

All our employees are free to join, assist, or support the said Truck Drivers Union or any other labor organization.

MONTGOMERY WARD & COMPANY, INC.,
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.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 881 U.S. Courthouse and Federal Office Building, 219 South Dearborn Street, Chicago, Illinois 60604, Telephone 828-7570.

Sylgab Steel & Wire Corp. and Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 29-CA-191. December 21, 1966

DECISION AND ORDER

On February 9, 1966, Trial Examiner Samuel Ross issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. He further found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended dismissal as to them. Thereafter the General Counsel filed exceptions and a supporting brief.¹ The Respondent filed cross-exceptions and a supporting brief.

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 this case 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 no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions, cross-exceptions and briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, as modified herein.

1. The Trial Examiner found, and we agree, that Respondent by the conduct of its foreman, J. Gimmi, and statements of its president,

¹ A letter adopting and relying upon the exceptions and brief of the General Counsel was filed by the Charging Party.

Carroll, all fully set forth in the Trial Examiner's Decision, violated Section 8(a)(1) of the Act.

2. We also agree with the Trial Examiner's finding that the General Counsel failed to establish by a preponderance of the evidence that the discharges of the Mastrangelo brothers were unlawfully motivated.

3. The Trial Examiner also found that the General Counsel failed to establish that Respondent's refusal to bargain with the Union was motivated either by a rejection of the collective-bargaining principle or by a desire to gain time within which to dissipate the Union's majority. With this finding we disagree.

As fully set forth in the Trial Examiner's Decision, the Union's letter of March 18 requesting recognition was received by the Respondent on March 22, 1965, together with a copy of the Union's petition to the Board which had been filed on March 19, 1965.² Although the Union did not represent a majority of the employees on March 18, its demand, as the Trial Examiner correctly found, was a continuing one, and by March 23, 1965, the Union did achieve majority status.

The record shows that Respondent's foreman, Gimmi, upon being shown the Union's letter, immediately commenced interrogating employees on March 22 and 23, 1965. Gimmi on these 2 days interviewed over one half of the employees in the plant. As to such interrogations by the Respondent's only foreman, who had authority to hire and fire employees without consultation with his supervisors, the Trial Examiner found, and correctly so, that they were systematic in design and purpose so as to ascertain the employees' union sympathies and were not casual in nature. Further, as the Trial Examiner found in the light of an employee's complaint to Respondent's vice president, D'Ambrosio, Gimmi's interrogations were interpreted by the employees as an attempt by him to discourage union membership. While the record shows that several days after the employee complaint to D'Ambrosio, Gimmi ceased his interrogations upon instructions to do so, there is nothing in the record to show that the Respondent ever openly disavowed to the employees Gimmi's actions. Concurrent with Gimmi's interviews with the plant employees on March 22, 1965, Gimmi conducted a 2-hour interview with employee Robert Pavone, at Pavone's home. Gimmi's interview, accompanied by expressions of hostility to the Union, contained threats of discharge to Pavone if the latter persisted in supporting the Union. In addition, in the same interview, Gimmi threatened that if the Union was successful, there would be layoffs of other

² The Respondent, as the Trial Examiner found, never replied to the Union's demand.

employees at the plant by expanding Respondent's Puerto Rico operation.

On March 26, 1965, Respondent's president, William J. Carroll, signed a consent-election agreement at the Board's Regional Office for an expedited election to be held on April 2; and later on the same day, Carroll assembled all employees at the plant and delivered a speech about the pending election. In this speech Carroll attempted to place the onus upon the Union for Respondent's inability to grant raises to the employees at that time. Further, Carroll stated that another company he directs, Carroll-McCreery, after organization by another Teamster Local, drastically reduced its complement of employees. Carroll gave no explanation of the reason for the reduction, thus subtly implying, as found by the Trial Examiner, that a like reduction in employment would occur in Respondent's plant if the Union won the election.

It is our conclusion, on the basis of the foregoing and the entire record, that the illegal acts which Foreman Gimmi engaged in, immediately following receipt of the Union's recognition demand and notice of its representation petition to the Board for an election, had for their singular purpose the coercing of employees from entering into or adhering to union membership. Because Gimmi's coercive interrogations of the employees clearly went beyond a simple effort to verify the Union's majority, they cannot, contrary to the Trial Examiner's apparent view of them, furnish support for an inference of good faith on the part of Respondent. Further, in our opinion, the illegal acts of Gimmi on March 22 and 23, coupled with those of Respondent's president, Carroll, which followed on March 26 immediately after Respondent signed a consent agreement to an election to be held on April 2, clearly establish a purpose to undermine the Union by unlawful means so that the Union would lose the election.³

Accordingly, we find, contrary to the Trial Examiner, that the Respondent's refusal to bargain with the Union was motivated by a rejection of the collective-bargaining principle and a desire to gain time within which to dissipate the Union's membership, in violation of Section 8(a)(5) and (1) of the Act.⁴ In these circumstances, only

³ We disagree with the Trial Examiner's apparent consideration of Gimmi's unlawful conduct and that of Carroll as separate and unrelated for the purpose of determining whether there was a violation of Section 8(a)(5). Such determination requires a consideration of the Respondent's entire course of conduct, as a whole, particularly where, as here, the unlawful conduct of Gimmi and that of Carroll were not only so close in time to one another but also to the election.

⁴ *Joy Silk Mills, Inc.*, 85 NLRB 1263, *Bernel Foam Products Co.*, 146 NLRB 1277; *Irving Air Chute Company*, 149 NLRB 627.

a bargaining order can adequately restore as nearly as possible the situation which would have existed but for the Respondent's unfair labor practices.⁵ Accordingly, we shall order Respondent, upon request, to bargain with the Union in the unit herein found appropriate.

