

**Shepherd Laundries Co. and International Union Of
Laundry And Dry Cleaning Workers, AFL-CIO.
Case 23-CA-3156**

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

June 19, 1969

DECISION AND ORDER

BY MEMBERS FANNING, BROWN, AND JENKINS

On April 1, 1969, Trial Examiner John F. Funke issued his Decision in the above proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

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

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.¹

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order the Recommended Order of the Trial Examiner, and orders that the Respondent, Shepherd Laundries Co., Beaumont, Texas, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

¹Further evidence of disparate treatment between union adherents and nonunion employees is shown in the treatment accorded discriminatees Berry, Smith, and Brown and employee Rayson who circulated the antiunion petition. Among the reasons given Brown and Smith for their discharge was the failure to seek written permission for their solicitations. (The Trial Examiner's Decision inadvertently fails to note that the employee handbook issued after the discharges required "written" permission.) Respondent's witnesses, President Shepherd and Vice President Dengler, claimed written permission was required even though not so stated in the posted rule, yet employee Rayson was not required to get written approval in order to circulate his antiunion petition. Moreover, while it appears from the discharge interviews the main reason given for the firing of the discriminatees was their alleged solicitation during work time, the record shows no one had ever been discharged for such cause before, and Rayson, according to the credited testimony of Shirley Jean White and the testimony of Gloria Ann Riles, solicited signatures for the antiunion petition during working time.

JOHN F. FUNKE, Trial Examiner: Upon charges filed October 7, 23 and November 21, 1968, by International Union of Laundry and Dry Cleaning Workers, AFL-CIO herein the Union, against Shepherd Laundries Co., herein Shepherd or the Respondent, the General Counsel issued complaint, dated November 29, 1968, alleging the Respondent violated Section 8(a)(1) and (3) of the Act.¹

The answer of the Respondent denied the commission of any unfair labor practices.

This proceeding, with all parties represented, was heard by me at Beaumont, Texas, on January 14, 15, and 16, 1969. At the conclusion of the hearing, the parties were given leave to file briefs and briefs were received from the General Counsel and Respondent on February 18, 1969.

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

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF THE RESPONDENT

Respondent is a Texas corporation engaged in the laundry and drycleaning business at Beaumont, Texas. Respondent during the past 12-month period received gross revenue in excess of \$500,000 from its laundry and dry cleaning operations. During the same period, Respondent received materials and goods valued in excess of \$1,000 which were shipped to it directly from points outside the State of Texas. Respondent is engaged in a business affecting interstate commerce within the meaning of the Act.

II. LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of the Act.

III. THE UNFAIR LABOR PRACTICES

A. The Evidence

1. Violations of Section 8(a)(1)²

a. The no-solicitation rule

The first allegation of paragraph 7 of the complaint alleges that Respondent maintained and enforced a no-solicitation rule forbidding all employees to engage in

¹At the conclusion of the hearing, the General Counsel moved to amend his complaint by adding subparagraphs v, w, x, y, z, aa, bb, cc, dd, ee, ff, gg, hh, and ii, to paragraph 7 of the complaint. The motion was denied by the Trial Examiner as to subparagraphs v, ff, gg and hh. As to the other subparagraphs decision was reserved. As to these the motion to amend is now granted. In his brief the General Counsel requested permission to withdraw subparagraphs 7(b), 7(c), 7(d), 7(e), 7(g), 7(h), 7(k), 7(n), 7(o), 7(p), and 7(t) of the complaint. Permission is hereby granted and said subparagraphs are stricken from the complaint.

²The original complaint alleged 20 separate violations of Sec. 8(a)(1) and the General Counsel moved at the close of the hearing to allege 14 separate other violations by amendment to the complaint. Of the 14, 4 were denied and 10 were granted. Eleven other allegations have been stricken at the request of the General Counsel, *supra*

solicitation without prior permission of management.

This rule, as posted by Respondent, (Resp. Exh. 3) reads:

ALL EMPLOYEES

PLEASE TAKE NOTICE

No soliciting of any kind by any person, group or association is permitted during working hours.

BY MANAGEMENT

The legend was printed in red and blue letters on a white background. On testimony which I find uncontroverted, six of these signs were posted about Respondent's plant in 1961 and remained posted through the critical period. I do not find that this rule, as posted, constituted a violation of the Act.

On or about October 15, Respondent issued a new employees' handbook (G. C. Exh. 2) which contained the following order:

Do not sell or solicit without permission from the Plant Manager. (The handbook in effect prior to this (Resp. Exh. 4) contained no such prohibition.

