

**Carnation Company Distribution Center and Local Union No. 414, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.** Case 25-CA-3500

June 25, 1970

### DECISION AND ORDER

BY MEMBERS FANNING, BROWN, AND JENKINS

On March 20, 1970, Trial Examiner A. Norman Somers issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices alleged in the complaint 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 the Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended dismissal as to them. Thereafter the General Counsel filed exceptions and a brief in support, and the Respondent filed a reply brief.

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

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions, the briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner as modified herein.<sup>1</sup>

#### AMENDED CONCLUSIONS OF LAW

We shall strike paragraph 4 of the Trial Examiner's Conclusions of Law and in paragraph 1, after the words "could lose their jobs," delete the "and" and insert the following:

... by threatening employees that Respondent would be harder on them if the Union got in and by implementing this threat immediately by initiating a series of written warnings for rule infractions, and by . . .

#### 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 Carnation Company Distribution Center, Fort Wayne, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as herein modified:

1. Add to the end of paragraph 1(d) the following:

"and immediately initiating a series of written warnings for rule infractions to implement the threat of harder working conditions because of the Union."

2. Renumber paragraphs 2(a) as 2(b), and 2(b) as 2(c), and add the following as 2(a):

"(a) Remove from the files of the employees concerned the written warnings in evidence here which were issued by the Respondent in the period September 3 to December 23, 1969."

3. Add the following to the Appendix attached to the Trial Examiner's Decision at the end of the third indented paragraph:

"or initiate written warnings to implement a threat of harder working conditions because of the Union."

4. Add as a new indented paragraph immediately following the above addition:

WE WILL remove from the files of the employees concerned the written warnings which we issued in the period September 3 to December 23, 1969, to implement a threat of harder working conditions because of the Union.

<sup>1</sup> Unlike the Trial Examiner, who viewed certain remarks made by Manager McCullar to employees on August 25 as cumulative, we find the following to be additional violations of Sec 8(a)(1) (1) McCullar's remarks concerning the negotiability of existing insurance benefits should the Union come in, which in the context of earlier statements that such benefits would be adversely affected is tantamount to threatening that bargaining—at least as to insurance—"would be from scratch", and (2) McCullar's warning to employees that with the Union in the warehouse "management would be even more on the employees rear ends than the employees thought" Also, in connection with the second threat above, we, contrary to the Trial Examiner, find the series of written warnings for rule infractions sent by letter to various employees in the period September 3 to December 23, 1969, to be a violation of 8(a)(1) inasmuch as they tend to implement the Respondent's August 25 threat to be harder on the employees because of the Union, and thereby to invade the Sec 7 rights of employees

#### TRIAL EXAMINER'S DECISION

##### STATEMENT OF THE CASE

A. NORMAN SOMERS, Trial Examiner: This case was heard before me in Fort Wayne, Indiana, on January 7 and 8, 1970, on complaint of the General Counsel issued November 5 on charges filed by the Union on August 25, 1969. The complaint alleges acts of interference, restraint, and coercion by

Respondent in violation of Section 8(a)(1) and conduct in alleged violation of Section 8(a)(3) and (1), in the form of the discharge of two employees (Calvin Blosser and James Smith), claimed by the General Counsel to be discriminatory, and the imposition of work rules and reprimands and warnings on employees generally, that the General Counsel claims to be in reprisal over the employees' interest in the Union. The parties waived oral argument, and counsel for the General Counsel and Respondent have submitted briefs, which have been duly considered. On the entire record and my observation of the witnesses, I hereby make the following:

## FINDINGS OF FACT

### I. THE BUSINESS OF RESPONDENT

Respondent, Carnation Company Distribution Center (sometimes called the Company or the Center), is a Delaware corporation. It is one of several distribution centers for products of Carnation. This center, Respondent herein, is located in Fort Wayne, Indiana, and receives from outside Indiana at least \$50,000 worth of Carnation food products. It is conceded and I find that Respondent Center is engaged in commerce within the meaning of the Act.

### II. THE LABOR ORGANIZATION INVOLVED

The Charging Party, Local Union No. 414 of the Teamsters, is a labor organization within the meaning of the Act.

