

William L. Bonnell Co., Inc. and International Union of District 50, United Mine Workers of America. Cases 10-CA-6639, 10-CA-6639-2, and 3.

April 24, 1967

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS FANNING AND BROWN

On January 26, 1967, Trial Examiner Paul E. Weil 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 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

¹ In adopting the Trial Examiner's Decision, we do not rely upon certain of his findings which appear to be contrary to evidence in the record. However, in our view, the weight of the evidence in the record as a whole clearly supports the Trial Examiner's findings that by promulgating and enforcing the no-solicitation rule, the Respondent violated Section 8(a)(1) and also Section 8(a)(3) of the Act. The Trial Examiner's findings which we find in error are as follows:

(a) "Employee Hannah testified credibly that he purchased tickets to a baseball pool from Press Operator Brown in the presence of Foreman Helms."

In fact, Hannah testified that he purchased the tickets while Foreman Fleming was about 7 feet away.

(b) "Brown testified that it was about seven feet."

In fact, Brown did not testify.

(c) "[George Hunter, Sr.] testified that he sold barbecue tickets on company time among others to employee Robertson who testified that he bought the barbecue tickets and delivered barbecue both to himself and to his foreman. Hunter, Sr., also testified that 160 barbecue plates were sold on that occasion."

In fact, George Hunter, Sr., did testify that he sold barbecue tickets on company time in 1965 rather than in 1966 as implied by the Trial Examiner. Hunter, Senior, did not state that he sold a barbecue ticket to Robertson. Robertson testified that in 1966 he bought a barbecue ticket from an employee named R. R. Hunter. George Hunter, Sr.'s testimony was simply to the effect that, in 1966, he helped prepare more than 160 barbecue plates to be delivered to the plant gate.

(d) "Dischargee Wyche testified that he never solicited on company time, as did dischargee Hannah" and "In addition, it appears that Wyche, Young, and Hannah did not solicit on company time. That Respondent may have thought that they did, at least in the case of Wyche, is no defense in the absence of evidence that Respondent's belief was well based."

In fact, all five of the discriminatees solicited for the Union on company time and their activities became known to management.

the entire record in the case, and hereby adopts the findings,¹ conclusions,² 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, William L. Bonnell Co., Inc., Atlanta, Georgia, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

² Contrary to Respondent's contention, we find that the testimony of employees Robertson, Gable, Hannah, Wyche, Young, Newman, Hunter, Senior, and Hunter, Junior, amply established that nonunion solicitation on the part of rank-and-file employees on working time was a frequent occurrence in Respondent's plant, and that Respondent was aware of these activities.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

PAUL E. WEIL, Trial Examiner: Upon charges filed August 3 and 10,¹ the Regional Director for Region 10 (Atlanta, Georgia), on behalf of the General Counsel of the National Labor Relations Board, issued his consolidated complaint on September 14, 1966, against Respondent William L. Bonnell Co., Inc., alleging that Respondent violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, by interrogating employees, promulgating an invalid no-solicitation rule, and discharging five employees for breach thereof. Respondent's duly filed answer denied all alleged unfair labor practices.

Pursuant to due notice a hearing was held before me at Newnan, Georgia, on November 2 and 3. All parties appeared at the hearing and were given full opportunity to examine and cross-examine witnesses, to introduce relevant evidence, to argue orally at the close of the hearing and to file briefs. The parties waived oral argument after the hearing. The General Counsel and the Respondent filed briefs with me which have been duly considered.²

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

¹ All dates herein are in the year 1966 unless otherwise specified.

² After the hearing, pursuant to agreement of the parties at the hearing, Respondent filed an affidavit of Supervisor Vernon Mentzer with the request that the same be incorporated in the record as Resp. Exh. 5. The agreement provided that in the event that either the Charging Party or the General Counsel was dissatisfied with the affidavit as such they could take a deposition from Mentzer and said deposition was to be filed with me on or before the date on which the briefs were to be received, in which case the deposition would be received as the testimony of Mentzer and the affidavit would not be received. No deposition has been received nor has any request therefore come to my attention. Accordingly, I receive the affidavit of Mentzer as Resp. Exh. 5.