I find that this rule violated Section 8(a)(1) of the Act since its restrictions were not confined to working time or working areas. There is no evidence establishing that the rule was necessary for plant production or discipline.³

I do find, however, that the posted rule (Resp. Exh. 3) was discriminatively applied with respect to employees Sadie Smith, Darlene Brown and Deborah Berry, all of whom were discharged for violating the rule. (This was not the only reason given by management for their discharge, but it was a substantial if not controlling factor).⁴ On the basis of the credited testimony of Sadie Smith, Darlene Brown, Annie Moye, Dolores Brown, and Shirley White⁵ I find that, until the known advent of the union campaign, Respondent's rules against selling and solicitation were enforced with laxity.⁶ Supporting their testimony is that of President Shepherd who, after denying that he knew of widespread solicitation in the plant, admitted that he spoke to superintendents about it repeatedly because it was so flagrant.⁷ While Respondent's witnesses testified that employees were told that they were required to obtain permission to sell or solicit within the plant, this rule was not reduced to writing until October 15, after Respondent became aware of union organization in the plant. That vigor was inoculated into the rule by the Union's campaign is established by the fact that only two permissions were granted in 1967, one on August 26, 1968, and one on September 13, 1968. Following the discharge of Smith, Brown, and Berry, some 14 permissions were granted.

³Walton Manufacturing Company, 126 NLRB 699.

⁴Findings as to whether the discharges of these employees violated Sec. 8(a)(3) of the Act are made *infra*.

⁵This credibility is based on their demeanor while testifying and particularly in contrast to that of Respondent's witnesses Cates, Madsen, and Alsobrook.

⁶After hearing these witnesses I indicated that any further testimony from the General Counsel on this issue would be merely cumulative.

⁷On credited testimony I find that employees sold tickets to church and school lunches and dinners or the lunches themselves, Stanley products, flowers, deodorizers, pies, oil lamps, dresses, panties, and cosmetics. Raffles and World Series pool chances were also sold in the plant. Some of these were sold to or in the presence of supervisors, Alsobrook and

I can only conclude that the selling and solicitation rule was more strictly enforced after union organizational efforts became known to management and that the purpose of this stricter enforcement was to discourage union activity and thereby violated Section 8(a) (1) of the Act.⁸

b. Participation in revocation of union authority

On September 20, Vice President Dengler made a speech to the employees (Resp. Exh. 20) advising them, among other things:

Now, another question was asked — some people have asked how they can get their cards back from the Union that they have signed. They feel like they've made a mistake. Now, this can be done. You have to write a letter to the Union asking for your card back. Now if you want this done, you can come to us and we will give you all the assistance you want in writing this letter. You must mail and sign this letter but we will assist you in doing it. We will assist people at all times in writing letters, giving legal advice and such things as that in this plant, and we will continue to do so.

In his speeches made on September 27, (Resp. Exh. 10, 11, and 12) Shepherd referred to the benefits employees were receiving without a union. Shepherd then advised those employees who wanted to get out of the Union how to do it:

Now many have asked questions about uh, I've signed a card — I didn't mean to join the union. I didn't know what I was signing and I would like to resign, or I'd like to get my card back. Well, it's very simple. All you have to do is write a letter to the union telling them just what I said — I want to resign — I'd like to withdraw my membership. Now this is so simple that all you have to do is to tell me or Mr. Dengler and we'll have the girl type the letter out for you — all you have to do is sign it and take it over and mail it. . . . We would be glad to help you because we think it takes a big person to admit they have made a mistake or they didn't intend to do what they did. . . . we'll address the envelope for you, all you have to do is sign it, put it in the envelope, take it over and mail it.

With respect to the antiunion petition, Shepherd told his employees:

Some people have asked us, is it all right to get up a petition in support of the company. Yes, this is all right. You can do it, this is permissible, of course, we appreciate the moral support, your doing it voluntarily, we have not told anyone to do it, the only request of you is not to approach people while they are on their working hours to sign a petition. It must be done during coffee breaks and lunchtime. . . . If you want to sign it all right, if you don't O.K. . . .

As a result, though perhaps only in part, of these solicitations by management to have employees withdraw from the Union 11 letters were received from employees requesting withdrawal (G. C. Exh. 3(a)-(k)). All letters were composed in identical language and were typed in Respondent's office.

Willie Rayson, a maintenance mechanic, testified that he heard something about an antiunion petition which would be circulated and that he asked Vice President

Madsen without incident.

⁸Brearley Co., 163 NLRB No. 64; Logan Mfg. Co., 162 NLRB 1586.

