

The Staver Company, Incorporated and Tool, Die and Mold Makers Guild, Independent. *Cases Nos. 29-CA-91 and 29-CA-91-2 (formerly 2-CA-10354 and 2-CA-10354-2). September 17, 1965*

DECISION AND ORDER

On April 15, 1965, Trial Examiner Maurice S. Bush 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. Thereafter, the General Counsel and the Respondent filed exceptions to the Trial Examiner's Decision and supporting briefs.¹

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 [Chairman McCulloch and Members Brown and Zagoria].

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 these cases, including the Trial Examiner's Decision, the exceptions, and the briefs, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations only to the extent consistent herewith.

1. We find, in agreement with the Trial Examiner, that the Respondent threatened and unlawfully interrogated its employees in violation of Section 8(a) (1) of the Act by the following conduct: (a) Plant Superintendent Wilens in effect told the toolroom employees, at a meeting he called with them shortly after the Guild distributed leaflets and cards among them in early October 1964, that they should not bring a union into the plant or else there might be a layoff in the toolroom; (b) Wilens made similar statements to employee Pastore the following day; (c) Toolroom Foreman Ahlgren unlawfully interrogated all the toolroom employees as to whether they had received the leaflets distributed by the Guild; (d) Ahlgren interrogated employees Pastore and Wilson, whose layoffs are in issue herein, as to whether they had received cards and how they felt about the Guild; (e) Ahlgren told Pastore, after the latter's layoff, that "All this talk about the Guild . . . has got to stop," and that, if Pastore felt strongly about the Union, he should get a job as a union organizer "so [he] wouldn't lose [his] job all the time"; (f) Ahlgren interrogated Wilson on November 2 as to how he felt about the Union, and remarked that same day that "it didn't look good" for Wilson to be seen with employee Aschatz because

¹In view of our disposition below of the 8(a)(3) allegation, the Respondent's motion to reopen the record to adduce additional evidence thereon is hereby denied.

the latter was a member of the Guild; (g) Wilens told the toolroom employees during another meeting with them on November 4 that the workweek would be reduced in the near future from 50 to 40 hours; and (h) Wilens interrogated Wilson on the last day of Wilson's employment as to how many other employees were members of the Guild.

The Trial Examiner found certain additional violations of Section 8(a) (1) which we do not adopt for the reasons set forth below

(a) The record does not support the Trial Examiner's finding that Wilens and Ahlgren, after the distribution of a union leaflet, "began a systematic course of interviewing and interrogating each employee of the toolroom" as to whether he had received the leaflet distributed by the Guild and as to his attitude toward the Guild's efforts to organize. Nor is there any basis in the record for the Trial Examiner's inference that Wilens and Ahlgren, in any such interviews, "implied that if the Union came in, the company would terminate the employment of some or all of its toolmakers by farming out the company's toolwork."

(b) There is evidence that Pastore told Wilens, in one of their conversations, that the Guild was a "sort of offspring" of the union which represented the employees at Tool Crafters Specialty Company, where Pastore and Wilson had been laid off before being hired by the Respondent, and suggested that Wilens might inquire how that company was getting along with the Union. Wilens did telephone the manager there and later told Pastore, according to the latter's testimony, that the manager "wasn't happy with the union," or, according to Wilens' testimony, that the manager said his men "were working harder now than they had ever done before." There is no basis in the record, however, for the Trial Examiner's inference "that Wilens and Ahlgren had learned from the telephone call to Tool Crafters that both [Wilson] and Pastore had been suspected by Tool Crafters of union activity while working for that company and had been fired by Tool Crafters for that reason." Accordingly, there is no support in the record for the Trial Examiner's finding of a violation in Ahlgren's remark to Pastore and Wilson that "You remember what happened to you at Tool Crafters."

2. The Trial Examiner found that the Respondent laid off Pastore and Wilson for discriminatory reasons, in violation of Section 8(a) (3) of the Act. For the reasons set forth below, we do not agree.

In late 1963, the Respondent assigned two of its toolroom employees to work on a research and development program, and hired two new tool-and-die makers to replace them in the toolroom. The toolroom employees were then working 58 hours a week and receiving time-and-a-half for work in excess of 40 hours. The Respondent hired Wilson and Pastore on January 22 and February 19, 1964, respectively, in order to reduce the workweek and cut overtime costs in the toolroom. The toolroom work thereafter leveled off to about 50 hours a week. In early

October 1964, the Respondent decided to eliminate the research and development program because it was not proving itself economically feasible, and reassigned the two employees who had been engaged in this program to the toolroom. Thereafter, the Respondent laid off Pastore on October 30, and Wilson on November 6. No toolroom employees have been hired since these layoffs, or indeed since Wilson and Pastore were hired.