### III. THE UNFAIR LABOR PRACTICES

#### A. *Background and Framework of Events*

The events here span a period from late May 1969, when Resing the employees organized. On June 30, Parker saw Blosser at his home, gave Blosser some 25 to 30 union pamphlets to pass out among the employees, and arranged for a meeting to be held among the employees in Blosser's home on July 2. That meeting was canceled when Blosser called Parker and informed him that Respondent "caught wind" of the union activity and the employees wanted to hold off their union affiliation for awhile. Early in August, union activity was resumed. On August 19 the Union wrote Respondent claiming majority designation and demanding recognition as exclusive bargaining representative. On August 25, the Union filed a representation petition. A Stipulation for Certification Upon Consent Election was approved on September 18, and an election held on October 6, which the Union

won, after which it was certified on October 14. Contract negotiations were in process at the time of the hearing.<sup>1</sup>

The alleged violations concern the activities of David McCullar, manager of Respondent, from the time of its establishment as a warehouse in May 1969.

#### B. *Interference, Restraint, and Coercion*

##### 1. The prehire interviews

When Respondent was staffing its work force in late May and early June, Manager McCullar had separate interviews with each employee hired. He discussed with each the rate of pay, the mechanics of the work (a forklift operation in unloading boxcars and storing the products) and, as he admitted, asked each employee his preference concerning a union in the place. Although he at first testified that this came in response to questions the employees put to him, he later admitted that with the exception of Romey, who asked whether Respondent had a union, it was he who initiated the reference to a union.<sup>2</sup> Each employee testified he answered he could work with or without a union, whereupon McCullar told them Respondent was nonunion and in varying form told each that he was opposed to a union and would try to see that it stayed that way.

##### 2. The conversations initiated by McCullar during the organizing periods

###### a. *The employees spoken to*

McCullar's statements at the prehire stage are appraised in the context of his statement to employees during the earlier organizational venture of late June and again in the later (and successful) organizational venture in August. He spoke to Johnson in June and to Horner, Romey, and James Atkins in June and again in August. It is not disputed that McCullar initiated the conversations in each instance, nor is there any dispute concerning what was said (except as otherwise indicated).

###### b. *The conversations in June*

Johnson, on being summoned to the office, was first asked by McCullar about an applicant who had named Johnson as a reference, and Johnson told him what he knew of him. McCullar replied, "We're grown men, let's not try to fool each other and play dumb. You know what I mean. . . . I know they are trying to bring a union in here and there has been a union man in here." McCullar then asked Johnson whether he thought he "need[ed] a

<sup>1</sup> Respondent's brief indicates that bargaining has since been completed and the employees have ratified a proposed contract

<sup>2</sup> Of the six employees who testified, four (Bill Horner, Dave Sutherby, Darwin Romey, and John Smart), are still employed by Respondent

Blosser, as earlier mentioned, whose termination occurred on August 23, is alleged to be a discriminatee. Rex Johnson was terminated in October and the validity of that discharge is not challenged

union in here at the present time," to which Johnson replied the Union had no chance now, but if a majority should later want a union, he would go along. McCullar then said that with a union, the employees would be wasting part of their earnings with payment of dues which otherwise would be "good, clear beer money," and added that "if the union did get in, it was the company's prerogative to take away the insurance benefits, which he said most likely would happen." McCullar stated that the employee behind the union venture was Sutherby because as a former truckdriver and member of the Teamsters, he valued the pension.

Horner, on entering the office, was first asked by McCullar how he was coming along in unloading boxcars. Horner replied "okay," and as he was leaving McCullar asked, "What about the union?" Horner too professed ignorance, whereupon McCullar replied that he "didn't pull any strings with [Horner], so [Horner] shouldn't pull any with him, that he knew there was a union trying to be organized, and he knew who was behind it." McCullar added that "he understood there was supposed to be a meeting at Blosser's house." Horner professed he knew nothing about that too and McCullar then commented that "he didn't understand why Cal (Blosser) was for a union, but he knew that Dave Sutherby was for a union because of his pension."<sup>3</sup>

