

**Butler's Shoe Corporation, a wholly-owned subsidiary of Zale Corporation and Retail Store Employees Union, Local 876, Retail Clerks International Association, AFL-CIO. Case 7-CA-10270**

January 15, 1974

**DECISION AND ORDER**

BY MEMBERS FANNING, KENNEDY, AND  
PENELLO

On September 28, 1973, Administrative Law Judge Jennie M. Sarrica issued the attached Decision in this proceeding. Thereafter, 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 attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt her recommended Order.<sup>1</sup>

**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 Respondent, Butler's Shoe Corporation, a wholly-owned subsidiary of Zale Corporation, Detroit, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

<sup>1</sup> Respondent's exceptions directed to the credibility resolutions of the Administrative Law Judge are without merit. The Board will not overrule the Administrative Law Judge's resolutions as to credibility unless a clear preponderance of all relevant evidence convinces us that they are incorrect. On the entire record, such a conclusion is not warranted herein. *Standard Drywall Products, Inc.*, 91 NLRB 544, enfd 188 F.2d 362 (C.A. 3, 1951).

**DECISION**

**STATEMENT OF THE CASE**

JENNIE M. SARRICA, Administrative Law Judge: This is a proceeding under Section 10(b) of the National Labor Relations Act, as amended (29 U.S.C. § 151, *et seq.*), hereinafter referred to as the Act. Based on charges filed on April 3, 1973,<sup>1</sup> a complaint issued May 31, amended August 3, presenting allegations that Butler's Shoe Corporation, a wholly owned subsidiary of Zale Corporation, hereinafter referred to as the Respondent, committed unfair labor practices within the meaning of Sections 8(a)(1) and 2(6) and (7) of the Act. Respondent's answer, as amended, denies that it committed the violations of the

<sup>1</sup> Unless otherwise indicated, all dates are in 1973.

Act alleged. Upon due notice, the case was tried before me at Detroit, Michigan, on August 16. Representatives of all parties were present and participated in the hearing. At the close of the hearing the General Counsel presented oral argument.

Based on the entire record, including my observation of witnesses, and after due consideration of the briefs, I make the following:

**FINDINGS AND CONCLUSIONS**

**I JURISDICTION**

Respondent, a Florida corporation with principal offices in Atlanta, Georgia, operates a number of retail shoe stores located in various States of the United States, among which are seven located in and around Metropolitan Detroit, Michigan. Respondent admits that during the year ending December 31, 1972, a representative period, it received gross revenues in excess of \$500,000 from the retail sale of shoes and related items, and that during the same period it purchased, and caused to be transported from locations outside the State of Michigan and delivered at its Michigan stores goods valued in excess of \$50,000.

It is admitted and I find that Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

**II. THE LABOR ORGANIZATION**

Retail Store Employees Union, Local 876, Retail Clerks International Association, AFL-CIO, hereinafter called the Union, is now, and has been during all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

**III. THE ALLEGED UNFAIR LABOR PRACTICES**

**A. The Issues**

It is alleged in the complaint and denied in the answer that Respondent, by certain specified conduct, engaged in unlawful interrogation, made unlawful threats, and solicited employee grievances, all in violation of Section 8(a)(1) of the Act. A threshold issue bearing on some of the evidence presented is whether Fred Lewis Rosenstein was, during the material time, a supervisor within the meaning of the Act.

**B. Background**

Early in January the Union began its organizing campaign among employees at Respondent's seven Detroit metropolitan area stores. At that time union officials called upon Randy Graham, manager of the Northland store, and advised him that in connection with the impending organizational efforts, Young Quarker, a regular part-time salesman at that store, was on the organizing committee and was protected by Federal law in such activity. Union authorization cards were distributed by Quarker, who was transferred to another store in mid-March; Linda Powers,

counter-sales-cashier, who was discharged in early April, and Rosenstein, a salesman, who left Respondent's employ in June.

