The sole question presented on review is whether or not an express written agreement of adoption either by Grainger Brothers Co., or by The Fleming Co., Incorporated, was necessary in order for the above-mentioned 1962 contract to operate as a bar to the instant petition, which, as shown above, was otherwise untimely filed 15 months before the third anniversary date of the agreement. It is uncontroverted on the record that the changes in ownership and corporate name did not result in any significant changes in the nature of the operation, the management, or the composition of the contractual unit, or the stability of the existing bargaining relationship. Accordingly, we find that at all times material there has been no change in the employing enterprise and that, for purposes of this proceeding, the present named employer is identical to the one that signed the 1962 contract.[2] In these circumstances, we find that no written adoption of the 1962 contract was necessary for contract-bar purposes. As the instant petition was untimely filed with respect to the terminal date of the contract, we shall dismiss it.

[The Board dismissed the petition.]

[2] See *The M. B Farrin Lumber Co*, 117 NLRB 575.

Bannon Mills, Inc. ***and*** **International Ladies' Garment Workers Union, AFL–CIO, Local 108.** *Cases Nos. 4–CA–2705 and 4–CA–2744. April 3, 1964*

DECISION AND ORDER

On August 15, 1963, Trial Examiner Thomas S. Wilson 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, Respondent and the Charging Party filed exceptions to the Intermediate Report and the General Counsel filed a brief in support of the Intermediate Report.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with these cases to a three-member panel [Chairman McCulloch and Members Fanning and Brown].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in these cases, and hereby adopts the find-

ings, conclusions, and recommendations of the Trial Examiner with the additions and modifications noted below.

We agree with the Trial Examiner that, beginning almost with the advent of the Union's organizational activities in May 1962 and continuing into January 1963, the Respondent engaged in a course of conduct which was deliberately designed to frustrate and undermine the Union and thereby violated Section 8(a)(1) and (3) of the Act, all as found by the Trial Examiner.[1] For the reasons given below, we shall remedy Respondent's unfair labor practices by requiring, *inter alia*, that Respondent bargain with the Union, upon request, as recommended by the Trial Examiner.

Like the Trial Examiner, we find that, despite Respondent's efforts to undermine it, the Union was the majority representative of Respondent's employees as of August 3, 1962, when it made its second request for bargaining. In so concluding, the Trial Examiner found that there were 294 employees in the appropriate unit. He arrived at this figure by counting only three individuals as temporary employees who should be excluded from the unit,[2] at the same time noting that "The testimony might actually justify the finding that there were eight such temporary employees." We agree with the General Counsel that there were eight such employees. The additional five employees in question are Katherine McQuate, Frances Sattazan, Ruthann Pete, Jean Engleback, and Eugene Van Dyke. All were students who were hired at or near the end of the school term in June and left the latter part of August or early September to return to school. The record demonstrates clearly that it was generally known in the plant that these five employees would not continue to work beyond the resumption of the school year in September. This evidence persuades us that there were eight temporary employees as of the critical period in question who should be excluded from the appropriate unit in any evaluation of the Union's majority status.[3]

Upon the exclusion of all the temporary employees disclosed by the record, 289 employees remain in the appropriate unit. As appears in the Intermediate Report, the Union submitted 149 cards. However, three of these cards were marked "For Election Only." All Board Members agree that such a limitation appearing on the face of a designation card invalidates it for purposes of computing a union's majority status. The exclusion of these three cards leaves the Union

[1] Because we find that Respondent's rule against solicitation during working hours was discriminatorily motivated, we agree with the Trial Examiner that it violated Section 8(a)(1) of the Act. *Walton Manufacturing Company*, 126 NLRB 697, 698. However, we deem it unnecessary to decide whether the showing of "And Women Must Weep" or the holding of private discussions with small groups of employees were, as found by the Trial Examiner, violative of the Act.

[2] Silverman, Breitstine, and Hostetter.

[3] *Pacific Tile and Porcelain Co.*, 137 NLRB 1358; *Agar Packing & Provision Corporation*, 62 NLRB 358.

with 146 designations, a majority of the employees in the unit, as of August 3, 1962.[4] The Union was prepared to demonstrate this majority representation in a Board election scheduled for August 10 but, after further unfair labor practices by Respondent, it withdrew its petition and filed these charges.

If the Union had retained its majority status herein, it would manifestly be Respondent's duty, upon a proper request therefor, to bargain with the Union as its employees' bargaining agent. An order requiring Respondent to bargain in such an eventuality would plainly be in order.[5] On the other hand, if, while rejecting the Union as its employees' representative and destroying the conditions for a fair election in which the Union could demonstrate its majority, the Respondent, by its misconduct, has succeeded in dissipating the Union's majority status, only a bargaining order could adequately restore as nearly as possible the situation which would have obtained but for Respondent's unfair labor practices. Such an order, we find, is necessary adequately to effectuate the policies of the Act in this case.[6]

ORDER

The Board adopts as its Order the Recommended Order of the Trial Examiner.[7]

[4] If the best evidence which could have been offered on this issue is not before us, responsibility therefor rests with Respondent who refused to honor a subpena by the General Counsel for its production.

[5] *Summit Mining Corporation* v *N.L.R.B.*, 260 F. 2d 894, 900 (C.A. 3), and cases therein cited.

[6] *Greystone Knitwear Corp. and Donwood, Ltd.*, 136 NLRB 573, 575–576. enfd. 311 F. 2d 794 (C.A 2).

[7] The Recommended Order is hereby amended by substituting for the first paragraph therein the following paragraph:

> Upon the entire record in these cases. and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Bannon Mills, Inc., of Lebanon, Pennsylvania, its officers, agents, successors, and assigns, shall:

INTERMEDIATE REPORT

STATEMENT OF THE CASE

Upon charges duly filed on August 10 and September 17, 1962, by International Ladies' Garment Workers Union, AFL–CIO, Local 108, hereinafter called the Union,[1] the General Counsel of the National Labor Relations Board, hereinafter called the General Counsel[2] and the Board, respectively, by the Regional Director for the Fourth Region (Philadelphia, Pennsylvania), issued his consolidated complaint dated November 6, 1962, against Bannon Mills, Inc., hereinafter called the Respondent.[3]

[1] Subsequently Jack G. Handler, attorney for the Union, formally withdrew from the case.

[2] This term specifically includes the attorneys appearing for the General Counsel at the hearing.

[3] At the beginning of the hearing when the appearances were requested, Jesse S. Hogg made the only formal appearance on behalf of Respondent. However, Hogg had previously given the reporter the names of three attorneys, Jesse S. Hogg, Granville M. Alley, Jr., and H. Rank Bickel, Jr., as representing Respondent. In the first few minutes

The complaint alleged that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Labor Management Relations Act, 1947, as amended, herein called the Act. In addition the complaint alleged that "but for the unfair labor practices of Respondent the Union would have been the exclusive representative of" Respondent's employees in an appropriate unit. General Counsel answered a Respondent motion by stating: "Accordingly, relief may be sought *inter alia* requiring the Respondent to recognize and bargain collectively with the Union." Copies of the charge, complaint, notice of hearing thereon, and replies to various Respondent motions were duly served upon the Union and Respondent.

Respondent duly filed its answer admitting certain allegations of the complaint but denying the commission of any unfair labor practice.

Pursuant to notice, a hearing was held at Lebanon, Pennsylvania, on various dates from January 7 to February 2, 1963, and on April 22,[4] 1963, before Trial Examiner Thomas S. Wilson. All parties appeared at the hearing, were represented by counsel, and were afforded full opportunity to be heard, to produce, examine, and cross-examine witnesses, and to introduce evidence material and pertinent to the issues. Oral argument at the close of the hearing was waived. A brief was received from General Counsel on May 22, 1963.

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

FINDINGS OF FACT

I. BUSINESS OF RESPONDENT

Bannon Mills, Inc., is, and has been, at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the Commonwealth of Pennsylvania. At all times material herein Respondent has maintained its principal office in the city of Lebanon, Commonwealth of Pennsylvania, where it has continuously engaged in the business of the manufacture of children's knit and woven sportswear. During the past year, Respondent, in the course and conduct of its business operations, purchased goods and services valued in excess of $50,000 which were transported to its plant directly from the States of the United States other than the Commonwealth of Pennsylvania. During the past year, Respondent, in the course and conduct of its business operations, manufactured, sold, and distributed products in excess of $50,000 of which products valued in excess of $50,000 were shipped directly to States of the United States other than the Commonwealth of Pennsylvania.

I find that Respondent is engaged in commerce within the meaning of the Act.

II. THE UNION INVOLVED

International Ladies' Garment Workers Union, AFL–CIO, Local 108, is a labor organization admitting to membership employees of Respondent.

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of the hearing each of the three had spoken for Respondent. Subsequently, Alley entered his formal appearance on behalf of Respondent. Bickel did not.

On January 11, 1963. Bickel made a special appearance in the following language:

> Mr. BICKEL: Mr. Trial Examiner, *in addition to my regular appearance for the Company,* I would add a special appearance as representing Harry Silber, and for the purpose of presenting a petition to revoke the subpena and subpena *duces tecum* [both of which had been served upon Harry A. Silber as president of Respondent on January 3. 1963]. [Emphasis supplied.]

In its motion to correct the record filed February 26, 1963, Respondent requested that the name of H. Rank Bickel, Jr., wherever appearing on behalf of Respondent, be stricken from the record on the grounds that Bickel never entered such an appearance. Because of the facts above stated, this motion is hereby denied

[4] On January 3, 1963, Harry A. Silber as president of Respondent was served with subpenas *ad testificandum* and *duces tecum* on behalf of General Counsel. Silber did not comply with either of said subpenas.

Subsequently Respondent caused a subpena *ad testificandum* to be served upon its own president, Harry A. Silber, as an individual In response to this subpena, Silber appeared on January 31, 1963, but at that time refused to answer any and all questions on the grounds that the same might tend to incriminate him.

On April 8, 1963. the Honorable Frederick V. Follmer in the United States District Court for the Middle District of Pennsylvania issued his order requiring obedience to subpena *ad testificandum* against Harry A. Silber.

Pursuant to said order the instant hearing was reopened on April 22, 1963, at which time Harry A. Silber testified.

III. THE UNFAIR LABOR PRACTICES

A. *The facts*

1. Campaign to August 3

The Union began its organizational campaign among the employees of Bannon Mills in the latter part of May 1962.

Respondent was almost immediately cognizant of this, the latest of five attempts to organize the plant. Silber acknowledged that he "was always interested in knowledge of how my employees reacted to any external attempts by anybody interfering or getting involved in our operations."

Promptly upon the advent of this campaign Silber announced in a speech and had posted in the plant a "no solicitation rule" described by Silber as being that Respondent would "not permit any activity of that nature during working hours that will interfere with anybody's work."[5] No such rule appears in the printed handbook given by Respondent to new employees.

On July 5, 1962, Respondent held seven showings of a movie entitled "And Women Must Weep" in the plant cafeteria during working hours from 7 a.m. to 4 p.m. Each employee of the plant was sent by her supervisor to attend one showing of that movie. The employees were paid by Respondent for the time so spent.

At each such performance, Harry A. Silber, Respondent's president and plant manager, made both a short introductory and a concluding speech.[6] In his introductory speech Silber commenced by saying: "First of all, is there anybody in the room that doesn't wish to see a movie or hear what he had to say may leave and go back to work."[7] Silber then stated he was "sure that we were all aware of the big problem confronting the Company at this time, namely, the Union. He had a movie that he wanted us to see. He wanted us to see exactly what we [The Employers] would have to do when we belong to a union." Silber also told the group that the movie they were about to see depicted an actual strike at Princeton, Indiana, and, while the movie was not actually filmed at the very time of the strike, the actors therein were the actual participants in the events portrayed.

