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 Local Union 2705, United Brotherhood of Carpenters and Joiners of America, AFL–CIO, by discharging Elzie Blanks, or refusing to reinstate him, or in any other manner discriminate against employees in regard to their hire or tenure of employment or any other term or condition of employment.

WE WILL NOT engage in like or related conduct that interferes with, coerces, or restrains employees with respect to their rights to join or assist Local Union 2705, or any other labor organization, or to engage in other concerted activities for mutual aid or protection, as guaranteed them in Section 7 of the Act.

WE WILL offer Elzie Blanks, without prejudice to his seniority and other rights and privileges, immediate and full reinstatement to his former or substantially equivalent position, and make him whole for any loss of earnings, including interest, he has suffered from the discrimination against him.

All our employees are free to become, or refrain from becoming, members of Local Union 2705, United Brotherhood of Carpenters and Joiners of America, AFL–CIO or any other labor organization.

THE SINGER COMPANY, WOOD PRODUCTS DIVISION,
Employer.

Dated_____ By_____
(Representative) (Title)

NOTE.—We will notify Elzie Blanks if presently serving in the Armed Forces of the United States of his rights to full reinstatement upon application in accordance with the Selective Service Act and Universal Military Training and Service Act, 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, 746 Federal Office Building, 167 North Main Street, Memphis, Tennessee 38103, Telephone 534–3161.

Bausch & Lomb Incorporated *and* Beatrice A. Misenar. *Case 31–CA–106 (formerly 21–CA–6844). June 13, 1966*

DECISION AND ORDER

On April 15, 1966, Trial Examiner James R. Hemingway issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaged 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 and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel [Members Fanning, Brown, and Zagoria].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds no prejudicial error. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and brief, and the entire record in this case, and hereby adopts the Trial Examiner's findings, conclusions,[1] and recommendations.

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

[1] We agree with the Trial Examiner that Respondent independently violated Section 8(a)(1) and (3) of the Act by discharging employee Misenar because she maintained friendly relations with pickets and strikers In adopting his findings in this regard, we agree with the reasoning set forth in his Decision, but also rely upon *San Antonio Machine & Supply Corp.*, 147 NLRB 1112, 1117–20. There, too, an employee, who was neither a known union member nor within the unit represented by the union, was terminated because of a friendly gesture to a picket. In finding said discharge unlawful, it was stated that though the discriminatee was not a member of the collective-bargaining unit, she ". . . was still an employee, and her activity at the Union's picket line was an activity protected by the Act." Further, in the instant case, as in *San Antonio Machine*, Misenar's discharge would forseeably discourage union membership, insofar as her open friendliness with pickets was witnessed by striking and nonstriking employees, who could not help but associate her subsequent discharge with her conduct in this regard, and hence conclude that their own collective activity might well be penalized by discharge. See also *N.L.R.B.* v. *Radio Officers' Union (A. H. Bull Steamship Company)*, 347 U.S 17, 39–40, 51

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

On July 20, 1965, Beatrice A. Misenar, an individual, filed a charge against Bausch & Lomb Incorporated, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, 29 U.S.C., sec. 151 *et seq.*, herein called the Act. Upon this charge the Regional Director for the National Labor Relations Board, herein called the Board, on behalf of the General Counsel of the Board issued a complaint against the Respondent on October 8, 1965, alleging that the Respondent had committed unfair labor practices in violation of Section 8(a)(1) and (3) of the Act by discharging the said Misenar. On October 18, 1965, the Respondent filed its answer in which it admitted the discharge of Misenar on July 9, 1965, admitted that it had failed and refused to reinstate said Misenar, but denied that it had discharged Misenar and thereafter refused to reinstate her because she assisted and supported the Jewelry Workers Union, Local No. 23, International Jewelry Workers Union, AFL–CIO, herein called the Union, or engaged in other union activities or in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, as alleged in the complaint. Simultaneously with the filing of the complaint, the Respondent filed a motion for a bill of particulars. This motion was referred to Trial Examiner James R. Hemingway for ruling, and on October 28, 1965, I denied the said motion.

