

engaged in commerce or an industry affecting commerce, where an object thereof is to force or require Aluminum Company of America to assign the work of unloading its cargo vessels at its dock at Vancouver, Washington, to employees who are members of International Longshoremen's and Warehousemen's Union and Local 4, International Longshoremen's and Warehousemen's Union, rather than to employees of the Company who are members of or represented by the Aluminum Trades Council of Vancouver, Washington, affiliated with the Aluminum Workers International Union and Local 300, Aluminum Workers International Union.

INTERNATIONAL
LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION
(Labor Organization)

Dated _____ By _____
(Representative) (Title)

LOCAL 4, INTERNATIONAL
LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION
(Labor Organization)

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 members have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 327 Logan Building, 500 Union Street, Seattle, Washington, Telephone 583-4583.

**Filtors, Inc. and Local 411, National
Organization of Industrial Trade Unions.**
Case 29-CA-528.

April 13, 1967

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS BROWN
AND JENKINS

On December 22, 1966, Trial Examiner Thomas F. Maher 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. He

¹ These findings and conclusions are based, in part, upon credibility determinations of the Trial Examiner, to which the Respondent has excepted. After a careful review of the record, we conclude that the Trial Examiner's credibility findings are not contrary to the clear preponderance of all the relevant evidence. Accordingly, we find no basis for disturbing those findings. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enfd 188 F.2d 362 (C.A. 3).

also found that the Respondent had not engaged in other unfair labor practices and recommended that the complaint be dismissed as to them. Thereafter, the Respondent and the General Counsel filed exceptions to the Trial Examiner's Decision and supporting briefs.

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 and the entire record in the case, including the exceptions and briefs, and hereby adopts the Trial Examiner's findings, conclusions,¹ and recommendations, except as modified below.²

THE REMEDY

Having found that by transferring and thereafter discharging Robert Conklin, Respondent discriminated against him in violation of Section 8(a)(3) of the Act, thereby interfering with, restraining, and coercing employees in violation of Section 8(a)(1) of the Act, we shall order that it cease and desist from this conduct. We shall also order that Robert Conklin be reinstated to the position which he held prior to his unlawful transfer on January 17, 1966, or to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges, and that he be made whole for any loss of earnings suffered by him because of Respondent's discrimination against him, with backpay and interest thereon computed in the customary manner.³

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, Filtors, Inc., East Northport, Long Island, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as herein modified:

1. Delete the word "Discharging" from the beginning of paragraph 1(a) of the Recommended

² The General Counsel excepts to the Trial Examiner's failure to accord proper weight to his own conclusion that Robert Conklin was transferred to an untenable situation for the purpose of being fired. As it is clear that the transfer was discriminatory, we find merit in these exceptions and have modified the Trial Examiner's Remedy, Recommended Order, and notice accordingly.

³ *F. W. Woolworth Company*, 90 NLRB 289, *Isis Plumbing & Heating Co.*, 138 NLRB 716

Order and substitute the words "Transferring, discharging."

2. Delete paragraph 2(a) of the Recommended Order and substitute the following:

"(a) Offer immediate and full reinstatement to Robert Conklin to the position which he held prior to his unlawful transfer on January 17, 1966, or to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole in the manner set forth in the section of the Board's Decision entitled 'The Remedy'."

3. Add the word "transfer," after "WE WILL NOT" in the first full paragraph of the notice.

4. Delete the second full paragraph of the notice and substitute the following:

WE WILL offer immediate and full reinstatement to Robert Conklin to the position which he held prior to his unlawful transfer on January 17, 1966, or to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and WE WILL make him whole for any loss of pay he may have suffered in the manner set forth in the section of the Board's Decision entitled "The Remedy."

