Wyle Laboratories *and* International Association of Machinists and Aerospace Workers, AFL–CIO. Case 5–CA–5398

January 12, 1973

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS FANNING AND PENELLO

On September 11, 1972, Administrative Law Judge Thomas F. Maher issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed an answering brief, cross-exceptions, and a brief in support of cross-exceptions.

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 attached Decision in light of the exceptions and briefs and has decided to affirm the rulings,[1] findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

We agree with the Administrative Law Judge that the record does not support the allegation in the complaint that Respondent terminated Galbreath, Artrip, Hartsock, and Moore in violation of Section 8(a)(3) and (1) of the Act. In urging that the discharges herein were motivated by union activity rather than poor performance, the General Counsel relies on several factors including, *inter alia,* (a) the failure of Respondent to counsel Galbreath during the 2-month period between his transfer from the jet noise project and his discharge; (b) the abruptness of the discharges; (c) Respondent's unwillingness to allow Galbreath to attend the Christmas party the day following his discharge; (d) the fact that NASA never complained of Hartsock's or Moore's performance and they were in no way a threat to the NASA contract; and (e) his conclusion that Artrip's poor performance was due to his being overworked as evidenced by the fact that he was replaced by two employees.

We agree with the General Counsel, as did the Administrative Law Judge, that the abruptness of the discharges so closely following the initiation of organizational efforts creates suspicion that the discharges were motivated by those efforts rather than solely by legitimate business considerations. However, on the basis of the record as a whole, we are unable to conclude that the General Counsel has sustained the burden of proving anything beyond mere suspicion.

The record contains a preponderance of convincing evidence that Respondent's conduct was motivated solely by its concern that continued poor performance would result in reduced fees under its present NASA contract, refusal of NASA to renew the contract, and refusal of NASA to award Respondent larger projects in the future. In this regard, we find that the credited and undisputed testimony of NASA officials, ostensibly disinterested in the outcome of this proceeding, provides ample support for the conclusion that the problem was as severe and immediate as Respondent contends. And although Respondent did not counsel some of the dischargees just prior to their discharge, we note that each had been counseled about his poor performance at various times, several had been transferred in the hopes that their performance would improve, their performance had been observed by supervisors following their transfer, and Respondent had seen no improvement in their performance at a time when it resolved to upgrade its overall level of company performance.

With respect to the relationship of Moore and Hartsock to the NASA contract, we cannot agree that their poor performance did not pose any threat to the contract. In view of the fact that the overwhelming percentage of Respondent's work is performed for NASA, any shortcoming or inability to perform reflects adversely on Respondent and jeopardizes present and future NASA contracts. The mere fact that NASA complaints did not refer to Moore or Hartsock by name does not detract from the fact that their poor performance would indeed contribute to NASA's evaluation of Respondent's ability to perform.

Nor are we willing to draw any inference of illegality in this case from Respondent's unwillingness to have Galbreath attend the Christmas party. Such a request is at least as likely to be the result of Respondent's desire to avoid friction at a social affair which could result from including a disgruntled former employee as well as from any desire of Respondent to attempt to prevent further organizational efforts by Galbreath.

With respect to Artrip's being replaced by two employees, we do not believe that this sustains the General Counsel's contention that Artrip's work

[1] The Administrative Law Judge precluded Respondent (not the General Counsel, as inadvertently stated in his Decision) from introducing evidence that Artrip was a supervisor In so doing, the Administrative Law Judge relied on *Talladega Cotton Factory, Inc.,* 106 NLRB 295, wherein we found that the discharge of a supervisor could, under certain circumstances, constitute a violation of the Act

We do not agree that *Talladega Cotton* renders the supervisory issue irrelevant to an 8(a)(3) allegation. However, since resolution of Artrip's status is unnecessary in view of the ultimate disposition of the case, we find that the Administrative Law Judge's error in precluding the introduction of evidence of such status was not prejudicial.

errors were attributable to the department's understaffing and thus his being overworked. The testimony of one of the replacements indicates that the workload in Artrip's former department has substantially increased since his departure, which would explain the present use of two employees in Artrip's former position. Moreover, with the removal of Artrip, Respondent has been advised by NASA that the performance in the department has vastly improved.

