

In the Matter of HAMMOND LUMBER COMPANY (TERMINAL ISLAND YARD) and SEAFARERS, GUARDS AND WATCHMEN LOCAL NO. 1, SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA

Case No. 21-C-3104.—Decided September 15, 1949

DECISION

AND

ORDER

On January 25, 1949, Trial Examiner Wallace E. Royster 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 General Counsel filed exceptions to the Intermediate Report and a supporting brief.¹

The Board has reviewed the rulings made by 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 and brief filed by the General Counsel, the exceptions and brief filed by the Respondent, and the entire record in this case, and hereby adopts such findings, conclusions, and recommendations of the Trial Examiner as are consistent with our findings, conclusions, and order, hereinafter set forth.

We disagree with the Trial Examiner's finding that the Respondent has not discriminated against Grundstrom, Howland, and Price, within the meaning of Section 8 (3) of the Act, as amended.

The contract between the Respondent and the Union required the Respondent to employ all regular watchmen through the Union.² This contract was in effect when the Respondent employed Grundstrom, Howland, and Price on June 12, 14, and 23, 1947, respectively. These watchmen were not employed through the Union; nor were they

¹ The Respondent excepted to the Trial Examiner's finding that the Respondent had notice that Phimister was no longer the Union's representative at the time the employees involved were placed on its pay roll. We find it unnecessary to resolve the issue raised by this exception in view of our determination of the case upon other grounds.

² As much of the contract as is pertinent to the issues in this case is set forth on page 1328 of the Intermediate Report.

members of the Union when they were hired, having transferred membership from the Union to the Seafarers in May 1947. The Respondent discharged Grundstrom, Howland, and Price on August 4, 1947, pursuant to the Union's demands, and replaced them with watchmen supplied by the Union. The Trial Examiner found that the contract, by operation of its automatic renewal clause, renewed itself effective June 30, 1947, and was in full force and effect on August 4, 1947, the date of the discharges. He further found that the Respondent discharged Grundstrom, Howland, and Price "because they were not members of the Union and were not hired in accordance with the terms of a valid existing, collective bargaining agreement."

The General Counsel excepts to the findings of the Trial Examiner, and contends (1) that the contract was not an agreement within the meaning of the 8 (3) proviso; and (2) that if it was a valid agreement within the protection of the proviso, it would not support the discharge of these employees because (a) there was a valid termination of the contract on June 30, 1947, and (b) even if the contract renewed itself, the parties could not give effect to its terms pending a determination of the question concerning representation raised by the filing of the Seafarers' petition.

We find it unnecessary to determine whether the contract renewed itself and, if so, whether the parties could lawfully give effect to any of its provisions. And assuming, without deciding, that the contract was an "agreement" within the meaning of the 8 (3) proviso, we find, nevertheless, that the discharges were discriminatory and in violation of Section 8 (a) (3) of the Act for the reason hereinafter set forth.

The Trial Examiner found, and we agree, that Grundstrom, Howland, and Price were discharged because they were not members of the Union, either at the time of hiring or thereafter. No exceptions were filed to this finding.³ In finding that the Respondent discharged these employees to remedy a breach of the contract, the Trial Examiner interpreted the contract as requiring the Respondent to hire *only union* members through the Union and that, once hired, the watchmen must remain members of the Union. The contract, however, did not require that only union members be hired through the Union, or that the watchmen, once hired, be members of the Union; it only required the Respondent to hire its regular watchmen *through* the Union. Despite the absence of specific language to such effect, our dissenting

³ The Respondent contends that Grundstrom, Howland, and Price were placed on its pay roll by fraud and that they did not, therefore, obtain bona fide employee status. Although we do not think that the record supports this contention, in any event it is no defense, as these employees were not discharged because they were placed on the pay roll through fraud, but because they were not members of the Union.

colleague would interpret the contract as requiring union membership as a condition of employment. However, we perceive no justification for departing from the salutary principle enunciated in *Matter of The Iron Fireman Manufacturing Company*, 69 N. L. R. B. 19, 20, that "In view of the stringent requirements of closed-shop provisions, it is not too much to require that the parties thereto express the essentials of such provisions in unmistakable language."

