**IPM Corporation, a Division of Allegheny Ludlum Industries, Inc. *and* United Steelworkers of America, AFL–CIO.** Cases 9–CA–8213, 9–CA–8285, and 9–RC–10341

September 5, 1974

## DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS JENKINS AND KENNEDY

On May 21, 1974, Administrative Law Judge Melvin J. Welles issued the attached Decision in this proceeding. Thereafter, the Employer, United Steelworkers of America, AFL–CIO, and the General Counsel filed exceptions and supporting briefs.

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, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.[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 Respondent, IPM Corporation, a Division of Allegheny Ludlum Industries, Inc., Columbus, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for the Administrative Law Judge's notice.

[1] The General Counsel and Steelworkers have excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (C.A. 3 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] The notice to employees recommended by the Administrative Law Judge states in part that Respondent will not direct its employees not to engage in solicitation "or other union activities" on their own time on company property. Insofar as the quoted words are concerned, the notice is broader in scope than the Administrative Law Judge's order, which directed Respondent only to cease and desist from promulgating an unlawful no-solicitation rule. We therefore shall substitute the attached notice for the one recommended by the Administrative Law Judge.

## APPENDIX

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

WE WILL NOT interrogate our employees about their union membership or activities.

WE WILL NOT threaten employees with loss of benefits because of their union activities.

WE WILL NOT create the impression of surveillance of our employees' union activities.

WE WILL NOT promulgate a rule which prohibits our employees from engaging in union solicitation during their nonworking time on company property.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights under Section 7 of the Act.

IPM CORPORATION, A DIVISION OF ALLEGHENY LUDLUM INDUSTRIES, INC.
(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, Federal Office Building, Room 3003, 550 Main Street, Cincinnati, Ohio 45202, Telephone 513–684–3686.

## DECISION

### STATEMENT OF THE CASE

MELVIN J. WELLES, Administrative Law Judge: Cases 9–CA–8213 and 9–CA–8285 are before me pursuant to charges filed December 27, 1973, and amended January 9, 1974, by United Steelworkers of America, and a consolidated complaint issued March 12, 1974, alleging violations of Section 8(a)(1) and (3) of the Act. In Case 9–RC–10341, an election was conducted on March 20, 1974, pursuant to a Stipulation for Certification Upon Consent Election, which resulted in 22 votes for and 20 against the Union, with 4

challenged ballots, a sufficient number to affect the results of the election. On April 9, 1974, the Acting Regional Director for Region 9 determined that a hearing on the challenged ballots was necessary,[1] and ordered that Case 9–RC–10341 be consolidated with Cases 9–CA–8213 and 9–CA–8285. A hearing was held before me in Columbus, Ohio, on April 17, and 18, 1974.

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

## FINDINGS OF FACT

### I. THE BUSINESS OF THE RESPONDENT AND THE LABOR ORGANIZATION INVOLVED

Respondent, an Ohio corporation, is engaged in the manufacture and sale of metal parts at its location in Columbus, Ohio. During the past 12 months, Respondent shipped products valued in excess of $50,000 directly from its plant to points outside the State of Ohio. I find, as Respondent admits, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The Union is a labor organization within the meaning of Section 2(5) of the Act.

### II. THE UNFAIR LABOR PRACTICES

#### A. *The Issues*

The complaint alleges that Respondent violated Section 8(a)(1) of the Act by the conduct of two admitted supervisors, Plant Manager John Sennstrom and Steve Gall,[2] in creating the impression of surveillance, threatening a loss of economic benefits, and promulgating an unlawful no-solicitation rule (all by Sennstrom), and, by Gall, interrogating employees, and "implying the futility of employee support for the Union." The complaint also alleges that Respondent discriminatorily discharged, in violation of Section 8(a)(3) of the Act, employees Zola Blankenship and William Barker.

As to the challenged ballots, two, those of Blankenship and Barker, turn on whether or not they were discriminatorily discharged, for they were off the company payroll before the eligibility date for the election. The other two, Charles Eastham and Steve Gall, involve their alleged supervisory status, petition asserting that Gall was a supervisor and Eastham was not, and the Employer the converse.

