

Holbrook Knitwear, Inc. and Local 107, International Ladies' Garment Workers Union, AFL-CIO. Case 29-CA-740

February 13, 1967

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS
FANNING AND BROWN

On August 17, 1967, Trial Examiner John H. Eadie issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. He also found that the Respondent had not engaged in other unfair labor practices alleged in the complaint and recommended that these allegations be dismissed. Thereafter, the Respondent and the General Counsel filed exceptions to the Trial Examiner's Decision and supporting briefs, and the General Counsel filed a brief in opposition to the Respondent's exceptions.

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.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, and entire record in the case, including the exception and briefs, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the modifications noted below.¹

We agree with the Trial Examiner that Respondent violated Section 8(a)(3) of the Act in discharging Sciacca and Radigan and, in doing so, we note particularly Fred Haug's observation at the time of Sciacca's discharge that, since he hired the latter, he had had union trouble, and Maria Haug's remark to Radigan, at the time of his discharge, that he was "against" them. We do not, however, agree with the Trial Examiner that Respondent should be held in violation of Section 8(a)(1) on account of employee Potenza's conduct herein, for the attendant circumstances relied upon by the Trial Examiner do not provide an adequate basis for charging Respondent with such conduct.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor

Relations Board adopts as its Order the Recommended Order of the Trial Examiner and hereby orders that Respondent, Holbrook Knitwear, Inc., Holbrook, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.²

¹ At the hearing, Respondent requested all statements, letters, or affidavits of Sciacca in possession of the General Counsel under Sec. 102.118 of the Board's Rules and Regulations in order that it might determine whether there was relevant evidence in such documents. Respondent subsequently explained that it wanted these documents, and particularly an affidavit given by Sciacca 3 years previously in another case involving another employer, in order to show a pattern of conduct by Sciacca which would prove that he was not a bona fide employee of Respondent inasmuch as he obtains employment in order to organize a shop and, when his effort proves unsuccessful, provokes a discharge. Since the statements sought by Respondent were furnished to the General Counsel in another proceeding, related to matters not in issue here, and were sought not for purposes of cross-examination, but to show prior conduct by Sciacca, which, even if established, we would not consider to be determinative of the issue in this case, we adopt the Trial Examiner's denial of Respondent's motion to strike Sciacca's testimony because of the General Counsel's refusal to furnish the requested documents.

² Delete from paragraph 2(d) of the Trial Examiner's Recommended Order the words "to be furnished" and substitute therefor "on forms provided."

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

JOHN H. EADIE, Trial Examiner: This proceeding was held before me in Plainview and New York, New York, on various dates, starting on February 28 and ending on March 10, 1967, on the complaint of the General Counsel and the answer of Holbrook Knitwear, Inc., herein called the Respondent.¹ The complaint alleges violation of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended. The Respondent's answer admits the jurisdictional allegations of the complaint, but denies the commission of any unfair labor practices. After the hearing the General Counsel and the Respondent filed briefs with the Trial Examiner.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent is a New York corporation with its principal office and place of business at Holbrook, New York. It is engaged in the manufacture, sale, and distribution of sweaters and related products.

During 1966 the Respondent purchased and caused to be transported and delivered to its plant wool, thread, and other goods and materials valued in excess of \$50,000, of which goods and materials valued in excess of \$50,000 were transported and delivered to its plant directly from States of the United States other than the State of New York.

¹ Charges were filed by Local 107, International Ladies' Garment Workers Union, AFL-CIO, herein called the Union, on September 23 and October 3, 1966. The complaint issued on January 5, 1967.

The complaint alleges, the Respondent's answer admits, and the Trial Examiner finds that the Respondent is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Local 107, International Ladies' Garment Workers Union, AFL-CIO, is a labor organization which admits to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. Background

Fred Haug and Maria Haug, his wife, are president and secretary, respectively, of the Respondent. The Haugs live in a house next door to the plant. In the front of the plant the Haugs operate a retail shop.

The Respondent's business is seasonal. The season varies, but generally begins sometime in the spring and ends sometime in the late months of the year. During the season the Respondent employs up to approximately 25 persons.

The Respondent conducts its business in two basically different ways. On some occasions it produces garments as a "manufacturer." On other occasions it produces garments as a "contractor." As a manufacturer, the Respondent purchases its own material with its own money or credit, furnishes the necessary labor for work on the material, and eventually sells the completed product to its customer. As a contractor, the Respondent's function is limited to the performance of services upon the goods owned by the customer at a set price per dozen garments. The Respondent made more profit when acting as a manufacturer.

During the 1966 season the Respondent worked principally for three other concerns, namely, Larry Levine, Inc., L & M Juniors, Inc., and Hygrade, Inc. The Respondent worked as a manufacturer for Levine and L & M Juniors, and as a contractor for Hygrade.

