

**Zenith Plastics Company and Textile Workers Union  
of America, AFL-CIO-CLC. Case 8-CA-6071**

June 7, 1971

**DECISION AND ORDER**

BY CHAIRMAN MILLER AND MEMBERS JENKINS  
AND KENNEDY

On February 23, 1971, Trial Examiner Arthur Leff 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 a certain other unfair labor practice and recommended that that allegation of the complaint be dismissed. Thereafter, Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief.<sup>1</sup>

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,<sup>2</sup> conclusions, and recommendations of the Trial Examiner.

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Trial Examiner and hereby orders that Respondent, Zenith Plastics Company, Cleveland, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's recommended Order.

IT IS FURTHER ORDERED that the alleged violation not herein found be, and the same hereby is, dismissed.

<sup>1</sup> The Respondent's request for oral argument is hereby denied as the record, the exceptions, and the brief adequately present the issues and positions of the parties.

<sup>2</sup> The Respondent excepts to certain credibility resolutions made by the Trial Examiner. It is the Board's established policy not to overrule a Trial Examiner's resolutions as to credibility unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. Such a conclusion is not warranted here. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enf'd 188 F.2d 362 (C.A. 3)

**TRIAL EXAMINER'S DECISION**

STATEMENT OF THE CASE

ARTHUR LEFF, Trial Examiner: Upon a charge filed on October 13, 1970, and an amended charge filed on November 16, 1970, by Textile Workers Union of America, AFL-CIO-CLC, herein called the Union, the General Counsel of the National Labor Relations Board, by the Regional Director of Region 8, issued a complaint, dated November 23, 1970, against Zenith Plastics Company, herein called the Respondent, alleging that the Respondent had engaged in unfair labor practices within the meaning of Sections 8(a)(1) (3) and (4) and 2(6) and (7) of the National Labor Relations Act, as amended. The Respondent filed an answer denying the commission of the alleged unfair labor practices. A hearing was held on January 25, 1971, at Cleveland, Ohio. At the close of the hearing the parties argued the issues orally on the record. Thereafter the General Counsel and the Respondent filed briefs.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I THE BUSINESS OF THE RESPONDENT

The Respondent, an Ohio corporation, with its principal office and place of business at Cleveland, Ohio, is engaged in the manufacture of plastic components. Annually, the Respondent receives goods at its Cleveland, Ohio, plant valued in excess of \$50,000 transported directly from States of the United States other than the State of Ohio. Respondent admits that it is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. It is so found.

II THE LABOR ORGANIZATION INVOLVED

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

III THE UNFAIR LABOR PRACTICES

A. *The Issues as Framed by the Pleadings*

Except for a single item of alleged independent 8(a)(1) conduct,<sup>1</sup> which is at most of minor import, this case is concerned solely with the Respondent's alleged discriminatory suspension and subsequent discharge of employee Maria Djokic. The complaint avers in substance that the Respondent, on October 12, 1970, suspended Djokic because of her union activities, and, on or about October 15, 1970, discharged her both for that reason and because she had in the meantime filed an unfair labor practice charge. The Respondent in its answer admits that on October 12, 1970, it suspended Djokic ("laid [her] off for a period of approximately one week"). But it affirmatively asserts that it did so only to give it "an opportunity to investigate and evaluate complaints made against Djokic by various employees" that she had "threatened employees with the loss of their jobs unless they voted for the Union" in a Board election that had been conducted 3 days earlier. As for the alleged discriminatory discharge, the Respondent in its answer denies that it ever discharged Djokic. It affirmatively alleges that Djokic, instead, "elected to terminate her own employment" on October 13, 1970, when the Union, in her behalf, filed its original unfair labor practice charge accusing the Respondent, falsely ac-

<sup>1</sup> To the effect that the Respondent, on October 2, 1970, forced an employee (Maria Djokic) to post union literature on her machine

ording to the answer, of having terminated Djokic's employment because of her union activities.<sup>2</sup>

### B. *The Relevant Facts*

Maria Djokic, prior to her suspension on October 12, 1970, had worked for the Respondent as a machine operator on its second shift for a period of some 6 years. Her competency as an employee is not questioned in this proceeding. Possibly because of her somewhat greater familiarity with the English language, Djokic was considered a leader among the female employees on the second shift, all or most of whom, unlike the employees on the first shift, were immigrants of Croatia origin.

During August and September of 1970, the Union conducted an organizational campaign among the Respondent's employees. The campaign culminated in a consent election, held on October 9, 1970, which was lost by the Union. Djokic played a prominent role in that campaign. She provided the use of her home for union meetings, read and explained union literature to her fellow employees, solicited employee signatures to union designation cards, and aided employees in filling out such cards. Djokic was present at the meeting at the Board's Regional Office at which the agreement was reached for a consent election. At the election she served as the Union's observer.

During the course of the campaign, Djokic was involved in the only incident alleged in the complaint to constitute an independent violation of Section 8(a)(1). It may be well first to dispose of that allegation before considering and evaluating the evidence bearing more directly on the alleged 8(a)(3) and (4) allegations which lie at the core of this case. The incident in question occurred on October 2, a week before the election. The union organizer had distributed that day to employees a union leaflet containing caricature drawings of Fred N. Acker, the Respondent's president, depicting him as concerned over the outcome of the election and also as one whose promises could not be relied on. Acker brought a copy of the leaflet to Djokic's place of work, posted it on her machine, and directed her to keep it there. When Djokic protested that she was not responsible for the leaflet, Acker, according to Djokic's uncontradicted testimony, called her "the biggest liar in this world." The leaflet remained posted on Djokic's machine for the balance of that shift; it was gone the following day. The evidence concerning this incident is cloudy and it is difficult to tell what motivated Acker to post the leaflet. Certainly, his purpose could not have been to promote the Union's cause; his overall testimony leaves little doubt that he was opposed to the organization of the Respondent's employees by the Union. One may infer that his action was prompted by a desire to show his disdain for the Union and its propaganda and at the same time to deride and possibly embarrass Djokic before her peers. But even so, although Acker's posting of the notice on Djokic's machine and his accompanying remarks may fairly be viewed as evidencing his hostility toward Djokic, I do not think this is sufficient to support a finding of unlawful coercion. I shall accordingly recommend that this allegation of the complaint be dismissed.

We come then to the facts bearing more immediately on the alleged 8(a)(3) and 8(a)(4) violations. As noted above, the election, at which Djokic served as the Union's observer, was

held on Friday, October 9, 1970. Djokic did not work that day, since the election ran into the second shift. Her next workday was Monday, October 12. On her arrival at the plant that day, she found her timecard missing from its rack. Upon inquiry of her foreman, she was told that Acker had left instructions for her to report to his office.

Acker informed Djokic, when she presented herself at his office, that he was laying her off for a week because he wanted to conduct an investigation to determine whether she had "violated the law" during the preelection period. He told her he understood that there had been complaints by various employees that she had threatened them with loss of their jobs if they did not vote for the Union. He added that he did not himself know whether or not there was any validity to these complaints because he had not yet talked to any of the people who had reportedly made them, but that he believed an investigation to be in order. The meeting that day lasted approximately half an hour, and the conversation expanded beyond the suspension notice. In the course of their meeting Acker told Djokic that he knew she had been the leading agitator for the Union and had pushed employees to support the Union. He stated that employees in the plant had theretofore been "like one family," and charged Djokic with responsibility for creating disharmony in that relationship. Acker also accused Djokic of having lied to him in the past about the extent of her involvement with the Union and at least implied, if he did not actually state, that she had broken an earlier promise she had made not to get mixed up again with the Union. The last had reference to an unsuccessful organizational campaign at the Respondent's plant that the Union had conducted some 2 years before. At that time, Djokic, fearing possible reprisal, had voluntarily gone to Acker's office and had represented to him that her role in that campaign was simply a passive one, although Acker—at least so he told Djokic—knew very well that she had also been a leader at that time and had held meetings at her home.<sup>3</sup>

On October 13, 1970, the day following Acker's layoff announcement to Djokic, the Union filed the original charge in this proceeding, alleging in substance that the Respondent had unlawfully terminated Djokic's employment because of her union activities. The charge was served on the Respondent on October 15, 1970.

