

tion of Section 8(a)(5) of the Act and has thereby interfered with, restrained, and coerced its employees in violation of Section 8(a)(1).

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 of commerce.

VI. THE REMEDY

It has been found that the Respondent, in violation of the Act, refused to bargain with the Union as representative of its employees in an appropriate unit, by the refusal to produce necessary information, and by the imposition of illegal conditions. To remedy the refusal to bargain in these respects and to effectuate the policies of the Act, it will be recommended that Respondent cease and desist therefrom and, upon request, bargain with the Union as the representative of its employees in the unit in which the Union was certified as such representative and, if an understanding is reached, embody such understanding in a signed agreement.

As it is implicit in my recommendation requiring Respondent to cease and desist from refusing to produce certain information that it so produce it, I find it redundant and unnecessary to affirmatively order Respondent to produce the requested information.

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

CONCLUSIONS OF LAW

1. The Union is a labor organization within the meaning of Section 2(5) of the Act.

2. The Respondent is an employer within the meaning of Section 2(2) of the Act, and its operations occurred in commerce within the meaning of Section 2(6) and (7) of the Act.

3. All production and maintenance employees of the Respondent employed at its West Memphis, Arkansas, plant including welders, setup men, layout men, painters, truckdrivers, stockroom clerks, installation, janitors, sweepers, and all helpers and the shipping and receiving clerk, excluding office clerical employees, salesmen, drafts-men, guards, and all supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. On and since February 1, 1961, the Union has been and now is the exclusive representative of the employees in the bargaining unit described above, by virtue of a certification of a Regional Director of the National Labor Relations Board.

5. By imposing a condition upon the production of information requested by the Union as necessary for the intelligent preparation for bargaining, and by imposing a condition upon the Union's attorney and its representatives that they provide verbal assurances of good conduct during the course of future negotiations, together with the requirement of a guarantee of performance of such assurances with a monetary penalty clause, Respondent has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

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

[Recommendations omitted from publication.]

Heiland Division of Minneapolis-Honeywell Regulator Co. and International Brotherhood of Electrical Workers, Local 1823, AFL-CIO. *Case No. 27-CA-859 (formerly 30-CA-859). January 31, 1962*

DECISION AND ORDER

On March 29, 1961, Trial Examiner Eugene K. Kennedy issued his Intermediate Report in the above-entitled proceeding, finding that the 135 NLRB No. 80.

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 Intermediate Report attached hereto. The Trial Examiner also found that the Respondent had not engaged in other unfair labor practices alleged in the complaint and recommended that such allegations be dismissed.¹ Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board has reviewed the rulings of 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 brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

The Trial Examiner found that Steyer was discharged and Olguin was suspended because of their union activities. The Respondent has excepted to these findings, contending that the separations were for cause, since Steyer had instigated and Olguin had participated in a production slowdown. According to the testimony credited by the Trial Examiner, the events leading up to the separations on August 10 were as follows:

The Respondent's plant at Denver, Colorado, at which the occurrences took place, manufactures automatic control devices, including miniature electrical galvanometers. The 17 or so employees who worked in the galvanometer room were supervised by Foreman Frank. On or about July 1, 1960, these employees approached Frank to complain about working conditions, wage rates, and the length of training time. Frank relayed their complaints to Imhof, the plant superintendent, who later addressed the group telling them that remedial action would be taken, but that he regretted their bringing these matters up by group action rather than on an individual basis. He also remarked that they did not need any third party to represent them.

On July 22, Respondent announced to its employees that it was conducting a wage survey, that it had been able to keep them busy because they could be shifted between departments, and that such flexibility was possible only under the present employee-relation plan. The same day the Union held its first organization meeting and on July 27 held another such meeting. Both Steyer and Olguin were active in urging employees to attend these meetings. Stillwell, an employee from whom Steyer had attempted to obtain a union authorization card, informed Frank on August 4 that Steyer was bothering her about the Union and asked what she should do. Frank told her to let him know if it happened again.

¹In the absence of exceptions, we adopt *pro forma* the Trial Examiner's finding that the Respondent's retraction of a general wage increase soon after the Charging Union's demand for recognition did not constitute a violation of Section 8(a)(1) of the Act.

At an employee picnic on Saturday, August 6, Frank told a group of four or five employees that the Respondent was a good company to work for, but that the pleasant relationship might end if the Union got in. He also said that: Steyer had worked for the Union while he was at another company; this company had been organized and was now out of business; Steyer was a union agitator who was "on his way out" whether or not the Union got in; and Olguin was a good boy until he started listening to Steyer.

On August 10, Frank, Imhof, and Ohrns, Respondent's manufacturing manager, summoned seven employees individually to Ohrns' office where they were questioned about a suspected production slowdown in the galvanometer room. A majority of those interviewed confirmed the Respondent's suspicion that some employees were engaging in such a slowdown, although none of them implicated either Steyer or Olguin as its instigators or as participants therein.²

However, according to Ohrns' own testimony, some of those interviewed did say that Steyer was trying to push for the Union. Immediately after the interviews, Steyer and Olguin were summoned to Ohrns' office where Steyer was discharged and Olguin was given a 5-day suspension, allegedly for their part in the slowdown.

The Trial Examiner doubted whether there was in fact such a slowdown. We do not share these doubts. Whether production was falling in the galvanometer room or whether it was not increasing at the rate at which Respondent believed it should as employees gained more experience, it is certain that some employees were deliberately not putting full effort into their work and were attempting to get others to do the same. The issue is not, however, whether there was a discernible slackening of activity in the galvanometer room but rather whether the Respondent seized upon the rumors of such a slowdown in order to rid itself of Steyer and Olguin because they were active adherents of the Union. In affirming the Trial Examiner's finding that Steyer and Olguin were separated because of their union activities, we rely on the fact that Respondent had made known its opposition to having a union in the plant; it was aware of Steyer's and Olguin's activities for the Union; Foreman Frank's statements at the picnic indicate that the Respondent was considering some disciplinary action against Steyer and Olguin even before the interviews of August 10, when its suspicions as to a slowdown were confirmed; and the interviews did not link either Steyer or Olguin to the slowdown. In view of the foregoing, we agree with the Trial Examiner that the Respondent discharged Steyer and suspended Olguin in violation of Section 8(a) (3), because of their activities on behalf of the Union.

²The Trial Examiner credited Boespflug's and Racz' testimony that they had not told Frank that Steyer and Olguin were participating in or had instigated the production slowdown.

ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that Heiland Division of Minneapolis-Honeywell Regulator Co., Denver, Colorado, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with discharge or less desirable working conditions if International Brotherhood of Electrical Workers, Local 1823, AFL-CIO, or any other labor organization should represent them; interrogating employees with respect to their activities on behalf of Local 1823, or any other labor organization, in a manner constituting interference, restraint, or coercion in violation of Section 8(a) (1) of the Act; and timing its announcements of wage increases so as to interfere with union organization.

(b) Discouraging membership in International Brotherhood of Electrical Workers, Local 1823, AFL-CIO, or in any other labor organization, by discharging, suspending, or otherwise discriminating against its employees in regard to their hire or tenure of employment or any term or condition of employment.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights to self-organization, to form labor organizations, to join and assist International Brotherhood of Electrical Workers, Local 1823, AFL-CIO, or any other 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 and all 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, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

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

(a) Offer Ivan Steyer immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority and other rights and privileges and make him and Joe Olguin whole for any loss of earnings suffered by reason of the discrimination against them, in the manner set forth in the section of the Intermediate Report entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records and reports, social security payment records, timecards, personnel records and re-

ports and all other records necessary or appropriate to analyze the amount of backpay and other benefits due.

(c) Post at its offices in Denver, Colorado, copies of the notice attached hereto marked "Appendix."³ Copies of said notice, to be furnished by the Regional Director for the Twenty-seventh Region, shall, after being duly signed by the Respondent, be posted by it immediately upon receipt thereof and be maintained 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 by the Respondent to insure that such notices are not altered, defaced, or covered by any other material.

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

MEMBER RODGERS took no part in the consideration of the above Decision and Order.

³ 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 International Brotherhood of Electrical Workers, Local 1823, AFL-CIO, or any other labor organization of our employees, by discharging or suspending any employee or in any other manner discriminating in regard to hire, tenure, term, or condition of employment.

WE WILL NOT threaten our employees with respect to their union activities.

WE WILL NOT interrogate our employees in a manner constituting interference, restraint, or coercion in violation of Section 8(a)(1) of the Act.

WE WILL NOT time our announcements of wage increases so as to interfere with union organization.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist International Brotherhood of Electrical Workers, Local 1823, AFL-CIO, or any other 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 and all 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, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

WE WILL offer Ivan Steyer immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make whole Ivan Steyer and Joe Olguin for any loss of pay they may have suffered as a result of our discrimination against them.

All our employees are free to become or remain or to refrain from becoming or remaining members of any labor organization, except as these rights may be affected by an agreement in conformity with Section 8(a)(3) of the Act.

HEILAND DIVISION OF MINNEAPOLIS-
HONEYWELL REGULATOR Co.,

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.

Employees may communicate directly with the Board's Regional Office, 609 Railway Exchange Bldg., 17th and Champa St., Denver, Colorado (Telephone Number Keystone 4-4151, Extension 513) if they have any question concerning this notice or compliance with its provisions.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

This matter was tried in Denver, Colorado, on October 25 and 26, 1960. It presented questions including the unlawful discharge of employee Ivan Steyer and the unlawful disciplinary layoff of Joe Olguin. Also presented was the question of whether the granting and withdrawal of a general pay increase along with certain alleged statements to employees by supervisors were violations of the National Labor Relations Act, as amended.

On consideration of the briefs submitted by General Counsel and Respondent, the entire record in the case, and my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT AND THE LABOR ORGANIZATION INVOLVED

As alleged in the complaint and admitted in the answer, it is found that Heiland Division of Minneapolis-Honeywell Regulator Co., herein called Respondent, is a Delaware corporation with its office and principal place of business in Minneapolis, Minnesota. It operates a plant in Denver, Colorado, the installation here involved,

where it is engaged in the manufacture, sale, and distribution of automatic control devices and systems. During the course and conduct of its business, Respondent annually ships from its Denver, Colorado, plant to customers outside the State of Colorado, finished products valued in an amount in excess of \$500,000. Respondent is an employer engaged in commerce and in a business affecting commerce, within the meaning of the Act.

International Brotherhood of Electrical Workers, Local 1823, AFL-CIO, herein called the Union, is a labor organization within the meaning of the Act.

II. THE UNFAIR LABOR PRACTICES

A. Background

The portion of Respondent's Denver plant with which this case is primarily concerned is called the galvanometer room. The production in this room involves the assembling of miniature electrical units.

The Union first held an organizational meeting on July 22 followed by one on July 27, 1960. On July 22, after a request by the employees of the galvanometer room, a wage study was commenced by Respondent to make its wage rate attractive enough to avoid losing key personnel. Steyer was discharged on August 10 and Joe Olguin was given a disciplinary layoff for 5 days, commencing on that date. They were both galvanometer room employees. On August 31 the Union requested recognition which was refused by Vice President and General Manager Keller. At the time of this request, Respondent's vice president of industrial relations, Morse, was in the Denver plant of Respondent and he was advised by Keller of the Union's request. That evening Morse returned to Minneapolis and had an emergency meeting of Respondent's wage board, and on September 1, the next morning, he called Keller stating that the wage increases asked by Keller had been authorized. Keller announced the wage increase shortly after noon on September 1, and after he announced the increase he was given a copy of the Union's petition for representation, filed with the National Labor Relations Board. The personnel manager was the individual who, according to Keller, handed him this petition after the announced wage increase. The record is silent as to what time of the day on September 1 it came to the attention of the personnel manager. In any event, Keller then, after consulting counsel, told the employees that in order to have a fair election he would have to withdraw the just announced general wage increase.

There had been an excessively high rate of employment turnover in the galvanometer room during the 6 months preceding August 10, 1960, due to the fact that the employees could obtain higher wages elsewhere.

The record reflects that the general attitude of the management of this company was in favor of retaining a nonunion work force. For example, in a letter dated July 22, 1960, to all hourly employees, Vice President and General Manager Keller, in connection with reporting to the employees concerning the efforts of Respondent to keep maximum employment, stated that only under the present employee relationship would this flexibility be possible. Plant Superintendent Howard Imhof advised the employees of the galvanometer department that he would prefer that they came to him individually rather than as a body with their grievances and stated that he did not believe a third party was necessary in Respondent's plant. Imhof also made this statement when Manufacturing Manager Ohrns was advising Joe Olguin that he was being given a disciplinary layoff. On the occasion of a company picnic, Francis Frank, the foreman of the galvanometer room, expressed the view that Respondent's plant was a much better place to work because there was no union.¹

B. Independent 8(a)(1) violations

(a) The complaint alleges that on or about July 21, 1960, Howard Imhof, the plant superintendent, told the employees that Respondent would take reprisals against the employees if the Union came into the plant. The record reflects that in July Imhof told the employees of the galvanometer department that a third party was not needed to represent them and that they should be spanked for coming to him as a group and not individually.² This statement of Imhof I find to be a permissible expression of opinion under Section 8(c) of the Act.

¹ Other statements of Frank on this occasion which are alleged to be violations of Section 8(a)(1) will be noted below.

² Imhof's testimony that he was complaining about the production of the employees on this occasion is not credited. This testimony is incompatible with Manufacturing Manager Ohrns' testimony that the first knowledge he had of an alleged slowdown was on

(b) The complaint alleges that Foreman Francis Frank on or about August 6 told employees that Respondent would take reprisals against the employees if the Union came into the plant. At the outset, it is noted that Frank in his testimony denied that he told anyone that he would take reprisals in the event of union organization. However, this is regarded as a conclusory remark and it is open to speculation as to what Frank meant by reprisals. He did not specifically deny comments which are found herein to be unlawful.

John Olguin, no relative of the Charging Party, Joe Olguin, gave the following credited testimony relating to Frank's statements at the company's picnic:

Francis Frank . . . was telling us what a wonderful company this was to work for, isn't this a wonderful picnic. He says, "If the union gets in it will never be like this." He says, "If the union gets in it would be harder down at work, too; I would have to be more strict, maybe breaks would be terminated, they would be shorter, and maybe not any." And he says, "Another thing, too, I would have to be more strict." In other words, a phrase he used, "use every rule in the book," that he would have to in regards to if the union got in.

And then he says, he says that Ivan Steyer was the agitator, was an agitator, something like that, and that Joe Olguin was a good boy until he started listening to Ivan Steyer. And he said that Ivan used to work for Elgin, for the union there, and, he says, "they folded up, and look where he is now," or something like that.

Ernest Martinez, who was with John Olguin, also heard Frank saying on the same occasion that if the Union did get into Respondent's plant, he was going to make it rough for the employees in the galvanometer room. It is found that these comments by Frank, Respondent's supervisor, were coercive and by their nature were unlawful threats aimed at defeating the rights of Respondent's employees to organize.

(c) The complaint alleges that on or about August 6, 1960, Frank told employees that an employee was about to be fired because he had engaged in union activities. It is noted that Frank's testimony contains a denial that he stated he was going to fire Ivan Steyer on August 6, but he did not deny the statements attributed to him by credited witnesses. It is possible that Frank's denial left open the question of his knowledge that someone else in management would discharge Steyer. Irrespective of semantics the following testimony with reference to Frank's statements on that occasion is credited, and establishes that Frank on this occasion told other employees that Steyer was a union agitator and was going to be discharged from Respondent's employ. Devona DaMoude, a galvanometer employee, also at the company picnic heard Frank say that Steyer worked for Elgin and that he was a union agitator and that Elgin went broke and closed down and that Steyer was on his way out if the Union came in or if it didn't come in. On the same occasion employee Ernest Martinez heard Frank make the statement that Steyer was nothing but a damned union agitator and that he was on his way out. Antal Racz on this same occasion also heard Frank say that Steyer was a union agitator.

In the context of the circumstances in which these statements were made, it is found that the statements of Frank, attributing to Steyer the character of a union agitator, and the statement that he was on his way out, would unlawfully tend to discourage union organization and support the charging allegations that Frank told employees Steyer was going to be fired because of union activities.

(d) The complaint alleges that on or about August 10, 1960, Ohrns, the production manager, interrogated employees concerning union membership activities and desires of other employees.

The only evidence relating to this charging allegation is contained in the credited testimony of employee Alfred Zeller, who testified that Ohrns asked him who was pushing the Union and pegging production. In view of the findings set forth herein there does not appear to be any justifiable reason for making this inquiry as to who was pushing the Union and it is found that this interrogation was an unlawful intrusion into the organizational rights of employees, guaranteed by the Act. The record supports the finding that the Respondent was hostile to union organization and no legitimate purpose is suggested why Respondent should ask an employee who was pushing the Union.

the morning of August 8, 1960. It is also incompatible with the credited and undented testimony of Steyer that he was complimented about his work 1 week prior to his discharge as well as the fact that Imhof offered Joe Olguin to pay him from his personal funds an additional amount of money if Joe Olguin would remain in the employ of Respondent until a wage increase could be effected.

It is noted that this interrogation was coupled with an inquiry as to who was pegging production. Because of the finding set forth herein that the interrogation of employees on August 10 was not designed to get information concerning Respondent's production but to set the stage for Steyer's discharge and Joe Olguin's layoff the inquiry as to who was pushing the Union remains unlawful. Because of the antiunion attitude of Respondent reflected by the disciplining of Steyer and Joe Olguin and statements of its supervisors, this interrogation does not come within the permissible area of interrogation such as that permitted in *Blue Flash Express, Inc.*, 109 NLRB 591.

(e) The complaint further alleges that on or about September 1, 1960, Respondent granted a wage increase to its employees and retracted the wage increase on the same day in order to discourage the union activity.

Respondent conceded that it had knowledge prior to August 10 of the union activity of dischargee Ivan Steyer, and on August 31 it was presented with a request by Business Representative Thuiss for recognition. That same afternoon Keller, the vice president and general manager of Respondent's Denver plant, consulted with the industrial relations vice president of Respondent concerning this request, and after such consultation advised Thuiss that Respondent would not recognize the Union as the representative of its employees. Following this, Morse returned to Minneapolis from Denver and called an emergency meeting of the wage board of Respondent and obtained authorization to grant the increase, which had, according to Respondent, been under study since about July 22. Keller was notified by phone on the morning of September 1 that the authorization for the wage increase had been given. It was announced by Keller shortly after noon. Sometime before that, Personnel Manager Cowdery had received a copy of the Union's petition to the National Labor Relations Board, requesting an election. This petition, according to Keller, was given to him after he had announced the wage increase. Keller then told the employees that in order to have a fair election he was compelled to withdraw the wage increase.

Having in mind that the record reflects an attitude of general opposition to union organization, the timing of the wage increase in the circumstances here present would unlawfully interfere with the union organizational effort by demonstrating that a union was not needed to obtain a wage increase.

Although the initial announcement of July 22 that a wage study was to be undertaken was made on the day of the first union meeting, no finding made herein relies on the coincidence, even though it must be assumed there were organizational activities in the plant preceding the July 22 union meeting.

However, when a wage increase is accelerated by calling a special meeting of Respondent's wage board on the evening of the same day Respondent is requested to recognize the Union and is advised that the Union intends to file a petition for an election, and the wage increase is granted the following day, the unlawful nature of this wage increase cannot be changed by the fact that a wage survey had been underway for some time. Nor is the commencement of a wage survey an adequate justification for the acceleration of the wage increase against the background of a demand for union recognition.³

Respondent makes a point of the fact that on August 31, Business Representative Thuiss did not state when he was going to file the petition for an election with the National Labor Relations Board. However, it is clear that Respondent was on notice that the Union was claiming to represent a majority of the employees.⁴

It may be argued that the retraction of the wage increase was designed to exhibit to the employees of Respondent that the Union was responsible for having its wage increase taken from them. On the other hand, assuming the wage increase was left in effect, it could be equally argued that the wage increase could continue to exhibit to the employees that a union was not necessary. Under these circumstances, I find the retraction of the wage increase not to be violative of the Act.

C. The alleged illegal discharge of Ivan Steyer and discriminatory layoff of Joseph Olguin

It is conceded by Respondent that it had knowledge that Steyer was an active union proponent prior to his discharge. On August 4, 1960, Donna Stillwell, an employee in the galvanometer room, complained to Frank that Steyer was bothering her about the Union. Since Steyer had been a union member for a long time the other galvanometer employees would ask Steyer questions about union organiza-

³ *N.L.R.B. v. Hoffman-Taff, Inc.*, 276 F. 2d 193 (C.A. 8).

⁴ The credited and uncontradicted testimony of Business Representative Thuiss reflects that he advised Keller on August 31 that the Union represented a majority.

tion. The probabilities are that these inquiries took place under the scrutiny of Foreman Frank and led to his characterizing Steyer as a union agitator at the company picnic of August 6, and to his informing employees that Steyer was on his way out.

The uncontradicted testimony of both Steyer and Olguin shows that they were complimented with respect to their work by Howard Imhof, the plant superintendent, shortly before their discharge and layoff, respectively. In the case of Steyer this occurred 1 week before his discharge and in the case of Joe Olguin, Imhof offered in July to pay part of Olguin's wages from his own money if Olguin would continue working for Respondent.

The record indicates that Foreman Frank worked in the same room with approximately 17 other employees in the galvanometer department and spent a substantial part of his time in that room, working at a bench. Joe Olguin and Ivan Steyer worked with their backs toward Frank. On one occasion Frank was immediately behind Olguin and Steyer when they were discussing the Union. The general picture that emerges from Stillwell's complaint to Frank about Steyer bothering her about the Union and the proximity of Frank to the other employees in the galvanometer room is that Frank would be in a position to know what was going on among the employees, including their organizational attempts. Vice President and General Manager Keller stated that prior to Steyer's discharge someone in supervision had told him that Steyer was an active union proponent. The logical source of this information would seem to emanate from Frank's close contact with employees in the galvanometer department.

On August 10, 1960, Steyer was discharged. His termination slip contains the notation "discharged for due cause—instigating and aggravating a work slowdown movement." On the same date Joe Olguin was given a disciplinary layoff for allegedly participating to some extent with Steyer in this alleged slowdown movement.

In discussing the evidence in connection with the alleged cause for this disciplinary discharge and layoff, it is noted that the characterization "slowdown movement" originated with Respondent and was equated by Ohrns with the term "pegging production." The evidence, which will be discussed in some detail, poses the question as to whether in fact there was instead a "speedup" movement on the part of Respondent.

Frank testified that Mike Boespflug, a galvanometer room employee, at the company picnic on August 6 told him that Steyer and Joe Olguin were bringing pressure on him to limit his production to 12 or 13 units a day, and that Boespflug was keeping additional units in his drawer because of his apprehension of incurring the disfavor of Steyer and Joe Olguin. During the same conversation Frank stated to Boespflug that Alma Stewart was capable of producing 13 to 17 units a day and that a Jim Rynearson before her could produce 19 or 20, and that Homer McKissack had produced as high as 23 units. Although this picnic was on August 6 and although Ohrns and Imhof, Frank's senior supervisors, were present at the picnic, he did not tell him about this alleged charge of the slowdown by Boespflug against Steyer and Olguin until Monday, August 8. Boespflug, who was still in the employ of Respondent at the time of hearing, was called as a rebuttal witness by the General Counsel and categorically denied that he told Frank that Steyer and Olguin had told him to produce only 12 or 13 units a day. Boespflug did testify that Frank told him that McKissack was making as much as 26 suspensions and that Alma Stewart was making 40 tubes, whereas Ivan Steyer was making only 20. Boespflug also denied that he told Frank on that occasion he had any units in his drawer that he had not turned in.

