

In the Matter of THE LAREDO DAILY TIMES and LAREDO TYPOGRAPHICAL
UNION No. 778

Case No. 16-C-1019.—Decided September 22, 1944

DECISION

AND

ORDER

On April 26, 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 forth in a copy of the Intermediate Report attached hereto. Thereafter, the respondent filed exceptions to the Intermediate Report.

The Board has reviewed the rulings on motions and on objections to the admission of evidence made by the Trial Examiner at the hearing, and finds that no prejudicial error was committed. The rulings are hereby affirmed.

The Board has considered the Intermediate Report, the exceptions, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except insofar as they are inconsistent with our findings and order hereinafter set forth.

We agree with the conclusion of the Trial Examiner that on November 27, 1943, the respondent discriminatorily discharged Serna, and we further find that the respondent, at various times thereafter, discriminatorily denied him reinstatement, in violation of Section 8 (3) of the Act.

We also concur in the Trial Examiner's conclusion that the respondent, following its reinstatement of Serna on January 21, 1944, discharged him on March 6, 1944, and we further find that the respondent thereafter refused to reemploy him, all for the reason that he filed or caused to be filed charges under the Act alleging that his dismissal on November 27, 1943, was discriminatory. The record discloses, and we find, that on March 4, 2 days after the respondent received a copy of the complaint alleging that Serna's discharge on November 27 was discriminatory, together with a Notice of Hearing thereon, the re-

spondent attempted to induce Serna to sign a statement to the effect that he would not proceed further against the respondent in that case and would not appear at the hearing.¹ Serna refused to sign that statement. On March 6, the next work day, President Allen repeated the respondent's request that Serna sign the statement, and Allen indicated to Serna that if he refused to do so he could consider himself discharged.² Serna thereupon proceeded to leave the plant. As he was walking out, Allen asked him to return, but Serna refused to do so. In view of the last-mentioned circumstance, the respondent urges that Serna voluntarily quit his employment and was not discharged, and that it therefore committed no violation of the Act. We find this contention to be without merit. As Serna himself testified, Serna did not return to the plant after March 6 because the respondent made it unmistakably clear to him that he could continue in its employ only if he signed the afore-mentioned statement. That such a condition which is clearly illegal, was attached to Serna's employment, is evidenced not only by Allen's afore-mentioned conduct in indicating to Serna that he was discharged for refusing to sign the statement, but by subsequent events as well. Thus, on the same day March 6 that Serna left the plant, Allen sent him a letter which, while reciting that Serna had not been discharged that morning, contained an attempted justification of Serna's dismissal on November 27, and specifically requested Serna to straighten out "with our bookkeeper, Mr. Pena" the matter of the Board's claim "that we owe you for the time you were not here," concluding with the statement that "we are not replacing you until you have had time to consult with your union and the National Labor Relations Board." Also, on the following day, March 7, Foreman Rodriguez, Bookkeeper Pena, and Press Foreman Watt called on Serna at his home, and while they too told Serna that he had not been discharged, they sought to persuade him to sign the afore-mentioned statement. So far as the record discloses, Serna was at no time advised by the respondent that he could return to its employ without signing that statement.

THE REMEDY

The respondent in effect contends that Serna should be denied back pay for the periods following his two discharges, during which he was unemployed, on the ground that he wilfully incurred a loss of earnings by failing to register with the United States Employment Service or to make a reasonable effort to obtain other employment during those

¹ We credit Serna's version of the contents of that statement, Serna having impressed us, as he did the Trial Examiner, as a trustworthy witness.

² According to Serna's testimony, which we credit, Allen said to Serna that if he did not sign the statement, "there is the door." Upon the entire record, including the fact that Allen did not impress us as completely trustworthy witness, we do not credit Allen's testimony that he told Serna, before the latter left the plant on March 6, that he was not concerned about Serna's failure to sign the statement.

periods.³ In view of the circumstances set forth below, we do not believe that Serna was guilty of a wilful incurrence of a loss of earnings for the periods in question, and we shall accordingly proceed with our usual back-pay order.

