

In the Matter of CHICAGO FREIGHT CAR & PARTS Co. *and* TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN & HELPERS, LOCAL UNION No. 910,
AFL *and* UNITED STEELWORKERS OF AMERICA, PARTY TO THE CON-
TRACT

Case No. 19-CA-13.—Decided June 7, 1949

DECISION

AND

ORDER

On September 9, 1948, Trial Examiner C. W. Whittemore issued his Intermediate Report in the above-entitled proceeding finding that the Respondent had not engaged in certain unfair labor practices and recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter the Teamsters filed exceptions to the Intermediate Report and a supporting brief. The Respondent and the Steelworkers filed briefs in support of the Intermediate Report and Recommendations of the Trial Examiner. The Respondent's request for oral argument is denied inasmuch as the record and the briefs, in our opinion, adequately present the issues and the positions of the parties.

The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions, the briefs, and the entire record in the case, and hereby adopts the findings of fact of the Trial Examiner, with the additions noted below. For the reasons set forth herein, however, the Board does not adopt the Trial Examiner's conclusions and recommendations, except with respect to the 8 (a) (2) charge.

The issue to be determined in this proceeding is whether the execution of the August 18, 1947, memorandum agreement¹ to include prospective employees at the Respondent's contemplated Auburn, Washington, plant under an existing union-shop contract covering the Respondent's Pueblo, Colorado, employees, and the subsequent enforcement of the union-shop provision at Auburn, violated Section 8 (a) (1), (2), and (3) of the Act.²

¹ With respect to the validity of its union-shop provisions, we consider the August 18, 1947, agreement to be covered by that portion of Section 102 of the amended Act saving certain agreements entered into after enactment but prior to the effective date of the 1947 Act.

² The complaint in this proceeding alleged violations of Section 8 (a) (1), (2), and (3) of the Act as amended. However, for all purposes material in this proceeding, Section

The Trial Examiner concluded that a combined unit of Respondent's employees at its Pueblo and Auburn plants was *not* inappropriate and therefore that the extension of the union-shop agreement effected by the August 18 memorandum was a valid extension of a valid labor agreement. We do not agree, because we find that a combined or two-plant unit would be appropriate in these circumstances *only* if the Auburn employees had indicated a desire for such a unit in the exercise of rights guaranteed them in Section 7 of the Act, and that prior to such indication, and certainly prior to the employment of the Auburn employees, the extension of the contract was unwarranted. However, we agree with the Trial Examiner that in signing the memorandum agreement the Respondent was not giving unlawful assistance to the Steelworkers within the meaning of Section 8 (a) (2) of the Act.

We reach our conclusion by interpreting the unit requirement in the proviso to Section 8 (a) (3)³ in accord with the statutory policy concerning units set forth in Section 9. That Section, and particularly subsection (b), obviously contemplates a unit determination which will accord to employees "the fullest freedom in exercising the rights guaranteed by" the Act. In implementing this statutory pronouncement it is the Board's policy not to sanction the inclusion of a distinct group of employees, at least where their community of interest is such that they might alone constitute a separate appropriate bargaining unit, in a larger bargaining group in which they will be a minority, without some expression of their preference. Where, as here, a distinct, *new* group is concerned⁴—and there is, as to them, no bargaining history with its implication of acquiescence in the unit—the Board affords the new group an opportunity to decide by the vote

8 (1), (2), and (3) of the original Act was continued without change in Section 8 (a) (1), (2), and (3) of the amended Act.

³ "Sec. 8 (a) It shall be an unfair labor practice for an employer * * * (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act * * * shall preclude an employer from making an agreement with a labor organization (not established, maintained or assisted by any action defined in Section 8 (a) of this Act as an unfair labor practice) to require as a condition of employment membership therein * * * (4) if such labor organization is the representative of the employees as provided in Section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made; * * *" (emphasis supplied).

