

and a truckdriver, constitute the department. Hendrickson and the truckdriver work together and deliver petroleum products. He also solicits new business when making deliveries, and spends the greater part of his time in such activity. In addition, he solicits new business during his free time. He receives a salary but no commissions on sales; apparently, his salary is substantially greater than the wages received by the other two employees in the department. Although Hendrickson is frequently referred to as the manager of the bulk oil department, there is no evidence that he regularly has or exercises any of the specific powers of a supervisor as set forth in Section 2 (11) of the Act, and we therefore find that he is not a supervisor. As Hendrickson appears to be primarily a salesman, we find that he is excluded from the unit. Accordingly, we find Hendrickson ineligible to vote and sustain the challenge to his ballot. As the tally of ballots now discloses that the Joint Petitioners won the election, we shall certify the Joint Petitioners as the exclusive bargaining representative of the employees in the agreed appropriate unit.

[The Board certified Local 977, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and Local 758, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America as the designated collective-bargaining representative of the Employees of Anderson's Super Service, Inc., Montevideo, Minnesota, in the agreed appropriate unit.]

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**Cooper Alloy Corporation (Aircraft Division) and John F. Shallcross**

**Local 5250, United Steelworkers of America, AFL-CIO and John F. Shallcross.** *Cases Nos. 22-CA-52 and 22-CB-27. April 25, 1958*

DECISION AND ORDER

On July 19, 1957, Trial Examiner Lloyd Buchanan issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent Company and the Respondent Union had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent Company filed exceptions to the Intermediate Report with a supporting brief.<sup>1</sup>

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<sup>1</sup> The Respondent Company's request for oral argument is hereby denied as, in our opinion, the record, exceptions, and brief adequately present the issues and positions of the parties.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, as amended, the Board has delegated its powers in connection with these cases to a three-member panel [Members Rodgers, Jenkins, and Fanning].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief of the Respondent Company, and the entire record in these cases, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.<sup>2</sup>

We agree with the Trial Examiner that the Respondent Company violated Section 8 (a) (3) of the Act by discharging John Shallcross for engaging in protected, concerted activities and not, as the Company contends, because Shallcross engaged in excessive talking during working hours which interfered with production.

The events leading to Shallcross' discharge are briefly as follows: Shallcross was employed on November 26, 1956, as a millwright at a time when these skills were in scarce supply. On his employment application, Shallcross noted that he had quit his last job because of differences which he had with a sister local of the Respondent Union at his last employer's plant. After an appropriate period, Shallcross joined the Union which had for some time represented the Company's employees. Toward the end of 1956, Shallcross spoke with his foreman after work and suggested that an independent union might afford the employees better representation than the Union was then offering. He also expressed his belief that the Union might be ousted. However, the foreman cautioned that the Union was too strong and that "things would happen if someone tried to disrupt this particular local." On January 8, 1957, Shallcross attended a union meeting and nominated an employee for union office to oppose a candidate favored by the union president. A few days later, Shallcross complained to fellow-employees during lunchtime that he was being assigned duties which he was not required to perform under his job description. The union president overheard this and remarked that he would not care what job he was asked to perform provided he drew his pay. Shallcross replied that, if this was the Union's attitude on the subject, there was no reason for having the Union in the plant. Shallcross then announced that he would call upon the union officers to resign if they did not get tougher with the Company. A few days before his discharge on January 21, 1957, Shallcross was questioned by union officers about his role concerning a petition pur-

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<sup>2</sup> In the absence of exceptions, we adopt *pro forma* the Trial Examiner's findings that the Respondent Company violated Section 8 (a) (1), (2), and (3), and that the Respondent Union violated Section 8 (b) (2) and (1) (A) of the Act, by enforcing and maintaining a clause in their contract requiring that new employees execute checkoff cards when they are hired.

portedly circulated in the plant calling for the removal of the Union, and was accused of instigating the petition. Although it does not appear that such a petition in fact existed, Shallcross' foreman testified that he had heard rumors that Shallcross was seeking to oust the Union and that the company officials were aware of them. The union president also testified that he had learned from the Company, shortly before Shallcross' discharge, that Shallcross' attempt to unseat the Union was disturbing the employees; that Shallcross believed the Union was not strict enough with the Company; that Shallcross had been in difficulties with a sister local at his last place of employment; and that the Company did not want any such trouble with the Union. On January 21 Shallcross was notified by his foreman that he was being discharged because the Company had checked on his union difficulties at his former job and did not want a recurrence of these difficulties at its plant.

In its exceptions, the Company contends that Shallcross was discharged solely for the reason that he talked excessively on the job. To support this contention, the Company states that Shallcross was repeatedly reprimanded by company officials for talking during working hours and that his initial 30-day probationary was extended for a like period because of this misconduct. The credited testimony in this proceeding discloses that Shallcross was told by his foreman on only one occasion shortly after he was hired that he had been observed by a company official talking on the job. However, despite the fact that millwrights were difficult to come by and Shallcross was concededly performing those duties in a satisfactory manner, no other complaint was made or communicated to Shallcross for the remaining 4 or 5 weeks before his discharge and no attempt was ever made to alert Shallcross to the possibility of discharge if, as the Company insists he did, Shallcross continued to talk on the job. Moreover, while the Company asserts that Shallcross' initial probationary period was extended on or about December 21 because of excessive talking, it is significant that neither Shallcross nor his foreman, who is customarily told when employees in his department have had their probation extended, was informed of this extension until the day on which Shallcross was actually discharged. In this connection, we note that the company official who allegedly ordered the extension in December felt constrained to check Shallcross' personnel file on January 18 to ascertain whether any extension had in fact been ordered.

