

pendent Unions, are entitled to perform the electrical work relating to the alteration of a portion of a building located at 337-341 Second Avenue, New York, New York, which is to be used as a supermarket.

2. Local 3, International Brotherhood of Electrical Workers, AFL-CIO, is not entitled, by means proscribed by Section 8(b)(4)(D) of the Act, to force or require Ladd Electric Corp., to assign the aforementioned work to a contractor employing its members.

3. Within 10 days from the date of this Decision and Determination of Dispute, Local 3, International Brotherhood of Electrical Workers, AFL-CIO, shall notify the Regional Director for Region 2, in writing, whether or not it will refrain from forcing or requiring Ladd Electric Corp., by means proscribed by Section 8(b)(4)(D), to assign the work in dispute to employees represented by Local 3 rather than those represented by Local 199.

American Coach Company and District 50, United Mine Workers of America, affiliate of United Mine Workers of America. *Case No. 17-CA-2749. April 26, 1966*

DECISION AND ORDER

On February 25, 1966, Trial Examiner Benjamin B. Lipton 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 cross-exceptions to 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 Fanning, 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 briefs, and the entire record in this proceeding, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

[The Board adopted the Trial Examiner's Recommended Order with the following modifications: Add the following paragraph 2(b),

the present paragraph 2(b) and those subsequent thereto being consecutively relettered:

[“(b) 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, as amended, after discharge from the Armed Forces.”]

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

Upon a complaint by the General Counsel,¹ a hearing in this proceeding was held on November 22, 1965, before Trial Examiner Benjamin B. Lipton in Newton, Kansas. The principal issues litigated are (1) whether Respondent promulgated certain rules against union solicitation and distribution of union literature on plant property, and (2) whether Respondent discharged employee John M. Zimmerman, for violating these plant rules, or for his activity on behalf of the Union, in violation of Section 8(a)(1) and (3) of the Act. At the hearing, all parties were represented and were afforded full opportunity to present relevant evidence. At the close, the General Counsel argued orally on the record in lieu of filing a brief. Respondent filed a brief which has been duly considered.²

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent, a Michigan corporation, with its principal office at Cassopolis, Michigan, maintains a plant at Newton, Kansas, where it is engaged in the manufacture and sale of mobile homes. Only the Newton plant is the subject of this proceeding. Respondent's Newton plant has a direct outflow in interstate commerce of merchandise valued in excess of \$50,000. It is admitted, and I find, that Respondent is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

District 50, United Mine Workers of America affiliate of United Mine Workers of America, herein called the Union, is a labor organization within the meaning of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The rules against solicitation and distribution*

On September 2, 1965, Respondent promulgated and distributed among its employees at the plant an “Employee Policy Manual” which indicated on its face that it applied to the Newton, Kansas Division, effective July 1, 1965.³ Under article XVI, the manual provided in pertinent part:

DISCIPLINE AND DISCHARGE

Employees are entitled to retain their jobs on the basis of good behavior, efficiency and honesty. Any employee who fails to meet the foregoing conditions may be discharged after receiving one written warning. However, any of the

¹ The charge by the Union was filed and served upon Respondent on September 8, 1965, and the complaint thereon was issued on October 15, 1965.

² Motions to correct the transcript, received from General Counsel and Respondent, are hereby granted, with the exception that Respondent's request to delete the words “part of” at transcript page 108, line 20, is denied, particularly as my notes taken at the hearing reflect exactly the version which appears in the record.

³ All dates are in 1965, unless otherwise specified.

following, by way of example, shall be considered grounds for immediate dismissal:

18. Distribution of unauthorized literature on Company property.

19. Solicitation of other employees for any unauthorized cause on Company property.

It is also understood that there are other conditions which will justify discharge and the Company will judge any offense in light of the actual happening.

