

In the Matter of PRESS WIRELESS MANUFACTURING CORPORATION and  
METROPOLITAN FEDERATION OF ARCHITECTS, ENGINEERS, CHEMISTS &  
TECHNICIANS, LOCAL 231, U. O. P. W. A., C. I. O.

Case No. 2-C-6599.—Decided July 9, 1948

Mr. James C. Paradise, for the Board.

Messrs. Alfred G. Greany and Harold J. Morse, of New York City,  
for the Respondent.

Mr. Thomas R. Sullivan, of New York City, for the Union.

DECISION

AND

ORDER <sup>1</sup>

On May 26, 1947, Trial Examiner Wallace E. Royster issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto.<sup>2</sup> Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-man panel consisting of the undersigned Board Members.\*

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.<sup>3</sup>

<sup>1</sup> The power of the Board to issue a Decision and Order in a case such as the instant one, where the charging union has not complied with the filing requirements specified in Section 9 (f), (g), and (h) of the amended Act, was decided by the Board in *Matter of Marshall and Bruce Company*, 75 N. L. R. B. 90

<sup>2</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 Section 8 (a) (1) and Section 8 (a) (3) of the Act, as amended by the Labor Management Relations Act, 1947.

\*Chairman Herzog and Members Murdock and Gray.

<sup>3</sup> We hereby correct the following subsidiary finding of fact contained in the Intermediate Report

The Trial Examiner found that, as applied to production and maintenance employees, the Respondent's seniority policy for lay-off purposes was on a departmental basis. The record shows, and we find, that this seniority policy was unit-wide

78 N. L. R. B., No. 29.

## 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, Press Wireless Manufacturing Corporation, Hicksville, New York, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in Metropolitan Federation of Architects, Engineers, Chemists & Technicians, Local 231, U. O. P. W. A., C. I. O., or in any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire or tenure of employment, or any term or condition of their employment;

(b) In any other manner interfering with, restraining, or coercing their employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Metropolitan Federation of Architects, Engineers, Chemists & Technicians, Local 231, U. O. P. W. A., C. I. O., or any other labor organization, to bargain collectively through representatives of their own choosing, or 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 Irving Rutstein full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority or other rights or privileges, in the event that the Respondent's Technical Writing Division is reestablished;

(b) Make whole Irving Rutstein for any loss of pay he may have suffered because of the Respondent's discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages during the period from September 15, 1946, the date of his discriminatory discharge, to November 15, 1946, the date on which the Respondent's Technical Writing Division was abolished, less his net earnings, if any, during the same period;

(c) Post at its plant in Hicksville, New York, copies of the notice attached to the Intermediate Report herein marked "Appendix A."<sup>4</sup> Copies of said notice, to be furnished by the Regional Director for the

<sup>4</sup> This notice, however, is hereby amended by striking from the first paragraph thereof the words: "THE RECOMMENDATIONS OF A TRIAL EXAMINER" and substituting in lieu thereof the words: "A DECISION AND ORDER." In the event that this Order is enforced by decree of a Circuit Court of Appeals, there shall be inserted, before the words "A DECISION AND ORDER," the words: "'A DECREE OF THE UNITED STATES CIRCUIT COURT OF APPEALS ENFORCING"

Second Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and maintained by it 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 any other material;

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

#### INTERMEDIATE REPORT

*Mr. James C Paradise*, for the Board.

*Messrs. Alfred G. Greany and Harold J. Morse*, of New York, N. Y., for the Respondent.

*Mr. Thomas R. Sullivan*, of New York, N. Y., for the Union.

#### STATEMENT OF THE CASE

Upon a charge filed October 1, 1946, by Metropolitan Federation of Architects, Engineers, Chemists & Technicians, Local 231, United Office and Professional Workers of America, CIO, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Second Region, (New York, N. Y.), issued its complaint dated February 19, 1947, against Press Wireless Manufacturing Corporation, of New York, N. Y., Hicksville, N. Y., and Long Island City, N. Y., herein called Respondent, alleging that 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 the charge together with notices of hearing thereon were duly served upon Respondent and the Union.

With respect to unfair labor practices, the complaint alleged in substance that on or about September 14, 1946, Respondent discharged Irving Rutstein, and since failed and refused to reinstate him, for the reason that he joined or assisted the Union or engaged in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; that Respondent thereby interfered with, restrained, and coerced its employees in the exercise of their rights under Section 7 of the Act; and that Respondent thereby violated Section 8 (1) and (3) of the Act.

