

In the Matter of N. P. NELSON IRON WORKS, INC. and IRON WORKERS
ASSOCIATION, INDEPENDENT

Case No. 2-C-6820.—Decided November 24, 1948

DECISION

AND

ORDER ¹

On January 6, 1948, Trial Examiner William F. Scharnikow issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices ² 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. Thereafter, the Respondent and the General Counsel filed exceptions to the Intermediate Report and supporting briefs.³

The Board ⁴ has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except as herein modified.

¹ The power of the Board to issue a Decision and Order in such a case as the instant one, where the charging union has not complied with the filing requirements of Section 9 (f), (g), and (h) of the Act, as amended, was decided by the Board in *Matter of Marshall and Bruce Company*, 75 N. L. R. B. 90. The Respondent's motion to dismiss the complaint on this basis is therefore denied.

² Both the General Counsel and the Respondent filed exceptions to the Trial Examiner's conclusion that the Respondent's unfair labor practices in violation of Section 8 (1) and (3) of the National Labor Relations Act, did not also constitute violations of Section 8 (a) (1) and (a) (3) of the Act as amended by the Labor Management Relations Act, 1947. Sections 8 (1) and 8 (3) were reenacted, insofar as here material, as Sections 8 (a) (1) and 8 (a) (3) of the Amended Act. We conclude, therefore, that the liability of the Respondent continued under Section 8 (a) (1) and (a) (3) of the Amended Act.

³ The Respondent's request for oral argument before the Board is denied, as the record, including briefs, adequately presents the position of the parties.

⁴ Pursuant to the provisions of Section 3 (b) of the Act, as amended, the Board has delegated its powers in connection with this case to a three-man panel consisting of the undersigned Board Members [Chairman Herzog and Members Houston and Gray].

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, N. P. Nelson Iron Works, Inc., Clifton, New Jersey, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Iron Workers Association, Independent, 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 its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Iron Workers Association, Independent, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other 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 George Van Ess immediate and full reinstatement to his former or a substantially equivalent position without prejudice as to his seniority or other rights and privileges;

(b) Make whole George Van Ess for any loss of pay he may have suffered by reason of the Respondent's discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages during the period from the date of his discharge to the date of the Respondent's offer of reinstatement, less his net earnings during such period;

(c) Post at its plant at Clifton, New Jersey, copies of the notice attached to the Intermediate Report, marked "Appendix A."⁵ Copies of such notice, to be furnished by the Regional Director for the Second Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately on receipt thereof and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are

⁵ This notice, however, shall be, and it hereby is, amended by striking from the first paragraph thereof the words, "The Recommendations of a Trial Examiner," and by substituting in lieu thereof the words, "A Decision and Order." In the event this Order is enforced by decree of a United States Court of Appeals, there shall be inserted before the words, "A Decision and Order," the words, "A Decree of the United States Court of Appeals-Enforcing."

customarily posted. Reasonable steps shall be taken by the Respondent to insure that such 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. Bertram Diamond, for the Board.

Mr. John F. Dumont, of Little Falls, N. J., for the respondent.

Mr. Bernard Cherny, of Jersey City, N. J., for the Union.

STATEMENT OF THE CASE

Upon a charge filed on December 20, 1946, by Iron Workers Association, Independent, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Second Region (New York, New York), issued its complaint dated June 24, 1947, against N. P. Nelson Iron Works, Inc., Clifton, New Jersey, herein called the respondent, alleging that the respondent had engaged in and is 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 charge, a notice of hearing, and an order postponing hearing were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance that the respondent, in violation of Section 8 (1) and (3) of the Act, discharged George Van Ess on December 18, 1946, and has since refused also to reinstate him, because Van Ess joined or assisted the Union or engaged in other concerted activities for the purposes of collective bargaining or other mutual aid or protection. In its answer, the respondent admitted certain allegations of the complaint, denied the commission of any unfair labor practices, and asserted that George Van Ess was discharged "for cause."

