

Welsh Company of the South, Inc. *and* Aluminum Workers International Union, AFL-CIO. Case 15-CA-3834

April 30, 1971

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND KENNEDY

On December 22, 1970, Trial Examiner James F. Foley issued his Decision in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. He also found that Respondent did not engage in certain other unfair labor practices and recommended that these allegations of the complaint be dismissed. Thereafter, Respondent filed exceptions to the Trial Examiner's Decision. The General Counsel filed a brief in support of the Trial Examiner's Decision.

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

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and brief, and the entire record in the case, and hereby adopts the findings,¹ conclusions,² and recommendations of the Trial Examiner, as herein modified.

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 as modified below and hereby orders that Respondent Welsh Company of the South, Inc., Union Springs, Alabama, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's recommended Order, as so modified.

¹ In adopting the Trial Examiner's finding that Respondent discriminatorily discharged employees Parham and Jones because they engaged in union activity, we deem it unnecessary to rely on the background evidence concerning activity of supervisors other than Plant Superintendent Carlson. We find that there is sufficient evidence to support the unlawful discharge findings based upon Carlson's admission that he told Parham and Jones they were being given disciplinary layoffs for their union talk during working time.

² The Trial Examiner concluded that Respondent threatened employees and recommended a prohibition against threats. Finding no supporting evidence, we shall delete this provision.

1. Delete the words "and threatening" from paragraph 1(a) of the recommended Order.
2. Substitute the attached notice for the Trial Examiner's notice.

APPENDIX

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

WE WILL NOT interrogate employees, or give them the impression of surveillance, or otherwise interfere with, coerce, or restrain them in regard to their rights to become members of Aluminum Workers International Union, AFL-CIO, or any other labor organization, to engage in union or other concerted activity to assist this Union, or any other labor organization, or to select or authorize it or any other labor organization to act as their collective-bargaining representative.

WE WILL NOT discourage membership in the above Union, or any other labor organization, by discharging employees because they become or seek to become members of this Union, or any other labor organization, or assist it, or any other labor organization, or select or authorize it, or any other labor organization, to act as their collective-bargaining representative, or otherwise discriminate against them in regard to hire and tenure of their employment, or any term or condition of employment, for these reasons.

WE WILL NOT in any like or related 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 Union, or any other labor organization, to bargain collectively through representatives of their own choosing or to engage in any other concerted activities for the purpose of collective bargaining, or other mutual aid or protection.

WE WILL offer immediate reinstatement to Lillie Elizabeth Parham and Frances Marie Jones to their former jobs or, if these jobs no longer exist, to substantially equivalent jobs, and make them whole for any loss of earning they may have suffered because of the discrimination against them with interest at 6 percent per annum.

WE WILL notify immediately Parham and Jones if presently serving in the Armed Forces of the United States of their right to full reinstatement, upon application after discharge from the Armed Forces, in accordance with the Selective Service Act and the Universal Military Training and Service Act.

All our employees are free to become, or refrain from becoming, members of Aluminum Workers International Union, AFL-CIO, or any other labor organization.

WELSH COMPANY
OF THE SOUTH,
INC.
(Employer)

Dated _____ By _____ (Title)
(Representative)

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, T6024 Federal Building (Loyola), 701 Loyola Avenue, New Orleans, Louisiana 70113, Telephone 504-527-6367.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

JAMES F. FOLEY, Trial Examiner: This case, 15-CA-3834, was brought before the National Labor Relations Board (herein called the Board) under Section 10(b) of the National Labor Relations Act, as amended (herein called the Act), 61 Stat. 136, 76 Stat. 569, against Welsh Company of the South, Inc. (herein called Respondent), by a complaint issued August 11, 1970, and amended August 26, 1970, and answer filed October 5, 1970. The complaint is premised on a charge filed June 10, 1970, by Aluminum Workers International Union, AFL-CIO (herein called the Union).

