

**M. C. Ricciardi Company and Textile Workers
Union of America, AFL-CIO. Case 22-CA-3805**

TRIAL EXAMINER'S DECISION

December 16, 1969

STATEMENT OF THE CASE

DECISION AND ORDER

**BY CHAIRMAN McCULLOCH AND MEMBERS
BROWN AND ZAGORIA**

On September 22, 1969, Trial Examiner Harry H. Kuskin 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,¹ a supporting brief, and a motion to reopen the record.²

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

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

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner and hereby orders that the Respondent, M. C. Ricciardi Company, Alpha, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

¹The Respondent's exceptions to the Trial Examiner's Decision are in large part directed to his credibility resolutions. We will not overrule a Trial Examiner's credibility resolutions unless a clear preponderance of all the relevant evidence convinces us that they are incorrect. Such a conclusion is not warranted here. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enf'd 188 F.2d 362 (CA 3). We also find no merit in the Respondent's charge of bias and prejudice on the part of the Trial Examiner.

²With its exceptions to the Trial Examiner's Decision, Respondent filed a motion to reopen the record to allow the production of evidence which, it contends, it could not produce at the hearing because it did not have sufficient time. The Respondent requested and had been granted a 2 weeks' postponement of the hearing and at no time indicated to the Trial Examiner that it needed additional time to produce evidence. The motion is hereby denied on the ground that sufficient reason has not been shown why the proffered evidence was not submitted at the hearing before the Trial Examiner. *Mid-South Towing Company*, 177 NLRB No. 123.

HARRY H. KUSKIN, Trial Examiner. This proceeding was heard at Newark, New Jersey, on August 12, 1969. A complaint issued herein on July 7, 1969, based on a charge and a first amended charge filed on May 23 and June 20, 1969, respectively. The complaint alleges, in substance, that M.C. Ricciardi Company, herein called Respondent, has violated Section 8(a)(1) of the Act (1) by promulgating, publishing, and maintaining a no-solicitation rule prior to February 1, 1969, and at all times relevant thereafter, in order to prevent its employees from giving support to, or engaging in activities on behalf of, a labor organization on its premises, without regard to whether such activities should occur during nonworking hours; (2) by threatening employees with discharge if they distributed union authorization cards on behalf of Textile Workers Union of America, AFL-CIO, herein called the Union; and (3) by interrogating its employees concerning their membership and activities on behalf of the Union. Respondent's answer denies that it has violated the Act in any respect alleged herein.

Upon the entire record, including my observation of the witnesses, including their demeanor while on the witness stand, and after due consideration of the briefs of the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

The complaint alleges, and Respondent admits, that it is a New Jersey corporation engaged in the manufacture, sale, and distribution of military ammunition containers and related products at various plants in New Jersey, including its Tung-Sol and Kings plants in Washington, New Jersey, and its Alpha plant, in Alpha, New Jersey, that during the 12 months preceding the complaint, which is representative of its operations at all times material herein, it manufactured, sold, and distributed products valued in excess of \$50,000, pursuant to contracts with various branches of the United States Government, including the United States Department of the Army, which manufactured products directly related to national defense and had a substantial impact upon national defense. I find, upon the foregoing, as Respondent also admits, that Respondent is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent agrees, and I find, that Textile Workers Union of America, AFL-CIO, is a labor organization within the meaning of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. The no-solicitation rule¹

The no-solicitation rule which is in issue herein is the one that was admittedly published and posted by Respondent in its Alpha, New Jersey, and Washington, New Jersey, plants from some time prior to February 1,

¹Unless otherwise indicated, the findings hereinafter are based on undenied or uncontroverted testimony, which I credit.

1969, until July 10, 1969.² It reads, as follows:

NOTICE

TO ALL CONCERNED:

THE M.C. RICCIARDI COMPANY WILL NOT PERMIT ANY TYPE OF SOLICITATION ON COMPANY PREMISES OR DURING WORKING HOURS WITHOUT DEFINITE CLEARANCE BY MANAGEMENT.

ANY PERSON OR PERSONS IN VIOLATION OF THE ABOVE REGULATION WILL BE DISMISSED AT ONCE.

ALL PEOPLE PUNCHING OUT SHALL TRY TO LEAVE THE PREMISES PROMPTLY TO SAFEGUARD INSURANCE REGULATIONS.