B. Gaspar Sciacca

During April 1966 Sciacca applied to the Respondent for work. At the time he was employed by Sanbeth Knitwear in Maspeth, New York. He began working for the Respondent as a presser on Tuesday, April 26. Sciacca was told by Fred Haug not to report for work on Monday as he wanted to make certain that he had enough work ready for him to do. Sciacca was paid on a piece-rate basis.²

Within a day or two after he first was employed by the Respondent, Sciacca had a conversation with Radigan about working conditions.³ After hearing Radigan's complaints, Sciacca suggested that a union was needed in the plant. During the lunch period Sciacca got an authorization card of the Union from his automobile and asked Radigan if he wanted to sign it. Radigan agreed. They went to the offices of the Union on April 27 where Radigan signed the card. Thereafter, Sciacca spoke to

² There were four piece-rate workers in the plant, including Sciacca. Bertram Radigan, the steamer, Mrs. Cruz, a Singer operator, and Hilda Kilz, the looper, also were paid piece rates. All other employees in the plant had hourly rates of pay.

³ Sciacca and Radigan worked together in the same area of the plant. They were separated from other employees by a semipartition which was about 3 feet high.

several other employees about the Union. He also spoke to Edward Banyai, an official of the Union, about organizing the Respondent's employees. Banyai told him that he would have "to wait a while" as John DiGerolamo, the Union's organizer, was busy at the time.

During the first week of his employment Sciacca spoke to Fred Haug, complaining that he could not make a living on the piece rates assigned to him. Haug complimented him on his work and increased his piece rates by 5 cents a dozen.

During about the end of June, Di Gerolamo met Sciacca and Radigan after work. He told them that he was going to start organizing the plant and that he was going to visit the home of employee Kay Buscarino that night. The following morning at or about 7:45 a.m. Buscarino went to the Haug residence and told Maria Haug about Di Gerolamo's visit.

On July 1 Fred Haug notified the employees that the plant would be closed for a vacation period of 1 week. He told Sciacca that he was to take a vacation of 2 weeks without pay and that he (Sciacca) should call him before returning to work on July 18. Sciacca asked why he was being laid off for 2 weeks and pointed out that there was some work in the plant that he could do. Haug explained that it was necessary for the plant to build up work so that it would be available for Sciacca.⁴ Haug told Radigan that he was receiving a vacation with pay for 1 week,⁵ and that he (Radigan) should call him before returning to work on July 10 to see if work was available for him. Sciacca was present during this conversation.

Sciacca called the plant on Friday as directed by Fred Haug. He spoke to Maria Haug who told him to report for work on Monday. When Sciacca returned to work at 8 a.m. on July 18, a sign was posted on the wall in back of Radigan's place of work. The sign, in large letters, stated:

DISAGONIZERS
WE DONT WANT
ARBI-TRAITORS
DOWN WITH GASBAG
MORE HOURS
MORE WORK
LESS PAY
WE STICK TOGETHER

Sciacca removed the sign from the wall at or about 9:30 a.m.

On or about July 20 Di Gerolamo called on the Haugs. He mentioned that he had been visiting employees' homes and said that he wanted to organize the Respondent's plant. Fred Haug replied that he was willing for the employees to vote in an election to see if they wanted the Union. Di Gerolamo said, "we don't have to have all the time a vote. We can get you some other way . . . You can now only work for Hygrade." Either that same day or the next day Fred Haug received calls from Larry Levine and L & M Juniors, advising him that they could not give the Respondent any more business as they had been contacted by the Union.⁶

⁴ Sciacca and Mary Pope, the packer, performed the last operations on the garments. Pope also was laid off for 2 weeks, but she received vacation pay for 1 week.

⁵ Radigan had not received vacation pay before this time.

⁶ Larry Levine later agreed to accept shipments of work already under order.

Sciacca and Radigan usually had lunch together, either in the garden behind the Haugs' home or in the plant. When they returned from lunch on or about July 20, another sign was posted over Sciacca's machine. The sign contained a large pair of eyes. Accompanying it in chalk writing on a window were the words: "See all, hear all and knows?" The sign faced the plant and could be seen by the employees. After about a week Sciacca removed the sign but left the chalk writing.

At sometime before the start of work on Monday, August 1, a sign was posted above the timeclock where all employees punch in and out. The sign was a large cigarette advertisement with the writing thereon modified to read: "Us Holbrook Workers Rather Fight Than Switch to Union." The sign remained posted for the balance of the week. During this time Maria Haug looked at the sign on two separate occasions, once in the company of Cruz and another time with employee Jean Bragoli.

About 4 p.m. on August 1, Fred Haug told Sciacca, "I have to lay you off tomorrow." Sciacca said, "Why? There's plenty of work." Haug replied, "I don't need this work now."

