

that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert our jurisdiction over its operations.

2. The labor organization involved claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections 9(c) (1) and 2(6) and (7) of the Act.

4. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.<sup>6</sup>

All installers and technicians employed by the Employer at its Athens, Georgia, place of business, including the lineman but excluding salesmen, office clerical employees, and sales manager, the senior installer, professional employees, watchmen, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.] <sup>7</sup>

<sup>6</sup> The parties were in general agreement upon the unit and stipulated as to the classifications to be included and excluded, but were unable to agree on the status of senior installer Ernest Smith. The record indicates that Smith interviews and screens applicants, eliminating some from further consideration, trains employees, and was consulted about the recent discharge of two employees. He is paid about 60 percent more than the installers. His authority in hiring and discharging is sufficient to meet the statutory standard of effective recommendation. Accordingly, he is found to be a supervisor and is excluded.

<sup>7</sup> An election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 10 within 7 days after the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *Excelsior Underwear Inc.*, 156 NLRB 1236.

**Alliance Manufacturing Company and International Union of Electrical, Radio and Machine Workers, AFL-CIO.** *Case 5-CA-3311. September 22, 1966*

DECISION AND ORDER

On June 8, 1966, Trial Examiner John G. Gregg 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 and the Charging Party filed 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 [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 entire record in this case, including the Trial Examiner's Decision and the exceptions, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

[The Board adopted the Trial Examiner's Recommended Order.]<sup>1</sup>

<sup>1</sup> The telephone number for Region 5, appearing at the bottom of the notice attached to the Trial Examiner's Decision, is amended to read: Telephone 752-8460, Extension 2159.

## TRIAL EXAMINER'S DECISION

### STATEMENT OF THE CASE

A hearing in the above-entitled proceeding was held before Trial Examiner John G. Gregg on March 17, 1966, at Harrisonburg, Virginia, on complaint of the General Counsel against Alliance Manufacturing Company, herein called the Respondent or the Company. The issues litigated were whether the Respondent violated Section 8(a)(3) and (1) of the Act in the discharge of two employees and whether the Respondent interfered with, restrained, or coerced its employees in violation of Section 8(a)(1) of the Act. The General Counsel filed a letter brief after the close of the hearing.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE RESPONDENT

The Respondent is a corporation organized under and existing by virtue of the laws of the State of Ohio, maintaining its principal place of business in Alliance, Ohio. Its Shenandoah, Virginia, plant involved herein is engaged in the manufacture of small electric motors. The Respondent during the preceding 12 months, a representative period, sold and shipped products valued in excess of \$50,000, from its Shenandoah, Virginia, plant directly to customers located outside the Commonwealth of Virginia. I find that the Respondent is and at all times material herein has been engaged in commerce within the meaning of Section 2(6) of the Act, and that it will effectuate the policies of the Act to exercise jurisdiction herein.

#### II. THE LABOR ORGANIZATION INVOLVED

The International Union of Electrical, Radio and Machine Workers, AFL-CIO, is a labor organization within the meaning of the Act.

#### III. THE UNFAIR LABOR PRACTICES

The complaint alleges that the Respondent by its officers, agents, and supervisors interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act by (a) on or about October 11, 1965, granting to its employees hourly wage increases and other benefits or improvements in their terms and conditions of employment in order to discourage their selection of or sympathies toward the Union (b) on or about October 21, 1965, Respondent promulgated and enforced a company rule prohibiting distribution of union leaflets by employees in nonworking areas of company premises during nonworking hours (c) on or about September 14, 1965, Respondent posted a notice in its plant and

mailed copies to its employees in which it threatened among other things that selection of the Union would result in serious harm to the employees (d) on or about September 16, 1965, Respondent by its Plant Superintendent William Bloom threatened and interrogated employees in the plant concerning their membership in, adherence to, and activities on behalf of the Union. The complaint further alleges that the Respondent did discharge Reba Breeden on September 17, 1965, and Julia Slye on September 24, 1965, because of their membership in, assistance to, or activity on behalf of the Union or because they engaged in concerted activities with other employees of the Respondent for the purpose of collective bargaining or other mutual aid or protection, and has at all times since failed and refused to reinstate them. The Respondent denies the foregoing allegations except that it admits the discharge of Breeden and Slye, but for cause.

