Westinghouse Electric Corporation, Tampa Division *and* International Brotherhood of Electrical Workers, AFL–CIO. Case 12–CA–5413

October 17, 1972

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS FANNING AND JENKINS

On April 24, 1972, Administrative Law Judge [1] Eugene George Goslee issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief.

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

The Board has considered the record and the Decision in light of the exceptions and brief and has decided to affirm the Administrative Law Judge's rulings, findings, and conclusions, as modified below, and to adopt his recommended Order.

We agree with the Administrative Law Judge that Respondent violated Section 8(a)(1) by maintaining and enforcing a broad nonaccess rule so as to preclude off-duty employees from ever distributing union literature on any part of Respondent's property. We further agree that Respondent has not furnished sufficient justification for so broad a prohibition, as interpreted and applied in the context of this case. However, as we stated in *McDonnell Douglas Corporation,* 194 NLRB No. 75, we do not intend our holding to be construed as precluding employers from adopting rules regulating the use of their property which in clear and unmistakable terms define the rights of employees and do not infringe on those rights to a greater extent than necessitated by legitimate employer interests in such matters as security, traffic, and littering. We therefore find it appropriate to clarify the Order in the light of these considerations.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Westinghouse Electric Corporation, Tampa Division, Tampa, Florida, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Maintaining and enforcing at its Tampa, Florida, plant its rule which totally prohibits its off-duty employees from entering or remaining on any portion of its premises for the purposes of distributing union literature in the nonworking areas of the plant premises during their nonworking time.

(b) Promulgating, maintaining, and giving effect to any rules which limit its employees' rights to distribute literature on its premises during nonworking time in nonwork areas, unless the limitations imposed on such activities are clearly defined as to times and areas and are demonstrably necessary to maintain production, discipline, or security.

(c) Disciplining employees, warning them of the imposition of further discipline, or placing written reprimands in their personnel files because they have engaged in activities protected by Section 7 of the Act.

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act.

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

(a) Expunge from the personnel records of employees Ronald W. Thomas, Richard E. Slane, and Gerald Ackley the written reprimands placed therein on January 24, 1972.

(b) Post at its plant at Tampa, Florida, copies of the attached notice marked "Appendix."[3] Copies of said notice, on forms provided by the Regional Director for Region 12, after being duly signed by the Respondent's representative, shall be posted by the Respondent 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.

(c) Notify the Regional Director for Region 12, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

[1] The title of "Trial Examiner" was changed to "Administrative Law Judge" effective August 19, 1972

[2] Member Jenkins agrees, for reasons fully set forth by the Administrative Law Judge, that Respondent violated Sec. 8(a)(1) of the Act. He finds it unnecessary to further clarify such findings or speculate upon circumstances or rules not presently before the Board in this case. Similarly, he would adopt the Administrative Law Judge's recommended Order, an order limited to the unlawful conduct found herein.

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

APPENDIX

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

WE WILL NOT maintain or enforce at our Tampa, Florida, plant our rule which totally prohibits our off-duty employees from entering or remaining on any portion of the plant premises for the purpose of distributing union literature in nonworking areas of the plant during their nonworking hours.

WE WILL NOT promulgate, maintain, or give effect to any rules which limit our employees' right to distribute literature on our premises during nonworking time in nonwork areas, unless the limitations on such activities are clearly defined as to times and areas and are demonstrably necessary to maintain production, discipline, or security.

WE WILL NOT discipline our employees, warn them of the imposition of further discipline, or place written reprimands in their personnel files, because they have engaged in activities protected by Section 7 of the National Labor Relations Act, as amended.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act, as amended.

WE WILL expunge from the personnel files of employees Ronald W. Thomas, Richard E. Slane, and Gerald Ackley the written reprimands placed therein on January 24, 1972.

WESTINGHOUSE ELECTRIC CORPORATION, TAMPA DIVISION
(Employer)

Dated By
(Representative) (Title)

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

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

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Room 706, Federal Office Building, 500 Zack Street, P.O. Box 3322, Tampa, Florida 33602, Telephone 813–228–7227.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

EUGENE GEORGE GOSLEE, Trial Examiner: This case came on to be heard before me at Tampa, Florida, on March 15, 1972, on a complaint [1] issued by the General Counsel of the National Labor Relations Board and an answer filed by Westinghouse Electric Corporation, Tampa Division, hereinafter called the Respondent. The issues raised by the pleadings related to whether or not the Respondent violated Section 8(a)(1) of the National Labor Relations Act, as amended, by certain practices, acts, and conduct hereinafter detailed. At the conclusion of the hearing all parties waived oral argument, but briefs have been received from the General Counsel, the Respondent, and the Charging Union, and have been duly considered.