When Sciacca reported for work on August 3, he found a large piece of brown paper stretched across the top of the semipartition which separated the steaming-pressing area from the remainder of the shop. The paper blocked Sciacca's view of the shop and interfered with the cross-ventilation for the area. Sciacca and Radigan complained to one another about the heat. Mary Potenza⁷ worked on the other side of the semipartition, across from Sciacca. Sciacca told her, "When are you going to stop this kindergarten stuff. . . . It's ridiculous." Potenza then started to scream at Sciacca. She said, "Get the hell out of here! We don't want you here any more. We don't want a union here. . . . I'll scratch your eyes out. . . . Let's have a vote now." Potenza then walked about 10 or 12 feet to the center of the plant. Still screaming, she said to the employees, "Who doesn't want a union in here? . . . raise your hand." At the time of the outburst the employees had stopped their machines. At least one employee raised her hand. Fred Haug was working at the cutting table which was about 8 or 10 feet from Sciacca's place of work. While Potenza was still screaming, Sciacca called Haug over to him. He told Haug, "Fred, you'd better stop this woman from doing this, and take the brown piece of paper down." Haug did not reply and walked back to the cutting table. At the time of the incident Maria Haug was in the plant "looking" at Potenza.

About half an hour after the above, Fred Haug spoke to Sciacca. He told Sciacca that his piece rate on style 950 was cut 10 cents a dozen because it was "much cheaper work."⁸ When Sciacca protested the cut, saying that the style was "harder to do than the other style," Haug told him, "If you don't like it, get out." Sciacca said, "Well, you have to answer to the Labor Board. . . .

This is not right. It's ridiculous." Haug replied, "What do you think I am, stupid? I know you are from Yearite and the trouble you caused there."⁹ Sciacca said, "Just don't touch my salary. . . . I am going to the Board with this." Haug answered, "I don't care about the Labor Board. I will handle it."¹⁰

At or about this time, some work which was piled up for Sciacca to press disappeared. Some of the work disappeared completely; but one lot waiting for Sciacca to press was already pressed and on Pope's table ready for packing when he came to work the following morning. Sciacca asked Fred Haug why this work was "disappearing." Haug answered, "I put it away. I don't need it now." Sciacca questioned him about the lot which he had found pressed in the morning, saying, "How come this work is being done at night?" Haug replied, "Because you're too slow."

On Friday, August 5, Fred Haug told Sciacca not to come to work the following Monday because there was "not enough work" for him. Sciacca asked him why he couldn't work on a bundle that was then ready for pressing. Haug replied, "I don't need that work."

Sciacca returned to work on August 9. Wednesday was the payday for the week ending August 5. When Fred Haug gave Sciacca his pay envelope, Sciacca noticed that his pay reflected a cut in his piece rate.¹¹ Radigan was present at the time. Sciacca protested the cut, saying, "I don't mind these signs and harassment too much, but when you fool around with my health¹² and my salary, you have to answer to the Labor Board." Haug replied, "I know about the signs. I didn't put them there. . . . Go to the Labor Board if you want. I don't care." Haug suggested that Sciacca "quit" if he did not like the treatment he was receiving. Sciacca answered, "That's what you want me to do."

On Tuesday, August 16, Fred Haug told Sciacca that he should not report for work the following day. Sciacca asked him for his pay, telling him that he did not have any money. Haug told him that he would have to wait until Thursday as he did not have the payroll prepared.

Sciacca returned to work on August 18. At or about 3:30 p.m. on August 19 Haug came to Sciacca's machine and told him that he wanted to talk to him in the office. When they got to the office, Maria Haug was present. Fred Haug said, "I have to let you go. I don't like your character." Sciacca asked what his character had to do with his work, saying that that was no excuse for his discharge. He stated that if there were other reasons, he wanted to know them. Maria Haug said, "your [sic] not counting the work right." Sciacca replied that Pope did "most of the counting." He accused Fred Haug of discharging him because of the Union. Fred Haug denied this but stated, "Since I hired you, I have got union trouble. I have been here so many years without a problem with union." Sciacca replied, "That's not my business. . . . I'm here for a day's work. What the organizer does is

⁷ Potenza was employed by the Respondent for over 11 years. She testified that she placed the paper over the partition because Sciacca annoyed her and other employees.

⁸ The record shows that Hygrade work was going through the plant at the time.

⁹ Sciacca testified that he at one time worked for Yearite, also known as "Bunny Knit"; and that he had been involved in a Board case at that company as an adherent of the Union.

¹⁰ Haug also notified Radigan of a cut in his piece rate on August 3. When Radigan protested the cut, saying that he was "working for peanuts

now," Haug answered, "You guys are the cause of us losing the good work that we used to do. . . . That's why I had to take [Hygrade work] at a cut or loss." Haug testified that he reduced the piece rate of Kilz at or about this time or "perhaps even sooner." The Respondent's payroll record does not indicate this to be the case. Haug also testified that he did not cut Cruz' piece rate because she did not work on Hygrade garments.

¹¹ The cut in Radigan's piece rate did not occur until the following week.

¹² The evidence shows that the brown paper was still over the partition at this time.

his business and your business." Fred Haug then paid Sciacca in full for the work that he had completed and the latter left the plant.