⁴ With respect to the distinct character of the Auburn group we note particularly (a) that the Auburn plant is a complete operating unit in itself, separate from rather than a part of the Pueblo plant, and has, so far as the record discloses, separate immediate supervision and equal status with the Pueblo plant under the Respondent's general manager in Chicago; (b) that the distance between the Auburn and Pueblo plants is great and the Auburn group was recruited in that area rather than partially from Pueblo as originally intended. We note also the smaller employee complement at Auburn; at Pueblo the 60 employed when the Auburn plant was being discussed in July 1947 had grown to 73 at the time of the hearing, a year later, while the Auburn plant had 55 employees by that time.

of their own separate majority whether or not they wish to become a part of the larger group.⁵

Thus, the attempt by the Respondent and the Steelworkers to make the as-yet-non-existent Auburn group a minor portion of the existing Pueblo unit was repugnant to the basic statutory policy. We view the memorandum agreement of August 18, 1947, as invalid when executed, because the two-plant unit, "covered by such agreement when made" could not *then* be the appropriate collective bargaining unit specified in Section 8 (a) (3) (i) of the Act.⁶ Therefore we find that by entering into the memorandum agreement and by requiring its Auburn employees to become members of the Steelworkers, the Respondent interfered with, restrained, and coerced its employees in their choice of representatives in violation of Section 8 (a) (1) of the Act, and that by discharging Currier and Cavanaugh for their failure to become members of the Steelworkers, the Respondent discriminated in regard to the hire or tenure of said employees in violation of Section 8 (a) (3) of the Act.

With respect to the Section 8 (a) (2) charge of unlawful support and assistance we find that the Respondent did not violate the Act by entering into and giving effect to the August 18, 1947, agreement, as the record is devoid of evidence that Respondent dominated the Steelworkers or assisted the Steelworkers in a contest with another union.⁷ Accordingly, we shall dismiss the 8 (a) (2) allegations of the complaint.

⁵ See, for example, *Matter of Suislaw Forest Products Co., Inc.*, 55 N. L. R. B. 1115; *Matter of General American Aerocoach Co.*, 55 N. L. R. B. 1377; *Matter of The Goodyear Tire & Rubber Co.*, 80 N. L. R. B. 1347; *Matter of Bercut-Richards Packing Co., et al.*, 67 N. L. R. B. 605; *Matter of DeMuth Glass Works, Inc.*, 53 N. L. R. B. 451 and unreported supplemental decision; *Matter of Chrysler Corporation*, 42 N. L. R. B. 1145; *Matter of The Texas Co.*, 63 N. L. R. B. 1334; *Matter of Riverpoint Finishing Co.*, 77 N. L. R. B. 1948. Compare *Matter of Pepsi-Cola Bottling Co.*, 55 N. L. R. B. 1183, in which the Board granted Pepsi-Cola employees a separate election because they had never acquiesced in their inclusion in a long-standing multi-employer unit.

⁶ See *Matter of Graham Ship Repair Co.*, 60 N. L. R. B. 842, and *Matter of Albert Love Enterprises and Foote & Davies*, 66 N. L. R. B. 416, 422, where contracts were held not to satisfy the proviso (then 8 (3)) because of the inclusion of employees constituting separate appropriate units, in which the contracting union did not command a majority.

⁷ Compare *Matter of Midwest Piping & Supply Co., Inc.*, 63 N. L. R. B. 1060; *Matter of Ken-Rad Tube and Lamp Corporation*, 62 N. L. R. B. 21, and *Matter of Fiss Corporation*, 43 N. L. R. B. 125, in which the respondents were on notice that rival unions claimed a majority at the time the contracts were executed; *Matter of Angelica Jacket Co.*, 57 N. L. R. B. 451, in which the respondent conceded the invalidity of a contract it had entered into prematurely for a separate, new group, *Matter of Julius Resnick, Inc.*, 74 N. L. R. B. 184, and *Matter of Keystone Steel & Wire Co.*, 62 N. L. R. B. 683 (aff. 332 U. S. 833), in which there was evidence apart from the execution of the contract, of employer assistance or domination; and *Matter of Fairfield Engineering Co.*, 74 N. L. R. B. 827, in which employer interference was found only as to acts occurring after a rival union was on the scene.

THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth above, occurring in connection with the operations of the Respondent described in Section I of the Intermediate Report, 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 thereof.

THE REMEDY

Having found that the Respondent has engaged in unfair labor practices, we shall order it to cease and desist therefrom and take certain affirmative action which we find necessary to effectuate the policies of the Act, as amended.