On all of the facets of the issue presented, there is abundant authority in Board and court decisions definitively explicating the principles established. Thus, it is settled that broad company rules which prohibit solicitation *during nonworking time*, or distribution of union literature *during nonworking time* in *nonworking areas* are unlawful, unless it is shown that "special circumstances" make the prohibitory rule necessary to maintain production or discipline.⁴

Here, while not specified, it is plain that rules 18 and 19 above, include within their broad compass *union* solicitation on nonworking time and distribution of *union* literature on nonworking time in nonworking areas.⁵ The condition inserted in these rules that permission in advance may be obtained to engage in such solicitation and distribution does not provide Respondent with a justification or defense. Respondent's assumption is erroneous that it can predicate upon its own authorization the employees' exercise of their right under Section 7 to self-organization.⁶

Finally, Respondent sought to establish that "special circumstances" existed to validate rules 18 and 19. J. David Sullivan testified that he is the corporate secretary and general counsel of Detroit Mobile Homes, which he described as the "parent company owning all of the outstanding issued stock" of Respondent since November 8, 1963. Sullivan's evidence was in substance as follows: In 1965, when Detroit Mobile Homes consisted of a single plant at Alma, Michigan, a notice to the employees was posted under his instruction, *viz*:

THIS IS TO ADVISE THAT NO SOLICITING WILL BE ALLOWED IN THE FACTORY OR ON COMPANY PROPERTY UNLESS APPROVAL HAS FIRST BEEN RECEIVED FROM THE GENERAL SUPERINTENDENT, MR. GEORGE ANDERSON, OR AN OFFICER OF THE COMPANY. ANYONE ABUSING THIS PRIVILEGE IS SUBJECT TO DISMISSAL.

He said the rule was put into effect because, with some 150 employees at that plant, "they were always coming to work with tickets for church suppers, boy scouts, girl scouts, and they were causing so much a problem of loss of time on the line . . . that I had to stop them some way . . ." The same rule—"has been subsequently posted in each plant as we acquired them,"⁷—now comprising eight plants situated in several

⁴ *Walton Manufacturing Company*, 126 NLRB 697, enfd. 289 F. 2d 177 (C.A. 5); *Stoddard-Quirk Manufacturing Co.*, 138 NLRB 615 (lead cases).

⁵ *Southwire Company*, 145 NLRB 1329, enfd. as modified 352 F. 2d 346 (C.A. 5); *General Industries Electronics Company*, 138 NLRB 1371.

⁶ E.g., *J. R. Stplot Company Food Processing Division*, 137 NLRB 1552; *Remington Rand Corporation*, 141 NLRB 1052; *Phillips Manufacturing Company*, 155 NLRB 512. And see, where such rules, similarly worded, were declared unlawful: *Plant City Steel Corporation*, 138 NLRB 839, enfd. 331 F. 2d 511 (C.A. 5); *M & S Steel Co.*, 148 NLRB 789, enfd. 353 F. 2d 80 (C.A. 5); *Idaho Potato Processors*, 137 NLRB 910, enfd. 322 F. 2d 573 (C.A. 9); *Walton Mfg. Co.*, *supra*; *Stoddard-Quirk Mfg. Co.*, *supra*. Respondent's reliance upon *N.L.R.B. v. Shauvee Industries*, 333 F. 2d 221 (C.A. 10), reversing in part 140 NLRB 1451, is not well taken, as that case is distinguishable on its facts. Among other things, the court found that the rule there did not apply to *union* solicitations but, as explicitly worded and orally announced by that employer, to solicitation of "contributions." Further, it held there was no evidence that the rule was ever used to interfere with *union* or organizational activities. As shown *infra*, absence of such evidence is not a factor here.

⁷ However, as previously shown, rules 18 and 19 were not promulgated at Respondent's plant until September 2, 1965, although it was "acquired" by Detroit on November 8, 1963.

States.⁸ However, the rule was extended to all these plants—"regardless of whether or not there was any particular circumstances in the plant that necessitated such rule." More specifically, there were no particular circumstances that prompted the issuance of rules 18 and 19 at Respondent's plant here in question.⁹

Admittedly, there was no "special circumstances" at Respondent's plant to make necessary rules 18 and 19 in order properly to maintain production or discipline. Moreover, even assuming, as I would not find, that "special circumstances" existed in 1956 to warrant institution of the rule at the original Detroit plant, the policy of perfunctorily extending the rule, with no further evidence of need, to other plants newly acquired and widely scattered, would scarcely justify for the Act's purposes the promulgation of rules 18 and 19¹⁰ at Respondent's plant 9 years later.¹¹

Accordingly, it is found that Respondent violated Section 8(a)(1) of the Act by promulgating and maintaining at its plant rules 18 and 19, above described.