The Trial Examiner concluded that Wilson and Pastore were terminated because of their suspected union activities, on the basis of the timing of the layoffs coincident with the Union's efforts to organize and the Respondent's violations of Section 8(a)(1). In so concluding, he rejected the Respondent's contention that the layoffs were economically necessary on the basis of his findings that no financial records were produced to substantiate the claim that "toolroom costs were extremely high"; there had been no previous layoff in the toolroom even though the toolroom admittedly never operated at a profit; the toolroom was largely responsible for the Respondent's overall financial success because it established the Respondent's reputation for being able to tool up for almost any stampings required by the Respondent's customers; the Respondent contracted out 25 percent of its toolroom work; and the Respondent's gross sales and net profits for the year 1964 exceeded those of 1963.

The Trial Examiner, however, failed to discuss the effect of one factor, although he referred to it in his Decision as "most prominent" among the reasons advanced by the Respondent for the layoffs—that is, that the Respondent had more tool-and-die makers than it needed after the research and development program was abandoned. When the impact of this factor is taken into consideration, the weight of the evidence does not support the Trial Examiner's conclusion that the layoffs were motivated by discriminatory considerations. Thus, as the Trial Examiner found, prior to October 1963, the Respondent employed eight tool-and-die makers in its toolroom. This number, after the Respondent initiated its research and development program, was raised to 10. Wilson and Pastore were then hired, in an effort to reduce overtime costs, and the toolroom complement was increased to 12. Thus, when the research and development program was eliminated and the two tool-and-die makers assigned to that program were returned to regular work in the toolroom, the Respondent found itself with 12 employees in the toolroom—an unprecedented number representing an increase of 50 percent over its complement of a year before.

In the light of this situation, the factors relied on by the Trial Examiner lose significance. This is particularly true of such factors as the absence of any prior layoffs, the asserted desirability of maintaining a toolroom capable of tooling up for any stampings, and the asserted improvement in the Respondent's financial position. These factors might have been significant if the Respondent had reduced the tool-

room complement below 10, but they have little significance when the Respondent's objective was only to maintain the complement at 10. There is no evidence that the Respondent would have made use of the two extra employees in the absence of union activity. Furthermore, we do not agree with the Trial Examiner that the fact that the Respondent was contracting out 25 percent of its toolroom work shows that its asserted economic defense is specious. Subcontracting was a long-standing practice of the Respondent. There is no showing that such subcontracting was regular rather than sporadic, and there is thus no basis for concluding that a change in this practice would have provided regular jobs for two otherwise unneeded employees; nor is it shown that the Respondent in any way changed or failed to change its subcontracting practice in order to get rid of the two men affected.

In view of all these circumstances, we are convinced that the record will not support the Trial Examiner's conclusion that the Respondent's asserted reasons for laying off two tool-and-die makers were not its real reasons. On the other hand, we agree with the Trial Examiner that the selection of Pastore and Wilson on the basis of seniority followed established company policy, and that there is no basis for concluding that their selection on the basis of seniority was for discriminatory reasons. Consequently, although the timing of the layoffs and the Respondent's conduct in violation of Section 8(a) (1) create some suspicion as to the Respondent's motives for the layoffs, we find, in all the circumstances, that the General Counsel has not established by a preponderance of the evidence that the layoffs were discriminatorily motivated.

Accordingly, we shall dismiss the Section 8(a) (3) allegations of the complaint.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, The Staver Company, Incorporated, Bay Shore, Long Island, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees as to their membership in or activities on behalf of Tool, Die and Mold Makers Guild, Independent, or any other labor organization, in a manner constituting interference, restraint, or coercion in violation of Section 8(a) (1) of the Act.

(b) Threatening employees with reprisals in order to discourage union membership activities.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Tool, Die and Mold Makers Guild, Independent, or any other labor organization, to bargain collectively through representatives of their own choosing, or 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, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

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

(a) Post at its plant in Bay Shore, Long Island, New York, copies of the attached notice marked "Appendix."² Copies of said notice, to be furnished by the Regional Director for Region 29, shall, after being duly signed by an authorized representative of the Company, be posted by the Company immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Company to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 29, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges unfair labor practices other than as found by the Board.

²In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decree of the United States Court of Appeals, Enforcing an Order".

APPENDIX

NOTICE TO ALL EMPLOYEES

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

WE WILL NOT interrogate employees concerning activities on behalf of Tool, Die and Mold Makers Guild, Independent, or any other labor organization, in a manner constituting interference, restraint, or coercion violative of Section 8(a)(1) of the Act.

