

**Ralston Purina Company and International Union
of District 50, United Mine Workers of America.
Case 25-CA-2618**

June 30, 1967

DECISION AND ORDER

BY MEMBERS BROWN, JENKINS, AND ZAGORIA

On April 28, 1967, Trial Examiner Harry R. Hinkes 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. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended that the allegations of the complaint pertaining thereto be dismissed. Thereafter, the Respondent and the General Counsel filed exceptions to the 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, the exceptions and briefs, and the entire record in this case, and hereby adopts the findings,¹ 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, Ralston Purina Company, Corydon and Pekin, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as modified below:

Delete from paragraph 2 (a) of the Trial Examiner's Recommended Order that part thereof which reads "to be furnished" and substitute therefor "on forms provided."

¹ The General Counsel excepts to the Trial Examiner's finding that Walton's statement to employee Gray concerning Anderson's "trouble" at the Borden Cabinet Factory did not have any interfering, coercive, or restraining effect upon the rights of Respondent's employees. We find merit in this exception. While it is true that Anderson testified that he did not have any trouble at Borden, this is not a relevant factor in determining the coercive effect on Gray. Accordingly, we find that this statement constituted a threat in violation of Section 8(a)(1) of the Act.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

HARRY R. HINKES, Trial Examiner: The complaint herein was issued on October 27, 1966,¹ pursuant to a charge filed on September 19 by the International Union of District 50, United Mine Workers of America, herein called the Union, and served upon Ralston Purina Company, herein called the Respondent or Company, on or about September 20. The Respondent is alleged to have engaged in unfair labor practices interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the National Labor Relations Act, as amended, as well as by the discharge of and refusal to reinstate an employee because of his union or concerted activities in violation of Section 8(a)(1) and (3) of the Act. By answer duly filed, Respondent admitted the jurisdictional allegations of the complaint but denied all other allegations.

A hearing was held before me at Salem, Indiana, on January 12 and 13, 1967, at which all parties were represented and were afforded full opportunity to participate, examine witnesses, and adduce relevant evidence. At the hearing Respondent further admitted the supervisory status of the two employees so designated in the complaint. Briefs have been filed by the General Counsel and Respondent and have been given careful consideration by me. Upon the entire record in this case, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent is a Missouri corporation with places of business at Corydon and Pekin, Indiana, and is engaged in the manufacturing, sale, and distribution of food commodities. During the 12 months preceding the issuance of the complaint, Respondent shipped from its Indiana facilities to points outside the State of Indiana and had delivered to its Indiana facilities from States other than the State of Indiana goods and materials valued in excess of \$50,000. The complaint alleges, Respondent's answer admits, and I find that the Respondent is now and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, Respondent's answer admits, and I find that the Union is now and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. Respondent's Operations

Respondent raises chickens for breeding purposes, for sale as poultry meat, and for commercial egg production. It maintains a hatchery at Pekin, Indiana, and a processing plant at Corydon, Indiana. Some of the fowl are raised on company-owned farms by employees of

¹ All dates hereafter are 1966 unless otherwise noted

Respondent and the remainder are raised by independent farmers under contract to the Respondent.

The Pekin hatchery has 8 to 10 employees who perform duties such as grading, checking, cleaning, and transferring eggs in the hatchery. There is a 3-member de-beaking crew that de-beaks chickens, an 8- to 10-member day service crew that vaccinates chickens and cleans coops, 3 hatchery truckdrivers who pick up eggs at the farms and bring them to the hatchery, and a spray truck driver who sprays chicken houses with disinfectants and insecticides.

In addition to the above, there are six bulk-feed truckdrivers who work out of Pekin and are engaged solely in the transportation of feed from the Respondent's Louisville, Kentucky, mill to various flocks on both company-owned and independent farms. These bulk-feed drivers are dispatched out of a building that is on the same premises as the hatchery, but a separate building not connected with the hatchery.

Besides the processing plant in Corydon, Indiana, there are chicken catchers and about seven live-haul drivers who operate out of Corydon. The former catch hens and load them on trucks to be taken to the processing plant and the latter drive the trucks transporting these hens from the farms to the processing plant. There appears to be little contact between the live-haul drivers operating out of Corydon and the bulk-feed drivers working out of Pekin.