On August 10, the Wednesday following the Saturday company picnic, Frank in connection with Ohrns, the manufacturing manager, and Plant Superintendent Imhof conducted interviews with seven employees for the alleged purpose of getting corroborative evidence of Boespflug's information given to Frank that he was told to limit his production by Steyer and Joe Olguin. Boespflug testified that it was at this interview that he disclosed for the first time that he had some extra units in his drawer and that the reason he had them was to have some available, because on some days, because of the cold or the heat, he was not able to produce a sufficient amount and that he wanted to have some in reserve for his bad days. Boespflug also denied that at this interview he told Ohrns, Imhof, and Frank that Steyer and Olguin had asked him to limit his production to 12 or 13 units per day.⁵

⁵ I credit Boespflug as against Frank, Imhof, and Ohrns. My impression of his testimony was that he was attempting to give an accurate version of what transpired between himself and Frank on August 6 and on the occasion of the interview on August 10 with Ohrns, Imhof, and Frank, who all testified substantially the same not only with respect to the interview with Boespflug but with respect to the six other employees interviewed on August 10, 1960. Imhof as well as Ohrns stressed in their testimony that Steyer was

On August 11, the day after Steyer's discharge, Ohrns, the manufacturing manager, wrote a detailed memorandum purporting to relate the events and interviews leading up to Steyer's discharge and Joe Olguin's disciplinary layoff, the record reflects that General Manager and Vice President Keller made the decision to discharge Steyer and to lay off Olguin on August 10. Consequently, the oral reports received on August 10 from Ohrns must form the basis for any belief on the part of Keller that Steyer and Olguin were responsible for a slowdown movement. This leads to a further consideration of the basis for Ohrns' report to Keller on August 10.

Prior to interviewing Boespflug on August 10, Frank, Ohrns, and Imhof interviewed McKissack, a galvanometer employee, who told them something had been going on and that he had been approached 6 months before but he did not name any person.

The other employee interviewed before Keller's decision was Antal Racz who, according to Ohrns, told the interviewers that Steyer and Olguin had asked him to limit his production to 12 fluid suspensions a day. As in the case of Boespflug, Ohrns allegedly reported to Keller that Racz was being emotionally disturbed by the pressure caused by Steyer and Olguin in favor of union organization. Racz credibly denies that he told the interviewers that he had been asked to limit his production to 12 or 13 units a day.⁶ Racz does not admit or deny Ohrns' testimony that he not admit or deny Ohrns' testimony that he told the interviewers he was emotionally upset. However, Boespflug's credited recital of how Ohrns queried him on the occasion of the interview as to whether or not his conscience bothered him because he was not producing enough units is credited and Ohrns' version that Boespflug told him that he was upset because of the atmosphere in the galvanometer room is not credited nor is Ohrns' version that Racz had made similar complaints. Aside from the personal observation of the witnesses, I discredit Ohrns, Imhof, and Frank because of what appeared to be an attempt to distort the significance of the production records, and their inconsistent testimony about them noted below.

This record does support a finding that Steyer and Olguin had been discussing production with other employees at least 6 months before they were disciplined on August 10. I am not making a finding that Respondent was unaware of this but that the information did not come to them in the manner claimed. The claim of recent knowledge, that is after August 6, was a posture aimed to conceal the actual reason for the disciplinary action taken against Steyer and Olguin which was to set an example in disciplining them to inhibit other employees in their attempts to organize. I find Respondent's actual attitude to be reflected in Frank's statements at the company picnic saying that Steyer was a union agitator and that he had to go. The evidence is equivocal as to whether Steyer was urging a slowdown or resisting a speedup. Whatever it may have been it commenced at least 6 months before Steyer's discharge and was not significant enough to be a subject for notice by management until the advent of union organization. Frank had probably heard Steyer's discussion about rate of production before the company picnic on August 6, as well as noting the influence Steyer appeared to have as an advocate of the Union, and this information led to the interviews to obtain evidence against Steyer and Joe Olguin.

On the basis of the interviews with McKissack, Boespflug, and Racz, Ohrns recommended to Keller that Steyer be discharged and Joe Olguin be given a disciplinary

not being discharged because of his work but because of the effect he was having on the other employees. Imhof testified this was supported by the records. I find that the records introduced by Respondent which were prepared 2 or 3 weeks after Steyer's discharge do not support such a conclusion. For example, the production records after Steyer's discharge show that Boespflug's production ranged from 12 to 14 units for an 8-hour day. The reliance by management officials on the production records as a justification for discharging Steyer because they concluded that the employees were nonprogressing in their output seems very dubious when there was a very high turnover in the galvanometer department in the 6 months prior to Steyer's discharge. Further Imhof testified in some detail as to the supply problems that were cutting down galvanometer production and that these problems continued until August, the month of Steyer's discharge.

Imhof's credibility also was impaired by the contradictory testimony of Respondent's witness, Alma Stewart, who testified that 15 fluid suspension units would represent a good day's production whereas Imhof claimed 18 to 23 units a day was possible. The impression received was that Imhof exaggerated actual production norms. Respondent did not offer any records to support Imhof's claim although he stated he had seen them over the past 2 years.

⁶ He did testify, however, that he heard Steyer and Joe Olguin tell other employees to keep their production at a certain level. He did not think he told this to Ohrns, Imhof, and Frank and it is found he did not. Otherwise this would have been included in Ohrns' detailed memo of August 11 or included in the testimony of Ohrns, Imhof, or Frank.

layoff. Keller agreed and on the advice of counsel four more employees were interviewed to obtain corroborative evidence.

There is some evidence that Keller took the disciplinary action against Steyer and Joe Olguin because he believed they were advocating a slowdown. Prior to a further consideration of this, the information given by the four additional employees will be considered.

Alma Stewart said she felt a "slowdown" was going on but did not give the interviewers any names. She did testify that at one time Steyer and Joe Olguin told her that her production was "too much," but she did not disclose this at the interview.

Donna Stillwell, who had complained about Steyer bothering her because of her refusal to go to a union meeting, told the interviewers she had not been approached about limiting production.

Al Zeller and LaVerne Corman were also interviewed, but gave no information about a slowdown movement.

The decision to take disciplinary action against Steyer and Olguin was made after the interviews with McKissack, Boespflug, and Racz. McKissack did not name Steyer or Olguin in the interviews and I credit Boespflug and Racz in their denials that they told the interviewers that Steyer and Olguin were attempting to limit production. While not entirely free from doubt, the versions of Boespflug and Racz seemed more truthful. Ohrns testified he was concerned about production because overtime had not shown a proportionate increase whereas in a letter Keller stated a concern because production had been reduced and Imhof testified the records showed a nonprogression in production. In view of the large turnover and material problems until the time of Steyer's discharge and the fact that the production records do show a proportionate increase during overtime work, the alleged partial reliance by Respondent on records to demonstrate that Steyer and Olguin were encouraging a "slowdown" must be rejected.⁷ Having rejected this portion of Frank's, Imhof's, and Ohrns' testimony and crediting the witnesses who testified contrary to them with relation to the interviews on August 10 prior to the decision by Keller to discharge Steyer and lay off Joe Olguin, it must be concluded that the report of a "slowdown" given by Ohrns to Keller had no basis in fact stemming from the interviews or production records.

The standard production rate for fluid suspension galvanometers was 11 a day set after an engineering study. Respondent's witnesses claim this was based on production of relatively new employees. Whether this is significant in view of the various types of units mentioned in the record is difficult to ascertain. As Steyer's credited testimony reflects: "Every month there is some type of change made on it. Different methods all the time." Steyer's viewpoint was expressed in this comment: "We are supposed to be working at a normal rate of speed for a normal day's pay." Racz testified Steyer and Olguin made comments to employees that 12 or 13 units a day were enough. This alone is not to be equated with a "slowdown."⁸ If the standard set after an engineering study which had not been superseded was 11 units a day, an expression of the view that 12 or 13 units a day were

⁷ Respondent stressed that Steyer and Olguin were not disciplined because of their own slowdown in production. The fact that Steyer's rate of production had been uniform is claimed by Respondent to be evidence he was urging others to slow down. Respondent points to the records of Steyer's production and claims that it was abnormal to have production of fluids suspension varying only by one a day. During the 2½ months preceding Steyer's discharge the records reveal that he worked on fluid suspensions 12 days. On one day he produced nine. On the remaining days he produced either 12 or 13. Inasmuch as Respondent does not claim that Steyer was discharged for limiting his own production, the production records do not support the contention that he was urging others to slow down. The only demonstration of a slowdown in the production records would come from the relatively uniform rate of production on the part of Steyer. Respondent rejected the use of the records for this purpose and inasmuch as Joe Olguin's production records show a greater variance than Steyer's and since Joe Olguin was an alleged collaborator with Steyer in urging a slowdown, I find the production records do not contain support in making a finding that Steyer and Olguin were urging a slowdown.

⁸ Inasmuch as the record does not support a finding that any of the claimed information concerning the slowdown was given to any representative of Respondent in the manner claimed in this proceeding, it is not necessary to evaluate the correctness of this testimony by Racz. However, serious doubt is cast upon this aspect of testimony because Joe Olguin's recent production records reflected during a regular 8-hour day 16 fluid suspensions on 3 days; 15 on 4 days; and 14 on 4 days. This does not seem compatible with the testimony of Racz that Olguin was urging a production limit of 12 or 13 at a time when he was producing a greater amount himself.

enough is not necessarily urging a slowdown. If Respondent had further engineering studies indicating more units should constitute a standard day's production a different question might be presented, if the expression of views on the rate of production were actually the cause of the disciplinary action, which was not the case here. McKissack's version as to how he made every second count resulting in extremely high production brought on a comment by Steyer and Joe Olguin some 6 months before they were disciplined that he was making the other employees look bad and also a complaint from a woman who had difficulty keeping up with McKissack.⁹ None of these events were told to management representatives in the interviews of August 10, or any other time as far as the record reflects.