We have found that the Respondent discriminated in regard to the hire and tenure of employment of LeRoy Currier and Irvin M. Cavanaugh. In order to effectuate the purposes and policies of the Act, as amended, we shall order that the Respondent offer to LeRoy Currier and Irvin M. Cavanaugh immediate and full reinstatement to their former or substantially equivalent positions,⁸ without prejudice to their seniority and other rights and privileges, and make them whole for any loss of pay they may have suffered by reason of the discrimination by payment to them of a sum of money equal to the amount they normally would have earned as wages during the period from the date of the discrimination against them to the date of the offer of the reinstatement, less their net earnings⁹ during said period. In accordance with our practice the period from the date of the Intermediate Report to the date of the Order herein will be excluded in computing the amount of back pay, since the Trial Examiner did not recommend reinstatement or an award of back pay.

We have also found that the memorandum agreement between the Respondent and the Steelworkers dated August 18, 1947, is invalid because the two-plant unit as created was not then appropriate. In order to insure to the Auburn employees the full and free exercise of the rights guaranteed in Section 7 of the Act, we shall order that the Respondent withdraw and withhold recognition from the Steelworkers as the representative of its Auburn employees for the purpose of collective bargaining until such time as the Steelworkers may be certi-

⁸ In accordance with the Board's consistent interpretation this means "former position wherever possible, but if such position is no longer in existence, then to a substantially equivalent position." *Matter of The Chase National Bank of the City of New York, San Juan, Puerto Rico Branch*, 65 N. L. R. B. 827; *Matter of Interstate Engineering Corporation*, 83 N. L. R. B. 126.

⁹ See *Matter of Crossett Lumber Company*, 8 N. L. R. B. 440, 497-498; *Matter of Colgate-Palmolive-Peet Co.*, 70 N. L. R. B. 1202, 1209.

fied as their representative by the Board. We shall also order that the Respondent cease and desist from giving effect to the memorandum agreement of August 18, 1947, with the Steelworkers, as well as to any extension, renewal, modification, or supplement thereof, or to any superseding contract with that labor organization or any affiliate thereof, until such time as that organization or an affiliate shall have been certified by the Board as the representative of the Auburn employees. Nothing herein, however, shall be deemed to require the Respondent to vary those wage, hour, seniority, and other such substantive features of its relations with the Auburn employees as the Respondent may have established in performance of the memorandum agreement of August 18, 1947, or said contract as extended, renewed, modified, supplemented, or superseded.

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

CONCLUSIONS OF LAW

1. The United Steelworkers of America, C. I. O., and its Local Union 3356, and Teamsters, Chauffeurs, Warehousemen & Helpers, Local Union No. 910, A. F. of L., are labor organizations within the meaning of Section 2 (5) of the Act, as amended.

2. By discriminating in regard to the hire and tenure of employment of LeRoy Currier and Irvin M. Cavanaugh, and each of them, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act, as amended.

3. By entering into the memorandum agreement of August 18, 1947, and by requiring its Auburn employees to become members of the Steelworkers, the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, as amended, and has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act, as amended.

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

5. By the aforesaid conduct in paragraph 3 of these conclusions the Respondent has not engaged in unfair labor practices within the meaning of Section 8 (a) (2) of the Act, as amended.

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, Chicago Freight Car & Parts Co., its officers, representatives, successors, and assigns shall:

1. Cease and desist from:

(a) Recognizing United Steelworkers of America, and any of its locals, affiliated with the Congress of Industrial Organizations, as the representative of its employees in the Auburn, Washington, plant for the purposes of collective bargaining unless and until that organization, or any local thereof, shall have been certified by the Board as the representative of such employees;

(b) Giving effect to its memorandum agreement dated August 18, 1947, with the United Steelworkers of America on behalf of its Local Union 3356, or to any extension, renewal, modification, or supplement thereof, or to any superseding contract with that labor organization or any organization or affiliate thereof, unless and until that organization or an affiliate thereof shall have been certified by the Board as the representative of the employees in the Auburn, Washington, plant;

(c) In any like or related manner interfering with, restraining, or coercing its employees in the Auburn, Washington, plant, in the exercise of the right to self-organization, to form labor organizations, to join or assist the Teamsters, Chauffeurs, Warehousemen & Helpers, Local Union No. 910, affiliated with the American Federation of Labor, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from so doing, all 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 LeRoy Currier and Irvin M. Cavanaugh immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges;