In our opinion, the credited testimony in the record before us establishes that Shallcross was discharged, not for the reason that he talked excessively on company time, but because of his activities with and within the Union. Like the Trial Examiner, we find that Shallcross had a statutory right to pursue those activities and that the Company's discharge of Shallcross for engaging in them constituted

a violation of Section 8 (a) (3) of the Act. The Company's exceptions to the Trial Examiner's finding in this regard are therefore overruled.

### ORDER

Upon the entire record in these cases, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

I. Respondent Company, Cooper Alloy Corporation (Aircraft Division), Clark Township, New Jersey, its officers, agents, successors, and assigns, shall:

(a) Cease and desist from:

(1) Encouraging membership in any labor organization by discharging any of its employees, by maintaining or enforcing the clauses of any agreement with any labor organization which require its employees to fill out checkoff authorizations, or by discriminating in any other manner in regard to their hire and tenure of employment or any term or condition of employment, except as authorized in Section 8 (a) (3) of the Act.

(2) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

(b) Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(1) Offer to John F. Shallcross immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges.

(2) Make the said John Shallcross whole for any loss of pay he may have suffered by reason of the discrimination against him.

(3) Post at its plant in Clark Township, New Jersey, copies of the notices attached to the Intermediate Report marked "Appendixes A and B."<sup>3</sup> Copies of said notices, to be furnished by the Regional Director for the Twenty-second Region, shall, after being duly signed by the respective representatives, be posted by Respondent Company immediately after receipt thereof, and be maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by the Respondent Company to insure that said notices are not altered, defaced, or covered by any other material.

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<sup>3</sup> These notices, however, shall be, and they hereby are amended by striking from the first paragraph thereof the words "Recommendations of a Trial Examiner" and substituting in lieu thereof the words "A Decision and Order." In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

(4) Mail to the Regional Director for the Twenty-second Region signed copies of the notice attached to the Intermediate Report marked "Appendix A," for posting by the Respondent Union. Copies of said notice, to be furnished by the Regional Director for the Twenty-second Region, shall, after being duly signed by representatives of Respondent Company, be forthwith returned to said Regional Director for such posting by Respondent Union.

(5) Notify the Regional Director for the Twenty-second Region in writing, within ten (10) days from the date of this Order, what steps it has taken to comply herewith.

II. The Respondent Union, Local 5250, United Steelworkers of America, AFL-CIO, its officers, representatives, agents, successors, and assigns, shall:

(a) Cease and desist from:

(1) Maintaining or enforcing the clauses of any agreement with any employer which require employees to fill out checkoff authorizations.

(2) In any other manner causing or attempting to cause any employer to discriminate against any employee in violation of Section 8 (a) (3) of the Act.

(3) In any other manner restraining or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

(b) Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(1) Post at its offices in Westfield and Irvington, New Jersey, copies of the notices attached to the Intermediate Report and marked "Appendixes A and B." Copies of said notices, to be furnished by the Regional Director for the Twenty-second Region, shall, after being duly signed by the respective representatives, be posted by the Respondent Union immediately after receipt thereof, and be maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to its members are customarily posted. Reasonable steps shall be taken by the Respondent Union to insure that said notices are not altered, defaced, or covered by any other material.

(2) Mail to the Regional Director for the Twenty-second Region signed copies of the notice attached to the Intermediate Report marked "Appendix B," for posting by the Respondent Company. Copies of said notice, to be furnished by the Regional Director for the Twenty-second Region, shall, after being duly signed by Respondent Union's representative, be forthwith returned to said Regional Director for posting by the Respondent Company.

(3) Notify the Regional Director for the Twenty-second Region in writing, within ten (10) days from the date of this Order, what steps it has taken to comply herewith.

## INTERMEDIATE REPORT AND RECOMMENDED ORDER

The consolidated complaint herein alleges that the Company and the Union have violated Section 8 (a) (1), (2), and (3) and Section 8 (b) (1) (A) and (2) respectively of the National Labor Relations Act, as amended, 61 Stat. 136, by executing, maintaining, and enforcing a collective-bargaining agreement which requires newly hired employees to sign a checkoff card; and that the Company has further violated Section 8 (a) (1) and (3) by discharging and failing and refusing to reinstate Shallcross because of his activity within the Union and because he engaged in other protected concerted activities. The answers admit the collective-bargaining agreement, but deny that the Act has thereby been violated. The Company further admits the discharge and failure and refusal to reinstate Shallcross but, denying that it was because of his union and other concerted activities, alleges that it was for just cause.

A hearing was held before me at New York, New York, on June 3, 5, and 6, 1957. Pursuant to leave granted to all parties, a brief was thereafter filed by the Union.

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

## FINDINGS OF FACT (WITH REASONS THEREFOR)

## I. THE COMPANY'S BUSINESS AND THE LABOR ORGANIZATION INVOLVED

It was stipulated and I find that the Company, a New Jersey corporation with principal office and place of business in Hillside, New Jersey, and a plant in the Township of Clark, New Jersey, is engaged in the manufacture, sale, and distribution of stainless steel rings and related products; that during the past year it purchased goods and materials of which more than \$500,000 in value was transported to the Clark plant from places outside the State of New Jersey; and that during said period it manufactured, sold, and distributed at said plant products valued at more than \$500,000, of which products valued at more than \$250,000 were shipped therefrom to points outside the State; and that the Company is engaged in commerce within the meaning of the Act.