It is alleged in the amended complaint that Respondent has violated Section 8(a)(1) of the Act by: (1) conduct of Plant Superintendent Leif Carlson on or about May 28, 1970, of interrogating an employee concerning the employee's "union activities, sentiments and desires," and creating the impression of surveillance of employees' union activities by stating to employees on two separate occasions that he knew they had been working for an organization other than Respondent, meaning a labor organization, by stating to an employee that he knew the employee had attended union meetings, and by stating to two employees on two separate occasions that he knew that the employees were discussing the Union on the job; and (2) Respondent, on or about May 28, 1970, discriminatorily promulgated a no-solicitation rule prohibiting union solicitation during working hours by employees at their work stations, or, in the alternative, discriminatorily enforcing such a no-solicitation rule.¹

It is also alleged in the amended complaint that on or about May 28, 1970, in violation of Section 8(a)(3) and (1) of the Act, Respondent discharged employees Lillie Elizabeth Parham and Frances Marie Jones "because of their membership

in, and activities on behalf of the Union, and to discourage union and other concerted activity on the part of its employees."

Respondent, in its answer filed October 5, 1970, denies the allegations of illegal conduct in the amended complaint.

A hearing on the amended complaint and answer was held before me on October 15, 1970, in Troy, Alabama. The parties were afforded an opportunity to present evidence, to make oral argument, and file briefs. Briefs were filed by General Counsel and Respondent, after the close of the hearing.

FINDINGS AND CONCLUSIONS

I THE BUSINESS OF RESPONDENT

Respondent, a corporation authorized to do business in Alabama, has a plant in Union Springs, Alabama, where it manufactures juvenile furniture and equipment. During the 12-month period preceding August 11, 1970, Respondent purchased goods and services with a value in excess of \$50,000, directly from points located outside the State of Alabama, and which were shipped directly to its Union Springs plant from outside Alabama, and sold goods valued in excess of \$500,000, consisting in part of goods with a value in excess of \$50,000, sold to customers located outside the State of Alabama, and shipped directly to their locations outside the State of Alabama from Respondent's plant in Union Springs, Alabama. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and assumption of jurisdiction of this case will effectuate the purposes of the Act.

II THE LABOR ORGANIZATION INVOLVED

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

III THE UNFAIR LABOR PRACTICES

A. *The Issues*

The issues in this case are limited to conduct of Leif Carlson, plant superintendent of Respondent. He testified in the hearing before me that when he gave notice on May 28, 1970, to Jones and Parham that they were terminated he told them that he knew they were agitating for an outside group that was trying to disrupt the Company, that this type of activity was legal as long as it was engaged in during breaktime, lunchtimes, before work, or any time else other than working time, but it was illegal when engaged in on working time. The questions to be decided are:

Do statements made by Carlson to employees Jones and Parham when he gave them notice they were discharged constitute the giving of an impression of surveillance, or interrogation, violative of Section 8(a)(1) of the Act?

Did Respondent by Carlson discriminatorily promulgate a no-solicitation rule or discriminatorily enforce a no-solicitation rule in violation of Section 8(a)(1) of the Act?

Did Respondent by Carlson discharge Jones and Parham for violation of a valid no-solicitation rule or for disrupting discipline and production, or did it discharge them, in violation of Section 8(a)(3) and (1) of the Act, because they engaged in organizational activity or other union activity?

¹ At the outset of the hearing, General Counsel, Respondent, and Charging Party stipulated that Respondent at its Union Springs plant neither maintained nor enforced a written rule which prohibited or in any way limited or restricted employees from engaging in union activities

B. Background Evidence²

1. Union activity

On May 19, 1970, Frances Marie Jones and Lillie Elizabeth Parham attended a meeting of a labor union identified as the Clothing Workers Union, and on June 1, 1970, attended a meeting of the Union. Jones, on May 18, 1970, asked two employees during working time if they were going to the union meeting the next evening. Parham also attended the May 19 union meeting. On a number of occasions, Parham talked about the Union to other employees during working time.