Thereafter, Djokic had one further contact with Acker. The Respondent's employees have Blue Cross hospitalization coverage under a noncontributory plan; i.e., one in which the premiums are paid out of the employees' wages. About a week after her layoff, Djokic, concerned about a premium payment which was then due, sent a message to her foreman inquiring about her "hospitalization." The foreman sent word back that she could come into the plant the next day to pay her premium. When she came in she saw Acker. She

<sup>3</sup> The findings in this paragraph are based on a synthesis of the testimony of Djokic and of Acker, to the extent credited. There are some variations in the respective accounts of Djokic and Acker as to what was said at Acker's office that day. Save in one respect, however, they do not appear to be substantial, relating mainly to shadings in emphasis, the sequence in which particular statements were made, and what comments by one party to the meeting prompted comments by the other. The substantial disagreement centered about whether Acker told Djokic that employees had accused her of having threatened them with loss of their jobs if they did not vote for the Union. Djokic flatly denied that he did. According to her account, Acker merely referred to her having "violated the law," without being more specific in this regard, and did not go into detail when she questioned him about it. Although Djokic appeared while testifying to be sincere and strong in her conviction that no more was said on this point, it seems to me highly improbable that Acker would have referred to an investigation without also describing the nature of the complaints leading to it. Consequently, I accept his version on this conflict.

<sup>2</sup> The amended charge, filed on November 16, 1970, alleges, as does the complaint, that the Respondent's original action as to Djokic was a suspension rather than a discharge. As to this, the Respondent's answer alleges that Djokic's "attempt to reverse her own act by filing an amended petition [sic] is of no avail. She cannot quit the Company on October 13 and then on November 16 decide she made the wrong decision."

protested to Acker that her layoff had now been extended to its second week although he had told her he was laying her off for just 1 week, and she asked him how she could be expected to pay her hospitalization when she was not working and had no money. In response, Acker told her that it was not true he had laid her off for just 1 week; that he had laid her off for the period required to conduct an investigation; and that—in Djokic's words while testifying—"now you be in trouble while you make charges against me by Labor Board"<sup>4</sup>

Shortly after that meeting, Djokic sent the Respondent money to cover her Blue Cross premium for the month of October and also did so when her premium for the following month fell due. The Respondent accepted Djokic's payments on these occasions. However, when Djokic tendered payment of her December premium, the Respondent's payroll clerk refused to accept it, stating that she had been directed by Acker not to accept any further payments from Djokic. Acker explained while testifying that the Respondent's group policy with Blue Cross did not allow coverage for employees who were off the Respondent's payroll for more than 60 days.

Djokic has never been recalled to work by the Respondent. Nor, so far as appears, was she ever directly advised by the Respondent that her layoff status had been converted to something else.

The reason given by the Respondent at the hearing for its suspension of Djokic is substantially the same as that stated to her by Acker on October 12. As appears from Acker's testimony, the decision to suspend Djokic was his alone. When he notified Djokic that he was suspending her to conduct an investigation of employee complaints lodged against her, his only knowledge of the complaints was derived from the payroll clerk who had reported to him that two employees, Edna Wiley and Martha Hamilton, had voiced such complaints.<sup>5</sup> Up to that time, Acker, by his own account, had not himself spoken to either of these complaining employees, had made no effort to check out the veracity of their complaints, and did not know whether or not the complaints could be substantiated. As to why he considered it necessary to suspend Djokic while conducting his investigation, Acker could only say that after 6 or 7 weeks of "turmoil" in the plant during the organizational period "there was a very, very stong feeling against her by some women;" that he "thought it would embarrass [Djokic] if she knew she was being investigated," and that he thought "this was the more polite, dignified way to do the [investigatory] job."

Acker testified that after suspending Djokic he conducted an investigation by interviewing some 5 or 6 employees, starting with Edna Wiley who "was the one who had actually come to the office and said [Djokic] was threatening her with the loss of her job." Only Wiley and Martha Hamilton, he testified further, gave him any information which might be considered of probative value; the accounts given by the

others, he discovered, were based solely on hearsay and rumor. Acker's testimony reflects that his interrogation of Wiley and Hamilton occurred before he received the charge.

To support Acker's account of what he had learned from Wiley and Hamilton, the Respondent called these employees as witnesses.

Wiley, an employee strongly opposed to the Union, testified that about a week before the election Djokic told her, "If you don't sign a contract for the Union you will be fired." Djokic's remark, she added, did not disturb her because she knew better.

Hamilton testified that in a conversation with Djokic during the week preceding the election, after she had explained to Djokic that she was unwilling to sign a union card because her boyfriend had advised her not to get involved, Djokic told her, "Well, I feel sorry for the girls that don't sign, especially you older women that can't get a job somewhere else when the Union gets in." Hamilton, as appears from her testimony, reacted to Djokic's remark by inquiring of Acker, "If the Union gets in, do we have to—you know, the ones that don't sign, do we have to join the Union?" to which Acker responded, "Yes in a period of time."

Djokic denied that she ever told Wiley that she would get her fired if she did not vote for the Union or that she ever threatened Wiley in any other way, and I credit Djokic's testimony in this respect.<sup>6</sup> Djokic, however, did not deny the specific statement Hamilton attributed to her, taking issue only with Hamilton's account of the setting in which it took place. According to Djokic, Hamilton's declination to sign a union card because of her boyfriend's objection occurred in August, a considerable time before the election, and she did not then make the statement attributed to her. Djokic agreed, however, that she did have a further conversation with Hamilton a week before the election, in which, in her words,

I told [Hamilton], "The last Union meeting somebody question representative from the Union and ask him, "What happen to women when they don't sign Union contract?" and answer was, after 30 days they must look for another job." So I told Martha, I say, "You know, I feel sorry for women in my age when they don't sign Union contract, they cannot find so easy job, another job."

Q. What did she say to you then?

A. She say, "Yes, I understand this."

Q. Did you tell her she would be fired if she didn't vote for the Union?

A. No, I don't tell to nobody to be fired. How can I fire somebody when I am employee over there, too?<sup>7</sup>

The Respondent makes no contention that it decided to discharge Djokic because of the facts uncovered by the investigation; on the contrary, as noted above, it affirmatively

<sup>4</sup> Although Acker would have expressed himself in more polished language, I credit Djokic's testimony as to the substance of what Acker said. Acker's testimony on this point was equivocal. Asked whether he had mentioned anything to Djokic on this occasion about the charge filed with the Board, he replied

I don't really think so I don't think it was discussed. She may have mentioned it. I don't know, but you might—something may have been said about that, either because it was initiated by me or because maybe she initiated it. I don't remember.

<sup>5</sup> Elsewhere in his testimony, Acker identified Wiley alone as the employee who had actually come to the office to make the complaint. Hamilton's testimony that she had complained about the matter prior to the election is inconsistent not only with Acker's testimony, but also with a prehearing affidavit she had given the Board agent who investigated the case.

<sup>6</sup> Wiley did not impress me favorably as a witness. As to surrounding circumstances, her testimony was wanting in convincing detail, and her demeanor was not such as to invite credence. Moreover, her further testimony that she reported this incident to Acker before the election is contrary to testimony given by Acker.

<sup>7</sup> As is apparent from her testimony, Djokic has difficulty in expressing herself in the English language, and it is quite possible that the union representative actually said at the union meeting, and the thought Djokic meant to convey to Hamilton, was that the Union could, if victorious in the election, obtain a contract with a union-security clause requiring membership after 30 days as a condition of employment. Hamilton's inquiry of Acker, reported above, which followed Djokic's remarks to her seems to suggest that Hamilton gained such an impression. On the other hand, if Djokic, because of faulty recollection or faulty articulation, gave a garbled account on the witness stand, she may well have given the same garbled account to Hamilton. Djokic's remarks must therefore be taken at face value as stated in the record.

asserts that it never discharged her at all, but that she voluntarily quit her employment. The Respondent rests its claim that Djokic quit not on any statement made by her to the Respondent—Acker admitted that Djokic never told the Respondent that she wanted to quit—but solely and entirely on the original charge filed by the Union in this proceeding. Concerning the charge, Acker testified:

... the charge itself was meaningless to me. The part of the charge that irritated me was not that she brought a complaint, that a charge was brought, but that she alleged, first of all, that I had terminated her employment. This would have been the impression that I got, and I knew that I hadn't. But the charge that she made which I deeply resented, that I had done this because of her union activity, because it just wasn't true.

Acker further testified that when he got the charge he felt, "Well if this is the way they want it, let them have it that way," and that he decided then that Djokic had quit "because it said she had been terminated, and I know I hadn't terminated her, somebody must have terminated her, and she is the only other person."

Asked whether, but for the charge, Acker would have kept Djokic in the Respondent's employ, Acker testified that he did not know whether he would or would not; that he had not made up his mind—"it would depend upon so many different things that I really don't know."

### C. Analysis and Conclusions

As shown above, the Respondent, relying on the fact that the Union's original charge erroneously referred to its October 12 action as a termination rather than as a 1-week layoff or a suspension, defends against the complaint's allegations of unlawful discharge solely on the ground that Djokic's termination was self-elected and not imposed on her by the Respondent. The Respondent's reasoning which it would have the Board adopt—the Respondent "hadn't terminated her, somebody must have terminated her, and she is the only other person"—I find adroit but not persuasive. It is undisputed that Djokic never told the Respondent that she intended or desired to terminate her own employment, and, on the facts of this case, I find it difficult to believe that the Respondent really thought she had quit. The Respondent was aware, of course, that she had not quit on October 12 for this was a matter within its own knowledge. Nor could it have reasonably inferred a quit from the charge which the Union filed the next day. If anything, the charge was more consistent with a desire on Djokic's part to remain in the Respondent's employ than to leave it. Moreover, Djokic clearly manifested her desire to continue with the Respondent when at her meeting with Acker, which shortly followed the Respondent's receipt of the charge, she protested the extension of her layoff into a second week and voiced her interest in protecting her continuing status as a covered employee under the Respondent's Blue Cross Group Policy. Accordingly, I reject the Respondent's defence that Djokic "elected to terminate her own employment" as implausible and unfounded. I find that the decision to terminate Djokic's employment was Respondent's alone, and, as such, constituted a discharge, even though the Respondent may have chosen to style it a quit.

In light of the finding just made, I think it clearly follows that the Respondent's decision to regard Djokic as a quit, which effected the termination of her employment, must be found violative, at the very least, of Section 8(a)(4) of the Act. Acker's testimony, related above, virtually concedes that the Respondent was led to that decision by its resentment of the charge's allegations that it had terminated Djokic because of

her union activities.<sup>8</sup> Moreover, if Acker's explanation is accepted that his resentment was directed not to the filing of the charge as such, but to the contents of the charge which he viewed as false, this cannot exculpate the Respondent from liability under Section 8(a)(4). The statutory protection accorded by that section is not forfeited, and certainly not in the absence of malice, simply because a statement made in a charge or testimony proves to be false or inaccurate. In this case there is no evidence that Djokic deliberately falsified the allegations of the charge which was prepared by the Union, let alone that this was done with malicious intent.

I further find on all the evidence that the Respondent's decision to terminate Djokic, although triggered by the filing of the charge, was also influenced in significant part by the Respondent's hostility to Djokic because of her leadership role in the recently concluded union campaign. Because of the absence of direct evidence of a causal relationship, the case for an 8(a)(3) and (1) finding may perhaps not be as readily apparent as the one for an 8(a)(4) finding. But, I believe the contributing presence of unlawful 8(a)(3) motivation in the discharge decision is reasonably to be inferred from the following when considered together: (1) Acker's manifest hostility to Djokic for union-related reasons as evidenced by the poster incident and, more sharply, by his comments to Djokic at the October 12 meeting, in the course of which he went beyond the stated reason for the suspension to characterize her as a union agitator, to accuse her of disrupting plant harmony, and to charge her in effect with having broken an earlier promise to him not to get mixed up with the Union; (2) Acker's precipitate suspension of Djokic immediately following the election, without any prior effort to determine whether there was even probable merit to the complaints he stated had been made against her; (3) Acker's inability to explain on a plausible basis why Djokic's suspension was required in order to conduct a full and fair investigation; and (4) the implausible ground on which the Respondent now defends Djokic's termination; i.e., that it was a quit and not a discharge. These circumstances collectively, in my opinion, also justify an inference that Djokic's initial layoff was similarly motivated in part by the Respondent's resentment of her union activities.

In reaching the conclusion that Djokic's termination was unlawfully motivated, I have taken into account the credited evidence in this record establishing that Djokic on one occasion in the course of her preelection union activities made statements (to employee Hamilton) of a kind which the Board has ruled to be outside the area of protected activity.<sup>9</sup> The question here, however, is not whether the Respondent *might* have discharged Djokic because of what she said to Hamilton, but whether it *did*. As shown above, the Respondent's defense to the complaint's allegations of unlawful discharge is that it did not discharge her at all, but that she voluntarily elected to quit by filing a charge stating she had been terminated. That defense has been rejected, and it has been found that the decision to terminate Djokic's employment, though substantially related to the filing of the charge, was the Respondent's decision, not Djokic's, and amounted to a discharge for an unlawful reason. It is not to be presumed that the Respondent, had it not chosen to view the charge's allegations as an election by Djokic to quit, would have considered Djokic's unprotected statements to Hamilton a substantial basis for discharge and would have discharged her anyway

<sup>8</sup> Support for this conclusion is also to be found in Acker's comment to Djokic, made shortly after the Respondent's receipt of the charge, that Djokic was now in "trouble" because of the filing of the charge.

<sup>9</sup> See *Continental Woven Label Co.*, 160 NLRB 1430, and cases there cited.

for that sole reason; indeed Acker stated at the hearing that he did not know whether, but for the charge, the Respondent would or would not have kept Djokic in its employ. In short, I do not think it is for the Trial Examiner or the Board to speculate on a possibly valid reason for discharge which the Respondent itself has not advanced as the basis for its action, and then to assess that hypothetical reason in the light of the record evidence to determine whether, if advanced, it might have stood up as a legitimate rather than a pretextual ground for the action taken.

For the reasons set out above, I conclude and find that the Respondent violated Section 8(a)(3) and (1) of the Act by suspending Djokic on October 12, 1970, and that it violated the same section of the Act, as well as Section 8(a)(4), by terminating her employment on or about October 15, 1970.

#### CONCLUSIONS OF LAW

1. By suspending Maria Djokic on October 12, 1970, because of her union activities, and by discharging her on or about October 15, 1970, both for that reason and because the Union had filed in her behalf unfair labor practice charges under the Act, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(1), (3), and (4) and 2(6) and (7) of the Act.

2. The Respondent did not, as alleged in the complaint, violate Section 8(a)(1) of the Act by forcing Maria Djokic to post union literature on her machine and instructing her not to remove it.

#### THE REMEDY

The recommended Order will contain the conventional provisions in cases involving findings of interference, restraint, coercion, and unlawful discharge, in violation of Section 8(a)(1), (3), and (4) of the Act. These will require Respondent to cease and desist from the unfair labor practices found, to offer reinstatement with backpay to the employee discriminated against, and to post a notice to that effect. In accordance with usual requirements, reinstatement shall be to the discriminatee's former or substantially equivalent position, without prejudice to her seniority and other rights or privileges. The discriminatee shall be made whole for any loss of earnings she may have suffered by reason of the discrimination against her by payment to her of a sum of money equal to that which she normally would have earned from the date of the initial discrimination against her (October 12, 1970) to the date of the offer of reinstatement, less net earnings, if any, during such period, to be computed in the manner prescribed in *F.W. Woolworth Company*, 90 NLRB 289, and *Isis Plumbing & Heating Co.*, 138 NLRB 716.

It will also be recommended, in view of the nature of the unfair labor practices in which the Respondent has engaged, (see *N.L.R.B. v. Entwistle Mfg. Co.*, 120 F.2d 532, 536) that it cease and desist from infringing in any manner on the rights guaranteed employees by Section 7 of the Act.

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

#### ORDER

The Respondent, Zenith Plastic Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership and activities in Textile Workers Union of America, AFL-CIO-CLC, by discriminating in regard to the hire and tenure of employment of Respondent's employees, or by discriminating in any other manner in regard to any term or condition of their employment, in order to discourage membership or activities therein.

(b) Discharging or otherwise discriminating against any employee because he has filed charges or given testimony under the Act.

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

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

(a) Offer Maria Djokic immediate and full reinstatement to her former or substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of pay she may have suffered as a result of her suspension and subsequent discharge in the manner set forth in "The Remedy" section herein.

(b) Notify the above-named employee if presently serving in the Armed Forces of the United States of her 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.<sup>11</sup>

(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 necessary to analyze the amount of backpay due under the terms of this recommended Order.

(d) Post at its plant in Cleveland, Ohio, copies of the attached notice marked "Appendix."<sup>12</sup> Copies of the notice, on forms provided by the Regional Director for Region 8, after being duly signed by the Respondent's 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 the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 8, in writing, within 20 days from the date of the receipt of this Decision, what steps the Respondent has taken to comply herewith.<sup>13</sup>

<sup>11</sup> This provision is being included in the Order in conformity with the Board's standard practice, even though it appears from the record that Djokic is a woman 59 years of age. It is however being omitted from the notice for reasons stated in *B.V.D. Company*, 157 NLRB 978, 982.

<sup>12</sup> 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."

<sup>13</sup> 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 8, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith."

<sup>10</sup> 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.