5. Add the following immediately below the signature line in the notice:

Note: We will notify the above-named employee if presently serving in the Armed Forces of the United States of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed forces.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

THOMAS F. MAHER, Trial Examiner: Upon a charge filed on February 21, 1966, by Local 411, National Organization of Industrial Trade Unions, the Regional Director for Region 29 of the National Labor Relations Board, herein called the Board, issued a complaint on May 25, 1966, against Filtors, Inc., Respondent herein, alleging violations of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended (29 U.S.C., Sec. 151, *et seq.*), herein called the Act. In its duly filed answer, Respondent, while admitting certain allegations of the complaint, denied the commission of any unfair labor practice. Thereafter Respondent filed a Motion for Bill of Particulars. Over the opposition of the General Counsel, Trial Examiner Sidney Lindner, by order of July 15, 1966, dismissed in part and granted in part Respondent's motion. Thereafter on July 18, 1966, pursuant to this order, counsel for the General Counsel filed a Bill of Particulars.

Pursuant to notice a hearing was held before me in Brooklyn, New York, where the parties were represented by counsel and afforded full opportunity to be heard, to present oral argument, and to file briefs with me. Briefs were filed by the parties on October 14, 1966.

Upon consideration of the entire record, including the briefs, and upon my observation of the witnesses as each appeared before me at the hearing, I make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. THE BUSINESS OF THE RESPONDENT

Respondent is a subsidiary of Deutsch Company, a California corporation. It is engaged in the manufacture, sale, and distribution of subminiature and micro-miniature electronic relays for aircraft and guided missile systems at East Northport, Long Island, New York, where it maintains its principal office and place of business. In the course and conduct of its operations Respondent annually ships from its East Northport plant finished products valued in excess of \$50,000 directly to points located outside the State of New York, and during the same annual period it manufactured, sold, and distributed products valued in excess of \$50,000 which had a substantial impact upon national defense. Upon the foregoing facts adduced from undisputed evidence at the hearing I conclude and find that Respondent is an employer within the meaning of Section 2(6) and (7) of the Act

II. THE LABOR ORGANIZATION INVOLVED

Local 411, National Organization of Industrial Trade Unions, sought, by the solicitation of Respondent's employees at its plant gates, to represent them for the purpose of collective bargaining with the Respondent, and to this end secured written authorizations from employee Robert Conklin and others.

It is Respondent's contention that the allegedly unsavory character of several of the organization's officers, more fully described in photocopies of newspaper reports distributed among the employees, was such as to preclude it from achieving representative status. In further support of its contention Respondent sought unsuccessfully to introduce into the record additional evidence relating to indictments returned against these officers, and of news reports of their irregular activities in labor relations affairs of the community. It is the Board's settled policy that, notwithstanding evidence of improper or corrupt practice in the administration of a union's affairs, Congress did not authorize the Board to withhold its processes from such an organization.¹ In view of this position Respondent's contentions must be rejected.

Quite apart from a stipulation among the parties that Local 411 is a labor organization within the meaning of the Act, it has been established by credible evidence that Local 411 sought to represent employees of the Employer. It has thereby satisfied the criteria set forth in Section 2(5) of the Act. Thus it can be said that Local 411 is an organization in which employees participate, as did employee Conklin herein, and which exists for the purpose, as disclosed by its organizing efforts, of dealing with employers in matters relating to their employees'

¹ *Alto Plastics Manufacturing Corporation*, 136 NLRB 850, *Edward Fields, Incorporated*, 141 NLRB 1182; *Local 456, International Brotherhood of Teamsters, Chauffeurs*,

Warehousemen and Helpers of America (Strauss Paper Co., Inc.), 149 NLRB 49

employment interests. I accordingly conclude and find that Local 411 is a labor organization within the meaning of the Act.

III. THE ISSUES

Whether employee Conklin was transferred or promoted to a job assignment in which he could not adequately perform his duties for the purpose of discriminating against him.

Whether Respondent gave the employees the impression that it was keeping their union meetings and activities under surveillance.

Whether Respondent's president, Louis DeLalio, warned or directed Respondent's employees to refrain from joining or to forego Local 411, or otherwise refrain from assisting or supporting it.