As for the 8-week period following the first discharge,⁴ it is clear that during that period, the respondent led Serna to believe that he might be reemployed, and that Serna made repeated efforts to obtain such reemployment. Thus, on November 27, the day of his discharge, President Allen advised Serna that he would be recalled as soon as Allen had an interview with some of the employees. About 2 weeks later, Serna, relying upon Allen's afore-mentioned advice, applied for reinstatement, and was offered reemployment on condition that he resign from the Union. Serna decided to consider that offer and so informed the respondent. Approximately 2 weeks later, Serna again applied for reinstatement, and again the respondent conditioned its offer of reemployment upon his withdrawal from the Union. Within the following 2 weeks, Serna and representatives of the Union considered ways and means of securing Serna's reinstatement, and the union representatives finally notified the respondent that Serna had resigned from the Union. Shortly thereafter, Serna was reinstated. In addition to the foregoing, the record discloses that during the period in question following his first discharge, Serna applied for a position with another company. In view of all the circumstances outlined above, we do not believe that Serna wilfully incurred a loss of earnings during that period.

With respect to the 12-day period between Serna's second discharge and the last day of the hearing herein, Serna testified that he did not seek new employment during that period because he expected to be reinstated within a short time following that discharge. In view of the respondent's conduct following his second discharge, as previously outlined, as well as the fact that the respondent had reinstated him after his first discharge, Serna's expectation in this regard was not without warrant and, according to a statement by the respondent in its exceptions to the Intermediate Report, Serna was in fact reinstated 5 days after the close of the hearing herein. But even in the absence of special circumstances justifying Serna's belief that there was a likelihood of his being reinstated within a short time following his second discharge, we would not deny Serna back pay for the period in question. It is not unlikely that an employer, upon reconsideration on his own motion, or upon negotiation with him by the dischargee or the latter's representative, will decide, within a reasonable time

³ See *Matter of The Ohio Public Service Company*, 52 N. L. R. B. 725

⁴ This is the period from November 27, 1943, the date of Serna's first discharge, to January 21, 1944, the date on which he was reinstated

following dismissal, to reinstate a dischargee. We are therefore of the opinion that, absent special circumstances, a dischargee should be allowed a reasonable period following his dismissal during which he should not be required to seek other employment which, if offered and accepted, would result in unnecessary dislocation if he decided to avail himself of a later offer of reinstatement by his former employer. We believe that 12 days, which is the length of time involved herein, can hardly be regarded as an unreasonable period for this purpose. In view of all of the foregoing, we find that Serna did not wilfully incur a loss of earnings during the period following his second discharge.⁵

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 Laredo Daily Times, Laredo, Texas, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Laredo Typographical Union No. 778, affiliated with the International Typographical Union, or in any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or otherwise discriminating in regard to their hire or tenure of employment, or any term or condition of their employment;

(b) Discharging, refusing to reinstate, or otherwise discriminating against any of its employees because they have filed or have caused to be filed charges under the Act;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Laredo Typographical Union No. 778, affiliated with the International Typographical Union, 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:

⁵ Since the hearing herein closed on March 18, we have no evidence concerning any wilful incurrence of a loss of earnings from that date until March 23, when, according to the afore-mentioned statement by the respondent in its exceptions to the Intermediate Report, Serna was reinstated. In any event, the record discloses that on March 18, counsel for the respondent stated at the hearing, at which Serna was present, that the respondent might reinstate Serna after the close of the hearing. With this expectation of early reemployment by the respondent, Serna, even assuming that he made no effort to seek employment elsewhere during the 5-day period in question, could hardly be said to have been guilty of a wilful incurrence of a loss of earnings during that period.

(a) Offer to Apolonio Serna immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority and other rights and privileges;⁶

(b) Make whole Apolonio Serna 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 the amount which he normally would have earned as wages from November 27, 1943, the date of his first discriminatory discharge, to January 21, 1944, the date on which he was reinstated, and from March 6, 1944, the date of his second discriminatory discharge, to the date of the respondent's offer of reinstatement,⁷ less his net earnings during such period;

(c) Post immediately in conspicuous places at its premises in Laredo, 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), (b), and (c) of this Order; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a) and (b) of this Order; and (3) that the respondent's employees are free to become and remain members of Laredo Typographical Union No. 778, affiliated with the International Typographical Union, and that the respondent will not discriminate against any employee because of membership in or activity on behalf of that organization, or because he has filed or caused to be filed charges under the Act;

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

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

INTERMEDIATE REPORT

Messrs Elmer Davis and Glenn L. Moller, for the Board
Mr. Robert S. Phelps, of Laredo, Texas, for the respondent
Mr. Juan J. Guerrero, of Laredo, Texas, for the Union.