Dengler if it would be all right to circulate one.⁹ When he was told it would be he prepared the language for the petition, took it to Dengler who had it typed and Rayson and some helpers distribute it among the employees. When the petitions were signed they were returned to Dengler's office.¹⁰ Rayson also asked Dengler how the employees could get their cards back. Dengler looked up the Union's address and had letters of withdrawal typed for employees to sign. Some 111 signatures were obtained to the petition. Rayson stated that some of the employees asked him for the letters of withdrawal, and that on occasion he would ask an employee if she wanted to withdraw. Rayson would have the letter signed, take it to the post office and mail it, paying the postage himself. In view of his testimony that his duties took him about the entire plant, the number of signatures obtained to his petition and his testimony that he visited the employees several times soliciting signatures to his petition the conclusion is inescapable that he did not restrict his activities to nonworking time.¹¹ In view of Dengler's knowledge that he was circulating such a petition and the fact that this circulation took place during the period when Respondent was applying stricter enforcement of its no-solicitation rule, at least as to union solicitation, I must conclude that Respondent had knowledge that Rayson was soliciting on company time.

It is my conclusion that Respondent violated Section 8(a)(1) of the Act by encouraging employees to withdraw from the Union and by participating in and assisting them in such withdrawal.¹² The action of the Respondent, particularly when it is considered in the context of his antiunion speeches and other violations of the Act, went beyond the mere performance of a ministerial act.¹³ The distinction is a fine one and the Board decisions, cited below, do little, either in language or in logic, to clarify it. I would also find that Respondent by permitting Rayson to circulate his antiunion petition throughout the plant engaged in a disparate application of its no-solicitation rule in violation of Section 8(a)(1).

c. The speeches to employees

During the course of the Union's campaign, speeches were made to the employees by President Shepherd and Vice President Dengler. Shepherd spoke to various groups of employees on September 16, Dengler spoke to groups of employees on September 20, and Shepherd again spoke to groups of employees on September 27. Tape recordings of these speeches were received in evidence over the objections of the General Counsel. In his brief to me, the General Counsel frankly stated that he was satisfied that the tape recordings were conscientiously transcribed and substantially correct. He also stated that the transcripts

"as being certainly more reliable than the recollections of the witness who heard the speeches or, for that matter, the recollections of the speakers themselves." With that statement I am fully in accord and any finding made herein based upon the speeches will be based on the contents as revealed in the transcripts. These transcripts were introduced as follows:

Respondent's Exhibit No. 6. Shepherd's speech of September 16 to the flatwork crew.

Respondent's Exhibit No. 7. Shepherd's speech of September 16 to linen supply.

Respondent's Exhibit No. 8. Shepherd's speech of September 16 to the upstairs laundry.

Respondent's Exhibit No. 9. Shepherd's speech of September 16 to the industrial uniform employees.

Respondent's Exhibits Nos. 10, 11 and 12 were transcriptions of speeches made by Shepherd on September 27, unidentified as to departments.

Respondent's Exhibit No. 20. Dengler's speech to employees on September 20. (Only one of Dengler's speeches was recorded).

The speeches were in opposition to the Union and its aims. The issue presented is whether they were coercive within the meaning of the Act. In Respondent's Exhibit 6 the following statement is made:

Now if they [the Union] lose the election, then that's the end, but if the election is won, it doesn't mean that you won-it just means that this is where you start negotiations, and negotiations can last for months, or even years. Particularly if the company would resist, which, naturally they would do, and during this time, there is a lot of bitterness between friends and people wanting to join the union and not wanting to join the union, and naturally they are going to have different ideas about it. Then strikes will be the result of the breaking down of negotiations and then that's when you can have threats, and violence and loss of work and pay. And of course, the company would lose business and that would mean that there probably would be a loss of some jobs and loss of earning to both the company and the employees.

* * * * *

Now Shepherd's must and will resist any signing of a contract because, as I said before, we want to protect people who do not want a union here. And, of course, we can't afford it, we've already shown you this, so naturally we will resist. And as a deadlock will result and when it does, then that is when they are going to have to call a strike. . . . You try to cross the picket line, then there is going to be threats of violence, you people read the paper, I know I'm not telling you something you don't know. Right over here in DeRitter, they had some fellows locked in the plant, they wouldn't even let them get out of the plant, they had to take them out in a helicopter because there was a picket line around there and they were afraid to get out — they were afraid they were going to be beat up, their cars turned over, and things like that.

Shepherd then mentioned the loss of jobs due to union representation, the amount of dues that would be collected and the appropriation of dues for union salaries and expense accounts.

⁹The time is best fixed as prior to Dengler's speech on September 20.

¹⁰Dengler testified that when Rayson asked for permission to circulate the antiunion petition he told him he (Dengler) was not initiating it and it was entirely up to the employees in the plant. He also testified that Rayson told it would be circulated in nonworking hours.

¹¹Rayson, in his testimony, did not state that when he requested permission from Dengler to circulate his petition he was told to confine his activities to nonworking hours.