B. Discharge of Zimmerman¹²

1. His background

Zimmerman commenced employment with Respondent in February 1956 and was terminated on September 3, 1965. Latterly he worked as a material handler, and in 1964, his earnings were as much as \$3 an hour on a piecework system called the "coach rate." Prior to and in connection with the Board election in October 1964, in which the Union was defeated, he was clearly a principal, if not the chief organizer among the employees on behalf of the Union.¹³ After the election, union activity was quiescent until about July 1965, at which time Zimmerman renewed functions for the Union of the character he had performed in the past. On August 23, a union meeting was held at his house¹⁴ during which an organizing committee was set up and he undertook to advise the participants on procedures, distributing authorization cards, and encouraging employees to vote for the Union in the event of another election. As he testified, Zimmerman was "instructed" by Ken Stuckey "to go golfing with he and another supervisor and the plant superintendent that evening that we had the meeting scheduled for,"—but he declined. Ken Stuckey was his previous supervisor, in 1964,¹⁵ and during that time was aware of Zimmerman's affairs with the Union. The invitation was "highly unusual," as Zimmerman had never before or since been asked to play golf with a supervisor.

2. Incident leading to his discharge

On September 2, Zimmerman received his copy of the "Employee Policy Manual," took it home to study that evening, and made notes of certain differences and similarities from and with provisions in a labor contract which the Union recently consummated at a plant of Detroit Mobile Homes in Hutchinson, Kansas.¹⁶ Among other things, he found that the contract did not include rules 18 and 19 but reflected the other 18 items appearing in the manual under "Discipline and Discharge."

⁸ To Sullivan's knowledge, there was no union organizational activity in any of the plants owned by Detroit until 1962 or 1963; as of the hearing date, many of these plants were union organized. In October 1964, a Board election was conducted among Respondent's employees, in which the Union herein was unsuccessful.

⁹ Until the instant hearing, Sullivan had never been at Respondent's plant.

¹⁰ And note, moreover, that the rule in 1956 prohibited only solicitation, while rule 19 bans distribution.

¹¹ E.g., *N.L.R.B. v. United Aircraft Corp.*, 324 F. 2d 128 (C.A. 2), cert denied 367 U.S. 951; *Plant City Steel Corp.*, 331 F. 2d 511 (C.A. 5); *M & S Steel Co.*, 353 F. 2d 80 (C.A. 5).

¹² The facts are found and credited as related. However, there are no testimonial conflicts which are critical.

¹³ He and his brother in November 1963, were the first in the plant to join the Union. He worked in close conjunction with Union International Representative John C. Elam and, among other things, solicited employees to sign authorization cards at the plant, made home calls, and acted as the Union's observer at the election.

¹⁴ He had written letters and contacted employees at the plant inviting attendance, but only four specified employees attended, together with Union Agent Elam.

¹⁵ At the time of the meeting in August 1965, Ken Stuckey was a "layout man"

¹⁶ About 50 miles away.

The next day during the noon break, Zimmerman came over to a table at the north (shipping and receiving) dock where employees were having their lunch. At the lunch table were five "material handlers,"¹⁷ one mail room employee,¹⁸ and one Rudy Woelk, alleged to be a supervisor, whose office was close by. Zimmerman laid down the manual and said, "Look, fellows, what 40 'yes' votes got for us. We got part of Detroit's contract. Look what 107 'yes' votes could have gotten you,¹⁹ we might have gotten all of the contract." He also laid on the table seven union authorization cards, commenting: "For damned sure it wasn't the 'no' voters that got this for you." He proceeded to point out the comparisons he made between the manual and the contract.²⁰ Concerning rules 18 and 19 in the manual, he said—they could be used "to unauthorize communist literature," or they "could be used as a scare clause to scare the employees." Referring to the top hourly rate of \$2.25 provided in the manual for material handlers, he asked employees if they were getting this rate, and received negative replies. A general conversation followed regarding qualification for the top rate. In the course of the whole discussion, Zimmerman remarked in effect that if the employees had "held the Union like Detroit," they might have been able to keep the "coach rate."²¹ And he also suggested that—"the more we push this [i.e., the Union] the more we can get of this contract," and that "we might eventually get all of it." At the end of the lunch period, Woelk made a statement that "if the man wasn't satisfied here, he shouldn't stay and torment the other men." Zimmerman departed leaving the authorization cards on the table. Brown testified that he took "part of the cards." Affirmatively testified, there was no turmoil or disturbance in the behavior of the employees involved in the luncheon discussion.²²