It was stipulated and I find that the Union is a labor organization within the meaning of the Act.

## II. THE UNFAIR LABOR PRACTICES

The record is replete with inconsistencies and contradictions. Assistance in finding the facts is to be found in several admissions against apparent interest and by testimony which was not contradicted.

## A. The collective-bargaining agreement

The Company and the Union entered into a collective-bargaining agreement on December 1, 1955 (with a retroactive provision to August 15, 1955), to expire on August 14, 1957. Article III of the agreement provides *inter alia*:

2. All new employees when hired shall fill out a union membership and check-off authorization card on Form No. 530 as provided by the Financial Secretary of the Local Union. The Company's copy shall be retained by it and the Union's copy shall be given to the Local Union's Financial Secretary.

3. Thirty-one (31) days from the date of hire, all such new employees shall become and remain members of the Union in good standing for the duration of this agreement. Until further notice from the International Secretary-Treasurer of the Union, initiation fees of \$5.00 shall be deducted, and Union dues of \$3.00 per month shall be deducted and will continue to be deducted thereafter at the same time as for all other employees. . . .

We cannot find violation in the execution of the agreement since the charges herein were filed more than 6 months thereafter. On the question of maintenance and enforcement, Bouton, the Company's assistant industrial relations director, testified that, after interviewing new employees, he requires them to sign tax withholding statements, hospital-surgical and life insurance applications, and union membership and checkoff authorization forms. He then added that employees are at that time told that there is a union in the shop, and that membership in the union requires that the authorization-checkoff card be completed; if membership is desired, the card must be signed. This latter almost parenthetical reference to a practice contrary to the requirements of the agreement between the Company and the Union is nowhere else supported. (Bouton's alleged statement to new employees suggests that membership in the Union is optional, whereas it is required even under section 3,

*supra.*) Shallcross, on the other hand, testified that Bouton at the employment interview handed him a few cards which he was required to fill out, including the authorization-checkoff card, and told him that everyone is a member of the Union. While the Union's answer admits only the execution of the agreement, the Company admits that the agreement is in effect. The evidence falls far short of showing that the agreement, while maintained, was not also enforced. I find that, as called for by the agreement, Shallcross was required, when he was hired, to sign the union-authorization and checkoff card, and that as McQueen, the Union's president, testified, his card, like others, was promptly forwarded to the Union. The agreement has been both maintained and enforced.

The requirement that the membership-checkoff card be filled out by new employees at the time of hiring is coercive and constitutes unlawful interference, support, and discrimination. It is, as to the Company, in violation of Section 8 (a) (1), (2), and (3); and as to the Union, in violation of Section 8 (b) (1) (A) and (2). If, as argued by counsel for the Union, such violation was inadvertent, and will not be repeated in a new contract between the Company and the Union, it is still a violation.<sup>1</sup> On this point, counsel for the Company declared, "The company will take no position in regard to the allegations of the complaint affecting the union contract . . . (or) with regard to the proof adduced in that connection." (The allegations of violation do not embrace the membership provisions, section 3, quoted *supra*, being itself lawful. The authorizations for membership and checkoff are separate and require separate signatures.)

#### B. The discharge of Shallcross

Shallcross was employed by the Company as a millwright or maintenance man on November 26, 1956. His immediate supervisor, Maintenance Foreman Grant, did not discuss plant rules with him, but questioned him concerning his work background. Shallcross was assigned to checking and repairing machinery.

Shallcross attended a union meeting about January 8, 1957. He nominated for recording secretary Marr, a friend on the job; the president of the local nominated the acting recording secretary for the post. Marr was defeated in a close vote. Quite unrestrained although he was a new employee and despite the fact that he had never before attended a meeting of this union local, Shallcross also seconded another's request or motion that wages be paid on Thursday instead of on Friday. (The record does not favor us with the Union's reaction to this proposal.)

Shortly thereafter, during lunch period in the locker room at the plant, Shallcross pointed out to Marr, who was an electrician, that under their job classifications they were not required to perform certain work. Shallcross was here referring to an assignment to clean some turret lathes, which he had performed under protest, pointing out that it classified as laborers' work; Grant had insisted that Shallcross do it at the time, and assured him that another man would be on hand to do it thereafter. McQueen, the union president, heard Shallcross' remark to Marr and declared that he would not care what he did so long as he got his 8 hours' pay. In response to this, Shallcross asked what, then, was the use of having a union. Shallcross later announced that he would at a union meeting call on the officers to resign if they did not get more strict or tough with the Company. If, as Marr testified, there was criticism of union officers all over the plant, there is no evidence that any employee's activity in this connection approached Shallcross', which was clearly delineated at the hearing. Grant testified that rumor had spread, and that he had heard it from various sources, that Shallcross was trying to install a new set of officers in the Union, and that his superiors in the Company received this information. Regardless of the validity of such a rumor, the Company's, as the Union's, impression of Shallcross' attitude toward the Union's officials is clear. One may infer that Shallcross no more endeared himself to the Union, despite his rights in this connection, when he several times asked Choffa, the union steward, for a copy of his own job classification, which was given to him.