¹²*Normandy Square Food Basket*, 163 NLRB No. 45; *Nell Amana Food Service*, 163 NLRB No. 27; *Cumberland Shoe Company*, 160 NLRB No. 1256. *Payless*, 157 NLRB 1143, *enfd.* *N.L.R.B. v. Payless* 405 F.2d 67 (C.A.6).

¹³*Cf. North American Aviation, Inc.*, 163 NLRB No. 115; *Warrensburg Board and Paper Corp.*, 143 NLRB 398; *Kay Electronics, Inc.*, 167 NLRB No. 161.

In Respondent's Exhibit 7 he stated, referring to the results of a strike:

... but if you do not go out on strike, then is when they come in with the threats, this is when they come in and say well, if you don't, it's just too bad, if you try to come in through that picket line, and somebody is going to rough you up pretty bad, may turn your car over or something like that.

On September 27 Shepherd again addressed his employees in groups. He told one group (Resp. Exh. 10, p. 5):

We want to repeat again what Mr. Dengler has said at that last meeting is, that we do not want a union, we want that plain and we will resist in every legal and lawful means, no matter how long it takes or how much it costs because we feel strong about this.

To another group on the same day (Resp. Exh. 11, p. 5):

We unquestionably, unqualified [sic], do not want and will not tolerate a union. We're gonna resist by every lawful and legal means for a long time and if it takes three months to three years, well, we're prepared to do it and we will do it.

To the same effect see Resp. Exh. 12, p. 6, another speech made the same day.

In his speech on September 20 (Resp. Exh. 20, p. 3) Dengler told the employees:

Now this company wants to reassure you of one thing. That they are going to do everything possible not sign up with any union, and they will resist in very lawful and legal means, so - no matter how long it takes. It may take three months or it may take six years, they are gonna do everything by legal and lawful means not to do it.

I think that in these speeches Shepherd and Dengler went beyond the permissible limits of Section 8(c). I do not think that the statements were mere predictions of the possible dire consequences of unionization.¹⁴ Rather I think they clearly indicated an adamant opposition to reaching any agreement with the Union and a complete rejection of the principle of good faith bargaining. The statement that Respondent would resist the Union for months and for years and would not tolerate a union are completely incompatible with any notion that it intended to bargain with any designated representative of its employees. I would further find that its warnings of strikes, violence and loss of pay constituted, in this context, a warning of the consequences of the stand which Respondent would take. Respondent was telling its employees that the Union would be forced to take strike action as a result of the course Respondent intended to pursue. I do not find that so clear a statement as saved by the parenthetical use of the words "in every legal and lawful means" injected in some of the speeches. Not only would the employees have no means of knowing what legal and lawful means were either intended by or available to the Respondent but such language could only serve to indicate that Respondent could lawfully resist good faith bargaining until a strike would be the Union's only means of recourse and that the Union, in the event of strike action, would necessarily resort to violence.

¹⁴*N.L.R.B. v. Automotive Controls Corporation*, 406 F.2d 221 (C.A. 10); *N.L.R.B. v. M & B Headware Co.*, 349 F.2d 170 (C.A. 4); *P.R. Mallory Co. v. N.L.R.B.*, 389 F.2d 704 (C.A. 7); *N.L.R.B. v. TRW-Semiconductors*, 385 F.2d 753 (C.A. 9); *N.L.R.B. v. Golub Corp.*,

In view of this finding, I find it unnecessary to dissect, as did the General Counsel, each and every sentence of the speeches or separate and additional violations. For the reasons set forth I find that the speeches violated Section 8(a)(1) of the Act.¹⁵

d. Other allegations of violations of Section 8(a)(1)

Subparagraph 7(1) of the complaint alleges that Vice President Dengler informed a group of employees that he knew who was distributing union cards. Delores Berry testified that Dengler in his speech to the flatwork department on September 20 stated:

... he said the union have people in the plant working, then he said, 'We know who they are, but we won't mention names.'

There is no transcription of this speech although there is a transcription of Dengler's speech to upstairs laundry. While Berry is the only employee who testified to this statement it was not contradicted by Dengler. In view of the fact that three employees were discharged on that same day for soliciting on behalf of the Union (so found, *infra*), I find that this statement did convey an impression of surveillance and violated Section 8(a)(1) of the Act. On the other hand, I again reject the General Counsel's contention that Shepherd's statement that union activity and solicitation was prevalent in the plant created any such impression. Inevitably an employer will know that union organization is taking place in his plant but this does not mean that he had sought to determine the identity of the organizers.

I also reject the allegation as it respects Supervisor Vallejo. Vallejo allegedly told a part-time employee, Michael Hart, that he knew who was in the union, who was organizing it and who was trying to get people in the Union. Hart allegedly repeated this conversation to another employee named Emma Harrison. Conceding that Hart's testimony is correct (Vallejo was not a witness) it relates to only one conversation with a minor supervisor and although Hart testified that he repeated it to Harrison I regard it as an isolated incident.

