

**Tex Manufacturing Company and El Paso District
Joint Board Amalgamated Clothing Workers of
America, AFL-CIO. Case 28-CA-1829**

January 20, 1970

DECISION AND ORDER

BY MEMBERS FANNING, BROWN, AND JENKINS

On August 26, 1969, Trial Examiner James R. Webster issued his Decision in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. He further found that Respondent had not engaged in certain other unfair labor practices alleged in the complaint, and recommended the dismissal of these allegations. Thereafter, exceptions and cross-exceptions to the Trial Examiner's Decision were filed by Respondent and the General Counsel, respectively, together with briefs in support thereof.¹ Respondent also filed a motion to reopen the record and a brief in answer to the General Counsel's cross-exceptions, while the General Counsel has filed a motion to strike certain portions of Respondent's brief in answer to the General Counsel's cross-exceptions.

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

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision and the entire record in this case, including the exceptions, cross-exceptions, motions² and briefs, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following clarification.

We agree with the Trial Examiner's finding that Respondent's stationing of supervisors at the plant exit gate interfered with the distribution of union literature and constituted surveillance of union activities within the meaning of Section 8(a)(1) of the Act. Our finding is based upon evidence that Respondent only began stationing supervisors at the plant gate after the Union commenced handbilling activities at this location, and the absence of any plausible reason for positioning supervisors at the plant gate. In such circumstances, we can only infer that Respondent's action was for the purpose of

discouraging and deterring employees from engaging in handbilling activities, a right guaranteed them by Section 7 of the Act.

We also agree with the Trial Examiner's finding that Respondent discharged employee Alicia Moreno in violation of Section 8(a)(3) and (1) of the Act. Moreno, an employee of 9 years standing, was a leading activist in the Union's organizational campaign. Moreno was a member of the Union's organizing committee, participated in numerous handbilling activities³ and solicited union membership from approximately 50 employees. Respondent was fully aware of Moreno's activities on behalf of the Union and, as detailed in the Trial Examiner's Decision, Respondent exhibited animus toward the Union and a change of attitude toward Moreno because of her activities. It was in this context that the Trial Examiner examined Respondent's contention that a lack of work made a reduction in force necessary and Moreno's poor production record caused her to be among those selected for termination. In passing upon this contention, the Trial Examiner agreed that Respondent experienced a severe drop in sales from July 1968 to December of that year. However, he found no justification for Respondent's claim that Moreno was the poorest producer on operation no. 129, and in view of Respondent's policy of delaying reductions in force until the end of the year, he could find no satisfactory explanation why Moreno was terminated on November 20, 1968, and replaced by an inexperienced employee.

Respondent contends that the Trial Examiner's finding of unlawful discharge is based in large part upon the subsidiary finding that Moreno was replaced by an inexperienced employee and that this latter finding is totally without record support. Specifically, Respondent challenges the Trial Examiner's determinations as to the composition of the work force on operation no. 129 both before and after Moreno's discharge, and in particular his finding that employee Alicia Gamboa was put on operation no. 129 as a replacement for Alicia Moreno. In support of its position, Respondent filed with the Board its Motion to Reopen Record and attached thereto, the production records of Alicia Gamboa covering the period from November 1968 to June 1969,⁴ together with an affidavit from Abie Mowad,⁵ Respondent's production manager, both of which tend to establish that Gamboa did not perform operation no. 129 after Moreno's discharge, although she did perform work of a similar nature. However, even assuming that the Trial Examiner was in error in concluding that Gamboa was a replacement for Moreno, it would not affect the

¹The matters raised in Respondent's motion to reopen are discussed in the body of our Decision.

²The General Counsel's motion to strike certain portions of Respondent's brief in answer to the General Counsel's cross-exceptions is hereby denied.

³The General Counsel's motion to correct the transcript to reflect that Moreno's handbilling activities commenced in June not January 1968 is unopposed and is hereby granted.

⁴The production records of Alicia Gamboa consist of 8 pages and are received into evidence as Resp Exhs 12(a)-(h).

⁵The affidavit of Abie Mowad is received into evidence as Resp. Exh. 13.

result reached here because in our judgment the overwhelming weight of the evidence establishes that Moreno would not have been discharged on November 20, but for her union activities.