As the contract did not require that Grundstrom, Howland, and Price be members of the Union, either at the time of hiring or thereafter, we find that their discharge, because they were *not* members of the Union, was not protected by the contract and was therefore discriminatory and in violation of Section 8 (a) (3) and 8 (a) (1) of the Act.

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 Charles J. Grundstrom, Charles E. Howland, and J. M. Price. In order to effectuate the purposes and policies of the Act, as amended, we shall order that the Respondent offer to Charles J. Grundstrom, Charles E. Howland, and J. M. Price, immediate and full reinstatement to their former or substantially equivalent positions,⁴ 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 against them, by payment to each of them of a sum of money equal to the amount each normally would have earned as wages during the period from August

⁴ In accordance with the Board's consistent interpretation of the term, the expression "former or substantially equivalent position" is intended to mean "former position whenever 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, 829.

4, 1947, the date of his discharge, to the date of the Respondent's offer of reinstatement, less his net earnings⁵ during such 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 to which these employees are entitled, as the Trial Examiner did not recommend their reinstatement or an award of back pay to them.

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

CONCLUSIONS OF LAW

1. Seafarers, Guards and Watchmen Local No. 1, Seafarers International Union of North America, is a labor organization 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 Charles J. Grundstrom, Charles E. Howland, and J. M. Price, and each of them, thereby discouraging membership in Seafarers, Guards and Watchmen Local No. 1, Seafarers International Union of North America, 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 said conduct the Respondent has interfered with, restrained, and coerced its employees in the exercise of their 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.

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, Hammond Lumber Company, Wilmington, California, and its officers, agents, successors, and assigns shall:

⁵ By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. *Matter of Crossett Lumber Company*, 8 N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. *Republic Steel Corporation v. N. L. R. B.*, 311 U. S. 7.

1. Cease and desist from:

(a) Discouraging membership in Seafarers, Guards and Watchmen Local No. 1, Seafarers International Union of North America, or any other labor organization of its employees, by laying off, discharging, or refusing to reinstate any of its 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 manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the said Union, 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, and to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the amended Act.

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

(a) Offer Charles J. Grundstrom, Charles E. Howland, and J. M. Price immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges;

(b) Make whole Charles J. Grundstrom, Charles E. Howland, and J. M. Price, 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 periods from August 4, 1947, the date of his discharge, to the date of the Intermediate Report herein, and from the date of this Decision and Order to the date of the Respondent's offer of reinstatement.

(c) Post immediately in conspicuous places at its offices and about its lumber yards in Wilmington, California, copies of the notice attached hereto marked "Appendix A."⁶ Copies of such notice, to be furnished by the Regional Director of the Twenty-first Region, shall, after being duly signed by 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

⁶ In the event that this order is enforced by a decree of the United States Court of Appeals, there shall be inserted before the words, "A DECISION AND ORDER," the words, "A DECISION OF THE UNITED STATES COURT OF APPEALS ENFORCING."

that such notices are not altered, defaced, or covered by any other material;

(d) Notify the Regional Director for the Twenty-first Region (Los Angeles, California) in writing, within ten (10) days from the date of this Order, of the steps the Respondent has taken to comply herewith.

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 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 SEAFARERS, GUARDS AND WATCHMEN LOCAL NO. 1, SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, or any other labor organization, to bargain collectively through representatives for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the amended Act.

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.

Charles J. Grundstrom
Charles E. Howland
J. M. Price

All our employees are free to become or remain members of the above-named union, or any other labor organization.

HAMMOND LUMBER COMPANY,
Employer.

By _____
(Representative) (Title)

Dated _____

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

MEMBER MURDOCK, dissenting:

I cannot agree with the conclusion of my colleagues that the contract between the Respondent and the Union did not require the employees here involved to be members of the Union. I think that such a conclusion is completely unrealistic and ignores the practicalities of collective bargaining.

The majority admits that the contract in this case required the Respondent to employ its regular watchmen "through" the Union. I can conceive of no reason why the Union would have negotiated such a provision had it not intended to bind the Respondent thereby to operate its business with employees who were union adherents. So far as the record indicates, the Respondent, under this contract, had employed only members of the Union as regular watchmen before its hire of the three employees with whom this proceeding is concerned. When the Union informed the Respondent that these three watchmen were not union members and demanded their discharge, the Respondent complied with the Union's request, thereby indicating its understanding that the contract required employees to be members of the Union. To my mind the only reasonable interpretation of the contract provision that the Respondent employ "through" the Union—an interpretation which is borne out by the conduct of the parties to the contract—is that it required the Respondent to employ only members of the Union. I therefore conclude that the Respondent's action in discharging Grundstrom, Howland, and Price was in accordance with the terms of its collective-bargaining contract.

