

In the Matter of THE SANDY HILL IRON & BRASS WORKS, A CORPORATION
and GEORGE BILLETDOUX

Case No. 2-C-5406.—Decided June 26, 1944

DECISION

AND

ORDER

On April 27, 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 affecting commerce, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the respondent filed exceptions to the Intermediate Report and a supporting brief. Pursuant to notice served on all parties, oral argument was held before the Board in Washington, D. C. on June 1, 1944, in which only the respondent participated.

The Board has considered the rulings of the Trial Examiner, 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 brief, and the entire record in the case, and hereby adopts the findings and conclusions of the Trial Examiner, with the following additions and exceptions:

1. The Trial Examiner has found that the respondent's attitude toward Billetdoux was colored by the fact that he had testified as a Board witness in an earlier proceeding against the respondent and had sponsored certain concerted or union activities among the employees, particularly in view of the remarks addressed to Billetdoux by Juckett, the respondent's president, and in view of General Superintendent Foster's admission that he knew of Juckett's resentment against Billetdoux because of his testimony. The Trial Examiner further found that the respondent's discriminatory attitude was clearly evidenced by the fact that Foster singled Billetdoux out and ordered him alone of all the respondent's employees to keep out of the shop at the main plant in Hudson Falls, and further by Foster's admission that Billetdoux's transfer to the Thompson plant was disciplinary at least in part. We agree with these findings.

2. The Trial Examiner also found that the respondent, by transferring Billetdoux to the Thompson plant, changed his employment status to a less permanent or less certain basis and to a type of labor which was more arduous and less agreeable than formerly. He further found that in making this transfer the respondent was motivated by the fact that Billetdoux had testified against the respondent in the prior hearing and had engaged in concerted activities. We do not agree with these findings. The record shows that the respondent had undertaken the task of removing certain machinery from the Thompson plant; that for this purpose it required the services of some nine employees, including several laborers (Billetdoux's classification); that it accordingly transferred some employees from its main plant at Hudson Falls to the Thompson plant; and that at the time of hearing it had already transferred some of these employees back to the Hudson Falls plant. At the time of the hearing Billetdoux had not been refused a transfer back to the Hudson Falls plant. Although the respondent's alleged reasons for selecting Billetdoux for temporary transfer to the Thompson plant are shifting, inconsistent, and incredible, as the Trial Examiner found, thus rendering its true motive highly suspicious, we are not convinced that the respondent's motive was discriminatory in view of its need for employees at the Thompson plant and Billetdoux's availability for that purpose. Under all the circumstances, we are satisfied that Billetdoux's claim of discrimination is premature, and that, if and when the respondent takes action against him without proper cause, a claim of discrimination may then properly be made.

ORDER

Upon the basis of the foregoing findings of fact and 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 complaint against the respondent, The Sandy Hill Iron & Brass Works, a corporation, Hudson Falls, New York, be, and it hereby is, dismissed.

INTERMEDIATE REPORT

Mr. Cyril W. O'Gorman, for the Board

Mr. Walter C. Ross, of Springfield, Mass., for the respondent.

Mr. William H. Brady, of Albany, N. Y., for the Union.

STATEMENT OF THE CASE

Upon a charge duly filed on January 25, 1944, by George Billetdoux, the National Labor Relations Board, herein called the Board, by the Regional Director for the Second Region (New York, New York), issued its complaint, dated March 4, 1944, against The Sandy Hill Iron & Brass Works, a corporation, Hudson Falls, New York, herein called the respondent, alleging that the respondent had engaged

in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (3), and (4) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by notice of hearing thereon, were duly served upon the respondent, upon George Billetdoux, and upon International Association of Machinists, affiliated with the American Federation of Labor, herein called the Union.

