

marked "Appendix."<sup>9</sup> Copies of said notice, to be furnished by the Regional Director for Region 30, after being duly signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt 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 the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 30, 744 North Street, Milwaukee, Wisconsin, in writing, within 20 days from the date of this Recommended Order, what steps the Respondent has taken to comply therewith.<sup>10</sup>

<sup>9</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>10</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 this Order, what steps Respondent has taken to comply herewith."

**Young Metal Products Company, and  
International Brotherhood of Boilermakers,  
Iron Shipbuilders, Blacksmiths, Forgers  
and Helpers, Lodge 1012, AFL-CIO. Case  
14-CA-3985.**

March 30, 1967

## DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS BROWN  
AND JENKINS

On December 22, 1966, Trial Examiner Owsley Vose issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision, and a 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.

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

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner and hereby orders that the Respondent, Young Metal Products Company, Granite City, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

### TRIAL EXAMINER'S DECISION

#### STATEMENT OF THE CASE

OWSLEY VOSE, Trial Examiner: This proceeding was heard in St. Louis, Missouri, on August 23, 1966, pursuant to a charge filed on June 2, 1966, by the Charging Party, hereinafter called the Boilermakers, and a complaint issued on July 12, 1966, and amended on July 18, 1966. The case involves the question whether the Respondent, hereinafter called the Company, engaged in interference, restraint, and coercion in violation of Section 8(a)(1) of the Act by posting a notice prohibiting all "union talk" in the plant.

Upon the entire record, and after due consideration of the briefs filed by Respondent and the General Counsel, I make the following:

#### FINDINGS AND CONCLUSIONS

##### I. THE BUSINESS OF THE COMPANY

The Company, which has its principal office and place of business in East Chicago, Indiana, operates, among others, a plant at Granite City, Illinois, where it is engaged in the manufacture of nestable corrugated metal pipe for the United States Department of Defense. Eighty-five percent of its finished products are shipped directly to Vietnam, by air, if possible. The rest is sent to army depots to be sent to Vietnam later on. During the year ending June 30, 1965, a representative period, the Company had shipped to its Granite City plant from out-of-State sources more than \$50,000 worth of raw materials.

Upon these facts, I find, as the Company admits, that it is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

##### II. THE LABOR ORGANIZATION INVOLVED

International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Lodge 1012, AFL-CIO, hereinafter called the Boilermakers, is a labor organization within the meaning of Section 2(5) of the Act.

##### III. THE UNFAIR LABOR PRACTICES

###### A. Background

In a prior decision involving the Company's Granite City plant, the Board found, in summary, as follows (157 NLRB 408): The Company hired its first employees on July 23, 1964, and the four employees hired that day were assigned to cleaning up the plant in preparation for the installation

of the machinery which would be used to manufacture the Company's finished products. The four employees hired were sent to the plant by a representative of the Boilermakers, and were at the time of hiring, or shortly thereafter became, members of that Union. The same day the four men were hired, the Company granted the Boilermakers' request for recognition, after having the bargaining authorization cards of the four men checked by the mayor of Granite City. Later that same day, July 23, 1964, the Company agreed with the Boilermakers on the main points of a contract, and on July 25 the contract was signed. The contract included a union-security provision covering all of the Company's Granite City employees. Thereafter, both the Company and the Boilermakers threatened employees with discharge for not paying Boilermakers initiation fees and monthly dues. Two employees were discharged by the Company, upon demand of the Boilermakers, assertedly for nonobservance of the union-security provision of the contract.

The Board in its earlier Decision concluded that the Company's recognition of the Boilermakers was premature and was unlawful assistance to and support of the Boilermakers in violation of Section 8(a)(2) and (1) of the Act; that the Company by entering into a contract containing a union-security provision with the Boilermakers at a time when it was not the employees' lawful representative, and thereafter enforcing the unlawful contract, including discharging two employees upon the demand of the Boilermakers, had violated Section 8(a)(2), (3), and (1) of the Act; that said Union, by entering into, enforcing, and demanding the discharge of employees pursuant to the union-security provision of the unlawful contract, had violated Section 8(b)(2) and (1)(A).

In this prior Decision, which was handed down on March 7, 1966, the Board ordered the Company, among other things, to cease recognizing the Boilermakers until it had been certified by the Board, to cease giving effect to its July 25, 1964, contract with the Boilermakers, and to cease its other unfair labor practices. Affirmatively the Company was directed, *inter alia*, to reinstate the two discharged employees with backpay,<sup>1</sup> to post notices indicating a willingness to comply with the Board's Order, to report on its compliance with the Board's Order to the Regional Director, and, jointly and severally with the Boilermakers, to reimburse all employees for all dues and fees paid over to the Boilermakers pursuant to the union-security provision of their unlawful contract. The Board ordered the Boilermakers, *inter alia*, to cease acting as the collective-bargaining representative of any of the Company's employees, to cease giving effect to the July 25, 1964, contract with the Company, and to cease its other unfair labor practices. The Boilermakers were also ordered by the Board, jointly and severally with the Company, to reimburse all employees for all dues and fees paid over to it pursuant to the union-security provision of the unlawful contract, to notify the Company that it had no objection to the reinstatement of the employee whom it demanded the Company discharge and, jointly and severally with the Company, pay backpay to this employee, and to post appropriate notices and furnish the requisite compliance.

<sup>1</sup> With respect to one of the two discharged employees, the Company's backpay liability was made joint and several with the Boilermakers.

Neither the Company nor the Boilermakers has posted the notices required by the Board's March 7, 1966, Decision and Order or in other respects with said Decision and Order.

B. *The Company's Posting of a Rule Prohibiting All "Union Talk" in the Plant*

On or about May 25, 1966, Thomas Sills, the assistant manager of the Granite City plant, posted on the plant bulletin board the following notice:

NOTICE TO EMPLOYEES

There has been too much talking about unions in the plant.

From now on any employee found talking about unions any place in the plant will be disciplined.

We don't like to prohibit employees from talking, especially during break time but all the union talk is causing a problem. If you want to talk about the union that's your business but do it after work.

/s/ Thomas Sills

The notice remained posted on the bulletin board for almost a month and then disappeared. There is no evidence as to who was responsible for removing the notice.

C. *The Company's Defenses; Conclusions*

The Company asserts that the union talk in the plant prior to invoking its new rule was seriously impairing plant production and was adversely affecting its shipments to the Defense Department, which were mainly to Vietnam, and that it put the prohibition against union talk into effect in an effort to improve its production and expedite shipments to the war area. These circumstances, the Company contends, bring its conduct in this case within the exception to the rule stated by the Board in the *Walton* case.<sup>2</sup> In its brief, pages 4-5, the Company quotes from the Board's decision in the *Walton* case, as follows:

... as we interpret these decisions of the Supreme Court, they establish the following rules of law with respect to employer no-solicitation rules:

1. No-solicitation or no-distribution rules which prohibit union solicitation or distribution of union literature on company property by employees during their nonworking time are presumptively an unreasonable impediment to self-organization, and are therefore presumptively invalid both as to their promulgation and enforcement; however, such rules may be validated by evidence that special circumstances make the rule necessary in order to maintain production or discipline.

In support of its defense, the Company points to the testimony of Assistant Plant Manager Sills that 85 percent of the Company's production or corrugated metal pipe is sent to Vietnam, by air where possible.

Assistant Manager Sills also testified that he had received the no-union-talk notice in the mail from the

<sup>2</sup> *Walton Manufacturing Company*, 126 NLRB 697, enfd 289 F 2d 177 (C A 5)

Company's East Chicago, Indiana, office, after having had a telephone conversation with Oscar Nelson, the manager for the Company of both the East Chicago and Granite City plants. Nelson's headquarters are at East Chicago. Sills testified concerning his conversation with Nelson as follows: "He wanted to know if there had been any talk about the unions and I said yes. He wanted to know why my production was down and I told him. . . ." After an objection was made and overruled, Sills testified that he gave Nelson his opinion, but the matter was let drop at this point and Sills did not state the nature of his opinion.

Sills further testified that an article in the Granite City Press discussing the Board's March 7, 1966, decision against the Company and the Boilermakers, particularly the provision requiring the reimbursement of "dues, initiation fees, plus interest is what started the talk in the plant." According to Sills, "the boys came in to me wanting to know if they was going to get their money back, if we was going to recognize the same seniority." An assistant steward for the Boilermakers came into his office, Sills further testified, and "wanted to know if we was going to keep the contract we had or if we was going to the Steelworkers." Sills explained that he could not answer "because that is not [his] privilege." There was also considerable discussion about Boilermakers' reinstatement fees, so Sills testified.

In support of its assertion of low production in the period prior to the promulgation of its new rule, the Company introduced into evidence, as Company Exhibit 1, a production summary giving certain figures concerning the number of feet of various sized pipe produced in each of the first 3 weeks in May, June, July, and August, 1966. The summary purports to show a substantial increase in production commencing the second week in June 1966, which was shortly after the notice of the no-union-talk rule was posted.

While the Company relies on Company Exhibit 1 to show the comparative production figures both before and after the promulgation of the no-union-talk rule, on its face the exhibit is incomplete. It fails to show the production in the fourth week of each of the months. Since production changed noticeably from one week to the next, it might be that the picture would be changed considerably were the figures for the production in the fourth week in each month given. Also, the inclusion of the production figures for only the first 3 weeks in May to show the levels of production before the promulgation of the rule appears to be too short a period, particularly in view of the fact that the "union talk" admittedly was prompted by the news of the Board's decision in the earlier case, which came out in mid-March 1966.

Furthermore, the testimony of Sills, through whom Company Exhibit 1 was received in evidence, raises further questions concerning the weight which can be given to the figures given in the exhibit. Although Sills testified that he had checked the Company's production records on the evening before the hearing, it is apparent from his testimony as a whole that he did not personally check the figures himself. Thus when asked whether the figures represented the Company's production for one shift per day, Sills answered at first, two shifts a day, then stated that he could not say for sure, but that he believed that the figures represented one shift per day's production, and "would have to check it to make sure." After thinking the matter over, Sills concluded that "it can't be two shifts, there is not enough footage here," but he was

unable to state which shift the figures represented. The Company operated not only two shifts, but three, on occasion. In view of the foregoing facts and considerations the incomplete figures given in Company Exhibit 1 cannot be relied upon as furnishing an accurate measure of the Company's total production in the periods before and after the promulgation of its no-union-talk rule.

The only other evidence in the record concerning the alleged low production in the period in question consists of oblique references by Assistant Manager Sills to lower production which he made when questioned at the hearing about discussions which he had had with his superior, Plant Manager Nelson.

Sills admitted that other factors wholly unrelated to union talk can cause a drop in production at the plant. Among these are machinery breakdowns and absenteeism among the employees.

In my opinion, the Company has failed to carry its burden with respect to proving the essential facts underlying its defense in this case. Not only has the Company failed to adduce convincing evidence of a drop in production after the Board's Decision in the earlier case, but also it has failed to establish that the asserted decreased production is reasonably attributable to the union talk in the plant.

Finally, assuming that production did drop materially in the period in question, the Company has failed to show how talking about unions during the employees' free time in the plant has a tendency to disrupt production during working time in a plant producing large metal culverts. It would seem that talking politics or baseball might have an equal tendency to disrupt production, but such talk was permissible, even during working hours, as far as the Company's no-union-talk rule was concerned.

Furthermore, it is not unreasonable to attribute any drop in production to the Company's failure to comply with the Board's Order in the earlier case. As Assistant Manager Sills' testimony clearly indicates, the discussions which were prevalent in the plant after the issuance of the Board's decision in the earlier case concerned, among other things, the reimbursement of Boilermakers' dues which had been checked off from their wages, continued recognition of the Boilermakers, and the question of their seniority rights in light of the Board's earlier Decision and Order. Had the Company posted the notice directed by the Board's Order in the earlier case, the employees would have had their answer to these questions and much of the discussion, which the Company urges prompted it to invoke its new rule, would have been avoided. Since it was the Company's failure to observe its obligations under the Board's earlier Decision which gave rise to much of the union talk upon which it relies as the basis for putting the rule into effect, it cannot now with good grace urge that the excessive union talk justified its action in this regard.

Relying on *N.L.R.B. v. Babcock & Wilcox Co.*, 351 U.S. 105, 112, the Company argues that a balancing of the competing interests of the Company in expediting the production of war materials, on the one hand, and the employees in the exercising of their right to communicate with one another about union matters on their own time, on the other hand, "must heavily weigh in favor of the" Company's action in initiating the new rule. However, this argument wholly overlooks that it was the Company's conduct in disregarding the Board's Decision and Order in the earlier case which gave rise to much of the union talk against which its new rule was aimed. In these

circumstances, particularly, any balance struck should favor the employees. While the needs of the Vietnam war are vital, they should not be achieved at the expense of the destruction of rights guaranteed by Congress without express congressional sanction.<sup>3</sup>

For the foregoing reasons I conclude that the Company has failed to establish in this case the special circumstances necessary to validate its rule prohibiting all union talk in the plant, including breaktimes, and find, in accordance with the contention of the General Counsel, that the Company by promulgating and enforcing its no-union-talk rule so as to prohibit union talk in the plant during nonwork times has placed an unreasonable impediment in the way of employees exercising their rights of self-organization, in violation of Section 8(a)(1) of the Act.

#### CONCLUSIONS OF LAW

1. By promulgating, maintaining, and enforcing a rule prohibiting employees from discussing union matters during nonworking time and in nonwork areas of the plant, the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, thereby engaging in an unfair labor practice within the meaning of Section 8(a)(1) of the Act.

2. The aforesaid unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

Having found that the Respondent has engaged in an unfair labor practice by promulgating, maintaining, and enforcing an invalid no-union-talk rule, my Recommended Order will direct the Respondent to cease and desist from such unfair labor practice and to take certain affirmative action to effectuate the policies of the Act.

Upon the foregoing findings and conclusions and the entire record, and pursuant to Section 10(c) of the Act, the Trial Examiner hereby issues the following:

#### RECOMMENDED ORDER

The Respondent, Young Metal Products Company, Granite City, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Promulgating, maintaining, and enforcing a rule prohibiting employees from discussing union matters in the plant during nonworking time or in nonworking areas.

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

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Post at its Granite City, Illinois, plant the attached notice marked "Appendix." Copies of said notice to be furnished by the Regional Director for Region 14, after being duly signed by an authorized representative of the Respondent, shall be posted by the Respondent immediately upon receipt thereof, and maintained 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 the Respondent to insure that said notices are not altered, defaced, or covered by any other material.<sup>4</sup>

(b) Notify the Regional Director for Region 14, in writing, within 20 days from the receipt of this Decision, what steps it has taken to comply herewith.<sup>5</sup>

<sup>3</sup> *Fabri-Tek, Incorporated v NLRB*, 352 F.2d 577 (C.A. 8), upon which the Company also relies, is clearly distinguishable on the facts. That case involved the wearing of union buttons during working hours in a plant manufacturing very complicated magnetic memory devices for computers. The work was all done by hand and required a high degree of concentration by the individual workers. In contrast, the instant case involves a rule prohibiting union talk on the employees' own time. The workers were laborers engaged in the production of heavy metal pipe, using heavy machine presses. What would distract workers in a computer factory would not necessarily disturb production in a pipe factory at all.

<sup>4</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>5</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 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** promulgate, maintain, or enforce a rule prohibiting employees from discussing union matters in the plant during nonworking time or in nonwork areas of the plant.

**WE WILL NOT** in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act.

**YOUNG METAL PRODUCTS  
COMPANY**  
(Employer)

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

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

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 1040 Boatmen's Bank Building, 314 North Broadway, St. Louis, Missouri 63102, Telephone 622-4167.