It was stipulated at the hearing that this movie is the same movie considered by the Board in *Plochman and Harrison—Cherry Lane Foods, Inc.*, 140 NLRB 130, where the Board majority described this movie as follows:

> . . . The Regional Director's report reveals that 4 days prior to the election the Employer mailed to its employees a pamphlet containing copies of letters purportedly written by a minister's wife to her mother during the course of a labor dispute 5 years earlier at the plant of Potter-Brumfield Company in Princeton, Indiana. The letters tell the purported story of an extraordinary strike, allegedly caused by nothing more than the refusal of the president of the local union at the plant to sign a sick leave form. According to the writer of the letters, union adherents were responsible for extreme acts of violence and sabotage, including the shooting of an infant child. On the day before the election in the present case, the employer assembled its employees in the Company's executive offices. There the employees were shown a 22-minute film entitled "And Women Must Weep." This movie, based upon the above letters, was ostensibly a true account of the Potter-Brumfield strike. It was, however, a dramatized production rather than a documentary film. The staging, acting, and direction were performed by persons skilled in this medium. The competence of the cast and the excellence of the production resulted in a moving story of callous union leaders, a helpless employer, unfortunate victims, including, as a climax, the above-mentioned incident involving the infant, violence, fear, and hatred in an unnecessary strike for no justifiable reason.
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[5] No copy of the posted rule was introduced into evidence

[6] The then production coordinator, Bertram Breit, who doubled as the projectionist for these seven performances, mentioned a 20-page prepared speech which apparently accompanied the movie. As all seven performances were given on 1 day, it seems obvious that Silber did not avail himself of this document, at least in its entirety. As the prepared speech, if any, which Silber actually used was not produced at the hearing, there are different versions as to what Silber did say on these occasions.

[7] So far as this record indicates, nobody left. After all, who could resist being paid to see a move on working time?

> . . . As indicated above, it is not clear to what extent the events portrayed were the result of poetic license rather than fact. . . . Having viewed the film "And Women Must Weep," we are satisfied that the employer effectively tarred the petitioner with alleged reprehensible conduct of the Princeton union.[8]

Employee Phyliss Sheaffer gave a short description of the movie as follows: "The movie showed all types of violence and a baby getting shot and picket lines and stuff like that." Employee Marilyn (Molly) Batdorf gave her description of the movie as follows:

> This movie showed largely violence on the picket line. How the catcalls and jeers and the rocking of cars. And I remember a minister holding a gun and he herded his family into the basement of his home. I remember a car speeding down a dark street, [a] shot into the trailer and hitting the baby in the head with a bullet. That was just about it.

In his concluding speech after the movie, Silber said that he "wouldn't tolerate such a thing as this to happen at his plant. That he would fight it all the way . . . . That he would fight this union with any and all legal means available . . . even if he had to take it to the Supreme Court." He also stated as a fact that some of the employees had signed cards for two different unions and that this "would prove to be a source of embarrassment . . . . Who would be more embarrassed, the girls or the Union when they found out that this had been done?" Silber continued: "That if enough girls signed cards that an election would eventually be held. Even if the Union won the election, he would never negotiate with them for the Company, he would never have a union in this plant." Silber warned: "That anyone caught soliciting for the Union or participating in union activities during working hours would definitely be fired." He said that "He couldn't afford to give raises at this time and even if he could, even if the Company could afford it, he wouldn't be allowed to give it because now that the Union is around everything is frozen . . . . He couldn't even go out and paint the wash room because the Union would call this a bribe." Silber concluded his speech by calculating the dues the Union would receive at the plant at $1,600 a month "just to keep these guys in the alley [organizers] going."

Early in July 1962 Supervisor Tamara Rahalewich inquired of employee Dorothy Whitman at her machine as to what Whitman thought about the Union. When Whitman answered that she thought it was a good idea in view of the rates being paid, Rahalewich replied, "Well, if the Union does get in here I can tell you one thing, we won't have as much work as we have right now."

About July 11 Rahalewich sent Whitman to Silber's office about 1 p.m. where she found about 10 other employees who had been sent to the meeting by their supervisors. That afternoon until approximately 4 p.m. Silber talked about the problems of the plant and about the improvements which had been made there during his tenure as general manager. He told the group to return the next morning.

At the morning meeting Silber began talking about the Union and told the group that he had a list of all the girls who had signed union authorization cards, that a lot of employees had come to his house and had asked what they should do because they had been forced to sign these authorization cards. He ended the discussion by telling the group that, "If the Union thinks they [Respondent] can't move the plant out of town that [sic] they are mighty mistaken because they can." But he added that "He wouldn't let the Union in . . . . He would go to the limits to keep it out."

At another of these group discussions held about the same dates by Silber in his office with some 11 other employees Silber told them, "Well, if the Union gets in . . . he (Silber) can't guarantee our jobs. He may lose his job as well as us losing our jobs . . . if the Union would make it, we would lose our jobs the same as he would lose his job."

On the afternoon of July 10, 1962, Respondent was sent the following telegram:

> Please be advised that Local 108 ILGWU has been authorized by a majority of the employees in your plant at Lebanon, Penna., in an appropriate unit consisting of all non-supervisory production personnel to represent them for purposes of negotiating a collective bargaining agreement including terms relating

[8] By a 3-to-2 vote the Board there set aside the election.

Subsequently the Board again considered the effect of the movie "And Women Must Weep" in *Carl T. Mason Co., Inc.*, 142 NLRB 480, with a similar result.

to wages, hours and working conditions and union recognition. Please contact Mr. Sol Hoffman, Penna. organizational director, ILGWU, 303 Dauphin Building, Harrisburg, CE 6–5389.

BANNON MILLS ORGANIZING COMMITTEE,
PHYLLIS [sic] SHEAFFER,
ALMA LOWE,
DOLLIE LOWE,
ANNA SILLIK,
MARGARET KERKESSNER,
RUTH HELLER,
MARGARET KETCHUM [sic],
ANNA BARLET [sic].

On July 13, Silber had the machines shut off and made a speech to the entire plant. He mentioned the receipt of the telegram from the organizing committee and denigrated the signers thereof by asking "who they were to think that they could represent the employees of the plant." He stated that he could have all the signers arrested or could sue them all. His speech included the statement that he would "never negotiate a contract or sign a contract with the Union." He then continued by saying "that if an election was held he would not sign a contract with the Union. As a result of his not signing . . . that then the Union would come in and say 'Come on, girls, you walk.' Then they will take you out here in the Alley and you walk . . . . All the while when you are walking you have no funds coming in whatsoever. But you still have to pay over $4.00 a month union dues . . . . There you are girls. You could join my union for half price and you don't have to walk." Silber, during this speech asked, "Furthermore where would the Union find jobs for 400 people?" He also told the employees that he had been told by his attorneys that it would be an unfair labor practice for him to continue holding conferences with the employees but that he had made arrangements so that, if any employee wanted to see him, that employee could make an appointment with him through the supervisors.

Later that day Silber repeated much the same speech to the second shift.

Either that same day or the next day the supervisors began going through their departments asking each employee if she would like an appointment with Silber. Supervisor Katherine Johnson asked employee Ada Ketcham whether she wanted such an appointment. Ketcham inquired as to the purpose of the conference. Johnson answered, "So you don't have to air your views to the Union. Or if you have any grievances or anything to the Union. You don't have to talk to those characters. You could go in and speak to Mr. Silber." Although Ketcham refused the opportunity, many of the employees did agree to accept the appointment as suggested by their supervisors.

Supervisor Edna Fetzer[9] asked employee Alma Lowe if she wanted an appointment with Silber. Lowe agreed. When Lowe appeared for her appointment seven other employees were present at the same time. This discussion lasted from about 1:30 to 4:30 p.m. During the course of the discussion Silber referred to a union leaflet that had been passed around over the names of the union organizing committee of which Lowe was one and stated, "I am not threatening you, Alma, but I could have you arrested for this." Thus the group discussions continued.

About July 20 Supervisor John Penn of the cutters sent Joseph Ogurcak, the plant's oldest and probably the highest paid cutter who was also a member of the union organizing committee, to Silber in his office. Silber brought up the circulars of the Union which were being signed by the organizing committee and informed Ogurcak that he "could sue us because we were calling him a liar." Silber stated that he could understand why Phyliss Sheaffer and Anna Sillik were members of that committee because "they were just dumb" but he did not understand why Ogurcak would be on the committee because he thought that Ogurcak "was smarter than that." Ogurcak explained that he was "trying to better himself and get more wages" but Silber told him that he had gone as far as he could and could not get more raises. As Ogurcak was leaving, Silber said, "Joe, I guess I can count on you." A few days later Penn came to Ogurcak and said, "Joe, if there is anything I can do for you, well, we will do it for you."

In the latter part of July, Silber's secretary, Trudy Steckbeck, sent Phyliss Sheaffer outside the plant to meet Second-Shift Supervisor Mamie Watson who asked Sheaffer

[9] Sometimes spelled F-e-t-e-z-e-r.

why she wanted a union in the shop and, after Sheaffer told her why, asked that Sheaffer give Silber "another chance." Watson explained, "Look, Mr. Freydberg [10] has other plants and one in North Carolina or Virginia and . . . that the Union had once tried to get in this plant down there . . . . He closed it down and reopened it under a new name."

Again in early August Mamie Watson told employee Doris Dengler that she, Watson, "hoped the Union didn't get in . . . . Because if the Union did succeed in getting in we would all be looking for jobs . . . . And that came directly from the Freydbergs. They said 'they would close the plant down.'"

Later when Sheaffer asked Watson the source of her information that the plant would close if the Union got in, which Watson acknowledged having told a number of employees during this same period,[11] Mamie answered that "Bert [Breit] told her 'that he had this conversation with Mr. Freydberg, Monday or Tuesday evening of that week. Mr. Freydberg informed him that if the Union should get in at Bannon Mills, he is going to close the plant.'"

Respondent answered the Union's telegram of July 10 by letter dated July 11 refusing recognition of the Union on the grounds that: (1) the possibility of the Union's inclusion in the unit sought of departments "which may or may not be appropriate for representation by your union"; (2) the disbelief of the Union's majority claim because allegedly another labor organization "was likewise trying to fool our employees" into joining it; (3) some employees had reported that they were being "coerced" into signing cards; and (4) Respondent would not be "a party to depriving our employees of their lawful right to vote in a secret election."

2. Trespass and telephone incidents

The following evening, July 12, two events occurred simultaneously in adjoining rooms at the Treadway Inn located in Lebanon: a supervisor's birthday dinner for Bert Breit in the dining room and a union organizing meeting in the room adjoining and separated therefrom only by a folding wall.

Upon discovering Silber's presence at the birthday dinner, Sol Hoffman with two members of the organizing committee, Phyliss Sheaffer and Joe Ogurcak, approached Silber where Hoffman requested that Silber grant recognition to the Union and that Silber meet with the committee next door. Silber refused, stating that he "was available to any of our employees in his office during regular working hours." When Hoffman persisted, Silber sent for the manager of the Treadway Inn to stop "the disturbance." Hoffman and party returned to their own room.

Subsequently Hoffman and Organizer Belasco decided to drive to the nearby Bannon plant on the chance of seeing Silber alone.

