In the Matter of BIG LAKE OIL COMPANY, *and* INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 709 (A. F. L.)

Cases Nos. 16–C–1007, 16–C–1008, and 16–R–692, respectively.—Decided May 20, 1944

DECISION
AND
ORDER

Pursuant to a Decision and Direction of Election of the Board,[1] an election was held on October 22, 1943, among the employees of the respondent at Texon, Texas, to determine whether or not International Union of Operating Engineers, Local 709 (A. F. L.), herein called the Union, was the majority representative of the employees for the purposes of collective bargaining. Having lost the election, the Union, on November 3, 1943, filed objections with the Regional Director, alleging that the respondent had engaged in certain unfair labor practices which had affected the outcome of the election. The Regional Director investigated the objections, reported to the Board that they raised substantial and material issues, and recommended that a hearing be held. On November 3, 1943, the Union filed charges with the Board alleging that the respondent had engaged in unfair labor practices. On December 21, 1943, the Board issued an Order consolidating the above proceedings and directing that a hearing on the objections and on the charges of unfair labor practices be held. On February 7, 1944, the Trial Examiner issued his Intermediate Report finding that the respondent had engaged in and was engaging in unfair labor practices, recommending that it cease and desist therefrom, and take certain affirmative action as set out in the copy of the Intermediate Report attached hereto. On February 28, 1944, the respondent filed exceptions to the Intermediate Report and a brief in support of the exceptions. The Board has considered the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and the brief, and the entire record in the case and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

[1] 52 N. L. R. B. 1188.

Since the record establishes that the respondent engaged in unfair labor practices prior to the election, we find that the election was not an expression of the free will of an uncoerced majority and therefore should be set aside, and we shall so order. We shall not, however, direct a further election until such time as the Regional Director advises us that the effects of the unfair labor practices have been dissipated.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Big Lake Oil Company, Texon, Texas, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

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

(a) Post immediately in conspicuous places in its offices and throughout its oil fields at Texon, Texas, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraph 1 of this Order;

(b) Notify the Regional Director for the Sixteenth Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply therewith.

AND IT IS FURTHER ORDERED that the complaint, insofar as it alleges that the respondent discriminated against Chaffin R. Proctor within the meaning of Section 8 (3) of the Act, be, and it hereby is, dismissed.

AND IT IS FURTHER ORDERED that the election held on October 22, 1943, among the employees of the Big Lake Oil Company at Texon, Texas, be, and it hereby is, set aside.

INTERMEDIATE REPORT

Mr. Robert F Proctor, for the Board.
Mr. Robert T. Neill, of San Angelo, Texas, for the respondent.
Mr. Arvil Inge, of Fort Worth, Texas, for the Union.

STATEMENT OF THE CASE

Upon two separate charges both duly filed on November 3, 1943, by International Union of Operating Engineers, Local 709, affiliated with the American

Federation of Labor, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Sixteenth Region (Fort Worth, Texas), issued its complaint dated January 7, 1944, against Big Lake Oil Company, herein called the respondent, alleging that the respondent had engaged in, and was engaging in unfair labor practices, within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and notice of hearing thereon were duly served upon the respondent and the Union.[1]

With respect to the unfair labor practices, the complaint alleges, in substance, (1) that the respondent, from on or about June 1, 1943, to the date of the complaint, disparaged and expressed disapproval of the Union, interrogated its employees concerning their union affiliations and activities, urged, persuaded, threatened, and warned its employees to refrain from assisting, becoming members of or remaining members of the Union; (2) that the respondent, about October 22, 1943, and prior thereto, interfered with the conduct of a Board-ordered election among its employees by publishing and circulating on July 24 misleading and threatening statements concerning the employees' union activities, by discriminatorily soliciting employees in the armed forces to participate in the election, by using company time and equipment to transport "a few favored" employees to the polls, by conducting a poll among the employees to determine how they intended to vote in the election, by making remarks designed to induce the employees to vote against the Union, and by stating to certain employees that if the Union were successful in the election, there would be little chance of promotion in the future and that certain benefits enjoyed by the employees would probably be denied; (3) that the respondent, on October 27, 1943, discharged one named employee and thereafter failed and refused to reinstate him because he joined or assisted the Union or engaged in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; and (4) that the respond-