In making the above findings of fact I have credited the testimony of Sciacca and Radigan and portions of the testimony of Maria Haug, Fred Haug, and Mary Pope. Denials and contrary testimony of the Haugs, Potenza, and Bragoli are not credited. Insofar as the credibility of the witnesses is concerned, the contentions of the parties as set forth in their briefs, as well as the entire record in the case, have been carefully considered in resolving the issues.

The Respondent contends that Sciacca was not an employee within the meaning of the Act. In this connection the parties stipulated that from January 5, 1965, through September 8, 1966, Sciacca received the total sum of \$3,085.50 from the Union; that of this amount "he received with regard to Holbrook Knitwear, Inc., a total of \$250 during the period June 29, 1966, to September 9, 1966"; that such payments were indicated on the Union's records as "organization expenses"; that the balance of the \$3,085.50 was paid to Sciacca "with regard to" Bunny Knit Corp., Judy Bond, Adeline Dress Shop, Kim Dress Shop, and Grand Dress Corporation; that the Union's records indicated that the payments as to Judy Bond, Adeline, Kim, and Grand were for "union label picketing"; and that payments with regard to Bunny Knit were for attendance at Board hearings in 1965 and 1966, "strike expense," and "organization."

Sciacca testified to the effect that the Union paid him \$25 per week starting June 29 for helping to organize the Respondent's plant; that in this connection he supplied the Union with the names of employees and of the Respondent's customers and visited the homes of employees with Di Gerolamo; that he obtained the names of employees from their timecards; and that he got the names of the customers from the cartons in the shipping room.¹³

In its brief the Respondent states that the evidence leads "inevitably to the conclusion that Sciacca participated in a clandestine scheme to undermine the Respondent's business." The Respondent points out that Sciacca provided the Union with the names of the Respondent's customers starting during the week of June 29, that shortly thereafter the Union threatened to take away all of Respondent's customers except for Hygrade, that this threat actually was carried out, and that Sciacca's activity from the inception of his employment shows that he "never intended to and never did become an employee of Respondent within the meaning of the Act." The Respondent contends that such conduct of Sciacca "is unprotected activity under any circumstances."

The question of whether or not Sciacca's activity, such as providing the Union with names of customers, was unprotected activity is not in issue. Fred Haug himself testified that he discharged Sciacca for slowing down his production "for the last few weeks" and for "incorrect" piece-rate slips. There can be no question but that Sciacca was an ardent adherent of the Union and that he com-

menced organization of the Respondent's employees at the beginning of his employment. However, he was not receiving any money from the Union when he was hired and he testified that he took the job with the Respondent because he needed the work. Under the circumstances, this contention of the Respondent is rejected.

The Respondent contends that Sciacca was discharged because he engaged in a slowdown in production and because his piece-rate slips were inaccurate. The record is replete with testimony on these subjects.

Fred Haug testified to the effect that during early August Sciacca slowed down in his production, but admitted that during the last 4 days of his employment his production was "up to par." Sciacca testified that he had trouble pressing one type of garment because of a problem with the zippers. He denied that he engaged in a slowdown. May Drollinger, the cutter, testified that at some time after the vacation there was a problem with zippers; that it was called to her attention by Pope, the packer; and that either Maria Haug or Fred Haug told her to change the cut from 5 to 5-1/2 inches in order to correct the problem.

If the Respondent needed Sciacca's production and if his alleged slowdown was losing money for the Respondent, as testified to by Fred Haug, then it would appear that Sciacca would not have been laid off for 3 days during August. Further, I am unable to believe that Sciacca, a pieceworker, would slow down his production deliberately. This would have cost him money out of his own pocket.

As for the count on the piece-rate slips which were submitted by Sciacca, both Sciacca and Fred Haug testified that they had disputes during almost all of the former's employment. After one such dispute Sciacca requested that a piece-rate ticket, which he could tear off, be supplied with each bundle. Fred Haug did not follow his suggestion. Sciacca then arranged with Pope to count the work. However, it appears that the disputes continued between Sciacca and Haug mostly because of rejects which were sent to the retail store and samples.¹⁴ Such pieces were not counted or packed by Pope. An example of the disputes over samples is shown by an incident which occurred prior to August. Fred Haug accused Sciacca of putting on his piece slip a count for some orange sweaters which the Respondent "didn't have." Sciacca insisted that he had pressed them and said that they "must be around some place." He and Haug then looked for the sweaters and found them near the packing table.¹⁵

Sciacca made errors in his favor on the piece-rate slips that he submitted for the weeks ending August 5 and 12. On the slip for August 5 he reported approximately 54 dozens of "950 Navy #11." On Tuesday, August 9, Fred Haug told Sciacca that the number of dozens was incorrect. Sciacca did not admit the error at first but agreed to correct the figure to 50 dozens and 3 pieces when he discovered that Pope had made an error in the count.¹⁶ The error amounted to approximately \$1.20.¹⁷

The piece-rate slip for the week ending August 12 also

sweaters were found by Sciacca and Haug.