Pursuant to notice, a hearing was held before me in Los Angeles, California, on November 4 and 5, 1965. At the close of the hearing the parties requested time in which to file briefs and such time was granted. Briefs have been received by me from both parties.

From my observation of the witnesses and upon the entire record in the case, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent is now, and has been at all times material herein, a New York corporation engaged in the manufacture and wholesale distribution of optical products, and it maintains a plant located in Los Angeles, California. Respondent

annually receives at its Los Angeles, California, plant goods valued in excess of $50,000 which were shipped to it directly from outside the State of California. Jurisdiction is not contested. I find that the Board has jurisdiction and that it will effectuate the purposes of the Act to assert jurisdiction.

II. THE LABOR ORGANIZATION AND THE STRIKE

Jewelry Workers Union, Local Union No. 23, International Jewelry Workers Union, AFL–CIO, the Union herein, represents a unit of production employees in the prescription lens department of the Respondent's Los Angeles plant. The Union was certified by the Board following an election held on April 2, 1965. During the course of ensuing negotiations for a contract, the employees in the unit, about eight in number, engaged in an economic strike, starting in the latter part of June 1965 and continuing until July 15, 1965. During the course of this strike, seven of the eight striking employees, at one time or another during the strike, picketed the Respondent's plant.

III. THE UNFAIR LABOR PRACTICES

A. *Employment history of Misenar*

Beatrice Misenar was employed by the Respondent at Rochester, New York, between 1925 and 1942, when she resigned, but she resumed work for the Respondent in Los Angeles in 1952 and worked thereafter until her termination, as hereinafter related, on July 9, 1965, at which time she was being paid $1.90 an hour. Misenar's job title was stock clerk. As such, she was responsible for purchasing everything needed to be stocked for the Respondent's inventory and, in addition, office supplies. The Respondent kept a file of records known as bin cards, about 1½ by 3 inches in size, upon which were noted the minimum and maximum number of the particular item noted on the card. The maximum would be the largest amount stocked, and when the supplies got down to the minimum amount, one of the employees would pull the card out and deliver it to Misenar to order stock from Rochester New York.

From the sketchy descriptions given piecemeal, I judge that Misenar worked in a large general office room with other clerical employees. Her desk faced the front of the building. Behind her, as she would sit at the desk, were filing cabinets approximately 4 feet in height, the drawers to which were opened on the opposite side from the side near Misenar. She had a telephone on her desk.

Misenar was personally acquainted with the employees from the prescription room who were on strike. One of the employees who did not report for work during the strike was Grace Oshiro. Oshiro was one of a group of women, including Misenar, who regularly ate lunch together on Fridays. When Misenar would leave the building at lunch time or during one of the two breaks each day, she would speak to the pickets, greeting them, and asking them questions such as whether or not their feet were tired, whether or not they were getting sunburned, and the like. Sometimes she would speak of personal matters having nothing to do with Respondent's business.

Soon after the strike started, early in the last week of June, Wilbur Broyles, Respondent's regional manager, telephoned the Los Angeles Police Department and gave notice of the strike. On the third day of the strike (the exact day of the commencement of the strike not being fixed), Sergeant Francis Gildea of the Labor Relations Detail of the Metropolitan Division of the Los Angeles police went to the Respondent's plant and spoke with the pickets. He then went into the Respondent's building and spoke with Broyles, who, at Gildea's request, took him on a tour of the premises. Gildea asked and was told what the strike was about. He discussed with Broyles the advisability of private guards, the possibility of damage to vehicles, advising that vehicles be centrally located, discussed the Respondent's shipments in and out of the plant. He inspected the shipping room to see how shipments could go in and out, and while there said to Broyles, according to Gildea's testimony, "Don't be surprised if there is somebody in here telling the Union what is going on in your plant." Gildea quoted Broyles as replying, "Yes, we think we know." With reference to this incident, Broyles testified that Gildea had said that there was "a pipe line going out of our offices to the picket lines" and to be on the lookout "as to this knowledge being imparted to someone else on the outside." Gildea denied having any knowledge that information was being given by anyone inside to the pickets. His version of what he told Broyles is more consistent with probabilities, and I accept it as the correct one.

