**Anchor Wire Corporation of Tennessee *and* Ernest M. Janco.** Case 26-CA-3237

September 23, 1969

## DECISION AND ORDER

BY MEMBERS FANNING, BROWN, AND JENKINS

On June 5, 1969, Trial Examiner Benjamin B. Lipton 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. Thereafter, the Respondent filed exceptions to the Decision and a supporting brief. The General Counsel filed an answering 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 made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.[1] The Board has considered the Decision, the exceptions, briefs, and the entire record in this case, and hereby adopts the findings, conclusions and recommendations of the Trial Examiner.[2]

## 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 orders that Respondent, Anchor Wire Corporation of Tennessee, Nashville, Tennessee, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

## TRIAL EXAMINER'S DECISION

### STATEMENT OF THE CASE

BENJAMIN B. LIPTON, Trial Examiner: Hearing was held before me on March 18 and 19, 1968,[1] in Nashville, Tennessee, upon a complaint issued by the General Counsel of the Board.[2] The complaint alleges certain acts of coercion upon the employees, and the discharge of two employees, in violation of Section 8(a)(1) and (3) of the Act At the hearing, all parties were represented and were afforded full opportunity to present relevant evidence and to argue orally on the record. After the close, briefs were filed by General Counsel and Respondent, which have been duly considered.[3]

Upon the entire record in the case, and from my observations of the demeanor of the witnesses on the stand, I make the following.

### FINDINGS OF FACT

#### I. THE BUSINESS OF RESPONDENT

Anchor Wire Corporation of Tennessee, herein called the Respondent, is engaged in the manufacture of wire cable and wire products at its plant in Goodlettsville, Tennessee. During the year preceding issuance of the complaint, Respondent had a direct inflow and a direct outflow in interstate commerce of goods and materials, in each instance, valued in excess of $50,000. Respondent admits, and I find, that it is engaged in commerce within the meaning of the Act.

#### II THE LABOR ORGANIZATION INVOLVED

District Lodge No. 155, International Association of Machinists and Aerospace Workers, AFL-CIO, herein called the Union, is a labor organization within the meaning of the Act.

#### III. THE UNFAIR LABOR PRACTICES

##### A. *The Essential Issues*

On August 28, a Board election in a production and maintenance unit was conducted, in which 18 votes were cast against the Union, 14 for the Union, and one ballot was void.[4] General Counsel alleges that Respondent committed violations of Section 8(a)(1) and (3), by engaging in coercive interrogation of employees prior to the election, and following the election, by threatening the employees with discharge and by discharging Ernest M. Janco and Odie Johnson, Jr., because of their union activities. It is further alleged that, for unlawful reasons, Respondent failed to offer Janco and Johnson other plant jobs available at the time of their discharge, and that it prevented them from applying for such jobs for which

[1] Respondent's allegation that the Trial Examiner acted improperly during the hearing is not substantiated in Respondent's brief or by our own examination of the record Accordingly we find no merit in this allegation

[2] In view of the credited testimony to the effect that union adherents Janco and Johnson would be terminated because of their organizational efforts and support for the Union, the interrogation of employees about the Union, and for other reasons detailed by the Trial Examiner in his Decision, we conclude, in agreement with the Trial Examiner, that the Respondent was discriminatorily motivated in terminating Janco and Johnson on December 10, 1968

Respondent has moved to supplement the record by affidavit or alternately to reopen the record for the taking of additional evidence about posthearing developments it alleges would support its contention that the terminations were prompted by economic considerations and a change in its operations

Even assuming, arguendo, the facts as set forth in the proffered affidavit, it would not in our view affect our conclusion that the terminations were in fact discriminatorily motivated It is possible, however, that such additional evidence may be relevant in determining the extent and duration of our remedial order Therefore, the motion to supplement the record or alternatively to reopen the record for such additional evidence is denied without prejudice to submission of such information in subsequent compliance proceedings