As previously noted, Respondent experienced a severe drop in sales in the summer and fall of 1968, and according to production manager Mowad's testimony, he informed all his supervisors that reduction in personnel would have to be made by the first of the year. Mowad explained that he set the time limit at the first of the year because traditionally Respondent has experienced a certain amount of attrition resulting from the failure of employees to return to work after the December vacation period. Mowad further testified that supervisors are reluctant to let people go before this time because they do not know whether they are going to lose personnel right after the first of the year. Pursuant to Mowad's directive, supervisor Amelia Franco was instructed to reduce her line of 25 operators by 5. Franco testified that the selection of those to be terminated was left to her discretion. On November 20, Franco had four employees performing the front pocket facing operation,⁶ and on that date, she notified employees Moreno and Delgado that they were being let go. At the time, Delgado was pregnant and due to go on maternity leave in the near future. Franco testified that Moreno was selected because she had the poorest production among those performing the front pocket facing operation. The day following Moreno's termination, employee Marie de luz Rendon returned from a leave of absence to her position as a front pocket facing operator.

There is no satisfactory explanation in the record as to why Franco chose to terminate Moreno on November 20 in the middle of a pay period,⁷ thereby departing from custom and acting at a time when the results of the usual end of the year attrition could not be known or evaluated. Likewise, Franco's contention that Moreno was selected because she was the poorest producer on front pocket facing is not supported by the record. The production records in evidence establish that Moreno was a better producer than either Delgado or Martinez. Yet Martinez was retained over Moreno and continued to work on front pocket facings.⁸ Finally, the urgency for reducing personnel on Franco's line is drawn into serious question by her testimony that although there had been no increase in the work load, Franco had 27 operators on her line at the time of the hearing in May 1969 as opposed to the 25 operators on her line at the time of Moreno's discharge. In such circumstances, we are constrained to conclude that Respondent discharged Moreno because of her union activities, thereby violating Section 8(a)(3) and (1) of the Act.⁹

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order the Recommended Order of the Trial Examiner, and hereby orders that Respondent, Tex Manufacturing Company, El Paso, Texas, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

Unfortunately, the production records do not indicate the amount of time any operator may have spent in non quota type work. However, Franco testified that Martinez worked steadily on front pocket facings after Moreno's discharge. So if Respondent is correct, we would have to view Martinez and Rendon as replacements for Moreno and Delgado.

*In light of our determinations, herein, we hereby deny Respondent's motion to remand this proceeding to the Trial Examiner for the purpose of taking further evidence.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

JAMES R. WEBSTER, Trial Examiner: This case, with all parties represented, was heard in El Paso, Texas on May 27, 28, and 29, 1969, on a complaint of the General Counsel and answer of Tex Manufacturing Company, herein called Respondent. The complaint was issued on April 11, 1969, on charges filed February 6 and 11, 1969. The complaint alleges that Respondent discharged Alicia Moreno on November 20, 1968, and engaged in other acts of interference, restraint, and coercion which were unfair labor practices within the meaning of Section 8(a)(1) and (3) of the National Labor Relations Act, herein called the Act.

Briefs have been filed by the General Counsel and Respondent and have been carefully considered. Upon the entire record and my observation of the witnesses, I hereby make the following.

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Tex Manufacturing Company is a Texas corporation with its principal office and place of business in El Paso, Texas, where it is engaged in a business of manufacturing and distributing men's dress and casual slacks. During the last calendar year, Respondent sold and shipped goods and materials valued in excess of \$50,000 from its El Paso, Texas place of business to customers outside the state of Texas; during the same period of time, Respondent purchased and received at its El Paso place of business, goods and materials valued in excess of \$50,000, which were transported from places outside the State of Texas.

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

II. THE LABOR ORGANIZATION INVOLVED

The El Paso District Joint Board, Amalgamated Clothing Workers of America, AFL-CIO, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

⁶Moreno, Delgado, Santos, and Martinez.

⁷Moreno's pay period runs from Sunday to Saturday and November 20, 1968, fell on a Wednesday.

⁹Respondent contends that Martinez only worked part-time on front pocket facings and her production records should be viewed in this light

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Issues*

1. Did Respondent discharge Alicia Moreno on November 20, 1968, because of her union activities or was she selected for discharge in an economic reduction because of low production.