¹⁶ Sciacca testified credibly that he himself did not count the "navy" work at the time and that he relied on Pope's count. Pope admitted that from time to time after the incident of the orange sweaters Sciacca asked her for her count on various sweaters.

¹⁷ The piece-rate slip in question was received in evidence and shows that Haug made a substantial error in his own favor in calculating the pay due Sciacca. Sciacca did not discover this error until the hearing herein.

¹³ Fred Haug testified that at sometime during July he told Sciacca to "stick to [your] own business" after he noticed him "looking in the cutting book" and "looking at something . . . by the packing table."

¹⁴ The evidence indicates that samples were sent out separately to customers and were not counted in the shipping room, and that some samples were put aside in the plant.

¹⁵ Haug testified that only "a few samples" were found. Pope, the Respondent's own witness, testified that "about two dozen" orange

was received in evidence. The second item listed on the slip is crossed out in pencil in such a way that the writing beneath is not discernible. Fred Haug testified that "950 Navy, lot 11, fifty dozen" was written on the slip before it was crossed out; that Sciacca had been paid for this same work the previous week; that lots 11 and 16, each consisting of 50 dozens, were the only lots of Navy style 950 going through the plant at the time; that on Tuesday, August 16, when he called the mistake to Sciacca's attention, Sciacca crossed it out; and that Sciacca's slip for the week ending August 12 showed "on the first item" that he reported and was paid for lot 16.¹⁸ Concerning his conversation with Sciacca at the time, Haug was questioned and testified as follows:

Q: Now as best you can, you tell us what you said and what Mr. Sciacca said. Give us the whole conversation.

A: I asked him how come he has got lot 11 down again on this slip when he already had it down from the week or two before, and he already had gotten paid for it, how did he arrive at that.

He said, "Well, it must be around some place." Then we checked and naturally there was no such lot number.

And I told him, well, that is a mistake, that I just cannot put it down.

So after I convinced him, he said, "Well, your [sic] right, I made a mistake. I will cross it out."

Sciacca admitted that he crossed out the item when Haug objected to it. However, his explanation of why it was crossed out is entirely different from Haug's. Sciacca testified, in substance, that he remembered the lot in question to be lot 12; that he completed about 10 dozens of this lot during the week ending August 12 before he

was ordered to cease work on it;¹⁹ that in accordance with the past practice of pieceworkers he included the whole lot on his piece-rate slip for the week ending August 12;²⁰ and that his error was in not having completed the whole lot before having turned in his piece-rate slip the following week. Sciacca testified that when Haug called the error to his attention, he said, "Okay, Fred, forget about it, I'll do it the next week. . . . pay me next week for it"; and that Haug was not angry at the time and did not claim that he (Sciacca) was attempting to cheat him.

I credit the above testimony of Sciacca. The documentary evidence tends to support his version of the error. When he was discharged on August 19, he gave Haug his piece-rate slip of work completed for that week. The slip shows 51 dozens and 3 pieces of "Navy #16." It also shows "950 Navy #12" with no number of dozens completed after the notation. At the time of discharge Haug gave Sciacca a check for the completed work in the amount of \$115.38.²¹ Before Sciacca left the plant, he returned to his machine and discovered 11 dozens and 8 pieces of completed work that he had not recorded on his piece-rate slip. He called this to Haug's attention. Haug then paid him \$3.50 in cash and noted the work and the payment on the slip opposite the Navy lot #12 notation.

From the above it appears, contrary to Haug's testimony and other records of the Respondent, that there was a Navy lot 12 going through the plant during August. The only record that shows work by Sciacca on this lot and on Navy lot 16 is his slip for the week ending August 19. If there was no Navy lot 12, then the crossed out item on Sciacca's slip for the week ending August 12 may have referred to lot 16. But then this would not explain the 11 dozens and 8 pieces, unless this represented work on Navy lot 21.²² In any event, the Respondent's own

¹⁸ The slip does not show any work on lot 16. Sciacca's slip for the week ending August 19, received in evidence, shows work on lot 16.

¹⁹ Sciacca testified, "They stopped me on it because they didn't want the two navies [lots 11 and 12] together at the same time for the storeroom. They couldn't stick two navies together; they didn't need it. So in between the two navies, I did a different color."

²⁰ As to this practice Sciacca was questioned and testified as follows:

TRIAL EXAMINER: Explain why you did it.

THE WITNESS: Sometimes I would want more money one week, so I would mark down an extra lot and I would finish it the next Monday, because he never collected the slips until Monday night, sometimes Tuesday morning, so I was able to do quite a bit with the work Monday to put it down on Friday, or the opposite, depending on how I felt. No problem. I did that all along.

Q. (By Mrs. Kornbluh) Do you know if Mr. Haug knew that you were doing this?

A. Oh, yes.

Q. How do you know he knew you were doing this?

A. He never said anything.

Q. He saw the work you were doing?

A. Yes. He collected my slip on a Monday night or Tuesday morning, it was marked in, he didn't say anything. It was on my slip.

