

In the Matter of STANDARD DRY WALL PRODUCTS, INC. and TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN & HELPERS, LOCAL 872, AFFILIATED
WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN & HELPERS OF AMERICA, A. F. L.

Case No. 6-CA-203.—Decided September 28, 1950

DECISION AND ORDER

On May 19, 1950, Trial Examiner Albert P. Wheatley issued his Intermediate Report 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 copy of the Intermediate Report attached hereto. Thereafter, the Respondent and the General Counsel filed exceptions to the Intermediate Report, and the Respondent filed a brief. The Respondent also requested oral argument. This request is hereby denied because, in our opinion, the record, exceptions, and brief adequately present the issues and the positions of the parties.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following additions and modifications.

1. The Respondent excepts to various findings of the Trial Examiner, on the ground that he erred in crediting the testimony of employees Struniak and Mejia and in refusing to credit the testimony of the Respondent's witnesses, General Manager Canon and Superintendent Begg. It is apparent that the Trial Examiner's credibility findings were based in large part on his observation of the witnesses. In all cases, save only where there are no exceptions to the Trial Examiner's proposed report and recommended order, the Act commits to the Board itself, not to the Board's Trial Examiners, the power and responsibility of determining the facts, as revealed by the preponder-

91 NLRB No. 103.

ance of the evidence.¹ Accordingly, in all cases which come before us for decision we base our findings as to the facts upon a *de novo* review of the entire record, and do not deem ourselves bound by the Trial Examiner's findings. Nevertheless, as the demeanor of witnesses is a factor of consequence in resolving issues of credibility,² and as the Trial Examiner, but not the Board, has had the advantage of observing the witnesses while they testified, it is our policy to attach great weight to a Trial Examiner's credibility findings insofar as they are based on demeanor.³ Hence we do not overrule a Trial Examiner's resolutions as to credibility except where the clear preponderance of *all* the relevant evidence convinces us that the Trial Examiner's resolution was incorrect. No such conclusion is warranted in this case. We therefore adopt the Trial Examiner's credibility findings, and his findings of fact based thereon.

2. As indicated in the Intermediate Report, the Respondent contended at the hearing that its interrogation of employees and applicants for employment regarding their union affiliations was justified because of the provisions of its contracts with the Union. However, at the time of its interrogation of employees Struniak, Stearns, and Mejia, there was no contract covering women employees.⁴ The Respondent's conduct with respect to them was therefore clearly violative of Section 8 (a) (1) of the Act.⁵

The Remedy

As recommended by the Trial Examiner, we shall order the Respondent to offer Mary Struniak reinstatement with back pay from the

¹ See Sec. 10 (c) of the Act, and compare Sec. 4 (a). See also: *Consumers Power Co. v. N. L. R. B.*, 113 F. 2d 38, 43 (C. A. 6); *N. L. R. B. v. Air Associates, Inc.*, 121 F. 2d 586, 588 (C. A. 2); *N. L. R. B. v. Botany Worsted Mills*, 133 F. 2d 876, 882-883 (C. A. 3); *N. L. R. B. v. Laister-Kaufmann Aircraft Corp.*, 144 F. 2d 9, 16 (C. A. 8); *N. L. R. B. v. Tex-O-Kan Flour Mills Co.*, 122 F. 2d 433, 437 (C. A. 5); *N. L. R. B. v. Universal Camera Corp.*, 179 F. 2d 749, 752-753 (C. A. 2), cert. granted May 29, 1950, 339 U. S. 962.

² But only one of the many factors by which credibility is tested. See *Eastern Coal Corporation*, 79 NLRB 1165, 1166, affd. 176 F. 2d 131 (C. A. 4). Compare *V Wigmore*, Evidence, Sec. 1396 (1940). See also: *N. L. R. B. v. Sartorius*, 140 F. 2d 203, 205 (C. A. 2), enforcing 40 NLRB 107, in which no Intermediate Report was issued; *N. L. R. B. v. Brown Paper Mill Company, Inc.*, 133 F. 2d 988, 990 (C. A. 5); *N. L. R. B. v. Tex-O-Kan Flour Mills Co.*, 122 F. 2d 433, 437 (C. A. 5).