WE WILL NOT threaten employees with reprisals in order to discourage union membership or activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Tool, Die and Mold Makers Guild, Independent, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities.

All our employees are free to become or remain, or to refrain from becoming or remaining, members of any labor organization, except to the extent that this right may be affected by an agreement in conformity with Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

THE STAVER COMPANY, INCORPORATED,
Employer.

Dated _____ By _____
(Representative) (Title)

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

Employees may communicate directly with the Board's Regional Office, Fourth Floor, 16 Court Street, Brooklyn, New York, Telephone No. 596-5386, if they have any question concerning this notice or compliance with its provisions.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This proceeding, with all parties represented, was heard before Trial Examiner Maurice S. Bush in Brooklyn, New York, on February 10 and 11, 1965, on the consolidated complaint of the General Counsel and the answer of The Staver Company, Incorporated, herein called the Respondent. By subsequent stipulation of record, the allegation of the complaint that the Charging Party herein is a labor organization within the meaning of Section 2(5) of the Act, originally denied, now stands admitted.

The issues litigated were whether the Respondent violated Section 8(a)(1) and (3) of the Act. Counsel for all parties, except the Charging Party, presented oral argument. Respondent also filed a brief.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent, a New York corporation, with office, factory, and place of business at 41-51 North Saxon Avenue, Bay Shore, Long Island, New York, has at all times herein material been engaged in the manufacture, sale, and distribution of metal stampings, including electronic tube shields, retainers, eyelet machine parts, and related products. During the year ending November 6, 1964, Respondent purchased and received at its said factory material and goods valued in excess of \$50,000 from points in States outside the State of New York. During the same period, it sold and shipped finished products in excess of \$50,000 to customers outside the State of New York.

II. THE LABOR ORGANIZATION INVOLVED

Tool, Die and Mold Makers Guild, Independent, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. FACTS RELATED TO THE ALLEGED UNFAIR LABOR PRACTICES

Respondent, which commenced its factory operations in the year 1951, has a total of approximately 63 employees, including clerical and supervising personnel. Most of these employees are engaged directly in the manufacture and production of stampings of various sorts for sundry accounts, including eyelet machine parts which accounts for more than one-half of Respondent's total sales.

The dispute here under consideration relates to Respondent's tool-and-die maker employees, two of whom have been terminated for alleged union activities. The tool-makers make the tools and dies required for the manufacture of the stampings pro-

duced by Respondent. A maximum of 12 tool-and-die makers have been employed in Respondent's toolroom; at the time of the hearing and after the discharges here in question, there were 10 such employees in Respondent's tool shop. Although the tool shop has never in itself operated at a profit, it is in large measure responsible for Respondent's overall financial success because it has helped Respondent establish a reputation for being able to tool up for almost any stampings required by its customers. Respondent's gross sales and net profits for the year 1964 exceeds that for the year 1963. Despite the gradual expansion of its toolroom through the employment of additional tool-and-die makers, Respondent's toolroom facilities have never been adequate to take care of all of its tool and die requirements, as it is common practice for Respondent to farm out 25 percent of its internal tool-and-die work to other tool shops for making, although to some undisclosed and necessarily limited extent Respondent's toolroom employees from time to time are called upon to make tools and dies for outside firms.

Respondent's top management group, herein called Respondent's management group, consists of a vice president, export secretary, comptroller, and one Seymour Wilens, Respondent's plant manager. Respondent's sole witnesses at the hearing were Plant Manager Wilens and Lawrence Ahlgren, toolroom foreman. Wilens has the authority to hire and discharge; Ahlgren has no authority to hire and discharge, but has authority to recommend persons for employment and discharge.

Prior to October 1963, Respondent employed eight tool-and-die makers in its toolroom. In October and November of the same year, Respondent assigned two of its toolroom employees to work with a consultant engineer in the development of a "heat sink line for transistors," a research and developmental project which had been commenced in the summer of 1962. Although assigned to this special work, the two involved craftsmen did their special developmental work in the regular toolroom where all of Respondent's tool-and-die makers work. Because of this transfer of two of its tool-and-die workers to research and developmental work, Respondent hired two additional tool-and-die makers in October and November 1963 for work in the normal operations of the tool shop. Thus at the end of 1963 Respondent had in its employment 10 tool-and-die makers.

Prior to January 1964, Respondent worked its tool-and-die makers 58 hours per week, with time and half for all hours over 40.

