

Borden Cabinet Corporation and Ruth E. Sullivan and Merdie Dotson. *Cases Nos. 25-CA-1241 and 25-CA-1241(2).* May 31, 1961

DECISION AND ORDER

On November 30, 1960, Trial Examiner Thomas F. Maher issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner further found that the Respondent had not engaged in certain unfair labor practices alleged in the complaint and recommended dismissal of these allegations. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief, and the Respondent filed a reply brief in support of the Intermediate Report.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its power in connection with this case to a three-member panel [Chairman McCulloch and Members Leedom and Brown].

The Board has reviewed the rulings made by the Trial Examiner 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 briefs, and the entire record in this proceeding, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Borden Cabinet Corporation, Borden, Indiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in United Brotherhood of Carpenters and Joiners of America, AFL-CIO, by discharging or in any other manner discriminating against employees in regard to hire and tenure of employment or any term or condition of employment.

(b) Interrogating its employees concerning their membership and interest in United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and the progress of its organizational campaign among the Respondent's employees, in a manner constituting interference, restraint, or coercion in violation of Section 8(a) (1) of the Act.

(c) Engaging in or requesting its employees to engage in the surveillance of its employees with respect to their union membership and activities.

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist United Brotherhood of Carpenters and Joiners 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 as guaranteed in Section 7 of the Act, or to refrain from any or all such activities.

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

(a) Offer to Ruth E. Sullivan immediate and full reinstatement to her former or a substantially equivalent position, without prejudice to her seniority or other rights and privileges.

(b) Make whole Ruth E. Sullivan for any loss of pay she may have suffered by reason of the discrimination against her, by payment to her of a sum of money equal to the amount which she normally would have earned as wages from the date of her discharge to the date of Respondent's offer of reinstatement, less her net earnings during said period, in the manner set forth above in section VI of the Intermediate Report entitled "The Remedy."

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due and the right of reinstatement under the terms of this Order.

(d) Post at its plant at Borden, Indiana, copies of the notice attached hereto marked "Appendix."¹ Copies of said notice, to be furnished by the Regional Director for the Twenty-fifth Region, shall, after being duly signed by the Respondent's authorized representative, be posted by the Respondent immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

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

IT IS FURTHER ORDERED that those allegations of the complaint relating to the termination of employee Merdie Dotson be, and they hereby are, dismissed.

¹ 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"

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT discourage membership in United Brotherhood of Carpenters and Joiners of America, AFL-CIO, by discharging or in any other manner discriminating against our employees in regard to their hire or tenure of employment, or any term or condition of employment.

WE WILL NOT interrogate our employees concerning their membership or interest in United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and the progress of its organizational campaign among our employees, in a manner constituting interference, restraint, or coercion in violation of Section 8(a)(1) of the Act.

WE WILL NOT engage in or request our employees to engage in the surveillance of our employees with respect to their union membership or activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist United Brotherhood of Carpenters and Joiners 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, as guaranteed in Section 7 of the Act, or to refrain from any and all such activities.

WE WILL offer to Ruth E. Sullivan immediate and full reinstatement to her former or a substantially equivalent job, without prejudice to her seniority or any other rights and privileges previously enjoyed by her, and we will make her whole for any loss of wages suffered as a result of our discrimination against her.

All our employees are free to become or remain, or to refrain from becoming or remaining, members of the above-named Union, or any other labor organization.

BORDEN CABINET CORPORATION,
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.

INTERMEDIATE REPORT

STATEMENT OF THE CASE

Upon charges and an amended charge filed on March 15 and April 13 and 14, 1960, by Ruth E. Sullivan and Merdie Dotson, Charging Parties herein, the Regional Director for the Twenty-fifth Region of the National Labor Relations Board, herein referred to as the Board, issued a complaint on May 13, 1960, against Borden Cabinet Corporation, Respondent herein, alleging violations of Section 8(a)(3) and (1) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519), herein called the Act. In its duly filed answer Respondent, while admitting certain allegations of the complaint, denied the commission of any unfair labor practice.

Pursuant to notice, a hearing was held before the duly designated Trial Examiner on June 20 and 21, 1960, at Salem, Indiana. All parties were represented at the hearing and were afforded full opportunity to be heard, to introduce relevant evidence, to present oral argument, and to file briefs. Oral argument was waived by counsel for Respondent. Both parties filed briefs with me thereafter.