I also find the alleged interrogation of Roy Manuel by Dengler on September 20 as isolated. All that Manuel testified to was that Dengler, presumably investigating solicitation of employees by Berry, asked him if he had been solicited by anyone in the plant. Manuel explained the incident and that was that. There was no effort made on Dengler's part to inquire as to Manuel's feelings toward the Union.

2. Violations of Section 8(a)(3)

Sadie Ray Smith testified that she was first employed by Respondent in January 1961, that she worked in the shirt department under Johnny Vallejo and later under Farley Cates and that she was discharged on September 20, 1968. She first learned of union activity from Delores Berry in August and attended her first union meeting on

¹⁵388 F.2d 921 (C.A. 2). Since in each of these cases the court reversed the Board's findings it is apparent that the court gave greater weight to the protection afforded by Section 8(c) of the Act than does the Board. A Trial Examiner is, however, bound by board decisions irrespective of court authority or his own opinion. *Insurance Agents International Union*, 119 NLRB 768.

¹⁶*Miller Charles and Company*, 146 NLRB 404, enf. 341 F.2d 870 (C.A. 2); *Reeves Broadcasting & Development Company* 140 NLRB 466; *Hunt Electronics Company*, 146 NLRB 1328.

September 11 when she signed her union authorization card. She was given three cards to distribute and at her lunch break the following day she passed them out to three other girls, two of whom signed and returned the cards to her. On Friday, September 20, she was told, as she was preparing to leave the plant, to see Farley Cates. Cates took her to the company meeting room where Dengler was waiting. She quoted Cates as saying:

Sadie, I hate to do this. You are a good worker and everything. And you have been here with us a number of years.

This is the bad part about it, but I have heard that you have been soliciting union activities, union cards on the job.

Cates admitted he had not seen her soliciting on the job but had received the information from two other employees. Despite her denial of on-the-job solicitation she was fired. Smith testified to three conversations with an employee named Dorothy Faulk. The first took place after work on September 12 when she and another employee asked Faulk what she thought about the Union. On the following day Smith asked her if she had made up her mind and Faulk told her to leave her alone and stop worrying her about the Union. This, according to Smith, was on her lunch break. The next day, again on lunch break, an employee named Esseline Nonette told her that Faulk had reported this solicitation to Bessie Thomas, group leader, Smith then told Faulk she should not have reported this incident to Thomas or anyone else.

Thomas testified that she had overheard Smith tell Faulk to keep her mouth shut and that this occurred right after lunch break. Cates asked her about the incident and Thomas reported what she had heard. Thomas stated that Smith and Faulk were good friends.

Cates testified that three girls, including Smith, were employed in the shirt finishing department. As to Smith he stated that for 2 or 3 weeks prior to her discharge her attention to her work was very poor: "It was too much loud talking and talking between the other units and people in the aisles, and so forth, that created an atmosphere that didn't, wasn't very conducive to getting production." Production rose "drastically" the Monday following her discharge.¹⁴

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As to the Faulk incident, Cates stated he observed Smith talking very loudly to Faulk at her work station at 12:36 p.m., that he asked Thomas what it was all about and that Thomas told him Smith was bawling Faulk out for not joining the union. Another employee, Ofelia Gonzales, told him that Smith had told Faulk she was going to "whip her ass."¹⁷ Faulk refused to tell him anything. Cates reported the incident to Smythe, Shepherd and Dengler. Each had complained to him about poor production and excessive claims. Shepherd gave him permission to fire Smith and Cates did fire her, telling her she had been soliciting during working hours.

The discharge interview between Cates and Smith was tape recorded and the record offered and received after the close of the hearing.¹⁸ This record establishes that

Smith was told she discharged solely because Cates had "heard" from other employees that she was soliciting on company time. Despite Smith's denial she was not confronted with any employee and was summarily fired after some 7 years of service.

Smythe Shepherd testified that at or immediately prior to the time Smith was discharged he had told Cates there was too much trouble in the department, respecting quantity and quality of the work. As to Smith, he stated he had had complaints from supervisors that she was disrupting the work of her fellow employees. This general statement was all Shepherd had to offer on Smith.

I have little difficulty in finding that Smith was discharged for her activity on behalf of Local 580. Her long record of service, her acknowledged good workmanship and the triviality of the specific cause of her discharge, her argument with Faulk, all belie Respondent's contentions. On the testimony of Respondent's own witnesses, Smith's reprimand to Faulk took less than a minute, confined as it was to a single statement, and could hardly have disrupted production. Nor do Respondent's own records support its contention that production in her department had deteriorated, let alone that Smith was responsible. The testimony that she engaged in loud talking is so nebulous as to be insusceptible of proof or disproof. It is a fact that Respondent was hostile to the Union, engaged in other unfair labor practices to keep it out and, on one day, discharged three veteran employees known to be active on behalf of the Union.

