(c) Notify the said Regional Director, in writing, within 20 days of the receipt of this Recommended Order, what steps it has taken to comply therewith.[4]

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

APPENDIX

NOTICE TO ALL EMPLOYEES

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

WE WILL BARGAIN collectively, upon request, with Lodge 2222, International Association of Machinists, AFL–CIO, as the exclusive bargaining representative of all employees in the bargaining unit described below concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of work, and, if an understanding is reached, embody it in a signed agreement. The bargaining unit is:

All production and maintenance employees employed at the Employer's place of business in Alliance, Ohio, exclusive of all office clerical employees and all guards, professional employees, and supervisors as defined in the Act.

WE WILL NOT refuse to bargain collectively as aforesaid, nor will we in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of their right to bargain collectively through the said Union or any other labor organization of their own choosing.

KEENER RUBBER, INC.,
Employer.

Dated_____ By_____
(Representative) (Title)

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

Employees may communicate directly with the Board's Regional Office, 720 Bulkley Building, 1501 Euclid Avenue, Cleveland, Ohio, Telephone Number, Maine 1–4465, if they have any question concerning this notice or compliance with its provisions.

Stoddard-Quirk Manufacturing Co. ***and*** **International Woodworkers of America, AFL–CIO.** *Case No. 26–CA–948. September 18, 1962*

DECISION AND ORDER

On April 26, 1961, Trial Examiner Herman Marx 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 attached Intermediate Report. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board has reviewed the rulings made by the Trial Examiner 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 except as modified below:

Invoking the principles enunicated by the Board in the *Walton* case,[1] the Trial Examiner found that Respondent's shop rule which prohibits "unauthorized distribution of literature of any description on company premises" is violative of Section 8(a)(1) of the Act, since the rule applies to employees who might wish to distribute union literature when they are not actually at work.

We agree with the Trial Examiner's conclusion, but we predicate our agreement on the additional factor that the prohibition embodied in the rule in question is concededly applicable to nonworking areas of "company premises," for example, the parking lot adjacent to the plant buildings. Implicit here, of course, is a limitation on the apparent scope of the principles enunciated in *Walton*, which, in turn, calls for a corresponding modification of the Trial Examiner's recommended order.

In short, we believe, contrary to our dissenting colleagues, that a real distinction exists in law and in fact between oral solicitation on the one hand and distribution of literature on the other. Further, we believe that logic and precedent call for recognition of this distinction and its legal effects. A brief review of the relevant factors and of the precedents in this area will make clear our views in this regard.

1. The principles which the Board deems controlling in respect to union solicitation and distribution of union literature when these activities occur on property subject to the employer's ownership and dominion had their genesis in the early days of the Wagner Act. The course of development of those principles, attended by a mass of Board and court litigation, has not always been smooth, and, it seems fair to say, the application of those principles to particular fact situations has not always been wholly consistent.[2]

Nevertheless, certain basic postulates have gained general acceptance. The Supreme Court long ago made clear in *Republic Aviation Corporation* v. *N.L.R.B.*, *supra*, that the validity of employer rules

[1] *Walton Manufacturing Company*, 126 NLRB 697 (February 1960), enfd. 289 F. 2d 117 (C.A. 5). In that case the Board articulated certain principles with respect to no-solicitation and no-distribution rules which it regarded as being established by three prior decisions of the Supreme Court:

(1) *Republic Aviation Corporation* v. *N.L.R.B.*, 324 U.S. 793, upholding the Board's decisions in *Republic Aviation Corporation*, 51 NLRB 1186, and *LeTourneau Company of Georgia*, 54 NLRB 1253.

(2) *N.L.R.B.* v. *The Babcock & Wilcox Company*, 351 U.S. 105, reversing 109 NLRB 485; *Ranco, Inc.*, 109 NLRB 998; and *Seamprufe, Inc. (Holdenville Plant)*, 109 NLRB 24.

(3) *N.L.R.B.* v. *United Steelworkers of America, CIO (Nutone, Inc.)*, 357 U.S. 357, upholding 112 NLRB 1153, but reversing *Avondale Mills*, 115 NLRB 840.

[2] This is not surprising. As set forth more fully in the text, what is involved basically in each case arising in this area is the necessity of striking a proper adjustment between conflicting rights against the background of particular fact situations. See *N.L.R.B.* v. *United Steelworkers of America, CIO (Nutone, Inc.)*, *supra*, at 362–363. That reasonable men can and do differ in striking this adjustment can readily be understood

restricting union solicitation or distribution of union literature on plant premises depends upon "an adjustment between the undisputed right of self-organization assured to employees under the Wagner Act and the equally undisputed right of employers to maintain discipline in their establishments." 324 U.S. 793, 797–798. Neither right is unlimited. "Opportunity to organize and proper discipline are both essential elements in a balanced society." *Ibid.*

Where there is no necessary conflict neither right should be abridged. By the same taken, where conflict does exist, the abridgement of either right should be kept to a minimum. The Supreme Court stated this principle and its underlying rationale in *N.L.R.B.* v. *The Babcock & Wilcox Company*, 351 U.S. 105, 112.

> This is not a problem of always open or always closed doors for union organization on company property. Organization rights are granted to workers by the same authority, the National Government, that preserves property rights. *Accommodation between the two must be obtained with as little destruction of the one as is consistent with the maintenance of the other.* [Emphasis supplied.] [3]

It follows, we believe, that the formulation of generalized rules in this area must be undertaken with caution for, patently, differing fact situations call for differing accommodations. The Supreme Court in the most recent of its utterances in this field pointedly reminded us in a closely related context that "mechanical answers" will not avail "for the solution of this non-mechanical complex problem in labor management relations." *N.L.R.B.* v. *United Steelworkers of America, CIO (Nutone, Inc.)*, *supra*, at 364.

2. Generally speaking, the development of the law regarding oral solicitation has been attended by less travail than that regarding distribution of literature. Almost from the outset the Board has held with court approval that an employer may in the normal situation make and enforce a rule forbidding his employees to engage in such union solicitation during working time ("working time is for work"), but that a broad rule banning such activity during nonworking time is presumptively invalid. *Peyton Packing Company, Inc.*, 49 NLRB 828, 843–844, cited with approval in *Republic Aviation Corporation* v. *N.L.R.B.*, *supra*, at 803.[4]

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[3] We are aware, of course, that the *Babcock & Wilcox* case has to do ultimately with the rights of nonemployees as contrasted with the rights of employees. This does not gainsay the fact that the quoted language—and, indeed, much of the Supreme Court's opinion—deals with the general principles elucidated in *Republic Aviation* and reaffirms those principles. The difference in result is attributable, as the opinion notes, to the Board's failure to take into account in its equation the subordinate status of nonemployees as compared to that of employees in the use of an employer's premises.

[4] Even this simple doctrine, however, is subject to exception where special circumstances exist. For example, employee solicitation can be forbidden even during nonworking time where the nature of the employer's business requires such a broad limita-

3. The relatively smooth evolution of the law respecting oral solicitation has been lacking with respect to the law relating to distribution of literature. As the Court of Appeals for the District of Columbia observed in the *Nutone* case, *supra*, footnote 1, "No-distribution rules have had a checkered history" (243 F. 2d 593, 597). The opinion in that case correctly recites (at 597–598):

> At one time the Board held that in the interests of keeping the plant clean and orderly it was not unreasonable for an employer to prohibit the distribution of literature on plant premises at all times. Later the Board took the position that, absent a particular showing that the rule was necessary to plant discipline, an employer could not validly apply such a rule to employees on nonworking time. Finally, in *Monolith Portland Cement Company* [94 NLRB 1358] the Board held that a no-distribution rule relating to the plant proper could be applied generally to non-working time absent special circumstances, discrimination, or a specific purpose to suppress self-organization. (Footnotes omitted.)

It was the last of these formulations which the Board had espoused in its earlier decisions in the *LeTourneau Company of Georgia*, 54 NLRB 1253. In the *LeTourneau* case the Board was squarely presented with the issue "whether a rule prohibiting distribution of literature by employees in an area outside the plant proper, although on company property, is itself repugnant to the Act under the circumstances of this case." *Supra*, at 1259. (The *LeTourneau* case involved employee distribution of union literature in a company parking lot.) In answer to the contention that prior Board authority justified a ban on distribution of union literature anywhere on company premises, the Board said that it did not agree. Rather, the *LeTourneau* decision notes that the "[c]onsiderations of efficiency and order which may be deemed of first importance within buildings where production is being carried on do not have the same force in the case of parking lots." *Supra*, at 1261. The Board thus recognized a distinction between the considerations applicable to production or working areas and those applicable to nonworking areas.

It was this *LeTourneau* decision which came before the Supreme Court for review along with *Republic Aviation*, a case which presented the classic working time versus nonworking time distinction

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tion, e.g., the selling floors of a department store *The May Department Stores Company, et al.*, 59 NLRB 976, enfd. 154 F. 2d 533 (C.A. 8), cert. denied 329 U.S. 725 In this connection it may be noted that our colleagues cite and rely upon a more recent case by the same name reported at 136 NLRB 797. There were divided opinions in that case but implicit in both opinions was recognition of the normal right of a department store owner to preclude employee solicitation on selling floors even during nonworking time. Significantly, our colleagues fail to note that the issue involved in the latter case arose in a context of a no-solicitation rule, and that the no-distribution rule issue, posed in the instant case, was not presented.

applicable to "solicitation." The Supreme Court approved the Board's resolution in both cases. To suggest, as our dissenting colleagues suggest, that the Supreme Court was oblivious to, or overlooked, the distinction between the two cases either in the *Republic* opinion itself or in the later cases where it reaffirmed its earlier holding is in our view an unwarranted deprecation of that Tribunal.[5]

4. The distinction is not fortuitous. It springs from the fact that solicitation and distribution of literature are *different* organizational techniques and their implementation poses *different* problems both for the employer and for the employees. Heretofore, the difference in result has been explained largely in terms of the employer's interests. Thus, it has been noted that solicitation, being oral in nature, impinges upon the employer's interests only to the extent that it occurs on working time, whereas distribution of literature, because it carries the potential of littering the employer's premises, raises a hazard to production whether it occurs on working time or nonworking time. See cases cited *supra.*

The validity of this consideration cannot be gainsaid. But because it presents only one side of the employer-employee equation, it does not wholly resolve the problem. Thus, if employer interests alone were controlling, oral solicitation on plant premises could be denied altogether for no one would deny that the strong feelings frequently engendered by union solicitation inevitably carry over to some extent from nonworking time to working time. And, on the other hand, the employer's unquestioned right to make reasonable regulations governing the manner and volume of literature distribution in working areas of the plant if such distribution were allowed could be invoked to minimize any hazard to production raised thereby and, *pro tanto*, would abate the need for complete exclusion.

