

In the Matter of THE STANDARD LIME AND STONE COMPANY¹ and
UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION,
A. F. OF L.

Case No. 5-C-1723.—Decided July 13, 1944

DECISION

AND

ORDER

On March 24, 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 annexed hereto. Thereafter, the respondent filed exceptions to the Intermediate Report and a brief in support of the exceptions. On May 15, 1944, the Board issued its Decision and Order² in the above-captioned matter adopting the findings, conclusions, and recommendations of the Trial Examiner. The decision noted that no request for oral argument before the Board had been made. Due to inadvertence the respondent's request for such oral argument, which had been duly made, was overlooked. Upon consideration, on May 31, 1944, the Board issued an Order Vacating and Setting Aside Decision and Order³ and granted the respondent's request for oral argument before the Board. On June 27, 1944, a hearing for the purpose of oral argument was held before the Board at Washington, D. C. The respondent appeared and participated.

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 brief and the arguments adduced by it at oral argument, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following additions:

The Trial Examiner has found, and the respondent admits, that it has refused to bargain with the certified union. It contends in support

¹ Erroneously described in the complaint as Standard Lime and Stone Company.

² 56 N. L. R. B. 522.

³ 56 N. L. R. B. 1159.

of its refusal, however, that the Board's direction of the run-off election with the "Neither" choice omitted from the ballot constituted error and that the certification of the Union on the basis of the results of that election which indicated that less than a majority of eligible employees had participated but that a majority of those voting had cast ballots in favor of the Union also amounted to error.

As to the respondent's first contention, the practice of the Board in directing run-off elections, as codified in its Rules and Regulations,⁴ supplies the answer. Where, as here, the results of an election are inconclusive because no choice on the ballot received a majority of the valid votes cast, the Board, acting pursuant to Section 9 (c) of the National Labor Relations Act, provides for a run-off election to determine the question concerning representation. Our run-off election process is an administrative procedure whereby employees, a substantial number of whom have evinced a desire for collective bargaining, albeit in an inconclusive test, are given a further opportunity to choose a representative for that purpose. The practice of omitting the "Neither" choice from the ballot is part of that process. Where, as is the case here, the number of employees who vote in an inconclusive election for "Neither" is less than the number who vote for either of two choices, the Board has considered that, since a majority of the employees who cast ballots has indicated a desire for collective bargaining, a further opportunity should be afforded all eligible employees to select a representative for that purpose in a new election.

With respect to the respondent's second contention that, since less than a majority of eligible employees participated in the run-off election, the certification issued to the Union is invalid, "we have consistently held that 'majority' means a majority of those participating in the election, subject to the qualification that the results of the balloting be representative."⁵ The basis for this view is that, as in political elections, the failure of eligible voters to participate in elections directed by the Board is construed as an assent to the choice of the majority of those who exercise their franchise. Where less than a majority of eligible employees participate in Board elections a question as to the representative character of the vote is raised; the choice of a majority of those who cast ballots is not *ipso facto* vitiated.⁶ We are not unmindful, as counsel for the respondent ably pointed out at oral argument before us, that a number of the cases which are con-

⁴ Article III, Section 11, National Labor Relations Board Rules and Regulations—Series 3

⁵ See *Matter of Central Dispensary and Emergency Hospital*, 46 N. L. R. B. 437, and cases cited therein, particularly the general discussion in *Matter of R. C. A. Mfg. Co.*, 2 N. L. R. B. 159, 173 and cases cited therein. See also *Matter of S. A. Kendall, Jr.*, 41 N. L. R. B. 395, 397.

⁶ Cf. *Matter of Chrysler Corporation*, 1 N. L. R. B. 164.

cerned with the general proposition of the meaning of the term "majority" may be distinguished in certain respects from the instant case. We are not persuaded, however, that such distinctions possess the controlling quality attributed to them by the respondent and that any of them impel the abrogation of the rule we have found salutary. Since the facts disclosed by this record convince us that the vote herein was substantial and representative, we perceive no reason for disturbing the result reached by the Trial Examiner.