[1] All dates are in 1968 unless otherwise noted

[2] The charge was filed and served upon Respondent by registered mail on December 16, the instant complaint is dated February 7, 1969

[3] Respondent's brief consists of a short generalized statement of its economic defense to the alleged discriminatory discharges

[4] No objections were filed

they were qualified. Respondent denies the alleged violations. It affirmatively defends on the basis that Janco and Johnson were terminated for legitimate business reasons, in that they were replaced by new personnel with greater skills needed under a reorganization program for developing new products The case entirely involves questions of fact, including that of Respondent's motivation for the discharges. For the most part, credibility conflicts arise from the material evidence. These have been resolved upon analysis of the pertinent testimony, the manner of its presentation, the demeanor of the witnesses, the inherent plausibilities, and the total record in the case.

### B. *The Interrogations*

In early August, Respondent's president, James W. Hogg, approached Mildred Hall, a machine helper, at her work station. He asked if she would "volunteer" to come into his office of her "own free will." She consented In his office, he inquired, "What is wrong out there?" She questioned whether he was referring to the Union, but he did not respond directly. For over 2 hours, they discussed various conditions in the plant. When she was about to leave, he said he thought a lot of her and that "If this other comes in here they'll be something come in between us that we can't sit down and talk like this."

At the end of July, Hogg escorted Altie Martin from her work area to his office, after asking if she would go of her "own accord " In his office, they conversed for about an hour. He asked her whether she liked her job She did. He asked if her husband was a railroad man, and if he was a union member. She said she supposed he "belonged to the Union." He asked what she thought about the Union in the plant, and "what they wanted out there." To both questions she replied that she did not know. Asked if she had any complaints, she mentioned only that she had not received a raise that year, while it had been given to the other girls in her area. He also inquired as to her former employment, although she had been an employee of Respondent for 6 years.

In mid-August, Hogg similarly approached Janco (one of the subsequent dischargees). After first declining, Janco agreed to talk in the private office, with Hogg repeatedly stressing that it was on Janco's "own free will." Their discussion lasted about 6 hours. Janco was asked why he wanted a union, and why the employees wanted one. Hogg mentioned "all kinds of things" Respondent had done for the employees, as well as certain special favors and considerations done for Janco. He couldn't understand why they wanted a union. He asked Janco if he could "pinpoint people that he should talk to in the plant."

Hogg was present throughout the hearing. He testified he did not recall their conversation as to what Hall said about the Union, but denied that he had asked her "what was wrong out there." As to Martin, he had "heard about this Union thing," and he called her into his office and inquired whether she had a "wage problem", as he wanted to explain how the rates were set. "It kind of needled [him] about the fact that if the Union got in there maybe she would improve her wage rate." She volunteered the information about her husband as a union railroad man. Concerning Janco, Hogg did not deny the above-described testimony. In his own brief version, he related, *inter alia,* that Janco pointed out that he was not involved in the Union, but volunteered that he was asked to appear as the Union's observer in the forthcoming election. Also Janco stated his hopes of getting to $3 an hour (as compared with his present rate of $2.50), and of getting into management. Hogg explained that, as chief executive, he had to be in his office and that he raised the question of Janco coming of his "own free choice" because his attorney advised him to do this.[5]

This evidence plainly shows that Hogg engaged in systematic interrogation of individual employees within the confines of his office, a locus of high management authority That these employees agreed, in the words of Hogg, to come of their own volition scarcely establishes the element of full consent Nor in any case can it serve to absolve or mitigate the effects of his purposeful personal questioning regarding the Union Accordingly, it is found that Hogg's conduct was violative of Section 8(a)(1), (a) in the series of coercive interrogations, as described, and (b) in seeking to enlist Janco in effect as an informer to identify the prounion employees with whom Hogg "should talk to out in the plant."