It follows, therefore, that to solve the equation we must look also to the countervailing employee interests involved in the respective situations. The first requirement for an employee seeking to solicit

[5] Our colleagues make much of the circumstance that in both *Babcock & Wilcox* and *United Steelworkers of America,* the Supreme Court on occasion used the broad "generic" term "solicitation" in obvious reference to both oral inducement and literature distribution. They argue from this premise that the Court regards both as being *pari materia.* This argument, however, overlooks the fact that in neither of those cases was the distinction between the two techniques material to the ultimate issue presented. In the former the question was whether the right of employees and nonemployees could be equated In the latter the question was whether an employer forfeited his right to invoke *valid* rules proscribing avenues of communication to his employees when he himself utilized those avenues. The Supreme Court has in no case stated that oral solicitation and literature distribution shall be controlled by identical rules. The only Board intimation to this effect is in the broad statement in *Walton* of the presumptions concerning "no-solicitation or no-distribution rules," upon which the Trial Examiner based his finding in this case. And that broad statement, apparently equating "solicitation" and "distribution of union literature," was not necessary to the decision in that case, not supported by any prior Supreme Court or Board holdings, and not explicitly analyzed or justified in the Board's decision. We therefore do not believe it should be given decisive weight as a clear precedent on this issue, which the Trial Examiner's reliance upon it would in effect do.

his fellow employees is that he find a time and place appropriate for such solicitation. In the *Republic Aviation* decision, 51 NLRB 1186, 1195, the Board pointed out that in the situation there presented, the free time of employees on plant property was "the very time and place uniquely appropriate . . . therefore" (quoted with apparent approval at 324 U.S. 801, footnote 6). This is true, moreover, whether the plant is located, as in *Republic Aviation*, in a somewhat remote location, or in the heart of a city; and whether the plant itself and its employee complement be large or small. Whatever the particular situation, the difficulty of drawing employees aside for oral discussion when they are hurrying to or from work or when they are engaged in other activities away from the plant is obvious. Accordingly, unless the right of employees to engage in effective oral solicitation is to be virtually nullified, a limitation upon the employer's normal and legitimate property rights is required. The scope of that limitation, however, is to be determined by the nature of the need. Balancing the respective rights, the working time versus nonworking time adjustment has been evolved. The respective rights of both employer and employees are thus accorded their proper weight.

It does not follow, though, that an identical adjustment is appropriate where distribution of literature is involved. The distinguishing characteristic of literature as contrasted with oral solicitation—and a distinction too often overlooked—is that its message is of a permanent nature and that it is designed to be retained by the recipient for reading or re-reading at his convenience. Hence, the purpose is satisfied so long as it is received.[6]

This purpose, however, can, absent special circumstances, be as readily and as effectively achieved at company parking lots, at plant entrances or exits, or in other nonworking areas, as it can be at the machines or work stations where the employer's interest in cleanliness, order, and discipline is undeniably greater than it is in nonworking areas. Granted that the distribution of union literature, even when it is limited to nonworking areas, is an intrusion upon an employer's acknowledged property rights, we believe that this limited intrusion is warranted if we are to accord a commensurate recognition to the statutory right of employees to utilize this organizational technique. On the other hand, opportunity for effective distribution of union literature is more easily afforded than opportunity for effective oral solicitation and the intrusion upon the employer's property rights can be correspondingly diminished without substantial prejudice to

[6] Wholly distinguishable, of course, is the situation where an employee is asked to sign an authorization card. Our dissenting colleagues exploit a semantic gambit by analogizing the solicitation of signatures on authorization cards to the distribution of "literature." This gambit, we respectfully suggest, is directed neither to the facts of this case nor to the issue posed herein.

employee rights.[7] Thus, in conformity with the Supreme Court mandate in *Babcock & Wilcox*, the limitation on the employer's property right in each situation is imposed only to the extent that it is necessary for the maintenance of the employees' organizational right.

To sum up, we believe that to effectuate organizational rights through the medium of oral solicitation, the right of employees to solicit on plant premises must be afforded subject only to the restriction that it be on nonworking time. However, because distribution of literature is a different technique and poses different problems both from the point of view of the employees and from the point of view of management, we believe organizational rights in that regard require only that employees have access to nonworking areas of the plant premises.[8]

5. Applying the foregoing principles in the instant case, we agree with the Trial Examiner, as stated above, that the no-distribution rule maintained by the Respondent is presumptively invalid on its face, as applied to employees who may wish to distribute union literature, since its reach is not limited to working time or to the working areas of the plant. We also find that the presumption of invalidity is not overcome by the testimony of Carson Butcher, Respondent's vice president, that the rule was adopted years ago for the purpose of "keep[ing] down the litter . . . [and] fire hazards . . . in the plant." The mere assertion that a broad no-distribution rule has this purpose hardly proves that it is actually "necessary" for the employer to prohibit union handbilling by his own employees in nonworking areas

[7] It defines all experience to suggest, as our dissenting colleagues do, that in many "small" plants it is virtually impossible for employees to pass out or receive union literature anywhere except "at their work benches." Surely, even in small plants, employees are not so chained to their work stations that they have no opportunity to distribute or receive union literature in some nonworking area at some time during the course of a normal 8-hour day, e.g., luncheon breaks, restroom periods, coffee breaks, timeclock punching, clothes changing, auto parking, and simple entry into and departure from the plant.

In its practical effects, furthermore, the alternative "no-littering" rule our colleagues espouse would be less clearly defined and, therefore, more onerous to apply. In terms of the administration of the law, also, it would leave more vague questions for future Board determination. For example, must the employer allow handbill distribution in an area where some employees are always at work, even though others may be taking a break? How many leaflets on the floor constitute "littering"? Is a total ban on distribution warranted if there are rival factions of employees distributing literature, and one group deliberately litters the working area with the other's handbills? If not, which group forfeits its distribution privileges?

[8] As in the case of no-solicitation rules (*supra*, footnote 4), so here there are exceptions to the normal rule. As *Babcock & Wilcox* establishes, nonemployee organizers can be excluded even from an employer's parking lot. Lumber camps and the like where employees are isolated from normal contacts, on the other hand, require a relaxation of otherwise permissible restrictions inasmuch as in such cases "union organization must proceed upon the employer's premises or be seriously handicapped" *Republic Aviation Corporation* v. *N.L.R.B.*, *supra*, at 799; *N.L.R.B.* v. *Lake Superior Lumber Corporation*, 167 F 2d 147, 150–151 (C.A 6). Finally, where it is shown that the imposition or enforcement of restrictive rules in this overall area flow not from the employer's right to protect his legitimate property interests, but rather from his desire to obstruct the employees' statutory right of self-organization, the immunity otherwise accorded him in this regard is forfeited. *N L R.B.* v. *Stowe Spinning Company, et al.*, 336 U.S. 226, 230–233; *N.L.R.B.* v. *The Babcock & Wilcox Company*, *supra*, at 111, footnote 4.

in order to "maintain production or discipline" (*Babcock & Wilcox, supra*). Such necessity has not been shown here.[9]

6. Respondent also argues that there is a place outside its premises but near the main plant entrance where nonemployee organizers have passed out handbills on several occasions to employees. Insofar as this argument is intended to suggest that Respondent's own employees are entitled to no greater rights in this regard than the nonemployee organizers, the argument is vulnerable to the Supreme Court's pronouncement in *Babcock & Wilcox*, *supra*, at 112–113, that there is "a distinction between rules of law applicable to employees and those applicable to nonemployees" and that the "distinction is one of substance."

Indeed, the Supreme Court's reversal of the Board's orders there under consideration was predicated on the fact that the Board had failed to make this distinction. Thus, in each of the three Board cases which the Supreme Court there ruled upon, the Board had concluded that, in refusing union organizers access to company parking lots, "the employers had unreasonably impeded their employees' organizational rights in violation of § 8(a) (1) of the National Labor Relations Act," (*supra*, at 106). The Board predicated its conclusion on its *LeTourneau* decision which the Supreme Court had approved and which affirmed the right of *employees* to distribute literature on company parking lots. As in *LeTourneau*, so in the *Babcock & Wilcox* cases, the Board ordered that the company parking lots be made available for distribution of union literature, subject to reasonable regulations by the employers.

As already noted, however, the Supreme Court held that the rules applicable to employees were different from those applicable to nonemployees. The Court enunciated the rule that "an employer may validly post his property against *nonemployee* distribution of union literature if reasonable efforts by the union through other available channels of communication will enable it to reach the employees with its message. . . ." (*Supra*, at 112; emphasis supplied.) Applying this rule to the facts of record, the Court held that the use of the employer's property for nonemployee distribution of literature could properly be proscribed "even under such reasonable regulations as the orders in these cases permit" (*supra*, at 112). Implicit in this holding, we believe, is the corollary holding that employees, as contrasted with nonemployees, would be entitled, subject to reasonable regulations, to engage in such distribution. *Ibid.*[10]

[9] The situation might be different and the presumption of invalidity of the broad rule overcome if an employer could establish that the particular operations of the company, e.g., a high explosives plant, made the distribution of any inflammable material a menace No such proof, of course, was adduced or sought to be adduced here

[10] The Court of Appeals for the Third Circuit in *N.L.R.B.* v. *Rockwell Manufacturing Company (DuBois Division)*, 271 F. 2d 109, upon which Respondent places major reliance, glossed over this distinction. But see *Time-O-Matic, Inc* v. *N L R.B.*, 264 F. 2d 96, 100 (C.A. 7).

7. Finally, we note our agreement with the Trial Examiner's observation, in footnote 13 of the Intermediate Report, that Respondent has construed its no-distribution rule, on one occasion at least, as banning mere solicitation in behalf of a union, as well as distribution of union literature. Employee Tweedy was discharged on the pretext that he had violated the no-distribution rule when he merely spoke to other employees on the plant parking lot after work, and asked them to attend a union organizational meeting. We agree with the Trial Examiner that Tweedy did not, in fact, violate Respondent's no-distribution rule on this occasion, although he apparently had a batch of union membership application forms in his hand. Furthermore, even if he had actually been distributing union literature in violation of the rule, his discharge for that reason would still have been unlawful because the situation arose in the parking lot and not in working areas of the plant.