With respect to the unfair labor practices, the complaint, as amended at the hearing, alleged in substance that: (1) on or about January 14, 1944, the respondent transferred George Billetdoux from its Hudson Falls plant to its Thompson plant, assigned him to more arduous and less agreeable work, and paid him at a lower rate than that paid to other employees doing similar work at the Thompson plant because Billetdoux, on or about December 2, 1943, had given testimony at a hearing held by the Board in a prior case and had joined or assisted the Union or engaged in other concerted activities for the purposes of collective bargaining or other mutual aid or protection; and (2) from on or about December 5, 1942, up to the date of the complaint, the respondent disparaged and expressed disapproval of the Union; interrogated its employees concerning their union affiliations; urged, persuaded and warned its employees to refrain from assisting, becoming members of or remaining members of the Union; and kept under observation the activities of the Union and the concerted activities of its employees for the purpose of self-organization or improvement of working conditions and for the purposes of discouraging membership in or assistance to the Union.

The respondent, by its answer verified on March 14, 1944, denied that it had committed the unfair labor practices alleged in the complaint.

Pursuant to notice, a hearing was held on March 16, 1944, at Glens Falls, New York, before David Karasick, the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel, and the Union by its international representative.¹ All parties participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.²

At the opening of the hearing the undersigned granted, without objection, motions of counsel for the Board to amend the complaint in certain minor particulars.³ At the conclusion of the case, counsel for the Board moved to conform the complaint to the proof insofar as formal matters were concerned. The motion was granted without objection. A similar motion on behalf of the respondent with respect to its answer was likewise granted without objection. None of the parties availed themselves of the opportunity to present oral argument before the undersigned. The parties were afforded an opportunity to file briefs with the undersigned. On April 1, 1944, the respondent filed a brief. No briefs were filed on behalf of the Union or of the Board.

¹ The undersigned granted, over objection by counsel for the respondent, a motion to intervene filed on behalf of the Union. Motion of the respondent to continue the hearing for one week for the purpose of giving it additional time to prepare because of the appearance filed by the Union in the proceedings was denied.

² The Union filed an appearance but did not present witnesses on its own behalf or examine or cross-examine any of the witnesses of the other parties, or otherwise participate in the proceedings.

³ The motions so granted were to amend the complaint to allege that: (1) the Regional Director issuing the complaint had been designated as agent for the Board by virtue of the Board's Rules and Regulations Series 3, rather than Series 2, as amended; and (2) that the respondent was engaged in the manufacture, among other products, of automatic towing winches, rather than automobile towing winches.

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 Sandy Hill Iron & Brass Works, a New York corporation, with its principal office and place of business in Hudson Falls, New York, is engaged in the manufacture, sale, and distribution of paper mill machinery, deck machinery, and automatic towing winches. The respondent also operates a plant located at Thompson, New York.⁴ The principal raw materials used by the respondent in its manufacturing operations are gray iron castings, steel castings, alloy steel plates, and steel shaftings. During the year prior to March 1, 1944, the respondent purchased raw materials valued in excess of \$250,000, of which approximately 90 percent was shipped to the respondent from places located outside the State of New York. During the same period of time the respondent sold finished products valued in excess of \$500,000, of which approximately 90 percent was shipped by the respondent to places located outside the State of New York. The respondent concedes that it is engaged in commerce within the meaning of the Act.⁵

II. THE ORGANIZATION INVOLVED

International Association of Machinists, affiliated with the American Federation of Labor, is a labor organization which admits to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The discriminatory transfer of George Billetdoux*

George Billetdoux was first hired by the respondent in June 1941. Between August and November 1942, he took an active part in attempting to induce the employees of the respondent to organize. He was discharged on November 6, 1942. Up to that time he had been employed by the respondent as a laborer and fire equipment inspector. He was reinstated on September 20, 1943, and was assigned to work as office janitor at the Hudson Falls plant of the respondent.

On December 2, 3 and 4, 1943, the Board held a hearing in a complaint proceeding involving the respondent in the present case.⁶ One of the issues in the prior proceeding involved the question whether or not Billetdoux, the complainant in this case, had been discriminatorily discharged. Billetdoux testified as a witness for the Board in that proceeding. On December 29, 1943, the Trial Examiner issued his Intermediate Report finding, among other things, that Billetdoux had been discharged on November 6, 1942, in violation of the Act, and that he had been reinstated by the respondent on September 20, 1943. Among other matters, the Trial Examiner recommended that Billetdoux be awarded back pay by the respondent for such losses as he had sustained through unemployment during the period of discrimination. On February 24, 1944, the Board

⁴ The Thompson plant, located a distance of some 8 or 10 miles from Hudson Falls, had formerly been a paper mill. The plant was bought by another company and the respondent, as agent of the purchaser, has been engaged in dismantling the equipment for shipment to another destination.