2. Surveillance by supervisors

On Thursday, May 21, 2 days after the May 19 union meeting, Jones attended, Jones was instructed by Mary Nell Hasson, assistant supervisor of the sewing line,³ to return to the job on the sewing line she held for the first 1-1/2 years of her 6 years and 3 months of employment. She had been holding the job of clipout girl for the last 4-3/4 years of her employment with Respondent. A clipout girl collected the work of five or six sewing machine operators and carried to them the materials on which they were to work.⁴

Jones and other employees congregated daily near their work stations in the interval between 12:20 p.m., the end of the lunch period, and 12:30 p.m., when working time resumed. After the May 19 meeting, Rita Chancey, production manager, came to this area daily until Jones was terminated on May 28, and sat down close to where Jones and other employees were sitting. She could overhear anything that was said. Myrtis Driggers, supervisor of the packaging table, asked employee Elizabeth Copes if she was going to the union meeting. Driggers asked her this question in May 1970 before Jones and Parham were discharged. The Union, identified as Clothing Workers Union, held its meeting on May 19 and the Union held its meeting on June 1. Driggers appears to have been referring to the June 1 meeting.

Jean Driggers, supervisor of the sewing line, said to Zola Maureen Riley shortly after she returned to Respondent's employment on June 1, 1970, "I hear you've been talking union on the floor." Riley replied that no one said anything to her about not talking union on the floor. She also said that the two women to whom she had been talking asked her about the Union. Driggers had assigned her to the examining table when her machine broke down. While she was working there two women asked her about the Union. When Riley's machine was fixed, she went back to it and resumed operating it. It was about 30 minutes later that Driggers accused her of talking union on the floor. After Riley had said to Driggers

that the women had asked her about the Union, Driggers said to her, "Well, you'll be fired if you talk union on the floor. I can tell you something else. If you don't make 100% this week you're going to be fired anyway." Riley had not worked for Respondent for 6 years prior to her return on June 1, 1970. A Mrs. Reynolds of Respondent's office had telephoned her and, when Riley returned the call, Reynolds asked her if she would be interested in returning to work. Riley replied that she would have to talk to Plant Manager Carlson first. She had a conversation with Carlson the next day, and he promised certain inducements if she would return to Respondent's employ. He said he needed her. She was hired as a sewing machine operator.

C. Evidence of Alleged Illegal Conduct

As stated, on May 28, 1970, Plant Superintendent Carlson terminated the employment of Jones and Parham. He testified he stated to them that the terminations were not final as he wished to check with Respondent's St. Louis office to see if he was acting properly in terminating them for talking about a union during working time. He would let them know if they were to return to their jobs. Carlson also testified he checked with his head office and found he acted properly, and thereupon decided they were discharged permanently. He did not notify them of this final decision he testified he made. They did not return to the plant or take any other action to inquire about the permanence of their discharge.

1. Testimony of Jones, Parham, and Carlson about the discharge

As stated, Jones testified that on May 19, 1970, she asked two employees at different times during working hours if they were going to attend the union meeting to be held by the Clothing Workers Union on May 19, 1970, and that she attended this meeting. She testified this was the extent of her union activity. She denied she engaged in any organizational activity on behalf of this union. She testified she learned that this union could not represent the employees of Respondent. Jones denied she said anything to anybody during working time about what took place at the May 19 union meeting. She attended a meeting of the Union on Monday, June 1, 1970, but that was 5 days after her discharge on May 28, 1970.

Jones testified that on Thursday, May 28, 1970, which was payday, Jean Driggers, her supervisor, did not give her her check when she distributed the checks, but said that Carlson wished to see her in his office. She went to his office and waited there 15 to 20 minutes. Driggers and Rita Chancey, the production manager, came into the office. Carlson then talked to her in the presence of Driggers and Chancey.

Jones testified that Carlson said to her he heard she had been trying to get another organization, and she replied that she did not know who was giving him this information, but it was the wrong information. He said to her she need not come to work on Monday, that he was laying her off, and would let her know when she was to come back in. Jones testified she recalled that she went to the meeting of the Clothing Workers Union, but that union could not represent the plant's employees. She left the plant and never came back.

As stated, Carlson testified he said to Jones he "understood she was agitating for an outside force, group. Is this true?" and she denied she was. He said to her he had people willing to swear in court she was. He then said to her that this type of activity was perfectly legal from the company standpoint, the Federal Government standpoint, and from the labor business standpoint as long as it was conducted during break-times, lunchtime, before work, or any time else except during work, which time was his time and it was supposed to be devoted to work. As stated, Carlson then testified that he said

² Respondent employs between 165 and 180 rank-and-file employees, and an additional number of supervisory employees. General Counsel introduced evidence of conduct by supervisors hostile to union organization. This conduct is not alleged in the amended complaint as violations of the Act. Respondent did not litigate it. I received it as part of the background evidence, and have considered it in reaching my decision on the conduct that is in issue.