3. The discharge interview

At 2:30 p.m., Woelk reported to Plant Superintendent Ernest W. Janzen that Zimmerman came to the lunch table of the material handling crew, threw down a copy of the manual and said, "Here's what you got," and then threw down a group of cards and said, "Here's what you could have got." Specifically pointing to rules 18 and 19, Zimmerman said that "the company can't enforce these rules, they're just a bluff." Woelk "didn't like to have John come over and get his crew all rowed up." Janzen testified that, after thinking about the matter for awhile, "I contracted Leroy Stuckey, who is John Zimmerman's supervisor, and I told Leroy to bring John in at 3:30, that I was going to terminate John, that I wanted him as a witness."²³

Zimmerman was accordingly brought in by Stuckey to Janzen's office. Taking Janzen's testimony, he related to Zimmerman certain details of Woelk's report,²⁴ and then told him that he "had brought a slander against the company, that he had disrupted the entire department, and that we held the policy manual to be of some value . . ." He read rules 18 and 19 to Zimmerman and said that, under the circumstances, he had no alternative but to terminate his employment. Zimmerman's testimony, to similar effect, specified that Janzen stated that he "also violated rules 18 and 19 under discipline and discharge, which are as plain as can be." After Zimmerman made some remarks, of irrelevant content here, Janzen repeated, "Nevertheless, by what you did this noon you violated rules 18 and 19." Stuckey thereupon added, "By passing those cards, and that." Janzen said, "Yes."²⁵

¹⁷ Lee Becker, Ross Van Rossun, Dale E. Brown, Warren Miller, and Joe Solls.

¹⁸ Pete Hartenburger.

¹⁹ Testified by Zimmerman as the total number of eligible voters in the Board election.

²⁰ Brown testified that all of Zimmerman's comments about the manual were not unfavorable.

²¹ Testimony of Van Rossun.

²² The foregoing is based essentially upon the testimony of Zimmerman, and that of Van Rossun and Brown substantially in corroboration. Woelk and the others at the lunch table were not called to testify in the proceeding.

²³ Janzen later testified that he certainly would not discharge one of Stuckey's men without having him, as the supervisor, present. Respondent denied the allegation in the complaint that Leroy Stuckey is a supervisor. Based upon the unmistakable admissions of Janzen, and upon Zimmerman's testimony, *inter alia*, that Stuckey gave orders to four employees in the department, assigned work, and granted requests for time off, I find that Stuckey is a supervisor.

²⁴ Under Stuckey's version, *inter alia*, Janzen charged Zimmerman with saying that the policy manual "stated some things just to scare the employees."

²⁵ Janzen and Stuckey could not "recall" such remarks.

In the general conversation which followed for several minutes,²⁶ Zimmerman argued that he did not understand how Janzen felt he had slandered the Company²⁷ just because he did not agree with everything in the manual. Eight days later, Zimmerman received in the same mailing envelope from Respondent his final check and a "Separation Notice,"²⁸ in which it is stated—"Discharged due to violation of company policy."

4. Concluding findings on discharge

The position of Respondent in its brief is that Zimmerman was discharged solely because he attacked and discredited the newly distributed policy manual, and thereby demoralized some of the employees; that Respondent had no knowledge of his union activities; and that he had not in fact engaged in solicitation or distribution at the time of the discharge. On the clear evidence, as described, I can find merit in none of these grounds advanced.

It is unquestionable that, on September 2, at the lunch table during nonworking time,²⁹ Zimmerman was discussing with his fellow employees matters which directly affected their wages and conditions of employment, as well as their rights under the Act. In the truest sense, these were protected activities under Section 7. To be sure, the protection afforded in the law may be forfeited by certain types of misconduct.³⁰ Such was clearly not the case here.³¹ Zimmerman's only remark of a conceivably disparaging vein was that the rules 18 and 19 "could be used as a scare clause to scare employees." These were rules, as already shown, which unlawfully restrained employees in their guaranteed organizational rights. But even if the rules were valid, Zimmerman's comments concerning them were patently in the interest of the employees' mutual aid or protection contemplated by the Act and well within the realm of freedom of expression.³² The actual evidence is to the contrary that Zimmerman caused any turmoil, disruption, or "demoralizing" of employees. Nor was there any reasonable basis for Plant Superintendent Janzen to believe that Zimmerman engaged in "slander" or serious discrediting of the Company.³³

Woelk was well aware of what transpired during the Zimmerman discussion at the lunch table on September 2. By conveying this information to Janzen, and Janzen adopting and acting upon the report, Woelk was at least an agent of Respondent regarding the actual events which took place during the incident.³⁴

Certainly within Respondent's knowledge, Zimmerman was *currently* engaged on September 2 in union activities—by passing authorization cards and soliciting sup-

²⁶ Stuckey left shortly before the conclusion of the interview, which had lasted about 15 minutes.