#### A. *The background*

In August 1965 the Union commenced an organizing drive which included the distribution of leaflets and several meetings. The high point occurred in September 1965, in which monthly meetings were held on September 14 and 23. The Company's plant rules, posted on all plant bulletin boards on June 24, 1963, and displayed since that time, included among other things prohibitions against leaving the work area without permission of the foreman and prohibitions against interfering with the work of others. Around September 7, 1965, the Respondent posted on the bulletin board a notice to all employees stating or setting forth the Company's position on the union campaign. This notice included a statement that the Company's sincere belief is that if the Union were to get in it would not work to the employees' benefit but in the long run would itself operate "to your serious harm." Copies of this notice were mailed individually to the employees at their homes about a week later. On September 21, 1965, the Respondent posted on the bulletin board a copy of a notice of wage increases which was put in effect on October 11. The notice referred to a general wage increase of 5 cents per hour for all employees effective October 11; an incentive rate increase from 64 cents per bonus hour to 66½ cents per bonus hour; and a second shift 5-cent hourly premium. On September 24, 1965, the Respondent posted on the bulletin board a notice in the form of a memo regarding attention to duties which indicated that it served as a reminder that all employees were to be at their workplaces during working hours. The notice indicated that there had been recent scattered instances of employees neglecting their work and interfering with the work of others even though the Company had endeavored to make it clear to all that leaving work stations and interfering with the work of others would not be permitted. The notice closed with the statement that henceforth anyone engaging in the activities prohibited will in effect be subjecting himself to dismissal.

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

The record establishes the distribution of leaflets by the employees of the Respondent in September 1965. It also establishes the fact that on the morning of September 15, 1965, while employees of the Respondent were distributing leaflets inside the parking lot on company premises on their own time prior to the 7 a.m. reporting time, they were directed by a foreman of the Respondent to move outside of the plant gate to distribute leaflets. They were subsequently permitted to resume distribution inside the plant gate for several weeks following which in October they were again directed to move outside the plant gate to distribute the leaflets. The record also establishes the fact that there was no company rule, nor was there a prohibition, against employees entering the premises before their actual worktime.

The Respondent contends that the passing out of leaflets inside the plant gate interfered with the flow of traffic in and out of the plant and that the anticipation of having two opposing factions passing out leaflets at the same time would cause interference with production or discipline at the plant. It is well settled that no-distribution rules which prohibit distribution of union literature on company property by employees during their nonworking time are presumptively an unreasonable impediment to self-organization. *Republic Aviation Corporation v. N.L.R.B.*, 324 U.S. 793. Since credible, probative evidence of record herein does not establish nor persuade me that it was necessary to prohibit this activity within the gate in order to maintain production or discipline I find that by such action the Respondent interfered with, restrained, and coerced employees of the Respondent in the exercise of activity protected by the Act and did thereby violate Section 8(a)(1) of the Act.