2. Did Respondent engage in surveillance of union activities by the presence of supervisors in the restrooms during rest periods and in the parking lot after working hours.

3. Did Respondent give any assistance and support to employees opposed to the Union that would constitute an interference within the meaning of Section 8(a)(1) of the Act.

B. *Union Organizational Activities*

Respondent has approximately 500 to 600 employees and approximately 500 are under the supervision of Abie Mowad, Respondent's production manager. In March 1968, the Union commenced an organizational campaign among Respondent's employees. Letters were sent to employees and handbills were distributed to them at the entrances and exits of Respondent's premises, and meetings were held. On May 13, 1968, the Union sent the following telegram to Respondent:

THIS TELEGRAM WILL PLACE YOU ON FORMAL NOTICE THAT THE EMPLOYEES WHOSE NAMES ARE LISTED BELOW AMONG OTHERS, ARE MEMBERS OF THE AMALGAMATED CLOTHING [SIC] WORKERS OF AMERICA EL PASO DISTRICT JOINT BOARD AND MEMBERS OF OUR ORGANIZING COMMITTEE, WE WILL SUBMIT ADDITIONAL LIST OF NAMES FROM TIME TO TIME

ALICIA MORENO
MERCEDES CARILLO
MARIA MOLINA
VICTOR MANUEL CARILLO
BALBINA C DE LUNA

Commencing on March 22, 1968, the Union distributed handbills approximately once each week through June of that year; one distribution was made in July, one in September and one in October; three distributions were made in November; two in December, and one in May 1969. The employees named in the telegram, along with union representatives, engaged in the handbilling.

Prior to receipt of the telegram, Mowad was aware of the organizational campaign, as union letters had been received by one of his supervisors and some employees had informed him of their receipt of these letters.

Shortly prior to the receipt of the Union's telegram of May 13, it was reported to Mowad that a union circular had been posted in one of the plant restrooms and that employee Balbina de Luna might know something about it. He called her into his office and questioned her about the matter. She informed him that she knew nothing about it, but that she had received some papers from the Union at her home, Mowad asked her why she had not told him about it and she replied that she did not think it was important. He told her that people were not grateful because he gave jobs to their sons. He told her to go back on the job and everything that she saw and heard to come back and tell him. She asked if she had to do it and he told her that she did.¹

When Mowad received the telegram from the Union one afternoon a few days later, he noticed that de Luna's name was on it. The next morning he walked up to de Luna and told her, "Balbina, thank you very much for what you did," and he added, "You tell your daughter Rosa that I do not have a job for her."

In May 1968, General Supervisor Josefina Gomez asked de Luna why she had entered the Union. De Luna asked Gomez if she did not believe it was good and Gomez replied in the negative and stated that Mowad was very mad; that de Luna was one of his favorites, that he had been very good to her and stood up for all the factory employees and had given them many benefits such as piped-in music, and they had repaid him with fists Gomez stated that she did not believe that the Union was going to help; that the Union was not going to enter because Mowad would sell or close the plant.

C. *Surveillance at the Plant*

The General Counsel contends that with the advent of union organizational activities, Respondent started or intensified a practice of stationing supervisors in restrooms during break periods and stationing supervisors at the exit from the parking lot at quitting time, and that this was done for the purpose of observing and interfering with union solicitation. Respondent contends that it has always had a practice of stationing supervisors in the restrooms during break periods; that the purpose of this is to assure that the employees will not linger in the restrooms when the warning bell is sounded; that supervisors have always been stationed in the parking lot and at its exit for purposes of policing and traffic control.

There is a conflict in the testimony as to whether the practice of stationing supervisors in the restrooms and at the exit from the parking lot existed prior to the union organizational activities.

It is reasonable to assume that with a plant of 500 to 600 employees some supervision during break periods would be warranted on plant premises; and with a parking lot of approximately 4 acres and 250 to 300 automobiles, it is reasonable to assume that some policing and traffic control would be warranted.

But, prior to distribution of any union literature, Union Representative Bertha Madrid visited the area of Respondent's plant on four occasions and made a survey to see where the employees made their exits and where would be a good place for handbilling. She visited the premises at 4 p.m.; she got out of her car and walked on the sidewalk near the exit from the parking lot. She did not observe Foremen Joaquin Escobar, Juan Centeno or Luis Lara near this exit when she was making these surveys. She participated in all of the distribution of union literature, and on these occasions she did observe two or more of these supervisors standing next to the exit from the parking lot.

I was particularly impressed with the testimony of employee Candelaria Macias, who has worked for Respondent since 1953; she did not sign a card for the

¹Mowad testified that de Luna volunteered to report what was going on, but in view of the fact that she was on the union organizing committee, it is not likely that she would do so, and I credit her version on this point. All of this occurred outside the limitation period prescribed by Section 10(b) of the Act, the original charge having been filed on February 6, 1969. No unfair labor practice is alleged to have occurred prior to August 6, 1968, but these facts were presented and are considered to the extent that they bear on the issue of motivation for the discharge of Alicia Moreno and on other events occurring within the limitation period.

Union and has attended no union meetings. She testified that in the summer of 1968 she started observing Foremen Lara and Escobar standing next to the exit from the parking lot when she left work and that this is the first time that she has seen them there; that she has seen them there regularly since then.

Production Manager Mowad testified that Respondent employs a Burns guard. It is his job to circulate through the parking lot and around the outside of the plant. At quitting time he stations himself at the entrance to the plant to check packages which are being taken out. Apparently some employees started leaving through one of the back doors. Foreman Escobar was instructed to keep his eye on the sewing room doors. It is also his duty to police the area of the parking lot in the vicinity of the exit gate while the guard is at the front entrance to the plant and the employees are leaving work. Foreman Luis Lara was assigned the central area of the parking lot near the corner of the plant building. He was given a jumper cable and is available to help employees who might be unable to get their automobiles started. Mowad makes no mention of any foreman being stationed at the exit gate for any purpose, although he suspects sometimes the supervisors get together in the parking lot and just talk. Juan Centeno stations himself near a corner of the plant to make sure that employees did not use emergency doors as they leave work. He testified that he has not gone near the exit gate but several employees testified that they have seen him at this gate, although not as regularly as Lara and Escobar. It is plausible that after employees left the plant he has walked over to where other foremen were located and smoked or talked with them.

At 12:30 p.m. of each day, Foreman Harvey Emmett is assigned the task of seeing that employees who get off work at that time leave the parking lot and do not linger there. One shift of pressers gets off work at that time; approximately seven or eight cars leave the parking lot then.

I find that when the Union began distributing literature at the exit gate at 4 p.m., Foremen Escobar and Lara, and occasionally Foreman Centeno did commence stationing themselves adjacent to this gate as the employees left work, and that this activity has continued since that time. I find that this activity interfered with the distribution of union literature and constituted surveillance of union activities within the meaning of Section 8(a)(1) of the Act, although no remarks of a coercive or restraining nature have been made by any of the supervisors, and although it was not limited solely to days of handbilling.² Although the presence of supervisors at the exit gate commenced prior to the limitation period, it continued on a daily basis and occurred when union literature was distributed following August 6, 1968.

The General Counsel contends that supervisors Josefina Gomez and Amelia Franco stationed themselves in the restrooms during the 9 a.m. and the 2:30 p.m. breaks and thereby engaged in surveillance or gave employees the impression of surveillance of their union activities. I do not believe that the General Counsel's evidence is sufficient to support this position. There is no evidence by any witness other than Franco herself as to her presence in the restrooms during the break periods. She does not smoke and does not have occasion to use the restroom for this reason. She testified that shortly before the warning bell sounds she goes to restroom number two to see that all employees leave, so that they will be at their machines

by the time the last bell sounds Gomez has the same duty at restroom number one, however, Gomez does smoke and uses the restroom for this purpose. Employees de Luna and Moreno — and these are the only two witnesses who testified on this point — testified that they did not observe Gomez in the restroom during break periods prior to the advent of the Union's organizing campaign. De Luna testified that prior to May 1968, she did not frequent restroom number one during the break period and did not notice whether Gomez was or was not in this restroom prior to the matter being called to her attention by Moreno, then she noticed Gomez smoking in restroom number one during the break periods.

It is logical to assume that Gomez would use the restroom for smoking since she had a duty that required her presence there near the end of the rest period. I do not credit Moreno's testimony that Gomez was not present in restroom number one prior to the advent of the Union. I find that there has been no violation of the Act by the presence of supervisors Gomez and Franco in restrooms during rest periods.

D. Assistance and Support to Anti-Union Employees

Respondent received letters from some of its employees expressing their opposition to the Union. One, "To my co-workers" was posted by Respondent in May 1968 on a window at Mowad's office with the following caption:

This is an open letter expressing the sincere and thoughtful opinion of one of our employees. The letter was unsigned, but we believe it to be worthy of your notice.

Also posted next to it was a list of questions asked by employees with answers. These were posted in May 1968, prior to the limitation period, but have remained posted since that time.

It is not contended by the General Counsel that there is anything coercive in the content of the posted matter, but it is contended that by the act of posting a letter from an anti-union employee Respondent is extending recognition and support to them.

An employer may express his position on the matter of unionism and by the same token he may indicate his approval of views of employees that coincide with his. The Act is violated if he rewards or promises a reward for antiunionism or if he discriminates against prounion employees. In the instant case there is no evidence of any no-solicitation rule; neither prounion nor antiunion employees have requested any posting or like privileges. I find that by the posting of antiunion sentiments of employees, there has been no illegal support or rewarding of antiunion employees within the meaning of Section 8(a)(1) of the Act.

On some date in the latter part of November, 1968 but prior to November 25, (the date of the Union's responding circular) employee Anna Granados complained to Balbina de Luna, a member of the Union's organizing committee, about the fact that her name appeared on a circular or paper as a supporter of the Union, which paper was in the office of Production Manager Mowad. Granados took de Luna, along with union committee member Mercedes Carillo, to the office of Mowad to see the paper. Mowad handed the paper to Granados and Granados handed it to de Luna. De Luna read it and told Granados that she was not to worry about it; that someone had made the paper to create a conflict between them; that the Union had not sent it and that Granados should compare it with circulars

²Wright & McGill Co., 102 NLRB 1035, 31 LRRM 1394

of the Union. De Luna asked Mowad to loan the paper to her and she would return it to him the next day, but he refused to do so. De Luna testified that the paper bore the initials of the Union but was not signed, and that it purported to notify the Company that certain named employees were protected by the Union.

Mowad testified that several of the employees whose names appeared on the paper were demanding that some kind of action be taken on the matter. A supervisor had reported to him that Granados was planning on doing something to people named in the Union's telegram; he had her brought into his office and he warned her that if there was any fighting or problem of that nature, both parties would be fired, and that this would be the case even though the fighting took place outside the plant.

The question of the spuriousness of the circular was certainly a matter that the involved employees and Respondent as well had an interest in taking up with the Union. The Union had submitted the names of five employees as members of its organizing committee, and it was reasonable and natural that the circular matter would be discussed with them as representatives of the Union at the plant. The discussion was solely as to the authenticity of the document. De Luna denied that it was a document of the Union, and apparently that concluded the matter, except for the Union's circular of November 25th affirming its denial of authorship and asking for its production. I find that Respondent committed no unfair labor practice in this matter.

E. The Discharge of Alicia Moreno

Moreno started to work for Respondent in September 1959. In 1961 she cut her working time to approximately 6 months of each year and she continued this pattern until 1965. This was because her eligibility for a pension depended upon the amount of her earnings. Each year during this period she returned to Respondent following her absence and was given employment. In 1965, she turned down the pension and began working throughout the year, except for time off for an operation, until her discharge on November 20, 1968.

Moreno joined the Union on April 17, 1968, and was one of five employees on its organizing committee. She actively supported the Union and asked approximately 50 employees to join the Union and attended about 20 union meetings. She passed out union literature at Respondent's gate on about 10 occasions. She observed foremen Escobar, Centeno, and Lara at the exit gate, and on one occasion Escobar asked her for one of the union circulars.

In May 1968, shortly after the Union's telegram of May 13, and outside the limitation period, General Supervisor Gomez informed Moreno of her disapproval of her support of the Union. She asked Moreno why she had done this thing; that Moreno was one of the persons least indicated and that Mowad had always gone along with her. Gomez told Moreno that Mowad had called a meeting and told them that inside the plant there were people who belonged to the Union. Gomez told him that there were none among her operators and was surprised to find that this was not true when Mowad showed her the Union telegram.

In November 1968, Inspection Supervisor Elsa Villalobos told Moreno one day that she had the urge to put her over her knee and to spank her. Among other things she asked Moreno what benefit would the Union bring to them. Moreno replied that only time would tell. Villalobos stated that she knew that old operators, with or

without a Union, had been fired and that she would never join the Union because she thought a lot of Mowad. Moreno replied that she was not against him.

In the late summer and early fall of 1968, there was a sharp drop in Respondent's sales and it was expedient that the size of Respondent's work force be reduced. Production Manager Mowad informed Moreno's supervisor, Amelia Franco, that she should reduce her staff of 25 persons by 5. Mowad gave his supervisors a time limit to the first of the year by which the reductions in personnel were to take place. He testified that the limit was set at the first of the year because traditionally Respondent has employees who do not return from vacations taken during the last 2 or 3 weeks of the year. He stated that supervisors are reluctant to let people go before this time because they do not know whether they are going to lose personnel right after the first of the year.

In August and September, two students, Dora Santamaria, a cutter, and Isabella Santamaria, who sewed and set patches, left Franco's work line to return to school. In October 1968, Refugio Cobos, who worked on back pockets, was terminated. Franco testified that she terminated Cobos because she had the lowest production among the workers on back pockets. On November 20, 1968, Franco released Raquel Delgado and Alicia Moreno, both of whom worked on front pocket facings, operation No. 129. Delgado was pregnant and was due to go on maternity leave in the near future. Franco testified that she selected Moreno because she had the lowest production in operation No. 129. At or about 4 p.m., on Wednesday November 20, 1968, Franco told Moreno that she had orders that this was the last day of work for Moreno; that Moreno had the right to get paid for her vacation, and in January she could appear there at the plant to see if she would be given employment again; that she wanted to continue to be a friend to Moreno and was giving Moreno her telephone number so that Moreno could call her if someday she had occasion to make use of her friendship.

The issue to be resolved is whether or not Respondent's reduced sales in the fall of 1968 would have brought about the discharge of Moreno in November 1968 if she had not been an active union supporter.

On the day following the termination of Moreno, employee Maria de la Luz Rendon returned from a leave of absence to her position on operation No. 129 and Supervisor Franco also put an employee, Alicia Gamboa, on operation No. 129. Thus, at the time of Moreno's discharge, Respondent had three employees on operation No. 129 — Moreno, Raquel Delgado, and Patricia Martinez; Rendon was on leave of absence. Following Moreno's discharge, Respondent had three employees on 129 — Rendon, Martinez, and Gamboa. Thus, both Moreno and Delgado were replaced, with one of the replacements, Gamboa, being inexperienced on operation No. 129.

Respondent complains of the production of Moreno and points out that her production is less than that of Rendon. The production quota for operation No. 129 is 100 dozen slacks daily. Mowad testified that operation No. 129 was clarified in February 1968. Production records of Rendon since the week ending March 8, 1968 show that she made the production quota only once through the week ending August 17, 1968, which was her last week of work until she returned following the discharge of Moreno. Her production record, however, was consistently higher than that of Moreno; but Moreno's production record during the weeks she,

Martinez and Delgado were on operation No. 129 was, with few exceptions, consistently higher than that of either Martinez or Delgado. Although Respondent contends that a comparison should be made only between Rendon and Moreno because of certain aids on their sewing machines, nevertheless all operators on operation No. 129 had a quota of 100 dozen pairs of slacks daily. Respondent's contention that Moreno was picked for termination because she was the poorest producer on operation No. 129 is not substantiated by the production records. Mowad testified that there was no complaint about the quality of Moreno's work; as a matter of fact she was frequently used to make samples.

Moreno testified that after the Union's telegram on May 13, 1968, most of the supervisors stopped speaking to her. She would greet Mowad at the door but he never answered her. General Supervisor Gomez testified on this point that, "We don't talk to each other, that's all." She said that Moreno did not give her a good morning and that she did not give Moreno a good morning either.

The testimony of Amelia Franco contains two significant errors which reflect on her ability to recollect events or occurrences accurately. She testified definitely and repeatedly that Delgado left about 3 weeks before Moreno, whereas in fact, they left on the same day. She was also very emphatic that Moreno had worked under her supervision for one year and 9 months, whereas in fact, Moreno had been under her supervision for less than one year. After recesses, she later acknowledged this testimony as being erroneous and that she had the departure date of Cobos confused with that of Delgado.