Upon the entire record in this proceeding, and from my observation of the testimony and demeanor of the witnesses, I hereby make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent is a Pennsylvania corporation and maintains, among others, a plant at Tampa, Florida, where it is engaged in the manufacture of nuclear steam generators. During its fiscal year 1971, the Respondent manufactured, sold and shipped products from its Tampa plant valued in excess of $50,000 to customers located outside the State of Florida. During the same fiscal year, the Respondent purchased goods and materials valued in excess of $50,000 from sources located outside the State of Florida. The complaint alleges, the answer admits, and I find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II THE LABOR ORGANIZATION INVOLVED

The complaint also alleges, the answer admits, and I find that the International Brotherhood of Electrical Workers, AFL-CIO, hereinafter called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES ALLEGED

The complaint alleges that at all times material to this case the Respondent has had in effect a "housekeeping" rule and a "non-access" rule, which the Respondent has maintained, interpreted, and enforced to prohibit its off-duty employees from entering on to the Respondent's premises during their nonworking time to solicit union support and to distribute union literature in nonwork areas. As amended on March 2, 1972, the complaint further alleges that in January 1972, the Respondent issued written reprimands to certain of its off-duty employees because they had returned to the plant to distribute union literature. The

[1] The complaint in this case, as amended on March 2, 1972, is predicated on a charge filed on December 3, 1971, and served on the Respondent on the same date

General Counsel alleges that by the above described practices, acts, and conduct, the Respondent violated Section 8(a)(1) of the Act.

By its answer the Respondent admits to most of the factual allegations of the complaint, but denies that it has committed any unfair labor practices.

There is little or no dispute over the factual issues of this case, and essentially no necessity for the resolution of credibility issues. The singular legal conclusion to be drawn from the facts is whether, either on their face, or as construed and applied, the Respondent's "housekeeping" and "non-access" rules, or either of them, interfere with, restrain, or coerce its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

The Respondent's Tampa plant opened in March 1968, and, as related above, the primary operations of this plant are devoted to the manufacture of steam generator pressurizers for nuclear power plants. The plant and surrounding premises occupy an area of about 250,000 square feet, and access to the premises is via a private entrance road, which is located off a public street, which will hereinafter be referred to as Westshore Boulevard.

The Respondent's operations are conducted on a 5-day workweek, with three shifts during each 24-hour period. A total of about 800 employees are employed at the Tampa plant, of which about 450 are hourly rated employees and approximately equally divided among the three shifts. The record reflects that the Respondent's employment rules require hourly rated employees to be present at their work stations when their shift begins, and to remain at their work stations until the shift ends.

The Respondent admits that at all times since the opening of the Tampa plant in 1968, it has maintained the "housekeeping" rule in effect. The rule is published and is distributed to the Respondent's employees through an employee handbook, which is entitled, "You and Your Job at Westinghouse." The rule recites:

> HOUSEKEEPING
>
> To keep the Division and property orderly, clean and free of litter, non-employees are not permitted to distribute advertising material, handbills, printed or written material of any kind on Westinghouse property. Likewise, in the interest of maintaining an attractive and litter free plant, employees are not permitted to distribute any such materials in working areas of the Division.

The General Counsel concedes that the second part of the "housekeeping" rule is a presumptively valid nondistribution rule.[2] He appears to contend, however, that the forepart of the rule, on its face applicable only to nonemployees, has in fact been construed to prohibit off-duty employees from entering on the premises for purposes of distributing union literature. For the reasons related below, I find the General Counsel's contention unmeritorious.

Robert J. Johnson, the Respondent's Employee Relations Manager, testified as a witness for the General Counsel pursuant to the provisions of Section 43(b) of the Federal Rules of Civil Procedure. Johnson's testimony, which is uncontradicted, reveals that the forepart of the "housekeeping" rule is applicable only to nonemployees, and has no applicability to the Respondent's employees, whether on duty or off duty. There is no evidence in this record, moreover, that the "housekeeping" rule, or any part of it, has been enforced, construed, or applied contrary to its literal and valid language. Accordingly, I find that the Respondent's "housekeeping" rule is in all respects, including its prohibition on distribution by nonemployees,[3] a valid no—distribution rule. The General Counsel concedes this much in his brief, and I will recommend that this allegation be dismissed.