However, because Respondent obviously reads into its broad no-distribution rule an even broader meaning which makes it applicable even to solicitation, we deem it appropriate to include a provision in our remedial order directing Respondent not to restrict the right of its employees to "solicit" for labor organizations whenever and wherever they are on nonworking time. Even in the absence of a specific allegation in the complain alleging promulgation or enforcement of an unlawful "no-solicitation" rule, the propriety of such a remedial provision is confirmed not only by Respondent's broad interpretation and application of its no-distribution rule but also by the fact that "there is a reasonable relation between the illegal act committed and the forbidden activity." *N.L.R.B.* v. *Firedoor Corporation of America*, 291 F. 2d 328, 331–332 (C.A. 2), cert. denied 368 U.S. 921. In such a situation the Board is not precluded from enjoining violations other than those specifically proved or alleged. *Ibid.*

ORDER

Upon the basis of the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Stoddard-Quirk Manufacturing Co., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership of any of its employees in International Woodworkers of America, AFL–CIO, or in any other labor organization, by discharging any individual, or in any other manner discriminating against any individual in regard to his hire, tenure of employment, or any term or condition of employment.

(b) Interrogating any employee with respect to any employee's activity, membership, or interest in any labor organization in a man-

ner constituting interference, restraint, or coercion in violation of Section 8(a)(1) of the Act.

(c) Promulgating, maintaining, enforcing, or applying any rule or regulation prohibiting its employees, when they are on nonworking time, from distributing handbills or similar literature on behalf of any labor organization in nonworking areas of Respondent's property.

(d) In any manner prohibiting its employees, during nonworking time, from otherwise soliciting their fellow employees to join or support International Woodworkers of America, AFL–CIO, or any other labor organization.

(e) In any other manner interfering with, restraining, or coercing employees in the exercise of their right to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

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

(a) Offer to Carroll Tweedy immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority and other rights and privileges, and make him whole in the manner and according to the method set forth in the section of the Intermediate Report entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board and its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records relevant to a determination of the amount of backpay due, and to the reinstatement and related rights provided under the terms of this Order.

(c) Post at its place of business in Clarendon, Arkansas, copies of the notice attached hereto marked "Appendix A."[11] Copies of said notice, to be furnished by the Regional Director for the Twenty-sixth Region of the Board, shall, after being duly signed by an authorized representative of the Company, be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the said Company to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply therewith.

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

MEMBERS FANNING and BROWN, dissenting in part:

We disagree with the majority opinion only insofar as it holds that an employee may lawfully prohibit his employees from distributing union literature in working areas of a plant even though the employees are on their own time.[12]

Our disagreement stems first from our belief that this holding of the majority cannot stand as a matter of law, because it is in conflict with Supreme Court decisions on the subject of employer no-solicitation and no-distribution rules. As indicated by the majority, the Board in the recent *Walton* case had occasion to review, interpret, and "codify" the three key decisions by the Supreme Court in this area.[13] And in the *Walton* case the Board stated that it interpreted these decisions of the Supreme Court as establishing three rules of law with respect to "no-distribution" rules, the first two of which were stated as follows:

> 1. No-solicitation *or no-distribution* rules which prohibit union solicitation *or distribution of union literature* on *company property* by employees during their *nonworking time* are presumptively an unreasonable impediment to self-organization and therefore presumptively invalid both as to their promulgation and enforcement; however, such rules may be validated by evidence that special circumstances make the rule necessary in order to maintain production or discipline.
>
> 2. No-solicitation *or no-distribution* rules which prohibit union solicitation *or distribution of union literature* by employees durworking time are presumptively valid as to their promulgation, in the absence of evidence that the rule was adopted for a discriminatory purpose; and are presumptively valid as to their enforcement, in the absence of evidence that the rule was unfairly applied. [Emphasis supplied.]

Thus, under the Board's most recent interpretation of the law as laid down by the Supreme Court in the *Republic Aviation*, *Babcock & Wilcox*, and *Nutone* cases, no distinction was drawn between no-solicitation and no-distribution rules applicable to employees,[14] but only a distinction as to whether *either* of the two types of rules is applicable to *nonworking time* so as to be presumptively invalid or is applicable to *working time* so as to be presumptively valid; and the first rule of law which is in issue here states clearly that a prohibition

[12] While the majority couches its holding and Order in terms of not permitting an employer to prohibit his employees from distributing union literature during nonworking time only in nonworking areas, implicit in this is the necessary corollary holding that an employer may lawfully prohibit such distribution in working areas at all times.

[13] See footnote 1, *supra*.

[14] The distinction drawn by the Supreme Court in *Babcock & Wilcox* between rules applicable to nonemployees rather than employees, and as stated in the third rule of law of the "codification" in *Walton*, is not in issue here In issue here only are employer rules applicable to employees

of *either* solicitation or distribution anywhere on "company property" during nonworking time is presumptively invalid. The legal premise underlying this formulation is, of course, that the "working time" test, in normal circumstances and in the vast majority of industrial establishments, provides a proper accommodation between the respective employee and employer interests which the Supreme Court, in *Republic Aviation*, characterized as "the undisputed right of self-organization assured to employees under [Section 7 of] the Act and the equally undisputed right of employers to maintain discipline in their establishments." For we think it clear, as stated in *Walton*, that the Supreme Court intended the "working time" test and no other to apply to the distribution of union literature as well as to oral solicitation in normal circumstances, as providing such proper accommodation.

Thus, in *Republic Aviation*, where that case itself involved a broad no-solicitation rule, and in the companion *LeTourneau* case which involved a broad no-distribution of literature rule, the Court not only referred broadly to both rules as rules against "solicitation," but specifically stated that "We perceive no error in the Board's adoption of this presumption" in a clear reference to the Board's application to *both* cases of the *Peyton Packing* presumption of unreasonable impediment and invalidity with respect to rules applicable to nonworking time.[15] Moreover, while the Court held in the subsequent *Babcock & Wilcox* case on the issue involved there that an employer's naked property rights will ordinarily suffice to justify exclusion of nonemployees from distributing union literature anywhere or at any time on the employer's property, the Court stated at the same time in an obvious reference to such distribution as well as literal oral discussion by employees, that "*No* restriction may be placed on the employees' right to discuss self-organization among themselves [during nonworking time], unless the employer can demonstrate that a restriction is necessary to maintain production or discipline. *Republic Aviation Corp.* v. *N.L.R.B.*, 324 U.S. 793, 803." [Emphasis supplied.] It

[15] 324 U.S. 793, 802–804. As there set forth, the *Peyton Packing* presumption is as follows (as italicized):

> The Act, of course, does not prevent an employer from making and enforcing reasonable rules covering the conduct of employees on company time. Working time is for work. It is therefore within the province of an employer to promulgate and enforce a rule prohibiting union solicitation during working hours. Such a rule must be presumed to be valid in the absence of evidence that it was adopted for a discriminatory purpose. It is no less true that time outside working hours, whether before or after work, or during luncheon or rest periods, is an employee's time to use as he wishes without unreasonable restraint, although the employee is on company property. It is therefore not within the province of an employer to promulgate and enforce a rule prohibiting union solicitation by an employee outside of working hours, although on company property. *Such a rule must be presumed to be an unreasonable impediment to self-organization and therefore discriminatory in the absence of evidence that special circumstances make the rule necessary in order to maintain production or discipline.*

should further be noted that while the only issue in the subsequent *Nutone* case, as stated by the Court itself, was whether there was unlawful enforcement of an otherwise valid no-solicitation rule applicable to employees' working time, there is no indication that the Court was changing in any way the rules it had laid down in *Republic Aviation*, and reaffirmed in *Babcock & Wilcox*, with respect to nonworking time no-solicitation or no-distribution rules. In fact, here again as in *Republic Aviation-LeTourneau*, the Court described both the handbilling involved in *Nutone* and the oral solicitation involved in the companion *Avondale* case by the broad generic term of "solicitation." Accordingly, we are convinced, as the Board was in the recent *Walton* case, and apparently as the Court of Appeals for the Fifth Circuit also was in enforcing *Walton*, that the Supreme Court has indicated very clearly that the working and nonworking time tests are the sole tests to be applied in determining whether either no-solicitation or no-distribution rules applicable to employees are presumptively valid or invalid;[16] and therefore that the Board may not apply an additional "area" test with respect to no-distribution rules, as the majority would do here.[17]

But even assuming *arguendo* no conflict with the Supreme Court decisions on the precise issue posed by the majority holding, we disagree most emphatically with the majority's implicit holding that an em-

[16] Like the Supreme Court, the court of appeals in *Walton* described both the no-solicitation and no-distribution rule involved in *Walton* as dealing with "solicitation," and agreed with the Board's interpretation of the Supreme Court decisions that only the "working time" test applied to both. 289 F. 2d 177, 180–181.

[17] The majority charges us with suggesting that the Supreme Court was oblivious to, or overlooked, the factual oral solicitation-distribution of literature distinction between *Republic* and *LeTourneau* either in the *Republic* opinion itself or in the later cases where it reaffirmed its earlier holding, and that this represents an unwarranted deprecation of that Tribunal We take the position rather, as we believe we have clearly indicated and shown, that the Court was fully aware of the two types of rules involved but simply regarded both types as being in *pari materia*. We would also say rather that when the majority attempts to draw a legal distinction between oral solicitation and distribution of literature calling for different treatment, in the face of the Court's contrary holding in *Republic* and its reaffirmation of that holding in *Babcock & Wilcox*, the majority's charge properly rests on the other foot. Nor is it true, as alleged by the majority, that the Supreme Court has in no case stated that oral solicitation and literature distribution shall be controlled by the same rules. The Court did so state in *Republic* and restated it in *Babcock & Wilcox*. Nor is it true, as alleged by the majority, that the Board's interpretation of the Court decisions in *Walton* only contains an intimation to this effect, which was not necessary to that decision, not supported by any prior Supreme Court holdings, and not explicitly analyzed or justified in the Board's decision, so that *Walton* is not entitled to be given decisive weight as a clear precedent on this issue. First, as is patent from our quotes of *Walton* above, *Walton* contains express and unequivocal statements that the same rules govern both oral solicitation and literature distribution. Second, this equating of the two was necessary to the decision in that case because the case involved *both* a no-solicitation and a no-distribution rule Third, *Walton* is supported by the Supreme Court holdings cited and explicated therein, and further explicated herein. Accordingly, and in view of the facts that *Walton* was a unanimous full Board decision including two members of the majority in the instant case, and this aspect of *Walton* was enforced by the Fifth Circuit without question, we are at a loss to understand why the majority here apparently refuses to give *Walton* any, let alone decisive, weight in this case, and would in effect repudiate it herein.