In an effort to shorten the workweek of its toolroom employees from 58 to 50 hours per week, Respondent in early 1964 expanded its toolroom by hiring two additional tool-and-die makers; namely, Donald Wilson on January 22 and Carmen Pastore on February 19, 1964. These are the alleged discriminatees under Section 8(a)(3) of the Act. Notwithstanding these additions, the toolroom continued to work 58 hours per week for a period of about 6 to 8 weeks, but thereafter the workweek leveled off to 50 hours, with an occasional call upon some of the toolroom employees to work in excess of the 50-hour workweek. Of the 12 toolmakers, 8 worked the day shift and 2 worked the night shift.

Respondent terminated the employment of Pastore on October 30 and Wilson on November 6, 1964. At the time of Pastore's discharge, he had approximately 100 hours of unfinished work on his bench. Written termination notices given these employees state that the terminations were due to "reduction in force."

In testimony given at the hearing, Plant Superintendent Wilens and Toolroom Foreman Ahlgren assigned the layoffs of Pastore and Wilson to business reasons. Most prominent among these was the decision of Respondent to phase out its heretofore mentioned research and developmental program for a "heat sink line of transistors," with resultant reduction of the consultant engineer's time on such project from 4 or 5 days a week to 1 or 2 days a week and the reassignment of the two toolmakers on the project to the regular tool-and-die work for the Company. A second reason given for the layoffs were that "tool room costs were extremely high." Respondent did not produce any of its financial records or other comparative cost data at the hearing to substantiate this reason for the layoffs and accordingly no credence is given to this assigned reason for the terminations. A third reason assigned for the layoffs was the loss of a contract for the production of a part for an RCA television set. This had constituted 5 percent of Respondent's total production. A fourth reason offered for the layoffs was an anticipated loss of Respondent's "captivated shield line" which had accounted for an undisclosed portion of Respondent's sales. The final reason given for the layoffs was "quite a bit of Japanese competition in the electronic business." At the time of the hearing some 3 months after the layoffs here under consideration, Respondent had not hired any toolmakers to replace Wilson and Pastore.

The evidence shows that the discharges of toolmakers Wilson and Pastore coincided with a period of virtually simultaneous union activities by the Charging Party to organize Respondent's tool-and-die makers strictly along craft lines and by a local

of the Teamsters Union to organize all of Respondent's employees in a companywide union. In late September 1964 the Teamsters Union passed out membership cards and leaflets to Respondent's employees throughout its plant. Similarly and more directly pertinent hereto, the Charging Party or Union in or about the early part of October 1964 distributed a mimeographed sheet to all of Respondent's toolroom employees entitled "NOTICE TO ALL TOOL DIE & MOLDBAKERS," together with a pledge card requesting membership in the Union and designating the Union to represent them in bargaining negotiations with Respondent.

A copy of the Union's said notice came into the possession of Plant Manager Wilens shortly after they were being distributed to Respondent's toolroom employees. The opening paragraph of the notice reads:

With or without your knowledge, your shop is presently involved in company-union negotiations, prior to a final election. This will decide whether you are to be represented by a union which *does not* have your best interests as *craftsman* at heart. [Respondent's Exhibit No. 1.]

Thereafter the Union's effort to organize Respondent's tool-and-die makers became a matter of daily discussion in Respondent's tool shop, not only among the toolmakers but also between them and Toolroom Foreman Ahlgren and Plant Manager Wilens.

A day or two after the distribution of the above notice, Plant Manager Wilens called a joint meeting of Respondent's day- and night-shift toolroom employees. At this meeting he emphatically denied that Respondent was in any way negotiating with a companywide union as represented in the Charging Party's notice or with any union. He also told the toolroom workers that he would "hate" to see any union come into the shop because the organization of a union of either craftsmen or production workers would inevitably lead to the organization of a union of the remaining employees of the Company. He stated that it would cause hardships for the Company to have to deal with two unions. He further stated that a union was not necessary at Respondent's plant because its employees were treated fairly, both with respect to wages and benefits, and expressed opposition to any unionization of Respondent's plant unless the entire industry of which Respondent was a part was unionized, as otherwise he stated the Company would be at a serious competitive disadvantage. He also advised the men that Respondent's management groups had been pressing him for a layoff of its tool-and-die maker employees, but that he was "fighting against the layoff." I find that this last-noted announcement to the toolroom employees constituted an implied threat of discharges or a shutdown of the entire toolroom if they choose to organize.

The subsequently discharged Pastore was absent on the day in early October 1964 when Plant Manager Wilens addressed Respondent's toolroom employees as described above. On his return to work the next day, Wilens took Pastore aside and repeated to him what he had told the assembled toolroom employees the day before. After expressing his opposition to the unionization of Respondent's toolroom workers, Wilens "at the same talking" also told Pastore that ". . . the stockholders of the Staver Company had been after him to cut down on the tool room. He tried to express to me a point that they could do without the tool room because they could always take the work and farm it out, subcontract it, that the stockholders felt that a tool room was very expensive, it wasn't a necessary thing to have."

After Pastore's discharge, a second meeting was called by Plant Manager Wilens of Respondent's toolroom employees on November 4, 1964. Wilens called this meeting for the purpose of informing the tool-and-die makers that their workweek would be reduced from a 50- to a 40-hour week "in the near future." After conveying this message to the men, there was a discussion of the Union's effort to organize Respondent's tool shop, but the record fails to disclose precisely what was said in the discussion. Wilens learned later that the men were deeply disturbed and opposed to the prospect of a 40-hour week as this would deprive them of a substantial part of their weekly earnings; namely, their overtime at time and a half. Due to this reaction and the difficulty of retaining tool-and-die makers on a 40-hour week under the competitive market, the proposal for the 40-hour week was never put into effect. At the time of the hearing, Respondent's tool shop was still working a 50-hour week, with occasional additional overtime above 50 hours.

On the very next day, November 5, 1964, the toolroom employees held a meeting of their own at which they discussed the question of whether to organize a union of their own or to form a committee to meet with management once a month for the purpose of negotiating on such matters as "raises or whatever they had in mind at that time." Plant Manager Wilens, who knew about this meeting, waited outside to be called in when the men had concluded their discussion among themselves and were ready to hear him present management's views. When opportunity to address them was given to Wilens, he expressed opposition to the Union on the ground that the

Union would put Respondent at a competitive disadvantage. Wilson was present at this self-called meeting of Respondent's toolmakers which took place shortly after he had received oral notice of his discharge, effective 2 days after the meeting. Pastore was not present at the meeting as he had been discharged several days earlier.

Both Wilson and Pastore had been employed as tool-and-die makers by Tool Crafters Specialty Company, a tool shop, at its nearby plant at Farmingdale, New York, prior to their employment by Respondent. Both had been laid off by Tool Crafters, a union shop, for assigned reasons of "lack of work."

In July 1964 both Wilson and Pastore received offers of reemployment from Tool Crafters. They informed Toolroom Foreman Ahlgren of these offers and inquired about the "security" or permanence of their jobs as they preferred to remain with Respondent if their jobs there were secure. Ahlgren informed them that he liked them and their work and that they had nothing to worry about with respect to the permanence of their jobs. About the same time Ahlgren told Pastore that he would have a good chance of getting the permanent job of the sole toolmaker assigned to Respondent's eyelet machine department upon the anticipated early retirement of that toolmaker. In the next 3 months and practically up to the time of his layoff, Pastore received numerous assurances or indications from Ahlgren that he could have the eyelet department toolmaker job when it opened, which Pastore considered desirable because it was a one-man job at higher pay not subject to a layoff.

Almost immediately after a copy of the Union's mimeographed appeal to Respondent's toolmakers to organize came into the hands of Respondent in early October 1964, Plant Manager Wilens and Toolroom Foreman Ahlgren began a systematic course of interviewing and interrogating each employee of the toolroom as to whether they had received the same mimeograph from the Union and as to their attitude toward the Union's effort to organize them. It is inferred and found from the entire record that Wilens and Ahlgren in their individual interviews with the toolmakers expressed opposition to the Union and voiced the opinion or implied that if the Union came in, the Company would terminate the employment of some or all of its toolmakers by farming out the Company's tool work. These interrogations with individual toolmakers took place both prior and subsequent to Wilens's calling and addressing Respondent's toolmakers as a group in early October 1964, as above described.

Both Plant Manager Wilens and Toolroom Foreman Ahlgren interrogated toolmakers Wilson and Pastore a number of times prior to their discharge. They were asked whether they had received union cards from the Union but further replied that they did not think a union was necessary at Respondent's factory because working conditions there were satisfactory, but that if a union did come into Respondent's factory and if they had a choice, they would favor a craftsmen's union as against a companywide union. They were not asked and did not disclose that they had become members of the Union. Wilson became a member sometime in September 1964 and Pastore on October 26, 1964.

Plant Manager Wilens, after learning from Wilson and Pastore that their former employer, Tool Crafters, had a union and that the Charging Party in the present case was a sort of offspring of the Tool Crafter's Union, made telephonic inquiry sometime in early October 1964 to the plant manager of Tool Crafters as to how that company was getting along with its union. Shortly thereafter Toolroom Foreman Ahlgren interrogated Wilson in the presence of Pastore and asked him whether he had received a union card from the Union.¹ Upon completion of this interrogation, Ahlgren looked at both Wilson and Pastore and said, "You remember what happened to you at Tool Crafters." It is inferred and found from this remark that Wilens and Ahlgren had learned from the telephone call to Tool Crafters that both Wilson and Pastore had been suspected by Tool Crafters of union activity while working for that company and had been fired by Tool Crafters for that reason.