The Respondent's "non-access" rule has also been in effect since the date the Tampa plant opened, but unlike the "housekeeping" provision, it has not been made known to the employees through publication in the employees handbook. The "non-access" rule is published by the Respondent only in its guard manual, and is distributed only to the eight individuals who comprise its contract guard force. Insofar as this record reflects, the "non-access" rule was generally unknown to the Respondent's employees, at least until after the events upon which the complaint here is predicated had transpired. The "non-access" rule provides in pertinent part as follows:

> EMPLOYEE ACCESS
>
> The *GREEN* (or tan) photo background on the Employee Identification Card designates an HOURLY or NON-EXEMPT SALARIED EMPLOYEE. This employee is permitted access to his work area during his regular shift hours or when authorized by his supervisor to work overtime.
>
> If an Hourly or Non-Exempt Salaried Employee is scheduled to work overtime, he should have in his possession a salmon colored, IRREGULAR HOUR PASS (Westinghouse Form 23154 B), signed by his supervisor. The Security Guard will mark the time on the pass and allow the employee to enter. When the employee departs, the Security Guard will note the time out, initial the pass and hold in the Guard Station for the day shift Lieutenant who will forward the passes each morning to the Security Manager.
>
> If the employee is reporting for work at a time other than his regular shift and for any reason does not have an Irregular Hour Pass, the guard shall properly identify the employee, log his entrance in the Daily Log, and insert a notation that there was no pass. The employee shall then be allowed to proceed to his work station. When employee departs, he should furnish an Irregular Hour Pass or he should be logged out.
>
> Other than for work duties, Hourly or Non-Exempt employees will not be admitted onto the property.

A literal reading of the Respondent's "non-access" rule requires the construction that it prohibits hourly rated employees from entering or remaining on Company premises for any reason other than the performance of their regular duties. The necessity for this construction is advanced by the testimony of Employee Relations Manager Johnson,

[2] The General Counsel also concedes that the Respondent's "no solicitation—no distribution" rule recited at p F-5 of its employee handbook is presumptively valid, and not contended in this case to be violative of the Act

[3] *N L R B* v *Babcock & Wilcox Company,* 351 U S 105.

who related that the Respondent has construed the "non-access" rule to prohibit any hourly rated employee, without an irregular hour pass, from entering on the premises more than one-half hour before the beginning of his shift, and similarly prohibits any hourly rated employee, without an irregular hour pass, from remaining on the premises more than one-half hour after the conclusion of his shift. As Johnson admitted, both on its face and as construed and applied the "non-access" rule precludes off-duty employees from entering or remaining on Company property, including nonwork areas, for the purpose of distributing union literature. The record further reflects that on three occasions during December 1971, and January 1972, the Respondent enforced its "non-access" rule to prohibit certain of its off-duty employees from distributing union literature in non work areas on its premises. When the employees persisted in this conduct, they were given written reprimands, and warned that any continuation of the conduct could result in the imposition of further discipline.

According to a composite of the testimony of employees Ronald W. Thomas, Richard E. Slane, and Gerald Ackley, all of whom are employed as maintenance servicemen on the Respondent's 3:30 to 11:30 p.m. shift, they were directed to leave the Respondent's property on each of the three occasions when they attempted to distribute literature on behalf of the Union to employees leaving the plant at the end of the third shift, as well as to employees entering the plant for the first shift.

On December 3, 1971, employees Thomas and Slane entered the company premises about 6:45 a.m., and stationed themselves at a walkway 15 to 20 feet from the main entrance to the factory building. At this location Thomas and Slane passed out union handbills to employees entering the plant for the first shift. About 6:50 a.m. the employees were approached by John Goff, the Respondent's plant operations manager for the third shift. Goff told the employees that they were within their rights to distribute the handbills, but asked them to please move back because they were creating congestion. Thomas and Slane complied, moved back, and continued to pass out handbills. Within a few minutes Willard Staples, the Respondent's manager for security and employee services, approached and asked Thomas and Slane, "What have we here?" Staples picked up the package of handbills, looked at them, and asked the employees to follow him.

Inside Staples' office he expressed surprise at the employees conduct, and stated that he thought Thomas and Slane knew they couldn't pass out literature on company premises. Thomas and Slane expressed the belief that the rule only applied inside the plant, but Staples assured them that the rule applied anywhere on Westinghouse premises. Staples added that he intended to take the handbills and destroy them. Slane argued that the handbills were his property, and Staples relented to the extent he kept only two copies and returned the remainder to the employees. Staples told Thomas and Slane to leave the premises and destroy the handbills. The employees complied, left the premises, and then handbilled at a location adjacent to the intersection of Westshore Boulevard and the access road leading to the Respondent's plant.