In view of our findings above, we shall modify the Trial Examiner's Conclusions of Law and Recommended Order to accord with such findings.

The Trial Examiner's Conclusions of Law are modified as follows:

1. Conclusion of Law 3 is renumbered as 6.

Insert the following conclusions as numbered:

"3. All production, maintenance, shipping and receiving employees, drivers, and mechanics employed by the Respondent at its Corona, New York, plant, exclusive of all office clerical, professional and sales employees, watchmen, guards, and supervisors as defined in Section 2(11) of the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act."

"4. On and at all times since March 23, 1965, Truck Drivers Local Union No. 807, has been, and is now, the exclusive representative for the purpose of collective bargaining of all employees in the appropriate unit described in 3 above, within the meaning of Section 9(a) of the Act."

"5. The Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act by the following conduct:

"(a) By refusing on March 23, 1965, and at all times since, to bargain with Truck Drivers Local Union No. 807."

The Trial Examiner's Recommended Order is modified by renumbering subparagraph (c) as (d) and by adding a new subparagraph (c) to paragraph 1 to read as follows:

"(c) Refusing to bargain collectively with Truck Drivers Local No. 807 as the collective-bargaining representative of all employees in the appropriate unit."

Paragraph 2 is amended by adding a new subparagraph (a), and renumbering subparagraphs (a) and (b) and (c), the new subparagraph (a) to read as follows:

"(a) Upon request, bargain collectively with Truck Drivers Local No. 807, as exclusive representative of the employees in the appropriate unit with regard to rates of pay, wages, hours of employment, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement."

⁵ *Bernel Foam Products, Inc., supra; Irving Air Chute Company, Inc., supra.* See also *Scobell Chemical Company v. N.L.R.B.*, 267 F.2d 922, 925 (C.A. 2).

The notice attached to the Trial Examiner's Decision as an Appendix is amended by adding the following paragraph immediately before the third paragraph of such notice:

WE WILL NOT refuse to bargain collectively with Truck Drivers Local No. 807, as the exclusive representative of all employees in the appropriate unit described below.

The following two paragraphs are added immediately before the last paragraph of the said notice:

WE WILL bargain collectively, upon request, with the above-named Union as exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, wages, hours of employment, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production, maintenance, shipping and receiving employees, drivers, and mechanics employed by us at our plant in Corona, New York, excluding all office clerical, professional and sales employees, watchmen, guards, and supervisors as defined in the Act.

[The Board adopted the 'Trial Examiner's Recommended Order.]

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

Upon a charge filed on March 24, 1965, and amended on April 9, 1965, by Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (herein called the Union), the General Counsel of the National Labor Relations Board issued a complaint on June 21, 1965, which alleges that Sylgab Steel & Wire Corp. (herein called the Respondent or the Company), engaged in unfair labor practices within the meaning of Sections 8(a)(1), (3), and (5) and 2 (6) and (7) of the National Labor Relations Act, as amended. The Company filed an answer denying the commission of unfair labor practices. A hearing was held in Brooklyn, New York, on August 16, 17, and 18, 1965, before Trial Examiner Samuel Ross. Upon the entire record in the case and my observation of the witnesses and their demeanor, and after due consideration of the briefs filed on behalf of the General Counsel and the Company, I make the following:

FINDINGS OF FACT

I. COMMERCE

The Company, a New York corporation, is engaged at its principal place of business at Corona, in the Borough of Queens, city and State of New York, in the manufacture, sale, and distribution of iron bar supports for reinforced concrete. During the past year, a representative period, the Company purchased and caused to be delivered to its plant in New York from places outside the State, goods and materials valued in excess of \$50,000, and sold and delivered products valued in excess of that amount from its plant in New York to places outside the said State. Upon the foregoing admitted facts it is found that the Company is engaged in commerce and in operations affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

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

III. THE UNFAIR LABOR PRACTICES

A. *The Union's organization of Respondent's employees*

At the times material to this proceeding the Respondent employed 20 persons in the following unit which was stipulated by the parties as appropriate for the purposes of collective bargaining:

All production, maintenance, shipping and receiving employees, drivers and mechanics employed by the Respondent at its Corona plant, exclusive of all office clerical, professional and sales employees, watchmen, guards, and supervisors as defined in Section 2(11) of the Act.

At 7 a.m. on March 18, 1965,¹ pursuant to prior arrangements made by two of Respondent's employees,² Union Organizer Louis Schneir visited the Company's plant. At the time of Schneir's visit, seven employees were present in the plant,³ four of whom had been working on the night shift⁴ which ends at 8 a.m. The night shift stopped working while Schneir explained to the seven employees the benefits to be derived from membership in the Union and answered their questions. All seven then signed union authorization cards, Schneir left the plant, and the night shift resumed working. None of Respondent's supervisors or officials were in the plant during Schneir's visit.

Although the Union did not then represent a majority of the Respondent's employees, upon leaving the plant, Schneir returned to his office and prepared and mailed a letter to the Company which stated that the Respondent's "spot welders, welders, machine operators, truckdrivers, shipping and receiving clerks and mechanics . . . are now members of this Local Union," that the employees had "designated [the Union] as their bargaining representative in all matters pertaining to wages, hours and working conditions," and requested "an opportunity to meet with [Respondent] at [its] earliest convenience to discuss the subject matter." The Respondent never replied to the letter. On the same day March 18, Schneir also notified the Union's attorneys to file a petition with the Board for certification as the representative of Respondent's employees in the unit described above. Such a petition was filed by the Union on March 19.⁵

On March 23, a second union meeting of Respondent's employees was held at the home of Robert Pavone, the Company's only truckdriver. This meeting was attended by about 15 employees. After an organizing talk by Union Agent Schneir and a question-and-answer period, five more employees signed cards.⁶ In addition, the cards of two additional employees which had been signed in the plant on March 22⁷ were delivered at the meeting by Pavone to Schneir. Thus, by March 23, the Union had 14 signed authorization cards out of 20 employees in the stipulated appropriate unit.