The tape recording of her discharge interview indicates the only reason given her for discharge was solicitation on company time and the evidence of this was admittedly hearsay. The tape recording serves only to confirm my conviction that she was discharged for her union activity.

Delores Elizabeth Berry was employed by Respondent in 1956 and worked in the flatwork department under F. H. Alsobrook, foreman. Berry testified that on July 8 she and Rosa Coleman wrote a letter to the AFL-CIO in Washington and that on August 21 she made contact with a Mrs. Johnny Salome in Houston and a union meeting was held that night. She and Coleman solicited attendance among the other employees. A second meeting was held on September 11 and at this meeting union cards were distributed. Berry signed one and took eight for distribution among other employees and had seven signed the next day at the plant during the lunch period. About 3:30 p.m. on September 20 Alsobrook took her to the conference room, told her she had been off for 6 weeks, that she was late in reporting for work and had been soliciting for the union. She admitted asking employees to sign cards and that she had been consistently late over a period of years. She had also taken off for three separate periods due to pregnancy.

Alsobrook testified that he returned from his vacation on September 14 and noticed that there was extreme tension throughout the plant, that the employees were not producing as they should and that they were emotionally upset. As conditions grew worse he investigated and learned from Bessie Mae Johnson that Berry was the source of the trouble. He also had complaints from four other employees that Berry was trying to pressurize them into joining the union.¹⁹ Alsobrook went to Shepherd, told

¹⁴Respondent's production records (Resp. Exh. 15) do not justify this statement. September production records for Smith's department read, in terms of units:

¹⁷Corroborated by Gonzalez.

¹⁸The recordings were not marked as exhibits. The record of Smith should be marked exhibit 24, that of Brown as 22, and that of Berry as 23.

¹⁹This was not corroborated by three employee witnesses called by Respondent, Pearl Johnson, Bessie Johnson, and Verneda Simmons. Pearl Johnson merely testified that Berry asked her to sign a card in the

him something had to be done since claims had doubled and tripled.²⁰ Shephard told him to make his own decision and Alsobrook discharged Berry telling her "that she had been soliciting on the job for union activities, and that all these people had been complaining on her, she was causing harrassment and undue rest through the department." Alsobrook further testified that Berry was a good employee but had a horrible record for tardiness until about a month prior to her discharge when she straightened out.

Having found Respondent did not substantiate its claim that Berry disrupted the work in her department nor that there was a significant increase in claims which could be attributed to Berry, I find that the only reason for her discharge was her solicitation of union cards. Respondent has not established, however, that this, except in the instance of Manuel,²¹ took place during working time, and, even if it did I would not find, in view of the testimony of other employees respecting solicitation in the plant, it justifiable cause for discharge. In short I find that the only reasonable inference that can be made is that Berry was discharged for her lawful union activity and for no other reason.²²

Darlene Brown was employed by Shepherd in its industrial uniform department from April 10, 1963, until discharged on September 20, 1968. She testified she attended the first union meeting on August 21 and at the second meeting on September 11 she signed a card. She was given four cards for distribution to other employees but asked only one employee to sign a card. (This employee, identified only as Jackie, refused to sign). She was, however, asked by Willie Rayson if she was soliciting and was told by him that an employee named Mamie Green told him that she had asked Green to sign a card. This she denied.

On September 20, she was discharged by her supervisor, Bill Madsen, on the ground that she had been soliciting on the job — selling things on the job. This she admitted and Madsen told her he had to let her go. According to Brown, she had been selling deodorizers for another employee named Annie B. Moye for about 2 weeks prior to September 20 and had sold deodorizers to

restroom, and Verenda Simmons that Berry asked her to sign a card outside the plant. Simmons never complained to Alsobrook about Berry. Bessie Mae Johnson testified that Berry worked directly across the table from her and talked to her about the union and that this made her nervous. She admitted that she was a nervous person and that there was talk about the union throughout the shop and that this made her more nervous. Berry did not ask her to join the union. Manuel, a truckdriver, testified that Berry asked him to sign a card while he was loading a truck, that he refused and later reported the incident to Dengler when Dengler asked him if he had ever been solicited to join a union. The tape-recorded discharge interview between Alsobrook and Berry was exceptionally brief. He told her she had worked for him for 12 years, had a poor absentee record but that the important thing was that she had been soliciting on the job. Despite the denial that she had talked to anyone on the job and the fact that Alsobrook's evidence was based on "reports," she was fired.

²⁰This statement was not substantiated by Respondent's records (Resp. Ex. 14) and Alsobrook's testimony regarding the method of computing claims. Shepherd also testified to an increase in claims following the advent of union organization but there is nothing to establish that Berry was responsible for this increase, if in fact there was one, any more than other employees in her department.