About a week before the election, Eugene Macquade, plant engineer and supervisor of Janco, had a discussion in his office with Janco concerning the Union. Macquade asked how he felt about it, and whether he thought the Company or the Union would win. On frequent occasions during this period, Janco went into Macquade's office where, among other things, they talked "quite a bit" about the Union Macquade's general denial that he *ever* had any conversations with Janco on the subject of the Union is not credited [6] When considered in conjunction with the preelection interrogations of Janco and other employees conducted by Hogg, and in light of the entire record, I find that Macquade's particular questioning of Janco as to his union sentiments was, at least in tendency, coercive.

### C *The Threats*

In mid-September, Macquade spoke to Janco in the presence of Macquade's assistant, Henry Ziemak, and Odie Johnson (the other subsequent dischargee). He said that if Janco had gone along with Hogg (at the time he spent 6 hours in Hogg's office before the election), he would have come out "smelling like a rose "[7] In total context, a reasonable implication of this statement is that if Janco had agreed to oppose the Union and "pinpoint" the pro-Union people for Hogg, he would have been substantially rewarded, and the converse applied because he had failed to do so.

In November, Macquade told Janco that Respondent was going to get rid of either Janco or Johnson. A few days later, about November 15, he told Janco and Johnson that they were both going to be discharged, and advised them to start looking for a job. Also about November 15, Macquade informed them, as follows. (a) Morgan Jones had gone into the front office and told them (i.e., management) that Janco and Johnson had signed him up to join the Union, and had signed up other members. (b) In Hogg's office they had a list of 14 employees who voted for the Union: they had already gotten rid of two of these employees; they would like to

[5] To the extent of any conflict, I accept the testimony of the employees in question

[6] Credibility findings contrary to Macquade are made as to other issues considered *infra*

[7] Johnson gave this testimony, but was unsure of the dates, generally estimated as in November However, he indicated there were two similar conversations "when they were talking about the rose " Johnson's affidavit given to the General Counsel (as read into the record) refers to such a conversation about 3 weeks after the election Ziemak did not testify

get rid of all within a year; and Janco and Johnson would be next. Later in November, substantially the same remarks as above were reiterated by Macquade.[8]

The foregoing, which is credited,[9] establishes that repeated threats were made by Respondent to discharge Janco and Johnson and other employees who had voted for the Union in the Board election. These alleged violations of Section 8(a)(1) are therefore sustained.

### D. *The Discharges*

Janco commenced his union activity in mid-July. Odie Johnson and Kenneth Brown enlisted him in the campaign to distribute union cards and "sign up members,"—which he did. After Johnson had unsuccessfully solicited Morgan Jones, Janco "got him to sign" early in August. At the election, Janco acted as the Union's observer Johnson was similarly active on behalf of the Union.

Janco was employed in Respondent's machine shop for over 7 years He had performed production work on Saturdays and Sundays when called upon, and had experience in running many of the production machines. In 1961, he took courses at night on the theory and operation of standard machine shop equipment. At the plant, he operated a South Bend lathe, bench lathe, milling machine, drill press, shaper, surface grinder, and "do-all" (an electrical saw). It is clearly evidenced that Respondent's machine shop equipment was not suitable for working to close tolerances.[10] Among his other duties, Janco set up, repaired, and maintained the production machinery, made and kept a supply of parts, and participated in building new machines. During his last 3 years, his work did not require close supervision. He was classified as "Machinist Helper A" and, at the time of his discharge, received $2.50 an hour, the highest wage rate in the plant Johnson had 6 years of employment with Respondent--the first 3 in production work and thereafter in the machine shop. He was classified as "Machinist Helper B" at the rate of $2.30, with duties substantially the same as Janco's, except that he apparently required closer supervision.

Macquade regularly performed work as the principal machinist, and his assistant, Ziemak, likewise functioned in a machinist's capacity John T. Heaney was the production manager. Gordon J. Rappugn held the office of treasurer, and with Hogg, constituted the executive committee. It is evident that Macquade and Heaney were included in top management discussions.

