

In the Matter of UNITED GROWERS, INC. and CANNERY WORKERS UNION,  
LOCAL 23104

*Case No. 19-C-1274.—Decided November 27, 1944*

DECISION

AND

ORDER

On July 14, 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 that it had not engaged in certain other unfair labor practices, and recommending that it cease and desist from the unfair labor practices found and take certain affirmative action, as set forth in the copy of the Intermediate Report annexed hereto, and that the complaint be dismissed as to the remaining allegations. Thereafter, the respondent filed exceptions to the Intermediate Report and a supporting brief; the Union filed no exceptions or brief. No request for oral argument before the Board at Washington, D. C., was made by any of the parties, and none was held. The Board has considered the rulings 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 brief filed by the respondent and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the additions noted below:

1. The Trial Examiner has found in effect, and we agree, that the respondent, by requiring Dollis Williams and Leota Sipe to accept work on the night shift, discriminated against them, within the meaning of Section 8 (3) of the Act. In agreeing with the Trial Examiner's conclusion that the respondent's treatment of these employees, especially its refusal to reinstate them to day work, was motivated by their union membership, we attach much significance to the following circumstances, among others: Of the employees involved in the original inter-line transfer, only Williams and Sipe protested their transfer to the night shift and requested reinstatement to the day shift for reasons which normally warranted favorable action by the respondent in accordance with its then existing practice. The respondent's failure to

give any convincing explanation for its treatment of these employees, is especially revealing in view of the fact that they admittedly were satisfactory workers and that on the day shift there were available jobs to which they could have been assigned.<sup>1</sup> It also appears that Williams and Sipe were the two most prominent members of the Union and that the respondent had manifested an anti-union animus, as found by the Trial Examiner. Further indicative of anti-union motivation with respect to the treatment of Williams and Sipe, is the testimony of Maxwell Williams, the husband of one of the discriminatees, which does not appear in the Intermediate Report. The record shows that on the day following the effective date of the proposed transfer, Mr. Williams asked Foreman Barnes, who had arranged the shift manipulation described in the Intermediate Report, why Mrs. Williams and Sipe were transferred to night work. According to Mr. Williams, Barnes stated that the "trouble" at the plant was caused by Mrs. Williams' union activity and not by her work. Barnes admitted having a conversation with Mr. Williams concerning the reason for the transfers in question, but denied the remaining statements attributed to him by Williams. The Trial Examiner did not resolve this particular conflicting testimony, but he has otherwise discredited Barnes and credited Williams with respect to certain conflicting testimony set forth in the Intermediate Report. In these circumstances, and especially since Barnes was unable to give a convincing valid explanation for requiring Williams and Sipe to work on the night shift,<sup>2</sup> we do not credit his denial in this instance, and we credit the testimony of Mr. Williams.

2. To remedy the unfair labor practices committed by the respondent, the Trial Examiner has properly recommended that the respondent offer Williams and Sipe immediate reinstatement with back pay from December 20, 1943, to the date of the respondent's offer of reinstatement. However, since the respondent's business is seasonal, it is possible that its plant may not be in operation at the time said offer of reinstatement is made; in that event the offer of reinstatement of these employees shall become effective at such time as the respondent's seasonal business next begins. Moreover, in making these employees whole, we shall not award back pay for the periods

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<sup>1</sup> As the Trial Examiner found, there were 3 employees on the day shift who had informed the respondent that they could work on the night shift. In addition, the record shows that on the day the respondent finally refused to reinstate Williams and Sipe to the day shift, only 30 employees reported for work on the day shift—5 less than the number required for an "ideal" crew—and on the following day only 27 reported.

<sup>2</sup> For example, Foreman Barnes, in attempting to explain why he did not revoke the transfer of these two employees to the night shift upon learning of their valid objection to night work, testified that Williams and Sipe said "enough things" as to why the transfer was made so that "if I had put them back to work I would have lost all authority, even with the other employees, they would have figured that they could do as they pleased." Barnes was unable to recall what "things" were said by these employees, and when asked how the revocation of the transfer of the only two complaining transferees would have undermined his authority Barnes was unable to give a reasonable explanation.

in which they normally would not have worked in the respondent's plant; nor shall we deduct as earnings any monies earned elsewhere by them during said period.

### 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, United Growers, Inc., and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Cannery Workers Union, Local 23104, affiliated with the American Federation of Labor, or any other labor organization of its employees, by discharging, transferring, or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire and tenure of employment or any term or condition of their employment;

(b) 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 Cannery Workers Union, Local 23104, affiliated with the American Federation of Labor, or any other labor organization, 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 Board finds will effectuate the policies of the Act:

(a) Offer Dollis Williams and Leota Sipe immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, in the manner set forth in our Decision;

(b) Make whole Dollis Williams and Leota Sipe for any loss of pay they have suffered by reason of the respondent's discrimination against them, by payment to each of them a sum of money equal to the amount which she normally would have earned as wages from December 20, 1943, the date of the discrimination against her, to the date of the respondent's offer of reinstatement, less her net earnings during such period, as set forth in our Decision.

(c) Post immediately in conspicuous places throughout its plant at Salem, Oregon, 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 ordered to cease and desist in paragraphs 1 (a) and (b) of this Order; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a) and (b) of this Order; and (3) that

the respondent's employees are free to become and remain members of Cannery Workers Union, Local 23104, affiliated with the American Federation of Labor, and that the respondent will not discriminate against any employee because of membership in or activities on behalf of that organization;

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

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

Mr. GERALD D. REILLY, dissenting in part:

For the reasons set forth in my dissenting opinion in *Matter of Waples-Platter Company and Warehouse and Distribution Workers Union, Local #220, affiliated with the CIO*,<sup>3</sup> I feel constrained to dissent from that portion of the majority decision which awards back pay to employees Williams and Sipe.

#### INTERMEDIATE REPORT

Mr. John E. Hedrick, for the Board

Mr. William J. Linfoot, of Salem, Ore., for the respondent.

Mr. Charles E. Smath, of Portland, Ore., Mrs. Leona Zalkoski, of Springfield, Ore., and Miss Theresa Hassenstab, of Salem, Ore., for the Union.

#### STATEMENT OF THE CASE

Upon an amended charge duly filed December 31, 1943, by Cannery Workers Union, Local 23104, affiliated with the American Federation of Labor, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Nineteenth Region (Seattle, Washington), issued its complaint dated March 23, 1944 (Board Exhs. 1-S, 1-R, 1-Q), against United Growers, Inc., Salem, Oregon, 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 and notices of hearing thereon were duly served upon the respondent and the Union.

With respect to the unfair labor practices the complaint alleges in substance: (1) that the respondent since on or about December 4, 1943, has, by various acts and statements of executives, supervisory employees, and other agents including Rolland Jory, Ernest Barnes, Gerald Knepper, Ted Knepper, and William J. Linfoot, interfered with, restrained, and coerced its employees in the exercise of their rights to form, join, and assist a labor organization and engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and has discouraged membership of its employees in the Union and in particular

<sup>3</sup> 49 N L R B 1156, 1159-60. On review, the Fifth Circuit Court of Appeals in *N. L. R. B. v. Waples-Platter*, 140 F. (2d) 228, denied enforcement of the Board's back-pay order for the reasons stated in my dissenting opinion in that case. The Board has not petitioned the U. S. Supreme Court for certiorari. See also the discussion in *Matter of Acme Industrial Police*, 58 N L R. B 1342.

as follows: (a) by vilifying, disparaging, and expressing disapproval of the Union and its representatives to its employees, (b) by interrogating its employees concerning their union affiliations and activities, (c) by attempting to deny union representatives access to the plant or an opportunity to talk with employees in the plant, by attempting to eject union representatives from the plant and preventing employees from talking about union organization in the plant, for the purpose of discouraging membership of its employees in the Union, (d) by urging, persuading, and warning its employees not to assist or become members in the Union and by threatening its employees who joined the Union with discrimination; (2) that the respondent on or about December 20, 1943, discharged Dollis Williams, Leota Sipe, and Aletha Whitney, and since that time has refused to reinstate them because of their membership in and activity on behalf of the Union; and (3) that by the acts described above respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On April 1, 1944, the respondent filed its answer to the complaint, denying that it had engaged in the unfair labor practices alleged.