A few days before his discharge on January 21, while Shallcross and others were getting dressed in the locker room at the end of the day, McQueen and Choffa came in and asked where the so-called petition was, apparently under the impression that Shallcross was connected with a petition for disavowal or ouster of the Union. Shallcross replied that he did not know what they were talking about, and Choffa then declared that, if Shallcross wanted to start ousting, he should do it at once and see who got hurt. (The record does not include such a petition or proof that it was

<sup>1</sup> *L. Ronney & Sons Furniture Manufacturing Co.*, 93 NLRB 1049, 1053; *Jandel Furs*, 100 NLRB 1390, 1392

in fact circulated.) Again, whether or not Shallcross sponsored or supported such a petition, the Union's impression is clear.

Shallcross described an incident when McQueen, Choffa, and Costa, the Union's former president, were in an automobile in front of the plant. To the extent, if any, that it is material to the issues the implication of threatened violence is without proof. But Shallcross did tell Grant of his fear of union violence.

A short time before this, about a week before his discharge, Shallcross had told a member of the job evaluation committee that men were working beyond their classification while others were not up to theirs, and that wages should be in accordance with the work actually done. These several instances might explain union animus or antipathy toward Shallcross. But it has been neither alleged nor shown that the Union caused the Company to take action against him, and the Company's defense is to the contrary. No more is it claimed that Shallcross' remarks concerning variance between employees' classifications and their actual work were unprotected or disruptive.

More direct for its bearing on the reason for Shallcross' discharge is the testimony concerning a conversation between Shallcross and Grant in a tavern during the latter part of December. Shallcross suggested the desirability of an independent union, and Grant replied that the Company would like it but could not do it. When Shallcross persisted that it could be done if handled right, Grant said that the Steelworkers Union is too powerful and that things would happen if someone tried to disrupt this local.

Shallcross, whose ability on the job is not questioned, testified that Grant never criticized him but did once relay a criticism: Shortly before or after the end of the year, Grant told him that Grossenbacher, the shop superintendent, had said that he had seen Shallcross standing by a machine and told Grant to tell him to stop loitering on the job. Shallcross explained to Grant that he had been thinking about the job and was waiting for tools, and Grant allegedly replied that he understood but Grossenbacher did not. I accept the uncontradicted testimony concerning this incident and that this criticism was thus relayed although Shallcross later stated that Grant did not speak to him concerning complaints concerning his activities. The point was not explored to determine whether Shallcross had in mind the distinction that Grossenbacher's alleged criticism here was that Shallcross was not working, not that he was talking to and interfering with other employees.

Concerning talking on the job, Shallcross testified that he never spoke to other employees during working hours concerning union matters or work assignments; he did speak to them concerning machine operation, this in connection with his machine maintenance work. On one occasion, when a forklift brushed his leg, he asked the operator whether he was qualified to operate the lift; when the man replied that he did not know, Shallcross suggested that he check: if he was, he could probably get more money.

Grant testified that he spoke to Shallcross several times about talking to others on the job, but that Shallcross' talking increased. Without proof that Grant reported this or any incidents to his superiors, there is no support here for the action taken against Shallcross for, as we shall see, Grant was neither consulted nor advised about the discharge except for the last-minute direction that he tell Shallcross. But further, I do not consider this testimony to be reliable or as supporting that which we shall soon note concerning observance of Shallcross by others. For it is clear that, despite his testimony that there were various instances of talking and progressive deterioration, and his dissatisfaction with Shallcross' conduct, Grant did not ask for an extension of Shallcross' probation although he testified that he would normally ask for an extension if he were dissatisfied with an employee. (All parties appeared agreed that, as a new employee, Shallcross could have been discharged within the first 30 days of his employment without recourse by the Union, and that such probationary period could be extended by the Company.) After testifying that Grossenbacher "very often" extended employees' probation without Grant's knowing about it, the latter could add only, "Well, I think it has been done before," and that Grossenbacher had never before extended the probationary period of an employee in Grant's department, as he did with Shallcross.

Grossenbacher testified that early in December he told Grant that Shallcross was in places in the plant where he should not be and was talking to employees, that about December 18 or 19 McCarroll, the plant manager, made a similar report to him and he again spoke to Grant; that he then decided to extend Shallcross' probation; and that he thereafter watched Shallcross more closely. Although good mill-

wrights are scarce and hard to find, Grossenbacher did not notify either Grant or Shallcross of the extension so that the latter might correct his alleged fault.

From Grant's testimony, it does not appear that Grossenbacher spoke to him more than once about Shallcross' talking, this was after McCarroll had allegedly spoken to Grossenbacher about it; and Grant had allegedly seen Shallcross engaged in such talking before Grossenbacher spoke to him about it. The time sequence here is hopelessly confused. We can but further wonder why, if Grossenbacher spoke to Grant about Shallcross early in December and Grant had himself earlier seen Shallcross talking, Grant waited until the end of the month or the early part of January to speak to Shallcross, as the latter testified, or, as counsel for the Company argued, until the end of December. Grossenbacher's explanation of his failure to advise Grant of the extension of Shallcross' probation, and his testimony that he may have told Grant were casual to say the least.