### C. *The Supervisory Issue*

Fred Rosenstein was employed as a shoe salesman in January 1972 and worked at the Northland store from April 1972 until he resigned for personal reasons in June 1973. Respondent contends, in opposition to the position of the General Counsel, that during the relevant period Rosenstein, as assistant manager, was a supervisor within the meaning of the Act. Sometime shortly before the union drive began,<sup>2</sup> Rosenstein was assigned the job title of assistant manager.<sup>3</sup> As such his hourly rate of pay was approximately 10 percent more than other salesmen received.

Rosenstein testified<sup>4</sup> that, when he became assistant manager, Graham told him in the presence of other sales persons that when Graham was not there Rosenstein was "in charge" and that during such periods he was to make sure that the store was running properly. He further testified that he was never instructed more specifically as to his authority but, as the person in charge, it was his duty to take care of any problems which arose; that he had no authority to hire, fire, or discipline the three or four other salespersons on duty at such times, and that he was never told that he had authority to grant permission to leave early or otherwise change the assigned work schedule; nor was he ever consulted with respect to changes in the rate of pay of any employee. Rosenstein asserted he could, however, make recommendations<sup>5</sup> and did, on one occasion, recommend that disciplinary action be taken because a salesman who was performing stock duties

refused to report to the sales floor when he requested this due to an influx of customers. On this occasion Rosenstein reported the incident to Graham the following day. Graham talked to the employee in the presence of Rosenstein and another employee witness of the incident, told the offending employee that he was wrong, and directed Rosenstein to "write him up."<sup>6</sup>

Other duties for which Rosenstein was responsible during periods when he was "in charge" included the handling of customers' complaints, the authorization of refunds, obtaining needed change for the cash register, locking the store, initialing deposit slips, and making night deposits. All money matters required the signature and participation of two persons and such tasks were also performed by certain other designated employees. All salesmen participated with Rosenstein in the various other duties which included the handling of stock, the preparation of displays, and general cleaning details.

The evidence does not present a clear indication that Rosenstein, in fact, possessed the significant supervisory authority contemplated by the Act. The one disciplinary incident related would seem to indicate that all of his recommendations were subject to the independent investigation by the manager. Further, as little independent judgment is required to determine, even without reference to the store manual,<sup>7</sup> that the primary function and first call of duty of a salesperson is to serve customers when they appear, and as any two employees could report on the dereliction of duty of another employee, I find this disciplinary incident, standing alone, insufficient to establish that Rosenstein had any real authority to effectively recommend discipline. It is not asserted that Rosenstein had any supervisory responsibility while Graham was

<sup>2</sup> The combined testimony of Rosenstein and Graham indicates that Arlie Hammond was made assistant manager around the first of the year but before the union activity began and within a week was assigned to work as manager at another store, whereupon Rosenstein became the assistant manager at Northland. Within a couple of months, Hammond returned to the Northland store where, thereafter, both men continued working with the same title and rate of pay. The store remained open until 9 p.m. nightly and Graham was not present for approximately 12 to 15 hours a week, generally before closing. It would appear, however, that Rosenstein was the only assistant manager at the store at least during January and February 1973.

<sup>3</sup> Respondent introduced into evidence a document entitled "Job Description Assistant Manager" listing some 13 numbered statements of the duties of an assistant manager. Several of these use the word "supervise," but the context in which it appears fails clearly to bestow any of the specific supervisory authority contemplated by the Act. The General Counsel presented copies of the pertinent parts of the transcript of hearing and the Regional Director's decision in the concurrent representation proceeding, pointing out that therein Respondent stipulated to the exclusion from the multistore unit, as supervisory, only one named assistant manager. The effect of this stipulation was to include, as nonsupervisory employees all other unnamed assistant managers (Case 7-RC-11707, Regional Director's decision issued June 6, 1973—resolving other unit issues raised in that proceeding. The Employer's request for review filed June 20 was denied on June 29.) Such a stipulation in an ancillary proceeding, even if Rosenstein had been specifically named as nonsupervisory, does not preclude a contrary determination herein on the evidence presented. It does, however, contrary to the implication of the job description, suggest that not all assistant managers were given the same authority. Consequently, the determination of Rosenstein's supervisory status must rest primarily upon the testimony presented herein with respect to the authority and responsibility actually conferred upon him.