Pursuant to notice, a hearing was held in Salem, Oregon, on April 13, 14, 15, 17, and 18, 1944, before the undersigned, Peter F. Ward, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel and the Union was represented by three organizers. All parties participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. At the close of the hearing, counsel for the Board moved without objection that the complaint be amended in formal matters to conform to the proof. Counsel for the respondent made a similar motion on behalf of respondent. Both motions were granted.

Following receipt of all evidence and testimony, counsel for the Board and the respondent argued orally before the undersigned, and the arguments were included in the official transcript of the proceeding. The parties were also afforded an opportunity to file briefs with the undersigned, and the respondent availed itself of such opportunity.

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 is an Oregon corporation, formed as a farmer-owned cooperative association. Respondent has its principal office and place of business at Route 3, Salem, Oregon, where it is engaged in the business of processing, canning, freezing, distributing, and selling of fruits, berries, vegetables, and related products. During the year 1943, the respondent received at its Salem plant, fruits, vegetables, and berries and other related products, all of which originated within the State of Oregon. During the year 1943, the respondent received at its Salem plant, supplies and equipment valued in excess of \$109,000, of which approximately 75 percent was transported to its Salem plant from States of the United States other than the State of Oregon. During the year 1943, the respondent processed, canned, and froze products valued in excess of \$400,000, of which approximately 98 percent was transported in interstate commerce from its Salem plant to States other than the State of Oregon.<sup>1</sup>

<sup>1</sup> The findings in this section are based upon a stipulation of the parties entered into at the hearing.

## II THE ORGANIZATION INVOLVED

Cannery Workers Union, Local 23104, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the respondent.

## III. THE UNFAIR LABOR PRACTICES

*A Interference, restraint and coercion; the discriminatory discharges*

## 1 Sequence of events

Labor organizational activity began at the respondent's plant about December 1, 1943.<sup>2</sup> Such activity resulted from certain working conditions having to do with lack of heat and of hot water for washing; occasional lack of toilet tissue and towels; loss of time and earnings resulting from machinery failures; and the fact that the employees were required to remain idle on the job while repairs were being made.

On December 4, employee Dollis Williams<sup>3</sup> met with the Union's organizer, Leona Zilkoski, in Salem, Oregon. Williams informed the organizer that some of the employees were interested in organizing a union in the respondent's plant. Plans were made for Zilkoski to meet with a group of the employees.

Such meeting was held on the night of December 13, at the home of employee Leota Sipe.<sup>4</sup> It was attended by Zilkoski, by the local Union's president, by a state organizer on behalf of the Union, and six of the respondent's employees. After discussion, all six<sup>5</sup> of the employees joined the Union and were issued union buttons with instructions to wear them in the plant. This advice was followed.

Following the December 13 meeting, Zilkoski visited the plant and contacted employees during the mornings and in the lunch room during meal times, and solicited their membership in the Union. Between December 13 and 19 a total of 19 membership application cards were signed by employees. During the noon lunch period on Friday, December 17, Williams announced that an open union meeting would be held at the Sipe home on Sunday, December 19, to which all employees were invited. Sipe joined in the invitation, stating that she wanted everybody in the cannery to know of the meeting and attend it. Superintendent Knepper learned of the proposed second union meeting, and remarked: "Why don't they have it in the cannery so everybody can go"

During December the respondent operated two lines or belts, one for beets and carrots, herein called the carrot line, and one for apples, herein called apple line. Both lines were operated on day and night shifts until December 17. The night shift apple line was discontinued when the night crew of December 16 finished its shift. The day shift apple line was discontinued at the close of day on December 17.

During the afternoon of Friday, December 17, while the day shift apple line was still in operation, and after Williams and Sipe had announced the open union meeting above referred to, Ernest Barnes, day foreman in charge of the carrot line transferred Williams, Sipe, and four others<sup>6</sup> to the apple line. At the same time Barnes caused 10 employees on the apple line to be transferred to the day shift on the carrot line. Prior to closing time William Stiltner, day

<sup>2</sup> Unless otherwise specified all events material herein transpired in 1943.

<sup>3</sup> Williams' discriminatory discharge is discussed below hereinafter.