²⁷ Janzen testified that Zimmerman asked what he meant by "slander" and by "unauthorized literature," and Janzen said that "maybe slander wasn't the word to use," but he had "discredited" the Company; and unauthorized literature included anything which he had no permission to distribute.

²⁸ On a form of the Kansas Employment Security Division.

²⁹ Other than the general reference to rules 18 and 19, Respondent made no contention that Zimmerman's passing of union cards constituted distribution of the union literature, and that he was discharged for this reason. In any case, the particular area at the north dock, customarily used by employees for having their lunch at the tables provided, cannot be considered a work area within the meaning of *Stoddard-Quirk Mfg. Co., supra*. *Harold Miller, et al., d/b/a Miller Charles and Company*, 148 NLRB 1579, 1581.

³⁰ E.g., sit-down strikes, mutiny, strikes in violation of contract, violence on picket line.

³¹ Cf. *Local Union No. 1229, International Brotherhood of Electrical Workers (Jefferson Standard Broadcasting Company) v. N.L.R.B.*, 346 U.S. 464, in which a forfeiture of protected rights was held where employees, while actively on the payroll and without reference to any union or current labor controversy, engaged in publicity which seriously disparaged their employer's product.

³² See *United Aircraft Corporation*, 139 NLRB 39, 44, enfd 324 F. 2d 128 (C.A. 2), cert. denied 376 U.S. 951.

³³ *Ibid.* As described, Woelk's report to Janzen revealed no slanderous statements by Zimmerman; and Janzen summarily made the decision to discharge with no attempt to investigate. Cf. *N.L.R.B. v. Burnap and Sims, Inc.*, 379 U.S. 21

³⁴ Indeed, there is sufficient evidence that Woelk was a supervisor under the Act. Thus, he gave orders to the material handlers, and they looked to him for direction in their work, for time off, and as one who conveyed to them management decisions. He was effectively consulted by Janzen concerning the quality of the employees' work and on recommendations for wage raises. (As noted, Woelk did not testify. And Respondent put in no affirmative evidence on the supervisory issue.) See, e.g., *Little Rock Hardboard Company*, 140 NLRB 264

port for the Union; i.e., "The more we push this [Union] the more we can get of this contract." With the addition, as I find, of Respondent's awareness of Zimmerman's leadership role some 10 months earlier, the renewal of his intensive activity beginning in July, and the unusual invitation he received to play golf with supervisors on the evening of a scheduled meeting at his home, it may reasonably be inferred, as I do, that Respondent knew or strongly suspected that Zimmerman was a prime mover in the Union at the time of his discharge.

The ground for discharge offered by Respondent that Zimmerman slandered the Company and caused turmoil and disturbance among the men has been found unsupported and unacceptable. It is plainly a pretext. Consistent with the foregoing, my conclusions, collectively and severally follow:

(a) Zimmerman was terminated because of his union activities generally, to discourage membership among the employees.³⁵

(b) In the terminal interview on September 3, Zimmerman was specifically told by Plant Superintendent Janzen and Supervisor Leroy Stuckey that he also violated rules 18 and 19, among other things, "by passing those cards." Such enforcement by discharge of unlawful no-solicitation and no-distribution rules was discriminatory.³⁶

(c) Zimmerman was engaged in a protected concerted activity on nonworking time and committed no cognizable misconduct as would forfeit such protection. Whatever Respondent's motive, his discharge was unlawful by virtue of Section 7.³⁷ Accordingly, it is concluded that Respondent violated Section 8(a)(3) and (1) of the Act, as alleged.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operations of 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 Respondent engaged in certain unfair labor practices, I will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

I will recommend that Respondent offer John M. Zimmerman immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of earnings suffered by reason of the discrimination against him, by payment to him of a sum of money equal to that which he would normally have earned, absent the discrimination, from the date of the discrimination to the date of the offer of reinstatement, less net earnings during such period, with backpay computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Co.*, 90 NLRB 289. Backpay shall carry interest at the rate of 6 percent per annum, as set forth in *Isis Plumbing & Heating Co.*, 138 NLRB 716. Further, it will be recommended that Respondent preserve and make available to the Board, upon request, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary and useful to determine the amount of backpay due and the right of reinstatement under the terms of these recommendations.

