

The Goodyear Tire & Rubber Company and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)

The Goodyear Tire and Rubber Company a/k/a Goodyear Service Stores and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Petitioner.
Cases 30-CA-1231 and 30-RC-1247

February 18, 1971

DECISION, ORDER, AND DIRECTION

BY CHAIRMAN MILLER AND MEMBERS BROWN AND JENKINS

On August 31, 1970, Trial Examiner David S. Davidson issued his Decision in the above-entitled proceeding, finding that Respondent had engaged in certain unfair labor practices in violation of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. The Trial Examiner further found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended dismissal as to them. He further recommended that the challenged ballot cast by employee Hawkins in Case 30-RC-1247 be opened and counted and that an appropriate certification be issued on the basis of a revised tally. Thereafter, Respondent filed exceptions to the Trial Examiner's Decision and a supporting 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 these cases 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 these cases, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, to the extent consistent with the decision herein.

The Trial Examiner found, and we agree, that Respondent violated Section 8(a)(1) of the Act by threatening its employees with loss of benefits and by threatening to close its store if the employees chose the Union as collective-bargaining representative. Unlike the Trial Examiner, however, we do not find the evidence sufficient to support a finding that

Respondent's discharge of employee Hawkins violated Section 8(a)(3) and (1) of the Act.

The facts show that Hawkins first started working in Respondent's store as a credit manager trainee on May 5, 1969. In September 1969, he was transferred to the service department and told that after receiving some on-the-job training he would be made manager of that department. Thereafter, he was promoted to service manager in November 1969¹ and given a \$25 a month raise.

As service manager, Hawkins directed the work of other employees in that department and was responsible for proper completion of work orders, receipt, storage, and maintenance of equipment for that area and the general cleanliness and appearance of that area.

During the entire time that Hawkins supervised the service department, he received numerous complaints from Store Manager Prendergast about the appearance of the area and the pace at which work was being performed there. Hawkins himself conceded that as early as January or February he had the impression that his work was not satisfactory to Prendergast.

Around the middle of March, Manos, Respondent's assistant district manager, visited the store. Upon observing that the service area was dirty and that the tires piled in the service bays made the bays inaccessible for cars, Manos complained to Hawkins that the plant was a "filthy" mess. Manos then discussed Hawkins' service area performance with Prendergast.

After the discussion with Manos, Prendergast spoke to Hawkins again about the service area. At this time they drew up a list of things which needed to be done. Prendergast assigned additional help to the service department and told Hawkins he wanted the listed work completed during the week ending March 29.

On Monday, March 30, Prendergast noticed that much of the work still had not been accomplished and informed Hawkins of his dissatisfaction with the rate of progress. On several occasions after that date Prendergast continued complaining to Hawkins that the work was not being done or was being performed slowly.

Meanwhile, early in March, Hawkins had mentioned to other employees the idea of union representation. About April 1, Hawkins again raised the matter with the employees and on April 2 he passed out, and obtained signatures on, authorization cards. On the night of April 3, Hawkins arranged a meeting at his home so that the employees could meet the union representative. It is undisputed that employees Hazelton, on April 2, and Johnson, on the morning of April 4, informed Prendergast of Hawkins' union activities.

¹ Unless stated differently all dates are 1970

On April 4, when Hawkins arrived for work he was told that he was being discharged due to the low sales performance in the service department, his failure to finish the work on the list drawn up by Prendergast, and his inability to get along with other employees.

The Trial Examiner found the evidence adduced at the hearing less than persuasive as to Respondent's dissatisfaction regarding the sales of the service department. No evidence was adduced regarding Prendergast's statement to Hawkins about Respondent's alleged irritation over Hawkins' relations with other employees. Although Respondent adduced considerable evidence which established its dissatisfaction with the condition of the service department under Hawkins' direction, the Trial Examiner concluded that whatever cause Respondent had for dissatisfaction with Hawkins' work, Hawkins would not have been discharged on April 4 but for his union activities.

In our view, the General Counsel has not sustained his burden of proving discriminatory motivation for Hawkins' discharge. Thus, although in October 1969 when Hawkins complained to Prendergast about not having been promoted, he mentioned getting a union to represent him and the others, Respondent took no action against him and indeed promoted him the following month. Early in April, when informed by other employees that Hawkins was promoting the Union, Respondent engaged in no conduct evidencing hostility toward the Union. Although the Trial Examiner found that on May 13, the day before the scheduled representation election and nearly a month and a half after Hawkins's discharge, Respondent made some statements which violated Section 8(a)(1) of the Act and relied on these statements to find animus, we do not find such statements sufficiently probative in the present circumstances to establish union animus on Respondent's part at the time of Hawkins' discharge.