In the early afternoon of October 30, 1964, Pastore asked Toolroom Foreman Ahlgren about the possibility of an increase in his hourly wage rate. Ahlgren put Pastore off by telling him he had just gotten a raise and reminded him about the possibility that he might succeed to the better paying and more secure job of the heretoforementioned toolmaker assigned to the eyelet department upon the latter's retirement. Within the hour after this conversation, Plant Manager Wilens discharged Pastore. Immediately after his discharge, Pastore spoke about his discharge to Ahlgren who denied responsibility for Pastore's layoff, but in the course of the conversation said: "All this talk about the Guild here, don't think this is just a subject

¹ It is not clear from the record whether this was the first and only interrogation of this nature or one of two or more similar interrogations by Ahlgren of Wilson.

that is in the tool room. Now throughout the shop the other employees are talking about getting their own union. This type of talk has got to stop." When Pastore rejoined that "It is ridiculous thing to lay me off because of my way of thinking," Ahlgren replied that, ". . . it was a cruel world and that if I [Pastore] felt that strong about it, I [Pastore] should go get a job as a union organizer so I wouldn't lose my job all the time."

Wilson was not at work on Friday, October 30, 1964, the day Pastore was laid off. When he returned to work the following Monday, November 2, 1964, and found Pastore was no longer in the employ of the Company, he inquired of Toolroom Foreman Ahlgren the reason for Pastore's discharge and was given the enigmatic answer that Pastore had "lit the fuse." A little later the same morning, Ahlgren called Wilson to his desk and inquired; "Between you and me, how do you feel about the union?" Wilson replied to this that he ". . . believed in the tool and die makers union," that he ". . . thought it would benefit both management and the die maker"; and that he ". . . didn't care for other unions as I had belonged to them before and they didn't really help out anybody."

In the morning of November 4, 1964, Wilson sought out Ahlgren and told him he was under considerable "tension" about the possibility of a layoff and inquired whether he was to be laid off. Ahlgren told him he would have to speak to Plant Manager Wilens about this.

After the noon lunch break that day, Ahlgren chided Wilson for having been seen lurching with a fellow toolroom employee who was known to management to be a long-standing union member and told him "it didn't look good for me to be going out with Aschatz" because "As we know, he is a member of the Guild." On this occasion, Wilson again expressed concern as to whether he was to be laid off and asked Ahlgren point blank whether he was going to be terminated. Ahlgren assured him that he would not be laid off.

Notwithstanding this assurance, Wilson received oral notice of a layoff that same day, effective 2 days later, from Plant Manager Wilens, just prior to the aforementioned meeting of the tool-and-die makers called by Wilens in the late afternoon of the same day, November 4, 1964, for the purpose of notifying them of the Company's intention of reducing the workweek from 50 to 40 hours in the near future.

Wilson had a conversation with Plant Manager Wilens on each of his 2 remaining days of employment. On November 5, his next to his last day of employment at Respondent's, Wilens in a conversation with Wilson told him that ". . . if he was still a die maker he [Wilens] could see the Guild and the reason of it, but he was now in management and he couldn't, you know, he couldn't go along with the Guild now because he was on the other side of the fence, sort of."

On November 6, 1965, Wilson's last day of employment at Respondent's plant, Wilens informed Wilson in speaking of the latter's layoff that ". . . he [Wilens] could no longer fight with the rest of his superiors because it would look like he was fighting for the Guild." At this same conversation, Wilens inquired of Wilson as to how many of Respondent's toolmakers had joined the Union and was told by Wilson that there were three, namely, himself, Pastore, and a third man, the latter being Aschatz, the toolmaker with whom he had had lunch the other day for which he had been criticized by Toolroom Foreman Ahlgren because Aschatz was known to be an avowed union advocate.

Both Wilson and Pastore were given letters of recommendation by Wilens upon the termination of their employment in Respondent's tool shop. The letters stated that each employee ". . . had been a responsible and conscientious employee and has performed satisfactorily in his position as first class Die Maker."

The layoffs of Wilson and Pastore were the first layoffs of tool-and-die maker employees by Respondent since the opening of its factory in or about the year 1951. Pastore was told by Plant Manager Wilens that he had resisted any layoffs because ". . . he [Wilens] wanted to build a reputation throughout the industry for the Staver Company being able to tool up on any job," but had to give way to the wishes of the management group on the matter.