⁵ The foregoing findings of fact concerning the business operations of the respondent are based upon a stipulation entered into between counsel for the Board and counsel for the respondent.

⁶ *Matter of The Sandy Hill Iron & Brass Works and International Association of Machinists*, A. F. of L., 55 N. L. R. B. 1.

issued its Decision and Order⁷ affirming and adopting the findings, conclusions, and recommendations contained in the Trial Examiner's Intermediate Report.

Billetdoux was absent from work for 3 or 4 days prior to December 18, 1943, because he was suffering from a cold. He returned to work on that day. During the course of the day, Frank A. Juckett, president of the respondent, met Billetdoux and mentioned to him the fact that he had been away from work. Billetdoux stated that he had been sick for 3 or 4 days, to which Juckett replied, "You know, Billetdoux, you ought to be sick, anybody going up there and testifying against Mr. Reilly⁸ the day you did, the Lord is just punishing you for it."⁹

Billetdoux testified that on January 14, 1943, Samuel Foster, production manager and general superintendent of the respondent, told him that he was going to be transferred to the Thompson plant¹⁰ the following morning. Foster also told Billetdoux that he was not to enter the Hudson Falls plant, and warned him that he would be discharged if he did so. This testimony of Billetdoux was corroborated by Foster. Foster issued instructions to the guards on duty the following day at the Hudson Falls plant that Billetdoux was not to be permitted to enter the plant. A few hours after Foster had told Billetdoux that he was going to be transferred, Billetdoux passed through the plant in order to carry a box of paper to the boilerroom and was seen by President Juckett who said, "My God, what are you doing down in the machine shop? Didn't you have orders to keep out of here or else you would be fired?" Billetdoux replied that he must have misunderstood Foster's orders which he thought were to go into effect on the following day.¹¹

In accordance with Foster's instructions, Billetdoux went to work at the Thompson plant on Saturday, January 15, and worked the following Monday and Tuesday. His work consisted of carrying pipe, unloading machinery, and other duties of a general laborer. His rate of pay was the same as it had been at the plant at Hudson Falls. Billetdoux last worked for the respondent on January 19.

About that time, he was injured and on the morning of January 19 he secured permission from the respondent's office to consult a doctor. That afternoon he met President Juckett on the street in Hudson Falls. Juckett asked Billetdoux why he was not working and Billetdoux replied that he had been injured and obtained permission from the respondent's office to see a doctor. Billetdoux testified without contradiction as follows concerning Juckett's response:

He [Juckett] says, "My God, I tell you," he says, "Everybody give testimony like you give up there against Mr. Reilly, God is going to punish him for it."

He says, "I have no sympathy for you whatever."

On January 26, 1944, Billetdoux underwent an operation for hernia. He has not returned to his job since that time because of instructions from his doctor to remain away from work for 3 months following the operation.

⁷ 55 N. L. R. B. 1.

⁸ Billetdoux had testified in the prior proceedings with respect to certain activities of Phillip J. Reilly, the respondent's treasurer, which were found by the Board in its Decision to have constituted unfair labor practices.

⁹ The foregoing findings are based upon the undenied and credible testimony of Billetdoux.

¹⁰ See footnote 4, *supra*.

¹¹ Foster testified that he discussed the question of Billetdoux's transfer with Juckett after it was done, and that he thought the discussion occurred the following day. Billetdoux's testimony concerning the statement made to him by Juckett on January 14 was not denied. Since Billetdoux testified on the whole with convincing certainty as to the dates upon which the various events in question occurred while Foster was often indefinite and uncertain, as in this instance, as to specific dates and times, the undersigned finds that Juckett made the foregoing statements to Billetdoux on January 14.