#### B. *The Facts*

The Teamsters first, and then the Steelworkers, the latter beginning in early October, were engaged in organizing Respondent's employees.[3] About October 15, Supervisor Gall, according to the testimony of Eastham, who was a close personal friend of Gall, had a conversation with him. Gall began by asking Eastham if he "was afraid" of his job. Eastham said he was not, and asked "Why?" Gall responded, "Well, I know you and your wife have signed union cards" for the Teamsters Union. Gall went on to tell Eastham some of the disadvantages of a union, with Eastham saying he thought a union was needed at IPM. Gall testified that he did have the conversation with Eastham, and that the merits and demerits of unionism were discussed, but that he did not mention, or even know, whether Eastham or Eastham's wife had signed a card at that time. Gall did not specifically testify about asking Eastham whether he was "afraid of his job," but his testimony concerning his lack of knowledge that Eastham or his wife had signed union cards, and the whole conversation, implicitly denies that question having been asked.

It is undisputed that the next day, Eastham, along with Barker, met with Plant Manager John Sennstrom at the latter's office. Eastham testified that Gall had suggested (or told him) the day before, during the conversation about unions generally, that Eastham and Barker "go up and talk to Sennstrom." According to Gall, Eastham had asked him if he could talk to Sennstrom the next day, and that he told Eastham, "John has an open door policy," and added that he would sign Eastham's timecard and pay him for the time spent seeing Sennstrom. Sennstrom testified that Eastham and Barker asked to see him, and that he did not know before they came in what it was about. Barker testified that Eastham told him they were to see Sennstrom, but did not say why, or who told Eastham.

It appears unlikely to me that, on the basis of either Eastham's or Gall's version of what occurred the previous day, Eastham would have asked to see Sennstrom. Furthermore, it is unlikely that Gall would have, as he did, offer to keep Eastham overtime and pay him had Eastham requested the meeting. Nor does there appear to be any reason why Eastham should even have asked Gall for permission to see Sennstrom, in view of the latter's admitted "open door" policy. Finally, Eastham's and Barker's very "vagueness" about what they were there for when they entered Sennstrom's office suggests that it was not Eastham's idea to see Sennstrom. Accordingly, I find that Gall did tell Eastham that he and Barker should see Sennstrom. For these reasons, and based also on the demeanor of Eastham and Gall, I credit Eastham's version of the conversation the previous day.

At the meeting in Sennstrom's office, according to Eastham, Sennstrom said that he was surprised at Eastham and Barker for wanting a union, and he "talked about getting the union dropped." Sennstrom then mentioned a Jim Hudas, another employee,[4] as being "too dumb and stupid to be a leader," adding that he (Sennstrom) "didn't think that anybody would follow him, and he knew that we were the

[1] As to two of these challenges, Bill Barker and Zola Blankenship, their resolution is wholly dependent on the resolution of the complaint's allegation that they were discriminatorily discharged.

[2] Gall is conceded to have been a supervisor at the time of the alleged unfair labor practices, but is one of the voters challenged at the subsequent election, the Employer (he was challenged by the Union) asserting that he was no longer a supervisor on the eligibility or election dates.

[3] The record is sparse as to when organizational activities began and when the Teamsters dropped out of the picture. Based on the testimony of Eastham, Barker, and Gall, it would appear that all the Teamster activity preceded October 15, 1973, and the Steelworkers' activity began about that time.

[4] Hudas apparently left the Company just before, or just after, this conversation, the testimony is not clear. The context of the conversation, however, seems to make after the only possible time.

two leaders."[5] Some mention of the Teamsters Union was made, with Barker saying he signed a Teamsters card, but "didn't have nothing to do with it, the starting of the Teamsters' Union." Sennstrom testified that he told Eastham and Barker that he thought they were "the leaders in the plant, that they were influential," and that "Hudas wasn't," because he was "not very bright, and I didn't think people would follow him like they would people like Mr. Eastham or Mr. Barker." Sennstrom did not deny that he said something about knowing who had signed Teamsters cards. The only discrepancy concerns whether Sennstrom said that Eastham and Barker were leaders of the *union,* or in the *plant.* It is possible that Sennstrom said "in the plant," and Eastham and Barker heard, or interpolated, "of the union." In the context of a conversation about unions, Eastham's and Barker's interpretation of the statement was not unreasonable.

Plant Manager Sennstrom held shift meetings (one for each of three shifts) on two occasions, October 31 and December 5. There is no great dispute as to what occurred, although some witnesses placed certain topics at the first meeting and others at the second, or both. The following findings as to what, of relevance here, occurred at the meetings is based on the composite testimony of the various witnesses, with certain minor credibility findings noted.

Sennstrom testified that he responded to an employee's question about the amount of union dues and initiation fees that the initiation fees could go up to $200 a month. After some discussion, Sennstrom said, according to the testimony of employees Eastham, Barker, and Barbara Frye, "the leader of the union is here, do you have anything to say, Barker?"[6]

Sennstrom testified that he reminded employees at the first meeting of the company rule against soliciting during working hours, and said that he "didn't appreciate the authorization cards being handled during working hours." He stated that the Company did not enforce the rule at all, but rather told employees that "the only way people could make good, objective decisions about the union was to talk about it, and I urged people to talk about it." Eastham's testimony has Sennstrom saying that he "didn't want union cards signed on company property at any time." Barker's testimony agrees with Eastham's, that Sennstrom said he "did not want the cards signed on Company property or premises at any time."

Sennstrom testified to having told employees about the Company's various "wages, benefits, and working rules and what have you," and then saying "if the union prevails in the election, . . . these rules will go in the waste basket . . . We sit down with the Union's representatives . . . and negotiate a contract." Eastham testified that Sennstrom added, after mentioning various benefits the Company already had, that if a union got in, "you'd have to start all over from scratch." Barker also testified that Sennstrom said "if the union got in, we would start from scratch" in relation to employee benefits. Employee Kenneth Schleppi testified that Sennstrom said "if the union gets in we can just take all our wage and hourly benefits, and all this stuff, and just throw it in the waste basket and start from scratch, and we'll negotiate the whole thing, starting with nothing." Barbara Frye testified that Sennstrom said the benefits would be lost if the union got in.

Sennstrom conceded saying at the October meeting that he knew who signed authorization cards, testifying that he in fact did know because it was a small shop, "there was very little secret about this in the plant," and a number of people had volunteered information to him.

Sennstrom also testified that in response to a question as to what was going to happen to the January 1 wage increase,[7] he said the Company was "not going to make any judgment until after the election—until after the results of the election were held." Eastham testified that Sennstrom said the employees would not get the first of the year raises "unless the union lost the election." Schleppi testified that Sennstrom, with respect to the annual increase, said, at the December 5 meeting, the employees "wouldn't get it because there was a union campaign going on, and that they weren't allowed to do it," and that "it would take the NLRB about 10 days to two weeks to verify the election, and at that time, after the union loses, we would be able to get our annual increases in benefits, after it was official." Zola Blankenship testified that Sennstrom said the employees "couldn't get our annual raise because the union negotiations were holding it up, and we wouldn't get the raise until it was settled," adding that he said the raise would not be given "until the union was voted out."

Sennstrom also testified that he did say to employee Hoyt Lucas, at the end of one of the shift meetings, "I was really surprised, you know, to hear that you were supporting the union," explaining that the reason for the statement was the fact that Lucas had just made a very "pro-company" speech. Lucas has Sennstrom saying, after Lucas indicated his support *for* the union, "Oh, I see, Hoyt, that you signed a union card."

Between the two meetings, on November 19, 1973, Respondent discharged William Barker. Barker began working for the Company in August 1972. Early in October 1973, a Steelworkers union meeting was held at Barker's house, attended by Supervisor Steve Gall.[8] Barker passed out Steelworkers cards in the parking lot of another plant, not belonging to IPM, to Kenneth Schleppi and "quite a few [other] people." He also discussed the union with other employees on many occasions during break periods.

Respondent has had a rule since the plant opened in 1969, which is set forth in the "Employee Handbook," providing for various disciplinary action for unexcused absences. One unexcused absence in any 12-month period called for a "verbal warning;" two for a "written attention notice";

[5] Barker's testimony has Sennstrom saying he knew "who was leading the union, that Hudas didn't have the sense and that he was too stupid."

[6] As indicated above, there were three separate shift meetings held on each date. The above colloquy obviously could only have occurred at one of these meetings, the one Barker attended.

[7] The Company had given an increase about the first of each year in each of the three preceding years.