AUTHORIZED BY
MANAGEMENT
M.C. RICCIARDI

On the latter date, which was 3 days after the filing of the complaint herein, Respondent changed the rule, on advice of counsel, and posted the rule in the same manner as the old rule. This rule, as changed, reads as follows:

NOTICE

TO ALL CONCERNED:

Owing to the misinterpretation of our long standing no-solicitation rule, the subscribing Company has decided to revoke that rule as of this date and to substitute therefore (sic), the following clear and unambiguous rules, to wit:

1. To insure efficient production and proper discipline, the Company will not permit any type of solicitation by its employees in work areas during their regular or scheduled working hours.

2. All employees shall leave the plant promptly after punching out.

3. No employee shall interfere with the work or the production efforts of any other employee by any means.

4. Any employee who violates any of the above rules will be discharged.

ISSUED AND POSTED: July 10, 1969

M.C. RICCIARDI
COMPANY

By:
Charles M. DeReamns
Personnel Manager

It is not contended that the rule, as changed, contravenes the Act in any respect.

As to the rule in issue, it is apparent from its language, as set forth above, that, on its face, it prohibits solicitation of all kinds, including that for a union, during nonworking time on plant premises without company authorization. It is well established that employees have the right to solicit for a union and to engage in union activities on an employer's property so long as they do not do so during working time. A plant rule which interferes with the exercise of this protected right, as here, by conditioning its exercise on the employer's permission is presumed, in the absence of special circumstances, to fall within the proscription of Section 8(a)(1) of the Act. And it is also well established that the burden of overcoming this presumption of illegality in such a broad no-solicitation rule rests upon the employer in an unfair labor practice case.³

I am satisfied on this record that Respondent has not sustained the burden of showing special justifying considerations. Although Matthew C. Ricciardi, Respondent's president, testified that Respondent sought by its rule to prevent the disruption of production which could result from uncontrolled solicitations for funds or selling by employees, such mere assertion fails to establish how solicitation in the plant, during nonworking hours,⁴ did, or could, affect or threaten production. Accordingly, since Respondent has failed to show special circumstances for attaching conditions and qualifications to its no-solicitation rule on nonworking time, it follows that, by requiring therein that employees obtain permission before engaging in union solicitation during nonworking time, Respondent unlawfully predicated upon its authorization the employees' exercise of their rights under Section 7 of the Act freely to engage in union solicitation during such periods.⁵

As noted above, Respondent admits that it published and posted the above rule in its plants during the above-mentioned period. However, it denies that, as alleged in the complaint, it maintained and enforced the rule with respect to its employees during nonworking hours. In this connection, Ricciardi testified that he did not mind the passing out of union cards on company premises "as long as it was done on off-working hours." Yet, it is apparent that he never communicated this information directly to the employees during the pendency of the rule. Nor did Respondent post anything so to qualify the rule or explain it until July 10, 3 days after the complaint issued herein. And while Ricciardi testified, at one point, that he made his position on solicitation during nonworking hours known to his foremen, when asked by counsel for the General Counsel, during cross examination, whether he ever told his supervisors to convey the information to the employees that solicitation was allowed during nonworking hours, even though the posted rule said otherwise, he said that he was unable to answer the question. In addition, admitted supervisor John Slack, Jr, testified that he received no such instructions from his superiors at the "two or three" meetings of supervisors that he did attend.⁶ Furthermore, employees Carrie Shepard, Doris Gerstenberg, Doris D. Alvin and Rosemary Lockhart, who impressed me as reliable witnesses and worthy of credit, each testified that at no time did she receive any such clarification from a representative of management.

In addition, there is testimony in the record as to how the rule was, in fact, enforced. Thus, there is testimony, which is mutually corroborative in many respects, by employees Shepard, Gerstenberg, and Alvin that employees have, in the past, been allowed to take up collections in the Alpha plant both during working hours and nonworking hours for Christmas presents for individual supervisors, and for employees who were sick or who suffered some personal tragedy. And Slack also

²See *Republic Aviation Corp v NLRB*, 324 U.S. 793, 803-804, fn 10, *N.L.R.B. v. Walton Mfg Co.*, 289 F.2d 177, 180 (C.A. 5), enfg 126 NLRB 697, *N.L.R.B. v. United Aircraft Corp.*, 324 F.2d 128 (C.A. 2), cert. denied 376 U.S. 591, *Stoddard-Quirk Manufacturing Co.*, 138 NLRB 615

⁴Respondent concedes that lunch periods and break periods constitute nonworking time

⁵See *Fasco Industries, Inc. v. N.L.R.B.*, 412 F.2d 589 (CA 5), enfg in relevant part 173 NLRB No. 85

⁶Slack explained that he had been on the night shift ever since he became a foreman and most of the meetings of supervisors were in the daytime when he was sleeping.