Concluding findings

The complaint alleges that the work to which Billetdoux was transferred at the Thompson plant was more arduous and less agreeable than that which he had performed at the Hudson Falls plant.¹² Prior to his discharge by the respondent on November 6, 1942, Billetdoux had worked as a laborer at the Hudson Falls plant. The duties of laborers are to unload coal, coke, and pig iron, clean up the yard at the plant, shovel snow, put salt on the sidewalks, mow the lawn, and do other work of a similar nature to which they may be assigned. Because of Billetdoux's experience as a cleaner, he was often used, however, to wash windows and to clean about the plant. After Billetdoux was reinstated by the respondent on September 20, 1943, he worked as office janitor at the Hudson Falls plant, and performed the usual duties of a janitor. Upon being transferred to the Thompson plant, Billetdoux's duties consisted of unloading machinery, carrying heavy pipe, working with pick and shovel, and laying planks on a trestle at the plant where coal was received so that trucks could be driven in. The Thompson plant is located 8 or 10 miles from Hudson Falls where Billetdoux lives. Nine persons were employed at the Thompson plant at the time of Billetdoux's transfer, while approximately 600 persons were employed at the plant at Hudson Falls. Work at the Thompson plant is only temporary, while laborers are continually employed at the Hudson Falls plant. Foster testified that he did not know what would be done with respect to Billetdoux after the work at the Thompson plant had been completed. Thus, while Billetdoux was employed prior to his discriminatory discharge on November 6, 1942, at work of a permanent nature, his status was changed as a result of the transfer to that of an employee whose job was temporary and whose continued employment thereafter was uncertain. Upon the foregoing facts and upon the basis of the entire record, the undersigned finds that the work to which Billetdoux was transferred at the Thompson plant was of a temporary nature and was more arduous and less agreeable than the work which he had performed at the Hudson Falls plant, and that his continued employment by the respondent thereafter was uncertain.

The question remains, however, whether the respondent transferred Billetdoux for a lawful reason or whether it did so because it wished to discriminate against him. Samuel Foster, production manager and general superintendent of the respondent, testified that Billetdoux was assigned the duties of office janitor at the time he was reinstated on September 20, 1943, because the regular office janitor was ill, and that Billetdoux was transferred to the Thompson plant after the regular janitor had returned to his job and had recovered sufficiently to perform his work.

Hughes, the regular office janitor, was suffering from a serious heart ailment and had been absent from work 3 or 4 months prior to the time Billetdoux was reinstated. Hughes returned to work about October 4, 1943, and both he and Billetdoux worked together until Billetdoux was transferred. Although Foster testified that he ordered Billetdoux to go to work at the Thompson plant after Foster saw that Hughes had regained his strength sufficiently to perform his duties unaided, he admitted that he had not spoken to Hughes or asked him if he was physically able to do his work without Billetdoux's aid before the latter was transferred. Foster's conclusion as to Hughes' physical condition, according to Foster's testimony, was based upon his observation of Hughes' appearance.

¹² The complaint also alleges that Billetdoux's wages were lower than those paid to other employees doing similar work at the Thompson plant. The evidence does not support this allegation.

Foster explained in this connection that: "You can tell by looking at a man whether he is gaining or failing." He admitted that in the regular course of his duties it was necessary for the office janitor to walk considerable distances and to climb quite a few flights of stairs while carrying buckets of water and baskets of waste paper. Foster admitted that Billetdoux would not have been sent to the Thompson plant "quite so quickly" if he had not been in the habit of talking to the other employees in the plant.

In view of Foster's admissions that he had made no attempt to ascertain whether Hughes was physically able to perform his work without the aid of Billetdoux prior to the latter's transfer other than by reason of his general observation of Hughes' appearance, that the duties of the office janitor required climbing flights of stairs and walking considerable distances while carrying baskets of waste paper and buckets of water which would be difficult of performance by a person suffering from a serious heart ailment, and that Billetdoux's transfer would not have occurred "quite so quickly" if he had not engaged in conversations with employees in the plant, the undersigned is convinced and finds that the reason for Billetdoux's transfer was not because Hughes had recovered sufficiently to perform his work alone.