STATEMENT OF THE CASE -

Upon an amended charge duly filed on February 21, 1944, by Laredo Typographical Union No. 778, affiliated with the International Typographical Union, herein called the Union, the National Labor Relations Board, herein called the

⁶ As already indicated, the respondent, in its exceptions to the Intermediate Report, states that 5 days after the close of the hearing herein, Serna was reinstated to the position which he held on March 6, 1944. However, since we have no evidence concerning Serna's reinstatement, or its terms, we are entering our usual order requiring that Serna be reinstated to his former or substantially equivalent position, without prejudice to his seniority and other rights and privileges. If the respondent has already taken action which would constitute compliance with the terms of such order, Serna's back pay will run up to the date of such compliance.

⁷ See footnote 6, *supra*

Board, by the Regional Director for the Sixteenth Region (Fort Worth, Texas), issued its complaint dated March 1, 1944, against The Laredo Daily Times, Laredo, Texas, 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) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by notice of hearing thereon, were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint, as amended at the hearing, alleged in substance: (1) that from about November 15, 1943, the respondent, through its officers, agents, and employees, namely William P. Allen and Guadalupe Rodriguez, has disparaged and expressed disapproval of the Union, warned and threatened its employees to refrain from assisting, joining or remaining members of the Union; stated to its employees that if they engaged in union or concerted activities their employment would be terminated; and required, as a condition of employment, that they abandon or resign their membership in the Union; (2) that on or about November 27, 1943, the respondent discharged Apolonio Serna and, from that date to January 21, 1944, refused to reinstate him; that the respondent reemployed Serna on or about January 21, 1944, and again discharged him on or about March 6, 1944, and thereafter refused to reinstate him, because he joined or assisted the Union or engaged in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, and/or because he filed charges or gave testimony pursuant to the Act; and (3) that by the foregoing acts, the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Pursuant to notice, a hearing was held on March 16, 17, and 18, 1944, at Laredo, Texas, before W. P. Webb, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel and the Union by its Secretary and Treasurer. All parties participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing upon the issues, was afforded all parties.

At the beginning of the hearing the respondent filed its answer in which it admitted certain allegations of the complaint in respect to its business, and that it discharged Apolonio Serna on or about November 27, 1943, but denied all material averments of the complaint relating to the unfair labor practices.

At the beginning of the hearing, Board's counsel moved to amend the complaint to include the allegation that the respondent had also discharged Apolonio Serna on March 6, 1944, thereby violating Section 8 (4) of the Act. The motion was granted by the Trial Examiner without objection. Thereupon the respondent's counsel moved to amend the respondent's answer to deny the aforesaid amended allegation. The motion was granted by the Trial Examiner without objection.

At the conclusion of the hearing a motion by Board's counsel to conform the pleadings to the proof in respect to minor inaccuracies regarding dates, the spelling of names and other matters not related to the fundamental issues, was granted by the Trial Examiner without objection.

At the conclusion of the hearing, counsel for the respondent moved to dismiss the complaint in its entirety. Ruling on this motion was reserved. It is now denied by the undersigned.

Opportunity to argue orally before the Trial Examiner at the conclusion of the hearing, and to file briefs with the Trial Examiner was waived by the parties.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, The Laredo Daily Times, is a Texas corporation, having its principal office and place of business in Laredo, Texas, where it is engaged in the publication, sale and distribution of a daily and Sunday newspaper, known as The Laredo Daily Times. It is the only daily newspaper published in Laredo. The daily edition has a circulation of approximately 12,000 copies, and the Sunday edition about the same. It is published in both English and Spanish and is distributed in Texas and Mexico, about one third of the copies going to Mexico. Advertising material is received from business concerns in Mexico and States other than the State of Texas. The respondent is a member of the Associated Press and uses its wire reports. It also uses feature articles supplied by Newspaper Enterprise Association of Cleveland, Ohio, and United Feature Syndicate, Inc. The respondent procures approximately 90 percent of its paper from Canada, which amounts to about \$2,000 a month in value. The respondent admits for the purpose of this proceeding, that it is engaged in commerce within the meaning of the Act. The respondent normally employs approximately 25 employees. W. P. Allen is president and general manager, and owns practically all of the stock of the respondent.