In 1967, Macquade told Hogg that Janco was "pretty well on the way," and that they were just starting to break in Johnson. However, it was not right to call them "machinists," and so they remained or were then classified as helpers. In November 1967, general pay raises were given out to employees, graded in accordance with job evaluations made by a committee [11] Janco and Johnson were awarded substantial increases.[12] About September 1968,[13] Hogg asked Macquade to evaluate the technical employees. At this time, Macquade said Janco was "fairly good," but still could not be classed as a "qualified machinist." In consequence of this discussion and evaluation, Hogg told Macquade that Janco and Johnson would have to be let go, when a replacement was obtained. But Macquade did not so advise them, as he was instructed, because he wanted to do it "softly." He merely told Janco and Johnson that "if they heard of a job coming up . . . to take it," and he would help them with references. There were instances in which he allowed Janco to take time off (without pay) in search of employment.[14] Macquade testified that, beginning in September, for a period of 3 months, he was consulted about hiring new personnel. He interviewed four applicants for a machinist's job. About October, he told Hogg that Frank Dodd "should probably work out." Hogg's testimony is at variance. At a meeting late in October, he, together with Rappugn and Macquade, made the decision to discharge Janco and Johnson and to look for a qualified machinist to supplant them. A letter from an employment agency dated October 24 confirms the qualifications given by Hogg that day in a request for "a graduate mechanical engineer" and a "qualified machinist" Hogg interviewed six machinist applicants, including Dodd, who were referred by the agency. A mechanical engineer. Schlemm, was not actually hired until March 10, 1969.

Hogg admitted that, in the interview, he asked Dodd how he felt about unions, and was satisfied with his answer that he would act in accordance with his best interests.[15] While General Counsel asserted at the hearing that no specific violation is alleged as to the interrogation of Dodd, the evidence is pertinent to the issue of Respondent's overall motivation.

Other discussions with Janco and Johnson during this time, involving threats of discharge, have already been described. In addition, Janco credibly testified that, about September 6, he went in to see Hogg and expressed his concern that the employees were not talking to each other as they did before the election. Hogg said that he shared his "happiness only with people who were on the winning team," that Janco was a good employee, had good leadership, and knew his job well, but he would make a better employee for another employer because he was not happy on his job. Janco then related this conversation to Macquade on the same day, commenting that, "I guess I'd better find another job." On December 9, Janco was told by Macquade that Dodd was coming in at 4 p.m., and "this would probably be the end." That evening he telephoned Macquade at home and inquired if Dodd had been hired. Macquade asked him to come out to his house and they would talk. At Macquade's, Janco was told that he and Johnson would be discharged the following day, but not to say anything when he went back to the plant.[16] However, Janco gave the information to Johnson the next morning. During the day on December 10, Janco and Johnson received termination slips, each stating "Did not

[8]Based on the testimony of Janco and Johnson

[9]Macquade disavowed any discussion with Janco about the Union, as previously noted, and gave general denials to each of these incidents

[10]No change in this equipment was contemplated among Respondent's projections.

[11]Hogg described the committee as consisting of himself, Macquade, Heaney, Mrs Davenport, and Janco

[12]Janco's rate was raised by 24 cents

[13]Hogg put the date as late October, and Macquade ultimately as August or September

[14]Johnson testified that he refused Macquade's suggestion to look for work

[15]Dodd was given written tests by an industrial psychologist retained by Respondent Such tests were not given to Janco and Johnson, nor it would appear to any incumbent personnel The psychologist's report is dated December 3, 1969. Hogg's attempted justification for his questioning Dodd concerning unions, on the basis that it was indirectly suggested by the psychologist for a valid reason, is rejected as unworthy of merit or credence Dodd was not called to testify.