Foster testified that one of the reasons for Billetdoux's transfer was that he made a practice of talking to other employees in the shop and thus interfered with their work. The respondent has no rule which prohibits the employees from talking to one another. The uncontradicted testimony of Billetdoux shows that while working as a janitor it was necessary for him to bring waste paper to the boilerroom from two to four times a day, that in going from the office to the boilerroom it was necessary to pass through the shop, that he also went through the shop to obtain cloths and soap powder from the stockroom, and that on one occasion he went to the shop for the purpose of having a mop repaired. Foster could not state definitely how many times he saw Billetdoux talking to other employees in the shop, but testified that he saw him so engaged on "several" occasions, and admitted that he did not know to whom Billetdoux was talking or what he was talking about on any of these occasions. The first time Billetdoux was ever told to keep out of the shop was when he received such instructions from Foster on January 14, 1944, and Foster admitted that this was the first time that he had ever issued an order to the guards to keep an employee out of the shop, and further admitted that no other employee was so restricted.

The fact that Billetdoux in the normal course of his work was required to go to the shop at various times during the day, that Foster did not know to which employees Billetdoux talked or what he talked about, that no employee testified that Billetdoux engaged him in conversation and thereby interfered with his work, that Billetdoux had never been told to keep out of the shop prior to the time he was told he would be transferred, and that the respondent has no rule against talking, lead the undersigned to the conclusion that Billetdoux was not transferred because he was in the habit of interfering with the work of other employees by talking to them in the shop.

According to Foster, the reason Billetdoux was assigned to the Thompson plant rather than to another department in the plant at Hudson Falls was because Billetdoux had once been convicted of arson, that the plant protection service of the military forces had cautioned Foster several times to be careful of arsonists, and that Foster feared that Billetdoux might again attempt to commit arson. The fact that Billetdoux had been convicted of arson was known to the respondent at the time he was first employed in June 1941. In April 1942, Billetdoux as well as all other persons then employed by the respondent were

required to fill out written applications for employment, at the request of the United States Army. The details as to Billetdoux's conviction were set forth in that application, but neither the War Department or any other government agency then or later objected to his continued employment by the respondent. One of Billetdoux's duties after that time and until he was discharged on November 6, 1942, was to inspect hose and hydrants used as fire protection equipment at the Hudson Falls plant to see that it was ready for use. On cross-examination by counsel for the Board, Foster admitted that in his capacity as trustee of a church in Hudson Falls he had asked Billetdoux to perform janitorial services in connection with the church at about the time that he had ordered Billetdoux transferred to the Thompson plant, that Billetdoux accepted the job, and that he continued at such employment until he sustained the injury above noted. Foster explained that his fears that Billetdoux might commit arson extended to the Hudson Falls plant but not to the church because "he might feel some resentment" toward the respondent which he would not feel toward the church. Neither Foster nor any other witness testified as to any word or act on the part of Billetdoux which would indicate in any way that he harbored resentment against the respondent.

The undersigned is not unmindful of the fact that a wide measure of latitude is to be accorded an employer in taking such steps as he feels are reasonably necessary in protecting his property. But the test to be applied in such a case as this is whether the reason assigned by the employer is the motivating force which impelled it to act as it did, or is, instead, but a pretext which is used to conceal the true reason for its action. On the basis of this record, the undersigned is convinced and finds that the latter is the case, and not the former. The record shows that there were other jobs at the Hudson Falls plant of the kind which Billetdoux could have performed, and at which he was actually employed prior to his discharge on November 6, 1942, and long after the respondent had knowledge of his conviction for arson. At the time of his discharge, it will be recalled, Billetdoux was employed as a laborer at the Hudson Falls plant. Since Billetdoux was reinstated, the respondent has employed at all times from 20 to 60 laborers at the Hudson Falls plant. Some of these laborers were hired after Billetdoux was reinstated and up to as late a period of time as 2 or 3 days prior to the hearing.¹³

In light of the fact that no steps were taken by the respondent to transfer Billetdoux prior to January 14, 1944, although the respondent had full knowledge of Billetdoux's conviction for arson from the time he was first employed in June 1941 and such fact had been known to the military authorities since April 1942 and no action had been taken by them with respect thereto, that the respondent had enough confidence in Billetdoux's reliability to assign him the task, among others, of inspecting fire protection equipment, that Foster requested Billetdoux to perform janitorial services at the church at the very time Foster professed that he feared Billetdoux might again attempt to commit arson, and that new employees have been hired since Billetdoux was reinstated for the same kind of work which Billetdoux had satisfactorily performed prior to his discharge on November 6, 1942, convince the undersigned, and he so finds, that the reason Billetdoux was transferred to the Thompson plant rather than to another department in the plant at Hudson Falls was not because the respondent feared that he might engage in acts of arson.