With respect to the matter of employee benefits Reeder, the Respondent's personnel director, testified that the decision to grant such benefits is made at Alliance, Ohio, that the Company had a policy of reviewing employee benefits at irregular intervals, that he was involved in the decision to grant benefits which was announced in September 1965 and that it had come under consideration at Alliance 2½ to 3 months prior to that time. Reeder stated that the decision to grant the benefits was not connected with union activity and that the Company had granted benefits and improvements at least annually since the plant opened. The Respondent provided evidence by way of two interoffice communications dated June 24 and July 27 indicating that the matter of a second shift differential had been considered as early as June 1965 but delayed pending a review of the Company's wage and fringe policies which was to be accomplished later in the year. There was evidence to indicate that on July 27 a 5-cent general wage increase was tentatively approved by management together with a 5-cent differential for the second shift and that Reeder stated to management personnel Baker and Bloom at Shenandoah on July 27, "As you realize increases were granted December 1, 1964, and January 1, 1965, and in our competitive position we cannot allow cost to climb too rapidly." The matter was then held over for later discussion. There was further testimony by Reeder indicating that subsequently there was considered the question of whether these benefits should be withheld because of the possible consequence of placing them in effect at a time when union activity was involved and that he was advised nonetheless to place them into effect. Reeder characterized the grant of benefits as following the normal practice.

The General Counsel contends that while benefits had been granted on an irregular basis a pattern existed of not making a grant within a year of the prior grant, that is, that the practice was not to give a second raise within a 12-month period. An analysis of the stipulated facts on the granting of benefits contained in Exhibit R-4 indicates this to be true. It also indicates that by calendar year the base wages were increased once in 1961, not in 1962, once in 1963, not in 1964, and twice in 1965. The actual time between raises in base wages prior to the one in question is about 24 months and 18 months. The grant in question comes 9 months after the previous grant. It is clear that this was outside the normal pattern.

I recognize that the record establishes the fact that the Respondent had considered the grant of benefits prior to the union campaign and had tentatively approved the grant of benefits but no final and irrevocable action had been taken, and the first general announcement of the changes to the employees coincided with the height of the union campaign.

As the Court stated in *N.L.R.B. v. Exchange Parts Co.*, 375 U.S. 405, the Act prohibits not only intrusive threats and promises but also conduct immediately favorable to employees which is undertaken with the express purpose of infringing upon their freedom of choice for or against unionization and is reasonably calculated to have that effect.

I find that the announcement to the employees of employee benefits in September and their conferral on October 11 during the union organizing campaign was for the purpose of inducing employees to reject the organizing effort and did thereby interfere with the protected right of the employees under the Act to organize, and a violation of Section 8(a)(1) of the Act.

On the matter of threats and interrogation Comer testified that on September 16, 1965, she discussed with Bloom and Baker the warning she had received relative to leaving her work area. Bloom asked her why she was "so strong for the Union" and Comer indicated that she did not think he was treating the girls fairly. According to Comer he asked her if she was some kind of crusader and she answered affirmatively.

Charlotte Dean testified that the first day she wore a union button Bloom came down to her line and started a conversation in which he said he was shocked to see a good worker with a button on and that he wanted to convince her that she did not need to wear that button. Dean stated that she asked Bloom whether the plant would move if the Union got in. Bloom answered, "Not because of the Union. But everyone knows that you can operate a plant in Ohio cheaper than here." Dean testified that Bloom also stated on this subject "after all we don't have 26 acres of land just sitting out there for nothing." Dean testified that Bloom stated that "You know, you're receiving a lot of benefits that this Company doesn't have to give you." He also stated that as a company policy the employees could probably expect a few more benefits.

Bloom denied asking Comer why she was so strong for the Union. He admitted that he may have asked her whether she was a crusader and admitted the conversation with Dean, but that he had stated only that the Union would not affect the matter of a plant move. From my observation of the witnesses and their demeanor on the stand, and from the testimony of record, I am convinced that Bloom questioned Comer and Dean concerning their union sympathies and that under the circumstances of this case the questioning contained a veiled threat of economic reprisal, was coercive and interfered with the protected right of the employees in violation of Section 8(a)(1) of the Act.

Coming to the testimony concerning the publication of the Respondent's notice to its employees stating the Respondent's position on the union campaign, Reeder testified that he participated in the publication of the notice, that he could not recall when it was determined to post the notice. When queried as to what prompted the publication of the notice Reeder stated that there was union activity and the Respondent wanted the people to know exactly what its position was, what was expected of all employees.