TRIAL EXAMINER: In other words, your slip would show so many dozens of lot so and so?

THE WITNESS: Yes.

TRIAL EXAMINER: And you would put this in on Friday although you hadn't really completed that?

THE WITNESS: Right.

TRIAL EXAMINER: Then on Monday, you would complete it, but you wouldn't put anything in on the slip for that Monday?

THE WITNESS: Right, or the opposite.

TRIAL EXAMINER: Or if it might be you would complete more than you put on the slip on Friday and then you would claim it on Monday?

THE WITNESS: Right, right.

TRIAL EXAMINER: The reverse?

THE WITNESS: The reverse. Bert also did the same thing, so there was no problem. We both did it, both piece workers. We were the only piece workers I remember in the place, except there was one more, I think.

Radigan testified that he and other pieceworkers engaged in the same practice and that Fred Haug never complained about it. In this connection Haug was questioned and testified as follows:

TRIAL EXAMINER: Was it their custom to do it, so far as your knowledge was concerned?

THE WITNESS: It could happen that they might be within five or ten dozen at the week end and they might put it in. If they wanted to get a little more money for that particular week, they might have put it in but I didn't tell them and they didn't say anything.

TRIAL EXAMINER: But insofar as this practice was concerned, it wouldn't mean any more money to them provided they finished that lot the following week?

THE WITNESS: That is right.

²¹ Before this time Sciacca was always paid in cash.

²² Sciacca's piece-rate slip for the week ending August 5 shows the notation, "950 Plum #12 equals 52.10." The Respondent adduced in evidence a record which Haug described as based on "the knitters slips that we make out after we get the orders from the customers." This shows lots of various colors, consisting of 50 dozens each and numbered 1 through 27, of which lots 11, 16, and 21 were assigned to navy and 12 and 27 were assigned to plum. Haug, however, testified to the effect that there were only two navy lots of style 950 going through the plant at the time. To support this testimony the Respondent adduced in evidence another record which Haug described as "an order from Hygrade Knitting Mills." This purportedly shows an original order, dated July 20, 1966, for 50 dozens each of navy and plum and a followup order in the same amounts. Thus, it appears that the above records are in conflict with each other and with Haug's testimony. He admitted that he paid Sciacca the sum of \$3.50 for "style 950" and that he did not know the color (and therefore the lot number).

records are in conflict with Haug's testimony and tend to support Sciacca's. Further, if Haug accused Sciacca of putting down on his slip the same lot 11 for which he had been paid the previous week, as testified to by Haug, it does not make sense that Sciacca would have suggested looking for the 50 dozens since this would not have proved him right, insofar as the slip was concerned, even if they had been found. And if there was no Navy lot 12 or 21, it would appear that Haug would have questioned the 11 dozens and 8 pieces since he had already paid Sciacca in full for Navy lots 11 and 16.

In sum, the Respondent expects the Trial Examiner to believe that Sciacca was attempting to cheat it out of approximately \$15. I am unable to believe this. The record shows that Haug and Sciacca had constant arguments over the count. These disputes usually involved pieces, not dozens. From this Sciacca must have known that Haug kept a close watch and had records of the lots going through the plant. Under the circumstances, I do not believe that he would have attempted to get paid twice for the same work. There is no question but that he was in error in not completing the lot before turning in his slip. But even if Haug had not questioned the item and had paid him for it, Sciacca still would not have gained since he would not have been paid for the lot again when he completed the work the following week. In sum, Sciacca's explanation is logical and comports with the facts. Haug's testimony conflicts with the Respondent's own records and leaves a number of questions unanswered. For the above reasons I am convinced that the Respondent's reasons for the discharge were mere pretexts.

The record shows that the Respondent knew that Sciacca was the instigator of the union activity and that it attempted to get him to quit his job. This is shown by the way it permitted its employees to harass Sciacca, by the cutting of his piece rate, and by his layoffs during August. When this campaign failed, the Respondent discharged him. I find that the discharge was violative of Section 8(a)(3) of the Act.

I also find that the layoff of Sciacca on August 17 was in violation of Section 8(a)(3) of the Act, as alleged in the complaint.²³ Fred Haug admitted that work was available for Sciacca on that day. I do not find that Sciacca's layoff during and after the vacation period during July was violative of the Act. The evidence shows that the Respondent had a practice of not giving new employees a vacation with pay. Radigan so testified. Further, Pope also received a layoff of 1 week along with Sciacca after the vacation. The evidence shows that they were on the end of the production line and indicates that production in the plant for that week was needed in order to provide them with work.

It is also found that Potenza's interrogation of the employees concerning their union sympathies was violative of Section 8(a)(1) of the Act. As found above, Fred and Maria Haug were present at the time. It does not appear that they in any way disclaimed Potenza's conduct. In fact, Fred Haug's refusal of Sciacca's request to stop Potenza must have appeared to the employees as the Respondent's stamp of approval.