¹³ The respondent does not follow a strict rule of seniority, but it does give preference in employment to older employees if their abilities are equal to those of other employees. Foster admitted that Billetdoux had satisfactorily performed the duties of a laborer.

In its Decision in the prior case¹⁴ the Board found that Billetdoux was discharged by the respondent on November 6, 1942, because he had been active in attempting to promote self-organization among the employees. The uncontradicted testimony in the record in the present case shows that approximately 2 weeks after Billetdoux had testified as a witness for the Board in the prior case, President Juckett stated that he felt that Billetdoux's testimony about Treasurer Reilly had not been true and expressed his resentment by telling Billetdoux ". . . you ought to be sick . . . the Lord is just punishing you for it." A few days after Billetdoux had been transferred, Juckett in substance reiterated these statements. Foster admitted that he had been told by Juckett that Billetdoux's testimony about Reilly had been false.

Juckett's resentment toward Billetdoux because he had testified in a manner which Juckett considered to be untrue, together with the fact that Billetdoux was transferred a short time after he had testified, that the reasons assigned by the respondent for the transfer are not convincing, and that jobs of the kind which Billetdoux satisfactorily performed prior to his discharge have been available since he was reinstated convince the undersigned that the reason for Billetdoux's transfer was because he testified in the prior case. Whatever opinion the respondent may have entertained as to the truth or falsity of Billetdoux's testimony, it was not justified, for that reason, in taking unfavorable action against him with respect to the hire, tenure, terms, or conditions of his employment.¹⁵

Nor can the undersigned overlook the fact that Billetdoux, as the Trial Examiner and the Board found in the prior case, was foremost among the respondent's employees who were active in their attempts to form a union and to secure self-organization in the plant. On cross-examination by counsel for the Board, Foster admitted that he "may have" told an agent of the Board with whom he discussed the matter of Billetdoux's transfer that there was only a handful of employees at the Thompson plant to whom Billetdoux could talk. The record shows that approximately 600 persons are employed at the plant at Hudson Falls while 9 persons were employed at the Thompson plant at the time Billetdoux was transferred. As noted above, the record does not support the respondent's contention that one of the reasons for Billetdoux's transfer was that he talked to other employees at the Hudson Falls plant and thereby interfered with their work. In this connection, the record does show, however, that the order which Foster issued on the day of the transfer, prohibiting Billetdoux from entering the Hudson Falls plant, applied only to Billetdoux among all the employees of the respondent and no such order had ever been issued before with respect to any other employee. In light of these facts and on the basis of the entire record, the undersigned finds that the respondent transferred Billetdoux, not only because he testified under the Act, but for the additional reason that it knew he was an active sponsor and adherent of the union and therefore wished to isolate him from the main body of the respondent's employees.

The undersigned accordingly finds that the respondent transferred George Billetdoux from the Hudson Falls plant to a temporary job at the Thompson plant which was more arduous and less agreeable and which changed the status of Billetdoux from that of a permanent employee to that of a person whose continued employment thereafter was uncertain because he gave testimony under the Act and because of his concerted and union activities. The undersigned

¹⁴ 55 N. L. R. B. 1.

¹⁵ Cf. *Matter of The Kramer Company*, 29 N. L. R. B. 921.

further finds that by so transferring Billetdoux, the respondent discriminated against him in regard to the hire, tenure, terms, and conditions of his employment, thereby discouraging membership in a labor organization and interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act.