ployer rule banning the distribution of union literature at all times in working areas is not an "unreasonable impediment to self-organization." The majority does not deny that literature distribution is just as much within the protection of the Act as "oral solicitation" where it is undertaken by employees in aid of union membership drives or other projects involving "self-organization—collective bargaining or other mutual aid or protection" (Section 7).[18] This being so, the importance of protecting such distribution during all nonworking time is surely equal to the importance of protecting oral solicitation during all nonworking time to which the majority gives continued recognition. The majority's new permissible ban on one of these basic rights is based on an assumption that the right to distribute literature will be sufficiently protected if employees are still allowed to do so during nonworking time in nonworking areas, such as company parking lots, plant entrances or exits, or in other nonworking areas, presumably such as restrooms, change rooms, lunchrooms, and gateways. Assuming *arguendo* that this may be true in some plants which have such elaborate nonworking area facilities that are reasonably adequate for literature distribution purposes, we dare say that many plants, and particularly smaller ones, do not have most of such nonworking area facilities, and such as they do have are not reasonably adequate for literature distribution purposes. Indeed, in many plants employees eat their lunch and take their other work breaks right at their workbenches, so that practically all of their nonworking time in the plant is spent in their working area. Obviously, therefore, the effect of the majority decision would be to deprive untold numbers of employees of their right under Section 7 to give and receive union literature at their place of work for purposes of "self-organization."[19] and this would constitute a serious impediment to self-organization. Indeed, the majority's apparent total permissible ban on the distribution of all types of union literature in work areas,

[18] See the Board's decision in *LeTourneau, supra,* at 1260, where it stated: "It must also be noted that speech is not the only mode of communication by which self-organization is effected, nor is it sufficient that this channel alone be free. Effective organization requires the use of printed literature and of application and membership cards, and these modes of communication are also protected by the Act"

[19] See *The May Department Stores Company d/b/a The May Company,* 136 NLRB 797, where the Board very recently stated.

> The normal effectiveness of such channels stems not alone from the ability of a union to make contact with employees, away from their place of work, but also from the availability of normal opportunities to employees who have been contacted to discuss the matter with their fellow employees at their place of work. The place of work is the one place where all employees involved are sure to be together. Thus it is the one place where they can all discuss with each other the advantages and disadvantages of organization, and lend each other support and encouragement Such full discussion lies at the very heart of the organizational rights guaranteed by the Act, and is not to be restricted, except as the exigencies of production, discipline and order demand. *N.L.R.B* v. *Babcock & Wilcox Co , supra.*

including union authorization and membership cards,[20] probably represents the most serious impediment they could place on this right, for we can conceive of no greater destruction of the fundamental rights guaranteed by the Act than to deprive employees during their free time of the opportunity to "sign up" their fellow employees in order to obtain a Board election. The result will be that in the untold numbers of plants with really nothing more than work areas the employees for all practical purposes will be unable even to obtain the necessary "showing of interest" for a Board election in order to determine a question of representation.[21] And this may be equally true in plants which do provide what might otherwise be deemed adequate nonworking areas. It is not uncommon for large numbers of workers to spend their lunch and other work break periods in their working area notwithstanding the existence of these facilities. As an example, many bring their lunch and eat it at their places of work rather than in the cafeteria. Such employees could, therefore, not be reached during these work breaks for purposes of having them take or sign union cards, and the nonwork areas would afford no opportunity for such distribution. By their new ruling in this case our colleagues would thus bring about a large-scale destruction of Section 9 of the Act as well as Section 7.

Moreover, we believe that the majority's new permissible ban on the distribution of union literature during nonworking time in working areas also represents an unreasonable impediment to self-organization not reasonably required to maintain production or discipline, and that such a ban is therefore presumptively invalid rather than presumptively valid. While not too explicit, the majority seems to assert that such a ban is not an unreasonable impediment and is justified by the employer's right to maintain production or discipline, because literature distribution in work areas would cause littering.[22] Such an assertion is based on an unwarranted and unsupported presumption that employees given union literature in a work area would throw it on the floor or elsewhere in the production area in disorderly fashion, rather than either pocketing such literature or depositing it in receptacles

[20] Webster's Dictionary defines "literature" in this colloquial sense as *"any* kind of printed matter, as advertising" [emphasis supplied], which would of course encompass a union authorization or membership card.

[21] Our colleagues would certainly concede that a necessary accompanying ingredient of the distribution of authorization or membership cards to obtain an election is a certain amount of oral explanation and solicitation. Do they seriously contend that this can be reasonably and adequately accomplished in the type of plant with only an entrance-exit and a restroom, when employees are either hurrying to or from work or attending to their personal needs?

[22] At least the majority points to no factor, other than the potential of littering, and we can conceive of none, which could possibly interfere with these employer property rights in any different or greater degree in the case of distribution than in the case of oral solicitation.

in orderly fashion. We refuse to presume, as the majority does, that the average rank-and-file worker is disorderly on his job rather than orderly. In any event, there is another basically different approach to this entire problem which we would adopt that does not depend on any unnecessary presumptions that the average worker tends to be either orderly or disorderly, and which we think demonstrates clearly that the majority's new permissible ban on distribution is an unreasonable impediment to self-organization not reasonably required to maintain production and discipline. Under this approach, we would give recognition to the *possibility* of littering if there is distribution of union literature in working areas even though during nonworking time, but we believe that the most reasonable and appropriate solution to such a possibility is a "no-littering" prohibition rather than a "no-distribution" prohibition.[23] First, we would point to the fact that the potential hazard to the employer's property rights which the majority is concerned with lies in the possible littering rather than the distribution itself. The distribution itself during nonworkng time even though in a work area poses no potential threat to the employer's property rights. Accordingly, it follows that in this situation an employer should be permitted to protect himself only against the possibility of littering by the simple expedient of a no-littering rule which would deal *directly* with the potential hazard involved. And unlike a no-distribution rule, a no-littering rule would in no way impinge upon the employees' Section 7 rights. Thus, a no-littering rule would provide the most complete accommodation of the employees' "self-organization" rights *and* the employer's "property rights" in this context, in that the employer's property right not to have the working areas of his plant littered would be reasonably protected and at the same time there would be no unnecessary infringement on the employees' Section 7 rights to distribute union literature.[24]

[23] In this connection, we find it strange indeed that the majority apparently presumes that distribution in working areas during nonworking time would result in littering, but that distribution in nonworking areas would not. We find this not only inconsistent, but if we were to engage in one of these unnecessary presumptions, we would rather be inclined to the view that employees would be more likely to litter in nonwork areas rather than work areas. We do, however, agree that the majority is not warranted in presuming that distribution in nonwork areas would cause littering By the same token, we assert that such a presumption is not warranted with respect to a work area as well

[24] See *Babcock & Wilcox, supra,* where the Supreme Court stated that "Accommodation between the two [conflicting rights] must be obtained with as little destruction of the one as is consistent with the maintenance of the other"

We see no reason why a no-littering rule with appropriate penalties would not be effective in curbing the possibility, or for that matter even a presumption, of littering as a result of distribution of union literature in working areas during nonworking time. But even if such a rule were not effective in a particular case, the employer could *then* promulgate a no-distribution rule, and the ordinary rebuttable presumption of invalidity with respect to such rule could then be rebutted by the employer's *evidence* that these are "special circumstances" which make the rule necessary to maintain production or discipline (*Walton, supra*). Surely this is more reasonable than applying in advance a presumption of necessity and validity to *all* such no-distribution rules, as the majority would do, and which the majority apparently would make a *conclusive* presumption not rebuttable in any way.

In conclusion, we would say by way of broad summary that where, as here, there are established rights protected by the Act, there is no reason for limiting such rights generally where in any appropriate case such limitation may be properly made on the basis of actual justification shown.

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, as amended, we hereby notify our employees that:

WE WILL NOT discourage membership by any of our employees in International Woodworkers of America, AFL–CIO, or in any other labor organization, by discharging any individual, or in any other manner discriminating against any individual in regard to hire, tenure of employment, or any term or condition of employment.

WE WILL NOT interrogate any employee with respect to any employee's activity, membership, or interest in any labor organization in a manner constituting interference, restraint, or coercion in violation of Section 8(a)(1) of the said Act.

WE WILL NOT promulgate, maintain, enforce, or apply any rule or regulation prohibiting our employees, when they are on nonworking time, from distributing handbills or other literature in behalf of any labor organization in nonworking areas of our property. Insofar as our shop rule 21B so restricts the rights of employees, it is hereby rescinded.

WE WILL NOT prohibit our employees, during nonworking time, from otherwise soliciting their fellow employees to join or support International Woodworkers of America, AFL–CIO, or any other labor organization.

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

WE WILL offer Carroll Tweedy immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority and other rights and privileges, and make him whole for any loss of pay he may have suffered by reason of our discrimination against him.

All of our employees are free to become, remain, or refrain from becoming, or remaining, members of any labor organization.

STODDARD-QUIRK MANUFACTURING CO.,
Employer.

Dated_____ By_____
(Representative) (Title)

NOTE.—We will notify any of the above-named employees 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 after discharge from the Armed Forces.

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

Employees may communicate directly with the Board's Regional Office, 714 Falls Building, 22 North Front Street, Memphis, Tennessee, Telephone Number, Jackson 7–5451, if they have any question concerning this notice or compliance with its provisions.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

The complaint in this proceeding, issued by the General Counsel of the National Labor Relations Board (also termed the Board herein), alleges that Stoddard-Quirk Manufacturing Co. (also referred to herein as the Respondent or Company) has discriminatorily discharged employee Carroll Tweedy in violation of Section 8(a)(3) of the National Labor Relations Act, as amended (61 Stat. 136, *et seq.*, 73 Stat. 519, *et seq.*; also referred to herein as the Act); and has by means of the discharge and other conduct interfered with, restrained, and coerced employees in the exercise of rights guaranteed them by Section 7 of the Act, thereby violating Section 8(a)(1) of the Act. The Respondent has filed an answer which, in effect, denies the commission of the unfair labor practices imputed to it in the complaint.[1]

Pursuant to notice duly served by the General Counsel upon each of the other parties, a hearing upon the issues raised by the complaint and answer has been held before Trial Examiner Herman Marx at Clarendon, Arkansas. The General Counsel and the Respondent appeared through respective counsel, and International Woodworkers of America, AFL–CIO, a labor organization, through a business representative; and all parties were afforded a full opportunity to be heard, examine and cross-examine witnesses, adduce evidence, file briefs, and submit oral argument. I reserved decision at the hearing on three motions, submitted by the Respondent, which, in sum, seek dismissal of the complaint. The motions are denied on the basis of the findings and conclusions set forth below. I have read and considered the respective briefs of the General Counsel and the Respondent filed with me since the close of the hearing.[2]

[1] The complaint is based on a charge filed with the Board by International Woodworkers of America, AFL–CIO, on September 6, 1960. Copies of the charge and the complaint have been duly served upon the Respondent.

