

and unequivocal manner.<sup>1</sup> We find that the above statement of the Employer's attorney does not meet such criteria.

In our opinion the alleged disavowal of the Employer's position by its attorney would reasonably be construed by eligibles merely as an expression of the legal position of the speaker rather than a clear and unequivocal repudiation of the Employer's prior statements concerning the formation of an independent union. Nor does it appear that the Employer's manager in any way ever retracted or disavowed statements contained in his letter or circular referred to above. Moreover, we note that the alleged disavowal was not made in the same form as the original announcement. The manager's letter was sent to all employees, and there is no showing of how many of the employees heard the speech of September 19. Accordingly, we find that the speech of the Employer's attorney was insufficient to neutralize the coercive effect of the Employer's prior conduct. We shall therefore set the election aside in order that a new election be conducted.<sup>2</sup>

[The Board set aside the election.]

[Text of Direction of Second Election omitted from publication.]

<sup>1</sup> See, e.g., *Mrs Alma Doran d/b/a Doran Nut Sales Company*, 102 NLRB 1437, 1439-1440; *Fleetwood Trailer Co., Inc.*, 118 NLRB 1355, 1356; *Drennon Ford Products Co.*, 122 NLRB 1353, 1356.

<sup>2</sup> In view of our determination herein, we find it unnecessary to, and do not pass upon, the alleged Employer's promises of benefits also found by the Regional Director to be a basis for setting aside the election.

**Bausch & Lomb, Incorporated and International Union of Electrical Radio and Machine Workers, AFL-CIO.** *Case No. 25-CA-1594. February 25, 1963*

#### DECISION AND ORDER

On November 26, 1962, Trial Examiner George J. Bott issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Intermediate Report. Thereafter, the Respondent and General Counsel filed exceptions to the Intermediate Report and supporting briefs.

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

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The

rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

### ORDER

The Board adopts as its Order the Recommended Order of the Trial Examiner.

### INTERMEDIATE REPORT AND RECOMMENDED ORDER

#### STATEMENT OF THE CASE

Upon a charge of unfair labor practices filed on June 12, 1962, against Bausch & Lomb, Incorporated, herein called Respondent or Company, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing dated July 30, 1962, alleging that Respondent had engaged in unfair labor practices in violation of Section 8(a)(1) and (5) of the National Labor Relations Act, herein called the Act. The answer of Respondent admitted certain allegations of the complaint but denied the commission of any unfair labor practices. Pursuant to notice, a hearing was held before Trial Examiner George J. Bott at Evansville, Indiana, on September 25, 26, and 27, 1962.<sup>1</sup> All parties were represented at the hearing. Subsequent to the hearing, Respondent and General Counsel filed briefs which I have considered.

Upon the entire record<sup>2</sup> in the case, and from my observation of the witnesses, I make the following:

<sup>1</sup>After complaint and answer, but prior to the hearing, Respondent filed a series of motions with the Regional Director. Respondent first moved for a more definite statement which motion was denied by the Trial Examiner originally assigned to hear the case. Respondent then moved for production before trial of all statements given the Board and moved appropriate Board officials for permission to grant the request. This motion was also denied and permission refused. Subsequently, Respondent served on the Board interrogatories seeking the names and addresses of persons from whom the Board had obtained statements and other information with respect to said persons. Respondent's request for interrogatories was also denied. On September 7, 1962, Respondent then subpoenaed the Regional Director and certain field examiners of the Board to appear and testify at the hearing and bring all statements relating to the instant case. On appropriate petition, the subpoenas were revoked.

At the hearing Respondent relying on the denials of the motions filed by it prior to the hearing twice moved for dismissal of the case contending that it was deprived of due process by not having a fair opportunity to defend itself. I denied Respondent's motions and Respondent claims error in that respect. In regard to Respondent's motion for a more definite statement, the record shows that the complaint was issued on July 30, 1962, advised Respondent of the acts claimed as unfair labor practices, the names of the agents who allegedly committed them, and the dates upon which committed. The hearing began on September 25, 1962, after one postponement requested by Respondent. Respondent employs only five employees in the bargaining unit and all testified at the hearing. At the conclusion of their direct testimony, General Counsel produced their statements for Respondent's inspection. In addition, the complaint named but four persons who allegedly committed unfair labor practices as agents of Respondent and all testified at the hearing. No other agent of Respondent was involved in the testimony of the General Counsel's witnesses. I find that the denial of Respondent's motion for a more definite statement did not prejudice Respondent in the circumstances.

With respect to Respondent's other motions in the nature of discovery, while the courts and the Board have granted specific requests for pretrial affidavits after the witness has testified, the right of Respondent does not extend to the broad requests made by Respondent in this case. *Jencks v. United States*, 353 U.S. 657; *Ra-Rich Manufacturing Corporation*, 121 NLRB 700; *R E Edwards, d/b/a Edwards Trucking Company*, 129 NLRB 385, 386; *Sealttest Southern Dairies Division, National Dairy Products Corporation*, 126 NLRB 1223, 1224; *W. L. Rives Company*, 125 NLRB 772, 773; National Labor Relations Board Rules and Regulations, Series 8, as amended, Sec 102.118.

<sup>2</sup>General Counsel's motion to correct the transcript which is unopposed by Respondent, except in one particular, is hereby granted. It is also my recollection that the word "closes" on line 7 of transcript 211 should be "is voted," as General Counsel states.