³ *Lancaster Foundry Corporation*, 75 NLRB 255, 256; *Robbins Tire & Rubber Company, Inc.*, 69 NLRB 440; *Vermont American Furniture Corp.*, 82 NLRB 408; *Minnesota Mining & Mfg.*, 81 NLRB 557. Compare: *Security Warehouse and Cold Storage Co.*, 35 NLRB 857, 883-884, enfd. 136 F. 2d 829 (C. A. 9); *Bahan Textile Machinery Co.*, 43 NLRB 97, 100; *Bohn Aluminum and Brass Corp.*, 67 NLRB 847, 849; *Cedartown Yarn Mills*, 76 NLRB 571, 573.

⁴ The first contract covering women employees was executed in 1950, effective from January 15, 1950, to January 15, 1952. Under the circumstances, we find it unnecessary to decide whether, as the Respondent contends, this contract contains a union-security clause.

⁵ *Standard-Coosa-Thatcher Company*, 85 NLRB 1358.

date of her discharge. Since the issuance of the Trial Examiner's Intermediate Report, however, the Board has adopted a method of computing back pay different from that prescribed by the Trial Examiner.⁶ Consistent with that new policy, we shall order that the loss of pay be computed on the basis of each separate calendar quarter or portion thereof during the period from the Respondent's discriminatory action to the date of proper offer of reinstatement. The quarterly periods, hereinafter called "quarters," shall begin with the first day of January, April, July, and October. Loss of pay shall be determined by deducting from a sum equal to that which Struniak would normally have earned for each quarter or portion thereof, her net earnings,⁷ if any, in other employment during that period. Earnings in one particular quarter shall have no effect upon the back-pay liability for any other quarter.

We shall also order the Respondent to make available to the Board upon request payroll and other records to facilitate the checking of the amount of back pay due.⁸

The Trial Examiner recommended that the Respondent cease and desist from the unfair labor practices found and from any like or related conduct. However, the Respondent's illegal activities, including the discriminatory discharge of Mary Struniak, go to the very heart of the Act and indicate a purpose to defeat self-organization of its employees. We are convinced that the unfair labor practices committed by the Respondent are potentially related to other unfair labor practices proscribed by the Act, and that the danger of their commission in the future is to be anticipated from the Respondent's conduct in the past. The preventive purpose of the Act will be thwarted unless our order is coextensive with the threat. Accordingly, in order to make effective the interdependent guarantees of Section 7 and thus effectuate the policies of the Act, we shall order the Respondent to cease and desist from in any manner infringing upon the rights of employees guaranteed by the Act.⁹

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations

⁶ *F. W. Woolworth Company*, 90 NLRB 289.

⁷ By "net earnings" is meant earnings less expenses, such as for transportation, room and board, incurred by an employee in connection with obtaining work and working elsewhere, which would not have been incurred but for this unlawful discrimination and the consequent necessity of his seeking employment elsewhere. *Crossett Lumber Company*, 8 NLRB 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered earnings. *Republic Steel Corporation v. N. L. R. B.*, 311 U. S. 7.

⁸ *F. W. Woolworth Company*, *supra*.

⁹ *May Department Stores v. N. L. R. B.*, 326 U. S. 376; *N. L. R. B. v. Entwistle Manufacturing Co.*, 120 F. 2d 532 (C. A. 4); *Premier Worsted Mills*, 85 NLRB 985.

Board hereby orders that the Respondent, Standard Dry Wall Products, Inc., New Eagle, Pennsylvania, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in Teamsters, Chauffeurs, Warehousemen & Helpers, Local 872, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, A. F. L., or in any other labor organization of its employees, by discharging any of its employees or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of their employment;

(b) Interrogating employees concerning their union affiliations, activities, or sympathies or those of their coworkers, threatening its employees with economic reprisals because of their union membership or activities, or promising rewards in return for relinquishment of union membership or activity;

(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 Teamsters, Chauffeurs, Warehousemen & Helpers, Local 872, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, A. F. L., 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 of such activities, except to the extent that such right 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 the Board finds will effectuate the policies of the Act:

(a) Offer to Mary Struniak immediate and full reinstatement to her former or a substantially equivalent position, without prejudice to her seniority or other rights and privileges;

(b) Make whole Mary Struniak, in the manner set forth in the section entitled "The Remedy," for any loss of pay she may have suffered by reason of the Respondent's discrimination against her;

(c) Upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records necessary to analyze the amount of back pay due and the right of reinstatement under the terms of this Order;

(d) Post at its plant in New Eagle, Pennsylvania, copies of the notice attached hereto, marked Appendix A.¹⁰ Copies of said notice, to be furnished by the Regional Director for the Sixth Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and maintained by it for sixty (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 said notices are not altered, defaced, or covered by any other material;

(e) Notify the Regional Director for the Sixth Region in writing, within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

APPENDIX A

NOTICE TO ALL EMPLOYEES

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

WE WILL NOT discourage membership in TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS, LOCAL 872, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, A. F. L., or in any other labor organization, by discriminating in any manner in regard to hire or tenure of employment, or any term or condition of employment.