Upon arrival at the plant, Hoffman attempted to enter the front door but found it locked. The side door was also shut and locked.[12] He entered the plant through the rear receiving door which was open and in use. Hoffman walked straight through the plant toward the front or office section, nodding to Supervisor Charles Byers and stopping to inquire of Janice Kern if "Harry" was in. At the front Hoffman was met by office girl Mary Fick who informed him that Silber was not in and ushered him out the front door.

Evening Supervisor Mamie Watson immediately telephoned Silber about the intrusion. Silber at once ordered Breit to return to the plant and take statements from the employee witnesses. Breit did so.

Although the episode lasted but a minute or two and was perfectly peaceful, Silber on the following day, July 13, hired the Lebanon law firm of Lewis, Lewis and Erickson, of whom one Lewis was also then the district attorney and Erickson his first assistant district attorney of Lebanon County, to represent Respondent in the matter.

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[10] Freydberg is also intermittently spelled F-r-e-y-b-e-r-g in the transcript.

"Freydberg" and "New York" appear in this record to be mysterious, synonymous, and highly important in the ownership of Bannon Mills. Although Respondent's managerial witnesses professed ignorance as to the exact relationship between the Freydbergs and Respondent, the employees generally, and Supervisor Mamie Watson in particular, considered the Freydbergs to be the owners of Respondent.

[11] Another supervisor, Katherine Johnson, testified that when a supervisor speaks the whole department is "all ears."

[12] Both these doors had posted 12- by 18-inch signs forbidding trespassing. The sign at the front door also had posted instructions to ring a bell for entrance.

About midnight on Sunday, July 15, Silber and Attorney Erickson sought a warrant for criminal trespass against Hoffman,[13] together with a commitment order, from Alderman Richard U. Schock. Although refusing the request at this unusual hour, Schock did issue the desired warrant and commitment order on the morning of Monday, July 16.

These documents were delivered to City Detectives Roland and DeLeo.[14]

A day or so later two other union organizers were arrested and lodged in the city jail on suspicion of being Sol Hoffman. Attorney Louis Meyer, a former Lebanon County district attorney, was hired and succeeded in securing their release. Meyer also informed the officers where and when Hoffman would next be in Lebanon and offered to have Hoffman appear and submit to arrest voluntarily.

Hoffman appeared for a meeting at the time and place Meyer had given to the police. Policemen were stationed outside the meeting hall but Hoffman was not apprehended. After the meeting, Hoffman proceeded to city police headquarters, informed the desk sergeant there that he understood there was a warrant out for his arrest, and offered to surrender. The officer in charge informed Hoffman that he knew of no such warrant and refused to arrest him. Thereupon Hoffman went his way.

In their search for Hoffman Detectives Roland and DeLeo spoke to Louis Kolovani, bellman at the Treadway Inn, at the bar of the inn and requested his assistance in letting them know when the organizers who were living at the Treadway Inn were around. Kolovani agreed. Whereupon Silber, who was sitting at the bar during this conversation, handed Kolovani a $5 bill saying, "Here is something for trying to help . . . . If you could find out any information to the meetings or anything like that [Kolovani] should contact Mr. DeLeo or Mr. Roland." Kolovani again agreed.

About 7 p.m. on July 19, Kolovani telephoned the detectives that there was to be a union meeting at the inn that evening and that Hoffman would probably be there. About a half or three-quarters of an hour later Detective Roland, equipped with dark glasses, appeared at the Treadway Inn, went into the dining room, and had dinner. Although the union meeting was held, Hoffman remained undetected.

About 11 p.m. that same evening while Kolovani was operating the switchboard at the inn, Organizer Pete Hugel placed a local call through the switchboard to Marilyn (Molly) Batdorf, an enthusiastic adherent of the Union employed at the Respondent's plant. At this same time Silber entered the lobby, went directly to the switchboard, and inquired of Kolovani if any of the union men were around. Kolovani, who was holding the switchboard telephone still connected to the Hugel call by his shoulder, indicated to Silber that Hugel was then on the telephone. Silber leaned toward Kolovani. Kolovani handed Silber the telephone. With one hand Silber put the telephone to his ear while with his other hand he got out his wallet. Between 15 and 30 seconds later, Organizer Herman Sacknoff entered the lobby from Hugel's room, came up behind Silber, and inquired if Silber was "getting an ear full." Immediately Silber returned the telephone to Kolovani who disconnected it and rushed to the kitchen for a few words with the Treadway Inn manager.[15]

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[13] Under Pennsylvania law a criminal trespass is a summary proceeding triable before an alderman or a justice of the peace without the right to a jury trial.

[14] Also spelled D-e-l-l-o in the transcript.

[15] Silber's testimony agrees with these facts in general but with explanations. According to his testimony, Silber came into the Treadway Inn either to make a purchase of his favorite cigars which accounted for the fact that he "may" have had his wallet out or to make a telephone call to his home which accounted for his having the telephone in his hand which, according to his testimony, he took from Kolovani "automatically" in a "reflex action." Neither explanation is convincing. The cigar counter was a considerable number of feet distant and around a corner from the switchboard. Patrons were permitted to use the switchboard telephone only when the nearby house telephone and two pay telephones were in use. None was busy during this episode. Silber's other defense was that he "heard nothing."

On the other hand, Kolovani's testimony was not only corroborated in large part but was given with all the appearance of a witness telling the unpleasant truth. Accordingly, I must credit the testimony of Kolovani as found above.

Subsequently, Silber was indicted under a Pennsylvania statute for this episode. It was on the basis of this indictment that Silber refused to answer questions when called by Respondent as a witness on January 31, 1963. This indictment was nolle prossed prior to April 22, 1963.

About 6:50 a.m. on July 23, Lebanon City Police Desk Sergeant Shaffer [16] received a telephone call from Silber informing him that there was a warrant outstanding for the arrest of Hoffman, that Hoffman was at that time on the sidewalk outside the Bannon plant, and that Silber wanted Hoffman arrested. A telephone call to Detective DeLeo confirmed the fact that such a warrant was then at city police headquarters. Another telephone call from Bannon Attorney and Assistant District Attorney Erickson ordered Shaffer to have Hoffman placed under arrest.

Accordingly, about 7 a.m., as the morning shift went to work, two officers from a prowl car following instructions from Sergeant Shaffer arrested Hoffman on the sidewalk in front of the plant and took him to city police headquarters.

At this time Shaffer telephoned Erickson to determine what disposition to make of the body of Hoffman because Alderman Schock "doesn't like to be gotten out of bed before 10:00 or 11:00 o'clock in the morning." Erickson ordered Hoffman held in "protective custody" and confined in the Lebanon County jail [17] to await the availability of Alderman Schock.[18]

Thereupon the city police turned Hoffman over to the county jailer as ordered. Originally the county police ordered Hoffman to shower, to don jail clothing, and to be fingerprinted as required of sentenced prisoners. Subsequently these orders were rescinded and Hoffman locked into a cell in his street clothing without the shower or the fingerprints.

Attorney Meyer promptly appeared at city headquarters and requested a copy of the warrant. Although Pennsylvania law requires that such copies be available at all times, no copy of this warrant was available at city police headquarters.[19]

Hoffman remained thus in detention until approximately 11 a.m. when he was taken before Alderman Schock and released on $50 bail. On July 27 Hoffman was tried before Alderman Schock without a jury, found guilty, and fined the maximum fine of $10 and costs of $9. Pending appeal Hoffman was released on $50 bail.[20]

The evidence shows without contradiction that throughout this period and despite the imposition of the no-solicitation rule, Respondent had its floorgirls pass out a spate of leaflets prepared by Respondent to the employees during working hours in the plant. Two of these leaflets were as follows:

GUILTY!
SOL HOFFMAN
Was Found Guilty
By Alderman Richard Schock
of
Trespassing in the
Plant of Bannon Mills
On the Night
of
July 12th Between
8–9 P.M.

and the second read as follows:

UNION ORGANIZER
POSTS BAIL IN
TRESPASSING CASE

[16] Respondent's motion to correct the record in the spelling of the sergeant's name is hereby denied as the transcript is correct. The remaining corrections proposed in said motion now marked "Exhibit TX–6," and admitted in evidence, are hereby allowed.

[17] Lebanon city police headquarters and Lebanon County jail are two separate and distinct organizations. City police headquarters at this time had some eight detention cells of its own.

[18] Although there were in all nine aldermen in the city of Lebanon, including Schock, with jurisdiction to handle this matter, Erickson testified that he preferred to use Schock because he, Erickson, had "a great deal of confidence in [Schock's] ability."

[19] As Sergeant Shaffer put it, this proved "rather humiliating" and "the Chief of Police of the City of Lebanon took one of the worst bawling outs that anyone would ever take through negligence on our part to have duplicate transcripts and duplicate warrants in our department." As a result Sergeant Shaffer, with the chief's consent, set up a new filing system for the city police.

[20] Prior to April 22, 1963, and prior to the hearing on appeal, this prosecution was also nolle prossed

A union organizer posted $50 bail before Alderman Richard U. Schock this morning to await further action on a trespassing charge resulting from alleged union activities at Bannon Mills, Seventh and Union Streets.

Sol Hoffman, a general organizer for the International Ladies' Garment Workers Union, posted the bail after he had been picked up and jailed by city police who served the warrant. Hoffman reportedly works out of the Union's Harrisburg office.

It is alleged Hoffman illegally entered on the factory premises July 12.

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3. The wage increase

The hearing on the Union's representation petition was scheduled for 10 a.m. on August 3, 1962, in Harrisburg.

On the evening of August 2, Silber spoke at a meeting of supervisors. After first attempting to ascertain from them how many employees had been subpenaed by the Union to attend the R hearing the next day, Silber ordered that "The girls that did have subpenas should show them to their supervisors before they would be allowed to attend the meeting." He then said that "Perhaps the girls that go to the meeting should be called by their supervisors and to tell them that they would have no work on Monday. That would do them good to have a day or so off from work because that would hurt them the most . . . . That it would hurt [Phyliss Sheaffer] the most to lose a day or so of pay because she was used to making high earnings." He instructed the supervisors further that "If the Union continued and they did get in, of course, that would not mean immediate raises for the girls because you could always say the company can't afford it . . . . They would fight the Union with everything, any words, anything he could possibly get his hands on, right down to the bare tooth."

Also that same evening of August 2, Respondent's supervisors, Esther Doupel [21] and Bea Mumford,[22] called upon employee Rosanna Metz at the Metz home. These supervisors told Metz that they wanted her to do something which would not get her "into trouble." They invited Metz to have breakfast the next morning with Harry Silber at Silber's home at 6 a.m. After Metz had accepted, Doupel used the Metz telephone to call employee Rae Hoffer who worked under the supervision of Dorothy Cavalier. Over the telephone Doupel told Hoffer that she wanted to ask Hoffer something which she was not even to tell her companion in her car pool and then invited Hoffer to the breakfast at the Silber home. Hoffer refused. During her conversation with Metz, Doupel stated, "The day after tomorrow what Harry has to give the girls they can't want more than that."

The next morning Doupel drove Metz to the Silber breakfast where they were joined by their host and Supervisor Bea Mumford with employees Lillian Manz, Doris Donmoyer, Helen Schauer, and Margaret Arnold.

At breakfast Silber told his guests that that morning he was going to make a speech and tell the employees of the new wage increases and extended benefits he was giving them and that he was sure "That the girls would be well satisfied with what he is going to do . . . . After I am finished, here [is] what I want you girls to do . . . . Janice Kern . . . will make a speech . . . I am sure she will because she is a good friend of mine. She is an individual that don't have anybody working under her . . . . After she is through making her speech he wants us to take a paper and get the girls to put their names on it."