³All dates hereinafter are in 1969

testified that he gave permission for such collections "quite a few times" in sickness and tragedy situations. In addition, there is testimony by these three named employees establishing that employee Phyllis Solomon has sold Avon products, consisting of cosmetics etc., during both working hours and nonworking hours in the plant and that employee Julie Shotwell has sold Tupperware products during such periods. Both Solomon and Shotwell did their selling via catalogues, and would, at times, leave the catalogues with the employee being solicited. In some instances, employees would look at the catalogues at their machines during working hours and would then write down the product or products to be ordered.⁷ As to the catalogue selling, Slack testified that "many times [he] told them no soliciting, no buying and selling and stuff with these books." However, I note, in this connection, that Slack admitted that he "never bothered to try and find out" who was doing the selling. Since I find it difficult to believe that Slack would have tried to stop the selling activity in the plant without ever trying to find out who was responsible therefor, and since I find hereinafter that Slack's testimony in other respects is not worthy of credit, I do not credit his testimony that he tried to stop such selling or soliciting in the plant.

The foregoing is to be appraised in the light of further testimony as to what occurred in the plant at about 6 or 6:30 p.m., on March 19. Preliminarily, it should be noted that earlier that afternoon about ten employees of Respondent attended a union meeting in Phillipsburg, New Jersey; that, among these employees, were Shepard, Alvin, Gerstenberg, Hilda Rogers and Marguerite Rogers; and that, after leaving the meeting but before reporting to work that day, at 5 p.m., their regularly scheduled time, Shepard, Alvin and Gerstenberg distributed some union authorization cards to Respondent's employees on Respondent's parking lot which adjoins the Alpha plant.

As to the subsequent events that afternoon, employees Shepard and Gerstenberg gave the following mutually corroborative testimony: Admitted supervisor John Slack, Jr., who is in full charge of the night shift,⁸ personally approached them, as well as Allen, Hilda Rogers and Marguerite Rogers, at their places of work on the production line and told them to go to his office.⁹ In the office, Slack held up a union authorization card and admonished the employees that, if he caught any one giving them out in the plant, that person would be discharged. It was their recollection that nothing else was said by Slack. Employee Alvin testified in corroboration of the testimony by Shepard and Gerstenberg, except that it was also her testimony, at one point, that Slack said further that what the employees do on their own time is their own business but they could not do so "on time in the place"; and, at another point, that Slack said that the foregoing prohibition related to the premises or company time. On this entire record, I am persuaded, and find, that Alvin gave a more complete version of the meeting with Slack and that Slack did make comments of this kind to the five assembled employees. And I am satisfied, and find, that the sum and substance of Alvin's additional testimony was, under either version, that Slack then told the employees that they were not free to engage in such activity at any time while on company premises, thereby reiterating, in effect, the existing no-solicitation rule.¹⁰

In respect to the foregoing, Slack admitted that he called the five above-mentioned employees to his office about 6:30 p.m. He gave as his reason for doing so that, starting shortly after 5 p.m., employees began to leave their machines "off and on" and talk to others; that the situation became progressively worse; and that this was affecting production. More particularly, as to the extent of the movement around the plant, Slack testified variously (1) that these five employees "seemed to be walking around the most," talking to others; (2) that only these five employees were away from their jobs talking to other employees; (3) that there came a time just before he called these five employees in the office "when everybody left their jobs, when everything stopped, then everybody was walking away. I didn't know what they were doing"; and (4) that just prior to calling these five employees into the office, "they were at their jobs" and "[he had] no idea" how long they had been at their jobs. Further, as to the impact of this movement about the plant on production, Slack also testified variously (1) that "it wasn't bad and production was going good until the time he called the employees into the office and it just kept going down hill"; (2) that the other people were at their jobs and ready to work but they did not have the materials to work with because of the disruption of flow of work caused by these five employees; and (3) that it was just a slowdown rather than a case of employees not having any work to do.