On Wednesday, June 30, 1965, Misenar left the building by the front door on her 2:45 p.m. break "to buy an ice cream." She returned by way of the back door. On the way back, she passed an automobile parked "across from the back entrance" which was used by the pickets to sit down and rest during their relief period. Misenar stopped at the car and commented to Jerome Banuelos and Tony Ortiz, two of the strikers who were sitting in the car, that they had a "cool, lucky, shady spot." Misenar did not relate any further conversation she had with them, but she testified that she dropped an earring and that Banuelos got out of the car to pick it up for her.[1]

Albert Sinnett, an ophthalmic salesman for the Respondent, whose superior was Broyles, testified that, on Wednesday or Thursday of the last week in June,[2] he saw Misenar, between 4:45 and 5 p.m., at the west (rear) of the building, apparently talking to someone in an automobile. He identified two strikers named Jerry Porter and Hank Astrudillo as the men in the car.[3] He testified that, when he went back in, he related what he had seen to Samuel Prato, Respondent's field warehouse manager (Misenar's supervisor), and to John Foltz, the Los Angeles branch manager. Misenar testified that only on one occasion had she spoken to pickets while they were sitting in a car. On all the evidence, I deduce that it was on the one occasion that she testified to as having spoken with pickets resting in a car that Sinnett saw her, and I conclude that he saw her between 2:45 and 3 p.m. rather than between 4:45 and 5 p.m. on June 30.

Apparently in order to lend significance to his observation of Misenar's speaking with pickets sitting in a car, Sinnett testified that, because of the lack of production, the strike was hampering the Respondent's ability to fill orders, and because of this, the Respondent was sending orders for lenses and frames to various branches of Respondent at locations in other States. Sinnett testified that on several occasions he had had conversations with Branch Manager Foltz about the routing of such orders. He had one such conversation with Foltz in the morning of the day he saw Misenar speak with pickets sitting in a car and again in the afternoon of that day. He testified that the morning conversation took place at the stock cabinets behind Misenar's chair, that Misenar was there but that he did not observe her to be listening. He placed the afternoon conversation as at about 2:30 or 2:45 p.m. and as in "the same general area."[4] He testified that he "believed" that Misenar was at her desk at the time, and that the second conversation was within Misenar's hearing. The subject of the afternoon conversation was about rerouting of orders. It was after this conversation, according to Sinnett, that he observed Misenar speaking with pickets at the back of the building as previously related. My impression is that Sinnett's memory was not too clear as to dates or times of day, but that he had had the benefit of the testimony given at the hearing on Misenar's unemployment compensation claim and sought to avoid any such conflicts as might have arisen there. Misenar testified that many people, including Sinnett, had held conversations on the other side of the storage cabinets in back of her desk, that she was aware of the fact that Sinnett and another person, presumably Foltz, were talking there before she left on her break. She did not identify the time as the morning or afternoon break. She testified that although she heard a conversation taking place she was not listening to it and did not remember what was said. She testified that she stood up, looked at the clock at the back of the room (thereby apparently looking past Sinnett and Foltz), and left on her break.

Prato testified that on an occasion in late June or early July, Branch Operations Manager Walkley had told him he had seen Misenar "attempting" to come in one

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[1] Banuelos did not recall the earring incident. Misenar did not testify to the presence of a third striker, but in her affidavit to the Board she also showed Jerry Porter as present.

[2] The last days of June fell on Wednesday in the week ending July 2. I deduce that the incident Sinnett witnessed occurred on Wednesday, June 30.