A determination of discriminatory motivation must necessarily be based on an evaluation of all the circumstances surrounding the conduct alleged to be discriminatory. In this regard the record herein supports Respondent's contention that during Hawkins' entire tenure as service area manager, his performance left much to be desired. We note especially the fact that after receiving complaints about the state of the service area from the assistant district manager, Prendergast gave Hawkins a specific list of items that must be done by a given date and assigned him additional employees for that purpose. Not only did Hawkins fail to have the listed work performed by the specified date but much of it still remained undone at the time of his discharge. In all the circumstances we cannot find that the union activity of Hawkins was a motivating factor in his discharge, and conclude that the General Counsel has not sustained the burden of

proving that the discharge was unlawful. Accordingly, we shall dismiss the complaint insofar as it alleges a violation of Section 8(a)(3).

As we do not adopt the Trial Examiner's finding that Hawkins' discharge violated Section 8(a)(3) and (1) of the Act, and as the record shows that on the election eligibility date Hawkins had been replaced by employee Morgan, we shall sustain the challenge to the ballot cast by Hawkins and overrule the challenge to the ballot cast by Morgan.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, The Goodyear Tire & Rubber Company, Kenosha, Wisconsin, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with loss of existing benefits or closure or removal of its store because of their union activities.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in any other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

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

(a) Post at its Kenosha, Wisconsin, place of business copies of the attached notice marked "Appendix."² Copies of said notice, on forms provided by the Regional Director for Region 30, after being duly signed by Respondent's authorized representative, 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.

(b) Notify the Regional Director for Region 30, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith.

² In the event that this 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."

IT IS FURTHER ORDERED that the complaint, insofar as it alleges violations of the Act not herein found, be, and it hereby is dismissed.

DIRECTION

It is hereby directed that in Case 30-RC-1247 the Regional Director for Region 30 shall, pursuant to the Board's Rules and Regulations, within 10 days from the date of this Direction, open and count the ballot of employee Bruce Morgan and thereafter prepare and cause to be served upon the parties a revised tally of ballots, including therein the count of Morgan's challenged ballot, and issue an appropriate certification.

APPENDIX

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

WE WILL NOT threaten our employees with loss of existing benefits or possible removal or closure of our store because of their union activities.

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 labor organizations, to join or assist International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), or any other labor organization, to bargain through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

THE GOODYEAR TIRE & RUBBER
COMPANY
(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, 2nd Floor, Commerce Building, 744 North 4th Street, Milwaukee, Wisconsin 53203, Telephone 414-272-3861.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

DAVID S. DAVIDSON, Trial Examiner: In Case 30-CA-1231, pursuant to a charge filed on April 8, 1970, and amended on May 12, 1970, by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), hereinafter referred to as the Union, a complaint issued on May 13, 1970, alleging that on April 4, 1970, Respondent discriminatorily discharged Gary Hawkins in violation of Section 8(a)(3) and (1) of the Act. In its answer Respondent denied the commission of any unfair labor practices.

In Case 30-RC-1247, pursuant to a petition filed April 8, 1970, by the Petitioner, the parties entered into a Stipulation for Certification Upon Consent Election, and an election was conducted on May 14, 1970, among the employees in the stipulated unit. The election resulted in a vote of 4 for the Union, 4 against, and 2 challenged ballots. On June 1, 1970, the Regional Director for Region 30 issued his report on challenged ballots, order consolidating cases and directing hearing on challenged ballots. As the 2 challenged ballots were cast by Gary Hawkins, the alleged discriminatee in Case 30-CA-1231, and Bruce Morgan, the alleged replacement for Hawkins, the Regional Director found that resolution of the challenges was dependent upon resolution of the issues raised by the complaint and ordered the representation proceeding consolidated with the complaint for purposes of hearing on the challenged ballots.

The consolidated hearing was held before me in Kenosha, Wisconsin, on June 30, 1970. At the outset of the hearing the General Counsel moved to amend the complaint to add allegations of violations of Section 8(a)(1) of the Act, based on statements to employees made after the charges were filed. The motion was granted over the opposition of Respondent.¹ At the close of the hearing oral argument was heard from Respondent, and the parties were given leave to file briefs which have been received from the General Counsel.