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, The Standard Lime and Stone Company, Martinsburg, West Virginia, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Cement, Lime and Gypsum Workers International Union, A. F. of L., as the exclusive representative of all of its production and maintenance employees at its Martinsburg, West Virginia, plant, including the sample carriers, but excluding the watchmen, chemical and physical analysts, supply clerks, and all other clerical employees and all supervisory employees with the rank of foreman or above, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self organization, to form labor organizations, to join, or assist United Cement, Lime and Gypsum Workers International Union, A. F. of L., or any other labor organization, 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) Upon request, bargain collectively with United Cement, Lime and Gypsum Workers International Union, A. F. of L., as the exclusive representative of all its production and maintenance employees, including sample carriers, but excluding the watchmen, chemical and physical analysts, supply clerks, and all other clerical employees and all supervisory employees of the rank of foreman or above, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post immediately in conspicuous places in its plant at Martinsburg, West Virginia, 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, and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

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

INTERMEDIATE REPORT

For the Board, *Robert A. Levett, Esq.*, of Baltimore, Maryland.

For the Union, *Del Barr*, International Representative, Martinsburg, W. Va.

For the Respondent, *Lacy I. Rice, Esq.*, and *Herbert E. Hannis, Esq.*, of Martinsburg, W. Va.

STATEMENT OF THE CASE

Upon an amended charge filed February 21, 1944, by United Cement Lime and Gypsum Workers International Union, A. F. of L., herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Fifth Region (Baltimore, Maryland), issued its complaint dated February 21, 1944, against the Standard Lime & Stone Company, herein called the respondent, alleging that the respondent at its plant near Martinsburg, West Virginia, had engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and amended charge, accompanied by notice of hearing thereof, were duly served upon the respondent and the Union. In respect to unfair labor practices, the complaint alleges in substance: (1) that all production and maintenance employees of the respondent at its Martinsburg, West Virginia plant, including the sample carriers, but excluding all watchmen, chemical and physical analysts, supply clerks and all other clerical employees and all supervisory employees with the rank of foreman or above, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act; (2) that pursuant to a Decision and Direction of Election, issued by the Board in case number R-4959,¹ an election was held on May 13, 1943, in which a majority of the employees of the respondent in the unit above described, designated the Union as their representative for purposes of collective bargaining and that on June 1, 1943, the Union was formally certified by the Board² as the exclusive representative for purposes of collective bargaining, of the employees in the above described unit; (3) that on September 18, 1943, the Union requested that the respondent bargain with it as the exclusive representative for purposes of collective bargaining of the employees within the unit and that on September 22, 1943, the respondent refused to bargain with the Union and has continued up to the present time to so refuse, and by so doing has engaged in unfair labor practices within the meaning of Section 8 (1) and (5) of the Act.

The answer of the respondent duly filed herein, admits the allegations of the complaint pertaining to the corporate structure, and nature, extent, and character

¹ 48 N. L. R. B. 424.

² 50 N. L. R. B. 34.

of the business transacted by the respondent. It further admits that the Union is a labor organization within the meaning of Section 2 (5) of the Act, denies that the respondent has interfered with, restrained, or coerced its employees at its Martinsburg plant in the exercise of the rights guaranteed to them in Section 7 of the Act, admits that the unit found by the Board to be appropriate in the Decision and Direction of Election in case No R-4959 is the appropriate unit for the purposes of collective bargaining, but denies the Union was ever selected by a proper majority of the employees in that unit as their collective bargaining representative. It further admits that on or about September 22, 1943, it refused to bargain with the Union as the exclusive representative of all employees of the respondent in the unit found by the Board and admitted to be appropriate. All the other allegations of the complaint pertaining to unfair labor practices are denied. The answer affirmatively pleads the historical development of the controversy, sets out that in the first election held pursuant to the Decision and Direction of Election, less than a majority of all the eligible voters participated and that neither the Union, the UMWA which was also a participant in the election, or the "Neither" classification received a majority of the votes cast, whereupon the Board ordered a run-off election to be participated in between the two unions above named, without permitting the voters the choice of "Neither." The answer also recites the objections filed by the respondent to the Board's order of a run-off election, the fact that such an election was held over the protest and objection of the respondent, and that objections were subsequently urged by the respondent to the report of election and to the issuance of the certification on the ground that the Board was in error in directing a run-off election where less than a majority of the employees had participated in the original election, and in holding a run-off election in which the employees were not given an opportunity to vote for "no union" if they so desired; and in certifying the Union on the basis of the results of the run-off election where substantially less than a majority of the eligible voters had participated. The answer attaches much of the documentary history of the proceedings above referred to, including the various orders of the Board with reference to the ordering of the original election, the objections of the respondent to the report of the election, the direction for a run-off election, the objections and exceptions to the supplemental decision directing the run-off election, the report on the run-off election, the objections and exceptions to the report on the run-off election, the certification on the basis of the result of the run-off election, and the correspondence between the Union and the respondent with reference to the demand for bargaining, and the respondent's refusal. The pleadings contain no allegation of irregularity in the conduct of the election insofar as the balloting is concerned and sets out no facts nor circumstances alleged to have developed or been discovered since the entry of the various orders or certification involved, but directs itself solely to the propriety of the order of the Board directing a run-off election, the designation of the questions upon which the voters in the run-off election were to vote, and the certification based upon the results of the run-off election, where less than a majority of the eligible voters participated in both elections.