<sup>4</sup> Rosenstein, who appeared under subpoena, amply demonstrated his antagonism toward the General Counsel and the Charging Party, and his reluctance to give any specific information concerning the various

allegations in the complaint beyond what he had previously supplied in his pretrial statement. He claimed he could not remember even such incidents in any specific detail without first referring to or examining the statement. His demeanor in responding to questions by the General Counsel, his frequent unresponsiveness in matters alleged in the complaint, and his eagerness repeatedly to voice his grievance against the General Counsel in connection with the service of the subpoena and against the Charging Party in other respects, in marked contrast to the quickening of his memory concerning other conversations and events concurrent in point of time with those covered by the complaint, created the impression that he was being deliberately vague. In the face of this apparent hostility, I am compelled to scrutinize all of his testimony in the light of his obvious prejudice.

<sup>5</sup> Rosenstein's testimony with respect to his authority and what he was told by Graham contains many inconsistencies, e.g., on redirect he asserted that he was told initially by Graham he "had authority to make a recommendation to somebody" for the discharge of employees. Since Graham himself had authority to hire and discharge employees, and he was the direct supervisor of Rosenstein and the other store employees, it would seem highly unlikely he would vaguely designate "somebody" rather than himself as the person to whom recommendations should be made, if, indeed, he made any such statement. I conclude that Rosenstein's initial version of what he was told, i.e., merely that he was "in charge," is the more accurate testimony. This is consistent with Graham's testimony that Rosenstein was to assist him and that he told employees that Rosenstein would carry on in his absence.

<sup>6</sup> This is a form of discipline in which a statement of the offense, signed by two persons, is sent to the district supervisor and made a part of the employees' record. Graham and Rosenstein signed the statement in this instance.

<sup>7</sup> Item 13 of the assistant manager's job description reads as follows: "The learning, execution, and/or supervision of: All company policies and procedures as outlined in the Store Manual Bulletin Binder to which he has access at all times during normal store hours."

present. Nor do I find in his other duties evidence that Rosenstein responsibly directed the work of other employees even during those closing hours after Graham left the store. Rosenstein's added responsibility during such time related primarily to store functions and financial matters rather than to the supervision of store employees. Moreover, the availability of the store manual and other directives supplied by the district manager would appear to obviate the possibility of any situation arising which would require the use of independent or responsible judgment in "carrying on" in Graham's absence.

On the basis of all the evidence presented, I find that Rosenstein was not, during any relevant period, a supervisor within the meaning of Section 2(11) of the Act.<sup>8</sup>

#### D. *The Alleged Unlawful Conduct*

Powers recalled a conversation with Graham which took place around mid-to-late January in the lower level stockroom. On this occasion Powers arrived at work later than her scheduled time and was told by Rosenstein that Graham wanted to see her downstairs. When she appeared, Graham opened the conversation with the question "Do you know that if the Union comes in they'll close the store?" and when she replied that she did not know this, he asked "How do you think you're going to vote?" After Powers told Graham she would hear both sides and then decide this question, he told her she could go upstairs. Graham denied that he asked Powers how she would vote or that he ever told anyone that if the Union came in the Detroit stores would be closed.<sup>9</sup>

Powers impressed me as a credible witness. Her version of this incident is consistent with, and buttressed by, the position she later took and the questions she raised in the meeting conducted by management in March. I do not credit Graham's denials with respect thereto. His January conversation with Powers conflicts with the testimony of others which indicates that the subject of obtaining the return of union authorization cards arose in late March. Accordingly, I find that Respondent through Graham threatened to close the store in retaliation if the employees selected union representation, and interrogated an employee as to how she was going to vote in the anticipated election, each violative of Section 8(a)(1) of the Act.

Quarker testified that at the Northland store sometime after January 25, Graham said to him, "Do you belong to a union? If you do, show me your card." Quarker recalled that this occurred when Graham stopped a conversation in the salesroom-stockroom doorway among employees Chris Boyd, Kerry Bell, Rosenstein, and himself in which Bell

stated that if they had a union in the store salesmen would not<sup>10</sup> have to run stock, a task in which they were presently engaged, and he had "instigated," i.e., voiced his agreement with this and similar comments by the others.