Atkins was asked by McCullar to his office. Romey was approached by McCullar at his place of work. McCullar, without preliminaries, asked each if he knew about union activities and each answered (truthfully in each case) he did not. In talking to Atkins, McCullar said he understood there was union activity going on, that a stranger had entered the plant without authorization, and added that he "could fire a couple of guys" and the union activity would be stopped. McCullar told Atkins he was a "little more level headed than some other employees," and asked that he "help" him "talk [the Union] down." He then told Atkins, "if you hear anything about the union activity would you let me know." McCullar also asked "what a truck driver's union could do for us," and stated "they were nonunion, and come hell or high water they were going to remain that way." In his conversation with Romey, when that employee said he had not known of union activity, McCullar asked him to let him know if he heard anything, which Romey agreed he would do.<sup>4</sup>

### c. *The conversations in August*

When union organization was resumed in August,

Horner, who signed a union authorization card on August 14, was called in by McCullar shortly afterwards. McCullar first asked Horner about a money shortage in a car which he had loaded. After Horner explained this to McCullar's satisfaction, McCullar asked Horner about the Union. As in the conversation in June, Horner denied he knew of it. McCullar then told him he knew Horner had signed a card, as had nearly all except a "couple of employees," whereupon Horner mentioned that one of these had just signed, so that all except one had now signed up. McCullar said that if a union came in the Company would no longer pay for their insurance and the employees would be paying for it, and further that "if we (the employees) thought they (the Company) were on our ass then, then they would really be on our ass after the union came in."

Romey signed a union card on August 16. About a week later, McCullar called Romey into his office and asked him about the "morale of the men," referring to what their grievances were which accounted for their turning to the Union. (There is no testimony concerning what Romey replied.) McCullar further stated that union or no union, "if a guy wasn't doing his job he would fire him." When Romey was about to leave, McCullar told him that if he should be asked why he was in McCullar's office, he should reply he "was up there talking about going on days."

Atkins was called into the office by McCullar on August 18. McCullar began by telling Atkins about the scope of his insurance coverage concerning which Atkins had some time earlier inquired. McCullar informed Atkins the news was good and that it had "cost quite a bit of money" in telephone calls to obtain the information. When Atkins was on his way out, McCullar asked him, as he had done in June, "if he knew about this union activity that was going on." Atkins this time replied that he did, and added that he had himself signed up employees. A discussion ensued concerning "aspects of union," in which McCullar said "he couldn't see why we needed one, that the door was always open." There followed a discussion, as Atkins further testified, about "the possibility of the employer (sic) representing the group or an independent union, an employees' union to talk to him." Atkins testified he did not recall who first mentioned an independent union, and McCullar's testimony, which I credit, was that Atkins did. It is not disputed, however, that McCullar strongly encouraged the proposal and, as Atkins testified, McCullar suggested he talk to other employees about the independent union, and stated "he would rather see an employer speaking for the group, or an indepen-

<sup>3</sup> Blosser testified that Horner and Sutherby were the source of his information on which he based his call to Business Agent Parker canceling the meeting because management had caught wind of the union activity and

the employees were scared to go ahead

<sup>4</sup> Romey testified he gave no information to McCullar, as there was none to give. As earlier stated, union organization abated about that time

dent union” than the Charging Union.<sup>5</sup> According to Atkins’ further undenied testimony, McCullar added that if the Union came in, “the personal aspect of the employer’s would be changed, that they could discharge employees for various reasons,” and further, that the insurance benefits “would be one of the first things to go.”

### 3. Conclusions concerning 8(a)(1)

McCullar’s interrogation of employees concerning their union preference during the prehire interviews and his interrogation of employees concerning their knowledge of union organization, mentioned in the context of his own opposition to a union, and his later discussions with the employees during the Union’s organizing periods, had a coercive connotation. These included questioning the employees, when called into the office, concerning what they knew of union organization, and linking this with (a) impression of surveillance in the specific knowledge McCullar conveyed to Johnson, Horner, and Atkins regarding how much McCullar knew of union organizing and who was behind, (b) recruiting employees into surveillance of union activity in the request he made of Atkins and Romey to pass on to him what they might learn of union activity; (c) threatening that if the Union came in it would entail loss or impairment of insurance benefits, possible discharge, and imposition of harder working conditions (conversations with Johnson, Horner, and Atkins) (d) encouragement of formation of an inside union in lieu of their present affiliation with the outside union (in McCullar’s August conversation with Atkins) and (e) interrogation of Romey concerning employees’ “morale” against the background of his earlier request to Romey that he let him know what he learned of union activity, and adjuring him to reply with a half-truth to any questions by employees as to the subject of his talk to McCullar.