³ All persons referred to as supervisors were identified as supervisors in notices signed by Carlson which were posted on the bulletin boards where notices to employees were posted. Hasson was identified as assistant supervisor in the same type of notice. She was in charge of the sewing line in the absence of Jean Driggers, the supervisor. The supervisors were in charge of groups of employees, and responsibly directed them. I find that the supervisors and Assistant Supervisor Hasson were supervisors within the meaning of Section 2(11) of the Act.

⁴ There is no evidence that Jones received a reduction in pay on the change in jobs. However, on the sewing assignment she had less contact with other employees during working time than she had when she serviced the five or six employees as a clipout girl.

he did not know "the status of a case of this nature" and would have to check with his people in St. Louis. He testified he further said she was on a disciplinary layoff, and he was not firing her. Carlson testified he checked with St. Louis, and then fired her. Jones testified on cross-examination she did not recall Carlson saying on May 28 that she could talk about anything on her time, or his saying that what she did on breaks and lunchtime was up to her.

Parham testified that she attended the meeting of the Clothing Workers on May 19, 1970, and that she attended the meeting of the Union on June 1, 1970. She had been employed 5 years when she was terminated on May 28, 1970. At the time of discharge she was running a riveting machine, and had been putting trays on "buggies" for about a week before May 28. Her supervisor was Sue Calhoun. Calhoun gave her her check after she gave checks to the other employees under her supervision. She said to Parham that Carlson wished to see her. She waited for Carlson. After a brief wait Carlson, Chancey, and Calhoun appeared. According to Parham, Carlson said, that he understood she had been talking about a union organization, and that she knew he was not going to stand for anything like that. He then said she had a right to talk about a meeting or a union organization on her own time, but was not allowed to talk union organization of any kind during working hours.

Parham testified that she said to Carlson that if she was talking union during working hours she did not know when it was because she had been so busy at the end of the conveyor belt catching buggies that she did not have time to talk to anybody. Parham testified, however, after being shown a statement she gave a representative of the Board's Regional Office on July 7, 1970, that she recalled that she discussed unions during working time on several occasions, but did not recall what she said or when the discussions took place. She also testified what she said or when the discussions took place. She also testified that at the ending of the Thursday, May 28, conversation Carlson said he was not firing her for talking union during working hours, that he was just laying her off. But he told her not to report for work on Monday, and that he would let her know when to come in after he checked with his advisors.⁵ Lillie testified he never called her back.

Carlson testified that in the May 28 conversation with Parham he said to her that he understood she was working for an outside force, group, and Parham said, "What do you mean?" He replied, "For an outside force that is trying to disrupt the Company." He asked her if she understood what he meant, and if it was true, and she answered she understood, and admitted that it was true. Carlson testified that he then said to Parham "Lillie this is illegal from company's standpoint, a Federal Government standpoint and from the labor standpoint when it's done on company time. You are free to do this on your breaks, lunch, after hours." He then said to Parham he did not know "the status of this type of thing," that it had never come up before, and he would have to check with their legal people in St. Louis about it, and would let her know. He told her it would not be necessary for her to return to work, that she was on disciplinary layoff, although she was not fired. According to Carlson, he checked with his headquarters in St. Louis, and, as a result, terminated her employment.

Carlson testified that he had a similar experience with an employee by the name of Jesse Guice a few days before May 28, and that he checked with St. Louis regarding this situation, and after doing so terminated him. In response to his

counsel's question eliciting Respondent's policy or rule with respect to nonwork activities during working hours, Carlson testified that working hours were supposed to be time worked. In response to his counsel's question asking whether other employees had been terminated for talking about non-working activities during working time, Carlson answered that other employees had been terminated for such a reason, and referred to Betty Rotten who had been discharged in 1962 or 1963 for "continually talking." Carlson further testified that there were at least four or five others whose names he could not remember who were discharged over the prior 10 years for the same reason.⁶

Carlson, on cross-examination, testified that in the conversations he had with Jones and Parham when he terminated them on May 28, 1970, he discussed with employees for the first time when they could and could not discuss union organization. He testified that he had no knowledge that any of his supervisors had ever discussed this subject with employees. Jones and Parham testified that prior to the discharge on May 28, they had never had reprimanded orally or in writing or disciplined in regard to the quality or quantity of their work, work output, or their conduct as employees. This testimony of Jones and Parham is rebutted.