[2] The transcript of the hearing contains garbled or otherwise erroneous transcriptions at a substantial number of points. One such inaccuracy is the attribution to me, at lines 3 to 8, inclusive, on page 401, of a statement made by a witness in the course of his testimony To correct the record, the transcript is amended by deleting the phrase "Trial Examiner MARX" at line 3, page 401, and substituting therefor the words "The WITNESS" I am also erroneously quoted at line 18, on page 18, as using the words "on one pretext" instead of "in one context," and the transcript is accordingly amended at the specified place by deleting the phrase "on one pretext" and substituting for it the words "in one context." Notwithstanding the inaccuracies, the record does adequately

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

FINDINGS OF FACT

I. NATURE OF THE COMPANY'S BUSINESS; JURISDICTION OF THE BOARD

The Company is a Wisconsin corporation; maintains its principal place of business in Cudahy, Wisconsin, and a branch plant and office in Clarendon, Arkansas; and is engaged at the latter place in the business of manufacturing air-conditioner filters and wire and wooden crates. The issues in this proceeding involve only the Clarendon establishment.

In the course and conduct of its business during the 12 months immediately preceding the issuance of the complaint, the Company shipped products valued in excess of $50,000 from its business location in Arkansas to points outside that State. By reason of its interstate shipments, the Company is, and has been at all times material to the issues, engaged in interstate commerce within the meaning of the Act. Accordingly, the Board has jurisdiction over the subject matter of this proceeding.

II. THE LABOR ORGANIZATION INVOLVED

International Woodworkers of America, AFL–CIO (also called the Union herein), is, and has been at all times material to the issues, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Prefatory findings*

The Company's Clarendon branch normally operates two production shifts, one during the day and the other at night, and, in the aggregate, employs about 70 persons. Its production operations are under the direction of a "general mill foreman" named Harold Hill. Approximately 18 of the employees work in a sawmill on the Clarendon premises and function under the supervision of Foreman Lonnie W. Johnson. The night shift personnel work under the direction of Supervisor Floyd Lockridge. Hill, Lockridge, and Johnson are subordinate to the Company's personnel director, Herbert F. Puls, who is normally stationed at the Company's Cudahy office, but is temporarily assigned to the Clarendon branch as its manager, and in that capacity directs the operation of the latter establishment. As the parties stipulated at the hearing, Lockridge, Puls, Johnson, and Hill "possess and exercise the power to hire and discharge, or . . . effectively recommend the same," and are, and have been at all times material to the resolution of the issues, supervisors within the purview of the Act.

The Company has had in effect at the Clarendon branch since its establishment some years ago (and at the Cudahy plant for a substantial number of years before that) certain shop rules for employees. The regulations are printed in a pamphlet. The only one that requires special mention here is rule 21B which provides: "Unauthorized distribution of literature of any description on company premises is strictly forbidden."

Tweedy entered the Company's employ at the Clarendon plant as a production worker on July 24, 1959, and, with the exception of a voluntary separation of some 10 days in January 1960, was employed at the establishment until August 29, 1960, when Puls discharged him under circumstances to be described later. Tweedy received a copy of the shop rules at the inception of his employment and has been aware since then of the regulation dealing with prohibited distribution of literature.

The Union embarked upon a campaign to organize the Clarendon plant's employees on or about August 23, 1960, and to that end arranged or sponsored several meetings of employees away from the plant, and solicited them to sign cards which, when executed, had the effect of designating the Union as the signatories' bargaining representative. In all, some 49 such cards were signed.

Tweedy was active among the employees in the Union's organizational campaign, attending all of its meetings, the first one about a week before his discharge; soliciting signatures for the authorization cards; securing the execution of about a third or a fourth of the total number signed; and speaking in favor of the organization to other employees.

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reflect the material facts and issues and I thus deem it unnecessary, in the absence of a motion by any of the parties, to amend the transcript in any other respects than those specified above.

Puls assumed his managerial duties at the Clarendon plant within a few days after the Union's organizational campaign began, arriving in Clarendon from Cudahy on August 25. Two days later, he assembled substantially all Clarendon plant personnel and addressed them. He introduced himself; touched on various problems of the management; stated that he had heard that employees were thinking of unionization and that that "by itself was not necessarily alarming" to the management, except to the extent that the employees "went too far"; asserted that in the event of union representation a deserving employee would not be able to seek a wage increase for himself alone, but that the Company would have to raise the wages of all if it increased those of one. At one point or another during the course of the meeting, an employee (either Tweedy or another, according to Puls) asked whether the Cudahy employees were represented by a labor organization, and Puls replied in the affirmative, stating that the organization charged Cudahy employees an initiation fee of $20 and dues of $4 per month. Tweedy, who was present, told Puls and the others in the audience that the Union did not charge the Clarendon employees an initiation fee, whereupon Puls asked what its dues were. Tweedy replied that these were $3 per month, but that he "would give $3 for a lot less than the Union." Other employees made statements or asked Puls questions at the meeting "concerning union activities." (The record does not detail such questions and statements by the others.) [3]

On August 29, 1960, Tweedy, whose work shift ended at 3 p.m., an hour earlier than the rest of the day crew, went to the Company's parking lot, adjacent to the sawmill, shortly before 4 p.m., for the purpose of inviting the sawmill employees, as they emerged from the building after the end of their shift. to attend a meeting scheduled by the Union to be held later that afternoon at a beach in the Clarendon area. He was accompanied by another employee named DeGunion. While Tweedy was in the parking lot, he held some 15 or 20 of the Union's authorization cards, which are green in color, in his hand. A few were blanks, most having been signed on one prior occasion or another. He had gone to his home to fetch them following the end of his workday, before proceeding to the parking lot, in order to have them available at the meeting. A few minutes before 4 p.m., Puls came out of the sawmill and passed "within five or ten feet" of Tweedy and looked at the latter. Puls admittedly saw that Tweedy "was holding something in his hand," and what he saw, I have no doubt, were the cards (although he refers to them in his testimony as "green papers").

As the employees emerged from the sawmill following the end of their workday, Tweedy and DeGunion notified them of the meeting and invited them to attend. The sawmill foreman, Johnson, approached Tweedy and DeGunion while they were engaged in talking to some of the employees, and asked DeGunion, who also had some authorization cards in his hand, what he was holding. DeGunion replied that they were "union cards," and, upon Johnson's request that he be permitted to see a card, handed one to the foreman who looked at it and returned it to DeGunion.

There is conflict in the evidence as to whether Tweedy handed any of the cards he held to any person while on the parking lot. Tweedy testified that he did not do so Puls and Johnson gave testimony to a contrary effect. As the Respondent claims that Tweedy handed a card or cards to one or more persons on the relevant occasion, that this conduct constituted an unauthorized distribution of literature in violation of rule 21B of the shop rules, and that such a breach was a reason for Tweedy's discharge, a resolution of the conflicting testimony is appropriate.

An ambiguous and self-contradictory vein runs through Johnson's testimony on the subject under consideration He stated at one point that "they (Tweedy and DeGunion) were trying to get them (employees) to take some of the cards," but soon thereafter he admitted that he saw neither Tweedy nor DeGunion hand any card to any person on the occasion in question (except for the card DeGunion handed him). This was followed by a claim that "they offered the card," but moments later, he admitted that he did not see Tweedy offer a card to anyone In short, Johnson's relevant testimony is so self-contradictory that it is valueless as a basis for findings.

Nor am I able to place any greater reliance on testimony by Puls that shortly after he passed Tweedy he looked back and saw the latter hand one of the "green papers" to another person. Puls' initial description of what he claims he saw appeared to me to have a tentative and indefinite cast, as reflected in his testimony

[3] Findings as to what was said at the meeting draw upon applicable portions of the testimony of Tweedy and Puls. Their versions are not in complete accord, one touching on matters that the other does not, but there is no material disharmony between the two accounts, and I believe that a composite of both substantially reflects the features of the meeting worth noting. The findings made are based upon such a composite.

that Tweedy "was at the time engaged in either handing it to him, or showing it to him. I would say that he handed it to him—." Asked at this point to particularize whether what Tweedy did was to "give something," or whether it was to "show something," Puls shifted to firm assertion, stating that Tweedy "handed it to the individual and the other individual was looking at it." From Puls' demeanor and the text of his testimony, I received the impression that the shift was the product of a spirit of advocacy, resulting from a realization by him that a mere showing of one of the "green papers" by Tweedy would hardly constitute the "distribution of literature," for which the Respondent maintains Tweedy was discharged

The shift was not the only indication of a disposition by Puls to serve his convenience rather than to relate the facts, for an evasive and self-contradictory vein runs through his testimony at a number of related points. For example, asked at one point what he thought the material held by Tweedy was, he testified that he "would not hazard a guess then or now," but he conceded, subsequently, that the "thought" that Tweedy was distributing union literature "might have entered my mind"; and then, pressed to say whether he had in fact entertained the "thought," he replied, "I believe so." Much the same disregard for candor regarding the "thought" appears in testimony Puls gave with respect to a long-distance telephone conversation he claims he had on the subject of Tweedy with his superior, Carson Butcher, the Company's executive vice president, on August 29, shortly after he saw Tweedy on the parking lot with the "green papers." According to both Puls and Butcher, the former told his superior that he had observed Tweedy passing out "literature." Butcher denied that anything was said about "union literature" in the conversation, or that it occurred to him that such was the nature of the "literature"; and narrative versions of the alleged discussion by Puls and Butcher do not quote the manager as telling Butcher that the "literature" was "union" in nature. These accounts appear to me to be deficient in candor. It may be noted, in that connection, that Puls was examined on the question whether he talked to Butcher about his "thought" that the "literature" involved was "union" in character, and he replied, "Not to the extent of asking for any guidance, or anything, but that was my intention." This unresponsive answer led to additional interrogation whether Puls talked to Butcher about "the fact" that Tweedy had given another person "union literature." Puls replied that "I believe that I said that it could have been." In other words, Puls testified, albeit with an evasive flavor, that he told Butcher in the course of the conversation that the "literature" in question could have been "union literature." This testimony is a substantial shift away from Puls' prior assertion that he "would not hazard a guess then or now" about the nature of the "green papers," and, in addition, contradicts Butcher's denial, in effect, that "union literature" was mentioned in the alleged telephone conversation. The fact is, as will shortly appear from evidence not yet discussed, that Puls knew before he discharged Tweedy a few hours after the parking lot incident that the "green papers" in Tweedy's possession while he was on the lot were "union cards." Moreover, as will also appear, the credited evidence of what Puls said at the time of the discharge supports a conclusion that Puls did not in fact see Tweedy give or offer any document, whether termed a "union card" or "union literature" or merely "literature," to any person on the parking lot. I credit Tweedy's testimony to the effect that he did not do so

The discharge took place in the plant's "clock room" on the night of August 29, some hours after Puls saw Tweedy with the "green papers" on the parking lot. The room is used by night-shift employees as a lunch area during their lunch period which extends from 8 to 9 p.m. Tweedy went there during the night-shift lunch period for the purpose of "passing the time" with members of the night crew while they were at lunch. Puls came into the room with Lockridge shortly before 9 p.m., saw Tweedy, addressed him, and a conversation ensued between Puls and Tweedy, in the course of which the manager discharged Tweedy.