II. THE ORGANIZATION INVOLVED

Laredo Typographical Union No. 778, affiliated with the International Typographical Union, is a labor organization admitting to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The discriminatory discharges of Apolonio Serna on November 27, 1943, and March 6, 1944; interference, restraint, and coercion*

1. The discharge of November 27, 1943

The predecessor of the Union began its organizational campaign in Laredo, Texas, about June or July 1942. It was known as "Labor Group of Graphic Arts." In September 1943, this group became affiliated with the International Typographical Union, and Local 778 was established. The Union has a contract with the South Texas Citizen, a local weekly newspaper, but its efforts to organize the respondent's employees have resulted in little or no success. None of them joined the Union, except Apolonio Serna. This employee had worked for the respondent, all told, about 6 years up to the time of his first discharge on November 27, 1943. His job was setting up forms for advertisements. Serna is a Mexican, but has some knowledge of English. He joined the predecessor of the Union in 1942, a fact which became known to the respondent. He was elected "Segundo Vocal," of the Union, which means second trustee or director. Serna solicited some of the respondent's employees to join the Union but with no success. On November 26, 1943, the day before his first discharge, a group photograph appeared in the South Texas Citizen. The group consisted of a representative of the International Typographical Union and 15 members of Local No. 778, one of whom was Serna. None of the others, appearing in this photograph, was an employee of the respondent. Although offered to the respondent for publication, Allen refused to use it. Copies of the South Texas Citizen were received regularly by the respondent.

On Saturday, November 27, the next day after the photograph was published, Guadalupe Rodriguez, one of the respondent's foremen, summarily and without warning gave Serna his check and said to him "This ceases your employment." Serna left the plant and on his way down town met President Allen. Allen told him that he had less work in the plant and less pages in the newspaper, but that he was going to have an interview with some of the employees, and that he could then come back to work.

Serna returned to the plant about 2 weeks after his discharge and had a conversation with Foreman Rodriguez. The latter patted Serna on the back and said to him, "Mr. Allen inquired about you and asked me whether or not you were working." Serna replied that he had not been working. Rodriguez said, "Very well, there is one thing, you have got work here, you have got employment here, but cease to be a member of the union . . . Mr. Allen has been very good to us . . . You have got to eat, you have got a family . . . It is up to you whether you want to work or not." Rodriguez also told Serna that the Union would not help him. Serna told Rodriguez that he would think it over. About 2 weeks later, that is about January 1, 1944, Serna again went to the plant and saw Foreman Rodriguez. The latter said to Serna "What have you decided, have you made up your mind?" Serna replied that he was willing to work, but that he belonged to the Union. Rodriguez replied that he was leaving it up to him, and told him that he had instructions from Allen to tell him that if he would give up the Union, he could come back to work.¹

According to the testimony of Eduardo Rodriguez and Juan Guerrero,² which is credited by the undersigned, at a meeting of the Union on Sunday, January 16, 1944, it was resolved by the members that information would be given out that Serna was no longer a member of the Union. The purpose of this resolution was to secure Serna's reinstatement by the respondent. On that same day, Eduardo Rodriguez and Juan Guerrero, together with two others, went over to Nuevo Laredo, Mexico, which is just across the river from Laredo, Texas, and met Juan Bazaldua, the respondent's Spanish Editor, in charge of the Spanish section and a supervisor. Over a glass of beer, Rodriguez told Bazaldua that Serna was no longer a member of the Union. Bazaldua replied that most of the respondent's employees were afraid or "really were not game," and that probably the respondent would reinstate Serna, since he had been discharged because of his union membership.³

On January 20, the respondent sent for Serna. He went to the plant and talked to Allen, with Foreman Rodriguez acting as interpreter. Allen asked him if he wanted to work and Serna replied that he did. Foreman Rodriguez then said to Serna, "Let's dedicate ourselves, let's devote ourselves to work and

¹ These findings are based upon the credible testimony of Serna. Foreman Rodriguez did not specifically deny these facts. He testified that he told Serna that Allen had said business was "picking up" and if it kept up Serna could have his job back, but that nothing was said about the Union. The undersigned credits the testimony of Serna.

² Eduardo Rodriguez was president of the Union and a foreman at the South Texas Citizen plant. Juan Guerrero was secretary-treasurer of the Union.

³ Bazaldua admitted that he met Rodriguez and the others in Nueva Laredo, on Sunday, January 16, and that they talked, but "it was not a topic of interest. We were just talking there in the saloon about work and war news." He denied that anything was said about Serna. The undersigned was not favorably impressed with the testimony of Bazaldua and finds that he made the statements substantially as testified to by Eduardo Rodriguez and Guerrero. Bazaldua further testified that he had seen Rodriguez at Nuevo Laredo, Mexico, on a number of occasions, but that Rodriguez had never before or since the meeting on Sunday, January 16, asked him to have a glass of beer.

you just keep out of this union proposition, this union acquaintance, let's get down to work."⁴ Serna went back to work the next day, at his old job.