On December 10, 1971, Thomas and Slane, accompanied by employee Gerald Ackley, again entered the Respondent's premises about 6:45 a.m. On this occasion the employees were stopped by a guard, who inquired the reason for their entering the plant during their off-duty hours. Thomas told the guard that they were going in to pass out literature, and the guard allowed them to proceed. The employees stationed themselves at the same location as on December 3. Within a few minutes the guard approached and told the employees that because they did not have an overtime pass, he had been instructed by management to tell them to leave the premises. The employees left, and again passed out their literature at the intersection of Westshore Boulevard and the access road.

Thomas, Slane, and Ackley again attempted to handbill at the entrance to the main plant on January 24, 1972. Within a few minutes Goff approached and asked the employees, "What, you here again?" Goff pointed to the gate, and said, "I'm sure you don't have an overtime pass. OUT!" The employees complied, and resumed their handbilling at the intersection of Westshore Boulevard and the access road.

At the beginning of their regular shift on the afternoon of January 24, Thomas, Slane, and Ackley were told that the Respondent's manager for hourly and salaried employee relations, William T. McLean, wanted to see them. The employees met with McLean and Works Engineer Richards in a small conference room. McLean informed the employees that they had been told repeatedly on two or three occasions to leave the company property, but that the employees kept coming back. McLean added that the purpose of the meeting was to inform the employees that a written reprimand would be placed in their personnel files, and if they returned to company property again, further disciplinary action would be taken. Thomas stated that the employees believed that they were within their legal rights in distributing union literature on company premises, to which McLean replied, "That's where we differ." The employees asked to see copies of the written reprimand to be placed in their files, and copies were furnished to them several days later. A week or so after the reprimands to Thomas, Slane, and Ackley, the Respondent held work area meetings, at which the employees were told that in accordance with the Respondent's longstanding policy they were prohibited from being on the premises more than one-half hour before or after their regular shift, unless they had an overtime pass.

It is the Respondent's contention that its "non-access" rule was promulgated and has been enforced as a means of protecting the Company with respect to security and insurance liability, as well as a means of encouraging adequate production. Although the "non-access" rule has been in effect since the Tampa plant opened in 1968, Employee Relations Manager Johnson testified to a number of incidents of theft or damage to company property and the property of its employees. Johnson also testified to the necessity of protecting the Respondent's records, its computer, and its confidential product designs, as well as the desirability of protecting the Company against workmen's compensation claims arising as a result of the injury of employees on the premises.

The evidence in support of the Respondent's contentions with respect to the reasons for the creation and en-

forcement of the "non-access" rule is not at all persuasive. Insofar as the whole of the relevant evidence in this record reflects, the "non-access" rule has been ignored by the Respondent for all purposes other than prohibiting its off-duty employees from distributing union literature on nonwork portions of its premises.

The "non-access" rule on its face is applicable only to hourly rated and nonexempt employees, and has no applicability to the many other employees on the Respondent's payroll who are salaried and exempt under the provisions of the wage and hour laws. It is clear that the "non-access" rule has never been published for the benefit of the employees' knowledge, and, contrary to the Respondent's contention, the existence of the rule and its applicability were generally unknown to the hourly rated employees until after the occurrence of the incidents which gave rise to this complaint. There is, moreover, a plentitude of evidence in this record to support the conclusion that the Respondent has generally ignored the enforcement on the "non-access" rule for most all work and nonwork-related purposes, but has rigidly enforced the rule to bar its premises to the distribution of union literature. The uncontradicted testimony of the employees who testified in this proceeding reflects that, except for overtime on weekends when regular shifts are not scheduled, they have been allowed without benefit of any overtime pass to both enter and remain on company premises for overtime work. Similarly, the uncontroverted testimony of the employees reveals that they have been allowed on the Company premises during nonworking time for nonwork-related reasons, such as visiting the nurse, inquiring about insurance, and making purchases at the company store. On such occasions the employees were not required to have an irregular hour pass, and they were not warned or reprimanded for violating the "non-access" rule. In the light of all this evidence I cannot accept the Respondent's assertion that its "non-access" rule is a universally applicable rule of employment designed and enforced to protect the Company solely against the eventualities which can ensue from trespass, theft, and its legal and insurance liabilities.