Pursuant to due notice, a hearing was held on March 15, 1944, at Martinsburg, West Virginia, before R. N. Denham, 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. At the close of the submission of all evidence, counsel for the Board moved to conform all pleadings to the proof with respect to the correction of names, dates, and other minor matters not affecting the issues involved. The motion was granted without objection. Formal oral arguments were waived although there was informal discussion of the issues on the record. All parties waived the privilege of filing briefs with the Trial Examiner.

Upon the basis of the foregoing and after having heard and observed all the witnesses and considered the exhibits admitted in evidence, and upon the entire record thus made herein, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT.

The Standard Lime and Stone Company is a corporation, incorporated under the laws of the State of Maryland, with its main office in Baltimore, Maryland. It operates several plants, one of which is located near Martinsburg, West Virginia, where it is engaged in quarrying, crushing, and screening limestone, and in the manufacture of cement, stauflax, and other products of limestone. This proceeding is concerned with the Martinsburg, West Virginia plant.

During 1943, approximately 80 percent of the products of the respondent at the Martinsburg plant were sold outside the State of West Virginia and shipped to the points of sale in interstate commerce. During the same period approximately 85 percent of its purchases were made outside the State of West Virginia and shipped in interstate commerce into said State. The respondent concedes that it is engaged in interstate commerce and subject to the provisions of the Act.

II. THE ORGANIZATION INVOLVED

United Cement, Lime and Gypsum Workers of International Union, A. F. of L. is a labor organization admitting to membership the employees of the respondent at its Martinsburg, West Virginia plant.

III. THE ALLEGED UNFAIR LABOR PRACTICES

On March 23, 1943, in case number R-4959,³ the Board issued its Decision and Direction of Election in which it found that "all production and maintenance employees of the Company at its Martinsburg plant, including the sample carriers, but excluding all watchmen, chemical and physical analysts, supply clerks, and all other clerical employees and all supervisory employees with the rank of foreman or above, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act," and directed that an election by secret ballot be held among the employees within such unit to determine whether they desired to be represented by UCW, Division of District 50, UMWA, Local 202, or by United Cement, Lime and Gypsum Workers International Union affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither. An election was duly held on April 13, 1943. At the time of the election there were 439 employees within the unit eligible to vote. 218 ballots were cast, of which 99 were for the A. F. of L. Union, 62 for the U. M. W., and 57 for "neither." In regular course, the Regional Director issued and served upon the respondent his report on the election and a certificate on the conduct of the election signed by the various persons who served as observers, certifying that the balloting was fairly conducted, that all eligible voters were given an opportunity to vote in secret and that the ballot box was protected in interest of their secret balloting. The Regional Director's report contained the usual recommendation that the petition for certification be dismissed unless one of the contesting labor unions requested a run-off election within 10 days. Within that period, the respondent filed an exception to the recommendation for a run-off election and requested that the petition be dismissed regardless of request from

³ In the *Matter of Standard Lime and Stone Company and UCW Division of District 50, UMWA, and Local No. 202*, 48 N. L. R. B. 424.

either the labor organizations for a run-off election. Request for a run-off having been made by both the participating labor unions within the prescribed time, the Board, on April 28, 1943, issued its Supplemental Decision and Second Direction of Election, overruling the exceptions filed by the respondent in its motion for dismissal of the petition. Respondent duly filed with the Board its objections and exceptions to the Supplemental Decision and Second Direction of Election, which were overruled by the Board on May 14, 1943. On May 13, 1943, the run-off election directed in the Supplemental Decision and Second Direction of Election was held at the respondent's plant near Martinsburg. Notices were duly posted and full cooperation was given the Board by the respondent in facilitating the conduct of the election. On May 14, 1943, the Regional Director issued his report on the election reflecting that at the time of the election there were 409 eligible voters within the unit and that 166 ballots were cast, of which one was void, 137 were in favor of the A. F. of L., the Union herein involved, and 28 in favor of UMW. It was stipulated by all parties hereto that the election was fairly held, that all eligible voters were given an opportunity to vote their ballots in secret and that the ballot box was protected in the interest of a fair and secret vote.