McCarroll testified that he observed Shallcross not working and engaged in conversation a couple of dozen times. McCarroll declared that he did not know what the conversations were about, but he had a pretty good idea of what was going on and knew that Shallcross was not where he should have been. He doubted that the conversations were about the machines near which Shallcross was standing. He then testified that he asked Grossenbacher and Grant to find out what Shallcross was doing, and they reported several days later. He did not say what they reported, nor did they testify of this. McCarroll did not know the names of those with whom Shallcross talked. He only hoped that they were reprimanded. He could not give the date of Shallcross' conversations. One can only surmise that they occurred prior to the extension of Shallcross' probation for, when McCarroll spoke to Grossenbacher about them, the latter said that he would correct or curb the situation; he did not apparently tell McCarroll that he had already extended Shallcross' probationary period. Neither did Grossenbacher before that time complain to McCarroll about Shallcross. Although within 10 days prior to Shallcross' discharge, he and Marr went to McCarroll's office with an idea which they had to improve the Company's operations, McCarroll, despite his appreciation of their interest, neither warned Shallcross nor mentioned his allegedly so frequent talking and loitering.

McCarroll described an unreal procedure in which maintenance men, receiving assignments from their foreman, are not supposed to and do not talk to the operator of the machine which is to be or has been repaired. (There is no evidence of any rule against talking generally.) The picture which he painted is so extreme as to be unbelievable. Grossenbacher gave somewhat similar testimony, but said that he had never objected to a millwright talking to an operator while repairing a machine, pointing out that the operator is seldom present. He testified further that the nature of Shallcross' job called for his presence in various places in areas where he was supposed to work. While he also declared that Shallcross did not have the right to walk from machine to machine to see if repairs were needed, he admitted that he never had seen Shallcross do that, talking to operators.

Blum, who as industrial relations director passed on Shallcross' discharge, was consulted by McCarroll and Grossenbacher on Friday, January 18, checked Shallcross' file (and, as *infra*, he had his references checked) and found that his probation had been extended, and told them that he could be discharged. It appeared from Blum's early testimony that, when he was thus consulted, he evidently had forgotten that the probation extension had been sent to him; and Grossenbacher did not mention that he had himself issued such extension, allegedly asking Blum to check on it since that was at least one of the reasons for consulting Blum on the discharge. Blum later testified that he had not recalled the extension, but that Grossenbacher mentioned it. (Grossenbacher testified to the latter effect.) This presents another unanswered question: Why, then, did Blum check Shallcross' folder "to see whether he had been extended for the extra 30 days"?

Apparently corroborating the defense that Shallcross was discharged because of his talking in the plant, McQueen, the union president, testified that, at a grievance meeting involving two other employees a short time before January 21, Blum declared that Shallcross was going around talking too much and holding up production. But McQueen was hardly reliable, and the reason was apparent as he first denied and then, his recollection refreshed, recalled that Blum had said that Shallcross' conversations upset the men because of his efforts to unseat the union officers. He also recalled that Blum reported that Shallcross had said that the Union was too soft on the Company. Blum also told the union representatives that Shallcross had trouble with the union at his prior place of employment, and the Company did not want any upset with the Union here. These references by the Company's industrial relations director to Shallcross' union activities, even if declared not to be the reason for the

discharge, indicate that those activities were in the forefront of the Company's attention.

According to Shallcross, Grant sent for him a few minutes before the end of the work day on January 21, and told him that he was sorry but he had to discharge him. He explained that Bouton, the assistant industrial relations director, had gotten in touch with Shallcross' former employer and learned that he had had union trouble there, and the Company did not want any here. Grant testified similarly that Blum had said that Shallcross was being discharged because he had previously engaged in union activities and the Company did not want any reoccurrence. Recalled near the close of the hearing, Grant testified that he had not discussed with Shallcross on January 21 the latter's union activities at the Company or at his prior place of employment. Grant then added that, contrary to a statement which he had previously issued, he had also been told that McCarroll had been watching Shallcross continually in a huddle and off the job, and that this had to stop.

Having been given this "unofficial" reason, Shallcross asked what the reason was for the discharge. Grant did not reply to this, but he did advise (this is not denied) that, if Shallcross ever needed a recommendation, he should come to him, not to Blum; and he further allegedly declared, "If I were you, I'd fight it." The unemployment compensation slip given Shallcross did not set forth the reason for the discharge; he was told that the reason would be inserted when the Unemployment Division returned it to the Company. The next day, McQueen told Shallcross that the Union could not do anything about his discharge since the Company had extended his probationary period. (McQueen testified to his belief that it is up to the department foreman to notify the employee. Explaining or failing to explain the Union's failure to notify Shallcross of the extension, McQueen testified that the Union, "on occasions, but not all the time" informs the employee involved.) In this connection, Shallcross testified that Grant told him about the first of the year that he could work overtime since his probationary period had expired without extension. Grant himself testified that he first learned on January 21, when he was told to discharge Shallcross, that the probation had been extended. From this there arose the question what the company practice is with respect to overtime. While the practice may have been to allow overtime according to seniority and regardless of completion of probation, it does not appear that Grant recognized it despite his testimony. I am unable otherwise to understand his admittedly combining reference to Shallcross' completion of his probationary period with a promise to try to get him some overtime. But aside from the reflection on Grant's credibility, this appears to show that Grant did not know of an extension of Shallcross' probation; and he admitted that. The practice or rule concerning overtime work and probationers does not in fact concern us. The question developed over the claim that Shallcross' probation had been extended on December 21.

Having testified that he inquired on January 21 about Shallcross' probation, Grant later thought that he recalled that this had been discussed on January 18. At that time, Grant testified, McCarroll went to the files and showed him the extension, declaring that he wanted Shallcross discharged because of his walking around the shop and bothering others. (He had previously testified that he discharged Shallcross at Grossenbacher's direction.) During the course of subsequent recollection, Grant testified that he had not been present at the meetings on January 18. I do not credit Grant's testimony concerning these additional reasons which he thus uncertainly recalled and which he did not mention to Shallcross on January 21.