## FINDINGS OF FACT

## I. RESPONDENT'S BUSINESS

Respondent, a New York corporation, maintains its principal office and place of business in Rochester, New York, a branch plant in Evansville, Indiana, and various other plants, places of business, warehouses, and other facilities in 40 States of the United States, and is, and has been at all times material herein, engaged at said plants and locations in the manufacture, sale, and distribution of eyewear and optical goods and related products. Respondent's Evansville plant is the only plant involved in this proceeding.

Annually and during the year ending June 30, 1962, Respondent in the course and conduct of its business operations, manufactured, sold, and distributed at its Evansville plant, products valued in excess of \$50,000, of which products valued in excess of \$50,000 were shipped from said plant directly to States of the United States other than the State of Indiana.

Respondent concedes, and I find, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

## II. THE LABOR ORGANIZATION INVOLVED

International Union of Electrical Radio and Machine Workers, AFL-CIO, herein sometimes called the Union, is a labor organization within the meaning of Section 2(6) and (7) of the Act.

## III. THE UNFAIR LABOR PRACTICES

A. *The setting*

In May 1962 Respondent employed seven production employees in its Evansville plant, two of which General Counsel contends, but Respondent denies, are supervisory employees.<sup>3</sup>

Orville Munzer, a union representative, testified without contradiction, and I credit his testimony, that after having first spoken to two employees<sup>4</sup> about the Union in April 1962, he held a meeting on May 2 which was attended by four of Respondent's production employees, namely, Ricer, Earl Phillips, Ronald Miner, and Ronald Sprinkle, all of whom signed cards designating the Union as their collective-bargaining agent after Munzer had explained the benefits of union organization to them. On May 3, a fifth production employee, Holland, signed an authorization card for employee Ricer and Ricer gave the card to Munzer.

On May 3, 1962, Munzer sent a registered letter to Terry Pressley, branch manager of Respondent's Evansville plant, in which he advised the Respondent that a majority of its production employees had designated the Union as their representative. Munzer requested the Respondent to recognize the Union as bargaining agent and meet for negotiations. He concluded by asking Respondent to let him know when and where it wished to meet, and advised where he might be reached. Respondent did not reply to this letter and Munzer filed a petition for certification of representatives with the Board on May 7, 1962.<sup>5</sup> The Board immediately notified the Company of the filing of the Union's petition. On June 5, 1962, the Regional Director of the Board issued a Decision and Direction of Election but subsequently dismissed the Union's petition upon the issuance of the complaint in this case.

B. *Alleged violations of Section 8(a)(1) of the Act*

## 1. Sales Manager Mills' interviews with employees

On May 8, William Mills, Respondent's regional sales manager from Kansas City, Missouri, who is in charge of 7 States and 15 branches, including Evansville, arrived in Evansville. He testified that while discussing business with Branch Manager Pressley and the local sales representative, Tom Habbe, Pressley mentioned that he had received ". . . some sort of letter from the N.L.R.B." and that Pressley said that "morale didn't seem to be quite like it should be." Mills volunteered to try to discover the cause of the "bad morale" and offered to talk with the employees ". . . to find out the facts." During his Evansville visit Mills talked with all five employees who had signed union cards. The interviews took place either in Mills' motel room or in Pressley's office at the plant. He talked with Holland on May 9,

<sup>3</sup> Charles Keeton and Donald Dormeler, discussed in section III, B, 2, *infra*.

<sup>4</sup> Bobby Holland and Richard Ricer.

<sup>5</sup> Case No 25-RC-2216.

Phillips and Miner on the 10th, and Ricer and Sprinkle on May 11. All employees were invited by Pressley to the Mills chat and Pressley remained during the meetings except in one case when he was called to the telephone.

Mills testified that his conversations with the employees averaged about 15 or 20 minutes and that his remarks were practically identical. He stated that he told the employees that he had "no responsibility with regard to their duties or their jobs . . . ; that he had no authority; that he could make no promises, but that (he) did hear there was a little uncertainty in the branch, the morale didn't seem to be what it should be." He added that he told the men that Pressley had told him that ". . . a letter of some type had been received from the N.L.R.B." and asked the men to tell ". . . what caused the problem . . . ."

Mills and Pressley discussed the interviews as they were completed and it was Mills' view which he expressed to Pressley, that ". . . the problem had to do with wages . . . ."

Mills returned to Kansas City on May 11. There he reported to Ivan Petty, branch operations manager and Pressley's superior, and told him ". . . that apparently the problem has something to do with wages, or the frequency of review." Very little else was said to Petty, according to Mills, and that ended Mills' role in labor relations as far as Evansville and its problems were concerned.

Employee Ronald Sprinkle's account of his meeting with Mills differed in certain material respects from Mills'. He testified that the conversation with Mills in Pressley's office took more than 1 hour, and unlike Mills' avoidance of "union" in his testimony and emphasis on "morale" and "the problem," he testified that the Union was discussed in the meeting. He stated that Mills said he understood that there was talk of a union at the plant and ". . . he didn't quite understand it, since when he (Mills) was there in the capacity of branch manager there wasn't any need for it." He added that Mills said there were only two organized plants in the Kansas City region of Respondent and that a union ". . . apparently wasn't needed." Mills also told Sprinkle, according to the employee, that if he wasn't satisfied with the existing wage administration program he could go directly to the management in Kansas City, and that with such internal sources of help there was no need for a union. Sprinkle also stated that Mills asked him what he was going to do in regard to the Union. Sprinkle asked if Mills thought Sprinkle would be wrong to go along with the other men and help them get a union, and Mills replied that Sprinkle would have to make that decision himself.

Pressley was present during the Mills-Sprinkle interview and Sprinkle testified without contradiction that Pressley told him that he could not understand why Sprinkle was dissatisfied since he had been hired only a few days before and appeared satisfied then. Pressley said he could not understand how the employee could change so radically. Mills added that Sprinkle would be "surprised" about the "insignificant raise" he would receive if the Union did organize the plant. Sprinkle admitted that he asked Mills if employees who supported the Union would lose their jobs, and that Mills replied that as far as he was concerned no one would. The employee added that this was because Mills felt that ". . . his word would carry power somewhere . . . ."

Employee Bobby Holland who had signed a union card on May 3 was asked to talk to Mills by Pressley. At an interview in Mills' room on May 9 with Pressley present, Mills asked the employee ". . . why the employees weren't satisfied with the way the Company was handling things." Holland told Mills that he had considered a union because he was not satisfied with the wage scale. Under cross-examination Holland admitted that Mills told him it was his business how he felt about a union and was free to make his own decision without fear of reprisal. He agreed that there were no threats or promises made to him in the meeting.

Mills interviewed employee Earl Phillips in Pressley's office on May 10. The Union was discussed but the employee was vague about details. Phillips testified that he was given the impression by Mills that ". . . in a union shop advancement wouldn't come as easy as in a nonunion shop." Phillips admitted under cross-examination that Mills may have stated that whether the employee was interested in the Union was his affair.

Ronald Miner was called to Pressley's office on May 10 and questioned by Mills in Pressley's presence. Mills asked Miner why the employees wanted a union. He suggested to the employee that if he had complaints he could discuss them. Miner told Mills that he felt he was underpaid and that the employees would like to have more money and get raises at regular intervals. Miner admitted under cross-examination that Mills said it was the employees' own business whether or not they were in favor of a union, and that the employees had a right to join or not to join without it affecting their jobs.

Richard Ricer saw Mills at his request in Pressley's office on May 11. Mills asked him what caused the employees to ". . . seek an outside agent . . . to bargain for (their) rights." Ricer told Mills that low wages was the principal cause. Mills told the employee that wages would probably be better if the Union was unsuccessful and that the Company would establish a training program for employees in that event. Mills told the employee that he was attempting to discover the causes of employee dissatisfaction and Ricer told him that one of the causes was that Pressley had just become manager and he was difficult to get in touch with. When Ricer asked Mills what would be done about employee problems he was told that the Company could make no promises because it was against the law.

As set forth earlier, Mills testified that his remarks to employees were practically identical. Essentially, the purport of his testimony is that after introducing himself and disclaiming any responsibility or authority, he asked employees to talk about their problems, and except for telling them that no threats or promises could be made, and that the Union was up to the employees, he sat silently for 15 to 30 minutes (his estimate of the length of the interviews) or an hour and a half (an employee estimate) while employees unburdened themselves. In my opinion, Mills was reluctant to disclose all that was said or happened at the interviews and tried to convert the sessions into a "morale" meeting totally unconnected with the employees' choice of a union and Respondent's interest in it. Although the employees' recall of the content of the meetings was not the best in all cases, it is my belief, based on my observation of them and analysis of their testimony, that they made a sincere effort to narrate faithfully the substance of their conversations with Mills. I credit the testimony of the employees with respect to the interviews.

I find that Mills interrogated employees with respect to their union membership, activities, and desires. Although there is no evidence that Mills asked any employee directly if he or anyone else was a member of the Union, the only purpose of the meeting was to discover what had caused the employees to choose the Union. In the context of the recent demand for bargaining, the petition for an election, and the admitted interest of the employees in the Union disclosed in the interviews, Mills' emphasis on "the problem" or "morale" rather than actual union membership is a distinction without a difference. In addition, it is clear from the employees' testimony that "the union" and union activity were mentioned in the interviews in connection with employee dissatisfaction.

I also find that Mills promised employee Ricer better wages and the establishment of a training program conditioned on the defeat of the Union. In addition, he implied to Sprinkle that appeal to Respondent's officials in Kansas City would result in improvement of the wage program without the need for union representation. In this connection I note that, although Mills denied generally any promises to improve wages, he admitted that he might have told Ricer that he might discuss his wage problem with the Branch Operations Manager in Kansas City and that he did not recall what Ricer said in response.

I also find Mills designedly left the impression with employee Phillips that employee advancement was more likely if the plant remained unorganized.

## 2. The supervisory status of Charles Keeton and Donald Dormeier

The complaint also alleged that Respondent engaged in other independent acts of interference, restraint, and coercion by conduct or statements of Keeton and Dormeier. Respondent denies responsibility for Keeton's and Dormeier's conduct, assuming it occurred on the ground that they are not supervisors within the meaning of Section 2(11) of the Act. I find as follows with respect to this issue.<sup>6</sup>

*Charles Keeton:* Respondent's production operations are divided into a finishing and a surfacing department containing four and three employees, respectively, including Keeton and Dormeier. The not unusual but somewhat difficult question is whether the facts show that the relationship of these men to other employees and management make them merely skilled workers who exercise control over less skilled workers, or supervisors who share the power of management.

Respondent's wage records show that Keeton was carried, as early as August 1961, as "assistant manager," and listed, in August 1962, as "Branch Supervisor" with job code number 1420. There is no evidence that Keeton's duties have changed since August 1961. For some period prior to May 1962 there was a printed notice on the entrance door to Respondent's plant advising the reader to call Terry Pressley, manager, or Charles Keeton, assistant manager, in case of fire or emergency. In

<sup>6</sup> My findings here are based on the testimony in the representation case and in the instant case, and my assessment of the credibility of the witnesses who appeared before me.

addition to these written indications of Respondent's position regarding Keeton's status, Respondent's wage manual also lists job code number 1420 as "Branch Supervisor I" and describes the job as follows:

Branch Supervisor I—Is a full time supervisor in a large branch (over 8 employees—excluding the Branch Manager). He is in charge of all operations under the general direction of the Manager in both the shop and clerical units, which includes the scheduling of work, assignment of personnel, and training of new employees. He also recommends hiring, transferring, and disciplinary action to the manager.

Despite the job description set forth, I have some doubt that Keeton's functions fit it exactly for it appears that he works with his hands about 90 percent of the time. However, Respondent's wage manual contains an additional job description of "Branch Supervisor II" which more nearly fits Keeton, but even under this description the occupant is described as ". . . responsible for all operations . . ." during the branch manager's absence. In addition, he recommends hiring, transferring, and disciplinary action according to the job description.

Aside from internal evaluations of Keeton's status, other evidence indicates Keeton's supervisory role. Branch Manager Terry Pressley testified that Keeton was carried as a branch supervisor and that he would be in charge in Pressley's absence. Although Keeton cannot hire or fire, Pressley stated that he could recommend such. Keeton is responsible for getting out the work. He assigns the work to employees and tells them what to do and if he job is not done properly he brings it to the employee's attention. Pressley testified that if an employee is not doing good work Keeton has the responsibility of recommending discharge or reassignment. Keeton also trains new employees and makes recommendations to Pressley about their retention. In addition he recommends wage increases for employees, and in both cases Pressley gives consideration to Keeton's recommendations. On the basis of the facts set forth and in reliance on the record in the representation case as amplified or explained in the instant proceeding, I find that Charles Keeton is a supervisor within the meaning of the Act.

*Donald Dormeier:* This employee is carried on Respondent's wage records as a journeyman surfer. Pressley testified that Dormeier instructs employees about their work but does so in the capacity of group leader. It is clear from the record that Dormeier exercises certain functions besides his multiskills and carries certain responsibilities which distinguish him from the two employees who work with and under him, but it also appears that he has less responsibility and authority than Keeton overall. Thus, Dormeier assigns employees work and returns it to them if it is improperly done but, nevertheless, he is subordinate to Keeton in Pressley's absence. On the other hand, Dormeier does make recommendations to Pressley with respect to reprimands or increases in wages for employees, and Pressley gives consideration to them. Dormeier makes \$40 a week more than the next highest paid employee in his department but \$7 a week less than Keeton. Dormeier appears to work with his hands somewhat more than Keeton, but it is also clear that he, like Keeton, spends some time in supervision for he has criticized the work of employees on many occasions.

I think Dormeier is a borderline case in the supervisory field. If he is held to be a supervisor there is a ratio of 2 supervisors to 5 production employees. Nevertheless, Keeton does not directly supervise Dormeier's men, nor does Pressley spend much time in the laboratory. If Dormeier is not a supervisor the two men who work with him are unsupervised. Although the issue is not free from doubt, I find that Dormeier is a supervisor under the Act.

### 3. The plant meeting of May 15

On May 15, 1962, a meeting of employees was held in the plant after working hours. Employee Bobby Holland testified that he called the meeting to evaluate employee sentiment about the Union. Supervisor Keeton told employee Ricer to notify Dormeier and Sprinkle that a meeting would be held, and he personally attended and spoke. It appears that only Holland and Keeton had anything to say at the meeting and there is some conflict about what was said.

Keeton testified that there was a general discussion of the advantages and disadvantages of a union at the meeting. Specifically, he stated that Holland said he felt that chances of advancement with the Company were poorer with a union, that he agreed with Holland's position and said the "same thing." Keeton also stated that employees had a chance to learn all the operations in Respondent's shop which increased their chances for promotion, but such was not true in union plants because

the classification system resulted in freezing an employee in one job. Only he and Holland spoke and this is all that was said according to Keeton.

Employee Ricer testified that Keeton asked him to be at the meeting and he attended. He stated that Keeton said he wanted to express his views and that Keeton spoke about what conditions were like in a union shop. He recalled Keeton saying that there was more to the problem than wages and that, in Keeton's opinion, if Respondent were unionized Ricer would probably have the same job he now occupied for the rest of his life and that employee Miner would remain an edger. According to Ricer, Keeton said that Mills and Petty got their jobs without being union members, and that Respondent did not give promotions to union men. Ricer also said that Keeton stated that someone would probably come from Kansas City to re-evaluate the company wage program after the Union was defeated.

