

In the Matter of SAMUEL S. BRODY, D/B/A STANDARD SERVICE BUREAU  
and UNITED PLANT GUARD WORKERS OF AMERICA, AMALGAMATED  
BUFFALO LOCAL

*Case No. 3-CA-129.—Decided December 30, 1949*

DECISION

AND

ORDER

On August 31, 1949, Trial Examiner C. W. Whittimore issued his Intermediate Report in this proceeding, finding that the Respondent had engaged and was engaging in certain unfair labor practices and recommending that he cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board<sup>1</sup> 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 Respondent's exceptions and brief, and the entire record in the case, and hereby adopts the findings,<sup>2</sup> conclusions, and recommendations of the Trial Examiner insofar as they are consistent with this Decision and Order.

1. The Trial Examiner found, and we agree, that the Respondent discriminatorily discharged Edward Shine, John Sokay, Robert Thistlewaite, Edward Jester, and Fremont Evans because of their activity on behalf of the Union and to discourage union membership. In reaching this conclusion, however, we find it unnecessary to decide, as

<sup>1</sup> Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Houston and Reynolds.].

<sup>2</sup> We find no merit in the Respondent's contention that he is not engaged in commerce within the meaning of the Act. Although the Respondent's operations, so far as the record shows, are confined to protecting industrial property located in only one State, we have consistently held that those who furnish such services to employees whose activities affect commerce are themselves engaged in activities affecting commerce within the meaning of the Act. *Merchants Fire Dispatch*, 83 NLRB 788; *American District Telegraph Company of San Francisco*, 78 NLRB 150; *Hilary Young, d/b/a Young Patrol Service*, 75 NLRB 404.

the Trial Examiner has done, that the Respondent learned that each of these employees had actually signed a union card.

The Respondent not only evinced a strong antiunion animus, but made it abundantly clear to each of the discharged employees that he was suspected of union sympathies. Thus, Shine was warned by Brody, the Respondent, against joining a union when he was hired in September 1948, and this warning was repeated in October 1948, and again in November or December 1948. Sokay was warned by Brody against joining a union in November or December 1948, and several weeks later was told by Brody, "I know that the boys are going to organize, and I heard there was a Polack organizer out here now trying to organize them." On at least one occasion, in November 1948, Brody asked Jester, at the gate of a plant of one of the Respondent's customers, if he had heard any union talk around there. When Jester replied that he had not, Brody said, "If you do, don't pay any attention to it because anyone that signs union cards is on the outs." Early in January 1949, Brody, in the presence of "Chief" Gervin, a supervisor, asked Thistlewaite and Evans at their guard station if there were any union men around; when assured that there were not, he said, "Well, if any union men comes around and says anything, just tell them you're not interested. We don't want nothing to do with them." On January 13, 1949, the day after Shine, Sokay, and Thistlewaite were discharged, Brody again asked Evans at his guard station if "any union fellows had been around." When Evans said there had not, Brody told him, "The company could not afford to have a union because if they did, they would have to bust up."<sup>3</sup>

Brody's repeated questioning of the discharged employees about the Union and their union sympathies, together with his direct and implied threats of discharge for those who adhered to the Union, give rise to a strong inference, in the absence of any other credible explanation, that Brody learned, or at least suspected, that the employees concerned had joined the Union, and that Brody discharged them for that reason.<sup>4</sup> There are, moreover, other circumstances in the case which strengthen this inference. Brody admitted that all of his guards had performed satisfactorily, yet the complainants were all discharged shortly after they joined the Union and all were replaced by new men. Three, Shine, Jester, and Evans, were given no

<sup>3</sup> All of the foregoing appears in uncontradicted testimony given at the hearing. The Respondent called no witnesses.