B. *The Organizational Campaigns*

In the first part of August 1966, Sam Anderson, a live-haul driver, contacted Leo Duty, International representative of District 50, United Mine Workers of America, about organizing the live-haul drivers at Corydon, Indiana. Anderson put Duty in contact with the other live-haul drivers and a meeting was held at the Hoosier Kitchen at New Salisbury, Indiana, during which the attending live-haul drivers signed authorization cards. On or about August 17, 1966, the Union sent Respondent a letter requesting recognition for the live-haul drivers at Corydon, Indiana.

Anderson then gave authorization cards to Terrence Loftus (the employee allegedly discharged in violation of Section 8(a)(3) of the Act) and John Porter, bulk-feed drivers working out of the Pekin facilities of the Respondent. On September 4 Porter signed the authorization card and on September 6 he and Duty visited Loftus and Loftus signed an authorization card. These signings took place at the homes of the employees. Loftus in turn saw bulk-feed driver Bierly at the latter's home and had him sign an authorization card on September 8. That same evening Duty gave Porter and Loftus some union badges. These badges were circular, about 1-1/2 inches in diameter, and contained the following language: "I'M A UNION MEMBER—INTERNATIONAL UNION OF DIST. 50, U.M.W.A.—ARE ? YOU." Loftus pinned a badge over the watch pocket of his trousers.

The next day, September 9, Loftus approached bulk-feed driver Ray while the two were at the Louisville plant of the Respondent waiting to have their trucks loaded. Ray signed an authorization card while standing at the side of his truck. Loftus testified that there were "quite a few people" around at the time but could not identify them as persons connected with the Respondent or outsiders having business there.

Loftus further testified that he drove around with Duty to sign up bulk-feed drivers; on the evening of September 7 he went with Duty to a restaurant in Borden, Indiana, to see bulk-feed driver Littrell; on the afternoon of September 8 they went looking for Bierly's truck where the trucks were parked on company premises; and that evening they went to Bierly's home. Although Loftus placed the visit to the parking lot during the "afternoon" of the 8th, Duty testified that it was in the "evening" and that it could have been between 5 and 5:30 p.m.

C. *The Alleged 8(a)(1)*

The complaint alleges that the Respondent through its admitted supervisor, Robert Walton, interrogated its employees concerning union membership and threatened them with discharge or other reprisals if they assisted the Union. The only record evidence of these allegations is the testimony of Elmer Gray and John Porter concerning statements made by Supervisor Walton. Gray is employed as a live-haul truckdriver at the Corydon facilities and had signed a union authorization card. He testified that on September 9 between 7 and 7:30 p.m. while he and others were drinking beer at a tavern in Borden, Indiana, Supervisor Walton came in and asked Gray when the Union was getting in at Corydon, to which Gray replied that they were to vote on it September 22. Walton replied, "You ain't going to do nothing but just hurt the individuals," adding, "There will be a meter put in the trucks so you won't be allowed to stop for a hour and a half or 2 hours at Pekin with a load of chickens." Walton also said, "Sam Anderson better watch hisself. He got in trouble down at the Borden Cabinet Factory." It appears that Anderson had formerly worked for a Borden cabinet factory and had testified at an NLRB hearing involving that employer. Anderson, however, testified that he never had trouble there, had voluntarily left them, and had been asked several times to return. Gray further testified that shortly after Walton's remark to him he noticed a speedometer at the Corydon office.

Porter testified that on or about September 12, while he was at a Pekin restaurant, Supervisor Walton approached him and asked him, "Where did you get that [union] badge? Did you go to the zoo or something?"

Walton admitted having a conversation with Gray at the Borden tavern but stated that the main thing was a discussion about union activities at the coal mines and that he agreed with Gray who allegedly said he, Gray, was against it. Walton did not specifically deny the statements attributed to him by Gray in the latter's testimony nor was he asked about it. I credit Gray's version of this conversation because I think it unlikely that Gray would initiate a conversation about union activities with one whom he recognized as a supervisor. Moreover, I find it hard to believe that Gray would utter antiunion sentiments soon after signing an authorization card. I also credit the testimony of Porter which was uncontradicted.

D. *The Alleged 8(a)(3)*

The complaint charges the Respondent with the unlawful discharge of Terry Loftus, a bulk-feed truckdriver working out of the Pekin facility.

Loftus came to work shortly before 6 a.m. on September 9. After fueling his truck, he went to a restaurant for coffee where he found Merle Hoseapple. Loftus asked Hoseapple about a job for a friend to which Hoseapple

replied that he had nothing to do with the trucks but was in charge of the hatchery. Loftus was wearing his union badge during this conversation. Loftus was unable to state positively that Hoseapple saw the badge since he did not check to see if it was visible. Moreover, he may have worn a sweater at the time which may have covered it. Neither man made any reference to the union badge.

With respect to Hoseapple, evidence on behalf of the Respondent indicates that he has no authority to discipline, keeps no record on his fellow employees, is carried on the company payrolls as a "hatchery employee," and does the same type of work as his fellow employees. Prior to becoming a night-hatchery employee in the spring of 1966, he had been a supervisor for the Respondent in charge of the live-haul drivers in Corydon. In the latter position he was paid on a salary basis. At all times material herein, however, he was not a supervisor of live-haul drivers but a night-hatchery employee. Nevertheless, he was kept on the same salary as before. The other hatchery employees, however, punch the timeclock and earn between \$1.45 and \$1.65 per hour. Hatchery Manager Eubanks works during the day and spends an average of 4 to 6 hours per week in the hatchery at night. The night shift works 84 hours per week. For the 78 to 80 hours during the week that Eubanks is not at the hatchery during the night shift, Hoseapple tells that hatchery employees what to do, according to Respondent's general manager, Watson, and has the authority to tell them what to do. His instructions to the other hatchery employees, however, are described as casual and his duties not unlike those of the other hatchery employees. The employees have been instructed to report to Hoseapple in case of an emergency. Hoseapple is admitted to be responsible for maintaining order during the night shift and consults with the hatchery manager on discipline.

After speaking to Hoseapple, Loftus drove to Louisville to pick up his first load of feed. While there, he got employee Ray to sign a union card, as mentioned earlier. Loftus then delivered his first load of feed, came back to Louisville for a second load, and drove to a farm managed by Don Roberts. He had unloaded about a ton of feed when the delivery mechanism of the truck, referred to as an auger or stinger, jammed. Both he and Roberts then tried to correct the difficulty but were unsuccessful. Loftus then called Supervisor Coates on the two-way radio. It was then around 5 p.m. Loftus explained that the auger had jammed and that he could not get it working. Coates instructed him to bring the truck into Pekin and have it fixed. According to Loftus, Coates also told him that if the mechanic could not fix it that night, he could deliver the load the next morning. Coates, however, denies any such instruction. According to Coates, he simply assumed that the mechanic would free the auger quickly and that Loftus would finish the delivery the same night.

Coates then went home around 5:15 p.m., having slated Loftus to work on the following morning. Loftus in the meantime drove the truck back to the plant where it was inspected by the mechanic who told Loftus that the auger could not be fixed for some time. Loftus then replied, "I don't give a damn if you don't get it fixed until the middle of next week," and left the plant.

About 9 p.m. Coates was called by a serviceman of the Respondent who handled the account of the farmer who had failed to get a delivery of feed as the result of the auger breakdown. The serviceman told Coates that the

farmer's flock was out of feed. About the same time the mechanic called to tell that Loftus' auger could not be fixed and that the truck was parked at the plant loaded with feed. Coates then returned to the plant and called another driver, Littrell, to come in and get the feed out of Loftus' truck by means of bulk vacuum. Littrell worked with Coates transferring the feed to another truck and then delivering the feed to the farmer who needed it. This work was not finished until about 2 a.m. the following morning, September 10. When Coates returned to the plant, he left a note for Loftus to see him in the morning.

Loftus came to work on September 10 about 8 a.m. Finding the note from Coates, he waited around until about 10 a.m. when he went to Coates' office. There he was asked by Coates what had happened. When Loftus said he did not know, Coates said "You must have bent it or damaged it," adding that "there were wood shavings on the side of the auger." Thereupon, according to Loftus, Coates said, "We can't have that kind of thing. I have been told to let you go." Loftus said, "You mean I am fired?" Coates replied, "That's right." Coates testified he told Loftus that since Loftus would not say anything about what had happened and since the damage that resulted was quite expensive, he was not the kind of employee that the Respondent wanted and that Coates had "no other thing to do but to discharge" him. Loftus then left but returned some 20 minutes later and asked for reinstatement. He told Coates the Company had no grounds to fire him and that he was going to notify the National Labor Relations Board, to which Coates replied, "The Union has nothing to do with this." During this second conversation, Loftus was wearing a union badge on his watch pocket, but no reference was made to it by either of the men. Coates denied seeing the union button but Loftus testified that he made sure his badge was visible.

The record further discloses that the Respondent executed a notice of removal form on Loftus, dated September 12, in which the reason for the discharge given was "unable to perform the work satisfactorily." In his testimony, however, Coates stated that Loftus was fired for lying about the extent of the damage to the auger and for destruction of company property. As respects the failure of Loftus to deliver the feed, it appears that Coates expected Loftus to describe the damage to the auger sufficiently to put Coates on notice that the load could not be delivered that night. This Loftus did not do by merely telling Coates that the auger was jammed. As respects the destruction of company property, it appears that other employees had sustained serious damage to their trucks and equipment in the past and around the same time, without incurring any disciplinary action. According to Coates, however, the other drivers did not attempt to conceal the extent and nature of the damage. I conclude and find that Loftus was discharged because Supervisor Coates was displeased with the way Loftus handled the auger breakdown and specifically with Loftus' failure to report the seriousness of the breakdown so as to have enabled Coates to take care of the farmer's flock without requiring Coates to return to the plant and work until 2 a.m. to avoid serious loss.

E. Conclusions

1. The alleged 8(a)(1)

As noted previously the record discloses only two instances of alleged 8(a)(1) behavior. The first, which oc-

curred on September 9 in Borden, Indiana, where Supervisor Walton told employee Gray of plans to install meters on trucks, was a clear threat to make working conditions less favorable for the drivers and was related to the union activities at Corydon. It needs no citation of authority to conclude that it constituted an interference with the rights of employees to engage in concerted activities as guaranteed in Section 7 of the Act and was a violation, therefore, of Section 8(a)(1). I cannot, however, reach the same conclusion with respect to Walton's other observation concerning employee Anderson's "trouble" at the Borden Cabinet Factory. Walton did not specify the nature of Anderson's "trouble" and Anderson, himself, testified that he had no trouble at that factory. I fail to see how Walton's remark would have any interfering, coercive, or restraining effect upon the rights of Respondent's employees to engage in concerted activities. Similarly, the second incident where Supervisor Walton, on September 12, asked employee Porter where he got the union badge—at the zoo or something—carries with it no threat, restraint, or other interference with an employee right. At the most it is merely derisive. Derision is not necessarily synonymous with coercion.

2. The alleged 8(a)(3)

Counsel for the General Counsel argues that the discharge of Loftus violated Section 8(a)(3) of the Act. He cites the union activity of the dischargee and his wearing a union badge, the antiunion utterances of Supervisor Walton, and the shifting reasons advanced by the Respondent for the discharge. I conclude, nevertheless, that General Counsel has not sustained his burden of proving that the discharge was motivated by union animus on the part of Respondent.

First, as respects the union activity of Loftus, this activity was not "great" as suggested by the General Counsel. Loftus signed up employee Bierly and employee Ray. In addition, he drove around with the union representative and wore a union button for 2 days before his discharge. This activity, which is all claimed by him or the General Counsel, is hardly "great." Nor does the wearing of a badge for 2 days lend much additional weight to the General Counsel's argument of great activity.

The antiunion utterances of Supervisor Walton are also of a minimal character. I have found that only one such statement was a violation of the Act. It is significant that that statement was made once and only to one employee. Moreover, that employee was not from the Pekin facility but from the Corydon facility. As for Walton's remark to Porter about the badge, it should be noted that it occurred 2 days after the Loftus discharge and does not indicate union animus on the part of the Respondent at or prior to the discharge.

Perhaps the strongest argument of the General Counsel involves the inconsistency of Respondent's explanation for the discharge of Loftus. Certainly the differing causes given for the discharge by Coates and the somewhat inconsistent, if not contradictory, reason contained on the notice of removal form raises some doubt as to the real reason for the discharge. This doubt is fortified by the fact that other drivers guilty of a similar property damage were not reprimanded, let alone discharged. Such inconsistency coupled with union animus on the part of Respondent, although not extensive in this case, could lead to a conclusion that the discharge of Loftus was motivated by antiunion reasons, provided, however, that

Respondent is found to have known of Loftus' union activities. It is at this point precisely that the General Counsel's argument fails.

There is no direct affirmative evidence that the Respondent knew of Loftus' union activities. General Counsel argues, however, that the Respondent's knowledge can properly be inferred. He cites as a circumstance "Loftus' open activity on Respondent's premises." The record, however, does not support the argument. Loftus got his union card at Porter's home and visited Bierly at Bierly's home. Neither of these events took place on company premises. He secured Ray's signature at Respondent's Louisville mill but was unable to identify any of the people present as being connected with the Respondent in any way and admitted that such observers may have been merely local citizens. The only time Loftus accompanied a union representative on the Pekin premises was when he and Duty went looking for Bierly. Even then, however, there is no suggestion that anyone saw him. In fact, employee Littrell, having first testified on behalf of the General Counsel, was recalled by the Respondent and testified that he had never heard of Loftus driving around with the union representative.

Of course, wearing a union badge could convey knowledge of union activity to an employer. In this instance, however, it should be noted that Loftus put on the union badge on the evening of September 8 when he was off company premises. Thereafter he wore the union badge on the watch pocket of his trousers when he reported to work on September 9 and 10. There is no direct affirmative evidence that anyone saw Loftus wearing the union button nor can I infer that result. It is true that he wore the union button when he spoke to Merle Hoseapple on the morning of September 9. General Counsel argues that Hoseapple must have seen Loftus wearing the union button and that his knowledge may be imputed to the Respondent because Hoseapple was a supervisor. I do not find Hoseapple's status as a supervisor clearly established. The Act defines a supervisor as:

... any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The Board has ruled that an individual to be a supervisor within the meaning of the Act need have only one of the indicia of a supervisor enumerated above. *Research Designing Service, Inc.*, 141 NLRB 211. But that authority cannot be of a "merely routine or clerical nature." Here the evidence suggests that Hoseapple's assignment of work to the other hatchery employees did not require the use of independent judgment.

Assuming, *arguendo*, that it did and that, therefore, Hoseapple was a supervisor within the meaning of the Act, I cannot conclude that he must have seen Loftus wearing the union button. There is no direct affirmative evidence that he saw it and Loftus testified that he did not check to see if the button was visible. Considering the fact that Loftus often wore a sweater which could have concealed the union button plus the fact that neither of the men made any reference to the union badge during their conversation, I conclude that Hoseapple did not notice it.

Similarly, there is nothing in the record to indicate that anyone noticed Loftus wearing the union button thereafter on September 9 or 10. When he went to Coates' office on September 10 in response to the note Coates had left for him, although he was wearing the union button there is no basis for assuming that Coates saw it. It was only after his discharge, when Loftus returned to talk to Coates, that Loftus stated he made sure the union button was visible. It was then that Coates told him the Union had nothing to do with discharge. It may be concluded therefore that Coates, and therefore the Respondent, knew of Loftus' union activities after Loftus was discharged when Coates was visited the second time for an explanation of the discharge. This, however, sheds no light on the issue of whether the Respondent knew of the union activities of Loftus at the time of the discharge or prior thereto.

Finally, counsel for the General Counsel argues that knowledge may be inferred from the smallness of Respondent's operations. Smallness of operations has been cited as a basis for inferring knowledge of union activities on the part of an employer, *Quest-Shon Mark Brassiere Co., Inc.*, 80 NLRB 1149. This holding was explicated by the Board in *Hadley Manufacturing Corporation*, 108 NLRB 1641, 1650.

However, the mere fact that Respondent's plant is of a small size, does not permit a finding that Respondent had knowledge of the union activities of specific employees, absent supporting evidence that the union activities were carried on *in such a manner, or at times that in the normal course of events, Respondent must have noticed them.* [Emphasis supplied.]

The size of the plant therefore is only one circumstance or factor which is to be considered in the resolution of inference of company knowledge. Considering the minimal nature of Respondent's 8(a)(1) behavior, I cannot conclude, despite the smallness of the operation, that the Respondent was aware of union activity at the Pekin facility. It was, of course, aware of union activity at the Corydon facility but this was the subject of an entirely separate campaign separately handled by the Union. There is no basis for assuming that because of union activities at one facility, similar activities were going on at another facility, particularly when there is little intermingling of employees between the two facilities and no record evidence of knowledge of the union activities of the live-haul drivers at Corydon on the part of Pekin bulk-feed drivers.

Counsel for the General Counsel has cited two cases in support of his position. The first is *Angwell Curtain Company, Inc. v. N.L.R.B.*, 192 F.2d 899, where company knowledge of union activities was inferred in the "small plant in a relatively small community." In that case, although company officials denied knowing of any union activity, there had been rumors of union activity throughout the plant for at least a month, the president of the company had boasted that he knew the people and their backgrounds to a minute detail and there was reference to the union during the discharge interview. Moreover, the president of the company had interviewed each employee separately to explain the company's opposition to the union after the discharge. Here, however, there is no evidence of any antiunion attitude on the part of the Respondent after the discharge of Loftus except Walton's remark about getting a union button at the zoo, and no reference to the Union was made by Loftus or management representatives prior to the discharge.

The second case cited by counsel for the General Counsel is even more to the point. In *N.L.R.B. v. Malone Knitting Company*, and *N.L.R.B. v. Joseph Antell, Inc.*, 358 F.2d 880, the court dismissed the *Antell* case for lack of evidence of company knowledge of union activities:

The smallness of the plant, or staff, may be material, but only to the extent that it may be shown to have made it likely that the employer had observed the activity in question . . . This can have *no application to an off-hour, off-the-premises, meeting* . . . [Emphasis supplied.]

In *Malone Knitting Company*, the Respondent was shown to have given a reason inconsistent with its previous practice against its apparent interest and inconsistent with its subsequent actions which is not unlike the situation here. In addition, as in this case, there was no affirmative evidence that management saw the employee in his union activity. In *Malone*, however, the employee activity took place openly in the plant during business hours. That fact, coupled with affirmative proof that the employer's reason for the discharge was false, the court found gave rise to an inference that some other reason was being concealed. Furthermore, with independent evidence of the employer's union animus which the discharge would gratify, the court concluded that it was a fair inference that this was the true reason for the discharge. Here, however, the facts are quite unlike those in *Malone Knitting*. Loftus' union activity was not "openly in the plant" nor was it "during business hours." The independent evidence of union animus on the part of the Respondent here is only slight and involves a different facility being organized independently of the Pekin facility, and having no necessary or actual connection with it. The discharge of Loftus could not "gratify" such union animus directed at the Corydon live-haul drivers. See also *Ventre Packing Co., Inc.*, 163 NLRB 540, where the Board again inferred company knowledge of union activities from the small size of the employer's plant, but where, in addition, the employer had engaged in "widespread unlawful interrogation of employees and other unfair labor practices," circumstances which are absent here.

I conclude, therefore, that counsel for the General Counsel has not sustained the burden of proving knowledge of union activity on the part of Respondent prior to the discharge of Loftus, without which, proof of a discriminatory discharge for union activity is lacking. I shall therefore recommend dismissal of the 8(a)(3) allegation.

THE REMEDY

Having found that Respondent engaged in an unfair labor practice when Supervisor Walton told an employee of plans to install meters on the trucks, I shall recommend that it cease and desist from such practices or any like or related practice and take certain affirmative action to effectuate the policies of the Act. I shall further recommend that in all other respects the complaint be dismissed. The fact, however, that Respondent has not committed other unfair labor practices is "hardly a reason for denying an effective remedy for the unfair labor practices it did commit," *American Fire Apparatus Co.*, 160 NLRB 1318.

On the basis of the foregoing findings of fact and conclusions, I recommend that the Board issue the following:

ORDER

APPENDIX

NOTICE TO ALL EMPLOYEES

Ralston Purina Company, Corydon and Pekin, Indiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening to change the terms or conditions of employment as a result of unionization.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their right to self-organization, to form, join, or assist the Union or any other labor organization, to bargain collectively through representatives of their own choosing, or to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from many or all such activities.

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

(a) Post at its place in Corydon and Pekin, Indiana, copies of the attached notice marked "Appendix."² Copies of said notice, to be furnished by the Regional Director for Region 25, after being duly signed by the Respondent's representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 25, in writing, within 20 days from the receipt of this Decision, what steps Respondent has taken to comply herewith.³

IT IS FURTHER RECOMMENDED that in all other respects the complaint be and hereby is dismissed.

² 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."

³ 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."

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 threaten to change any term or condition of your work as a result of unionization at our plants.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist the Union or any other labor organization, to bargain collectively through representatives of their own choosing, or 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.

All our employees are free to become or remain, or refrain from becoming or remaining, members of the International Union of District 50, United Mine Workers of America or any other labor organization.

RALSTON PURINA COMPANY
(Employer)

Dated _____ By _____ (Representative) _____ (Title)

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

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 614 ISTA Center, 150 West Market Street, Indianapolis, Indiana 46204, Telephone 633-8921.