[16]Macquade testified that he then told Janco his discharge was "due to the new equipment coming in, and stuff, that we needed more skills."

have training, education, and skill level requirements for changing business needs, which requires engineer and machinist. [17]

Dodd is paid a yearly salary of about $7,000.[18] As later stipulated, Johnson earned $6,150.81 for 1968, which presumably was less than the earnings of Janco, paid at a higher rate.[19] Macquade testified that Dodd had done only one thing different from Janco and Johnson Since about March 1969, he has made some "prints" in connection with the design of a "new product" he suggested to Respondent. However, Macquade could not approximate the amount of time Dodd spent in such work, there has been no occasion for Dodd to perform any work from blueprints or drawings; and he could not say whether the expectations have been borne out concerning Dodd's ability, as to which there have been some disappointments.

Since at least 1961, Macquade has not worked from blueprints in the machine shop, although he has done a lot of building and revamping of machines. Despite Hogg's vague estimates, I do not find as a significant factor in any future plans of Respondent the use of blueprints in the regular machinist's work in the plant. Nor has it been demonstrated that the qualifications of Dodd are materially greater than those possessed by Janco and Johnson for the work to be done on the machine tools available. The professional mechanical engineer, Schlemm, who was hired 3 months after the release of Janco and Johnson, cannot plausibly be regarded as a replacement in the performance of any of their duties.

In 1964. Janco had engaged in a fist fight on company property and was told that, if it happened again, he would be terminated. Prior to that incident, he had been discharged for gambling on the job, but was reemployed. In July or early August, Mildred Hall informed Hogg that Janco told her of an "affair"[20] he had (in the summer of 1967) with a female employee in the plant. Macquade, evasive in his testimony, ultimately indicated that he was fully aware of the circumstances at the time; and likewise, as I find, was Hogg. Hogg testified that his first information of the "problem" came from Hall, that he inquired no further into the matter, but that he and Heaney then and there determined that if Janco were ever terminated, he would not be hired back for this reason. The same policy would be applied to the female employee involved, who was still employed. Respondent does not allege these incidents as reason for Janco's discharge. Rather, it advances the theory, in a form and for purposes which are less than clear, that Janco. now having been terminated, is unsuitable for further employment. At this point in the consideration of the evidence, it appears to me quite plain that Respondent is seizing upon any straw, however ancient and ambiguous, as a makeweight to justify a refusal to reinstate Janco. These contentions, devoid of merit, form a part of the entire record in assessing the validity of Respondent's general economic defense. In General Counsel's case in chief, a strong *prima facie* showing of the alleged violations has been made out

In considerable and attenuated detail, encompassing a company history over several years, Respondent has presented its reasons in this record for the discharge of the two employees classified as machinist helpers. The evidence consists principally of internal management discussions and conclusions related in the testimony of Hogg.[21] In 1966, a total reorganization was commenced principally for the purpose of developing new product lines, and plans have been in progress since then. Hogg became president and Rappugn, treasurer, the two constituting the executive committee, and for all that appears, the controlling stockholders and management of the corporation. It was not until June 1968 that a Board of Directors' meeting was convened wherein Hogg and Rappugn presented their ideas for the production of about 40 new products which they had "mocked up." It was resolved at this meeting to "study" the technical problem, take an audit of the technical talent of the plant, do what was necessary to move the planned products ahead, and report back to the directors [22] In late October, an informal meeting was held, also attended by Macquade Final decisions, in oral form, were then made to effect the "reorganization," and to purchase the necessary new equipment Responsibilities were reassigned by setting up a "development group," consisting of Hogg, Macquade,[23] and a graduate mechanical engineer; and a "maintenance machine shop services" group consisting of Ziemak in charge and a "qualified machinist."

The term "new products" as used by Respondent was not clearly defined. Rappugn testified that, at the time of the hearing, the Respondent manufactured about 50 products, that almost all of them were being produced in 1961, and that on one product line packaging changes were made but that the product was the same. Hogg listed, as of the hearing, about 40 "new items," but when closely questioned in concrete terms, the following testimony emerged· Many of the items are basically the same, with minor variations. as were made in the prior years. Most are projected into the future. Some are going to be completely purchased. Some are dependent upon the lease and purchase of certain machines as to which firm orders have not yet been placed.[24] Some require the design and manufacture of parts in the plant, but there is no showing that any such work had yet been done All that appears to be seen. of any substance representing a departure from normal overall operations. is a new packaging process in the stage of projection for certain of the old products.