Thereafter, in the Board consent election on April 2, the Union received 7 votes, 10 votes were cast against the Union, and 3 ballots were challenged. On April 9 the Union filed objections to the Respondent's conduct affecting the results of the election. On June 17 the Regional Director issued his Report on Objections finding merit in at least some of the objections and set aside the election. However, in view of the instant pending case, a new election was not directed.

B. *The discharge of the Mastrangelo brothers*

At the time of their discharge, Jack Mastrangelo had worked for Respondent for 12 years, and Nicholas for 4 years. As noted above, the two Mastrangelo brothers signed union authorization cards in the plant on the morning of March 18.

¹ All dates hereafter refer to 1965 unless otherwise specified.

² Robert Pavone and Victor Babich

³ Robert Pavone, Anthony Pavone, Victor Babich, Attilio DiPilla, Germano Rubino, Nicholas Mastrangelo, and Jack Mastrangelo.

⁴ DiPilla, Rubino, and the two Mastrangelo brothers.

⁵ Case 29-RC-111.

⁶ Frank A. Ciro, Patsy Colangelo, Henry Francis Benizzi, Jr., Antonio Tollis, and Raymond Holbrook.

⁷ Nicholas P. Vittore and Andrew Tifinger.

At 8 a.m. on March 19, upon finishing work on the night shift, these two employees were notified by Jerry Gimmi, Respondent's plant foreman, that they were being discharged because "They are not satisfied with your work in this office." According to Jack Mastrangelo, Foreman Gimmi also said on this occasion, "Anyway we don't want a union." Foreman Gimmi denied that he made any reference to a union in his terminal conversation with these employees, and he also denied that he had any knowledge of any union affiliation or interest on their part. The issue of whether the Mastrangelo brothers were discharged to discourage interest in the Union, or for cause, will be considered and determined *infra*.

C. *The interrogation of employees by Foreman Gimmi*

On March 22, Respondent received the Union's letter of March 18, and notice of the filing of its petition to the Board for certification. The Union's letter was read by Foreman Gimmi that morning. Thereupon, on that day and the day following, Gimmi interrogated about half of the employees in the plant (including his three brothers) regarding their knowledge of the Union.

The only testimony in respect to this interrogation was adduced during the cross-examination by the General Counsel of Foreman Gimmi after the latter had testified for the Respondent. Gimmi at first testified that he only asked the employees "whether they had heard about the Union." However, he later admitted that "in fact," he asked the employees "whether the union represented them." For the most part, Gimmi received responses to his inquiries, either that the employee knew nothing about the Union, or "that they haven't signed up."

About March 23 or 24, employee Victor Babich complained to Respondent's vice president, Ralph D'Ambrosio that Foreman Gimmi "was asking and trying to discourage the men from joining the Union," and threatened "to protest to the Labor Board." D'Ambrosio replied, "that he would check on it." A day or so later, D'Ambrosio told Foreman Gimmi "to stop talking to the employees about the Union," and the latter ceased doing so.

D. *Further interrogation of and threats to employee Robert Pavone by Foreman Gimmi*

The Respondent's only truckdriver, Robert Pavone, is a brother-in-law of Foreman Gimmi. Prior to the events in issue herein, Pavone on occasion had experienced difficulty in delivering Respondent's products to construction sites which employed union labor, and had been "chased" from such jobs by the union steward when he was unable to produce "a union book." As previously noted, Pavone was one of the two employees who initiated the Union's organizing drive at the Company's plant, and he signed an authorization card on March 18.

On March 22 after work Foreman Gimmi visited Pavone's house for the admitted purpose of learning from Pavone what he knew about the Union and its letter of March 18. Gimmi assumed that Pavone would know something about the letter because it was from an organization which represented truckdrivers. Gimmi remained at Pavone's house for about 2 hours, and concededly discussed the Union with Pavone.

According to the mutually corroborative and credited testimony of Pavone and his wife (who was present throughout the conversation), Gimmi started the conversation by saying, "Bob, what's going on . . . with this union business. If you think there is a union coming in, you are highly mistaken. There are certain men in the shop that I can get at." Gimmi then successively mentioned by name 15 of the Respondent's employees in the plant, commented regarding the union or antiunion predilections of each, and about his ability to change the views of some of the pro-union employees. For example, in respect to Henry Benizzi, Sr., Gimmi stated that although he was "a loud mouth [and] makes a lot of protests, for money he will do anything." Gimmi then said, "Bob, I am warning you that if the union comes in, which I know it's [sic] not, then we are going to lay off everyone in the shop. You know we have a plant in Puerto Rico. We have two men working there now. We will hire ten more men, because labor is very cheap out there, and make production and ship it back here and still stay in business." Gimmi then offered to permit Pavone alone "to join the union," and to pay him the union rate of \$3.10 and later \$3.20 per hour. He suggested that Pavone think about it. Gimmi also threatened, that Pavone's "job was at stake," that the Respondent would sell its truck and use Tony Serio, an independent trucker who performed some of Respondent's deliveries, to do all its trucking work, and that "win or lose, if the Union comes in [Pavone] was number 1 on the list to go."