The General Counsel called three witnesses, including Tweedy, and the Respondent an equal number, including Puls, to describe the conversation. As is so often, if not indeed invariably, the case with multiple versions of a conversation, there are differences in content among the various accounts. It would serve no useful purpose to trace all details of similarity or difference among them, for the only truly important issue raised by the relevant testimony that need be decided is whether Tweedy admitted during the course of the conversaiton that he had distributed "literature" while on the parking lot earlier that day, and whether such an admission led Puls to discharge him.

Giving his version of the conversation, Puls, after quoting himself as asking Tweedy what "he was doing there at this time," and receiving a reply from Tweedy that he was "just visiting." Puls gave the following testimony:

> I did say, "Are you sure you are not passing out any more literature?" and he said, "No, sir, I do not have any on me." I then said, "But you were passing out some literature of some sort" (or words to that effect) "over at the mill this afternoon, the mill building?" And he said, "Yes, I was handing out Union cards." I said, "You are familiar with the rule book," and I believe at this time I took it out of my pocket and turned to the proper page, and walked over to him, and showed it to him and read it to him, that as far as its being unauthorized, distribution of unauthorized literature, it was strictly forbidden, and I said, "In view of the fact that you have admitted passing it out, you do not have to bother clocking in tomorrow. You are through." He said, "Now, let's get this straight. I am being fired for passing out Union cards?," and I believe my exact words to him at that time were, "You said that. I didn't." He said, "What am I being fired for?" I said, "As I told you, you are being fired for unauthorized distribution of literature."

Describing what passed between himself and Puls, Tweedy testified in part, as follows:

> It got pretty close to nine o'clock, I don't know the time exactly, Mr. Puls came in and looked at me for a minute, and then he said, "Aren't you the fellow who had the Union cards over at the sawmill this afternoon?", and I said "Yes, sir." He said, "You do not need to bother about clocking in in the morning." I said, "You mean I am fired?" He said, "That is right," or words to that effect. I asked him why he was firing me, on account of the Union, or what, and he told me that he was firing me for distributing unauthorized literature on the company premises. I could not understand what he was talking about, and I kept on questioning him; I asked him a couple of more times and I got the same answer, "distributing unauthorized literature on the company premises."

It will be observed that the material difference between the two versions set forth above is that Puls quotes Tweedy as admitting that he had distributed "literature," in the form of "union cards," in the sawmill vicinity earlier that afternoon, making the admission in response to an intimation, in interrogative form, that he had distributed "literature"; whereas Tweedy quotes Puls as asking him whether he was "the fellow who *had* the Union cards over at the sawmill" [emphasis supplied], and himself as replying in the affirmative to that question.

The clear weight of the evidence militates against acceptance of Puls' claim to the effect that Tweedy admitted that he had been "passing out some literature." For one thing, as I have found, Tweedy had not distributed literature on the parking lot (whether or not one takes the view that union authorization cards are "literature"), and it thus seems quite implausible that he would agree that he had done so. For another matter, each of the four witnesses, who, in addition to Tweedy and Puls, was called to give testimony regarding the conversation, supports Tweedy's account, stating, in substance, that Puls asked Tweedy whether he had had union cards in the mill area, and that Tweedy replied in the affirmative; and not one of the four supports Puls' claim that Tweedy admitted that he had distributed literature on the parking lot. It is a significant fact that two of these witnesses, Floyd Lockridge and James Henry, were called by the Respondent and gave testimony to the effect indicated on their direct examination. Thus, the Respondent itself presented testimony supporting Tweedy on the point at issue, and in effect contradicting Puls. It may be noted, too, that both Henry and Lockridge, much like Tweedy, picture Puls as discharging Tweedy after the latter agreed that he had had "union cards" in his possession "at the mill" on the afternoon of August 29.[4] In short, I credit Tweedy's description, set forth above, of what passed between him and Puls in the clock room.[5]

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[4] Floyd Lockridge testified under direct examination by the Respondent's counsel: "Then we (Lockridge and Puls) walked into the clock room and Mr. Puls asked Mr. Tweedy if he had any cards, and Mr. Tweedy told him that he did not have any right then. Mr. Puls said, 'But you did have over at the mill this afternoon?' and Pedro (Tweedy) said, 'Yes, I did'" Then, according to Lockridge, Puls quoted the rule prohibiting distribution of literature, and told Tweedy "that he might as well not come back the next day" Testifying in much the same vein, James Henry stated, under direct examination: "Then, he (Puls) asked him (Tweedy) if he was the one that had the cards at the mill in the afternoon, and Pedro (Tweedy) said, 'Yes.' Then, Mr Puls said, 'I see no alternative but to ask you not to come back to work in the morning' Then, Tweedy asked him, 'Am I being fired for passing out Union cards?' and he (Puls) said, 'No, you are being fired for passing out unauthorized literature.'"

[5] An affidavit (Respondent's Exhibit No. 8) given by a former employee named Stanley Renneker to the General Counsel quotes Puls as asking Tweedy if the latter "wasn't the one passing out unauthorized literature at the mill that afternoon," and Tweedy

On the morning following Puls' conversation with Tweedy, the latter reported for work to the plating department, his work place, at his customary starting time, but his departmental supervisor told him to go to the office for his termination paycheck. He did so, secured his check, and then asked Puls, whom he saw in the office vicinity, for a written statement of the reason for his dismissal. Puls took the position, in substance, that he was not required to give Tweedy such a statement and would not furnish one. The manager, however, subsequently changed his mind about the matter, and on the following day, August 31, 1960, wrote a letter, bearing that date, to Tweedy, stating that "your discharge from this Company on Monday night, August 29, 1960, was brought about because of your distribution of unauthorized literature on Company premises, which distribution took place, by your own admission, at approximately 3:45 p.m. of the same date"; and "is further based on repeated acts of dangerous horseplay materially affecting the safety of your fellow employees." Puls, it may be noted, had said nothing to Tweedy about "horseplay" in the clock room, whether by way of giving a reason for the discharge or otherwise.

On September 1, 1960, the Union filed with the Board a petition seeking certification as the representative of a unit of the Company's Clarendon employees. A "consent election" was held on October 14, 1960, to determine the question of representation. Of the 60 votes cast, 53 voted against the Union.

Between the date, in the latter part of August, when the Union's organizational efforts began and the time of the election, Foreman Johnson questioned all of the employees, numbering about 18, who worked under his direction in the sawmill, regarding their attitude toward the Union. Speaking to one of these, Stanley Renneker, in September or October, Johnson told the employee that he had heard rumors in another building of the Company's plant that half of the sawmill employees "had signed Union cards"; that he was "going to prove" that this was erroneous; and that he was "taking down the names of all persons against it" (the Union) so that he could "prove" the error; and he thereupon asked Renneker if he "was for or against" the Union. Renneker replied that he "was against it," and at that point Johnson wrote "something" on a piece of paper he was holding. It seemed to Renneker that it was his name that Johnson wrote. The foreman spoke in much the same vein about the end of August to another sawmill employee, Leo Miller, telling the latter that he had taken it upon himself to ascertain the attitude of the sawmill employees toward the Union, that the Company "did not know anything about it," and that he wished to know whether Miller "was for the Union or against the Union." Miller replied that he was neither for nor against the organization, and Johnson asserted that Miller "had to be one way or the other." While talking to Miller, Johnson had in his hand "a paper with a list of names on it," and Miller

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as replying, "No, sir, I was passing out Union cards." Renneker was called by the General Counsel. He gave no evidence on his direct examination relating to the clock room conversation, the burden of his direct testimony dealing with an occasion when his supervisor, Johnson, questioned him regarding his attitude toward unionization. There is some discrepancy between the affidavit, which was produced by the General Counsel upon the Respondent's request, as to whether Lockridge, in fact, wrote down Renneker's name at the time of the interrogation. The Respondent offered the affidavit, and it was my intention to receive it as a prior self-contradictory statement with regard to the interrogation incident, but in receiving it, I misspoke myself and stated that "so much of the affidavit (would be received) that purports to outline what happened on the occasion when Tweedy was told he was fired." That portion of the affidavit obviously is not admissible as a prior self-contradictory statement since Renneker gave no prior testimony on the subject. The General Counsel called the mistake to my attention, as the transcript shows, and registered an appropriate objection to receipt of the portion of the affidavit in question. The record does not show that I took any corrective action The General Counsel's position is so clearly well taken that I think it unlikely that I would have persisted in the error after it was called to my attention. It is possible that the record is garbled, as it is at a substantial number of places, but I cannot at this point determine, either from the context or from my recollection, that such is the case. Be that as it may, the General Counsel in his brief, renews his objection to receipt of the affidavit, and seeks its total exclusion. The objection is overruled because of the discrepancy related to the interrogation incident, noted above. Receipt of the portion dealing with the clock room conversation was incorrect, but I see no useful purpose in modifying or altering whatever ruling on the subject the transcript reflects, for whether or not the affidavit, and a blanket statement by Renneker under cross-examination that its statements "are true," be taken into account, the clear weight of the evidence, I have no doubt, supports Tweedy's version of his conversation with Puls. One should not forget, in that connection, that the Respondent itself presented testimony, through Henry and Lockridge, supporting Tweedy's account set out above.

asked the foreman if his name was on the list. Johnson inquired, "Do you want it on there?" and Miller replied that he did. Johnson thereupon added Miller's name to the list.[6]

B. *Discussion of the issues and concluding findings*

Three issues are presented for resolution: (1) Whether Tweedy was dismissed because he engaged in union activity, and thus was unlawfully discharged; (2) whether Johnson's interrogation of employees was unlawful interference with the exercise of rights guaranteed employees by Section 7 of the Act; and (3) whether the Respondent, to quote the complaint, "has promulgated and enforced a rule prohibiting its employees from distributing literature on its premises during their non-working hours," thus interfering with the exercise of Section 7 guarantees.