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent, a Georgia corporation, manufactures and sells aluminum extrusions at Newnan, Georgia, from which it annually ships products valued in excess of \$50,000 directly to customers located outside the State of Georgia. Upon the foregoing facts the Respondent concedes and I find that it is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent concedes and I find that the Charging Party is a labor organization within the meaning of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Introduction*

In July and August the Charging Party was engaged in an attempt to organize the employees of Respondent through the usual channels including the use of employee proponents who solicited their fellow employees both in the plant and out of it to sign union cards. The last prior attempt to organize Respondent's employees had taken place in the fall of 1964. Respondent's reaction to the organizational campaign included "man to man" discussions by Respondent's supervisors with many employees, during the course of which various supervisors gave as their opinion that the employees did not need a labor organization nor a "third party" between the employees and management. In addition, it is alleged, two of the supervisors, Henry Orr and Hugh Don Smith, interrogated employees concerning their own and other employees' union activities.

On August 2, 1966, Kenneth L. Gable, Billy H. Robertson, and Ernest L. Hannah were discharged, allegedly for violation of a company no-solicitation rule which was thereafter posted on August 3, 1966. The posting took the form of a letter which stated as follows:

To all Employees: Yesterday it became necessary for us to enforce our rule against carrying on union organizing activities in the plant during working hours. For your information we are reposting this rule: No person will be allowed to carry on union organizing activities in the plant during his working hours. Anybody who does so and thereby interferes with his own work or the work of others will be discharged.

Donald A. Wagner, Vice President—Operations

On August 8, Thomas C. Wyche and John Robert Young, Jr., were discharged, allegedly for violation of the same company rule.

The five discharges set forth above and the interrogations by Orr and Smith are alleged as unfair labor practices.

B. *The Issues*

The issues raised by the pleadings, in addition to the factual issues whether Smith and Orr in fact interrogated

employees as alleged, are whether the no-solicitation rule is a valid exercise of Respondent's prerogative to regulate the working hours of its employees or whether the presumption of such validity is rebutted by the fact that its adoption was motivated by antiunion considerations, in which case the rule is invalid, or the rule was discriminatorily enforced in which case the rule was invalid.

The Respondent apparently contends that it has for a period of years had a broad rule prohibiting any solicitation in the plant that interfered with the work. There is no evidence that such a rule was ever posted in the plant or appeared in written form.³ Industrial Relations Man Petty testified that from time to time notices were posted in the plant with respect to solicitations. He could recall only four such notices, the last of which is that of August 3, set forth above. He identified a notice to all employees dated May 13, 1963, which stated:

It is the Company's desire to cooperate with and help with church and civic fund raising endeavors. It has been the practice to allow churches and civic clubs to sell chicken lunches, barbecue plates, etc. in the plant. This we want to continue, but we find it necessary to ask for compliance with the following regulations:

1. Anyone desiring to sell lunches in the plant must get written permission from the Personnel Department. This will serve as a gate pass into the plant.
2. An employee must accompany the party or parties selling the lunches.
3. Notices will be placed on the plant bulletin board several days in advance of the selling date, giving those individuals who desire lunches a chance to so indicate.
4. No "person to person" solicitation will be allowed during working time. This is not being allowed because of the confusion and distractions this causes in the work area.
5. It will be permissible to carry lunches to the canteen areas during the feeding periods.

It is felt that the above regulations will work out to the satisfaction of all.

Thereafter Petty identified a notice posted April 20, 1964, which stated:

Effective immediately, employees will not be allowed or permitted to sell "lunches" for churches or civic clubs. We have allowed this to be done during the past year, but have found it impractical to continue doing so.

The policy posted May 13, 1963, has not been complied with and too much confusion and distraction in the plant has resulted.

³ There is some evidence from two of the supervisors that they orally informed their employees of the existence of a rule but there is no evidence as to what they said.

We regret that we must do this, but feel that it is necessary.

Ray Petty

Finally Petty identified a notice posted October 16, 1964, on the Company's letterhead which stated "All solicitations during working time which interfere with the work of any employee are prohibited. No person will be allowed to carry on union organizing activities in the plant during his working hours. Anybody who does so and thereby interferes with his own work or the work of others will be discharged."

It is clear from the record that the October 1964 notice was posted at a time when the Union was attempting to organize the employees. It remained posted for a matter of a few weeks and was removed from the bulletin board. No notice was posted thereafter until the August 3 notice was posted. Petty testified that he felt other notices had been posted but his testimony is unsupported in the record and flatly contradicted by a number of witnesses who testified that between the October 1964, and the August 3, notice no no-solicitation rule of any kind was posted in the plant. Industrial Relations Man Petty also testified that the Employer posts notices when there is a need and that it seldom takes the notices down until there is need to post another notice. Notices are usually replaced in 1 to 4 weeks when Respondent puts up a new notice and takes the old one down.