At this point Metz remarked, "Arlene [23] won't let me take a paper around because I tried it once before." Silber's answer to that was "She will this morning."

Sometime after work began that morning the machines were shut down and the girls assembled in the sewing room so Silber could make his speech. Silber told the employees that he had to attend the R case hearing in Harrisburg that morning "but that can wait . . . . The Union might think that he was trying to buy his girls by doing what he is going to do right now . . . but he was going to do it anyway." Silber then proceeded to tell the employees that he was increasing the minimum wage to $1.25, raising the piece rates, giving greater hospitalization coverage, adding more holidays, and letting the employees take out a "Christmas club" plan at 4-percent interest.

[21] Also spelled D-o-u-p-l-e in the transcript.

[22] Neither Doupel nor Mumford testified at the hearing.

[23] "Arlene" refers to Metz' supervisor, Arlene Gingrich.

As Silber was outlining these new benefits, Respondent's Attorney Granville Alley, Jr., rushed up and said, "Harry, you can't do this," that Silber "should not do it at this time" [24] to which Harry answered, "I am going to do it anyway even if I get my head chopped off."

Silber ended his speech shortly before 10 a.m.[25] by telling the employees that they would have to work harder "to convince New York" that this was the only way.

Soon after Silber's departure, as prophesied at breakfast, the power was again turned off on the machines and Silber's "good friend," Janice Kern, spoke to the employees over the plant loudspeaker system located in the office. Kern told the employees "that she wants to keep her job. That she worked there a long time and that she wants to keep it. She is sure we all do too. That we should show that we appreciate Harry . . . . That we should show our appreciation of what we think of Harry. That we all want to work there. We don't want the plant to move out of town. We should show our appreciation and put our name on the piece of paper that they were going to pass around."

Kern also stated that "She thinks that Harry has went to the limit. That we should give him another chance . . . . Mr. Silber didn't know a thing about this. But they were going to pass a paper around and [in] each individual department for the girls to sign who wanted to back Harry."

As Kern was speaking, Supervisor Arlene Gingrich, also as prophesied at breakfast, not only made no objection but, in fact, handed Rosanna Metz a piece of yellow paper for her to circulate among the employees for their signatures. Metz and other employees, without let or hindrance from any supervisor, thereupon proceeded to circulate these yellow papers, one of which at least was headed "Back Harry," among the employees for their signatures. Supervisor Cavalier, in fact, instructed Metz to circulate her petition among the employees under Cavalier's supervision because employee Rae Hoffer in her line had refused to do so.

Some few employees refused to sign. Supervisors Cavalier and Mumford went to those who refused and asked why they would not sign. One argument Doupel used in her vain attempt to secure employee Malin's signature was that "You know he could if the Union comes in, Mr. Silber is going to close the plant." Respondent's production manager, Herb Friedman, spoke to at least one employee trying to secure her signature to the petition. In another instance when employee Mary Yeagley persisted in her refusal to sign even after importuning by Cavalier and Mumford, Janice Kern came to Yeagley's workplace and instructed Yeagley "to come back to [Kern's] office and talk to her alone."

This solicitation of signatures continued throughout most of that morning. From time to time Kern would make reports over the loudspeaker system as to percentage of girls in each line or department who had signed. On one occasion Kern also announced over the loudspeaker system that "she talked to Mr. Freydberg on the telephone and that he was backing Harry in everything he said, that he was coming down to change the prices on the work."

Between 3 and 4 p.m. that day Silber returned from the Harrisburg hearing where Respondent had agreed to a consent election and made another speech to the day shift in which he told the employees that "He was really surprised at what had taken place. That he didn't know a thing that was going on . . . . He just couldn't believe it. That the girls would do what they did." He also said that he "was so thrilled that everybody shows how much they appreciated what he did . . . and that we were all back of him . . . he was so surprised and glad that everybody acted like that."

When Molly Batdorf, who was employed on the evening shift and who had attended the Harrisburg hearing, punched into the plant about 5:35 p.m., she found Day Supervisors Olive Shiner, Bea Mumford, Dorothy Cavalier, Katherine Johnson, Tammy Rahalewich, and Arlene Gingrich all standing around although their shift had ended at 4 p.m.

About 6 p.m. the power was shut off in the plant and the employees assembled because Silber wanted to make another speech. At this time Silber said, "What a hard day he had had and a hard night. He had hardly any sleep because of this hearing. That his reason for calling us together was to tell us that he had a plan to discuss with us . . . . When he does discuss this plan he knows that the Union will run to the Labor Board and file unfair labor practice charges because he is doing this . . . . Well, what is another charge? . . . He is a law abiding citizen. That since the Union put out this challenging leaflet he felt he was free to go ahead and raise the rates."

[24] This testimony remained uncontradicted in the record

[25] Silber and Alley did not arrive at the hearing in Harrisburg until well after 10 o'clock. It is a 40-minute drive from Lebanon to Harrisburg

At this point Molly Batdorf interrupted him by saying that he had not given all the union leaflet demanded.[26]

Silber answered, "Well, if [he] went ahead and gave all that was given at the Di-Anne that would be the same as admitting the Union to the plant."

Batdorf then inquired as to why Silber had waited until the day of the R case to present this plan.

Silber answered this by saying, "Molly, all I can tell you that it was in the book since last February. However, the Union prevented him from giving it, but now he felt he was free to do so . . . . If he is breaking the law, what is another charge? . . . He was going to go ahead and do it . . . . Let the lawyers take care of the law. My main concern is with my girls."

Silber continued his speech by saying, "He was very touched and overwhelmed and surprised when he got back from the hearing to learn that the whole day shift supported him 100 percent. Him and his new wage and benefit program . . . . He felt sure we too would be happy with this program."

Silber then proceeded to list the increased wage rates, the increased insurance, the increased hospitalization benefits, the increased maternity and surgical benefits, the added holidays as well as the Christmas club, and promised to bring in engineers to study the piece rates but that the employees "weren't to be too upset if this didn't work out right away."

Silber summed up by saying that these increases would cost about $150,000 but added that "if the Union got in it would cost 16 percent above that yet. That we would have to work very hard to help pay for these increases. By working hard we would help him convince New York that this was the only way to get rid of the Union . . . . He'd made mistakes before and he is sure he will make mistakes again. However, he feels this was the best mistake he ever made and he was willing to pay for it."

Soon after Silber's announcement had ended, the above-named supervisors together with an employee named Helen Stone, who was wearing a white sailor's hat with the words "Honest Harry's Union" inscribed on it, circulated among the employees with the familiar yellow sheets of paper asking the employees to sign the same. Night Supervisor Mamie Watson was similarly engaged as was Night Supervisor Charles Byers. This endeavor consumed about a half hour after which the employees were sent back to work.

About 8:30 p.m. the employees were again told to turn off their machines as Silber wanted to make another speech. This time he said, "He just got a report that the Union was very shook up since they heard about this new plan . . . . They were calling an emergency meeting which was to be held immediately after work at the Steelworkers' hall . . . . He is predicting that the Union would now run screaming to the Labor Board that this is an unfair labor practice to give these raises. And he even predicted that they would withdraw from the election . . . . He wants everyone to know that the girls who took part in union activities, those who signed cards and got on the Committee he is sure that we did so in good faith. That there would be no harassment or intimidation or coercion by any supervisors or management . . . . He will even go on record before the entire night shift of 40 to 50 girls that there would be no reprisals or no revenge taken on this—on these girls. He is sure that no one would lose their jobs through firing or that their job would be taken away . . . . As Molly [Batdorf] implied that I timed this just right. But this isn't so. This is an honest attempt. Now, that he offered this wage he felt that the Union was unnecessary. . . . That the Union was using job security as a weapon and nothing else."

Silber also assured them at this time that "He is sure that on Monday morning that when we came in that we would find posted on the bulletin board . . . signed by me [Silber] all these benefits that he mentioned. That they would be in effect immediately . . . . The Union would accuse him of buying votes in the coming

[26] Both Silber and Batdorf were referring to a union leaflet over the names of Sol Hoffman and the Bannon Mills organizing committee circulated shortly prior to August 3 which contained the following:

ANOTHER CHALLENGE TO HARRY SILBER

Harry Silber has been telling the girls everything is *frozen*. In fact he can't even paint the wash room now. The ILGWU states for the record, if the Company pays immediately *ALL* the benefits that Di-Anne gets, we will not complain to the Labor Board.

election . . . . This isn't so, that he is merely trying to correct legitimate grievances. . . . He was again overwhelmed the way the night shift supported him. They supported him 100 percent."

Production on the night shift that evening was about 50 percent of normal. However, the employees were paid for their time.

On Monday, August 6, 1962, the Respondent posted two notices upon the bulletin boards of the plant. The first of these stated in pertinent part:

NOTICE TO ALL EMPLOYEES

Unless the Union backs out between now and then . . . .
An Election will be held—On Thursday afternoon August 16, 1962
between 3:15 p.m. and 5:00 p.m.
in the new lunchroom.

* * * * * * *

The second notice stated that "Effective Monday, August 6, 1962, the following changes in fringe benefits, guaranteed minimum and piece-rate adjustments will take effect." This notice listed all the wage and other benefits Silber had described in his August 3 speeches.

A few days thereafter the floor girls and supervisors passed out to the employees in the plant a circular over the name "The Fighting Bannon Workers" [27] reading in pertinent part as follows:

ATTENTION ORGANIZATIONAL COMMITTEE
ATTENTION PLEASE

We would like to know what unfair labor practices you are talking about?

A. Do you mean the 3 breaks that are given to us each day consisting of 10 minutes a day or 2½ hours a week??
B. Do you mean the 1—2 or 3 weeks vacation with pay??
C. Do you mean all the other benefits that every one of us employees, including the Bannon Mills Organizational Committee, will tell you that we are getting??

Now we ask you this question, and we want an honest answer—What more can the union give us that the Company hasn't given us already? How can the Company afford to give us more than they have already given us? What good is a union is [if?] we haven't the work to pay our union dues??

In a talk to the employees about this time Silber stressed the high salary he claimed Hoffman was making and of the dues and offered to show any of the employees the official salary lists. Phyliss Sheaffer accepted the invitation. During the conversation at this time Silber told Sheaffer, "I hate unions. I am going to do everything I can to prevent it from coming into this plant."

4. The August 8 demonstration and repercussions

Beginning about 6:30 a.m. on August 8, about 15 of the Respondent's employees demonstrated outside the plant against Respondent's unfair labor practices by handing out leaflets and carrying picket signs. The leaflet passed out at this time read in part as follows:

IT'S THE LAW!

Why are we demonstrating?

1—We are protesting many unfair labor practices committed by the Company.
2—That is, intimidation, coercion, threats and misleading promises.
3—Silber has said himself that he does not care about "breaking the law."

About 9 a.m. three of the demonstrating employees Elsie Geist, Katherine Knapp, and Margaret Ketcham left the demonstration, went into the plant, and were promptly put to work at their regular jobs.

About 11:30 that morning the employees were told to shut down their machines so Silber could make another speech. This time Silber said "that he did nothing to prevent the three stooges from coming into work in the morning." And then told the employees, "If they were afraid to go out at lunch time that he would have their lunch brought in. He would give the supervisor what you wanted for lunch and they would relay it to one of the restaurants in town and they would take care of it. You didn't have to go outside the door and pass the demonstrators."

[27] A pseudonym for Silber, Janie Kern, and Respondent during this period.

When Ketcham punched out for the lunch recess from noon until 1 p.m., she left work on her machine still to be completed.