C. Bertram Radigan

Radigan was hired by the Respondent in March 1964. As related above, he worked as a steamer in the same

area of the plant as Sciacca and ate his lunch with him almost everyday. The record shows that during all of his employment Radigan was frequently absent from work, and that the Haugs complained to him about this.

About once a month prior to August 1966, Radigan obtained from Fred Haug a small advance against his earned wages. Payday was on Wednesday; and Radigan usually asked for the advance on Monday or Tuesday. On or about August 2 he asked Haug for an advance of \$5. Maria Haug was present at the time. Fred Haug refused Radigan's request, telling him, "Go get it off your friends." Radigan replied, "They don't give me money. I don't ask them for money. I've got back pay coming to me and I ask you." Maria Haug then said, "We know about [Sciacca]. He has a bad character reference from Yearite. Why don't you break off with him?" One of the Haugs mentioned that Sciacca had claimed that the Union was in the Yearite plant and that they knew that this was not so. Radigan answered, "No, you're wrong. I read it in the Justice paper, the ILG paper, that the ILG is in and they had to pay \$10,000 back pay." Radigan again asked Fred Haug for the advance on his salary. Haug refused.

As related above, on August 3 Fred Haug notified both Sciacca and Radigan that he was cutting their piece rate. When Radigan received his pay envelope on August 17, he noticed that his rate had been cut from 25 cents to 20 cents per dozen. Radigan waited until the end of the day before speaking to Haug about it. Radigan said, "What are you doing? I think you're doing something wrong here. I think it's against the law." Haug replied, "No, I know what I'm doing. I can make you work for a nickel a dozen or a dime a dozen. It's up to me." Radigan said, "I never heard of this before, cutting the pay. Everybody is getting raises; you're cutting . . . [Sciacca] is going to go to the Labor Board about his pay cut. . . . Did you cut all the other people's wages that work here?" Haug answered, "No, but I told them . . . that they would have to cut out talking during the day and maybe I could get an extra ten dozen out of them." Radigan ended the conversation by saying, "you're kidding."

At or about noon on Wednesday, August 24, Fred Haug gave the employees their pay envelopes. However, he did not pay Radigan and told him that he wanted to see him at 4:30 p.m. At 4:30 p.m. Fred and Maria Haug came to Radigan's place of work. Paul Kilz, another employee, was present. One of the Haugs told Radigan, "We know you filed a charge against us. We can't have you working here if you're going to be against us." Radigan said, "Well, if you did nothing wrong, you have nothing to worry about." Fred Haug replied, "No, I know what I am doing." Maria Haug then suggested that Radigan go to Patchogue and "get a job" with Yearite. When Radigan answered that he did not have a car for transportation, she said, "Why don't you take a bus." Radigan explained that the bus schedule to and from Patchogue was not convenient for him. Fred Haug said, "Why don't you try to get a job in a delicatessen down by Ronkonkoma railroad station. They pay \$2.00 an hour." Radigan replied that he did not know anything about such work as he had never worked in a delicatessen. One of the Haugs said, "What are you going to do?" Radigan answered, "Well, I'll see what I'm going to do." Fred Haug then gave him his pay for the week ending August 19.

²³ No finding is made with respect to the layoffs on August 2 and 8 since they are not alleged as violations in the complaint

Radigan obtained a job with another employer, starting the following Monday. He returned to the Respondent's plant either that night or Tuesday night in order to collect his pay for the work that he had completed the preceding week. He got his piece slips at his machine and was paid by Fred Haug.

The above conversations between Radigan and the Haugs are based upon the credited testimony of Radigan. Fred and Maria Haug denied that she was present during the conversation about a loan or the one on Radigan's last day of work. Kilz was not called as a witness. Fred Haug admitted that about 8 times he had made advances of \$5 or \$10 to Radigan and that he refused a request of Radigan during early August. Haug testified that he told Radigan, "Gee, I'm sorry Bert, but the last time I gave you five, you didn't show up the following day. I'm only hurting my own cause. . . . Go get it from your friends"; that Radigan said, "They don't give me anything"; that he replied, "That's too bad"; that Radigan did not mention Yearite or the Union; and that nothing was discussed between them "other than about the loan." Concerning his conversation with Radigan on August 24, Haug testified to the effect that he reprimanded him for coming to work late.²⁴ In this connection Haug testified as follows:

A. I asked him, "What's going on here now?"

He wants to work for us or he doesn't want to work for us. I said if it is going to keep us like this, I have to do something, I have to either let him go or what, because this way we can't get ahead, we can't do anything.

Q. Go head.

* * * * *

. . . I went to talk to him and told him the same thing over and over again that I had been saying all along, why did he stay out again, why doesn't he buckle down, why doesn't he work every day since he is always complaining about not making the money, there is enough work for him that he can make plenty of money if he worked the full week.

He mentioned something about in Lindenhurst steamers are making \$90 a week and in Yearite they are making \$90 a week.