On May 15, 1943, the respondent filed with the Board, its written objections and exceptions to the report of the Regional Director and objected to a certification by the Board because a majority of the eligible employees in the bargaining unit did not vote in the election, and because a majority of the eligible employees in the bargaining unit had not voted in the first election. The request of the respondent for permission to argue the matter orally before the Board was denied and on June 1, 1943, the Board issued a Supplemental Decision and Certification of Representatives,⁴ in which it certified the Union as the representative, for the purposes of collective bargaining, of all the employees within the unit therefore found to be appropriate.

Between June 1, 1943, and the early part of September, 1943, the representative of the Union was in negotiation with the respondent concerning contracts covering two of the respondent's other plants at which the Union had theretofore been certified as the exclusive bargaining representative. On September 18, 1943, the representative of the Union wrote the respondent requesting that a time agreeable to both parties be set for the beginning of negotiations for a contract with reference to its employees in the unit above referred to, in the respondent's, Martinsburg plant. On September 22, 1943, the respondent advised the union representative in writing that it was unwilling to enter into contractual relations with the Union for the reason that a majority of the eligible voters in the unit did not vote at either the original or the run-off election and that a majority of the eligible voters had not designated the Union as their bargaining agent.

On September 28, 1943, the Union filed a charge against the respondent in the office of the Regional Director of the Fifth Region, based upon the respondent's refusal to bargain with it as the exclusive representative of the employees within the appropriate unit. Thereafter, the Union withdrew the charge on or about October 11, 1943, in order to present the matter of respondent's refusal to bargain, for the consideration of the National War Labor Board. The facilities of the United States Conciliation Service and the National War Labor Board were invoked but produced no results by way of bargaining between the respondent and the Union. On November 20, 1943, the National War Labor Board referred the matter back to the Conciliation Service and called attention to the fact that the Union had recourse through the National Labor Relations Board.

⁴ 50 N. L. R. B. 34.

Further efforts by the Conciliation Service produced no results and on November 26, 1943, the representative of the Union again made formal demand upon the respondent to set a date to begin negotiation of a contract. On November 29, 1943, the respondent replied, stating that its position would remain the same as had been set out in the respondent's letter of September 22. As a result, the Union again filed charges with the Regional Director for the Fifth Region, charging the respondent with violation of Section 8 (1) and (5) of the Act, which charge was later amended on February 21, 1944. Upon the amended charge the complaint herein was issued.

The respondent has stipulated that since the election of April 13, 1943, there has been no substantial change in the employment or conditions of employment at its Martinsburg plant. It was further stipulated that on the dates of the elections held on April 13, 1943, and May 13, 1943, actual employment at the Martinsburg plant was normal, and that the usual and ordinary number of employees were present. It was stipulated on the record that due and ample notice was given to all employees by the appropriate posting of the notices of the election provided by the Board; that facilities for holding the election were provided by the respondent on its premises, and that all employees were given a full opportunity to vote, with the exception of those who were in the military service and who were unable to personally present themselves at the polls. This latter question was not raised at the hearing or made a point of contention by any of the parties, but is mentioned in the pleadings and in the exhibits, to indicate that in addition to the 439 and 409 employees, respectively eligible at April 13 and May 13 elections, there was also a number of eligible employees in the military service not included in these numbers. The respondent's sole and only contentions as stated on the record by its counsel, are (1), that the Board was in error in not dismissing the petition following the election on the ground that less than a majority of the eligible voters participated in the election; (2) that the Board was in error in ordering a run-off election in which those employees who did not desire to be represented by either of the competing unions were denied the privilege of making their wishes known in any manner other than by staying away from the polls and not participating in the election; and (3) that the Board was in error in certifying the Union on the basis of the run-off election in which substantially less than a majority of the employees within the unit participated.