In *Surprenant Manufacturing Co. v. N.L.R.B.*, 341 F.2d 756, a notice very similar to the notice posted herein was considered by the United States Court of Appeals, Sixth Circuit. In that case the Board had held the notice to amount to a veiled threat tending to coerce the employees in their selection of a union, centering its contention on the two statements that the advent of a union "would not work to your benefit but to your serious harm," and that the Respondent in that case proposed "to use every proper means to prevent a union from becoming established here." The court, in reversing the Board finding that the notice violated Section 8(a)(1) of the Act stated that an employer has the right of freedom of speech and may express his hostility to a union and his views on labor problems or policy providing he does not threaten or coerce his employees. The court went on to point out that this statement of the law has since been recognized in the enactment of Section 8(c) of the Act in 1947, Section 158(c), Title 29 United States Code, providing that "the expressing of any views, argument or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this subchapter, if such expression contains no threat of reprisal or force or promise of benefit." The court adverted to *N.L.R.B. v. Threads, Inc.*, 308 F.2d 1 (C.A. 4), holding that such statements as are contained in the notice herein were privileged under Section 8(c) of the Act. With high respect for the decision of the United States Court of Appeals, Sixth Circuit, expressed in *Surprenant* I am compelled to find, nevertheless, in the notice posted by the Respondent herein a distinct coercive flavor, not lessened by the Respondent's attempt to package the coercion under the label of opinion, belief, or prediction of unfavorable consequences. I would center attention on the use of the word "serious" in the phrase "serious harm." In normal language this would convey the thought that the consequences of unionization on which the Respondent is focusing the attention of the employees would have important or dangerous connotations of much greater potential than mere economic detriment. In *Surprenant* accompanying speeches by representatives of the Respondent tended to indicate the extent of the possible consequences thereby providing parameters within which the employees might contemplate possible consequential impact. Herein there are no accompanying statements delimiting the distinctly coercive radius of the communication. It could, under the circumstances, be interpreted by the employees as a threat of economic reprisal to close down the plant if necessary to keep the Union out. It is quite apparent that the Respondent could easily have conveyed its opinion to its employees in language less susceptible to interpretation as coercive in context rather than to have selected a phrase such as "serious harm" which is fraught with unlimited consequential implication. I find therefore that the notice posted by the Respondent is coercive in nature and tends to interfere with, coerce, and restrain the employees of the Respondent in the exercise of protected concerted activity in violation of Section 8(a)(1) of the Act.

### C. The discriminatory discharges

The General Counsel contends that Breeden and Slye were discharged for discriminatory reasons. Reba Breeden testified that she went to work at Alliance in 1961 and worked until the date of discharge except for a 7-month period. At the time of discharge she was employed as a tester in department 34. Breeden attended the union meeting on September 14, signed a union membership card, and promi-

nently displayed a union badge on September 15, 16, and 17. She was discharged on September 17. On this date, she testified, she went to get a drink of water about 2:25 p.m. and on the way back she was hailed by Barbara Eppard, another girl in her department. Breeden went over to her, spoke with her, and went back to her line. Shirley Beaghan stopped her and told her to get her timecard and clock out. Breeden queried Beaghan as to the reason and was told that she had been away from her work station. According to Breeden she discussed this with Roberts, the Respondent's quality control manager, and said she thought she was supposed to get a warning before being fired, but Rogers said he had to go along with Beaghan. Breeden testified that prior to September 17, she had never received a warning nor a reprimand for leaving her work station. Breeden further testified that she went back the following Tuesday to talk to Baker, the Respondent's personnel manager at the Shenandoah plant, about getting her job back, that Baker said there were no openings but that Breeden had a good record and when an opening developed he would let her know. Breeden stated that she told him she thought she was supposed to get a warning before discharge and he said they had posted a paper on the bulletin board. Breeden told him she had not seen it, but he said they had to tighten down on the rules since the union campaign had started. Breeden's testimony on cross-examination was not consistent with her statement that Baker had said "they had to tighten the rules since the union campaign had started." This was her personal conviction but not a statement made by Baker.