Upon consideration of the entire record before me, the briefs of the parties, and upon my observation of the witnesses, I make the following:¹

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Borden Cabinet Corporation is an Indiana corporation maintaining its office and principal place of business in Borden, Indiana, where it is engaged in the manufacture, sale, and distribution of furniture and related products. In the course and conduct of its business operations the Respondent annually manufactures, sells, and distributes from its Borden plant products valued in excess of \$100,000, which products were shipped from said plant directly to States of the United States other than the State of Indiana. It is admitted that Respondent is engaged in commerce within the meaning of the Act, and I so find.

II. THE LABOR ORGANIZATION INVOLVED

United Brotherhood of Carpenters and Joiners of America, AFL-CIO, herein referred to as the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ISSUES INVOLVED

1. Whether the economic reasons assigned for Ruth Sullivan's layoff were the true reasons or but a pretext for discharging her for her known union activity.
2. Whether Merdie Dotson's poor workmanship constituted adequate cause for his discharge.
3. Whether Respondent's surveillance and interrogation of its employees constituted interference, restraint, and coercion.

IV. THE UNFAIR LABOR PRACTICES

A. Introductory facts

Essential to an understanding of the issues presented by this case is a consideration of several aspects of the production method utilized by Respondent in the manufacture of wooden cabinets; namely, the process by which the cabinets are finished and the changeover that occurred in the method of sanding cabinets.

In the course of production cabinets pass through the cabinet room where they are sanded preliminary to final finishing, inspected, and, where necessary, repaired. They are then passed on to the finishing room.

The repair work, commonly known as detailing, involves the minor repair or patching of dents, scratches, and irregularities that do not require a major recondi-

¹Unless specifically indicated to the contrary, any credibility evaluation I make of the testimony of any witness appearing before me is based, at least in part, upon his or her demeanor as I observed it at the time the testimony was given. Cf. *Bryan Brothers Packing Company*, 129 NLRB 285. To the extent that I indicate hereafter that I reject in part or entirely the testimony of any given witness, it is my intent thereby to indicate that such part or whole of the testimony, as the case may be, is discredited by me. *Jackson Maintenance Corporation*, 126 NLRB 115, footnote 1.

tioning and that can be handled as part of the line operation. It was suggested in the record that the need for detailing would increase as cabinets passing through the cabinet room would accumulate at the detailing station, where, because of crowding, they would become vulnerable to denting and scratching. Thus it would appear that the greater the volume of items to be repaired the stronger would be the likelihood of further damage in the meantime.

From the cabinet room the cabinets are routed to the finishing room where a base coat is applied to the surface and thereafter finished by a process referred to as base coat sanding. Any excessive sanding at this stage of the finishing process would result in a gouged effect exposing the wood surface and requiring a further spray application of the base coat, to be followed by further sanding. Such damage as this would most likely occur along the edges of the cabinet, but frequently occurred on the plane surfaces of the cabinet as well.

Upon the appointment of John Habig as general manager of the plant in September 1959, the sanding operation was completely changed. Whereas sanding, including base coat sanding, had been done entirely by hand, the sanding materials being wrapped around a wooden block, under the system introduced by Habig the block sander was replaced by a power driven, vibrating sander referred to as a jig sander, a jigger, or a jitterbug. Hence sanding under the new system was restricted to a fine finish operation immediately following the machine sanding.

When a cabinet has received its base coat and has been properly sanded, wiped off, and inspected, it is then ready for printing. In this operation a print roller is manually applied to the surfaces of the cabinet and by steady rolling operation across each surface a wood grain would be imprinted over the finished base coat. Following the application of the printed grain the cabinet is then passed on for further processing, the details of which have no reference to the issues presented here.

B. Union organization

Organization among Respondent's employees commenced in mid-September 1959 upon the appearance in the area of representatives of the Union. A meeting of the employees was held at that time and a membership campaign began. Present at this initial meeting and most active in the solicitation of union memberships were Ruth Sullivan and Merdie Dotson. Subsequent meetings were held, including one on November 10, and during the period between mid-September 1959 and April 1960 employees were visited in their homes by union advocates, principally employees Sullivan and Dotson. A considerable number joined the Union. The organizational efforts culminated in representation proceedings before the Board in Case No. 35-RC-1751. A Board-conducted election was held among Respondent's employees on April 2, 1960, which election the Union lost by vote of 109 to 38.