[3] Sinnett testified that he was half a block away. He did not appear too sure of the identity of the men in the car. Porter's name was mentioned by Misenar in her affidavit dated July 20, 1965.

[4] Misenar testified that at the unemployment compensation hearing, following her discharge, Foltz had placed the afternoon conversation as 20 or 25 feet away from and behind Misenar's desk and that he had testified that Misenar had walked past them at the time. Sinnett's testimony in this case regarding the location of their afternoon conversation varied therefrom, and he did not testify that Misenar had walked past them at the time. Foltz did not testify in the hearing herein.

of the two rear doors, but that she had not done so and that she would probably come in the other door. He and Walkley walked to the other door and, Prato testified, he saw Misenar enter the rear door of the building at about 4:50 p.m. and that she had in her hand "what appeared to be" about 35 to 50 bin cards. Misenar testified that she did not see Prato or Walkley when she returned from her break on June 30. Misenar sometimes carried bin cards in her pocket or hand in the building but would have no reason to take them out of the building. Prato's testimony about seeing Misenar come in the rear door at 4:50 p.m. on Wednesday or Thursday (June 30 or July 1) did not carry conviction. He testified that the incident had occurred after he had been informed by the different people involved, that is, Broyles and Sinnett and perhaps others. This would fix the time as on Thursday, July 1, for there is no indication that Broyles had mentioned anything to Prato about Misenar until Thursday, July 1, but that was the day that Misenar had left the office early (about 3:30 p.m.) to go to the doctor's.[5] If Prato's testimony could be credited at all, it would have to be assumed that the incident when he saw her enter the back door occurred on Wednesday rather than on Thursday, as he testified. If Prato were mistaken as to the hour when he saw Misenar enter the rear door, he might perhaps have seen Misenar after she had conversed with the pickets and, conceivably, she might have been holding in her hand, as described by Prato, her earring or the ice cream that she had gone out to purchase. The record does not, however, disclose the description of the ice cream, whether or not in a container, and it does not disclose whether or not she had eaten the ice cream before she returned. Walkley was not called as a witness. I am not convinced that Prato's memory of the time of day was accurate and I am not convinced that what she had in her hand was bin cards. Although Misenar would have had no reason to be out of the building except during her lunch period or break, Prato, who was her supervisor, apparently did not reprove Misenar for being out of the building at such a late hour as he would be expected to do if she were violating a rule. As a basis for Respondent's claim that Misenar was giving out confidential information, however, Prato's testimony is of no value in any event, because Prato, himself, admitted that here would be nothing on the bin cards which would be of any interest to the pickets. He also admitted that he had heard nothing that would lead him to believe that the Union was possessed of, or making use of, information concerning the branches of the Respondent to which it was sending its orders for lenses to be ground. His suspicion apparently was that, if the Union had such information, it would picket the branches. There is no evidence that such picketing or any other action was taken by the Union against other branches which were keeping the Los Angeles branch supplied with lenses.

At about noon on Thursday, July 1, 1965, Misenar used the telephone on her desk to call Grace Oshiro, an employee who was employed in the section of Respondent's plant that was on strike. Oshiro did not work during the strike, and so would be considered a striker, but she did not picket. As previously stated, Oshiro was one of four women at Respondent's plant that had lunch together every Friday, and Misenar was calling her on this occasion to see if she would be joining them the next day for lunch. Regional Manager Broyles testified: "I turned to answer the phone,[6] and there was a conversation on the line, and being suspicious, I put my hand over the talking device and listened." With his hand over the mouthpiece, Broyles called Operations Manager Walkley to him from his adjoining office and asked Walkley to check Misenar's desk and see if she was on the telephone. Walkley reported that she was. Broyles then asked Walkley to take the receiver and see if he could identify the person with whom Misenar was conversing. Walkley identified the other voice as that of Oshiro. The portion of Misenar's conversation which Broyles recalled was a statement by Misenar that the pickets were asking for Oshiro's telephone num-

[5] Prato testified that at the unemployment compensation hearing one of the Company's (Respondent's) witnesses had testified that it was late on Thursday, July 1, that Misenar had been seen doing an act which entered into the reason for her discharge and that Misenar had then produced a doctor's certificate to show that she had been at the doctor's office at 4 p.m. that day. She testified that she had left work at 3:30 p.m. to keep this appointment and had not left the doctor's office until after 5 p.m.

