

In the Matter of REPUBLIC AIRCRAFT MANUFACTURING COMPANY  
and UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA,  
CIO

*Case No. 16-C-1003.—Decided June 5, 1944*

DECISION

AND

ORDER.

On March 15, 1944, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set out in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that the respondent had not engaged in certain other unfair labor practices and recommended the dismissal of allegations in the complaint with respect thereto. Thereafter, the respondent filed exceptions to the Intermediate Report. No exceptions were filed by the Union. Oral argument before the Board was requested by the respondent, but the respondent did not appear and did not ask for postponement of a hearing scheduled for that purpose for May 23, 1944, and oral argument was not held. The Board has considered the rulings of the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the respondent's exceptions, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.<sup>1</sup>

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, Republic Aircraft Manufacturing Company, Dallas, Texas, its officers, agents, successors, and assigns shall:

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<sup>1</sup> The correct date on or about which Lila Lee Bell was first employed by the respondent is September 25, 1943, not September 15, 1943, as stated in the Intermediate Report.

56 N. L. R. B., No. 213.

1. Cease and desist from :

(a) Discouraging membership in the United Electrical, Radio and Machine Workers of America, affiliated with the Congress of Industrial Organizations, or in any other labor organization of its employees, by discharging or refusing to reinstate any of its employees or in any other manner discriminating in regard to their hire and tenure of employment or any term or condition of employment ;

(b) In any other 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 purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

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

(a) Make whole Lee B. Barnett for any loss of pay he may have suffered by reason of the respondent's discrimination against him by payment to him of a sum of money equal to that which he would have earned in his regular employment with the respondent from October 7, 1943, the date of his discriminatory discharge, to the date of his reinstatement on October 11, 1943, less his net earnings during said period ;

(b) Post immediately in conspicuous places throughout its plant at Dallas, Texas, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order; (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order; and (3) that the respondent's employees are free to become or remain members of the United Electrical, Radio and Machine Workers of America, or of any other labor organization, and that the respondent will not in any manner discriminate against its employees because of membership in or activities on behalf of that organization or any other labor organization;

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

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Order.

INTERMEDIATE REPORT

*Mr. Robert C. Proctor*, for the Board

*Mr. J. M. Hoppenstem*, of *Leake, Henry, Young & Golden*, of Dallas, Texas, for the respondent.

STATEMENT OF THE CASE

Upon an amended charge duly filed on October 20, 1943, by United Electrical, Radio and Machine Workers of America, affiliated with the Congress of Industrial

Organizations, 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 18, 1944, against Republic Aircraft Manufacturing 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.

With respect to the alleged unfair labor practices, the complaint in substance states that the respondent: (1) on or about October 8, 1943, discharged Lee Barnett, and on or about October 11, reinstated him, and thereafter on or about October 18, again discharged Lee Barnett and thereafter refused to reinstate him for the reason that he joined and assisted the Union or engaged in other mutual aid or protection; (2) on or about October 15, 1943, discharged Lila Lee Bell and thereafter refused to reinstate her for the reason that she joined and assisted the Union or engaged in concerted activities for the purposes of collective bargaining or other mutual aid or protection; (3) since on or about October 7, 1943, has expressed disapproval of the Union, has interrogated its employees concerning their union affiliations, and has urged, persuaded, threatened and warned its employees to refrain from assisting, becoming members of the Union, or remaining members of the Union; and (4) by the foregoing acts has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act. The respondent in its answer dated January 26, 1944, admits certain facts concerning commerce, denies that it engaged in any unfair labor practices and avers that Lee B. Barnett and Lila Lee Bell were discharged for reasons that were predicated upon the inefficiency of these employees and at the request of the Army Air Force Inspector.

Pursuant to notice a hearing was held in Dallas, Texas, on February 1 and 2, 1944, before the undersigned Trial Examiner, James C. Batten, duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel and participated in the hearing. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. During the hearing the undersigned approved a stipulation submitted by counsel for the Board and the respondent providing for the taking of the testimony of Joe Hood on or before February 28, 1944, by deposition.<sup>1</sup> At the close of the taking of testimony the undersigned, without objection, granted the motion of the Board to conform the pleadings to the proof as to minor details. No oral arguments were made at the conclusion of the hearing and the parties advised the undersigned that they did not intend to file briefs.

Upon the entire record thus made, and from the undersigned's observation of the witnesses, the undersigned makes in addition to the above, the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE RESPONDENT

Republic Aircraft Manufacturing Company, a Texas corporation, operates a plant in Dallas, Texas, where it is engaged in the processing of airplane fittings.