Vera Good, another employee of the Respondent and also a tester in department 34, testified that she was riding home with Beaghan one evening and they were discussing Breeden's discharge. Beaghan said that Breeden had left her work station, that on the date of Breeden's discharge Beaghan had been told by George Dowery to report any girls that left their work area while the foremen were at a regular Friday meeting. After having her recollection refreshed by reading her prior affidavit, Good testified that Beaghan told her that Dowery told Beaghan to watch the girls with the union badges on while he was at the meeting. While Good was reluctant to testify relative to "watching the girls with union badges," even though she stated this in her affidavit, the subsequent testimony of Beaghan did not contradict the statement. I am inclined to credit Good's account of the conversation.

Julia Slye testified that she was employed by the Respondent since August 1962, as a coil winder in department 31 when discharged by the Respondent. She wore the union button, passed out literature on the bus, and attended two meetings, the second on September 23. The next day, in the afternoon, she was clocked out on 205, meaning that she had completed all the work at her work station, and was helping Charlotte Meadows and Vivian Campbell until they caught up on their work at which point she went over to help Shelby Shifflett. About 5 minutes later Katherine Sigafoose came to her, asked whether she had seen the notice on the bulletin board regarding absence from work station, and when Slye answered that she had, but that she had no work to do, Sigafoose told her she was discharged and ordered her to take her timecard and clock out. Slye testified that in past she had gone to help other girls after she was clocked out on 205 and that this had been a common practice in the 3 years she had worked there, that she had never been warned against it. Subsequent to the discharge by Sigafoose, Slye went to Baker, told him she did not think the posted warning applied to employees clocked out on 205. Slye stated that Baker said there were a lot of girls leaving their work stations going to help other girls "talking about unions and all." Slye alleges that she said she was not talking about a union. While Baker denied in subsequent testimony making this statement, I credit Slye's account.

Charlotte Dean, another employee in department 34, testified that before she started to wear the union button she used to "run around a lot," that no one had ever said anything to her, she had never had any warning about leaving her work area either before or after the notice was posted on the board. She testified that in her presence one day Baker told Bonita Comer that "everyone needs a warning, receives a written warning, and the next time they are out." The time of this alleged statement was not fixed, and it was denied by Baker in subsequent testimony.

Ralph Reeder, personnel director for the Respondent, testified that the Respondent had no system for oral or written warnings at its Shenandoah plant, and that employees at that plant were not entitled to a warning of any kind in the sort of situation involved. His testimony concerning the reasons for the policy of requiring employees to stay at their work stations was essentially that it would be disruptive to production to have large numbers of employees moving about in a relatively confined area, that since employees are on the incentive basis the result of one

employee assisting another is an increase in the cost per item, consequently the employees are prohibited from helping others except where a team effort is involved. On cross-examination Reeder testified that he did not know what the practice was in the Shenandoah plant insofar as employees leaving their work stations was concerned. Reeder was queried as to why the Company, which had had a notice posted for several years prohibiting the leaving of work stations, should find it necessary to post a new notice at the time of the union activity.

Q. But you felt it necessary to enact another notice?

A. No, not necessary. We felt that it was more than proper, more than kind, before taking further action.

Q. Well what occasioned this sudden need for another warning, another notice?

A. I frankly don't remember what brought the subject up. I know that I approved it, that it should have been issued. I don't remember the specific incident that brought the subject up.

However, subsequently, Reeder testified that he had received a report from Baker about Comer being away from her work station the day before.

Q. What was this report?

A. The report was that she had been away from her work station and she had been warned.

Q. Did the report say anything about whether or not she was wearing a union badge?

A. Not that I recall.

Q. And was there any connection between the Comer incident and putting this notice on the board the next day?

A. Yes, sir, there was.

Reeder testified further as follows:

Q. Now isn't it true, Mr. Reeder, that prior to this notice of September 24th the employees were permitted and in fact did leave their work stations to help one another?

A. Not to my knowledge, it's against the policy to do so, if they did.

Q. You don't know whether they did or they didn't?

A. They didn't when I was in the plant. I never observed any, in other words.

William Bloom, the Respondent's plant superintendent, testified that the company policy was that employees were not to leave their work station except to go to the restroom, drinking fountain, or during break periods, that the rule was enforced to the best of his ability, that if employees were caught away from their work stations they were discharged. Bloom testified to the discharge by Respondent of Lois Thomas for leaving her work station and interfering with the work of others by talking on the subject of religion; of Derrell Shifflett for neglecting to do his work, involving talking to others; of Jeffrey Pettit for neglect of work.

Robert Baker, personnel manager of the Shenandoah plant since June 1965 testified that they had no system of warning employees. In discussing why Comer had been warned he testified as follows: "Now on the occasion of her warning I recommended that she not be discharged."

Q. And why?

A. Because it was obvious that she was interested in the Union and it looked likely to me that we would wind up with an unfair labor practice charge if we discharged her, and I felt that she would straighten out and we would not lose a capable employee if she were warned and not discharged.

Baker testified relative to the discharge of Slye and Breeden and denied making the statements alleged by Slye in the discussions and telephone conversations which he had with her.

H. F. Karnes, Jr., foreman of department 31, testified that Slye had been discharged while he was at the regular Friday meeting. He testified that while in the past he had warned several employees about getting up and helping other employees he had not warned Slye.

Shirley Beaghan, floorlady, testified that the rule about staying at work stations had always been enforced at the plant, that others had been discharged for violating this rule. When queried as to whether she told Good that she had been told to

watch people wearing union buttons she answered "I don't remember saying it that way." When further queried as to whether she ever told Vera Good that Dowery had told her to watch girls who wore union buttons she answered, "I don't remember." Beaghan testified further that Reba Breeden was the first girl she had discharged, that it was the first time she discharged any girl for talking to another girl, and that she did not know whether Eppard called Breeden over or whether Breeden went over to her, she knew Breeden had been wearing a union button.

Roberts, quality control manager for the Respondent, testified that while his private office was in front of the building he worked plantwide. He stated that it was not common practice for employees to go to the water fountain, stop, have a short conversation, and return to their work station. He testified, however, that he had seen employees talking to other employees.

Katherine Sigafoose, a supervisor for 5 years, testified that the rule requiring employees to stay at work stations was enforced in the plant. She saw Slye talking to the other girls whereupon Slye hurried back to her machine. Sigafoose then noticed that Slye left to go to the washroom with Shelby Shifflett that since Slye had already been there she timed her. Slye and Shelby Shifflett were gone for about 10-12 minutes. On their return Slye went to where Shifflett was working, and was there for a few minutes when Sigafoose asked her if she had read the notice on the bulletin board. When Slye said "yes," Sigafoose ordered her to clock out and leave. Sigafoose testified that before the foremen went into the meeting her foreman, Karnes, told her that this rule would be enforced. Sigafoose admitted that there had been occasions in the plant when girls have helped other girls, but not as a rule. She also testified that no other girls had been discharged for helping other employees although other girls had assisted other employees, but that she did not know of any employee who left her work area under these circumstances or helped another employee who knew about this rule and was not taken to task for it. She stated that she had, in the past, warned employees who assisted other employees prior to Slye's case.