[6] Presumably his bell rang when Misenar was making a telephone call, and it is a fair inference that Broyles had arranged this in advance.

ber and Misenar said, "I will not give it to them unless you tell me to give it to them." He heard Misenar ask Oshiro to the office the next day to have lunch with "the girls," and he heard Oshiro say that she was busy packing and did not want to be around the office. Oshiro was apparently taking advantage of the hiatus in work caused by the strike to go to Hawaii. Broyles also heard Misenar say, "I will be glad to keep you informed of all the Union matters going on," that she was sorry Oshiro could not make it for lunch and that they would get together after "the vacation." On cross-examination Broyles also recalled a comment made by Misenar or Oshiro that the strike and picketing was a mess and very unpleasant. When the conversation ended, Broyles called Field Warehouse Manager Prato, Misenar's superior, into his office and related to him and to Walkley what he had overheard. Broyles quoted Prato as saying that he was very much surprised and Broyles also described Prato as "very shocked that one of his employees was engaging in talking to the people in the picket line or the Union people."

B. *Misenar's discharge*

At 5 p.m. on July 9, 1965, more than a week after Broyles had overheard Misenar's telephone conversation with Oshiro, Prato called Misenar into the conference room and told her that he was dismissing her. The accounts given by Prato and by Misenar of the discharge interview did not vary widely, and Prato testified that Misenar's testimony about the incident was generally accurate. Misenar asked Prato why she was being dismissed, Prato told her for disloyalty to the Respondent. Misenar asked what she had done. Prato told her, Misenar testified, that she had been seen or heard on two occasions, one on Wednesday and one on Thursday (presumably he mentioned Wednesday and Thursday of the previous week), talking to pickets in a car.

Misenar said that she did not know what she had done that was wrong, that she had known "those boys" for 12 years, and the mere fact that they were on strike was no reason to treat them like criminals. Prato said he had it "on good authority" that she had been passing out information. Misenar asked what she had told the pickets. Prato said that he did not know because he was not present but that she knew better than he what she had told the pickets. Prato testified that Misenar replied that she had only been talking to the pickets about things of a personal nature and not about business, that she had told them about a previous experience. Prato added, in explanation, that apparently Misenar had once belonged to a union.

Misenar then asked what she had done on Thursday. Prato did not testify to this portion of the interview. Misenar quoted Prato as replying, "Never mind, you know what you did on Thursday." Misenar replied that she did not know or she would not ask. Misenar quoted Prato as then saying, "Well, you know, work is falling off." Prato denied saying this. He testified that Misenar had asked if her discharge had anything to do with her work and that he had told her it was certainly not her work, that it was not because her work had fallen off, that her work was satisfactory. Neither testified to further conversation.

The record does not show when Misenar received her final paycheck. Prato testified that the decision to discharge Misenar had been made early in the week ending July 9 but that her discharge had been delayed until Friday, July 9, because he had had to write to Rochester, New York, to learn "the various amounts" due to her. The various amounts due to her would be her wages, her vacation pay, and her pension, which, despite her discharge, she was still entitled to. Prato presumably had the figures concerning her wages and vacation pay, but he testified that he wrote to Rochester concerning Misenar's pension after (rather than before) her discharge. Even accepting, as a fact, Prato's testimony that the Respondent delayed the discharge because it desired to figure Misenar's final pay before discharging her (a fact which I find difficult to believe), I find the delay between Thursday, July 1, when Misenar telephoned Oshiro, and Monday or Tuesday, July 5 or 6, when the decision was made to discharge her, difficult to account for if Misenar was considered a security risk.