Thus, on the basis of the entire record herein, including the absence of any convincing evidence that Respondent was aware of the dischargees' union activities, and the absence of any evidence of union animus, we must conclude that Respondent's conduct occurred when it did solely because of sound business considerations and not because of any unlawful motivation. Accordingly, we shall dismiss the complaint in its entirety.[2]

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 Administrative Law Judge and hereby orders that the complaint herein be, and it hereby is, dismissed in its entirety.

[2] It is true as the General Counsel contends that the Administrative Law Judge improperly restricted the General Counsel's right to establish certain evidence with respect to wage increases granted to employees Artrip and Hartsock, and certain other evidence to show why Artrip could not perform his job properly. Under the circumstances of this case, however, we do not find that these erroneous rulings of the Administrative Law Judge constitute prejudicial error Assuming *arguendo* that the General Counsel had established the facts it now urges, for the reasons set forth above we are not persuaded that such facts would negate Respondent's defense that the discharges were for sound business considerations.

DECISION

STATEMENT OF THE CASE

THOMAS F. MAHER, Administrative Law Judge: Upon a charge filed on December 27, 1971, by International Association of Machinists and Aerospace Workers, AFL–CIO, against Wyle Laboratories, Respondent herein, the Regional Director for Region 5 of the National Labor Relations Board, herein called the Board, issued a Complaint on behalf of the General Counsel of the Board on March 13, 1972 alleging violations of Section 8(a)(3) and (1) of the National Labor Relations Act, as amended (29 U.S.C., Sec. 151 *et seq.*), herein called the Act. In its duly filed answer Respondent, while admitting certain allegations of the complaint, denied the commission of any unfair labor practice.

Pursuant to a notice a trial was held before me in Newport News, Virginia, at which all parties were present, represented and afforded a full opportunity to be heard, present oral argument and file briefs. Briefs were filed with me by General Counsel and Respondent on August 18, 1972.

Upon consideration of the entire record,[1] including the briefs filed with me, and specifically upon my observation of each witness appearing before me,[2] I make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. THE NATURE OF RESPONDENT'S BUSINESS

Wyle Laboratories, Respondent herein, is a California corporation with facilities located in California, Alabama, and in Hampton, Virginia, the only one involved in this proceeding. At this facility Respondent is engaged in scientific research and the repair and modification of scientific equipment and instruments.

In the course and conduct of its business operations at the Hampton facility Respondent received during the past 12 months in excess of $2 million for services performed for National Aeronautics and Space Administration, herein referred to as NASA, an agency of the United States Government, and it purchased and received goods and materials valued in excess of $50,000 from points located outside the Commonwealth of Virginia.

Upon the foregoing admitted facts I conclude and find Respondent to be an employer within the meaning of Section 2(6) of the Act.

Respondent was frequently referred to in the record as a service-oriented and not a product-oriented operation. Thus it contracts on a cost plus basis to perform a variety of engineering tasks, mostly electronic and mechanical in nature. Its principal customer, as noted above, is NASA at the nearby Langley Research Center, Langley Air Force Base, and this comprises 99 percent of all services performed by Respondent at its facility.

Respondent's services to NASA, performed both at its own laboratories, referred to in the record as "in-house," and at Langley is based upon a federal contract, the fee for services performed being dependent primarily upon the level of performance. Thus the customer determines the level of performance by a system of technical monitoring conducted by government employed monitors whose duties it is to assess the degree of satisfactory performance, make the necessary reports to their superiors who, when the occasion demands, make the required followup with Respondent and also provide materials to NASA officials for fee determination and for the awarding of future contracts. Periodic evaluation of performance is made on a quarterly basis.

Respondent's contract with NASA, a cost plus, nonpersonal service contract, was to expire in March 1972, subject to renegotiation at that time for another year. Incidents

[1] Following the receipt of the transcript of the trial of this matter Respondent filed with me a Motion to Correct Record. Upon an examination of Respondent's submission and the portions of the record referred to, and in the absence of opposition thereto, Respondent's motion is granted and the record is corrected to the extent required

[2] *Bishop and Malco, Inc*, 159 NLRB 1159, 1161

involved in this proceeding occurred during the third quarter, ending December 31, 1971, and extended into the fourth quarter. Areas particularly involved here were Jet Noise Research Laboratory, Receiving and Inspection, the Thermal Calibration Laboratory, and the communications system between Respondent's facility and the Langley Center, where there was a constant flow of paper work, equipment and personnel.[3]

II. THE LABOR ORGANIZATION INVOLVED

It is admitted and I accordingly conclude and find that International Association of Machinists and Aerospace Workers, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

From December 2 to 9, 1971, between 40 and 60 of Respondent's approximately 150 employees signed authorization cards for the Union at the behest of employees William E. Galbreath, Thomas Hartsock, Robert C. Moore, and Charles Easton and of Fred J. Artrip, whose employee status is in issue, it being claimed by Respondent that he is a supervisor.[4] On December 9, Galbreath, Artrip, Hartsock, and Moore were terminated for what Respondent claims to have been stated cause in each case. Easton is still employed. Because the claim of Respondent respecting each of these discharged individuals conflicts with the discriminatory reasons alleged in the complaint an assessment of the circumstances surrounding the termination of each is in order.

1. William E. Galbreath

William E. Galbreath was hired by Respondent as a senior technician on June 16, 1971, following his response to a newspaper advertisement in Los Angeles, California. Although he had a number of telephone conversations with Respondent's officials and there had been an exchange of correspondence following the submission of his application he did not meet with any official until he had been hired and had reported for duty.

From the time of his employment Galbreath's supervisors found fault with the manner in which he performed his assigned duties; the bulk of this criticism stemming from what was considered to be his lack of technical competence. Thus Eladio Breganza, his immediate supervisor, testified that he was given the routine assignment of taking readings on an oscilliscope and was observed to have operated the instrument set on AC (alternating current) rather than on DC (direct current) as normally required for low frequency readings. This ruined the whole operation. Breganza described this as an elementary mistake not to be expected of a technician of Galbreath's level. Additionally Breganza quotes an engineer, Ross Drake, associated with the project to which Galbreath was assigned as complaining that he did not consider Galbreath qualified to do the work he was assigned to do in the project. John Wood, the head of Respondent's instrumentation group and Breganza's superior, likewise testified to a complaint by Drake of Galbreath's abilities and the fact that it was such incompetence that impelled him (Drake) to leave the Company. While Galbreath was on the same assignment involving the calibration, operation, and maintenance of systems for Jet Noise Research representatives of NASA for whom the work was being performed registered complaints concerning Galbreath. Thus Breganza stated that in August or September 1971 Messrs. Maestrello and McDaid of NASA came to him and said they would like Galbreath replaced because they felt he could not perform the job previously done by other technicians. These two officials likewise complained to Wood who quoted them as strongly critical of Galbreath's performance on the Jet Noise Research Program, stating that they did not consider him capable of performing the work. Other NASA officials with whom Breganza and Wood came in contact were equally critical of Galbreath. Thus on an occasion when discussion was being held as to the future staffing of an aircraft noise reduction laboratory Messrs. Dominic Maglieri and Harvey Hubbard stated that Respondent could not hope to get that assignment if it was to be staffed by incompetents such as those who had been used in the Jet Noise Project, referring to Galbreath. In answer to the complaint from NASA Breganza and Wood assured them that they would rectify the situation and, after consulting with Manager Tobin, replaced Galbreath with another technician—Osinski—and returned Galbreath to work in the laboratory. No complaints have been received concerning Osinski's performance.

