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**The Catholic Press Society, Inc. and Denver Newspaper Guild,  
Local Union No. 74, AFL-CIO. Case No. 27-CA-1578. March  
25, 1965**

### DECISION AND ORDER

On November 12, 1964, Trial Examiner James R. Webster issued his Decision in the above-entitled proceeding, finding that Respondent had not engaged in certain unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the attached Trial Examiner's Decision. The Charging Party filed exceptions to the Trial Examiner's Decision and a brief in support thereof. The Respondent thereupon filed a brief in answer thereto.<sup>1</sup>

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Fanning 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 entire record in this case, including the Trial Examiner's Decision, the exceptions, and the briefs, and hereby adopts the Trial Examiner's findings, conclusion, and recommendations.<sup>2</sup>

### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order the Order recommended by the Trial Examiner, and orders that the complaint herein be, and it hereby is, dismissed.

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<sup>1</sup> We construe point II of Respondent's brief ("The Exceptions Filed by the Guild Do Not Comply With the Board's Rules and Should be Disregarded") as a motion to strike the exceptions, and deny the motion. The exceptions adequately comply with the Board's requirements. Cf. *Patrick F. Izzi, d/b/a Pat Izzi Trucking Company*, 149 NLRB 1097.

<sup>2</sup> In adopting the Trial Examiner's conclusion that Whitehead was not discharged in violation of Section 8(a)(3), we have applied to his findings the legal standard appropriate in so-called "mixed motive" situations. See, e.g., *N.L.R.B. v. Whittin Machine Works*, 204 F. 2d 883, 885 (C.A. 1). We conclude that Whitehead's discharge did not violate the Act because in this case the credited testimony does not establish that protected activities were a factor in Respondent's decision to discharge Whitehead.

MEMBER BROWN, dissenting:

Unlike the Trial Examiner and my colleagues, I would find that employee Whitehead was discharged in violation of Section 8(a) (3) of the Act. The Trial Examiner reached the wrong conclusion because he applied an incorrect legal standard to his findings. In view of Respondent's admitted hostility toward the Union and toward Whitehead as the leading figure in the formation and activities of the Union, the insignificant nature of the purported cause for the discharge, the credited testimony of Matty showing who ordered the discharge, and the Trial Examiner's finding that Whitehead's protested activities "added fuel to the fire," I believe that the evidence requires the conclusion that Whitehead's protested activities were a motivating reason for his discharge. I therefore dissent from the dismissal of the complaint.

### TRIAL EXAMINER'S DECISION

#### STATEMENT OF THE CASE

This proceeding, with all parties represented, was heard before Trial Examiner James R. Webster in Denver, Colorado, on July 1, 2, 20, and 21, 1964, upon a complaint of the General Counsel and answer of the Catholic Press Society, Inc., herein called Respondent. The complaint was issued on May 28, 1964, upon a charge filed on March 12, 1964, and amended on April 1, and May 28, 1964. The complaint alleges that Respondent violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, herein called the Act, by the discriminatory discharge of H. Raymond Whitehead, on March 6, 1964. Briefs have been filed by the parties and have been carefully considered.

On September 4, 1964, Respondent filed a motion to correct transcript. No opposition to the motion has been received from the General Counsel or the Charging Party and I have carefully reviewed the motion and the transcript, and find that the corrections enumerated by Respondent are in order. I hereby order that the transcript stand corrected as set forth in Respondent's motion, which motion has been placed in the formal exhibit file.

Upon the entire record and my observation of the witnesses, I hereby make the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE RESPONDENT

The Respondent is a Colorado corporation with its principal office and place of business in Denver, Colorado, where it is engaged in the publication of weekly newspapers. In the course and conduct of its business operations during the past 12-month period, Respondent received a gross income in excess of \$200,000 for the sale of newspapers in all States of the United States and in foreign countries.

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

##### II. THE LABOR ORGANIZATION INVOLVED

The Denver Newspaper Guild, Local Union No. 74, AFL-CIO, herein called the Union, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

##### III. THE ALLEGED UNFAIR LABOR PRACTICE

###### A. *Introduction and issue*

This case involves the termination of H. Raymond Whitehead, on March 6, 1962, only; no other unfair labor practice is alleged. Whitehead began his employment with Respondent on June 22, 1952, as a proofreader. In addition to proofreading, he has worked as a copy editor and as a rewrite editor.

Respondent publishes a national newspaper and a newspaper for the Denver Diocese of the Catholic Church; it also provides the means whereby Catholic dioceses throughout the country can publish their own newspapers without having to operate publishing plants. In all there are about 36 newspapers published weekly by Respondent.

Involved in this proceeding is the editorial department, located on the third floor of the Denver plant, and the composing room and the proofroom located on the first floor of Respondent's plant. In the editorial department there are three principal job functions: (1) copy editing; (2) headline writing and layout of pages; and (3) rewriting stories from wire releases and writing of original stories. In the first of these the editor takes material forwarded from a particular diocese and prepares articles for publication. In laying out of pages and writing of headlines, the editor arranges the articles and contents of the diocese newspaper and writes the headlines.