<sup>1</sup> It was further agreed that if the deposition was not taken on or before February 28, the parties waived the taking of the deposition. On March 3, 1944, the undersigned was advised by the regional attorney for the Sixteenth Region (Fort Worth, Texas), that Joe Hood was not available on or before February 28. On the same day, the undersigned issued an order closing the record.

The principal raw materials consist of aluminum, brass, and steel. Of the raw materials used by the respondent during the past 6 months, in its operation, approximately 75 percent were purchased and imported into the State of Texas from points outside that State. Of its finished products, part are sold and delivered to the North American Aviation Company at its plant located near Grand Prairie, Texas, and a large portion is delivered direct to the United States Navy. All of the products of the North American Aviation Company are delivered to the United States Army and Navy. The respondent admits that it is engaged in commerce within the meaning of the Act.<sup>2</sup>

## II. THE ORGANIZATION INVOLVED

United Electrical, Radio and Machine Workers of America, is a labor organization, affiliated with the Congress of Industrial Organizations, admitting to membership employees of the respondent.

## III. THE ALLEGED UNFAIR LABOR PRACTICES

### *The discharges; interference, restraint and coercion*

While the complaint alleges in substance a violation of Section 8 (1) of the Act as an independent issue, there is no evidence in the record of any such unlawful activities on the part of the respondent. The testimony offered by the Board concerning interference, restraint, and coercion is directly related to the issues involved in the discrimination in regard to the hire and tenure of employment of Lee B. Barnett and Lila Lee Bell. In the interest of brevity these activities of the respondent will be developed in the discussion of the respondent's discriminatory treatment of these employees.

Lee Barnett was employed by the respondent on or about July 29, 1943, as a working foreman in the drill press and bur bench department. In addition to Barnett's supervisory duties, he worked as a drill press and turret lathe operator. On October 7, he was discharged and thereafter on October 11 reinstated to his position as a working foreman. Barnett was again discharged on October 18, 1943. With respect to Barnett two issues are presented; whether or not his discharge on October 7 and October 18, were due to his union activities or for reasons unrelated thereto.

The Union inaugurated its organizational campaign at the respondent's plant on October 7, 1943, when one of its representatives passed out leaflets and application cards to the employees as they reported for work on the night shift. As Barnett was entering the plant he received a leaflet and an application card. The employees both before the shift started and after were discussing the advisability of joining the Union, and Barnett in the course of these discussions talked to several of the employees in his department. Some of the employees knew that Barnett had been a member of a labor organization while employed at The North American Aviation plant and they asked Barnett what he thought of the Union. Barnett advised the employees that "it was a good thing, if they wanted to join they could, and if they didn't they didn't have to" Later in the evening Night Foreman Clark approached Barnett and asked him if he belonged to the Union. Barnett replied that he did and stated to Clark that "it was a free country, and a man could join or a woman could join, but if she didn't want to, she could tear her card up and throw it away." Clark, during the conversation, told Barnett that he disapproved of the C. I. O. Union.<sup>3</sup>

<sup>2</sup> The findings in this section are based upon a stipulation of counsel.

<sup>3</sup> Clark did not deny the facts set forth in these findings.

About 10 o'clock on the evening of October 7, at Manager Williams' request, Barnett reported to the office.<sup>4</sup> Williams accused Barnett of soliciting the employees to sign application cards and of agitating in behalf of the Union. Barnett denied these accusations, however, he did tell Williams that he had advised some of the employees that the decision as to whether or not they joined the Union was one for them to make. After some further discussion Williams told Barnett that he would not have a union in the plant and that he could not afford to pay union wages. Williams then discharged Barnett. Barnett at his own request was given a release by Williams and on the following day received his pay, including full payment for October 7. A day or two later, after Barnett had reported his discharge to Hood, a representative of the Union, a conference was arranged with Williams at the plant. Hood at the conference stated to Williams that it was a violation of the Wagner Act to discharge an employee because of his union activities. At the close of the conference Williams advised Hood that he would think the matter over for a day or two and requested Hood to call him later. On October 11, Hood called Williams, who requested Hood to have Barnett report to the plant for work on his regular shift on the evening of that day. Barnett reported for work and was assigned to his former job as a working foreman.<sup>5</sup>