[17]Macquade's affidavit dated January 24, 1969, as read into the record, states the following Janco did not come to his home in the past year or at any time surrounding the date of his discharge Janco and Johnson did not know before receiving their termination slips on December 10 that they would be released that day. He, Macquade, did not know until that morning that Dodd had been chosen to take their places On the day before, he had no idea a man was about to be chosen. Macquade testified that, in reviewing his affidavit at home in preparation for the hearing, his wife refreshed his recollection that Janco had been there I do not credit this explanation, nor Macquade's testimony generally insofar as it presents material conflicts.

[18]Hogg's testimony is that Dodd was engaged, under the reorganization, as a member of management, and has attended the regular management meetings. Rappugn stated that Dodd was first told on January 10, 1969, that he was part of management

[19]Hogg had earlier estimated that each made about $5,000

[20]A term employed by Respondent's counsel in leading questions Pursued by Respondent at some length, the evidence does not indicate the nature of the offense beyond the use of this term, and consists only of the vaguest innuendos

[21]It must be noted that, although repeatedly cautioned by the Trial Examiner as to the effect upon the weight to be given such testimony, leading questions were utilized to a substantial extent by Respondent in eliciting evidence from Hogg

[22]The minutes of the meeting were not produced, no attempt was made to show the extent of participation of other directors at the meeting, nor were the subsequest actions reported back to the Board of Directors

[23]Previously called the plant engineer, Macquade was given a new title in January 1969 of assistant to the president on Developing and Engineering

[24]The lease of two impact machines, still needing an imprinter, and conditional upon Respondent's approval of the art work, "may arrive" in August, they hoped to get by January 1970 a four slide machine, for which

The "reorganization," long in process, was implimented, following the election among 33 employees in late August, by a redescription of responsibilities of a small contingent of management officials, and the eventual hiring of a mechanical engineer. So far as concerned the small machine shop, the basic skills and functions performed by Macquade and Ziemak, and by the subordinate help, have remained essentially unchanged. In the entire plant, the reorganization materially affected only Janco and Johnson. Despite many years of experience with Respondent, their machinist skills were purportedly regarded as inadequate for the development of the "new products,"– the actual nature of which has been described. Although Respondent's plans were under development since 1966, it averred that this knowledge of the inadequacy of Janco and Johnson effectively came to light only after the formality of a Board of Directors' resolution in June 1968 to conduct a "study" of the technical talent in the plant. Evidence of the study which was made is an exercise in ambiguity. After the election, a decision was soon reached to terminate these two employees and replace them with a "qualified machinist." Without disclosing such a reason, they were advised to seek other employment. Their separation was then consummated after the studied processing and hiring of Dodd, whose qualifications and duties have been shown to involve no significant differences, past or prospective, from those of Janco and Johnson.

The question is not one of judging the correctness of Respondent's business decisions, but whether its proffered economic justifications for the discharge of these two employees are legitimate and credible in context of the entire record. The contrary is found. In all, it seems quite apparent that the grounds advanced by Respondent, considering as well the character and probity of the evidence, are but an elaborate effort to cloak and obfuscate the true reasons for the discharge. Respondent's animus and motivation to eliminate any future threat of union representation are fairly demonstrated. Indeed, as found, Janco and Johnson were apprised of express threats of termination because of their soliciting activities in the election campaign The element of timing in Respondent's actions reinforces a conclusion of discrimination. Accordingly, in the discharge of Janco and Johnson on December 10, Respondent violated Section 8(a)(3), as alleged.