Pursuant to notice, a hearing was held in New York City on October 15, 16, and 17, 1947, before the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The Board, the respondent, and the Union participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues. At the beginning of the hearing, the undersigned granted an unopposed motion by counsel for the Board to amend the complaint to allege that the facts pleaded in the complaint constituted unfair labor practices not only within the meaning of Section 8 (1) and (3) of the Act but also within the meaning of Sections 8 (a) (1) and 8 (a) (3) of the Labor Management Relations Act of 1947. The undersigned also granted an unopposed motion by counsel for the respondent to amend the answer to include a denial of this amendment to the complaint. At the end of the Board's case, the undersigned denied a motion by counsel for the respondent to dismiss the complaint on the grounds (a) that the Union had failed to comply with the affidavit requirements of Section 9 (h) of the Labor Management Relations Act of 1947; and (b) that the evidence adduced by counsel for the Board failed to sustain the allegations of the complaint by a reasonable preponderance of the evidence. At the end of the hearing, the undersigned granted unopposed motions to conform the pleadings to the proof in such formal

matters as the spelling of names and dates. The hearing was closed after oral argument before the undersigned by counsel for the Board and counsel for the respondent.¹ Since the conclusion of the hearing, counsel for the respondent filed a brief which the undersigned has considered.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, N. P. Nelson Iron Works, Inc., a New Jersey corporation, is engaged at Clifton, New Jersey, in the manufacture, sale, and distribution of construction machinery and related products. During the year preceding the hearing, the respondent purchased steel, iron, and other materials of a value in excess of \$100,000, approximately 50 percent of which was shipped to the plant from points outside the State of New Jersey. During the same year, the total value of the respondent's finished products was approximately \$250,000, of which approximately 75 percent was shipped to States other than the State of New Jersey.

The respondent admits, and the undersigned finds, that the respondent is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

Iron Workers Association, Independent, is a labor organization admitting to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

George Van Ess was employed by the respondent from sometime in 1941 until his discharge on December 18, 1946. In 1944, he and four other employees organized the Union, which, since December 11, 1944, has continuously represented the respondent's employees under successive contracts with the respondent. Van Ess also served as the Union's treasurer for a year beginning in October 1945, and then, in October 1946, 2 months before his discharge, he became the Union's shop steward and a member of its negotiating committee.

In the beginning of November 1946, the Union notified the respondent in writing of its desire to negotiate a new contract to become effective on December 11, 1946, the first anniversary and earliest possible termination date of their then current contract. On November 5, 1946, the Union's negotiating committee, including Van Ess, presented to the respondent's president, N. P. Nelson, and its general manager, Arnold Nelson, a demand for a general wage increase under the proposed new contract. In the course of seeking to justify this demand with respect to each category of the respondent's employees, the Union's committee asserted that some of them worked as mechanics. General Manager Nelson disagreed, saying that the only mechanics employed by the respondent were its superintendent, Aksel Pedersen, and its assembly foreman, Karsten Florin. Thereupon, Van Ess denied that the supervisors were mechanics, stated that

¹ Counsel for the Union was not present at the close of the hearing. On the last day of the hearing, before the conclusion of the testimony, counsel for the Union requested that he be excused to attend to other business. At the same time he asserted his reliance upon counsel for the Board in the continuance of the proceeding and support of the complaint and urged that the hearing continue even in his absence.

they depended upon the advice of the men under them, and concluded with the remark, "You know, there are two kinds of mechanics, a half-assed mechanic and a mechanic." On the following day, Van Ess voluntarily apologized for this remark.

Despite further conferences between the Union's committee and the Nelsons, no agreement on contract terms was reached by December 16, 1946.² On the evening of that day, the Union's members voted to go on strike. During the lunch hour of the following day, December 17, Van Ess and Walter Shuky, the Union's president, orally informed President N. P. Nelson and General Manager Arnold Nelson of the strike vote. President Nelson asked Van Ess whether the vote had been conducted by secret ballot or a show of hands. According to Van Ess' testimony, he said this was information concerning union activities which he was not permitted to disclose. President Nelson and General Manager Nelson testified, however, and the undersigned credits their testimony, that Van Ess retorted, "That is none of your damned business." According to General Manager Nelson, "that was a hard pill to swallow," and he and President Nelson, after conferring with Superintendent Pedersen that afternoon, decided that Van Ess should be discharged at the close of work the following day, which was the end of the workweek. Pursuant to this decision, General Manager Nelson discharged Van Ess just before quitting time on December 18, 1946.