About 15 minutes to 1 that afternoon Phyliss Sheaffer and the rest of the demonstrators who had continued their demonstration up to this time, abandoned the demonstration and entered the plant prepared to punch in and to return to work. Ketcham, who had finished her lunch at home, was with this group as they entered the plant.

The group was met at the timeclock by Production Manager Herb Friedman, who refused them the right to punch in and go to work on the grounds that, "There wasn't any work available for them." Sheaffer asked if they were fired. Friedman answered that they were not fired, that there was no work available for them and that they were to report for work the next day at 7 a.m. When Ketcham pointed out that she had worked that morning, Friedman replied that "There is no work available for any of you." This conversation occurred about 5 or 6 feet from Sheaffer's machine which was not being operated even though the line in which Sheaffer worked was at that time operating an overtime period from 12:30 to 1 p.m. so that there must have been work available.

Sheaffer carried the matter to Silber who reiterated that they were not fired, were to report the next morning, and added, "We do not run this plant to suit you. We operate this plant from 7 a.m. to 4 daily."

Elsie Giest was the only one who had participated in the demonstration who was permitted by Respondent to work that afternoon. Even Ketcham who left work to be done in her machine when she went to lunch was told there was "no work."

During the course of the demonstration that morning, Hoffman and Organizer Belasco asked Silber if he was ready to negotiate and sign a contract with the Union and get "this thing over with." Silber retorted that, "When the day comes that hair grows in the palm [of the hand], that is the day he would sign a contract and not before."

When Molly Batdorf, who had been among the demonstrators that morning, reported for work as usual on the afternoon shift that evening, she noted three day supervisors were present, Tammy Rahalewich, Olive Shiner, and Bea Mumford. Batdorf punched in and began work.

Not long after the shift began, employee Agnes Pesta, whose machine was located just behind that of Batdorf's, asked Batdorf a question. As Batdorf turned to answer, Supervisor Tammy Rahalewich rushed up shouting: "Marilyn, turn around, shut up and get to work." When Batdorf answered, "Tammy, my God, this is America," Rahalewich answered in a rising tone, "I don't care what it is. Turn around, shut up, and get back to work." To this Batdorf said, "My God, just because I am for the Union and have a union button on . . . I still have my freedom of speech." After Ralahewich reiterated these orders, Mumford and Shiner said, "That is right, Marilyn, from now on the only time you are allowed to speak is on your break."

Both Pesta and Batdorf thereupon asked to see Silber.

About 7:25 p.m. Batdorf was notified that she could have an audience with Silber. Night Supervisor Mamie Watson accompanied Batdorf to Silber's office. Silber explained that he had Watson there "as a witness as to what he was going to say" to Batdorf. When Silber attempted to explain the incident in the sewing room on the ground that "Tammy just got a little excited," Batdorf refused to "buy that" and stated that she felt "that he had [Rahalewich] there to watch me and she was told to pick on me." Silber denied the accusation and turned the conversation by telling Batdorf that she "was a natural born leader, and that he only wishes that I would lead them in the right direction. That if I would lead them in the right direction and switch sides . . . I could save the whole plant . . . . If you would switch sides I [Silber] would give you a supervisor's job. I would send you to supervisors' school for which you would get a certificate . . . . That if I could figure out a better way to hand and hem pants he would give me the biggest bonus the Company ever offered."

Batdorf then told Silber "that no one ever talked non-union to me. That they avoid me like the plaugue." To this Mamie Watson said, "She couldn't for the life of her understand how [Molly] ever got mixed up with the Union and how I ever fell for their line."

This conversation lasted for some 3 hours during which Silber contended that the Union and the Amalgamated Union had closed a number of other shops in the area.

Batdorf did not report for work the following day. Watson telephoned to find out the reason and was told that Batdorf was suffering from mental exhaustion but would be in on Friday.

When Batdorf reported for work on Friday, August 10, Watson asked if she wanted to talk further about the supervisor's job. Batdorf refused the offer.

On August 14, Watson sent Batdorf to Silber's office where Silber asked what she knew about "this dissonant group within the ILG." When Batdorf denied having any knowledge of the subject, Silber said, "Molly, I am sure this is the first time we ever had any differences . . . . Well, if we can't iron out our differences when this is all over you and I will have to get a divorce and this will break my heart." Finally Silber asked, "Molly, what else can I tell the girls?" When Batdorf knew of nothing, Silber said, "Well, coming from [Molly] it might help sway them more to his side." Silber ended this interview by cordially inviting Batdorf to come back to his office anytime.[28]

On August 9, 1962, the Union simultaneously filed unfair labor practice charges against Respondent and a request to withdraw its petition for certification. On August 10 the Regional Office granted the request to withdraw the petition.

On or about August 10 Respondent caused to be published, over the signature of Harry A. Silber, its president, and distributed to its employees in the plant, the following leaflet:

IT'S THE
LAW!

THE CONSTITUTION THE BILL OF RIGHTS
GUARANTEE YOU THE RIGHT TO VOTE
IN A SECRET ELECTION

NO ELECTION!!

SPECIAL BULLETIN

The union has demanded that the National Labor Relations Board withdraw their Petition for an election at this plant!

The Union has weasled out of the election as *we* predicted they would!!
They don't want *you* to vote!!
WHY? Because they know that if your vote were in
THE UNION WOULD BE OUT!

SOL IS TRYING TO SNEAK IN AGAIN . . .

He knows he will lose all of your dues (and your vote)
Like all "Poor Losers" they are now crying "UNFAIR"

HOW?

Because—We harassed you	Into accepting wage increases.
We intimidated you	Into accepting increased benefits.
We coerced you	Into taking more vacations.

—AS WE HAVE SAID, SO OFTEN—

"We will not be a party to depriving our employees of their RIGHT TO VOTE by secret ballot as to whether they do or do not want to be represented by the International Ladies' Garment Workers Union"

We will carry this fight for your rights up to the Supreme Court if necessary.

BANNON MILLS, INC.,
HARRY A. SILBER, *President.*

About 9:30 a.m. on August 22, 1962, the power for the machines was shut off and Silber made another of his speeches. In this speech he said,

> As you know the National Labor Relations Board is now into the picture because of the Union's stopping the election and filing these charges . . . . As the National Labor Relations Board is government supervised . . . they are neutral. They are not for management and they are not for labor . . . . I can assure you they are not for management . . . . If they come around to visit some of you girls in your homes . . . if they try to force their way into your homes you do not have to see them. But this is your right . . . . And, if you want to see them . . . just tell the truth.

[28] Neither Silber nor Watson made any attempt to deny or explain this testimony by Batdorf.

He added, "That if there is anybody that signed an authorization card for the Union if they feel that they were sorry they did it, that they would just have to give their names to him and he would see that their card is voided." Referring to the election Silber said, "The Union had canceled the election . . . . He wanted the election but he wanted the girls to have the right to vote so the Union stopped it . . . . He wants us girls to have the right to vote."

Once again on November 12, 1962, the power was shut off and Silber again spoke to the employees. This time Silber said,

> That he wanted to stop some of the rumors that were being spread about from rumor mongers. He assured us that we would get a turkey for Christmas . . . . The National Labor Relations Board hearing will be coming up in January . . . . He had dealings with this type of hearing before . . . . He will never negotiate a contract with the Union as long as he is in charge of the plant . . . . He would never hold an election at his plant. He wouldn't never sign a contract with the Union as long as he is in charge of that plant . . . . He wants a secret ballot election. He wants us girls to have a right to vote by secret ballot. He will never deprive us of that. That he wants . . . . That there would be an increase in rates in the minimum rate at the plant in January.

As of early January 1963, Respondent in fact did increase the minimum rate at the plant from $1.25 per hour to $1.35 per hour.

On January 3, 1963, employee Rosanna Metz informed Supervisor Mumford that she had been interviewed by a Board agent between Christmas and January 1, 1963, and that the Board knew about the August 3 breakfast at the Silber home.

On January 4 Metz was sent to Silber's office where Silber inquired as to what Metz had told the field examiner. Metz answered, "I told him I don't know nothing." Whereupon Silber replied that Metz "should just keep telling him that [she] don't know anything." Metz told Silber that questions were asked about Janice Kern and others. To this Silber said, "Well, Janice Kern wasn't out to the house but neither were you . . . . You don't even know my house number." [29]

The instant hearing began on January 7, 1963.

5. The September 7 incident

About 10:30 a.m. on September 6, 1962, Phyliss Sheaffer who was not feeling well that day told Floorgirl Katherine Reich she was ill and asked permission to take the afternoon off. Reich [30] reported this request to Supervisor Olive Shiner who, having a busy schedule that day, said, "Gee, I don't know." Shiner thereupon went to Sheaffer's work place. At this point one of the rare factual conflicts in this record occurred: Sheaffer testified that when Shiner appeared, she told Shiner that she was going home at noon because she was not feeling well and that Shiner answered, "Well, I can't give you off . . . . I got orders that I dare not give anyone off," whereas Shiner testified that, when Sheaffer told her only that she was taking the afternoon off, Shiner asked if she had "any excuse" to which Sheaffer replied, "Just tell him I am just taking off" without ever stating that she was ill.[31]

Shiner thereupon reported to Production Manager Herb Friedman that Sheaffer just said she was taking off that afternoon. Friedman ordered Shiner to so report to Silber. Silber approached them at that time and upon hearing Shiner's report said, "Let's give her the day off without pay."

Admitedly that afternoon Shiner learned from employees who, according to Shiner, "volunteered" the information to her that Sheaffer was in fact sick, a fact Shiner also reported that afternoon to Herb Friedman.

On Friday, September 7, when Sheaffer reported back for work, Shiner sent her to Herb Friedman who asked why she had taken the afternoon off and then informed Sheaffer that she would have to have a doctor's excuse before she could return to

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[29] There was no cross-examination of Metz nor contradiction of her testimony regarding the August 3 breakfast meeting

[30] Reich was not called as a witness

[31] As subsequently Shiner admitted having received the information that same afternoon that Sheaffer was ill, I would consider the resolution of this conflict immaterial except for the fact that at the hearing Respondent apparently considered Shiner's alleged lack of knowledge to be a defense. I credit Sheaffer's version because she, like Batdorf, proved throughout her testimony to be a very honest witness. Shiner's testimony, even of the event in question, was not convincing.

work. This was the first time in Sheaffer's 11½ years of employment with Respondent that a doctor's excuse had been necessary before returning to work. Sheaffer told Friedman, "I will look like a fool going [to the doctor] for it but that is your wish I will fulfill it."

Sheaffer reported for work on Monday morning with a doctor's excuse and was permitted to go to work. That same morning Silber ordered Shiner to make a written memorandum of this incident.[32]

B. *Conclusions*

1. Interference, restraint, and coercion

In a number of respects the instant case is unusual, if not positively unique.

The question here actually is not whether Respondent committed acts of interference, restraint, and coercion in violation of Section 8(a)(1) of the Act. The commission of such unfair labor practices appears to have been practically admitted, especially in at least two instances: (1) the group antiunion seminars held by Silber in his office which Respondent's own attorneys informed him had to be discontinued as illegal, and (2) Silber's August 3 announcement of wage, etc., increases where Attorney Alley apparently shocked by the blatancy of the unfair labor practice shouted out: "Harry, you can't do that." In both instances I must concur with the legal opinion thus expressed by Respondent's attorneys.

Furthermore the almost innumerable instances of violations of Section 8(a)(1) by Respondent spelled out in the testimony of General Counsel's witnesses, in general by Phyliss Sheaffer and Molly Batdorf, two most impressive witnesses, as well as by other witnesses, remain almost without exception uncontradicted and corroborated throughout this record.