Of course, I told him that the work in Yearite is harder than our work, that he doesn't have to go there, that he can make as much or more money by us if he worked a full week.

And he even mentioned something about a delicatessen in Ronkonkoma that was paying \$2 an hour.

So I told him, "Go ahead and take the job if you think you can make more money." And he told me he had no experience.

I believe he said then to me, "I think you made a mistake about letting Mr. Sciacca go." He said, "He is going to make trouble for you."

I said, "Well, I don't know. That's his privilege."

* * * * *

He said I believe that they had already reported

me to the Labor Board. I told him that he has a right to do that.

* * * * *

I think he mentioned something that they had to pay back wages or something in Yearite.

Haug admitted that he did not pay Radigan until after he had paid the other employees, but testified that he paid him sometime during the afternoon, before his conversation with Radigan.

I do not credit the denials of Maria and Fred Haug or the above testimony of Fred Haug.

The Respondent contends that it did not discharge Radigan and that he quit his job. This contention is rejected. The Haugs told Radigan that they could not let him work for them if he was going to be "against" them. When Radigan did not assure them that he was not against them and in fact indicated otherwise, they suggested other places where he might find a job. Radigan explained why he did not want such work. The Haugs then closed the conversation by asking him what he was going to do. They may not have stated specifically that he was discharged but they made it clear that such was the case. I find that Radigan was discharged on August 24.

The statements of the Haugs show that they knew that Radigan was associated with Sciacca's attempt to organize the plant, and that this was the reason why Fred Haug refused to give him an advance on his wages and discharged him. I find that such conduct was violative of Section 8(a)(3) 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 Respondent's operations described in section I, above, have a close, intimate, and substantial relationship 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, it will be recommended that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the Respondent laid off Gaspar Sciacca and discharged him and Bertram Radigan. Accordingly, it will be recommended that the Respondent offer them immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights or privileges, and make them whole for any loss of pay suffered by reason of the discrimination by payment to each of them of a sum of money equal to that which he would have earned as wages from the date of the discrimination to the date of reinstatement, less his net earnings during such period in accordance with the formula prescribed in *F. W. Woolworth Company*, 90 NLRB 289, together with interest on such sum, such interest to be computed in ac-

²⁴ There is a *pen* notation on Radigan's timecard showing that he started work at 12 30 p.m. on August 24. Radigan testified that he often did not punch in when he reported for work and that he did not recall at

what time he arrived for work on August 24. He denied that his absences from work were discussed during the conversation.

cordance with the formula prescribed by the Board in *Isis Plumbing & Heating Co.*, 138 NLRB 716.

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

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

3. By discriminating against Gaspar Sciacca and Bertram Radigan because of their activities on behalf of the Union, thereby discouraging membership in the Union, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

4. 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

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record in the case, I recommend that the Respondent, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in the Union, or any other labor organization of its employees, by refusing to grant advances on wages to employees for discriminatory reasons, by laying off or discharging employees or by otherwise discriminating against them in regard to their hire and tenure of employment or any term or condition of employment.

(b) Interrogating its employees concerning their membership in or activities on behalf of the Union, or any other labor organization.

(c) In any other 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 the above-named labor organization or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, 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.

2. Take the following affirmative action, which I find will effectuate the policies of the Act:

(a) Offer Gaspar Sciacca and Bertram Radigan immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights or privileges, and make them whole in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Notify Gaspar Sciacca and Bertram Radigan if presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

(c) Preserve and, upon request, make available to the National Labor Relations Board or its agents, for examination and copying, all records necessary for the determination of the amount of backpay due under these recommendations.

(d) Post at its plant in Holbrook, New York, copies of the attached notice marked "Appendix."²⁵ Copies of said notice to be furnished by the Regional Director for Region 29, after being duly signed by the Respondent or its authorized representatives, shall be posted by Respondent immediately upon receipt thereof, and 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 to insure that said notices are not altered, defaced, or covered by any other material.

(e) 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.²⁶

²⁵ 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."

²⁶ 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 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 discourage membership in Local 107, International Ladies' Garment Workers Union, AFL-CIO, or any other labor organization of our employees, by discriminating in regard to their hire or tenure of employment, or any term or condition of employment.

WE WILL NOT interrogate our employees concerning their membership in or activities on behalf of the above Union, or any other labor organization.

WE WILL NOT in any other 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 the above Union, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining or 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.

WE WILL offer Gaspar Sciacca and Bertram Radigan immediate and full reinstatement to their former or substantially equivalent positions, without

DECISIONS OF NATIONAL LABOR RELATIONS BOARD

prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay suffered as a result of the discrimination against them.

refrain from becoming or remaining members of any labor organization.

HOLBROOK KNITWEAR, INC.
(Employer)

Dated

By

(Representative)

(Title)

WE WILL notify the above-named employees if presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces. All our employees are free to become or remain, or

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, 4th Floor, 16 Court Street, Brooklyn, New York 11201, Telephone 596-3535.