The editor and business manager of Respondent is Monsignor John Cavanagh, who has held this position since 1960; he has been with Respondent for about 28 years in various capacities. Under Monsignor Cavanagh is the managing editor, who supervises the editorial department, and the production manager. Miles Porter has been the managing editor since April 1963, and Robert Lynch is the production manager.

In July 1962, the Union became the bargaining representative for the employees in the editorial department and the proofroom. The International Typographical Union has for many years represented the employees in the composing room. Whitehead was instrumental in the organization of the Union at Respondent's plant and has been an active union member since that time.

In May of 1962, Whitehead inquired of other employees in the editorial department if they were interested in joining the Union; he contacted Anthony Hodnick, administrative secretary of the Union, and a meeting was held in his home on or about May 24, 1962, which was attended by eight or nine employees. On May 25, a petition was filed by the Union; on June 21, 1962, a stipulation for an election was executed; on July 3 an election was held, and on July 12, 1962, the Union was certified as the bargaining representative for "all employees of the editorial department, including editorial, proof, art and literary employees, excluding the president, editor, business manager, executive editor, managing editor, and the associate business manager, and employees employed in the circulation, promotion, advertising, general administration departments, guards and supervisors as defined in the Act, and all other employees." On January 31, 1963, a contract was executed between the Union and Respondent.

On July 18, 1962, Whitehead was elected to the position of chairman of the bargaining unit at Respondent. He also was on the union's bargaining committee that met with Respondent in the fall of 1962, and on the Union's grievance committee at that time. Employee Ed Smith was elected chairman of the unit in 1963, and Whitehead was again elected chairman on January 19, 1964.

The General Counsel contends that Monsignor Cavanagh's attitude toward Whitehead changed with the advent of the Union in May 1962, and that his statements and conduct since that time toward Whitehead demonstrate that his discharge in March 1964, was brought about because of his connection with the Union.

The Respondent contends that Whitehead has traditionally been one of its slowest producers, was inattentive to his work, and exhibited a poor attitude toward his job, and that Monsignor Cavanagh, since he became editor and business manager in 1960, repeatedly urged his managing editor to terminate Whitehead, and that he was terminated on March 6, 1964, for these reasons and his failure to correct this conduct after repeated warnings.

The issue in this case is whether or not Whitehead was discharged because of his union activities or for his poor performance and demeanor as contended by Respondent.

#### *B. The discharge of Whitehead on March 6, 1964*

The discharge of Whitehead on March 6, 1964, was precipitated by two incidents on February 25 and March 3, 1964, when he engaged a fellow employee in conversations. These two instances were merely the last two instances of alleged inattentiveness on the part of Whitehead and were the culmination of years of such conduct.

On Tuesday night, February 25, 1964, Whitehead was seen by Lester Stevens, the composing room superintendent, leaving the proofroom, where approximately six employees were employed on the night shift reading proof. Stevens had observed that since the last of January or the first of February 1964, he had begun to get delays in proofing work, especially on Tuesday nights, which is the night he left earlier than usual to go by the bank. He called the matter to the attention of Foreman Frank

Stratton, and asked him to watch and report if anyone was disturbing the proofreaders. Stevens returned to the plant on Tuesday evening, February 25, and observed Whitehead leaving the proofroom area; however, he did not speak to Whitehead on the occasion and did not know whether he was in the proofroom on business or not. He told his foreman about it and told him to watch more closely for interruptions of the proofroom employees. The next day he talked with several of the proofroom employees and was told that Whitehead had conversed with a proofroom employee on February 25 and on other dates as well. He reported the matter to Managing Editor Miles Porter. Porter replied that he would take care of it. He planned to investigate the incident, as he stated that there are occasions when an editor has business reasons for being in the proofroom; and his objective was to stop the unnecessary trips to the proofroom and unnecessary interruptions of work there.

On the following Tuesday night, March 3, 1964, before Porter had talked with Whitehead about Steven's report, Whitehead had reason to go to the proofroom on business. On the evening of March 3, a call came through to the editorial room that an editor was needed in the composing room on a matter concerning the Eastern Kansas Register. Whitehead took the call and went downstairs as part of his duties. He went to the composing room and talked with Fred Witt, the employee who was making up the Eastern Kansas Register edition. Witt could not find the "copy" that went with his "head." Whitehead then went into the proofroom and to the slots where the copies are kept for the various editions, and stopped by the work station of Lee Matties, a proofreader. She thought he wanted to say something to her, and she noticed Foreman Stratton standing outside the door to the proofroom. She tried to communicate to Whitehead that Stratton was there. She then left her work station and went into a small back room behind the proofroom and Whitehead followed her. They were unable to exchange any conversation before Stratton came in and asked Whitehead if he had finished his business there. When Whitehead replied that he had, Stratton told him to leave.