WE WILL NOT interrogate employees concerning their union affiliations, activities, or sympathies or those of their coworkers, threaten our employees with economic reprisals because of their union membership or activities, or promise rewards in return for relinquishment of union membership or activity.

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 TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS, LOCAL 872, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, A. F. L., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted

¹⁰ In the event this Order is enforced by decree of a United States Court of Appeals, there shall be inserted before the words, "Decision and Order," the words "Decree of the United States Court of Appeals Enforcing."

activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act, or to refrain from any or all of such activities, except to the extent that such right 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 Mary Struniak immediate and full reinstatement to her former or a substantially equivalent position, without prejudice to her seniority or any other rights and privileges previously enjoyed, and make her whole for any loss of pay suffered as a result of the discrimination against her.

STANDARD DRY WALL PRODUCTS, INC.,
Employer.

Dated _____ By _____
(Representative) (Title)

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

INTERMEDIATE REPORT AND RECOMMENDED ORDER

Mr. Emil F. Narrick, for the General Counsel.

Messrs. Thomas E. Whitten and David B. Fawcett, of Pittsburgh, Pa., for the Respondent.

Mr. Victor G. Spridik, of Charleroi, Pa., for the Union.

STATEMENT OF THE CASE

Upon an amended charge duly filed by Teamsters, Chauffeurs, Warehousemen & Helpers, Local 872, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, A. F. L., herein called the Union, the General Counsel of the National Labor Relations Board,¹ by the Regional Director for the Sixth Region (Pittsburgh, Pennsylvania), issued a complaint dated March 3, 1950, against Standard Dry Wall Products, Inc., herein called the Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act.

With respect to the unfair labor practices, the complaint alleged in substance, that Respondent during the months of July and August 1949 and thereafter, committed certain specified acts constituting interference with, and restraint and coercion of, its employees in the exercise of their statutory guarantees, and that on or about August 8, 1949, it violated Section 8 (a) (1) and (3) of the Act by discriminatorily discharging Mary Struniak "because of her membership in and activities in the Union, because she engaged in concerted activities with other employees of the Respondent for the purpose of collective bargaining and other mutual aid and protection, and in order to discourage membership in the Union."

¹ The General Counsel's representative at the hearing is herein called the General Counsel, and the National Labor Relations Board is called the Board.

Respondent filed an answer specifically denying the commission of unfair labor practices. The answer admits the discharge of Mary Struniak but affirmatively alleges that she was discharged "because of repeated acts of insubordination against which she had been warned and because of her stubborn and studied refusal to obey orders of her supervisor."

Pursuant to notice, a hearing was held on March 27, 28, 29, and 30, 1950, at Pittsburgh, Pennsylvania, before the undersigned Trial Examiner. The General Counsel and Respondent were represented by counsel and the Union by its representative. All parties participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues. The parties were afforded, but did not avail themselves of, an opportunity for oral argument at the close of the hearing. The parties were advised of their right to file proposed findings of fact, conclusions of law, and briefs. On May 8, 1950, counsel for Respondent duly filed a brief which has been considered.

Upon the entire record in the case, and from his observation of witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. BUSINESS OF THE RESPONDENT²

Standard Dry Wall Products, Inc., a Pennsylvania corporation having its principal office and main plant in New Eagle, Pennsylvania, is engaged in the production, manufacture, sale, and distribution of hydraulic cements and waterproofing materials. During the 12-month period ending March 27, 1950, Respondent purchased for use at its New Eagle plant raw materials and supplies valued in excess of \$311,500, of which approximately 30 percent was shipped to the Respondent's plant from points outside of Pennsylvania. During the same period Respondent manufactured and sold finished products valued in excess of \$574,000, of which approximately 85 percent was sold and shipped to points outside of Pennsylvania.

Respondent employs an approximate total of 32 employees at its New Eagle plant.