Even if I were to assume, *arguendo,* that the Respondent's "non-access" rule was promulgated and maintained for legitimate business considerations, I would still be required to find that the rule, both on its face and as construed and enforced, is an unlawful and unreasonable impediment to the exercise by the Respondent's employees of the rights guaranteed them by Section 7 of the Act.[4] In the absence of evidence of special circumstances necessitating the rule to maintain production or discipline, a burden which the Respondent has not met in this record the "non-access" rule is discriminatory and unlawful.[5]

In its brief the Respondent acknowledges the general rule promulgated by the Board in *Peyton Packing Company,*[6] and approved by the Supreme Court in *Republic Aviation, supra.* The Respondent argues, nevertheless, that *Peyton* and *Republic Aviation* dealt with employees who were at the employer's premises pursuant to work obligations, and that the thrust of those decisions was directed to employees' rights within the parameter of their workday. Because this case involves off-duty employees, as opposed to on-duty employees during nonwork time, the Respondent asserts that a proper balancing of the interests of the employees and the Employer requires that the doctrine of the "alternate means of communication" be applied. As factual support for this contention the Respondent relies on some evidence in the record which it argues supports a finding that both unions and employees have had adequate opportunities for solicitation and distribution on Westinghouse premises. As to legal precedent in support of its argument for application of the doctrine of the "alternate means of communication," the Respondent relies on the Decisions of the United States Supreme Court in *N.L.R.B.* v. *Babcock & Wilcox Company*[7] and *N.L.R.B.* v. *United Steelworkers of America,*[8] as well as the decision of the Third Circuit Court of Appeals in *Diamond Shamrock Co.* v. *N.L.R.B.*[9]

As to the facts, the record in this proceeding does reflect that during the current and prior organizing campaigns union representatives and employees did distribute literature along the access road from where it intersects with Westshore Boulevard to a point within several feet of the guard shack. There is also evidence in the record that on three occasions commensurate with the incidents of this case, employees Thomas, Slane, and Ackley handbilled employees on the Respondent's premises during a one-half hour period after the conclusion of their regular work shifts.

On the basis of this evidence I find little merit in the Respondent's contention that its employees have had, or can have, adequate opportunity to engage in organizational activities on the nonwork areas of its property. Whatever leeway the Respondent has allowed in the enforcement of the "non-access" rule, the rule on its face prohibits off-duty employees from entering or remaining on the whole of its property for any reason unrelated to their regular duties. There is nothing in the rule to put the employees on notice that they are permitted to distribute union literature on the access road, and the rule is equally silent on like conduct during the one-half hour periods preceding and following the employees' regular shifts.

Nor do I find great merit in the Respondent's reliance on the decisions of the Supreme Court in the *Babcock & Wilcox* and *United Steelworkers* cases. It is granted that in both cases the Supreme Court expressed its concern for the necessity to balance the rights of workers to organize against the rights of the employer to protect and utilize his property. In *Babcock & Wilcox* the Court applied the test of the availability of alternate means of communication in determining whether an employer was obligated to open up his premises to allow distribution of union literature by nonemployee union organizers. In the *United Steelworkers* case the Court applied the same test in determining whether the enforcement against employees of a presumptively valid no-distribution rule was nevertheless discriminatory because the employer violated his own rule in the course of conducting an antiunion campaign. The facts of *Babcock & Wilcox* and the *United Steelworkers* cases are not the facts of this case. At issue here is a total prohibition against off-duty employees to enter any portion of the

[4] *Republic Aviation Corporation* v. *N.L.R.B.,* 324 U.S. 739.
[5] *Republic Aviation, supra*
[6] *Peyton Packing Company, Inc.,* 49 NLRB 843.
[7] 351 U S 105.
[8] 357 U.S. 357.
[9] 443 F.2d 52 (C.A. 3).

Respondent's premises for purposes of union solicitation or distribution. This case does not concern the rights of nonemployee union organizers, does not concern the enforcement of a presumptively valid no-distribution rule, and, in my view, does not require application of the doctrine of the "alternate means of communication."[10]

As to the Respondent's reliance on the decision of the Third Circuit Court of Appeals in *Diamond Shamrock Co., supra,* even if I were obligated to be bound by the court's decision, rather than the decision of the Board, I would find the *rationale* of that case inapplicable to the facts before me in the instant proceeding. Unlike the Respondent's "no access" rule, the no-solicitation rule in *Diamond Shamrock* was applicable only to production areas and certain secured nonproduction areas, thus leaving the employees free to solicit during nonworking time on all other nonwork portions of the employer's premises.