IV. THE UNFAIR LABOR PRACTICES

A. *Background of Union Activity*

Respondent's plant was the object of a number of separate union campaigns during 1965. In each case the Union involved was unsuccessful in its organizing efforts and left the scene. It is clear from the testimony of Respondent's officials² that it was aware of these efforts and publicly expressed satisfaction that to date each union, in its turn, had moved on. The last of these unions to appear on the scene was Local 411 which, in late November 1965, began to pass out campaign literature at the plant gate.³ Respondent's officials were prompt to counter, preparing a letter to Respondent's employees stating its opposition to Local 411. On January 18 and thereafter, it distributed this letter, together with reprints of newspaper articles dealing with the alleged extralegal activities of Local 411's president, Lasky. The record is not entirely clear that the materials were handed out personally to the employees, but it was established by Personnel Manager Motherwell's testimony that after preparing these materials and clearing them with President DeLalio, he and his assistant, Allgiere, made them available at tables placed at both the side and front employee entrances.

B. *President DeLalio's Speech*

Several days after Respondent circulated its opposition literature, on the afternoon of January 21, it called a meeting of employees in the plant cafeteria. Personnel Manager Motherwell, who was responsible for the physical arrangements of the meeting, was present only sporadically, but most of the other management officials were present for the full session as President DeLalio addressed the group, speaking from notes for approximately 20 or 25 minutes.⁴

With several exceptions to be noted hereafter there appears to be general agreement as to the substance of the speech, the emphasis, however, differs with the telling. Thus President DeLalio described the speech as a

consequence of production instability that had resulted in some recent layoffs of production employees. It is not disputed that DeLalio devoted a considerable part of his speech to this subject, explaining in detail the Company's problems to the group, outlining its plans for future developments and improvements, and seeking their cooperation in such matters as absenteeism, efficiency, and extended job training. Based on the correction of such considerations, DeLalio assured the assembled employees, the Company's profit situation would be improved and it would redound to their ultimate benefit, particularly as to the future of the bonus, an item which had previously been curtailed because of the business slump.

As DeLalio warmed to his subject, however, he enlarged on it to include the presence of the Union. This he did by first complimenting the employees upon their rejection of the several unions that had recently sought to organize them. From that point he proceeded to make specific reference to Local 411 whose representatives he and other company officials had admittedly observed soliciting at the plant gates. He said that the very thought of this Union trying to get in made him mad: that its officials were nothing but a "bunch of crooks"⁵ who sought the employees' dues payments to support their racetrack and other gambling activities: that he hoped that the employees, as they had before, would reject this new Union, Local 411, and that they would "quietly fold their tents" and move on. He went on to say that the Company would, in any event, fight Local 411 in its efforts to organize the employees, that they were now only using their "little guns" to combat it, but if necessary would get out their legal "big guns" to do the job.⁶

There is conflicting evidence in the record concerning a statement attributed to DeLalio to the effect that if the Union got in they would be forced to close or move the plant. Because of the confusion of this evidence, I reject it. Thus employee Robert Ibbotson, in response to a leading question following the exhaustion of his recollection on the speech, quoted DeLalio as stating that "if the Union had gotten in, that operating cost would go up and the plant would be forced to move elsewhere." And employee Morris Burton quoted DeLalio at several points in his testimony that if the Union got in the Company would have to "pack up and move." Similarly employee Robert Conklin testified that DeLalio had stated that "if the Union got in, financial conditions, they would have to close the plant."⁷ On the other hand, in addition to DeLalio's denial of having made the statement, Personnel Director Motherwell's denial that it was made, a number of employees called by the General Counsel corroborated these denials. Specifically, employees Eddie Lewis and Frances Daniel were asked if anything was said in DeLalio's speech concerning the closing or moving of the plant if the Union got in. Each stated that nothing was said by DeLalio in his speech concerning the moving or closing of the plant. In view of the confused condition of this evidence, and particularly as it involves contradictory testimony of General Counsel's own witnesses, I am not