On the basis of the above stipulated facts, it is found, as admitted by Respondent, that Respondent is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Local 872, Teamsters, Chauffeurs, Warehousemen & Helpers, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, A. F. L., is a labor organization admitting to membership employees of Respondent.

The Union is the collective bargaining representative of Respondent's male employees and it was stipulated that beginning the summer of 1946 and through the period involved by the dispute in this case, July and August 1949, there was in existence between the Union and Respondent an unbroken succession of contracts. However prior to the events involved in this proceeding Respondent's female workers, the employees involved herein, were unorganized. During July 1949 the Union organized these female workers and an agreement on their behalf, effective January 15, 1950, has been executed.

² The facts concerning Respondent's business were stipulated.

III. THE UNFAIR LABOR PRACTICES

A. *Facts*³

Respondent's operations for convenience may be divided into the following divisions or departments: Production, small container, shipping, and office. Only the employees in the small container division are involved in this proceeding. Small containers—pints, quarts, half-gallons, gallons, etc.—as distinct from large drums are packed in the small container division and these operations are performed by female employees. Normally four workers are employed in this division. This division is designed and set up in a manner conducive to a production or assembly-line type of operation and ordinarily such a method is employed. Thus one person fills the containers, another vibrates and weighs them, another inserts instructions and puts lids on the containers, and the fourth operator labels and packs the containers into cartons. On occasion one or more of these workers is segregated from the others to work on special orders and on occasion all of these functions are not required and one or more of the workers undertakes to perform independently all of the functions required.

About May 1948, Bertha Ostifin was employed in the small container division and from that time until May 24, 1949, the workers in this division consisted of Mary Struniak, Margaret Stearns, Bertha Mejia, and Bertha Ostifin. Struniak's personality is such that employees in this division looked to her for advice and guidance and the supervisor, David Herron, frequently treated her as the representative of the group and passed orders for the group to her. Ostifin was a slower worker than the others and resented suggestions from Struniak as to how to improve her production. Several weeks prior to May 24, 1949, Struniak, Stearns, and Mejia agreed among themselves that Ostifin should be separated from the group and work alone while the others continued to follow a production or assembly method of operation.⁴ This agreement was placed into effect in May 1949, and the daily production cards submitted by the workers of this division on and after May 18, 1949, carried notations signifying this deviation from normal method of operation. Also during the 3 weeks immediately prior to May 24, 1949, Ostifin and Struniak ceased talking to one another. A "few days" prior to May 24, 1949, Ostifin conferred with Katherine Reinhardt, secretary to the general manager, Edward Canon, about the working arrangement in the small container division. Reinhardt "mentioned" this matter to Canon. Around quitting time on May 24, 1949, Canon called the employees of this division to his office. Canon inquired as to the difficulties and why Ostifin "was working by herself the last few days." He was informed by Struniak that Ostifin was too slow and made too many mistakes to keep up with the others and that when Struniak told her about her mistakes she told Struniak "to mind my own damned business." Ostifin at this meeting stated that "she wanted to quit because she couldn't get along back there" and when asked "why?" responded because "I can't get along with Mary" [Struniak]. Canon told these employees that Struniak understood the work and that he was

³ Certain conflicts and questions of credibility are noted and resolved; others are unmentioned so as not to lengthen unduly this Report. However, all have been considered by the undersigned.

⁴ Prior to the events herein related the actual method employed in filling particular orders in this division was left largely to the discretion of the employees involved although the physical arrangement of the division is conducive to a production or assembly-line type of operation and such method was normally employed.

thinking about making her a foreman and persuaded Ostifin not to quit, at least until the end of the week. This meeting ended with an agreement by the workers that they would take Ostifin back into their group operations.⁵ However, Ostifin did not report for work the next day and has not since been employed by Respondent.

From May 25 to August 8, 1949, the date of Struniak's discharge, the three employees performed their work in the usual manner (as a group)⁶ except that on July 11, 12, 13, and 14, 1949, Struniak worked off by herself instead of with the other employees. In July 1949, a rush order was received. This order was for Thoroseal and Quickseal.⁷ A vibrator is used in packing Quickseal but not required in packing Thoroseal, a heavier substance. The three workers agreed among themselves that the most efficient manner of handling this order was for one of them to handle the Thoroseal while the others handled the Quickseal. Accordingly Struniak on July 11, 12, 13, and 14 worked at a separate table filling the order for Thoroseal while Stearns and Mejia filled the Quickseal portion of the order.