Gimmi left Pavone's home with the admonition that Pavone "think about" what Gimmi had told him. He telephoned Pavone later that evening about 9:30 p.m. and asked Pavone what he had decided. Pavone replied that he had already given Gimmi his answer. Gimmi then said, "Now I know what I have to do." Pavone replied that if Gimmi "endanger[ed]" his job in any way, Pavone would notify the "Labor Department about this incident."⁸

In respect to the foregoing conversation with Pavone, Foreman Gimmi's version conflicted substantially with that given by Pavone and his wife. For the reasons hereinafter stated, Gimmi's testimony in this regard is considered as generally unworthy of reliance and is credited only to the extent that it accords with that of the Pavones, or is an admission against interest.

Gimmi's testimony was frequently evasive and lacking in candor. He quite apparently was reluctant to admit anything which he regarded as possibly adverse to Respondent's interest, and on several occasions it was necessary to confront him with his affidavit, given before the hearing to a Board agent, before he would do so. Gimmi's testimony on several occasions also was self-contradictory. These conclusions are based, *inter alia*, on the following examples of Gimmi's testimony:

(a) When asked whether he went to Pavone's house "to ask him about the Union," Gimmi replied that he went for the "combination" purpose of discussing a raise which Pavone had requested a few days earlier, and "to talk to him about the Union." However, Gimmi earlier had testified that at 4 p.m. that same afternoon, he had told Pavone in the plant that although he had tried, he had been unsuccessful in his attempt to get a raise for Pavone. On further cross-examination, Gimmi admitted that he had no further information regarding the requested raise to convey to Pavone that evening. It is therefore quite obvious to me that contrary to Gimmi's testimony regarding his "combination" purpose for visiting Pavone, his only real purpose was to discuss the Union with him.

(b) Foreman Gimmi denied that in the conversation at Pavone's house, he offered to permit Pavone alone to join the Union and to get him a raise. However, Gimmi conceded that such an offer was made to Pavone "a few months back" in order to eliminate the difficulties which had been experienced when Pavone attempted to deliver Respondent's products to union construction sites. In the light of Pavone's active participation in inviting the Union to organize Respondent's employees, it is quite apparent that Pavone was not opposed to union membership, and would have accepted Gimmi's earlier offer (if one had been made) in order to secure the raise which he admittedly was seeking. Moreover, the earlier alleged offer of a raise to Pavone is wholly inconsistent with Gimmi's asserted inability to get him one currently. Under the circumstances, Gimmi's testimony in this regard is regarded as self-contradictory.

For the foregoing reasons, as well as the mutually corroborative and persuasive testimony of the Pavones to the contrary, Gimmi's version of their conversation is not credited.

E. Promises and threats by the Respondent's president

On March 26, after a conference at the Board's Regional Office in which Respondent signed a consent-election agreement, its president, William J. Carroll assembled all the employees in the plant at the end of the day shift, and delivered a speech about the impending election.⁹ There is no serious conflict regarding what was said by Carroll.

According to the credited testimony of employee Victor Babich, Carroll told the employees that he had been notified that a petition for an election had been filed, that he had visited the Board's office, and that he "was greatly embarrassed about this." Carroll further stated that he had received information that some of the employees were against the Union, and that others were not too sure regarding how they stood on the question, and that he felt conscience bound to state the Company's views. Carroll told the employees that he knew they were "dissatisfied," "that they were up for raises," but that because of a "quirk" in the law, he was not at liberty "to reveal them."¹⁰ Carroll also admittedly said that "the Union makes a lot of

⁸ This obviously was an erroneous reference to the Board.

⁹ At the outset, employees were told by Carroll that they were on their own time, and that their attendance was not obligatory. However, none of the employees left.

¹⁰ In respect to wage raises, Foreman Gimmi admitted that Carroll said, "we were going over the payroll and we were looking to give the employees a raise before all this [the union demand and petition for election] did come up."

promises," but that "the only way they could be fulfilled was if the Company agreed to them." Carroll further told the employees that the Carroll-McCreery Company, of which he also is president, had over 30 employees before they were organized by the Teamsters, but that since then, they only had 4 men working in the plant. He concluded his speech by saying that the men were free to vote for or against the Union, that the election would be secret, and that no one would know how they voted.

F. Concluding findings

1. In respect to the discharge of the Mastrangelo brothers

As previously noted, Jack Mastrangelo had worked for Respondent for 12 years, and Nicholas Mastrangelo for 4 years, at the time of their discharge one day after they signed authorization cards for the Union. At the time of their dismissals, they were told by Foreman Gimmi that the reason for their termination was their unsatisfactory work. According to Jack Mastrangelo, Gimmi also said, "Anyway we don't want a union," a statement which Gimmi denied making. For the reasons hereinafter stated, Jack Mastrangelo's testimony in this respect is not credited.

Jack Mastrangelo admitted that at the time of his discharge, he attached no significance to Gimmi's statement quoted above. On the contrary, Jack Mastrangelo ascribed his discharge and that of his brother to reprisal by the Respondent for their mother's compensation claim against the Company, based on the death of their father who also had worked for the Company. He so told his brother Nicholas at that time. It is difficult to believe that if Gimmi had made the quoted statement which clearly indicated that their dismissal was attributable partly to their union membership, Mastrangelo would have attached no significance thereto.

Additional reasons exist for not crediting Jack Mastrangelo in this respect. There is no testimony in the record from which an inference reasonably can be made that Gimmi knew either that the Mastrangelo brothers had signed union cards, or even that the Union was engaged in organizing Respondent's employees. As previously noted, no supervisors were in the plant when the two brothers and the other five employees signed union cards. Furthermore, there is no testimony that any of the seven who signed, or anyone else, told Gimmi or any plant official that they had done so.¹¹ Finally, Gimmi's conduct on March 22 and 23, immediately after receiving notice of the Union's advent in the plant, of interrogating employees about the Union, strongly suggests that he had no prior knowledge of union activity in the plant. All of the foregoing compels the conclusion that Gimmi was not aware of the Union's advent in the plant when the Mastrangelo brothers were discharged, and that Jack Mastrangelo's testimony regarding Gimmi's reference to a union in their terminal conversation is not worthy of credence.