² Personnel Manager Motherwell and President DeLalio

³ The undisputed testimony of Union Representative Hustic

⁴ This speech is not to be confused with a subsequent one referred to in the record, which appears to have dealt exclusively with company problems and included the introduction of a company sales executive to the assembled employees

⁵ I do not credit DeLalio's denial that he used the word "crooks" in his speech

⁶ Certain of the witnesses quoted DeLalio as stating his plan to use their "big artillery"

⁷ The record further discloses that in referring to this speech in an affidavit which he supplied to an agent of the Board prior to the hearing, Conklin made no mention of DeLalio's statement with respect to the closing or moving of the plant

disposed to make any finding with respect to DeLalio's alleged threat to close or move the plant.

C. *The Union's Meetings and Activity*

It is alleged in the complaint that Respondent's president, DeLalio, and other representatives, gave employees the impression that the Union's meetings and its activities were being kept under surveillance. The evidence is clear that DeLalio did know of Local 411's organizing efforts, of the presence of its organizers, usually Husic, at the gate, and, in fact, of friendship between Representative Husic and one of the Company's employees, Conklin, whom DeLalio encountered together at a local restaurant. None of these facts demonstrate that the Company was spying or creating the impression that it was but rather that it had knowledge of the Union's presence, a necessary element in establishing, in the first place, a motive of opposition to the Union. I accordingly reject any suggestion that these facts known to Respondent were related in any way to actual or intended or implied surveillance.

There is, however, one other incident which bears comment. Several employees testified that at a union meeting attended by employees on January 18, 1966, one Joan Linz attended, arose to express opposition to Local 411, and solicited the names of employees in attendance. No where was Linz identified as anything but a rank-and-file employee: specifically, an inspector. Nor is there any evidence that she represented or claimed to represent management in this or any other connection, or that management knew of, little less authorized, her presence at the meeting. Except for employee Joan Linz' vocal opposition to the Union and her collection of the names of some of her fellow employees at the union meeting there is no other evidence of an effort by Respondent to create an impression of surveillance.

D. *The Rise and Fall of Robert Conklin*

Until one evening in early January 1966 Robert Conklin was but another of Respondent's employees with little if anything to distinguish him from his fellows except his good work record, first as a machine shop employee and later as an inspector, and a 10-year term of employment—one of the longest in the Company. But with the chance encounter of President DeLalio with Conklin as he was dining with Union Representative Husic in a local restaurant, a chain of events commenced which did not end until Conklin had been terminated from Respondent's employ, thus initiating the subject matter of this proceeding.

Conklin was first hired by the Company in 1956, worked in the machine shop, and has since progressed through various jobs until he had achieved the classification of reliability inspector in the quality assurance department of the plant, a department charged with the maintenance of proper standards in the production of microrelays and other electronic devices.⁸ By December 1966 Conklin was earning an hourly wage rate of \$3. His record of performance was shown to have been very good and his immediate superior, Everett E. Taylor, credibly testified that in the 4 years during which he had had opportunity to observe and direct Conklin he was "a good man," and again he testified, "a good worker." Personnel records

introduced at the hearing substantiate Taylor's estimate of Conklin's ability. Thus, from 1956 he moved from job to job at continually increasing hourly wage rates, beginning at \$1.50 and including at least two merit increases in the past 3 years. During all of his employment the record shows periodic ratings of "Very Good," and for the most recent periods "Excellent." It is significant, however, that after his transfer on February 19, 1966, the critical incident in this matter, no ratings whatever appear in Conklin's personnel record.