[8] Gall testified that Barker invited him to the meeting. Barker testified that he did not "invite" Gall, but that Gall was standing "in close proximity" when Barker talked to some other employees about a union meeting to be held at his home, and Barker answered "Yes" to an employee's question whether anybody could come to the meeting. As there is no specific allegation in the complaint with respect to Gall's attendance at this meeting, I need not determine whether he was, or reasonably thought that he was, invited to attend.

three for a 1-day suspension; four for a 2-day suspension; and five for discharge. The rule provided that "Each employee who is absent from work for any reason must report such absence directly to his supervisor prior to the start of his shift. Reporting to any other person is not acceptable." Barker's "record" shows "unexcused absences" for October 27, 1972, and June 13, October 17 and 18, and November 16 and 17, 1973. On October 22, 1973, he was given a notice that he was suspended for 2 days, October 23 and 24, for four unexcused absences within a year.[9] On November 19 he was discharged, according to Respondent, for five unexcused absences within a year.[10]

Barker testified that he called his supervisor, Barry Haas, each of the last four "unexcused absence" days, October 17 and 18, and November 16 and 17, before the start of the shift, and notified Haas he would not be in because he was ill. He also testified that when he was suspended for 2 days, he made no protest to any management official about the suspension, that is, he did not tell anyone that he should not have been charged with unexcused absences for October 17 and 18. He testified at first that when Sennstrom told him on November 19 that he was discharged, he told Sennstrom that he had "called in both days," i.e., November 16 and 17. He subsequently, on examination by the Charging Party, stated his conversation with Sennstrom as follows: "I was told that I was—that there was—the absentee records and I said, 'Well, does that mean I no longer have a job?' And he said, 'Yeah.' And so I went in and picked up my check." When called back as a rebuttal witness, Barker again stated his version of the last conversation with Sennstrom, without indicating he made any protest. His testimony at that point was: "I called in and I told him—he's talking on the phone and he says that he cannot tolerate absentee, and I don't know if he said anything else and I asked him does that mean I do not have a job and he says yes, so I just hung the phone back up." With respect to the last absence, on November 17, a Saturday, Barker claimed that when he called in and spoke to Haas, the latter told him to talk to Sennstrom the following Monday before reporting for work.

Supervisor Haas categorically denied that Barker called in sick on November 16 and 17, testifying he did not talk with Barker at all on those days. Barker did in fact call Sennstrom on Monday, November 19, and his version of that conversation is given above. Sennstrom testified that on Monday morning he went to see Haas, to ask where Barker was. Haas told Sennstrom that Barker was not there, and that he had not heard anything from him since the preceding Thursday. Sennstrom then told Haas to tell Barker, if he did come in, to see him (Sennstrom) in his office. When Barker subsequently telephoned, he said, according to Sennstrom, "Hes, I don't suppose I've got a job anymore." Sennstrom responded "Not unless you've got some legitimate excuse." Barker then said "Okay," and hung up the phone.

There is an obviously flat credibility conflict between Barker and Supervisor Haas as to whether Barker called Haas on November 16 and 17. Tending to support Barker is the fact that he did not report to work on the following Monday, instead calling in to speak to Sennstrom, for Barker testified that Haas told him, when he called on Saturday, to phone Sennstrom before reporting in Monday, and the fact that Barker did so would seem to indicate that he called in on Saturday. On the other hand, he testified that he also called in and reported to Haas that he would not be in on each of the two October absences, yet made no protest to anyone about the 2-day disciplinary suspension in October based on these absences, nor did he complain to Sennstrom at the Monday, November 19, call, when told he was terminated for unexcused absences. It is difficult for me to believe that Barker would accept uncomplainingly first the 2-day suspension and then his discharge, if the fact of the matter was that the absences should have been excused. So, although there is no ready explanation as to why Barker called Sennstrom on Monday if he had not been advised to do so, there are many possible reasons that could account for that.[11] But there seems to be only one logical explanation for Barker's failure to protest the 2-day suspension and the discharge, and that is the obvious one that there was no excuse for the absences; i.e., that Barker had not called in. I am constrained, therefore, to credit Haas that Barker did not call in on November 16 or 17.[12]