The testimony of Slack as to the ensuing episode in his office was, like the foregoing, also lacking in forthrightness and, at times, contradictory. Thus, he testified that he told the five assembled employees that he "knew that these cards were being passed out and any more solicitation of any kind, books, all that kind of stuff, that he would fire them." Yet, he denied that he mentioned the Union to them or that he talked to President Ricciardi about the card when he reached him on the telephone and discussed the situation at the plant with him, which discussion resulted in instructions to call this meeting. And while he testified that he saw union cards on the plant floor and picked them up, his testimony varied as to what he did with these cards, saying, at first, that he put them on his desk but he does not know exactly what he did with them next; and saying, at a later point, that he does not know whether he threw them in the garbage after he picked them up or had them in or on his desk. Also, although pressed for an answer, he replied that he could not recall whether (as testified to by Shepard, Alvin and Gerstenberg) he held a union card in his hand while talking to them. It is also clear from the record that Slack was instructed by Ricciardi not only to call this meeting but to make sure that the employees knew the rules of no-solicitation. In this connection, Slack's testimony, at one point was that, in explaining the rule to them he told them that he "didn't care what they did on their own time but don't do it on my time which was during working hours." Yet, as already found, the rule, on its face, prohibited solicitation in the plant during nonworking time. Also noteworthy, in this connection, is Slack's further testimony that he did not tell the employees that it would be all right to do soliciting on company premises

employees, of whom about 45 were production line employees.

⁷Shepard testified that, at the time in question, the office was located in an area which housed Slack's desk and was also used as a lunchroom. At the time of the hearing, the area was being used only as a lunchroom

¹⁰Ricciardi testified that company premises, under that no-solicitation rule, included the parking lot adjoining the Alpha plant

⁷It was stipulated by the parties, in effect, that, if Rosemary Lockhart were to testify on the matter of solicitation and selling by employees in the plant, her testimony would be similar to that of these three employees

⁸The total complement on the night shift consisted of about 60

during their own time, and that he did not clarify to them what he meant by nonworking time. In all these circumstances, it strains one's credulity to believe that Slack told these five employees, in contravention of the established rule, either directly or by implication, that they were free to engage in solicitation in the plant on their own time. In this connection, I find totally unconvincing and incredible Slack's testimony that, although the rule referred to "solicitation on company premises or during working hours, he did not, at that time, interpret this language in the disjunctive.

As I have heretofore found that Slack was not a forthright or convincing witness and that his testimony was, at times, contradictory; and since his version of the meeting is at odds, in many significant respects, with that of Shepard, Alvin, and Gerstenberg, who impressed me, I have found, as reliable witnesses and who gave mutually corroborative testimony as to much of what occurred at the meeting, I credit their testimony and discredit the testimony of Slack. And since, as also found above, I have found that Alvin gave a more comprehensive version of the meeting episode, I find further that her version more accurately reflects what took place at the meeting.

With respect to the situation existing in the plant prior to the meeting, there was mutually consistent testimony, on rebuttal, by Shepard, Gerstenberg and Alvin that they neither passed out cards in the plant after they started work on March 19, nor left their machines to talk to anyone about the Union or about anything, nor saw any groups of employees milling around when they should have been working.¹¹ This testimony was in direct contradiction of Slack's testimony. Casting serious doubt on Slack's version, that all of the above was going on and that it was adversely affecting production to the point that he felt impelled to do something about it, is his admission that, at no time during the meeting, did he mention anything about production to the employees; and, further, nowhere does it appear that Slack spoke to any of these five assembled employees about production before the meeting that day. In all these circumstances, including the fact that Slack did not impress me as a reliable witness whereas Shepard, Gerstenberg, Alvin, and Lockhart did so impress me, I conclude, and find, contrary to the testimony of Slack, that the record fails to establish that anything untoward occurred in the plant's operations during the hour and a half, or so, preceding the meeting, or that there was any nexus between what occurred in the plant during that period and the meeting which followed.¹² Rather do I infer, and find, particularly in light of Slack's admission that he knew that cards were being passed out, that Slack called these five employees into the office, all of whom had attended the union meeting earlier that day and three of whom had distributed union authorization cards on the company parking lot thereafter but before the night shift began, in order to counteract such union activity, including the distribution of union authorization cards.

¹¹Employee Lockhart also testified that she did not engage in such conduct on March 19, nor did she see any groups milling around during working time.

