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 refuse to bargain collectively with Meat Cutters, Packing House Workers & Food Handlers, District Union No. 657, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL–CIO, as the exclusive representative of our employees in the appropriate unit noted below with respect to wages, hours, or any other terms and conditions of employment.

WE WILL NOT institute changes in wages, seniority, vacation pay, grievance procedures, or any other terms and conditions of employment of our employees in the said appropriate unit without first notifying, consulting, and bargaining with the Union concerning such changes.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of any of the rights guaranteed them by the National Labor Relations Act.

WE WILL, upon request, bargain with the above-named Union as the exclusive representative of our employees in the appropriate unit noted below, with respect to wages, hours, seniority, vacation pay, grievance procedures, and all other terms and conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The appropriate unit is:

All maintenance, production and processing employees, including drivers and shippers, but excluding all salesmen, office and clerical employees, executives, guards, and supervisors as defined in the Act.

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

VALLEY DALE PACKERS INC., OF BRISTOL,
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 Resident Office, 826 Federal Office Building, 51 South West First Avenue, Miami, Florida 33130, Telephone 350–5391.

White Superior Division, White Motor Corporation *and* Herbert T. Baker, John E. Rightsell, Robert F. Langen, Paul A. Mealy, Virgil A. Young, John Yencho, Walter A. Lewe, and James Malahy. *Cases 9–CA–3922–1 through –8. February 7, 1967*

DECISION AND ORDER

On November 7, 1966, Trial Examiner Paul E. Weil issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter the Respondent filed exceptions to the Decision 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, Jenkins, and Zagoria].

The Board has reviewed the rulings made by the Trial Examiner 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 brief, and the entire record in this case, 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:

[1. Add the following as paragraph 2(b), and consecutively reletter the present paragraph 2(b) and those following:

["(b) Notify the above-named employees if presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces."

[2. Add the following immediately below the signature line at the bottom of the notice attached to the Trial Examiner's Decision:

> [NOTE.—We will notify the above-named employees if presently serving in the Armed Forces of the United States of their right to full reinstatement, upon application, in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.]

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

On charges filed by Herbert T. Baker, John E. Rightsell, Robert F. Langen, Paul A. Mealy, Virgil A. Young, John Yencho, Walter A. Lewe, and James Malahy against White Superior Division, White Motor Corporation, hereinafter called Respondent, a complaint was issued by the General Counsel alleging that Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act. Pursuant thereto, a hearing was held before Trial Examiner Paul E. Weil on September 7, 1966, at which all parties were represented by counsel and were afforded full opportunity to be heard, to present relevant evidence and oral argument, and to file briefs. A brief was filed by Respondent.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent, an Ohio corporation, manufactures diesel engines in its plant in Springfield, Ohio. Respondent annually ships its products valued in excess of $50,000 from its Springfield, Ohio, plant directly to points outside the State of Ohio. Respondent is at all times relevant herein an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

At all times material the International Association of Machinists and Aerospace Workers, AFL–CIO, District No. 82, herein called the Union, has been a labor organization as defined in Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

Since 1940 the guard force at Respondent's plant has been unrepresented while the production and maintenance employees in the plant were represented by the Union. Sometime prior to March 7, 1966, the Union was authorized by a majority of the guards to bargain on their behalf and on March 7 the Union addressed and mailed a letter to L. J. Schutte of the Respondent's industrial relations department requesting recognition. On March 14, William F. Burrows, president of Respondent, by letter addressed to the Union, acknowledged receipt of the request for recognition and denied it without explanation.

On the morning of March 12, all 10 members of the guard force were called to Schutte's office together with William Kay, the personnel service supervisor, and addressed by Schutte. Schutte furnished each of the guards with a document consisting of photographic reproductions of pages from a labor reporting service, dealing with plant protection personnel and Section 9(b)(3) of the Act. Schutte stated that he had received notice that some of the guards had signed cards indicating they wanted to be represented by the Union, stated in effect that the Employer did not want any more union business, read excerpts from the pamphlets, and informed the guards that the Employer was disbanding its guard force and that the protection work would be taken over by the Pinkerton agency.

Each of the guards was then taken to Kay's office where he was offered a production or maintenance job. Two of the guards refused to transfer, one retiring and the other seeking other employment.[1]

Six of the employees were transferred at the same rate of pay that they had been making as guards.[2] Two of them were reduced in pay, one by 22 cents an hour and the other by 15 cents an hour. The fringe benefits for the production and maintenance unit were the same as those for the guard unit and remained unchanged.

The approximate monthly cost of maintaining the guard force prior to March 14 was about $5,800 and after March 14, approximately $3,500.

Shortly after the guards were transferred, Clell Boggs, who was the union member primarily concerned with the efforts to organize the guards as part of the Machinist Union, in a conversation with Schutte, asked why the guards had been removed. Schutte answered that they (presumably he meant the Respondent) had considered it before but admitted that he had not talked it over with anybody. In reply to a statement by Boggs that "I assume that this move by Union was what brought this along." Schutte answered, "Possibly it was."

Analysis and Conclusions

Respondent argues, first, that it was organized for the purpose of deriving a profit from its operations and if it could acquire the services of a satisfactory guard force at a savings of over $27,000 annually, it would be foolish not to do so, especially if this may be accomplished without injury to any of its employees. Respondent appears to argue that it is mere coincidence that the changes were made at the time of the organization by the Union. However, Respondent produced no evidence that the changes did not result from the demand by the IAM for recognition and Schutte's statements to the employees that it did not want any more union business and to Boggs that the union move possibly caused the Employer's action, stands uncontradicted in the record and certainly raises the inference that the transfers were caused by the employees' union activities.

Respondent argues secondly that Section 9(b)(3) of the Act must intend that the possibility of a conflict of interest which could arise from representation of guards by the production and maintenance union should not be permitted to develop and that to create a situation in which it is permitted to develop is therefore not protected by the Act. More specifically Respondent argues that the employees who do create such a conflict, and presumably Respondent refers to their ex-guards, do not have the guarantees of Section 8(a)(1) and (3) of the Act.

[1] The complaint contains no allegation regarding these two employees.

[2] The reference is to base pay. Some of the guards were apparently paid additional sums for working evening or night shifts and Sundays and holidays.

Respondent concludes therefore that the guards' membership and activities on behalf of the Union were not protected activities and consequently Respondent's transfer of them to other work cannot be construed as a violation of the Act.

Respondent cites no authority for its arguments or conclusions nor have I found any.

The Board has been at pains to point out that Section 9(b)(3) proscribes only the certification of affiliated labor organizations as representing guard units, *The William J. Burns International Detective Agency, Inc.*, 138 NLRB 449, 452, or that a unit containing both guards and nonguards is inappropriate for any purpose, *The William J. Burns International Detective Agency, Inc.*, 134 NLRB 451, 452, 453. In the latter case the Board pointed out that Congress could readily have declared a guard unit inappropriate if the representative of that unit admitted nonguards to membership but did not do so, and that it follows that a contract unit comprised exclusively of guards is not invalidated merely because the representative of that unit admits to membership, or is affiliated with an organization which admits to membership, nonguard employees. Accordingly, the Board declined in the latter case to hold such a contract a bar to an election. In the former case, as in many other cases, the Board permitted a nonguard union which represents the production and maintenance employees in the plant in which the guards were located to appear on the ballot and agreed to certify the numerical results of the election which was there ordered in the event the nonguard union won the election.

In *Joseph E. Seagram & Sons, Inc.*, 83 NLRB 167, 169, the Board pointed out that the specific changes involved in Section 9(b)(3) "in no way alter the status of guards as 'employees' under the Act." In short, guards are employees and are protected like any other employees.[3] Hence, under Section 8(a)(3) of the Act, they may not be discriminated against because of their activities on behalf of any union for their own mutual support and protection nor may they be interfered with, restrained, or coerced in their activities protected by Section 7 of the Act.

The Board has many times held that the action of closing down a department with the object of avoiding bargaining with the labor organzation that represents employees, or because the employees became interested in the union, is violative of Section 8(a)(3) and (1) of the Act.[4] Nor is it any defense that the employees concerned did not suffer loss of income as a result of the change.[5]

I conclude and find that Respondent here entered into the contract with Pinkerton and transferred its guard employees to other employment solely because such employees had selected union representation and has thereby discriminated against its guard employees in violation of Section 8(a)(3) and (1) of the Act.

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.

CONCLUSIONS OF LAW

1. Respondent is and at all times relevant hereto has been engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

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[3] Except that the Board will not find the employer guilty of a violation of Section 8(a)(5) when it refuses to bargain with a union which represents nonguards, or in a mixed guard-nonguard unit. See *Mack Manufacturing Corporation*, 107 NLRB 209; *City National Bank and Trust Company of Chicago*, 76 NLRB 213. I view the language of the Supreme Court with regard to the rights of a labor organization, which had not complied with Section 9(f), (g), and (h) when they were part of the Act, as an interesting and possibly cogent parallel with the problem herein. *United Mine Workers of America* v. *Arkansas Oak Flooring Co.*, 351 U.S. 62. See also in that regard the opinion of Judge Weinfeld in *Rock-Hills-Uris, Inc. and Hilton Hotels Corporation* v. *Ivan C. McLeod, Reg. Dir.*, 344 F.2d 697 (C.A. 2). An interesting and apposite discussion of the effect of Section 9(b)(3) is also to be found in *International Harvester Company, Wisconsin Steel Works*, 145 NLRB 1747.

[4] *Herman Nelson Division, American Air Filter Company, Inc.*, 127 NLRB 939; *Weyerhaeuser Company*, 134 NLRB 1371; *Blue Cab Company and Village Cab Company*, 156 NLRB 489.

[5] *Herman Nelson Division, American Air Filter Company, Inc., supra; Palestine Telephone Company*, 154 NLRB 1325.

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

3. By discriminating in regard to the tenure of employment of the employees named in the Appendix, thereby discouraging membership in the Union, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

THE REMEDY

Having been found that the Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act, I shall recommend that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Having found the guard positions to have been discriminatorily abolished on March 14, 1966, I shall recommend that Respondent offer each of the employees named in the Appendix immediate and full reinstatement to his former position as a guard, without prejudice to his seniority or other rights and privileges, and make each of them whole for any loss of pay suffered as a result of the discrimination against him by payment to each of them of a sum of money equal to the amount he would have earned from the date of discrimination to the date of the offer of reinstatement, less net earnings to be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289, with interest at the rate of 6 percent per annum to be computed in the manner set forth in *Isis Plumbing & Heating Co.*, 138 NLRB 716. It is obvious that the Recommended Order envisions the reopening by Respondent of its guard department. I believe that a specific reopening order is appropriate here inasmuch as Respondent continues to utilize guard service. See *Herman Nelson Division, American Air Filter Company, Inc., supra.*

RECOMMENDED ORDER

On the basis of the foregoing findings of fact and conclusions of law and upon the entire record of the case, I recommend that Respondent, White Superior Division, White Motor Corporation, Springfield, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in International Association of Machinists and Aerospace Workers, AFL–CIO, District No. 82, or any other labor organization, by discriminating in regard to the hire or tenure of their employment or any term or condition of employment of its employees.

(b) In any other manner interfering with, restraining, and coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, including the above-named organization, to bargain collectively through representatives of their own choosing, and to engage in 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 to effectuate the policies of the Act:

(a) Reopen its plant guard department and offer to Herbert T. Baker, John E. Rightsell, Robert F. Langen, Paul A. Mealy, Virgil A. Young, John Yencho, Walter A. Lewe, and James Malahy reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole in the manner set forth in the section of the 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, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay and other benefits due and the rights of employment under the terms of this Recommended Order.

(c) Post at its plant at Springfield, Ohio, copies of the attached notice marked "Appendix." [6] Copies of such notice, to be furnished by the Regional Director for Region 9, after being duly signed by an authorized representative of the Respondent, shall be posted immediately upon receipt thereof, and be maintained

[6] In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "a 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."

by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify said Regional Director for Region 9, in writing, within 20 days from the date of this Decision, what steps the Respondent has taken to comply herewith.[7]

[7] 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 this Order, what steps the Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to a 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 International Association of Machinists and Aerospace Workers, AFL–CIO, District 82, or any other labor organization, by discriminating in regard to the hire or tenure of employment or any term or condition of employment of our employees.

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, join, or assist labor organizations, including the above-named organization, to bargain collectively through representatives of their own choosing, and to engage in 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 reopen our plant guard department and offer to Herbert T. Baker, John E. Rightsell, Robert F. Langen, Paul A. Mealy, Virgil A. Young, John Yencho, Walter A. Lewe, and James Malahy reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole in the manner set forth in the section of the Decision entitled "The Remedy."

WHITE SUPERIOR DIVISION, WHITE MOTOR CORPORATION,
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, Room 2023, Federal Office Building, 550 Main Street, Cincinnati, Ohio 45202, Telephone 684–3627.

Chas. Pfizer & Co., Inc. *and* District #104, International Association of Machinists and Aerospace Workers, AFL–CIO, Petitioner. *Case 1–RC–9110. February 7, 1967*

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a Hearing Officer of the National Labor Relations Board. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.