Both Whitehead and Matties deny other "conversations" in the proofroom, or the backroom. Whitehead testified that there may have been "one or two" other occasions, but the incident of March 3 is the only one he can specifically recall. On a couple of other occasions he has posted bulletins on the union bulletin board in the proofroom or has checked the bulletin board and has made "a few brief remarks, common courtesies" to proofroom personnel. Proofreader Frederick Harris and Stella McDonald testified that Whitehead engaged Lee Matties in conversations in the proofroom area several times a week. I find that Whitehead and Matties did engage in conversations several times a week during the last few weeks of his employment.<sup>1</sup>

Whitehead did not work Wednesday or Thursday as these were his regular days off. At about 10 a.m. on Friday, March 6, 1964, he received a telephone call from Porter informing him that he had been discharged. Whitehead replied that a grievance would be filed. He then contacted Joe Matty, administrative secretary of the Union, and employee Ed Smith, grievance committee chairman. A few hours later he went to the plant accompanied by Ed Smith, and was given his severance and vacation paycheck and the following letter of dismissal:

This is presented to you as notice of your discharge from employment as a member of the editorial staff of *The Register*.

The discharge is effective immediately. Your final pay, your severance and your accrued checks are enclosed.

You are discharged for:

1. Failure to comply with established office procedures.
2. Willfully and deliberately disregarding a previously issued warning directed to you.

Specifically, you have been leaving your assigned work and your assigned work area to conduct personal private conversations with other employees who also are absent from their assigned work and assigned work area.

You have been absenting yourself from your work on company time, at company expense, and contrary to directives of the management.

On February 27, 1964, about 6.30 p.m., you conducted a personal conversation in the back room of the proof reading department with a fellow employe.

<sup>1</sup> Whitehead admitted "a few brief remarks." Harris and McDonald testified to observing them engaged in conversations for periods up to half an hour and three quarters of an hour. I am inclined to the view that there is some exaggeration on both sides as to the lengths of these conversations, but the testimony of Harris and McDonald was impressive, and I find that conversations of some length did occur

At this time, you were assigned to the editorial department. You were not authorized to go to the proofroom for the purpose of engaging in any conversation. You left your work waiting in the editorial department.

Your actions resulted in not only leaving your work undone when it should have been completed; it also resulted in the assigned work of your fellow employe going undone and unattended.

Just as the investigation of this matter was being completed, specifically on March 3, 1964, you again conducted yourself with an obvious disregard for the established office procedures and the warning issued previously.

On Tuesday, March 3, about 6:30 p.m., after you had completed an assigned task on the Eastern Kansas Register in the composing room, instead of returning to your work in the editorial department, you went to the proof reading department and again engaged a proof room employe in personal conversation.

Again you were absenting yourself from your work and your work area without authorization. Again your fellow employe was unable to perform the assigned task in the proof room.

While you were still engaged in your personal private conversation in the back room of the proof reading department, the proofroom supervisor, assigned to supervise the production of the proof department, directed you to leave the proof room, where you had no authorized business, and to allow your fellow employe to return to the job of proof reading.

In both instances, you willfully disregarded the warning which I submitted to you in a letter dated Sept. 7, 1963.

It read in part: "You use the absence of a supervisor as an excuse to leave your desk and chat with fellow employes. In this way, you not only stop your own production, you stop the production of another employe."

The letter also read: "I am using this warning letter as a means of issuing you four direct orders concerning your *modus operandi* at The Register:

"1. Stay at your desk unless on a legitimate, assigned task.

"2. Keep quiet and stop verbally harrasing your fellow employes . . ."

The Sept. 7, 1963, warning letter concluded: "Failure to comply with any of these orders will constitute grounds for dismissal."

For your disregard for established office procedures;

For your lack of concern about the production demands of The Register;

For your obvious willingness to place personal matters before those of The Register while on company time and at company expense;

And for failing to heed orders 1 and 2 of the Sept. 7, 1963, warning letter;

For these reasons, you are discharged.

All pay and allowances due you are enclosed herewith.

### *C. Operational problems in the editorial department*

For many years Respondent has suffered difficulties in the operation of its editorial department—both from the standpoint of supervision and from the standpoint of employees. When Monsignor Cavanagh became business manager following the death of Monsignor Smith in 1960, he made Father Dan Flaherty the managing editor. He asked Father Flaherty to make a complete study of what was wrong in the editorial department and to give him a list of the potentials of the people in the department. In January 1961 Father Flaherty prepared a list of the editorial employes and the proofroom employes with comments about each. The 14 editorial employes were divided into 3 groups: (1) those with the least promise; (2) those with the best promise; (3) the remainder, between the 2 other groups. Four employes, including Whitehead, were listed in the first category—the employes with the least promise; five employes were listed in the second category, and five employes were listed in the middle category. Regarding Whitehead, Father Flaherty reported as follows: "Has reached a point where he wants to advance no farther. Slow and verbose in writing, does not want to be local editor of any edition, tending to gripe more and more. No desire for future. Best point is sitting and doing copy but not too swift at this."