In its answer dated March 4, 1947, Respondent admitted certain of the allegations of the complaint but denied the commission of unfair labor practices. Its motion for a bill of particulars, bearing the same date, was denied *in toto* on March 14, 1947, by William E. Spencer, a Trial Examiner duly designated by the Chief Trial Examiner.

Pursuant to notice, a hearing was held in New York, New York, on March 24, 25, and 26, 1947, before the undersigned, the Trial Examiner duly designated, subsequent to March 14, 1947, by the Chief Trial Examiner. The Board and Respondent were represented by counsel; the Union by one of its agents. All parties participated in the hearing, were afforded full opportunity to be heard,

to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues.

At the conclusion of the hearing, a motion by counsel for the Board to conform the pleadings to the proof was granted without objection. All parties were granted until April 5, 1947, to file briefs or Proposed Findings and Conclusions with the Trial Examiner. A brief has been received from Respondent.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF RESPONDENT

Respondent, a Delaware corporation, maintains its principal office at 1475 Broadway in the City of New York and a manufacturing plant in Hicksville, Long Island, N. Y. Until November 1946, and at all times material herein, Respondent maintained a staff of employees engaged principally in engineering functions at Long Island City, N. Y. Its business is the manufacture, sale, and distribution of electrical equipment and related products. During 1946, it purchased materials for use in its processes having a value in excess of \$500,000, of which approximately 50 per cent was shipped to its plants in the State of New York from other States of the United States. During the same period, Respondent's sales exceeded \$1,000,000 in value, of which approximately 90 per cent was shipped from its said plants to States of the United States other than the State of New York.

#### II THE ORGANIZATION INVOLVED

Metropolitan Federation of Architects, Engineers, Chemists & Technicians, Local 231, United Office and Professional Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of Respondent.

#### III. THE UNFAIR LABOR PRACTICES

##### A. *The facts*<sup>1</sup>

Irving Rutstein, whose discharge is the subject of the complaint, was employed by Respondent as a technical writer at Long Island City in April and continued to work in that capacity until his discharge effective September 15. Samuel J. Goodman, supervisor of technical publications, in charge of publications, technical writing and graphic arts, was Rutstein's immediate superior. Above Goodman were Pascal Della-Croce,<sup>2</sup> engineering service manager, and Lester N. Hatfield, chief engineer, who was in charge of all engineering functions at the plant.<sup>3</sup> Rutstein, for the period of his employment, was engaged in assembling data and in writing instruction manuals pertaining to the use and operation of Respondent's products.

In July, Respondent discontinued the operation of a school of instruction which it had maintained in Hicksville and attempted to find suitable employment elsewhere in its organization for some of the workers displaced thereby. In late July, Henry Fricke, in charge of the personnel office at Hicksville, telephoned Goodman with reference to finding employment for two of them, Edwin Steinberg

<sup>1</sup> Unless otherwise indicated, all dates mentioned are in 1946.

<sup>2</sup> Appearing in the record as Della-Cross

<sup>3</sup> Reference to the plant is in all cases to Respondent's operations in Long Island City

and one Wessels. In this conversation, Fricke mentioned that both Steinberg and Wessels were senior in point of service to Rutstein and Vincent Bariano, who at that time were the only employees engaged in technical writing under Goodman. After being advised by Hatfield or Della-Croce that he might hire an additional writer, Goodman interviewed Steinberg on July 26. In the belief that Wessels was to be placed elsewhere in the organization, Goodman recommended the employment of Steinberg, a recommendation which was shortly approved by Hatfield and Della-Croce. Steinberg then left on vacation, scheduled to return on August 12. Shortly after July 26, Wessels appeared for interview whereupon Goodman learned of his desire for employment as a technical writer. Believing that Wessels was a better choice than Steinberg, Goodman so stated to Hatfield and Della-Croce. Wessels was hired. Goodman advised Harold J. Morse, director of personnel and industrial relations, that Wessels had been hired for work which had been promised to Steinberg and was told "to stop worrying about it and he [Morse] would take care of it." Steinberg's employment dated from June 21, 1944; Wessel's from June 16, 1945. In the discussion of which of them to hire for work in Goodman's division, no mention was made by Hatfield, Della-Croce, or Morse of their relative seniority standing. Goodman gave no consideration to this factor in making his recommendation.