In summary, I find and conclude that by maintaining and enforcing its "non-access" rule to prohibit its off-duty employees from entering or remaining on the Company's premises for the purposes of distributing union literature during nonworking time in nonworking areas, the Respondent has violated, and is violating, Section 8(a)(1) of the Act.[11] In arriving at this disposition of the issue before me, I have considered the evidence that Respondent has allowed the distribution of union literature at some times and at some places on its premises. I have also considered the absence of evidence in the record that employees have ever requested, or that the Respondent has ever denied, permission to them to enter its premises for the purpose of distributing union literature. I find both considerations immaterial.[12]

I also find and conclude that by reprimanding its employees for distributing union literature on its premises, by warning them that any repetition of this conduct would result in the imposition of further discipline, and by placing written reprimands [13] in the employees' personnel files, the Respondent engaged in additional violations of Section 8(a)(1) of the Act.[14]

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 its operations described 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.

Upon the foregoing findings and conclusions, I hereby make the following:

[10] *Diamond Shamrock Co*, 181 NLRB 261, enforcement denied 443 F.2d 52 (C.A. 3).

[11] *McDonnell Douglas Corporation*, 194 NLRB No. 75, *Cone Mills Corporation, White Oak Plant*, 174 NLRB 1015; and *Bauer Aluminum Company*, 152 NLRB 1360.

[12] *Diamond Shamrock Co*, *supra*, and *Bauer Aluminum Company, supra.*

[13] I find no merit in the Respondent's assertion that the memorandums placed in the files of employees Thomas, Slane, and Ackley were for information purposes only, and not for purposes of reprimand.

[14] *Bauer Aluminum Company, supra*

CONCLUSIONS OF LAW

1. The Respondent, Westinghouse Electric Corporation, Tampa Division, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union, International Brotherhood of Electrical Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By maintaining and enforcing a rule prohibiting its off-duty employees from entering or remaining on its premises for the purposes of distributing union literature in nonworking areas during their nonworking time, the Respondent has violated, and is violating, Section 8(a)(1) of the Act.

4. By reprimanding its employees Ronald W. Thomas, Richard E. Slane, and Gerald Ackley because they distributed union literature in nonworking areas on its premises during their off-duty hours; by warning said employees that any repetition of such conduct would result in the imposition of further discipline; and by placing written reprimands in said employees personnel files, the Respondent violated 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.

THE REMEDY

Having found that the Respondent has engaged in and is engaging in unfair labor practices I will recommend that it cease and desist therefrom and take certain affirmative actions to effectuate the policies of the Act.

Having found that the Respondent's "non-access" rule has been maintained and enforced in contravention of Section 8(a)(1) of the Act, I shall recommend that the Respondent cease and desist from maintaining and enforcing said rule to prevent its off-duty employees from entering or remaining on its premises during their nonworking time for the purpose of distributing union literature in nonworking areas. Having also found that the Respondent violated Section 8(a)(1) of the Act by reprimanding its employees, warning them, and placing written reprimands in their personnel files because they engaged in conduct protected by Section 7 of the Act, I will further recommend that the Respondent expunge from the personnel files of employees Ronald W. Thomas, Richard E. Slane, and Gerald Ackley the reprimands placed therein on January 24, 1972.

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

ORDER [15]

The Respondent, Westinghouse Electric Corporation, Tampa Division, its officers, agents, successors, and assigns, shall:

[15] In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

1. Cease and desist from:

(a) Maintaining and enforcing at its Tampa, Florida, plant any rule which prohibits its off-duty employees from entering or remaining on it's premises for the purposes of distributing union literature in the nonworking areas of the plant premises during their non-working time.

(b) Disciplining employees, warning them of the imposition of further discipline, or placing written reprimands in their personnel files because they have engaged in activities protected by Section 7 of the Act.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act.

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

(a) Expunge from the personnel records of employees Ronald W. Thomas, Richard E. Slane, and Gerald Ackley the written reprimands placed therein on January 24, 1972.

(b) Post at its plant at Tampa, Florida, copies of the attached notice marked "Appendix."[16] Copies of said notice, on forms provided by the Regional Director for Region 12, after being duly signed by the Respondent's representative, shall be posted by the Respondent immediately upon receipt thereof, and shall 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 other material.

(c) Notify the Regional Director for Region 17, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith.[17]

3. It is further recommended that all other allegations of unfair labor practices in the complaint be dismissed.

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[16] 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."

[17] 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 12, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith."