Rowe Industries, Inc. *and* John W. Miller *and* Howard Barry. Cases 29–CA–537 and 29–CA–548

May 31, 1967

DECISION AND ORDER

BY CHAIRMAN MCCULLOCH AND MEMBERS BROWN AND JENKINS

On January 26, 1967, Trial Examiner Joseph I. Nachman 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 brief in support thereof,[1] and the General Counsel filed cross-exceptions and an answering brief in support of the Trial Examiner's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

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 briefs, 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, Rowe Industries, Inc., Sag Harbor, Long Island, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

[1] Respondent's request for oral argument is hereby denied as, in our opinion, the record, including the exceptions and briefs, adequately presents the issues and positions of the parties

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

JOSEPH I. NACHMAN, Trial Examiner: This matter was heard before me at Brooklyn, New York, on October 12 and 13,[1] on a complaint issued pursuant to Section 10(b) of the National Labor Relations Act[2] (herein called the Act), which alleges that Rowe Industries, Inc. (herein called Respondent), violated Section 8(a)(1) and (3) of the Act in that it discharged and failed and refused to reinstate John W. Miller and Howard Barry because they joined and assisted Local 485, International Union of Electrical, Radio and Machine Workers, AFL–CIO (herein called Local 485 or the Union), and otherwise interfered with, restrained, and coerced its employees in the exercise of rights guaranteed them by Section 7 of the Act. Respondent, by answer, admitted certain allegations of the complaint, but denied that it violated the Act as charged.

At the hearing all parties were afforded an opportunity to adduce evidence, to examine and cross-examine witnesses, to argue orally on the record, and to submit briefs. The General Counsel argued orally, which argument is included in the record of proceedings. Briefs have been received from the General Counsel and from Respondent. The argument and briefs have been duly considered.

On the basis of the entire record in the case,[3] including my observation of the demeanor of the witnesses while testifying, I make the following:

FINDINGS OF FACT[4]

I. THE UNFAIR LABOR PRACTICES INVOLVED

A. *Background*

Early in 1964, Building Service Employees Union, Local 307, conducted an organizational campaign among Respondent's employees and ultimately filed a representation petition. The election conducted by the Board in May 1964, pursuant to that petition, was lost by that union. In the prior unfair labor practice case, referred to in footnote 1, *supra*, the Board adopted without modification all of the findings, conclusions, and recommendations of Trial Examiner Louis Libbin who found that during the campaign by Local 307, Respondent (1) by Company President Rowe made two coercive speeches to the employees which threatened job loss if the employees selected a union; (2) spied upon and interrogated employees; (3) urged employees to form an "inside" union; (4) promulgated an invalid no-distribution and no-solicitation rule; (5) offered wage increases for rejection of the Union; and (6) discriminatorily discharged two employees. The Board's Decision in that case, issued April 23, 1965, apparently was complied with by Respondent.

In the summer of 1965, International Union of Electrical, Radio and Machine Workers, AFL–CIO, began a campaign to organize the employees, and in due course filed a representation petition (Case 29–RC–314). Pursuant to a Direction of Election issued October 29, 1965 (affirmed by the Board December 22, 1965), an election was conducted January 14, which resulted in a majority vote for the Union. Respondent filed timely objections to the conduct of and conduct affecting the results of the election, but thereafter with the approval of

[1] Unless otherwise stated, all dates are 1966

[2] Issued June 28, on a charge filed by John W Miller on March 3, and by Howard P Barry on March 16

[3] The General Counsel has moved to correct the record in certain particulars, mostly typographical, to which motion Respondent filed no objection I find each of the corrections proper, and now grant the General Counsel's motion in its entirety A copy of said motion has been included in the record marked "Trial Examiner's Exhibit 1 "

[4] No issue of commerce or labor organization is presented The complaint alleges and the answer admits facts which establish both elements Moreover, the Board has heretofore exercised jurisdiction over Respondent See *Rowe Industries, Inc*, 152 NLRB 70, and the representation cases hereafter referred to

the petitioning union and the Regional Director withdrew its objections, and on January 26 International was certified.[5] Thereafter, at the request of International, Local 485 assumed the administration of the certification. Upon the request of Local 485, Respondent entered into contract negotiations, and in March agreement was reached retroactive to March 1.