<sup>4</sup> It has often been held that knowledge by an employer of the union sympathies of discharged employees may be inferred where the employer's organization is small and where, as in this case, the employer has demonstrated considerable knowledge of, and antipathy for, union organization among his employees. *Westex Boot & Shoe Company*, 82 NLRB 497; *Quest-shon Mark Brassiere Company, Inc.*, 80 NLRB 1149; *Ames Spot Welder Company, Inc.*, 75 NLRB 352; *Abbott Worsted Mills*, 36 NLRB 545, *enfd.* 127 F. 2d 438 (C. A. 1).

reason. Although the other two discharged employees, Sokay and Thistlewaite, were given reasons for their discharge, the reasons advanced are not the true reasons, so far as the record shows. Thus, Sokay was told he was discharged because of a cut-back; yet he was replaced the next day by a new man. Thistlewaite was told he was discharged because of his age; yet, as he testified without contradiction, the Respondent continued in its employ three guards of his age or older. Moreover, counsel for the Respondent conceded at the hearing that Thistlewaite "was well and healthy and in physical capacity required of him to do the work as a guard in the plant," and that there was never any complaint about his work.

In view of the foregoing, and upon the entire record, we find that the evidence adduced at the hearing establishes a strong *prima facie* case against the Respondent. It became the Respondent's duty to go forward with probative evidence, if any, to establish, from information in his exclusive possession, that the discharges were not discriminatory.<sup>5</sup> This the Respondent failed to do. Accordingly, we must conclude, as the Trial Examiner has done, that the employees concerned were discharged because of their union activities in violation of Section 8 (a) (1) and (3) of the Act.

2. As the Respondent has taken no exceptions to the Trial Examiner's finding that his questioning and warning of employees about their union sympathies constituted independent violations of Section 8 (a) (1) of the Act, we adopt that finding without further comment.

### 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, Samuel S. Brody, d/b/a Standard Service Bureau, Buffalo, New York, and his agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in United Plant Guard Workers of America, Amalgamated Buffalo Local, or in any other labor organization of his employees, by discriminatorily discharging or refusing to reinstate them, or by discriminating in any other manner in regard to their hire or tenure of employment, or any term or condition of employment;

(b) Interrogating his employees concerning their union affiliations, activities, or sympathies, or in any other manner interfering with,

<sup>5</sup> See *Sioux City Brewing Company*, 82 NLRB 1061; *Universal Camera Corporation*, 79 NLRB 379; *E. Anthony & Sons, Inc. v. N. L. R. B.*, 163 F. 2d 22 (C. A. D. C.), enfg. 70 NLRB 717.

restraining, or coercing his employees in the exercise of the right to self-organization, to form labor organizations, to join or assist United Plant Guard Workers of America, Amalgamated Buffalo Local, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, and to refrain from any or all 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 Act.

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

(a) Offer to Edward Shine, John Sokay, Robert Thistlewaite, Edward Jester, and Fremont Evans immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole 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 that which he normally would have earned as wages from the date of his discharge to the date of the Respondent's offer of reinstatement, less his net earnings during said period;<sup>6</sup>

(b) Post at his office in Buffalo, New York, and at stations where his employees are regularly assigned, copies of the notice attached hereto and marked "Appendix A."<sup>7</sup> Copies of said notice, to be furnished by the Regional Director for the Third Region, after being signed by the Respondent or a representative, shall be posted by the Respondent immediately upon receipt thereof, and maintained by him for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

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

<sup>6</sup> By "net earnings" is meant earnings less expenses, such as transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the Respondent, which would not have been incurred but for the unlawful discrimination and the consequent necessity of his seeking employment elsewhere. See *Crossett Lumber Company*, 8 NLRB 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N. L. R. B.*, 311 U. S. 7.

<sup>7</sup> In the event that this Order is enforced by decree of a United States Court of Appeals, there shall be inserted in the notice, before the words: "A DECISION AND ORDER," the words: "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING."

## 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 interrogate our employees concerning their union affiliations, activities, or sympathies, or in other 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 UNITED PLANT GUARD WORKERS OF AMERICA, AMALGAMATED BUFFALO LOCAL, 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 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 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:

Edward Shine

Edward Jester

Robert Thistlewaite

Fremont Evans

John Sokay

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.