The above are recognized acts of interference, restraint, and coercion in violation of Section 8(a)(1).<sup>6</sup>

### C. Other Alleged Violations

#### 1. Discussions with the employees in the lunchroom

The General Counsel relies also on certain statements made by McCullar to the day-shift employees on or about August 25 in the lunchroom.

<sup>5</sup> McCullar testified that Atkins said he had been talking with employees about forming their own exclusive union and that he replied “it was okay with him, that I knew of plants where they even had every step of a grievance program without an outside bargaining agent representing the employees, that I knew of safety committees and that I would be receptive to any time the employees wanted to talk with me.” As to this, the probabilities favor Atkins’ version that McCullar suggested he talk to the employees about the independent union. It was McCullar who initiated the conversation by his inquiry concerning Atkins’ knowledge of the activity of the Charging Union and his baleful comment concerning the need for one since “the door was always open.”

McCullar came there at the employees’ request to answer questions. In essence, the employees wanted to know how conditions with Respondent compared with those of other companies in the area. They asked about wages, insurance benefits, and grievances, particularly about the absence of a break between the end of the regular 8-hour shift and the start of the overtime. McCullar stated the conditions under Respondent were at least as good as those with other employers, and further that conditions were not set by him but by his superiors in Los Angeles. In the discussion of insurance benefits, McCullar did state that with a union as bargaining agent, insurance benefits “would become negotiable” between the Union and the Company’s labor relations department. This statement, taken against McCullar’s previously described statements to Johnson, Horner, and Atkins, how insurance would be adversely affected if the Union came in, are comparable to an employer’s statement that if a union came in, working conditions would “start from scratch,” which has been held to be coercive. *Surprenant Manufacturing Co. v. N.L.R.B.* and *N.L.R.B. v. Marsh Supermarkets* (*supra*, fn. 6). Also, at the completion of the question and answer session, McCullar on his own admonished the employees that they should toe the mark by observing company rules against negligence in handling of products in the cars and untidy condition of the “bays” (storage containers for the products). The employees testified that McCullar’s comment consisted of a warning that with the Union in the warehouse, the rules would be enforced more strictly—which last would be in line with McCullar’s statement to Horner, in the earthy language that that employee ascribed to the manager, that with the Union in the place, management would be even more on the employees’ rearends than the employees now thought. Those items hardly add to the violations already found and, in view of their slight ambivalence, there is no need to labor them to final resolutions since they would not affect the remedy on the violations as found. I accordingly make no finding either way concerning the legal effect of that lunchroom discussion.

#### 2. The terminations of Smith and Blosser

##### a. Preliminary comment

The terminations of Smith and Blosser, as earlier stated, occurred, respectively, on August 21 and

<sup>6</sup> E.g., *The Everite Door Corp.*, 171 NLRB 56, *Efco Corporation*, 150 NLRB 1505, 1509 (interrogation of applicant), impressions of surveillance (*J P Stevens & Co., Inc.*, 167 NLRB 266), recruiting employees to engage in surveillance in the form or request to be informers (*Teamsters Local 901—Interstate Air Service Corp.*, 167 NLRB 135, *N.L.R.B. v. Yale Manufacturing Company, Inc.*, 356 F 2d 69, 71 (C A 1), *N.L.R.B. v. Saginaw Furniture Shops, Inc.*, 343 F 2d 515, 517 (C A 7), *N.L.R.B. v. Trumbull Asphalt Co.*, 314 F 2d 382 (C A 7)), threat of loss of benefits (*Surprenant Manufacturing Co. v. N.L.R.B.*, 341 F 2d 756, 761 (C A 6), *N.L.R.B. v. Marsh Supermarkets, Inc.*, 327 F 2d 109, 112 (C A 7)); and threat of loss of jobs *N.L.R.B. v. Merchants Police, Inc.*, 313 F 2d 310, 312 (C A 7)

23. This was when the union organizing venture had resumed and reached its height, and McCullar had been expressing to employees he called into his office a baleful view of what lay in store for the employees if the Union were selected. The General Counsel claims Respondent's jaundiced view of the Union accounted for the terminations of Smith and Blosser. We treat each in the order of their terminations.

b. *Smith*

Smith started with Respondent on August 11. When he was hired, Smith was interviewed by McCullar in the same manner as the employees at the time Respondent was established, and the discussion with Smith regarding a union was substantially similar to the previously described discussions with the earlier group of employees, when they were hired.