B. *The Current Facts*

1. Interference, restraint, and coercion

a. *The organization campaign*

When International began its organization campaign, Respondent from time to time distributed leaflets to its employees urging them to reject the Union.[6] Although the General Counsel argues in his brief that the contents of the leaflets violated Section 8(a)(1), I do not consider that contention because the General Counsel offered the documents referred to only to establish union animus, and they were received for that limited purpose. Said documents do show, and I find, that Respondent was hostile to the Union and the efforts of its employees to organize. The evidence also shows that employee Miller[7] was directed by management officials David Lee and Virginia Whitman[8] to work against the Union, and to report back to Lee or Whitman which employees were signing union cards. Miller testified that he reported such facts to Lee or Whitman, and that the employee involved would be transferred to another department, or in some instances the employee would not be seen again; whether his employment was terminated or he voluntarily quit, Miller did not know.[9] On one occasion Whitman complained to Miller that she had ascertained that employee Cypress had signed a union card, and that Miller had failed to report that fact. Whitman at this time told Miller not to be friendly with Cypress and other named employees who, she claimed, had signed union cards. As will hereafter appear, it is of some importance to note that after the last mentioned conversation with Whitman, Miller went to Cypress during the lunchbreak and berated her for signing a union card. An argument followed and Miller slapped Cypress. Although Whitman and other officials of Respondent were aware of the incident, no disciplinary action was taken against Miller, nor was the incident mentioned to him by anyone connected with the Company. It also appears that as late as January 5, the Company had a report that Miller had engaged in a fight on company property, with employee Lopez, and that Miller was asked why he liked to fight, but no disciplinary action was taken against Miller in connection with that incident.

Miller's activity against the Union continued until about January 12, when he changed and openly demonstrated his support of the Union. Thus, on the last-mentioned date Miller came to work with a number of IUE buttons on his shirt and hat. Company President Rowe observed Miller wearing the buttons and asked the latter if the buttons were "for real," or were a "joke." Miller assured Rowe they were "for real," and that while he had theretofore worked against the Union "now I work with the Union."

b. *Rowe's speech*

On January 13, the day preceeding the election, Rowe made a speech to the employees whom he caused to be assembled in the plant for that purpose.[10] Rowe reminded the employees that the election would be held the next day and stated that while he could not tell them how to vote, they should remember they had bills to pay and homes to pay for. At this point employee North interrupted stating, in substance, that employees were not earning enough to pay their bills now and they would earn more if the Union got in. At this point Rowe told North that the latter would get his chance, that he (Rowe) would take care of North later.[11]

c. *The discriminatory discharge*

(1) Howard P. Barry

Barry was first employed by Respondent in September 1965 as a quality control inspector. At no time during his employment by Respondent was Barry criticized for his work, or reprimanded for any conduct. In fact, in the latter part of January, Respondent hired a new man to take over the work Barry was then doing and assigned Barry to new and more exacting work that required additional skills. At sometime during the Union's campaign Barry signed a union card, but made every effort to conceal that fact from the Company. He testified that so far as he knows, his efforts were successful. During the union campaign, several supervisors spoke to Barry about the Union, indicating the Company's opposition thereto. One supervisor told Barry that it was extremely important to the Company that the Union lose the election. To all of these remarks Barry would merely nod his head without indicating whether he was for or against the Union.