SAMUEL S. BRODY, d/b/a

STANDARD SERVICE BUREAU,

*Employer.*

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

Dated \_\_\_\_\_

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

## INTERMEDIATE REPORT

*Mr. Richard Lipsitz, for the General Counsel.*

*Messrs. Edward D. Flaherty and Samuel S. Brody, of Buffalo, N. Y., for the Respondent.*

*Mr. Edward K. Pacosz, of Buffalo, N. Y., for the Union.*

## STATEMENT OF THE CASE

Upon charges duly filed by United Plant Guard Workers of America, Amalgamated Buffalo Local, herein called the Union, the General Counsel of the National Labor Relations Board,<sup>1</sup> by the Regional Director for the Third Region (Buffalo, New York) issued a complaint dated June 23, 1949, against Samuel S. Brody, d/b/a Standard Service Bureau, herein called the Respondent. The complaint alleged that the Respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. Copies of the charges, the complaint, and notice of hearing were duly served upon the Respondent and the Union.

With respect to the unfair labor practices, the complaint alleges, in substance, that the Respondent: (1) on certain dates in January 1949 discriminatorily discharged five employees because they joined or assisted the Union and engaged in concerted activities with other employees for the purpose of collective bargaining or other mutual aid or protection; (2) urged and threatened his employees to refrain from assisting or becoming members of the Union; and (3) by these acts has interfered with, restrained, and coerced his employees in the exercise of rights guaranteed by Section 7 of the Act.

On July 5, 1949, the Respondent filed an answer generally denying the allegations of the complaint.

Pursuant to notice, a hearing was held before C. W. Whittemore, Trial Examiner, duly designated by the Chief Trial Examiner, on July 13 and 14, 1949, at Buffalo, New York. All parties were represented, 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 conclusion of General Counsel's case-in-chief, ruling was reserved upon a motion by counsel for the Respondent to dismiss the complaint in its entirety; the motion being grounded as follows: (1) Failure of the evidence to support the allegations of the complaint; (2) lack of jurisdiction of the Board because the Respondent is not engaged in a business affecting commerce; and (3) that the Board, as a matter of administrative discretion, should not assume jurisdiction. The motion is disposed of by the findings, conclusions, and recommendations below. The Respondent offered no evidence on his own behalf. All counsel waived opportunity to argue orally upon the record. Briefs have been received from General Counsel and the Respondent.

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

<sup>1</sup>The General Counsel and his representative at the hearing are herein referred to as General Counsel, and the National Labor Relations Board as the Board.

## FINDINGS OF FACT

## I. THE BUSINESS OF THE RESPONDENT

The Respondent operates a detective agency licensed by the State of New York and a plant-protection service, with sole office in Buffalo, New York. The plant-protection service is furnished to industrial enterprises in the area of Niagara Falls, New York, and consists of furnishing guards whose function is to protect property and control access to the premises of the concerns for which this service is performed. During 1948 the Respondent's income from his business was more than \$70,000, about 50 percent of which was derived from plant-protection service performed for the Carborundum Company, a Delaware corporation with its main office and plant at Niagara Falls, New York, and the Hooker Electrochemical Company, a New York corporation also with its principal office and plant at Niagara Falls, New York. Carborundum Company is engaged in the manufacture, sale, and distribution of abrasives, resisters, and heating elements; it has been found by the Board to be engaged in commerce within the meaning of the Act.<sup>2</sup> Hooker Electrochemical Company is engaged in the manufacture of chlorine, caustic soda, and other chemicals; it also has been found by the Board to be engaged similarly in commerce.<sup>3</sup>

The Respondent employs from 35 to 40 guards. Most of them are deputized as special police officers. The Carborundum Company employs no other guards except those provided by the Respondent. The record does not reveal whether or not Hooker Electrochemical employs any other guards except those of the Respondent.

The Respondent contends that his business operations do not affect commerce within the meaning of the Act and that therefore the Board does not have jurisdiction in the instant case. On the contrary, the Trial Examiner believes, and finds, that Board policy as set out in *Theodore R. Schmidt, doing business under the assumed name of Acme Industrial Police* (58 NLRB 1342) is controlling in this case. There the Board found:

The respondent employs approximately 42 plant guards who are assigned to serve manufacturers who themselves are engaged in operations which affect commerce within the meaning of the Act. A labor dispute involving the respondent's guards would tend to affect the operations of such manufacturers.