In July 1949 Struniak, Stearns, and Mejia discussed whether they should join the Union and it was agreed that Struniak should contact Orman Marraccini, union shop steward, about membership applications. Struniak thereafter conferred with Marraccini. On or about July 12, 1949, Marraccini, during lunch period, gave union membership application cards to Struniak, Stearns, and Mejia. Stearns took her card to Reinhardt, Canon's secretary, and discussed union membership with her. Reinhardt reported this conversation to Canon.

On July 14, 1949, Schuyler Begg, superintendent, stopped Mejia as she walked through the plant and asked her "if we were thinking about joining the Union" and upon receiving an affirmative reply inquired "well, you haven't signed your cards yet?" Mejia responded "No" and was told by Begg "well, will you please talk to Mr. Canon about it first?" Mejia answered "Yes." Begg did not testify concerning this conversation.

On July 15, 1949, Stearns and Mejia⁸ were called to Canon's office where they met Canon and Begg. Canon said "I heard you girls want to join the Union" and when told that they had received union applications inquired where they had

⁵ Canon's version of the May 24 meeting while differing in detail is in accord as to substance and he testified that the events leading to the meeting were as follows: Around May 1, 1949, he observed "a considerable amount of quarreling going on in the small container division" (later described as "raised voices") and on one occasion he observed Struniak thumb her nose at Herron as he (Herron) turned away from Struniak after giving her "a piece of paper." Upon investigation Canon found it was just "shop talk" and "forgot" about it until he noticed from the daily production cards that Ostifin was working by "herself, individually." Canon stated that he took no action, however, until May 24, that on that date as he came into the plant about 2 p. m. Struniak and Ostifin approached him in a manner indicative of differences between them, and that he indicated he did not want to hear from them at that time but that they were to "meet in the office about 4 o'clock this afternoon."

⁶ Between May 25 and June 11 there were occasions when the group did not function as a unit for the entire workday. However no comments, criticism, or objections were made to the workers involved. Also the record reflects that where only a portion of the day is spent by an employee working independent of the others it is not considered noteworthy unless the amount thereof is relatively large. The record does not reflect that any of these employees worked separately from the others for any, even a small portion, period of time between July 15 and August 8, 1949.

⁷ Thoroseal—a masonry wall coating to fill, seal, and protect concrete or other masonry surface. Quickseal—a finer, smoother finish coat which further adds to sealing of the surface. Both packed by Respondent in a dry form, ready for use other than by the addition of water.

⁸ Struniak was not working on this date.

obtained the cards and whether they had signed them. After being told that Marraccini had given them the cards and that they had not signed them, Canon told these workers that "it would be to your advantage not to, because you'd have to pay [an] initiation fee and you would have to pay monthly fees" and told them that if they joined the Union they could expect to be laid off during slack periods.⁹ At this meeting, Begg stated to the employees that "the initiation fee would be twenty-five dollars." The meeting was concluded with an indication by the employees that they would not join the Union. The undersigned credits the testimony of Mejia and accepts her version of this meeting. Stearns was not called as a witness in this proceeding.

According to Canon¹⁰ on July 13 Reinhardt called his attention to "the separate table business" and "tossed" the daily production cards on the table saying "you'd better look into it." Canon testified he then made a number of trips through the plant on July 13 and 14 observing especially that Struniak was working by herself, that on July 15 he told Begg to have "the girls come into my office" and found out from Begg that Struniak was not working that day. Nevertheless Canon did not cancel the request that the girls come to his office. At this office meeting, according to Canon, he (Canon) asked Mejia and Stearns "Have you girls joined the Union?" and they both answered "No." Canon denied "from that point until the conversation with the girls closed" there was "any further reference to their membership in the Union, the payment of dues, the payment of initiation fees or anything connected with union activity." He denied the specific statements attributed to him and to Begg and stated he asked Stearns why Struniak was working by herself and was told by Stearns "she's trying to show us up, that she can do more work than we can in a day . . ." and that he (Canon) ended the meeting by stating "That's too bad. We will have a meeting on Monday, if Mrs. Struniak is here." Canon's denials and version of this meeting are not credited by the undersigned.

