

In the Matter of ALBINA ENGINE AND MACHINE WORKS, INC. and
CLAYTON C. JACO, AN INDIVIDUAL

Case No. 19-C-1243.—Decided January 18, 1945

DECISION

AND

ORDER

On August 22, 1944, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had not engaged in and was not engaging in the unfair labor practices alleged in the complaint, and recommending that the complaint be dismissed, as set forth in the copy of the Intermediate Report annexed hereto. Thereafter, Clayton C. Jaco filed Exceptions to the Intermediate Report. None of the parties requested oral argument before the Board at Washington, D. C. 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 complaint alleged, and the case was tried on the theory, that the respondent discriminated against the leaders of an insurgent group within the Union by laying them off and thereafter failing to follow the regular procedure in rehiring them because of their activities in trying to wrest the leadership from the dominant faction of the Union. The Board has considered the Intermediate Report, the Exceptions of Jaco, and the entire record in the case, and agrees with the Trial Examiner that the evidence is insufficient to support the allegations in the complaint. Accordingly, we adopt the findings, conclusions and recommendations of 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 complaint issued herein against the respondent, Albina Engine and Machine Works, Inc., Portland, Oregon, be, and it hereby is, dismissed.

60 N. L. R. B., No. 25.

INTERMEDIATE REPORT

Messrs. Joseph D. Holmes and William A. Babcock, Jr., for the Board.
Mr. W. B. Shively, of Portland, Oreg., for the Respondent.

STATEMENT OF THE CASE

Upon a first amended charge duly filed on April 7, 1944, by Clayton C. Jaco, an individual, the National Labor Relations Board, herein called the Board, by its Regional Director for the Nineteenth Region (Seattle, Washington), issued its complaint dated April 14, 1944, against Albina Engine and Machine Works, Inc., 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 Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and the first amended charge, accompanied by a notice of hearing thereon were duly served upon the Respondent, the International Brotherhood of Boilermakers, Iron Shipbuilders, Welders, and Helpers of America, Local 72 (A. F. of L.), herein called the Boilermakers, and Clayton C. Jaco.

With respect to the alleged unfair labor practices the complaint in substance states that the Respondent: (1) on or about July 9, 1943, discharged or terminated the employment of Clayton C. Jaco, Russell W. Duke, Albert J. Jordan and Clyde Ellinger; and thereafter failed and refused to reinstate or reemploy these persons for the reason that they and each of them had promoted, assisted and participated in certain activities within the Boilermakers and had engaged in concerted activities with other employees of the Respondent for purposes of collective bargaining and other mutual aid and protection; and (2) by the foregoing acts has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, thereby engaging in unfair labor practices within the meaning of Section 8 (1) of the Act. The Respondent in its answer dated April 25, 1944, admits certain facts concerning commerce but denies that it engaged in any unfair labor practices.

Pursuant to notice, a hearing was held in Portland, Oregon, on April 27, 28, 29, and May 1, 2, and 3, 1944, before the undersigned Trial Examiner James C. Batten, duly designated by the Chief Trial Examiner. The Board and the Respondent were represented by counsel and participated in the hearing. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.

No oral arguments were made at the conclusion of the hearing. The undersigned requested that the parties submit a memorandum brief within seven days after the close of the hearing. Such briefs were filed by the Board and the Respondent.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, Albina Engine and Machine Works, Inc., is an Oregon corporation with its office located in Portland, Oregon, where it owns and operates a shipyard for the construction of new vessels and leases or rents ways and dry dock facilities for the repair and conversion of vessels. In the year 1943 the Respondent purchased raw materials, machinery, and supplies valued in

excess of \$1,000,000, of which in excess of 70 percent was transported through the channels of interstate commerce from points outside the State of Oregon.

The Respondent is engaged exclusively in the construction, conversion, and repair of ocean-going vessels under contracts with departments and agencies of the United States Government. These vessels have been used by the armed services of the United States Government and by other persons and agencies to transport goods and passengers in interstate and foreign commerce. The value of the construction, conversion, and repair work done by the Respondent during the year 1943 was in excess of \$5,000,000.