¹²In this connection, I do not credit the testimony of President Ricciardi that, during the telephone conversation with Slack, which resulted in his instructions to Slack to call the meeting, Slack told him that employees "were passing out cards disrupting production, with a couple of situations where the people were arguing, didn't want to take the cards." Ricciardi did not testify in a forthright manner, at times, (e.g., see discussion *supra* of his testimony with respect to conveying his claimed interpretation of the no-solicitation rule to his supervisors) and he did not impress me as a

The record also discloses, in this latter connection, undenied testimony by employee Gerstenberg that (1) on March 20, when she was on her way to the ladies room, she overheard her supervisor, Slack, say to his father, an employee, "There goes a union man"; (2) later that evening, while she was in the office arranging with office employee Doris Bray to have her order supper to be brought into the plant "for the girls" on the night shift, Slack came into the office and said, upon being told by Bray what was taking place, "Oh, I thought maybe she was trying to give you a union card"; and (3) on one occasion, when she was leaving the office, Slack said to her, "Doris, I never thought you would do this"; and, in response to her query as to what he meant, Slack answered, "Be a union man."¹³

I am not persuaded that either items (1) or (3) exceeded permissible bounds under the Act. However, with respect to item (2), since Slack had, the night before during the meeting with the five employees, including her, threatened to discharge any employee who distributed a card on plant premises, I am persuaded that Slack thereby implied to Gerstenberg that he meant to carry out the threat, witness the fact that he was then on the lookout to see whether she was engaging in such distribution in the plant. I therefore conclude, and find, that, by Slack's direct threat to the five assembled employees on March 19 and by Slack's implied threat separately to Gerstenberg on March 20, Respondent further violated Section 8(a)(1) of the Act.

Considering the fact that, as found above, other forms of solicitation were being allowed both during working and nonworking time, as of the time of Slack's meeting with the five employees in the plant, and the further fact that the burden of Slack's remarks to the five employees at the meeting was that Respondent would not tolerate the solicitation of union membership on the plant premises on working or nonworking time by the distribution of union authorization cards, I conclude, and find, further that Respondent thereby enforced its no-solicitation rule not only coercively but disparately in order to prevent its employees from engaging in solicitation in behalf of the Union.¹⁴

Although Respondent has admitted in its answer that John Slack, Jr., is a supervisor within the meaning of Section 2(11) of the Act, it takes the position, in effect, therein that it should not be held responsible for any conduct or statements by Slack, which may be found to have contravened the Act, because Slack engaged in such conduct without its authority. However, because Respondent has clothed Slack with the mantle of its authority, any conduct or statements by him to Respondent's employees contravening the Act would naturally have a coercive effect upon them, regardless of the fact that such conduct or statements are unauthorized.¹⁵ Accordingly, I find that Respondent is answerable for the aforesaid threats and acts of interrogation by Slack found herein.

In sum, therefore, I conclude, and find, that Respondent violated Section 8(a)(1) of the Act (1) by

reliable witness.

¹³Slack's testimony was only that he could not recall any of the above occasions testified to by Gerstenberg.

¹⁴On the matter of enforcement of the rule, see *The Great Atlantic & Pacific Tea Company, Inc.*, 162 NLRB 1182, 1184, holding that: It is well established that the mere existence of an unlawful no-solicitation rule makes it susceptible to application to employees and this factor alone tends to coerce, restrain, and interfere with their right to engage in self-organizational activities.

¹⁵See *N.L.R.B. v. Ace Comb Company*, 342 F.2d 841 (C.A. 8).

promulgating, and maintaining in effect, an illegally broad no-solicitation rule which prohibited union solicitation on nonworking time on plant premises; (2) by enforcing this illegally broad no-solicitation rule discriminatorily in order to prevent its employees from engaging in solicitation on plant premises in behalf of the Union; and (3) by threatening employees both directly and indirectly with discharge for engaging in the distribution of union authorization cards on plant premises.

B. *Additional 8(a)(1)*

According to Rosemary Lockhart, "a couple of hours after work had started" on March 19, Slack approached her, while she was at the water fountain in the plant,¹⁴ holding a union card in his hand, and asked her whether she had gone to the union meeting; and when she replied in the negative, he inquired further whether she was sure. She testified, in addition, that Slack also said, "whoever passed union cards around will be fired"; and that he asked her whether she knew who was passing out union cards. As to the above, Slack admitted talking to Lockhart at the fountain on one occasion about a meeting, and saying, "what are you doing having a meeting down there?" Slack testified, on direct, in explanation of his admitted remark that the word "meeting" was "just a figure of speech. It was just something I said because they were all in one spot talking." Thereafter, on cross examination, Slack gave as an explanation that he was referring to "people just milling around in that general area," — the area where Lockhart worked. In view of (1) my finding heretofore discrediting Slack's testimony that such milling around did occur; (2) the unconvincing explanation by Slack as to why he used the word "meeting," and his failure to explain why he said to Lockhart what are you doing having a meeting down there (emphasis supplied), when Lockhart was at his side; (3) Slack's failure specifically to deny both the interrogation concerning who was passing out union cards and the threat attributed to him by Lockhart; and (4) my findings heretofore discrediting Slack and crediting Lockhart, I credit Lockhart here and conclude, and find, that Slack interrogated Lockhart as to the union meeting and as to who was passing out union cards and, as was the case during the meeting that day with the five employees, threatened to discharge any employee who passed out union cards on company premises, all of which interfered with, restrained and coerced her in her rights under Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

Upon the basis of the entire record, I make the following:

CONCLUSIONS OF LAW

1. Respondent is an employer 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 interfering with, restraining, and coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act in the manner found above, Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. 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

As I have found that Respondent engaged in certain unfair labor practices, I shall order Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the purposes of the Act. In this connection, although Respondent did, shortly after the filing of the instant complaint, in effect, rescind the unlawful no-solicitation rule found herein, I shall nevertheless, in order to safeguard against any further promulgating, maintaining or enforcing by it of such a rule and thereby interfering with its employees' self-organizational rights under the Act, recommend that Respondent be ordered to cease and desist therefrom. Furthermore, since the record shows that the above rule was promulgated and maintained by Respondent not only in its Alpha plant in Alpha, New Jersey, but also in its Tung-Sol plant and Kings plant in Washington, New Jersey, I shall also recommend that Respondent be ordered to post the notice hereinafter set forth both in the Alpha, New Jersey, plant and in these two Washington, New Jersey, plants.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, I recommend that:

A. Respondent, its officers, agents, successors, and assigns, shall:

1. Cease and desist from

(a) Interrogating employees concerning their own or their fellow employees' union membership, activities, or desires in a manner constituting interference, restraint, or coercion, in violation of Section 8(a)(1) of the Act.

(b) Threatening employees directly or indirectly with discharge if they engaged in the distribution of union authorization cards on plant premises in a manner consistent with their organizational rights under the Act.

(c) Promulgating, maintaining or enforcing a rule which prohibits solicitation on company premises during nonworking time unless authorized by management.

(d) Enforcing any no-solicitation rule in a manner which discriminates against solicitation in a Union's behalf.

(e) 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 designed to effectuate the policies of the Act:

(a) Post at its plants in Alpha, New Jersey, and Washington, New Jersey, copies of the attached notice, marked "Appendix."¹⁷ Copies of said notice, on forms provided by the Regional Director for Region 22, shall, after being signed by a representative of Respondent, be posted by Respondent immediately upon receipt thereof, and be maintained 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.

¹⁴She testified that she had just taken a break and had been to the bathroom.

¹⁷In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the

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(b) Notify the said Regional Director, in writing, within 20 days from the receipt of this Decision, what steps Respondent has taken to comply herewith.¹⁸

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 "Pursuant to a Decree of the United States Court of Appeals Enforcing an Order," shall be substituted for the words "a Decision and Order."

¹⁸In 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:

After a trial at which all sides had the chance to give evidence, the National Labor Relations Board found that we, M.C. Ricciardi Company, violated the National Labor Relations Act, and ordered us to post this notice and to carry out its provisions.

The Law gives you the right.

To form, join or help unions,

To choose a union to represent you in bargaining with us,

To act together for your common interest or protection; and

To refuse to participate in any or all of these things.

The Board has ordered us to promise you that.

WE WILL NOT interfere with your rights.

WE WILL NOT interrogate you as to your or your fellow employees', union activities, union membership, or desires.

WE WILL NOT threaten you directly or indirectly with discharge if you engage in the distribution of union authorization cards on plant premises in a manner consistent with your organizational rights under the Act.

WE WILL NOT promulgate, maintain, or enforce a rule which prohibits solicitation on company premises during nonworking time unless authorized by us.

WE WILL NOT enforce any no-solicitation rule in a manner which discriminates against solicitation in a union's behalf.

M.C. RICCIARDI
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, Federal Building, 970 Broad Street, Newark, New Jersey 07102, Telephone 645-2100.