C. The termination of Ruth Sullivan

1. Sequence of events

Ruth Sullivan was first employed by the Company in 1957 and worked for approximately a year, at which time she took a leave of absence. During this period of her employment she worked as hand sander and detailer interchangeably. In September 1959 Respondent's personnel manager, Louis Korff, sent for Mrs. Sullivan and rehired her as hand sander, her hiring becoming effective on September 21, 1959.²

Prior to her reemployment in September 1959 Sullivan, as has already been noted *supra*, was already actively engaged in the organizing efforts of the Union. From mid-August 1959 until April 1960 she made frequent visits to the homes of Borden employees; at first in the company of her husband and employees Marion and Belt, and later with other employees including Dotson and with the Union's representa-

² The testimony of employee Sullivan which I credit.

There is considerable dispute in the record as to whether Sullivan's return to work was the consequence of constant importuning on the part of Personnel Manager Korff and whether she was hired as a hand sander or a detailer. The fact of the matter is that Sullivan was hired, and Korff's alleged eagerness to hire her was at least initiated by Sullivan's admitted application for reemployment 4 months after she took leave of absence. And whether Sullivan was hired as a detailer, as Respondent contends, or as a hand sander, as she credibly testified, no one questions her competence in either skill, nor is it contended by either party that work proficiency was a factor in her subsequent termination.

tives. She made these home visits in such neighboring towns as Pekin, Salem, and Daisy Hill.³

Following her employment on September 21, employee Sullivan was assigned to hand sanding in the cabinet room. This assignment lasted for a week at which time she was transferred to repairing, or detailing. Three weeks later, on October 19, her foreman, Albert Hunt, came to her and informed her that they would have to lay her off. Sullivan's credited account of this incident thus describes it:

And he came up to me and he said that they was going to lay me off for lack of work. They had one too many hand sanders.

Q. What did you say when he told you this?

A. I said, "That's not right," because the hand sanders were behind.

Q. What was said further, if anything, by Mr. Hunt or yourself?

A. I asked him if it was my work, and he said no. And I asked him, I talked to him, and I says, "Well, what is it them?" and he just shook his head and he says, "Well," he says, "It's just for lack of work."⁴

On October 30, following her layoff, Mrs. Sullivan returned to the plant to obtain her final paycheck. On this occasion she met Personnel Manager Korff outside the plant office and engaged him in conversation. Sullivan's account of this meeting, which I credit, is as follows:

I stopped Lou Korff as he was coming from the plant to go to his office. I asked him, I said, "There have been rumors that I have been fired, and I want to know for myself if I have been fired," and if what was said was true, if I had been laid off. He said, "Ruth, you have been laid off for lack of work." And I asked him then, I said, "Well, I wanted to know because I had to have a job." Then he says, "Well, I thought when you came here you had to have a job"; and I said I did.

We had just bought the house after I got my job, and I had an application from Goodrich, and when I was talking to him, he says, he started talking about the Union, and he says, "John Habig has got wind that you had something to do with the Union."⁵

Sullivan further detailed the interview, stating:

And I asked him what he found out, he said, "Well," he says, he had talked to two men that I had asked to sign cards, and they had told him that I had asked them, but they had never seen any cards.

And I asked him then, I says, "Well, how do you know that I did, then," and he couldn't answer. And I asked him then, I said, "Well, what about a job?" He says, "Well, you might as well hunt for work elsewhere because we haven't got any work here for you."

I told him I had an application for Goodrich and on it you had to put the last place of your employment, and I asked him what they would put down, and he

³ It is clear from the credited testimony in the record that considerable numbers of Respondent's approximately 150 rank-and-file employees and all of its supervisory staff resided beyond the immediate confines of Borden, Indiana, and commuted to work. Thus, of the 17 employees who testified in behalf of the General Counsel only one (Standiford) resided in Borden; two others gave a Borden R.F.D. address and the remainder resided in either Pekin or Salem, 5 miles and 16 miles distant, respectively, from Borden. Upon the foregoing, therefore, it has not been shown that Respondent's was a small plant or that its employees and supervisors resided in a small community.