It appears that no employee has ever been discharged for soliciting in the plant other than solicitation on behalf of the Union. It appears also that solicitations in the plant are extremely common. There is evidence of solicitation by supervisors of the employees on behalf of various "public service" enterprises such as the Blood Bank, United Fund, Red Cross, and sale of United States savings bonds. In addition, it is clear that supervisors as well as employees solicited in the plant on behalf of such organizations as a community club, a recreation center, and various churches and the like as well as a masonic lodge, flowers for the families of two company officials who were killed in a plane crash, for an employee's son who was injured and hospitalized, for a girl, not otherwise identified, who was about to have heart surgery, donations for the unemployed and to a standing flower fund and solicitations for betting pools on the world series baseball games and the raffle of various items such as shotguns, watches, toasters, hams, etc.

In addition, it appears that the community has a custom of preparing and selling chicken and barbecue dinners, which are sold at the plant by means of a prior ticket sale and delivered at lunchtime to the employees.

Respondent contends that the evidence shows that solicitations were "only carried on during nonworking time except in a few instances and in those instances it was not shown that solicitations were carried on by rank-and-file employees during working time which interfered with the work." Respondent concedes that it used its supervisors for the purpose of soliciting for the United Fund, Red Cross, Blood Bank, and savings bond sales and other appeals and draws a distinction between allowing rank-and-file employees to solicit at will, thereby neglecting their work or interfering with the work of others and

having an organized solicitation for charitable and worthy causes sponsored by the management. Respondent relies on *James Hotel Company, a Corp., d/b/a Skirvin Hotel*, 142 NLRB 761, and the Supreme Court decision in the *Nutone* case.⁴

Respondent contends, with regard to employee solicitation of employees, that employees did not solicit during working time or at any rate such solicitation did not come to the attention of supervision.

It is clear from the record that Respondent provides for a lunchtime of 15 minutes for each of its employees and that employees are permitted to take breaks during the day when they are caught up with their work. There is no evidence on the record as to what constitutes being caught up. Respondent's supervisors testified generally that they were aware of various solicitations and took part in some of them but that they at no time solicited except during lunch and break time. On the other hand employees testified that they either solicited or were solicited by other employees during working times; i.e., they stopped work in order to solicit or they solicited employees who were engaged in work at the time. Employee Gable testified in fact that he himself sold raffle tickets during working time to employees who were working and that Foreman Helms drew the winning ticket for the raffle. He testified that he solicited in Helm's presence during working time.⁵ Hannah also purchased chances on a toaster from employee Bobby Wilson. Employee Hunter, Junior, testified that he purchased barbecue tickets during working time from Foreman Hains and a chance on a car from an employee known as Preacher Ray. His father, an employee, testified that he sold barbecue tickets on company time among others to employee Robertson who testified that he bought the barbecue tickets and delivered barbecues both to himself and to his foreman. Hunter, Senior, also testified that 160 barbecue plates were sold on that occasion.

It is clear and I find that employees were permitted to solicit on working time for any purpose other than the Union. It is obvious that foremen not only knew of the practice but themselves indulged in it by buying and selling tickets and chances and by collecting for various more or less charitable enterprises. In addition, I find on the evidence before me that the blanket assertions by the various supervisors called to testify that all solicitations took place on employees' lunch or break times are patently incorrect. Aside from the credible and occasionally undenied testimony of various employees concerning solicitations during worktime, it is obvious that with the Respondent's custom of permitting employees to take a break, whatever time they are "caught up" with their work, it would be impossible to state with anything like certitude that both the solicitor and the employee being solicited were on break at any given time. I infer from the record that for purposes of enforcement of the rule, if rule there be, the supervisors were clearly willing to believe that anyone who was soliciting was on break, if his solicitation did not involve the Union, but that any solicitation which involved the Union must have been accomplished during worktime. An exemplar of this is to be found with regard to the discharge of employee Young. Young testified that he solicited an employee named Coalson on his break time. Foreman Smith testified that

⁴ *N.L.R.B. v. United Steelworkers of America, CIO (Nutone Inc.)*; *N.L.R.B. v. Avondale Mills*, 357 U.S. 357.

⁵ Helms was not called to testify. Employee Hannah testified credibly that he purchased tickets to a baseball pool from Press

Operator Brown in the presence of Foreman Helms and that the drawing was held a short distance from Helms. Brown testified that it was about 7 feet. It may have been up to 12 feet from the foreman's desk.