FINDINGS AND CONCLUSIONS

I THE BUSINESS OF THE RESPONDENT

Respondent, an Ohio corporation with its principal offices located at Akron, Ohio, is engaged in the retail sale and service of merchandise through outlets located throughout the United States, including an outlet located at Kenosha, Wisconsin, which is the only outlet involved in this proceed-

¹ *NLRB v Fant Milling Co*, 360 US 301, *NLRB v Kohler Company*, 220 F 2d 3 (CA 7) Although Respondent's counsel had no actual notice of the General Counsel's intent to seek amendment of the complaint until the evening before the hearing, the information upon which the amendment was based did not come to the General Counsel's attention until several days before the hearing, and a notice of intent to amend the complaint was mailed to Respondent's counsel promptly thereafter. During the course of the hearing Respondent's counsel was twice informed that I would entertain a request for a continuance if necessary for Respondent to investigate and prepare to meet the allegations added by the amendment. However, Respondent's counsel indicated that he chose to stand on the position that the amendment was improper, and no continuance was requested.

ing. During the 12-month period preceding issuance of the complaint, Respondent's Kenosha outlet received merchandise from points outside the State of Wisconsin valued in excess of \$50,000, and sold goods and services valued in excess of \$500,000. I find that Respondent is an employer engaged in commerce within the meaning of the Act and that assertion of jurisdiction herein is warranted.

II THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of the Act.

III THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Discharge of Gary Hawkins*

1. The employment and work of Hawkins

On May 5, 1969, Gary Hawkins started to work at Respondent's Kenosha service store as a credit manager trainee, and he continued to work in that capacity until approximately September 1, 1969, when he was transferred to the service department.² At the time of his transfer he was told that he would be made service manager after receiving training on the job.³ On November 1, 1969, Hawkins was made service manager and received a raise from \$525 to \$550 a month.

As service manager, Hawkins directed the work of the other employees in the service department, and was responsible for the proper completion of work orders, for the receipt and proper storage of incoming merchandise, for the maintenance of equipment in the service area, and for the cleanliness and appearance of the service area.

During the period that he was service manager, Hawkins received no written reprimands but from time to time Store Manager Prendergast complained to him orally about his work.⁴ Prendergast told him that the appearance of the service area could be improved, that sales could be picked up, and that the employees could do their work faster.

In mid-March 1970, Assistant District Manager Manos visited the Kenosha store and observed the condition of the service department. He noted that the service area was dirty and that tires were piled in the service bays making them inaccessible for cars. Manos asked Hawkins why the tires were in the bays. Hawkins replied that there was no room for them in the warehouse and that Prendergast had told him to put them in the bays. Manos then commented that the place was a filthy mess, and Hawkins agreed. Manos inspected the warehouse and then spoke with Prendergast. He mentioned the dirty condition of the service area, the tires in the bays, and his observation that there was room for them in the warehouse. Manos discussed Hawkins' performance and the sales of service at the store.

During the week before Easter, March 29, 1970, Prendergast and Hawkins drew up a list of things which needed to be done in the service department. During the week following Easter, Prendergast assigned some additional help to the service department, and told Hawkins that he wanted the work on the list completed at that time.

² Unless otherwise indicated, the findings which follow are based on the uncontradicted testimony of the witnesses who appeared before me.

³ The service manager position is not supervisory and was included in the bargaining unit stipulated to be appropriate in the representation case.

⁴ Hawkins conceded that he formed the impression that his work was not satisfactory to Prendergast as early as January or February, 1970.

2. The union activities at the store

In early October 1969, Hawkins went to Prendergast to complain that he had been in the service department for more than 30 days without becoming service manager and that he was not receiving training from the incumbent service manager. At that time, Hawkins told Prendergast that, if things didn't change, he would see if he could get a union to represent him and the other service department employees. Prendergast became angry and told Hawkins that he did not like threats.

In early March, Hawkins asked several other employees what they thought about having a union represent them as bargaining agent. These conversations took place at various locations in the store and service area. Hawkins did nothing further until around April 1 when he again raised the question with several employees. As a result of these conversations, Hawkins contacted Union Representative Ball on April 1 and arranged to meet with him that night. Ball gave Hawkins blank authorization cards, and on the next day, April 2, Hawkins took them to the store where he obtained signatures from three other employees at various locations around the store and service area. On the following day, April 3, an additional employee signed a card at the store. That night Hawkins held a meeting at his home, so that the employees could talk with Union Representative Ball. Four employees attended, one of whom signed a card at that time. Hawkins gave all the cards, including one he had signed, to Ball at that time.

