agreement any understanding reached."

[3. Substitute the following paragraphs for the third, fourth, and fifth paragraphs of the notice :

WE WILL NOT change terms and conditions of employment of our employees without consulting with the above-named Union, or refuse to bargain collectively with the above-named Union as the exclusive bargaining representative of our employees in the following appropriate unit: All employees employed at our Denver, Colorado, warehouse; excluding office clerical employees, salesmen, guards, professional employees, and supervisors as defined in the National Labor Relations Act, as amended, and all other employees represented by other labor organizations.

WE WILL NOT in any other manner interfere with our employees in exercising their rights to join or assist, or to refrain from join-

ing or assisting any union, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as authorized by Section 8(a)(3) of the Act, as amended.

[4. Add the following to the last paragraph of the notice:

["and embody in a signed agreement any understanding reached."]

### TRIAL EXAMINER'S DECISION

#### STATEMENT OF THE CASE

Upon a charge filed on March 26, 1965,<sup>1</sup> and amended March 30, by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 905, herein called the Union, the General Counsel of the National Labor Relations Board, herein called the Board, issued a complaint dated May 7, alleging that American Sanitary Products Co., d/b/a American School Supply Company,<sup>2</sup> herein called Respondent, had violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act, herein called the Act.

Pursuant to due notice a hearing in the matter was held before Trial Examiner E. Don Wilson, at Denver, Colorado, on June 8 and 9. The parties fully participated. General Counsel's and Respondent's briefs have been received and considered.

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

#### FINDINGS OF FACT

##### I. RESPONDENT'S BUSINESS

At all material times, Respondent has been a Colorado corporation. It has maintained its principal office and place of business in Denver, Colorado, and has there been engaged in the wholesale distribution and sale of school and janitorial supplies in Colorado and other States of the United States. Its warehouse in Denver is involved in this proceeding.

In conducting its business, Respondent annually purchases, and causes to be shipped, directly from outside Colorado and into Colorado, goods and materials valued in excess of \$50,000. It is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

##### II. THE LABOR ORGANIZATION

The Union is and at all material times has been a labor organization within the meaning of the Act.

##### III. THE UNFAIR LABOR PRACTICES

###### A. *The issues*

Did Respondent illegally interrogate its employees and threaten them with discontinuance of bonuses; threaten them with reduction in work force; unilaterally change employees' payday; promise improved working conditions; unilaterally afford benefits for employees' suggestions; unilaterally grant employees their birthdays as paid holidays; promise benefits for rejection of the Union; condition bargaining with the employees as distinct from the Union upon the employees' rejection before the Board, not in an election, of the Union's authority to represent them; discharge Ernest Tafoya about April 21; discharge Francisco Salazar about March 13; and since on or about March 15, has Respondent unlawfully refused to bargain with the Union?

###### B. *The Union's majority and request and Respondent's refusal to bargain*

Employee Ernest Tafoya contacted Fred T. Jones, organizer for the Joint Council of Teamsters, with which the Union is affiliated, about March 9. On March 11, 8 of the 14 employees in the unit to be found appropriate attended a union meeting. They were told that the cards they then signed "were for the purpose of authorizing the Union to represent them and if we had them signed in a majority we would call on the Employer [Respondent and] offer the cards as evidence of our majority

<sup>1</sup> Hereinafter all dates refer to the year 1965 unless otherwise stated.

<sup>2</sup> As amended at the hearing.

status." These findings are based on the credited testimony of Fred T. Jones, who further credibly testified that he told the eight signers that if the employees would sign cards in a substantial majority the Union would demand recognition. On the next day two more employees in the unit signed cards authorizing the Union to represent them. The cards signed by all these employees unequivocally authorized the Union to represent the signers as collective-bargaining agent. The signers were not told there would be an election, but were told recognition would be demanded on the basis of a majority as evidenced by the cards.

On March 12, the Union forwarded to Respondent copies of the authorization cards signed by 10 of the 14 employees in the appropriate unit and demanded recognition as follows:

Gentlemen: This is to advise your Company that the undersigned Labor Union has been authorized by a majority of "All employees employed at 2301 Blake Street, Denver, Colorado; excluding office clerical employees, salesmen, guards, professional employees and supervisors as defined in the Act and all other employees presently being represented by other Labor Organizations", to represent them on all matters pertaining to their wages, hours of work and other terms and conditions of employment.