²¹This incident I find totally insignificant as far as "disruption" of work was concerned, it took only 5 minutes or a little longer. Since the conversation was not related on objective estimate of time can be made.

²²The allegation as to habitual tardiness must fail in view of Alsobrook's testimony that she had straightened out in this respect during the month prior to discharge.

two girls in Madsen's office in his presence without receiving a reprimand. She stated she had not seen the signs posted against solicitation, did not know it was against the rules and had never requested permission to engage in solicitation. She further testified that she had sold pies, candy and punch cards to other employees, including Madsen, and had never heard of any employee being fired for selling merchandise. During her period of employment, she had taken pregnancy leave on three occasions, but testified at the time of her discharge Madsen did not mention absenteeism or tardiness.

On cross-examination Brown admitted that she had often reported late for work because work would not be ready for her until 9 or 9:30 and that on her time sheet she showed her reporting time as 8 a.m. Her time clock would, however, show her actual time of arrival.²³ She admitted that she knew it was wrong to falsify her timesheet but did it because other employees falsified their sheets, and admitted being reprimanded by Madsen for this. She also admitted being reprimanded by Madsen on different occasions for her absenteeism which she justified on the ground that she always called in.

Madsen testified that he discharged Brown because she was late for work, misrepresented her time sheet and distracted other people. As to distracting other people, Madsen said he had complaints from superintendents Earl Ridley in the drycleaning department and Farley Cates in the finishing department that Brown, visiting their departments, would stop and talk to the employees.²⁴ The complaints were submitted about 2 weeks before her discharge. He received a similar complaint from a Mrs. Smart in the make-up department.²⁵

Madsen testified that at her discharge interview he told Brown that she was discharged for being late, misrepresenting her time sheet and distracting the work of other employees. He also testified that she did not call him when she was going to be absent.²⁶ He denied that he knew she was soliciting for the union. He did testify, however, that the specific reason he gave Brown for her discharge was her tardiness and that he spoke to her about it in July and warned her that if it did not cease he would have to lay her off.²⁷ Madsen offered no rebuttal to Brown's explanation for her tardiness; i.e., that work would not be ready for her until 9 or 9:30 a.m.

It is my conclusion, although the issue is close, that Brown was discharged because Respondent suspected her of union activity. Respondent's knowledge of this activity is based upon her testimony that Willie Rayson accused her of solicitation of a union card from Mamie Green.²⁸ While she denied this to Rayson there is nothing to establish that he believed the denial. My conclusion is

²³The employees punched a timeclock upon arrival and were paid, if they were hourly paid employees, by the time on the timeclock. The reason for signing a timesheet at their work station was not disclosed.

²⁴Neither Cates nor Ridley were called to support this testimony.

²⁵Mrs. Smart was not called as a witness.

²⁶I credit Brown's testimony that she did call in when she would not be able to report and that Madsen was not available to receive her calls. I also credit her testimony that she left the message for Madsen.

²⁷A tape recording of the discharge interview between Madsen and Brown (Resp. Ex. 23) indicates that he found three reasons for discharging her, her tardiness, her failure to call in when she was absent and her solicitation of sales of merchandise. In this interview there is no denial by Madsen that other employees also solicited on company time.

²⁸From his own testimony and his demeanor on the stand I cannot but believe that Brayson reported all union activity and the identity of union adherents to management. Frankly, I would not only call him an agent of Respondent but, in the common vernacular, a stool pidgeon.

based also upon the fact that the asserted reasons for her discharge, her tardiness in particular, had been largely ignored by Respondent until union organization became rampant in the plant. Likewise, I find nothing to establish that her talking with other employees either disrupted their or her work or that it was more than was customary among employees in the plant. I have given further consideration to her absenteeism as established by Respondent's Exhibit No. 18 but this, too, seems to have been overlooked until the organizational campaign became known to Respondent, to which it responded with its anti-union and unlawful speeches.

In reaching my conclusion that Smith, Berry and Brown were discharged for their union activity I have given some but not controlling weight to the fact that Respondent's conduct followed a familiar pattern of discrimination. Its response to the known organizational activity in its plant was antiunion speeches, stricter enforcement of its anti-solicitation rule and the discharge of known union adherents²⁹ for asserted violations of company rules — violations which had been overlooked for many years. As the courts have acknowledged, employers seldom confess that employees have been discharged for their union activity and the best an examiner can do in the face of conflicting testimony is to draw what experience had indicated is the most reasonable inference from an employer's conduct. Such deduction cannot, of course, be free from error but it is on such deduction that findings must be made.

It is my conclusion that the discharges of Smith, Berryman, and Brown violated Section 8(a)(3) and (1) of the Act.