Respondent's records show a very severe drop in sales from July 1968, to December of that year. Mowad stated that on one prior occasion, it was necessary to reduce employees because of a reduction in sales. Respondent's sales records for 1964 through 1968 show that annually there is a sales reduction following the peak summer months, although the one in 1968 was the most severe.

Since Mowad had given Franco until the end of the year to accomplish the reductions, and as he indicated that attrition usually accounts for some reduction following vacations in December, it is not satisfactorily explained why Respondent terminated Moreno, an employee who had been with Respondent for 9 years and repeatedly rehired, on November 20 and replaced her with an inexperienced employee rather than await the outcome of the usual end of the year attrition. Respondent's animus toward the Union and change of attitude toward Moreno is clearly established. I find that Respondent discharged Alicia Moreno on November 20, 1968, because of her union activities.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of Respondent described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

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

CONCLUSIONS OF LAW

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

2. El Paso District Joint Board, Amalgamated Clothing Workers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By engaging in surveillance of employees' union activities Respondent has interfered with, restrained, and coerced employees, and has thereby engaged in an unfair labor practice within the meaning of Section 8(a)(1) of the Act.

4. By discharging Alicia Moreno on November 20, 1968, because of her union activities, Respondent has discriminated against employees to discourage membership in the Union, and has thereby engaged in an unfair labor practice within the meaning of Section 8(a)(3) and (1) of the Act.

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

6. Respondent has committed no unfair labor practice as alleged in paragraphs 8(a), (c), (d), and (e) of the complaint.

THE REMEDY

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

I shall recommend that Respondent offer to Alicia Moreno immediate and full reinstatement to her former or substantially equivalent position without prejudice to her seniority or other rights and privileges, and make her whole for any loss of pay that she may have suffered by reason of the discrimination against her, by paying her a sum of money equal to that which she normally would have earned as wages, from the date of the discrimination to the date of 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. The "Armed Forces" provision will not be included in the order recommended, as it would not be appropriate in the instant case. Since many of Respondent's employees speak only Spanish, it will be recommended that the notice to employees attached hereto be posted in both Spanish and English.

On the basis of the foregoing findings of fact and conclusions of law, and the entire record herein, I recommend that, pursuant to Section 10(c) of the Act, the Board issue the following.

RECOMMENDED ORDER

Tex Manufacturing Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in the El Paso District Joint Board, Amalgamated Clothing Workers of America, AFL-CIO, or any other labor organization, by discharging employees because of their union activities or in any other manner discriminating against employees in regard to hire or tenure of employment or any terms or conditions of employment.

(b) Engaging in surveillance of union activities of employees.

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

2. Take the following action:

(a) Offer to Alicia Moreno immediate and full reinstatement to her former or substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of pay she may have suffered by reason of the discrimination against her, in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and make available to the Board or its agents, upon request, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post in Spanish and in English and in conspicuous places at its plant including all places where notices to employees are customarily posted, copies of the attached notice marked "Appendix."³ Copies of said notice, on forms provided by the Regional Director for Region 28 of the National Labor Relations Board, after being duly signed by an authorized representative of Respondent, shall be posted by it immediately upon receipt thereof and maintained by it for 60 consecutive days thereafter. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 28, in writing, within 20 days from the date of receipt of a copy of this Decision, what steps Respondent has taken to comply herewith.⁴

It is recommended that paragraphs 8(a), (c), (d), and (e) of the complaint be dismissed.

³In the event that this Order be 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 be 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"

⁴In the event that this Order be adopted by the Board, this provision shall be modified to read: "Notify the 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 the El Paso District Joint Board, Amalgamated Clothing Workers of America, AFL-CIO, or any other labor organization, by discharging employees because of their union activities, or in any other manner discriminating against employees in regard to hire or tenure of employment or any terms or conditions of employment.

WE WILL NOT engage in surveillance of union activities of our employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, 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.

WE WILL offer Alicia Moreno immediate and full reinstatement to her former or substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of pay she may have suffered by reason of the discrimination against her.

All of our employees are free to become or to remain or refrain from becoming or remaining members of the above-named Union or any other labor organization.

TEX MANUFACTURING
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 Resident Office, The Mart Building, 206 San Francisco Street, Room 400, El Paso, Texas 79901, Telephone 533-9351.