[1] On July 27, 1943, the Union filed with the Board's Regional Director a petition for investigation and certification in Case No 16–R–692. On September 7, 1943, a hearing was held on said petition. On October 5, 1943, the Board issued its Decision and Direction of Election. On October 22, 1943, an election by secret ballot was conducted among the respondent's employees found by the Board to constitute an appropriate unit On October 25, 1943, the Regional Director issued his report on the results of the election. On the same day the Union, by letter to the Regional Director protested the results of the election On November 1, 1943, the Regional Director issued his revised report on the results of the election, finding, *inter alia*, that the Union had not been designated by a majority of the employees in the appropriate unit On November 3, 1943, the Union filed with the Regional Director objections to the election, alleging in substance that the respondent, by suggesting to certain employees that they vote, by suggesting to certain employees that they "knew how to vote," by transporting certain employees to the polling place, by stating to certain employees that the respondent was transporting to the polls a sufficient number of employees then in the armed forces "to win said election," by utilizing the services of an employee-soldier in electioneering against the Union, and by assisting said soldier in that activity by transporting him from place to place on the day of the election, had prevented a free and uncoerced election On November 20, 1943, the Regional Director issued his report on the Union's objections to the election, finding, *inter alia*, that the respondent's conduct prior to and during the election had prevented a "free and unhampered expression by the employees of their desires with respect to representation" and recommending that a hearing be held in the matter On November 26, 1943, the respondent filed its reply to the Regional Director's report on the Union's objections On December 7, 1943, the Board issued its order directing a hearing on the Union's objections and referring the case to the Regional Director with authorization to him to issue notice of such hearing On December 21, 1943, the Board, pursuant to Article II, Section 36 (b) and Article III, Section 13 (c) (2) of its Rules and Regulations—Series 3, consolidated cases Nos 16–R–692, 16–C–1007, and 16–C–1008. On December 28, 1943, the respondent filed with the Board a protest against the consolidation of these cases On January 7, 1944, the Regional Director issued notice of a consolidated hearing in the three cases

ent, by the above-stated conduct, discriminated with respect to the hire and tenure of employment and interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The respondent filed an answer dated January 14, 1944, containing no averments regarding the operations of the respondent and denying that the respondent committed any of the alleged unfair labor practices. The answer also contains a motion to dismiss the complaint on the ground that it is beyond the scope of the Board's order of December 7, 1943, directing a hearing in Case No 16-R-692 Pursuant to notice, a hearing was held at Big Lake, Texas, on January 20 and 21, 1944, before William F. Guffey, Jr, the undersigned Trial Examiner, duly designated by the Chief Trial Examiner The Board and the respondent were represented by counsel, the Union by its representative, and all participated in the hearing Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties At the beginning of the hearing the motion to dismiss the complaint, which was contained in the respondent's answer, was denied At the conclusion of the hearing, counsel for the Board and the respondent presented oral argument on the record before the undersigned The parties were advised that they might file briefs with the undersigned. All parties waived this right and no briefs have been filed.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, Big Lake Oil Company, is a Delaware corporation, having its principal place of business at Texon, Texas, where it is engaged in the production of crude petroleum and the manufacture of casinghead gasoline obtained pursuant to oil and gas leases upon land owned by the University of Texas. During the year 1943, the Company purchased raw materials valued at approximately $440,000, more than 50 percent of which was shipped to the respondent at Texon from points outside the State of Texas. During the same period, the respondent produced approximately 1,515,000 barrels of petroleum, all of which was delivered to a pipe line near the respondent's premises and thence transported to the Humble Oil & Refining Company. During the same period, the respondent produced approximately 2,400,000 gallons of casinghead gasoline, all of which was delivered to the Republic Oil & Refining Company near Texas City, Texas. The respondent concedes that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

International Union of Operating Engineers, Local 709, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the respondent.

III THE UNFAIR LABOR PRACTICES

A. *Introduction*

The Union began its organizational activities among the respondent's employees early in July 1943. Several organizational meetings were held in the local court room, on the local school grounds, and in an open field on or near the respondent's property. On July 27, 1943, the Union filed with the Board's Regional Director a

petition for investigation and certification. An election was held pursuant to this petition on October 22, 1943. The Union lost the election by two votes. Shortly thereafter, the Union filed objections to the election and the unfair labor practice charges which resulted in this proceeding.

B. *Interference, restraint, and coercion*[2]

On July 24, 1943, the respondent posted on its bulletin boards and mailed to each of its employees a statement signed by Charles E. Beyer, the respondent's vice-president and general manager, stating that the Union had notified the respondent that a petition for investigation and certification was about to be filed with the Board and setting forth the respondent's position regarding the unionization of its employees and the election which probably would be held. The full text of this statement is as follows:

> TO THE EMPLOYEES OF BIG LAKE OIL COMPANY:
>
> Representatives of the American Federation of Labor have given notice that a petition will be filed with the National Labor Relations Board for an election to determine whether a majority of the employees of Big Lake Oil Company desire to organize a union to engage in concerted activities for the purpose of collective bargaining with the Company.
>
> The employees of Big Lake Oil Company have a right to form such an organization if they choose. The Company has no right to interfere with, restrain, or coerce any employee in the exercise of that right. It will not do so.
>
> Any election held will be by secret ballot. In the United States it is the duty of every citizen to vote. Do so. There will be no effort to interfere, and regardless of the result of the election no employee will get in bad with the Company because of any activity to carry the election or because of any argument he may advance. Whether an employee votes affirmatively or negatively, his standing will not be jeopardized. Of course no such activity should, nor necessarily will, interfere with the work for which the Company pays and to which it is entitled. The Company will make it possible to vote if necessary on Company time.
>
> The National Labor Relations Act does not compel an employee to assist in forming or to join a labor union. Under the law he is as free not to do so as he is to do so. If he does not join a union he has the right to deal individually with his employer.
>
> The Big Lake Oil Company has the right to express its views on this question. The employees are entitled to those views.
>
> In the judgment of the Big Lake Oil Company the organization sought to be effected would not prove to the interest of the employees or to their mutual interest.
>
> For the present and for some indefinite time in the future our united efforts and interest must be to assist in winning the WAR as soon as possible and in getting our boys back home. This is no time for experimenting. The Company takes this opportunity regardless of what the future may bring to state that its employees have done their part consistently, continuously and satisfactorily, and it offers its congratulations and appreciation.
>
> Old Number One—the discovery well—was brought in in May, 1923. Shortly thereafter the Company was organized Some of you have been here since the organization. Some of you have sons and daughters born and raised on the lease that are old enough to have gone through college and

[2] Unless otherwise noted, the findings herein rest upon undisputed and credible evidence.

some of the boys are now in the Army and Navy. We are holding their jobs for them.

Without any union we have been able every year to pay a Christmas bonus. Sick benefits have been established. Hospitalization has been provided and is being maintained at a loss. The picture show is being run at a loss. We have our own golf course, tennis courts and swimming pool. We have established an annuity retirement plan. It became effective June 1st of this year. To accomplish this the Big Lake and the Plymouth Companies are paying more than five hundred thousand dollars back premiums for the employees' benefit. The Company contributes toward the payment of the premiums. Sons of the employees have been consistently aided in getting an education by giving them work in the summer—and they have done their work well. These are not the accomplishments of any union but the result of twenty years cooperation between you and the Company.

It is possible that there may be an attempt to construe the mere recital of these benefits as a threat that they might be withdrawn. This would be unfair. Such is not the intention. The Company cannot know any more than you can know what may happen if the projected organization is accomplished.

The foregoing is submitted with the earnest hope that it will receive the careful and thoughtful consideration of eacy [sic] employee.

In the latter part of July or early August, the Union held a meeting on the local school grounds. The first part of this meeting was open to the public; the latter part was only for those interested in the Union. W. J. Grissett, the respondent's assistant superintendent, attended this open meeting upon the invitation of one of the employees who was active in the Union. During the course of the meeting, those present were permitted to ask questions of the Union's representatives. Grissett took this opportunity to inquire, in the presence of about 70 employees, if any law compelled the respondent to carry free insurance on its employees, to pay them a 2-weeks Christmas bonus, and to maintain a hospital and swimming pool for its employees. Grissett testified, and the undersigned finds, that his purpose in asking these questions was "to call the men's attention to something they had already received without having to bargain for it, or use any tactics whatever, what they had gotten without any effort on their part other than being loyal employees." About a month prior to the election, Grissett told three employees that "if this union business come up," the respondent "might do away with the hospital, and bonus, and all."

About two weeks prior to the election, Grissett told R. T. Norwood, another employee, that Norwood had always been independent of matters such as the Union, but that he might be compelled to join the Union later on, and that his [Grissett's] brother had once belonged to a union which levied a special assessment on him, "so much money . . . he didn't like it, and . . . moved."

Shortly before the election, Grissett told Willie C. Dies, an employee, that no employee would be discharged because of the Union or the election and that he [Grissett] had "no regards" which way the election went, but that the respondent was privileged to fight the Union in the election and that it was doing so. Grissett added that the respondent was going to get some of its employee-soldiers to return to Texon and vote, that some of the soldiers did not want to participate in the election but the respondent had written their commanding officer who had them return to Texon regardless of their wishes in the matter.[3] About the same

[3] Beyer testified, and the undersigned finds, that the respondent wrote no commanding officers concerning this matter. Dies' credible testimony concerning Grissett's statement to that effect, however, stands undisputed in the record.

time, Paul Danner, an employee, questioned Grissett concerning his [Danner's] future prospects with the respondent. Grissett replied that if the matter rested with him, he thought Danner "could get somewhere" with the respondent, but if the Union won the election, "it would be left up to the union" and Grissett would have little to do with Danner's future.