2. Other oral testimony relevant to Jones' and Parham's discharge

Employees Jones, Parham, Renfroe, Copes, Riley and Banks, as witnesses for the General Counsel, gave rebutted testimony they had no knowledge of any rule banning talking during working time, that supervisors talked to rank-and-file employees and rank-and-file employees talked among themselves about nonwork subjects during working time, and that collections for flowers, wedding presents, birthday presents, going away presents, and Christmas presents were taken up during working time by rank-and-file employees with permission of supervisors and by the supervisors themselves. Jones also testified that Jean Driggers said to her and other employees not to talk when Welsh, an official of Respondent, was in the plant. Renfroe also testified that Rita Chancey in April 1962 or 1963 said not to talk too much on the job.

ANALYSIS AND FINDINGS AND CONCLUSIONS OF FACT AND LAW⁷

In the May 28, 1970, conversation Respondent's Plant Superintendent Carlson had with employee Jones, he asked her if it was true she was engaging in union activity. And he said to her that he had employees willing to swear in court she was engaging in it. Jones was shopping around for a union to represent Respondent's employees. She attended a meeting on May 19, 1970, of a union she identified as a clothing workers union, and asked two employees at different times on May 18, 1970, if they were going to the May 19 meeting.

⁶ Carlson testified that Respondent's filing system would disclose the identity of these four or five persons. He further testified that he secured affidavits from other employees about Jones and Parham on June 13, 1970, after they were terminated, and after July 12, 1970, when Respondent received notice that an unfair labor practice charge had been filed against it. I do not consider Carlson's testimony that Respondent's files would disclose the identity of the four or five employees to be probative evidence. Carlson's testimony that he secured statements about Jones and Parham and their union activity on working time raises a question as to whether he violated Sec 8(a)(1) and (4) in securing the affidavits. Since this matter was not litigated I do not pass on it. In any event, I do not consider this testimony as testimony favorable to Respondent's case.

⁷ All credibility conflicts have been resolved and findings of fact made after evaluation of demeanor and oral testimony of the witnesses in the context of the record as a whole.

⁵ Memorial Day was on Saturday, May 30. The employees did not work on Saturday, so Friday, May 29, was the nonwork day.

Jones testified she learned that this union could not represent employees in Respondent's plant. Jones also attended a meeting of the Union on June 1, 1970, 5 days after she was terminated. Carlson referred to Jones' efforts in seeking a union and to the union she was seeking as agitating for an outside force.

Carlson, in the conversation he had with Parham on May 28, 1970, asked Parham if it was true that she was working for an outside force that was trying to disrupt the Company. As in the case of his statements to Jones, it is clear from the evidence that Carlson in referring to an outside force was referring to a labor organization. Parham attended the May 19, 1970, union meeting, and discussed union organization on several occasions with other employees during working time.

I find and conclude that Respondent' by Carlson's conduct has violated Section 8(a)(1) of the Act by illegal interrogation and the illegal giving of an impression of surveillance.⁸

Respondent stipulated with General Counsel and Charging Party that Respondent neither maintained nor enforced a written rule which prohibited or in any way limited or restricted employees from engaging in union activities. Plant Superintendent Carlson testified that the time he said to Jones and Parham on May 28, 1970, they had a right to engage in union activity on their own time but not on working time, as part of the explanation for their discharges, he was speaking to employees for the first time about engaging in union activity on working time. He also testified that to his knowledge none of his supervisors had discussed this subject with employees. Jean Driggers, shortly after June 1, 1970, threatened employee Riley with discharge if she talked about the Union during working time.