⁴ Foreman Hunt, who testified thereafter, was not specifically questioned concerning the language used in this conversation with Mrs. Sullivan. He was, however, twice asked to give an explanation for the layoff and each time he evaded the question by indulging in generalities. I therefore deem Mrs. Sullivan's account of the layoff incident to be undented.

⁵ I do not credit Korff's denial that he made any reference to General Manager Habig in the course of this conversation with Sullivan. Nor do I credit his testimony that he was not at that time aware of Sullivan's union interest and activities. I note numerous instances of evasion and obfuscation in Korff's testimony and for this reason I do not credit him. Illustrative of the fault upon which I base this determination is his testimony that he did not know if Mrs. Sullivan worked as a hand sander on her return to work in September. As a personnel manager who otherwise impressed me with his professional competence he should have known, and presumably did. Similarly, when asked if any other persons were hired to work in the cabinet room after Mrs. Sullivan was laid off he first replied that "there were other people laid off" and only answered the question after it was repeated to him.

said, "Don't give the Company itself, give my name personally," and he says, "I will give you a good recommendation."⁶

2. Respondent's contentions

It is Respondent's contention that employee Sullivan was employed for the purpose of assisting in Respondent's attempt to eliminate a bottleneck in the production line, and that after a 3-week trial period it was determined that the relatively small increase in production did not justify the added cost of a second detailer. Accordingly, Sullivan, having the least seniority, was laid off in conformance with company policy.

Respondent further contends that, absent evidence that it was aware of Sullivan's union membership and activity at the time of her layoff, it could not now be charged with having discriminated against her.

3. Analysis and conclusions

a. Respondent's knowledge of Sullivan's union activities

It is evident that Respondent knew that Sullivan "had something to do with the Union when it laid her off." Korff's statement to Sullivan that General Manager Habig had "got wind" of that fact is enough to establish such awareness, not necessarily on the part of Habig, but an awareness by Korff, a responsible company official, who so advised Sullivan. Nor am I persuaded to the contrary by Respondent's suggestion of inconsistent testimony.

First, it is contended that Sullivan, by her own admission, restricted her employee home visiting to the period following her termination. On the contrary, when Sullivan was asked by me if she was "active on behalf of the Union in its attempt to organize the employees at Borden from the first time it showed up here in August," she answered in the affirmative. Secondly, the Respondent can derive no comfort from Dotson's testimony, allegedly to the same effect, for Dotson merely testified that the first time *he* engaged in home visiting with Sullivan was on October 21, after Sullivan's termination. That Dotson joined Sullivan at a specified date hardly proves that Sullivan was previously inactive. And finally, Union Representative McElroy's testimony that the first visit was made in the latter part of October refers not to Sullivan but, according to the question asked him at the hearing, to "the first such trip that [he] made." McElroy arrived late on the scene and was then advised that Sullivan was already active. I fail to see how his delayed participation in the campaign proves that Sullivan did not begin her activity until he did.

In sum, for the reasons outlined above, I reject Respondent's suggestion that the evidence refutes any company knowledge of Sullivan's union activity prior to her termination. And I likewise reject as a factor of employer knowledge General Counsel's reliance upon the smallness of the plant and of the community; for the plant, employing 150, was *not* small, and the employees, as has been previously shown, *supra*, resided for the greater part, not in the community itself, but in a wide area of southern Indiana.

On the contrary, I rely upon Sullivan's credited quotation of Personnel Manager Korff to find that the Company was aware at that time that she "had something to do with the Union."

⁶ I do not credit Korff's version of the request for a letter of recommendation to the effect that he would give her a letter of recommendation "if she would come down and personally request one at the office." That this conversation took place but several steps from the office casts serious doubt upon Korff's explanation and I reject it.

Nor do I rely for evidence of Sullivan's rehability upon a proffered exhibit of the General Counsel purporting to be a confidential report of a prehire investigation made at the request of B. F. Goodrich Company where Sullivan had applied for employment following her layoff. This report was made by an investigator of Retail Credit Corporation who could not identify, except by referring to a name on the office copy of the type report, the person he had spoken to at Respondent's plant. Nor could he state whether the information was secured by him in person or by telephone. Not only does such a report constitute hearsay information, but indeed it cannot even be shown from whom the hearsay matters were received. Furthermore, as the report was obtained for Goodrich by Retail Credit upon an agreement by Goodrich to hold it in strict confidence and not divulge its contents, I am persuaded that its attempted use as evidence by subpoena, despite its confidential character, raises a serious question as to its privileged nature (8 Wigmore, *Evidence*, § 2285), a question which I do not find necessary to decide.

b. *The economics of Sullivan's termination*

Repair work, or detailing, was identified as the operation which created the alleged bottleneck in cabinet production. Accordingly, after a week of hand sanding Sullivan was assigned as the second detailer as part of Respondent's effort to speed the work.⁷

Basic to Respondent's explanation of Sullivan's layoff was its estimate of the production situation. Thus it concluded that because no appreciable increase had resulted from the addition of a detailer the number of detailers should be halved. How such a conclusion was reached is not clear in the record. But without meaning to bring into question the Company's manner of running its business I cannot but conclude that the judgment lacks logic. You just cannot achieve added production or greater efficiency in a given work area by the simple expedient of reducing the number of workers in the area. Yet that is precisely what Respondent claims it sought to do here. Cabinets were piling up awaiting repair; one additional repairer or detailer was put to work; and cabinets continued to pile up with no criticism of the repair work being done. Solution: lay off one detailer, and arrange to have the cabinets stored elsewhere awaiting repair or detailing.

In this respect I have made a searching study of the record as it describes the production problem and I have sought to understand the explanation that Respondent has advanced. The record provides no adequate justification for the action taken and indeed the foreman selected to eliminate the bottleneck, Hunt, could not, at the hearing, supply any proposed solution to the problem he was selected to solve.

I do not believe that I have substituted my judgment for the Company's in an area where it supposedly has superior competence when I conclude, as I must, that Sullivan was removed as a detailer for some reason other than the poor production claimed by Respondent.

Furthermore, Sullivan's summary termination does not square with the integrated character of the cabinet room operation, where, for example, an employee like Merdie Dotson was assigned one duty after another to a total of five or six, including hand sanding and spraying. It is difficult to understand, therefore, why Respondent would lay off a concededly competent hand sander and detailer, Sullivan, and on the other hand make the determined effort that it did to place Dotson at a job that would meet his limited qualifications (*infra*). And it becomes increasingly more difficult to understand Sullivan's layoff and Respondent's failure to recall her when it is seen that beginning within a month of her termination and extending thereafter for a period of 4 months Respondent hired nine women to work in the cabinet room.

I have given due consideration to Respondent's claim of economic justification in this matter, but I have also considered Respondent's knowledge of Ruth Sullivan's union activity. When I thus view the tortured reasoning by which Respondent explains the layoff, against a backdrop of Sullivan's known union leadership, not to mention Respondent's undue and unlawfully manifest interest in the progress of the Union's campaign (*infra*),⁸ I can draw no other inference but to conclude that the production problem was but a pretext utilized by Respondent to eliminate an active union protagonist.⁹ By such conduct, therefore, I conclude and find that Respondent has discriminated against Ruth Sullivan in violation of Section 8(a)(3) of the Act.

D. *The termination of Merdie Dotson*

1. Sequence of events

Merdie Dotson was first employed with the Company in January 1957, and assigned to the rough mill where he operated all of the woodcutting equipment used in the department. Thereafter he was assigned to the rub and pack department, and about 1½ years before his termination he was transferred to the finish department, where he was classified as a hand sander and assigned to base coat sanding. During this same period he was assigned for short periods to other duties in the finish department as personnel requirements dictated.

⁷ Although I credit Sullivan's testimony that she had been rehired as a hand sander and I reject Respondent's contrary contention, I would emphasize at this point that the circumstance of her rehiring is not significant inasmuch as she *did* work as a hand sander for the week prior to her reassignment and her competence in neither duty is in issue.

⁸ Cf. *N.L.R.B. v. Kaye, et al. d/b/a Arrow Press*, 272 F. 2d 112, 114 (C.A. 7).

⁹ *Jackson Tile Manufacturing Co. v. N.L.R.B.*, 282 F. 2d 90 (C.A. 5); *Bituminous Material & Supply Co. v. N.L.R.B.*, 281 F. 2d 365 (C.A. 8).