As witnesses, Sheaffer and Batdorf were each explicit, concise, factual, truthful, and convincing. On the other hand, Silber, the chief actor for and on behalf of Respondent, when he finally took the stand, sought only to explain—not deny—the facts. As a witness he proved to be suave, loquacious, and rambling but implausible and unconvincing.

During the hearing itself Respondent's trial attorney, as a good attorney and realist, actually did not attempt to contest most, if any, of the myriad of violations of Section 8(a)(1) of the Act but, on the other hand, did seek vigorously to prevent the possibility of a remedial order requiring Respondent to recognize and bargain with the Union based on these violations of Section 8(a)(1).

Hence the only real issue presented here is as to how these acts of interference, restraint, and coercion against its employees covering the extended period from July 5, 1962, to January 4, 1963, can be remedied.[33] The question of remedy will be discussed in the ensuing section of this Intermediate Report.

In any assessment of Respondent's acts and statements as constituting interference, restraint, and coercion, it must be remembered that Respondent and Silber, its main if not only actor, without contradiction "hated the union" and would fight it by any and all "legal" means including the "bare tooth."

While Silber expressed this "legal" limitation to his opposition in his original statement thereof on July 5, 1962, he forgot to include the same limitation in his many subsequent reiterations of that opposition. Furthermore, regardless of that, the facts prove that Silber's conception of "legal means" differed radically from that held by the Board and the courts.

The facts here prove:

(1) On July 5, 1962, Silber began his campaign of interference, restraint, and coercion by showing the film "And Women Must Weep" to all Respondent's employees during working hours in order, as he put it, for the employees "to see exactly what we have to do when we belong to a union." Silber misrepresented the movie to the employees as being a true story of the strike with the scenes being performed by the actual participants therein. By thus presenting this movie, Silber tarred the Union with the same brush as the movie company had applied to the fictionalized union in its drama. The effect of this presentation on employees was well described in the Board's R case decisions in *Plochman & Harrison—Cherry Lane Foods, Inc.*,

[32] This memorandum was not present at the hearing.

[33] Actually the 8(a)(3) violations herein are minor and insignificant except as a part and parcel of Respondent's whole campaign of coercion to prevent the Union from obtaining bargaining rights in the plant. The very few dollars of lost wages would be an exceedingly small purchase price for the time gained by Respondent.

140 NLRB 130, and *Carl T. Mason Company, Inc.*, 142 NLRB 480. (Having viewed the movie, I agree with the majority opinions and particularly the concurring opinion of the Chairman in the *Mason* case.)

Respondent seems to defend here on the ground that attendance at the movie was "voluntary"—Silber did say the employees did not have to stay. However, Respondent both invited and paid for their attendance. An employee rarely has the opportunity to get paid for seeing a free movie.

I find that the presentation of this film during working time to a paid audience of all the employees under the circumstances existing here, both alone or in conjunction with other events herein, to be a violation of Section 8(a)(1) of the Act.[34]

(2) Promptly after the organizing campaign began, Respondent promulgated, verbally and by posting, a rule against union solicitation during working hours. Silber threatened that anyone violating such rule would be discharged. The rule is a violation of Section 8(a)(1) both in its promulgation and its enforcement. It was too broad covering as it did the employees' break periods. It was also discriminatorily enforced in that Respondent, its supervisors, and Janice Kern, its agent, were permitted to solicit against the Union during working hours in the plant, even over the plant public address system, without objection. Therefore, I find both the promulgation and enforcement of Respondent's no-solicitation rule to constitute interference, restraint, and coercion in violation of Section 8(a)(1) of the Act.

(3) There can be no argument that Silber's promise of a supervisory position to Molly Batdorf, conditioned, as it was, upon her "switching sides" from prounion to Respondent's "side," constituted interference, restraint, and coercion within the meaning of Section 8(a)(1) of the Act. Nor can there be much, if any, argument that Silber's statement to Batdorf a few days later that, unless they could compose their differences over union representation, they would have to be "divorced" was, in fact, a thinly veiled, but well understood, threat of discharge because of Batdorf's continued prounion sympathies in violation of Section 8(a)(1) of the Act.

(4) Also Respondent's attempt to frighten all members of the Union's organizing committee named in the telegram of July 10, 1962, into abandoning the Union by threatening each with arrest or a lawsuit constituted interference with their rights. This is especially so as the announcements were made publicly by Silber before all Respondent's employees. This announcement coupled with Silber's announcement that Respondent knew all the employees who had signed union cards was clearly intended to coerce all employees interested in the Union into abandoning it for fear of arrest, lawsuits, or discharge, all in violation of Section 8(a)(1) of the Act.

(5) Silber, Supervisors Mamie Watson, Esther Doupel, and Katherine Johnson, as well as Agent Janice Kern, also threatened the employees that, if the Union succeeded in organizing the plant, the plant would be closed down, the employees as well as Silber would lose their jobs or that there would be less work to do. These threats were intended to prevent the employees from enjoying their statutory freedom to join the Union and thus constituted violations of Section 8(a)(1) of the Act.

(6) The practice of Respondent in holding private group discussions with 10 or 12 employees selected for the purpose by the Respondent in Silber's private office or in the plant cafeteria in order to permit Silber to influence these employees away from their adherence or activity on behalf of the Union by showing Respondent's benevolence and the Union's malevolence is violative of Section 8(a)(1). The Board and the courts have condemned this practice, similar to "brainwashing," on a plantwide scale under circumstances similar to those present here. Even Respondent's legal advisers found the practice illegal and advised that it be abandoned. The evidence here proves that Silber, despite this sound legal advice, in fact continued the practice under the thinly veiled disguise of having the employees "request," with supervisory urging, conferences with him. I find both to be violations of Section 8(a)(1) of the Act.

(7) The publicly made suggestion, whether true or false, by Silber to the employees on at least two occasions that Respondent knew all the employees who had signed union cards, which the Union had assured the employees would be kept secret from Respondent, could only imply to the employees that Respondent was engaged in illegal surveillance of union activities and, in addition, cause fear of discharge among those employees who had actually signed cards for the Union for having done so. Both are further violations of Section 8(a)(1) of the Act.

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[34] At the reopened hearing on April 22, 1963, the last day of this hearing, Respondent sought to eliminate this matter from consideration as an unfair labor practice on the ground that the movie was not specifically mentioned in the complaint. This technical objection came both too late and was otherwise invalid as the pleader need not plead all his evidence.

(8) In the telephone episode at the Treadway Inn, Silber was caught *in flagrante delictu*. Surveillance by any other means has always been condemned by the Board and the courts. Similarly I must find that surveillance of union activities by telephone also is a violation of Section 8(a)(1) of the Act.

(9) Although Hoffman who was deprived of his personal freedom for a 4-hour period would no doubt disagree, the trespass incident is of no real importance except to indicate how far Silber and Respondent were prepared to go to demean and denigrate the Union and its officials and thus attempt to undermine the Union in the minds of Respondent's employees. For this purpose Respondent caused leaflets describing each step in that sordid and sorry episode to be distributed to the employees in the plant during working hours to denigrate the Union and its leadership. The actual facts of that so-called trespass were definitely not worth the time, money, or effort spent thereon by Silber, Respondent, their attorneys, Alderman Schock, and the police except as an attempt to demean and denigrate. Because of the obvious purpose behind, and use made of, the episode by Respondent, I must find it to constitute another violation of Section 8(a)(1).

(10) The "spontaneous" solicitation of support for "Harry," carefully planned and prepared by Silber and led by his "good friend" and agent, Janice Kern, over the plant public address system with petitions being circulated among the employees by numerous supervisors during working hours was another act of interference, restraint, and coercion of employees designed to force them to abandon their rights under such Section 7 of the Act in violation of Section 8(a)(1).

(11) Silber's attempt to have employee Rosanna Metz "forget" the August 3 breakfast at the Silber's home also amounts to a violation of 8(a)(1) as an illegal effort to prevent the employees from having a fair and honest appraisal of the Union's charges against Respondent.

(12) Then, of course, came the sockdolager: Silber's announcement on August 3 of a plantwide wage and benefit increase for all the employees.

Thus, at practically the moment Silber was supposed to have been in Harrisburg attending an R hearing on the Union's petition, he was in fact at the plant announcing to the employees the plantwide wage and rate increases, greater hospitalization benefits, additional holidays, and other fringe benefits. Up to this time wages, etc., according to Silber, had been frozen due to the Union but now suddenly these increased wages, benefits, etc., became the "only way to beat the Union." Attorney Alley's outburst "Harry, you can't do that" proved that Respondent's attorney recognized this as a flagrant unfair labor practice.

Then as soon as Silber had departed, the carefully planned "spontaneous" solicitation of support for "Harry" by Silber's "good friend" Janice Kern on the basis of these newly announced benefits coupled with the threat of loss of employment proved the illegal purpose behind the Silber wage announcement—as well as proving beyond peradventure of a doubt the discriminatory enforcement of the plant's "no solicitation" rule.

At the hearing Respondent adduced testimony that these increases were in fact only a part of Respondent's 1962–63 budget upon which consideration began as early as December 1961, and, hence, long before the advent of the Union. The only proof Respondent was able to produce in its efforts to corroborate this generalized and indefinite testimony of Breit and Silber were two pieces of handwritten material clearly proving that the only wage increases considered in that budget were a few individual merit wage increases amounting at most to a few thousand dollars, not the $150,000 which Silber estimated his August 3 announcement cost. In fact this evidence itself proved that no general plantwide increase was even considered by the Respondent before the appearance of the Union.

The purpose of the August 3 wage increases was well expressed in the leaflet over the name of "The Fighting Bannon Workers" passed out to the employees in the plant with Respondent's approval which stated in part:

> Now we ask you this question, and we want an honest answer . . . . What more can the Union give us that the Company hasn't given us already? How can the Company afford to give us more than they have already given us? What good is a union [if] we haven't the work to pay our union dues??

and in that other leaflet over Silber's signature which asked:

> Like all "poor losers" they are now crying "unfair"
>
> HOW?
>
> Because—We harassed you into accepting wage increases.
> We intimidated you into accepting increased benefits.
> We coerced you into taking more vacations.

Accordingly, I must, and hereby do, find that Respondent announced and gave its employees the increased wages and benefits on August 3 in order to coerce and entice its employees away from union membership and activity and, as suggested by Silber himself, as a "bribe" to secure the employees' votes against union as well as proof that the Union could no longer assist the employees. Sweets are often more effective than vinegar. Under the existing circumstances the August 3 increases constituted a blatant act of interference in violation of Section 8(a)(1).

(13) I also make the further and additional finding that Respondent committed its estimated $150,000 unfair labor practice on August 3, 1962, with malice aforethought for the purpose of thwarting the right of its employees to a determination of their preference for or against union representation in a Board-conducted secret election by intentionally and deliberately destroying the "laboratory conditions" which Respondent well knew the Board has always required for the holding of such elections. In other words Respondent by that unfair labor practice of August 3 sought to prevent or postpone the representation election among its employees by creating conditions beforehand which would make the holding of such an election impossible and thus prevent recognition of, and bargaining with, the Union. It is to be recalled that, in making his announcement of the benefits on August 3, Silber confidently predicted that, upon hearing of his announcement, the Union would "back out" of the election by filing charges of unfair labor practices with the Board but, as Silber expressed it at the time, "What are charges?" I, therefore, find that this deliberate act by Respondent amounted to subverting the Board's processes in order to deprive Respondent's employees of the exercise of their statutory rights to an election and possible certification of the Union with the resultant obligation upon Respondent to bargain with the Union in violation of Section 8(a)(1) of the Act.