(b) Make whole LeRoy Currier and Irvin M. Cavanaugh for any loss of pay they may have suffered by reason of the Respondent's discrimination against them by payment to each of them 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, excluding the period from the date of the Intermediate Report to the date of the Order herein, less his net earnings during the period for which payment is directed;

(c) Post in conspicuous places in the plants of the Respondent at Auburn, Washington, and Pueblo, Colorado, copies of the notice, at-

tached hereto, marked "Appendix A."¹⁰ Copies of said notice, to be furnished by the Regional Director for the Nineteenth Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof and be maintained by it for at least 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 Nineteenth Region in writing, within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint, insofar as it alleges that the Respondent has engaged in unfair labor practices within the meaning of Section 8 (a) (2) of the Act, be, and it hereby is, dismissed.

MEMBER MURDOCK, dissenting:

I dissent from the conclusion of my colleagues that the August 18, 1947, memorandum agreement was invalid under Section 8 (a) (1) and (3) of the Act. In my view the Auburn operation was not a distinct, separate operation but rather, as described in Respondent's testimony, a removal of the "plant to the cars rather than the cars to the plant." On such facts there is no doubt in my mind that had the Respondent refused to deal with the Steelworkers when they requested bargaining representation for the Auburn employees because Pueblo employees were to be moved to Auburn, it would have been subject to an 8 (a) (5) proceeding under the Act for refusal to bargain with the representative of its employees. However, Respondent did not refuse but acceded to the bargaining request and a contract resulted. Because, on the facts here presented, the Respondent did have a duty to bargain, I see no reason to disturb that contract.

Moreover, with respect to the unit question which arises here under the 8 (a) (3) proviso, I would find that a combined Pueblo and Auburn unit is appropriate. It is clear under established Board precedent that a two-plant unit might have been appropriate.¹¹ I therefore

¹⁰ In the event that 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"

¹¹ See *Matter of Suislaw Forest Products Co., Inc.*; *Matter of General American Aero-coach Co.*; *Matter of The Goodyear Tire & Rubber Co.*; and *Matter of Bercut-Richards Packing Co.*, all cited in footnote 5 of the majority opinion. In performing its functions under Section 9 of the Act, the Board, when it directs a so-called "Globe" election—a direction which would probably have resulted had the facts here considered come to the Board in a representation proceeding—makes a preliminary determination that either of the units under consideration may be appropriate.

see no reason to penalize the Respondent for contracting with respect to a unit that cannot be said to be inappropriate.

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, we hereby notify our employees that:

WE HEREBY WITHDRAW RECOGNITION from UNITED STEELWORKERS OF AMERICA, C. I. O., and any of its local unions, as the exclusive representative of our Auburn, Washington, employees for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment, unless and until said organizations and/or any of its local unions shall have been certified by the Board as the representative of such employees.

WE WILL NOT give effect to our memorandum agreement signed August 18, 1947, with UNITED STEELWORKERS OF AMERICA on behalf of its LOCAL UNION 3356, or to any extension, renewal, modification, or supplement thereof, or to any superseding contract with said labor organization unless and until said organization shall be certified by the Board as the representative of our Auburn employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our Auburn employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS, A. F. of L., LOCAL UNION No. 910, 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, or to refrain from so doing, all as guaranteed in Section 7 of the Act.

WE WILL OFFER to LeRoy Currier and Irvin M. Cavanaugh full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights or privileges previously enjoyed, and make them whole for any loss of pay suffered as the result of discrimination against them.

CHICAGO FREIGHT CAR & PARTS CO.,
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 other material.

INTERMEDIATE REPORT

Mr. Patrick H. Walker, for the General Counsel.

Mr. Charles D. Preston (Seyfarth, Shaw & Fairweather), Chicago, Ill., for the Respondent.

Mr. Samuel B. Bassett (Bassett & Geisness), Seattle, Wash., for the Teamsters.

Messrs. Philip M. Curran, of Pittsburgh, Pa., and *Hugh Mathews*, of Seattle, Wash., for the Steelworkers.

STATEMENT OF THE CASE

Upon an amended charge filed June 7, 1948, by Teamsters, Chauffeurs, Warehousemen & Helpers, Local Union No. 910, AFL, herein called Teamsters, the General Counsel of the National Labor Relations Board,¹ by the Regional Director for the Nineteenth Region (Seattle, Washington), issued a complaint dated June 9, 1948, against Chicago Freight Car & Parts Company, of Auburn, Washington, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1), (2), and (3) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, herein called the Act.

With respect to the unfair labor practices, the complaint alleges, in substance, that the Respondent: (1) in August 1947, entered into an agreement with Steelworkers requiring membership in that organization as a condition of continued employment at its Auburn plant, at a time when the Steelworkers did not represent a majority of the employees within the unit described in the contract, nor in any unit of Respondent's employees at Auburn appropriate for collective bargaining; (2) in December 1947, discharged LeRoy Currier and Irvin M. Cavanaugh because they joined Teamsters and failed to become members of Steelworkers; and (3) by such conduct has assisted and supported Steelworkers and has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act.

Answers were thereafter filed by the Respondent and Steelworkers, on July 22 and June 21, respectively. Each answer denies the commission of any unfair labor practices by the Respondent, and sets forth certain affirmative allegations which will be discussed fully below.

Pursuant to notice, a hearing was held at Seattle, Washington, on July 26, 1948, before the undersigned Trial Examiner, designated by the Chief Trial Examiner. All parties were represented by counsel; all 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 close of the hearing counsel for the Respondent moved that the complaint, in whole and in part, be dismissed. Ruling was reserved; disposition of the motions is made by the findings, conclusions of law, and recommendations appearing below.

After the receipt of evidence, all counsel argued orally before the Trial Examiner, said argument appearing in the official transcript of the proceedings. Leave was granted to the parties to file proposed findings of fact, conclusions of law, and briefs with the Trial Examiner. Briefs have been received from the General Counsel, the Respondent, and Steelworkers.

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

¹The General Counsel and his representative are herein referred to as the General Counsel; and the National Labor Relations Board as the Board.

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Chicago Freight Car & Parts Company is an Illinois corporation with its principal place of business at Chicago, Illinois. It owns and operates plants in Chicago, Illinois, in Pueblo, Colorado, and in Auburn, Washington, where it repairs, converts, and rebuilds railroad cars and railroad car parts.

At its Auburn plant it is engaged in converting rolling stock, commonly called troop sleepers, into railroad cars to be used by the Alaska Railroad Company, which is an instrumentality of the Government of the United States engaged in public transportation in the Territory of Alaska. The Respondent is under contract with the Alaska Railroad Company to convert, rebuild, and deliver to it a minimum of 300 railroad cars, which have been and will be transported to its Auburn plant by common railway carriers in interstate commerce from and through various States of the United States. Said cars, when rebuilt, have been and will be transported by common water carrier from the State of Washington to the Territory of Alaska. The Respondent uses parts and materials in its operations at its Auburn plant valued annually at about \$500,000, of which about 75 percent is caused by it to be transported to said plant from various States of the United States. The estimated value of its annual sales and services at its Auburn plant is \$1,000,000.

The Respondent concedes that its operations substantially affect commerce and that it is engaged in commerce, within the meaning of Section 2 (6) of the Act.³

II. THE ORGANIZATIONS INVOLVED

Teamsters, Chauffeurs, Warehousemen & Helpers, Local Union No. 910, affiliated with the American Federation of Labor, and United Steelworkers of America, affiliated with the Congress of Industrial Organizations, are each labor organizations within the meaning of Section 2 (5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Events from which the issues stem*

The record contains little or no dispute as to the actual events which gave rise to this proceeding. Most of the major facts found below are contained in a written stipulation entered into at the hearing by all parties involved.

The Respondent began negotiations for a contract with the Alaska Railroad Company in February, 1947. In June assurances were received that a contract would be awarded to it and the final agreement was drawn up about the first of August. The contract, when awarded, covered the conversion of 400 cars—300 troop sleepers and 100 troop kitchen cars. Since the troop sleepers were already stored at Auburn, Washington, it was decided to lease a site in that vicinity and set up equipment there for the work, thus obviating the necessity of moving the cars to Pueblo, Colorado, for reconversion and then returning them to Seattle, the point of delivery called for in the contract. The remaining 100 cars included

³ The stipulation also states that the Respondent concedes that it is engaged in commerce within the meaning of Section 2 (7) of the Act. Since this subsection refers to "burdening or obstructing commerce" . . . etc., and since the Respondent's contention throughout the hearing was to the effect that it had engaged in no unfair labor practices, the Trial Examiner believes that inclusion of reference to Section 2 (7) was an inadvertent error.

in the same contract were to be reconverted at the Pueblo plant, already in operation, since the cars were then located at that city.