Begg testified he did not hear Canon say "I hear you have joined the Union," he did not recall any statement by Canon about "cards" and he didn't remember hearing Canon say "you will have to pay dues to belong to the Union." Begg denied that Canon said that if Mejia joined the Union "she would be laid off in slack periods" and denied that he (Begg) said "you will have to pay a twenty-five-dollar initiation fee to join the Union" or that he (Begg) made any statement that the girls would be laid off in slack periods if they joined the Union. Begg did not state his version of what occurred at this meeting. In the light of the entire record the undersigned finds the occurrences of July 15 were as stated above and does not credit Begg's testimony concerning this incident.

On July 18, 1949, Canon called Struniak into his office and said to her "I hear that you girls want to join the Union" and asked whether she had filled out a union application card. Canon told Struniak he did not want the girls to join the Union, that the initiation fee was high, that it would be to their disadvantage to join the Union and that if they joined the Union they could expect to be laid off during slack periods. Canon promised a 5-cent increase, after the pending negotiations for male workers were completed¹¹ if the girls

⁹ These employees normally worked during plant slack periods.

¹⁰ Canon frequently volunteered information, was evasive and contradictory with respect to particularities, and gave a garrulous account of the incidents involved herein. Nevertheless, the undersigned has endeavored to ascertain and state as accurately as he can Canon's version of disputed issues of fact.

¹¹ The negotiations were completed July 23 and on August 8 the "girls" received a 5-cent increase. In the past when wage increases were negotiated for male employees Respondent also granted 5-cent increases to female employees.

would "go along" with the Company. Struniak indicated she would "go along."

Canon denied the specific statements attributed to him and testified that at the meeting on July 18 he criticized Struniak for working "separate from the other girls" and told her to work with the other girls "or else go home, and stay there," and that he talked to Struniak about obeying the orders of her supervisor, Herron.¹² Begg's testimony tends to support Canon's version of this meeting. The undersigned on the basis of the entire record believes and finds the facts to be as stated in the preceding paragraph.

On July 23, 1949, Struniak and Mejia met Victor Spridik, secretary-treasurer and business agent of Local 872, on a street in New Eagle, Pennsylvania. Spridik gave them applications for membership in the Union which they executed and returned to Spridik on that occasion.

On August 5, 1949, Spridik wrote a letter to Canon stating as follows:

Please be advised that we now have the warehouse girls under application for membership in this Union.

It is necessary however to put these girls under contract with the Company. We are therefore, requesting that the girls be put under the same contract with the men workers with the exception of wages which will be (\$1.00) One Dollar per hour. At your convenience we are ready to conclude the negotiations on this matter.

The letter was sent registered mail and was received on August 8, 1949, by Lattimore, the office supervisor, who handed it unopened to Reinhardt. About 1:30 p. m. on that date Reinhardt opened the letter and placed it with other letters on Canon's desk. Reinhardt did not direct Canon's attention to this letter until August 9, 1949.

On August 8, 1949, about 9:30 a. m. Begg went to the small container division and said to Struniak, "Well, Mary, what did you do about the Union?" Struniak responded, "I did what I thought best" and Begg then said "I don't want none of that. Did you or did you not join the Union?" Struniak informed Begg that she had joined the Union and Begg then inquired as to whether Mejia and Stearns had also joined. He was told that Mejia had but that Struniak didn't see Stearns "sign." Begg denied stating to Struniak, "Mary, what have you done about joining the Union?" or being in the small container division at the time specified. His testimony in these regards is not credited by the undersigned.

Near quitting time on August 8, 1949, Struniak was called to Canon's office. As Struniak and Mejia entered the office Canon stated "These are our unfaithful, deceitful employees. After promising to go along with the Company, they turn around and join the Union." Then he asked "Why?" Struniak stated "Mr. Canon after thinking it over, I thought this is a free country and it's up to me whether I should join the Union or not. It's not up to the employer to tell me when I should join the Union." Canon then told the employees that the Union was demanding a dollar an hour for girls and stated "I'll never give you a dollar an hour. I will move the plant out of New Eagle before I will pay you a dollar an hour. I will move the plant out of New Eagle because nobody

¹² According to Canon he wanted to clarify some things in connection with Herron. Details of the things to be clarified are not revealed except that the record does reflect that on one occasion, in June 1949, Struniak requested some material for an order and Herron stated "I will give you four drums" and when Herron did not answer her request for more drums, Struniak obtained 10 drums from the delivery boys and Herron resented this action by Struniak.

else in New Eagle has a chance but the damned Jews" and thrust his fist towards Halpern's costume factory, next door. Canon stated further "I never had trouble back there before, and I am not going to have it now. I personally dislike you so I am firing you." Canon called his secretary, Reinhardt, and told her to "get Mary's pay."³³ Reinhardt obtained a check and gave it to Canon. Canon looked over at Begg and Lattimore and asked "Well men, do you think I did right in firing Mary?" Lattimore did not reply but Begg stated "Well, Mr. Canon as far as Mary's work is concerned, she's a good worker, but if you have any personal reasons for firing her, it's entirely up to you." Struniak suggested that laying her off "would be a more pleasant way of discharging her" and Canon stated "I am not laying you off. I am firing you because I personally dislike you." Struniak stated that she would go to the Union and tell them about her discharge and Canon said "go ahead. Spridik will come in here and pop off to me; but I can take care of him." Near the end of the meeting Canon looked at Mejia and said "Bertha, if you want to join the Union, go ahead. I am not going to stop you. Go ahead and join the Union if you want to, but you can expect a lay-off when there's slack periods." Struniak was given her check and she and Mejia left the office together.

According to Canon he first arrived at the plant on August 8 about 4:15 p. m. At that time he saw Struniak standing around "not doing anything, although she might have been talking with Mr. Herron or Mr. Hixenbough a few minutes before, another shipper" and it made him (Canon) so "angry because she was standing there" that he called Begg and told him to tell Struniak to come into the office. About 30 minutes later Struniak and Mejia came to the office where in the presence of Lattimore and Begg he (Canon) discharged Struniak. According to Canon he "expressed himself" to Struniak by saying she was the "most deceitful, the most discourteous person that I had ever met or employee that I ever met. I told her 'For practically three months now, we have been trying to get you to do what we tell you to do, not to act as a foreman, or superintendent, or try to eliminate older employees than you, and especially have you tried to get rid of Bertha Ostifin, which you had already done, then Margaret Stearns, in turn and then Herron. You have worked on him for the last year, by not doing the things he's asking you to do, making faces at him and sticking your nose up, your hand up to your nose when he does bring you some information and I am going to discharge you.'" At this point Struniak, according to Canon, asked "are you going to fire me on account of me joining the Union?" and he (Canon) said "No." Canon testified Struniak suggested a "lay off?" and he responded "I am not laying you off, Mrs. Struniak, I am discharging you." Canon testified that Struniak then stated "Well I own three houses and I'll spend everyone of them fighting this" and he (Canon) answered "Mrs. Struniak you can spend your money in any way you see fit, but I am going to get your check" and called Reinhardt and told her to get Struniak's check. Canon admitted asking Lattimore and Begg "if they thought I had done the right thing" and after considerable cross-examination stated that Begg responded "she was a good worker but she wouldn't obey orders. Bad influence."

Begg testified he responded, "Well, she's a good worker Mr. Canon but . . . I am not sure whether it was. That's your decision. That's the way it's to be. Words to that effect." Begg did not testify in detail concerning his version of this meeting and Lattimore was not called as a witness in this proceeding.

³³ Employees are normally paid on the 3d and 18th of the month.

Canon denied stating "These are our deceitful employees who after promising to go along with the Company have gone and joined the Union"; denied stating that he had a letter (as testified to by Struniak) from the Union;¹⁴ denied stating that the letter demanded that the Company pay the girls a dollar an hour; denied stating that he would "not give the girls a dollar an hour"; denied stating "no one has a chance in New Eagle except the Jews"; and denied knowledge, at the time of Struniak's discharge, "of receipt by the Company of any letter from the Union." Begg testified that Canon did not make "any such statement" as "These are our deceitful employees, who, after promising to go along with the Company, have joined the Union," that he could not recollect Canon stating he "had a letter from the Union in which they wanted a dollar an hour for the girls," and that Canon did not state "no one has a chance in New Eagle except the Jews." On the basis of the entire record including the testimony of Struniak and Mejia whose testimony is credited, the undersigned believes and finds that the facts concerning the August 8, 1949, meeting are as first herein stated and that Canon made the statements attributed to him.

Prior to the date of her discharge, Struniak was not given a warning that she would be dismissed or terminated, was not told that her work was unsatisfactory, and her work was not criticized except as noted above. On several occasions Begg commended Struniak for the way she did her work.