From the testimony and exhibits of record the Respondent has established the existence of a rule requiring employees to remain at their work station and to refrain from interfering with the work of others. This rule was displayed on the bulletin boards. All foremen had been instructed to carry out the rule. However, from the testimony adduced at the hearing, and from my observation of the witnesses as they testified I am convinced that while the rule was in existence it was not uncommon for employees to be away from their work stations and talking to other employees, and that there had been in existence a practice of warning such employees prior to application of the drastic action of discharge. By its notice of September 24, warning the employees that infraction of this rule would subject employees to dismissal the Respondent initiated a more stringent application of the rule. At the same time foremen, as they went to the regularly scheduled Friday meeting, emphasized to the floorladies that the rule would be enforced. With this prompting two floorladies, Beaghan and Sigafoose, took their first action in summarily discharging employees without prior warning.

While the Respondent made much of the point that other employees, naming Thomas, Knott, Shifflett, Burner, and others had been discharged for being away from work stations and interfering with the work of others, the testimony does not clearly establish this. Jessie Knott was discharged in 1963 for "substandard production and holding conversations away from her work place." Roberta Burner was discharged in July 1964, for "Unsatisfactory job performance, neglect of duties, and talked excessively." Shifflett was discharged for "lack of progress during probationary period, was inclined to neglect his work and talk."

The testimony does not clearly establish whether or not these discharges were effected without prior warning. Bloom testified that Bonita Comer was warned because it was the policy that the determination as to whether a warning would be given depended on the degree of the infraction. He stated that Comer's infraction was not serious enough to warrant discharge. Bloom also testified that he was not involved in the discharges of Thomas, Knot, Shifflett, and Burner and did not know the number of infractions involved in these cases. The matter of the nature of the infraction is significant when the prior discharges are analyzed. Knott was labeled a substandard producer. Burner was an employee with unsatisfactory job performance. The testimony of record in this case would indicate that both Slye and Breeden were satisfactory employees with good records and there has been no allegation nor testimony to the contrary. It is true that an employer may discharge

for any reason or for no reason and has no burden to justify his action. *N.L.R.B. v. Ace Comb Co.*, 342 F.2d 841, 970. However, the testimony herein has established a change in the Respondent's application of the company rule which raises an inescapable inference that the rule has been discriminatorily applied to effect the discharges of union adherents Breeden and Slye.

Accordingly, the timing of the discharges, coming summarily as they did at the height of the union organizing drive, accompanied by the Respondent's knowledge of the union activities of both Slye and Breeden, and the unconvincing basis advanced by the Respondent for the stringent application of the drastic action of discharge to satisfactory employees under circumstances in which other employees had been accorded prior warning convince me, and I find, that the discharges were discriminatory, that Breeden and Slye would not have been discharged under these circumstances but for their union activities which were protected by the Act. I find therefore that in the discriminatory discharge of Breeden and Slye and the failure and refusal to reinstate them the Respondent violated Section 8(a)(3) and (1) of the Act.

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

The activities of the Respondent set forth above, occurring in connection with the operations of the Respondent described 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

It having been found that Respondent has engaged in certain unfair labor practices, it will be recommended that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

It having been found that Respondent discriminated in regard to the hire and tenure of employment of Reba Breeden by discharging her on September 17, 1965, and of Julia Slye by discharging her on September 24, 1965, I will recommend that Respondent offer them immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges and make them whole for any loss of pay they may have suffered by reason of said discrimination against them by payment to them of a sum of money equal to that which they would have earned as wages from the date of the discrimination to the date of their reinstatement, less net earnings during such period, in accordance with the formula set forth in *F. W. Woolworth Company*, 90 NLRB 289, with interest thereon at 6 percent per annum, as provided for in *Isis Plumbing & Heating Co.*, 138 NLRB 716.

Because of the variety, extent, and type of the unfair labor practices engaged in by Respondent, I sense an opposition to the policies of the Act in general, and hence I deem it necessary to order Respondent to cease and desist from in any manner infringing upon the rights guaranteed its employees in Section 7 of the Act.

#### CONCLUSIONS OF LAW

1. The Respondent Alliance Manufacturing Company is an employer within the meaning of the Act and is engaged in commerce within the meaning of the Act.

