

In the Matter of VAN RAALTE COMPANY, INC. and TEXTILE WORKERS
OF AMERICA, C. I. O.

Case No. 3-C-653.—Decided February 29, 1944.

DECISION
AND
ORDER

Upon complaint issued pursuant to charges duly filed by Textile Workers Union of America, C. I. O., herein called the Union, against Van Raalte Company, Inc., Dunkirk, New York, herein called the respondent, a hearing was held before a Trial Examiner at Dunkirk, New York, on July 29 and 30, 1943, in which the Board, the respondent, and the Union participated by their representatives. The Board has reviewed the rulings of the Trial Examiner made on motions and on objections to the admission of evidence and finds that no prejudicial error was committed. The rulings are hereby affirmed.

On September 16, 1943, the Trial Examiner issued his Intermediate Report, finding that the respondent had engaged in unfair labor practices, within the meaning of Section 8 (1) of the Act. Exceptions to the Intermediate Report were thereafter filed by the respondent and were considered by the Board. The Union has not excepted to the findings and recommendations of the Trial Examiner. Oral argument was held before the Board at Washington, D. C., on November 4, 1943. Upon consideration of the entire record, we hereby adopt the findings, conclusions, and recommendations of the Trial Examiner, a copy of whose report is attached hereto, except insofar as they are inconsistent with our findings and conclusions hereinafter set forth.

The record is clear and we are convinced that, except as indicated below, the respondent has engaged in the unfair labor practices found by the Trial Examiner. The Union began its activities among the respondent's employees in January 1943, and on January 6 held its first general meeting, at which pledge cards were distributed and signed, an organizing committee was formed, and plans were made for organizing the respondent's plant. During the week of January 11, 1943, the Union, through its representative, asked the respondent for a bargaining conference; and on January 18, having received no

reply to its request, it filed with the Board a petition for investigation and certification of representatives. As a result of the proceedings so instituted, the Board, on February 26, 1943, issued a Decision and Direction of Election,¹ in which it found that all production and maintenance employees at the respondent's Dunkirk plant, excluding employees in certain specified classifications, constituted an appropriate bargaining unit, and directed an election to determine whether or not these employees desired to be represented by the Union. The election took place on March 16, 1943; and, after certain supplemental proceedings, the Board, on June 11, 1943, dismissed the Union's petition for the reason that the Union had not been selected by a majority of the employees.

The Trial Examiner has found that, shortly after the Union meeting of January 6, Forelady Martha Frankowski questioned Angeline Pakulski, an employee in the glove department, regarding Pakulski's participation in the meeting. We agree with the Trial Examiner's resolution of the conflicting testimony in regard to this incident, and confirm his finding thereon.

Thereafter, on January 19, 1943, the respondent posted in its plant a notice to its employees stating that they were free to join or not to join a union as they chose, that their "employment and opportunity with the Company" would not be affected by the fact that they were or were not union members, and that they did not have to belong to a union to work for the respondent. There is also uncontradicted evidence in the record that, during the period of the Union's campaign, and particularly on the day preceding the election, the respondent instructed its supervisory employees to observe a neutral attitude in union matters. Nevertheless, we find, as did the Trial Examiner, that within a week before the election, Forelady Anna Promenschenkel told Carrie Michalski, an employee in the underwear department, that if the Union came into the plant the respondent would move the mill and that it was already packing,² and that, on the day before the election, Mary May, an instructress in the glove department,³ after telling Irene Odebralski, an employee, that some of the girls were angry with her (May) for giving them advice about voting, accused Odebralski of belonging to the Union, made derogatory remarks to

¹*Matter of Van Raalte Company, Inc.*, 47 N. L. R. B. 1110.

²The Trial Examiner's finding as to the statements made by Promenschenkel was based on the testimony of Michalski, which was denied by Promenschenkel. Although the Trial Examiner found Michalski's testimony on another point confused, the record affords no reason for doubting her veracity or the accuracy of her recollection as to this incident, which reflects the same policy on the part of the respondent as the newspaper article discussed below. We therefore credit Michalski, as did the Trial Examiner.

³Because of the absence of any showing as to the exact duties of instructresses or the degree of supervision exercised by them, the Trial Examiner made no finding as to the respondent's responsibility for May's conduct. Since it is clear from the record as a whole that instructresses were regarded by both the respondent and the Union as supervisory employees, we find that May's anti-union conduct is imputable to the respondent.

her about the Union, and stated that the employees should vote as they pleased, but that they would be sorry later.

During the course of its campaign to enlist members, the Union distributed a series of leaflets among the respondent's employees, urging them to become union members in order to obtain seniority rights, higher wages, vacations with pay, and other benefits. During the same period of time, the respondent also issued a series of announcements, at least some of which were admittedly in direct answer to the union bulletins. Thus, the respondent mailed to each of its employees on February 5 a notice regarding the President's Wage Stabilization Order, in which it promised that an application for an increase in the base rate for sewing operations would be presented to the National War Labor Board within a few days; on February 15, a document entitled "INFORMATION FOR OUR EMPLOYEES," showing the increase in the annual pay rolls at the Dunkirk plant from 1929 to 1942 and stating that the average annual income of the employees had been increased 40 percent since 1939; on February 19, a notice captioned "HOW YOUR WEEKLY INCOME CAN BE SUBSTANTIALLY INCREASED," stating that the respondent was making certain changes in hours and styles which should increase earnings by at least 10 percent, and reminding the employees that the existing and long-established time standards and rates were protected by the Wage Stabilization Order; on March 9, a notice entitled "REPAIRS," offering to permit the employees to choose whether they should make their own repairs on defective articles or have deductions made from their pay or from their vacation money and bonus payment to cover part of the cost of such repairs; also on March 9, a notice regarding the respondent's policy with respect to releasing workers to war industries; on or about March 12, an announcement of the election to be held on March 16 under the auspices of the Board, stating that the management was neutral, but urging the employees to vote; and on March 15, the day before the election, a statement headed "A PROMISE MADE IS A DEBT UNPAID," assuring the employees that the promise made on February 5 would be kept just as soon as governmental regulations would permit. Although these announcements, except for the notice of the election,⁴ contained no direct reference to the Union, we are convinced and we find, as did the Trial Examiner, that they were so timed as to constitute replies to the various statements issued by the Union, and were designed to discount the objectives of the Union, one by one, by showing the employees that the benefits promised to be sought by the Union were already being

⁴ Since an employer may properly encourage his employees to vote, provided he does nothing to influence them as to how they should vote, we do not regard the respondent's notice of March 12 as evidence of interference with the rights of its employees. Cf. *Matter of Martin Food Products, Inc.*, 52 N. L. R. B. 1131.

enjoyed by the employees, or would be granted by the respondent itself as soon as conditions permitted, or were beyond the power of the Union to secure.

On March 15 a news item appeared in the local newspaper, based on a statement given to a reporter by Nelson Koeppen, the respondent's plant manager. This article, headed "VAN RAALTE TO CLOSE MAIN STREET OFFICES," stated that the respondent, in order to consolidate diminishing operations, was planning to abandon one of its buildings comprising approximately 20,000 square feet of floor space, and to transfer its activities to another part of its plant; that the owner of the building was that day being given notice of termination of the lease; and that "present conditions" had decreased employment and production to such an extent as to make unnecessary the additional floor space. Although the respondent contended that this story was issued for the purpose of quieting the anxiety of the employees that the respondent might move its plant, we agree with the Trial Examiner that its effect naturally would be to confirm such fears rather than to set them at rest.

On March 16, the date of the election, voting was scheduled to take place from 6:30 to 8:00 a. m. and from 11:30 a. m. to 7:00 p. m.; and it was agreed between the respondent and the Union that employees were not to vote during their working hours. The Trial Examiner has found, however, that between 7:30 and 7:45 a. m. Forelady Frankowski permitted three employees to leave their work for the purpose of voting, and that later in the morning Forelady Mary Geiben changed the working hours of the employees in her department in violation of the agreement between the respondent and the Union. We deem it unnecessary to resolve the conflict in testimony regarding Frankowski's conduct or to determine whether the change in hours in Geiben's department constituted a violation of the agreement between the parties, since there is no evidence to indicate in either case that the action taken by the foreladies afforded any advantage to the opponents of the Union which was not also given to union adherents.