The Trial Examiner therefore concludes and finds that the Respondent is engaged in commerce within the meaning of the Act and that, contrary to the Respondent's contention, the Board has jurisdiction in this case.<sup>4</sup>

## II. THE LABOR ORGANIZATION INVOLVED

United Plant Guard Workers of America, Amalgamated Buffalo Local, is a labor organization admitting to membership employees of the Respondent.

<sup>2</sup> 80 NLRB 756.

<sup>3</sup> 74 NLRB 619.

<sup>4</sup> See also: *Harold Jackson, et al.*, 69 NLRB 1343; *Hilary Young, et al.*, 69 NLRB 1377; *W. Sherman Burns, et al.*, 49 NLRB 385; and *W. Sherman Burns, et al.*, 47 NLRB 610.

III. THE UNFAIR LABOR PRACTICES<sup>5</sup>A. *The major events and issues*

In the latter part of 1948, the Respondent's employees began discussing the possibility of self-organization, in order to better their wages and working conditions. In December employee Herbert McCarthy approached a union representative and obtained membership application cards. After trying unsuccessfully to interest some of the older men in signing cards, according to his testimony, McCarthy ceased his activity on behalf of the Union. At about the same time employer Samuel Brody asked McCarthy and others about the union activity, and inquired particularly from McCarthy if he had signed one of the cards. Brody told McCarthy that the men would simply pay dues and derive no benefit from the Union. McCarthy then offered to call the men together so Brody could talk to them. Although Brody accepted the offer, according to his testimony, McCarthy did not call the men together, but decided to "give the thing all up and backed out of it," since he "had no grievance."

Thereafter, five employees were discharged. These discharges are in issue, together with antiunion remarks made to them by Brody and "Chief" Gervin, admitted by the Respondent to serve in a supervisory position.

B. *The discharges and interference, restraint, and coercion*

## 1. The events

*Edward Shine and John Sokay.* When Shine was hired by Brody in September 1948, the latter told him that he hoped he wouldn't join a union, become dissatisfied with his 70-cent hourly rate, and cautioned him to be "shy of anything like that." In October Brody again advised him "to be careful" and said that he could not consider his organization being unionized. In December, while Shine was present, Sokay told Brody that the men were anxious to obtain more money, and that if they did not they might organize. Brody again said that he would not consider a union. Late the same month, Brody told Sokay that he knew the "boys" were going to organize, and that a "Polack organizer" was out there for that purpose. It was at about this time, according to other undisputed testimony, that union representative Pacosz brought employee McCarthy application cards.

Despite Brody's warnings, both Shine and Sokay applied for union membership early in January. Both were discharged on January 12, 1949. Sokay was discharged by Gervin, who told him that the action was because of a "cutback in work" and he was one of the "newer men there." A few days later Sokay telephoned to Brody in protest, upon learning that a new man had been hired for his place. Brody said there was nothing he could do about it, but offered him a letter of recommendation for another job. The next day Brody gave him such a letter in which it is stated, among other things, that Sokay was a "very conscientious worker" but had been "let out" because of a reduction in force. At the hearing, however, the Respondent conceded, in effect, that there had actually been no reduction in force. Counsel for the Respondent stated that "at least five" new guards were hired at "about the time" the five employees involved in this proceeding were discharged.

<sup>5</sup> The findings in this section rest upon uncontested evidence. The Respondent offered no testimony in his behalf.

Shine was simply told by Brody, before reporting for his shift on January 12, that he was "through."<sup>6</sup> Neither Shine nor Sokay have been reinstated.

*Robert Thistlewaite.* When discharged by Gervin on January 12, 1949, Thistlewaite had been employed by the Respondent about 3½ years. While on duty early in January he was approached by Brody and asked if he had seen any union men around. When he replied in the negative, Brody said:

Well, if any union men come around and say anything just tell them you're not interested. We don't want anything to do with them.