Smith signed a union authorization card on Saturday, August 16. On the afternoon of Monday, August 18, he attended a union meeting, and on the evening of that day, while working on the night shift, he discussed the Union with several employees. Smith testified that Bill Bollinger, the night-shift supervisor, was then sitting no more than 2 or 3 feet away and heard the discussion. This, the General Counsel contends, was Smith's undoing.

On the following night, August 19, Smith admittedly had trouble handling a difficult carload, and Bollinger upbraided him for not having followed instructions and thus damaging some of the products. Toward the end of that regular shift, Smith asked to be excused from overtime because he was not feeling well, and Bollinger refused saying that they were all tired but there was work to do. Smith replied he was leaving at the end of the regular shift anyway, and Bollinger then told him to call McCullar before he came back to work. Smith called McCullar the morning of August 21 (he had had his wife call in sick on the 20th). He told McCullar he would come in that day, and McCullar told him he was terminated and that he would be paid off on Monday. When he received his pay, Smith was handed the following letter from McCullar, dated August 21:

A number of disturbing factors concerning your work habits have been called to my attention.

You were late for work two days in a row last week, August 14, and August 15.

It was called to my attention by the supervisor that you were given instructions when unloading a car to extend the rack on the pul pak and grasp the slip sheet lip with the gripper bar and to lift and drive the unit. You were later observed upon two different occasions trying to scoop the top unit by running your plattens under the unit without the aid of the gripper bar. This action caused considerable product

damage to both the top and bottom unit. This was a direct violation of the supervisor's instructions to you in operating the machine. It was also a direct violation of the posted work rules.

A check of the bay that you were unloading into reveals that you seem to care nothing about the caliber of your work. The bay was put in very poorly and the work was very sloppy.

Another disturbing factor is your unwillingness to work overtime. On August 14, you left work without informing the supervisor where you were going or that you were leaving work. On August 19, at 2:00 a.m., you informed the supervisor that you were going home. The supervisor, in turn, informed you that we worked overtime and that you were expected to work overtime and the work was there for you to do. You left the building anyway and without a reasonable excuse.

Your actions lead me no choice but to terminate your service, effective 2:00 a.m. on August 19, the time you walked out of the building.

Bollinger testified that at the end of that shift of August 19, he left a memorandum for McCullar complaining of Smith and recommending his dismissal. The next morning, when McCullar read Bollinger's memorandum, he called Bollinger at his home, for particulars. Bollinger testified, in effect, that he told McCullar that although Smith at the beginning had shown interest in the job, his performance deteriorated in the manner later embodied in McCullar's letter. Bollinger added that Smith exhibited both indifference to the job and resentment of supervision.

Smith admitted he had come in late on the 14th and 15th, and testified that he did not remember whether on the 14th he had given prior notice of having missed overtime. He denied having been criticized concerning his work other than on the 19th, but in respect to the 19th, he testified he thought Bollinger's criticism was unjustified, since Bollinger did as sorry a job showing him how to perform as Smith did in performing.

Bollinger, who is no longer with Respondent (he left in September for other employment), left no question of his sincerity when he described the travail he endured, or thought he did, in trying to make Smith get with it on the job. Whether one agrees with Bollinger's appraisal of Smith, it seems clear that Bollinger genuinely felt he had had about as much as he wanted to take from Smith in the quality of his performance. As to the luncheon discussion on the 18th, that Smith and other employees had within earshot of Bollinger, Bollinger testified he had no recollection of it. The General Counsel's witnesses testified that the discussion of August 18 was not unique, since there had been continued discussion concerning the Union, and

that Bollinger's appearance in the lunchroom on the 18th also was not unique, since he frequently entered the lunchroom to eat or to take food to carry out.

Smith testified that on the 18th, Bollinger more than merely heard the discussion concerning the Union but had in fact been drawn into it. He testified that Romey, who was one of a group of employees who participated in the discussion, asked Bollinger his opinion. The men had been discussing whether, if the Union came in, insurance would be a "negotiable item." Smith testified Romey asked Bollinger what he thought but Bollinger "avoided the question." The "avoiding" consisted of Bollinger's telling the men there were several boxcars to be unloaded and that they should get to them when lunch was over.