Later on the same day, certain non-supervisory employees of the respondent engaged in anti-union demonstrations in the plant during working hours. Thus we find, as did the Trial Examiner, that Rose Kruzinski and Josephine Cortese, employees in the underwear department, paraded through their department and the mosquito bar department, one of them carrying, attached to a coat hanger with a silk cloth, a milk bottle filled with orange juice and labeled "Van Raalte," while the other carried an empty bottle, tied with a rag and labeled "C. I. O."; and that at about the same time Julia Mekus and Teresa Lisi, employees in the mosquito bar department, also paraded through the two departments, wearing hats constructed of

cardboard spool ends and mosquito bar netting, across the front of which were signs bearing the words "Van Raalte." Other employees wore signs reading "Van Raalte" and "C. I. O.," displayed in such a way as to indicate disparagement of the Union. Although these activities were carried on openly, and were noted, at least in part, by some of the supervisors, no attempt was made by the respondent to stop the demonstrations.

Upon the above facts, we are convinced and we find, as did the Trial Examiner, that the respondent, at a crucial time in the organizational campaign of the Union, engaged in a course of conduct designed to discourage its employees from choosing the Union as their representative, and that, in so doing, it interfered with, restrained and coerced its employees within the meaning of the Act. In so holding, we are not unmindful of the fact that the respondent's anti-union conduct consisted in large part of a series of notices to its employees, and that the Supreme Court has recently denied certiorari in the *American Tube Bending* case,⁵ in which the United States Circuit Court of Appeals for the Second Circuit held that a letter and speech of an employer to his employees, of somewhat the same tenor as the notices in the present case, were privileged under the constitutional guarantee of free speech. In that case, however, the Court not only found that the employer's speech and letter contained no intimation of reprisal against employees whose views differed from his own, but also specifically stated that, had there been evidence in the record other than the speech and letter, it would have remanded the cause to the Board. Moreover, the Supreme Court on the same day also denied certiorari in the *Trojan Powder Company* case,⁶ in which the United States Circuit Court of Appeals for the Third Circuit upheld the Board's finding of interference, based in part on a series of letters from an employer to its employees, although the language of the letters contained no explicit threat and "standing by itself, could hardly receive anything but an innocent interpretation." From these decisions, as well as from the decision of the Supreme Court in the *Virginia Electric and Power Company* case,⁷ it appears that anti-union expressions on the part of an employer are not protected by the constitutional guarantee of free speech if

⁵ *N L R B v. American Tube Bending Co.*, 134 F. (2d) 993. (C. C. A. 2), setting aside 44 N. L. R. B. 121; cert. denied 320 U. S. 768.

⁶ *N L R B. v. Trojan Powder Co.*, 135 F. (2d) 337 (C. C. A. 3), enforcing 41 N. L. R. B. 1308; cert. denied 320 U. S. 768.

⁷ *N L R B v. Virginia Electric & Power Co.*, 314 U. S. 469, in which the Court said: "But certainly conduct, though evidenced in part by speech, may amount in connection with other circumstances to coercion within the meaning of the Act. If the total activities of an employer restrain or coerce his employees in their free choice, then those employees are entitled to the protection of the Act. And in determining whether a course of conduct amounts to restraint or coercion, pressure exerted vocally by the employer may no more be disregarded than pressure exerted in other ways." See also *Jacksonville Paper Co. v. N. L. R. B.* 137 F. (2d) 148.

they are in themselves coercive, and that, in any event, they may be considered as part of a complex of activities in determining whether an employer has violated the Act.

In the present case, as in the *Trojan Powder Company* case, cited above, the respondent's notices to its employees constituted only one manifestation of its opposition to the Union. Its attitude and intentions were shown clearly by Forelady Frankowski's interrogation of Angeline Pakulski regarding her union activities, and by Forelady Promenschenkel's remark to Carrie Michalski that the respondent would move the mill if the Union came into the plant. The respondent's warning that it might move its plant, conveyed to the employees first through Forelady Promenschenkel and repeated in a more subtle but nonetheless unmistakable form in the newspaper article which appeared on the very day before the election, clearly constituted a threat of economic reprisal if the employees voted for the Union. Finally, by its failure to interfere with the anti-union demonstrations of certain of its employees in the plant on the day of the election, the respondent in effect gave its support and approval to their disparagement of the Union, and to the suggestion, conveyed in pantomime, that the respondent could do more than the Union for the employees. We are convinced and we find that in its totality the respondent's conduct, as outlined above was coercive of its employees, and that the notices issued by the respondent to its employees during the Union's organizational campaign were an integral part of this course of conduct. We accordingly find that the respondent, by the threatening remarks of its supervisory employees, by its intimation of moving its plant if the Union became the representative of the employees, by the notices issued to its employees between February 5 and March 15, 1943, and by its acquiescence in the anti-union demonstrations and activities conducted in the plant during working hours on the day of the election, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

THE REMEDY

Having found that the respondent has engaged in unfair labor practices, we shall order it to cease and desist therefrom and to take certain affirmative action which we find necessary to effectuate the policies of the Act.

Upon the basis of the above findings of fact, and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. Textile Workers Union of America, affiliated with the Congress of Industrial Organizations, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Van Raalte Company, Inc., Dunkirk, New York, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Post immediately in conspicuous places in its plant at Dunkirk, New York, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraph 1 of this Order;

(b) Mail immediately to all its employees notices stating that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraph 1 of this Order;

(c) Notify the Regional Director for the Third Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

INTERMEDIATE REPORT

Mr. Francis V. Cole, for the Board.

Mr. Alger A. Williams, of Buffalo, N. Y., for the respondent.

Mr. William DuChessi, of Buffalo, N. Y. and *Mr. Jack Rubenstein*, of New York City, for the Union.

STATEMENT OF THE CASE

Upon charges duly filed on March 17, 1943, by Textile Workers Union of America, affiliated with the Congress of Industrial Organizations, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Third Region (Buffalo, New York), issued its complaint,

dated June 30, 1943, against Van Raalte Company, Inc., Dunkirk, New York, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by notice of hearing, were duly served upon the Respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance that the respondent had interfered with, restrained, and coerced its employees in violation of Section 8 (1) of the Act by: (1) publishing newspaper advertisements and sending letters to its employees which tended to discourage its employees from joining or participating in union activities; (2) interrogating employees concerning their union membership and activities; (3) threatening employees with discharge because of their union membership and activities; (4) threatening employees with discharge if they voted for the Union in the Board election conducted on March 16, 1943; (5) permitting anti-union demonstrations and parades by employees on the respondent's time and property; and (6) urging employees to vote on company time at the said Board election.

On or about July 19, 1943, the respondent filed an answer¹ in which it denied that it had engaged in the unfair labor practices alleged.

Pursuant to notice, a hearing was held at Dunkirk, New York, on July 29 and 30, 1943, before the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The Board and the respondent were each represented by counsel and the Union by its representative. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the close of the hearing, motions by counsel for the Board and for the respondent to conform to the pleadings to the proof were granted. Also at the close of the hearing, counsel for the respondent moved to dismiss the complaint, and ruling thereon was reserved. The motion is hereby denied. All parties waived oral argument before the undersigned. The parties were afforded an opportunity to file briefs with the undersigned. On August 5, 1943, the respondent filed a brief. No briefs were filed on behalf of the Union or of the Board. On August 23, 1943, the undersigned, on his own motion, issued an order correcting the transcript of the proceedings.

Upon the entire record in the case, and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Van Raalte Company, Inc., a New York corporation, is engaged in the manufacture, sale, and distribution of gloves and ladies underwear. The respondent operates seven plants located in various parts of the United States. Only the plant located in Dunkirk, New York, is involved in this proceeding.² During the year 1942, the respondent used at said plant raw materials valued at approximately \$900,000, of which approximately 20 percent was shipped to the Dunkirk plant from points outside the State of New York. During the same period of time, sales by the respondent of its finished products manufactured at Dunkirk amounted to approximately \$3,000,000, of which 90 percent was shipped to

¹ Counsel for the Board conceded that no question was being raised with respect to the time within which the answer was filed.

² The Dunkirk plant consists of two buildings located about two blocks apart.