In passing on Grant's credibility, we must note that the accuracy of a document which contained statements allegedly made by him to a Board representative was not in issue. The document allegedly refreshed Grant's recollection; later he testified that it had not in fact earlier refreshed his recollection, but that it contained erroneous statements and had led him to testify incorrectly; and he now repudiated some of his earlier testimony. The General Counsel on the one hand had an opportunity to and did question him, and used the document to refresh his recollection when Grant appeared to give answers contrary to statements in the document. On the other hand, the Company's counsel had full opportunity to and did question Grant concerning the issues involved. It is therefore unnecessary to consider the document further as either containing admissions by Grant against the Company's interest or as reciting facts which he could otherwise orally declare.

In connection with the matter of union trouble at his former place of employment, Shallcross testified that at his employment interview (he placed it on November 20; the application is dated November 16) he told Bouton that he had quit his prior job, where the men were represented by another Steelworkers local, because of union disturbances, the Union there having gotten "out of hand" and prevented him from doing his work, and that Bouton replied that the Company here has union

trouble also. Bouton's recollection of this conversation was vague. On his employment application, Shallcross stated as his reason for leaving his prior place of employment: "Plant Relocated Caused Union Difficulties Therefore I Resigned" Questioned concerning this, he testified that the union disturbances, which were caused by the relocation, had prompted him to resign, not the relocation itself. Bouton's testimony was that in January he checked some of Shallcross' references and was informed by the last employer that Shallcross had resigned because of difficulty he had had with and within the union there, and that such difficulty was no concern to that company.

The circumstances surrounding Shallcross' resignation elsewhere are not included in the specific reasons listed by the Company in its answer; nor are they embraced in the catch-all reference to "other acts and conduct which in the Company's opinion was detrimental to the proper and efficient operation of its business." Shallcross' earlier acts might be deemed undesirable aside from any question of law in that connection; but such earlier acts could not be detrimental to current efficient operation. In any event, the evidence concerning Shallcross' previous employment and his earlier union activities are not relied upon by the Company to support the discharge, and it has a limited bearing here. Considering this in connection with an evaluation of Shallcross' credibility, he was not broken down despite lengthy and extensive cross-examination. The cross-examination on collateral matters, including his employment application and its references to prior employment, failing to impair his testimony, served to bolster his reliability. I have not overlooked variance or possible variance in his testimony. For example, although he declared that he never spoke to employees in the plant about getting rid of officers of the Union, he did tell a committeeman in the locker room that he would like to see Marr run for office; and he testified that he may have mentioned others for other offices. If there be a variance between his testimony that he had earlier stated that he would like to see Marr and one or more others run for union office, and his testimony that just before the union meeting he suggested to Marr that he should be the recording secretary, I find that he was nevertheless a credible and reliable witness.

One aspect of the reference to Shallcross' previous employment appears to shed light on the Company's attitude or motive here. Bouton testified that he would not and did not check Shallcross' employment history until sometime during the first half of January, when he did at Blum's direction. Blum's explanation for this belated check is that he ordered it after he was consulted concerning the proposed discharge. (This parallels his alleged check for the probation extension, *supra*.) The facts which had allegedly led to the extension of probation did not prompt a check of Shallcross' references in December. With the decision to discharge, subject only to Blum's administrative approval, no reason appears for the check in January despite Blum's statement that in some cases he checks references before discharging an employee. Here it is claimed that Shallcross' conduct called for his discharge; the reference check did not contribute to it. If a check might in some cases clinch a discharge, it did not here, as Blum testified, for he did not receive any bad report. The alleged belated check would thus have been without reason, and also without effect. Made earlier, it may have been prompted by a desire to find a lawful reason for discharging Shallcross; when the check proved fruitless, another reason was cited. We have seen from Bouton's testimony that the reference check was made during the first half of the month, not on January 21, when it was allegedly decided to discharge Shallcross for talking and loitering on the job. We have seen also that, before that date, Blum mentioned Shallcross' activities at the other job to the union representatives.

The reasons cited in the Company's answer to support Shallcross' discharge may be summarized as insubordination and talking, the latter excessive, away from his work, and interfering with the work of other employees. Bearing in mind the testimony concerning the cleaning of the turret lathes, there is no evidence of insubordination. As for Shallcross' talking, I find from all of the testimony that he did talk during working hours and was spoken to about it. Depending on one's point of view, Shallcross' activities and remarks during and outside of working hours concerning the Union, classifications, and work being done, on matters which were not directly his concern, and on some which did directly concern him as, for example, his own work assignments, might lead one to attribute to him a decent concern for the welfare of others; or on the other hand, to charge him with being a busybody or a firebrand. Our function is neither to praise nor to censure as we determine the issues before us.

Talking by Shallcross during working hours might have warranted his discharge. But we have seen that his concerted activities at a prior place of employment were pointed out to Grant when the latter was told to discharge him, as they had been pointed out to union representatives; and that his efforts to unseat union officers and

to stiffen the Union's attitude toward the Company had also been pointed out to those officers.