I find and conclude that on this evidence Respondent has not promulgated or enforced a no-solicitation rule, valid or invalid, and, therefore, did not violate Section 8(a)(1) of the Act by promulgation of a discriminatory no-solicitation rule or discriminatorily enforcing a no-solicitation rule. The evidence discloses the complete absence of a rule, written or oral, prior to Carlson's conversations with Jones and Parham on May 28. It also discloses that Carlson's statements to Jones and Parham were not, and were not intended to be, the promulgation of a rule. Promulgation means an open declaration, proclamation, or announcement. Carlson's statements to Jones and Parham in separate conversations, even though two supervisors were present in each instance, that they were being given disciplinary layoffs, which I find were discharges, for talking about union organization or the seeking of union representation during work time, were not an open declaration, proclamation, or announcement to employees generally or to a class or group of employees. A rule may be promulgated orally by its announcement to a group in a meeting or gathering or even by a series of individual warnings. This is not the case here. Moreover, the promulgation must precede the imposition of discipline for its violation. In this case, the discipline was imposed simultaneously with the statements that an employee may not talk union during working time.⁹

As I have found, Respondent's Plant Superintendent Carlson told employees Jones and Parham on Thursday, May 28, 1970, not to report for work on the next workday which was June 1, 1970, or thereafter until he let them know they were to report for work. Neither Carlson nor any other representative of Respondent communicated with them thereafter to tell

them to report for work or that they were permanently discharged. Carlson's testimony is that he was giving them disciplinary layoffs for talking about organizing a union during working time. The disciplinary layoffs were in fact discharges with the built-in protection of his being able to put them back to work if his superiors ordered him to do so. However, they endorsed his conduct.

The evidence favoring General Counsel presents a *prima facie* case that Respondent discharged Jones and Parham to defeat union organizational activity, and its consequence of membership in a union, in violation of Section 8(a)(3) and (1) of the Act. There is the testimony of Jones' and Parham's union activity; the testimony of Carlson as to what he said to Jones and Parham on May 28, 1970, when he discharged them; the testimony of Jones and Parham relating to their conduct during working time, disclosing that while they talked during working time they did not engage in talking and other conduct to the extent they interfered with efficiency, production, or discipline; the background evidence showing Respondent's hostility to the organizing of a union or seeking union representation and the un rebutted testimony of General Counsel's witnesses including Jones and Parham that Respondent did not have a rule dealing with talking during working time, that employees talked during working time among themselves and with their supervisors about nonwork subjects, and that the employees were only told not to talk too much on the job or while Welsh, an official from St. Louis, was in the plant; and that collections for flowers and presents were taken up during working time by rank-and-file employees with the permission of supervisors, and by the supervisors themselves.¹⁰

It became the burden of Respondent upon this showing by General Counsel to advance legitimate and substantial business reasons for the discharge to avoid liability for violating Section 8(a)(3) and (1) of the Act.¹¹ Respondent, however, did not contend that Jones and Parham interfered with efficiency, discipline, or production by their talking about the organizing of a union or seeking union representation during working time, or present evidence that this situation occurred. Neither did Respondent advance any other legitimate and substantial business reasons for the discharges. It made no attempt to advance evidence rebutting the evidence advanced by General Counsel. It corroborated the testimony that the employees were told not to talk too much during working time by the testimony that Respondent discharged an employee for continually talking during working time. This is the only probative evidence it furnished that related to this matter.

Respondent relies on the legal argument that working time belongs exclusively to Respondent, that only conduct relating to work may be engaged in during working time, and the engaging in talk relating to the organizing of a union or the seeking of union representation during working time is by its nature disruptive and grounds for discharge. Respondent, in its brief, supports this position by a quotation from *Peyton Packing Company, Inc.*, 49 NLRB 828,¹² in which the Board states that working time is for work, and therefore it is within the province of an employer to promulgate and enforce a rule

¹⁰ *Kamp Togs, Inc.*, 148 NLRB 196; *Cotton Lumber Company*, 182 NLRB No. 43; *N.L.R.B. v. Tru-Line Products Company*, 324 F.2d 614, 616 (C.A. 6), cert. denied 377 U.S. 906, enfg. 138 NLRB 964; *N.L.R.B. v. D'Armigene, Inc.*, 353 F.2d 406, 409-411 (C.A. 2), enfg. 148 NLRB 2; *N.L.R.B. v. WTWJ, Inc.*, 268 F.2d 346, 347-348 (C.A. 5), enfg. 120 NLRB 1180; *Ames Ready Mixed Concrete, Inc.*, 170 NLRB No. 174, enf. 411 F.2d 1159 (C.A. 8).