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

CONCLUSIONS OF LAW

1. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By discriminatorily discharging John M. Zimmerman, thereby discouraging membership in the Union, Respondent engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.
4. By promulgating, maintaining, and enforcing rules which prohibit employees on company property from engaging in union solicitation on nonworking time, and dis-

³⁵ E.g., *Idaho Potato Processors, Inc.*, 137 NLRB 910, enfd. 322 F. 2d 573 (C.A. 9); *Southwire Company*, 145 NLRB 1329, enfd. in pertinent part 352 F. 2d 346 (C.A. 5).

³⁶ *Ibid.* *Miller Charles and Co., supra.*

³⁷ *Burnup and Sims, Inc., supra.*

tribution of union literature on nonworking time and in nonworking areas, Respondent interfered with, restrained, and coerced employees in violation of Section 8(a) (1) of the Act.

5. By the foregoing, and by terminating John M. Zimmerman for and while he was engaging in protected concerted activities under Section 7 of the Act, Respondent engaged in and is engaging in unfair labor practices within the meaning of Section 8(a) (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices 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 of the case, it is recommended that Respondent, American Coach Company, Newton, Kansas, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in District 50, United Mine Workers of America, affiliated of United Mine Workers of America, or in any other labor organization, by discharging or in any other manner discriminating in regard to hire or tenure of employment or any term or condition of employment.

(b) Promulgating, maintaining, or enforcing a rule which prohibits employees from engaging in union solicitation during their nonworking time on company property.

(c) Promulgating, maintaining, or enforcing a rule which prohibits employees from distributing union literature on nonworking time in nonworking areas of company property.

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

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Offer John M. Zimmerman immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights or privileges, and make him whole for any loss of earnings, as set forth in the section of the Trial Examiner's Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents all payroll and other records, as set forth in the section of the Trial Examiner's Decision entitled "The Remedy."

(c) Post at its Newton, Kansas, plant, copies of the attached notice marked "Appendix."³⁸ Copies of said notice, to be furnished by the Regional Director for Region 17, shall, after being duly signed by Respondent, be posted immediately upon receipt thereof, in conspicuous places, and be maintained for a period of 60 consecutive days. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 17, in writing, within 20 days from receipt of this Decision, what steps Respondent has taken to comply herewith.³⁹

³⁸ In the event that this Recommended Order be adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "a Decision and Order."

³⁹ In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify the 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 discourage membership in District 50 United Mine Workers of America, affiliate of United Mine Workers of America, or in any other labor organization, by discharging or in any other manner discriminating in regard to hire or tenure of employment or any term or condition of employment.

WE WILL NOT promulgate, maintain or enforce a rule which prohibits employees from engaging in union solicitation during their nonworking time on company property, or promulgate, maintain, or enforce a rule which prohibits employees from distributing union literature on nonworking time in nonworking areas of company property.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the above-named, or any other labor organization, to bargain collectively through representatives of their own choosing, or to engage in any other concerted activities for the purpose of collective bargaining or other mutual aid or protection or to refrain from any or all such activities.

WE WILL offer John M. Zimmerman immediate and full reinstatement to his former or substantially equivalent position, and make him whole for any loss of earnings he may have suffered by reason of his discriminatory discharge.

AMERICAN COACH COMPANY,
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, as amended, 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, Room 610, Federal Building, 601 East Twelfth Street, Kansas City, Missouri, Telephone No. FR 4-5282.

L. D. Caulk Company and Local Union 1969, International Brotherhood of Electrical Workers,¹ Petitioner, and Warehouse and Production Workers Union Local 655, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,² Petitioner. *Cases Nos. 20-RC-6614 and 20-RC-6615.*
April 26, 1966

DECISION ON REVIEW AND DIRECTION OF ELECTION

On November 10, 1965, the Regional Director for Region 20 issued a Decision and Order in the above-entitled proceeding, dismissing the petitions on the ground that the requested units were inappropriate. Thereafter, in accordance with the National Labor Relations Board's Rules and Regulations, Series 8, as amended, the Teamsters filed a timely request for review of said Decision and Order, contending that the Regional Director erred in concluding that the unit alternatively requested by both Petitioners, confined to all employees at the Employer's Menlo Park, California, operation, was inappropriate. The Board, by telegraphic order dated December 20, 1965, granted the request for review. Thereafter, the Employer filed a brief.

¹ Referred to herein as the IBEW.

² Referred to herein as the Teamsters.