On the basis of the foregoing and the record in its entirety the undersigned finds that the respondent has discriminated in regard to the hire and tenure of employment of Barnett by his discharge on October 7 and that by such action and by the remarks of Foreman Clark, above referred to, the respondent has discouraged membership in the Union, and interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On several successive days after Barnett's return to his job, on October 11, the Union handed out leaflets and application cards outside the plant. The evidence is undisputed that during the week of October 11, the employees, both at lunch time and during working hours, spent a great deal of their time discussing the Union which resulted in a decrease of production in the plant. The only incident occurring during that week which involved Barnett was on or about October 14 when Night Foreman Clark came into the department and noticed that one of the employees was signing a union card. Clark admonished the employee for signing a card during working hours and inquired of the employee where he had received the card. Clark, receiving an unsatisfactory reply, asked Barnett, who was standing near, if he had given the employee the card. Barnett denied that he had given out the card and Clark then remarked that he was going to make it his business to find out who had been passing out cards on the job. Outside of this incident there is no testimony to indicate that the respondent was particularly concerned about the union activities which admittedly, during that week, had caused some confusion in the plant.<sup>6</sup>

On Thursday night, October 14, Barnett had in his department one employee who was reworking bronze "L" fittings. An error had been made in the first

<sup>4</sup> Although Williams at times was at the plant in the evening, on this occasion he was called to the plant by either Foreman Clark or Assistant Foreman Oliver because there was some difficulty at the plant. The undersigned is of the opinion the "difficulty" referred to was the Union's organizational drive, which started that evening.

<sup>5</sup> Williams testified that during the conversation he discussed Barnett's union activities on that evening, but that Barnett denied soliciting the employees to join the Union or threatening them with loss of their jobs if they did not join. The recital of facts in this paragraph are based upon the testimony of Barnett and Williams and in those instances where there is any conflict in their testimony, the undersigned accepts Barnett's testimony, because the activities of Williams and Clark on the evening of October 7 plainly indicate a desire to thwart the organizational efforts of the Union.

<sup>6</sup> The undersigned is of the opinion that under the circumstances here set forth this incident cannot be considered, as interference by the respondent.

instance in cutting threads on one end of the "L" and it was necessary to correct the error to re-thread that end of the "L" by cutting on it a tapered thread. The following morning the respondent's chief inspector reported to Williams that 200 or 300 of the fittings would have to be scrapped because an S. A. E. or straight thread had been worked on the fittings instead of a tapered thread.<sup>7</sup> Williams, when Barnett reported for work on the evening of October 15, requested that he come back and see him on the following day. Barnett did not report to Williams on the following day it being his day off and he "slept all day." On Monday evening, October 18, when Barnett reported for work his time card was missing from the rack and the office girl told Barnett that Williams wanted to see him. Williams discharged Barnett, after telling him that an excessive number of fittings had been scrapped because of his improper supervision on the night of October 14.<sup>8</sup>

Snyder, an Army Air Force inspector, testified that on Friday morning, October 15, he was called to the respondent's plant by one of his resident inspectors because of an unusually large amount of rejected fittings that had been produced the night before. Snyder further testified that by visual examination of several "L" fittings, he rejected and condemned 200 or 300 of them that had been produced the night before in the rework department. Snyder also testified that he at that time instructed Williams that a change in the personnel should be made in the department where the scrapped fittings had been produced. Snyder further testified that he did not have the authority to recommend the discharge of employees but that he did have the authority to insist upon the removal of an employee who was responsible for the production of poor work.

The undersigned is convinced that Barnett because of his own improper supervision and inspection permitted an employee under his supervision to produce 200 or 300 fittings by cutting thereon an S. A. E. or straight thread instead of a tapered thread, that this inattention to his job resulted in the scrapping of a substantial amount of valuable fittings. This failure on the part of Barnett to perform the duties of his job is particularly inexcusable in view of the fact that inspection of the fitting by visual examination would have disclosed that an S. A. E. or straight thread, rather than a tapered thread was being cut upon the fittings.<sup>9</sup>

It is clear from the above, and the undersigned finds, that Barnett on October 18, 1943, was discharged both for his failure to report to Williams on Saturday, October 16, as requested, and also for the reason that he improperly supervised the employees in his department. The undersigned further finds that his membership in or activity on behalf of the Union had no relation to, or in any manner affected his discharge.<sup>10</sup>

<sup>7</sup> The die which was used for the purpose of reworking the threads on the fitting was a nonadjustable die, and when the die was properly placed in the jig with proper side up would cut a tapered thread. To properly perform the operation of cutting a tapered thread the die should be placed in the jig with the larger opening of the die to the top. In order to put a straight thread upon the fitting it would be necessary to reverse the die so that the smaller opening was at the top. If threads were cut upon the fitting while the die was in this position it would make an S. A. E. or straight thread. Fittings with an S. A. E. or straight thread could not again be reworked and would have to be scrapped.