¹¹ *N.L.R.B. v. Great Dane Trailers*, 388 U.S. 26, 34; *N.L.R.B. v. Fleetwood Trailer Co.*, 389 U.S. 375; *N.L.R.B. v. Duncan Foundry and Machine Works*, 75 LRRM 2781 (C.A. 7), enfg. 176 NLRB No. 31.

¹² Enf. 142 F.2d 1009 (C.A. 5), cert. denied 323 U.S. 430.

⁸ *Mobile Paint Manufacturing Company of Delaware, Inc.*, 168 NLRB 783; *Skaggs Transfer, Inc.*, 185 NLRB No. 91; *Struksnes Construction Co., Inc.*, 165 NLRB 1062; *N.L.R.B. v. South Bay Daily Breeze*, 415 F.2d 360 (C.A. 9), enfg. 160 NLRB 1850.

⁹ See *Peyton Packing Company, Inc.*, 49 NLRB 828, enf. 142 F.2d 1009, cert. denied 323 U.S. 430.

prohibiting union solicitation during working hours, and that such a rule must be presumed to be valid in the absence of evidence that it is adopted for a discriminatory purpose. This is the law on the promulgation of a no-solicitation rule. As the Board states in the matter quoted the validity of the rule may be rebutted.¹³ In any event, this particular quotation from *Peyton Packing* is inapposite, as I have found there was not any no-solicitation rule. The sincerity of this defense is very questionable by reason of the un rebutted testimony that Respondent permitted nonunion talk during working time between rank-and-file employees and between rank-and-file employees and supervisors, and permitted collections for flowers and presents during working time by rank-and-file employees with permission of supervisors and by the supervisors themselves.

Respondent's second defense that talk about unions during working time is *per se* disruptive and grounds for discharge also lacks merit. Section 7 of the Act gives to employees a statutory right to engage in organizational and other union activity. There is not a condition attached to this right that it may not be engaged in in working areas during working time. On the other hand, Congress did not intend that it take precedence over the employer's right to protect his property. The Board and courts have held that there must be an accommodation between the right of the employees and the right of the employer. They have held that in the absence of a valid no-solicitation rule this accommodation is expressed in the principle that employees may engage in union activity in working areas during working time if it does not interfere with efficiency, discipline, or production. A discharge for engaging in union activity in a working area during working time is an unfair labor practice if the evidence discloses that it stemmed from hostility to union activity, and therefore to union membership, a consequence of it, and not from interference with or disruption of efficiency, discipline, or production.¹⁴

There is a complete absence of any evidence that shows that Jones' and Parham's union activity interfered with efficiency, discipline, or production, while on the other hand there is substantial evidence that Respondent is hostile to union activity, union membership, and union representation, and discharged Jones and Parham because they engaged in union activity, with the consequences of union membership and representation, to discourage membership in a union.

For the above reasons, I find and conclude that Respondent violated Section 8(a)(3) and (1) of the Act by discharging Jones and Parham on May 28, 1970.¹⁵

Respondent takes exception to my ruling in granting a motion for separation of witnesses that Jones and Parham, dischargees, could remain in the hearing room during the testimony of other witnesses. This ruling was within my discretion. See *TIL Sportswear Corp.*, 131 NLRB 176, 177, fn. 1, affd. 302 F.2d 186 (C.A.D.C.). Respondent also appears to take exception to my questioning of witnesses on matters initiated or opened up by counsel. I find my questions to be within the authority given me in Section 102.35 of the Board's Rules and Regulations, Series 8, as amended, and Section 101.10(a) of the Board's Statements of Procedure, Series 8, as amended.

¹³ See also *Republic Aviation Corporation v N.L.R.B.*, 324 U.S. 793, *Stoddard-Quirk Manufacturing Co.*, 138 NLRB 615, *Walton Manufacturing Company*, 126 NLRB 679, enf'd 289 F.2d 117 (C.A. 5).