As previously noted (*supra*), the sanding operations were changed in September 1959. Under the system introduced by General Manager Habig, hand sanding, except in specialized areas, was replaced by the power driven jig sander. On October 10, Dotson was assigned the operation of this tool as an adjunct to base coat sanding of cabinets, and from that date his fortunes took a decided change for the worse. He experienced considerable difficulty in operating the jig sander and was repeatedly instructed and corrected by his supervisor, Seeger, and other company officials.¹⁰ For all of the correction and admonition that he received Dotson continued to commit two faults: He would either sand cabinet surfaces and edges so deeply that he would cut through the base coat, thus requiring refinishing, or he would not sand the surfaces sufficiently, thus requiring further sanding along the line. Both faults, it was determined by supervision, were the result of Dotson's inability to master the power driven tool. After consultation with Korff and after a front office interview with Dotson to discuss his workmanship Supervisor Seeger took him off sanding at the end of October and assigned him to other jobs as they became available. First, they tried him at printing, an operation involving the use of a hand roller across the surfaces of the cabinet, and requiring the services of a tall, long-armed man. It was discovered that because of his slight build Dotson was having too much difficulty with the work and, after a day or two, he was assigned to spraying parts, the portions of cabinets that are not exposed to view. At this job involving the operation of a power spray Dotson was equally inept in that he either caused a "dry spray," the result of holding the spray gun too far from the object, or he caused "runs" in the finish, the result of spraying at too close a range.

Again the quality of Dotson's work became a subject of high level consideration. After complaints by Seeger, and corrections suggested to him by General Manager Habig, Dotson was taken to Korff's office where Korff and Seeger discussed with him the possible causes of his poor workmanship. Shortly thereafter, on November 11, Supervisor Seeger, after further consulting with Korff, decided to discharge Dotson because of his poor performance and he so advised him.

Meanwhile on October 10, Dotson was approached by employee Marion to join the Union and he signed a union authorization card. Thereafter, beginning on October 12, he solicited union memberships among Respondent's employees, and beginning on October 21, in the company of employee Sullivan and representatives of the Union, he traveled throughout the neighboring area soliciting union memberships among the employees at their homes. He was among those present at the union meeting held at the Legion Hall in Salem on November 10, the evening preceding his discharge. According to employee Hardy, whose testimony I credit, General Manager Habig inquired of him on November 11, as to who was present at the meeting and Dotson was among those whom Hardy named.

2. Respondent's contentions

Respondent resists General Counsel's allegation that Dotson was discharged for his union activity by countering with affirmative proof that he was unable to properly perform the work assigned him after the hand sanding work was abolished in September 1959. In support of its finding Respondent elicited testimony, which I credit, to substantiate the fact that at no time during his employment could Dotson effectively operate power driven tools.¹¹

3. Analysis and conclusions

It can hardly be expected of Respondent that it tailor its operations to accommodate the shortcomings of an employee whom it may have known to be active in the affairs of the Union. Yet that is precisely what I must do if I find Dotson's discharge to be for discriminatory reasons. I can make no such finding.

However satisfactory Dotson's workmanship may have been in the rough mill and thereafter as a hand sander, and no one denies his competence on either job,

¹⁰ There is a marked degree of incoherence in Dotson's testimony but nevertheless I am persuaded of its basic truthfulness. Accordingly, while mindful that Dotson has described his shortcomings and his termination in the most favorable light, I find that the facts detailed in the text agree substantially with his account. In so doing I likewise rely upon the testimony of Supervisor Seeger, Personnel Manager Korff, and General Manager Habig insofar as their testimony describes Dotson's work habits and proficiency, a subject matter within their special competence to evaluate.

¹¹ The testimony of Supervisor Seeger

the one fact that emerges from everyone's testimony, including Dotson's, is that he could not handle a power tool assignment and that except for hand sanding he was an unsatisfactory worker. Thus, according to Foreman Seeger, even before he was given his original hand sanding duties Dotson had been put on the automatic screw-driver and had to be relieved of the job because of the damage he was causing by faulty operation of the tool. Thereafter his work on the jig sander, as previously described, was a matter of serious concern to management. And finally, in an effort to place him after his removal from jig sanding and after determining that he was physically not adapted for grain printing, Respondent assigned Dotson to spraying parts of cabinets that would not be exposed to view. He had no more success with the several types of spray guns assigned to him there than he had with any of the other power tools he had previously operated.