Graham recalled a somewhat different setting for his questioning of Quarker with respect to his having a union card. According to Graham, employees Gary Strat, Powers, Boyd, and Rosenstein were standing with Quarker near the end of the counter and Quarker was "bragging . . . for five minutes" telling everybody he had a union card. Graham said to Quarker, "If you've got a union card, let me see it."<sup>11</sup>

I find it unnecessary to reconcile the different versions with respect to the context of Graham's remarks. Each may reflect partial or selective, recollection of a single event or they may have reference to two separate occasions. In either case both attest to the fact that on at least one occasion, in the presence of fellow employees, Graham questioned Quarker as to whether he belonged to a union and demanded to see his union card. Graham's own version suggests that he was thereby attempting to discredit Quarker whom he knew to be the union organizer at the store. Such interrogation is clearly violative of Section 8(a)(1) of the Act.

District Manager Steve Fatovic came to the Northland store in late March and met with employees in two groups according to their work shift. The second meeting, conducted between 5:30 and 6 p.m., was attended by Graham, Rosenstein, Powers, and possibly Debbie Johnson and/or Craig Bell. The purported purpose of the meeting was to discuss with employees "some policies and also benefits of the company." Fatovic told employees the Company was trying to improve their benefits and, using a new booklet which had been printed for distribution to employees the preceding month, Fatovic explained various existing employee benefits. During the discussion of benefits Powers raised various questions.

According to Powers, Fatovic told the group that if the Union came in the Company would not have to meet the Union's demands and would not have to give employees anything; employees could even lose the benefits they already had; Zale Corporation grossed some \$400 million and that Butler's Detroit stores contributed only about \$4 million of this; and, if they closed the store he would still get his salary every week. Powers responded "I'm a gambler so I'm still going to hear both sides." Fatovic said to her "would you write on a piece of paper your grievances and we'll try to meet your demands."<sup>12</sup>

Fatovic testified that at this meeting Powers made the

<sup>8</sup> Big "N" Department Store No 307, Big "N", a Division of Neisner Bros., Inc., 200 NLRB No 137, Pacific Drive-In Theatres Corp., 167 NLRB 661, 662. See *Plastic Workers Union Local 18, International Union, Doll and Toy Workers, AFL-CIO v. N L R B*, 369 F 2d 226 (C.A. 7, 1966)

<sup>9</sup> Graham also denied ever calling Powers downstairs, asserting "We went downstairs to get some handbags and she told me that she had signed a union card but planned on getting it back. I said 'that's up to you.'" His recollection was that this occurred sometime in January rather than in March after the district manager met with the employees and the subject of how employees could obtain the return of their cards was discussed.

<sup>10</sup> Although the transcript of testimony omits the word "not," contrary to my recollection as to the sense of the testimony, its omission is in no way crucial to any finding herein

<sup>11</sup> Graham explained that he had been a member of another union while working for another employer in a different locality, and did not believe Quarker had a membership card. He further testified that he did not know whether Quarker was aware he was not referring to an authorization card but to a membership card

<sup>12</sup> Rosenstein recalled that at this meeting Fatovic said they were a \$400-million Company and that the Detroit stores produced only 1 percent of the business, that if the Union came in these stores did not really matter. He also recalled that Fatovic told Powers that if the Union came in "you could lose benefits or you could gain benefits" and she replied "I'll take a gamble with the Union." Fatovic told her that "the Union was no guarantee you're going to get more. You could wind up losing too." I view his testimony as corroboration and amplification of that of Powers

statement that the Employer could not afford to close the Detroit stores because these produced \$10 million in sales which was 10 percent of Butler's business and that he replied "Linda, if Butler's going to close the Detroit stores, it's news to me. Where did you hear that?" She responded "They can't afford to close the stores" and he said, "But there is no intention of closing any stores."<sup>13</sup> Fatovic admitted telling employees that through bargaining, if the Union came in, benefits might go up or down. With respect to grievances, Fatovic explained that he had received through managerial channels a suggestion that management hold a group meeting with employees of all stores to discuss their problems. This suggestion was turned down by his superior, but when he held the meetings at the Northland store he told the employees that if anyone wished to make any suggestions or complaints to management "They could write it on a piece of paper and give it to their store Manager and he'll see the proper people get it."