General Manager Nelson testified that their decision to discharge Van Ess was based mainly upon Van Ess' refusal to obey the orders of Foreman Karsten Florin, but was also founded in part upon his "insults" to management in the conversations of November 5 and December 17, and upon his inability to get along with some of the men in his department. General Manager Nelson further testified that, when he discharged Van Ess, he gave these reasons to Van Ess and the members of the Union's negotiating committee, whom Van Ess immediately summoned to his support.³ Van Ess and two of the Union's committee testified, however, and the undersigned credits their testimony, that the Nelsons told them merely that Van Ess had been discharged because "he had insulted management at the first negotiating meeting," and that he had not been discharged earlier because "they (the Nelsons) had to digest it."

Van Ess was the only painter employed by the respondent and, while not painting, filled in as an extra member of the assembly crew. General Manager Nelson, Superintendent Pedersen, and Foreman Florin testified generally that Van Ess was a good painter, but that he habitually wandered about the shop away from his work, that he openly resented and opposed the orders and authority of his foreman, Karsten Florin, and that on a number of occasions before his discharge, he had been reprimanded and warned of discharge by Superintendent Pedersen, and General Manager Nelson.

Florin testified as to only four specific instances in which he had difficulty with Van Ess concerning orders, all of which occurred within a month after Florin became foreman in August 1946, and, therefore, apparently not later than in September 1946. He testified that, on the first of these occasions (and only on this one occasion), Van Ess told him that he would not take Florin's orders;

² The parties eventually did agree upon, and execute, a contract in late December 1946 or early January 1947, pre-dating it December 11, 1946.

³ In answer to a letter from the Board's Regional Director advising the respondent of the filing of the charge in the instant case, Jean Nelson, the respondent's secretary, informed the Regional Director in a letter dated December 27, 1946, which was 9 days after the discharge, that Van Ess had been discharged because of "rank disregard and disrespect for supervision."

that on the second occasion, Van Ess, on returning to work after a day's absence, objected to Florin's having assigned assembly-worker Steve Plesco to substitute for Van Ess as painter on the preceding day, and told Florin that "nobody was allowed to paint when he [Van Ess] was not there"; that, on the third occasion, Van Ess demurred to Florin's order to paint certain buckets or chutes with the sprayer, saying that they could be painted by hand; and that, on the fourth occasion, Van Ess told Florin that a boom could be painted the following day instead of that afternoon as Florin had ordered. General Manager Nelson testified that, in the last mentioned incident, Van Ess in fact completed the painting that afternoon. Although Florin testified that, upon objecting to painting the boom that afternoon, Van Ess "fooled around," he admitted on further examination that Van Ess' "fooling around" consisted of what Florin termed to be "more or less" unnecessary work with the assembly crew. Florin also admitted in his testimony that, although he would "hesitate," Van Ess eventually performed his work according to Florin's orders; that the difficulties between him and Van Ess could be described as disagreements as to the manner in which work should be done; that, in the case of the buckets or chutes, they had previously been painted by hand, as Van Ess suggested; and, finally, that Florin never reprimanded Van Ess for his opposition to Florin's orders.

In addition to this testimony concerning Florin's alleged difficulties with Van Ess, General Manager Nelson and Superintendent Pederson testified that they overheard Van Ess berate Plesco for substituting for him on the occasion mentioned by Florin, and that General Manager Nelson told Van Ess that the work had to be done and that if Van Ess did not like it, he should look for another job. General Manager Nelson, who fixed the time of this incident as the middle of September 1946, testified that this was the only time he reprimanded Van Ess.

Florin, according to his own testimony, never reprimanded Van Ess either for wandering about the shop or for opposing his orders, although he asserted that he reported instances of each type of conduct four or five times to Superintendent Pedersen. Pedersen testified that, although he himself had noticed Van Ess wandering about the shop every day from the time Pedersen became superintendent in April 1946 until Van Ess was discharged in December, he "warned" Van Ess only three or four times. Pedersen further testified that he also spoke to Van Ess three or four times about the latter's attitude toward Florin's orders; that Van Ess expressed to Pedersen his resentment at having to take Florin's orders because, he said, Florin did not know what he was doing; that Pedersen warned Van Ess he would be discharged, whereupon Van Ess said he would try to follow Florin's instructions; and that Pedersen reported the substance of each of these conversations with Van Ess to General Manager Nelson, several times with the recommendation that Van Ess be discharged. It is significant that, according to the testimony of both Superintendent Pedersen and General Manager Nelson, the latter, upon receiving these reports and recommendations, commented as late as a week before Van Ess' discharge, that Van Ess was a good painter and asked Pedersen to try to straighten him out. There is no testimony that Van Ess in any way thereafter incurred the displeasure of any of the respondent's representatives until, a week later, he bluntly rebuffed President Nelson's request for information on the conduct of the Union's strike vote, the incident which admittedly precipitated consideration of Van Ess' discharge.

In this testimony, Van Ess dealt fully with the various accusations contained in the testimony of the respondent's witnesses. He denied that he had told Florin that nobody else should be permitted to work as a painter in the shop,

although he admitted having said to Florin on this occasion he understood that all the men were working together and that no one should take a fellow-employee's job. As to his alleged insistence that buckets be painted by hand in spite of Florin's orders that they be sprayed, Van Ess testified that there had been a difference of opinion between him and Florin on the point, and, as Florin also testified, that the buckets had previously been hand painted. Finally, Van Ess flatly, and in detail, denied that there was any truth to the rest of the testimony of the respondent's witnesses concerning his wandering about the plant away from his work, or his alleged insubordination or disrespect for Florin's orders, or concerning his having been reprimanded.⁴

Even if it were accepted at face value, the testimony of the respondent's witnesses concerning Van Ess' alleged inattention to his work, his insubordination, and his reprimands prior to the time of his actual discharge, would not indicate, as the respondent urges, that Van Ess was discharged for these alleged shortcomings after a series of fruitless reprimands, but rather that they played no role, that they were resurrected as a pretext for the discharge, and that the discharge was purely and simply the result of Van Ess' having "insulted" the respondent's officials on November 5 and December 17. For, as has already been noted, all of the alleged instances of insubordination to which the respondent's witnesses were able to testify, occurred approximately 3 months prior to his discharge, during which intervening period and as recently as 1 week before the discharge, General Manager Nelson refused to discharge Van Ess in spite of the superintendent's recommendation. Then, too, as Florin admitted, aside from the earliest and unrepeatd incident in which Van Ess assertedly said he would not take orders, Van Ess, an experienced painter, merely made suggestions to Florin, as to how the work should be done, in fact obeyed Florin's orders; and Florin himself never reprimanded him. It would seem that, although perhaps annoyed, Florin never actually regarded their differences at the time as being serious enough for discipline, much less discharge. That General Manager Nelson was clearly of the same opinion is indicated by his refusal to discharge Van Ess on the superintendent's recommendation. It was only when Florin told President Nelson that the manner of conducting the Union's strike vote was "none of [President Nelson's] damned business," which the General Manager testified was "a hard pill to swallow," and which obviously caused the Nelsons seriously to consider his discharge, that the discharge decision was made.

These weaknesses in the testimony of the respondent's witnesses, when considered in the light of the purpose for which it was adduced, do more than merely render the substance of the testimony valueless as an explanation of the discharge; they also demonstrate the unreliability of the testimony when contrasted with the reasonable testimony of Van Ess. The undersigned, therefore, credits the denials and explanations of Van Ess rather than the testimony of the respondent's witnesses, and accordingly finds, contrary to the respondent's contentions and the testimony of its witnesses, that Van Ess had not been insubordinate, defiant, or resentful of Florin's orders; that he had not wandered about the shop; that he had not had difficulties with other employees; that he had neither

⁴ Thus, Van Ess denied that he had ever wandered from his work; that he had ever disobeyed, delayed in obeying, or refused to obey Florin's orders; that he had told Florin he would not take Florin's orders; that he had told Superintendent Pedersen that he resented Florin's orders or that Florin did not know what he was doing; that he had criticized Plesco for taking his place as a painter; that he had ever been reprimanded by General Manager Nelson for not doing his work or for criticizing Plesco; or that he was ever reprimanded or warned of discharge by Superintendent Pedersen for wandering from his work or for disobeying or refusing to obey orders.

been reprimanded nor warned of discharge by the respondent's representatives on any of these grounds; and finally that he was not discharged on December 18 for any of these reasons, but rather and solely because he had "insulted" the respondent's officials by the statements he made to them on November 5, and December 17, 1946.