It is Respondent's policy to interrogate applicants for employment and employees, participating in meetings with Respondent's representatives, concerning their union affiliation and the employment application form which Respondent uses requires the disclosure by prospective employees of their "union affiliation." Respondent contends this interrogation is justified in view of the provisions of the contracts with the Union and is a necessary procedure to enable Respondent to determine whether there are union representatives who should be consulted with respect to the grievances or other pending problems. The contracts, for the period from June 1, 1948, to March 1, 1952, covering male workers provide, *inter alia*, the employer agrees that all employees in his production department, first employed after date of this contract shall join the Union within 30 days from their date of employment or forfeit their employment and provide for check off of a specific sum of money each month upon written authorization. The contracts provide that union representatives shall have admission to Respondent's premises to ascertain whether or not the agreement is being observed and "for the purpose of assisting in the adjustment of grievances" but do not establish a specific grievance procedure.¹⁵ The first and only agreement covering female workers, the small container division, was signed in March 1950 and is effective January 15, 1950, to January 15, 1952. It does not contain union-security, checkoff, or grievance procedure provisions.

B. Conclusions and Findings

Upon the foregoing facts and the complete record herein, the undersigned concludes and finds:

1. That Respondent discharged Mary Struniak on or about August 8, 1949, and has since refused to reinstate her, because of her union membership or activity and thereby discriminated with respect to hire and tenure of employ-

¹⁴ The undersigned does not deem it necessary to resolve the issue of whether Canon stated he had such a letter but does find that Canon's statements reflected information set forth in the letter.

¹⁵ The legality of the contracts are not in issue herein. Also see 6-UA-461.

ment and discouraged membership in the Union and interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. That Respondent interrogated employees concerning their union affiliation and attempted to discourage activities on behalf of the Union, made promises of reward in return for relinquishment of union membership and activity, and threatened possible economic reprisals because of union membership and activity.

3. That Respondent uses an employment application form requiring disclosure by prospective employees of their union affiliation and pursues a policy of interrogating employees and prospective employees concerning their union affiliation.

The Board has frequently held that interrogation of employees concerning their union affiliation is violative of the Act. The undersigned finds nothing in the contracts herein requiring or warranting a deviation from this interpretation of the statute. The facts set forth in this Report establish an unwarranted invasion of employees' privacy having a reasonable tendency to interfere with the enjoyment of their rights guaranteed by the Act. *N. L. R. B. v. Fairmont Creamery*, 169 F. 2d 169; *Standard-Coosa-Thatcher Company*, 85 NLRB 1358.

The undersigned further concludes and finds that the afore-mentioned acts and conduct of Respondent constitute unfair labor practices within the meaning of Section 8 (a) (1) and (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 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 Respondent has engaged in certain unfair labor practices, it will be recommended that Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that Respondent discriminated in regard to the hire and tenure of employment of Mary Struniak thereby discouraging membership in the Union. It will be recommended that Respondent offer to Mary Struniak immediate and full reinstatement to her former or substantially equivalent position¹⁶ without prejudice to her seniority or other rights and privileges and that Respondent make whole Mary Struniak for any loss of pay she may have suffered by reason of Respondent's discrimination against her by payment to her of a sum of money equal to the amount she normally would have earned as wages from the date of the discharge to the date of Respondent's offer of reinstatement, less her net earnings during said period.¹⁷

Upon consideration of the entire record, especially Respondent's past amicable relations with the Union and the fact that Respondent is dealing with the Union

¹⁶ In accordance with the Board's consistent interpretation of the term, the expression "former or substantially equivalent position" is intended to mean "former position wherever possible and if such position is no longer in existence then to a substantially equivalent position." See *The Chase National Bank of the City of New York, San Juan, Puerto Rico Branch*, 65 NLRB 827.

¹⁷ For an explanation of "net earnings" see *Crossett Lumber Co.*, 8 NLRB 440 and *Republic Steel Corporation v. N. L. R. B.*, 311 U. S. 7.

under collective bargaining agreements, the undersigned is of the opinion that the policies of the Act will be adequately effectuated if Respondent ceases and desists from the unfair labor practices found and from any like or related conduct.

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

CONCLUSIONS OF LAW

1. Teamsters, Chauffeurs, Warehousemen & Helpers Local 872, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, A. F. of L., is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Mary Struniak thereby discouraging membership in a labor organization, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

3. By such discharge and by otherwise 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 and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) 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 omitted from publication in this volume.]