2. The discriminatory discharge of March 6, 1944

On Thursday, March 2, 1944, the respondent received the complaint and notice of hearing thereon⁵ On Saturday, March 4, Allen told Serna, in the presence of Foreman Rodriguez, Jimmie Watt, press foreman, and Pena the bookkeeper, the latter and Rodriguez acting as interpreters, that there was not sufficient work to justify keeping him. Allen showed Serna a lot of books and figures, and finally asked Serna if he owed him anything. Serna replied that he did not. Allen then said to Serna, "Haven't you filed a complaint against me or The Laredo Times?" Serna replied that he had not. Allen then said "Well, if you have not filed such a complaint, are you willing to sign a letter for me?" Serna agreed, and Allen instructed Pena to write the letter and told him what to put into it. It was then lunch time, and Serna said that he would come back. About 3.00 p. m. that day, Serna returned to the plant and saw Rodriguez. The latter asked Serna if he had signed the letter. Serna replied that he had not. Rodriguez then took Serna over to the desk, showed him the letter, translated it into Spanish, gave Serna a pen and told him to sign it. The letter was typewritten in English and was addressed to Dr. Elliott, the Regional Director. Serna locked over the letter and refused to sign it. The letter, according to Serna's testimony, referred to Paragraph 5 of the Complaint.⁶ As to the text of this letter, Serna testified as follows:

I recall this in which the letter stated that I would agree not to appear in any court at any time; by that I mean that we were not to come to no hearing or no procedure would be taken as we are doing now . . . That was one of my reasons for not signing it, when he [Foreman Rodriguez] explained to me that I was not to appear against The Laredo Times or Mr. Allen in any court. That is one of the outstanding points that I understood.

When Serna refused to sign the letter, Foreman Rodriguez said to him "You agreed to sign this letter for Mr. Allen, . . . If you do not sign this letter, you do not realize just in what sort of a mess you are getting into."⁷

⁴ This finding is based upon the credible testimony of Serna, whom the undersigned found to be a straightforward and truthful witness. Foreman Rodriguez testified that the respondent reinstated Serna because they had a lot of work to do and could not get anyone in town.

⁵ Under date of March 1, 1944, the Regional Director wrote the respondent as follows:

THE LAREDO DAILY TIMES, *Laredo, Texas*

(Attention: Mr. W. P. Allen, Publisher.)

Re The Laredo Daily Times, Case No. 16-C-1019.

MY DEAR MR. ALLEN: We are enclosing copy of Complaint and Notice of Hearing in the above-entitled matter. Our object is always to avoid the procedure of hearing where possible. Should you be disposed to contact us prior to the date of the hearing for the purpose of adjusting the matters made the subject of the enclosed instrument, in compliance with the National Labor Relations Act, we should be happy to have you call upon us.

Sincerely,

(Signed) EDWIN A. ELLIOTT,
Regional Director.

⁶ Paragraph 5 of the Complaint states "Respondent did discharge and refuse or fail to restate the said Apolonio Serna for the reason that he joined or assisted the union or engaged in other concerted activities for the purpose of collective bargaining or other material aid, or protection."

⁷ These findings are based upon the credible testimony of Serna. Rodriguez denied having made this statement to Serna. The undersigned does not credit his denial and finds that he made the statement substantially as testified to by Serna.

Serna told Rodriguez that he would see that President of the Union about whether he should sign the letter or not. With the foreman's permission, Serna then left the plant, but returned later in the day. He saw Pena and Watt, both of whom urged him to sign the letter. Serna again refused. On the following Monday morning, March 6, Serna reported for work as usual. After he had been at work about 15 minutes, Allen and Pena came to his department. Pena, interpreting for Allen, said to Serna, "You have no reason why you should not sign this letter. If you do not come to some agreement as Mr. Allen has stated, there is the door." According to Serna, Allen was angry and excited and used some profanity, which was not interpreted by Pena. Serna understood from what Allen said, that if he did not sign the letter, he was discharged. Serna went outside. Serna's credible testimony as to what then happened is as follows:

I started out and as I was right at the door, Mr. Allen called me back and I told him I would not return to talk to him because I was worried and because he was mad, that is why I would not go back. As I was going out, Mr. Guadalupe Rodriguez, the foreman, was coming in, and then both Mr. Rodriguez and Mr. Allen called me back, and inasmuch as I was outside, I proceeded on to my home. That was all.

On the same day, Allen wrote Serna a letter reciting the history of Serna's employment and endeavoring to justify the respondent's actions toward Serna, but it did not state that Serna would not be required to sign the above-described letter. Serna did not return to work and, at the time of the hearing, had not been reinstated.

3. Conclusion as to the discharges and interference, restraint, and coercion

In the respondent's answer, signed by Allen, it is contended that Serna was discharged on November 27, 1943, because "the seasonal increase of the business was expected and had not materialized." It further contends that Serna was offered, but refused, reemployment about two weeks later.

At the hearing, witnesses for the respondent gave confused, contradictory and evasive testimony as to the actual discharge and the respondent's alleged reasons for it. Foreman Rodriguez testified that he discharged the employee. President Allen testified, "I called him in there and discharged him." Rodriguez at first gave as one of the reasons for discharging Serna, "he was the newest man there." Shortly thereafter Rodriguez admitted that Serna had more seniority than Castillo, another employee doing the same sort of work, who was not discharged. Allen testified that he discharged Serna:

Because I had an overdraft at the bank for about \$2,000 00 which my books reflect, and I was having a faster loss in business than I expected.

Allen further stated, however, that he had not needed Serna during the entire year of 1943, and admitted that he had been overdrafted at the bank "since the beginning of the summer." Allen gave no reasonable explanation as to why, if poor business and a bad debt, both of long existence, were the real reasons for Serna's discharge, the decision to dismiss the employee was suddenly made on November 27. Nor do the reasons for the discharge advanced by the respondent bear scrutiny in the light of immediate subsequent events. Almost immediately after Serna's dismissal another employee was hired to take his place.⁸ As found above, about two weeks after the discharge Serna was offered his job back if he would drop the Union. He rejected this condition.

⁸ Allen stated, "About the first of December."

The Trial Examiner is convinced and finds that there is no merit in the contentions of the respondent that Serna was discharged on November 27 because of business decline and a bad debt.

Serna was the only union member in the respondent's plant. The respondent knew that Serna was a member of the local group which was the predecessor of the Union, chartered by the International late in September 1943. As noted above, the Union endeavored to have the respondent publish a photograph of union members and officers, including Serna, but the Union president was told by the Spanish Editor that Allen refused permission. On November 23, 1943, the picture was published by the respondent's weekly competitor, the South Texas Citizen. On the next day Serna was summarily discharged. In mid-December and again early in January Serna was, in effect, offered reinstatement by Rodriguez upon the condition that he cease his union membership. On January 16 the Spanish Editor was told that Serna had dropped such membership. Four days later the respondent sent for the employee, and reinstated him without asking him if he still belonged to the Union, but with the admonition that he "keep out of this union proposition."

The Trial Examiner concludes, and finds, that Serna was discharged on November 27, 1943, because of his union membership and activity on behalf of that organization.

The answer contends that Serna was not discharged on March 6, but that he left his work voluntarily although urged to remain. The testimony of the respondent's witnesses as to the events of March 4 and 6 are likewise confused and contradictory. The document which, as found above, Serna was told to sign or "there is the door", was not produced by the respondent. During the hearing counsel for the respondent stated that Allen had informed him that he had torn it up and thrown it away. Allen, however, testified that he never saw it, and did not know who it was addressed to. He insisted, nevertheless, that it was nothing but a "memorandum receipt," and that he suggested Serna sign it to settle the case which, he said, "the Labor Relations Board say we must settle." Bookkeeper Pena, who typed the document, was not called as a witness. Foreman Rodriguez, who translated the text of the document into Spanish for Serna, was vague and uncertain in his testimony concerning the nature of its contents, and the Trial Examiner can place no reliance upon his statement that the "letter" only contained an agreement that Allen did not owe Serna any money. Foreman Watt's testimony as to the document was somewhat more explicit, and substantially corroborated Serna's testimony on the point. Watt testified that Allen, with the "paper" on the desk before him, asked Serna "why this complaint against him," but that all he could recall of the contents was: "I, so-and-so, have no claim against the Laredo Times."