Thistlewaite signed a union application card on January 5 or 6, having been solicited by employee Fremont Evans. On January 12 Thistlewaite was discharged by Gervin, who told him it was because of his age. He was then 62 years old. His testimony is unchallenged that the Respondent continued to employ at least three guards of his age or older. At the hearing counsel for the Respondent conceded that there was never any complaint about Thistlewaite's work, and that he "was well and healthy and in physical capacity required of him to do the work as a guard in the plant."

*Edward Jester.* For varying periods Jester was employed intermittently by the Respondent from 1943 to January 14, 1949.

Soon after Thanksgiving, 1948, Brody asked Jester if he had heard any "union talk" around there, and warned him "don't pay any attention to it because anybody that signs union cards is on the outs."

Early in January Jester became interested in the Union, and obtained a number of blank cards from McCarthy. He solicited signatures from two other employees and on or about January 12 left the blank cards in his locker, shared with another employee. Upon his return the next day the cards were gone.

On January 14 Brody discharged Jester, telling him that "changes" were being made. Jester declared that he believed the real reason to be that Brody had found out that he had union cards in his pocket. Brody denied this, and then said that the "company has been complaining that you are not neat appearing." Jester's testimony is undisputed that no one had ever before complained about his appearance.

*Fremont Evans.* Evans was employed by the Respondent from November 1946 until January 26, 1949. Early in January Brody asked him if he had seen any union men around; he was warned not to pay "any attention" to them and that the Company could not afford to have a "union in" or it would have "to bust up." Evans was similarly warned again on January 13. Although never receiving any complaints about his work from either Brody or Gervin, Evans was summarily discharged before completing his shift on January 24, by Gervin, who would give him no reason for his action. The next morning Evans' wife called Brody and asked why her husband had been laid off. Brody said he had not known about it until late the day before, that Gervin's action was a surprise to him, and that he would give Evans a "recommendation."

Evans joined the Union early in January.

## 2. Conclusions

Neither in his answer nor at the hearing did the Respondent offer any evidence to support reasons he might have had for the discharge of any one of the five

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<sup>6</sup> It appears that Shine had not worked for the 2 days just before being discharged, but that the Respondent had been properly notified before the absence occurred. Improper absence was not alleged in the answer as a reason for Shine's discharge, nor did Brody, although present at the hearing, advance this or any other reason for his action.

discharged employees, although both Brody and Gervin attended the hearing, and Brody was called as a witness on other matters by General Counsel. On the contrary, Brody testified that *all* his guards had performed satisfactorily.

Counsel for the Respondent urges that the complaint must be dismissed because General Counsel failed to prove that Brody or Gervin knew any of the five employees were active on behalf of the Union. The Trial Examiner cannot agree. Proof of knowledge is seldom available in documentary form or as an admission. Here, where the Respondent had full opportunity and witnesses available to present testimony as to why he discharged five experienced employees and hired as many new guards—but declined to do so, no resolution of contradictory testimony is required. It is undisputed that Brody knew of the organizational activity and that he warned, either directly or by implication, each of the five men against participating in it. He told Jester candidly, “anybody that signs union cards is on the outs.” Each of the five men signed cards. Shortly thereafter they were dismissed. Under the circumstances but one inference is clear: the Respondent discovered their action and invoked the reprisal it had threatened. It is reasonable to believe, and the Trial Examiner finds, that Brody and Gervin learned the identity of those who signed cards—whether from McCarthy who, according to his own testimony, “dropped” the Union after talking with Brody and offering to gather the men so Brody could talk to them, or from other sources. There were only a few employees; the evidence establishes that Brody and Gervin frequently visited them at their stations. It is concluded and found that each of the five above-named employees was discriminatorily discharged because of his activity on behalf of the Union, and to discourage union membership.

It is also found that by these discriminatory discharges and by Brody's questioning of employees, as above described, as to whether or not they had signed union cards; by his instructions that employees were to tell any “union men” that they were “not interested”; and by his threat that anyone signing a union card would be “on the outs,” the Respondent interfered with, restrained, and coerced his employees in the exercise of rights guaranteed by Section 7 of the Act.