Bollinger's response was in line with a statement he had earlier made to McCullar when the latter mentioned the fact that the Union had resumed organizing the men. Bollinger, as he testified, replied he "could not care less."<sup>7</sup> Confirming this is Bollinger's own stated background as a Teamsters member, from which he has an "honorable" withdrawal because of ineligibility due to his taking a supervisory position and the record showing that Bollinger never spoke to any employee concerning the Union or expressed any opinion concerning it. I find that Bollinger, in making his adverse recommendation to McCullar, acted in accordance with his genuine opinion of Smith's fitness to continue on the job.

As to whether McCullar would nevertheless have retained Smith but for his union affiliation, there was nothing to distinguish Smith on that score from the rest of the employees, all but one of whom had already signed up (of which employee Horner had informed McCullar in a conversation previously described). The General Counsel states, however, that Smith had been given no prior discharge warning. However, he had been orally reprimanded, as Smith admits. Further, he had had a rather impressive accumulation of delinquencies for an employee at this threshold stage of his tenure, which would account for McCullar's agreeing with his supervisor that he was not worth holding onto any further, at least not so much as to warrant his overriding his supervisor's recommendation, which, I have found, was honestly given.

I accordingly conclude that the discharge of Smith was not antiunion motivated, and hence not a violation of Section 8(a)(3) or (1), as alleged.

*c. Blosser*

Blosser's employment started May 27. It ended at noon of August 23, when he left for home after completing 4-1/2 of the 8 hours of overtime

scheduled for that day, a Saturday.

As earlier appears, Blosser was among the employees first hired by Respondent and questioned by McCullar concerning union preference and informed by McCullar concerning the latter's aversion to a union. As also appears, Blosser was a key figure in the initial union venture in June, and McCullar mentioned him in first of the two previously described conversations he had with employee Horner. When union organizing resumed, Blosser signed a card on August 14.

So far as the record shows, Blosser's performance on the job had not met with reprimand or adverse comment, whether on the score of competence or punctuality or regularity of attendance. Saturday, August 23, had been scheduled during midweek for a full 8-hour day shift. This was apart from the regular 5-day week. Blosser during that week, in addition to his regular time, had put in the scheduled overtime, consisting of 6 to 8 hours. On the Saturday which followed, Blosser worked 4-1/2 hours and then asked McCullar to excuse him for the rest of the shift because he had things to do at home. McCullar refused, pointing to the fact that the full shift had been previously scheduled. Blosser repeated that there was something at home he urgently had to attend to. Then, according to Blosser, McCullar remarked that "work comes before your family sometimes" and stated, "If you have to go home you'll lose your job because the work is here and it has to be done." Blosser testified he repeated he "had to go home" and added that "if that was his situation, or his last on it, I would have to come in Thursday and pick up my check," and that McCullar replied "okay." Blosser testified this was the whole of the conversation and that McCullar did not ask him to specify the reason. Blosser went home and he was paid off in midweek as stated. He did not return to the job after that Saturday, and neither has there been any communication by either on the part of the other about returning to work.

McCullar's version (corroborated by Kemerling, his assistant, and by Ramsey, a supervisor, who happened to have been there at the time) was that when Blosser said he had things to do or had "responsibilities" at home, McCullar told him overtime had been announced early so that he could take care of his "responsibilities" and that on Friday there had been no overtime so that the employees could take care of their responsibilities; that Blosser then asked, "Are you firing me?" and McCullar replied he was not firing him but the work had to be done, and then asked Blosser to give him a specific reason why he had to go home, whereupon Blosser repeated, "I have things to take care of," and he again asked McCullar, "Are you firing me?" to which McCullar replied "No. But if

<sup>7</sup> The word "not" was omitted in the stenographic transcript of the hearing and it is hereby inserted as a correction Tr 334, l 10

you leave, we will consider you as having walked off the job." McCullar testified that Blosser then turned and as he was leaving, said, "I'll be in next Thursday to pick up my paycheck." As stated, this was the last time Blosser worked for Respondent and the last time they ever communicated with each other.