In further support of its testimony respecting Galbreath's shortcomings Respondent introduced into the record documentary evidence underlining NASA's view of the situation. Thus in an October 18 memorandum from Harlan Holmes, a NASA monitor, to his superior, W. B. Jones, a copy of which was supplied Respondent at the time, it was stated, in part:

> Personnel assigned in the support of Jet Noise Research (Bldg. 1221) were not considered adequate by the investigator. Discussions with E. Breganza and J. Wood of Wyle indicate they are attempting to rectify this situation.
>
> * * * * *
>
> It is felt that the recent loss, by the contractor, of several experienced personnel in the acoustics area and their replacement with relatively inexperienced people has lessened the confidence of many investigators in the ability of the contractor to participate in a large scale field operation.

Thereafter, on January 14, 1972, in a memo from Holmes to Jones, it was stated, in part:

> Lucio Maestrello reports enthusiastically on the initia-

[3] The foregoing summary of Respondent's operation is based on the testimony of Paul Tobin, manager of Respondent's Hampton facility.

[4] At the trial I precluded counsel for the General Counsel from adducing evidence on the subject of Artrip's supervisory status, ruling that the nature of the alleged discrimination against him did not require a resolution of this issue and citing *Talladega Cotton Factory, Inc.*, 106 NLRB 295

In any event my disposition of the allegation respecting Artrip makes further consideration of his status unnecessary.

tive and competence exhibited by Messers. Elio and Osinski in support of the Jet Noise Program.

* * * * *

It is felt that this quarter has shown much improvement, particularly in the documentation of work orders.

Called as a witness by Respondent William B. Jones, assistant head of the Instrument Research Division of NASA's Langley installation, confirmed the nature of the complaints reported to him by Holmes and identified the subject individual as Galbreath. Jones confirmed the fact that Respondent's officials, as they had testified, had frequently been urged to rectify the poor performance in the Jet Noise section and that upon Tobin's assignment of Osinski, Galbreath's successor, to that work at NASA's request, the situation vastly improved.

It was because of the constant criticism of its Jet Noise Research operations and the prospects of a reduced fee and possible loss of the NASA contract that Tobin, in early December, requested and on December 7 received Supervisor Breganza's detailed report of Galbreath's work history and his recommendation that Galbreath be terminated. Nowhere does it appear, however, that Galbreath had ever been appraised of the gravity of the situation, and except for the quarterly interview and review carried out with all employees in connection with the implementation of the NASA contract it does not appear that anyone had a serious conference with Galbreath concerning his technical incompetence, *albeit* everyone with whom he was concerned in either a supervisory or a reviewing capacity had indulged in considerable discussion and exchange of correspondence on the subject.

On December 9, 1971, Galbreath was terminated by Supervisor Wood, the reason given being nonperformance of duties, referring specifically to his work in the Jet Noise Program.

2. Fred J. Artrip

Fred J. Artrip was hired as an assistant buyer in September 1969. Respondent's operations group manager, Benjamin E. Hoffman, testified without contradiction that Artrip's handling of the buyer's job was such that in January 1971 he was replaced there and transferred to another area where it was hoped that he would work out—the receiving and inspection division (I. & R.). This operation is responsible for all shipping and receiving activities in Respondent's facilities, including the transfer of materials and instruments between the laboratory and Langley. All communications are channeled through the division and in general it is a clearing house for everything and everyone in transit, as well as the collecting center for items repaired and to be repaired. Such paper work and files as results from the duties described above are equally the responsibility of the Division and of Artrip who was its head.