Employee Miner attended the shop meeting and testified that Keeton told the employees that if the plant were organized the employees would be frozen in a particular occupation. Keeton also said that if the Union were successful the employees might get a raise, but that there would be no need for a training program for Respondent's employees. Miner stated that Keeton told the employees that if they wanted a union to vote for it, and that it would make no difference to him or anyone else in the Company. He also recalled that Keeton's comments about employees remaining in the same job were in connection with his expressed opinion about how the job classification system works in organized plants.

Employee Holland testified that Keeton said it was his opinion if the employees voted for the Union the Company would not have training sessions for employees and that employees would not be switched from job to job in order to learn new skills but would remain on the same job indefinitely.

Keeton denied that he said anything about wages at the shop meeting and denied generally all the allegations of the complaint relating to threats or promises made by him. He specifically denied saying Respondent did not promote union men or that the Kansas City office of Respondent would send someone to Evansville to evaluate the wages of the employees after the union matter was behind them. He admitted that he might have said that Mills and Petty did not need union help to obtain their jobs.

Again, as in Mills' case, I find that Keeton disclosed only part of his statements to employees at the May 15 meeting and that his utterances were more than lofty statements of personal opinion but were couched in simple shop language. For example, Ricer testified that Keeton said that Ricer would probably be doing the same task ". . . for the rest of his life," if the Union were successful. Keeton, however, suggested that his statements were a restrained comparison of conditions he thought existed in other shops with conditions at Respondent. I do not credit Keeton where his account differs with the employees' account. In this connection I note that the employees displayed no bias or animus toward Respondent in their testimony and candidly admitted under cross-examination, or volunteered in direct, facts that could not help them. Ricer, for example, acknowledged a poor work record and difficulties with Dormeier. Miner, with no reluctance, admitted that Keeton said that the Union was up to the employees and it would not affect their jobs. Holland gave an explanation of his role in the withdrawals from the Union and his change of position some of which favors Respondent's case.

I credit the testimony of the employee witnesses about the May 15 shop meeting and I find that Supervisor Charles Keeton advised employees that there would be less chance for advancement in a union shop; that Respondent did not favor promoting union men; that Respondent would not have a training program for employees in the event of organization; and that after the union matter was disposed of the wage program would be studied with a view to improvement.

#### 4. Respondent's participation in securing and preparing written withdrawals from the Union

On May 17, 1962, letters were directed to the National Labor Relations Board and the Union stating that the signatories wished to withdraw their applications for membership in the Union. The letters were signed by Dormeier, Holland, Keeton, Miner, and Phillips.

Branch Manager Pressley testified that Keeton told him that he had prepared the letters. The facts surrounding their preparation, signature, and dispatch are as follows: According to Keeton, the day after the shop meeting described above, employee Holland told him that the men no longer desired the Union and he and Holland discussed what steps to take. They decided to write a letter saying that the employees ". . . wanted to drop the petition." He added that ". . . we thought since they didn't want it that we would just write up the letter and send the letter

in saying they wanted to cancel it, and we thought that would cancel it." Keeton dictated the letters to an office employee and placed them on Pressley's desk.

On May 16 Keeton asked employees to sign the letters. He testified that "I told them that we were getting up the letter to cancel application for membership in a union, and if they wanted to sign it they could, and if they didn't want to, they didn't have to." He stated that all employees except Sprinkle and Ricer signed. When the signatures were obtained, including Keeton's as well as Dormeier's, Keeton took care of mailing the letters and sent a copy to Respondent in Kansas City. He testified that he obtained the Union's address from the Union's letter to Pressley which was on Pressley's desk.<sup>7</sup>

It is evident from Keeton's testimony alone that he participated actively as a management representative in preparing, securing signatures, and forwarding the withdrawal letters, and I so find. In addition, the record shows that his purpose in doing so was to defeat the Union's request for recognition. Employee Ricer testified, and I credit his testimony, that at first he refused to sign the letter but when on May 18 he told Keeton he would, Keeton told him the letter had been mailed and his signature was not needed since they had enough and ". . . it's not going to go through now." Later in the morning Ricer saw Pressley and told him that he would like to sign the withdrawal letter but was told by Pressley that although another letter could be prepared its preparation was not warranted since it would not change the ". . . position of the company. . . ." Employee Sprinkle also testified that Keeton told him that there was a letter on Pressley's desk which all employees were going to sign. Sprinkle did not sign the letter and when on the very next day he asked Keeton if he could then sign he was told it was unnecessary since the letter had been sent. He overheard Keeton tell Ricer that enough employees had signed the previous evening and that the ". . . union wouldn't be in for that reason."

#### 5. Other alleged acts of interference, restraint, and coercion in violation of Section 8(a)(1) of the Act

##### a. *Activities of Dormeier*

Employee Sprinkle was asked by Dormeier on May 15 or 16 if he was for or against the Union. Dormeier told the employee that he was against the Union since he was in a position to advance with the Company and asked Sprinkle how he thought the Union would help him. Dormeier also said that if the Union came in the plant there would be less opportunity for the employee to learn new jobs. Dormeier, whose memory appeared to be peculiarly poor, was unable to recall whether he talked with Sprinkle and questioned him about the Union. I find that he did and made the statements attributed to him by Sprinkle.