Upon consideration of the foregoing view of Dotson's inability to do the jobs assigned him and of the facts which support it, I have no alternative but to conclude that Respondent was clearly justified in discharging him. Nor has General Counsel proven to my satisfaction that this justification was but a pretext for some hidden, discriminatory motive. The only evidence in the record that Respondent was aware of Dotson's union affiliation was Hardy's testimony that Dotson's name was among those supplied to Habig as having attended a union meeting on the evening preceding Dotson's discharge. After noting the many exhortations and work corrections which Dotson was admittedly then receiving and Dotson's own understanding that he was expected to do better work, I cannot conclude that this one item of union information effectively converted a justifiable personnel action into a discriminatorily motivated act.¹² Accordingly, I shall recommend that so much of the complaint as relates to the discharge of Merdie Dotson be dismissed.

E. *The alleged interference, restraint and coercion*

1. Sequence of events

From November 11, immediately following the second organizational meeting of its employees, until March 2, 1960, the date of the Board-conducted election, Respondent, through its officials and supervisors, was active in a quest for information concerning the Union. Thus prior to the November 10 meeting General Manager Habig asked employee Hardy to attend the meeting and report back to him the names of those who were there. And on November 11, the morning following the meeting, Hardy reported to Habig the names of those employees present at the meeting.¹³

As the election approached Respondent's interest in its outcome appears to have increased. Thus employee Lewellyn stated without contradiction that around March 1, Foreman Hunt called him on the telephone and "he said they had asked him to call me and see if I was going to come to vote." And several days previously Supervisor Seeger came to employee Edith Standiford's work station and asked her if any union men had been around to visit her.¹⁴ During the same period Supervisor Strange inquired of employee Cyrus Roberts how he "felt about the election,"¹⁵ and Foreman Virgil Hurst asked employee Hardy what thoughts he had on the Union's success at the coming election.¹⁶ And during the week previous Hurst came to employee James Dotson, Merdie's brother, and asked him if he thought the Union would get in, adding that John Habig, the general manager, "was asking me the other day what you thought about the Union."¹⁷

2. Analysis and conclusion

I cannot subscribe to Respondent's claim that the foregoing incidents are but perfunctory and innocuous inquiries. Judging from the summary fate that befell

¹² *Stanley Levandowsky, d/b/a L & L Shop Rite Market*, 127 NLRB 767; *Dit-Mco, Inc.*, 127 NLRB 269; *Howard Aero, Inc.*, 119 NLRB 1531, 1534-1537. See also *Lundy Manufacturing Corporation*, 125 NLRB 1188; *City Products Corporation*, 127 NLRB 164; *Jackson Tile Manufacturing Company*, 124 NLRB 218, 238.

¹³ The credited testimony of employee Hardy. Habig conceded that he asked Hardy if he were going to the meeting and that he thereafter inquired who was there. He denied that Hardy attended at his request. I do not credit this denial.

¹⁴ The credited, undenied testimony of Standiford.

¹⁵ The credited, undenied testimony of Roberts.

¹⁶ The credited undenied testimony of Hardy.

¹⁷ The credited, undenied testimony of James Dotson.

Mrs. Sullivan when Habig "got wind that [she] had something to do with the Union," (*supra*), it is not difficult to surmise the feeling of employees who were thereafter questioned either about their union feelings, or the expected outcome of the election. And this is particularly true when all the inquiries followed Habig's direction to Hardy, in the first instance, that he report back to him the names of those who attended the November 10 union meeting. Linked as such conduct necessarily would be with the summary termination of their leader, Sullivan, as soon as Respondent had "got wind" of her activity, it could hardly be said that the surveillance requested and received by Habig and the campaign of inquiry indulged in by Respondent's other supervisors thereafter, would be viewed by the employees as "petty and trivial." In this respect, therefore, *N.L.R.B. v. Peerless Products, Inc.*,¹⁸ relied upon by Respondent in defense of its conduct, is clearly inapplicable. On the contrary, the circumstances as they have been set forth satisfy me that the actions indulged in by Respondent interfered with, restrained, and coerced its employees. That there is no evidence of the effect of such interference, restraint, or coercion is in itself unnecessary so long as the conduct is, as I find it to be, the sort that could be expected to achieve such effect.¹⁹ Accordingly, I find that by requesting and securing the effective surveillance of a meeting of its employees and by thereafter interrogating these employees respecting their union feelings and the outcome of the pending election, Respondent interfered with, restrained, and coerced its employees in the exercise of their right to freely organize, thus violating Section 8(a)(1) of the Act.