Graham, who was also present at this meeting, at first testified that Fatovic did not ask employees to write down their problems and submit them to him and that he did not state anything in regard to having employees state their problems to the company in this meeting. Later, when asked whether in this meeting Mr. Fatovic said anything about employee grievances or complaints, Graham testified that "He said, 'If you have any, I'd like to hear them.' . . . He said they could be in writing," and that they did not have to sign their names if they did not want to.

With respect to closing the stores, I do not credit Fatovic's recitation of the exchange he had with Powers. Nor do I find in the combined testimony of Powers and Rosenstein a clearly stated threat to do so. However, in the context of pointing out the insignificance of the Detroit operations in relation to the overall sales of Respondent, I find that Fatovic's comments, that if the Union came in these stores did not really matter and if they closed the stores he would still get his salary every week, constitute a veiled threat that if employees chose representation the stores could be closed. This threat is a violation of Section 8(a)(1). Additionally, I find that Fatovic not only solicited employee grievances in writing as he attested, thereby implying a promise of benefit, but also solicited from Powers a written statement of her grievances and promised to try to give them favorable consideration. Such conduct,

<sup>13</sup> Fatovic further testified that Powers then stated "there's been some conversation or some inquiry about people getting the union cards back" and he said "I'm not suggesting nor am I telling anyone to get their cards back. However, if each person knows what he wants to do . . . if he wants to get his card back, you could write to NLRB with a copy to Local 876, and if that address is needed, I'm sure your Manager would have it." On cross-examination Fatovic was asked how the subject of getting back cards came up at the meeting and he testified

A I said there had been some persons in the area inquiring about getting their cards back. And I said, "we're not suggesting or telling you to get your cards back. But if a person is interested in that way, they can write to NLRB with a carbon copy to Local 876."

Q Neither of the employees at the meeting had made this suggestion at the meeting?

A No, Sir

There is no specific allegation in the complaint covering this conduct and the only evidence presented by the General Counsel was testimony by Quarker that after these meetings he was approached by some of the employees for the return of their authorization cards. This self-contradictory testimony is significant, however, in evaluating the credibility of witness Fatovic and in relation to Graham's testimony concerning his stockroom

in the context of an organizing campaign amounts to interference with the exercise of Section 7 rights in violation of Section 8(a)(1) of the Act.<sup>14</sup>

Affirmative evidence concerning a number of the allegations in the complaint rests entirely upon the testimony of Rosenstein whose reluctance to supply such information is discussed at footnote 4, *supra*. Before being permitted to examine the signed statement he had previously given to the Board Agent, Rosenstein gave some testimony concerning various events which he amplified upon to some degree after examining his statement.

In his memorandum brief, the General Counsel urges reliance upon Rosenstein's statement, which was offered into evidence by Respondent without limitation or a statement of purpose and received without objection, as evidence of the allegation in the complaint of a threat of more onerous working conditions if the Union succeeded in its organizational efforts. Before reading his statement, Rosenstein testified that in March Graham mentioned to him and Boyd, whatever he had put in the statement.<sup>15</sup> A comparison of Rosenstein's testimony with his affidavit would indicate that the following is the portion to which that testimony had reference:

Sometime in March at the store with Chris Boyd, Kim Bell, Gary Strat, and I present, Graham told us that if the Union, [sic] there would be no smoking breaks and we would have to be working all the time. That was about all to that conversation.

No further testimony was presented concerning this event.