These statements of Van Ess on November 5 and December 17, which the undersigned thus finds to have been the causes for Van Ess's discharge on December 18, 1946, were made by Van Ess as a member of the Union's negotiating committee, while dealing with the employer on behalf of the other employees whom the Union represented. Van Ess' criticism on November 5 of the qualifications and abilities of the supervisors as mechanics, was made during the course of a bargaining conference in answer to General Manager Nelson's statement that only the supervisors were qualified mechanics, and in support of the Union's position, scoffed at by the general manager, that some of the rank-and-file employees, as mechanics, merited the wage increase sought by the Union under the new contract. It was, therefore, clearly germane to the subject matter of the bargaining conference. Van Ess' remark on December 17 that it was none of President Nelson's "damned business" how the Union's strike vote was conducted the night before, was also made by Van Ess as a union representative in the course of notifying the employer that the Union's members had voted to strike because of the respondent's failure to meet the employees' contract demands. Moreover, this latter statement was a justifiable rebuff to an employer who sought information as to the concerted activities of his employees. Thus, Van Ess' remarks on November 5 and December 17, which the respondent describes as "insults to management," were pertinent to Van Ess' representation of the employees as a member of the Union's committee.

The Act, in its original form and as amended by the Labor Management Relations Act of 1947, clearly protects the making of such statements by an employee-representative in the course of his dealing with the employer on behalf of the employees. For it is the express objective of both statutes to protect the exercise by the employees of their rights to self-organization and collective bargaining through representatives of their own choosing, so that differences or disputes between them and their employers may be resolved by the process of collective bargaining rather than by tests of strength in strikes or lock-outs. Unquestionably, it is essential to the accomplishment of this purpose that, in their dealings with the employer on behalf of the employees, the employee-representatives be treated on a plane of equality with the employers rather than as subordinates as they are in the performance of their duties in the plant; that, in spite of possible offense to the employer, the employee-representatives be permitted the broadest, frankest, and freest possible statement of their positions and pertinent arguments in such language of vigor and clarity, as comes naturally to them and seems reasonably related to their objectives as employee-representatives, short of inexplicable or prolonged name-calling or threats of physical harm or other illegal action;⁵ and, finally, that for the effective exercise of these rights on behalf of the employees, the employee-representatives be protected against discrimination or retaliation by the employer. Only by a full acceptance and observance of these fundamental requirements, can it be hoped that manage-

⁵ Of course, the employer and his representatives possess a corresponding right to freedom in their expressions and arguments. And representatives of either party may forcefully object to the tactics and language employed by the other side so long as they bargain collectively in good faith as required by the Act and the Labor Management Relations Act of 1947.

ment and labor shall be afforded a reasonable opportunity of coming to grips with, and ultimately solving, the problems which confront them.

In the light of these considerations, it is apparent that Van Ess' remarks were well within the permissible and protected limits of the legitimate representation of employees contemplated by both the Act and the Labor Management Relations Act of 1947. Indeed, not only was the substance of Van Ess' remarks pertinent to the proper objectives of Van Ess as a union-committee representative of the employee's interests, but the language he used, though impolite according to genteel standards, was mild according to the not-uncommon standards of conversation in industrial plants.

The undersigned, therefore, finds that the respondent by discharging George Van Ess on December 18, 1946, because of his remarks of November 5 and December 17, discriminated against him in regard to his hire and tenure of employment, thereby discouraging membership in the Union and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act. The undersigned further finds that the respondent thereby committed unfair labor practices within the meaning of Section 8 (1) and (3) of the Act, which was in effect at the time of the discharge on December 18, 1946. The reenactment of identical provisions in Sections 8 (a) (1) and 8 (a) (3) of the Labor Management Relations Act of 1947 occurred subsequent to the discharge of Van Ess. The undersigned therefore finds that the respondent's unfair labor practices were not violations of the Labor Management Relations Act of 1947, as alleged in the amendments to the complaint.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III, above, occurring in connection with the operations of the respondent described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Since it has been found that the respondent has engaged in unfair labor practices within the meaning of Section 8 (1) and (3) of the Act, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act.⁶

The undersigned has found that by discharging George Van Ess on or about December 18, 1946, the respondent discriminated against him in regard to his hire and tenure of employment, thereby discouraging membership in the Union. Such discrimination "goes to the very heart of the Act,"⁷ and constitutes the grossest form of violation of the rights guaranteed by Section 7 and generally protected by Section 8 (1) of the Act. That an employer has deliberately resorted to discrimination, as has the respondent in the present case, indicates not merely his disposition to commit similar acts of discrimination in the future but also (1) his broader and basic "attitude of opposition to the purposes of the

⁶ These recommendations will, in the opinion of the undersigned, also effectuate the policies of the Labor Management Relations Act of 1947, in which Congress has reenacted the provisions of the Act herein found to have been violated, as Sections 8 (a) (1) and 8 (a) (3).