Additional allegations are made that Respondent prevented Janco and Johnson from bidding on certain production jobs available at the time of their separation. Testifying from company records, Rappugn disclosed that Kenneth Brown, a buncher operator, left Respondent's employ in mid-September, and Robert Huddleston, a heavy packer, left in mid-October. Janco and Johnson each testified that in the latter part of November the jobs of buncher operator and heavy packer were posted on the bulletin board, that these vacancies were not filled by Respondent, and that they were experienced in performing such work, but could not bid on these jobs because of a new employment policy instituted by Respondent that November. Heaney testified that only the position of heavy packer was posted on the November 1, that no bids were received, and that several days later Respondent decided not to fill this job. Rappugn further revealed that no new production employees have been hired since the discharge of Janco and Johnson, excepting certain part-time and temporary employees whose tenure was relatively brief. However, Respondent did "realign" a number of production jobs among several of the incumbent employees in the plant.

Respondent posted in pamphlet form and orally read to the employees a new employment policy effective November 1 for a period of 14 months. The previous written policy had been stated as effective for 12 months ending December 31. Hogg testified that the decision was made at such time because they wanted "a total change of employment policy and the reorganization . . at the same time so we could get on with developing the new products and get them on the market." In relevant part, the new policy disallows an employee to bid on a lower paying job, and changed the rule of plantwide seniority to departmental seniority. In the new policy three departments or "categories" are set forth· (1) machine shop personnel (consisting of two employees), (2) working foreman, shipping clerk and receiving clerk (consisting of three employees), and (3) all other personnel in production Theretofore Janco and Johnson were among the most senior employees on a plantwide basis; under the new rule they were reduced as the only employees on a seniority list of the machine shop "department." Hogg's explanation for the change is unacceptable in light of Respondent's unlawful purposes evident in this time period, particularly its intent to eliminate Janco and Johnson.[25] The finding has been made that Janco and Johnson were unlawfully discharged from their machinist jobs, and their reinstatement will be recommended herein. It is therefore unnecessary to pass upon whether Respondent contemporaneously acted to keep them out of the plant by blocking their acquisition of lower paying production jobs. However, as properly within the framework of this allegation in the complaint, it is held that Respondent discriminatorily deprived Janco and Johnson of their plantwide seniority rights in violation of Section 8(a)(3).

### 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 the Respondent 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 of commerce.

### V. THE REMEDY

Having found that Respondent engaged in certain unfair labor practices, I will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Particularly by reason of the discriminatory discharges which go "to the very heart of the Act," a broad order appears warranted.[26]

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the order has not yet been placed, these are the "big outside purchases" In this line of testimony especially, Hogg impressed me as an unreliable witness

[25] It is also observed that, in a preface to the new employment policy, there is now added (following the election) a lengthy statement in the nature of a permanent campaign specifically directed against union organization by employees.

[26] *N L R B* v *Express Publishing Co*, 312 U S 426, *N.L.R.B* v *Entwistle Mfg Co*, 120 F.2d 532 (C A. 4)

It has been found that Respondent unlawfully discharged Ernest M. Janco, and Odie Johnson, Jr., in violation of Section 8(a)(3) and (1) of the Act. It will therefore be recommended that Respondent offer these employees immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings suffered by reason of the discrimination against them, by payment to them of a sum of money equal to that which they would normally have earned, absent the discrimination, from the date of the discrimination to the date of the offer of reinstatement, less net earnings during such period, with backpay computed on a quarterly basis in the manner established by the Board in *F W. Woolworth Company*, 90 NLRB 289. Backpay shall carry interest at the rate of 6 percent per annum, as set forth in *Isis Plumbing & Heating Co*, 138 NLRB 716. It is further specifically recommended that Respondent restore their seniority standing on a plantwide basis to the full extent that it existed before Respondent's change in employment policy made effective on November 1, 1968, and notify Janco and Johnson in writing to such effect. It will also be recommended that Respondent preserve and make available to the Board, upon request, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary and useful to determine the amounts of backpay due and the rights of reinstatement under the terms of these recommendations.

Upon the foregoing findings of fact, and upon the entire record in the case, I make the following.