Having found that the reports to Vice President Keller based on information received from employees and the production records do not establish that Steyer and Joe Olguin instigated a "slowdown," the remaining question is whether Keller took disciplinary action against these employees because he believed these reports. On balance, I find that the evidence does not reasonably support a good-faith belief on Keller's part as to the alleged information of a slowdown conveyed to him by Ohrns. Boespflug and Racz, the only two employees who Respondent claimed gave any significant information concerning the slowdown allegedly instigated by Steyer and Joe Olguin, demonstrated Respondent's claimed information was contrived. A consideration in crediting the testimony of Boespflug and Racz against that of Ohrns, Imhof, and Frank was that they were both still in Respondent's employ and their self-interest would seem to dictate that they would not contradict their supervisors except for their compulsion to tell the truth under oath. Also Keller timed the wage increase so that it would have a natural effect of discouraging union organization. These factors balance the probabilities in favor of the fact that Keller was motivated by antiunion considerations in disciplining Steyer and Olguin. In view of the foregoing, and the entire record, it is found that a motive of Respondent in discharging Ivan Steyer and giving Joe Olguin a disciplinary layoff was discriminatory and for the purpose of discouraging union organization.¹⁰

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section II, above, occurring in connection with the operations of Respondent set forth 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 threatening and obstructing commerce and the free flow thereof.

IV. THE REMEDY

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

Having found that Respondent has discriminated with respect to the tenure and employment of Ivan Steyer, it will be recommended that Respondent offer him immediate and full reinstatement to his former or substantially equivalent position without prejudice to seniority and other rights and privileges previously enjoyed and make him whole for any loss of pay suffered by reason of discrimination against him by a payment to him of a sum of money in accordance with the Board's *Woolworth* formula.¹¹

Having found that Respondent has discriminated with respect to the tenure of employment of Joe Olguin, it will be also recommended that he be made whole in accordance with the Board's *Woolworth* formula.

It also having been found that Respondent engaged in illegal conduct consisting of interrogation, threats, and giving a wage increase aimed at discouraging em-

⁹ McKissack testified as follows:

Well, on my six-month review it was explained to me that my production wasn't as good as it should be. So I started trying to work out a faster system to produce the same suspension—without changing the suspension, but a faster way to do it. And I worked on time study, picking up tools and laying tools down, no wasted motion, and scheduling my process so that at all times I would be busy and doing the most I could do with the time that I had.

¹⁰ Keller admitted to knowledge of Steyer's union activities prior to his discharge. The record is replete from the evidence offered by Respondent that Olguin was regarded as a participant along with Steyer in what the Respondent claimed to have been activities aimed at a slowdown of Respondent's production.

¹¹ *F. W. Woolworth Company*, 90 NLRB 289.

ployees from exercising their rights under the Act, it will likewise be recommended that Respondent be ordered to cease and desist from engaging in such conduct.

On the basis of the foregoing findings of fact and entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. Heiland Division of Minneapolis-Honeywell Regulator Co. is an employer engaged in commerce and a business affecting commerce within the meaning of the Act.

2. International Brotherhood of Electrical Workers, Local 1823, AFL-CIO, is a labor organization within the meaning of the Act.

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

4. By discriminating with respect to the terms and conditions of employment of Ivan Steyer and Joe Olguin, thereby discouraging concerted activities and membership in the Union, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

5. Respondent did not commit unfair labor practices by advising the employees of Respondent's preference in dealing with the employees as individuals rather than as a group.

6. The aforesaid unfair labor practices affect commerce within the meaning of the Act.

[Recommendations omitted from publication.]

Sylvania Electric Products, Inc. and International Union of Electrical, Radio and Machine Workers, AFL-CIO,¹ Petitioner.

Cases Nos. 6-RC-2911, 6-RC-2912, and 6-RC-2913. January 31, 1962

DECISION AND ORDER

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, a consolidated hearing was held before F. J. Surprenant, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in these cases, the Board² finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent certain employees of the Employer.

3. No questions affecting commerce exist concerning the representation of employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act, for the following reasons:

Petitioner requests separate units at the Employer's Altoona, Pennsylvania, plant, of over-the-road truckdrivers (Case No. 6-RC-2911), machine shop employees (Case No. 6-RC-2912), and maintenance employees (Case No. 6-RC-2913). The Employer contends that the

¹ Hereinafter referred to as the I.U.E.

² Member Fanning dissents from the majority findings, Member Rodgers concurs, and Member Leedom concurs in part and dissents in part. Their separate opinions are set forth below.