Under my view that the contract required the discharge of employees who were not members of the Union, certain questions which the majority finds it unnecessary to pass upon under its interpretation of the contract—i.e., the status of the contract under Section 8 (a) (3) of the Act and under the doctrine of the *Midwest Piping* case¹—would have to be resolved before a final determination could be reached in this case. As it would not affect the result of the proceeding for me to set forth my opinion on these questions, I shall not do so.

INTERMEDIATE REPORT

AND

RECOMMENDED ORDER

George H. O'Brien, Esq., of Los Angeles, Calif., for the General Counsel.

Ivan G. McDaniel, Esq., by *Glenn R. Immel, Esq.*, of Los Angeles, Calif., for Respondent.

Arthur Garrett, Esq., of Los Angeles, Calif., for the Seafarers.

¹*Matter of Midwest Piping and Supply Co., Inc.*, 63 N. L. R. B. 1060.

STATEMENT OF THE CASE

Upon a charge duly filed by Seafarers, Guards and Watchmen, Local No. 1, Seafarers International Union of North America, herein called the Seafarers, the General Counsel of the National Labor Relations Board, herein called respectively the General Counsel and the Board, by the Regional Director of the Twenty-first Region (Los Angeles, California) issued his complaint dated September 8, 1948, against Hammond Lumber Company, 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 and of the corresponding sections of the National Labor Relations Act as amended, Public Law 101, 80th Congress, First Session, effective August 22, 1947, herein called respectively the Act and the amended Act. Copies of the complaint and the charge were duly served upon Respondent, the Seafarers and Building Service Employees International Union, Local 137, herein called the Union.¹

With respect to unfair labor practices, the complaint alleged that Respondent, on or about August 4, 1947, discharged Charles J. Grundstrom, Charles E. Howland, and J. M. Price because of their membership in and activities on behalf of the Seafarers, to discourage membership in the Seafarers and to encourage membership in the Union and that the Respondent thereby interfered with, restrained, and coerced its employees in the exercise of rights guaranteed to them by Section 7 of the Act and the amended Act, thereby engaging in unfair labor practices within the meaning of Section 8 (1) and (3) of the Act and Section 8 (a) (1) and (3) of the amended Act.

In its answer dated September 16, 1948, the Respondent admitted certain of the jurisdictional allegations in the complaint, denied others, denied that the discharges complained of were accomplished for the reasons alleged, and alleged, affirmatively, lack of jurisdiction on the part of the Board to entertain the charge because the Seafarers had failed to comply with certain requirements of the amended Act.

Pursuant to notice, a hearing was held November 8, 9, 10, and 16, 1948, at Los Angeles, California, before the undersigned Trial Examiner duly designated by the Chief Trial Examiner. All parties were represented by counsel, participated in the hearing, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. After the taking of evidence, motions to conform the pleadings to the proof were granted without objection. Motions by Respondent to dismiss the complaint in whole or in part were denied. All parties filed briefs with the undersigned.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

FINDINGS OF FACT²

I. THE BUSINESS OF RESPONDENT

Hammond Lumber Company is a Delaware corporation engaged at Terminal Island, Wilmington, California, in the purchase, sale, and distribution of building lumber. In the course and conduct of its business at the Terminal Island Yard, Respondent purchases, annually, lumber, equipment, supplies, fuel, and

¹ Although served as stated, the Union did not appear at the hearing.

² Except as indicated these findings are based upon undisputed testimony.

lubricants valued at approximately \$10,000,000. Approximately 80 percent of such purchases are shipped to Respondent from points outside the State of California. Respondent sells and distributes annually goods valued in excess of \$15,000,000, approximately 4 percent of which is shipped from Terminal Island to points outside the State of California.³

II. THE ORGANIZATIONS INVOLVED

Seafarers, Guards and Watchmen, Local No. 1, Seafarers International Union of North America, and Building Service Employees International Union, Local 137, are labor organizations affiliated with the American Federation of Labor, admitting to membership employees of Respondent.