2. Discrimination

a. *Discrimination against the August 8 demonstrators*

General Counsel alleged and contends that Respondent discriminated against employees Dolores Griffiths, Clara Bellman, Violet Dibockley, Alma Lowe, Emily Kiscadden, Lena Barrell, Mary Edris, Betty San Martin, Ruth Heller, Anna Barlett, Phyliss Sheaffer, and Ada Margaret Ketcham because they engaged in a protected concerted activity by demonstrating against Respondent's unfair labor practices around Respondent's plant on August 8, 1962, by refusing them their regular employment on the afternoon of that day after they had abandoned their demonstration about noon and had returned to the plants or at work.

The evidence proved that the above-named employees together with employees Geist, Knapp, and Batdorf did demonstrate or picket outside the plant protesting Respondent's unfair labor practices during the morning of August 8. At 9 o'clock that morning employees Ketcham, Geist, and Knapp abandoned the strike, returned to the plant, and were immediately put to work that morning.

About 11 a.m. Silber made one of his speeches to the employees over the public address system and mentioned that he had not prevented the "three stooges" from returning to work that morning.

About 12:30 p.m. the remaining demonstrators or pickets abandoned the demonstration or picketing, returned to the plant, and were refused work that afternoon by the Respondent on the ground that there was allegedly "no work" or because the plant was not being run for their convenience. Ketcham who returned from lunch at the same time that the demonstrators arrived at the plant was also refused work that afternoon allegedly for the same reason.

Respondent maintained that there was no work for the demonstrators that afternoon and, because the work had been scheduled and the production lines set up for the day with due regard to the fact that the above-named employees would be absent, this scheduling and setup could not be changed at such a late hour in order to provide work for the demonstrators.

At first blush this work scheduling argument appears valid, especially if it be assumed that work can be so precisely scheduled.

But actions often speak louder than words.

In the morning when Respondent's concern was to hold the demonstrators down to the fewest possible numbers and to break the demonstration if possible, Respondent welcomed the return to work of Geist, Ketcham, and Knapp and was able to find work for them immediately even though the work had been scheduled and the production line set up some 2 hours before the three returned. At this time Respondent made no mention of work schedules or production lines. There was work despite the prior scheduling.

However, in the afternoon when the demonstration was called off and the picket line abandoned, Respondent first began to talk about work schedules and production lines. With the demonstration broken Respondent's purpose now turned to punishing the demonstrators for having participated in the demonstration at all. This was proved by the experience of Ketcham for whom the Respondent found work immediately in the morning when she abandoned the picket line. In the afternoon, however, with the demonstration over, when Ketcham happened to return to work with the other demonstrators, Respondent had "no work" for her even though there was still work on Ketcham's machine from her morning's work. With the demonstration completely broken Respondent was obviously punishing her for having participated in it earlier in the day. Phyliss Sheaffer was told that there was no work for her even though her department at the very time of the telling was in fact working overtime. In fact the evidence showed that there was work available except for the fact that the Respondent wished to teach the demonstrators a lesson.

This vindictiveness of the Respondent toward union adherents had been expressed only 6 days before when Silber told his supervisors that those employees who attended the R hearing in Harrisburg on behalf of the Union "perhaps" should be told that there would be "no work" for them the following day because "that would do them good to have a day or so off from work because that would hurt them the most." Silber specifically mentioned the name of Phyliss Sheaffer in connection with this proposed layoff.

I am, therefore, convinced and find that Respondent discriminatorily laid off for one-half day employees Delores Griffiths, Clara Bellman, Violet Dibockley, Alma Lowe, Emily Kiscadden, Lena Barrell, Mary Edris, Betty San Martin, Ruth Heller, Anna Barlett, Phyliss Sheaffer, and Ada Margaret Ketcham because they had engaged in concerted activities on behalf of the Union in violation of Section 8(a)(3) and (1) of the Act.

b. *The discrimination of September 6*

The facts of the September 6, 1962, episode regarding Phyliss Sheaffer speak for themselves. Sheaffer went home at noon that day because, as she told Floorgirl Katherine Reich,[35] she was ill. Supervisor Shiner testified that Sheaffer in requesting the afternoon off did not tell her of her sickness. Even if so, Shiner as a woman indicated a strange lack of knowledge and perception. Be that as it may, however, even Shiner acknowledged that she knew early in the afternoon the cause of Sheaffer's departure and so informed Herb Friedman.

Silber indicated his vindictiveness toward Sheaffer for her union activities by saying upon learning of her departure, "Let's give her the day off without pay."

Accordingly, the next day Friedman refused to permit Sheaffer to return to work without a doctor's excuse, a requirement used for the first time so far as this record shows in this particular instance.[36]

Three times prior to September 7, Silber had suggested, or inflicted, a penalty of time off without pay for union adherent Phyliss Sheaffer. The first time Silber made such a suggestion was the day before the R hearing in Harrisburg on August 3, and significantly it applied only to those employees who had been subpenaed to appear at that hearing on behalf of the Union and significantly Silber, on that occasion, specified Sheaffer by name. The second occasion was on August 8, when Sheaffer was discriminatorily laid off for one-half day because of her participation in the union demonstration of that day. The last occasion, of course, was on September 6, when Sheaffer left the plant because of illness.

Accordingly, I must, and hereby do, find that Respondent discriminatorily laid off Phyliss Sheaffer on September 7 and discriminatorily required a doctor's excuse prior to permitting her to return to work because of her known union membership and activities in violation of Section 8(a)(3) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and

[35] Respondent did not call Reich as a witness.

[36] Respondent adduced testimony that at some unspecified date, a memorandum of new plant policy was distributed to supervisors requiring employees to report to the plant nurse for permission to leave because of illness. As Respondent failed to produce any copy of this memorandum, even though it was in its control, it is a fair inference that the date thereof was after September 6, 1962. There was no evidence that this memorandum required a doctor's excuse prior to the employees' return to work.

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

With the finding of the numerous violations of Section 8(a)(1) by Respondent, this Intermediate Report finally reaches, as noted *supra*, the real issue in this case: how to remedy the unfair labor practices and how to restore their statutory rights to the employees.

The historic, time-honored remedy for the usual type of violations of Section 8(a)(1) is by the posting of notices by the employer in the plant stating in effect: "We won't coerce our employees illegally again."

In the usual case where these Section 8(a)(1) violations are relatively unimportant or subsidiary, essentially unintentional or accidental, or, perhaps, committed without plan or real reason, such posted notices, or "slaps on the wrists" as they are popularly known, prove to be quite adequate.

The present is not such a case.

From the very beginning to and through the instant hearing Respondent here constantly pursued one definite plan and object: no matter what tactics it had to use, Respondent was never going to recognize or bargain with the Union so long as Silber was in charge. Each and every violation of Section 8(a)(1) here was intentionally and deliberately committed as an integral part of that careful plan designed to prevent any legal obligation from arising which would require Respondent to recognize or bargain with the Union. Thus far Respondent has been eminently successful.

Apparently in the belief that the usual posted Section 8(a)(1) notice would be an inadequate remedy in this matter, General Counsel drafted his Section 8(a)(1) and (3) complaint so as to include allegations therein as to the appropriate unit, the request for and refusal to bargain plus the unusual allegation that "but for" Respondent's Section 8(a)(1) violations, "the Union would have been the exclusive representative of Respondent's employees." [37] Subsequently General Counsel answered a motion by Respondent by stating that, *inter alia,* General Counsel was seeking a remedial order requiring Respondent to recognize and bargain with the Union. Later during the hearing Respondent's motion to strike those allegations of the complaint sounding in a Section 8(a)(5) violation on the grounds that they failed to state an unfair labor practice was denied.

On January 3, 1963, General Counsel had subpenas *ad testificandum* and *duces tecum* served upon Harry A. Silber as president of Respondent. The subpena *duces tecum* required the production of Respondent's payrolls and other records involving those employees working for Respondent during the payroll periods of August 4 and 11, 1962.[38]

Harry A. Silber and Respondent both failed to comply with said subpenas. Silber failed to appear. Respondent refused to produce the payrolls and other records thus subpenaed.

Upon Respondent's refusal to produce such subpenaed records, General Counsel requested and was granted permission to produce secondary evidence in lieu of said subpenaed, but unproduced, records.

As General Counsel began to adduce this secondary evidence of majority, Respondent objected on the grounds that it was not the "best evidence." When Respondent again indicated its refusal to produce "the best evidence," i.e., the subpenaed payrolls and other records in its possession in compliance with said subpena, the objection was overruled.

Thereafter when General Counsel had rested following the production of this secondary evidence, Respondent sought to introduce as part of its own case these subpenaed, but unproduced, payrolls and other records together with secondary evi-

[37] Originally the Union's charge had included a refusal to bargain. Prior to issuance of the complaint herein the Regional Office refused to include the refusal to bargain in the complaint on the ground that its investigation indicated that the Union did not enjoy majority status However, shortly prior to resting, General Counsel sought leave to amend his complaint by alleging that the Union was, in fact, the representative of the majority of the employees. Upon objection by Respondent, leave to amend was refused.

[38] Respondent made no motion to quash said subpenas or either of them. On January 11, 1963, Attorney H. Rank Bickel, Jr., appearing specially on behalf of Harry A. Silber, as an individual, filed a tardy motion to quash said subpenas, noted *supra.* This motion was denied.

dence of other matters provable by said records. Upon objection, I ruled these subpenaed, but unproduced, payrolls and records as well as secondary evidence regarding matters provable by such records inadmissible. (Upon appeal the Board sustained this ruling on the merits.)

The record here, including the secondary evidence adduced, proves, and I find, that, as of August 3, 1962:

(1) The unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act is: All production and maintenance employees of Respondent employed at its Lebanon, Pennsylvania, plant, including plant clerical employees, but excluding office clerical, temporary employees, watchmen, and supervisors as defined in the Act.

(2) All employees, including supervisors, below the managerial level were required to punch timecards daily. There were 332 such cards in the racks at Respondent's plant.

(3) The following employees required to punch timecards must be excluded from the appropriate unit by reason of their occupations: 16 as supervisors; 3 as temporary summer employees; [39] 9 employees of the payroll department and 4 of the shipping office as office clerical employees; 3 private secretaries of managerial officials; 2 sales clerks in Respondent's outlet store; and Janice Kern whose duties were managerial.

(4) Therefore, the number of employees in the appropriate unit was 294.

(5) Of these 294 employees then in the appropriate unit, 149 had authorized the Union to act as their representative for collective bargaining with Respondent.

(6) On July 19 and August 3 and 8, 1962, the Union requested and Respondent refused recognition and bargaining.

Accordingly, I must find that as of this time the Union did in fact represent a majority of the Respondent's employees in the appropriate unit despite all of Respondent's acts of interference, restraint, and coercion intended to produce a contrary result.

It is, of course, possible that "the best evidence"—the subpenaed payroll records—might disprove the Union's majority. That is pure speculation—made such by Respondent's refusal to comply with General Counsel's subpena.

There is, of course, no assurance that the Union would have won the election which it was seeking on August 3, 1962, when Respondent intentionally, deliberately, and blatantly created conditions making it impossible for the Board to hold such an election wherein the employees themselves could express their own free choice for or against the Union. However, that too is pure speculation—made such deliberately by Respondent's August 3 action on wage increases.

From the beginning Respondent's unfair labor practices had been carefully designed to accomplish Respondent's ultimate aim: never to recognize and never to negotiate with the Union. When it appeared to Respondent—and Silber stated that he knew all who had signed union cards—that the Union had obtained majority status, Respondent made the legal determination of that question impossible with its $150,000 package announcement of August 3, thereby preventing, or at least postponing indefinitely, recognition and bargaining. The very blatancy of Respondent's action seems to confirm Respondent's opinion as to the Union's majority status.

Thus so far as Respondent is concerned, to refuse the General Counsel's request for an order requiring Respondent to recognize and bargain with the Union, would, as General Counsel suggests in his brief, reward Respondent by enabling it to profit by its own unfair labor practices, a mere "slap on the wrist" for having actually subverted the Board's processes in order to thwart the statutory rights of the majority of its employees.

So far as the employees themselves are concerned—and, after all, this Act is designed to protect the employees—the danger in granting the requested bargaining order is that it might actually be contrary to the freely held desires of the majority of those employees. However, the possibility of determining the actual choice of the employees free from the Respondent's influence has been successfully removed by Respondent itself. However, in the instant case the evidence indicates that that possibility is so remote as to be nonexistent.

Accordingly, as Respondent was well advised by the pleadings of the possibility of such an order, as the Board has of recent date recognized the possibility of such

[39] The testimony might actually justify the finding that there were eight such temporary employees.

remedial action in the proper case,[40] and as I am convinced that the present is "the proper case" where the majority has been established and where, without such a bargaining order, Respondent's many unfair labor practices could never be remedied, I will recommend that Respondent recognize and bargain with the Union as the representative of the majority of its employees in the appropriate unit above described in addition to the usual Section 8(a)(1) remedy.

Having also found that Respondent discriminated in regard to the tenure and conditions of employment on August 8, 1962, of Delores Griffiths, Clara Bellman, Violet Dibockley, Alma Lowe, Emily Kiscadden, Lena Barrell, Mary Edris, Betty San Martin, Ruth Heller, Anna Barlett, Ada Margaret Ketcham, and Phyliss Sheaffer and again on September 7, 1962, as to Phyliss Sheaffer, I will recommend that Respondent make them whole for any loss of pay they may have suffered by reason of said discrimination against them by payment to each of a sum of money equal to that which she normally would have earned as wages on said dates with interest thereon at the rate of 6 percent per annum.

The violations of the Act committed by Respondent are persuasively related to other unfair labor practices prescribed for the Act, and the danger of their commission in the future is to be anticipated from Respondent's conduct in the past. The preventive purposes of the Act will be thwarted unless the order is coextensive with the threat. In order, therefore, to make more effective the interdependent guarantees of Section 7, to prevent a recurrence of unfair labor practices, and thereby minimize industrial strife which burdens and obstructs commerce, and thus effectuate the policies of the Act, I will recommend that Respondent be ordered to cease and desist from infringing in any manner upon the rights guaranteed in Section 7 of the Act.

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

CONCLUSIONS OF LAW

1. Bannon Mills, Inc., is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. International Ladies' Garment Workers Union, AFL–CIO, Local 108, is a labor organization within the meaning of Section 2(5) of the Act.
3. By the following acts and conduct Respondent has engaged in and is engaging in interference, restraint, and coercion within the meaning of Section 8(a)(1) of the Act:

(a) By holding private antiunion seminars with small groups of employees, including the presentation of the movie "And Women Must Weep."

(b) By promulgating and discriminatorily enforcing a "no solicitation" rule in the plant.

(c) By interrogating and issuing various threats against employees for engaging in union activities, such as threats of closing the plant, loss of jobs, less work, arrest, and law suits.

(d) By offering supervisory status to an employee leader of the union movement if she would desert the Union and threatening her with discharge upon her refusal so to do.

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[40] In *Greystone Knitwear Corp. and Donwood, Ltd.*, 136 NLRB 573, 575–576, the Board said:

> Inasmuch as the Unions' majority was clearly established by a showing of cards signed prior to the unfair labor practices we would hold the Respondents' conduct, including their refusal to recognize the Union, to constitute unlawful interference with employee rights in violation of Section 8(a)(1). Upon the basis of such finding we would further order the Respondents to bargain with the Union and thus achieve "a restoration of the situation, as nearly as possible to that which would have obtained but for the commission of the unfair labor practices." [Citing numerous court cases.] Indeed, under such circumstances not to order Respondents to bargain with the Union would in effect enable Respondents to profit by their unfair labor practices.

In *Tennsco Corp.*, 141 NLRB 296, the Board said:

> However, Section 8(a)(1) violations by their nature constitute "interference" with Section 7 activities; they justify a bargaining order only where the union's majority has once been established, and where it may *thereafter* be said that any loss of majority was caused by the employer's unfair labor practices. [Citing cases.] We cannot, however, on this same basis, presume that the Union's failure to establish a majority at this Employer's operations was due to the unfair labor practices committed, or order the Respondent to bargain with the Union in the absence of a majority showing at any appropriate time.

(e) By implying that union activities were under surveillance and actually engaging in such surveillance by telephone.
(f) By demeaning and denigrating the Union and its leaders.
(g) By unilaterally raising wages and increasing benefits to its employees without consulting the Union and as the "only way to get rid of the Union."
(h) By encouraging an employee to withhold information from the Board and its agents in an attempt to impede the processes of the Board and thus deprive its employees of a full and fair hearing as to whether Respondent was actually depriving its employees of their statutory rights under the Act.
(i) By subverting Board processes by deliberately creating conditions so as to deprive its employees of their rights to a determination of their preference for or against representation by the Union in order to prevent and delay the possibility of recognition and bargaining with the Union as the representative of said employees.
4. By discriminating in regard to the hire and tenure of employment on August 8, 1962, of Delores Griffiths, Clara Bellman, Violet Dibockley, Alma Lowe, Emily Kiscadden, Lena Barrell, Mary Edris, Betty San Martin, Ruth Heller, Anna Barlett, and Ada Margaret Ketcham and on August 8 and September 7, 1962, of Phyliss Sheaffer, thereby discouraging membership in the Union, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.
5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case considered as a whole, I recommend that the Respondent, Bannon Mills, Inc., of Lebanon, Pennsylvania, its officers, agents, successors, and assigns, shall:
1. Cease and desist from:
(a) Discouraging membership in International Ladies' Garment Workers Union, AFL–CIO, Local 108, or any other labor organization of its members, by discriminating in regard to the hire and tenure of employment or any term or condition of employment of its employees.
(b) In any manner interfering with, restraining, and coercing its employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist International Ladies' Garment Workers Union, AFL–CIO, Local 108, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.
2. Take the following affirmative action which I find will effectuate the policies of the Act:
(a) Upon request, recognize and bargain collectively with International Ladies' Garment Workers Union, AFL–CIO, Local 108, as the exclusive representative of all their employees in the following appropriate unit: All production and maintenance employees of Respondent employed at its Lebanon, Pennsylvania, plant, including plant clerical employees, but excluding office clerical, temporary employees, watchmen, and supervisors as defined in the Act, and embody any understanding reached in a signed agreement.
(b) Make whole Delores Griffiths, Clara Bellman, Violet Dibockley, Alma Lowe, Emily Kiscadden, Lena Barrell, Mary Edris, Betty San Martin, Ruth Heller, Anna Barlett, Ada Margaret Ketcham, and Phyliss Sheaffer for any loss of pay they may have suffered by reason of Respondent's discrimination against them in accordance with the recommendations set forth in the section entitled "The Remedy."
(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all records necessary to analyze the amount of backpay due.
(d) Post at its plant in Lebanon, Pennsylvania, copies of the attached notice marked "Appendix A." [41] Copies of said notice, to be furnished by the Regional

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

Director for the Board's Fourth Region (Philadelphia, Pennsylvania), shall, after being signed by the Respondent's representative, be posted by Respondent 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 Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for the Fourth Region, in writing, within 20 days from the date of the receipt of this Intermediate Report, what steps Respondent has taken to comply herewith.[42]

[42] 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 A

NOTICE TO ALL EMPLOYEES

Pursuant to a 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, as amended, we hereby notify our employees that:

WE WILL NOT interrogate our employees about their union activities, nor threaten them with loss of benefits should they engage in union activities, nor promise benefits to employees to give up their union activities nor threaten to close the plant or that the employees would suffer any other dire consequences because of the union activities of our employees, nor interfere with the union activities of our employees in any other manner.

WE WILL NOT hold antiunion seminars nor otherwise propagandize our employees against the Union.

WE WILL NOT unilaterally raise wages or increase benefits of our employees in order to oppose or to get rid of the Union.

WE WILL NOT keep union activities under surveillance nor imply that they are under surveillance.

WE WILL NOT discourage membership in International Ladies' Garment Workers Union, AFL–CIO, Local 108, by in any manner discriminating in regard to the hire and tenure of employment or any term or condition of employment of our employees.

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

WE WILL make each of the following employees whole for any loss they have suffered as a result of our discrimination against them on August 8, 1962, and/or September 7, 1962:

Dolores Griffiths	Emily Kiscadden	Ruth Heller
Clara Bellman	Lena Barrell	Anna Barlett
Violet Dibockley	Mary Edris	Ada Margaret Ketcham
Alma Lowe	Betty San Martin	Phyliss Sheaffer

WE WILL bargain, upon request, with International Ladies' Garment Workers Union, AFL–CIO, Local 108, as the exclusive representative of our employees in the following appropriate unit: All production and maintenance employees of Respondent employed at its Lebanon, Pennsylvania, plant, including plant clerical employees, but excluding office clerical, temporary employees, watchmen, and supervisors as defined in the Act, and will embody any agreement reached in a signed agreement.

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

BANNON MILLS, 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, 1700 Bankers Securities Building, Walnut and Juniper Streets, Philadelphia, Pennsylvania, Telephone No. 735–2612, if they have any question concerning this notice or compliance with its provisions.

Rose Printing Company, Inc. ***and*** **Tallahassee Typographical Union No. 660, affiliated with the International Typographical Union, AFL–CIO.** *Cases Nos. 12–CA–2639 and 12–CA–2688. April 3, 1964*

DECISION AND ORDER

On October 7, 1963, Trial Examiner Eugene F. Frey issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel filed exceptions to the Trial Examiner's Decision and a brief in support thereof, and the Charging Party filed a supplemental memorandum.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and brief, the supplemental memorandum, and the entire record in these cases, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following additions and modifications.[1]

The Trial Examiner found, and we agree, that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain unless the Union submitted a completely new written proposal; by unilaterally granting a wage increase in excess of the figure offered to the Union during the negotiations; and by unilaterally granting its employees a holiday without pay on July 5, 1963, while negotiations for a new contract were pending. The Respondent took no exceptions to these findings, which are clearly supported by the record, and we adopt them *pro forma.*

The Trial Examiner, in describing the Respondent's unlawful conduct, discussed its unilateral grant of improved hospitalization benefits and a new life insurance program on April 15, 1963, while the contract negotiations were in process, but apparently inadvertently failed to find this conduct violative of the Act. The General Counsel has excepted to the Trial Examiner's failure to do so. We find merit in

[1] The Trial Examiner in his Decision found that the Respondent's attorneys had engaged in improper conduct, and submitted to the Board the issues whether this was misconduct within the scope of Section 102.44(a) of the Board's Rules and Regulations, Series 8, as amended, and whether such conduct warrants disciplinary action under Section 102.44(b) of the Rules. The Board is disposing of this matter in an order directing hearing issued on the same date as this Decision and Order.