States other than New York. The Dunkirk plant employs approximately 1200 persons. The respondent admits for the purpose of this proceeding that it is engaged in commerce within the meaning of the Act.³

II. THE ORGANIZATION INVOLVED

Textile Workers Union of America, affiliated with the Congress of Industrial Organizations, is a labor organization, which admits to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. Introduction

The record does not show whether any union attempted to organize the employees at the respondent's Dunkirk plant or whether any of the employees were members of a union prior to January 1943. On January 4, 1943, Hugh Thompson, Regional Director of the Union in Buffalo, informed William DuChessi, a field representative of the Union, that a group of women had communicated with Thompson for the purpose of organizing a union in Dunkirk. DuChessi went to Dunkirk, and, after conferring with a small committee, prepared and distributed a leaflet announcing a general meeting of the Union on January 6. At this meeting, pledge cards were distributed and signed, an organizing committee formed, and the campaign to organize the employees of the respondent's Dunkirk plant was initiated. Thereafter, various meetings of the employees were held for the purpose of enlisting them as members and organizing the Union.

During the week of January 11, DuChessi requested Nelson Koeppen, manager of the Dunkirk plant, to arrange a bargaining conference between the respondent and the Union. Koeppen stated that DuChessi's request would be referred to Lawrence Griffis, vice-president in charge of production and labor relations at the Dunkirk plant, and that DuChessi would probably hear from Griffis in a few days. Having received no word from the respondent by January 18, DuChessi, on behalf of the Union, on that day filed a Petition for Investigation and Certification of Representatives with the Regional Office of the Board at Buffalo, New York.⁴

B. Interference, restraint and coercion

1. Activities of supervisory employees

Shortly after the first meeting of the Union on January 6, 1943, Martha Frankowski, forelady in the glove department, questioned Angeline Pakulski,

³ The foregoing facts are based upon a stipulation entered into between counsel for the Board and counsel for the respondent. The figures above set forth are estimates based upon costs.

⁴ As a result of the proceedings so instituted, the Board, on February 26, 1943, issued a Decision and Direction of Election (*Matter of Van Raalte Company, Inc. and Textile Workers Union of America, C. I. O.*, 47 N. L. R. B. 1110), in which it found that all production and maintenance employees at the respondent's Dunkirk plant, excluding certain stated classifications of employees, constituted an appropriate bargaining unit. Pursuant to the Direction of Election, an election by secret ballot was conducted on March 16, 1943. Certain ballots cast in the election were challenged by the parties. On May 20, 1943, the Board issued a Supplemental Decision and Direction (49 N. L. R. B. 985) with respect to the ballots so challenged, and on June 11, 1943, issued a Second Supplemental Decision and Order (Case No. R-4906, unpublished), dismissing the petition for the reason that the Union had not been selected by a majority of the employees.

an employee, with respect to the latter's attendance at the meeting. Evelyn Ziembra, an employee in the glove department, who was present during this conversation, testified that while she and Pakulski were at work, Frankowski approached them and addressed Pakulski; that Frankowski stated that she understood that Pakulski had been at the Union meeting and had spoken up; that Pakulski admitted attending the meeting but denied that she had anything to say; that Frankowski continued to accuse Pakulski of speaking at the meeting, which Pakulski denied; and, that, finally, Pakulski began to cry. Frankowski, who was called as a witness by the respondent, admitted this conversation. According to her version, some of the employees told her that Pakulski had attended the union meeting; that she asked Pakulski if she had gone to the meeting; that Pakulski said that she had gone, and Frankowski then said that it was all right; that she did not remember saying anything else about the Union; and that Pakulski "felt kind of embarrassed." Frankowski explained that she questioned Pakulski because Frankowski "wanted to see what it was about." On cross-examination, Frankowski admitted that Pakulski was crying at the conclusion of the conversation. Pakulski did not testify. Frankowski's admissions that she questioned Pakulski and that Pakulski was crying at the end of the conversation and the fact that Frankowski did not remember, but did not deny, saying anything else about the Union convince the undersigned, and he so finds, that the conversation in question occurred in the manner related by Ziembra.

Carrie Michalski, an employee in the underwear department, testified that during the course of a bingo game one evening within a week before the election, Anna Promenschenkel, forelady in the glove department, told Michalski that if the Union came into the plant the respondent would move the mill and that they were already packing. Promenschenkel denied having made this statement, but admitted on cross-examination that both she and Michalski attend bingo games every night, "even Sunday." As noted below, the respondent released a story to the local newspaper on the evening preceding the election, which stated that the respondent planned to abandon one of the buildings comprising the Dunkirk plant, to "consolidate diminishing operations"; and Nelson Koeppen, manager of the Dunkirk plant, testified that he released this story to the newspaper because a number of the employees had inquired of Koeppen "if it were true that the Company was planning to take some of their manufacturing business out of town." The undersigned is convinced and finds that Promenschenkel made the statement so attributed to her by Michalski.⁵

Irene Odelbralski, an employee in the glove department, testified that on March 15, the day preceding the election, Mary May, an instructress in the glove department, stated that some of the employees in the department were angry at her because she was trying to give them advice about voting; that Odelbralski said that she did not blame the employees in question for being angry, whereupon May replied, "Oh, I see that you are for the Union, too"; that May also stated that the employees thought the C. I. O. was a pile of gold, but in contrast May

⁵ The fact that Promenschenkel was not Michalski's immediate supervisor did not provide justification for her statements nor relieve the respondent of responsibility for the statements so made. Cf. *Matter of Sunbeam Electric Manufacturing Co. and United Electrical, Radio & Machine Workers of America, affiliated with the C. I. O.*, 41 N. L. R. B. 469, enforced as modified in other respects *N. L. R. B. v. Sunbeam Electric Manufacturing Co.*, 133 F. (2d) 856, (C. C. A. 7). Nor is the respondent excused by reason of the fact that Michalski testified that she did not believe Promenschenkel's statement that the plant would move if the Union were successful. *Matter of Marshall Field & Company and Department Store Employees Union, Local 291 of United Retail, Wholesale and Department Store Employees of America, C. I. O.*, 34 N. L. R. B. 1, enforced *N. L. R. B. v. Marshall Field & Company*, February 26, 1942, (C. C. A. 7).

referred to the Union in a derogatory and obscene manner; and that May further stated that the employees should vote as they pleased, that May did not care, and that the employees would be sorry later. May was not called as a witness by the respondent.⁶ The undersigned finds that May made the statements as testified by Odelbralski.

On Sunday, March 14, 1943, the Union presented a pre-election broadcast over a local radio station. Evelyn Ziemba, an employee in the glove department, spoke over the radio at that time. On the following day, Ziemba, as a Union representative, went to the office of the plant for the purpose of checking the names of employees listed on the respondent's pay roll who were eligible to vote at the election. Ziemba testified that when she returned to work, Martha Frankowski, her forelady, called her aside and told her that Ziemba was a very nice girl and Frankowski was surprised that she had become "mixed up" in the Union; that Ziemba had been putting in quite a few hours of work and had not drawn less pay than \$20 when she was working, and that Griffis, vice president of the respondent, was their "bread and butter"; that Frankowski asked Ziemba if she could vote in the election and when Ziemba said that she could, Frankowski stated "you still have your way out of this", that Frankowski declared that she did not think half of the employees were going to be there after the election; and that Frankowski advised Ziemba not to mention their conversation to anyone.

Frankowski testified that when Ziemba returned from the office, Frankowski called her aside and asked her where she had been; that Ziemba said that she had been checking the pay-roll list of employees eligible to vote; that Frankowski stated: "you are kind of mixed up with it", that Ziemba said that she was; and that nothing more was said about the Union. Frankowski also testified that she had read an article in the newspaper stating that Ziemba would appear on the radio program of the Union which has been referred to above. Frankowski's admission that she did speak to Ziemba about the latter's union activity, the improbability of Frankowski's testimony that she said nothing further about the Union after indicating an initial curiosity by remarking that Ziemba was "mixed up with it," the fact that Frankowski admitted questioning Angelne Pakulski about the Union shortly after its first meeting on January 6 because Frankowski "wanted to see what it was about," as noted above, convince the undersigned and he so finds, that Frankowski did make the statements attributed to her by Ziemba.