The day before the election, Grissett spent most of his time showing the employees a sample ballot to be used in the election and explaining how to mark the ballot to vote either for or against the Union. Grissett thus explained the ballot to 70 or 75 employees.

On October 13, 1943, Vice-President Beyer sent identical letters to seven employees in the armed forces notifying the addressees of the forthcoming Board election and of their right to participate therein, and expressing the respondent's hope that the addressees would be present to participate in the election. The following day, Beyer sent another letter to the same persons notifying them of the time and place of the election and again stating the respondent's desire that the addressees be present to cast their vote. At the time of the election, there were 35 or 40 of the respondent's employees in the armed forces. According to Beyer's credible testimony, he notified only seven of the election because the others were either stationed at inconvenient distances from Texon or had had recent furloughs which, he assumed, would preclude them from being in Texon on the day of the election.

On the day of the election, the respondent transported four or five employees to the polls in a company car. It brought one member of the armed forces from San Angelo to Texon, a distance of about 85 miles, in a company car to enable him to participate in the election. According to credible and undisputed evidence, it has always been the respondent's practice to take its employees to the polls on political election days if that was necessary to permit them to vote.

About a week or ten days after the election, Assistant Superintendent Grissett told J. C. Baker, an employee, that he would not be discharged because of his membership in the Union, that "from now on" the employees' "work was what would count," but that "those leaders in the union had better watch their step." He also told Baker on this occasion that the Union was not "so smart after all" and that the respondent "had the union full of spies all the time."

C. *Conclusions with respect to interference, restraint, and coercion*

Upon the foregoing facts, the undersigned is of the opinion that the respondent has failed to maintain the neutrality concerning its employees' choice of a bargaining representative which the Act requires. At the very outset of the Union's organizational drive, Vice-President Beyer, in his July 24 written statement, notified all the employees that in the respondent's view the Union "would not prove to the interest of the employees." He then recited the benefits the employees enjoyed as a result of cooperation between employees and management "without any union." In the same statement Beyer anticipated the possibility that his rmarks might be construed as a threat to withdraw these benefits in the event the Union made a successful appeal to the employees. He did not, however, assure the employees that the benefits would not be withdrawn. Instead, he stated: "The Company cannot know any more than you can know what may happen if the projected organization is accomplished." This statement is open to but one construction—that to seek mutual aid and protection through concerted activity was to risk the loss of benefits already enjoyed. The same threat was implicit in the questions asked by Assistant Superintendent Grissett at the Union meeting held shortly after Beyer's statement was circulated. The threat became all but direct when Grissett told three employees that if the Union were successful, the

respondent "might do away with the hospital, and bonus, and all." These statements of Beyer and Grissett, as well as Grissett's other above-noted statements to Norwood, Dies, Danner, and Baker demonstrate the respondent's hostility toward the Union. They were calculated to, and had the necessary effect of discouraging adherence to the Union.

Additional interference with the employees' exercise of their right to select a bargaining representative is found in Grissett's ballot—explaining actively the day before the election, Beyer's urging of the employees to vote, Beyer's letters to seven employees in the armed forces, and the respondent's transportation of certain employees to the polls on election day. In view of the respondent's expressed antipathy for the Union, the employees could not fail to understand that the respondent was urging them and assisting them to vote against the Union.[4]

The respondent, in its reply to the Regional Director's report on objections to the election in Case No. 16–R–692, asserts that Beyer's statement of July 24, 1943, was a privileged statement protected by the constitutional guarantee of free speech. In this connection the respondent relies upon the *Virginia Electric* case[5] and the *American Tube Bending* case.[6] The contention is without merit. The respondent's "total activities," as outlined above, place the instant case outside the applicable scope of the *American Tube Bending* case and within the doctrine expressed in the *Virginia Electric* case.

The undersigned finds that by Beyer's statement of July 24, Grissett's statements and activities outlined above, urging employees, including those in the armed forces, to vote, and transporting employees to the polls, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

It is further found that the record does not support the allegations of the complaint, that the respondent interrogated its employees concerning their union affiliations and activities and conducted a poll to ascertain how they intended to vote in a Board-ordered election.