¹⁴ *Stoddard-Quirk Manufacturing Co.*, 138 NLRB 615, *Greentree Electronics*, 176 NLRB No. 127, enf'd 75 LRRM 2656 (C.A. 9)

¹⁵ Cases cited in fn 10

IV THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with operations described in section I, above, have a close, intimate, 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.

THE REMEDY

In order to effectuate the policies of the Act, I find that it is necessary that the Respondent be ordered to cease and desist from the unfair labor practices found and from like or related invasions of the employees' Section 7 rights; to take certain affirmative action, including the offering of reinstatement to Lillie Elizabeth Parham and Frances Marie Jones, with backpay computed on a quarterly basis, plus interest at 6 percent per annum, as prescribed in *F. W. Woolworth Company*, 90 NLRB 289, and *Isis Plumbing & Heating Co.*, 138 NLRB 716; and to post appropriate notices.

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

CONCLUSIONS OF LAW

1. Respondent is an employer within the meaning of Section 2(2) of the Act and 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. Respondent, in violation of Section 8(a)(1) of the Act, has interrogated and threatened employees; and has given an impression of surveillance, with respect to their rights under Section 7 of the Act to become members of a union, engage in union activity, and select and authorize a union to be their collective-bargaining representative.

4. Respondent, in violation of Section 8(a)(3) and (1) of the Act, discriminatorily discharged employees Lillie Elizabeth Parham and Frances Marie Jones because they engaged in union activity to become members of a union and to select and authorize a union to be their collective-bargaining representative.

5. Respondent did not promulgate a discriminatory no-solicitation rule or seek to enforce discriminatorily a no-solicitation rule as alleged in the complaint, and this allegation in the complaint should be dismissed.

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

Upon the foregoing findings of fact and conclusions of law, and the entire record and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER¹⁶

Respondent Welsh Company of the South, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating and threatening employees and giving them the impression of surveillance, in regard to their rights to become members of a union, to engage in union activity, and to select and authorize the Union, or any other labor

¹⁶ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 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

organization, to act as their collective-bargaining representative.

(b) Discouraging membership in the Union or any other labor organization, by discharging employees because they engage in union activity to become members of the Union, or any other labor organization, or to select or authorize the Union, or any other labor organization, to act as their bargaining representative, or otherwise discriminate against them in regard to the hire and tenure of their employment or any term or condition of employment for the above-stated reasons.

(c) In like or related manner interfering with, restraining, or coercing employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist the 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, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

2. Take the following affirmative action which I find will effectuate the purposes of the Act:

(a) Offer immediate reinstatement to employees Lillie Elizabeth Parham and Frances Marie Jones to their former jobs or, if those jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority and other rights and privileges, and make them whole for any loss of earnings they may have suffered by reason of the discrimination against them with interest at 6 percent per annum, as provided in the above section identified as "The Remedy."

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

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll

records social security payment records, timecards, personnel records and reports, and all other records relevant and material to Respondent's compliance with the provisions of this Order.

(d) Post at its plant and office in Union Springs, Alabama, copies of the attached notice marked "Appendix."¹⁷ Copies of said notice, on forms provided by the Regional Director for Region 15, 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.

(e) Notify the Regional Director for Region 15, in writing, within 20 days from the date of the receipt by the Respondent of this Trial Examiner's Decision and Recommended Order, what steps the Respondent has taken to comply therewith.¹⁸

IT IS RECOMMENDED that unless on or before 20 days from the date of the receipt of this Trial Examiner's Decision and recommended Order the Respondent notifies the Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the Respondent to take the action aforesaid.

IT IS FURTHER RECOMMENDED that the complaint, insofar as it alleges a violation of Section 8(a)(1) of the Act by the promulgation of a discriminatory no-solicitation rule or discriminatory enforcing a no-solicitation rule be dismissed.

¹⁷ 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."

¹⁸ In the event that this recommended Order is adopted by the Board after exceptions have been filed, this provision shall be modified to read: "Notify the Regional Director for Region 15, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply therewith."