When Local 411 representatives appeared at the gates in late November, Conklin was among those accepting literature and a membership card. On December 6 he signed his card and mailed it to the Union's headquarters. Thereafter Representative Husic, noting from Conklin's application that he had been with the Company for over 9 years, decided that this would be a good man to enlist into the organizing campaign and wrote Conklin asking him to get in touch with the Union. This Conklin did by telephoning Husic and as a result a meeting between the two was arranged for before Christmas at Heim's Restaurant in nearby Comack, Long Island. Due to auto difficulties Conklin was able to meet only briefly at this time with Husic outside the restaurant. Another meeting was scheduled for the first week in January. At the appointed time the two met in the restaurant and were assigned a table first in a row directly in line with the entrance and about 15 feet from it. As Husic and Conklin were engaged in conversation at the table, Respondent's president, DeLalio, came into the restaurant in the company of Charles Nunn, an engineer with the Company. DeLalio testified that he recognized Conklin on this occasion and spoke to him, and Conklin returned the greeting. DeLalio further testified that although he was aware at the time that Conklin was with another person he did not know it to be Local 411's Husic. For reasons which will become apparent hereafter I do not accept DeLalio's insistence that he did not recognize Conklin's companion to be the union representative.

Local 411's representatives, Husic and another, had been at Respondent's plant gates morning and night, at least two or three times a week, from late November through March 1966. Respondent's officials were quite conscious of this activity, Personnel Manager Motherwell testifying that as soon as the organizers appeared in front of the plant he knew of it, and he particularly recognized Husic because of his distinguishing portly appearance. In fact Motherwell, according to Husic, frequently requested him to move his circular-passing activities further away from the plant entranceway.

For his part President DeLalio, as early as before Christmas 1965, was also familiar with Local 411's presence at the gate. And he admitted, in fact, to having an investigation made of the organization after Motherwell had first told him what union it was. DeLalio similarly conceded that at least occasionally upon his arrival and departure from the plant he had the opportunity to witness the activities of the union representatives there, including, presumably, Representative Husic whom Motherwell had frequently observed there.

Finally, it is to be noted that President DeLalio's interests in the activities of 411 were not as fleeting as his testimony would suggest. Quite apart from the investigation he directed, by January 21 he considered it a

⁸ A relay is an electrically activated switch

matter of such considerable moment that in a meeting with the employees he asked them to reject the Union for the "crooks" he believed them to be (*supra*).

Upon all of the foregoing it is difficult to believe that when President DeLalio saw Husic in the company of Conklin in early January he did not recognize him as the union representative who had engaged in organizing activities at Respondent's gates, which campaign Respondent's officials were already aware of and which had inspired DeLalio, himself, to initiate an investigation. I had occasion to observe President DeLalio as he testified on many subjects related to this proceeding. Suffice it to say he did not impress me as a company official who was so obtuse that he would not have recognized Husic in the restaurant on the occasion mentioned, or that he would not have assessed the significance of Husic's meetings with employee Conklin. I accordingly reject DeLalio's denial that he did not recognize Husic at this time and his further testimony that he did not know that Husic was connected with Local 411 until sometime late in January.

Within a week or 10 days following the restaurant meeting, on January 17, 1966, Taylor, the supervisor in the quality assurance department, summoned Conklin and informed him he was being transferred to the specifications department whose function, according to Pat Mullahy, the department manager, is to review customers' specifications to assure that the product conforms to them, and to interpret these specifications for the purpose of making manufacturing instructions for the product on order. This involves a review of blueprints, drawings, and the specifications themselves. In his testimony Taylor, Conklin's superior, concedes that Conklin had not requested this transfer nor had he been consulted in advance concerning it, nor did Taylor have any knowledge of Conklin's ability to read blueprints. He just "had always assumed that he had." What Conklin had done under Taylor's supervision was relay inspection work; and this, said Taylor, he did well. Conklin, for his part, stated his willingness to accept the transfer, and in the company of his new supervisor, Pat Mullahy, went to the specifications department area where he was put to work at a table provided for him. The other employees in the department, it appears, performed their duties at desks. Conklin's pay for this new assignment remained the same, \$3 per hour, albeit it was computed on a 40-hour weekly basis, as salary, rather than on the previously computed hourly wage basis.

The working personnel in the specification department to which Conklin was assigned all appeared to have been on a higher educational level than Conklin himself. Thus, for example, one Grubner held a degree in mathematics, McAdams held a college degree, and Robotti had at least 2 years of study at the nearby Farmingdale State College. Conklin, on the other hand, had less than a full high school course of study.

Conklin was not at his new job more than a few days before he began to experience difficulties with his newly assigned tasks, such as reviewing specification analyses and reading blueprints. To be sure, Conklin was expected to do all of these jobs from the time of his assignment, according to Mullahy, but at the outset made the mistakes usually expected of a newcomer. For the first couple of weeks he would make the mistakes and Mullahy would

have him correct them. But as they went into the third week he began to make even more errors. At this point Mullahy consulted with his own superior, Krieger, and with Personnel Manager Motherwell, and the latter suggested that Conklin be given another chance. During the week that followed the mistakes continued and Conklin gave the impression, according to Mullahy, that he just did not care. Whereupon Mullahy, with the approval of Krieger, terminated Conklin on February 18, 1966. Significantly, whereas Conklin had admittedly been rated "Excellent" in the job from which he had been previously transferred, nevertheless the company personnel manager knew of no report on Conklin's performance in the job from which he was terminated, Mullahy, never having been required to submit such a report.

E. Circumstances Relating to Conklin's Assignment and Termination

Quite apart from the chronological sequence of Conklin's misfortunes, certain factors and circumstances relating to the work and to his qualifications are worthy of comment at this point. Because of their general relevance no attempt will be made to present them in any order suggestive of their place in chronology or their comparative significance.

1. It is contended that Conklin's new assignment constituted a promotion and involved increased emoluments. A review of the evidence supplied by the testimony of Respondent's officials and the documents procured by them makes it clear and specific that Conklin was "transferred," and not "promoted." This brings into question the interpretation of the policy whereby Respondent never returned a *promoted* employee to his previous job when he failed to make good—the alleged reason for terminating Conklin on February 18, and for refusing to rehire him thereafter on July 1, 1966, when he reapplied for work and was again refused. As Conklin was never promoted clearly the policy was not mandatory in this case. It thus becomes questionable whether Respondent's termination of Conklin and subsequent failure to rehire him was, in fact, an implementation of this policy.

2. That Conklin's new assignment had certain advantages over the previous ones can not be gainsaid. Thus he worked in the office and not in the production area. He was free of the restraining work conditions in the so-called blue room where he had last previously worked—a department where working conditions were restrictive as to clothing atmosphere, and confinement because of the precise and critical nature of the operations being performed. Similarly, although as a so-called "exempt employee" for pay purposes⁹ he received a weekly salary. It was, in essence, the same \$3-per-hour rate, and it is admitted that for production employees there were jobs, on an hourly basis, that paid higher than this rate. Hence he was not moved from a "dead end" to new vistas of pay.

Nor is it significant that in his new assignment there was one increased benefit, a doubled insurance benefit. The credited evidence discloses that based upon the insurance company's computations, generally, insurance benefits to

⁹ An "exempt employee" is a classification established under the Wage and Hour Law whereby, under certain conditions,

salaried employees are entitled to overtime benefits from which they would normally be excluded

the white collar employees are greater than those to production workers. This, it was made clear, had nothing to do with compensation but was an actuarial result reached by the insurance carrier and hence could not be viewed as an increased benefit in the usual sense. Except for this insurance differential and a certain amount of laxity with regard to sick leave and lateness nothing else that might be considered an added benefit could be suggested.¹⁰

3. It appears from the testimony of all company management witnesses that advancement into sales and management positions was a possible step from the specification department.

4. It appears from all the testimony that at the time Conklin was transferred that Respondent was in a production crisis and a number of production workers were being laid off. Respondent's officials' testimony suggests that Conklin's transfer was part of this whole economic upheaval. In this regard it is to be noted, however, that Conklin was one of the most senior production workers in the plant and had been receiving merit increases and ratings of "Excellent" in his inspection work for the past 2 years. I therefore reject the unspoken inference that Conklin's job was in jeopardy for such economic reasons, particularly as there was no showing of anticipated layoffs in the blue room where he was last assigned.

5. As previously noted, Respondent's records establish that Conklin was "transferred" not "promoted." In his testimony concerning the differences between the two, whether one is or is not a reclassification, or an upgrading, Personnel Manager Motherwell's description of the terminology and the application of the so-called policy bordered on an incoherence that could only be compared with obtuse technical or professional conversation. All that can be distilled from a reading of Motherwell's analysis is that Conklin's change from one job to another could be cataloged as anything management chose to adopt. Here, for purposes that I will describe later, it chose to consider Conklin to be "promoted"; and as such, when found unqualified, to be "unreassignable," all of this in the face of documentary evidence that the initial assignment was noted as a "transfer" and not "promotion."

F. Conclusions as to Conklin's Assignment and Discharge

From a review of the foregoing findings and of the entire record, it is obvious that Robert Conklin was assigned to the specifications department only as a first step to his dismissal. Conklin was present for the 4 days of hearing and appeared before me as a witness. Consequently I have had ample opportunity to observe him. It is easy to see in him a person who would be imminently successful in the routine performance of the routine duties of an inspector, even as he had succeeded previously in the various operations of the machine shop. But in this specific I reject the testimony of his superior, Taylor, that these talents were transferable to his newly assigned job in specifications analysis. The confusion which Conklin brought to the witness stand, in his hesitant answers and in his failure to understand some of the questions propounded to him, bespeaks not only a basic inability to do the tasks assigned to him, all of a more technical nature

than he had previously experienced, but more significantly, there was suggested in his general demeanor an inability to extricate himself from the untenable position into which he had let himself be placed by accepting the new assignment. To repeat, this profile of Conklin's personality was obvious to me as the trier of the facts. I have no doubt whatever that it was equally as obvious to those who had supervised him for the past 10 years. Upon the facts herein and upon my observation of the witnesses, I would conclude and find that Conklin was duped into accepting a job for which he was not qualified.

However an employee may have come into a job it is well established, of course, that quite apart from an employer's obligations in charity and basic justice he can discharge him for any reason except those proscribed by the Act. I have no difficulty in finding and concluding that this was Respondent's basis for ridding itself of Conklin.

There is no question of Respondent's distaste for Local 411. President DeLalio's own version of his speech, the Company's distribution of information concerning the unsavory character of Local 411's officials, all of these establish a positive, admitted antipathy towards Local 411 in its goal to organize Respondent's employees. Against such a backdrop DeLalio's encounter with employee Conklin in the company of Local 411's organizer, Husic, at the Heim Restaurant, and Conklin's subsequent fate have a most significant connection. Upon a consideration of all the facts surrounding these two elements I have no alternative but to find and conclude that Conklin was transferred or "promoted" into an untenable situation for the purpose of being fired,¹¹ and for no other reasons. Under all these circumstances I conclude and find that Respondent has thereby discriminated against Robert Conklin in violation of Section 8(a)(3) of the Act, thus engaging in interference, restraint, and coercion of Respondent's employees in violation of Section 8(a)(1).

G. Conclusions as to Other Interference, Restraint, and Coercion

Two other significant incidents emerge from a review of the findings herein: the nature of President DeLalio's speech, and the presence of one Joan Linz at a union meeting.

With respect to the speech it is obvious that DeLalio opposed this Union as he had the others. Thus he commented on the character of its officials with facts that were not rebutted and assured the employees he would be glad to see Local 411 depart the scene. Neither of these statements appear to infringe upon the employees' guaranteed rights. In the first place I am not referred to any authority that would grant sanctuary to union or company officials from fair comment¹² upon their reported unsavory character. Nor is Respondent precluded from advising its employees that it will "fight" the Union. It is only when it does so, or announces that it will do so, in a manner proscribed by the Act, by threats and promises of benefits, that such conduct becomes violative. Neither statement had such a portent. On the other hand, DeLalio was also reported to have threatened to close or move the plant if Local 411 got in. As previously noted (*supra*, section IV, B), evidence upon this alleged threat ranges from outright denial, through faint recollection, to positive