It is also significant that when Grant referred to Shallcross' technical competence to do the work assigned to him, he added that Shallcross may have taken more time than he should have; but this, according to Grant, was because he was not familiar with the Company's machines and was still learning; not because he was talking and not performing his work. (Grant, in his last version, did say that Shallcross was discharged for talking and not being on the job.) This explanation by Grant, Shallcross' immediate supervisor who assigned his work, scarcely supports Grossenbacher's statement that Shallcross was discharged because he talked too much and took too much time to get to and do his jobs. Grossenbacher admitted that Grant told him that Shallcross was a good technical man and that Grant had never complained that Shallcross had failed to carry out an assignment. Like Bouton, Grossenbacher testified that competent millwrights were hard to find. There is no evidence of even one specific instance or occasion when Shallcross was in fact talking and away from his work; this in contrast to the several occasions specifically described when he talked in the locker room on nonworking time. Aside from the implausible elements in the testimony concerning Shallcross' alleged talking, the absolvment of others with whom he talked, the failure to take action against him during his regular probationary period, the extension of his probation, and the failure to give him early or serious warning (I do not credit Grant's testimony concerning repeated notice) despite the need for such men, the versions submitted by company witnesses are mutually contradictory, and I do not credit them.

Beyond the matter of credibility, it is settled that, even if nondiscriminatory reasons existed and were sufficient to warrant discharge, the discharge was violative if it was based on discriminatory reasons. Various uncontradicted statements by company representatives, which we have noted, and the circumstance of the alleged earlier extension of Shallcross' probationary period without Grant's knowledge for so long a time indicate that Shallcross' union activities weighed more heavily in the decision to discharge him than did dissatisfaction with his conduct as described.<sup>2</sup> Shallcross was not discharged for a lawful reason even if the facts would have supported such a reason.

The extent to which the *Whitin* and other cases are in point depends on the similarity of the facts; the principles are clear. The motivation found in the *Deep Freeze Appliance* case<sup>3</sup> cited by counsel for the Company, was quite different from that found here. The factual conflict in the testimony in the instant case centers on two points: The time when Shallcross' probation was extended (as reflecting on the reason for it), and the reason for his discharge, the latter being the salient issue. As I evaluate the testimony, I conclude that, as Grant told Shallcross, the Company regarded the Union as too powerful and did not want any trouble; that Shallcross' criticism of the Union here, as his activities at his prior place of employment, which Grant and Blum indicated concerned the Company, promised such trouble, and his various remarks to other employees that their work should be according to their classification and their wage rate according to their work, promised trouble more directly; and that for all of these reasons the Company decided to discharge Shallcross. Company counsel's argument to the contrary notwithstanding as he strove earnestly to justify the discharge, the existence of disputes, grievances, and arbitration proceedings between the Company and the Union does not bar a conclusion that the Company desired to discharge Shallcross because of his concerted activities. Other disputes might at least as readily lead to a desire to avoid a dispute under the circumstances which here developed as it might indicate a willingness to fight the Union.

With respect to the probationary period, it is true that had there been a valid extension, it would be unnecessary to give Shallcross a reason for his discharge. But a reason was given, and that was stated to be his concerted activity elsewhere. Further, whether or not a reason was given or had to be given to Shallcross, the Company could not lawfully discharge him because of his concerted activities here or elsewhere. Certainly there is no proof that such concerted activities were illegal or outside the protection of the Act, nor are they claimed to have been so. As for the effect of the extension of the probationary period, even if not discriminatory, the evidence indicates that the discharge was discriminatory; and the probation extension, affecting the mechanics or method of discharge, did not remove the element of discrimination when Shallcross was discharged. On the other hand the extension of a maintenance man's probation by Grossenbacher was unique, as we have seen, and

<sup>2</sup> *N. L. R. B. v. Whitin Machine Works*, 204 F. 2d 883, 885 (C. A. 1). Cf. *United States Rubber Company*, 115 NLRB 1707, 1711, 1720.

<sup>3</sup> *Deepfreeze Appliance Division, Motors Products Corp. v. N. L. R. B.*, 211 F. 2d 458 (C. A. 7).

the departure from the Company's practice itself suggests discrimination although discrimination was not alleged in that connection and is not being found. The further fact that Grant was not even told about the extension may lead to doubt that it was timely and proper, and to the suspicion that it was collusive. The Company's testimony concerning the extension, offered to support its alleged nondiscriminatory reasons for the discharge, is not credited. This rejection supports the finding of discrimination. Here it may be noted that Grossenbacher, who effected the extension, testified only that Shallcross' alleged talking continued. Despite his own observation of Shallcross since at least the early part of December and the alleged complaints by McCarroll, he did not before the original probationary period expired discharge Shallcross for talking; he did during the extension. Probationary employees, we are told, were discharged without warning; yet Shallcross' probation was allegedly extended, and he was only later discharged. Further, like McCarroll, Grossenbacher could not say which employees Shallcross had talked to, nor could he recall that any of them had been reprimanded. Even if timely and made in a manner and under circumstances which would warrant its acceptance as at least in accordance with company practice, the extension of probation would not overcome the weight of the other evidence of Shallcross' activities and the Company's reaction to them, on which the finding of discrimination is based.