Zola Blankenship, who was discharged January 7, 1974, began working for Respondent in March 1972. She signed a Steelworker card, wore a Steelworker button in the plant, and testified that at lunchtime she discussed the union with a number of other employees. During the last few months or so of her work tenure, according to her own testimony, she had a number of run-ins with her supervisors. She was told by Supervisor Vic Kay on one occasion to use a scoop, rather than a product called "Oil Dry," to clean up some oil on the floor. She refused his direction, saying if she "couldn't use the Oil Dry I . . . wouldn't clean it up." Kay told her to clock out. Plant Manager Sennstrom then spoke with her, told her not to quit, but to go back to work, and "do it the way he [Kay] wants you to do it. He is your supervisor." Blankenship testified that although at the time she didn't know of anyone else being asked to use a scoop rather than the Oil Dry, "later I found out he did make other people do it that way." Sennstrom's testimony confirms Blankenship's in pertinent part with respect to the Oil Dry incident.

About 2 weeks or so [13] before her January 7 discharge, Supervisor Gall told Blankenship that she was "only allowed to go to the bathroom two times that night from now on." She responded that he did not have "the right to tell me when I could go to the bathroom, that I only went to the bathroom when I had to go, and I didn't stay that long." Gall then went to see Sennstrom about his problems with

[9] The first of these four was October 27, 1972.

[10] The first of these five was June 13, 1973.

[11] For example, and this is, of course, only speculation, Barker might well have known, having less than a month earlier received the 2-day suspension, that he had five unexcused absneces and felt it was futile to come to the plant.

[12] A further reason for not crediting Barker is the fact that he testified on direct examination that he was not scheduled to work on Saturday, November 17, and then, on cross-examination, first equivocated as to whether he was scheduled to work, then admitted that he was. Indeed, Respondent introduced into evidence a notice to all employees, dated November 15, that the plant would be in full operation on November 17.

[13] Blankenship first testified "a few days before," then "a couple of weeks." Gall placed the time as a week before her discharge, and Sennstrom as about 3 weeks.

Blankenship. Sennstrom told Gall that it was "his problem," and suggested that Gall have a talk with Blankenship to "iron out" the problem.

On January 7, 1974, Gall asked Blankenship to come to his office. She had a glass of water with her when she went there. Gall told Blankenship that she "went to the restroom entirely too much," and that to keep her from going to the restroom that much he "didn't want me to have any water, pop, or coffee, or anything to drink on my press." Blankenship asked Gall "whose rule" that was, and he responded that it was "his rule." She then said "Well, when they post a notice on the board that we're not allowed to have anything to drink from upstairs—if they post a notice from upstairs, . . . I would be glad to leave mine in the lunch area." Blankenship carried the water back to her press. Gall then came back, turned the press off, and told her she was fired for drinking water, saying, shortly after, that it was for "insubordination." The above is based on Blankenship's testimony. Gall's testimony was essentially the same. He said that because Blankenship was still going to the bathroom too often, he decided to meet with her about this problem. When he told her not to take any liquids back to her press, she responded that "until John Sennstrom posted something on the bulletin board to the effect that she could not take anything up to her press, she was going to do so no matter what I said, she was going to do it anyway." Gall explained that this was not a rule for everybody, it was a rule for her "because she, and only her, had abused this privilege to take a drink or something to her press," and added that although a couple of times a night was fine, "six and seven times a night is just too much." He concluded by specifically telling her "Zola, do not take anything up on that press to drink." She said she was going to do it anyway. When she did, he "fired her for insubordination."

Two other incidents allegedly occurred respecting Blankenship during her last few months. On one occasion, according to her, someone had taken a pop bottle she had set by her machine, and thrown it in the trash can, breaking the top. She retrieved the bottle, and "threw it on the floor and broke it . . . because it just irritated me that they had thrown it away. . . . " Gall spoke with her about that incident, and told her she could not bring bottles back to her press thereafter, only a plastic glass. Shortly thereafter, according to Gall, Blankenship picked up and posted by her machine a sign reading "No pop bottles in briquette department. Fat Boy." Blankenship denied posting this sign. The circumstances are such that I am inclined to believe she did post it, although the incident has very little bearing on the disposition of this case.