Monsignor Cavanagh talked to certain of the employees about their work following this report. He talked with Whitehead. He told Whitehead about the complaints regarding his work, his slowness in the department and persistent absences. He was asked to do better.

Father Flaherty asked to be relieved from this assignment because of the pressure of other work. Monsignor Cavanagh prevailed upon Linus Riordan, who was then in the employ of Respondent, to take over the job until he was able to find someone else. Potential managing editors were interviewed from various places throughout

the United States—from New York, Pittsburgh, Boston, and Chicago. Finally Respondent hired Floyd Anderson, the editor of a paper in New Jersey; Anderson was also the president of the Catholic Press Association and this required a considerable amount of his time. Because of his absences, the operation of Respondent's plant suffered. He left Respondent in October 1962 and in November of that year John Heher was hired as the managing editor. Heher had worked for Respondent for 11 years prior to 1958. When he was hired in November 1962, he was told by Monsignor Cavanagh that there were a number of problems in the editorial department concerning its supervision and its personnel and its work schedules. "The work wasn't being done on time or properly." Monsignor Cavanagh informed him that employees were wandering around or going away from their assigned places and were not doing the work that they were supposed to be doing, and he wanted Heher to take charge of the situation and to correct this and other problems. Monsignor Cavanagh mentioned Whitehead as one of the employees he felt was not paying attention to his work.

After several weeks with Heher as the managing editor, Monsignor Cavanagh noticed no improvement in the operation of the plant. He complained to Heher about the matter and in January 1963 Heher wrote a memorandum regarding the plight of the department and his plans for improving it. In this memorandum Heher stated the following, among other things:

The editorial department at The Register is in deplorable condition. It is understaffed; some members are indifferent, others erratic, others disaffected by what they consider to be arbitrary treatment.

The professional caliber of some members of the staff may be described as mediocre. There is a nucleus, however, of skilled personnel. It is on this nucleus that The Register depends for the weekly production of the papers.

Depleted staff, disaffection, lack of supervision, low level of competence in some cases, these conditions suggest their own cures. I recommend that four members be added to the editorial staff; that some be dismissed; that in hiring, a carefully planned screening process be initiated; that two of these men be competent editors, and that two be neophytes, to be trained in Register procedures. I suggest too that day and night supervisors be appointed in the department.

Heher stated that he had frequent discussions with Monsignor Cavanagh regarding Whitehead and another employee, Larry Collins, who was also an active union member, to the effect that they were disruptive influences in the editorial department and he wanted very much to separate these two from their employment with Respondent. Following the execution of a contract with the Union in January 1963, Monsignor Cavanagh suggested to Heher that if Whitehead were given a job he did not like, which was page layout work, perhaps he would become less happy and would quit.<sup>2</sup> Monsignor Cavanagh also told Heher, after the contract with the Union was completed in January 1963, that the contract stipulations were to be adhered to strictly and that past policy as far as personnel was concerned was completely null and void. Heher stated that the Monsignor's nickname for Whitehead was "Fishhead."

John Heher resigned in April 1963 and Respondent then employed Miles Porter as its managing editor.

#### D. *Whitehead's performance under Porter*

Porter became the managing editor in April 1963; he observed Whitehead and the other employees in the editorial department from that time on. He testified that over a period of 4 or 5 months of observation, Whitehead turned out less work than any other man in the editorial department. He was frequently away from his desk and was reprimanded by Porter for this conduct, although there were times when he had business reasons for conferring with other employees. Whitehead's reaction to the reprimands was surly; on one occasion he left and absented himself for a period of time, on another occasion he commented that this was "a lousy, stinking place to work" and on another occasion that they were "a bunch of bastards."

In September 1963 Porter handed Whitehead a written criticism of his work, as follows:

This is being presented to you as a warning concerning your work at The Register.

It is being given to you following a discussion of the items mentioned in the warning and upon your return to the staff following a three-week vacation.

<sup>2</sup> Monsignor Cavanagh testified that he did not tell Heher to reassign Whitehead "in a Guild context" (because of his union activities).

I am hopeful [sic] that your vacation has improved your attitude and your capabilities. If it has not, then I can assure you there is nothing but trouble ahead.

Frankly, neither I nor The Register will continue to put up with either your work or your attitude if they continue unchanged from what they were before you went on vacation.

In the first month after my arrival at The Register, you informed me that you do not do layout work. This is absurd for a man with more than 10 year's experience at The Register and drawing a full salary.

I have watched you closely for four months. Early in my tenure at The Register, I issued you a verbal warning concerning your slowness. I felt then, and I feel now, that it was deliberate, intentional, disloyal and vicious.