When International asked Local 485 to service the certification, as above stated,[12] the latter called a meeting

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[5] The unit was "All production and maintenance employees employed by the Employer at its Sag Harbor, New York, plant, including truck drivers and shipping department employees," with the usual exclusions

[6] G C Exhs 4(a)–4(e) and 5

[7] John W Miller who, it is contended, was discriminatorily discharged The circumstances of his discharge are hereafter set forth

[8] It was stipulated that Lee is a supervisory employee and Whitman is personnel director

[9] Miller also testified that in the 1964 campaign he was asked by Lee and Whitman to report to one of them which employees were passing out or signing union cards, and that he would get a pay raise if he helped them to defeat the Union. According to Miller, he did as he was asked and shortly after the election received an increase of 10 cents an hour As these events occurred more than 6 months prior to the filing of the charge herein, no finding of violation is made with respect thereto.

[10] Only two witnesses, both called by the General Counsel, testified concerning what Rowe said Employee Barry testified that he was unable to recall any specific statement that Rowe made, or even the substance thereof, his testimony was only the subjective impressions he got from Rowe's remarks which he characterized as "very thinly veiled threats of curtailment of work " Barry testified also that a tape recorder was operating and took down what Rowe said

[11] Miller testified that he did not see a tape recorder in operation while Rowe spoke, and Respondent contends none was used. Although there is no real conflict between Miller and Barry on this point, I find it unnecessary to make any finding as to whether a tape recorder was in operation or not The substance of what Rowe said being established by the credited testimony of Miller, it is unnecessary to decide whether they were mechanically recorded

[12] International made this request because it won the election by a very close margin and was fearful that it might lose the support of the employees because it was satisfied that Respondent would try to destroy the Union's support No finding is made as to the justification for the Union's fears.

of Respondent's employees.[13] A substantial number of employees attended this meeting, including Barry. On behalf of Local 485, the meeting was conducted by Wallace Eisenberg, its business manager. Eisenberg told the employees about Local 485 and its programs, making particular reference to its insurance and welfare program. With respect to the latter, Eisenberg stated that if anyone doubted his statements, he could refer them to one of their fellow employees who knew a great deal about it. In making this remark Eisenberg was referring to Barry who at one time had worked for an organization that handled insurance and welfare for Local 485. The two had not seen each other for some years, and neither knew that the other would be present at this meeting. At the end of the meeting Barry went to the head table where Eisenberg was. The two renewed their acquaintance and, among other things, Eisenberg asked for Barry's assistance in keeping the employees loyal to Local 485. Barry promised to do what he could. Some 25 to 30 employees were in the immediate area where Eisenberg and Barry spoke, and a number of others were at various locations in the room.

During the morning of February 2, Barry was called away from his work station by Aldridge, his supervisor, who told Barry, "you have talked yourself out of a job." Barry asked what this meant. Aldridge replied that a day or two before, while inspecting some motors, Barry made a remark that upset some of the girls and they refused to work with him. Barry, claiming to be unaware of such an incident, asked for further details, but Aldridge would only say that Barry had "fooled around too much." In reply to a question from Barry as to whether there was any objection to his work Aldridge stated that Barry's work was satisfactory, and that he got along well with people. Barry then asked if he might talk with some officer of the Company. Aldridge left the room, but returned in a few minutes saying that no one wanted to talk with Barry, that the decision had been made and it was going to stand. In response to Barry's inquiry as to when the discharge would be effective, Aldridge replied, "right away." Barry then asked if he might resign rather than be discharged. Stating that he saw no objection to that, Aldridge took Barry to the office where Personnel Director Whitman gave him his final check.[14] Barry admits that a day or two prior to his discharge, he did go to one of the production tables and there discussed with the employees a production problem. He also testified, however, he neither saw nor heard anything to indicate that any employee took offense at anything he said or did. In this connection it is important to note, as hereafter pointed out in more detail, that neither Aldridge nor any other company official testified with respect to the reason for Barry's discharge.[15]