Shortly before Christmas 1973, Steve Gall approached Eastham, Hoyt Lucas, and another employee, and, according to Eastham, said "It'd be nice if the Union got in, we could be on strike for Christmas," adding, "Well, the Company gave you a turkey for Christmas. What did the Union give?" Gall was wearing an "IPM Cares" button at the time, and he said to Eastham, "You should be wearing one of these, Chuck." Gall placed this conversation at the Company's Christmas party, testifying that he said, when he gave Eastham his turkey, "See, IPM cares, they give you a turkey." Gall denied saying anything about a "strike for the Christmas holiday." He did testify that some time later, about January 25, 1974, he said to Eastham, "Well, we're going to be on strike now. I heard you signed a union authorization card." For substantially the same reasons I have already credited Eastham with respect to conflicts between his testimony and Gall's I credit Eastham's version of the pre-Christmas incident.

### C. *Discussion*

#### 1. The alleged violations of Section 8(a)(1)

Based on the facts reported above, I find that Respondent violated Section 8(a)(1) by Sennstrom's statements to Eastham and Barker to the effect that they were the leaders of the Union, which, taken together with Sennstrom turning to Barker at one of the shift meetings and referring to him as "the leader of the union," as well as his statements at these shift meetings that he knew who had signed union cards, and his statement to Hoyt Lucas, set forth above, clearly create the impression of surveillance among the employees. It is no defense that Sennstrom may well have gained his knowledge without having actually engaged in any unlawful surveillance.

I find also that the totality of Sennstrom's statements at the shift meetings with regard to the existing benefits going in the waste basket, and the annual raise not being given because of the impending election, the latter carrying with it the clear implication that the raise would be bestowed only if the Union lost the election,[14] support the complaint's allegation that Respondent was threatening a loss of economic benefits, thereby violating Section 8(a)(1).

I further find that Sennstrom was, in effect, warning its employees not to solicit union authorization cards on company property, by Sennstrom's statements reminding employees of the company rule (which, as written in the Employee Handbook, does not refer to union solicitation as such, but is not limited to "working time"), and coupling it with saying he did not "appreciate" their handling authorization cards during working hours.

Finally, I find that Respondent violated Section 8(a)(1) by the conduct of Supervisor Steve Gall in questioning Eastham about the union on or about October 15. The comments made by Gall in connection with that incident make the questioning more than just a friend-to-friend discussion of the advantages and disadvantages of unionism.

I do not conclude, however, that the incident involving Gall, Eastham, Lucas, and an unidentified employee at the 1973 Christmas party violated Section 8(a)(1). Gall's saying "It'd be nice if the Union got in, we could be on strike for Christmas," is not sufficient, particularly in view of the fact that Gall was hardly a high-level company official, and Gall and Eastham were in fact friends, to support the complaint's allegation that it "implied the futility of employee support for the union.

#### 2. The alleged violations of Section 8(a)(3)

Based on the facts found above, I do not find that the

[14] For, if the Union won, all benefits were "in the waste basket," and subject to negotiation "from scratch."

General Counsel has established that either Zola Blankenship or William Barker was discriminatorily discharged in violation of Section 8(a)(3) of the Act.

As to Blankenship, her own testimony clearly establishes her insubordination on January 7, 1974, the occasion of her discharge. Gall had directed her not to take the glass of water back to her work station, and she flatly refused to obey. Furthermore, she had previously shown a propensity for disregarding orders from both her previous supervisor, Vic Kay, and Gall. Finally, there is very little reason to believe that Respondent seized on the incident as a pretext to discharge Blankenship because of her union activities, for although she signed a Steelworkers card and wore a Steelworkers button, there is no evidence to show that she was, or that Respondent believed she was, in any sense a leader, or even particularly prominent, in the Union's organizational campaign.

As to William Barker, the case is much closer, for he not only was one of the leaders among the employees of the Steelworkers organizing drive, but, based on Sennstrom's statements, Respondent clearly knew that he was. On the other hand, the evidence plainly establishes that Barker had five unexcused absences within a 12-month period, and it is conceded that the Company has had since the plant opened in 1969 a rule providing for discharge in these circumstances, said rule being set forth in the employee handbook. Furthermore, despite the fact that I have found violations of Section 8(a)(1), these violations were not of the kind, magnitude, or serious nature so as to suggest that the Company would go to the extreme of firing anyone to defeat the union. A few incidents, spread over 3 or 4 months, with each of a relatively mild nature, are not a sufficient basis for a "pretext" finding, in the face of the clear ground for discharge for violating a longstanding rule.