On more than one occasion while testifying, Rosenstein attested to the truthfulness of his pretrial statement generally. Considering his testimony quoted in conjunction with the relevant portion of the statement, I find that Rosenstein also specifically adopted as part of his direct testimony the portion of the statement set forth above. Respondent's witness, Graham replied "No, I did not" to the direct question, "Did you ever threaten any employee with more onerous working conditions if the union succeeded in its organizational efforts?" Although Respondent had introduced Rosenstein's statement as Respondent's Exhibit 1, Graham was not asked and did not specifically deny he ever said to employees that if the

conversation with Powers

<sup>14</sup> No finding is made with respect to Fatovic's statement that if the Union came in employees could lose benefits they already had as there is no allegation in the complaint specifically covering such statements

<sup>15</sup> The pertinent part of the record reads as follows

Q Going on to the month of March, 1973, did Mr. Graham mention the Union at any time when you and Chris Boyd were present?

A Yes

Q Was anyone else besides Chris Boyd and Mr. Graham present?

A Not that I can think of, no

Q Where were you in the conversation in March took place?

A In the store

\* \* \* \* \*

Q What was said by Mr. Graham in this conversation?

A That's why I need the paper to see I don't recall I can't recall word for word what I said. *What I said in that statement is true* I said it then but I can't recall it word for word. There were so many statements I made, that I don't recall everyone of them

Q Can you recall any part of this March conversation now?

A Not unless I read the paper

union came in there would be no smoking breaks and employees would have to work all the time. Accordingly, on the basis of all the foregoing evidence, I find that Respondent threatened employees with more onerous working conditions if employees chose union representation, and that such threat violated Section 8(a)(1) of the Act.<sup>16</sup>

At the hearing, and in his memorandum brief, the General Counsel urged that "the apparent disenchantment of witness Rosenstein with the Charging Party at this time should add a great deal of weight to his testimony." As indicated in footnote 4, *supra*, I find that Rosenstein's demonstrated hostility has relevance in evaluating his testimony. I would add the observation, however, that Rosenstein's care in testifying with respect to specific statements made to him, as distinguished from his interpretation of statements and events—not only those of Graham which are alleged to be unlawful but also those of the union representative and of the Board officials—revealed a particular concern that his testimony be truthful. Respondent did not question Rosenstein concerning any inconsistencies in his direct testimony and his statement. However, on the assumption that this was at least part of the purpose for Respondent's offering the statement in evidence, I have made such a comparison. I do not find in that comparison a variance sufficient to impeach Rosenstein or even to warrant rejection of any significant part of his direct testimony. On the other hand, since Rosenstein did testify from his present recollection with respect to the particulars of the various allegations considered *infra*, either before or after he was shown his statement, I shall not use the statement to establish any unlawful conduct not specifically recited in Rosenstein's oral testimony.

Initially Rosenstein testified that Graham discussed unions in the stores and "said a lot of things" which he, Rosenstein, could not recall. On further questioning he did recall that such conversations included the subject of union authorization cards, and that Chris Boyd was present when Graham mentioned he knew about the cards and wanted to find out who was passing them around. This occurred around the time when Quarker was passing these out among employees. Rosenstein also recalled that very soon thereafter Graham knew, but Rosenstein had no knowledge as to the source of Graham's information. In his statement Rosenstein indicated that he and Boyd told Graham it was Quarker. Graham denied that he ever asked Rosenstein or anyone else who was passing out cards for the Union. I do not credit this denial. Accordingly, I find that by this interrogation Respondent violated Section 8(a)(1) of the Act.

Rosenstein testified that later in January Graham stated that the Union needed a certain number of authorization cards before it could obtain an election. Graham said he did not "feel that many people had cards in the store," and he was trying to find out which employees had filled out cards. Graham asked him, in the presence of other

employees, whether he had signed a card, why he filled out a card, and why he was joining a union. Rosenstein responded he felt they needed a union in the store. Rosenstein's statement does not cover a conversation in the context mentioned here but does refer to similar inquiries in March to which he refused to give his personal reasons. Graham denied that he ever asked Rosenstein whether or not he had signed a card for the Union, why he had signed the card, or why he was joining the Union. I credit Rosenstein's testimony that such interrogation concerning his union activities, sympathies, and desires was made in the presence of other employees, and that such inquiries violated Section 8(a)(1) of the Act.