Foreman Gimmi testified that the Mastrangelo brothers had been unsatisfactory employees for many years and that other employees had frequently complained that they did not want to work with them.¹² Gimmi ascribed his failure to discharge them prior to the date in question, to his respect for their father, a valued and respected employee of the Company for many years, and to his sympathy for the two brothers because of their father's death. According to Gimmi, his decision to discharge the Mastrangelo brothers when he did, was made because two skilled employees, Attilio DiPilla and Germano Rubino, who worked with them on the night shift, had complained on the morning of March 18 that they could no longer work with them because they were not cooperating and bearing their share of the team load. Both DiPilla and Rubino corroborated Gimmi's testimony that they had complained on several occasions to Gimmi about working with the Mastrangelo brothers. They testified in substance that the two brothers did not cooperate with them in handling the output of the machines which each of them operated, and left the burden of the work to them. They also testified that they had requested Gimmi to "change" their "helpers." However, although quite obviously uncertain of the last date when such complaint was made, both DiPilla and Rubino testified that it was not on March 18, as Gimmi had testified, but several days before that.¹³

The General Counsel has the burden of establishing "by a preponderance of the testimony" that the discharge of the Mastrangelo brothers was motivated by anti-union considerations. Aside from the coincidence of the timing of their discharge just after they signed cards for the Union, there is nothing in the record to support

¹¹ Those employees who testified denied that they told Gimmi about signing cards.

¹² The employees work in teams of two

¹³ In his affidavit to the Board, Rubino gave the date as "perhaps near March 10."

such a conclusion. Neither of these two brothers had anything to do with the initiation of the Union's organizing effort, and at best they were just two of seven employees who signed union cards. It is thus unlikely that they would have been selected for discharge if discouragement of the union activities of its employees was Respondent's motivation. However, most importantly, there is not a scintilla of evidence upon which knowledge by the Respondent of the interest of these two employees in the Union can either be found or reasonably inferred. Absent such evidence, a finding that they were discharged for antiunion purposes cannot be supported, at least not on the record herein.

Accordingly, notwithstanding the suspicions raised by the sudden discharge of two long term employees one day after they signed cards for the Union, it is found that the General Counsel has not sustained his burden of proof on this issue. It will therefore be recommended the complaint in this respect be dismissed.

2. In respect to Gimmi's conversation with Pavone

Gimmi's inquiry at Pavone's house about the Union, accompanied as it was by expressions of hostility to the Union and threats of economic reprisal to Pavone if the latter persisted in supporting the Union's campaign, clearly was coercive and constituted interference, restraint, and coercion within the meaning of the Act¹⁴. Accordingly, it is found that thereby the Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

In addition, Gimmi's threat that Respondent would lay off employees at its Corona plant and expand the Company's operations in Puerto Rico if the Union came in, his offer to let Pavone alone join the Union and give him a raise if he desisted from assisting the Union, and his threats to Pavone, implicit in the statements that Pavone's job was at stake, that all of Respondent's deliveries would be performed by an outside contractor, and that Pavone was number one to go whether the Union won or lost, all quite clearly constituted interference with, and restraint and coercion of employees in the exercise of rights guaranteed by the Act. It is therefore found that by such threats and promises of Gimmi, Respondent further engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.¹⁵

3. In respect to the general interrogation of employees by Foreman Gimmi

As previously noted, upon receipt of the Union's letter, Foreman Gimmi, on March 22 and 23, asked about half of the employees in the plant "whether they had heard about the Union," and "whether the Union represented them." Gimmi testified that he engaged in the said interrogation because the Union was a matter which affected everyone in the shop, he wanted to know what was going on, and he didn't believe that a majority of the employees had signed for the Union. According to Gimmi, the employees whom he named as having so interrogated (none of whom had yet signed cards for the Union) for the most part responded that they knew nothing about the Union, or that they had not signed for the Union. However, as a consequence of said interrogation, Gimmi, who prior thereto had no knowledge of the Union's organizational efforts at the plant, was able to comment to his brother-in-law Robert Pavone, regarding the prounion, antiunion, or neutral predilections of 15 named employees in the plant. Moreover, the said interrogation admittedly continued on March 23 after the coercive threats to Pavone of economic reprisals to himself and other employees if the Union's campaign was successful. Moreover, the interrogation provoked a complaint by employee Babich to Vice President D'Ambrosio that "Gimmi was asking and trying to discourage the men from joining the Union."

The complaint alleges that by Gimmi's interrogation, Respondent interfered with, restrained, and coerced employees in the exercise of their rights guaranteed by Section 7 of the Act. Interrogation of employees by their employer about union matters is not *per se* a violation of the Act.¹⁶ Whether such interrogation tends to interfere with, restrain, or coerce employees in the exercise of their organizational rights depends on the facts of each case. Certain factors assist in determining whether or not the interrogation is coercive and unlawful: (1) the background, particularly as

¹⁴ *Cannon Electric Company*, 151 NLRB 1465; *Bourne Co v NLRB*, 332 F.2d 47, 48 (C.A. 2).