D. *The discharge of Chaffin R. Proctor*

The complaint alleges that on or about October 27, 1943, the respondent discharged and theerafter failed and refused to reinstate Chaffin R. Proctor because he joined or assisted the Union or engaged in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. The respondent, in its answer, admits that it discharged Proctor on the alleged date, but avers that he was discharged because he was found asleep at his post of duty on the night of his discharge.

Proctor joined the Union on July 28, 1943. Proctor admitted that he attended none of the Union's "preliminary" meetings, that he held no office in the Union, that he solicited no other employees to join the Union. In short, Proctor's total union activity consists of joining the Union and attending five or six of its meetings. Thus, it appears that Proctor was not active either in the organization or administration of the Union.

In addition to Proctor's scant union activity, the only evidence suggesting discrimination in the discharge is the statement of C. M. Satterfield, acting farm boss at the time of the discharge, that the respondent had been watching

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[4] *Matter of Stonewall Cotton Mills*, 36 N. L. R. B. 240, 249–51, enforced as modified on another point, 129 F. (2d) 629 (C. C. A. 5), cert. denied, 317 U. S. 667.

[5] *N. L. R. B.* v. *Virginia Electric & Power Company*, 314 U. S. 469.

[6] *N. L. R. B.* v. *American Tube Bending Company*, 134 F. (2d) 993 (C. C. A. 2), cert. den., 320 U. S. 768.

Proctor and had his discharge "timed to perfection," Grissett's statement to Proctor that he had had someone watching Proctor, Grissett's statement to Baker shortly after the election that the leaders of the Union had better watch their step, and Grissett's admission that prior to the election he had heard that Proctor was a member of the Union. Grissett testified, however, that there were many other employees whom he thought to be members of the Union.

It is true, as Board counsel argued at the hearing, that a finding of discrimination may rest upon circumstantial rather than direct evidence. But the circumstances of the instant case do not persuade the undersigned to such a conclusion. The statements of Grissett and Satterfield are subject to an interpretation indicating discriminatory motive. But the fact remains that Proctor was not a leader of the Union. He was just a member as were many other employees. There is nothing in the record which sets Proctor apart from the other members. There is no persuasive showing of any reason why the respondent should have singled out Proctor for discriminatory discharge and left all the other members of the Union untouched. On this state of the record, it is unnecessary to consider the merits of the respondent's defense.

The undersigned finds that the record fails to support the allegation of the complaint that the respondent discharged and thereafter refused to reinstate Proctor because of his membership in and activity on behalf of the Union or because he engaged in other concerted activity.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The undersigned finds that the activities of the respondent set forth in Section III, B and C, above, occurring in connection with its operations described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the respondent has engaged in certain unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action which the undersigned finds necessary to effectuate the policies of the Act.

Since it has been found that the record fails to support the allegations of the complaint that the respondent interrogated its employees concerning their union affiliations and activities, conducted a poll to ascertain how the employees intended to vote in a Board-ordered election and discriminatorily discharged Chaffin R. Proctor, it will be recommended that those allegations of the complaint be dismissed.

CONCLUSIONS OF LAW

1. International Union of Operating Engineers, Local 709, affiliated with the American Federation of Labor, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

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

4. The respondent did not interfere with, restrain, or coerce its employees in the exercise of the rights guaranteed in Section 7 of the Act by interrogating

them concerning their union affiliations and activities or by conducting a poll to ascertain how its employees would vote in a Board-ordered election.

5. The respondent did not discriminate with respect to the hire and tenure of employment within the meaning of Section 8 (3) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends that the respondent, Big Lake Oil Company, Texon, Texas, and its officers, agents, successors, and assigns shall:

1. Cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

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

(a) Post immediately in conspicuous places in its offices and throughout its oil fields at Texon, Texas, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraph 1 of these recommendations;

(b) Notify the Regional Director for the Sixteenth Region in writing within ten (10) days from the receipt of this Intermediate Report, what steps the respondent has taken to comply herewith.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report the respondent notifies said Regional Director in writing that he has complied with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

It is further recommended that the allegations of the complaint that the respondent interrogated its employees concerning their union affiliations and activities, conducted a poll to ascertain how its employees intended to vote in a Board-ordered election, and discharged Chaffin R. Proctor because of his union membership and activity or other mutual aid and protection be dismissed.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, effective November 26, 1943, any party or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, D. C. an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing within ten (10) days from the date of the order transferring the case to the Board.

WILLIAM F. GUFFEY, Jr.
Trial Examiner.

Dated February 7, 1944.