The complaint also alleged that Respondent, by Dormeier, threatened employees with discharge because of the Union. Sprinkle and Ricer testified in support of this allegation but I find that the allegation has not been sustained by a preponderance of the evidence. It is evident from the record that Dormeier is a hard task master, conscientiously concerned with quality performance and consistently critical of the work performance of both Sprinkle and Ricer. Sprinkle testified that, on or about June 21, 1962, Dormeier told him that the employee would not be employed in 30 days and later told him that Dormeier was going to have to get rid of him and bring in another man. Sprinkle testified, however, that earlier in the week he had told Dormeier that certain mistakes he had been making would not occur when he had been employed for 30 days. He also candidly admitted that he had been making mistakes, that Dormeier was aware of it and thought Sprinkle should be doing better, and that Sprinkle understood his remarks as intended to frighten Sprinkle into better performance. In my opinion the record will not support a valid inference that Dormeier threatened to discharge Sprinkle because of his union activities.

Ricer testified that Dormeier asked him why he was worrying about the Union when he would not be employed in 90 days and if he intended to remain with the Union. On June 25 Dormeier told Ricer that if Dormeier were not leaving on vacation he would fire the employee, and in September told him that he would ". . . be glad when this thing is over . . ." so he could get rid of him. From these remarks it is suggested that Dormeier threatened Ricer with respect to the Union. The record shows, however, that Dormeier is Ricer's uncle and got him his job at Respondent. Ricer admitted that all Dormeier's remarks to him about discharge were related to Ricer's work, and that he had no disagreements with his uncle ex-

<sup>7</sup> Keeton had seen the Union's written demand for recognition before this for he testified that Pressley showed it to him when received.

cept in relation to the quality of his work. He testified, for example, that Dormeier told him frequently that an employee with his experience should perform better and that the reason he did not get paid more was because he did not perform his work properly. There is nothing new about Dormeier's criticism of the employee, for, according to Ricer, it has been going on for over a year and he has been threatened with discharge four or five times. I find that despite Dormeier's inquiry about Ricer's intentions regarding the Union it may fairly be inferred that his threats were conditioned by his close relationship to the employee and annoyance with his relative's work performance. Certainly such inference is as valid as any other.

#### b. Wage increases

The complaint alleged that employees were granted wage increases in May 1962 in order to induce them to abandon the Union. Holland and Miner are involved in this allegation. The record shows that Miner was granted a wage increase as of May 4 to be effective May 7, and that Holland got an increase at the end of April 1962. Branch Manager Pressley testified that he recommended Holland's increase to Kansas City prior to April 23, 1962, and at the time had no knowledge of the Union. Holland testified that he did not tell any management representative prior to receiving his increase that he was interested in the Union and was never given any reason to believe that the increase had anything to do with his or any other person's interest in the Union. Pressley testified that when he told Miner that his increase was effective he had no knowledge of the union campaign to organize Respondent. Miner admitted that he was advised of the increase before there was any union activity in the shop and was never given any reason to believe that the increase had anything to do with union activity. The employee had discussed the increase with Pressley weeks before he received it. Since management's knowledge of the union activities of the employees at the time the increases were made has not been established, I find that this allegation of the complaint has not been sustained.

#### c. Branch Manager Pressley's alleged threat

Employee Sprinkle testified that after he had failed to sign the letter withdrawing membership in the Union he asked Pressley what effect his action would have on his status with the Company and that Pressley replied, ". . . he didn't see how my not signing the letter would have an immediate effect on my termination with the Company." The use of the word "immediate" in Pressley's reply is urged as the illegal threat. Sprinkle testified that the word "immediate" did not mean anything to him at the time but that later he began to wonder what it did mean, and if it meant that he might be terminated in the future. Pressley testified that he could not swear that he did not use the word "immediate" in his conversation but it was his recollection that he told Sprinkle that "Under the circumstances, Ronnie, you have nothing to worry about. This will not affect your employment." He added that the employee was concerned and he was trying to assure the employee that he should have no fear of being laid off. I find that the word "immediate" was used by Pressley, but although Sprinkle was the employee who was chided by Pressley during his interview with Mills for having changed so "radically," I am unwilling to rely on the employees' recall of the use of one word in a sentence to find a subtle threat of future retaliation by Pressley. I find no violation here.

#### 6. Conclusions with respect to the alleged independent violations of Section 8(a)(1) of the Act

I have found earlier that Sales Manager Mills interrogated employees about the Union and promised a training program and better wages if the Union were defeated. Respondent's questioning of employees was not intended to determine in good faith the accuracy of the Union's claim of majority representation and even without the promises was a violation of Section 8(a)(1) of the Act.<sup>8</sup> It has also been found that Supervisor Keeton told employees in the shop meeting that chances of advancement were less in a union shop and that wages would be improved if the Union lost and a training program forgotten if the Union won. Whether or not the factors of less advancement or training were put forward as Keeton's own opinion about conditions in an unorganized plant it appears that his talk was designed to indicate less concern by Respondent for employee advancement in the event of union success. Taken with his suggestion that management would study the employees'

<sup>8</sup> *Orlin Exterminating Company of South Florida, Inc.*, 136 NLRB 399; *S. H. Kress & Co.*, 137 NLRB 1244; cf. *Blue Flash Express, Inc.*, 109 NLRB 591.

wage scale, his remarks amounted to interference, restraint, and coercion of employees in violation of the Act. Respondent also participated actively through Keeton in securing withdrawals from the Union, and thus I also find to be an independent violation of Section 8(a)(1) of the Act regardless of whether Keeton originated the idea or merely shared it with employee Holland.<sup>9</sup>