The improvement following the verbal warning was brief. You not only returned soon to your old ways, but worsened.

In the four months of my tenure at The Register, you have done less work than any other member of the staff—far less.

On one occasion, a Friday in July, a check of the copy revealed you had handled exactly eight pieces of copy. That is a rate of one an hour.

My absence from the editorial room almost invariably serves as a signal for a halt in your output. You use the absence of a supervisor as an excuse to leave your desk, and chat with fellow employees.

In this way you not only stop your own production, you stop the production of another employe.

Your constant griping is a source of irritation to all others in the room.

The only enthusiasm for any project you have displayed in the past four months is for recruiting efforts on behalf of the Guild.

It is of course ridiculous to assume that this is fair or proper when done on company time, at company expense.

In the light of all this, I am using this warning letter as a means of issuing you four direct orders concerning your modus operandi at The Register:

1. Stay at your desk unless on a legitimate, assigned task.
2. Keep quiet and stop verbally harrassing fellow employees.
3. Start producing at a level commensurate with your years of experience and your rate of pay.
4. Start doing your share of the layout work. Editions will be assigned to you and you will be expected to do them in a professional, competent manner.

Failure to comply with any of these orders will constitute grounds for dismissal.

In discussing the letter with Whitehead, Whitehead asked "Did that mean he could never stand up and walk away from his desk?"; and "did that mean he could never speak to anybody in the Register plant?"

Whitehead made a written reply dated September 11, 1963, as follows:

This letter is in acknowledgement of your letter bearing dates of Sept. 7 and 1 regarding criticism of my work. The principal purpose of it is to gain additional information and facts on which you base your opinion of my work habits.

It is my desire to obtain some specific details so that I can better evaluate some of the criticisms in your letter to me.

I informed you when you first came to the Register that I edited copy, wrote headlines, and did national rewrites and that I wrote up stories for the Denver edition whenever assigned to me. This was in response to your desire to know what work I was doing at the time. In no sense did I intend to inform you that I refused to do layout work or that I had never done it. I have done layout work whenever assigned to me and have not refused any assignments.

Because of a nervous ailment aggravated by the added pressure of layout work, I asked to be relieved of it and was. But at no time did I refuse it. I was in fact assigned it later by a managing editor and did it until he left the Register. For me it is an additional stress that causes a health problem, and so I request that, if at all possible, I not be assigned to it. If, however, you feel that it is necessary for me to handle layout work, I am willing to do it.

You charge me with slowness and with doing "less work than any other member of the staff—far less." Please furnish me a specific guide as to your expectations. How many pieces of copy do you want per day? How many pieces do the other copy editors do? What is the quota you have established per employe? Does a piece of copy without errors have more weight than another with errors? If so, what are the comparative weights? Do you count 10 pages

of obits as one piece of copy or 10 pieces? How do you rate copy requiring heads as contrasted to copy not requiring heads? What are the comparative weights you give to difficult copy and easy copy? How many pieces of copy do you require when a man is sick?

The Friday work you refer to in your letter is national rewriting. It is not unusual for the one-page stories to take one hour to rewrite well. Some of the larger stories, which require sifting through a great amount of material, take two or three hours or more.

In my 11 years with the Register I have never made a serious error in my work and on various occasions have had compliments on it.

Thereafter Whitehead's work improved. He was told by Porter about 1 week later that his work had become satisfactory and that Monsignor Cavanagh had been after him to terminate Whitehead but that as long as he did good work, he could not discharge him.

In October 1963 Whitehead was assigned to the position of copy editing and rewriting of news stories for the national edition. In January 1964 he was reassigned to the night shift in the editorial department. This was occasioned by the leaving of an employee. Whitehead was placed on this shift because of his experience in the department and because of the lack of experience on the part of most of the other editors then on that shift. Porter warned him at the time of this assignment "for heaven's sake, stick to your work, attend to your knitting."

Porter stated that the quality of Whitehead's copy editing was generally satisfactory and that his writing was very mediocre, but that his work "was so danged all-fired slow that we couldn't put up with it." When Porter took over as managing editor, he knew that Whitehead was in disfavor. He heard numerous times that Whitehead had stated "they are trying to get rid of me because I was acting foreman of the Guild." Porter told him that he expected him to lean over backwards, that he (Porter) would lean over backwards, and he would get Monsignor Cavanagh to lean over backward, and "we would see if we couldn't all get along and live together."