Blosser's specific reason for leaving for home was explained by him for the first time at the hearing in this case on his redirect examination. Blosser explained that there had been a leak in the mobile home he occupied which was ruining the bedroom carpet and it needed fixing to avoid more damage. That condition arose on Thursday. As to why he thus did not give prior notice of his intention to take time off on Saturday, Blosser testified that when the leak occurred, he did something to avoid more damage, and "I figured I would wait until the weekend before I would repair it." This still did not answer why he had not asked for the time off before the weekend began. He then testified, "I had hopes of being able to take care of it during the weekend and I was not able to."

Blosser did not elaborate on this. He had worked overtime on Thursday, which would explain his inability to make the repairs that day. However, on Friday there had been no overtime, as previously stated. The regular day shift ends at 3:30, and Blosser testified he then gets home at 4:15. This left plenty of daylight on that August day. Further, if he had completed the shift on Saturday, and then gotten home at 4:15, he would still have had the remainder of the weekend, including Sunday, to make the repairs.

However, if Blosser nevertheless felt that the need was so urgent that he had to give up the remaining hours on the Saturday shift to do the repairs, it is rather strange that he did not specifically state the reason for having to leave, even if McCullar had not asked him. Giving point to this was Blosser's admission that on prior occasions when he had specified the reason, he had been given time off as requested. By way of example, Blosser cited an instance where he had been excused when he told management he had to attend to "a legal matter involved in an automobile accident." Blosser's failure to specify the reason in this instance places him in this dilemma. Either he was capriciously withholding the specific reason despite the genuineness of his sense of urgency, or he was designedly withholding it because he realized that if he stated the reason, it would not support the sense of urgency he was asserting for it.

The result is that McCullar's opposition to the Union is not here connected up with Blosser's termination. This is so whether we adopt Blosser's version that McCullar told him outright he would be discharged if he went home, or McCullar's version that he told him he was not firing him, but if Blosser left he would be regarded as "having walked off the job." McCullar being something of a

precisionist, his version seems to fit his style, and I credit it. Yet the two versions mean the same, however much Respondent prefers to call the termination a quit instead of a discharge. McCullar, in telling Blosser to complete the shift or be deemed insubordinate, was giving Blosser a Hobson's choice. The question is whether, despite the "choice" thus given Blosser, Respondent discriminated against him. Blosser's own version disputes it. On his own testimony, he knew that to be given time off, he had to specify the reason. He failed to do so and McCullar then refused to excuse him. In leaving without excuse, he acknowledged his own act of insubordination.

The only basis on which the claim of discrimination could rest would be that, even without a valid excuse, McCullar would normally have indulged him because of his hitherto unblemished work history and the fact that there were just a few hours left to what had been a rather hard week's work. There is no indication that McCullar had ever indulged any other employee in that manner. This was a peak period in which Respondent particularly needed the work it scheduled. Even if otherwise, the picture here is that of a hard employer but not one engaging in discrimination. By way of example, in the previously described lunchroom talk held at the employees' request, the employees grieved, unsuccessfully, about the absence of any break between the end of the regular shift and the start of overtime. This too was a hard condition but not a discrimination. The employees' recourse in that instance lay not in a claim of unfair labor practice (which in respect to this item was never made), but in exercising their protected right under Section 7 of pooling their bargaining powers in dealing with their employer. They did so, with apparent success as the outcome of the election and ensuing contract negotiations would indicate.

The conclusion is that McCullar's opposition to the Union was not a motivating factor in the termination of Blosser, and so the termination was not in violation of Section 8(a)(3) and (1) of the Act.

### 3. The warning letters as a claimed unfair labor practice

The remainder of the case concerns letters Respondent has been sending various employees concerning infractions as they arise, with warning of further disciplinary action in the event of their repetition. They range from September 3 through about the end of the year (shortly before our hearing began) and cover numerous employees. They cover specific items of lateness, absence without calling in beforehand, manner of handling the mechanics of unloading boxcars, etc. The complaint originally characterized them as "unwarranted." The only specific item of that kind was a reprimand letter to Sutherby on October 2. It concerned a talk Sutherby had with a supervisor, followed by one with McCullar's assistant. Without

going into details, Sutherby thought the criticism in the letter was unwarranted, and he complained to McCullar about it. McCullar, after hearing him, decided that he agreed with his assistant and that the reprimand in the letter would stand. The General Counsel no longer disputes the actual contents of any of these letters, including even the one to Sutherby. Of the employees to whom the warning letters beginning September 3 were sent, none have been discharged, except Rex Johnson. It is not disputed that the discharge of Johnson was for good cause and that the letters sent to him were valid reminders of lateness in coming to work and warnings of discharge in the event they persisted, which culminated in a final or fourth letter discharging him because of his continued lateness after such warnings.