¹⁵ *Id.*

¹⁶ *Blue Flash Express, Inc.*, 109 NLRB 591

it relates to the employer's hostility to the union; (2) the nature of the information sought, especially where it appears designed to permit ascertainment of the identity of the employees and their support of the union; (3) the identity of the questioner; (4) the place and method of interrogation; and (5) the truthfulness of the response.¹⁷

Viewed in the light of these factors, it is concluded that the interrogation was coercive in nature. (1) In the light of the threats made by Foreman Gimmi to Pavone of economic consequences to Pavone and other employees if the Union won, the interrogation must be viewed as having occurred in a context of strong antipathy by the Respondent toward the Union, which Respondent publicized to its employees. (2) The interrogation was directed at ascertaining the union sympathies of the employees who were interrogated, and in the light of Gimmi's statements to Pavone, quite apparently succeeded in supplying Respondent with that information.¹⁸ (3) The management representative who engaged in the interrogation was the Respondent's only foreman who had authority, without consultation with his superiors, to hire and fire employees. (4) In view of the systematic design and purpose on the part of Gimmi to ascertain the employees' union sympathies, the interrogations cannot be regarded as of a casual nature. Moreover, in light of employee Babich's complaint to Vice President D'Ambrosio, the interrogations were interpreted by the employees as an attempt to discourage union membership. On the basis of the foregoing evidence and considerations, it is concluded and found that the interrogation of employees regarding the Union by Foreman Gimmi on March 22 and 23 constituted interference, restraint, and coercion within the meaning of Section 8(a)(1) of the Act.

4. In respect to President Carroll's speech

As found above, in a speech to the Respondent's employees assembled for the purpose of hearing him, Carroll expressed his objection to the representation of the employees by the Union, and told them *inter alia* that wage increases had been contemplated, but because of a "quirk" in the law, he was not able to reveal what they were. In the course of his speech Carroll also told the employees that another company, of which he also was president, had 35 employees before it was organized by the Union, and now were down to 4 employees.

Carroll's statement in respect to wage raises which were contemplated but could not be revealed because of the law, quite apparently referred to the alleged inability of the Respondent to grant such increases during the pendency of the Union's petition. As such, whether or not legally correct, this statement constituted an attempt to place the onus on the Union for Respondent's alleged inability to grant a raise, and thereby to discourage the employees from supporting the Union in the impending election. At the hearing, the General Counsel contended that this statement was an implied promise of benefits. However, when his attention was directed to the absence of an allegation in the complaint that Respondent had violated the Act by promising benefits to discourage union affiliation, the General Counsel said, "I will withdraw that part of it then." President Carroll was not specifically asked (when he testified) if he made the above statement, and it therefore cannot be said that the matter has been fully litigated. Accordingly, in the absence of any applicable allegation in the complaint, no finding of violation of Section 8(a)(1) of the Act will be predicated on this statement.

Carroll's bare statement, that after organization by the Union, employment in another company which he directs as drastically reduced, was in no way explained. Thus, he did not say that the reduction in employment in the other company was caused by inordinate union demands which rendered the other company noncompetitive, nor did he furnish any other explanation for the reduction in employment. In view of the absence of elucidating explanation, the statement quite apparently was a subtle threat that a like reduction in employment would occur in the Respondent's plant should the Union win the election. The statement therefore constituted interference, restraint, and coercion of the rights of employees guaranteed by the Act, and thereby the Respondent engaged in further unfair labor practices within the meaning of Section 8(a)(11).

¹⁷ *Cannon Electric Company, supra; Bourne v. N.L.R.B., supra.*

¹⁸ In this regard it should also be noted that President Carroll in his speech to all the employees, stated *inter alia*, that he had "received information regarding the men in the plant . . . that some of them were against the union . . . [and] others weren't too sure." [Emphasis supplied.]

5. In respect to the Respondent's alleged refusal in good faith to recognize and bargain with the Union

The complaint alleges that since March 23, the Union has been the majority representative of Respondent's employees in a unit appropriate for collective-bargaining purposes, and that the Respondent has refused to recognize and bargain with the Union as such representative. Relying on Board decisions such as *Joy Silk Mills, Inc.*,¹⁹ *Bernel Foam Products Co., Inc.*,²⁰ and *Irving Air Chute Company, Inc.*,²¹ the General Counsel contends that the Respondent's refusal to bargain with the Union was not motivated by any good-faith doubt regarding the Union's majority status, but on a "bad-faith" desire to gain time within which to undermine the Union's support in the forthcoming election, "clearly shown by the [unlawful] activities of its supervisor Gimmi and President Carroll's speech during the pre-election period." The Respondent, on the other hand, contends that no violation of Section 8(a)(5) has been proven because: (a) the Union's letter of March 18 "is not a clear and unequivocal demand for bargaining by the Union, as is required"; (b) the Union did not represent a majority of the employees on the "crucial" date when the Union's letter was received by Respondent on March 22; (c) the Union never represented a majority of the employees; and (d) even if it did, the Respondent's conduct "did not amount to a refusal to bargain." These contentions will be considered *seriatim*.

a. *The sufficiency of the Union's letter as a bargaining demand*

The Board has said:²²

It is now well established that, absent special circumstances not present here, a prerequisite to a finding of a refusal to bargain by an employer is a clear and unequivocal demand for bargaining by the union.