2. International Union of Electrical, Radio and Machine Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By discrimination in regard to the hire and tenure of employment of Reba Breeden by discharging her on September 17, 1965, and of Julia Slye by discharging her on September 24, 1965, thereby discouraging union membership and activities among its employees, 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. By interfering with, restraining, and coercing its employees through the granting of wage increases and other benefits or improvements in order to discourage their selection of, or sympathies toward, the Union; the prohibition against distribution of union literature in nonworking areas of company premises during nonworking hours; the post of threats; and the threatening and interrogation of employees concerning union membership, adherence, and activities, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

## RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this case, I recommend that the Respondent Alliance Manufacturing Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership and activities in International Union of Electrical Radio and Machine Workers, AFL-CIO, by discriminating in regard to the hire and tenure of employment of any of its employees by discharging such employees in order to discourage membership or activities therein.

(b) Interfering with, restraining, or coercing its employees through the granting of wage increases and other benefits or improvements in order to discourage their selection of, or sympathies toward the Union; the prohibition against distribution of union literature in nonworking areas of company premises during nonworking hours; the posting of threats; and the threatening and interrogation of employees concerning union membership, adherence, and activities.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist the International Union of Electrical, Radio and Machine Workers, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and 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.

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

(a) Offer to Reba Breeden and Julia Slye immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges and make them whole in the manner set forth in the section of this Decision entitled "The Remedy."

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

(c) Post at Respondent's plant in Shenandoah, Virginia, copies of the attached notice marked "Appendix A."<sup>1</sup> Copies of the said notice are to be furnished by the Regional Director for Region 5, upon being duly signed by Respondent's representative, shall be posted by it immediately upon receipt of it thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by other materials.

(d) Notify the Regional Director for Region 5, in writing, within 20 days from the date of the receipt of this Decision, what steps the Respondent has taken to comply herewith.<sup>2</sup>

<sup>1</sup>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 is 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>2</sup>In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of the Order, what steps the Respondent has taken to comply herewith."

## APPENDIX A

## 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 or activities on behalf of International Union of Electrical, Radio and Machine Workers, AFL-CIO, or any other labor organization of our employees, by discriminating in regard to the hire and tenure of employment or any other terms or conditions of employment of our employees because of their union affiliation or activity.

WE WILL offer Reba Breeden and Julia Slye immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges and will make them whole for any loss of pay they may have suffered by reason of the discrimination practiced against them together with interest thereon at 6 percent per annum.

WE WILL NOT interfere with, restrain, or coerce our employees by the granting of wage increases and other benefits or improvements in order to discourage their selection of, or sympathies toward the Union; the prohibition against distribution of union literature in nonworking areas of company premises during nonworking hours; the posting of threats; and the threatening and interrogation of employees concerning union membership, adherence, and activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist International Union of Electrical, Radio and Machine Workers, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and 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.

ALLIANCE MANUFACTURING 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 the employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Sixth Floor, 707 North Calvert Street, Baltimore, Maryland 21202, Telephone 752-2159.

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**Baltimore Lithographers and Photoengravers Union, Local 2-P,  
Lithographers and Photoengravers International Union, AFL-  
CIO and Lithographers and Photoengravers International  
Union, AFL-CIO and Alco-Gravure, Division of Publication  
Corporation. Cases 5-CC-303 and 306. September 22, 1966**

### DECISION AND ORDER

On December 13, 1965, Trial Examiner Morton D. Friedman issued his Decision in the above-entitled consolidated proceeding, finding that Respondent Local 2-P 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. He also found that Respondent International had not engaged in any unfair labor practices and recommended that the complaint be dismissed as to it. Thereafter, Respondents, the General Counsel, and the Charging Party (herein called Alco), filed exceptions to the Trial Examiner's Decision and supporting briefs, and an answering brief was filed by Alco.

The National Labor Relations 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