#### 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

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

The Respondent's fixed intention to defeat his employees' efforts toward self-organization, as manifested by the discharges, interrogation, and threats of reprisals, if they joined the Union, indicates such a disregard of his employees' rights under the Act as to convince the Trial Examiner that there exists a danger of the repetition of such violations, and of the commission of other unfair labor practices proscribed by the Act. Unless the recommended order is coex-

tensive with the threat the preventive purposes of the Act will be thwarted. Accordingly, in order to effectuate the policies of the Act, to make more effective the interdependent guarantees of Section 7, and to deter the Respondent from future violations of the Act, it will be recommended that the Respondent cease and desist from infringing in any manner upon the rights guaranteed in Section 7 of the Act.

As to the five discriminatorily discharged employees, it will be recommended that the Respondent offer them immediate and full reinstatement to their former or substantially equivalent positions,<sup>7</sup> without prejudice to their seniority or other rights and privileges, and make them whole 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 that which he normally would have earned as wages from the date of his discharge to the date of the Respondents' offer of reinstatement, less his net earnings during said period.

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

#### CONCLUSIONS OF LAW

1. United Plant Guard Workers of America, Amalgamated Buffalo Local, 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 Edward Shine, John Sokay, Robert Thistlewaite, Edward Jester, and Fremont Evans, thereby discouraging membership in United Plant Guard Workers of America, Amalgamated Buffalo Local, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of 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 (a) (1) of the Act.

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

#### RECOMMENDATIONS

Upon the above findings of fact and conclusions of law, upon the entire record in the case, and pursuant to Section 10 (c) of the amended Act, the Trial Examiner recommends that Samuel S. Brody, d/b/a Standard Service Bureau, Buffalo, New York, his officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in United Plant Guard Workers of America, Amalgamated Buffalo Local, or in any other labor organization of his employees, by discriminatorily discharging, refusing to reinstate, or by discriminating in regard to their hire or tenure of employment, or any term or condition of employment;

(b) Interrogating his employees concerning their union affiliations, activities, or sympathies, or in any manner interfering with, restraining, or coercing

<sup>7</sup> In accordance with the Board's consistent interpretation of the term, the expression "former or substantially equivalent position" is intended to mean "former position wherever possible and if such position is no longer in existence then to a substantially equivalent position." See *The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch*, 65 NLRB 827.

his employees in the exercise of the rights to self-organization, to form labor organizations, to join or assist United Plant Guard Workers of America, Amalgamated Buffalo Local, 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 Trial Examiner finds will effectuate the policies of the Act:

(a) Offer to Edward Shine, John Sokay, Robert Thistlewaite, Edward Jester, and Fremont Evans immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole in the manner set forth in Section V, above, entitled "The remedy";

(b) Post at his office in Buffalo, New York, and at stations where his employees are regularly assigned, copies of the notice attached hereto and marked Appendix. Copies of said notice, to be furnished by the Regional Director for the Third Region, after being signed by representatives of the Respondent, shall be posted by the Respondent immediately upon receipt thereof, and maintained by him for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Third Region in writing, within twenty (20) days from the date of the receipt of this Intermediate Report, what steps the Respondent has taken to comply herewith.

It is also recommended that unless on or before twenty (20) days from the date of the receipt of this Intermediate Report, the Respondent notifies the said Regional Director in writing that he will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring Respondent to take the action aforesaid.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board, 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, Washington 25, D. C., an original and six copies of a statement in writing, setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and 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. 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 31st day of August 1949.

C. W. WHITTEMORE,  
*Trial Examiner.*

#### APPENDIX

##### NOTICE TO ALL EMPLOYEES

Pursuant to 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 UNITED PLANT GUARD WORKERS OF AMERICA, AMALGAMATED BUFFALO LOCAL 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.

Edward Shine

Robert Thistlewaite

John Sokay

Edward Jester

Fremont Evans

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.

SAMUEL S. BRODY D/B/A STANDARD SERVICE BUREAU,  
*Employer.*

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

Dated \_\_\_\_\_

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