In this case, the Union's letter stated that the Respondent's employees "are now members of this Local Union," that the employees had "designated [the Union] as their bargaining representative in all matters pertaining to wages, hours and working conditions," and that the Union's representative would appreciate a meeting at the Respondent's earliest convenience "to discuss the subject matter." In context, "the subject matter" quite clearly referred to "the wages, hours and working conditions" of the Respondent's employees. It is therefore found that the letter constituted "a clear and unequivocal" request for bargaining by the Union.

b. *The Union's majority status*

On March 18, 7 of the Respondent's 20 employees in the stipulated appropriate unit signed cards designating the Union as their representative. As found above, two of the employees who signed cards were discharged by Respondent on March 19, and these terminations were not shown to have been motivated by anti-union considerations. Accordingly, on March 22 when Respondent received the Union's demand for bargaining, the Union represented only 5 of the 18 remaining employees in the unit, obviously not a majority. However, on the same day that Respondent received the Union's bargaining demand, it also received notice that the Union had filed a petition with the Board for certification as the representative of Respondent's employees. Under the circumstances, the Union's bargaining demand quite obviously was, and was known by the Respondent to be, a continuing one.²³ Moreover, by the following evening of March 23, seven more employees had signed union cards, and thus the Union had authorizations to represent 12 of the 18 employees in the unit. Accordingly, in the light of the continuing nature of the

¹⁹ 85 NLRB 1263, *enfd.* as modified on other grounds 185 F.2d 732 (C.A.D.C.), cert. denied 341 U.S. 914

²⁰ 146 NLRB 1277.

²¹ 149 NLRB 627.

²² *Wafford Cabinet Company*, 95 NLRB 1407, 1408-09

²³ *American Compressed Steel Corporation*, 146 NLRB 1463, 1470-71; *Henry Spen & Company, Inc.*, 150 NLRB 138; *Benson Veneer Company, Inc.*, 156 NLRB 782; *Scobell Chemical Company, Inc v. N L R. B.*, 267 F.2d 922 (C.A. 2).

Union's bargaining demand, its lack of majority status on the "critical" date of March 22 is not dispositive of the issue of whether the Respondent refused in "bad faith" to recognize and bargain with the Union after March 23, the date charged in the complaint.

The Respondent's next contention, that the Union at no time represented a majority of its employees, is based on its assertion that four of the cards "should not be counted." Specifically the Respondent asserts that the cards of Patsy Colangelo, Antonio Tollis, Germano Rubino, and Attilio DiPilla do not represent valid designations of the Union as their representative because, the three first named employees cannot read English, the cards were not read to them, all four of the cards were partly filled out by other persons, and the testimony of these four employees "showed a total confusion as to the meaning of the card."

All the cards used by the Union in this organizational campaign stated in bold type at the top, "APPLICATION FOR MEMBERSHIP." The front of the card then provided space for the name and address of the person who was applying, his date of birth, social security number, and the name and address of his employer. The reverse side of the card read as follows:

Were you ever a member of Local Union 807 of the I. B. of T.—

I hereby agree that TRUCK DRIVERS UNION LOCAL No. 807 shall be my bargaining agent in all matters pertaining to wages, hours and working conditions.

I hereby make application for membership in TRUCK DRIVERS UNION LOCAL No. 807 and consent and agree, if elected, to be bound by its laws, both general and local.

I further agree to make every effort to attend meetings and will pay all dues and assessments levied in accordance with the I. B. of T. C. & H. Laws. It is understood that should it be hereafter discovered I have made any misstatements as to my qualification for membership that I be barred from all benefits provided by this Union.

Initiation Forfeited If Not Paid In Full Within 30 Days

Sign Here _____

Date Application Signed _____

Patsy Colangelo, after admitting that he understood English "a little bit" testified without an interpreter. The nature of his responses disclosed that he comprehended the nature of the questions which were asked of him. Colangelo testified that employee Pavone told him at the union meeting on March 23, "to sign this card, present to the Labor Board, going to protect us in case the boss want to fire us, somebody not get fired." The front side of the card was filled in for Colangelo by Nick Vittore, a fellow employee. Colangelo denied that he understood that by signing the card, he was "becoming a member of" the Union, but his denial is not credited for the following reasons: Colangelo's affidavit, which admittedly was read to him by the Board's agent before Colangelo swore to it, states, "I voluntarily and of my own free will signed a card to become a member of Local 807, IBT, to have them represent me in collective bargaining." Moreover, Robert Pavone credibly testified that he told Colangelo that "this was a card to join a Union." In the light of this record it is found that no misrepresentation was made to secure Colangelo's signature to the card, and that it was a valid designation of the Union as his representative in collective bargaining.

Antonio Tollis also testified without an interpreter after he admitted that he understood English "a little bit" and appeared to comprehend the questions put to him. Tollis identified his signature to the Union's card, and testified that the other information was put on the card by Andrew Tifinger, a fellow employee. Tollis testified that he signed the card at the union meeting in Pavone's house (March 23). He further testified that he was told by employees Pavone and Babich, "this card was nothing. This no mean anything," but this testimony is not credited for the following reasons: Tollis signed an affidavit for a Board agent written in Italian which he admittedly can read and understand. According to the stipulated English translation of his affidavit, Tollis stated, "I knew that I was signing a card to be a member of the Union, and did it voluntarily." Moreover, according to the credited testimony of Pavone, the latter told Tollis, "This is a card for joining a Union,"

and he denied that he told Tollis, either that the card did not mean anything, or that it was only for the purpose of securing a Board election. In view of the above, it is concluded that no misrepresentation was made to secure Tollis' signature to his card, and that it was a valid designation of the Union as his representative for collective-bargaining purposes.