On July 13, 1965, Prato prepared a termination report for the main office in Rochester, New York, on Misenar's discharge. On it, he gave the explanation: "Was passing out confidential Company information to RX [prescription] employees who are on Strike." This was in violation of "Reason for Termination No. 22." Prato testified that, after Misenar's discharge, he wrote a letter to the home office regarding Misenar's retirement fund and, in this letter,

explained the circumstances under which Misenar was terminated. This letter is not in evidence. Respondent's counsel stated, in connection with an effort to introduce a letter from a Rochester law firm tending to corroborate Broyles' testimony, that Broyles had made a verbal rather than a written report to Rochester. Broyles, himself, had not testified about that. Respondent did not offer any explanation, however, for failing to produce Prato's letter.

C. *Conclusions*

Reason for Termination 22, in Respondent's list of reasons for discharge, reads: "Divulging confidential data or information relating to company business." There is no evidence that an unfounded suspicion of such divulgence fulfills the requirements of Respondent's rules. Apparently, Prato was confined, in discharging Misenar, to the Respondent's listed causes for discharge and could not put down on the termination report his actual reasons for Misenar's discharge. Of course, the fact that Respondent discharged an employee for a reason which is not a violation of its rules does not convert such unfair discharge into an unfair labor practice. It is, however, a factor which may be considered, along with other evidence, in appraising Respondent's motivation. I find that Respondent adduced not one iota of evidence which would lead an impartial employer to conclude that Misenar had, in fact, disseminated any confidential information. The most that Respondent has shown is that Misenar remained on friendly relations with employees who were on strike and conversed with them. If Respondent had believed that maintaining friendly relations might, conceivably, put Misenar under pressure by strikers to reveal confidential information, it might have cautioned Misenar to refrain from communications with strikers in order to remain above suspicion. If it had any real basis for belief that Misenar had been aligning herself with the strikers' strike action, it might conceivably have laid her off for the duration of the strike, but could not have discharged her.[7] But Respondent did not consider such safeguards, apparently, as an alternative to discharge. On the evidence, I can find no rational basis for even supposing that Misenar might give out confidential information, however. She, herself, did not work on anything that was particularly confidential. The testimony shows only that she ordered supplies from Rochester. This would have been no secret to employees of Respondent, even to those on strike. If the Respondent had felt that the routing of orders for prescription lenses to branch offices was highly confidential information, discussions of those routings would be expected to have been carried on in the privacy of an office instead of in the open where anyone might have overheard.[8] But even excusing such negligence, there is no evidence that Misenar was actually possessed of, let alone that she gave out, confidential information. Respondent showed only that Misenar was in a position where she might have overheard confidential matter had she been listening—not that she heard it. Broyles' spying upon Misenar's telephone conversation, his report of it to Prato as though it were a serious matter, although there was nothing in the conversation from which one might deduce disloyalty, and Prato's "surprise" and "shock" at being informed of Misenar's telephone conversation with a striker make it apparent that, in the eyes of Respondent, either Misenar's mere association with, or being on friendly terms with, strikers was tantamount to disloyalty to the Respondent, or, because, as Prato testified, Misenar had "apparently" once been a union member, and because Misenar had offered to keep Oshiro informed of union matters, the Respondent suspected that Misenar had aligned herself with the Union.

The first alternative, as a cause for discharge, poses the question, then, as to whether the discharge of a nonunion employee because he continues friendly relations with striking union-represented employees is an unfair labor practice.

On this point, precedent is scarce. Cases are to be found where the dischargee was allegedly discharged because of friendly relations with prounion employees, but the discharge in such cases, has been found to have been actually motivated by another reason.[9] In one case, it was held to be a violation of Section 8(a)(1)

[7] See *Cooper Thermometer Co.*, 154 NLRB 502—discharge of nonunion employee for refusing to cross picket line.

[8] The failure to take such precaution casts doubt on the accuracy of Sinnett's testimony concerning the subject of his conversation.

[9] *Cook Paint & Varnish Company*, 129 NLRB 427. Cf. *Indiana Gas & Chemical Corporation*, 130 NLRB 1488.

of the Act for an employer to discharge a clerical employee who was not on strike, for refusing to cross a picket line.[10] By such act, however, the clerical employee gave definite support to the strike; so the discharge was not based on friendship or association alone. Misenar actually engaged in no activities that might be described as concerted, unless passing on news concerning the course of the strike could be called concerted action, as which I would not classify it. The news available to Misenar to send to Oshiro in Hawaii would have been no different from what it would have been to anyone locally who was interested enough to learn. Misenar's offer was, therefore, merely to furnish such news to a striker who was leaving the State, to inform her, for example, of the time the strike ended, so that Oshiro might return to her job.

Cases somewhat akin to the question here posed may be found in the situation where an employee is discharged because of his or her relationship by blood or marriage to a striker. Such a discharge has been found to be a violation of the Act.[11] I find no material basis for distinguishing a discharge because of such relationship from a discharge because of a relationship of friendship. Such a discharge, for no rational cause and for no reason other than friendship with strikers, is in the nature of a reprisal used against the strikers because of their striking. It is immaterial whether or not Misenar's discharge actually affected the actions of the strikers generally. It would tend to have a naturally coercive effect upon those strikers who were most friendly with Misenar. Accordingly, I find that, by discharging Misenar because she associated with, and because she was on friendly terms with, the strikers, Respondent interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

But even if a discharge because of friendly relations with strikers were not an unfair labor practice, I find ample evidence that Respondent discharged Misenar because of its belief, albeit inadequately grounded, that Misenar had aligned herself with the strikers. On the evidence, I find that the Respondent had no basis for a belief that Misenar was passing confidential information to strikers. Its assertion that she had, I am convinced, was the result of its attempting to find a cause for discharge which would meet Respondent's rules for discharge. Its belief, therefore, was no more than a suspicion that Misenar was union-minded and might be in a position to aid the Union if she desired. I find no distinction between discharging an employee who has already taken steps to join or aid a union and discharging an employee who is merely incorrectly suspected of union activity or of being inclined in the future to aid a union.[12] In either event, the natural tendency of such conduct by an employer is to discourage its employees from joining or assisting a union or from engaging in other concerted activity. I find, therefore, that Respondent discharged Misenar, among other reasons, to discourage union or concerted activities in violation of Section 8(a)(3) and (1) of the Act.

IV. THE REMEDY

Having found that Respondent has unlawfully discharged and refused to reinstate Beatrice Misenar, I shall recommend that it cease and desist from such conduct. Because this case is unique and because there is no evidence tending to show a disposition on the part of the Respondent to flout the policies of the Act generally, I shall not recommend a broad cease and desist order but shall recommend that Respondent cease and desist from engaging in unfair labor practices such as are herein found and any like or related conduct.

I shall further recommend that Respondent take certain affirmative action, including a Recommended Order that it offer Misenar immediate and full reinstatement to her former or substantially equivalent position without prejudice to her seniority or other rights and privileges, and that it make her whole for any loss suffered by her as a result of the unfair labor practice by paying to her

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[10] *Cooper Thermometer Co*, 154 NLRB 502.

[11] *Marydale Products Company*, 133 NLRB 1223, citing *Marathon Electric Mfg. Corp.*, 106 NLRB 1171, 1179, enfd *sub nom United Electrical, Radio and Machine Workers of America, Local 1113* v *N.L.R.B.*, 223 F.2d 338 (C.A.D.C.), cert denied 350 U.S. 981, 351 U.S 915; *F. G. & W. Company*, 129 NLRB 1105; *Milco Undergarment Co*, 106 NLRB 767.

[12] *Marydale Products Company*, 133 NLRB 1223; *B V.D. Company, Inc*, 110 NLRB 1412, and cases there cited

a sum of money equal to that which she would have earned as wages in Respondent's employ between July 9, 1965, the date of her discharge, and the date of reinstatement to her former or substantially equivalent position, provided, however, that in the event she declines the offer of reinstatement or fails to accept it within 5 days after receipt thereof, then such pay back shall run only to the date of receipt by Misenar of Respondent's unconditional offer of reinstatement, less her net earnings elsewhere during said interim, and less, also any amounts she may have received in said interim period under her retirement pension from Respondent, which sum shall be restored to the retirement fund of Respondent to Misenar's credit, the net amount of back pay to be computed on a quarterly basis in accordance with the Board's customary practice.[13] Interest on said sum shall accrue on said net amount, until paid, at the rate of 6 per cent per annum.[14]

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 discharging Beatrice Misenar on July 9, 1965, and by thereafter refusing to reinstate her, because of her friendship with striking union employees and because of her supposed aid thereto, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.
4. 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 foregoing findings of fact and conclusions of law and upon the entire record in the case, I recommend that the Respondent's officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discharging employees because of their personal friendship with members of the Union, whether or not they are on strike or because of a belief that employees might align themselves with a union or with a strike.

(b) Discriminating in regard to hire or tenure of employment or any term or condition of employment of any employee to discourage membership in any labor organization.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

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

(a) Offer Beatrice Misenar immediate and full reinstatement to her former or substantially equivalent position without prejudice to her seniority or other rights or privileges and make her whole in the manner set forth in the section above entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary or useful in analyzing the amount of back pay due under the terms of this Recommended Order.

(c) Post at its plant at Los Angeles, California, copies of the attached notice marked "Appendix."[15] Copies of said notice, to be furnished by the Regional Director for Region 31 of the Board, shall, after having been duly signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof in conspicuous places, including all places where notices to employees

[13] *F. W. Woolworth Company*, 90 NLRB 289.

[14] *Isis Plumbing & Heating Co.*, 138 NLRB 716.

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

are customarily posted, and shall be maintained by it for 60 consecutive days thereafter, Respondent taking reasonable steps to assure that said notices are not altered, defaced, or covered with any other material.

(d) Notify the said Regional Director, in writing, within 20 days from the date of receipt of this Decision what steps Respondent has taken to comply herewith.[16]

[16] In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the 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, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT discharge any of our employees who are nonmembers of Jewelry Workers Union, Local No. 23, International Jewelry Workers Union, AFL–CIO, or of any other labor organization because of the fact that they maintain friendly personal relations with members of said Union, whether or not said members are, or are not, at the time, on strike against this Company and WE WILL NOT discriminate in regard to hire and tenure of employment of any employee to discourage membership in any labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist labor organizations to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or refrain from any or all such activities except to the extent that membership in a labor organization is made a condition of employment under the terms of an agreement permitted under the proviso to Section 8(a)(3) of the Act, as modified by the Labor Management Reporting and Disclosure Act of 1959.

WE WILL offer Beatrice Misenar immediate and full reinstatement to her former or substantially equivalent position, without prejudice to her seniority or other rights and privileges previously enjoyed, and WE WILL make her whole for any loss of pay suffered by paying the sum calculated in the manner recommended in the Decision and Recommended Order of the aforesaid Trial Examiner.

BAUSCH & LOMB INCORPORATED,
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, 312 North Spring Street, Los Angeles, California 90012, Telephone 688–5850.

Killard Printing Company, Inc. *and* Local 1, Amalgamated Lithographers of America, International Typographical Workers and Michael Stephan. *Cases 29–CA–402 and 455. June 13, 1966*

DECISION AND ORDER

On April 18, 1966, Trial Examiner Thomas A. Ricci issued his Decision in the above-entitled proceeding, finding that the Respond-