The evidence shows that Pastore and Wilson, the most recently employed tool-and-die workers in Respondent's tool shop, were laid off on the basis of strict seniority, contrary to the recommendations of Toolroom Foreman Ahlgren that two less able toolmakers be let go. General Counsel contends that Respondent deliberately invoked the inauguration of the seniority system of layoffs to reach Pastore and Wilson because of their union sympathies or activities. I find that the Respondent in discharging Pastore and Wilson on the basis of seniority was following established company policy of layoffs based on the least amount of seniority. Although the Company has never had occasion to apply the seniority rule to layoffs of its toolroom employees prior to the layoffs of Pastore and Wilson as they were the first layoffs of

toolroom employees in the 13-year history of Respondent, the record shows that Respondent has consistently followed the seniority rule of layoffs in its production department where its most numerous employees are employed.

Accordingly no credence will be given to General Counsel's theory that Respondent inaugurated the seniority system of layoffs as an instrument to affect the separation of Pastore and Wilson from its payroll for suspected union activities, although it is apparent that the incidental effect of Respondent's established seniority system of layoffs resulted in the discharges of the two alleged Section 8(a)(3) discriminatees, Pastore and Wilson. Similarly, on the other hand, no inference will be made from the fact that Toolroom Foreman Ahlgren wanted to lay off two less competent tool-makers in lieu of Pastore and Wilson that Pastore and Wilson were not laid off for suspected union activities, as the record shows that Ahlgren was not part of the management group of the Company and had no authority to hire or fire, but was required to do what the management group directed. Ahlgren's interest was to maintain efficiency in the toolroom of which he is foreman; the Company's interest insofar as here pertinent, according to the allegations of the complaint, was to prevent the Union from organizing its toolroom.

The record contains a letter of advice, dated November 20, 1964, from a firm of attorneys to Respondent. The letter was introduced in evidence by counsel for General Counsel in support of his theory that Respondent had no established system of layoffs at the time of the discharges of Pastore and Wilson, but deliberately adopted the seniority system in order to reach Pastore and Wilson for layoffs for seeming business reasons. The letter is from the same firm of attorneys of which the attorney who represented the Respondent at the hearing herein is a partner, but was signed and mailed at his direction by one of his associates in the firm.

The letter is addressed to an inquiry from one of Respondent's management group, Andy Young, who was said to have represented in a telephone call to the law firm ". . . that the Company was required, for business reasons, to make layoffs in the tool room" and sought advice ". . . as to how to proceed, stating that on the basis of merit alone two senior employees would have to go—but that if seniority were used two more capable employees with less seniority would have to be laid off."

The letter lends itself to the implication that the layoffs of Pastore and Wilson were solely for economic reasons. This inference has been considered and rejected in the light of a complex of facts and inferences in the record which give rise to contrary conclusions as stated below.

Discussion and Conclusions

The essential issue here is whether Pastore and Wilson were laid off for suspected union activities and sympathies in an effort to prevent unionization of Respondent's toolroom, or for bona fide business reasons, unrelated to the union activities of these two employees. The essence of the various business reasons advanced by Respondent for the layoffs of Pastore and Wilson as set forth in detail above is that their layoffs were compelled by reason of a decline in business through the loss of accounts and increased competition from both domestic and foreign competitors. This assigned underlying reason for the discharges of Pastore and Wilson does not hold up because the record shows conclusively that Respondent's gross sales and net profits for the year 1964 exceeded the Company's gross sales and net profits for 1963, notwithstanding the fact that Pastore and Wilson were hired in 1964 and worked for Respondent for approximately 9 months of that year. The record further shows that there never has been any lack of work for Respondent's tool-and-die makers, as the Company's normal practice is to farm out as much as 25 percent of its requirements for tools and dies to outside tool shops. The discharges here in question were the first in the 13-year history of Respondent's factory, despite the fact that Respondent's toolroom has always operated at a loss. The policy of the Company for years has been to have a tool shop capable of tooling up for any stampings required by its customers. This policy is in large part responsible for the Company's overall financial success over the years.

The record, on the other hand, shows that Pastore and Wilson were laid off in a period coinciding with efforts of the Union to organize Respondent's tool-and-die workers and under circumstances which show conduct on the part of Respondent inconsistent with the rights guaranteed to employees under Section 7 of the Act as implemented by Section 8(a)(1) thereof. This conduct consisting of many acts, as set forth in detail above, manifests a clear intention by Respondent to prevent the Union from getting a foothold in its toolroom, with the layoffs of Pastore and Wilson serving as an excision of suspected union sympathizers and as an implied

warning to remaining employees, whether toolmakers or production workers, as to what may happen to them if they also came under the suspicion of union activity or sympathy.