In February and March 1964, Composing Room Superintendent Stevens made his complaints to Porter about Whitehead, and Porter decided to terminate him. Approximately 3 days later Union Representative Matty and Grievance Chairman Smith talked with him in their investigation of the discharge. Porter told them that he did not discuss with Whitehead his visits with Lee Matties prior to his discharge, that he was investigating the first incident when the second incident was called to his attention. He indicated he had not intended to fire Whitehead when he did, but stated, "You know how things happen around here when other people find out about it." The inference from this statement being that Monsignor Cavanagh would find out about Whitehead's visits on February 25 and March 3 and would be displeased, or had found out about them and was displeased, and that this precipitated Porter's action against Whitehead. Porter also stated that Whitehead's attitude improved following the letter of criticism of September 1963, but that the improvement did not last. He stated that Whitehead's bad attitude was not all Whitehead's fault and not just developed by him alone; the inference being that other persons (with no doubt Monsignor Cavanagh being included) and/or working conditions contributed to the development of his poor attitude on his job. Porter also told Matty that "Monsignor Cavanagh has told me that he just can't stand to be close to Whitehead."

#### *F. Other evidence of Monsignor Cavanagh's dislike for Whitehead*

The record is replete with evidence that Whitehead was in disfavor with Monsignor Cavanagh, "which is putting it awfully mildly," according to Porter. It is admitted by Monsignor Cavanagh. The issue throughout is whether the dislike stemmed from Whitehead's union activities or from his conduct and demeanor on the job. Or, stating this issue more accurately, assuming that Monsignor Cavanagh had business reasons for his displeasure in Whitehead, was it his union activity that actually caused his discharge?

The General Counsel contends that it did; and in addition to evidence already presented bearing on this contention, the following facts, most of which occurring prior to the Section 10(b) limitation period, were presented by the General Counsel as "indicia of a discriminatory motive" by Respondent.

(1) On July 7, 1962, following the Board election, Monsignor Cavanagh made a speech to employees. In this speech he indicated his displeasure with the fact that the employees had voted for the Union. He told them that they should have come to "us" first: that if there was the slightest suggestion of injustice, they were always

ready to correct it. He indicated that the formation of the Guild at the plant was a "stabbing in the back" and that he was eternally grateful to those employees who had not supported the Union, but had chosen to remain loyal to him.

(2) On or about July 18, 1962, then Managing Editor Anderson posted a notice on the bulletin board to the effect that it had come to their attention that some of the employees had been going out on coffee breaks and checking their cars; this violation of rule 6 was to be discontinued.<sup>3</sup>

In the latter part of September or early October 1963, Porter called Whitehead into his office regarding the parking of his car on the street in front of the plant; he stated that this infuriated Monsignor Cavanagh.

Some years ago Respondent purchased adjacent land and constructed parking facilities to accommodate all of its employees. For each vehicle a charge of \$5 per month was made. The use of the lot was voluntary, and a majority of employees chose to use the lot. Some of the employees, including Whitehead, objected to the \$5 charge on the parking lot and made an issue of it. They sought, through the Union, to obtain free parking, but it was refused. With the warning from Porter, Whitehead and unspecified "other employees" discontinued parking in front of the plant.

(3) On July 19, 1962, Whitehead, as chairman of the unit, sent a telegram to the Apostolic Delegate, Archbishop Vagnozzi, asking for a papal blessing on the newly formed bargaining unit. A papal blessing is given by the Pope, or Pontiff, but may be bestowed through an apostolic delegate as his agent. The blessing was received by telegram from the Apostolic Delegate dated July 20, 1962. Whitehead sent a copy of the telegram to each of the employees in the unit. Under date of August 1, 1962, Monsignor Cavanagh posted on the plant bulletin board a notice to the employees on the matter of the papal blessing, as follows:

It would seem altogether too obvious to need mention that no one would use company letterheads on stationery for personal or any use other than official business correspondence. To have used it secretly and in such a manner as to mislead the recipient and leave the impression that it is an official request and to embarrass the management of a company is patently cause for immediate discharge. There is a notable precedent, amazingly enough, here at the Register for the summary dismissal of an employee who violates this canon of decency and common sense. For the sake of those under suspicion it is to be hoped that such did not happen recently.

The second matter is so serious as to leave me humiliated and depressed. Archbishop Urban J. Vehr is the Ordinary of the Archdiocese of Denver. He is also the president of the Catholic Press Society, Inc. For any person or persons to dare to go over his head and contact the Apostolic Delegation is a flagrant affront both to his person and to his authority. Not even a pastor would dare to ask for an Apostolic Blessing for a jubilee or anything else except through the Chancery.

That a request was made directly to the Apostolic Delegate by a Register employee or employees in an altogether unapproved venture, completely alien to the management of the Register, bypassing and ignoring the Ordinary, not only embarrassed Archbishop Vehr but forces him to take the distasteful matter under further consideration. Bishop Maloney has been appointed by the Archbishop to resolve the incident. No person or persons may lightly take unto themselves or attempt to contravene the authority of the Bishop of a diocese without inviting severe sanctions.

Whitehead testified that he considered it to be proper for any individual in the church to contact the Apostolic Delegate for a papal blessing. When he was married he and his wife wrote directly to the Vatican for a blessing on their marriage. Monsignor Cavanagh was of the conviction that since the blessing of the unit was a matter so related to Respondent, the request, in observance of proper protocol, should have gone through channels.