(2) John W. Miller

Miller, who performed janitorial work, was initally employed by Respondent in October 1963. In addition to the pay raise given him for reporting on the union activities of the employees during the 1964 campaign, as above stated, he received other increases in pay. Respondent concedes that Miller's work was satisfactory. The evidence shows that while Miller was on occasions involved in altercations with fellows employees and outsiders (the incident involving employee Cypress, having occurred as late as December 1965), these events were well known to Respondent, and at no time did Respondent discipline him therefor, or warn him that any repetition thereof would not be lightly regarded. Indeed, the fair inference from the evidence is, and I so find, that Respondent regarded these events as personal matters between Miller and the other party involved. The evidence also shows, and I find, that after Miller demonstrated his adherence to the Union by openly wearing its insignia in the plant, Respondent's attitude toward Miller changed. Thus, in the latter part of January, Miller was directed to cease cleaning certain offices, which reduced his hours of work and his pay. The evidence discloses no reason for this directive.

About February 1, Miller, pursuant to directions, went to the office. Present at the time, in addition to Miller, were his supervisor, David Lee, and Personnel Director Whitman. Lee stated that he had been told by employee White that Miller had cursed and threatened White. Miller denied the accusation. Upon leaving the office Miller sought out White and asked why the latter had falsely told Lee and Whitman that Miller had cursed and threatened him. White denied that he had made such a statement and told Miller "to watch [himself] because David Lee and Mrs. Whitman were going to try to get rid of [him]."[16]

During the morning hours of Friday, February 11, Miller was carrying through a work area of the plant a heavily loaded barrel (apparently refuse) which he was going to dump into a larger barrel. Employee Curran, who had ceased being friendly with Miller when the latter started wearing IUE buttons in the plant, bumped Miller with his shoulder, causing the barrel Miller was carrying to fall to the floor. Regarding Curran's action as deliberate, Miller asked Curran why he had bumped him. Receiving no reply, Miller told Curran, "You just want me to get into a fight in this plant so I can get fired. I'm not going to fight you in this plant [but] if you hit your card out, I'll hit my card out. Any difference you want to take up with me, we'll take it up off the premises, out on the pike." Curran said nothing, and Miller resumed his work. Shortly thereafter

[13] Although the record is not entirely clear as to the date on which this meeting was held, it is clear, and I find, that it was at a time when Barry was employed by Respondent, and a few days prior to his discharge

[14] Although the answer denied the allegations of the complaint that Barry and Miller, the other 8(a)(3) involved, were discharged, at the hearing Respondent conceded "There is no question they were discharged "

[15] In its brief, Respondent refers to an affidavit allegedly given by Aldridge to the General Counsel in the course of the latter's investigation of these matters, which is said to demonstrate that Barry was discharged for cause The affidavit referred to was neither offered nor received in evidence, is not physically in the record, and, therefore, may not be considered by me

[16] No objection was made to this testimony It is plain that the failure to object was not inadvertent, because Respondent's representative promptly asked that this answer of the witness be read back, and this was done No motion with respect to this testimony was made However, as there is no evidence that Respondent is responsible for White's statement, I do not consider that portion of the statement by White, that Lee and Whitman were out to get Miller, in reaching a conclusion on the issue whether Miller was discriminatorily discharged The General Counsel also adduced some testimony through the witness Robert Wise which could be interpreted as meaning that in the middle or latter part of January, Wise had been told by responsible supervisors of Respondent that Respondent had decided that Miller would be discharged within 2 weeks I find Wise's testimony confusing and do not rely on it in support of any of my findings herein