With respect to the first issue, as is evident from Puls' testimony, as well as his letter to Tweedy, the Respondent claims that Tweedy was discharged because (1) he engaged in acts of horseplay while at work, and (2) he distributed "literature" on the parking lot on the afternoon of August 29, without prior authorization by the management.

It is undisputed that Tweedy engaged in some acts of horseplay during his employment, although there is conflict in the evidence as to the number of such instances. About a year before his discharge, as he conceded, using a match, he lit an apron string worn by an employee named Guthrie (who, according to Tweedy's uncontradicted testimony, had lit Tweedy's apron string); and, approximately a year before his dismissal, too, Tweedy, as he testified, placed a lighted cigarette under the seat of oily pants worn by an employee named Ward.[7] Also, some 4 or 5 months before his dismissal, Tweedy operated a plant vehicle, described in the record as a "hoister," with another employee sitting on the vehicle's forklifts, and Lockridge, who was then Tweedy's supervisor, reprimanded Tweedy for the incident.

As a preface to resolution of the question whether any acts of horseplay by Tweedy were a factor in his discharge, one may note, without condoning such conduct, that there is good reason to believe that the Clarendon plant management did not take as serious a view of the matter before Tweedy's dismissal as the Company now claims. It is evident from the testimony of Hill, the top production supervisor after the plant manager, that pranks of the type in question were common among young male employees (like Tweedy, who is 22 years old), and this contributes support to testimony by Tweedy that in the early period of his employment (on the night shift) "the foreman and everybody else would come behind you and set you on fire."[8] Significantly, in that connection, there is no evidence that any employee was discharged for such conduct prior to Tweedy's dismissal; and it is noteworthy that Hill testified that he could not recall warning Tweedy about any acts of horseplay apart from an admonition on one occasion that Tweedy was driving the "hoister" too fast.[9] To be sure, Lockridge, as noted earlier, did rebuke

[6] There is good reason to believe that Johnson wrote down the names of other sawmill employees, in addition to those of Miller and Renneker. At one point, the foreman testified that he "probably did" write down the names of all those he interrogated, but he equivocated about the matter, stating soon thereafter that "I don't say that I did or I did not"; and, after that, that he does not know whether he did so; and at an earlier point that he "might have put the names down and checked them off the list," but does not "think that I did." In any case, whether he actually wrote the names of any of those interrogated is not decisive of the issue whether his acts of interrogation were unlawful.

[7] According to an employee named William Friday, about a year before Tweedy's discharge, the latter on one occasion lit or singed Friday's apron string with "a hot iron"; and, on another, lit a rag in Ward's pocket. Tweedy denied that he burned Friday's apron string; and, in response to interrogation about Ward, testified, as described above, that he put a lighted cigarette under Ward's trouser seat. It may be that Tweedy and Friday are describing the same incident involving Ward, but whether that is so need not be decided, nor need the other conflict between the two be resolved, for the incidents described by Friday, if they occurred, took place long before Tweedy's discharge and, as will appear in greater detail, had no connection with his dismissal. It may be noted, in passing, that it does not even appear, with any clarity at least, that the Company had any knowledge, prior to Tweedy's dismissal, of the incidents described by Friday.

[8] Hill testified that "a lot" of young male employees engaged in acts of horseplay of the type attributed to Tweedy, and that he received complaints from supervisors about "a lot" of them.

[9] Notwithstanding his testimony that he could not recall ever warning Tweedy about any acts of horseplay except for the admonition about fast operation of the "hoister,"

Tweedy on one occasion some months before the dismissal for the way in which he operated the "hoister," but I find no persuasive force in a claim by Lockridge to the effect that after he became night supervisor, on February 15, 1960, he reprimanded Tweedy "several times on different acts of horseplay." Asked by the Respondent's counsel to describe "some of these acts of dangerous horseplay that Tweedy was involved in," Lockridge testified: "Well, I do not remember exactly what was happening. I know when I first took over the supervision, there was some fire setting (by Tweedy and another employee) going on, and I tried to get this stopped, and could not do it, but I do not remember the exact acts." One would think that if Tweedy engaged in "dangerous horseplay" while employed under Lockridge's supervision, the latter would have had some recollection of the "acts" beyond a generalization that Tweedy and another employee had engaged in "fire setting," and would have been able to take supervisory action "to get this stopped." Particularly bearing in mind that the evidence does not describe any specific act of "fire setting" by Tweedy after Lockridge became night supervisor, I am unable to attach any weight to Lockridge's vague generalization imputing such conduct to Tweedy; nor, in my judgment, is Lockridge's testimony of sufficient weight to warrant a finding that he reprimanded Tweedy beyond the one occasion, some 4 or 5 months before the discharge, when Tweedy operated the "hoister" with another employee sitting on its forklifts.

In any case, whether or not one believes Lockridge's relevant testimony, or that the management took as serious a view of the acts of horseplay when they occurred as it now claims, the evidence establishes in abundant measure that such conduct had no connection with Tweedy's discharge. One may note, in that connection, that the specific acts involving burning materials took place about a year before the discharge; that the "hoister" incident for which Tweedy was admonished by Lockridge, occurred about 4 or 5 months before the dismissal, and that the alleged admonition by Hill that Tweedy was operating the "hoister" too fast was given, according to Hill, about 3 months prior to Tweedy's termination. In other words, the acts of horseplay imputed to Tweedy by the management, with the possible exception of the alleged fast operation of the "hoister" several months before the dismissal, were stale at the time of the discharge, and that of itself raises a substantial doubt, to say the least, that the pranks had any connection with Puls' decision to discharge Tweedy.[10]

Any doubt about the matter is dissolved by the circumstances of the dismissal. A basic fact that stands out, in that regard, is that Puls admittedly said nothing to Tweedy about horseplay at the time of the discharge, let alone telling Tweedy that he was discharged for such a reason. The very terms of the conversation between Puls and Tweedy in the clock room, whichever of the versions one chooses to accept, establish that Tweedy was dismissed for another reason; and, indeed, evidence of that conversation presented by the Respondent itself, through the testimony of Henry and Lockridge, warrants a conclusion that Tweedy's possession of "union cards" on the parking lot on the afternoon of August 29 was the precipitating cause of his discharge. What is more, the tenor of the letter from Puls to Tweedy, particularly when considered in the light of the conversation in the clock room that preceded it, indicates that the claim that Tweedy's dismissal was based, in part, "on repeated acts of dangerous horseplay" was an idea that occurred to Puls after the discharge took place. Significantly enough, in that connection, the letter first states

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Hill subsequently, giving no details, gave a blanket affirmative reply to a question by Respondent's counsel whether he had ever told Tweedy "that if he continued to engage in these acts of horseplay, . . . he would be discharged" This does not quite jibe with Hill's testimony that he could not recall any warning to Tweedy except the admonition noted above, and does not, in my judgment, preponderate over a denial by Tweedy that Hill ever reprimanded him. I do not credit Hill's claim, in effect, that he threatened to discharge Tweedy.

[10] Henry testified that on one occasion (probably the summer of 1960, according to Henry, who appeared to be uncertain when the incident in question occurred), he saw Tweedy attempting to drive a "hoister" into the "clock room" No supervisor was present, Henry stated, nor did he report the incident to one. There is no evidence that the incident ever came to the Company's attention before Tweedy's discharge, and no basis in the record for any inference that it had anything to do with the dismissal Indeed, the fact that this testimony is presented, without any material link to the dismissal, supports a conclusion that the Respondent has resorted to the device of dredging up from Tweedy's work history incidents that had no connection with his termination to give it some color of legality. Such a procedure bespeaks a disposition to conceal the real motivation for the dismissal and adds weight to an inference that the motive was unlawful.

that Tweedy's discharge "*was brought about* because of your distribution of unauthorized literature on Company premises," and then goes on to say that the "discharge *is* further based on repeated acts of dangerous horseplay" (emphasis supplied). I am convinced, in short, that the claim that acts of horseplay by Tweedy were a factor in his discharge is but an afterthought improvised by the Company after Tweedy was dismissed. The fact that the Respondent has resorted to such an *a posteriori* improvisation bespeaks a design to conceal an unlawful motive for the discharge.

The real motivation emerges from the credited evidence of the conversation in the clock room on the occasion of Tweedy's discharge. Puls admittedly had observed Tweedy holding the "green papers" in his hand in the parking lot a few hours earlier, and almost at the inception of his remarks in the clock room, the manager inquired of Tweedy whether he was not the individual who had had "union cards" in his possession "over at the sawmill this afternoon." The very tenor of the inquiry attests to the fact that either at the time Puls observed Tweedy with the "green papers" in the parking lot or at some point between that time and the inquiry, the manager formed either a belief or suspicion that the "green papers" were "union cards" or, in other words, cards used by the Union to secure its designation by employees as their bargaining representative. Moreover, in the context of circumstances, particularly the fact that Puls saw Tweedy with the cards only a matter of minutes before day-shift employees were due to emerge from the plant, the manager's inquiry was, in my judgment, more than a mere question whether Tweedy had had the cards on the parking lot; what it was, I am persuaded, was an intimation by Puls to Tweedy, in interrogative form, that the latter had brought authorization cards of the Union to the parking lot in order to solicit employees to sign them. The discharge, as the evidence (including testimony by the Respondent's witnesses, Henry and Lockridge) establishes, came practically immediately after Tweedy's admission, in reply to Puls' inquiry, that he had had authorization cards of the Union in his possession on the parking lot, and thus, in the light of the sequence of events and the content of the clock room conversation, I am led to the conclusion, and find, that Tweedy was discharged because Puls believed or suspected that Tweedy (who, it may be recalled, had evidenced more than passive support for the Union on the occasion when Puls addressed the employees) had come to the parking lot with authorization cards of the Union in order to solicit signatures of employees for them.