In view of the above findings, the Union had 10 valid cards on March 23 out of a unit of 18 employees, even without considering the Respondent's contentions in respect to the alleged invalidity of the cards of DiPilla and Rubino.²⁴ It is therefore concluded and found, contrary to the Respondent's contention, that on and after March 23 the Union represented a majority of the Respondent's employees in the stipulated unit.

c. The alleged "bad-faith" refusal of Respondent to bargain with the Union

In view of the findings above, there remains for determination the question of whether the Respondent's failure and refusal to bargain with the Union was motivated by unlawful considerations. In regard to this issue, the Board, in a recent decision, reiterated the governing principles, as follows:²⁵

The Board has long held that an employer may insist upon a Board election as proof of a union's majority if it has a reasonable basis for a bona fide doubt as to the union's representative status in an appropriate unit. If, however, the employer has no such good-faith doubt, but refuses to bargain with the majority representative of its employees because it rejects the collective-bargaining principle or desires to gain time within which to undermine the union and dissipate its majority, such conduct constitutes a violation of Section 8(a)(5) of the Act. In determining whether the employer's action was taken to achieve either of the said invalid purposes, the Board considers all the surrounding circumstances as well as direct evidence of motivation. Absent such direct evidence, where extensive violations of the Act accompany the refusal to grant recognition, they evidence the employer's unlawful motive and an inference of bad faith is justified. . . . While unfair labor practices committed at or about the time of an employer's refusal to bargain often demonstrates the bad faith of the respondent's position, not every act of misconduct necessarily vitiates the respondent's good faith. For, there are some situations in which the violations of the Act are not truly inconsistent with a good-faith doubt that the union represents a majority of the employees. Whether the conduct involved reflects on the good faith of the employer, requires an evaluation of the facts of each case.

In the instant case, when the Respondent received the Union's bargaining demand on March 22, the Union was not the majority representative of the employees, a fact which the Respondent undoubtedly learned as a consequence of Foreman Gimmi's interrogation of about half of the employees in the plant.²⁶ This interrogation, while unlawful, was not so flagrant that it must necessarily have had as an object the destruction of the Union's majority status. Notwithstanding, the said interrogation, and Foreman Gimmi's unlawful threats to Pavone, the Union achieved majority status on the night of March 23. However, that fact was never, at any time thereafter, brought to the knowledge of Respondent, and no further demand by the Union for bargaining was ever made. Moreover, on the complaint of employee Babich, Foreman Gimmi was instructed by his supervisor, Vice President D'Ambrosio, to desist from speaking further to the employees about the Union, and he complied with that instruction and committed no further unfair labor practices. Thereafter Respondent promptly signed a consent-election agreement,²⁷ and except for the single statement in President Carroll's speech hereinbefore found to be coercive, committed no further unfair labor practices. I do not regard that single violation of the Act after the Respondent's agreement to an expedited consent election, to be either inconsistent with a good-faith doubt by the Respondent that the

²⁴ Accordingly, although I am persuaded by the record that the cards of DiPilla and Rubino likewise were valid designations of the Union as their collective-bargaining representative, the reasons for that conclusion are regarded as unnecessary.

²⁵ *Hammond & Irving, Incorporated*, 154 NLRB 1071, 1073.

²⁶ See footnote 18, *supra*.

²⁷ *Harvard Coated Products Co*, 156 NLRB 162.

Union was the majority representative of its employees, or as sufficient to establish that the Respondent's refusal to bargain was motivated by a rejection of the collective-bargaining principle of the Act.

To establish a violation of Section 8(a)(5) of the Act on the basis of a card showing, the General Counsel has the burden of proving, not only that a majority of the employees in the appropriate unit signed cards, but also that the employer in bad faith declined to recognize and bargain with the union.²⁸ On the record in this case, the General Counsel has not established that the Respondent's refusal to bargain was motivated either by a rejection of the collective-bargaining principle, or to gain time within which to dissipate the Union's majority. Accordingly it will be recommended that the complaint in this respect be dismissed.²⁹

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

V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies 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. Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

2. By threatening employees with discharge, layoff, and other economic reprisals to discourage union affiliation and/or support, and by coercively interrogating employees regarding their union sympathies, Respondent has interfered with, restrained, and coerced employees in the exercise of their rights under the Act, and has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this case, I recommend that the Respondent, Sylgab Steel & Wire Corp., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with loss of employment, economic sanctions, or other reprisals to discourage union activities or adherence.

(b) Coercively interrogating employees in regard to their union membership, activities, or sympathies.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from engaging in 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 by Section 8(a)(3) of the Act.

²⁸ *John P. Serpa, Inc.*, 155 NLRB 99.

²⁹ *Cf. Hammond & Irving, Inc*, *supra*; *Harvard Coated Products Co.*, *supra*.

2. Take the following affirmative action to effectuate the policies of the Act:

(a) Post at its plant in Corona, Long Island, New York, copies of the attached notice marked "Appendix."³⁰ Copies of said notice, to be furnished by the Regional Director for Region 29, after being duly signed by Respondent, shall be posted by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that such notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 29, in writing, within 20 days from the date of the receipt of this Decision, what steps it has taken to comply herewith.³¹

I also recommend the dismissal of the complaint insofar as it alleges that by discharging Jack Mastrangelo and Nicholas Mastrangelo the Respondent engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act. I further recommend the dismissal of the complaint insofar as it alleges that the Respondent engaged in a refusal to bargain with the Union in violation of Section 8(a)(5) of the Act.

³⁰ In the event that this Recommended Order is adopted by the Board the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals Enforcing an Order" shall be substituted for the words "a Decision and Order."

³¹ In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

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

WE WILL NOT threaten our employees with loss of employment, economic sanctions, or other reprisals to discourage union activities or adherence.

WE WILL NOT coercively interrogate employees regarding their union membership, activities, or sympathies.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities, except to the extent 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.

All our employees are free to become or remain or to refrain from becoming or remaining members of Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization.

SYLGAB STEEL & WIRE CORP.,

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.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 16 Court Street, Fourth Floor, Brooklyn, New York 11201, Telephone 596-3535.