(4) Monsignor Cavanagh also expressed himself regarding the Union and/or Whitehead by letter to editors and managers of the various diocese newspapers published by Respondent. By letter dated September 17, 1962, he stated, among other matters:

We have for the time being a new organization in the house, and it has not been a happy introduction. The Denver Newspaper Guild has been embraced by a

<sup>3</sup> This item of evidence was presented by the General Counsel in support of his contention that the rules were tightened after the advent of the Union.

dozen of the editorial employees. The cause of the heat and aggravation was and is not the Guild as such, but the manner in which certain characters around here campaigned for the wedding. Enough said.

By letter dated February 1, 1963, he stated:

Some of you may be interested in knowing that the Newspaper Guild has completed negotiations for a contract, which is notably and fundamentally different from the proposal that was presented a few months ago. Obviously the wage issue was paramount. The ultimate settlement was something very close to the national pattern. Despite the sizable gouge, you need have no anxiety about any increase in price.

Now that the fighting with some members of the editorial department has been concluded for a number of months, I do hope that Jack Heher will expeditiously and successfully effect a number of changes for our mutual benefit. Nothing could be done while we were in negotiations, lest we be slapped with an N.L.R.B. case.

(5) In February 1963, after the execution of a contract with the Union, Respondent posted a list of 16 office rules with the reminder that "these rules are posted so that each employee may know he is subject to discharge if guilty" of a violation of any of the rules. These rules had previously been posted and had existed prior to the advent of the Union, as rule No. 6 was called to the attention of the employees in July 1962.

(6) As previously mentioned, Whitehead was assigned as an editor on the national edition in October 1963. On the first article prepared by Whitehead for publication on the national edition, his name appeared with the article. Porter told him that his "by-line on a story was like waving a red flag in front of Monsignor Cavanagh." Therefore, his stories had the caption "By a Staff Writer."

(7) On about three occasions in November and December 1963 and January 1964, matters placed on the union bulletin board at the plant were removed personally by Monsignor Cavanagh. After Whitehead was elected chairman of the bargaining unit again in January 1964, he placed a "Hands Off" notice on the bulletin board and the matter was taken up as a grievance in February 1964. Since that time no matter has been removed.

(8) Prior to the advent of the Union in 1962, Whitehead had been asked to appear on a television program, the House of the Lord Program, as a Catholic representative. Following the formation of the Union, he was no longer asked to participate. The program had panelists representing the Catholic, Protestant, and Jewish faiths. A number of employees and supervisors of Respondent have participated. Monsignor Cavanagh stated that he was asked by the moderator or one of the panelists not to send Whitehead again. Monsignor Cavanagh also stated that Whitehead intruded in every conversation.

(9) In the latter part of March 1963, James Cesnik, a copy editor and makeup man for the Minneapolis Star Tribune in Minneapolis, Minnesota, was interviewed by Monsignor Cavanagh for a supervisory position in the editorial department of Respondent. Cesnik was editorial vice president for a local of the American Newspaper Guild in Minneapolis and he was interested in ascertaining during the interview whether employer-employee relations were strained over the matter of the Union. Monsignor Cavanagh told him that "they had their Guild now and they were going to have to live with it." He alluded to complaints that had been made by employees of a paternalistic attitude of Respondent before the organization of the Union and stated that "this was gone now. They had a contract. They were going to live with that contract."<sup>4</sup> In the interview, Monsignor Cavanagh told Cesnik that he was looking for someone who could make the employees toe the mark.

Cesnik did not mention to Monsignor Cavanagh at the outset that he held a position with a local of the American Newspaper Guild, but during the course of the interview he told him of this fact. Monsignor Cavanagh stated that he did not care if he was a member of the Union or not, and at the conclusion of the interview he offered the supervisory position to Cesnik. Cesnik declined the offer.

(10) Robert Seivers, who had worked for Respondent for about 8½ years and who left its employment in March 1963, testified to conversations he had had with Monsignor Cavanagh and with Managing Editor Anderson during his period of employment. He was acting in charge of the night shift in the editorial department when he left Respondent.

<sup>4</sup> The word "fraternalistic" appears at line 4 on page 121 of the transcript and is an error; I hereby correct the record to substitute the word "paternalistic."

Anderson stated to Seivers, in October 1962, just prior to Anderson's departure from the Company, that "they had asked him to get rid of—or words to this effect—Mr. Whitehead, and he had not done so." Seivers also testified to a conversation with Monsignor Cavanagh about September 1962, to the effect that Whitehead had a dim future. This was mentioned in a conversation dealing with the Union, but Monsignor Cavanagh testified that "putting it in its proper context, I am sure I did say that Mr. Whitehead had a dim future . . . because of the type of work he was doing."