At this juncture of Artrip's employment Respondent, according to Hoffman, began to receive complaints of the I. & R. division, from Respondent's own officials, and from NASA's monitors. Thus Field Service Supervisor John Lindsey complained to Hoffman of the poor service Artrip was giving NASA on transferring equipment on the various projects, particularly as it involved the handling of the necessary paper work such as the prompt transmittal of work orders for items under repair. Lindsey himself testified to this and also to the fact that he found that Artrip frequently failed to follow through on assignments given him. Richard Prince, a NASA official, testified to having had a conference with Artrip concerning his work wherein a number of discrepancies had been detected in the handling of instrument record cards. Artrip protested to Prince that he was overworked and needed help. When Prince reported this to Respondent's management Artrip was given a helper but after 3 weeks he requested that she be replaced because she could not handle the work to his satisfaction. On cross-examination Artrip admitted that in addition to the mistakes made by others in his department for which he was ultimately held responsible he also had made mistakes and these had been pointed out to him by NASA officials, including Prince, as noted above. Moreover, when he was shown at the trial a December 7 report detailing his shortcomings, a memorandum from Hoffman to Tobin, Artrip conceded that at least two or three of the items noted had been discussed with him by Respondent's officials at the time he was terminated.

Following Artrip's termination on December 9, 1971, his duties were assumed by Roger Back who testified that he did the same type and volume of work as had Artrip. In a report to NASA's Jones from Monitor Earl S. German, Jr., dated January 13, 1972, it was stated, in part, as follows:

> Shipping and Receiving Effort:
>
> The effort in this area has greatly improved during the last 30 days of this quarter. The contractor made changes in personnel in this area and other personnel who have taken over are doing an excellent job. A check with Property Control personnel confirms this. Mistakes on R & I's have become almost nil. Communications between contractor and Property Control personnel have improved greatly.

NASA's official, Richard Prince, when called as a rebuttal witness and shown this statement confirmed its accuracy and stated that the R & I situation had "improved considerably."

3. Thomas Hartsock

Thomas Hartsock was employed on March 18, 1968, and has worked as a technician in a number of areas, including Electrical Calibration and Thermal Conductivity. Most of his work was confined to Respondent's laboratory.

On December 9, 1971, Supervisor James Walsh came to Hartsock's work bench and asked him to accompany him to the office of Herbert D. Williams, Respondent's senior calibration engineer. There Williams told Hartsock that his performance was poor. After a 20- or 30-minute discussion on the subject of the poor performance record Williams informed Hartsock that he was being terminated.

In support of its contention that Hartsock was terminated because of his poor performance record testimony was adduced from a number of officials with whom Hartsock had worked. Thus, according to Supervisor James Walsh, as long ago as a year and a half before his termination,

Hartsock, who was then working in Electrical Calibration, told him that he was bored with his work and had no interest in it. Walsh then transferred him to Thermal Conductivity in the hope that the new work would motivate him. Thereafter in this new assignment he was found to be making numerous errors in his work. In addition, Hartsock took a dislike to one of the recently hired engineers with whom he was working, Chitness. In this connection Hartsock grudgingly conceded in his testimony that he had discussions with Walsh on the subject of getting along with people in the laboratory. Later, in May or June 1971, as working began to slacken in the Thermal laboratory, Hartsock was transferred to Electrical Calibration from which he had been moved previously. While in this new assignment he improperly connected an instrument and destroyed it. He was found on one occasion shortly thereafter to have broken off a thermometer in a resistor being used on a project. And on still another occasion he inadvertently failed to ship out part of an instrument scheduled for repair.

Walsh spoke to Manager Tobin of Hartsock's shortcomings and poor attitude frequently during the year. On one occasion, being 6 months prior his termination, Walsh and Tobin had an extended discussion concerning him. At this time Hartsock's chances for improvement were evaluated and it was decided to see if any improvement showed in the near future. In early December 1971 Tobin inquired of Williams, and in turn of Walsh, as to Hartsock's progress. Walsh reported that the performance continued to be poor and recommended that he be terminated. Tobin concurred in the recommendation and directed that Williams terminate him.

The foregoing is a synthesis of the credited testimony of Tobin, Williams, and James Walsh concerning Hartsock's work record. Hartsock testified in rebuttal and denied much of the testimony given as to his performance and attitude, and in certain respects admitted that some of it was true. Thus Hartsock, in effect, admitted he had broken equipment as claimed, had not gotten along with fellow employees, and had, in fact, been counseled concerning his poor attitude and performance. To the extent that such testimony constitutes admissions against Hartsock's interests I accept it; otherwise I do not rely upon his testimony. I observed him as a witness and have reviewed his testimony generally which I find to be replete with hedging and with vague and evasive replies. Accordingly, I do not rely upon it.