Two employees spoke with Store Manager Prendergast about Hawkins' union activities. On April 2, Alvin Hazelton told Prendergast that Hawkins was trying to organize a union. Prendergast told him not to worry about it and to go about his work. Hazelton told Prendergast that he didn't want any part of a union. On the morning of April 4, Daniel Johnson, who was then employed as a credit sales manager trainee at the Kenosha store, spoke to Prendergast as Prendergast arrived at the store, and told him that Hawkins and the boys in the back of the store had a union meeting. Prendergast replied that it was all right, and he was going to fire Hawkins that day "anyhow."

3. The discharge of Hawkins

As set forth above, Prendergast and Hawkins worked up a list of things to be done in the service department during the week beginning March 29. On Monday, March 30, Prendergast complained to Hawkins that the work was not completed and indicated that he was not satisfied with what had been done. According to Prendergast, he believed he spoke to Hawkins again about the work on the list 2 days later on Wednesday, April 1, although not at length. Although Hawkins did not recall that Prendergast spoke to him about it on that day, he conceded that Prendergast spoke to him about it several times that week before April 4. Late in the afternoon on Friday, April 3, Prendergast called Hawkins into his office and again spoke to him about the work in the service department. Prendergast told him that the work was not being done or was being done slowly, and that sales were down. Prendergast mentioned that they had talked about the possibility of giving raises to the service department employees, but that he felt that he could not do that, pointing out that he had checked records from the previous year when there were fewer employees working there although the condition of the service department was better. Prendergast told him that the condition of the service department and its sales had to be improved. Prendergast told him that some of the things on the list had still not been

done and that the department was in general chaos. The conversation ended without any mention of Hawkins' future prospects as an employee. However, Prendergast testified that he intended to continue and discharge Hawkins at that time but that they were interrupted by customers in the store.

On the following morning, April 4, when Hawkins arrived at work, Prendergast called him into his office and told him that he was going to be terminated due to the poor sales performance of the service department, his failure to finish the work on the list they had drawn up, and his inability to get along with other employees. Prendergast told him he did not have to finish working that day but that he would be paid for it. Hawkins asked if Prendergast would put the reasons for his discharge in writing, and Prendergast gave him a letter later that day. Prendergast had never said anything to him previously about his inability to get along with other employees.

Prendergast testified that the prime reason for Hawkins' discharge was the sloppiness of the service department and Hawkins' failure to complete the work on the list Prendergast gave him before Easter.

The letter which Prendergast gave Hawkins on April 4 contained the following:

The following is written per your verbal request. On April 4, 1970 in my office your employment with the Goodyear Tire and Rubber Co. was terminated. I indicated at that time that you would receive pay through Saturday, April 4, 1970 and that you would receive two weeks vacation pay. The appropriate documents have been initiated by me and your final payment should reach you in ten (10) days to three (3) weeks.

The reasons for your dismissal are, I'm quite sure, obvious to you. In the past five (5) months we have had several discussions in my office and other areas of the store regarding the performance of the service department and your personal efforts as my Service Manager. You seemed quite aware of what had to be done, but did not have the capabilities to get them handled. The perfect example is: The week prior to Easter you gave me a long list of work that you knew had to be done to improve the condition of the service department and the storage area in an acceptable manner. From your list I prepared a step by step program of sixteen (16) steps. (Some requiring 2-3 hours work others only 15-20 minutes work.) I gave you the list prior to Easter and scheduled considerable additional manpower to get the "job" done. You said the work would be handled! However, as of Saturday morning, April 4, 1970, over a full week from when you were given the job list, action had been done on only two steps per my survey of the service department and storage area prior to your arrival at work Saturday, April 4, 1970.

In addition to your failure to handle your responsibilities as Service Manager you, through words and action developed considerable animosity between yourself and the other employees of the store. Further, I'm sure you must agree that you were given considerable opportunity and warnings to get your job "handled."

The above is not written to embarrass or censure you, but was written per your request.

C. E. Prendergast, Jr.
Store Manager

4. Concluding findings as to Hawkins' discharge

The General Counsel contends that Hawkins' discharge was caused by his union activities and that the reasons advanced by Respondent were pretexts designed to hide the true reasons for his discharge. Respondent contends that Hawkins was a poor employee who was discharged for cause and who realizing his own failures on the job involved himself in union activity for protection against the eventual consequences of his poor work performance.

There is no question that Prendergast became aware of Hawkins' union activities on April 2, before his discharge. Hawkins contacted the Union only a few days before his discharge, obtained signatures from several other employees, and held a union meeting at his home on the night before his discharge. Although Respondent said or did little otherwise to indicate animus against the Union, when the representation election approached Respondent actively sought to persuade the employees to reject the Union, and, as set forth below, exceeded lawful bounds campaigning against the Union. Despite dissatisfaction with Hawkins' work which Prendergast communicated to Hawkins over a considerable period of time, Prendergast never warned Hawkins that failure to improve would result in his discharge. Hawkins was discharged on a Saturday morning at the start of the workday and was paid for that day without being required to work.

Among the reasons advanced by Prendergast for Hawkins' discharge was his inability to get along with other employees in the department. The latter reason was repeated in Prendergast's letter which states that in addition to his failure to handle his responsibilities Hawkins "through words and action developed considerable animosity between yourself and the other employees of the store." Hawkins testified, without contradiction, that Prendergast had never before spoken to him about his relations with other employees at the store, and no indication was given him as to Prendergast's basis for this complaint.

The General Counsel contends that, under the circumstances, an inference is warranted that the words and action of Hawkins creating animosity to which Prendergast referred were Hawkins' union activities, which led Hazelton to report them to Prendergast accompanied by his statement that he did not want any part of a union. I agree. The inclusion of this reason among those advanced for Hawkins' discharge along with the evidence summarized above as to the timing of the discharge, Respondent's knowledge of Hawkins' union activities and Respondent's hostility to organization, established a *prima facie* case supporting the complaint, and it was incumbent upon Respondent to come forward with evidence to explain otherwise the discharge and, in particular, the reference to Hawkins' inability to get along with other employees.⁵ While Respondent adduced persuasive evidence as to its dissatisfaction with the condition of the service department under Hawkins' direction and less persuasive evidence as to the poor sales of the department,⁶ it introduced no evidence whatsoever as to the

⁵ *Heck's Inc.*, 156 NLRB 760, 762, enf'd as modified 386 F.2d 317 (C.A. 4).

⁶ Although Hawkins testified that Prendergast had raised the sales performance of the service department with him in the past, on the record before me it is impossible to conclude that Hawkins bore responsibility for the sales volume of the department. Prendergast's description of Hawkins' duties omits any mention of sales responsibility, and it appears that the business of the sales department is principally generated by the activities of Respondent's salesmen and its efforts through advertising to bring customers

Continued

additional reason for Hawkins' discharge advanced for the first time on the morning of the discharge. In these circumstances, the inference to be drawn from that reason stands un rebutted. Moreover, the assertion of that reason cannot be disregarded as mere surplusage. The other reasons advanced for Hawkins' discharge had existed for some time, but had not led Respondent to discharge him previously. Although Prendergast spoke to Hawkins several times during the week of March 29 about the performance of the work on the list, he did not tell Hawkins that his job was in jeopardy. Prendergast felt impelled to refer to Hawkins' inability to get along with other employees both orally and in the letter he prepared at Hawkins' request.

In sum, I conclude that whatever cause for dissatisfaction with Hawkins' work Respondent entertained, but for Hawkins' union activities he would not have been discharged on April 4. To be sure, an employer need not endlessly endure an employee with whom it is dissatisfied, but having tolerated him and sought to work with him, it may not decide that its patience is at an end because he has sought union representation.⁷

Accordingly, I conclude that Hawkins' discharge violated Section 8(a)(3) and (1) of the Act.⁸

B. *The Alleged Violations of Section 8(a)(1)*

As set forth above, following Hawkins' discharge a representation petition was filed by the Union, and an election was scheduled for May 14, 1970. On the day before the election, James Craig, a representative of Respondent's personnel department at Akron, came to the Kenosha store and spoke to employees in groups of two or three at a time in Prendergast's office, where they were asked to go by Prendergast.⁹ Among the employees who attended one of these meetings was Edwin Seefeldt. He testified, without contradiction, that Craig said that he could not see that any of the employees were going to receive any benefits by becoming unionized, and that they stood a good chance of losing their existing benefits. Craig said that to his knowledge Respondent's stores which were organized had far less benefits than those which were not, and that if the employees went union and they could not settle a contract, they would either close the store or move it.