Coalson reported to him that he was solicited by Young but from his testimony it is clear that Coalson said nothing about being solicited during working time. Smith further testified that he reported what Coalson had told him to Industrial Relations Man Petty and Petty testified that the Coalson solicitation was the violation that "clinched it on" Young and that he discharged Young for soliciting on company time. Coalson was not called to testify.

Dischargee Wyche testified that he never solicited on company time, as did dischargee Hannah. Petty testified that Hannah was discharged because it was reported to him that Hannah had solicited three named employees, Warner, Boswell, and Houston. Houston testified that he was solicited by Hannah in the company canteen, where he had gone for a coke. Boswell testified that after being told by Gable that he could get a card from Hannah and reporting this to his foreman, Massey, Massey said, "Could we get a card. If you see Hannah, see if you can get a card." Boswell went to Hannah and asked him for a card and Hannah said that he could not give him a card because "the general foreman was pretty hot on him and he couldn't get up a card, he wanted to discuss it." Boswell reported this back to Foreman Massey.

Warner, the janitor, testified that Hannah was talking with another man in the men's room and Warner, who had put some towels in the room, was standing there when Hannah turned to him and said, "If the Union was to come in, would you join it?" Warner answered that he did not know anything about it and Hannah left the restroom. When Warner left the restroom, Foreman Duncan came to him and asked what Hannah said about the Union. Duncan was not called to testify and Warner could not explain how Duncan knew that Hannah had said anything about the Union. It is clear by the testimony adduced by the Employer, that in all three of the alleged solicitations which lead to the discharge of Hannah, he was on his breaktime.⁶ Additionally the persons solicited by Hannah to the Company's knowledge were themselves on breaktime with the exception of Warner and it is clear that such solicitation did not interfere with Warner's work or cause him to neglect his work, which the Employer appears to contend is a prerequisite to the application of the rule, at least insofar as solicitations for matters other than the Union are concerned.

It is clear and I find, that if there was a broad no-solicitation rule, i.e., broader than the limitation of solicitation to union talk, it was discriminatorily enforced. Employee Boswell, who was instructed by his supervisor to solicit Hannah for a union card, is still an employee and there is no evidence that he was in any way punished for his actions which were clearly on company time.

C. Discussion

Respondent contends basically that its no-solicitation rule is not rendered invalid by reason of the fact that it had in the past made exceptions to the rule for charitable solicitations and that there is no evidence that the rule had the effect of closing off the Union's channel of communication. This defense is based on the decision of the Supreme Court in the *Nutone* case, *supra*.

The cases on which Respondent relies, *Nutone*, *James Hotel Company*, and *Crawford Manufacturing Company*,⁷ all involve the exercise of an otherwise valid no-solicitation rule. However, as the Board stated in *Walton Manufacturing Company*, 126 NLRB 697, enfd. 289 F.2d 177 (C.A. 5), "no-solicitation or no-distribution rules which prohibit union solicitation or distribution of union literature by employees during working time are presumptively valid as to their promulgation in the absence of evidence that the rule was adopted for a discriminatory purpose [citing *Republic Aviation Corporation v. N.L.R.B.*, 324 U.S. 793, 803] and are presumptively valid as to their enforcement in the absence of evidence that the rule was unfairly applied [citing the *Nutone* case, *supra*]." The General Counsel here contends both that the rule was adopted for a discriminatory purpose and that it was unfairly applied.

I believe the General Counsel's position is well taken. While Respondent's witnesses testified and Respondent argues that Respondent has a broad gauge no-solicitation rule and has had such rule for a considerable length of time, there is no evidence that it was ever promulgated to the employees except in the form of the four notices, set forth above.

The first two of these notices dealt solely with, first, the conditions under which solicitation for the sale of "dinners" could be undertaken at the plant and; second, the denial of future solicitation of such dinners during working time. It is clear that the two rules dealt solely with this single form of solicitation and the notices reveal that Respondent's concern with it took place during the year 1963 and early 1964. However, since 1965, there appears to have been no impediment to the resumption of solicitations for this purpose which took place.

The third and fourth notices produced by Respondent both prohibit only solicitation in support of a union organization. Each was promulgated and posted at a time when the Employer became aware that a union was soliciting and both were removed from the bulletin boards and not replaced when the union activity ceased.