Upon his return from vacation on August 12, Steinberg was advised that no work was available for him. After verifying through Morse's assistant that such advice was correct, he wrote to the director of personnel as follows:

Since the job openings in Press Wireless Mfg Corp. are uncertain, I would like a release.—(I neither desire to quit or be fired). I want a release on the grounds of no further need for my services as an instructor. I can then get unemployment compensation until I get another job.

After two years of satisfactory service, I feel that I am entitled to the following:

1. July 15-31 paycheck
2. Pay for August 1-12 inclusive
3. One-half month termination pay
4. Refund of Pension Trust account

I would appreciate it very much if you can arrange this for me.

Upon receipt of the letter, Morse instructed his secretary to record Steinberg's termination as of August 15; to pay him through August 31; to notify the Pension Trust of the termination; and to advise Steinberg, in applying for return of monies from the Pension Trust, to refer to a termination of employment and not to resignation. Under date of August 26, Morse wrote Steinberg as follows:

This is to advise you that you will shortly receive termination check covering one semi-monthly paycheck.

In order to obtain refund of Pension Trust monies, it is necessary that you submit letter requesting return of said monies. The fact that you were involuntarily released due to a reduction in staff should be indicated. The letter should be addressed as follows:

Press Wireless Pension Trust  
1475 Broadway  
New York, New York

About September 5, Rutstein, with others from the plant, met with a representative of the Union and discussed the possible advantages of organization.

Rutstein signed an application-for-membership card and approached 10 or 12 fellow employees at the plant to determine their interest in collective action. According to Rutstein, he spent from 1 to 1½ hours per day in this fashion principally during rest or leisure periods. On Friday, September 13, he was absent from work and on Sunday, the 15th, received by special delivery the following letter:

SEPTEMBER 14, 1946

Effective September 16, 1946, Mr. Edwin Steinberg was reinstated and returned to employment in the company as a Technical Writer.

Through an oversight on the part of the company at the time Press Wireless Institute was discontinued Mr. Steinberg's transfer was not effectuated. Examination of the seniority standings established the fact that Mr. Steinberg should have been returned to the Instruction Book Department displacing an employee with less company seniority.

We regret to inform you that an examination of the records indicates that the employee with the lowest company seniority holding an equivalent job is yourself and since our budget allowance for your department does not allow for additional personnel at the present time we are compelled to terminate your employment effective the week ending September 15th.

Under the circumstances although our policy does not provide for severance pay for employees having less than six months employment in the company we are nevertheless allowing you one week's termination pay.

We shall be pleased to furnish you with whatever recommendations you may require.

Very truly yours,

(signed) HAROLD J. MORSE

Harold J. Morse

*Personnel Director.*

Until the receipt of the letter, Rutstein had no intimation that his tenure was insecure. Della-Croce and Goodman testified that he was a competent worker; Hatfield testified that he would rehire Rutstein if an opening for which he was qualified should develop.

Counsel for the Board contends that Rutstein was dismissed because of his membership in and activity on behalf of the Union. Respondent, on the other hand, asserts that it had no knowledge of such membership or activity and that, when it belatedly recognized its failure to accord Steinberg his seniority rights, it sought to rectify its oversight by giving him employment with the necessary result that a less senior employee, Rutstein, was displaced.

Hatfield testified that Respondent recognized seniority as applying to its engineering employees and that it was the function of the Personnel department to see that reductions in force were in accordance with the policy. According to his testimony, he was informed shortly before Rutstein's dismissal that a place would have to be found for Steinberg but that he did not know who would be replaced and did not learn of Rutstein's selection until so informed by Rutstein on September 16. According to Hatfield, he took no part in any discussion which led to the selection of Rutstein for discharge and knew nothing of any Union activity on the part of Rutstein.

Della-Croce testified that he knew of the seniority rule but had never known of its application until in the case of Rutstein. According to Della-Croce, he, Hatfield, and Goodman had several discussions about September 11 or 12 concerning the necessity for discharging Rutstein and that Hatfield became first

acquainted with the problem in that fashion. On another occasion, he discussed the question with Hatfield and Morse and when he asked for "justification" for replacing Rutstein with Steinberg, Morse stated that Steinberg had the greater seniority. Later in his testimony, Della-Croce recalled that it was he who selected Rutstein for discharge when he was told that a place must be found for Steinberg. Still later, he testified that this decision was reached in a conference with Morse and Hatfield after a review of the relative qualifications of the individuals involved. Della-Croce admitted Rutstein's competency and asserted his willingness to rehire him insofar as his ability was a factor. He explained that he indicated on Rutstein's personnel record that he would not recommend his rehiring solely because he expected the plant personnel to be moved to Hicksville and that Rutstein lived too far from that city to make his employment convenient.