Miller observed Curran going into the company offices. In about 20 minutes Mason, an assistant to President Rowe, called Miller to the office and told the latter that Curran claimed he had been threatened by Miller. Miller denied any threat to Curran and explained to Mason what had taken place, as outlined above, including the fact that he had told Curran that he would not fight him on company property, because this would cause him to lose his job, and his offer to settle any differences with Curran "out on the pike." Mason told Miller to return to work, but suggested that he do his cleaning in Curran's work area at times when the latter was not there. Miller worked the remainder of that day without incident. Over the weekend, Miller was arrested on the complaint of Curran for, as Miller understood it, "threats" and was taken before a judge. Although Miller requested that Curran be present, the judge regarded this as unnecessary. Miller stated his version of the facts to the judge, and the latter imposed a $25 fine. The following Monday (February 12), Miller reported for work at his usual 8 a.m. starting time. Shortly thereafter he was summoned to the office of Personnel Director Whitman. Sensing trouble, Miller got prounion employee Jackson to go with him to Whitman's office.[17] Lee was also present. Miller was told that he was being "let go" because of the Curran incident the preceding Friday. Miller protested that he had not hit Curran, but rather that Curran had hit him, and that he had witnesses to prove that fact. At this point Jackson suggested that the Company hear Miller's witnesses. Whitman agreed to do this after working hours, and directed Miller to return to his work. About 11 a.m. Miller sustained an injury in the plant which required that he go to the hospital for X-rays. Returning to the plant about 2 p.m., Miller was told by Whitman that she had decided not to listen to his witnesses, and that he was discharged. Miller asked for no explanation, and Whitman offered none. Miller's final check was given to him at the time.[18]

C. *Discussions and Concluding Findings*

1. Based on Miller's testimony, I find and conclude that Respondent violated Section 8(a)(1) of the Act by Rowe's statement in his speech to the employees on January 13, that in considering whether they should vote for or against the Union they should bear in mind that they had bills to pay. This was a statement, whether it be regarded as thinly veiled or not, which certainly could reasonably be construed by the employees as meaning that the advent of the Union would result in reduced earnings to the employees, and thus was a clear threat of economic reprisal.[19]

2. On the entire record, I find and conclude that Barry and Miller were discriminatorily discharged in violation of Section 8(a)(3) and (1) of the Act. My reasons for this conclusion are set forth separately, dealing first with Barry.

To establish that an employee was discharged in violation of Section 8(a)(3) of the Act, it is necessary, of course, that the General Counsel establish that the Company knew or thought that the employee had engaged in some protected or union activity. It is true that Barry made every effort, and so far as he knew had succeeded, in concealing from Respondent the fact that he had signed a union card, or otherwise assisted the Union, but on the whole record I am convinced and find that Respondent, at the time of Barry's discharge, was in fact aware or suspected that he was assisting the Union. The evidence shows, as I have found, Respondent's strong opposition to the Union and the organizational efforts of its employees. That Respondent used informers to keep itself informed on the union activities of its employees is demonstrated by its use of Miller for that purpose, and the fact that Whitman upbraided Miller for not reporting to management that Cypress had signed a union card. The union membership meeting held just a few days prior to Barry's discharge, and which was attended by 50 or more employees, revealed Barry's acquaintance with the Union's representative, and his promise to do what he could to keep the employees loyal to Local 485. On these facts it is reasonable to infer, as I do, that word somehow got back to Respondent that Barry was assisting the Union. This inference is supported by the circumstances surrounding Barry's discharge, and the fact that so far as this record shows Barry had engaged in no conduct warranting his discharge.[20] The uncontradicted evidence is that a theretofore satisfactory employee, whose work performance had never been criticized, and who had shortly before been assigned to more exacting work that

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[17] Jackson was one of the discriminatees involved in the prior case but had been reinstated pursuant to the Board's order See 152 NLRB 70

[18] All findings herein set forth, except where otherwise indicated, are based on the uncontradicted and credited testimony of Barry and Miller Respondent called no witnesses