Allen's account of Serna's leaving the plant on March 6 is, in substance, as follows. He told the employee that he did not care about his not having signed the "receipt" on the preceding Saturday, but insisted that he go over to the bookkeeper and "tell him how much we owe you." In about five minutes Serna came from the back of the plant, with his bicycle, "came barging through and about half knocked the door down . . . and went through another one and almost knocked it off." He "hollered" and asked Serna to stop, but the employee declared, "No, I am going."

Rodriguez testified that Serna was just leaving the plant when he came in, that he asked the employee what the matter was, but that Serna only replied, "No," and kept on going.

It is plain that the testimony of neither Allen nor Rodriguez provides reasonable support for the respondent's contention that Serna quit his job voluntarily on March 6. The Trial Examiner finds no merit in the contention.

On the other hand, the circumstances described in the findings above, which are undisputed by Pena, established beyond doubt that Serna was given his choice, by Allen through Pena, of signing a release absolving the respondent from responsibility under the Act for his previous discharge, or of leaving his employment.

The Trial Examiner is convinced, and finds, that Serna was, in effect, discharged by the respondent on March 6 because charges had been filed on his behalf by the Union, with respect to his previous discharge on November 27.

In summary, the Trial Examiner concludes and finds that Serna was discriminatorily discharged by the respondent on November 27, 1943, because of his union membership and activity, and on March 6, 1944, because he had filed charges against the respondent under the Act; thereby discouraging membership in the Union and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act. It is also found that the respondent, by the anti-Union remarks of Rodriguez to Serna, as described above, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by 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, 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 unfair labor practices, it will be recommended that the respondent cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the respondent discharged Apolonio Serna on November 27, 1943, and thereafter refused to reinstate him until January 21, 1944, for the reason that he joined or assisted a labor organization and engaged in concerted activities for the purposes of collective bargaining or other mutual aid or protection. It also has been found that the respondent again discharged Apolonio Serna on March 6, 1944, because he filed charges pursuant to the Act. It will therefore be recommended that the respondent offer Apolonio Serna immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges.

It will be further recommended that the respondent make whole Apolonio Serna for any loss of pay he may have suffered by reason of the respondent's discrimination against him in the following manner: (1) by payment to Apolonio Serna of a sum of money equal to that which he would normally have earned as wages from November 27, 1943, the date of his first discharge, to January 21, 1944, the date on which he was reinstated, less his net earnings²

² 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.

during said period; and (2) by payment to Apolonio Serna of a sum of money equal to that which he would normally have earned as wages during the period from March 6, 1944, to the date of his offer of reinstatement, less his net earning during said period.¹⁰

Upon 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. Laredo Typographical Union No. 778, affiliated with the International Typographical Union, is a labor organization within the meaning of Section 2 (5) of the Act.

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

3. By discriminating in regard to the hire and tenure of employment of Apolonio Serna, thereby discouraging membership in Laredo Typographical Union No. 778, affiliated with the International Typographical Union, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

4. By discharging and otherwise discriminating against Apolonio Serna because he filed charges 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.

5. 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 above findings of fact and conclusions of law, the undersigned recommends that the respondent, The Laredo Daily Times, Laredo, Texas, its agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Laredo Typographical Union No. 778, affiliated with the International Typographical Union or in any other labor organization by discharging, refusing to reinstate, or otherwise discriminating in regard to the hire and tenure of employment or any term or condition of employment of its employees;

(b) Discharging, refusing to reinstate, or otherwise discriminating against any of its employees because they have filed charges or given testimony under the National Labor Relations Act;

(c) 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 undersigned finds will effectuate the policies of the Act:

¹⁰ During the last day of the hearing, an exchange between counsel indicated that the respondent might reinstate Serna after the close of the hearing. No information has been received by the Trial Examiner as to what, if any, action in this respect has been taken by the respondent.

(a) Offer to Apolonio Serna immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges;

(b) Make whole said Apolonio Serna 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 in the manner set forth in the Section entitled "The remedy";

(c) Post immediately in conspicuous places throughout the respondent's place of business at Laredo, 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 to cease and desist in paragraph 1 (a), (b) and (c) of these recommendations; (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 and remain members of Laredo Typographical Union No. 778, affiliated with the International Typographical Union, and that it will not discriminate against any employee because of membership in or activity on behalf of that labor organization;

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

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report the respondent notifies said Regional Director in writing that it will comply 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.

W. P. WEBB,
Trial Examiner.

Dated April 26, 1944.