Morse testified that as director of personnel it was his responsibility to see that established personnel policies were followed. According to Morse, he was almost exclusively preoccupied during the month of August in negotiating the settlement of a strike among employees of a company allied with Respondent and in consequence was not immediately aware or completely informed of developments concerning Steinberg. Thus when he received Steinberg's letter of August 12, he assumed that Steinberg was leaving voluntarily and wrote him on August 26 under that misapprehension. In late August or early September, still according to Morse, Steinberg came to Respondent's office in New York City and complained that he had been unfairly treated by being discharged. Morse, allegedly, promised to investigate his case and, when Steinberg again called upon him a short time later, told him that his case was under investigation. According to Morse, the investigation disclosed that no consideration had been given to Steinberg's seniority and that he was mistakenly told by some unidentified person on August 12 that no position was open for him. Further investigation by Morse led him to the conclusion that Steinberg was qualified to do technical writing and that he had substantial seniority over Rutstein. Upon the basis of these determinations, according to Morse, he notified his subordinates in the personnel department that Rutstein must be discharged to make room for Steinberg. This information was communicated to Hatfield with the result that the required change was made.

Goodman, called as a witness by counsel for the Board, testified that he was pleased with Rutstein's work and had no reason to desire his termination. On September 12 or 13, according to Goodman, he was called to Hatfield's office where Hatfield inquired if the work in Goodman's division would be seriously handicapped if Rutstein were laid off. Goodman replied that some delay would be occasioned and asked why such action was being contemplated. According to Goodman, Hatfield "said something about the fact of Rutstein being down around the laboratory and model shop and so forth quite a bit." Further testimony by Goodman on this conversation follows:

By Mr. PARADISE:

Q Well, is it your testimony, Mr. Goodman, and that Mr. Hatfield said that he wanted to lay Mr. Rustein off because he was down around the laboratory and the model shop.

A. That is the gist of it.

Q. Didn't he say what Mr. Rutstein was doing down around the laboratory and the model shop—withdrawn.

Q Didn't you tell him that Rutstein had business down around the laboratory and the model shop.

A. Yes.

Q. What did he say to that, if anything?

A. I don't recall.

Q. Did he say something?

A. I guess he did say—yes, I suppose he said something else.

Q. You don't remember what it was, do you?

A. Not at the moment.

Q. Well, you have just testified, Mr. Goodman, that Mr. Hatfield said that he wanted to lay Rutstein off because he was down around the laboratory and the model shop. Did he ever tell you what there was about Rutstein's being around the laboratory and the model shop that he objected to, if anything?

A. Yes, he did.

Q. Well, what did he say?

A. He said that Rutstein was passing out union cards. [aside] I am sick and tired of this. I cannot be——

Q. Is that all he said, just that Rutstein was passing out union cards?

A. That is all he said.

Q. Did he say he had objection to that?

A. He didn't say anything about objection.

Q. Did he say that the company had any objection to that?

A. He didn't say anything about the company.

Q. What, if anything, did you say after he said that he wanted to lay Rutstein off because he was passing out union cards?

A. Well, very frankly I was very much surprised at the whole conversation which I had with him. I guess in all true [deference] to Mr. Rutstein, I think that has been expressed by other witnesses here. I was completely satisfied with Mr. Rutstein's work. The question of union activities had never entered into the work he was doing under my supervision, so it never came up. The answer to the question is, of course, that I expressed my surprise at the whole business, that I hadn't heard anything definite about it at all.

Q. You have been with this company for four years?

A. That is right, approximately four.

Q. And you are a supervisor in the technical writing department is that right?

A. That is right.

Rutstein testified that when he inquired of Hatfield on September 16 for a reason for his discharge, Hatfield said that he knew nothing about it and referred him to personnel. When Rutstein persisted in his inquiry, Hatfield observed, "Well, maybe your discharge was for something outside of your regular work," and refused to explain further.