The evidence is insufficient to determine whether Ziemba's duties were those of a regular production employee or an instructress at the time Frankowski's statements were made.⁷ Furthermore, although the respondent and the Union regarded instructresses as supervisory employees; no showing was made as to their exact duties or the degree of supervision which they exercised.⁸ Under such circumstances, it is impossible to determine whether or not instructresses exercised such degree of supervisory authority as to charge the respondent with responsibility

⁶ Forelady Hope was questioned by counsel for the respondent with respect to making the statements attributed to May by Odelbralski. Hope denied that she (Hope) had made the statements in question.

⁷ Ziemba participated in the election and her right to vote was challenged by the respondent on the ground that she was considered an instructress. Instructresses were excluded from the unit, and the parties considered them as supervisory employees both in the prior representation proceeding and in the present case. The Board made no determination with respect to Ziemba's eligibility to vote since her ballot would not have affected the result of the election (49 N. L. R. B. 985, and Second Supplemental Decision and Order in the *Matter of Van Rualte Company, Inc and Textile Workers' Union of America, CIO*, Case No. R-4906, June 11, 1943, unpublished).

⁸ The employment status of instructresses was not determined by the Board in the prior representation proceeding. In that case, instructresses were excluded from the unit found to be appropriate upon request of the Union, and without objection by the respondent.

for their activities and statements. The undersigned, therefore, does not rely upon the findings with respect to the statements made by Frankowski to Ziembra and by May to Odelbialski, alone or together with other conduct of the respondent, as evidence that the Act was thereby violated. The statements so made, however, may and have been considered as evidence of the respondent's anti-union animus and give content and meaning to other activities engaged in by the respondent which have been alleged as unfair labor practices.⁹

2 The leaflet campaign of the respondent

During the course of its campaign to enlist members, the Union distributed a series of leaflets among the employees, urging them to become union members for the purpose of receiving seniority rights, higher wages, vacations with pay, and other benefits. The leaflets issued by the Union were primarily concerned with these matters. During this same period of time, the respondent mailed announcements to its employees and posted various notices in its plant, concerning the same subjects dealt with by the Union in its leaflets.

On February 5, the respondent mailed the following notice to each of its employees:

VAN RAALTE COMPANY, INC

To our employees:

Attached is a bulletin issued by the National War Labor Board in regard to President Roosevelt's

Wage Stabilization Order

Our *Government* considered this order an absolute necessity in order to prevent ruinous inflation which would make our money almost worthless; and it is an attempt to *control the cost of living* for the duration of the war.

There is nothing fixed as regards the *procedures* of the War Labor Board. The *Government* as well as all *reasonable employers* know that wages cannot remain stationary if living costs continue to rise.

Under the Order, increases are permitted without War Labor Board approval which come within the following classifications:

- a. Individual promotions or reclassifications.
- b. Individual merit increases within established rate ranges.
- c. Operation of an established plan of wage increases based upon length of service.
- d. Increased productivity under piece-work or incentive plans.
- e. Operation of an apprentice or trainee system.

⁹ The undersigned has considered the testimony of Estelle Nawodzinski, formerly an employee in the glove department, relating to certain anti-union statements alleged to have been made to her by her forelady, Frances Hope. Nawodzinski's testimony in these respects was denied by Hope. In view of Nawodzinski's admissions on cross-examination that she had concealed her union activities from Hope and had not engaged in such activities in the plant, thus refuting the inference that Hope had knowledge of her union membership or activities at the time some of these statements were made, and that Nawodzinski had felt aggrieved and had refused to cooperate with Hope after she had been transferred to defense work by Hope in December 1942, prior to the inception of union activities, the undersigned credits Hope's denials and finds that she did not make the statements attributed to her by Nawodzinski. Other testimony by Nawodzinski, and employees Marie Messina, and Helen Butryn with respect to alleged anti-union statements and activities on the part of Hope has also been considered by the undersigned but is regarded as insufficient evidence, either alone or together with other acts of the respondent, upon which to predicate a finding of interference, restraint and coercion.

f. Such other reasons as may be prescribed in future regulations

The *Company* has been in constant contact with the Wage & Hour Office, and has obtained rulings for various wage rates which have permitted us to make some increases in hourly rates which come within the exceptions listed above. Any increase that is made, however, in the base rates for sewing operations *must be approved by the War Labor Board*.

This requires that the *Company* file an application with the War Labor Board. This application calls for a great deal of information and statistics on earnings in January 1941, as compared to present earnings. The information is being compiled, and an application will be presented within a few days to the WLB for an increase in the base rate. What the exact amount of the increase may be has not yet been determined and cannot be until all the information has been compiled.

We trust this letter will inform our employees as to why your requests for increased rates cannot be acted upon until we have either obtained a ruling from the Wage-Hour office or approval from the WLB. At the same time, we want to assure our people that we are doing everything within the law to see that they are properly compensated for their efforts.

Mr. Koeppen will be glad to give you any additional information we have available in regard to this matter. (Emphasis in original.)

VAN RAALTE COMPANY, INC.¹⁰

FEB. 5, 1943.

"On February 15," the respondent mailed to each of its employees a document entitled "INFORMATION FOR OUR EMPLOYEES." This document stated that the employees had received vacations with pay for a number of years and would continue to receive them; that vacations with pay were a permanent policy of the respondent, and were protected by the Wage Stabilization Order which prohibited their discontinuance. The notice further stated that the respondent would follow seniority should lay-offs be necessary, and that the seniority rule might also be applied to other matters affecting working conditions at such time as it would be desirable and practical to do so.

On February 16, the respondent mailed to each of its employees a document entitled "INFORMATION FOR VAN RAALTE EMPLOYEES." This document set forth the total annual pay rolls of the Dunkirk plant for each year from 1929 to 1942, showing an increase from a sum in excess of \$300,000 in 1929 to a sum exceeding \$1,500,000 in 1942. The notice then stated that the average annual income of the employees had increased 40 percent since 1939, by reason of higher rates, overtime, bonuses, and vacation pay, and that other efforts were being continuously made by the respondent to improve manufacturing schedules as a means of further improving the earnings of the employees. The notice then continued with a statement of the history of the respondent's progress through the years of the depression, and ended in the following manner:

While there are predictions of great competition with foreign imports after the war, *we believe that our management in cooperation with our employees will find a way to meet those problems when they come.*

¹⁰ Attached to this notice was a balance-sheet in graphic form, showing income of the respondent and disbursements for wages, salaries, taxes, and other items for the year 1942. Also attached thereto was a copy of a release issued by the National War Labor Board, explaining in question and answer form the adjustment of wages and salaries by that Board.

¹¹ This was 2 days after the hearing had been held in the representation proceeding. *Matter of Van Raalte Company, Inc. and Textile Workers Union of America, C. I. O., 47 N. L. R. B. 1110.*

There are optimistic predictions of the war's end in 1943 and not later than '44.

Van Raalte is essentially a peace-time business, and we look forward to the opportunity of maintaining a high record of employment in Dunkirk and increasing it. *There never has been a time, however, when cooperation between employees and management has been so vital. The future progress of both our employees and our company depends on a continuance of the fine relations we both have enjoyed in the past.* (Emphasis supplied.)

VAN RAALTE COMPANY.

FEBRUARY 16, 1943.

On February 19, the respondent mailed to each of its employees a notice captioned "HOW YOUR WEEKLY INCOME CAN BE SUBSTANTIALLY INCREASED." This notice stated that the respondent was at once adopting a 48-hour week in accordance with the President's Executive Order of February 9, and was also initiating a policy of fewer styles, and that these two changes should increase earnings by at least 10 percent. The notice contained the further statement that:

We wish to remind our employees that the Wage Stabilization Order protects *existing* and *long-established* time standards and rates. No reductions can be made in such rates without War Labor Board approval regardless of how earnings may increase due to improved working conditions and methods.¹² (Emphasis in original)

On March 9, the respondent mailed to each of its employees a notice entitled "REPAIRS".¹³ This notice stated that deductions for repairs had been called "fines" by those who were not familiar with the reasons for the deductions;¹⁴ that the employees could choose between making their own repairs on defective articles without pay deductions, or could have repairs done by regular repair girls, in which latter event deductions could be made weekly or from vacation money and bonus payments every 6 months; that the employees should check the method they preferred and hand the notice to their instructor, foreman, or forelady; and that the respondent would adopt the method receiving the majority vote.