Respondent's Industrial Relations Man Petty testified that Respondent has a turnover in excess of 400 persons annually and presently has an employee complement of approximately 1,325. Therefore, in the period of time between the removal of the October 1964 notice, before the end of 1964, and the posting of the 1966, notice on August 3, it would appear that as many as half of the employees in the plant had never been advised of the existence of a no-solicitation rule.⁸

When Respondent became aware that the union organization was proceeding rapidly, it immediately posted the August 3, version of the rule; "This precipitous promulgation and the fact that the rule did not apply to all forms of solicitation and distribution, clearly indicates that Respondent's purpose in adopting this rule was not to prevent disruptions of production and discipline . . ." and in fact indicates that it was adopted for the discriminatory purpose of impeding the union organization.⁹ In addition, it is clear that the discharge of Hannah, under the pretext that he had breached the rule although Respondent clearly

was discharged

⁷ 161 NLRB 989.

⁸ Dischargee Hannah testified credibly that he was hired in April, and he never saw or heard of a no-solicitation rule until the day of his discharge.

⁹ *Ward Manufacturing, Inc.*, 152 NLRB 1270

⁶ Another employee, Adams, testified that he was solicited during working time but on cross-examination it appeared clear that he considered all time working time except for the 15-minute lunch break and that he, himself, never left his machine and took no breaks. He appeared to be unaware of the fact that anybody was permitted to take a break at any time. There is no evidence that the Employer knew of Adams' solicitation at the time Hannah

had no reason to believe that he had done so and the attempt by Foreman Massey to trap Hannah and Gable into a breach of the theretofore unannounced rule as well as the discharge of Young in the absence of any evidence that he had solicited *on company time*, all buttress the conclusion that the sole purpose in the adoption of the rule was "to stifle the union's organizing campaign."¹⁰

The record establishes that in the enforcement of the rule Respondent clearly acted in a discriminatory manner. In addition to the examples set forth in the last preceding paragraph, the solicitation of Hannah by Boswell earned Boswell nothing but thanks from Respondent. Further, it is clear that many other forms of solicitation were chronic in the Company's plant and although they were overt and necessarily had come to the attention of supervision (some of whom were involved in the solicitation either as purchasers or sellers of chances, betting pool tickets, lunches, etc.), no attempt was made to investigate or punish anyone for it, no one was ever discharged for such solicitation, nor so far as the record reveals, warned to desist therefrom except by the memorandum relating to the sale of dinners which was posted in 1963. On the record, as a whole, I find that the rule was not only promulgated in response to union activity but was discriminatorily enforced, in violation of Section 8(a)(1) of the Act. Inasmuch as the no-solicitation rule is found to be invalid, it follows that the discharges pursuant to the invalid rule are unlawful. Accordingly, I find that Respondent discharged Kenneth L. Gable, Billy H. Robertson, Ernest L. Hannah, Thomas C. Wyche, and John Robert Young, Jr., because of their activities on behalf of the Charging Party and in order to discourage union activities and membership among their employees, all in violation of Section 8(a)(3) of the Act.¹¹

D. The 8(a)(1) Interrogation

The record contains considerable evidence of violative interrogation by Respondent. It appears from the testimony of Industrial Relations Man Petty that while investigating the alleged breaches of the no-solicitation rule he inquired whether the employees he was talking to had signed union cards and who had talked to them about it. Not only was employee Boswell interrogated by his supervisor but he was asked to report back to his supervisor any union activities that he saw or about which he learned. The fact that Boswell was seriously working against the union organization renders it no less violative for the Employer to interrogate him about the union activities of other employees than if he were, himself, a union supporter. The General Counsel alleged only two instances of interrogation as violations, one by Die-Repair Foreman Orr and the other by General Foreman Hugh Don Smith, both of employee Young. Orr admitted that he, individually, talked to all the employees under his supervision, including Young, advising them against joining the Union, but denied asking Young what he thought about the Union or whether he thought the employees needed one. Young's testimony was delivered

in a straightforward and credible way. Orr, on the other hand, was an unimpressive witness. In addition to contradicting his direct testimony during cross-examination, he appeared to be evasive and forgetful. I credit Young's account.

On the afternoon of the same day on which Young was interrogated by Foreman Orr, he was called to the office of Foreman Smith, where Smith asked him how he felt about the Union and asked him to report back if anyone asked him to sign a union card. Smith denied that any such conversation took place. I found Smith to be incredible. Although he denied ever mentioning the Union to any employee except Young, it is clear from the record that he must have at least mentioned union during his "investigation" that led to the discharge of Young and included talking to employees Bonner, Brady Jones, Coalson, and others.¹² I credit Young's account of the interview with Smith and I find that both the interrogation by Smith and the interrogation by Orr, unaccompanied as they were by any of the "safeguards" spelled out by the Board in its *Blue Flash* doctrine¹³ and refined in the Board's Decision in *Johnnie's Poultry*,¹⁴ tended to interfere with, coerce, and restrain employees and violated Section 8(a)(1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the Respondent's 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.