No evidence was adduced by counsel for the Board in support of those allegations of the complaint which alleged that the respondent had disparaged and expressed disapproval of the Union; interrogated its employees concerning their union affiliations; urged, persuaded, and warned its employees to refrain from assisting, becoming members of or remaining members of the Union; and kept under observation the activities of the Union and the concerted activities of its employees. The undersigned will therefore recommend that the complaint be dismissed insofar as such allegations are concerned.

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 the operations of the respondent 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

Since it has been found that the respondent has engaged in certain unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the respondent discriminatorily transferred George Billetdoux because he gave testimony under the Act and because of his concerted and union activities. Billetdoux underwent a surgical operation on January 26, 1944, and was instructed by his doctor not to return to work for 3 months after the operation was performed. In order to effectuate the policies of the Act, the undersigned will recommend that the respondent upon application by Billetdoux at such time as he is physically able to return to work, offer Billetdoux full reinstatement to his former or a substantially equivalent position at the Hudson Falls plant, without prejudice to his seniority and other rights and privileges. The undersigned will further recommend that the respondent make Billetdoux whole for any loss of pay he may suffer by payment to him of a sum of money equal to the amount which he normally would have earned as wages during the period from a date five (5) days after his application for reinstatement to the date of the respondent's offer of reinstatement, less his net earnings¹⁹ during such period.²⁷

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

¹⁹ 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 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.

²⁷ Cf. *Matter of J. W. Greer Company*, 52 N. L. R. B. 1341.

CONCLUSIONS OF LAW

(1) International Association of Machinists, affiliated with the American Federation of Labor, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. By discriminating against George Billetdoux because he gave testimony under the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (4) of the Act.

3. By discriminating in regard to the hire and tenure of employment and the terms and conditions of employment of George Billetdoux and thereby discouraging membership in a labor organization, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

4. 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.

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

6. The respondent has not engaged in unfair labor practices within the meaning of Section 8 (1) of the Act by disparaging and expressing disapproval of the Union; by interrogating its employees concerning their union affiliations; by urging, persuading, and warning its employees to refrain from assisting, becoming members of or remaining members of the Union; or by keeping under observation the activities of the Union and the concerted activities of its employees.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, the undersigned recommends that the respondent, The Sandy Hill Iron & Brass Works, a corporation, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Transferring or otherwise discriminating against any of its employees because they have given testimony under the Act;

(b) Discouraging membership in International Association of Machinists, affiliated with the American Federation of Labor, or in any other labor organization of its employees, by transferring such employees or in any other manner discriminating in regard to their hire and tenure of employment or any terms or conditions of their employment because of membership in, or activity in connection with, International Association of Machinists, affiliated with the American Federation of Labor;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively, through representatives of their own choosing, 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 Act.

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

(a) Upon application by George Billetdoux at such time as he is physically able to return to work, offer him full reinstatement to his former or substantially equivalent position at the Hudson Falls plant, without prejudice to his seniority and other rights and privileges.

(b) Make whole George Billetdoux for any loss of pay he may suffer, as set forth in Section V, above.

(c) Post immediately in conspicuous places throughout the plants located at Hudson Falls, New York, and at Thompson, New York, and maintain for a period of at least sixty (60) consecutive days from the date of posting notices to the 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), (b), and (c) of these recommendations; and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) and (b) of these recommendations; and (3) that the respondent's employees are free to become or remain members of International Association of Machinists, affiliated with the American Federation of Labor, and that the respondent will not discriminate against any of its employees because of membership in or activity on behalf of that labor organization;

(d) File with the Regional Director for the Second Region on or before ten (10) days from the date of the receipt of this Intermediate Report, a report in writing setting forth in detail the manner and form in which the respondent has complied with the foregoing recommendations.

It is further recommended that the complaint be dismissed insofar as it alleges that the respondent has engaged in unfair labor practices by disparaging and expressing disapproval of the Union; by interrogating its employees concerning their union affiliations; by urging, persuading, and warning its employees to refrain from assisting, becoming members of or remaining members of the Union; or by keeping under observation the activities of the Union and the concerted activities of its employees.

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.

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.

DAVID KARASICK,
Trial Examiner.

Dated April 27, 1944.