On or about March 12, the respondent mailed the following notice to each of its employees:

NOTICE

You are eligible to vote at the election to be held at Holy Trinity Hall on Tuesday the 16th day of March under the supervision and direction of the National Labor Relations Board, to determine whether or not a majority of our employees desire the C. I. O. to act as the collective bargaining agent (for all of the employees)?

The Management is neutral in this matter and does not, by this notice or otherwise, desire or intend to influence your vote one way or the other. **BUT WE DO URGE YOU TO VOTE.**

In order that the result of this election will represent the true wishes of the real majority of our employees

¹² The Union in its leaflets stated that the respondent had reduced certain wage rates.

¹³ On the same day, the respondent also mailed to its employees an announcement of its policy with respect to releasing workers to war industries.

¹⁴ In several of its leaflets, the Union stated that elimination of the "fine system" in the plant was one of its objectives.

**BE SURE TO VOTE AT THIS ELECTION AND MAKE DEMOCRACY
WORK**

Polls are open

From----- 6:30 A. M. to 8 A. M.

From----- 11:30 A. M. to 7 P. M.

Call your clock number to the observers checking the eligible lists. You will get a ballot and your vote will be secret.

There will be at the polls two observers appointed by the Company and two appointed by the Union in addition to N. L. R. B. agent. (Emphasis in original.)

VAN RAALTE Co., INC.

On March 15, the day before the election, the respondent mailed to each of its employees the following statement:

VAN RAALTE

MARCH 15, 1943.

To Our Employees:

A PROMISE MADE IS A DEBT UNPAID!

On February 5th we made a **PROMISE**.

This promise will be kept just as soon as **GOVERNMENTAL REGULATIONS** permit.

While you are waiting for this **PROMISE** to be kept—you will get

More money in the pay envelope because of—

1. Fewer and simpler styles to work on
2. Fewer colors
3. More working hours with overtime pay

Working time

During recent weeks, the average hours worked for the entire mill has been 40 hours or less.

While some have worked over 40 hours, many have worked less.

An increase in average working hours from:

40 to 44 = 15% increase.

40 to 46 = 22½% increase.

40 to 48 = 30% increase.

VAN RAALTE Co., INC.

(Signed) L. W. GRIFFIS.

[Italics in original.]

On the same day, the respondent inserted a full-page advertisement in the local newspaper, identical in content to the notice which it had mailed to its employees on February 16. On the page opposite this advertisement, the following news item appeared:

VAN RAALTE TO CLOSE MAIN STREET OFFICES.

Will Transfer Activities to Plant No. 2, Acquired from Alco.

To consolidate diminishing operations the Van Raalte company plans to abandon the building at 416 Main street comprising approximately 20,000 square feet of floor space.

David S. Wright, owner of the building was today given notice of the termination of the lease.

The Van Raalte company has occupied this building for the past eight years during which time their employment in Dunkirk reached its highest

peak since the mill originally opened in 1906. These eight years were a period when employment in other industries was at a low level.

Present conditions have decreased employment and production in the Van Raalte plant to an extent that there is no need for the additional floor space, it was explained today.

The activities at present carried on in the Wright building will be transferred during April to Plant No. 2 which is known as the Alco building.

Vice-president Griffith testified that, with the exception of a single War Bond advertisement, the respondent had not in recent years placed an advertisement in a newspaper similar to that which appeared on March 15.¹⁵

Nelson Koeppen, manager of the Dunkirk plant, testified that he called a reporter of the local newspaper and gave him the statement which appeared as a news item on March 15, because the respondent had been planning to move from one of its buildings since January 1942, that a number of the employees came to him and wanted to know if it were true that the respondent was planning to move some of its business out of town; and that Koeppen thought it advisable to inform the employees and other people in town that the respondent was not planning to take any of its activities out of the city. Koeppen admitted that the respondent did not at any time post a notice in the plant with respect to the matters contained in the newspaper article as a means of quieting the alleged rumors.

On March 17, the respondent posted a notice in the plant, announcing the tentative result of the election as 537 votes against and 535 votes for the Union, with 14 challenged ballots. This notice stated that the final results of the election had not yet been determined.¹⁶

3. Events in the respondent's plant on the day of the election

On March 16, 1943, the election which the Board had directed was conducted on premises removed from the property of the respondent. The respondent and the Union had agreed that the employees should not be permitted to vote during their working hours. As a result of this agreement, the election was scheduled between the hours of 6:30 and 8:30 a. m. and 11:30 a. m. and 7 p. m.

William DuChessi, the Union's field representative, testified that on the morning of the election he was stationed in front of the door of one of the buildings of the respondent's plant¹⁷ and that at about 7:30 or 7:45¹⁸ he saw three employees from Forelady Frankowski's department leave the plant. DuChessi further testified that he questioned these employees and was told by them that they had been working for a half hour and were going out to vote; that DuChessi, seeing Frankowski standing in the doorway of the plant, protested the fact

¹⁵ Griffith further testified that the respondent "occasionally" mailed communications directly to its employees and stated that the respondent had mailed to its employees once a month a booklet, not published by the respondent, which dealt with employment conditions and matters of general information. He admitted, however, that the number of notices and announcements issued by the respondent during the period of the Union campaign was considerably greater than usual. The record shows that during a period of less than 6 weeks, from February 5 to March 15, 1943, the day before the election conducted by the Board, the respondent either mailed to its employees or posted in its plant eight announcements or notices of various kinds, exclusive of the advertisement and of the news item which appeared in the local newspaper on March 15.

¹⁶ The Union ultimately lost the election by a count of 538 to 542.

¹⁷ See footnote 2, *supra*.

¹⁸ The working hours of the first shift in the department here involved began at 7 a. m.

that she had been ordering employees to leave their work for the purpose of voting; that Frankowski admitted she had done so and stated that she would continue to do so; and that, at DuChessi's request, the Board agent conducting the election went into the plant and upon his return stated that he had spoken to Frankowski and had received the same reply as that given by her to DuChessi. DuChessi's testimony in this respect was in substance corroborated by Estelle Nawodzinski, at that time an employee in the glove department who acted as a Union observer at the election. According to Nawodzinski, one of the three employees in question told Nawodzinski that they had been sent out to vote. Evelyn Ziemba, an employee in Frankowski's department, testified that at about 7:30 or 7:45 on the morning of the election, Forelady Frankowski asked the employees in the department if they had voted; that quite a few stated that they had not and were told by Frankowski that they could go out and do so; and that some of them did then leave the department; that shortly thereafter the agent of the Board came into the department and spoke to Frankowski; and that during the afternoon, Frankowski stopped two employees who left their work for the purpose of going out to vote. Frankowski denied that she had ordered any of the employees to vote, and denied that any employees left her department to vote on the morning of the election with her permission. Frankowski testified that a man whom she had never seen before came to her during the morning of the election and told her that she could not send the employees out to vote and that Frankowski told him that she was not doing so. She further testified that the first time she ever saw DuChessi was on the day of the hearing. In view of Frankowski's antagonism toward the Union and her manifest interest in securing information with respect to the organizational efforts of the employees as shown by her statements to Angeline Pakulski shortly after the first meeting of the Union on January 6 and Evelyn Ziemba on March 15, as related above, the undersigned does not credit her denial and finds that she did permit employees in her department to leave their work for the purpose of voting on the morning of the election.

Shortly after 11 a. m., a group of about 15 employees from the steaming department, also known as the glove box department, appeared at the polls to vote. The lunch hour in the glove box department did not normally begin until 11:30 in the morning. Mary Geiben, forelady in the glove box department, testified that several employees in the department requested a longer lunch hour so that they could vote; that Geiben therefore announced to the employees in the department that the lunch hour that day would begin at 11 o'clock instead of 11:30; and that the department worked an extra half hour on the following Friday to make up for the time so lost. Geiben further testified that on previous occasions when some of the employees were about to enter the Army or a group of employees wished to attend a wedding, Geiben had rearranged their working hours as an accommodation to them. She admitted, however, that on such occasions a rearrangement of working hours had been made only for those employees who requested permission to leave, while on the day of the election, the hours were changed for the entire department. She further testified that the change in hours on the day of the election was made at the request of 4 or 5 employees out of the 70 to 75 then working in the department, and that the employees who made the request were acting for themselves and not as a committee representing all the employees in the department. As noted above, the hours scheduled for the election were from 6:30 to 8:30 o'clock in the morning and from 11:30 in the morning to 7 o'clock in the evening. Geiben did not attempt to explain why the extended lunch hour on the day of the

election did not begin at 11:30, the time the employees normally went to lunch and the time the polls would again have been open to permit the employees to vote. From the foregoing facts, and upon the basis of the entire record, the undersigned is convinced and finds that Geiben changed the working hours of the employees in the glove box department on the day of the election in violation of the agreement between the respondent and the Union that the employees would not be permitted to vote on their working time.