CONCLUSIONS OF LAW

1. The Respondent is engaged in commerce and the Union is a labor organization within the meaning of the Act.
2. By promulgating and enforcing an invalid no-solicitation rule and by interrogating employees concerning their and other employees' union activities, Respondent interfered with, restrained, and coerced employees in the exercise of rights guaranteed them by Section 7 of the Act and by such conduct engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
3. By discharging Kenneth L. Gable, Billy H. Robertson, Ernest L. Hannah, Thomas C. Wyche, and John Robert Young, Jr., because of their union activities and in order to discourage union activities among its employees, Respondent engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.
4. The aforesaid practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

¹⁰ *The William H. Block Company*, 150 NLRB 341.

¹¹ In addition, it appears that Wyche, Young, and Hannah did not solicit on company time. That Respondent may have thought that they did, at least in the case of Wyche, is no defense in the absence of evidence that Respondent's belief was well based. Thus, even were the no-solicitation rule valid, as to these three employees, the enforcement of it is pretextuous and violative under Section 8(a)(3) of the Act.

¹² Smith's denial that on August 8, he knew that the Union was conducting an organizing campaign but had only heard rumors of it, in the face of the fact that three employees had theretofore been discharged and a notice posted referring to the union activity, does nothing to enhance his credibility in my opinion.

¹³ *Blue Flash Express, Inc.*, 109 NLRB 591.

¹⁴ 146 NLRB 770.

THE REMEDY

Having found that the Respondent has engaged in unfair labor practices and in order to effectuate the policies of the Act, I shall recommend that the Company cease and desist from the unfair labor practices found. I shall further recommend that the Company offer to the employees, named in the Appendix hereto, immediate reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges, and make them whole for any loss of pay sustained by reason of the discrimination against them including interest at the rate of 6 percent per annum, the computation to be made in the customary manner in accordance with the Board's Decision in *F.W. Woolworth Company*, 90 NLRB 289, with interest as provided in *Isis Plumbing & Heating Co.*, 138 NLRB 716.

RECOMMENDED ORDER

Upon the basis of the above findings of fact and conclusions of law and upon the entire record in the case, it is recommended that the Respondent, William L. Bonnell Co., Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees in a manner violative of the provisions of Section 8(a)(1) of the Act.

(b) Discouraging membership of its employees in International Union, District 50, United Mine Workers of America or any other labor organization by discharging or otherwise discriminating against employees in regard to their hire or tenure of employment or any term or condition of employment.

(c) Promulgating and enforcing rules against union solicitation on company time in order to interfere with union organization or enforcing such rules while permitting other types of solicitation on company time.

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

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

(a) Offer to the employees named in the attached Appendix immediate and full reinstatement to their former or substantially equivalent position in accordance with the section herein called "The Remedy" and make them whole for any loss of pay they may have suffered by reason of the Respondent's discrimination against them in the manner set forth in the section of the Trial Examiner's 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 due under the terms of this Order.

(c) Post at its place of business in Newnan, Georgia, copies of the attached notice marked "Appendix."¹⁵ Copies of said notice, to be furnished by the Regional Director for Region 10, after being duly signed by the Company's representative, shall be posted by the Company 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 Company to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director of Region 10, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith.¹⁶

¹⁵ In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order 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."

¹⁶ 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 interrogate our employees in a manner violative of the provisions of Section 8(a)(1) of the Act.

WE WILL NOT discourage membership in International Union, District 50, United Mine Workers of America, or any other labor organization by discharging or otherwise discriminating against employees in regard to their hire or tenure or employment or any term or condition of employment.

WE WILL NOT promulgate and enforce rules against union solicitation on company time in order to interfere with union organization or enforce such rules while permitting other types of solicitation on company time.

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

WE WILL offer to the employees named below immediate and full reinstatement to their former or substantially equivalent position in accordance with the section herein called "The Remedy" and make them whole for any loss of pay they may have suffered by reason of our discrimination against them.

Kenneth L. Gable
Ernest L. Hannah
Billy H. Robertson

Thomas C. Wyche
John Robert Young, Jr.

WILLIAM L. BONNELL CO.,
INC.
(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, 528 Peachtree-Seventh Building 50 Seventh Street, N.E., Atlanta, Georgia 30323, Telephone 526-5741.