The undersigned finds that the activities of the Respondent above set forth constitute commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

International Brotherhood of Boilermakers, Iron Shipbuilders, Welders, and Helpers of America, Local No. 72, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Respondent.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The issues and contentions of the parties*

The complaint alleged in substance: that on or about July 9, 1943, Jaco, Duke, Jordan, and Ellinger, all members in good standing of the Boilermakers, were employees of Respondent in its ship repair department, in positions which it recognized as coming within the jurisdiction of that organization; that on or about that date the Respondent discharged these individuals and thereafter failed and refused to reinstate or reemploy them for the reason that they promoted, assisted, and participated in certain activities within the Boilermakers, and had engaged in concerted activities with other employees of Respondent for purposes of collective bargaining, and other mutual aid and protection; and that by the above acts the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. The Board contends: that the Respondent "took sides" with the "Ray faction" then in control of the Boilermakers by not following the regular procedure in rehiring its men after a lay-off in order to "get rid" of the above-named individuals; that it, at the request of this faction, enforced a new rule or acquiesced in the invocation of an abandoned practice, to the effect that these individuals who had been old employees should obtain a clearance or referral slip from the Boilermakers before they could be rehired, knowing that that organization would refuse to refer to the Respondent the above individuals who were the leaders of the "insurgent faction"; that the Respondent's decision to permanently lay off these individuals and require them to be rehired through the Boilermakers was initiated for the express purpose of "disposing of them."

The Respondent's answer denied the commission of any unfair labor practices and for a separate answer and defense alleged: that the number of Respondent's employees in the ship repair department is wholly dependent on the number of repair jobs on hand; that on June 12, 1943, it had four jobs on hand and employed 564 men and because these jobs were rapidly being completed with no new jobs in prospect, its employees, including Jaco, Duke, Jordan and Ellinger, were discharged as the jobs were finished; that long prior to the termination of the employment of these four individuals, strife arose between the various factions in the Boilermakers, involving the control of that organization and resulting in the filing of more than 15 lawsuits in the various State

courts; that as a part of the intra-union strife the "Ray faction" undertook to discipline, restrict, embarrass and curtail the "insurgent faction" led by Jaco, Duke, Jordan, Ellinger and others; and that it at all times has remained strictly neutral in this dispute; that it is required under the terms of its agreement with Portland Metal Trades Council, to obtain its employees through the hiring halls of the respective unions; that subsequent to Respondent's discharge of the four named individuals, men in control of the Boilermakers' hiring hall failed and refused to assign these individuals to Respondent for employment, consequently it did not have an opportunity to refuse to employ them although Respondent did employ a large number of boilermakers through that source; and the difficulties of Jaco, Duke, Jordan and Ellinger are due wholly to matters between themselves and the Boilermakers and not to any act for which the Respondent is responsible. The Respondent's position may be summarized by the following statement appearing in its brief: "we regard ourselves as an 'innocent bystander'; . . . drawn into this maelstrom of contending factions within . . . [the Boilermakers]."

B. The alleged interference, restraint, and coercion, by discrimination in regard to hire and tenure of employment

1. Prefatory statement¹

The Respondent and its predecessor corporations have since 1904 owned and operated a shipyard on the waterfront in Portland, Oregon. In this yard for several years, the operations have been devoted entirely to the construction of new ships—sub-chasers, tankers, landing craft, and landing control craft. Since its organization, the Respondent has also been engaged in the repairing and conversion of vessels. These operations have been performed at the various docks throughout the "Portland Waterfront"² where the ship "laid" and while there is no particular dock where the Respondent does any major portion of its repair work, it does regularly use the City Dock and a leased "mill dock." The business of the Respondent, new construction and repair work, is conducted as two distinct departments each with its own superintendent and complete hierarchy of supervisory employees—general foremen, foremen, and leadmen. Its operations are under the management of President George Rodgers, and Executive Vice President and General Manager H. R. Hussa, who is in direct charge of its activities. Under Hussa's immediate supervision are superintendents Wally Rovang, in charge of new construction and Henry Davies in charge of the repair work. In the repair department, George Stoele, was, at all times material herein, general boilermaker foreman, under whom the alleged discharges worked. The supervisory employees designated as superintendents, general foremen, and foremen have the authority to hire, fire, discipline and promote employees. Leadmen do not have this authority nor do they possess the *indicia* of authority customarily vested in supervisory employees.

The number of persons employed in the Respondent's repair department is subject to rapid expansion and contraction, depending upon the number of vessels coming into the "Portland Waterfront" for repairs. During 1931 the number of persons employed in this work by the Respondent varied from 6 to 500. In 1933 it had for repair the largest job ever performed on the West Coast, requiring 1500 employees for a period of six months. After the completion of this job

¹ The facts set forth in this section unless otherwise indicated rest upon undisputed and credible testimony

² The term "Portland Waterfront" is commonly used by the employers and unions to indicate ship repair work performed on the river, in the vicinity of Portland, Oregon. Whenever this term is used in this report hereafter, it will be used with such connotation.

there was a short period where there were few if any employees on the repair department pay roll. In 1939 and thereafter, there was a substantial increase in repair work on the "Portland Waterfront" and since that time, except on a few occasions, not only the Respondent, but all of the companies engaged in ship repairing have had an exceptionally large amount of work. However, even during these years the number of vessels docked and allocated³ to the Respondent for repair has been somewhat "spasmodic," requiring a variation in the number of employees of from 20 to 1200.

Since 1931 the Respondent and the Metal Trades Department of the A. F. L. and its affiliated craft organizations have had continuous contractual relations. In the case of the Boilermakers, the organization here involved, collective bargaining agreements have been maintained for a period of 35 years, and at all times material herein, the Respondent has recognized the Boilermakers as the exclusive representative of certain of its employees coming within the jurisdiction of that organization. The Respondent during this period has operated a closed shop and in accordance with the terms of the agreements was required to secure all its employees through the different union "hiring" halls.

The Respondent's employment relations policies, at all times material herein, were subject to the terms of a master agreement dated April 1, 1941, between certain employers engaged in repairing vessels on the Pacific Coast and the Metal Trades Department of the A. F. L., and a local ship repair agreement dated May 15, 1941, between the Respondent and the Portland Metal Trades Council. The master agreement provides *inter alia*: that the terms therein shall be incorporated in contracts with the Local Metal Trades Councils having jurisdiction of the port; that a shift shall consist of 8 hours; that leaders shall be compensated in accordance with local practice, but in no case less than 15¢ per hour over the wage of the craft they supervise.⁴ On May 15, 1941, the companies on the "Portland Waterfront" engaged in the repairing of vessels and the Portland Metal Trades Council negotiated a new "Repair Work Agreement."⁵ This local agreement provided in part: that "All men shall be hired through the office of their respective Union, or if any Union is not maintaining an office, the men shall be hired through the office of the Metal Trades Council"; that each shift shall consist of 8 hours; that leadmen shall not be paid less than 25¢ per hour over the minimum journeymen rate; and that "all foremen who work with tools and leadmen shall be practical mechanics of the trade over which they have supervision and shall be members in good standing of the organization under whose jurisdiction they are employed."

These agreements, to which the Respondent was a party for several years, have provided that it must secure "all men" through the hiring hall of the Boilermakers. This requirement resulted in the establishment of a definite hiring hall procedure. When the Respondent desires boilermakers it places an order with the Boiler-

³ Prior to the "emergency" the Respondent obtained vessels needing repairs direct from the owners, but since that time the War Shipping Administration and Maritime Commission allocates the vessels to the ship repair concerns on the West Coast.

⁴ At the time this Master Agreement was executed there was in effect an agreement between the Respondent and the Boilermakers which provided, "Employees coming under this Agreement shall be members, of the [Boilermakers] and shall be hired through the Business Office of Local Lodge No. 72."

⁵ After the parties had agreed upon all the terms to be embodied in the agreement and it had been prepared in written form for the signatures of the parties, the President of the Portland Metal Trades Council for an undisclosed reason refused to sign the agreement. However, it is undisputed that the terms of the agreement were accepted by the companies, including the Respondent and the Council, and its affiliates, one of which was the Boilermakers. The parties operated under the terms of the agreement, as amended, until on or about April 1, 1944.

makers, indicating whether the persons are to be hired for new construction or repair work. Upon receipt of the order the dispatcher of the Boilermakers announces to the members present in the hiring hall that an order for men has been received and from those available selects the men to be sent to the job. The men so selected are furnished an "Employment Card," commonly designated as a "dispatch slip."⁶ The Respondent cannot employ a boilermaker unless he is sent to the job by the dispatcher nor can it refuse to employ him when so sent. When the Respondent, for any reason, terminates the employment of a member of the Boilermakers, it issues to him a "Lay-Off Card"⁷ and in recent years also a "Termination Clearance,"⁸ which is notice to the organization that the member

⁶ INTERNATIONAL BROTHERHOOD OF BOILER MAKERS, IRON SHIP BUILDERS, WELDERS AND HELPERS OF AMERICA, LODGE 72

EMPLOYMENT CARD

Name -----
 ----- will report for work to -----
 ALBINA ENGINE WORKS

 Qualifications ----- Rate per hour -----
 Date ----- Signed -----

Prior to the Boilermakers enormous increase in membership—500 to several thousands beginning in 1939—the men were dispatched to the job without a formal "dispatch slip."

ALBINA ENGINE & MACHINE WORKS, INC.

LAY-OFF CARD

Employee ----- No. -----
 Date of Last Day Worked ----- Hrs. -----

Quit

- | | |
|---|--|
| 1. Competent to perform higher skilled work ----- | 6. Loafing on the job ----- |
| 2. Employed for a substantial period at less than full time ----- | 7. Flagrant and unauthorized absence from work ----- |
| 3. Transportation difficulties ----- | 8. Wilful violation of safety rules ----- |
| 4. Joining armed forces ----- | 9. Drunkenness ----- |
| 5. Sickness ----- | 10. Early quitting ----- |

Foreman's No. ----- Name -----
 Dept. -----
 Superintendent -----

Employee's Copy

----- Last name	----- First	----- Middle	----- Date
----- Social Security No.	----- Badge No	----- Occupation	
----- Signature of employee	----- Union	----- Department	

TERMINATION CLEARANCE

CLEARED

NOT CLEARED

ALBINA ENGINE AND MACHINE WORKS
 Portland, Oregon

 Signature of Company Representative
 Employee Copy

is now available for other employment. In order for that person to secure other employment it has been necessary for him to report at the hiring hall and turn in the clearance slip before he could be dispatched to another job. If the boilermaker refused the job offered to him, the clearance slip was returned to him by the Boilermakers and unless he again reported to the hiring hall, with the clearance slip he could not obtain a job on the "Portland Waterfront." Prior to 1939, due to a lack of work for all the members of the Boilermakers, the hiring procedure was rigidly enforced, to provide work for as many members as possible under a system of rotation. Subsequent to this time when the demand for men exceeded the supply, the procedure was somewhat relaxed where a lay off of only a few days was necessary, while awaiting the arrival of a vessel definitely allocated; but where the work on hand was completed and there had been no allocation of a vessel for repair, the regular lay off and clearance procedure was followed.⁹

2. The event giving rise to the issues.¹⁰

The undersigned's determination of the issues herein may be more expeditiously disposed of by first considering the variable factors in the employment status of Jaco, Ellinger, Duke and Jordan and thereafter, to proceed by examining certain evidence of a general nature.

(a) Employment status of Jaco, Ellinger, Duke and Jordan

Jaco has been employed by the Respondent, after-referral by the Boilermakers, on many occasions since 1918. He worked continuously from October 1942 to June 1943, when his employment was terminated. During this latter period, after working for about a month as a journeyman, he was promoted to a job as leadman. The Respondent concedes that *Jaco* is a competent journeyman and that his work has always been satisfactory. *Jaco* has been a member of the Boilermakers for 26 years and in that time has worked for all the companies in Portland engaged in either the construction or repair of vessels. *Jaco* testified that employment, particularly in repair work with the different companies "did not last long," making it necessary for him to go "where the job was" and that usually the work would last for a "few weeks or a few days," then he would wait for the next vessel needing repairs to arrive in port. On each of these occasions when work was completed, *Jaco* was laid off and rehired through the hiring hall of the Boilermakers. *Ellinger* was dispatched through the hiring hall of the Boilermakers to the Respondent's repair department on April 22, 1943 and was laid off on June 23, 1943. After working for a week as a welder, he was made a leadman, in which job he continued until his lay off. His work was very satisfactory.

The Board asserts that *Jaco* and *Ellinger* were foremen. The evidence fails to support this assertion. The shifts worked by *Jaco* and *Ellinger* were the same as that of the other leadmen and production employees, while the foremen's shifts required longer hours and were so arranged that their hours overlapped the starting and stopping time of the regular shifts. When the Respondent, at the request of the Boilermakers, had to abandon its program of two, 10 hour shifts and follow the three, 8 hour shift requirements of the agreements, heretofore referred to, the leadmen, including *Jaco* and *Ellinger*, worked on that basis, while the foremen continued on a two shift basis. These

⁹ This finding is based upon the credible testimony of *Jordan*, president of the Boilermakers and a Board witness, supported by the testimony of other credible witnesses of the Board and the Respondent.

¹⁰ Unless otherwise indicated, the facts in this section are undisputed and are based upon testimony which the undersigned believes to be credible.

individuals were paid the leader's hourly rate although they did receive a daily time credit of $\frac{1}{2}$ hour which brought their hourly rate approximately to that paid foremen. Jaco and Ellinger worked under the supervision of shift foremen. They did not perform major supervisory duties, nor did they have the authority and responsibility vested by the Respondent in its foremen. The undersigned cannot believe that the Boilermakers, in view of the established rates for leadmen and foremen, usually vigilantly guarded by labor organizations, would have permitted Jaco and Ellinger to perform the work of foremen, unless they were paid the proper rate. The undersigned on the basis of the above and other relevant evidence herein, concludes and finds that Jaco and Ellinger were not foremen but leadmen and as such were subject to the established hiring hall procedure.¹¹

Duke was dispatched by the Boilermakers to the Respondent's ship repair department as a journeyman on February 11, 1943, and was laid off on June 25, 1943. The Respondent concedes that he was in all respects a competent employee. The Respondent was well aware as in the case of Jaco, Jordan and Ellinger, of Duke's leadership in the activities of the "insurgent faction." A day or two before Duke was employed by the Respondent, Ray, business agent of the Boilermakers and the leader of the "Ray faction", phoned General Manager Hussa, telling him that by court order, Duke would have to be referred by the Boilermakers to a job and asked Hussa if he would accept Duke. Hussa replied "certainly" if Duke was sent down, because the Respondent could not do otherwise if he was given a "dispatch slip." Ray then suggested to Hussa that Duke could later be fired; to this suggestion Hussa replied that if Duke did his work he would not be fired and that Respondent intended to "stay absolutely neutral in the intra-union fight." The Respondent shortly after this conversation promoted Duke to a more desirable job, that of expeditor. On at least two occasions, the Respondent refused to consider Duke's offer to quit in order to relieve the "pressure" that was being put upon the Respondent by the "Ray faction" to discharge him.

Jordan worked for the Respondent as a journeyman from May 13, 1943, until about the middle of June. He has been a member of the Boilermakers since 1916 and worked on the "Portland Waterfront" since 1916. On several occasions, including May 13, 1943, Jordan was dispatched with a "clearance slip" to the Respondent's yards. Admittedly he was a competent and fully qualified worker. Jordan, at the time of the hearing president of the Boilermakers, testified that when "repair work" was completed it has always been the practice, even during the emergency to issue lay off and clearance slips to the workmen, which made

¹¹ Jaco testified he had authority to hire, fire, and discipline employees but his later testimony failed to support this broad assertion. The testimony of other Board witnesses as well as those of the Respondent require the undersigned to reject this statement of Jaco. Ellinger, a credible witness who held a job similar to Jaco's, testified that when he needed men, he secured them from the foreman and if he desired to decrease his force, for the reason that a workman was not "assuming responsibility," he would transfer them back to the foreman. Ellinger further testified that he could not hire, fire, or discipline employees and that his duty was to assign the work and see that it was properly done. There is no evidence to indicate that Jaco or Ellinger had any authority or duties, in any respect different than those of the other leadmen.

The undersigned further finds that assuming *arguendo* they were foremen at the time of the general lay off in June 1943 the issuance of "clearance slips" to them was not discriminatory, absent a showing that their services as foremen after the lay off were needed or that others with less seniority were later engaged as foremen. There is no such evidence in the record. The evidence is clear that when the Respondent resumed repair operations in July, the number of crews required, fully discussed hereinafter, had been materially reduced and whether these men had been given clearance slips or not they would not have been recalled as foremen, thus requiring a "dispatch slip" before the Respondent could have employed them.

it necessary for them to clear through the Boilermakers and secure a dispatch slip in order to obtain another job. The undersigned accepts this credible testimony of Jordan and finds in accordance therewith, that such practice is customary on the "Portland Waterfront."

It is conclusively clear and the undersigned finds that the Respondent has not discriminated against Jaco, Duke, Jordan or Ellinger, with respect to the hire or the conditions of their employment.

(b) The intra-union dispute; its effect upon Respondent's operations

The issues in this proceeding are premised upon a factional dispute among the members of the Boilermakers¹²

Sometime prior to the Boilermakers' election of officers in November 1942, there developed in that organization two strong and virile factions; the "Ray faction" headed by Tom Ray, who for 13 years had been business agent of the Boilermakers, the other known as the "insurgent faction" sponsored principally by Jaco, Duke, Jordan and Ellinger. These factions each selected a slate of officers and conducted an intensive election campaign, which developed bitter feeling within the organization. In the election the "insurgent faction" was successful in electing a majority of their slate, including Jordan as president and Jaco as vice-president. When the officers attempted to take their seats, they were prevented from doing so by the "Ray faction." The dispute became so intense that the International Union took charge of the affairs of the local. It refused to permit the insurgent officers to assume office, and permitted the "Ray faction" to continue in control of the operations of the local. In the latter part of January 1943, the "insurgent faction" started a campaign to raise funds, by means of a public mass meeting and solicitation from the members of the Boilermakers, and when they obtained sufficient funds attorneys were engaged to protect their rights. The first suit in the State Court was filed in January and within a few months thereafter about 15 separate suits and proceedings were instituted, by the "insurgent faction," the "Ray faction," the International Union and by interested individuals. At the time of the hearing herein, several of these suits were still pending. The "insurgent faction" was successful in having the State Court appoint a Receiver for the Boilermakers and during the receivership a new election for officers was conducted under the supervision of the State Court. In this election, Jordan was elected president, he being the only person on the slate of the "insurgent faction" to be elected to office. He later was seated and has since been carrying on the duties of that office although the Receiver has not yet been discharged. The intra-union dispute within the Boilermakers due to the strife and turmoil which always accompanies such disputes, has from its inception been a matter of public knowledge.

Prior to the employment of Duke on February 11, 1943, the only leader of the "insurgent faction" in the Respondent's repair department was Jaco, although many of the employees were adherents of that faction. Both before and after the election in November 1943, the Respondent's employees would, on the job, gather in groups to discuss the situation. In January, 1944, the discussions became so argumentative that Hussa instructed Superintendent Davies to direct the employees to discontinue the group meetings. At about this same time, the assistant business agents, controlled by the "Ray faction" would more often than usual appear on the Respondent's repair jobs. Subsequent to Duke's employment, the circumstances of which have been heretofore set forth, the

¹² The situation is aptly described by the Respondent in its brief as follows: The quarrel is only important here in that the respondent, by reason of events wholly beyond its control and as an "innocent bystander" has been dragged into the maelstrom of angry emotions created by it.

"Ray faction," then in control of the Boilermakers, subjected the Respondent to various forms of "pressure" for the purpose of having the insurgent leaders discharged. There is no dispute that "pressure" was directed against the Respondent through subtle and indirect methods, and it is here only necessary to summarize the facts. The Respondent's orders for men, placed with the hiring hall, seldom, if ever, were filled. On several occasions there was a delay in dispatching men until Hussa or Rodgers would contact Ray and then either too many or incompetent workers were dispatched. At one time, Ray agreed to dispatch workers to the Respondent's repair department providing Hussa personally placed the orders, but this resulted only in temporary relief. In March 1943, Ray gave as a reason for failing to dispatch workers, the fear that his members might become contaminated by drinking and gambling that Ray alleged was going on at the City Dock. After Hussa had called in the Coast Guard to check this matter and had been advised by the other companies who also used the City Dock that Ray had not warned them, Hussa called the dispatcher at the hiring hall, in Ray's absence, advising that the situation had been cleaned up. The dispatcher then for a few days referred workers to the Respondent, but immediately upon Ray's return to Portland the dispatching of men ceased. Due to a shortage of men it became necessary to work the available crews 16 hours a day and when Ray insisted that the Respondent discontinue 10 hour shifts and operate on the basis of three 8 hour shifts as required by the agreements, repair operations were retarded. Upon the facts here reviewed, the undersigned finds that the Respondent was not responsible in any way for the intra-union dispute in the Boilermakers nor did it support or encourage either of the factions, but so far as possible remained aloof, even when the "pressure" handicapped its operations of repairing vessels much needed in the War effort.¹³

(c) The general lay off; the rehiring

It now becomes essential to consider whether or not the Respondent, by means of the general lay off in June 1943, and the rehiring of crews in July, interfered with the rights of these individuals.

In the early part of June 1943, in accordance with the customary procedure on the "Portland Waterfront", the Respondent, because of a decline in repair work, by a method of rotation started to lay off crews for a few days, without the issuance of lay off or clearance slips, with a hope that sufficient vessels for repairs would be allocated to it, in order that the Respondent could maintain the crews it had built up, without the necessity of ordering workmen through the hiring hall of the Boilermakers. However, it soon became evident that the decrease in the allocation of vessels for repair and the completion of work on hand would compel a general lay off. In May 1943, the Respondent had allocated to it by the War Shipping Administration, 8 Russian vessels, requiring an average of 30 days for the completion of the work. In June the Respondent was allocated 3 vessels for repair, requiring an average of 10 days for completion. The work upon 9 of these vessels had been completed on or before June 18, about the date the Respondent decided that a general lay off could not be avoided. After this date only 3 vessels were under repair by the Respondent. From June 12, until July 8, the Respondent's repair department did not start work on any new repair jobs, although on July 1, it had notice of the allocation

¹³ This finding is based upon the credible testimony of Hussa and Davies, supported by that of Steele, and Board witnesses. The undersigned cannot accept the testimony of Duke. It is not convincing. In fact from observation of the witness while testifying and a careful examination of Duke's testimony, the undersigned concludes that his testimony should be rejected, except in those instances where fully corroborated by other witnesses

of the "Athelduke" for repairs, but this vessel, did not dock until July 8.¹⁴ As the work was completed the employees were laid off, except the "Liberty" crew and a few riggers, usually retained. The number of employees declined from 564 on June 12, to 18 on July 3. Gehrig, who was the Boilermakers' head dispatcher in 1943, testified that the "Portland Waterfront" was practically closed down through the months of June and July 1943, and as a result a large number of the members who preferred repair work because of the differential in pay and refused to consider being dispatched to new construction, were waiting around the hiring hall for repair orders. From these salient facts the undersigned finds that the completion of work on hand required a general lay off of Respondent's repair work crews, including Jaco, Duke, Jordan, and Ellinger¹⁵ and that the termination of their employment, under these circumstances, did not deny them any of the rights to which they are entitled under Section 7 of the Act.

On July 8, the "Athelduke", an English tanker, which had been allocated to the Respondent for repairs was docked and the Respondent at once placed an order for men with the hiring hall of the Boilermakers, requesting that they be dispatched to the repair department. On July 8, the Respondent had 45 employees in the repair department, on July 9, 154 employees, on July 10, 201 employees, on July 15, 308 employees, on July 30, 403 employees, and on August 1, 502 employees. Although the number of employees on August 1 was substantially less than employed in the repair department prior to the general lay off, it is clear that the Boilermakers dispatched to the Respondent during July, several hundred men.

It appears from the above that the general lay off in June 1943, terminated the employment of Jaco, Duke, Jordan and Ellinger, and further employment by these individuals on the "Portland Waterfront" could only be sought through the hiring hall of the Boilermakers. It now becomes important to give consideration to whether the Respondent refused to reinstate or reemploy these individuals.

The Respondent, under the terms of its agreements, heretofore referred to, had only one source from which to obtain boilermaker employees: the hiring hall of the Boilermakers. It could not hire men at the gate nor could it refuse to accept men dispatched by the hiring hall. The record contains much evidence of what occurred at the hiring hall on and after July 8, when Jaco, Duke, Jordan, and Ellinger sought to be dispatched to the Respondent's repair department. However it is unnecessary here to detail these efforts for the reason that the Respondent exercised no control over the hiring hall. The Boilermakers refused, even though requested by the Respondent, to issue dispatch slips to these individuals,¹⁶ consequently the Respondent did not have an opportunity to refuse them rein-

¹⁴ The Respondent had, in addition to the above vessels for repair during May, June, and July, 7 new Liberty vessels allocated to its repair department. These vessels came direct from the shipyards in the vicinity of Portland, for the purpose of modification or additional fittings. This special work was performed by a regular "Liberty" crew and in most instances the work was completed in one or two days. The repair crews, except in an emergency, have never been employed on this type of work.

¹⁵ In making this finding the undersigned relies upon the testimony of Davies corroborated by the records of the Respondent. Duke testified, concerning the amount of work on hand and vessels expected for repair. His testimony was indefinite and of little value. His statements on vessels expected, was plainly based on rumors and as later events show was without any basis in fact.

¹⁶ On or about July 8, 1943, when the Respondent re-opened its repair operations, Foreman Steele requested and received Ray's promise to dispatch certain members of the Boilermakers including Jaco, Duke, Jordan and Ellinger, to the Respondent. None of the men requested, were thereafter dispatched to its repair department.

statement or reemployment. The undersigned finds therefore that the Respondent did not on or about July 9, 1943, or thereafter, refuse Jaco, Duke, Jordan, or Ellinger, reinstatement or reemployment.

C. *Concluding findings*

From the foregoing findings of fact, and upon the basis of the entire record, the undersigned finds that the Respondent has not discriminated in regard to the hire and tenure of employment of Jaco, Duke, Jordan or Ellinger and that it has not interfered with, restrained, or coerced these individuals or its other 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.

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

CONCLUSIONS OF LAW

1. The operations of the business of the Respondent, Albina Engine and Machine Works, Inc., Portland, Oregon, constitute a continuous flow of trade, traffic, and commerce among the several States and territories of the United States and foreign countries within the meaning of Section 2 (6) of the Act;

2. International Brotherhood of Boilermakers, Iron Shipbuilders, Welders and Helpers of America, Local No. 72, affiliated with the American Federation of Labor, is a labor organization, within the meaning of Section 2 (5) of the Act; and

3. The Respondent has not engaged in unfair labor practices within the meaning of Section 8 (1) of the Act.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, the undersigned recommends that the complaint against Albina Engine and Machine Works, Inc., Portland, Oregon, be dismissed.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended 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 33 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 to the Board within ten (10) days from the date of the order transferring the case to the Board.

JAMES C. BATTEN,
Trial Examiner.

Dated August 22, 1944.