The reason for the dismissal was manifestly unlawful, and by discharging Tweedy, the Respondent discriminated against him in violation of Section 8(a)(3) of the Act, and interfered with, restrained, and coerced employees in the exercise of rights guaranteed them by Section 7 of the Act, thereby violating Section 8(a)(1) of the statute.[11]

As regards the propriety of Foreman Johnson's conduct, the Respondent appears to stress the fact that he did not harness his interrogation of employees with threats to them. This, it seems to me, ignores the coercive thrust of the statement he made to Renneker that he was recording the names of those opposed to the Union, and of the fact that he either listed or appeared to list the names of at least some of those interrogated. Moreover, the circumstance that Johnson made no threats is not controlling, for Section 8(a)(1), as is sometimes overlooked, forbids interference with, as well as restraint and coercion of, employees in the exercise of their Section 7 guarantees. Nor am I able to accord operative weight to the fact that the foreman told any of those interrogated (or all, according to his testimony) that his inquiries were a project of his own, and not of the Company, and that the employees did not have to reveal their attitude toward the Union if they chose not to do so. The controlling fact is that Johnson was the supervisor of each employee he questioned, with power to control the work of each and to make effective recommendations regarding their tenure, and I think it obvious that the employees so situated could reasonably believe that his voice was that of management, notwithstanding his statement to them that the census he was taking was an affair of his own. Such a belief would particularly be justified after Tweedy's discharge, for the dismissal could reasonably be construed by employees as signifying not only an interest by the Company in their attitude toward unionization, but as a signal that it was prepared to resort to drastic measures to stamp out activity on behalf of the Union. Responsibility for Johnson's conduct is, in short, imputable to the Respondent. In sum, by Johnson's interrogation of employees, the Respondent

[11] The discharge was unlawful if it was motivated by no more than the fact that Tweedy had authorization cards of the Union in his possession on the parking lot, and not, in addition, by a belief or suspicion by Puls that Tweedy had brought the cards there to solicit signatures for them.

interfered with the free exercise of employees' Section 7 rights, and thereby violated Section 8(a)(1) of the Act.

The remaining question is whether the Company has unlawfully "promulgated and enforced a rule prohibiting its employees from distributing literature on its premises during their non-working hours." The regulation in question is embraced in rule 21B of the shop rules, which, plainly, by reason of its breadth, and by the Company's interpretation, as is evident from the Respondent's attempted use of rule 21B to justify Tweedy's discharge, applies to union literature.

It is important to bear in mind that the issue, as framed by the pleadings, does not involve the validity of the regulation as a prohibition against distribution of literature by employees during working time, nor distribution by individuals who are not in the Company's employ, such as, for example, business agents employed by a labor organization. Hence, this case is not concerned with the principle that "rules which prohibit union solicitation or distribution of union literature by employees during working time are presumptively valid as to their promulgation in the absence of evidence that the rule was adopted for a discriminatory purpose; . . . and are presumptively valid as to their enforcement, in the absence of evidence that the rule was unfairly applied" (*Walton Manufacturing Company*, 126 NLRB 697, 698, citing *N.L.R.B.* v. *United Steelworkers of America, CIO* (*Nutone, Inc.*), 357 U.S. 357, and *Republic Aviation Corporation* v. *N.L.R.B.*, 324 U.S. 793). Nor are we concerned here with the doctrine (also expressed in the *Walton* case, relying upon *N.L.R.B.* v. *The Babcock & Wilcox Company*, 351 U.S 105) that "rules which prohibit union solicitation or distribution of union literature by nonemployee union organizers at any time on the employer's property are presumptively valid, in the absence of a showing that the union cannot reasonably reach the employees with its message in any other way, or a showing that the employer's notice discriminates against the union by allowing other solicitation or distribution."

The issue here is controlled by the principle, which was also invoked in the *Walton* case (upon the authority of the Supreme Court's holding in *Republic Aviation*), that "rules which prohibit union solicitation or distribution of union literature on company property by employees during their nonworking time are presumptively an unreasonable impediment to self-organization, and are presumptively invalid both as to their promulgation and enforcement; . . . (but) may be validated by evidence that special circumstances make the rule necessary in order to maintain production or discipline." It will be observed that the applicability of this doctrine does not turn upon a question whether employees may reach their fellows by solicitation or distribution away from the employer's premises, and thus the issue here is not controlled by evidence that the Union, whether through an organizer in its employ or through an employee of the Company, has been able to distribute literature to the employees on public roads adjacent to points of access to the plant.

Measured by the applicable doctrine, it is clear that rule 21B has an invalid reach, for there is no substantial evidence that "special circumstances" make a prohibition of distribution of union literature by employees during nonworking time "necessary" for the maintenance of production or discipline. Butcher testified that the reason for rule 21B is to "keep down litter around the plant," and because distribution of literature "interferes with production," but, this, it seems to me, has the earmarks of abstract generalization and assumption, for there is no evidence that any distribution of literature has ever caused any "litter" at the Clarendon plant, or interfered with any production activity there. Nor is it shown how the distribution of literature by an employee to others, particularly outside the plant buildings, as in the parking lot, would interfere with production.[12] Moreover, so far from rebutting the presumptive invalidity of the rule in issue, the evidence actually establishes that the Respondent is prepared to use, and has used, rule 21B as an excuse to inhibit legitimate union activity by employees, and as an instrument of reprisal against them, and, indeed, to that end, has resorted to distortion of its terms. This is evident from

[12] According to Butcher, Puls reported to him in the alleged telephone conversation, described earlier, that he "had seen (Tweedy) handing out something" in the parking lot on the afternoon of August 29 Butcher was hard put to it to explain how the conduct imputed to Tweedy interfered with production. He testified that the alleged act "could" have constituted such interference, and then launched into speculation that "[i]t was taking up time, if it was during our time and on our premises, it could interfere with the men going on to duty, it would delay them getting to work stopping to hand them literature, and even stopping to give those going off work could interfere with and delay those going to work." There is no evidence that what Tweedy did on the parking lot, whether or not one believes Puls' claim that Tweedy handed one of the "green papers" to another, had any impact on production or any of the consequences that Butcher stated "could" have taken place.

the very circumstances surrounding Tweedy's discharge, for he distributed no literature in the parking lot, did not admit that he had done so, and was discharged, upon his admission that he had had "union cards" in his possession on the parking lot, because Puls, as found above, believed or suspected that Tweedy was on the parking lot to solicit signatures for the cards; yet, when Tweedy asked the reason for his dismissal, Puls charged him with distribution of literature in violation of rule 21B. It is noteworthy, too, that in his testimony Butcher gave a tortured construction to rule 21B, palpably one that would inhibit legitimate union activity during nonworking time, for he testified that he would regard as "distribution" an act of an employee in handing to another, on the Company's premises, without its permission, "a union card for the purpose of getting (the latter employee's) signature and regaining it immediately." [13] As a final comment on rule 21B, I note, upon the long established authority of *N.L.R.B.* v. *LeTourneau Company of Georgia,* 324 U.S. 793 (decided jointly with the *Republic Aviation* case), that rule 21B is not redeemed so far as it reaches distribution by employees during nonworking time by the fact that it prohibits "unauthorized" distribution.

I find, in sum, that by force of the existence and application of rule 21B, the Company maintains and enforces a rule at its Clarendon plant prohibiting employees there, without lawful justification, from distributing on its premises literature of, or on behalf of, any labor organization; and that by maintaining and enforcing the rule, the Respondent has abridged rights guaranteed employees by Section 7 of the Act, thereby violating Section 8(a)(1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

V. THE REMEDY

Having found that the Respondent has engaged in unfair labor practices violative of Section 8(a)(1) and (3) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

The Respondent's unfair labor practices go to the heart of basic rights guaranteed employees by Section 7 of the Act.[14] The rights involved have a close relationship to other rights guaranteed by Section 7. Because of the nature of the unfair labor practices found above, it is reasonable to conclude that the Respondent will infringe upon such other rights in the future unless appropriately restrained. Therefore, I shall recommend an order which will have the effect of requiring the Respondent to refrain in the future from abridging any of the rights guaranteed employees by said Section 7.[15]

Having found that the Respondent discharged Carroll Tweedy on August 29, 1960, in violation of Section 8(a)(1) and (3) of the Act, I shall recommend that the Respondent offer him immediate and full reinstatement to his former or a substantially equivalent position,[16] without prejudice to his seniority and other rights and privileges, and make him whole for any loss of pay he may have suffered by reason of his discharge by payment to him of a sum of money equal to the amount of wages he would have earned, but for the said discharge, between the date of his dismissal and the date of a proper offer of reinstatement to him as aforesaid; and

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[13] The evidence, in my judgment, warrants a holding that by force of the construction and application the Respondent has given rule 21B, it maintains and enforces an unlawful rule prohibiting employees from *soliciting* other employees on the Company's premises, during nonworking time, to support any union or to engage in any union activity. I make no such finding because the issue litigated, as evidenced by the applicable allegations of the complaint, is whether the rule prohibiting *distribution* by employees during nonworking time is valid

[14] *N.L.R.B.* v. *Entwistle Mfg Co.,* 120 F. 2d 532 (C.A. 4).

[15] *May Department Stores d/b/a Famous-Barr Company* v. *N.L.R.B.,* 326 U.S. 376; *Bethlehem Steel Company* v. *N.L.R.B.,* 120 F. 2d 641 (C.A.D.C.)

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

that the said loss of pay be computed in accordance with the formula and method prescribed by the Board in *F. W. Woolworth Company*, 90 NLRB 289, to which the parties to this proceeding are expressly referred.

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

CONCLUSIONS OF LAW

1. Stoddard-Quirk Manufacturing Co. is, and has been at all times material to this proceeding, an employer within the meaning of Section 2(2) of the Act.
2. International Woodworkers of America, AFL–CIO, is, and has been at all times material to this proceeding, a labor organization within the meaning of Section 2(5) of the Act.
3. By discriminatorily discharging Carroll Tweedy, as found above, the said Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.
4. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed them by Section 7 of the Act, as found above, the said Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

Young Spring and Wire Corporation *and* Louis Reeves and William Mitchell. *Case No. 13–CA–3844. September 18, 1962*

DECISION AND ORDER

On April 21, 1961, Trial Examiner William Seagle 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 attached Intermediate Report. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief. The General Counsel filed a brief in support of the Intermediate Report.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Leedom and Brown].

The Board has reviewed the rulings made by the Trial Examiner 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 briefs, and the entire record in this proceeding, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions and modifications.[1]

[1] We find no merit in Respondent's contention that the Trial Examiner was biased. However, we do not adopt the Trial Examiner's hyperbolic comment, albeit in a facetious vein, that, in view of the widespread gambling activities at Respondent's plant, it might be described as a "gambling establishment" rather than as an automotive parts factory.