#### B. Conclusions

The record makes clear that Respondent did not have a policy respecting seniority affecting lay-offs which was uniformly applied among its unorganized employees. Morse, the only witness who testified at length concerning such a policy, asserted that it was, in effect, an extension of the seniority clause con-

tained in an agreement between Respondent and a labor organization covering production and maintenance employees. That clause, however, gives effect only to departmental as opposed to company seniority in effecting lay-offs and, under it, Steinberg, who appears never to have worked in the engineering department, would have had no right to displace Rutstein. It is clear also, as Respondent in its brief concedes, that Respondent's operating heads were unfamiliar with such a policy. Della-Croce and Goodman testified frankly that, although they had heard of its existence, they were unsure of the technique of its application and, save for the case of Rutstein, knew of no instance where it had been used. Further evidence that such a policy either did not exist or was not generally applied is found in the transfer, in late July, of Wessels rather than Steinberg to the Technical Writing staff. Even admitting that Wessels may have been the more desirable employee, it seems clear that Steinberg's seniority was not even considered in making the choice. Morse's attempted explanation that the whole affair arose through inadvertence and that had he not been so engrossed in other pressing matters such confusion would not have arisen, is hardly persuasive. A rule of seniority such as he described would surely have been known to others who had responsibility of making selections for lay-offs.

The testimony of Hatfield in important aspects was contradicted by his subordinates. Thus his assertion that he took no part in any discussion leading to the selection of Rutstein for lay-off is in sharp contrast to testimony on this point by Della-Croce and Goodman. Furthermore, although Hatfield denied that he had knowledge of Rutstein's union activity, he was not called to rebut Goodman's positive testimony that he knew of Rutstein's circularization of union cards. Hatfield was not a convincing witness and was prone to evade direct answers to questions posed to him by Board's counsel. The undersigned does not credit his testimony on these points.

Morse's assertion that he insisted upon the rehiring of Steinberg in order to give effect to Steinberg's alleged seniority rights is highly implausible. He at first testified that he ordered Steinberg reinstated and Rutstein dismissed. Even under the seniority policy which Morse described this would not have been his prerogative for it was not his responsibility finally to determine employee qualifications and if, in the opinion of those suited to judge, Rutstein was the superior worker, seniority would have no application. Possibly in realization of this, Morse later testified that he told Hatfield that Steinberg must be reinstated and that the person having the least seniority must be dismissed. Here again he would have been determining that the qualifications of Steinberg were at least equal to those of some less senior employee. Finally, he testified that he told Hatfield that Steinberg was qualified and that he deserved consideration. Morse's account of his meeting with Steinberg in late August and his offer then to investigate his case with a view to reinstating him is in contradiction to a sworn statement given by Steinberg to a field examiner for the Board on November 8. According to this statement, which was admitted in evidence by stipulation of the parties when it appeared that Steinberg was absent from New York, Steinberg met Morse casually on the street in New York City on September 12 and Morse then suggested the possibility of reemployment. On the following day, according to Steinberg, he was interviewed by Hatfield and Della-Croce at the plant, and, without reference to seniority, was offered employment which he accepted a few days later. The respondent's records show, as Steinberg stated, that he reported for work on September 19. It is with some reluctance that the undersigned accepts the testimony of Steinberg as set forth in his statement for it has the obvious weakness of not being tested by cross-examination. How-

ever, Steinberg had no discernible interest in the outcome of the case hostile to the Respondent and was not a member of the Union. A further test of Morse's credibility lies, in the opinion of the undersigned, in his testimony concerning Steinberg's letter of August 12. Morse asserted that he assumed from the letter that Steinberg was voluntarily quitting. The letter is not couched in such terms and such a conclusion is inconsistent with Steinberg's request that he be paid through August 31. Steinberg last worked on July 26 and, although he might properly expect to be paid in any event for his vacation period, that ended August 12. His request for pay beyond that date, and Morse's assent to it, in the opinion of the undersigned is a clear indication that he was leaving Respondent's employ involuntarily. Morse's reply of August 26 is further and conclusive evidence that Steinberg was separated from his employment due to a reduction in force and that Morse knew this to be so. His willingness to testify otherwise casts a doubt upon the reliability of his testimony concerning all the circumstances surrounding the rehiring of Steinberg.