Rosenstein also recalled that Graham mentioned the possibility of a strike and what could happen, shortly after the district manager's late March meetings with employees at the store. Rosenstein stated there were other employees present on this occasion but he was unable to remember who, or whether they were listening. In this respect, Rosenstein testified that Graham stated if employees went on strike the company would bring other employees in to do the job, and when the strike was over and the striking employees came back they would not be guaranteed they would get their same jobs back. In his statement Rosenstein indicated Graham said that "after the strike was over most of us wouldn't get our jobs back because of going on strike." Graham denied that he ever had a conversation with Rosenstein "concerning, if the employees went on strike," or that he ever told Rosenstein that if the employees went on strike they would be fired. He then testified that he did tell Rosenstein that, if the employees went on strike, the Company would continue to run its business, and could replace them, and when the strike was over, if the replacements were gone, they could come back; if the employees went on strike the Company had the right to hire to stay open and to hire employees—as long as the employees were doing the job, the company did not have to let that employee go to rehire the employees on strike. Although as appears, Graham contradicted himself, and I find his testimony reliable only to the extent that it is consistent with that of Rosenstein, I do not find in the testimony a sufficient indication that Respondent thereby exceeded the purview of Section 9(c). Although Rosenstein's written statement set forth the threat alleged to be unlawful in section 9(g) of the complaint, in view of Rosenstein's oral testimony, I find that this allegation is not established by the best evidence.

After his memory was refreshed by reading parts of his statement, Rosenstein recalled that in January Graham stated to him, Quarker, Boyd, and Powers, that the store would be closed down if the Union came in, the part-time employees would be laid off and they would be out of jobs. Rosenstein's statement does not contain this latter phrase. Graham denied he told Rosenstein that if the Union got in all the part-time employees would be laid off. His testimony is, he said that if the Union came in "there would perhaps be a reshuffling of employees . . . there

alluded to the absence of specific testimony relating to more onerous working conditions. However, having denied the motion at that time in all respects, and having thereafter received the statement in evidence without limitation being placed on its purpose, I must now evaluate the proof of all allegations on the basis of the entire record

<sup>16</sup> I make this finding with considerable reservation, particularly in view of the fact that the direct testimony, standing alone, is quite unintelligible as to what specific allegation was involved, and the statement had not yet been introduced into evidence at the time the General Counsel rested his case and Respondent, in making its motion for dismissal of the entire complaint,

may be more part-timers used and may be less part-timers used. There may be more full timers used." Graham explained this comment was made when they were discussing the Union and Rosenstein said "it seemed to him the Union was playing the part-timers against the full timers," and as he understood it, there is usually some reshuffling when there is a new organization.

Graham's attempt to explain his comments in terms of his understanding as to what usually happens when there is a newly selected representative does not remove the coercive threat contained in his admitted comment indicating that if the Union got in the employment status of part-timers vis-a-vis full timers would be changed. Evaluating credibility, I find that Graham's statements were as testified to by Rosenstein and that Respondent thereby made unlawful threats to close the store and layoff part-time employees if the Union were selected as bargaining representative, violative of Section 8(a)(1).

Also after reading his statement, Rosenstein testified that the subject of the cards was brought up by Graham again in March. Speaking to Rosenstein, Strat, Boyd, and Quarker, Graham stated he knew that Powers, Quarker, and Rosenstein had passed out the cards and wanted to know who had the union cards at that time. This incident is not specifically covered by Rosenstein's statement. Graham testified he did not ask who was passing out union cards. When asked whether he knew who was passing out cards Graham replied "No," but to the very next question "How did you find out," he replied "Mr. Willie Jackson [the representative of the Charging Party herein] came in with another man one day and said that Young Quarker was a union organizer. . . ." I do not find in his testimony a denial that he stated to employees he knew who was passing out the union cards or a denial that he inquired of them who had the cards at that time. This incident, I find, is yet another instance of unlawful interrogation violative of Section 8(a)(1).