Although I find separate violations of Section 8(a)(1) of the Act in the Mills interviews, the Keeton meeting, and the union resignations, realistically I do not think these events can be considered separately and apart from each other in assessing Respondent's conduct because they are part of a program. In substance, employees dissatisfied with wage conditions designated a union to represent them and to bargain for them with management. The Respondent was so advised and within a few days a representative of Respondent interrogated all employees and discovered that the union problem was bottomed on wages. Some suggestion was made that there were disadvantages in the union program and advantages without it. When the interviews were completed, another supervisor reiterated the view that Union would work to the employees' disadvantage and that wages would be studied. The same supervisor then prepared resignations from the Union and invited employees to visit the manager's office to sign them and a majority did. The program had been effective, for, as one employee testified, he did not want to remain in the same job for the rest of his life. Aside from specific violations in the program, it, as a whole, constituted interference, restraint, and coercion of employees in violation of Section 8(a)(1) of the Act.

### C. *The refusal to bargain collectively with the Union*

#### 1. The appropriate unit; the Union's majority status; the demand and refusal

After a hearing on the Union's petition for certification the Regional Director of the Board found that all production and maintenance employees of the employer at its Evansville plant, but excluding office clerical employees, professional employees, the branch manager, messenger, salesmen, guards, and supervisors, constituted an appropriate unit for collective bargaining under the Act. The only dispute about the appropriateness of the unit at the hearing conducted by the Regional Director, and in this proceeding, is about the unit placement of Keeton and Dormeyer. The Regional Director found that both were supervisors, and I have come to the same conclusion. On the basis of the whole record, I find the unit as found by the Regional Director.

If Keeton and Dormeyer are excluded from the unit five employees remain. I have found earlier that those five employees signed cards designating the Union as their bargaining representative not later than May 3, 1962. In a letter dated May 3, 1962, the Union requested Respondent to recognize it as the statutory representative of the employees and to meet for the purposes of collective bargaining. Respondent ignored the requests. I find that Respondent has refused to bargain with the majority representative of its employees in an appropriate unit.

An employer who has a good-faith doubt of a union's majority status need not recognize it but may insist that it establish its majority through appropriate means. But an employer has no absolute right to insist upon an election before recognition for if he has no doubt, or it is not genuinely held in good faith, the law requires him to bargain in good faith upon request whenever a union has been designated by a majority of employees in an appropriate bargaining unit.<sup>10</sup>

If an employer's refusal to recognize a union is motivated by his rejection of the principle of collective bargaining and designed to gain time in which to undermine the Union, his action may be held to be illegally motivated. The question of whether the employer is acting in good faith in refusing to bargain will depend on all the facts of the case. I have found that, shortly after the Union's designation, Respondent interrogated its employees improperly, threatened them, promised them benefits, and secured withdrawals from the Union, all in violation of Section 8(a)(1) of the Act. The record shows, in addition, that employees were told that Respondent felt that a union was unnecessary in Respondent's plants, and this taken with Respond-

<sup>9</sup> *Heavever Co., Inc.*, 122 NLRB 208, 216; *The Juvenile Manufacturing Company, Inc.*, 117 NLRB 1513

<sup>10</sup> *United Mine Workers of America v. Arkansas Oak Flooring Co.*, 351 U.S. 62, NLRB v. *Loren Decker*, d/b/a *Decker Truck Lines*, 296 F.2d 388 (C.A. 8); *Fred Snow, et al., d/b/a Snow & Sons v. NLRB*, 308 F.2d 687 (C.A. 9); *NLRB v. Armco Drainage & Metal Products, Inc., Fabricating Division*, 220 F.2d 573 (C.A. 6); *Joy Silk Mills, Inc. v. NLRB*, 185 F.2d 732, 741 (C.A.D.C.).

ent's acts of interference, restraint, and coercion, leads me to believe, and I find, that Respondent's rejection of the Union's request was unlawfully motivated. By failing to bargain with the Union as requested Respondent engaged in an unfair labor practice in violation of Section 8(a)(1) and (5) of the Act.<sup>11</sup>

I also find that regardless of whether Respondent's refusal to bargain was motivated by a desire to gain time in which to undermine the Union's majority, its failure to accord the union statutory recognition violated the Act. If an employer has no reasonable doubt that a union is the majority representative he must bargain upon request.<sup>12</sup> Unfair labor practices engaged in by him at the time or subsequent to the request is evidence from which the lack of a reasonable doubt may be inferred but such lack may be established in other ways.<sup>13</sup> The record in this case convinces me that Respondent knew or had no genuine doubt that its employees had designated the Union.