In addition to the foregoing events, other incidents occurred in the respondent's plant on the day of the election.

At about 2:30 or 3 o'clock on the afternoon of the election, Rose Kruzinski and Josephine Cortese, employees in the underwear department, paraded up and back through the department, one of them carrying a milk bottle filled with orange juice, to which was attached a stencilled sign bearing the words "Van Raalte," and the other carrying an empty milk bottle with a sign on which the letters "C. I. O." had been pencilled. One bottle was tied with a silk cloth to a coat hanger, and the other was tied with a rag. After walking up and down the length of the underwear department,¹⁹ Kruzinski and Cortese then went to the mosquito bar department, located on another floor in the plant, through which they paraded in a like manner for 15 or 20 minutes. At about the same time, Julia Mekus and Teresa Lisi, employees in the mosquito bar department, paraded through their department, attired in hats constructed of cardboard spool ends and mosquito bar netting, across the front of which were signs bearing the words "Van Raalte."²⁰ Thereupon they left their department and walked through the underwear department, where they remained about 5 minutes. They then returned to the mosquito bar department and wore these hats for about 15 minutes while working at their machines.

Agnes Stewart, forelady of the underwear department, testified that she saw Mekus and Lisi walk through her department but did not notice whether any signs were attached to the hats which they wore; and that she did not see Kruzinski and Cortese carrying the milk bottles, described above, through her department. Jessie Siragusa, forelady of the mosquito bar department, admitted that she saw the above incidents involving Kruzinski, Cortese, Mekus and Lisi, as they occurred in her department, but testified that she also did not see whether any signs were attached to the hats worn by Mekus and Lisi. Both Stewart and Siragusa admitted that they did not make any attempt to reprimand the employees involved or to stop them from carrying on such activities during working

¹⁹ The underwear department is approximately 150 to 200 feet long and employs between 400 and 500 persons when fully staffed, but on the day of the election was operating with a force of between 100 and 150 employees.

²⁰ Carrie Michalski, an employee in the underwear department, testified that one of the hats in question bore the letters "C. I. O.", while the other carried the words "Van Raalte." However, Mary Byczynski, an employee in the mosquito bar department, who was present during Michalski's testimony and who immediately followed Michalski to the witness stand, testified on direct examination and reiterated on cross-examination that each of the hats in question bore a sign containing the words "Van Raalte." Agnes Stewart and Jessie Siragusa, foreladies of the underwear and the mosquito bar departments, respectively, who appeared as witnesses for the respondent, testified that they did not see the lettering which appeared on the hats worn by Mekus and Lisi. Under these circumstances, in view of the fact that Michalski testified as to several incidents involving the various use by employees on the date of the election of C. I. O. and Van Raalte signs, and therefore may well have been confused in identifying the signs with particularity in this instance, and in view of the positive testimony of Byczynski, who impressed the undersigned as a credible witness, it is found that the hats worn by Mekus and Lisi, as related above, in each instance bore a sign containing the words "Van Raalte."

hours.²¹ In fact, Siragusa testified that normally she would not order an employee to return to his department if he came into Siragusa's department on other than business matters. However, Forelady Hope testified, and the undersigned finds, that none of the employees are supposed to go into a department other than the one in which they work.

In addition to the incidents related above, Carrie Michalski, an employee in the underwear department, testified without contradiction that on the day of the election, two of the employees in that department each wore a sign bearing the words "Van Raalte" across her breast and a sign bearing the letters "C. I. O." across her buttocks. The words "Van Raalte" were in stencilled letters on cardboard, while the letters "C. I. O." were printed in pencil on yellow paper. The record also shows that various employees during working hours on the day preceding as well as on the day of the election wore signs 12 or 15 inches long and 3 or 4 inches wide, on which the words "Van Raalte" had been stencilled. The respondent sought to show that a number of the C. I. O. signs which had been printed by the Union appeared in the plant. Thus, Superintendents Durham and Eden, and Foreladies Hope, Frankowski, and Geiben, all of whom appeared as witnesses for the respondent, testified that they saw C. I. O. signs, varying from one to eight in number in the plant for various periods of from 4 weeks before to a week or two after the election. On the other hand, Foreladies Stewart and Siragusa, who also appeared as witnesses for the respondent, testified that they did not see any C. I. O. signs either before or after the election. Their testimony in this respect was substantially corroborated by employees Butryn and Michalski, who appeared on behalf of the Board. Butryn testified that she saw one C. I. O. sign the day after the election; Michalski testified that on the day of the election she saw one C. I. O. sign, in addition to those used in conjunction with the "Van Raalte" signs, as described above. Michalski further testified, and her testimony in this respect was not contradicted, that she saw 25 to 30 Van Raalte signs worn by various employees in her department²² on the day of the election. DuChessi testified without contradiction that the only signs which were used by Union representatives or Union members were not received at the headquarters of the Union until about 4:30 Saturday afternoon, March 13, and were not distributed until Sunday evening, March 14. The record shows and the undersigned finds that a few C. I. O. signs did appear in the plant; that the number of such signs was small in comparison to the number of Van Raalte signs; and that the C. I. O. signs, unlike the Van Raalte signs, were not worn by any of the employees.

Conclusions

The foregoing recital of events shows that the respondent, at a crucial time in the organizational campaign of the Union, engaged in a course of conduct de-

²¹ The respondent sought to show that the employees do not have regular rest periods and have had gatherings and parties in the plant during working hours on various holidays such as April Fool's Day, St. Patrick's Day and Hallowe'en, thus raising the inference that the employees are permitted a large measure of freedom in the plant. Parties and general gatherings involving all the employees are not comparable to instances of activities engaged in by isolated employees during working hours. Furthermore, the issue involved here is not limited to the mere question whether or not the respondent permitted a violation of plant discipline, but whether or not its inaction under these circumstances constituted tacit acquiescence of obviously anti-union conduct of the employees involved at the crucial time that all the employees were being given an opportunity to express their choice of representation without hindrance or influence, thereby indicating to the employees as a whole that the respondent considered representation by the Union to be contrary to its interests and those of its employees.

²² As noted above, from 100 to 150 employees worked in this department on the day of the election.

signed to discourage its employees from choosing the Union as their representative. The respondent's activities began upon the inception of the Union campaign and continued with increasing frequency up to the day of the election conducted by the Board.

The interrogation of Angeline Pakulski by Forelady Frankowski early in January 1943, and the threatened removal of the plant if the Union succeeded in organizing the employees, voiced by Forelady Promenschenkel to Carrie Michalski a few days before the election, were clear indications of the respondent's hostility to the Union.²³

In addition to the anti-union conduct of its supervisory employees, as above set forth, the respondent adopted the strategy of mailing announcements to its employees and posting notices, so timed as to constitute direct or anticipated replies to the various statements issued by the Union,²⁴ and so designed as to eliminate the demands of the Union, one by one. The number of these notices and announcements and the frequency of their issuance was neither usual nor customary in the conduct of the respondent's business.²⁵ Following the Union's action on January 18 of filing its petition under Section 9 (c) of the Act, the respondent, on February 5, mailed to each of its employees an announcement that it was about to apply to the National War Labor Board for a general wage increase for the employees. The announcement emphasized the fact that this action was being taken solely by the respondent, and implied that only the respondent and not the Union could seek to secure an increase in wages. The respondent itself recognized that this announcement carried such an implication. Thus Lawrence Griffis, respondent's vice president, testified that the respondent withheld filing the application with the National War Labor Board until May 5, because it was advised, sometime after February 5, that in view of the Union's demands it might subject itself to charges of violating the Act if it filed the application before the election.

The notice of February 5, was followed by an announcement mailed to all the employees to the effect that they had always received vacations with pay and that seniority in the event of lay-offs, as well as other matters, would be followed. This announcement was admittedly made in reply to the Union's statement that it would seek vacations with pay²⁶ and seniority privileges for the employees.²⁷ The announcement could have had no other purpose than to inform the employees that they already possessed or would be granted these benefits

²⁴ The statements made by Forelady Frankowski to Evelyn Ziemia and by Instructress Mary May to Irene Odelbraski are further evidence of the anti-union animus of the respondent, notwithstanding the fact that they are not found, alone or together with other acts of the respondent, to violate the Act. "Motive," the Supreme Court has said, "is a persuasive interpreter of equivocal conduct" and the respondent is not entitled to complain because its activities are "viewed in the light of manifest interest and purpose" *Texas & New Orleans Railroad Company, et al v. Brotherhood of Railway & Steamship Clerks, et al*, 281 U S 548

²⁵ On cross-examination by counsel for the Board, Lawrence Griffis, vice-president of the respondent, testified as follows.

Q And is it true that you timed the particular statements and announcements you made to be in reply to certain contentions, claims and statements made by the union?

A Yes, some of our bulletins were in direct answer, you might say. For instance, the vacation pay. It was mentioned in many union bulletins, and naturally we said something about it, and we reminded our employees they had vacation pay. In fact, we were telling them they were going to have it as they always had it.

²⁶ See footnote 15, *supra*.

²⁷ Although the employees were receiving vacations with pay, the Union was apparently contending that what it called "fines" and what the respondent termed "repair charges" for defective articles should not be deducted from the vacation pay earned by the employees.

²⁸ See footnote 24, *supra*.

which the Union had promised to secure for them and that, therefore, they would have nothing to gain by becoming Union members.

The announcement of February 16 stated that the wages of the employees had increased 40 percent since 1939 through the respondent's efforts, and by stressing the fact that "our management in cooperation with our employees will find a way to meet those problems [of the post war period] when they come," that there had never been a time "when cooperation between employees and management has been so vital," and that "future progress of both our employees and our company depends on a continuance of the fine relations we both have enjoyed in the past," clearly indicated to the employees that they had benefited in the past and would continue to do so in the future without union representation.

Three days later, on February 19, the respondent mailed to each of its employees an announcement that a change in operations providing for the immediate adoption of the 48-hour week and reduction in the number of styles would increase earnings by 10 to 15 percent, and reminded the employees that no reduction in wage rates could be made without approval of the National War Labor Board.²⁸ Here, as in the notices of February 5 and February 16, the employees were in effect being told that the respondent was doing everything possible to secure wage increases and that the Union could have nothing more to offer.

The notice of March 9 with respect to repairs was in reply to the contention of the Union that the policy followed by the respondent constituted a "fine" system. The informal poll suggested by the respondent for the purpose of adopting the system most desirable to the employees provided a method of eliminating another of the Union's demands.

The notice of March 12, urging the employees to vote, in view of the carefully executed plan of the respondent to inform its employees prior to the election that they had nothing to gain by joining the Union²⁹ was a clear invitation to vote against the Union.³⁰ The notice of February 16 contained a statement that "future progress of both our employees and our company depends upon a continuance of the fine relations we both have enjoyed in the past." The respondent's attempt to urge the employees to vote thus clearly showed that it considered it desirable to retain a continuance of the relations that had previously existed—relations which did not take into account the presence of a labor organization.

On March 15, the day preceding the election, the respondent mailed to each of its employees a statement that the respondent intended to keep its promise of February 5 to file an application for general wage increases with the National War Labor Board and that an increase in working time from 40 to 48 hours per week would result in increased earnings of from 15 to 30 percent. This notice constituted the final effort of the respondent to eliminate the issue of wage increases as an incentive to voting for the Union.

²⁸ The reminder was prompted by issuance of a union circular alleging that the respondent had reduced certain wage rates

²⁹ Griffis, vice-president of the respondent, admitted on cross-examination by counsel for the Board that the "big question" at issue during the Union's pre-election campaign was wages. It is significant that 4 of the 8 announcements mailed by the respondent to each of the employees from February 5 to March 15, 1943, the day before the election, dealt directly with the question of wages. Each of these announcements served to inform the employees either that the respondent was presently providing a method for increasing their earnings or was taking action directed toward that end, thus indicating that the "big question" was being solved by the respondent alone and that the Union to that extent was unnecessary.

³⁰ Cf. *Matter of Stonewall Cotton Mills and Textile Workers Federal Local Union 21723*, affiliated with American Federation of Labor, 36 N. L. R. B. 240, modified in other respects *Stonewall Cotton Mills v. N. L. R. B.*, 129 F. (2d) 629 and 129 F. (2d) 633, cert. denied 317 U. S. 667

On the evening of the same day, the respondent placed a full-page advertisement in the local newspaper, consisting of a reproduction of its notice mailed to the employees on February 16. On the opposite page of the newspaper appeared the story, issued by General Manager Koeppen, that the respondent planned to abandon one of the two buildings constituting its Dunkirk plant to "consolidate diminishing operations," and because of "decreased employment and production." The story itself refutes Koeppen's explanation that it was issued for the purpose of quieting the anxiety of employees that the respondent might move its plant, or part of it. The effect of the story, would be to confirm such fears rather than set them at rest—an effect intended by the respondent as shown by the statement of Forelady Promenschenkel to Carrie Michalski a few days before the election that the plant would move if the Union were successful. Timed, as it was, to appear on the very eve of the election and after the respondent through repeated notices to its employees had eliminated one by one the demands of the Union, thus effectively showing that the Union could offer nothing to the employees, this story conveyed the warning voiced by Promenschenkel that continued tenure of employment would be jeopardized should the Union win the election and an end be put to the "fine relations" which had existed between the respondent and its employees.³¹ Since the respondent had in effect become a contestant of the Union it was quite clear what choice it wished the employees to make at the polls.

Nor did the respondent's acts of interference cease on the day preceding the election. On the day of the election, in violation of the agreement of the parties that employees would not be permitted to vote during their working hours and that the election would be held only during specified hours; Forelady Frankowski permitted several employees to leave the plant during working hours for the purpose of voting, and Forelady Geiben advanced the lunch hour of the employees in her department a half hour for the same purpose. Later on the same day, Foreladies Stewart and Siragusa made no attempt to stop employees in their respective departments who engaged in anti-union demonstrations during working hours.

The respondent seeks to justify the issuance of these notices and announcements on the ground that they constituted a legitimate exercise of its right of free speech. These statements were not issued, nor can they properly be considered, as isolated instances of an employer's expression of opinion.

They are to be viewed in the light of the manifest antipathy of the respondent to the Union, as shown by the statements of Foreladies Frankowski and Promenschenkel to Angeline Pakulski and Carrie Michalski, respectively. They are also to be considered together with the release of employees from Frankowski's department during working hours and the change in hours of work for the employees in Forelady Geiben's department on the day of the election. And finally, these statements must be regarded in their contextual relation to other circumstances, which shows that they were so timed as to coincide with the statements issued by the Union, that their issuance was limited to the crucial period of the Union's pre-election campaign, and that their number and the frequency of their appearance was an unusual occurrence, explicable only on the basis of the Union's presence. From the foregoing facts, and upon the basis of the entire record, the undersigned is convinced and finds that the notices and announcements in question constituted an integral and inseparable part of a complete, consistent

³¹ The respondent introduced in evidence copies of nine newspaper articles dealing with various activities relating to its plant, which appeared in the local newspapers from April 20, 1935 to May 20, 1939. No showing was made that any similar newspaper articles appeared after May 20, 1939.

and continuously pursued course of conduct designed to defeat the Union.³² The undersigned further finds that the anti-union demonstrations which occurred among the employees during working hours in the plant on the day of the election were inspired by the respondent's conduct and were encouraged by its acquiescence, and that the respondent is therefore responsible for such activities.³³

The fact that part of the respondent's conduct was expressed through the medium of words does not relieve it of responsibility for the coercive effect of such words, reasonably to be inferred when considered together with other activities in which it engaged. The constitutional guarantee of free speech confers no privilege upon an employer's asserted expressions of opinion which amount to "pressure exerted vocally" where the employer's "whole course of conduct," as here, constitutes interference, restraint, and coercion within the meaning of the Act.³⁴ Nor is an inference of coercion under such circumstances precluded merely because the employer's statements manifest themselves in forms of subtle expression. As the Supreme Court of the United States has noted: ³⁵ "Slight suggestions of the employer's choice between unions may have telling effect among men who know the consequences of incurring that employer's strong displeasure."³⁶

The respondent further seeks to justify issuance of the notices and announcements in question on the ground that they constituted truthful statements. Vice-president Griffis testified that the statements contained in the publications issued by the respondent were true but the respondent did not otherwise seek to establish that fact. Even if the statements of the respondent in question were truthful, however, that fact in itself would not justify their issuance in this case if the statements had the effect of interfering with, restraining, or coercing its employees. Obviously, the truth alone is no justification for the publication of statements which, irrespective of their truth or falsity, constitute unfair labor practices. The statements of the respondent here,³⁷ irrespective of their truth,

³² This course of conduct clearly negatives any claim of neutrality made by reason of the fact that the respondent posted a notice in its plant on January 19, 1943, to the effect that the employees were free to join, or not to join a union, and that they did not have to belong to a union in order to work for the respondent.

³³ See *Matter of Aintree Corporation and International Ladies' Garment Workers' Union, Local No. 373, affiliated with the American Federation of Labor*, 37 N. L. R. B. 1174, enforced *N. L. R. B. v. Aintree Corporation*, 132 F. (2d) 469, cert. denied, 318 U. S. 774.

³⁴ *N. L. R. B. v. Virginia Electric and Power Company*, 314 U. S. 469.

³⁵ *International Association of Machinists v. N. L. R. B.*, 311 U. S. 72.

³⁶ The principle so enunciated applies with equal if not greater force to a situation involving the presence of but one union and the "slight suggestions" of the employer indicate a choice of no union at all.

³⁷ The right and privilege of an employer to defend his character, if attacked by a Union, is not here involved. See *Matter of Pulaski Vencer Corporation and United Brotherhood of Carpenters & Joiners of America, Local Union #1862*, 10 N. L. R. B. 136. Nor were the respondent's statements in the present case aimed to correct misstatements which it generally charged had been made by the Union. See *Matter of National Mineral Company and Chrome Furniture, Handlers and Miscellaneous Crafts Union No. 653, affiliated with Upholsters' International Union of North America, affiliated with the American Federation of Labor*, 39 N. L. R. B. 344, modified in other respects and enforced *N. L. R. B. v. National Mineral Company*, 134 F. (2d) 424 (C. C. A. 7). Further, this case does not involve the isolated instance of an equivocal statement issued by an employer. See *Matter of Essex Rubber Co. Inc and United Rubber Workers of America, Local No. 212, affiliated with the Congress of Industrial Organizations*, 50 N. L. R. B. 283, nor does it involve a finding based upon a single statement issued to employees by an employer during the course of bargaining negotiations with a union which had been certified and whose majority had already been established. See *Matter of Kalston Purina Company and International Longshoremen's Association, Local 1642, A. F. L.*, 51 N. L. R. B. 769. In this case, unlike the two cases last cited, the question involved concerns statements and activities of supervisory employees, together with numerous written publications, constituting an entire course of conduct in which the respondent engaged during the crucial period of a pre-election cam-

were issued for the purpose and were reasonably calculated to have the effect of discouraging membership in the Union by eliminating its demands, one by one, and by attempting to show that the employees already possessed or would be granted certain benefits demanded by the Union, and therefore that a choice of the Union would be to no advantage.³⁸

The respondent, by its activities, interjected itself in the Union's campaign as a contestant of the Union, and thereby forced upon the employees the necessity of choosing between it and the Union. As the Board has stated in a similar situation:

No such choice is presented to employees participating in an election conducted pursuant to the provisions of the Act, the only question involved in such an election is whether the participating employees want to designate a representative for the purposes of collective bargaining with their employer and, if they do, which if any competing representatives shall be designated. An election is not a contest between a labor organization and the employer of the employees being polled, and participation by an employer in a pre-election campaign as if he were a contestant is an interference with the employees' right to bargain collectively through representatives "of their own choosing."³⁹

If an employer believes that his employees could secure better leadership and guidance than that which the Union enlisting their support affords, he must nevertheless permit his employees to arrive at a decision unhampered by any suggestions or influence from him. The Act presumes that employees are no less intelligent than employers and that employees are entitled to determine for themselves the wisdom or lack of wisdom of union membership in any particular instance. They are entitled to exercise the democratic principle of a free choice based upon the trial and error of their own experience, and free of the influence of the employer.⁴⁰

From the foregoing facts, and based upon the entire record, the undersigned is convinced and finds that by the statements made by Forelady Frankowski to Angeline Pakulski and Forelady Promenschenkel to Carrie Michalski; by the notices, discussed above, which the respondent mailed to its employees on Feb-

paign when the Union was most vulnerable and when the respondent's indication of an unfavorable attitude would prove most effective in destroying the Union's chances of securing the adherence of a majority of the employees. Finally, this case does not involve the situation of a single letter, without more, sent by an employer to his employees prior to an election. See *N L R B v. American Tube Bending Co.*, 134 F. (2d) 993. All of the respondent's activities in this case are to be considered in their context.

³⁸ Vice-president Griffis testified that the Union's leaflets influenced him in issuing the respondent's statements, that if the statements issued by the respondent were "helpful in coming to a decision in the Union campaign or vote, it was all right with us," that he was "not too much concerned" about the influence the respondent's statements may have had in the election, and that although it was possible that truthful statements might affect the results of the election, the respondent was "satisfied to tell the truth, let the chips fall where they may."

³⁹ *Matter of Sunbeam Electric Manufacturing Co. and United Electrical, Radio & Machine Workers of America, affiliated with the U. I. O.*, 41 N. L. R. B. 469, modified in other respects and enforced *N. L. R. B. v. Sunbeam Electric Manufacturing Co.*, 133 F. (2d) 856.

⁴⁰ See *N. L. R. B. v. Burry Biscuit Corp.*, 123 F. (2d) 540, where the court stated: "No matter how much [the employer] may desire to aid his employees by his own suggestions, it is the purpose and intent of the law that when employees embark upon a course of action necessary to the selection of a bargaining agent, they act freely and wholly without influence from the employer. . . Congress has made it the employer's duty in such cases to observe the utmost of neutrality and impartiality and to accord to the employees an unhampered, uninfluenced right to determine their own labor affiliations."

ruary 5, 15, 16 and 19, and March 9, 12, and 15, 1943; by the newspaper advertisement and newspaper article of March 15, 1943; by acquiescing in the anti-union demonstrations and activities conducted in the plant during working hours on the day of the election; by permitting some of the employees to leave the plant during working hours and by changing the working hours in one of the departments for the purpose of permitting the employees to vote on the day of the election, the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8 (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III, above, occurring in connection with the operations of the respondent described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Since it has been found that the respondent has engaged in unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1. Textile Workers Union of America, affiliated with the Congress of Industrial Organizations, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends that the respondent, Van Raalte Company, Inc., Dunkirk, New York, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act.

(a) Post immediately in conspicuous places in its plant at Dunkirk, New York, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notice stating: (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraph 1 of these recommendations; and (2) that the respondent's employees are free to become or remain members of Textile Workers Union of America, C. I. O.;

(b) Mail immediately notices to all its employees, stating that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraph 1 of these recommendations, and that the respondent's employees are free to become or remain members of Textile Workers Union of America, C. I. O.⁴¹

(c) Notify the Regional Director for the Third Region in writing within ten (10) days from the date of the receipt of this Intermediate Report what steps the respondent has taken to comply herewith.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report, the respondent notify said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33, of Article II of the Rules and Regulations of the National Labor Relations Board, Series 2—as amended, effective October 28, 1942,—any party may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board.

DAVID KARASICK,
Trial Examiner.

Dated September 16, 1943.

⁴¹ *N. L. R. B. v. Sunbeam Electric Manufacturing Co.*, 133 F. (2d) 856; *Matter of Holtville Ice and Cold Storage Company et al.*, 51 N. L. R. B. 596.