

In the Matter of FRED MANNING, DOING BUSINESS AS WESTERN OIL TOOL COMPANY, and OIL WORKERS INTERNATIONAL UNION, C. I. O. DISTRICT No. 2

*Case No. 17-C-1273.—Decided January 23, 1948*

*Mr. Robert S. Fousek, for the Board.*

*Mr. Joseph Garst, of Douglas, Wyo., for the respondent.*

*Mr. B. J. Rickey, of Casper, Wyo., for the Union.*

## DECISION

AND

## ORDER

On March 18, 1947, Trial Examiner Martin S. Bennett 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 he cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto.<sup>1</sup> Thereafter, the respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board has reviewed the Trial Examiner's rulings made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the respondent's exceptions and brief, and the entire record in the case and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the additions and modifications<sup>2</sup> hereinafter set forth.

Upon the findings, with which we agree, that the respondent discriminatorily denied employment to Simpson, Korn, and O'Neill on

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<sup>1</sup> Those provisions of Section 8 (1) and (3) of the National Labor Relations Act, which the Trial Examiner found were violated herein, are continued in Sections 8 (a) (1) and 8 (a) (3) of the Act, as amended by the Labor Management Relations Act, 1947.

<sup>2</sup> We make the following corrections in the Trial Examiner's findings of fact with respect to events which transpired before June 5, 1945, and with respect to testimony adduced at the hearing herein. (1) the respondent's reason for purchasing the business here involved from the Hunt Tool Company is not established by the record; (2) the bulk of the repair work of Manning and Brown, Inc., was performed by the Hunt Tool Company, and while such work constituted a portion of the work of the latter company, its extent is not indicated by the record, (3) Mefford did not admit at the hearing that he told Simpson and Korn that Manning would not stand for the Union, (4) at the hearing Mefford testified regarding an incident in 1944 when two shop employees complained to him about Simpson's antagonistic attitude toward the two employees.

The foregoing corrected findings do not affect our resolution of the issues in this case.

June 5, 1945, the Trial Examiner recommended that the respondent be required to offer employment to these individuals and to make them whole for loss of pay suffered by them as a result of the respondent's unfair labor practices. The respondent contends, however, that such remedy should be denied herein because Simpson, Korn, and O'Neill allegedly failed to accept subsequent offers of employment which the respondent claims he tendered to each of them.

The record shows that Simpson and Korn failed to remove their tools from the plant on June 5, 1945, when the respondent refused to employ them. When they returned to the plant within the next few days to collect their tools, Mefford, according to Simpson's credible testimony, told Simpson that "if we would forget this deal—drop it and let everything quiet down in three or four weeks when the old man forgot about it he would have us all back to work again." Similarly, Mefford told Korn, according to Korn's credible testimony, "to hold off a couple of weeks until the old man cooled off and I should come back to work; or I could come back to work."<sup>3</sup> Neither Simpson nor Korn returned to the plant thereafter, or subsequently asked the respondent for employment.

At the hearing, O'Neill denied that he was told by the respondent to return to work after he was refused employment on June 5, 1945.<sup>4</sup>

We regard without merit the contentions of the respondent. Insofar as O'Neill is concerned, we find that no offer of any kind was made to him after he was refused employment on June 5, 1945. Insofar as Simpson and Korn are concerned, we find that no *bona fide* unconditional offer of employment after June 5, 1945, was made to them. The proposals contained in Mefford's conversations with Simpson and Korn were not only indefinite as to the time when the respondent would be willing to employ them, but were also contingent upon the abandonment of the respondent's disposition to discriminate against Simpson and Korn on the basis of their union activities.

### ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the respondent, Fred Manning,

<sup>3</sup> Mefford's testimony regarding his conversation with Simpson and Korn differed from the versions of the latter individuals both as to the time of their occurrence and the nature of what was stated by Mefford. In resolving the credibility issues raised by such conflicting testimony, we attach weight to other credibility findings made herein by the Trial Examiner, who had the opportunity of observing the demeanor of the witnesses on the stand; and we credit the not unreasonable testimony of Simpson and Korn, regarding their conversations with Mefford.

<sup>4</sup> O'Neill's testimony was contradicted by Mefford, who testified that he told O'Neill to return in 3 or 4 weeks. For reasons similar to those indicated above in footnote 3, we credit O'Neill.

doing business as Western Oil Tool Company, Mills, Wyoming, and his agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in Oil Workers International Union, C. I. O., District No. 2, or in any other labor organization of his employées, by discriminating with regard to the hire or tenure of employment of any of his employees, or any term or condition of their employment;

(b) In any other manner interfering with, restraining, or coercing his employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Oil Workers International Union, C. I. O., District No. 2, 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, as amended.

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

(a) Offer Floyd Simpson, Matt Korn, and Roland O'Neill immediate and full employment in their former or substantially equivalent positions, at which they would have been employed on June 5, 1945, absent the unlawful refusal to hire them, without prejudice to their seniority or other rights and privileges;

(b) Make whole Floyd Simpson, Matt Korn, and Roland O'Neill for any loss of pay they may have suffered as a result of the respondent's discrimination against them, by payment to each of them of a sum of money equal to the amount he normally would have earned as wages during the period from June 5, 1945, to the date of the respondent's offer of employment, less his net earnings during said period;

(c) Post at his plant at Mills, Wyoming, copies of the notice attached hereto and marked "Appendix A."<sup>5</sup> Copies of said notice, to be furnished by the Regional Director for the Seventeenth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof and maintained by him for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by other material;

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

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<sup>5</sup> In the event that this Order is enforced by decree of a Circuit Court of Appeals, there shall be inserted in the notice, before the words "A Decision and Order," the words: "A Decree of the United States Circuit Court of Appeals Enforcing"

CHAIRMAN HERZOG and MEMBER HOUSTON took no part in the consideration of the above Decision and Order.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, I hereby notify my employees that:

I WILL OFFER to the persons named below immediate and full employment in their former or substantially equivalent positions at which they would have been employed on June 5, 1945, absent the unlawful refusal to hire them, without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination.

Floyd Simpson  
Matt Korn  
Roland O'Neill

I WILL NOT in any manner interfere with, restrain, or coerce my employees in the exercise of their right to self-organization, to form labor organizations, to join or assist OIL WORKERS INTERNATIONAL UNION, C. I. O., DISTRICT No. 2, 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.

All employees are free to become or remain members of the above-named union or any other labor organization. I will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

FRED MANNING, DOING BUSINESS AS  
WESTERN OIL TOOL COMPANY,  
*Employer.*

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

## INTERMEDIATE REPORT

*Mr Robert S. Fousek*, for the Board.

*Mr. Joseph Garst*, of Douglas, Wyo., for respondent

*Mr B J. Rickey*, of Casper, Wyo , for the Union.

## STATEMENT OF THE CASE

Upon an amended charge duly filed on July 24, 1945,<sup>1</sup> by Oil Workers International Union, C. I. O , District No 2, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Seventeenth Region (Kansas City, Missouri), issued its complaint dated November 26, 1946, against Fred Manning, doing business as Western Oil Tool Company, herein called respondent, alleging that respondent had engaged in and was engaging in unfair labor practices 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 respondent and the Union

With respect to the unfair labor practices, the complaint as amended at the hearing alleged that respondent on and after June 5, 1945, refused to employ or continue the employment of Floyd Simpson, Matt Korn, and Roland O'Neill because they joined the Union and engaged in concerted activities, and that respondent by these acts has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Respondent in its answer filed December 4, 1946, admitted that it refused on June 5, 1945, to employ or continue the employment of the individuals named in the complaint, alleged that employment was refused these individuals because they were incompetent workers, and denied the commission of any unfair labor practices.

Pursuant to notice, a hearing was held on December 12, 1946, at Casper, Wyoming, before Martin S. Bennett, the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The Board and respondent were represented by counsel and the Union by its representative 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, a motion by counsel for the Board to conform the pleadings to the proof was granted without objection The parties waived their right to argue orally before the undersigned at the conclusion of the hearing. A date was fixed for the filing of briefs and/or proposed findings and conclusions with the undersigned. None have been received.

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 RESPONDENT

Fred M Manning, doing business as Western Oil Tool Company, has his place of business at Mills, Wyoming, where since on or about June 4, 1945, he has been engaged in the business of operating machine, motor repair, and welding shops, and in the operation of a fleet of welding and boiler repair trucks

<sup>1</sup> The original charge was filed June 7, 1945

for the purpose of maintaining and repairing oil well drilling and production equipment. Respondent further produces shafts, bushings, and subs, fabricates skids, guards, substructures, and mud tanks utilized in oil drilling and oil producing equipment, and repairs drilling equipment in his shop and on location. During the months of June, July, and August, 1945, respondent purchased raw materials including pipe, steel, and iron valued at approximately \$15,000, of which 90 percent was shipped to respondent from points outside the State of Wyoming. During the same period, respondent provided services valued at approximately \$94,000, of which 42 percent was provided for companies in States other than Wyoming.<sup>2</sup>

## II. THE ORGANIZATION INVOLVED

Oil Workers International Union, affiliated with Congress of Industrial Organizations, District No 2, is a labor organization admitting to membership employees of respondent.

## III. THE UNFAIR LABOR PRACTICES

### A *The refusals to hire*

#### 1. Background and introduction

The business and plant presently operated by respondent was operated prior to December 1944, by a Wyoming corporation entitled Western Machine Company, herein called Western, whose president and principal stockholder was Fred Manning.<sup>3</sup> In December 1944, the business was sold to the Hunt Tool Company, herein called Hunt, which continued the business in substantially the same manner as its predecessor, the bulk of its work being performed on oil drilling equipment owned by Manning and Brown, Inc. The latter concern became dissatisfied with the progress of the work being done on its equipment by Hunt, and on June 4, 1945, the business was bought by respondent herein, Fred Manning, individually and doing business as Western Oil Tool Company, and continued in substantially the same manner. It is alleged that respondent, in commencing business operations on June 5, 1945, refused to hire Floyd Simpson, Matt Korn, and Roland O'Neill, who had been employed by Hunt, because of their union affiliation and activities.

#### 2. The Union campaign and activities<sup>4</sup>

The union activities of the 3 men alleged to have been discriminated against took place during the period when Hunt Tool Company was operating the business. After the Union lost a consent election conducted among the employees of Hunt in February 1945, union activity revived among the employees during April. Simpson, Korn, and O'Neill were each active in soliciting the membership of employees during April and May, and Simpson and Korn obtained 27 signed cards among the approximately 32 employees in Hunt's employ. On or about May 10, a committee was elected by the employees which included Simpson as chairman, and Korn and O'Neill as committeemen for machinists and welders,

<sup>2</sup> Respondent admitted that its operations subsequent to August 1945 have continued in substantially the same manner and amount.

<sup>3</sup> Manning owned 62.5 percent of stock in another corporation Manning and Brown, Inc., an oil drilling company, which in turn owned all of the stock of Western Machine Company.

<sup>4</sup> Findings hereinafter, except where otherwise indicated, are based upon the clear, forthright, and uncontroverted testimony of Simpson, Korn, and O'Neill.

respectively. On May 14, the Union addressed a letter to Hunt requesting recognition as bargaining representative, and also filed a petition for investigation and certification of representatives with the Board on or about May 17, 1945. No reply was made to the letter requesting recognition.

On or about May 19, Welder Foreman William Mefford<sup>5</sup> and Foreman Rate<sup>6</sup> addressed the employees. Mefford read the letter requesting recognition sent by the Union to Hunt and wanted to know how many of the men favored the Union; a majority indicated this fact. Rate, who during the previous December had told Simpson that he was opposed to the Union, asked the men why they had to "mess with the damned union deal." Mefford then suggested the appointment of a committee which could meet with Hunt but was informed by Simpson that the Union members had already chosen a committee which included Simpson, Korn, and O'Neill. The following day, Simpson and Korn spoke to Mefford in an effort to obtain a meeting of the union committee with Hunt. They were unable to hold this meeting with Hunt, who left on a trip, and shortly thereafter the business was sold to respondent.

Shortly before the sale of the business on June 4, Mefford asked Simpson if he "could hold the union deal off" until the business was sold. Simpson replied that it had gone too far. Mefford also spoke to O'Neill at about this time and asked whether the men would drop the Union if he, Mefford, took things over. O'Neill replied that he would remain in the Union.

### 3. The refusals to hire and respondent's contentions

At the close of business on Saturday, June 2, 1945, all of the approximately 32 employees of Hunt were discharged by Mefford. The latter, who was about to assume his position as plant superintendent of respondent, informed the men that the plant would be shut down on Monday, June 4, for inventory-taking, and told them that they were all to report for work on Tuesday, June 5, and that there would be no changes made.<sup>7</sup> All reported for work on the morning of June 5 and all were rehired with the exception of Simpson, Korn, O'Neill, and one other man named Ball.

Simpson, in reporting for work, was summoned to the office by Mefford and told "the old man . . . Manning . . . is damned badly burned up over this union deal . . . I can't put you back to work . . . I am instructed to tell you that you are not satisfactory, and nothing else."<sup>8</sup> Korn was similarly summoned to the office and told by Mefford, in the presence of Rate, that he could not be rehired because he was "unsatisfactory." Korn asked in what respect this was so and Mefford replied that he "was instructed" to tell Korn he was unsatisfactory; Mefford then stated "that the old man would not stand for the Union for a ——— minute; that he would sell the place piece by piece before he would do business with the Union." O'Neill was also summoned to the plant

<sup>5</sup> Mefford was then one of several foremen in Hunt's employ and a supervisory employee. On or about May 23, Mefford was offered the position of plant superintendent by respondent, when the sale of the business would be completed, and accepted several days later. It was he who refused to hire the 3 alleged to have been discriminated against. At the time of the instant hearing, Mefford had left respondent's employ.

<sup>6</sup> Rate was another foreman in Hunt's employ who continued on with respondent after the sale was made. He did not testify herein.

<sup>7</sup> Simpson, Korn, and O'Neill so testified. Mefford admitted that he informed the men to report on June 5, but averred that he did not state *which* men were to be rehired.

<sup>8</sup> Manning did not testify. According to K S Saltgaber, treasurer of another Manning enterprise, Manning was ill in Texas at the time of the hearing.

office and told by Mefford, in the presence of Rate, that respondent could not use him because he was unsatisfactory.<sup>9</sup>

It is respondent's contention that these three men were not rehired because they were unsatisfactory workers, and specifically that Simpson was (1) subject to discontent, (2) there were numerous complaints concerning him, and (3) the men did not like to work with him; Korn was (1) slow in his work, (2) had a fight with another employee, and (3) turned out work which was too expensive in cost to customers; O'Neill (1) during March and April of 1945 argued with Mefford on all points concerning his work, and (2) refused to go out on an assignment.

#### 4. Work records of the men and analysis of respondent's contentions

*Floyd Simpson* commenced his employment in the plant in April 1942 when it was operated by Western. He was a first class welder with 20 years of experience, received the top rate of \$1.25 per hour, and was capable of handling all types of work. After failing to obtain employment with respondent on June 5, he was hired by William Taylor who had been Simpson's supervisor at Western and Hunt.<sup>10</sup> Mefford admitted that the quality of Simpson's work at Western and Hunt had been "excellent."

With respect to the contention that the men did not like to work with Simpson and that he was subject to discontent, the record discloses only the opposite. O'Neill and Korn credibly testified that Simpson got along well with his fellow employees, that Simpson was liked, and that he was the most popular man in the shop. That he was liked by the men is shown by his leadership of the union movement and the strong support given the movement by the other workers, as well as Mefford's admission that he personally had no difficulty getting along with Simpson. With respect to the contention that there had been complaints concerning him, Mefford admitted that two of the three complaints he referred to took place in 1943 and one in August or September of 1944 and that all related to work on field jobs. The record discloses that Simpson had worked in the field during the period of operations of the business by Western, but was assigned to work in the shop after Hunt took over in December 1944. There is no evidence of any complaints during the period of time Simpson was employed in the shop.

In the final analysis, any doubt as to Simpson's ability to get along with workers and as to his own ability is dispelled by the offer to him of the job of welder foreman. Several days before the business was sold to respondent by Hunt, Mefford informed Simpson that he was to be plant superintendent of the plant after the sale, and asked Simpson if he would consider taking over Mefford's position of welder foreman. On the following day, Simpson informed Mefford that he would accept the offer.<sup>11</sup> Not only does this support the view that Simpson was an able worker with ability to handle other men, but, in view of the statements made to Simpson on June 5 by Mefford, as heretofore found, it also im-

<sup>9</sup> The credible testimony of Simpson, Korn, and O'Neill Rate did not testify Mefford's testimony was inconsistent herein. He admitted telling Simpson and Korn on June 5 that Manning would not stand for the Union but then alleged that he was referring to Hunt.

<sup>10</sup> Taylor left the employ of Hunt shortly before the sale of the business to respondent.

<sup>11</sup> Findings herein are based upon Simpson's credible testimony. Mefford alleged that he checked the employees to find a candidate for welder foreman, that he asked Simpson, whom he considered the most qualified man for the job, and that Simpson recommended himself. In view of the inconsistency between this alleged interview of Simpson and the fact that Mefford refused to employ Simpson for the reasons advanced above, the undersigned rejects Mefford's testimony herein.

pels the conclusion that the reasons advanced by respondent for the failure to hire Simpson were not the true reasons therefor.

*Matt Korn* commenced his employment in the plant in November 1942 when it was operated by Western. He was a general machinist who received the top rate of \$1.25 per hour. He was never reprimanded in connection with his work and had been complimented by Foreman Feese while with Hunt.

With respect to Korn's alleged slowness, there is no evidence that it was ever called to his attention, although Mefford testified that he usually took up complaints with the men. The altercation between Korn and another employee took place in April, according to Mefford, who admitted that he had been informed that only one blow had been struck, that he had never brought the matter to Korn's attention, and that Korn was not prone to fighting with people. As for the allegation that the work turned out by Korn was excessively high in cost to the customer, no evidence was introduced in support of this contention. Mefford admitted, however, that the entire shop output of Hunt was being billed at a higher rate than under Western and that complaints were frequent and common as to prices being excessive. Here too, Mefford did not complain to Korn concerning his work; on the contrary, he testified that he considered Korn an excellent workman.

In view of the above and the statements made to Korn on June 5 by Mefford, as heretofore found, the undersigned finds that the reasons advanced by respondent for the refusal to hire Korn are not the true reasons therefor.

*Roland O'Neill* commenced his employment with Western in 1939 as a truck helper. He received a number of promotions and wage increases and became a welder in 1941. About 10 months thereafter, he was promoted to first class welder at the top rate of \$1.25 per hour and was under the supervision of Mefford after 1942. His work was never criticized and he was complimented by Mefford on several occasions on the performance of his duties.

No evidence was introduced in support of respondent's contention that O'Neill's work deteriorated during March and April of 1945. Nor is respondent's contention that O'Neill refused to accept a job assignment supported by the record.<sup>22</sup> O'Neill, a clear and forthright witness, credibly testified that Foreman Rate asked him to report to an out-of-town job on a Sunday when it was snowing. O'Neill replied that it was a poor day to go out of town but then stated that he would go and did go. In addition, Mefford admitted that he had never spoken to O'Neill concerning the incident which was allegedly reported to Mefford by Foreman Rate. The undersigned does not credit Mefford's testimony that O'Neill did not go out on this assignment.

In view of the above, and Mefford's admission that O'Neill was a good welder whom he had complimented on his work, the undersigned finds that the reasons advanced by respondent for the refusal to hire O'Neill were not the true reasons therefor.

##### 5. Conclusions

As found above, the reasons advanced by respondent for the refusal to hire Simpson, Korn, and O'Neill are not supported by the record. It is also clear that each of them was an excellent workman with a long and exemplary record with the business to which respondent had succeeded and under the supervision of William Mefford who, as plant superintendent, refused to employ them on June 5, 1945. Furthermore, the bulk of the work done by Hunt was for Manning and

<sup>22</sup> The record does not disclose when this incident took place

Brown, Inc, which Fred Manning controlled, and respondent had purchased Hunt in order to speed up operations and reduce the backlog of Manning and Brown work. And, as Mefford testified, respondent desired him to increase production which he did by operating 24 hours a day and by increasing the crew of men from 32 to a peak of 75 at a time when help was still scarce and being cleared through the United States Employment Service. It was against this background that Mefford refused to hire these 3 admittedly excellent workmen on June 5.

In view of the above, the outstanding position of the three men on the union committee, the requests of Simpson and O'Neill by Mefford to hold off the "union deal" and "drop" the Union, as found above, and the anti-union statements made to Simpson and Korn by Mefford on the morning of June 5 when denying them employment, the undersigned finds that respondent denied employment to Simpson, Korn, and O'Neill on June 5, 1945, because of their union affiliation and activities, thereby discriminating with respect to their hire and tenure of employment and discouraging membership in a labor organization, and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.<sup>13</sup>

#### IV THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of respondent set forth in Section III, above, occurring in connection with the operations of 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

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

It has been found that respondent has discriminated with regard to the hire and tenure of employment of Floyd Simpson, Matt Korn, and Roland O'Neill. It will be recommended that respondent offer each of them immediate and full employment in his former or substantially equivalent position<sup>14</sup> at which he would have been employed on June 5, 1945, absent the unlawful refusal to hire him, without prejudice to his seniority or other rights and privileges, and make them whole for any losses suffered by reason of respondent's discrimination against them by payment to each of them of a sum of money equal to that which he normally would have earned from June 5, 1945, to the date of respondent's offer of employment, less his net earnings<sup>15</sup> during said period.

The refusal to hire persons because of their union membership, thereby depriving them of their economic livelihood, is a disregard of the fundamental rights of employees under the Act and convinces the undersigned of the danger of commission by respondent of other types of unfair labor practices in the future. It is therefore recommended, in order to effectuate the policies of the Act, to prevent

<sup>13</sup> *Phelps Dodge Corporation v N. L. R. B.*, 313 U. S. 177, *N. L. R. B. v Security Warehouse & Cold Storage Co.*, 136 F. (2d) 829 (C. C. A. 9)

<sup>14</sup> In accordance with the Board's consistent interpretation of the term, the expression "former or substantially equivalent position" is intended to mean "former position wherever possible, but if such position is no longer in existence, then to a substantially equivalent position." See *Matter of The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch*, 65 N. L. R. B. 827.

<sup>15</sup> *Matter of Crossett Lumber Company*, 8 N. L. R. B. 440, 497-498.

any recurrence of unfair labor practices, and thus mitigate industrial strife which burdens and obstructs commerce, that respondent be ordered to cease and desist from infringing in any manner upon the rights guaranteed in Section 7 of the Act.<sup>10</sup>

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

#### CONCLUSIONS OF LAW

1. Oil Workers International Union, C. I. O., District No. 2, is a labor organization within the meaning of Section 2 (5) of the Act

2. By discriminating with regard to the hire and tenure of employment of Floyd Simpson, Matt Korn, and Roland O'Neill, thereby discouraging membership in Oil Workers International Union, C. I. O., District No. 2, 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 his employees in the exercise of the rights guaranteed in Section 7 of the Act, 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 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, and upon the entire record in the case, the undersigned recommends that respondent, Fred Manning, doing business as Western Oil Tool Company, Mills, Wyoming, his officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in Oil Workers International Union, C. I. O., District No. 2, or any other labor organization of his employees, by discriminating with regard to hire or tenure of employment or any term or condition of employment;

(b) In any other manner interfering with, restraining, or coercing his employees in the exercise of the rights to self-organization, to form, join, or assist Oil Workers International Union, C. I. O., District No. 2, 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 undersigned finds will effectuate the policies of the Act:

(a) Offer Floyd Simpson, Matt Korn, and Roland O'Neill immediate and full employment in their former or substantially equivalent positions at which they would have been employed on June 5, 1945, absent the unlawful refusal to hire them, without prejudice to their seniority or other rights and privileges;

(b) Make whole Floyd Simpson, Matt Korn, and Roland O'Neill for any loss of pay they may have suffered as a result of the discrimination against them by payment to each of them of a sum of money determined in the manner set forth in the section above entitled "The Remedy";

<sup>10</sup> See *N L R B v. Express Publishing Company*, 312 U S 426, *May Dept. Stores Co. v N L R B*, 326 U S 376

(c) Post at his plant at Mills, Wyoming, copies of the notice attached hereto and marked "Appendix A" Copies of said notice, to be furnished by the Regional Director for the Seventeenth Region, shall, after being duly signed by respondent's representative, be posted by respondent immediately upon receipt thereof and maintained by him for sixty (60) consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by respondent to insure that said notices are not altered, defaced, or covered by other material;

(d) Notify the Regional Director for the Seventeenth 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, respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring respondent to take the action aforesaid

As provided in Section 203.39 of the Rules and Regulations of the National Labor Relations Board, Series 4, effective September 11, 1946, any party or counsel for the Board may, within fifteen (15) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.38 of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, 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; and any party or counsel for the Board may, within the same period, file an original and four copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, 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. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.65. As further provided in said Section 203.39, 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 service of the order transferring the case to the Board.

MARTIN S. BENNETT,  
*Trial Examiner.*

Dated March 18, 1947.

#### APPENDIX A

##### NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL OFFER to the persons named below immediate and full employment in their former or substantially equivalent positions at which they would have been employed on June 5, 1945, absent the unlawful refusal to hire them, without prejudice to any seniority or other rights and privileges

previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination.

Floyd Simpson  
 Matt Korn  
 Roland O'Neill

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist OIL WORKERS INTERNATIONAL UNION, C I. O. DISTRICT No. 2 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.

All our employees are free to become or remain members of the above-named union or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

FRED MANNING, DOING BUSINESS AS  
 WESTERN OIL TOOL COMPANY,  
*Employer.*

Dated \_\_\_\_\_ By \_\_\_\_\_  
 (Representative) (Title)

NOTE—Any of the above-named employees presently serving in the armed forces of the United States will be offered full reinstatement upon application in accordance with the Selective Service Act after discharge from the armed forces.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.