The evil the General Counsel finds in them is that since Respondent had not sent any such letters to employees until the letter of discharge it sent to Smith on August 21, it follows that the warning letters it sent to employees from there on were illicitly motivated whatever their content. This exemplifies the *post hoc* fallacy in its quintessence.

The claim that the warning letters violated any provision of the Act is not sustained.

On the foregoing findings and conclusions, I hereby state the following:

#### CONCLUSIONS OF LAW

1. By interrogating employees concerning their union preference or affiliation as well as the affiliation of other employees in a context of stated oppositions to the Union, by creating an impression of surveillance of union activity, by requesting employees to inform Respondent concerning what they might learn of union activity, by warnings to employees that if the Union came in they would lose present benefits and could lose their jobs, and encouraging employees to form an inside union as a substitute for their affiliation or interest in the Charging Union, Respondent interfered with, restrained, and coerced employees in the exercise of their rights under Section 7, thereby engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

3. The terminations of James Smith and Calvin Blosser were not in violation of Section 8(a)(3) or (1) of the Act.

4. The warning letters to employees were not unfair labor practices within the meaning of the Act.

#### THE REMEDY

The recommended Order will require that Respondent refrain from repeating the violations as found, and, in view of the breadth and character of the infringements found, from in any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to employees under the Act.

Upon the basis of the above findings of fact, conclusions of law, and the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, I hereby recommend that the Board issue the following:

#### ORDER

Carnation Company Distribution Center, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Coercively interrogating employees concerning their or other employees' preference or affiliation in regards to the above Union or any other labor organization.

(b) Creating an impression of surveillance or engaging in surveillance or recruiting employees to engage in surveillance of union activities of employees.

(c) Requesting any employees to inform Respondent concerning what they might learn regarding union activity.

(d) Threatening employees with loss of benefits or jobs, or with harder working conditions, if they are represented by the above Union or any other labor organization.

(e) Encouraging employees to form or organize a union as a substitute for or in replacement of their existing union affiliation.

(f) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action, which it is found will effectuate the policies of the Act:

(a) Post at its premises in Fort Wayne, Indiana, copies of the attached notice marked "Appendix."<sup>8</sup> Copies of said notice, on forms provided by the Regional Director for Region 25, after being duly signed by an authorized representative of Respondent, shall be posted by it 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.

<sup>8</sup> In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, recommendations, and Recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes. In the event

that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall be changed to read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board"

(b) Notify the Regional Director for Region 25, in writing, within 20 days from the date of the receipt of this Decision, what steps the Respondent has taken to comply herewith.<sup>9</sup>

The complaint is dismissed in respect to all other allegations not herein found.

<sup>9</sup> In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read "Notify the Regional Director for Region 25, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith"

**APPENDIX  
NOTICE TO EMPLOYEES**

POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

WE WILL NOT coercively ask any employees concerning their preference of affiliation, or of any other employees' affiliation with or support of Local Union 414, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or of any other labor organization.

WE WILL NOT engage or create the impression of engaging in surveillance or ask any employees to engage in surveillance of employees' union activities, or ask any employees to inform us concerning what they might learn about union activity of employees.

WE WILL NOT threaten employees with loss of benefits or jobs or with harder working conditions as a result of being represented by the

above Union or any other labor organization.

WE WILL NOT coercively encourage employees to form or organize an inside union as a substitute for or in replacement of their existing union affiliation or support.

WE WILL NOT in any other manner, interfere with, restrain, or coerce employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist the above-named Union, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

CARNATION COMPANY  
DISTRIBUTION CENTER  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

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.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 614 ISTA Center, 150 West Market Street, Indianapolis, Indiana 46204, Telephone 317-633-8921.