In June the Respondent leased, on a year-to-year basis, certain property at Auburn for a site. Quonset huts and building materials were obtained in September from a nearby army depot for the housing of machinery. On October 16 the Respondent hired LeRoy Currier, the first of its nonsupervisory employees at the Auburn site, and on November 3 employed Irvin M. Cavanaugh. Until early in December Currier, Cavanaugh and a few others employed locally were engaged mainly in hauling materials to the site and setting up the quonset huts and other materials.

On or about May 22, 1947, the Respondent and Steelworkers had entered into a 2-year collective bargaining agreement applicable to the Pueblo operations. This agreement, *inter alia*, contained provisions whereby the employer:

- (1) Recognized Steelworkers as the exclusive bargaining representative for all its Pueblo plant employees, excluding those of supervisory, office, and watchmen duties.
- (2) Agreed not to retain in its employ workers who did not become within 30 days after employment, or who ceased to be, members in good standing of Steelworkers.

In June, General Manager Edward J. England, who has charge of production at all the Respondent's shops, asked a number of the experienced employees at Pueblo if they would be willing to move to Auburn, the plan then being, as England explained, to transfer "about ten or twelve men" from the Pueblo shop to Auburn "as gang leaders to educate the men" to be hired locally. Upon learning of these plans in July, Steelworkers proposed to England that an agreement be entered into covering the Auburn plant "because of employees from Pueblo going out to Auburn." Following some correspondence, on August 18 the Respondent and Steelworkers entered into a "Memorandum of Understanding," extending all provisions of the Pueblo contract to embrace the Auburn operations, although at that time no employees were actually working at Auburn.

As events later developed, due apparently to the increasing demand for new employees at the Pueblo plant itself, only two Pueblo employees actually were transferred, temporarily, to Auburn, and of these two one was a foreman, not covered by the contract. From May, 1948, to the time of the hearing, no employee from Pueblo was working at Auburn.

In October and November Steelworkers' representatives visited the Auburn operations, advised the few employees, then engaged in setting up the plant, of the contract, and distributed among them copies of the contract and membership application cards. During the same period, and before December 5, a Teamsters' representative also visited the operations and solicited bargaining authorizations from the employees. The evidence is insufficient to support an accurate finding as to how many employees signed authorization cards for either labor organization. A proposed Teamsters' contract was left with local management, which forwarded it to the Respondent's Chicago office. No answer to the proposal was received by Teamsters. At the time of submitting the contract, no proof of majority representation was offered by Teamsters.

Currier, at least, was already a member of Teamsters at the time of his employment. He thereafter passed out cards to other employees openly. There is no evidence that any management representative interfered with this solicitation.

On December 5 the Respondent was informed by letter from Steelworkers that three employees, including Currier and Cavanaugh, had failed to become members of Steelworkers within the 30-day period provided, and was requested to terminate their employment. Currier and Cavanaugh were thereupon discharged.³

B. *The issues*

In substance, the General Counsel contends that the "Memorandum of Understanding,"⁴ above described, was invalid for the reason that at the time of its execution there were no employees at the Auburn plant.

In substance, the Respondent and the Steelworkers urge the validity of the "Memorandum of Understanding," claiming that under all the circumstances the memorandum constituted a valid extension of a valid labor agreement.

C. *Conclusions*

The Trial Examiner is unable to find a clear determination of Board policy in a case where the facts are precisely as revealed here.

It is true that in a long line of cases, (cited by General Counsel in his brief and beginning with *Lenox Shoe Co., Inc.*, 4 N. L. R. B. 372, 386) the Board and the courts have frowned upon the enforcement of union-security provisions in a contract with a labor organization which does not represent a free and uncoerced majority of the employees. Here, however, no claim or evidence exists that the basic contract at Pueblo was not, in August 1947, a valid labor agreement. In the absence of any contrary evidence, it must be presumed that on August 18 Steelworkers represented an uncoerced majority at the Pueblo plant in an appropriate unit.