¹⁰ The testimony of Personnel Manager Motherwell

¹¹ Cf. *Beiser Aviation Corporation*, 135 NLRB 450, *Bernhard Conrad Embroidery Company*, 156 NLRB 1056

¹² Cf. *Monroe Auto Equipment Company*, 159 NLRB 613

recall, by witnesses called by both parties. In such a state of the record, and finding it to be the only statement of doubtful propriety I am not disposed to find DeLalio's speech, or any part of it, to be interference, restraint, and coercion.¹³

As to Joan Linz' presence at the union meeting constituting the suggestion of surveillance, one item is missing. Who is Joan Linz? Nowhere in the record is there any evidence that she represented Respondent or claimed to do so, or that Respondent had so designated her. All we know is that she was an inspector, as Robert Conklin was an inspector, who vocalized her opposition to the Union and who had an unexplained interest in recording the names of those who attended the union meeting in her company. In the absence of anything more tangible or suggestive I would dismiss so much of the complaint as alleges such activity to be a violation of Section 8(a)(1).

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section IV, above, occurring in connection its business operations described in section I, above, have a close, intimate, and substantial relationship 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.

VI. THE REMEDY

Having found that by discharging Robert Conklin Respondent discriminated against him in violation of Section 8(a)(3) of the Act, thereby interfering with, restraining, and coercing employees in violation of Section 8(a)(1) of the Act, I shall recommend that it cease and desist therefrom. Affirmatively I shall recommend that Robert Conklin be reinstated to his former or substantially equivalent position, if this has not already been done, without prejudice to his seniority or any other rights and privileges, and that he be made whole for any loss of earnings suffered by him because of Respondent's discrimination against him, with backpay computed by access to Respondent's books, records and accounts, in the customary manner,¹⁴ with interest added thereto at the rate of 6 percent per annum;¹⁵ and that if he be presently serving in the Armed Forces of the United States that he be notified of his right to full reinstatement upon application in accordance with the provisions of existing law. I shall also recommend that the Respondent post the customary notices of compliance with the provisions of the Board's Order.

RECOMMENDED ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, I recommend¹⁶ that Fittors, Inc., its officers, agents, successors, and assigns, shall:

1 Cease and desist from:

(a) Discharging or otherwise discriminating against employees in respect to hire and tenure of employment for the purpose of discouraging membership in Local 411, National Organization of Industrial Trade Unions or engaging in concerted activities.

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

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

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

(b) Notify Robert Conklin if presently serving in the Armed Forces of the United States of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

(c) Post at its East Northport, Long Island, New York, plant, copies of the attached notice marked "Appendix."¹⁷ Copies of said notice, to be furnished by the Regional Director for Region 29, after being duly signed by the Respondent, shall be posted immediately upon receipt thereof, in conspicuous places, including places where notices to employees are customarily posted, and maintained by it for a period of 60 consecutive days thereafter. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 29 in writing, within 20 days from the receipt of this Decision, what steps the Respondent has taken to comply therewith.¹⁸

IT IS FURTHER RECOMMENDED that so much of the complaint in this proceeding as alleges other incidents of unlawful interference, restraint, and coercion be dismissed.

¹³ Cf. *Poray, Inc.*, 143 NLRB 617, *Texas Boot Manufacturing Company, Inc.*, 143 NLRB 264.

¹⁴ *F W Woolworth Company*, 90 NLRB 289

¹⁵ *Isis Plumbing & Heating Co.*, 138 NLRB 716

¹⁶ In the event that this Recommended Order be adopted by the Board the word "recommended" shall be deleted from its caption and wherever else it thereafter appears, and for the words "I recommend" there shall be substituted "The National Labor Relations Board hereby orders."

¹⁷ 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."

¹⁸ 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 discharge or otherwise discriminate against our employees with respect to hire or tenure because they are leaders in or members of Local 411,