(11) John Thelen, supervisor of the proofroom from April 1 to July 27, 1963, testified to a conversation with Monsignor Cavanagh as follows. When he was hired in April 1963, Monsignor Cavanagh told him that the Union had a unit at Respondent and that he considered that the employees were ungrateful to him and to the publisher for having done this. He stated that there would be no more bonuses when they have new babies.<sup>5</sup> He indicated that the Union probably would not last.

Also, during his brief employment, Thelen had a conversation with Porter regarding Whitehead wherein Porter stated that "the man is on my back to get rid of my boy [Whitehead]." Thelen stated that there was a production problem when he arrived and that it was there when he departed.

### G. Conclusions

Monsignor Cavanagh readily acknowledges that he has a low opinion of Whitehead and testified that he repeatedly stated to managing editors that Whitehead should be fired. This attitude of Monsignor Cavanagh did not begin with the advent of the Union; it had existed prior to the time he took over as editor and business manager in 1960. He made the statement in 1959 to Monsignor Smith, who was then the editor, that "He [Whitehead] has got to be fired." At that time Monsignor Cavanagh was upset because of certain alleged interpolations that Whitehead had made in a story that came from Whitehead's parish. Monsignor Cavanagh also told Anderson when he was managing editor that he could not live with the production record of Whitehead, but Anderson replied that "right now I have to take anything we have." He also told Managing Editor Heher, "You've got to do something about this man [Whitehead]. He is breaking our back." Heher replied that at the time he was shorthanded. Monsignor Cavanagh made similar comments to Miles Porter.

In May 1962 Whitehead was instrumental in bringing the Union in at Respondent's plant. Monsignor Cavanagh testified that in "the context and the framework with which this was organized and done, I felt [it] was a direct attack on me." He felt that the organization of the Union was a retaliation for his trying to get the employees to do better work. Whitehead's activities on behalf of the Union added "fuel to the fire", but the question is—was this the conduct of Whitehead that brought about his discharge? I answer this question in the negative.

Respondent has approximately 200 employees and all production employees are represented by various unions, and have been for many years. With the Union, Respondent entered into a stipulation for an election in June 1962 and concluded a bargaining contract in January 1963.

Whitehead's conduct and demeanor over the years was a source of repeated irritation to Monsignor Cavanagh. Porter, who became managing editor in April 1963, endeavored to get full utilization of Whitehead's abilities and experience and to promote harmony at the plant. He gave Whitehead oral warning and a written warning, but his successes were short-lived.

In 1961 Whitehead was picked by the then managing editor as 1 of the 4 poorest employees out of 14 editorial employees; he was described then as slow, verbose, tending to gripe, and not wanting to advance. Managing Editor Heher in January 1963, described the editorial department as "in deplorable condition," with some employees "indifferent, others erratic, others disaffected." Although he did not name them, he recommended that some be dismissed. Porter characterized Whitehead as having done "less work than any other member of the staff—far less," as constantly griping, as frequently absenting himself from his work station, and as being surly in response to criticism.

The two incidents that actually brought about Whitehead's termination, viewed in isolation, were very insignificant, but when viewed in the totality of his conduct, I must conclude that Respondent had reasonable basis for its evaluation of Whitehead's performance and demeanor as marginal and undesirable. Although Respondent resented Whitehead's activities in organizing the Union at the plant and in his utilizing it in the growing rift between himself and his employer, I am convinced that the

<sup>5</sup> Monsignor Cavanagh stated to Managing Editor Heher that the contract would be strictly adhered to, and to job applicant Cesnik that the paternalistic attitude was now gone.

expressions of Monsignor Cavanagh about Whitehead were not "in a Guild context" and that he was not discharged because of his union activity, but because of his work performance and demeanor in general, and as culminated in the two incidents of February 25 and March 3, 1964. Accordingly, I shall recommend that the complaint be dismissed.

#### CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent has not violated Section 8(a)(3) or (1) of the Act as alleged in the complaint.

#### RECOMMENDED ORDER

It is recommended that the complaint be dismissed.

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**Wheeling Pacific Company and International Association of Machinists, AFL-CIO, District Lodge No. 87, Local Lodge No. 653.** *Cases Nos. 20-CA-2435 and 20-CA-2673. March 26, 1965*

#### DECISION AND ORDER

On October 19, 1964, Trial Examiner Maurice M. Miller issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. He further found that the Respondent had not engaged in certain unfair labor practices alleged in the complaint and recommended that such allegations be dismissed. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a brief in support thereof.

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

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 Trial Examiner's Decision, the exceptions and brief, and the entire record in these cases and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

We agree with the Trial Examiner's conclusion that the Respondent violated Section 8(a)(5) of the Act. For the reasons fully explained in the Trial Examiner's Decision, Respondent's entire course of bargaining, both before and after the settlement agreement, persuades us that the Respondent was not bargaining in good faith in an effort to reach an agreement with the Union but was,