III. THE ALLGEG UNFAIR LABOR PRACTICES

Respondent has two integrated operations in the Los Angeles area, both under the superintendency of James Smith. The Terminal Island Yard, which alone is here involved, is directly supervised by Superintendent Frank Rickinger, Smith's subordinate. Negotiations with labor organizations of Respondent's employees are the responsibility of Smith.

For a number of years Respondent has had contractual relations with the Union covering watchmen at Terminal Island. Normally, contracts were negotiated each year between the Union and six lumber companies in the Los Angeles area, each of which signified its acceptance of the agreement by its signature on the document.

On July 11, 1946, Respondent signed such an agreement with the Union as did five other employers. The contract provided, *inter alia*:

Temporary Watchmen, commonly referred to as "Call Watchmen," employed prior to October 31, 1945, by the Employer, will be deemed as hired through the Union. On and after that date, the Employer shall, so far as possible, employ all Temporary Watchmen through the Union, and shall be required to employ Regular Watchmen through the Union.

* * * * *

This contract shall continue in effect, without change until June 30, 1947, and thereafter from year to year unless notice of cancellation be given by one Party to the other in writing by or before the 1st day of June of the year in which the change is sought.

No question was raised in this proceeding as to the majority status of the Union at the time the contract was executed nor has the propriety of the bargaining unit been placed directly in issue. The record indicates that the Union constituted a pool of workers from which Respondent and the other employers secured watchmen as their needs arose. The method of dispatching watchmen to the jobs was not described in detail.

Clearly, for a number of years all watchmen of the six contracting companies, including Respondent, have constituted a single bargaining unit. In the absence of a contrary contention, I find that a single unit embracing all watchmen employees of the six companies is appropriate for the purposes of collective bargaining.

³ These findings are based upon allegations in the complaint admitted in Respondent's answer and upon data furnished to a representative of the General Counsel prior to hearing by Respondent's general superintendent.

In early April 1947, a majority of the membership of the Union voted to disaffiliate from the International and to affiliate with the Seafarers. About 100 of the 240 members of the Union refused to follow the seceding group. John Phimister, secretary-treasurer and business agent of the Union, followed the majority and occupied the same offices in the Seafarer organization.

Phimister notified the Unions international organization of the act of secession but continued to occupy the same office space as theretofore. About May 10, Ted Camp, secretary-treasurer of another local of the Union's International, informed Phimister that under authority from the International he, Camp, had been appointed trustee of the Union. Phimister surrendered the office space to Camp and established an office for the Seafarers at another location.

On May 29, the Seafarers filed a petition⁴ with the Board seeking certification as bargaining representative for the Respondent's watchmen. By letter dated June 2, the Board's Regional Director notified Respondent of this development. By letter dated May 28, mailed May 29, and received by Respondent June 2, the Seafarers notified Respondent that the guards and watchmen in Respondent's employ were members of Seafarers and that a question concerning their representation existed.

Under date of May 31, a letter to Respondent was prepared by counsel for the Seafarers over the signature of Phimister, reading:

As you are probably aware, Building Service Employees International Union, Building Service Employees, Port Watchmen, Local No. 137, voted to dissolve on May 6, 1947.

Your guards and watchmen in the harbor area are now affiliated with Seafarers, Guards and Watchmen's Union, Local No. 1.

This is your notice of termination of your contract with Local 137.

Very truly yours,

J. R. PHIMISTER,
Postoffice Box 1306, Harbor City.

Jack Marvin, a sometime member of the Union but on May 31 a member of the Seafarers, testified that he delivered this letter to the premises of Respondent on the afternoon of Saturday, May 31.

The delivery of the letter on May 31 is disputed.⁵ However, it is my opinion that nothing turns upon the incident. The General Counsel and the Seafarers contend that the letter was effective to accomplish its stated purpose—to terminate the contract with the Union. I do not believe this contention to be sound. The Seafarers did not succeed the Union as a party to the contract. Indeed, so far as the evidence shows, they did not succeed to any of the rights of that organization. Phimister, having severed his connection with the Union earlier in May, and lacking specific authorization from that organization, could not act in its behalf. Those erstwhile members of the Union who voted to dissolve their organization and to affiliate with the Seafarers accomplished no more than to relinquish their membership in the Union and to establish a new relationship with the Seafarers. The approximately 100 members remaining with the Union constituted a con-

⁴ Case No. 21-R-4014.