4. Robert C. Moore

Robert C. Moore was hired as a driver on October 1, 1971, and on December 9 he was terminated by his supervisor, T. Pete Forehand, for the stated reason that he lacked motivation and an ability to perform his job.

Called as a witness to support Respondent's claim were a number of its supervisors. Thus Forehand testified to Moore's inability to follow specific instructions and cited as examples Moore's failure to notify the switchboard receptionist over the two-way radio when he was absent from his cab, and his practice of picking up and delivering packages and documents when personnel were awaiting pickup—a practice contrary to stated instructions to him.

The most grevious incident, however, occurred in early December prior to his termination. Moore found it necessary, as he himself testified, to attend to personal business and, not being able to locate anyone in authority to so inform them, took off without notice or approval. This caused unusual confusion on this occasion because the other cab driver was not working on that particular day.

Field Service Supervisor Lindsey likewise testified to Moore's poor performance as a cab driver and specifically referred to reports that he had received to the effect that Moore was frequently running 20 to 40 minutes late, that he was found to be visiting at various of Respondent's trailer facilities on occasions other than when making deliveries and pickups, and that his cab was frequently out of radio range for unexplained reasons when he should be on active duty.

Called in rebuttal to explain the complaints registered against him Moore testified that the delays occurred principally when he was breaking in on the job, or that he might have been on one errand when being sought out for another one. Except that he admitted taking off without authorization Moore generally denied responsibility for the shortcomings attributed to him. My analysis of Moore's testimony, particularly on cross-examination, and my observation of him as a witness, persuades me that the testimony of Forehand and Lindsey more accurately describes the poor cab service and properly assigns responsibility for it to Moore.

5. Respondent's knowledge of the union activity of its employees

It is alleged that the foregoing terminations were the consequence of the union activity of the respective employees when Respondent became aware of it. It would, therefore, be appropriate to outline this activity and set forth all of the evidence suggestive of Respondent's knowledge of it.

Union activity began on December 2, 1971, when employee Galbreath sought out Jack Anderson, a representative of the Union, and discussed the possibility of organizing Respondent's employees. Anderson gave Galbreath a supply of pledge cards which he immediately circulated among the employees. Galbreath enlisted the support of employees Artrip, Hartsock, Moore, and Easton in this endeavor. As a result of 40 to 60 of Respondent's 150 employees had signed the cards within the next several days. Galbreath testified to procuring 16 of these after talking to 15 or 20 percent of the work force; Artrip claimed 12, after talking to 30; Hartsock procured 5; and Moore and Easton an unstated number.

At no time during the short organizing campaign was any reference ever made by members of management to the union activity that was then going on about them. In numerous ways it is claimed, however, that this information came to Respondent's attention. Thus employee Hartsock testified that a number of employees had left their pledge cards on their work benches. He also testified that at an earlier hearing before the Virginia Employment Commission he had stated that only one employee openly solicited signatures and he (Easton) was not fired.

Artrip testified that several employees came to him seeking cards and he referred them to Galbreath, thus suggesting that it was generally known among the employees that they were being organized. Artrip likewise testified that he was sure that no one observed him as he signed up employees.

Artrip further testified that employees were seen to have left their cards on their work benches. He did not think this wise and spoke to the people about it. He further testified that the supervisors, generally, were in the habit of moving about the several work areas during the day.

Employee Moore testified that he did not know whether or not supervisors observed his activities for the simple reason that he did not know who the supervisors were.

Galbreath credibly testified to a conversation he had on December 2 with Glenn Coulson, supervisor of Respondent's Electro-Mechanical Laboratory. His account of his conversation with Coulson follows:

> I went into Mr. Coulson's lab; and I was in the process of a break and I was contacting some people as far as union activity was concerned. As I went to Mr. Coulson's lab, his lab has got a double door and the double doors swing open because there's some bigger equipment that goes in and he needs a double door and as soon as you come inside, Mr. Coulson's office, his desk is right there. I talked to Glenn Coulson, I says, "Glenn, what do you think about a union around here?" Glenn's response was, Your Honor, "Hell, yes." And I asked Glenn, "Have you ever been a member of a union?" And Glenn's response was, "Yes." And I asked where at. Glenn's response to me was that he was a member of a union at Arnold Engineering at Tullahoma, Tennessee, that's where he had worked before he came to Wyle Labs.

Coulson was not called as a witness and each of Respondent's witnesses called to testify at the trial specifically denied any knowledge of union activity at the facility and further denied that the termination on December 9 bore any connection with the union membership or activity of any of the four men terminated.

B. *Analysis and Conclusions*

Implicit in any finding that an employer discriminated against any one or more of his employees for their union membership or activities is the obvious fact that he *knew* of their union membership or activity. This is the sole issue in this case.

I am quite aware of the suspicious chronology in the termination of these four employees; that they began their union solicitation on Thursday, that on the following Tuesday representatives of management submitted unfavorable recommendations concerning them, and that 2 days later they were fired. Be all of this as it may, however, there are strong reasons, considered individually, to support the termination of any one or more of the individuals concerned. This I have detailed above as I find it upon credible evidence, including admissions by the employees themselves. Nonetheless, however, I cannot substitute my suspicions, however lively they may be, for solid evidence or for a reasonable inference that the proven reasons of poor performance, in each case, *was not* the reason for each discharge. Indeed I can just as readily suspect that the individuals involved, learning of their precarious tenure, sought a union only to protect themselves, as I can suspect that the employer discharged them only because they sought out the Union. I shall infer neither. Instead I shall review the evidence at hand to determine if employer knowledge can reasonably be inferred.

Catalogued above are the several instances of possible knowledge (*supra*). I refer first to Galbreath's uncontradicted testimony that he mentioned the union campaign to Supervisor Coulson. This is the only direct evidence of possible knowledge. Solicitation was guarded, when observed by the organizing employees to have left their pledge cards on their work benches employees were cautioned to keep them out of sight, some supervisors were located where they could survey their shops, all supervisors were known to circulate about the work places. I am not so impressed by any of this as to infer that Respondent knew of the activity carried on by Galbreath, Artrip, Hartsock, and Moore—and Easton.

Finally there is the Board's so-called "small plant" doctrine by which company knowledge may be inferred from the smallness of the work force.[5]

Respondent's operation at Hampton employed a total of approximately 150. Clearly this is not a small work force and it does not, either in and of itself or coupled with other facts or factors, provide a basis upon which it can be reasonably inferred that Respondent's management knew of the union activity of Galbreath, Artrip, Hartsock, or Moore, and acted upon it.[6]

All that remains, therefore, in the assessment of Respondent's knowledge of its terminated employees' union activities is Galbreath's question to Supervisor Coulson, "What do you think about a union around here?" And Coulson's reply, "Hell, yes"; plus an avowal of his own previous union membership. Fully cognizant of Coulson's undenied membership in Respondent's management I am not so disposed to use this brief exchange, containing as it does Coulson's implicit approval of the organizing campaign, as the sole determinate of Respondent's otherwise denied knowledge of the union activity of any one of the four men involved.

[5] *Wiese Plow Welding Co, Inc*, 123 NLRB 616

[6] *Borden Cabinet Corp*, 131 NLRB 890 896

In such a state of the record as I have considered it above, and fully conscious of the most peculiar coincidence surrounding the discharge of the four individuals involved, I have no alternative but to conclude that each was dismissed for the cause stated and established on the record and not for reasons proscribed by the Act. I accordingly recommend that there be issued the following:[7]

ORDER

The complaint in this matter is dismissed in its entirety.

[7] 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 this recommended Order 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.