In effect, then, it appears that General Counsel must rest his case upon the contention that the Auburn plant is a new, and distinctly separate plant, and that the Respondent was prohibited, by the Act, from entering into a labor agreement with any labor organization until new employees were hired and majority representation established in an appropriate unit.

The Trial Examiner is unable to find, from evidence adduced at the hearing, that the Auburn plant is a new and distinctly separable plant, and that a unit combining employees at both plants is inappropriate.

The undisputed facts point,—not to a new enterprise, but merely to an extension of the Pueblo operations to quonset huts on property in Auburn acquired by temporary lease. All subsequent events stem from the execution of the Respondent's single contract with Alaska Railway to repair and convert several hundred cars. For economic reasons the Respondent planned to perform part of the work, covered by the single contract, at its Pueblo plant, already in operation, and the remainder at Auburn, near which the cars for repair were already situated and to which they must be delivered. As General Manager England succinctly expressed it, the Respondent decided to "move the plant to the cars rather than the cars to the plant." Having arrived at this decision, management approached a number of its Pueblo employees in exploration of tentative plans to move some

³ There is no evidence as to what happened with respect to the third employee named in the Union's request.

⁴ In his brief General Counsel contends— inadvertently, the Trial Examiner believes—that "entering into the contract in itself is a violation of Section 8 (a) (2) of the Act." In oral argument the same counsel stated "The sole issue in this case, it appears to General Counsel, is whether the 'Memorandum of Understanding' entered into on August 18, 1947, was a legal and binding contractual arrangement. The General Counsel contends that it was not."

of them to Auburn. It was at this point that Steelworkers, already the legal bargaining representative of such employees, entered the picture. The labor agreement then existing was simply extended, by a "Memorandum of Understanding," to include the same category of "maintenance and production" workers at Auburn, where work on the same production contract was to be performed; although at that time no employees were at Auburn and, in fact, no plant.

The Trial Examiner is unable to read into the conduct of the Respondent, in thus laying plans for amicable labor relations at its Auburn plant, any ulterior attempt to deprive either its old or its new, and as yet unhired, employees of any rights guaranteed by the Act. Had the employer decided to erect new buildings at Pueblo, to accommodate more machinery and additional employees to perform similar work on the Alaska Railway contract, the new employees clearly would have been subject to the Pueblo contract provisions. No charge of an unfair labor practice would reasonably have arisen.

It appears that only the element of geographical distance between Pueblo and Auburn distinguishes this case from that of ordinary plant expansion in one community. The Trial Examiner is of the opinion, and finds, that this element is insufficient to stamp the "Memorandum of Understanding" as invalid, and the Respondent's conduct in enforcing its provisions as illegal.

It is likewise plain that in signing the memorandum the Respondent was not lending potent assistance to one labor organization in its contest with another, as was the case in *Fiss Corporation*,⁵ cited by General Counsel. No contest existed, since at the time there were neither plant nor employees at Auburn.

Under all the circumstances, the Trial Examiner concludes and finds that the "Memorandum of Understanding," dated August 18, 1946, was a valid extension of a valid labor agreement.

It follows that the Respondent's performance of its obligations under that labor agreement were not violative of the Act.

Therefore the Trial Examiner concludes and finds that the evidence does not sustain the allegations of the complaint that the Respondent: (1) discriminatorily discharged Currier and Cavanaugh; (2) assisted and supported Steelworkers, and (3) interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1. Chicago Freight Car & Parts Company is engaged in commerce within the meaning of Section 2 (6) of the Act.
2. Chicago Freight Car & Parts Company has not engaged in unfair labor practices within the meaning of Section 8 (a) (1), (2) and (3) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, the Trial Examiner recommends that the complaint against the Respondent, Chicago Freight Car & Parts Company, be dismissed in its entirety.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board—Series 5, as amended August 18, 1948, 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,

⁵ 43 N. L. R. B. 137.

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. Statements of exceptions and briefs shall designate by precise citation the portions of the record relied upon and shall be legibly printed or mimeographed, and if mimeographed shall be double spaced. 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 thereto shall be deemed waived for all purposes.

Dated at Washington, D. C., this 9th day of September 1948.

C. W. WHITTEMOBE,
Trial Examiner.