These acts, among others, commencing with the receipt of information that the Union was seeking to organize its toolroom employees, consisted of: (1) interrogations by the plant manager and toolroom foreman of Respondent's toolmakers, particularly Pastore and Wilson, as to whether they had received cards from the Union and as to their attitude toward the Union, the interrogations being accompanied by expressions of hostility to the Union; (2) the meetings of toolmakers called by the plant manager at which he expressed strong opposition to the Union; (3) the meeting called by the plant manager of toolmakers, after the discharge of Pastore and Wilson, for the express purpose of advising them of the Company's plan in the near future to reduce the workweek from 50 to 40 hours which in view of the Union's then efforts to organize the toolmakers could only be interpreted as an implied threat to reduce the hours of employment if the Union succeeded; (4) the remark made by the plant manager to Pastore that the toolroom was not strictly necessary for the operation of the Company's manufacturing activities as the Respondent could farm out its tool-and-die work which carried the implication that this could or would happen if the toolroom employees permitted themselves to be organized; (5) the admonishment by the toolroom foreman to Pastore and Wilson to "Remember what happened to you at Tool Crafters," their former employer, with its implication that they had been fired by Tool Crafters for union activities and that this was known to Respondent and could also happen at Respondent's; (6) the statement by the toolroom foreman to Pastore that "Union talk" in the shop must stop because ". . . throughout the shop other employees are talking about setting up their own union"; and (7) the criticism leveled by the toolroom foreman on Wilson for having been seen eating with a fellow toolmaker known to be an avowed union member and advocate.

I find and conclude that the interrogations and implied threats, as shown above, of a shutdown of the toolroom or curtailment of its workweek if the toolmakers became unionized constituted unfair labor practices in violation of Section 8(a)(1) of the Act. It is further found and concluded from the evidentiary facts shown above that Respondent terminated the employment of Pastore and Wilson because of their suspected union activities in violation of Section 8(a)(3) and (1) of the Act.

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 the operations of Respondent described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

It having been found that the Respondent engaged in unfair labor practices in violation of Section 8(a)(1) and 8(a)(3) of the Act, it will be recommended that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It will be recommended that Respondent offer employees Carmen Pastore and Donald Wilson immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, and make them whole for any loss of earnings they may have suffered by reason of the discrimination against them, by payment to them of a sum of money equal to that which they would have earned as wages from the date of the discrimination against them to the date of offer of reinstatement, and in a manner consistent with Board policy set forth in *F. W. Woolworth Company*, 90 NLRB 289. Interest on backpay shall be computed in the manner set forth in *Isis Plumbing & Heating Co.*, 138 NLRB 716.

It will also be recommended that the Respondent preserve and, upon request, make available to the Board, payroll and other records to facilitate the computation of backpay.

It will also be recommended, in view of the nature of the unfair labor practices the Respondent has engaged in, that it cease and desist from infringing in any manner upon the rights guaranteed employees by Section 7 of the Act.

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

CONCLUSIONS OF LAW

1. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Tool, Die and Mold Makers Guild, Independent, is a labor organization within the meaning of Section 2(5) of the Act.
3. By interfering with, restraining, and coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act, as found above, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
4. By discharging Carmen Pastore and Donald Wilson to discourage membership in a labor organization, Respondent violated Section 8(a)(3) and (1) of the Act.
5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]

**International Brotherhood of Electrical Workers, Local 953,
AFL-CIO and Erickson Electric Company.** *Case No. 18-CP-44. September 17, 1965*

DECISION AND ORDER

Unfair labor practice charges were filed on October 26, 1964, by Erickson Electric Company against Respondent, International Brotherhood of Electrical Workers, Local 953, AFL-CIO. Thereafter, on November 5, 1964, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 18, issued a complaint and notice of hearing, alleging that Respondent, hereinafter called the Union, had violated Section 8(b)(7)(B) of the National Labor Relations Act, as amended, by picketing Erickson at the construction site of the Memorial Hospital in Menomonie, Wisconsin, for recognition and organizational purposes within 12 months after a valid election had been held pursuant to Section 9(c). On November 12, 1964, Respondent filed an answer denying the commission of any unfair labor practices, and alleging affirmatively that its picketing was for the purpose of advertising to the public that Erickson's employees were employed under substandard working conditions.

On January 18, 1965, the parties entered into a stipulation by which they waived a hearing before a Trial Examiner and the issuance by him of a Trial Examiner's Decision and Recommended Order and agreed to submit the case to the Board for findings of fact, conclusions of law, and an order, based upon a record consisting of the charge, the complaint, the answer, certain correspondence between Respondent and Erickson dated December 18, 22, 28, and 29, 1964, and the stipulation, including the record made at an injunction proceeding in the United States District Court, Western District of Wisconsin, brought pursuant to Section 10(1) of the Act.