## CONCLUSIONS OF LAW

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

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By terminating Ernest M. Janco and Odie Johnson, Jr, and by reducing their seniority rights, thereby discouraging membership in the Union, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

4. By the foregoing, and by other acts and conduct interfering with, restraining, and coercing employees in the exercise of their rights guaranteed in Section 7 of the Act, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

## RECOMMENDED ORDER

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, it is recommended that Respondent, Anchor Wire Corporation of Tennessee, Goodlettsville, Tennessee, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Coercively interrogating employees concerning their union activities and sentiments; requesting or instructing employees to engage in surveillance or to act as informers regarding union activities of other employees, or threatening employees with discharge, job loss, or other reprisal for engaging in union activities.

(b) Discouraging membership in District Lodge No. 155, International Association of Machinists and Aerospace Workers, AFL-CIO, or in any other labor organization, by discharging employees, or reducing their seniority rights, or in any other manner discriminating in regard to hire or tenure of employment or any term or condition of employment.

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

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

(a) Offer Ernest M. Janco and Odie Johnson, Jr., immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings, in the manner set forth in "The Remedy" section of the Trial Examiner's Decision.

(b) Notify the above-named employees, in writing, that their seniority standing on a plantwide basis, as it existed prior to November 1, 1968, has been fully restored.

(c) Notify the above-named employees if presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

(d) Preserve and make available to the Board or its agents all payroll and other records, as set forth in "The Remedy" section of the Trial Examiner's Decision.

(e) Post at its Goodlettsville, Tennessee, plant, copies of the attached notice marked "Appendix."[27] Copies of said notice, on forms provided by the Regional Director for Region 26, shall, after being duly signed by Respondent, be posted immediately upon receipt thereof, in conspicuous places, and be maintained for 60 consecutive days. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material

(f) Notify the Regional Director for Region 26, in writing, within 20 days from the receipt of this Decision, what steps Respondent has taken to comply herewith.[28]

[27] In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals Enforcing an Order" shall be substituted for the words "a Decision and Order"

[28] 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 26, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith"

## APPENDIX

### NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

After a formal trial before a Trial Examiner of the National Labor Relations Board at which all sides had the chance to present evidence, it has been found that we violated the law and we have been ordered to post this

notice to inform our employees of their rights and to honor what we say in this notice

WE WILL NOT ask you anything about a Union or who is in the Union or who favors the Union in a manner which would coerce you regarding your rights under the Act.

WE WILL NOT ask any employee to spy on other employees and report to us who joins the Union or who works for it.

WE WILL NOT threaten to fire you, or punish you or treat you differently in any way, if you joined or worked for any Union.

WE WILL NOT discharge, or reduce the seniority rights, or otherwise discriminate against any employees in order to discourage membership or support for District Lodge No. 155, International Association for Machinists and Aerospace Workers, AFL-CIO, or any other labor organization.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed employees in the National Labor Relations Act, which are as follows:

To organize themselves.

To form, join, or help unions.

To bargain as a group through a representative they choose.

To act together for collective bargaining or other mutual aid or protection

To refuse to do any or all of these things.

Since it has been found that we unlawfully fired Ernest M. Janco and Odie Johnson, Jr., WE WILL offer to give them back their jobs and seniority, and WE WILL pay them for the earnings they lost, plus 6 percent interest.

WE WILL restore to Ernest M. Janco and Odie Johnson, Jr., their full seniority standing on a plantwide basis, as it existed before our change in employment policy made effective on November 1, 1968.

WE WILL notify Ernest M. Janco and Odie Johnson, Jr. if presently serving in the Armed Forces of the United States of their right to full reinstatement upon application, in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces

All of our employees are free to become or remain, or refrain from becoming or remaining, members of any union of their choice.

ANCHOR WIRE
CORPORATION OF TENNESSEE
(Employer)

Dated By
(Representative) (Title)

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

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 746 Federal Office Building, 167 North Main Street, Memphis, Tennessee 38103, Telephone 901-534-3161.