This is also to advise your Company that we are in a position to prove that we represent the above described unit of employees.

Further, as the bargaining agent for said employees, we request that your Company meet with us for the purpose of negotiating the terms of a labor agreement covering their wages, hours of work and other terms and conditions of employment.

Therefore, we request that the meeting be held at 10:00 A.M., on March 16, 1965, in our office, located at 3245 Eliot Street, Denver, Colorado.

Sincerely yours,

On the afternoon of March 12, the union representatives called at Respondent's offices and to no avail asked to see representatives of Respondent. They left a copy of the March 12 request for recognition with the receptionist asking her to deliver it to Respondent's president, Malcolm Kamm and Respondent's secretary-treasurer, Leo Burwick.

On March 15, Respondent refused to bargain with Union as set forth in the following letter:

Dear Sir: This letter is in response to yours dated March 12, 1965. Please be advised that in regards to your request "that we meet with you to discuss the terms of a Labor Agreement" we feel that we have nothing in common to discuss. We further feel that you have mis-represented your case to the people employed by our firm. Also, please be advised, we will take steps to prove this.

Therefore, Please [sic] be further advised that we will not meet with you as per your request.

Respectfully yours,

#### C. *The appropriate unit*

The answer admits and I find that: All the employees employed by the Respondent at its warehouse located in Denver, Colorado, excluding office clerical employees, salesmen, guards, professional employees, and supervisors as defined in the Act, and all other employees represented by other labor organizations constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

#### D. *Interference, restraint, and coercion*

On March 15, the same day Kamm signed his letter refusing to bargain, Kamm called employee Ben Johnson, into his office. Oscar Luedemann, Respondent's credit manager and paymaster was present.<sup>3</sup> Kamm told Johnson he had been called into the office because he had signed a union card. Johnson admitted that he had but added the card meant nothing "if it comes to an election, I can still vote either way." Kamm told Johnson the employees couldn't win with Local 905 and he wouldn't argue with them if it had been any other local. Kamm told Johnson he had made \$6,100 the previous year and he doubted Johnson could make as much with a union. Johnson pointed out that the \$6,100 included a \$600 bonus check. Kamm replied that there would be no more bonus checks if the Union appeared in the shop.

<sup>3</sup> My findings as to what transpired at this meeting are based upon the credited testimony of Johnson whose demeanor impressed me favorably.

Kamm asked Johnson what gripes he had. Johnson narrated them. Kamm replied that he was going to hire a public relations man and see that the employees were taken care of. He assured Johnson that relations would improve. Johnson told Kamm he signed the card but it meant nothing if it came to an election. Kamm told Johnson that if the Union came in there would be no more overtime. Kamm admittedly told Johnson that Respondent would not be obligated to keep people on in dull seasons, as it had in the past, should the Union come in.

Also, on March 15, employee Nicholas Medrano<sup>4</sup> was twice called into Kamm's office. In the first conversation a Mr. Harvey<sup>5</sup> was present. Kamm told Medrano that Local 905 was not "the right union." Kamm said Medrano could not win with a laundry union, implying Respondent could not do business with such a union. Kamm stated his lawyers had informed him that the Union could not represent Medrano. He told Medrano he would fight the Union and take it to court. He asserted he would file unfair labor practice charges against the Union. In the presence of Kamm, Harvey asked Medrano, who "was sort of scared," what he hoped to gain by joining the Union. Medrano recited some complaints. About an hour later, Medrano was again called into Kamm's office. After he was there a short time Mr. Luedemann joined them. Luedemann reviewed with Medrano previous earnings. After some discussion Medrano pointed out that he had been paid only \$60 per week for the previous 2 weeks and inquired if Respondent believed he could live on that. Kamm said that things would be better and a public relations man would be hired and "things will change around here." Medrano was told Respondent would try to do better. Luedemann, in his testimony admitted that Kamm told Medrano overtime "would probably be eliminated if they joined the union . . ."

On the next day, the day after he refused to bargain, Kamm called employee George E. Gibson into his office. After Gibson arrived, Sales Manager Cy Marks joined Gibson and Kamm. Gibson credibly testified that Kamm asked him why he wanted to join the Union, adding that he could. When Gibson replied he was not making enough money to care for his family, Kamm said Respondent could get by with two rather than three men in the wintertime and implied that if Gibson were let go in the winter Respondent was not required to rehire him in the summer. Marks testified that Kamm asked Gibson if he thought he'd gain any of the advantages he was talking about, through union membership. Further, testified Marks, Kamm inquired of Gibson what guarantees the Union offered with respect to full employment. The meeting with Gibson and the meeting with Schmidt, to be hereinafter discussed, each lasted about 30 to 45 minutes.

Herman R. Schmidt, Jr., credibly testified that on March 17, 2 days after Respondent refused to recognize the Union, Kamm called him into his office, Marks being present. After advising Schmidt he knew Schmidt had signed a card, Kamm stated the Union was illegal. Kamm asked him if he had been at a union meeting, Schmidt replying in the negative and giving an explanation. Kamm said Respondent would try to improve working conditions. Kamm asked Schmidt, who was a stock clerk, how he would like to be a truckdriver.<sup>6</sup>

In making findings with respect to Kamm's dealings with Johnson, Medrano, Gibson, and Schmidt, I have considered, of course, the testimony of Kamm, Luedemann, and Marks. I find that in their testimony with respect to these conversations, the latter three were not candid and no one of them gave a straightforward account of what was said. I do not credit their testimony in these instances where it may disagree with that of Johnson, Medrano, Gibson, or Schmidt. The latter four were honest witnesses.

On March 16, Kamm announced to the employees in the unit that instead of being paid every 2 weeks as had been the custom, they would be paid every Friday as the employees wanted. He gave them the option of being paid as they had in the past or accepting the new proposal. All but two employees accepted the new proposal of being paid every week. I am entirely unimpressed by Respondent's defense that this was done to eliminate bookkeeping costs arising out of pay advances, etc. Testimony in support of such reason appears to me to be confused and contrived. I find such was not the reason for the new benefits. The change in pay periods was designed to influence and interfere with the employees in their free choice of union representation, the employees' choice in this regard having been made plain to Respondent on the preceding day.

<sup>4</sup> The findings in this paragraph are based upon the credited testimony of Medrano.

<sup>5</sup> A salesman.

<sup>6</sup> Presumably a truckdriver would be paid more money.

On March 18, Respondent with no notice to the Union established an employee suggestion program wherein an employee could receive financial benefit for a suggestion. About a week later, Respondent provided employees with their birthdays off with pay, retroactive to the first of the year. I find there is insufficient probative evidence that the birthday off and the suggestion program were provided by Respondent for an improper reason. These programs had been decided upon some months prior to the advent of the Union and were initiated according to a nondiscriminatory plan upon receipt of a favorable auditor's report a short time prior to the announcement of the benefits.

In April the employees became restive of waiting for the Union to accomplish their purposes, and Johnson and Gibson met with Kamm, making a proposal for wage increases. Johnson credibly testified that Kamm said he couldn't talk to them as long as they were in the Union "and we'd have to come up to the Labor Board and withdraw from the union first." As Gibson credibly put it, they would have to "back out of the Union." I find nothing unlawful in Respondent's refusal to bargain directly with his employees who are represented by the Union, but I am convinced Respondent violated Section 8(a)(5) and (1) of the Act when he implied to employees that he would bargain with them directly if they would repudiate the Union they had chosen and more particularly violated Section 8(a)(1) of the Act when he told them they should withdraw from the Union. I have considered Kamm's testimony that he told the employees to take their proposals to the Board because he did not think he could discuss the matter unless the Union had no further interest in it. I have considered his denial that he specifically told the employees to get out of the Union. Considering his demeanor, and that of Johnson and Gibson, I do not credit his testimony in this regard.

#### E. Their discharges

##### 1. Ernest Tafoya

Tafoya began his employment with Respondent in September 1960. He was terminated by Respondent on March 26, 1965. He has since been rehired. He was a truckdriver, except that for the last week of his employment he worked in the warehouse. He had gone to the Union's office on March 9 to find out how he and his fellow employees could join the Union. He was the union leader in the shop. He and Jones arranged for a union meeting among the union representatives and at least eight employees. That meeting is the one which occurred on March 11, when eight employees signed authorization cards. Tafoya brought into the Union the two additional authorization cards. Tafoya was the employee who advised the others that there would be a union meeting. It was common knowledge that Tafoya was active in organizing for the Union, at least among the employees. Tafoya was the employee spokesman in behalf of unionization and told his fellow employees what privileges they could obtain through joining the Union. Fred C. Hatcher, Respondent's foreman of the warehouse, testified that during the years he had been foreman the employees included him in their conversations but they became quiet when they discussed union organization. Respondent gave preference in employment to employees who had seniority. Of the four to six truckdrivers, Tafoya ranked second in seniority. Hatcher had spoken to all the employees about their asking to join the Union by the time Tafoya was discharged. As Hatcher put it, Tafoya was "a good employee."<sup>7</sup>

Respondent concedes that Tafoya was the employee instrumental in bringing the Union into this small plant. Respondent urges that there is insufficient evidence that it had knowledge of such activity when it discharged Tafoya. I find that in the circumstances of this case, including the "small plant," concentrated union activity through Tafoya's leadership, Hatcher's general awareness of employees' activities, Respondent's intense interrogations of various employees indicating that it was maintaining an open and anxious ear to all union activities, and the specious nature of the alleged reasons for Tafoya's discharge, Respondent had knowledge of Tafoya's union leadership activities and discharged him because of them. Respondent has argued that it had economic reason for terminating one truckdriver. It properly asserts Tafoya was attending an autobody school. I do not credit Hatcher's testimony or its implications that Tafoya announced on various occasions that he *soon* would quit his employment to obtain better employment in autobody work. Lopez replaced Tafoya but simultaneously Medrano was advising Hatcher that Lopez intended to

<sup>7</sup> Hatcher testified that Toby Lopez who took over Tafoya's work was also a good employee. Lopez had signed an authorization card.

quit and work for the county and city of Denver. Bearing in mind that Tafoya was a "good" employee there is no proper explanation from Respondent as to why Kamm, when he discharged Tafoya, told him only that they had started "a package delivery" service. Neither Hatcher nor Kamm asked Tafoya "when" he intended to quit. Although Hatcher had heard rumors that Lopez intended to quit, he never asked him "when." I do not credit the reasons advanced by Respondent for the termination of Tafoya. I find that with knowledge of Tafoya's leading role in the union activities to which it was militantly opposed, Respondent discharged Tafoya because he was the leader. That Respondent offered pretextual reasons for this discharge supports my finding in this regard.

## 2. Francisco Salazar

Salazar had been employed by Respondent from 1960 until February 1964, when he quit. Early in 1965 he was rehired on a part-time basis. There came a time that he began using a timecard. I find insufficient credible evidence that he was, in 1965, a full-time employee. He was terminated, according to Salazar, on March 19.<sup>8</sup> The credible evidence reveals that the services of Salazar were not utilized after March 19, because there was no work available for his ability. He had begun using a timecard only for the reason that Respondent found this necessary for the maintenance of proper records. General Counsel contends that discrimination as to Salazar is evidenced by the fact that an employee named Palamino was hired and retained to do the work Salazar had done. There is no merit to this contention. Salazar had filled orders only for janitorial supplies. Palamino was hired to fill orders for school supplies. Respondent did not, according to credited testimony, consider Salazar able to fill school orders which were much more complex than janitorial orders. I reject, out of hand, General Counsel's argument that Palamino could not have been more qualified than Salazar because "he only had an eleventh grade education with no previous stock experience." I am satisfied that an 11th grade education has qualified persons for positions more demanding than that assigned to Palamino. General Counsel also contends that on the Monday following Salazar's discharge Salazar observed a new employee doing warehouse work. Credited evidence shows only that new men were hired for a few days to perform work for a different department, under different supervision, and on a different pay basis. None of them replaced Salazar. I find insufficient credible evidence that Respondent discriminated against Salazar.

## F. Concluding findings

General Counsel has established by a preponderance of the substantial evidence that in violation of Section 8(a)(1) of the Act Respondent, simultaneously with and after the Union's demand for recognition and after its refusal to bargain, interrogated its employees concerning their union activities, threatened them with discontinuance of bonuses, threatened a reduction in the work force, changed the employees' payday, promised improved working conditions through employment of a public relations counselor and otherwise, promised benefits to employees if they should reject the Union, conditioned bargaining with employees absent the Union upon the employees advising the Board that they rejected the Union, and told employees to advise the Board that they rejected the Union.

General Counsel has established by a preponderance of the substantial evidence that Respondent violated Section 8(a)(3) and (1) of the Act by discharging Tafoya on or about April 21. Respondent, by its threats, promises, and unlawful interrogations made plain its antipathy to union activities. I have found it knew of Tafoya's leadership in these activities. This good employee with almost 4 years seniority was not discharged for the pretextual reasons advanced by Respondent but rather was selected for discharge because of his union leadership. The pretextual reasons advanced by Respondent for Tafoya's discharge confirm my finding of unlawful discharge.

General Counsel has established by a preponderance of the substantial evidence that since March 15, Respondent has failed and refused to bargain with the Union as the majority representative of Respondent's employees in an appropriate unit. I find no merit to Respondent's claim that it had a good-faith doubt as to the union majority status. Respondent on or about March 15 had copies of authorization cards signed by 10 of 14 employees. They unequivocally authorized the Union to bargain for them. Respondent had every opportunity to check the signatures with its records. I have considered the testimony of Kamm, Luedemann, Johnson, and

<sup>8</sup> He was offered reinstatement at least by April 29 and perhaps as early as April 23.

Medrano. I find that Johnson and Medrano, at most, told Kamm they could vote freely in an election should one take place. I do not credit testimony implying that Johnson or Medrano repudiated their cards as evidence of their choice of the Union as their representative. Simultaneously with and after receipt of the Union's proof of majority and request for bargaining Respondent interrogated, threatened, and promised benefits to a substantial number of its employees. Respondent thus made clear while it was refusing to bargain with the Union that it repudiated the principles of collective bargaining and it simultaneously demonstrated that it was endeavoring to gain time so as to destroy the Union's majority status. Among its many acts of interference, restraint, and coercion, I have considered the unlawful discharge of Tafoya. Respondent was in bad faith when it refused and continued to refuse to bargain with the Union.

There is insufficient probative evidence to find that Respondent violated the Act by affording benefits for employees' suggestions or by pay for employees' birthdays as holidays. There is insufficient evidence that these acts of Respondent were conditioned upon union activity or the absence thereof. They were occasioned by proper economic motives.

I find insufficient probative evidence that the services of Salazar were discontinued for any reason other than lack of work suitable to his abilities on March 19.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

Respondent's activities as set forth in section III, above, occurring in connection with the operations of Respondent set forth 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.

#### V. THE REMEDY

Having found that Respondent has engaged in unfair labor practices violative of Section 8(a)(1), (3), and (5) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policy of the Act.

To remedy the discharge of Tafoya who has been rehired, Respondent will be required to make him whole for any loss of pay he may have suffered by reason of the discrimination against him in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289, with interest computed in the manner described in *Isis Plumbing & Heating Co.*, 138 NLRB 716.

It has been found that the Union represented a majority of Respondent's employees in an appropriate unit and requested recognition and bargaining, the same being unlawfully refused. I shall recommend that Respondent bargain, upon request, with the Union and, if an understanding is reached, embody such understanding in a signed agreement.

Respondent's unfair labor practices strike at the heart of rights guaranteed employees by the Act. Unless appropriately restrained, there is reasonable ground to anticipate that Respondent, in the future, will infringe upon other rights guaranteed to employees. I shall, therefore, recommend an order requiring Respondent to cease and desist from infringing in any manner upon the rights guaranteed employees 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. Respondent is an employer within the meaning of the Act.
2. The Union is a labor organization within the meaning of the Act.
3. By discharging Tafoya because of his union activities, Respondent violated Section 8(a)(3) and (1) of the Act.
4. All employees employed by Respondent at its warehouse located in Denver, Colorado, excluding office clerical employees, salesmen, guards, professional employees, and supervisors as defined in the Act, and all other employees represented by other labor organizations constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.
5. The Union has been at all times since on or about March 11, and now is, the exclusive bargaining representative of the employees in the above described unit within the meaning of Section 9(a) of the Act.

6. Since March 15, by refusing to bargain collectively with the Union as the exclusive bargaining representative of the employees in the aforesaid unit, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

7. By interrogation, threats, and promises addressed to employees, Respondent interfered with, restrained, and coerced employees and committed unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

### RECOMMENDED ORDER

Upon the foregoing findings of fact and conclusions of law, and upon the entire record herein, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, I recommend that Respondent, its agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating, threatening, or making promises to its employees with respect to their membership in, sympathies for, or other concerted activities on behalf of any labor organization.

(b) Discouraging membership in the Union or any other labor organization, by discharging or in any other manner discriminating against its employees, except as authorized by Section 8(a)(3) of the Act.

(c) Refusing to bargain collectively, upon request, with the Union as the exclusive bargaining representative of its employees in the above-described unit.

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to join or assist the Union or any other labor organization or otherwise engage in activities protected by the Act.

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

(a) Make Tafoya whole in the manner set forth in the section of this decision entitled "The Remedy" for any loss of earnings by reason of Respondent's discrimination against him.

(b) Bargain collectively, upon request, with the Union as the exclusive bargaining representative of its employees in the above-described unit.

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

(d) Post at its Denver, Colorado, warehouse, copies of the attached notice marked as "Appendix."<sup>9</sup> Copies of said notice, to be furnished by the Regional Director for Region 27, shall, after being signed by Respondent's authorized representative, be posted by it immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by any other material.

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

<sup>9</sup> In the event 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 is adopted by the Board, paragraph 2(e) hereof shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps 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, as amended, we hereby notify our employees that:

WE WILL NOT question, threaten, or make promises to our employees in connection with their membership in or sympathies for or other activities in behalf

of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 905, or any other union.

WE WILL NOT terminate or in any other way discriminate against any of our employees because of their activities in International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 905, or any other union, or because of other protected concerted activities.

WE WILL NOT refuse to bargain upon request with the above named Union as the exclusive bargaining representative of our employees in the unit described below:

The following is the appropriate unit of which International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 905, is the representative:

All employees we employ at our warehouse located in Denver, Colorado, excluding office clerical employees, salesmen, guards, professional employees, and supervisors as defined in the National Labor Relations Act, and all other employees represented by other labor organizations.

WE WILL NOT in any manner interfere with our employees in their exercising rights to join or assist or to refrain from joining or assisting any union.

WE WILL pay Ernest Tafoya for the wages he lost because of his discharge.

WE WILL bargain collectively, upon request with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 905, as the bargaining representative of our employees in the above-described unit.

AMERICAN SANITARY PRODUCTS CO., D/B/A AMERICAN  
SCHOOL SUPPLY 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, 609 Railway Exchange Building, 17th & Champa Streets, Denver, Colorado, Telephone No. 297-3551.

**International Die Sinkers' Conference, Milwaukee Lodge No. 140  
and Ladish Co. and American Federation of Technical Engineers,  
Local 92, AFL-CIO.<sup>1</sup> Case No. 30-CD-3. March 8, 1966**

### DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed on August 17, 1965, by Ladish Co., herein called the Employer, alleging a violation of Section 8(b) (4) (ii) (D) by International Die Sinkers' Conference, Milwaukee Lodge No. 140, herein called IDSC. Pursuant to notice, a hearing was held at Milwaukee, Wisconsin, on October 7 and 8 and on October 26, 27, and 28, 1965, before Hearing Officer Michael O. Miller. All parties appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. The rulings of the Hearing Officer made at the hearing are free from prejudicial error and are hereby

<sup>1</sup> The name appears as amended at the hearing.