IV. THE REMEDY

Having found that Respondent engaged in and is engaging in certain unfair labor practices it shall be recommended that it cease and desist from the same and take certain affirmative action necessary to effectuate the policies of the Act.

Having found that Respondent discharged Sadie Smith, Darlene Brown, and Delores Berry to discourage membership in a labor organization, it shall be recommended that Respondent offer them full and immediate reinstatement to their former or substantially equivalent position without prejudice to their seniority and other rights and privileges and make them whole for any loss of earnings or other monetary loss they may have suffered by reason of the discrimination practiced against them. Loss of earnings shall be computed in accordance with the Board's formula as set forth in *F. W. Woolworth Company*, 90 NLRB 289, and *Isis Plumbing & Heating Co.*, 138 NLRB 716.³⁰

Upon the foregoing findings and conclusions and upon the entire record in this case I make the following:

²⁹Brown was not, as her own testimony establishes, an active organizer for the union. My finding as to Brown is based on the fact that Brayson accused her of soliciting for the union and that her admitted selling of deodorizers, a nonunion activity, would serve to fortify Respondent's position that the discharges of Smith and Berryman were nondiscriminatory.

³⁰While I do not consider it within my province to amend the Board's remedial procedures, it is suggested that the Board might well consider whether interest at the rate of 6 percent is adequate under prevailing rates.

CONCLUSIONS OF LAW

1. By promulgating an unlawful no-solicitation rule; by discriminatorily enforcing it; by encouraging employees to withdraw from the Union and by assisting them in withdrawing; by threatening its employees that union organization would be futile and would result in strikes, violence and loss of pay; and by creating the impression that it knew the identity of union adherents, Respondent violated Section 8(a)(1) of the Act.

2. By discharging Sadie Smith, Darlene Brown, and Delores Berry because of their membership in and activity on behalf of the Union and in order to discourage membership in said Union, Respondent violated Section 8(a)(3) and (1) of the Act.

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

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record in this case, it is recommended that Respondent, Shepherd Laundries Co., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Promulgating and enforcing an unlawful no-solicitation rule; discriminatorily enforcing a lawful no-solicitation rule; encouraging employees to withdraw from the Union and assisting them in withdrawing; threatening its employees that union organization would be futile and would result in strikes, violence and loss of pay; creating the impression that it knew the identity of union adherents.

(b) Discouraging membership in International Union of Laundry and Dry Cleaning Workers, AFL-CIO, or in any other labor organization by discharging or discriminating against any employee in regard to his hire, tenure or other terms and conditions of employment.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action which I find necessary to effectuate the policies of the Act:

(a) Offer Sadie Smith, Darlene Brown, and Delores Berry full and immediate and reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges and make them whole for any loss of earnings or other monetary loss they may have suffered by reason of the discrimination practiced against them in the manner set forth in that section hereof entitled "The Remedy."³¹

(b) 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 relevant and necessary to a determination of compliance with paragraph a.

(c) Post at its plant at Beaumont, Texas, copies of the notice marked "Appendix."³² Copies of said notice, on forms to be provided for the Regional Director for Region 23, after being duly signed by the Respondent's

³¹For reasons disclosed by the record the usual "Armed Services" order is not recommended.

³²In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the

representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify said Regional Director, in writing, within 20 days from the date of this Decision, what steps have been taken to comply therewith.³³

IT IS FURTHER RECOMMENDED that the complaint, as to all matters not specifically found to be in violations of the Act, be dismissed.

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

³³In the event that this Recommended Order is adopted by the Board, the provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

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

WE WILL NOT keep in effect or enforce a rule which prohibits union solicitation or activity on nonworking time.

WE WILL NOT encourage our employees to withdraw

from the International Union of Laundry and Dry Cleaners Workers, AFL-CIO, or any other union.

WE WILL NOT assist our employees in withdrawing from said or any other union by preparing letters of withdrawal or antiunion petitions or by encouraging their circulation.

WE WILL NOT tell our employees that we will resist the said Union for months and years and will not tolerate a union in our plants.

WE WILL NOT tell our employees that as a result of our resistance to the said or any other union there would be strikes, violence and loss of pay.

WE WILL offer Sadie Smither, Delores Berry, and Darlene Brown their old jobs back and pay them for any earnings they may have lost because we fired them.

WE WILL NOT discharge any employee because he joined a union or was active for any union.

WE WILL NOT tell our employees we know who belongs to the Union.

All our employees are free to join and remain members of any union and not to join or remain members of any union.

SHEPHERD LAUNDRIES
Co.
(Employer)

Dated

By

(Representative)

(Title)

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

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 6617 Federal Office Building, 515 Rusk Avenue, Houston, Texas 77002, Telephone 713-226-4296.