Counsel for the respondent conceded at the hearing that the issues herein involved are the same issues that were involved in the respondent's numerous motions, objections, and exceptions and other pleadings filed with the Board in case No. R-4959 and that the respondent has refused to bargain with the Union and has invited this proceeding as its only medium for obtaining a review by an appropriate court, of the legal questions involved in its contentions presented to the Board in the representation case.

The question of the interpretation of the term "majority" as used in Section 9 (a), of the Act, has been disposed of by the Board in numerous decisions, both where the respondent has coupled the refusal to bargain with other unfair labor practices, and in cases such as the instant one, where there is no charge of any unfair labor practice other than the refusal to bargain. In each instance the Board has determined that so long as a substantial proportion of the eligible voters participate in the election, the results are to be determined by the expressed wishes of a majority of those voting, even though they may represent less than a majority of the total eligible voters. The Board having announced and on numerous occasions followed the above principle, it is neither necessary or fitting that this Trial Examiner comment further upon it. In the absence of any show-

ing of improper conduct, arbitrariness, or capriciousness, it must be and is found that there is no merit in the contention of the respondent that the election failed to indicate a choice of a majority merely because less than a majority of the total eligible voters elected to participate therein. Those not participating, after due notice and full opportunity must be regarded as having assented to whatever choice a majority of those voting might make.

The other contention, that the Board was in error in limiting the voting in the run-off election to a choice between the two unions, has likewise been determined by the Board in numerous instances in the past and has been set down in the current Rules and Regulations as the Board's established policy, where the vote at the first election disclosed the order of the choice of the voters to be as it was in this instance. Again, this rule having been established and followed by the Board as a reasonable rule to permit it properly to perform its functions under the law, it is neither necessary nor fitting that this Trial Examiner comment on the propriety of the established rule, particularly when, as here there is no suggestion of improper conduct, arbitrariness, or capriciousness on the part of the Board or any of its agents in applying the rule. It is therefore found that there is no merit to the contentions of the respondent above recited, and that the respondent did in fact and in law on September 22, 1943, and at all times since that date has continued to refuse to bargain with the Union as the duly chosen and certified exclusive representative, for the purposes of collective bargaining, of all the employees within the unit heretofore found to be appropriate, and that thereby the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed to them in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III above, which have been found to have interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act, 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 thereof.

V. THE REMEDY

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

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

CONCLUSIONS OF LAW

1. United Cement, Lime and Gypsum Workers International Union, affiliated with the American Federation of Labor, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All production and maintenance employees of the respondent at its Martinsburg plant, including the sample carriers, but excluding all watchmen, chemical and physical analysts, supply clerks, and all other clerical employees and all supervisory employees with the rank of foremen or above, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. United Cement, Lime and Gypsum Workers of International Union A. F. of L. was on June 1, 1943, and at all times thereafter has been the exclusive representative of all employees in such unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing, on September 22, 1943, and at all times thereafter, to bargain collectively with United Cement, Lime and Gypsum Workers International Union, A. F. of L., as the exclusive representative of its employees in the appropriate unit above described, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

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

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

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record, the undersigned recommends that the respondent, its officers, agents, and representatives shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Cement, Lime and Gypsum Workers International Union, A. F. of L. as the exclusive representative of all its production and maintenance employees at its Martinsburg plant, including the sample carriers, but excluding the watchmen, chemical and physical analysts, supply clerks, and all other clerical employees and all supervisory employees with the rank of foreman or above;

(b) In any similar manner interfering with, restraining, or coercing its employees in the exercise of the rights 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 will effectuate the policies of the Act:

(a) Upon request bargain collectively with United Cement, Lime and Gypsum Workers International Union, A. F. of L. as the exclusive representative of all its production and maintenance employees at its Martinsburg plant, including the sample carriers, but excluding all watchmen, chemical and physical analysts, supply clerks, and all other clerical employees and all supervisory employees with the rank of foremen or above, in respect to rates of pay, wages, hours of employment, or other conditions of employment;

(b) Post immediately in conspicuous places in its plant, near Martinsburg, West Virginia, 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 (a) and (b) of these recommendations and that the respondent will take the affirmative action set forth in paragraph 2 (a) hereof;

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

It is also recommended that unless on or before ten (10) days from the receipt of this Intermediate Report the respondent notifies the Regional Director for the Fifth Region in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take such action.

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 this case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, an original and four copies of a statement in writing setting forth such exceptions to this 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.

R N. DENHAM,
Trial Examiner.

Dated March 24, 1944