<sup>4</sup> Sipe's discriminatory discharge is discussed below hereinafter.

<sup>5</sup> Those joining were employees Williams, Sipe, Nancy Ramey, Nellie Hoard, and a Mr. and Mrs. Henry.

<sup>6</sup> Marian Vickers, Leona Klopt, Lola Bennett and Minnie Hulet.

foreman on the apple line, informed all employees then engaged on that line that the apple line would finally close that evening and all the remaining employees would report for work on the night shift carrot line on Monday, December 20. The respondent's plant did not operate on Saturdays.

Williams indirectly informed Stiltner that she could not work nights, by asking, "What if you can't work nights?" Stiltner replied: "I don't know." At the same time Stiltner informed Sipe that he had had nothing to say "about putting you over here this afternoon."

The Union meeting scheduled for Sunday, December 19, was held as planned. The transfer of Williams, Sipe, and others to the closing apple line was discussed. It was decided that Williams, Sipe, Ramey,<sup>7</sup> and Aletha Whitney<sup>8</sup> would report for work on the day shift on Monday, December 20. During the meeting, Whitney, who had signed an application for membership on December 16, was admitted to membership in the Union. Prior to December 17, Zilkoski had made a number of visits through the plant and talked to about four employees. On the morning of December 20, Barnes posted "no admittance" signs at the front of the plant. Barnes stated that he saw necessity for them "at this time."

On Monday, December 20, Williams, Sipe, and Ramey attempted to take their former positions on the carrot line, but were prevented from doing so by Barnes who stated that they could not go to work, except on the night shift. When Williams asked "Why?" Barnes replied: "You work nights or else." Williams replied that some of Barnes' ways would be changed, and Barnes, according to Williams, replied, "Go ahead. I have a damn good attorney."

The same day, Whitney asked Barnes if she was to work days on beets, since "the apples were done." Barnes did not reply for a time, but looked at Superintendent Knepper, and said: "There is another union button."<sup>9</sup> To Whitney he said: "You can't work days; you work nights."

Zilkoski spoke to Superintendent Knepper, at the receiving platform in an attempt to arrange a meeting between him and the group of employees above referred to. Knepper refused to meet the employees but did talk privately with Zilkoski in the office. Knepper said he would "consider" meeting the group later in the day. Shortly thereafter Manager Jory arrived at the plant and Zilkoski met him on the platform and attempted to confer with him on the group's behalf. Jory, ascertaining that she was the organizer for the Union, refused to talk to her, ordered her off the premises, and threatened to call the sheriff if she did not leave.

Following his refusal to talk with Zilkoski, Jory did meet with Williams, Sipe, Ramey, and Whitney. At this time he stated that he proposed to make a canvass of all employees to determine who could work days, nights, or either. He advised Williams, Sipe, and Ramey that they would be notified after the canvass, or that they could come in the next day to see what the situation was. Jory testified, in effect, that he did not plan to reconsider Whitney's case, as she was a comparatively new employee.

The group, including Nollie Hoard<sup>10</sup> on December 21 reported to Jory, who informed them that the "canvass" had not been completed and that they should

<sup>7</sup> Ramey had not worked between December 14 and 17, due to illness, but attended the union meeting on December 19. She had been working days on the carrot line.

<sup>8</sup> Whitney did not work on December 17, due to illness. She had been working on the apple belt on the day shift.

<sup>9</sup> This finding is based on Whitney's credible testimony. Barnes denied making this statement and Knepper was not questioned concerning it. For reasons stated in connection with Williams' discharge discussed below the undersigned does not credit Barnes' denial.

<sup>10</sup> Hoard, a union member, was not present on Monday, December 20.

return on Thursday, December 23<sup>11</sup> However, on Wednesday, December 22, Jory, accompanied by William J. Linfoot, an attorney and full-time employee of the respondent, called at the homes of Ramey and Hoard who are sisters<sup>12</sup> and advised them that they might return to work on the day shift.<sup>13</sup> Jory and Linfoot also called at the homes of Williams and Sipe, with the ultimate result that neither was permitted to return to work on the day shift. Details of Jory and Linfoot's call on them are discussed later.

## 2 The discriminatory discharge of Dollis Williams and Leota Sipe

### (a) Events leading up to the discharges

*Williams* was employed September 13, 1943, and first worked under the supervision of Stiltner, then under Barnes. She worked with prunes, tomatoes, and then on the carrot line at 63½ cents per hour. She was assigned as an inspector at the head of the line. She took the leading part in organizing the Union, and Jory recognized her as the "spokesman" for the union members. Also as above set forth, she reported for work on the day shift on Monday, December 20, was told to return on December 21, which she did, and was then told to return on December 23. On December 22, however, Jory and Linfoot called at the Williams' home.

On this occasion Jory requested Williams to work nights. She explained to Jory that she could not do so because of her children and the transportation problem, which would necessitate her husband's breaking his sleep to get up and call for her, and because the time that she would have to go to work would be chore time on the farm. Jory then stated that he had no use for Zilkoski; that she was a union erratic; and that he did not "want her in this plant." He stated to Williams, "For your own benefit, until this thing is settled, you had better not come to work . . ." Williams' husband who was present stated: "We will file charges" with the National Labor Relations Board. Jory then replied: "If that is the way you feel about it, you needn't come back at all."<sup>14</sup>

*Sipe* first began to work for the respondent in June 1941, and continued to work each season thereafter until December 20, 1943, when, as above set forth, she was separated from the carrot line day shift. She had worked on the night shift during 1941 and 1942. From the close of the berry season in 1942 until December 17, 1943, she had not been requested to work nights. She is the mother of four children between the ages of 7 and 14 years. As detailed above, she was, next

<sup>11</sup> The canvass was made on questionnaires which were distributed to the day and night workers. The result showed that, of 69 questionnaires returned, 36 were from the night shift and 33 from the day shift. All of the night-shift employees answered that they could work nights and 3 of the day-shift employees answered that they could work nights. No effort was made to switch these 3 to the night shift so that anyone assigned to the night shift could work days.

<sup>12</sup> Ramey's husband and the mother of Ramey and Hoard are stockholders in the respondent company.

<sup>13</sup> The only explanation given for this action was by Linfoot. His explanation indicates that Barnes, in making the transfers, was acting under directions and that a misunderstanding had occurred as to Ramey and Hoard.

<sup>14</sup> Jory's version of this conversation differs from that of the Williams' family. Jory admitted that he and Linfoot were at the Williams' home. He testified that he asked Mrs. Williams if she would come back and work nights for a short time until "we could get the thing straightened out"; that Mrs. Williams informed him definitely that she could not, that Mr. Williams spoke up and said he knew discrimination when he saw it, "and began to repeat the Wagner Act," whereupon, according to Jory, he said, "If that is the way it is, that is the way it is." Jory was not questioned concerning the statements he was alleged to have made concerning Zilkoski as found above. Linfoot's version was substantially the same as that of Jory's. On the record the undersigned credits the Williams' version, and finds that the events occurred substantially as found above.

to Williams, the most active employee on behalf of the Union. She permitted her home to be used for union meetings, invited employees to attend the meetings; and individually solicited the employees to join the Union. The events of December 20, and 21, in which she was a participant; have been described above.

On December 22, Jory and Linfoot called at Sipe's home. Jory requested her to return and work nights for a time. She advised him that it was not possible for her to do so on account of her children. During the conversation had at this time Sipe told Jory that he could "blame" her for attempting to organize the cannery. Jory replied that she was not to blame; that he didn't blame her.<sup>15</sup> Sipe, whom the record shows to be very hard of hearing, understood Jory to tell her that she could return to work on the day shift and that she was to report the following morning, Thursday, December 23.<sup>16</sup> Pursuant to her understanding of the instructions, Sipe reported for work on the morning of December 23, reported to Barnes that Jory had been to see her and told her "to come back to work days." Barnes refused to permit her to go to work, and stated, "You and five others will work nights or else." Sipe then left the plant.

(b) Contentions and testimony of the respondent and its witnesses as to the discharges

The respondent contends (1) that Williams and Sipe were not discharged; (2) that while Williams' and Sipe's work had always been satisfactory they had not worked nights in 1943; (3) that Williams, Sipe and others were transferred to the night line via the apple line because help was needed on the night line, and the respondent was sure they would continue on the night shift. As to contention (1) the record discloses that Williams and Sipe were transferred to the apple line because of their union activities and the respondent's refusal to reinstate them to their positions on the day shift was and is a constructive discharge. As to contention (2), the record discloses that the respondent has no policy requiring every woman employee to work some nights during a year; that the respondent would ordinarily arrange for women to work days if they were unable to work nights;<sup>17</sup> and that prior to December 17, 1943, no employee had ever been separated from the pay roll for refusing to accept a transfer from the day to the night shift. It is undisputed that, before the Williams and Sipe transfers were attempted, no effort was made to learn whether or not they could work nights; no survey was made to learn who had worked longest in the plant in 1943; and others in the same category as Williams and Sipe were not transferred. As to contention (3), the record discloses that the ideal belt crew requires 35 employees. While Barnes contended transfers were made between the carrot line and apple line in order to provide more help for the night line, the result of the December 17 transfers was to give the day line a net gain of four employees. During the last two weeks of its operation the apple line averaged 29½ employees on the day line and 30 employees on the night line, for an average total of 59. Since the apple line did not close down completely until the night of December 17, and since many on the night apple

<sup>15</sup> In its brief the respondent states in part: "There is some testimony that Mrs. Sipe carried a grudge against Mr. Barnes and this coupled with the fact that Mrs. Sipe was friendly and worked with Mrs. Williams and is of a weaker character . . . would indicate a motive for her refusing to work nights."

<sup>16</sup> Both Jory and Linfoot denied that Sipe was told to report for day work at this time. While there is credible evidence in the record which tends to corroborate Sipe's version of this episode, the undersigned finds, in the light of subsequent events, that it is unnecessary and would serve no useful purpose to resolve this conflict.

<sup>17</sup> Superintendent Knepper testified that if a woman was unable to work nights it was arranged so that she would work in the day time.

line might have remained to work on the night carrot line, the respondent could have no definite knowledge as to what proportion of the 59 employees would accept employment on the night line. It obviously was a most inopportune time arbitrarily to transfer satisfactory employees from the day line to the night line. The record discloses that from December 20 to 23, the day shift averaged 30 employees per day and the night shift averaged 31½ per day, without any of the five union<sup>18</sup> employees working on the night shift. The hasty and precipitate manner in which the transfers were made under the then existing circumstances leads to the conclusion that they were made as a result of the union activities of Williams, Sipe and others, referred to above, in order to discourage membership in the Union, and it is so found.

### (c) Conclusions

The record discloses that Williams was employed on September 13, 1943; that Sipe had been employed since 1941; that their work was highly satisfactory; that they were the moving spirits in organizing the Union; that the respondent was opposed to the Union and determined to discourage its employees from becoming members therein; that it attempted to transfer Williams and Sipe to the night shift for the purpose of discouraging their union activity,<sup>19</sup> and on December 20 for the same reason, refused them employment on the day shift. From the above and the entire record the undersigned concludes and finds that the respondent constructively discharged Dollis Williams and Leota Sipe on December 20, 1943, because of their activity on behalf of the Union, thereby discriminating against them in regard to their hire and tenure of employment. By said acts, by Jory's statements to Williams at her home, disparaging the union organizer, and by Barnes' derisive comment about "another union button" the respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

### 3 The alleged discrimination against Aletha Whitney

The complaint alleges in substance that Whitney was discharged by reason of her union activities. The answer denies that the respondent discharged Whitney and alleged affirmatively that Whitney had been employed to work on the apple line; that the apple line closed on December 17; that the day shift on the carrot line was amply staffed; that there was insufficient help on the night carrot line; and that Whitney, along with others, was requested to report for work on the night line, but failed and refused to accept such employment.

Whitney was employed by the respondent on November 16, 1943, on the day shift apple line. She first heard of the plan to organize a union in the plant on December 16, at which time employee Iva M. Green so informed her. Green gave her an application-for-membership card for signature. Whitney signed the application at noontime on December 16, and learned from Green that the Union would hold a meeting at the Sipe home the following Sunday.