⁵ Respondent's offices were closed at the time of the alleged delivery. There is evidence, however, from which I find that the letter came to the notice of Respondent's responsible officials on Monday, June 2.

tinuing organization.⁶ The Union did not become defunct or even dormant. It remained what it was—a functioning labor organization capable of discharging its obligations to its members and to those with whom it had contracted.⁷

The filing of the representation petition by the Seafarers on May 29, of course, created a situation whereby the contract could not successfully be pleaded as a bar to a determination of representatives. But it did no more. Alone, the petition could not prevent the renewal of the contract even though it became defeasible during that part of its term when the Board was considering the petition. The rights and obligations of the parties to the agreement remained unchanged. Respondent continued under an obligation to hire watchmen through the Union.

The Seafarers' petition never resulted in an election.

C. J. Grundstrom, J. M. Price, and C. E. Howland, on June 12, 14, and 23, 1947, respectively, were employed by Respondent. They constituted the entire force of watchmen at the Terminal Island Yard. Each had relinquished his membership in the Union before hire, had become a member of the Seafarers, and was dispatched to the job by Phimister, acting for the Seafarers. At the time these individuals were entered on the pay roll, Respondent had received notice from Phimister of the schism in the Union and knew that Phimister was no longer its representative. On June 16, Rickinger visited the office of the Seafarers, discussed with Phimister the problem of securing watchmen, and gained additional information regarding the membership of its watchmen in the Seafarers.

On August 4, 1947, Grundstrom, Price, and Howland, at the request of the Union, were discharged for failure to retain their membership in the Union. Before this action was taken, Grundstrom and Price were requested by a representative of the Union to pay their dues and threatened with discharge if they failed to do so. Neither did. The record does not indicate that Howland was offered such opportunity but it is clear that he had left the Union in May, and had ceased paying dues to it.

Later in August the Union and Respondent agreed on higher wages for watchmen.⁸ The 1946 contract was not changed in any other particular.

I find that the 1946 contract was renewed for another year on June 1, 1947, when neither party gave notice of termination. The contract was, of course, in effect during June 1947, when Grundstrom, Price, and Howland were hired and when Respondent breached its agreement by hiring nonmembers of the Union. When called upon to do so in August, it remedied this breach in the only fashion possible—by discharging the three watchmen who had not fulfilled the condition of hire, who had not been dispatched to the job by the Union.

I find that no unfair labor practice was thereby committed. The 1946 contract was made with what must, under the evidence, be regarded as a majority representative and was renewed on June 1, 1947, at a time when all watchmen employed by Respondent were, so far as the record reveals, members of the Union. The unit covered by the contract was appropriate. The three individuals

⁶ Article I of the Union's Constitution and By-Laws provides that the Union cannot dissolve if seven members dissent from such action. As to the contention that the Seafarers were substituted as a party to the agreement and might therefore terminate it, see *M and M Woodworking Co. v. N. L. R. B.*, 101 F. 2d 938 (C. A. 9).

⁷ See *White Bros. Smelting Corp.*, 61 N. L. R. B. 340.

⁸ Counsel for Seafarers contends, in effect, that this circumstance is evidence that the 1946 contract was terminated on July 1, that the Union benefited by the termination to the extent that it was enabled thereby to negotiate a higher wage scale, and that the Union and Respondent are thus estopped from denying the termination. I find no merit in this contention.

were discharged, not because of any dual union activity, but because they were not members of the Union and were not hired in accordance with the terms of a valid, existing, collective bargaining agreement.⁹

In consideration of all the evidence, I recommend therefore that the complaint herein be dismissed in its entirety.

CONCLUSIONS OF LAW

1. Respondent is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act and the amended Act.

2. Respondent, in effectuating the discharges of Charles J. Grundstrom, Charles E. Howland, and J. M. Price, did not engage in unfair labor practices within the meaning of the Act or the amended Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, it is recommended that the complaint against Hammond Lumber Company, Los Angeles, California, 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, 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 25th day of January 1949.

WALLACE E. ROYSTER,
Trial Examiner.

⁹ See *General Furniture Mfg. Co.*, 26 N. L. R. B. 74.