Finally, Rosenstein testified with a "refreshed memory" that in early April Graham told him that he could not become a manager if he voted for the Union because managers are against the Union. Although this conversation took place in the store, Rosenstein recalled that no other employee was present during the conversation. His testimony is consistent with his statement. Graham denied that he told Rosenstein he could not become a manager if he voted for the Union, asserting he said "A manager could not be in a union. Management can not be unionized." This testimony was offered to establish the allegation in section 9(h) of the complaint that Graham threatened employees with loss of opportunity for advancement if they supported the Charging Party. In view of Graham's admitted frequent conversations with Rosenstein concerning the Union, the fact that as assistant manager Rosenstein was eligible for training to become a manager at Graham's election (which is the purport of the job description), and my consistent impression that Graham was not a convincingly credible witness, I conclude that the statements testified to by Rosenstein

were made and that Respondent thereby violated Section 8(a)(1) of the Act as alleged.

Finally, even if my finding that Rosenstein was not a supervisor within the meaning of the Act is erroneous, most of the statements herein were nevertheless unlawful as they were made in the presence of other employees.

Upon the basis of the entire record, I make the following:

#### CONCLUSIONS OF LAW

1. Respondent is engaged in commerce within the meaning of Section 2(2) and (6) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By engaging in the conduct described in section III, above, Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed them in Section 7 of the Act, and thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
4. 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 Respondent engaged in certain unfair labor practices, I will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. And, as the unfair labor practices committed by the Respondent, occurring in the context of an organizing campaign which embraced all stores in the Metropolitan Detroit area are of a character striking at the very basic employee rights safeguarded by the Act, I shall recommend that Respondent's remedial action be coextensive with the employee-union activity with which it interfered and, additionally, that it cease and desist from in any other manner infringing upon rights guaranteed in 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:

#### ORDER<sup>17</sup>

The Respondent, Butler's Shoe Corporation, a wholly owned subsidiary of Zale Corporation, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:
  - (a) Coercively interrogating employees concerning their union sympathies, membership, activities, and voting intention, and the union activities of fellow employees.
  - (b) Threatening employees with layoff of part-time employees, with more onerous working conditions, with closing of the store or the Detroit stores, or other reprisals if they selected union representation, and threatening an employee with loss of an opportunity for promotion if he voted for Retail Store Employees Union, Local 876, Retail

<sup>17</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

Clerks International Association, AFL-CIO, or any other labor organization.

(c) Soliciting employee grievances and promising to try to meet employee demands to dissuade employees from assisting, joining or selecting Retail Store Employees Union, Local 876, Retail Clerks International Association, AFL-CIO, or any other labor organization.

(d) In any other manner infringing upon rights guaranteed in Section 7 of the Act.

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

(a) Post at its stores in Metropolitan Detroit, Michigan, copies of the attached notice marked "Appendix."<sup>18</sup> Copies of such notice, on forms provided by the Regional Director for Region 7, after being signed by an authorized representative of Respondent, shall be posted by 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 Respondent to insure that said notices are not altered, defaced, or covered, by any other material.

(b) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

<sup>18</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 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

After a trial in which all parties had the opportunity to present their evidence, it has been decided that we violated the law and we have been ordered to post this notice. We intend to carry out the order of the Board and abide by the following:

**WE WILL NOT** coercively interrogate employees

concerning their union sympathies, membership, activities, and voting intentions or the union activities of fellow employees.

**WE WILL NOT** threaten employees with layoff of part-time employees, with more onerous working conditions, and with the closing of the store or the Detroit stores, or with other reprisals if they select union representation, or with loss of an opportunity for promotion if they voted for Retail Store Employees Union, Local 876, Retail Clerks International Association, AFL-CIO, or any other labor organization.

**WE WILL NOT** solicit employee grievances and promise to try to meet employee demands to dissuade employees from assisting, joining or selecting Retail Store Employees Union, Local 876, Retail Clerks International Association, AFL-CIO, or any other labor organization.

**WE WILL NOT** in any other manner infringe upon the rights of employees guaranteed in Section 7 of the National Labor Relations Act.

All employees are free to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. Our employees are also free to refrain from any or all such activities.

**BUTLER'S SHOE  
CORPORATION A WHOLLY-  
OWNED SUBSIDIARY OF  
ZALE CORPORATION  
(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, 500 Book Building, 1249 Washington Boulevard, Detroit, Michigan 48226, Telephone 313-226-3244.