### 3. The challenged ballots

As I have concluded that Blankenship and Barker were not discriminatorily discharged, I sustain the challenges to their ballots. The ballots of Eastham and Gall were challenged, as indicated above, on the ground that each was a superivsor.

Eastham testified that, on sporadic occasions when the supervisor on his shift was sick or had a day off, he was told he was the "lead man." On each of these occasions, the supervisor on the preceding shift would give Eastham specific instructions as to what to do and what he should have the men do. He "followed exactly" what the previous shift supervisor told him to do. Eastham did not on those days reprimand, discipline, hire, or fire employees, nor is there any evidence that he had the authority to do so. From February 1972 until the time of the hearing, a more than 2-year period, Eastham acted as "lead man" about 10 times in all. He had no authority to assign people to specific machines or to reassign them. His basic duties at these times were to see that "production tickets" were filled out properly, and to relay instructions already given him. Although the supervisors had a regular production meeting each Monday, Eastham never went to such meetings. The Employer adduced no evidence to contradict Eastham with respect to his testimony about his "lead man" functions, authority, and duties.

The above facts plainly fall far short of establishing that Eastham was a supervisor within the meaning of Section 2(11) of the Act. Accordingly, I overrule the challenge to his ballot.

As to Gall, it is conceded by the Employer that he was a supervisor from August 6, 1973, until January 21, 1974. Prior to August 6, Gall was a Class A die setter. On that date, he was transferred to the midnight shift as "acting foreman," and the previous foreman of that shift, Joe Woodruff, was transferred to Gall's former shift as "acting die setter—Class A." The notice to the employees of the August 6 change was posted on the bulletin board, and stated that "It is anticipated that these changes will be temporary in nature, lasting approximately six months." On January 15, 1974, the Employer posted a notice on the bulletin board reading: "Effective Monday, January 21, the following personnel changes will be made: Joe Woodruff will be transferred to third shift as briquetting department supervisor. Steve Gall will be transferred to second shift as briquetting department die setter." Employee Eastham testified to the above changes having occurred. Gall also so testified, and he stated that he exercised no supervisory functions or authority after he and Woodruff were switched back to their original status. During the close to 6 months that Gall was a supervisor, from August 6, 1973, to January 21, 1974, he remained on the timeclock, and received the same wages, and there were no changes in these respects when he was transferred back to Class A die setter position.

There is no evidence to suggest that the transfer back, which had been contemplated the preceding August, when there was no union even in the picture, was anything but bona fide. As the eligibility date for the March 20, 1974, election was February 24, and because it is plain on the evidence presented that Gall was no longer a supervisor after January 21, 1974, I overrule the challenge to his ballot.

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

### Conclusions of Law

1. Respondent, by interrogating employees, by creating the impression of surveillance, by threatening employees with a loss of economic benefits, and by promulgating an unlawful no-solicitation rule, has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.
2. Respondent has not violated the Act in any respect other than those specifically found.
3. Charles Eastham and Steve Gall were not supervisors within the meaning of Section 2(11) of the Act at the time of the eligibility date for the election.

### The Remedy

I shall recommend that Respondent cease and desist from its unfair labor practices, and take certain affirmative action designed to effectuate the policies 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 [15]

Respondent, IPM Corporation, a division of Allegheny Ludlum Industries, Inc., Columbus, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating employees about their union activities and membership.

(b) Creating the impression of surveillance of its employees' union activities.

(c) Threatening employees with loss of benefits because of their union activities.

(d) Promulgating unlawful no-solicitation rules.

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

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

(a) Post at its Columbus, Ohio, plant copies of the attached notice marked "Appendix." [16] Copies of the notice, on forms provided by the Regional Director for Region 9, shall be signed by an authorized representative of the Company and posted immediately upon receipt thereof and maintained for 60 consecutive days thereafter, in conspicuous places, including all places at all locations where notices to employees are customarily posted. Reasonable steps shall be taken by the company to insure that the notices are not altered, defaced, or covered by any other material.

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

IT IS FURTHER ORDERED that the complaint be dismissed in all other respects.

IT IS FURTHER ORDERED that Case 9–RC–10341 be remanded to the Regional Director to open and count the ballots of Charles Eastham and Steve Gall, to issue a revised tally of ballots, and to take such further action as then becomes appropriate.

[15] 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.

[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 read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."