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section IV, 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 thereof.

V. THE REMEDY

It has been found that Respondent, by discharging and refusing to reinstate Ruth E. Sullivan, discriminated against her in respect to her tenure of employment in violation of Section 8(a)(3) of the Act. I shall therefore recommend that Respondent cease and desist therefrom and from infringing in any other manner upon the rights of employees guaranteed in Section 7 of the Act.²⁰ I shall recommend that the Respondent offer to the aforementioned employee immediate and full reinstatement to her former or substantially equivalent position,²¹ without prejudice to her seniority or other rights and privileges. I shall also recommend that Respondent make her whole for any loss of earnings that she may have suffered because of the discrimination against her, by a payment of a sum of money equal to the amount she would normally have earned as wages from the date of her discrimination to the date of the offer of reinstatement, less her net earnings during said period, with backpay computed in the customary manner.²² I shall further recommend that the Board order the Respondent to preserve and make available to the Board, upon request, payroll and other records to facilitate the checking of the amount of backpay due and the rights of employment.

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. The operations of Respondent occur in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By discriminating in regard to the tenure of employment of Ruth E. Sullivan the Respondent has engaged in and is engaging in an unfair labor practice within the meaning of Section 8(a)(3) of the Act.
4. By the foregoing conduct, and by indulging in the surveillance of its employees and by interrogating them with respect to their union sentiments and with respect

¹⁸ 264 F. 2d 769, 772 (C.A. 7).

¹⁹ *N.L.R.B. v. Wilbur H. Ford, d/b/a Ford Brothers*, 170 F. 2d 735, 738 (C.A. 6).

²⁰ *N.L.R.B. v. Lamar Creamery Company*, 246 F. 2d 8 (C.A. 5).

²¹ *The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch*, 65 NLRB 827.

²² *F. W. Woolworth Company*, 90 NLRB 289.

to the outcome of the pending union election the Respondent has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed by Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

6. Respondent did not violate Section 8(a)(3) or (1) of the Act by the discharge of Merdie Dotson whom I have found to have been discharged for cause.

[Recommendations omitted from publication.]

**General Engineering, Inc. and Harvey Aluminum (Incorporated)
and United Steelworkers of America, AFL-CIO. Case No.
36-CA-1023-1. May 31, 1961**

DECISION AND ORDER

On January 24, 1961, Trial Examiner James R. Hemingway issued his Intermediate Report in the above-entitled proceeding, finding that Respondents 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. The Respondents filed exceptions to the Intermediate Report and a supporting brief; the General Counsel filed a limited exception to the Trial Examiner's recommended remedy.

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 parties' exceptions, and the entire record,¹ and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except as indicated below.²

ORDER³

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor

¹ We find no merit in Respondents' contention that the Trial Examiner was prejudiced or arbitrary.

² Respondents except to certain factual findings of the Trial Examiner. Although the record indicates that the access road to the plant may be somewhat shorter than 100 feet and that there is a rear entrance to the plant, contrary to the Trial Examiner's finding, these minor errors or discrepancies have no bearing on the unfair labor practices found herein, nor do they affect our reliance on the Trial Examiner's credibility findings.

We take official notice of our prior finding that General Engineering, Inc. and Harvey Aluminum (Incorporated) are a single employer under the Act, and find, in the instant case, that the Respondents constitute a single employer. *General Engineering, Inc., and Harvey Aluminum*, 123 NLRB 586; *General Engineering, Inc., and Harvey Aluminum*, 125 NLRB 674; *General Engineering, Inc., and Harvey Aluminum (Incorporated)*, 131 NLRB 648. We do not find it necessary, therefore, to rely on the Trial Examiner's finding that the Respondents acted in concert.

³ As urged by the General Counsel in its exception, we shall alter the Trial Examiner's recommended order and notice to correspond to his unfair labor practice findings, which we adopt.