Upon all the evidence, the undersigned is convinced, and finds, that Respondent enforced no policy of seniority among its engineering employees at the plant and that Steinberg's employment was terminated by reason of a reduction in force on August 12. Rutstein was engaged in writing a manual at the time of his discharge and this circumstance was a matter of concern to Della-Croce and Goodman when they learned he was to be replaced. Considering that Rutstein was a competent and satisfactory worker, the undersigned is convinced that, if Respondent's interest was only to enforce a policy of seniority, he would have continued in this work at least until his replacement reported. Instead, Rutstein was discharged with precipitate haste effective upon receipt of a special delivery letter to that effect, although Steinberg did not report in his place until 4 days later. This action, on the basis of the record, is consistent only with an eagerness on the part of Respondent to rid itself of Rutstein as quickly as possible.

Goodman's testimony that Hatfield stated his desire to discharge Rutstein because of the latter's Union activity was utterly convincing and is accepted. It is found that the discharge of Rutstein was discriminatory.

By the discharge of Rutstein effective September 15, Respondent discouraged membership in the Union, interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by the Act, and thereby violated Section 8 (1) and (3) of the Act.

#### 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 as described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among membership in the Union, interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by the Act, and thereby violated Section 8 (1) and (3) of the Act.

#### V. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices the undersigned will recommend that it cease and desist therefrom and take certain affirmative action which the undersigned finds will effectuate the policies of the Act.

Having found discrimination in regard to the discharge of Irving Rutstein, it will be recommended that Respondent make him whole for any loss of pay he

may have suffered thereby by payment to him of a sum of money equivalent to that which he normally would have earned from the date of his discharge to November 15, 1946, less his net earnings<sup>4</sup> during that period. The Technical Writing division was abolished on November 15 and it appears that Rutstein would have been terminated on that date in any event, hence his immediate reinstatement is not recommended. It will be recommended, however, should the Respondent reestablish the said division, that Rutstein be offered reinstatement to his former or substantially equivalent position<sup>5</sup> without prejudice to any seniority or other rights and privileges previously enjoyed.

The unfair labor practices found would, in the opinion of the undersigned, reasonably indicate to Respondent's engineering employees that concerted activity would quickly be punished by discharge. This disclosed attitude of opposition toward self-organization and the continuing threat which it implies requires a cease and desist order as broad as the threat. It will, therefore, be recommended that Respondent cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

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

#### CONCLUSIONS OF LAW

1. Metropolitan Federation of Architects, Engineers, Chemists & Technicians, Local 231, U. O. P. W. A., C. I. O., 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 Irving Rutstein, thereby discouraging membership in the Union, 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, 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, the undersigned recommends that Press Wireless Manufacturing Corporation, New York, New York, its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in Metropolitan Federation of Architects, Engineers, Chemists & Technicians, Local 231, U. O. P. W. A., C. I. O., or any other labor organization of its employees, by discharging and refusing to reinstate any of its employees or in any other manner discriminating in regard to their hire or tenure of employment or any condition of 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 organiza-

<sup>4</sup> *Matter of Crossett Lumber Company*, 8 N L R B 440.

<sup>5</sup> "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 Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch*, 65 N L R B 827.

tions, to join or assist Metropolitan Federation of Architects, Engineers, Chemists & Technicians, Local 231, U. O. P. W. A., C. I. O., 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 reinstatement to Irving Rutstein under the conditions and circumstances outlined in the section entitled "The remedy";

(b) Make whole Irving Rutstein for any loss of pay he may have suffered by reason of the discrimination against him, in the manner provided in the section entitled "The remedy";

(c) Post, at its plant in Hicksville, New York, to which its engineering employees have been transferred, copies of the notice attached hereto marked "Appendix A". Copies of said notice, to be furnished by the Regional Director for the Second Region, after being signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places where notices to engineering employees customarily are 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 Second Region, in writing, within ten (10) days from the date of receipt of this Intermediate Report, what steps have been taken to comply therewith.

It is further recommended that unless on or before ten (10) days from 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.

WALLACE E. ROYSTER,

*Trial Examiner.*

Dated May 26, 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 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 METROPOLITAN FEDERATION OF ARCHITECTS, ENGINEERS, CHEMISTS & TECHNICIANS, LOCAL 231, U. O. P. W. A., C. I. O., 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

WE WILL OFFER to Irving Rutstein, in the event of the reestablishment of the Technical Writing division, full reinstatement to his former or substantially equivalent position without prejudice to any seniority or other rights and privileges previously enjoyed and make him whole for any loss of pay suffered as a result of the discrimination.

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.

PRESS WIRELESS MANUFACTURING CORPORATION,

*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.