### III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

### IV. THE REMEDY

Having found that the Respondents have engaged in and are engaging in certain unfair labor practices affecting commerce, I shall recommend that they cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

It has been found that the Respondents respectively violated Section 8 (a) (1), (2), and (3) and Section 8 (b) (1) (A) and (2) of the Act by maintaining and enforcing an illegal checkoff provision in their collective-bargaining agreement. I shall therefore recommend that they cease and desist therefrom.<sup>4</sup>

It has been further found that the Company, by discharging Shallcross, discriminated against him in regard to his hire and tenure of employment in violation of Section 8 (a) (3) and (1) of the Act. I shall therefore further recommend that the Company offer to Shallcross immediate reinstatement, and make him whole for loss of pay, computation to be made in the customary manner.<sup>5</sup>

Although, as found, the agreement between the Company and the Union contains an unlawful provision, it is not questioned that a majority of the employees had designated the Union, and that the agreement contains a separate and lawful union-security clause which required Shallcross to become a member and pay dues 31 days from the date of his employment. Aside from the prior illegal clause which requires new employees to execute a membership and checkoff authorization card, the agreement quoted, *supra*, suggests that payments must in fact be made to the Union after 30 days. (As for Shallcross' discharge, we have seen that it is not even claimed that the Union caused the Company to take that action.<sup>6</sup> I shall not recommend that dues checked off be returned to the employees.<sup>7</sup>)

The violations of the Act found herein are persuasively related to other unfair labor practices proscribed by the Act, and the danger of their commission in the future is to be anticipated from the conduct of the Respondents in the past. The preventive purposes of the Act will be thwarted unless the order is coextensive with the threat. In order, therefore, to make more effective the interdependent guarantees of Section 7, to prevent a recurrence of unfair labor practices, and

<sup>4</sup> There is neither allegation nor evidence attacking the majority status of the Union. It will therefore not be recommended that the agreement be set aside in its entirety.

<sup>5</sup> *The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch*, 65 NLRB 827; *Crossett Lumber Company*, 8 NLRB 440; *Republic Steel Corporation v. N. L. R. B.*, 311 U. S. 7, *F. W. Woolworth Company*, 90 NLRB 289.

<sup>6</sup> In mentioning this, I note only what might be argued under different circumstances. I do not suggest that I would consider such an argument valid. The distinction between the two concepts should be apparent. Cf. *J. I. Case Company*, 118 NLRB 520, footnote 10.

<sup>7</sup> Cf. *Bowman Transportation, Inc.*, 112 NLRB 387, 388, 398-399.

thereby minimize industrial strife which burdens and obstructs commerce, and thus effectuate the policies of the Act, I shall further recommend that the Respondents be ordered to cease and desist from infringing in any other manner upon the rights guaranteed in Section 7 of the Act.

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

CONCLUSIONS OF LAW

- 1. Local 5250, United Steelworkers of America, AFL-CIO, is a labor organization within the meaning of Section 2 (5) of the Act.
- 2. By discriminating in regard to the hire and tenure of employment and terms and conditions of employment of its employees, thereby encouraging membership in labor organizations, Cooper Alloy Corporation (Aircraft Division) has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act
- 3. By contributing support to the Union, the Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (2) of the Act.
- 4. By interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, the Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.
- 5. By causing the Company to discriminate in regard to hire and tenure of employment and terms and conditions of employment in violation of Section 8 (a) (3) of the Act, the Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (2) of the Act.
- 6. By restraining and coercing employees in the exercise of rights guaranteed in Section 7 of the Act, the Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.
- 7 The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication ]

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the Labor Management Relations Act, we hereby notify our employees that:

WE WILL NOT encourage membership in Local 5250, United Steelworkers of America, AFL-CIO, or any other labor organization by discharging any of our employees, by maintaining or enforcing the clauses of any agreement with the said or any other labor organization which require our employees to fill out checkoff authorizations, or by discriminating in any other manner in regard to their hire or tenure of employment, except as authorized in Section 8 (a) (3) of the Act

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Local 5250, United Steelworkers of America, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

WE WILL offer to John F. Shallcross immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay suffered as a result of the discrimination against him.

COOPER ALLOY CORPORATION (AIRCRAFT DIVISION),  
*Employer.*

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

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

## APPENDIX B

## NOTICE TO MEMBERS AND ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the Labor Management Relations Act, we hereby notify our employees that:

WE WILL NOT maintain or enforce the clauses of any agreement with Cooper Alloy Corporation (Aircraft Division), or any other employer, which require employees to fill out checkoff authorizations.

WE WILL NOT in any other manner cause or attempt to cause Cooper Alloy Corporation (Aircraft Division), or any other employer, to discriminate against an employee in violation of Section 8 (a) (3) of the Act.

WE WILL NOT in any other manner restrain or coerce employees in the exercise of the right to self-organization, to form labor organizations, to join or assist any labor 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 or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization, as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

LOCAL 5250, UNITED STEELWORKERS OF AMERICA, AFL-CIO,  
*Labor Organization.*

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

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

**Springfield Building and Construction Trades Council; Carpenters' District Council of Springfield, Massachusetts, and Walter J. LaFrancis, and Local Union No. 1 of the Bricklayers, Masons and Plasterers International Union of America, AFL-CIO, and James M. Leonard and Leo Spear Construction Co., Inc.**

**Springfield Building and Construction Trades Council; Carpenters' District Council of Springfield, Massachusetts, and Walter J. LaFrancis and James F. Rogers, d/b/a Rogers Heating and Engineering Company. Cases Nos. 1-CC-180 and 1-CC-184. April 25, 1958**

## DECISION AND ORDER

On December 9, 1957, Trial Examiner Sidney Lindner issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices, and recommending that they be required to cease and desist therefrom and to take certain affirmative action, as set forth in the Intermediate Report, a copy of which is attached hereto. Thereafter, the Respondents filed exceptions to the Intermediate Report and supporting briefs; the General Counsel also filed a brief with the Board.