The complaint herein fixed the date of hearing as August 24 On August 17, the hearing was rescheduled for October 12 The reason for this continuance does not appear In preparation for trial, the General Counsel issued a *subpoena ad testificandam* and a *subpoena duces tecum* directed to Company President Rowe It is admitted that Rowe personally received both subpenas on Friday, October 7 Although the documents requested by the *subpoena duces tecum* were produced at the hearing by Personnel Director Whitman, Rowe did not respond when called by the General Counsel for examination presumably under rule 43(b) of the Rules of Civil Procedure It was explained that Rowe left for Bermuda on Monday, October 10, and would not be back for 10 days Prior to the hearing, Respondent made no request to the Regional Director for a continuance, nor was such a request made of me during the hearing The General Counsel asks that I draw the inference that Rowe deliberately made himself unavailable because he did not want to face examination by the General Counsel Although the facts rather strongly indicate that Rowe deliberately made himself unavailable for the hearing, I find it unnecessary to draw the inference which the General Counsel requests, because, as I have stated, Respondent offered no evidence, and that offered by the General Counsel stands undenied

[19] Although the request made by Lee and Whitman that Miller spy on the union activities of the employees on behalf of IUE, and report back to them which employees were signing union cards was a plain violation of Section 8(a)(1) of the Act, I do not make such a finding in this case Such a violation is not alleged in the complaint, and while the evidence with respect thereto came in without objection, it is clear that it was brought out by the General Counsel for the purpose of showing the concerted activity in which Miller had engaged and for which he was allegedly discharged, and not for the purpose of establishing an independent violation of Section 8(a)(1) In that sense the issue was not litigated Furthermore, it is not clear from this record that the requests which Respondent made to Miller were made within 6 months of the filing of the first charge herein

[20] On cross-examination Barry was asked whether he had stated that Company President Rowe did nothing and he could come out and do the work He was also asked if he had in fact offended any of the employees, as Aldridge claimed when he discharged Barry Barry denied that he did either His testimony stands undenied on the record

required greater skills, is dismissed at mid-day without prior warning, by his antiunion employer, just 2 or 3 days after his union sympathies are revealed, allegedly for conduct that, so far as this record shows, he was falsely accused of. The alleged ground for discharge being unsupported by the record it may appropriately be inferred, as I do, that the real motive of the discharge is the motive which Respondent denies and seeks to conceal; namely, to rid itself of an employee who has demonstrated his support of a union. *Shattuck Denn Mining Corporation* v. *N.L.R.B.*, 362 F.2d 466 (C.A. 9, 1966).

In the case of Miller, the evidence shows that Respondent used him as the instrument for spying on the union activity of its employees. So long as Miller served Respondent's purpose in that regard, it was not disturbed by his several altercations in and out of the plant concerning all of which Respondent had knowledge. Even as late as December 1965, when Miller, on company property, slapped employee Cypress after Miller learned from Whitman that Cypress had signed a union card, Miller was not disciplined or warned that such conduct, if repeated, would not be tolerated. But after Miller refused to further serve as Respondent's spy and openly supported the Union, an effort seems to have been made to cause Miller to quit. First his pay was reduced by curtailing his hours of work. When this did not produce the desired result, Miller was accused of cursing and threatening White, but the latter apparently failed or refused to cooperate. Shortly thereafter the Curran incident took place. The uncontradicted evidence in the record is that it was Curran not Miller, who precipitated the incident by deliberately bumping the latter; that Miller refused to engage in any altercation on company time or property; and that all Miller did was to express his willingness to fight if, but only if, Curran was also willing to do so. This was not a threat, simply an invitation to combat by mutual consent. Upon these facts, and particularly in view of Respondent's failure to discharge or warn Miller for his prior altercations, I am convinced, and so find and conclude, that the motivating reason for Miller's discharge was Respondent's decision to rid itself of an employee who would no longer assist in an antiunion program, and who now openly supported the Union, and that the Curran incident, if not actually instigated by Respondent, was merely seized upon to obscure the true motive for Miller's discharge.[21]

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. Respondent is an employer within the meaning of Section 2(2) of the Act and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

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

3. By the portion of Rowe's speech of January 13, set forth above, Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed to them by Section 7 of the Act, and thereby engaged in, and is engaging in, unfair labor practices proscribed by Section 8(a)(1) of the Act.

4. By discharging Howard P. Barry and John W. Miller because of their activity on behalf of the Union, Respondent discriminated against them in regard to their hire or tenure of employment, thereby discouraging membership in the Union, and thus engaged in, and is engaging in, unfair labor practices proscribed by Section 8(a)(3) and (1) of the Act.

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

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent discriminatorily discharged Howard P. Barry and John W. Miller, I shall recommend that Respondent be required to offer them immediate, full, and unconditional reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights, privileges, and working conditions, and make them whole for any loss of earnings they suffered as a result of the discrimination against them, by paying to each a sum of money equal to that which each normally would have earned as wages from the date of the discrimination to the date of his reinstatement, less net earnings during such period, in accordance with the Board's formula set forth in *F. W. Woolworth Company*, 90 NLRB 289, together with interest thereon at the rate of 6 percent per annum, as prescribed in *Isis Plumbing & Heating Co.*, 138 NLRB 716.

Because of the character of the unfair labor practices found, and in view of the prior proceedings against Respondent, I shall recommend that Respondent be required to cease and desist from in any manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act. *N.L.R.B.* v. *Entwistle Mfg. Co.*, 120 F.2d 532 (C.A. 4).

RECOMMENDED ORDER

Upon the foregoing findings of fact and conclusions of law and the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, it is recommended that Rowe Industries, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with economic reprisal if they selected a union as their bargaining representative.

(b) Discouraging membership in International Union of Electrical, Radio and Machine Workers, AFL–CIO, or any other labor organization against an employee in regard to his hire, tenure, or other terms or conditions of employment.

(c) In any manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist the above-named, or

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[21] At the hearing Respondent argued that while it had in the past not disciplined Miller for his various altercations, it had always regarded his conduct as a potential danger, and that with the Union in the shop the danger became so great that it was forced to discharge him for the Curran incident The General Counsel argues this admission shows the existence of an independent ground for holding that Miller's discharge was unlawful because it demonstrates that the discharge was predicated upon union considerations In view of the conclusions reached, I find it unnecessary to consider that contention

any other, labor organization, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by the provisions of Section 8(a)(3) of the Act.

2. Take the following affirmative action found necessary and designed to effectuate the policies of the Act.

(a) Offer to Howard P. Barry and John W. Miller immediate, full, and unconditional reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights, privileges, or working conditions, and make each of them whole for any loss of earnings they suffered, in the manner set forth in the section hereof entitled "The Remedy."

(b) Notify Howard P. Barry and John W. Miller if presently serving in the Armed Forces of the United States of their right to full reinstatement, upon application, after discharge from the Armed Forces, in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended.

(c) 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.

(d) Post at its plant in Sag Harbor, Long Island, New York, copies of the attached notice marked "Appendix."[22] Copies of said notice, to be furnished by the Regional Director for Region 29, after being duly signed by an authorized representative, shall be posted immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including places where notices to its employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the aforesaid Regional Director, in writing, within 20 days from the date of receipt of this Decision, what steps it has taken to comply herewith.[23]

[22] 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 "

[23] 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 discourage membership in International Union of Electrical, Radio and Machine Workers of America, AFL–CIO, or any other labor organization, by discriminating against employees in regard to their hire or tenure of employment, or any term or condition of employment.

WE WILL NOT threaten our employees with economic reprisal if they select union representation or otherwise assist any labor organization.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist International Union of Electrical, Radio and Machine Workers, AFL–CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by the provisions of Section 8(a)(3) of the Act.

WE WILL offer Howard P. Barry and John W. Miller immediate, full, and unconditional reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and WE WILL make each of them whole for any loss of earnings they may have suffered by reason of the discrimination against them.

All our employees are free to become, remain, or refrain from becoming or remaining members of International Union of Electrical, Radio and Machine Workers, AFL–CIO, or any other labor organization.

ROWE INDUSTRIES, INC.
(Employer)

Dated By
(Representative) (Title)

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

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, 16 Court Street, Fourth Floor, Brooklyn, New York 11201, Telephone 212–596–3535.