<sup>18</sup> In this connection it is noted that Ramey and Hoard were not at work on December 17, but had been regularly employed on the day carrot line. They were not included in the list testified to by Barnes as having been transferred from the carrot line to the apple line for inclusion on the night shift. Ramey was advised by Barnes on December 20, that she had to work nights if she worked. Hoard reported December 21, and was not permitted to go to work on the day shift at that time. Both wore union buttons and were known to be union members.

<sup>19</sup> The record discloses that following the transfers and attempted transfers on December 17, referred to above, no additional employees have become members of the Union.

Whitney attended the December 19 union meeting; joined the Union; and received a union button. As set forth above she wore her union button when she requested Barnes on December 20 to assign her to the day shift on the beet and carrot line.

The record discloses that the respondent did not know of Whitney's union membership until December 20, when she applied for assignment to the day shift; that she had not been considered among those transferred from the apple line on December 17; that on December 17 she was included with the apple group scheduled to report for work on the night of December 20.

There is nothing on the record to indicate that, if Whitney had not joined the Union and had reported for assignment to the day shift on December 20, that such assignment would have been made. On the contrary Barnes had, by the transfers he manipulated between the two lines on December 17, added four employees to the day shift for a total of 36 or one more than the "ideal" number. As found above the respondent's acts of discrimination consisted first of transfers from the carrot line to the apple line, made on December 17. From the above and the record, it appears that the respondent has not discriminated against Whitney by refusing to assign her to the day shift, and it is so found. The complaint as to Whitney should be dismissed.

#### 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 operation of the respondent's business described in Section I, above, have a close, intimate and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

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

The undersigned has found that the respondent discriminated in regard to the hire and tenure of employment of Dollis Williams and Leota Sipe, by transferring them from their regular position on the carrot line to the apple line on December 17, 1943, with the purpose of sending them to the night shift, on which, to the respondent's knowledge or presumption, they would not find it convenient to work because of their family responsibilities; and emphasized its discriminatory intent by refusing on December 20, 1943, after their explanation, to permit them to continue work in their regular positions on the carrot line, thereby discouraging membership in the Union. In order to effectuate the policies of the Act it will be recommended that the respondent offer to Dollis Williams and Leota Sipe immediate and full reinstatement to their former or substantially equivalent positions without prejudice as to their seniority or other rights and privileges, and that it make them whole for any loss of pay either may have suffered by reason of the discrimination practiced against them, by payment to each of them a sum of money equal to the amount which she normally would have earned as wages from December 20, 1943, to the date of offer of reinstatement less her net earnings<sup>20</sup> during such period.

<sup>20</sup> By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company* and *United Brotherhood of Carpenters and Joiners of America*,

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. Cannery Workers Union, Local 23104, affiliated with the American Federation of Labor, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Dollis Williams and Leota Sipe, 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.

3. 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.

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

5. By refusing, on December 20, 1943, to assign Aletha Whitney to the day shift, the respondent did not discriminate in regard to her hire and tenure of employment.

#### RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, the undersigned recommends that the respondent, United Growers, Inc., and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Cannery Workers Union, Local 23104, affiliated with the American Federation of Labor, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees or in any other manner discriminating with regard to the hire and tenure of employment or any term or condition of employment;

(b) In any 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 Cannery Workers Union, Local 23104, or any other labor organization, 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) Offer to Dollis Williams and Leota Sipe immediate and full reinstatement to their former or substantially equivalent positions;

(b) Make whole Dollis Williams and Leota Sipe for any loss of pay either may have suffered by reason of respondent's discrimination against her by payment to her of a sum of money in the manner set forth in the section entitled "The remedy;"

(c) Post immediately in conspicuous places throughout its plant at Route 3, Salem, Oregon, 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) and (b) 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 respondent's employees are free to become or remain members of Cannery Workers, Inc., Local 23104, American Federation of Labor, and that the respondent will not discriminate against any employees because of their membership in or activities on behalf of that organization;

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

It is further recommended that, unless on or before ten (10) days from the receipt of this Intermediate Report the respondent notifies the 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 the 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 to the Board within ten (10) days from the date of the order transferring the case to the Board.

PETER F. WARD,  
*Trial Examiner.*

Dated July 14, 1944.