The amendment to the complaint alleges that these statements interfered with, restrained, and coerced employees in the exercise of their Section 7 rights by (a) threatening employees with loss of existing benefits if the Union won the election, (b) informing employees that any collective bargaining would be futile since only Respondent would decide what wages would be, and (c) threatening to close or move the store if the Union won the election. I find no support for (b) in the evidence. However, the remaining allegations are supported. Thus, by asserting that the employees had a good chance of losing their existing benefits and that organized stores had less benefits than those which were unorganized, Craig did more than raise a mere possibility that

to the store. Although figures were introduced to show declining monthly sales during the period that Hawkins was service department manager, no figures were introduced to indicate how the sales of the department during that period compared to those during corresponding months under other managers.

⁷ In concluding that Hawkins' discharge was caused by his union activities, I have considered and rejected Respondent's contention that Prendergast's responses to Hazelton and Johnson when they informed him of Hawkins' union activities negate any inference of discrimination that might otherwise be drawn.

⁸ *Nachman Corporation v. NLRB*, 337 F.2d 421 (C.A. 7).

⁹ Craig also visited the store and spoke to employees about a week earlier

bargaining would result in a decrease in benefits and conveyed to the employees that it was likely that Respondent would not agree to any contract for an organized store which provided all the benefits they were then receiving. No reason was advanced to explain why this was likely other than that this was a likely consequence of obtaining union representation. Craig's statement threatened further that if no agreement was reached the employees were faced with loss of employment by the likelihood that Respondent would move or close the store, despite the fact that Respondent had been willing to operate the store without a contract as long as they were unrepresented. The necessary inference to be drawn by the employees was that Respondent would not offer the Union contract terms providing for benefits equaling their present benefits, that as a consequence either they would have to accept a decrease in their benefits or that no agreement would be reached, and that in the latter event the store would therefore be closed or moved, all simply because they might choose union representation and seek a collective-bargaining agreement.

While these threats were in a sense in the alternative, they were nonetheless threats. To be sure nothing requires an employer to agree to any particular terms in a contract or to agree to any contract if it bargains in good faith to an impasse. But the assertion that employees are likely to lose their benefits or their source of employment made before any bargaining has occurred and in the absence of any reason for these alternative consequences other than a vote in favor of union representation can only be construed as a threat of reprisal if the employees chose to be represented.¹⁰

Accordingly, I find that by these statements of Craig, Respondent violated Section 8(a)(1) of the Act.

C. *The Challenged Ballots*

There were two challenged ballots in the representation election. One was that of Gary Hawkins whom I have found above was discriminatorily discharged on April 4. In view of that finding and the recommended order of reinstatement below, I find that Hawkins was eligible to vote in the election and that his ballot should be opened and counted.

The other challenged ballot was that of Bruce Morgan. Morgan replaced Hawkins as service department manager and was not previously employed in the bargaining unit. Although I am persuaded that Morgan became service manager before the eligibility date for the election,¹¹ as a replacement for Hawkins Morgan was ineligible to vote.¹² Accordingly, I will recommend that the challenge to Morgan's ballot be sustained.

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 Respondent's operations described in section I, above, have a close, intimate,

¹⁰ *NLRB v. Gissel Packing Co., Inc.*, 395 U.S. 575, 618.

¹¹ Morgan's name was not on the list furnished the Board by Respondent in compliance with the *Excelsior* rule, and employee Seefeldt testified that Morgan did not become service department manager until May 1, after the April 25 eligibility date. However, Prendergast testified that although Morgan had been advised he would become service manager starting May 1, he transferred Morgan to that position on April 24, when Prendergast was suddenly called away from the store because of an emergency. As Prendergast's recollection in this regard is more likely to be accurate than Seefeldt's, I find that Morgan became service department manager on April 24.

¹² *Lock Joint Tube Company*, 127 NLRB 1146, 1153

and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V THE REMEDY

Having found that Respondent violated Section 8(a)(1) and (3) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

As I have found that Respondent discriminatorily discharged Gary Hawkins on April 4, 1970, I shall recommend that Respondent be ordered to offer him immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and to make him whole for any loss of earnings he may have suffered by reason of the discrimination against him by payment to him of the amount he normally would have earned as wages from the date of his discharge to the date of an offer of reinstatement, less net earnings, to which shall be

added interest at the rate of 6 percent per annum, in accordance with the formula set forth in *F. W. Woolworth Company*, 90 NLRB 289, and *Isis Plumbing & Heating Co.*, 138 NLRB 716.

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

CONCLUSIONS OF LAW

1. The Goodyear Tire & Rubber Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) is a labor organization within the meaning of Section 2(5) of the Act.

3. By discriminatorily discharging Gary Hawkins and threatening employees with loss of benefits and closure or removal of its store, Respondent has engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Sections 8(a)(1) and (3) and 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]