<sup>8</sup> Barnett testified that he checked every fifth fitting produced during the night shift of October 14. This statement of Barnett is incredible, because practically the entire production of the only employee engaged in this particular work had to be scrapped.

<sup>9</sup> There is evidence in the record to indicate that the respondent had on other occasions discharged or demoted employees including supervisors, because of their failure to properly perform the work assigned to them.

<sup>10</sup> This finding is based upon the testimony of Williams and Snyder which the undersigned believes. The undersigned is not unmindful of the fact that Barnett testified that Williams

Lila Lee Bell was employed by the respondent on or about September 15, 1943, as an inspector, and worked regularly at such work until her employment was terminated on or about October 15, 1943. She was a member of the Union and from the inception of its organizational campaign on October 7 was an active advocate, among the employees, of the advantages of concerted action. The respondent was aware of her interest in the Union.<sup>11</sup>

The facts leading up to the termination of the employment of Mrs. Bell are not in dispute and may be briefly summarized as follows: Mrs. Bell worked on the night shift which started at 6 p m and on the evening that her employment was terminated she was responsible for the inspection of the fittings produced on four machines. Under the instructions which Mrs. Bell had received from the respondent she was charged with the responsibility of inspecting every fitting being produced on these machines. The operator of each machine, as the fittings were completed, would place them upon a drain net where they would remain until the inspector came around to inspect the fittings. It was Mrs. Bell's duty to go from machine to machine, inspect the fittings, and grade them, and after grading, place them in one of three boxes according to grade—accepted fittings, rejected fittings, and fittings that could be reworked.

The testimony is in dispute as to whether during the evening Mrs. Bell observed that the operator of one of the machines was making parts which did not meet the specifications or whether Night Foreman Clark in making his regular rounds found the error. It is, however, unnecessary to resolve this conflict as Mrs. Bell admitted that there were at least 63 fittings made on that particular machine that were imperfect and would have to be scrapped. Further, according to her testimony, this number of scrapped fittings would indicate that she had for at least a period of 2 and ½ hours failed to inspect the fittings coming from the machine. The defect in the fittings were what is termed a visual defect, that is, by merely looking at the fitting it could be seen that it was imperfect. The undersigned is of the opinion that such inattention to her duties as an inspector was inexcusable.<sup>12</sup>

After the operator of the machine at the suggestion of Clark had attempted to rework a few of the fittings and it was found that this could not be done, Clark requested Mrs. Bell to come to the office. Clark then told Mrs. Bell to punch her time card and go home and come back the following day and see Manager Williams. Mrs. Bell then asked Clark if she was fired, and Clark replied, "No, not exactly" again stating that he wanted her to come back the next day and talk to Williams. Mrs. Bell replied that she was not going "nowhere" and that if she was fired she wanted a release and her money. Mrs. Bell's father, Lee Bar-

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on the day he (Barnett) was discharged, stated that "he [Williams] wouldn't tolerate the Union." The undersigned does not credit this testimony of Barnett.

<sup>11</sup> General Manager Williams, on October 21, 1943, in a letter to the Regional Director regarding the discharge of Mrs. Bell stated: "Please be assured that Miss Bell was definitely not discharged from this Company for Union activities, but if we did discharge employees from this Company, for such activities she would have been discharged long ago." Williams testified with respect to this portion of the letter "I knew that she had solicited Union members on the job and that she was not criticized for that to my knowledge. The only thing I had told Mr. Clark, the night foreman, was that I had noticed her being all over the plant on various occasions when I would go in there at night and I understood that she had told two of the girls that they had to join the Union or lose their jobs."

<sup>12</sup> The respondent offered testimony to show that Mrs. Bell spent a substantial portion of her time roaming about the plant, particularly in the department where her father Lee Barnett was the working foreman. While the undersigned credits this testimony, the respondent did not offer it as a justification for her discharge but for the purpose of showing that the incident which occurred on the night her employment was terminated was due to her apparent inability to assume the responsibilities connected with the job of an inspector.

nett, the employee referred to earlier in this report, also stated to Clark that Mrs. Bell would not go home unless she received her money. Clark then phoned Williams' home but was unable to reach him, finally Clark was able to contact Williams' secretary who came to the office and made out a release for Mrs. Bell and paid her the wages due her. Mrs. Bell after receiving the release and her pay went home.<sup>13</sup> Although Mrs. Bell was requested by Night Foreman Clark to come back the next day and see Manager Williams she did not do so nor has she ever returned to the plant for the purpose of seeing Williams.

Under the circumstances set forth above, particularly Mrs. Bell's refusal to leave the plant and return the next day to talk to Manager Williams, and her insistence that she be given a release and paid her wages before she would leave the plant, the undersigned is of the opinion that Mrs. Bell by these actions terminated her employment with the respondent. Further the undersigned concludes that Mrs. Bell's refusal to return to the plant the following day to see Manager Williams warranted the respondent in concluding that she had terminated her employment and had no intention of returning.

The undersigned finds that the allegations of the complaint with respect to Mrs. Bell are not sustained by substantial evidence and that she was not discharged because the respondent believed her to be a union member or active in its behalf.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III above, occurring in connection with its operations described in Section I above have a close, intimate, and 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 thereof.

#### V. THE REMEDY

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

The undersigned has found that the respondent discriminated as to the hire and tenure of employment of Lee B. Barnett by discharging him on October 7, 1943. The undersigned will make no recommendation with reference to the reinstatement of Lee B. Barnett who was reinstated on October 11, 1943. In order to effectuate the policies of the Act, the undersigned recommends that the respondent make whole Lee B. Barnett for any loss of pay that he has suffered by reason of his discharge on October 7, 1943, by payment to him of a sum of money equal to the amount he would have earned in his regular employment with the respondent from the date of his discharge above noted to the date of his reinstatement on October 11, 1943, less his net earnings during said period.<sup>14</sup>

<sup>13</sup> Mrs. Bell testified that Clark did not tell her she was discharged but that "he did pay me off that night and give me a release." Mrs. Bell also testified that she did not come back the next day because she figured she was fired by the way Clark talked to her the night before. When Mrs. Bell was asked whether there was any other reason for her discharge in addition to the spilling of 63 fittings she stated that she thought it was because she had joined the Union, although she admitted that neither Clark nor Williams knew that she was a member.

<sup>14</sup> By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, 8 N. L. R. B. 440. Monies received for

The undersigned has also found that the respondent has not discriminated against Lila Lee Bell on or about October 15, 1943 and Lee B. Barnett on October 18, 1943 in respect to their hire or tenure of employment and the undersigned will therefore recommend that the complaint be dismissed insofar as it alleges such discrimination.

Upon the basis of the foregoing findings of fact and on the entire record in the case, the undersigned makes the following:

#### CONCLUSIONS OF LAW

1. United Electrical, Radio and Machine Workers of America affiliated with the Congress of Industrial Organizations, 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 Lee B. Barnett by discharging him on October 7, 1943, the respondent has engaged in and is engaging in an unfair labor practice within the meaning of Section 8 (3) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed them 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.

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

5. The respondent has not engaged in unfair labor practices within the meaning of Section 8 (3) of the Act by the termination of the employment of Lila Lee Bell on or about October 15, 1943, and Lee B. Barnett on October 18, 1943.

#### RECOMMENDATIONS

On the basis of the above findings of fact and conclusions of law the undersigned hereby recommends that the respondent, Republic Aircraft Manufacturing Company (Dallas, Texas) its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in the United Electrical, Radio and Machine Workers of America affiliated with the Congress of Industrial Organizations or in any other labor organization of its employees by discharging or refusing to reinstate any of its employees or in any other manner discriminating in regard to their hire and tenure of employment or any term or condition of employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights of self-organization, to form, join or assist labor organization or to bargain collectively through representatives of their own choosing or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

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

(a) Make whole Lee B. Barnett for any loss of pay he may have suffered by reason of the respondent's discrimination against him by payment to him of a sum of money equal to that which he would have earned in his regular employment with the respondent from October 7, 1943, the date of his discriminatory discharge to the date of his reinstatement on October 11, 1943, less his net earnings during said period;

work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N. L. R. B.*, 311 U. S. 7.

(b) Post immediately in conspicuous places throughout its plant at Dallas, Texas, and maintain for a period of at least sixty (60) consecutive days from the date of posting notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist, in paragraph 1 (a) and (b) in these recommendations; (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of these recommendations; (3) that its employees are free to become or remain members of the United Electrical, Radio and Machine Workers of America, or of any other labor organization and that the respondent will not in any manner discriminate against its employees because of membership in or activities on behalf of that organization or any other labor organization.

(c) Notify the Regional Director for the Sixteenth Region (Fort Worth, Texas) in writing within ten (10) days from the date of the receipt of this Intermediate Report what steps the respondent has taken to comply therewith.

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 it will comply 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 complaint be dismissed so far as it alleges that the respondent has discriminated in regard to hire and tenure of employment of Lila Lee Bell, by discharging her on or about October 15, 1943 and of Lee B Barnett by discharging him on October 18, 1943

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.

JAMES C. BATTEN,

*Trial Examiner.*

Dated March 15, 1944.