Respondent employs only five persons in the appropriate unit under the close supervision of Keeton and Dormeier. All five signed cards for the Union and Mills interviewed them all. As late as May 11, Mills told Pressley that Respondent's labor problem was wages based upon his inquiries as to what caused the employees to seek a union. Nothing happened between May 3, the date on which the Union claimed majority status, and May 11, when the Mills interviews were finished, to indicate to Respondent that the Union's claim was inflated and no employee indicated to Respondent during that period that he did not wish the Union to represent him. On May 15 Keeton explained the disadvantages of a union to the employees and on May 16 and 17 he helped them resign from the Union. These acts were unnecessary if the employees were not at the time union designers to the Respondent's knowledge. Indeed, Keeton testified that he told the employees ". . . we were getting up the letter to cancel application for membership in a union. . . ." In addition, Dormeier interrogated two employees about the Union and told Holland that the Company knew five cards had been signed. Finally, Respondent never suggested to anyone that it had any doubt that the Union's claim was valid. Since Respondent had no genuine doubt that a majority of its employees had selected the Union, its failure to accord the Union the recognition it was legally entitled to violated Section 8(a)(1) and (5) of the Act.<sup>14</sup>

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

The activities of the Respondent set forth in section III, above, occurring in connection with its operations 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 burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

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

It has been found that Respondent has refused in good faith to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit described herein. It will, therefore, be recommended that Respondent be ordered to bargain collectively, upon request, with the Union as the exclusive representative of the employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

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

<sup>11</sup> *Joy Silk Mills, Inc v. NLRB.*, *supra*, footnote 10; *NLRB v. Samuel J Kobritz, d/b/a Star Beef Company*, 193 F 2d 8, 14 (CA 1).

<sup>12</sup> Cases cited in footnote 10, *supra*.

<sup>13</sup> *Fred Snow, et al d/b/a Snow & Sons v. NLRB*, *supra*; *NLRB v. Armco Drainage & Metal Products, Inc*, *Fabricating Division*, *supra*, footnote 10. In *Armco Drainage* the court denied enforcement of the Board's Order founded on its finding of Section 8(a)(1) violations but still ordered the company to bargain under Section 8(a)(5).

<sup>14</sup> The filing of the Union's petition and the subsequent hearing on it did not relieve Respondent of its obligation to bargain. *NLRB v Poultry Enterprises, Inc.*, 207 F. 2d 522, 524-525 (CA 5); *NLRB v. Armco Drainage & Metal Products, Inc*, *Fabricating Division*, *supra*, footnote 10; *Rea Construction Company*, 137 NLRB 1769; *United Butchers Abattoir, Inc.*, 123 NLRB 946.

## CONCLUSIONS OF LAW

1. Bausch & Lomb, Incorporated, is an employer within the meaning of Section 2(2) of the Act, and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union of Electrical Radio and Machine Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees employed at Respondent's Evansville plant, but excluding office clerical employees, professional employees, the branch manager, messenger, salesman, guards, and 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. At all times since May 2, 1962, the Union has been, and now is, the exclusive representative of all the employees in the appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on May 3, 1962, and at all times thereafter, to bargain with the Union as the exclusive representative of its employees, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the foregoing conduct, by interrogating its employees concerning their union activities, by threatening to eliminate a training program and promising to improve wages if the Union were defeated, by securing employee resignations from the Union, Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in 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.

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

8. Respondent did not threaten employees with discharge because of their union activities or grant wage increases to influence them against the Union as alleged in the complaint.

## RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, it is recommended that the Respondent, Bausch & Lomb, Incorporated, Evansville, Indiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees about their union activities in a manner constituting interference, restraint, and coercion in violation of Section 8(a)(1) of the Act, threatening to eliminate or not institute a training program or promising to increase wages if employees abandon the Union, and instigating, sponsoring, or securing employee resignations from the Union.

(b) Refusing to bargain with the Union as the exclusive bargaining agent of all its employees in the appropriate unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them in Section 7 of the Act.

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

(a) Upon request, bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit and embody any understanding reached in a signed agreement.

(b) Post at its plant at Evansville, Indiana, copies of the attached notice marked "Appendix."<sup>15</sup> Copies of said notice, to be furnished by the Regional Director for the Twenty-fifth Region, shall, after being signed by Respondent's representative, be posted by Respondent 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 Respondent to insure that said notices are not altered, defaced, or covered by any other material.

<sup>15</sup> In the event that this Recommended Order be adopted by the Board, the words "A Decision and Order" shall be substituted for the words "The Recommendations of a Trial Examiner" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "Pursuant to a Decision and Order."

(c) Notify said Regional Director, in writing, within 20 days from the date of receipt of this Intermediate Report and Recommended Order, what steps it has taken to comply herewith.<sup>16</sup>

<sup>16</sup> In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith."

## APPENDIX

### NOTICE TO ALL EMPLOYEES

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

WE WILL bargain collectively, upon request, with International Union of Electrical Radio and Machine Workers, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below with respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees at the Evansville plant, excluding office clerical employees, professional employees, branch manager, messenger, salesman, guards, and supervisors as defined in the Act.

WE WILL NOT interrogate our employees about their union activities in violation of the law.

WE WILL NOT threaten our employees with reprisals or promise them benefits in order to induce them to give up the Union.

WE WILL NOT instigate, sponsor, or secure employee resignations from the Union.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the rights to self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

BAUSCH & LOMB, INCORPORATED,  
*Employer.*

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

This notice must remain posted for 60 consecutive 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, 614 ISTA Center, 150 West Market Street, Indianapolis 4, Indiana, Telephone No. Jackson 7-5451, if they have questions concerning this notice or compliance with its provisions.

**Ideal Laundry and Dry Cleaning Co. and Dry Cleaning and Laundry Workers, Local Union No. 304, Laundry, Dry Cleaning and Dye House Workers International Union.** *Case No. 27-CA-1269. February 25, 1963*

## DECISION AND ORDER

On December 12, 1962, Trial Examiner Fannie M. Boyls issued her Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative