Muncy Corporation *and* Local 682, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW). Cases 9–CA–7118, 9–CA–7356, and 9–CA–7327–1, –2

June 10, 1974

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS FANNING AND PENELLO

On January 9, 1974, Administrative Law Judge Thomas S. Wilson issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief and the General Counsel filed a brief in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs[1] and has decided to affirm the rulings, findings,[2] and conclusions[3] of the Administrative Law Judge.[4]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Muncy Corporation, Enon, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Provoking violence or directing assaults upon employees because they engage in activities on behalf of Local 682, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), or any other labor organization.

(b) Interfering with the posting of informational picket signs by the above-named labor organization or any other labor organization by tearing down and removing said signs which are not attached to, or appear on, its property.

(c) Promising employees economic benefits in order to discourage membership in, sympathy for, support of, or activity on behalf of the above-named labor organization or any other labor organization.

(d) Telling employees that it will not sign a collective-bargaining agreement with the above-named labor organization.

(e) Instigating, preparing, or promulgating decertification petitions or employee resignation letters from the above-named labor organization or any other labor organization.

(f) Refusing to meet and/or bargain in good faith with Local 682, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), as the exclusive certified representative of its employees in the following appropriate unit:

> All production and maintenance employees including janitors and truckdrivers employed at the Respondent's plant located at 2601 Enon Road, Enon, Ohio, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

[1] The General Counsel has moved to strike Respondent's exceptions and supporting brief on the grounds that Respondent generally failed to comply with Sec. 102.46(c) of the Board's Rules and Regulations, Series 8, as amended, which sets forth requirements pertaining to the contents of briefs submitted to the Board. General Counsel asserts that Respondent specifically failed to comply with the rule in that Respondent's brief is replete with references to matters not contained in the record to support its arguments. Although Respondent's brief in support of its exceptions does not fully comply with Sec. 102.46(c), we find that there has been substantial compliance therewith, and, therefore, we deny General Counsel's motion

[2] The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect *Standard Dry Wall Products, Inc*, 91 NLRB 544, enfd. 188 F.2d 362 (C.A. 3). We have carefully examined the record and find no basis for reversing his findings

Respondent also excepted to the Administrative Law Judge's Decision, *inter alia,* on the grounds that he was biased against Respondent and prejudged the case in that he: (1) consistently resolved credibility questions against Respondent's witnesses, (2) refused to admit into evidence certain documents offered by Respondent, (3) is admittedly a friend of another Administrative Law Judge who had at one time issued a Decision and Order adverse to Respondent, and (4) conducted the hearing in a prejudicial manner by his "[frequently antagonistic] demeanor towards all of management's witnesses," and by continually "cross-examining" witnesses We find nothing in the record which reveals that the Administrative Law Judge's conduct of the hearing, rulings on evidence, and resolutions of credibility were the result of bias or prejudice. See, e g, *United Aircraft Corporation,* 192 NLRB 382. Neither does the record show that he had prejudged the case, or that his "friendship" with another Administrative Law Judge in any way affected the conclusions he reached in this case. Nor do we find anything in the record which suggests that the Administrative Law Judge, by his questioning of witnesses, was doing anything other than attempting to inquire fully into the facts. See Sec. 102 35, Board's Rules and Regulations, and 5 U.S.C. §556(d) Accordingly, we find Respondent's assertions of bias and prejudice to be wholly without merit.

[3] We agree with Respondent that it is neither "coercive" nor an illegal "inducement" for an employer to express the view, either in prose or in so-called poetry, that his plant would be a happier place without a union. However, since we agree with the Administrative Law Judge's findings that Respondent was under a duty to bargain with the Union at the time it caused the poem to be distributed, we find such distribution to have been part and parcel of Respondent's campaign to undercut the majority representative, and thus unlawful solely for that reason

[4] In the section of his Decision entitled "Conclusions" under subsection 4 thereof, the Administrative Law Judge inadvertently stated that strikers Brenda Miller, Ruth (Smith) Wilson, Claudette Adams, Sally Vermillion, and Ruth Smouse reported at the plant on September 22. The correct date should read September 25

The Administrative Law Judge found various independent violations of Sec 8(a)(1), but did not specifically include them in his recommended Order. We agree with his conclusions and, accordingly, we shall issue an Order modifying the recommended Order of the Administrative Law Judge to remedy these violations.

(g) Discharging or otherwise discriminating in regard to the hire and tenure of employment and any term or condition of employment of any of its employees specifically including refusing to reinstate the strikers because of their membership in or activities on behalf of Local 682, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), or any other union of their choice.

(h) In any manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Local 682, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

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

(a) Upon request bargain collectively in good faith with Local 682, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), as the exclusive representative of Respondent's employees in the appropriate unit above found with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment and, if an understanding is reached, embody same in a written, signed agreement.

(b) Offer to each of the following 14 unfair labor practice strikers immediate and full reinstatement to his former job with adequate protection against any actions by its nonstriking employees or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, discharging, if need be, any employee hired after June 19, 1972, and make each whole for any loss of pay he may have suffered by reason of the discrimination against him in the manner set forth in the section of the Administrative Law Judge's Decision entitled "The Remedy," with interest thereon at 6 percent per annum:

Larry Hubbard	Ruth Smouse
Richard Myers	Barbara Page
Wayne Suttles	Phyllis Prugh
Brenda Miller	Dona Robinson
Ruth (Smith) Wilson	Jan Wilson
Claudette Adams	Martha Russell
Sally Vermillion	Hilda Frey

(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 other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its plant in Enon, Ohio, copies of the attached notice marked "Appendix."[5] Copies of said notice, on forms provided by the Regional Director for Region 9, after being duly signed by Respondent's representative, shall 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 Region 9, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

[5] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL, upon request, bargain collectively in good faith with Local 682, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), as the exclusive representative of Respondent's employees in the appropriate unit set forth below with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment and, if an agreement is reached, we will embody the same in a written, signed agreement. The appropriate unit is as follows:

> All production and maintenance employees including janitors and truckdrivers employed at the Respondent's plant located at 2601 Enon Road, Enon, Ohio, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL offer to the 14 unfair labor practice strikers named below immediate reinstatement of their former jobs with adequate protection against any actions by our nonstriking employees or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their

seniority or other rights and privileges, and WE WILL pay them for any loss of pay they may have suffered by reason of our discrimination against them together with interest thereon at 6 percent annum. These unfair labor practice strikers are: Larry Hubbard, Richard Myers, Wayne Suttles, Brenda Miller, Ruth (Smith) Wilson, Claudette Adams, Sally Vermillion, Ruth Smouse, Barbara Page, Phyllis Prugh, Dona Robinson, Jan Wilson, Martha Russell, and Hilda Frey.

WE WILL NOT at any time engage in provocations of violence or assaults directed at persons engaged in activities on behalf of Local 682, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), or any other labor organization.

WE WILL NOT interfere with the posting of informational picket signs by the above-named labor organization or any other labor organization by tearing down and removing said signs which neither are attached to, or appear on, our property.

WE WILL NOT promise employees economic benefits in order to discourage membership in, sympathy for, support of, or activity on behalf of the above-named labor organization or any other labor organization.

WE WILL NOT tell employees that we will not sign a collective-bargaining agreement with the above-named labor organization.

WE WILL NOT instigate, prepare, or promulgate decertification petitions or employee resignation letters from the above-named labor organization or any other labor organization.

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 Local 682, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), or any other labor organization of their choice, to bargain collectively through a bargaining agent chosen by our employees, to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any such activities.

MUNCY CORPORATION
(Employer)

Dated By
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

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.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Office Building, Room 2407, 550 Main Street, Cincinnati, Ohio 45202, Telephone 513–684–3686.

DECISION

STATEMENT OF THE CASE

THOMAS S. WILSON, Administrative Law Judge: Upon a charge duly filed on June 20, 1972, by Local 682, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), herein referred to as the Charging Party or the Union, the General Counsel of the National Labor Relations Board, herein referred to as the General Counsel[1] and the Board respectively, the Regional Director for Region 9 (Cincinnati, Ohio), issued its complaint dated July 31, 1972, and entitled "Complaint and Notice of Hearing" in Case 9–CA–7118 against Muncy Corporation, herein referred to as the Respondent.

Upon a charge in Case 9–CA–7356 duly filed on October 18, 1972, and upon a charge in Case 9–CA–7327–1 duly filed on October 5, 1972, and a charge in Case 9–CA–7327–2 duly filed on October 6, 1972, the said General Counsel, over the signature of the Acting Regional Director for Region 9, issued its complaint entitled "Consolidated Complaint and Notice of Hearing" dated December 15, 1972, against Respondent.

The "complaint" in Case 9–CA–7118 alleged that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Sections 8(a)(1) and (5) and 2(6) and (7) of the Labor Management Relations Act, 1947, as amended, herein referred to as the Act.

The "consolidated complaint" alleged that Respondent had engaged in, and was engaging in, unfair labor practices affecting commerce within the meaning of Sections 8(a)(1) and (3) and 2(6) and (7) of the Labor Management Relations Act, 1947, as amended, herein referred to as the Act.[2]

Respondent duly filed separate answers to the "complaint" and to the "consolidated complaint" admitting certain allegations of those documents but denying the commission of any unfair labor practices. Paragraphs 5 and 6 of Respondent's answer in Case 9–CA–7118 read as follows:

> 5. The Respondent further charges the truth to be that the Regional Director acted arbitrarily and capriciously in issueing [sic] the complaint because the

[1] This term specifically includes the attorneys appearing on behalf of the General Counsel at the hearing

[2] As I have written in a multitude of previous cases in this and other regions in cases similar to these, it seems to me that convenience and good practice requires that in the consolidation of numerous cases, such as the instant one, a final consolidated complaint encompassing the allegations of all the consolidated cases set for one hearing should be typed in a single document.

Respondent requested an investigation of his Region 9 in the following cases: Muncy Corp. (Stemun Mfg. Co.,) Case Nos. 9–CA–3189, 9–CA–6815, 9–CB–2183, 9–CA–7118, 9–CA–7170; Recto Molded Products, Inc. Case No. 9–CB–1824 and; [sic] Miami Cement Products, Inc. Case Nos 9–CB–2165 and 9–CC–656 filed with the General Counsel in Washington, D.C.

6. The Respondent further charges that the Regional Director is biased against Randall E. Muncy and Harvey B. Rector because he was reversed in a charge of fraud against the Stemun Mfg. Co., now Muncy Corporation, by a three (3) Judge panel of the U.S. Sixth Circuit Court No. 19438, Case No. 9–CA–3189 and 9–CA–6815.[3]

Pursuant to notice a hearing on the "complaint" and "consolidated complaint" was held before me in Springfield, Ohio, on September 11–14, and 18–20, 1973. All parties appeared at the hearing, were represented by counsel or by labor consultants, and were afforded full opportunity to be heard, to produce and cross-examine witnesses, and to introduce evidence material and pertinent to the issues. At the conclusion of the hearing oral argument was waived. Briefs were received from General Counsel and Respondent on October 29, 1973.

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

FINDINGS OF FACT

I. BUSINESS OF RESPONDENT

The complaints alleged, the answers admitted, and I therefore find that: Muncy Corporation is an Ohio corporation engaged in the manufacture and sale of pressed metal products from its plant at Enon, Ohio. During the past 12 months, which is a representative period, Respondent had a direct inflow of products in interstate commerce valued in excess of $50,000 which it purchased and caused to be shipped from points outside the State of Ohio directly to its Enon, Ohio, location. During the same period Respondent had a direct outflow of products in interstate commerce, valued in excess of $50,000 which it sold and caused to be shipped from its Enon, Ohio location directly to points outside the State of Ohio.

Accordingly, I find that Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Local 682, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), is a labor organization admitting to membership employees of Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The Facts*

1. Refusal to bargain

Following an election in which the Union here was selected by Respondent's employees in an appropriate unit as their bargaining agent, Respondent and the Union entered into a collective-bargaining agreement on June 21, 1971. This contract was an "open shop" contract, i.e., containing no union-security clause, of 1-year duration. Thereafter some 35 of Respondent's 57 employees voluntarily signed union checkoff authorizations.

The above agreement had been negotiated for the Union by its then Business Agent Troyer. In November 1972 Troyer was replaced by Ronald Mason as the union official in charge of the union affairs at Respondent's plant.

In November Mason attended his first grievance meeting with Respondent at Respondent's plant. During this meeting which on occasions grew heated, Respondent's President Randall E. Muncy became profane towards Mason and, in fact, impuned his ancestry. Mrs. Glenna Muncy, the president's wife, even got into the act by referring to Mason as a "g—d—liar." At the hearing the Muncys attempted to justify their behavior at this meeting on the grounds that Mason had remarked early in the meeting that he was "going to try Muncy on for size." This antisocial name calling was repeated at other similar grievance meetings between these parties.

In fact Plant Superintendent Danny Palmer admitted to having called Mason a "redhaired s.o.b." and challenging Mason to go outside into neighboring Enon Park and "settle it."

In all there were some 21 or 22 grievances handled after Mason's arrival. Some even went to arbitration. On one occasion Muncy refused to proceed with arbitration until the arbitrator assured him that he intended to hear the Union's case regardless. Respondent has refused to abide by one arbitration award and has appealed that award to the courts.

About February 2, 1972, Muncy objected to employee Brenda Miller, a plant union committeewoman, that "You know you don't have to sign grievances, any stupid grievance you don't agree with" and added that all the union representatives were "nothing but troublemakers and all they did was to agitate trouble."

[3] At the commencement of the instant hearing Respondent objected to the introduction of G.C. Exh. 1, the formal papers in the instant case, on the grounds that said formal papers were "incomplete" in that they did not contain certain documents which Respondent contended would prove the allegations of paragraphs 5 and 6 of its above answer.

Among other such documents Respondent desired included the decision of the Circuit Court of Appeals for the Sixth Circuit, 423 F.2d 737, April 2, 1970, in the *Stemun Mfg. Co.* case, which overturned in part two Board decisions, 153 NLRB 1278 and 174 NLRB 288, holding, as had two different Trial Examiners, that it had not been proved to be a fraudulent document, but sustaining those Board decisions as to the discriminatory discharge of three of the four employees involved.

At this time I indicated my skepticism that paragraphs 5 and 6 of Respondent's answer above constituted a defense in the instant case. However at the conclusion of the hearing when General Counsel moved to strike the above paragraphs from the answer, I denied the motion exclusively on the grounds of the lateness thereof.

The relationship between Respondent's management and Union Representative Mason was not congenial.[4]

In April 1972,[5] a letter was typewritten which read as follows:

April 5, 1972[6]

Mr. Ron Mason
Tower Building
1240 E. Main Street
Springfield, Ohio 45503

Dear Mr. Mason:

Re: U.A.W. Local 682

I give notice immediately to withdraw from the U.A.W. Local 682.

Catheline Mann (Dennison) (Kathy Mann)[7] testified that she had this letter typed by a neighbor of hers. She did not know the neighbor's name. She then took the typed letter and had some 20 copies thereof xeroxed at a store in town. Mann took these xeroxed resignation letters back to the plant where she and employee Rena Bowman kept them available for any union member who desired to resign from union membership. After each "resigning" member of the Union had signed two copies of this document, Mann and Bowman retained the signed letters for future use. As Mann frequently volunteered during her testimony, all this work was done "on breaks or lunchtime." This was so due to the fact that Mann knew that Respondent had a "no solicitation" rule in the plant. Despite this volunteered information, Mann admitted that employees came to her work bench for these letters or she went to theirs for the signature. Other witnesses corroborated the fact that much of this activity occurred at the workplace. One testified that Mann brought the letter to her while she was "setting up her press." The truth of Mann's volunteered time limitation is doubtful.

At some unknown time some 16 union employees executed the above letters in duplicate. Mann and Bowman retained these letters in their possession until advised that it was the time to mail them.

On May 23, after giving due and proper notice to all necessary federal and state agencies, the Union sent Respondent its contract proposals for the next year's contract and requested negotiations thereon. It was agreed that the parties would hold their first negotiation meeting on this proposal on June 9.

On June 6 "Head Mechanic"[8] Frank Fisher notified Kathy Mann that it was time to send off the letters of resignation to the Union and to Muncy. Mann's daughter thereupon addressed the envelopes to Mason and to Respondent with the employees' return address thereon. The dual letters were then posted, registered mail with return receipt requested at a cost of $1.16 each.

Mann originally testified that Fisher supplied the stamps for the postage. Then she testified that at the time the letters were executed she collected $2 apiece from the signers. Then, apparently acting upon the assumption that the postage amounted only to $1.16 per employee, Mann testified that she returned some money to the contributing employee after posting. Finally, when it was pointed out to her that the cost of postage for letters so mailed to the Union and to Respondent would be $2.36 per employee, Mann testified that she herself paid the 36 cents for each employee. Mann had been a well-coached witness on the no-solicitation clause but not on the mathematics of the situation. Her testimony was not credible.

Indeed there is an indication that these letters of resignation were typed in Respondent's office by Respondent's secretary. The date "April 5, 1972" was typed at the left margin at the top of the page. This is a rather unusual place for the date on a letter. It is, however, the location of the date on every letter typed in Respondent's office.

On June 9 Labor Consultant Harvey Rector with Plant Manager Wagoner, Palmer and Comptroller Patton[9] met with Mason accompanied by the plant union committee consisting of Brenda Miller, Ruth (Smith) Wilson and William Pope. For 2 hours they discussed the Union's proposal which had been submitted on May 23. The Union had proposed a union security clause as Article II. Rector's discussion of this consisted of one word: "No." Mason was equally adamant but equally unsuccessful. Rector accepted all the terms in the proposal which were identical with those in the expiring contract but rejected all new terms. No new agreement was reached except that the parties would meet again on June 19.

Employee Rena Bowman knew that Respondent had no intention of reaching a collective-bargaining agreement with the Union because Muncy had informed her a number of times that there would be no signed agreement with the Union "come hell or high water." But under date of June 13, 1972 the following handwritten letter was sent by Respondent:

JUNE 13, 1972

Dear Sir:

A majority of the workers at the Muncy Corp. have filed for an election with the N.L.R.B. because we don't want the U.A.W. to represent us any longer.

We are asking you not to sign any contracts with them.

[4] This antagonism existed even as of the date of the instant hearing As he walked past counsel table at which Mason sat at the conclusion of his testimony in the instant hearing Plant Superintendent Palmer became pugnacious, accused Mason of calling him "a liar" and had to be ordered to his seat

[5] All dates hereinafter are in the year 1972 unless other specified

[6] The typewritten date "April 5" shows with clarity on General Counsel's Exhibit 29 J even through the superimposed handwritten inked date of "June 6" The same typewritten date shows on the other Exhibits in the General Counsel's Exhibit 29 series except that the attempted erasure on certain of them was better than on General Counsel's Exhibit 29 J

[7] The transcript incorrectly spells her first name as "Kathaleen" She will be referred to herein, as she was at the hearing, as "Kathy Mann"

[8] Fisher testified that the only significance in this title was that he had greater seniority than the other four mechanics in the department

[9] Rector prevailed upon Muncy to absent himself from this meeting because of his antagonism to Mason

COMMITTEE FOR ELECTION

/s/ RENA M. BOWMAN
/s/ TOMMY JOHNSON
/s/ FRANK M. FISHER

On or before June 13 either Muncy or Palmer handed employee Rena Bowman in the plant a petition with the typed heading reading as follows:

> We, the undersigned, don't want Local 682 of the UAW to represent us as our collective bargaining agent. We request an election for decertification of the UAW.

Rena Bowman spoke to the employees in the plant and secured their signatures thereon, again "at lunch time and on breaks," but according to her, not while they were working. Thirty-four employees, including Bowman, signed the petition.

At or about the same time Bowman was called to the office where she signed an NLRB form petition for a decertification election. This form was, with the exception of Bowman's signature, typed and prepared for her in Respondent's office before she executed it. The RD petition and the employee's petition were placed in an envelope addressed in typewriting to the Ninth Regional Office by Respondent's secretary. It was then sealed and handed to Bowman with instructions to mail the same. This RD petition was received at the Regional Office on June 16 and became Case 9–RD–564.

On that same day, June 16, 1972, Respondent over the signature of H.B. Rector notified the Union by letter as follows:

RE: MUNCY CORPORATION

NEGOTIATIONS FOR NEW CONTRACT

Dear Mr. Mason:

At the conclusion of our bargaining meeting, in your office, June 9, 1972 we promised to submitt [sic] our final offer on the economic issues June 19, 1972. However, since that time we have recieved [sic] notice that a majority of our employees have filed a petetion [sic] with the NLRB for a decertification election thus raising a legal question of representation. Therefore, under the circumstances, we are not at liberty to sign an agreement with your Union until the question of representation is determined by the NLRB. If your Union is not decertified we will be pleased to continue negotiations and to sign a contract.

In view of the above we see no reason for the meeting June 19th.[10]

Accordingly the scheduled meeting of June 19 was not held despite unsuccessful telephone calls by Mason.

On the evening of Tuesday, June 20, about 25 members of the Union attended a union meeting at which it was voted to strike Respondent because of its refusal to bargain. Pickets with picket signs announcing that the Union was on strike appeared on the morning of June 21. This picketing continued until September 22 when the union members on strike voted to call off the strike and return to work.

Also on June 20 the Union over the signature of Ronald E. Mason, international representative, filed a charge against Respondent alleging that "on or about June 16, 1972" Respondent had refused to bargain with the Union in violation of Section 8(a)(1) and (5) of the Act. This charge was filed with the Regional Office on that same date and became Case 9–CA–7118.

On June 22 Rena Bowman was notified by telephone by a field examiner of the Regional Office that it was the Regional Director's intention to dismiss her petition in 9–RD–564 as being untimely filed.[11]

Upon receipt of this information Rena Bowman conferred with Muncy and inquired as to the next move. Muncy answered that "we would have to file another petition."

So the process gone through on or about June 13 was repeated again in detail. Respondent's office typed out a new RD petition for Bowman's signature. Respondent's secretary also apparently typed out another petition for the employees to sign similar to that attached to the previous RD petition. According to Bowman, "I received that [the already typed petition] in the Company office and I took it around to the employees and got their signatures."[12] For a second time the envelope enclosing the new RD petition was typed in Respondent's office and handed to Bowman for mailing after signing. The new RD petition indicated that a strike was in progress.

This new RD petition was filed in the Regional Office on June 26, 1972, and became Case 5–RD–565.

By letter dated June 29 the Regional Director notified Rena Bowman that Case 9–RD–564 was dismissed as prematurely filed. As was customary with all such correspondence from the Regional Office to her, Bowman took this letter into Respondent where it was discussed with Muncy or Patton.

All was not altogether peaceful on the picket line. These instances will be discussed hereinafter.

On July 6 Respondent and the Union met and discussed certain pending grievances. There was no attempted negotiation of the new contract at this meeting. It was on this occasion Palmer referred to Mason as a "redheaded s.o.b." and offered to go outside into neighboring Enon Park and "settle it."[13] The challenge was ignored.

Under date of July 10 Harvey Rector for Respondent sent the Union the following letter:

[10] On the alleged legal point raised in the letter see *Rogers Mfg. Co.* v. *N.L.R.B.*, 486 F.2d 644 (C.A. 6, 1973).

[11] The dismissal of Case 9–RD–564 was actually accomplished by letter of the Regional Director dated June 29.

[12] On this point Bowman may have been mistaken for the reason that no such second signed petition was introduced in evidence by the General Counsel. However the first signed petition had been copied by the Respondent's office so that a copy no doubt was submitted with the RD petition if no second employee petition was signed. Bowman perhaps was describing her activities with the first employee petition.

[13] Mason is redhaired.

RE: MUNCY CORPORATION

LETTER DATED JUNE 16, 1972

SIGNED BY HARVEY E. RECTOR

Dear Mr. Mason:

I have been informed that you considered my letter to you, dated June 16, 1972, a refusal to bargain with the UAW.

I can assure you that my intentions were to remain nuetral [sic] until the question of representation was resolved. I did not and will not refuse to bargain with your Union so long as it is the exclusive collective bargaining agent for a majority of the employees of the Muncy Corporation. Therefore, should you wish to schedule other meetings, the Company committee will be pleased to meet with you.

The purpose of the June 16 letter was to inform you that I have been notified by a majority of the employees that they no longer wanted you to represent them and had filed a petition with the NLRB. I assumed that the meeting scheduled for June 19th, would not be in the best interest of either party. However, after your Union struck the plant with a minority group and I was informed that the NLRB had refused to process their petition, I filed the RM petition in behalf of the Company. I also filed an 8(b)(7)(C) charge against your Union. However, the NLRB has now informed me that the RD petition is now in process and I have withdrawn all charges against your Union, including the RM petition.

I trust this clarifies the situation and paves the way for a better relationship between all parties concerned.

The meeting requested by you July 3, 1972 may be held at your convenience.

As a result a second negotiation meeting was scheduled for July 18 in Springfield, Ohio. This meeting was attended by Mason with a union committee and Respondent by the two Rectors, Palmer, Wagoner, and Patton. Rector for the Company offered the employees a| 2-1/2-percent wage increase and stated that the Company would grant no other concessions except those granted on June 9. That statement constituted the whole of the negotiations at this meeting. The meeting consumed 5 minutes.

On July 25 the Union sent Respondent a new contract proposal which also included the union-security clause.

Thereafter the Union attempted to set up further meetings for the negotiation of the new contract by telephone and by letter. These efforts were universally unsuccessful.

On August 22 Gregory Rector for Respondent wrote Mason in pertinent part as follows:

> In regard to contract negoitiations [sic], the Company after careful consideration of all facts as to our position, feels that we cannot legally bargain with UAW Local 682 because you no longer represent a majority of the employees of the Muncy Corporation.

On August 29 Mason wrote Rector as follows:

> In reply to your of August 22, 1972, I am trying hard to understand just what your position is, as it relates to working out a new agreement, because in one letter you state you are ready and willing to meet, in the next letter you aren't, then again you are. Now you say "No" to a meeting.
>
> During our telephone conversation on or about August 22, 1972, you stated you were concerned about our proposal for a union security clause so I am hereby withdrawing the proposal for a union security clause and propose we continue with the existing language.
>
> Please let me know just as soon as possible when we can meet on the other issues.
>
> I will attempt to reach you by telephone today, but in the event I am unable to do so I will appreciate an early reply.

On September 18 Gregory Rector answered Mason as follows:

> In accordance with our telephone conversation of Thursday, September 14, 1972; I am sending this restatement of the position of the Muncy Corporation as it regards the UAW.
>
> The management is willing to meet on and, if, necessary, arbitrate those grievances which arose during the contract period just ended.
>
> We are pleased to hear that those employees still members of the Union have accepted the Company's counterproposal as presented at our last meeting. However, as I stated on the telephone, the Company feels that it cannot, in good faith, sign a contract with your union as it is now obvious to all that the UAW no longer represents a majority of the employees at the Muncy Corporation. We, therefore, will have to wait until the National Labor Relations Board can determine the proper course of action for us to follow.
>
> Please feel free to contact this office at any time.[14]

On Friday, September 22, the strikers attended a union meeting and voted to call off the strike and to return to work unconditionally. All the strikers returned to work at 7:30 on Monday, September 25. They were greeted by Danny Palmer who instructed each to enter the office and sign a paper there signifying their intention to return unconditionally together with any new address or telephone number they may have acquired in the meantime. Nick Bishop instructed them that they would be notified when they were to return to work.

No further negotiations took place between the parties. No contract has been agreed upon. In fact no striker with the exception of Jeffery Carter, who was proved to have been on Respondent's payroll as a labor spy during his period on the picket line, has ever been reinstated by Respondent.

[14] It is interesting to note that carbon copies of all of Respondent's correspondence with Mason was sent to the Regional Director or field examiners of Region 9.

Conclusions

The facts here, as the saying goes, are perfectly clear. Negotiations between the certified Union and Respondent began as early as May 25 when the Union submitted its proposals for a new contract to succeed that expiring on June 20, 1972. One negotiation meeting was held on June 9 at which Respondent agreed to accept all the terms in the expiring contract but none of the terms in the new proposal. The result was that the parties agreed to continue their negotiations on June 19.

In the meantime, however, Respondent through Muncy announced to employee Rena Bowman and other antiunion employees that Respondent would not sign another contract with the Union "come hell or high water." Respondent was also working behind the scenes through Kathy Mann and Rena Bowman and others getting employees to sign "resignations" from the Union. In addition it composed, typed, and prepared a decertification petition together with employee petitions on behalf of the same which it permitted Bowman and others to circulate in and about the plant during worktime as well as on "breaks and lunchtime" for the signatures of its then nonstriking employees despite Respondent's "no solicitation" rule. On June 13 Respondent called employee Bowman to the office to execute this already typed decertification petition with its typed envelope addressed to the Regional Office in Cincinnati together with instructions that Bowman mail the same. Also Respondent permitted the circulation of an antiunion poem with copies placed near the timeclock for its employees.[15] Indeed Plant Superintendent Palmer himself admittedly circulated this poem. Palmer's attempted explanation for this activity was that this poem did not constitute solicitation. No intelligent human being could have seriously believed this. Further on June 13 Respondent had Bowman give Respondent a handwritten letter requesting Respondent not to sign another contract with the Union.[16]

Thus reinforced, Management Consultant Harvey Rector on behalf of Respondent wrote on June 16 cancelling the scheduled June 19 negotiation meeting on the grounds that "a majority of our employees have filed a petetion [sic] with NLRB for a decertification election thus raising a legal question of representation" so that, according to Rector, Respondent was "not at liberty to sign an agreement" with the Union.

Upon receipt thereof the Union promptly filed a charge against Respondent of refusing to bargain.

This letter constitutes a clear—and blatant—refusal to bargain by Respondent in violation of Section 8(a)(1) and (5) of the Act.

In the very recent (October 24, 1973) case of *Rogers Mfg. Co.* v. *N.L.R.B.*, 486 F.2d 644, the Circuit Court of Appeals for the Sixth Circuit had the following to say regarding a very similar situation:

> We turn to the issue arising out of the Company's suspension of negotiations. This Court has recently held that under some circumstances an employer may be warranted in refusing to bargain with a union about whose majority he has a good faith doubt, see *N.L.R.B.* v. *Dayton Motels, Inc.*, 474 F.2d 328, 331–32, 82 LRRM 2651 (Sixth Cir. 1973), but the mere filing of a decertification petition is of itself insufficient justification. Cf. *Allied Industrial Workers, AFL–CIO Local Union No. 289* v. *N.L.R.B.*, 476 F.2d 868, 881, 82 LRRM 2225 (D.C. Cir. 1973). Rather, evidence indicating that a good faith doubt was reasonably grounded must be advanced. Contrary to the Company's argument, however, the fact that certain employees would not support the strike or that replacement employees were hired is insufficient evidence that the employees have repudiated the Union as its bargaining representative. See *Allied Industrial Workers, AFL–CIO Local Union No. 282* v. *N.L.R.B., supra.* As a matter of fact, a company's engagement in unfair labor practices during the strike, such as are hereinafter discussed, the demand for superseniority, casts a shadow on allegations of good faith. We agree with the Board that the Company has not met its burden in this respect.

Upon receipt of Respondent's letter cancelling the June 19 negotiation meeting on the aforementioned ground, thus refusing to bargain, the Union voted to and did go on strike beginning June 20 because of Respondent's unfair labor practices. This was, of course, an unfair labor practice strike.

Apparently recognizing the illegal position it had assumed therein, Rector by letter dated July 10 wrote after the dismissal of that decertification petition that the Union had misunderstood Respondent's June 16 letter and agreed to another negotiating meeting with the Union on July 18.[17]

Upon receipt of the information on June 22 by telephone that Bowman's first decertification petition (9–CD–464) would be dismissed on the grounds that it had been

[15] This poem read:

> When June arrives, let's make it a date,/To throw out the union, which causes hate./Let's get rid of them once and for all./Make this a happy place again and not so dull./They only cause trouble wherever they go./They take your money, try to make a great show.
>
> After a year, just what have they done?/Besides reach out their hand like a bum./It's a rotten organization in every way./Why on earth would you want them to stay?/The reason for this, we are all aware/It's an organization that doesn't care.
>
> You needed work, when you came to apply,/So the word of your *superiors,* you should reply,/They gave you work when you were in need./So return the favor, and do a good deed./The U.A.W. is not interested in you or me,/Only what they get "Those Union Fee's".
>
> So let's throw them out, and start again./Make apologies and make amends./So we all can be happy, lucky and friends/And smile at each other once again.
>
> OUT WITH THE U.A.W.
>
> O.K.?

[16] Bowman recognized from Muncy's "come hell and high water" comments that this letter was nothing but window dressing.

[17] Respondent contends in its brief that Respondent "continued bargaining as early as July 6 in the form of an arbitration case" on a previously filed grievance. On July 6 nothing was said about negotiations. In fact the time there was consumed by Respondent refusing to participate in the arbitration scheduled until the arbitrator stated that he would hear the Union's case regardless of what Respondent did.

prematurely filed, Respondent again returned to working behind the scenes with Muncy's instructions to Bowman that "we will just file another decertification petition." So Respondent had another NLRB form of decertification petition typed up in its office and called Bowman into that office to execute the same as she had done for Respondent previously. This decertification petition was filed with the Board on June 26 and became 9–RD–565 which was ultimately dismissed by the Regional Office on December 21, 1972.

The meeting held on July 18 between Respondent and the Union was short, 5 minutes, during which Respondent offered a 2-1/2-percent wage increase but refused to even discuss any of the new contract proposals. There was no discussion. There was only this ultimatum from Respondent. Such does not qualify as "negotiations" as defined in the Act. Again Respondent refused to bargain in violation of Section 8(a)(5) of the Act.

Once again Respondent began working behind the scenes with Rena Bowman. Twice the Regional Director sent letters to Bowman explaining the Region's actions in dismissing Case 9–RD–564. Twice Respondent typed out responses to said Regional Director for Bowman's signature together with the signatures of other working employees which Bowman solicited in the plant despite the "no solicitation" rule. The first such Respondent-prepared answer had 38–39 signatures thereon, all secured according to the document on August 4. The second such answer to the Regional Director dated August 23, 1972, contains 50 signatures, including Bowman's, all dated August 25.[18]

As though to confirm the above findings, Respondent by letter dated August 22 announced to the Union that it "cannot legally bargain with UAW Local 682 because you no longer represent a majority of the employees of Muncy Corporation."

Finally after the Union announced to Respondent on September 18 its acceptance of Respondent's "final offer" made on July 18, Respondent made its position crystal clear in its letter of September 18:

> The Company feels it cannot, in good faith, sign a contract with your Union as it is obvious that to all that the UAW no longer represents a majority of the employees of the Muncy Corporation. We, therefore, would have to wait until the National Labor Relations Board can determine the proper course of action for us to follow.

Thus did Respondent make good on Muncy's promise to Bowman and other employees that Respondent would not sign a contract with the Union "come hell or high water."

Respondent here defends its obvious refusals to bargain on two grounds: (1) the filing of the two decertification petitions by Bowman; and (2) an alleged "good faith doubt" as to the Union's continuing majority status.

The first string to Respondent's bow is removed by the decision in the *Rogers Manufacturing Co.*, case quoted *supra.* That same decision also holds, as to the second string to Respondent's bow, "Rather, evidence indicating that a good faith doubt was reasonably grounded must be advanced" by the party claiming that doubt.

Here Respondent bases its alleged "good faith doubt" upon the fact that 16 employees signed letters resigning from the Union, that "70.2 percent" of its employees remained at work during the strike and executed the various and sundry petitions and correspondence prepared by Respondent in favor of holding a decertification election.

Under the circumstances proven to exist here I find that none of the above-claimed evidence was "reasonably grounded" here because of Respondent's own interference, restraint, and coercion of its own employees in procuring all the so-called evidence noted above. All of that so-called "evidence" was instigated, prepared, promulgated, and procured by Respondent acting either on its own or through agents, overt or covert.

In the first place Muncy's own "come hell or high water" statement to the employees regarding the possibility of signing a union contract amounted to a violation of Section 8(a)(1) as well as (5) by discouraging membership in the Union through showing the utter futility of the employees continuing their union representation. That Muncy's statement was Respondent's policy was further demonstrated by Palmer's distribution of the antiunion poem to employees in the plant and permitting its presence in the plant contrary to Respondent's "no solicitation" rule, another violation of Section 8(a)(1).

The alleged resignations from the Union were also prepared by Respondent and likewise not "well grounded" despite Kathy Mann's attempt to prove that Respondent had nothing to do with the instigation, preparation, or distribution of these letters for the simple reason that again Respondent permitted the solicitation of signatures thereto in the plant contrary to its no-solicitation rule. Mann's testimony in regard thereto, as noted heretofore, is so confusing and conflicting as to be totally unbelievable.

Nor does the evidence permit Respondent to base its "reasonable doubt" upon the "70.2 percent" of the employees who signed the various and sundry petitions and letters allegedly backing the decertification election. This so-called evidence is subject to the same infirmities as noted above. All these petitions and letters were instigated, composed, typed, and prepared for mailing by Respondent. In addition thereto the signatures thereon were once again solicited and procured by its willing tool or agent, Rena Bowman,[19] with Respondent's acquiescence and consent in violation of its own no-solicitation rule. Once again this "proof" resulted from Respondent's unfair labor practices in violation of Section 8(a)(1). The signatures resulted from these unfair labor practices rather than as an expression of the employees' own free rejection of union representation. Once again the strategy was devised and executed by Respondent itself even though executed in part in the person of Rena Bowman.

Rena Bowman was antiunion from the beginning. She was still admittedly antiunion at the time she testified in the instant matter. Like Mann, Bowman was sworn in as a witness. Unlike Mann, Bowman took her oath seriously.

[18] This long communication reads like Respondent's brief. If these 50 signatures were all solicited and secured during "breaks and lunchtime," it was an exceptionally well coordinated drive.

[19] See *Walgreen Co.*, 206 NLRB No. 15.

She testified to the truth and to nothing but the truth as she knew it to be. If she did not testify to the "whole truth" while a witness, it was only because the question was not asked as she volunteered nothing while a witness. By so doing Bowman definitely let the cat out of the bag.

Admittedly Bowman knew nothing about the law. Admittedly, except by Muncy, she received a "lot of advice" from all of Respondent's management including, as will be shown *infra,* some very important advice from Harvey Rector, Respondent's management consultant. The strategy of these decertification petitions was devised by Respondent. The necessary papers and letters were composed, typed, and prepared by Respondent. And Bowman, as Respondent's tool or agent, was told to sign same and permitted to solicit and secure employees' signatures in and about the plant with Respondent's knowledge, consent, and instruction, again disregarding the no-solicitation rule. Although unlike Jeff Carter, Bowman was apparently not paid for this covert or overt work she performed for Respondent, she was, in fact throughout acting for and on behalf of Respondent under Respondent's suggestion or instruction. Once again Respondent violated Section 8(a)(1) by so using employee Bowman as its antiunion agent. Hence these signatures from the "70.2 percent" of the employees is not the "well grounded" evidence required of Respondent in order to prove its alleged "good faith doubt." Accordingly, as in the *Rogers* case, I must find that the Company had not met its burden in this respect.

It is settled law that the asserted doubt of majority "must not have been raised . . . in a context of antiunion activities, or other conduct by the employer aimed at causing disaffection from the Union or indicating that in raising the majority issue the employer was merely seeking to gain some time in which to undermine the Union."[20]

The cases also hold that "Section 8(a)(1) of the Act makes it unlawful for an employer to instigate and promote a decertification proceeding or induce employees to sign any other form of union repudiating document, particularly where the solicitation is strengthened by express or implied threats of reprisal or promise of economic benefit." *N.L.R.B.* v. *Birmingham Publishing Company,* 262 F.2d 2, 7 (C.A. 5, 1958); accord: *N.L.R.B.* v. *Parma Water Lifter Co.,* 211 F.2d 258 (C.A. 9, 1954), cert. denied, 348 U.S. 829; *Hinson* v. *N.L.R.B.,* 428 F.2d 133, (C.A. 8, 1970); *Boren Clay Products* v. *N.L.R.B.,* 419 F.2d 385 (C.A. 4, 1970).

It is also well settled law that "petitioner [the employer] cannot, as a justification for its refusal to bargain with the Union, set up the defection of union members which it has induced by unfair labor practices, even though the result was that the Union no longer had the support of a majority."[21]

Hence since any loss here in the Union's majority status, as Respondent well knew, was directly attributable to Respondent's own unfair labor practices in instigating and promoting the decertification issue as well as in its refusal to bargain, the presumption of the Union's majority status derived from the earlier certification was not overcome. *Franks Bros.* v. *N.L.R.B.,* 321 U.S. 703; *Ingress-Plastene, Inc.,* v. *N.L.R.B.,* 430 F.2d 542 (C.A. 7, 1970); *Sky Wolf Sales, d/b/a Pacific Industries of San Jose,* 189 NLRB 933.

Accordingly the facts require, and I hereby find, that at least on and after June 16, 1972, Respondent has refused to bargain in good faith with the Union as the representative of Respondent's employees in an appropriate unit in violation of Section 8(a)(5) and (1) of the Act.

I further find that the strike of June 21, 1972, was caused and prolonged by Respondent's own unfair labor practice in refusing to bargain with the Union and was, therefore, an unfair labor practice strike.

2. Independent coercion

During the strike the strikers occasionally tacked their picket signs to utility poles in front of Respondent's plant. The undenied facts prove that on one occasion, at least, Mrs. Muncy tore a couple of these signs down while Muncy waved a shotgun around as though protecting his wife from harm. Not infrequently foreman Nick Bishop also removed and tore up similar picket signs over the verbal objection of the pickets. These actions by Respondent's personnel constituted violations of Section 8(a)(1) of the Act.

Respondent's attempted defense to these actions was that the signs were tacked upon poles owned by the utility company. This might justify utility company action in regard to the picket signs but hardly the Respondent's.

During the week of September 15 it is undenied that Muncy told employees Hubbard, Myers, and Paul Davis that "if it wasn't for the Union that there wouldn't be anybody in the shop making $3 per hour and that, if the Union was gotten out, [the employees] would get a raise just like [they] were supposed." This can be interpreted only as a financial inducement to the employees to see to it that the Union was eliminated and as such violates Section 8(a)(1) of the Act. *Florida Machine and Foundry Company,* 174 NLRB 1156.

3. The picnic incident

Located adjacent to Respondent's plant property on Enon Road is a rather large public park known as Enon Park. Respondent's property is separated from Enon Park by a link chain fence on Respondent's side on which is the truck entrance to Respondent's plant. Enon Park itself contains a number of picnic tables and three or four shelters as well as the usual children's swings, etc. Approximately 75 to 100 feet from Respondent's truck entrance there is a narrow gravel roadway running from Enon Road some 300–400 feet straight into the Park parallel to the truck entrance into the plant. This road leads apparently only to a Little League baseball diamond inside the Park. It is dead end. Some picnic tables are located between this road and Respondent's property.

On July 14 the strikers, their families and friends, held a picnic in Enon Park which began about 3 p.m. This fact was well known to Respondent's management and supervisors. In fact, Foreman Bishop had specifically noted the

[20] *C & C Plywood Corp.,* 163 NLRB 1022, 1023, enfd. 413 F.2d 112 (C.A. 9, 1969).

[21] *N.L.R.B.* v. *Parma Water Lifter Co., supra* at 263.

dearth of men at the picnic before he left the plant about 5 p.m.

About 8 p.m. that evening Bishop, acting according to him out of "curiosity," drove his automobile down the narrow graveled road into the Park at a rather high rate of speed, turned around at the end of the road, and returned at high speed throwing gravel and nearly hitting a young child who was pulled out of the way of the auto by Brenda Miller. As he passed, Bishop shouted "bitch" at her.

Bishop then drove to the "19th Hole," a bar, where he consumed, according to him, a "maximum" of two-three beers during the 1 hour until Danny Palmer and his wife joined him "by chance" there.[22] After another admitted beer with the Palmers, it was decided to go "see what was going on at the picnic"—and to see about the plant. Bishop testified that he had heard "rumors—of destruction of the plant."[23]

So with Palmer driving his automobile, his wife in the middle, and Bishop in the passenger's seat, they drove to the plant, found it unharmed and the picnic still going on in Enon Park. They then returned to the car and drove into the Park to the end of the road, turned around, and drove back to Enon Road and then into the beginning of the truck entrance to the plant where they parked and got out of the car. After Palmer and Bishop had exchanged a few insults with the strikers, Palmer said "Let's get out of here." Palmer and Bishop then went around the fence and some steps into Enon Park and rushed a group of picnickers about 15 feet away with fists flying. According to Bishop, then "all hell broke loose" with Bishop and Palmer becoming the battered losers. The fracas was short.[24]

The facts make it clear that Bishop and Palmer were determined to provoke an incident with the strikers, their families and friends, at a peaceful picnic. Neither had any business at the plant that evening which was well guarded by two security guards, provided only a few minutes earlier that evening for the first time with walkie-talkies by Respondent. Bishop's first speedy incursion into the Park where he obviously had no business unless he was trying to create trouble with the strikers was intentionally provocative due to his speed which threw gravel and nearly hit a child. Then, after a few beers at the 19th Hole, Palmer and Bishop decided again to see "what was going on at the picnic." This was followed by another motor intrusion on the picnickers although less speedy than on Bishop's first run through the Park. After that there was nothing to do but to depart, except that Palmer and Bishop apparently wanted to jeer and call names, another unnecessarily provocative action. Then, according to Bishop, when Palmer said "Let's get out of here," they both physically invaded territory which they well knew was being used by strikers for a peaceful picnic. They intentionally went where they not only knew they were not invited or wanted but they went with fists flying. Palmer and Bishop went in not "to protect" themselves, which they easily could have done by merely driving home as they should have, but in order to obstruct and breakup a theretofore peaceful gathering of strikers because they were strikers.

I find these provocative actions and assault by Bishop and Palmer to have been for the purpose of discouraging union membership and activities and thus a violation of Section 8(a)(1) of the Act. *Arton Studios, Inc.*, 74 NLRB 1158.

4. The discharges

As previously noted some 25 of Respondent's employees went on strike on June 21 because of Respondent's refusal to bargain. The strike lasted until September 22 when the strikers met after 6 p.m. and voted to end the strike and return to work unconditionally. Respondent was so notified.

On Monday, September 25, about 7:30 a.m., each of the strikers named below reported for work at Respondent's plant. They were met by Superintendent Palmer who instructed them to enter the office one by one and to sign their names, addresses, and telephone numbers on a paper

[22] Bishop's memory as to his movements from the time he left the plant until 8 o'clock was hazy at best. He "believed" he went home for dinner, some 10–20 miles from the plant. He was not positive where he had dinner The 19th Hole served sandwiches.

[23] Respondent's management seems to have become almost paranoid during the strike. There was Bishop's "rumor" of "destruction to the plant." First there was one guard at the plant. Then there were two security guards at the plant. Then there was another security guard at the Muncy home. On July 14 the security guards were supplied with walkie-talkies. Next the security guards were supplied with policy dogs. Finally one of the security officers dressed in a police-like uniform with a simulated police officer's badge showing the number one on it testified at the hearing.

Actually in June Respondent's new building had been splashed with paint by parties unknown despite the plant guards on duty and despite the fact that Muncy allegedly had warned the guards about two alleged phone calls received that night threatening "to hit" the building. Muncy and his wife both identified the telephone caller as Mason although each admitted to never before having heard Mason on the phone. To borrow a decisional technique from the Board's recent *Tale-Lord* case, *infra*, "It strains credulity to believe" that Mason, on the verge of "hitting" the plant, would advise the Muncys of his plans in advance.

But more important in determining the facts, I found Mason credible but not the Muncys largely on the basis of their demeanor, lack of forthrightness on the stand and the substance of their testimony. I credit Mason's denial of these phone calls.

It might also be of importance here that Muncy had been critical of the brick work done on the building by the contractor and had had to have it redone at least twice before it was painted.

During the period of the strike Muncy testified that because of the "turmoil" caused thereby that he had to sleep on the floor with his shotgun by his side and that his children out of the same fear slept on the floor in a room with an exit toward the back of the house.

What the activities were by the strikers which caused this "fear" was not explicated at the hearing except for one incident when allegedly four unknown persons were seen walking in the back portion of Muncy's home property. According to the guard on duty at their home at that time, he would have captured these "invaders" and thus have been able to identify them except that in the dark he fell over a bicycle so that the four individuals got away and remained unidentified.

In fact Muncy even blamed the strikers for the traffic on Enon Road, or Route 40, which passed in front of his home and bothered him during the strike.

[24] Bishop contended that he and Palmer went into the Park at this time in order to "protect" himself because he had been hit in the center of his back by a rock thrown from the Park. Originally Bishop located himself on the passenger side of the car preparing to get in when he was hit. In that location his back would not have been towards the Park. After drawing a map of the locale, Bishop relocated himself when hit to the rear of the automobile walking toward the passenger side, the only place where his back would have been facing the Park. Later in his examination and at the suggestion of Respondent's labor consultant, Bishop claimed to have been "confused" when he originally located himself because the questions were coming "so fast and furious that I didn't realize which way I was going then." I am convinced, and therefore find, that Bishop's rock was both a figment of his imagination and an alibi for his provocative conduct

which foreman Bishop gave to them. Bishop informed each that the Respondent would notify them when to report for work.

As will be developed, not one of the strikers, except labor spy Carter, has been reinstated.

Larry Hubbard, Richard Myers, and Wayne Suttles

On September 22 about 1:15 p.m., Larry Hubbard, Richard Myers, and Wayne Suttles who had been working during the strike left the plant together and joined the strikers. Respondent promptly verified this fact.

These three attended the union meeting at which it was voted to end the strike and to return to work. All three reported with the rest of the strikers on September 25 and signed their names, addresses, and telephone numbers as requested. They were informed that they would be notified when to report for work.

By identical letters dated September 29 Respondent notified Hubbard, Myers, and Suttles that each had been discharged for leaving the plant without permission on September 22. Accordingly they never reported for work. It was useless. None has been reinstated.

Respondent sent copies of its letters to the striking employees to the Union. However the alleged copies sent by Respondent to the Union regarding Hubbard, Myers, and Suttles were letters ordering them to return to work on October 3.

About October 6, upon discovering that these three had not been reinstated, Mason by telephone inquired of Plant Manager Wagoner why these men had not been reinstated in accordance with the copies of the letters which had been received by the Union regarding these three. Wagoner informed Mason that the letters received by the Union regarding the three were sent to the Union by mistake as the men had actually been discharged. Upon inquiry Wagoner then informed Mason that Respondent had terminated Hubbard, Myers, and Suttles "for leaving the plant and joining the strikers on the picket line."[25]

It is fundamental law that an employer who terminates employees for joining a lawful picket line is in violation of Section 8(a)(1) and (3) of the Act. *N.L.R.B.* v. *International Van Lines*, 409 U.S. 48 (1972).

Brenda Miller, Ruth (Smith) Wilson, Claudette Adams, Sally Vermillion, and Ruth Smouse

At 7:30 a.m., September 22 all of the above named reported at the plant and signed their names, addresses, and telephone numbers as requested by Palmer and Bishop.

By identical letters dated September 29 Respondent notified Miller, Wilson, Adams, Vermillion and Smouse as follows:

> This is to inform you that your employment with the Muncy Corporation has been terminated as of September 25, 1972 because of your participation in violence, intimidation and/or threats against the Company and/or its employees while on strike.

All of the above, except Smouse, were known by Respondent to be union committeewomen before and during the strike. They were also all active on the picket line.

Respondent never notified any of them as to what specific acts of "violence, intimidation and/or threats" Respondent contended they were guilty of. In fact even during the hearing Respondent gave no specifics as to what activities it was referring to other than that the individuals named had been on the picket line. Each of these individuals denied that she had committed any acts of violence or threatened anyone during the strike.

The only real case where Respondent attempted to identify any of these individuals as engaging in "violence" occurred on July 28 when foreman Nick Bishop, whose propensity towards violent action was established at the picnic incident of July 14 in Enon Park, was leaving the employees' entrance to the plant in his automobile for lunch. Miller and Adams were walking the picket line at the time. Bishop testified that on this occasion Adams on the left, or driver's side, of the automobile was carrying a cardboard picket sign while Miller on the right, or passenger, side of his car had a ball peen hammer in her hand and that as he drove slowly out of the driveway, Adams "attacked" the car beginning at the windshield with her picket sign with a baseball like swing while he heard Miller "banging" on the trunk of the car with her hammer. Bishop did admit that after the incident he could find no damage done to his car. That was Bishop's story.

The Miller and Adams testimony was different. According to them, they were walking picket when Bishop drove out of the entrance onto Enon Road at a rather fast rate of speed nearly hitting Adams as he did so and causing her to let go of her picket sign in her efforts to jump backwards in order to save herself from being hit. The picket sign may have hit the auto. Miller denied striking the automobile and denied having a hammer on this occasion.

There is a third story about this incident. Tommy Johnson, promoted to foreman after the strike, happened to see the incident, according to his testimony. However he saw Miller and Adams located on the opposite sides of the automobile from the testimony of Bishop and also striking the car in different locations.

There is still a fourth—and still untold—story of this incident. Admittedly Jeffery Carter, Respondent's paid labor spy, was in the Bishop automobile at the time. Respondent asked him no questions regarding the incident thereby giving rise to the inference that his testimony would have been unfavorable to Respondent's contention.

Even accepting the contradictory stories of Bishop and Johnson at face value, this incident would be insufficient to deny either Miller or Adams reinstatement.

However due to Bishop's demeanor while on the stand, his known propensity for speedy driving, his known propensity towards violence, and his undenied instruction to truckdrivers to run down the pickets if in the way, as

[25] This testimony by Mason was undenied as Wagoner was not called by Respondent as a witness.

well as the conflicts with the Johnson testimony, I cannot credit the Bishop or Johnson testimony regarding this incident and find in accord with the Adams-Miller version thereof. I believe the facts to be that Bishop drove out of the entrance at a good rate of speed, nearly hit Adams, thereby causing her to jump back and let go of the picket sign which may have hit his automobile. I credit Miller's testimony that she did not hit the automobile.[26]

The other picket in this group whom Respondent identified in the evidence as engaging in "violence" was Ruth Smouse who was accused by Rena Bowman as having thrown a handful of gravel at Bowman's automobile as she drove from the plant. Bowman was not even sure that her car was hit and, like Bishop, was able to find no damage to her car thereafter. Smouse denied the incident. Even if true, the incident was so picayunish as not to justify Respondent's refusal to reinstate Smouse. *W.J. Ruscoe Company,* 166 NLRB 618, 620.

At the hearing Respondent also produced evidence that during this long strike nails and glass had been swept up from the two driveways into the plant. In fact Respondent produced a large box containing several pounds of roofing nails which it said had been swept from its driveways. Evidence as to how this material got where it was supposed to have been and as to who was responsible for putting this material there was conspicuously missing. This is so even though Muncy testified that on at least one occasion he spent 1/2 hour or so intently watching Mason sitting in his auto parked near the truck entrance through binoculars from 150-to 175-feet distance in the new office building which Respondent was having constructed at that time. Muncy thought he saw something shiney in Mason's hand as it swung back and forth outside his car's open window. Of course roofing nails were at that time being used in the construction of Respondent's new building. It is also noteworthy that nobody could recall a single tire punctured in going in or out of either plant entrance during the whole strike.

Another incident described by Muncy was equally remarkable. On this occasion, according to Muncy, it took him 1 and 1/2 hours to get his car out of the employee driveway while he was attempting to take the two Rectors, Wagoner, Palmer, and Patton to lunch. On this occasion, according to Muncy, even he was picking up nails from the driveway.[27] He testified that within seconds of the time he would have the driveway cleared "completely" he would look back again and discover more nails at his feet in the driveway without having seen or heard anything even though the then picket, Betty Haney, was standing within a foot or two of him. This truly remarkable testimony, supposed to be believed and given with all due solemnity, caused me to have some questions as to Muncy's credibility, especially as apparently none of his five passengers standing around during the episode had any explanation for this phenomenon of the rapidly reappearing nails either. Even without a denial by Haney, I cannot on this evidence find that she or the Union was responsible for this alleged plethora of nails in driveways.

Ruth (Smith) Wilson was named by Muncy as being on the picket line when the rear window of his GTO Pontiac was smashed apparently on July 3 sometime. Respondent's testimony regarding this incident—the only evidence in regard to it besides Wilson's denial of knowing anything about it—goes beyond the remarkable and verges on the fantastic.

Muncy and his brother-in-law testified as to the incident. So did William R. Royce, a security guard at Respondent's plant. According to Muncy the rear window of his GTO was shattered about 9–9:30 p.m. as he was driving at 5–10 miles per hour some 70–100 feet south on Enon Road after leaving the employee entrance to the plant. According to Royce he saw and heard the rear window shattered about 3–3:30 p.m. as Muncy's automobile was moving in the employees' entrance road to a stop in front of the plant office after having turned in from driving north on Enon Road. According to Muncy, he thought the window had been shattered by a shot gun fired by some unseen person. According to Royce, just before the crash he saw an unidentified man moving his arm while standing in the center of Enon Road. According to Muncy, a deputy sheriff found a steel ball 1-1/4 inch in diameter in the rear of his automobile and gave it to Muncy. According to Muncy, the pictures of the damaged automobile admitted in evidence in the instant case were taken a day or two after the incident. According to Royce, these pictures were taken the same day as the incident.

It is admitted that although the sheriff arrived on the scene "very quickly" after the incident, despite Muncy's complaints made at the hearing that the sheriff "was not doing his job" and "not cooperating or trying to maintain law and order," no arrests were made at the time nor have any been made thereafter regarding this incident. Nor has Respondent's labor spy, Jeffery Carter, been able to locate the culprit, if any, despite his $100 per week salary from Respondent allegedly for that purpose, among others.

Hence this incident remains a mystery as to who, where, when, how, and why.

However, in the very recent case of *Local 918 Teamsters (Tale-Lord Manufacturing Co., Inc.),* 206 NLRB No. 102, a case of egg throwing during a strike, the Board expounded a rather novel theory of union liability by finding: "The fact that the identity of some of the egg throwers[28] was unknown is of little importance, given the fact that the nonstriker witnesses invariably identified the eggs thrown as coming from the direction of the strikers." This no doubt will be known as the "directional theory of responsibility." But even this directional theory is inapplicable here for the simple reason that we actually cannot say which way the automobile was facing when the window was shattered nor where the picket line, if any, was

[26] On appeal the Board of Review of the Ohio Bureau of Employment Services decided in the cases of both Adams and Miller that "The evidence does not establish that claimant committed an act or acts of violence during the strike nor did she cause injury to an employee, damage the property of the employee or damage the property of the Muncy Corporation."

It is interesting to note from the decision of the Ohio Bureau that Muncy had informed the Bureau that Adams' alleged act "was witnessed by Mr. Dan Palmer, Mr. Tommy Johnson, Mr. Mike Schmidt and Mrs. Patricia Alfred." Yet only Tommy Johnson was called by Respondent in the instant case.

[27] Usually it seemed that Muncy would telephone ahead to have the entrance swept clear before he drove in or out of the plant.

[28] Actually only two egg throwers were identified and only one of those threw an egg from the picket line.

located at the time. Hence it is here necessary to use the old-fashioned Anglo-Saxon legal theory of identifying the person or persons responsible and the method used.

Hence using only these old-fashioned legal methods I can only find on the evidence presented by Respondent that the rear window of Muncy's automobile was in fact shattered at some uncertain place at some unknown time by some unknown method by some person or persons unknown and for some unknown reason. Accordingly, I must, and hereby do, exonerate Ruth (Smith) Wilson and the Union from any and all responsibility therefor.

As for Sally Vermillion there was no evidence connecting her in any way to any misconduct during the strike. However at the Board of Review of the Ohio Bureau of Employment Services hearing on her claim Respondent did accuse Vermillion of threatening an employee by the name of Ed Dolph. Vermillion admitted having a few words with Dolph at the cashier's counter in a supermarket where Vermillion objected to Dolph's chasing her all the time trying to get her to marry him. Dolph was not called as a witness by Respondent. Certainly words between two persons who happen to be employees of Respondent in a public place like a shopping center over a personal matter like marriage cannot justify Respondent for refusing the woman employee reinstatement to her job with her employer.[29]

Accordingly I must, and hereby do, find that Respondent has failed to establish that Brenda Miller, Ruth (Smith) Wilson, Claudette Adams, Sally Vermillion and/or Ruth Smouse, or any of them, participated "in violence, intimidation, and/or threats against the Company and or its employees while on strike." Hence there is no evidence against any of the above sufficient to warrant their discharge on September 29, 1972.

I also find that Respondent discharged each of the above named because of their membership in and activities on behalf of the Union and in order to rid the plant of employees favoring union representation in violation of Section 8(a)(1) and (3) of the Act.

Barbara Page, Phyllis Prugh, Dona Robinson, Jan Wilson, Martha Russell, and Hilda Frey

Following their application for reinstatement on September 25, the Respondent by identical letters dated September 29 notified the above-named strikers as follows:

> This is your notification of reinstatement to your former position at the Muncy Corporation.
>
> You are to report for work on Tuesday, October 3, 1972 at 7:30 a.m. Hours are the same as in the past.

On October 3 at 7:30 a.m. all the above named, except Frey, reported for work, punched their timecards, and received their job assignments. After working about 5 minutes the nonstriking employees began shutting off their machines and gathering around the coffee machine. Soon the returnees were the only employees working. Palmer appeared at the coffee machine and inquired why the employees were not working. He testified that the nonstriking employees told him that they would not work with the returning strikers.

After the returnees had worked approximately 30 minutes, each of them was instructed to report to Palmer in the office. Palmer told them that the other employees refused to work with them because of their activities during the strike without any specifics as to what the returnees were supposed to have done. Palmer told them that he would have to send them home. The returnees thereupon left the plant followed by the nonstriking employees jeering and calling them names.

Palmer was busy for the next hour or hour and a half having each of the remaining employees sign a sheet of paper at his desk headed "Refused to work with strikers." "Head Mechanic" Frank Fisher was the first employee to sign. After his name Palmer printed the words "Do not trust & dont [sic] feel safe" as the reason Fisher would not work with the returnees. As each succeeding employee signed this list, ditto marks were inserted after the signature for the same reason as that given by the signing employee for not working with the returnees.

This demonstration may have appeared spontaneous to the returnees. It was not. It had been carefully planned by Harvey Rector and Respondent.

After it became known that the strikers would be returning to work, Rena Bowman, Delores Jordan, and Thomas Johnson were instructed by Respondent to report to the office for a meeting. The meeting was attended by Harvey Rector, Muncy, Palmer, and Patton for the Company as well as the three named employees.[30] Promptly after the meeting began, the question of what to do when the strikers returned to work came up.

On this point Harvey Rector testified as follows:

> Well, I was asked a question of, was it legal if the employees refused to work with the striking employees that had offered to work. Oh, I don't—the question came up, they found out that they were going to be coming back to the plant. And I said, "I cannot give you any advice at all because I happen to represent the Company."
>
> Then I don't know how many questions were asked, but there were, I think, several. And one of them said to me, "Well, what would you do if we refused to work with them?"
>
> So I said, "The only thing I can say to you is, you had better have a sufficient reason or you will be fired."

Bowman's testimony on this point was as follows:

> A. We were—well, you couldn't call it advice.[31] Mr. Rector told us that he knew of a case where—it didn't happen in this town, but it happened in some other town—that if we could quit work when these

[29] The Board of Review also found as follows:

> The evidence does not establish that claimant (Vermillion) committed an act or acts of violence during the strike nor that she caused injury to an employee, damage to property of the employee or damage to the property of the Muncy Corporation.

[30] At the hearing Rector attempted to show that this antiunion group was a labor organization and that Rena Bowman was its chairman. However Rena Bowman denied the existence of any such organization as well as her alleged chairmanship thereof.

[31] On cross-examination of Bowman, Rector had gotten Bowman to testify that the Rectors had given her no "advice."

people walked back in wanting to come to work, that we could quit, just walk off the job. He said—he did tell us, though, I am not advising you or telling you to do this. He said, "I am just relating that I know it happened." He stated the town, but I can't remember what town it was.

Respondent's witness Patton supplied the name of the case in the following testimony on the point:

A. Okay. Mrs. Bowman stated that—there's a lot of talk that employees refused to work with the returning strikers. They heard that the strikers were going to be coming back. They do not want to work with them, and that they wanted to know how they could get out of working with them. Mr. Rector was present at this meeting. He says, "I cannot give you advice. However I can cite you a case," and I believe it was the Superior Tool & Die in Akron, Ohio; one of those similar—very similar situations where employees refused to work with the returning strikers because of acts of violence on the picket line, and a decision was upheld in the Sixth Circuit Court, I believe.

Following this meeting Rena Bowman admittedly circulated among the employees and gave them the information which Rector had provided at the meeting. Thus Respondent provided the nonstriking employees with the strategy as well as the assurance that a "good reason" would prevent their being discharged.

Once again Bowman carried Respondent's strategy to the nonstrikers as Respondent's agent.

With Palmer's permission Hilda Frey reported for work on October 4. She was met by Palmer and instructed to report to his office and wait for him. Shortly thereafter Palmer returned to the office and informed Frey that she "had no more friends than the other strikers had." When Frey stated that she was there to operate a press and not for friendship, Palmer informed her that she could not operate all the machines and so he would have to send her home.

By identical letters dated October 11 Respondent informed Page, Prugh, Robinson, Wilson, Russell, and Frey as follows:

Because of the activities on the picket line and the acts of violence and intimidation that occurred and the fear that acts of violence and intimidation will continue, the employees af the Muncy Corporation refuse to work with you. The Muncy Corporation has no reasonable alternative but to terminate your employment effective October 3, 1972.

Enclosed find a check for four (4) hours pay for October 3, 1972 and all vacation pay accumulated prior to the strike.

None of the above-named striking employees have since been reinstated.

Conclusions

The above-found facts require the finding here made, that Respondent refused to reinstate upon unconditional application and discharged Larry Hubbard, Richard Myers, Wayne Suttles, Brenda Miller, Ruth (Smith) Wilson, Claudette Adams, Sally Vermillion, Ruth Smouse, Barbara Page, Phyllis Prugh, Dona Robinson, Jan Wilson, Martha Russell, and Hilda Frey, all of whom had engaged in the unfair labor practice strike, because of their membership in and activities on behalf of the Union and in order to discourage such membership and activities as well as to eliminate all known prounion employees from the plant in violation of Section 8(a)(3) and (1) of the Act.

As for Hubbard, Myers, and Suttles, Respondent claims that they were discharged for leaving the plant without permission on September 22. If this were a valid reason for discharge, then any employee who went on strike would likewise be subject to discharge. Here whether permission to leave the plant was granted or not, Respondent well knew that each of these employees had left the plant and had joined the strikers on an unfair labor practice strike. In fact Respondent discharged each of them for having joined the strike and refused them, as unfair labor practice strikers, reinstatement in violation of Section 8(a)(1) and (3) of the Act.

As for Miller, Ruth Wilson, Adams, Vermillion, and Smouse, Respondent claims that it refused these unfair labor practice strikers reinstatement because of their "participation in violence, intimidation and or threats against the Company and/or its employees while on strike." Respondent not only failed however to specify the activities which each was supposed to have engaged in but also failed to connect any of them in the evidence it presented with any activities which would have justified Respondent's refusal to reinstate them as unfair labor practice strikers.[32]

The real reason Respondent discharged these individuals was the fact that, except for Smouse, each was a union committeewomen in the plant and all were active in the Union and during the strike. Respondent's refusal for these reasons to reinstate unfair labor practice strikers upon their unconditional offer to return to work at the end of the strike constitutes a violation of Section 8(a)(1) and (3) of the Act.

As for Page, Prugh, Robinson, Jan Wilson, Russell, and Frey Respondent contends that the nonstriking employees refused to work with them because of the acts of violence and intimidation that occurred during the strike and the fear that these acts would continue so that Respondent had "no reasonable alternative but to terminate" the returnees. In its brief Respondent expands on that and contends that this so-called "refusal" by the employees was "beyond control of management."

The facts prove otherwise.

Actually the evidence not only of Bowman but also of Rector and Patton prove that employees Rena Bowman, Delores Jordan, and Tommy Johnson were called by Respondent to a meeting in the office where consultant

[32] *Daniel A. Donovan, etc. d/b/a New Fairfield Hall Convalescent Home,* 206 NLRB No. 108. *Coronet Casuals, Inc.,* 207 NLRB No. 24. *Seminole Asphalt Refining, Inc.,* 207 NLRB No. 40.

Harvey Rector advised them that, if the nonstrikers refused to work with the returnees, they would be discharged only if they did have a "good reason" for so doing. Rector even cited one of his own cases as authority therefor. These three antiunion employees thereupon, as anticipated and expected, passed this word on to the other nonstriking employees. When the occasion arose, the nonstrikers, as was also to be anticipated in view of Rector's advice, refused to work with the returnees. Thereupon Plant Superintendent Palmer himself provided the "good reason" mentioned above so that the returnees were dismissed rather than the nonstrikers. Thus, contrary to the brief, this whole operation of refusing reinstatement to the strikers from beginning to end was at all times under the control of management and its labor consultant. The plan was devised and carried out by Respondent with the aid and assistance of its chosen agents, Bowman, Jordan, and Johnson.

Refusing reinstatement of unfair labor practice strikers on the grounds that the nonstriking antiunion employees will not work with them particularly when that alleged refusal to work with the returning strikers is devised, encouraged, incited, and carried out by Respondent and its agents, violated Section 8(a)(1) and (3) of the Act.[33]

IV. THE EFFECT OF UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent, set forth in Section III, above, and occurring in connection with Respondent's operation described in Section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in numerous unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that on and after June 19, 1972, Respondent has refused to bargain with the Union as the certified and duly designated representative of its employees in the appropriate unit by refusing to meet and/or refusing to bargain in good faith, I will order that Respondent, upon request, bargain with Local 682, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) in good faith and, if an agreement is reached, to embody that agreement in writing and execute the same.

Having found that Respondent discriminated in regard to the hire and tenure of employment on or about September 25, 1972, of Larry Hubbard, Richard Myers, Wayne Suttles, Brenda Miller, Ruth (Smith) Wilson, Claudette Adams, Sally Vermillion, Ruth Smouse, Barbara Page, Phyllis Prugh, Dona Robinson, Jan Wilson, Martha Russell, and Hilda Frey because of their membership and activities on behalf of Local 682, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) in violation of Section 8(a)(1) and (3) of the Act, I will order that Respondent offer each of them full and immediate reinstatement to his or her former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to their seniority or other rights and privileges and make her whole for any loss of pay she may have suffered by reason of said discrimination against each by payment to each of a sum of money equal to that which each would have earned from the date of the discrimination to the date of Respondent's offer of reinstatement with adequate protection in the plant less the net earnings of each during such period in accordance with the formula set forth in *F.W. Woolworth Company,* 90 NLRB 289, with interest thereon at 6 percent per annum.

Because of the type of unfair labor practices engaged in by Respondent it is clear that Respondent has an opposition to the policies of the Act in general and, therefore, I deem it necessary to order Respondent to cease and desist from in any manner interfering with the rights guaranteed its employees in Section 7 of the Act.

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

Conclusions of Law

1. Local 682, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), is a labor organization within the meaning of Section 2(5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Larry Hubbard, Richard Myers, Wayne Suttles, Brenda Miller, Ruth (Smith) Wilson, Claudette Adams, Sally Vermillion, Ruth Smouse, Barbara Page, Phyllis Prugh, Dona Robinson, Jan Wilson, Martha Russell, and Hilda Frey by discharging and/or refusing reinstatement to each of them on or about September 29, 1972, because of their membership and activities on behalf of said Union and in order to discourage such membership and activities, Respondent has engaged in and is engaging in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act.

3. All production and maintenance employees including janitors and truckdrivers employed at Respondent's plant located at 2601 Enon Road, Enon, Ohio, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act

[33] See *N.L.R.B.* v. *Weissman Co.* where the Sixth Circuit Court of Appeals held in 170 F.2d 952 (1948):

> Weissman, the owner of the Company, doing business in its name, was of course responsible for his own acts; and Drimmer, the general manager, was responsible to Weissman and the Company for his conduct. Further, we think that respondents' employees might reasonably have regarded its supervisors, whose conduct was challenged, as representative of the policy of respondents. It is clear enough that the attitude of the anti-Union group of respondents' employees was encouraged, and tacitly, if not openly, approved by respondent Weissman, and the defense that he was under no obligation to protect his Union employees is without merit.

Fred P. Weissman Co, 71 NLRB 147 and 69 NLRB 1002 *Brown Garment Manufacturing Co,* 62 NLRB 857. *Riverside Manufacturing Co.,* 20 NLRB 394, *Altamont Shirt Corporation,* 131 NLRB 112 *Aclang, Inc.,* 193 NLRB 86. The *Superior Tool & Die Case, supra,* is clearly inapposite under the facts here.

constitute the appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times since September 10, 1970, Local 682, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) has been, and still is, the exclusive representative of all employees in the aforesaid appropriate unit within the meaning of Section 9(a) of the Act.

5. By refusing on and after June 19, 1972, to meet and/or bargain in good faith with the Union as such exclusive certified representative of its employees in the aforesaid appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. By the numerous acts of Respondent and its supervisors above found Respondent has interfered with, restrained, and coerced its employees in the rights guaranteed them in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

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

[Recommended Order omitted from publication.]