⁷ *N. L. R. B. v. Entwistle Manufacturing Co.*, 120 F. (2d) 532, 536 (C. C. A. 4). See also, *N. L. R. B. v. Automotive Maintenance Machinery Co.*, 115 F. (2d) 358, 363 (C. C. A. 7).

Act to protect the rights of employees generally,"⁸ and (2) the consequent likelihood of his resorting to the lesser acts of interference, restraint, and coercion with these rights as guaranteed by Section 7 and protected by Section 8 (1) of the Act.⁹ These preventive purposes of the Act will be thwarted unless the Board's order is coextensive with this threat. In order, therefore, to make effective interdependent guaranties of Section 7, to prevent industrial strife which burdens and obstructs commerce, and thus to effectuate the policies of the Act, the undersigned will recommend that the respondent cease and desist from in any manner infringing upon the rights guaranteed in Section 7 of the Act.

It will also be recommended that the respondent offer George Van Ess immediate and full reinstatement to his former or substantially equivalent position¹⁰ without prejudice to his seniority or other rights and privileges; and that the respondent also make George Van Ess whole for any loss of earnings suffered by him by reason of the respondent's discrimination against him by payment to him of a sum of money equal to that which he would normally have earned as wages from the date of the discrimination against him, to the date of the offer of reinstatement less his net earnings¹¹ during that period.

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. Iron Workers Association, Independent, 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 George Van Ess, and thereby discouraging membership in Iron Workers Association, Independent, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

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

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

5. The respondent has committed no unfair labor practices in violation of Sections 8 (a) (1) and 8 (a) (3) of the Labor Management Relations Act of 1947.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, the undersigned hereby recommends that the respondent, N. P. Nelson Iron Works, Inc., a New Jersey corporation, Clifton, New Jersey, its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in Iron Workers Association, Independent, or in any other labor organization of its employees, by discriminatorily discharging

⁸ *May Department Stores Company v. N. L. R. B.*, 66 S. Ct. 203, 213, 326 U. S. 376.

⁹ See *N. L. R. B. v. Express Publishing Company*, 312 U. S. 426, 437.

¹⁰ 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.

¹¹ See *Matter of Crossett Lumber Co.*, 8 N. L. R. B. 440, 497-498.

employees or by discriminating in any other manner in regard to their hire or tenure of employment or any term or 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 organizations, to join or assist Iron Workers Association, Independent, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

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

(a) Offer to George Van Ess immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges, and to make him whole for any loss of pay he may have suffered by reason of the discrimination of the respondent against him by payment to him of a sum of money equal to that which he normally would have earned as wages from the date of the respondent's discrimination against him to the date of the offer of reinstatement, less his net earnings during such period;

(b) Post at its plant in Clifton, New Jersey, copies of the notice attached hereto, marked "Appendix A." Copies or said notice, to be furnished by the Regional Director for the Second Region, shall, after being duly signed by the respondent, be posted by it 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;

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

It is further recommended that unless on or before ten (10) days from the date of the receipt of this Intermediate Report the respondent shall notify said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

The undersigned further recommends the dismissal of the amendments to the complaint alleging that the respondent committed unfair labor practices in violation of Sections 8 (a) (1) and 8 (a) (3) of the Labor Management Relations Act of 1947.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board, Series 5, effective August 22, 1947, any party may, within twenty (20) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.45 of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and six copies of a statement in writing setting forth such exceptions to the Intermediate Report and Recommended Order 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 six copies of a brief in support thereof; and any party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report and Recommended Order. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other parties. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in said Section 203.46, 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.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations and recommended order herein contained shall, as provided in Section 203.48 of said Rules and Regulations, be adopted by the Board and become its findings, conclusions and order, and all objections and exceptions thereto shall be deemed waived for all purposes.

WILLIAM F. SCHARNIKOW,
Trial Examiner.

Dated January 6, 1948.

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 IRON WORKERS ASSOCIATION INDEPENDENT, 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 the employees named below immediate and full reinstatement to their former or substantially equivalent positions 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.

George Van Ess

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.

N. P. NELSON IRON WORKS, INC.,
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.