In the Matter of CHENEY CALIFORNIA LUMBER COMPANY *and* LUMBER & SAWMILL WORKERS, LOCAL 2647, A. F. L.

Case No. 20–C–1229.—Decided July 10, 1945

DECISION

AND

ORDER

On April 12, 1945, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in, and was engaging in, certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. None of the parties filed exceptions to the Intermediate Report or briefs. No request was made for oral argument before the Board at Washington, D. C., and none was had. 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, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.[1]

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Cheney California Lumber Company, Greenville, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Lumber & Sawmill Workers, Local 2647, A. F. L., as the exclusive representative of all its employees at its Greenville, California, mill, excluding the foreman and office employees.

(b) Engaging in any like or related acts or conduct interfering with,

[1] The correct citation for Case No 20-C-1195 referred to in footnotes 10 and 11, page 1213 of the Intermediate Report, is 54 N L R B 205 and not 44 N L. R B. 205.

restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Lumber & Sawmill Workers, Local 2647, A F. L., 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 Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Lumber & Sawmill Workers, Local 2647, A. F. L., as the exclusive representative of all its employees in the appropriate unit set forth in paragraph 1 (a) of this Order and, if an understanding is reached, embody such understanding in a signed agreement;

(b) Post at its mill in Greenville, California, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material; and

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

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Order.

"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 Lumber & Sawmill Workers, Local 2647, A. F. L., 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. All our employees are free to become or remain members of this union, or any other labor organization We will bargain collectively upon request with the above-named union

as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, hours of employment or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All employees at the Greenville, California, mill, excluding the foreman and office employees.

CHENEY CALIFORNIA LUMBER COMPANY *(Employer)*

By

(Representative) (Title)

Dated

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

INTERMEDIATE REPORT

Mr. Wallace E. Royster, for the Board.

Mr. Charles Langdon, of Dunsmuir, Calif. and *Mr. Leslie A. Sehorn,* of Susanville, Calif., for the Union

Mr Francis I Cheney, of Medford, Oreg , for the respondent

STATEMENT OF THE CASE

Upon a second amended charge duly filed on October 9, 1944, by Lumber & Sawmill Workers, Local 2647, A. F. L., herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Twentieth Region (San Francisco, California), issued its complaint dated October 9, 1944, against Cheney California Lumber Company, Greenville, California, 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 (1) and (5), and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act Copies of the complaint, accompanied by notice of hearing, were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged, in substance, that, following a consent election, the Regional Director on February 11, 1944, had issued his consent determination of representatives, in which he had found that a majority of the valid votes cast in the election had been for the Union and that the Union was the exclusive representative of all of the employees in the appropriate unit for the purposes of collective bargaining, and that the respondent had, on February 24, 1944, and July 28, 1944, and on various intervening and subsequent dates, refused and continued to refuse to bargain with the Union. No answer was filed.

Pursuant to notice, a hearing was held in Greenville,[1] California, on October 24 and 25, 1944, before the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. Notice of this hearing was received by the respondent in Greenville, California, on October 11, 1944. Under date of October 14, 1944, the respondent, by its attorney Francis I. Cheney, wrote from respondent's office in Tacoma, Washington,

[1] There are two towns of this name in California The hearing was held at the one in Plumas County.

asking the acting Regional Director for an extension of time of 60 to 90 days.[2] This letter was received by the acting Regional Director on October 18, 1944, and on the same day he replied by telegram followed by letter denying the continuance because the request did not contain sufficient facts to warrant granting a continuance for the period asked and because it was not timely. On the same day, Ben Cheney, the respondent's president, wired the acting Regional Director again urging the requested continuance.[3] Upon receipt of this telegram, the Regional Director wrote, under date of October 19, 1944, to Ben Cheney, as follows:

> This is in reply to your wire and to confirm your telephone conversation of this date with Mr. Royster, during which you rejected our offer to continue the hearing in the above case for 1 week.
>
> Your request for a continuance of 45 days is hereby denied. Your objections to an early hearing do not appear to have sufficient merit to warrant so long a postponement in a case where you agree that an early disposition of the case will make for industrial peace.

At approximately 8 35 a m on Tuesday, October 24, 1944, the date set for the hearing, the undersigned received a telegram from Pine Industrial Relations Committee, Inc., and C. L. Irving, requesting a continuance until Friday or Saturday.[4] The undersigned denied the request but offered to postpone the hearing for one day if respondent wished.[5] At 10 a m., the undersigned opened the hearing for the purpose of announcing the respondent's request and for the purpose of taking other appearances, and then adjourned until 1 p.m. to await a reply from the respondent's representative. No reply having been received by 1 p.m., the hearing proceeded without the respondent Later, the undersigned received notice that respondent would be unable to attend the hearing, and stating that they would submit written statements. No statements were filed, however The Board was represented by counsel, and the Union by representatives. At the close of the hearing, Board's counsel moved to amend the complaint to conform to the proof as to immaterial variances not affecting the substance of the complaint. The motion was granted The Board's counsel argued orally at the close of the hearing

On December 20, 1944, the Chief Trial Examiner issued an order granting to respondent until January 3, 1945, to file, if it desired, its Motion to Reopen the Hearing. On January 5, 1945, the respondent filed its Motion to Reopen the Hearing.[6]

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[2] The reason stated for the request was
"Due to pressing business and prior commitments elsewhere, neither Mr Ben Cheney or myself will be able to attend this hearing upon the date scheduled"

[3] This telegram read.
"Due to scheduled commitments it is absolutely impossible for me to appear in Greenville October 24. I respectfully request a postponement as per our letter"

[4] This telegram read.
"Cheney Lumber Company has asked us to represent them in case scheduled for 10 a m tomorrow morning [The telegram was sent night letter] It is impossible for Mr Cheney to be present and will also be impossible for me to be at hearing tomorrow because of previous commitments I could arrange to be in Greenville Friday or Saturday if hearing could be postponed. If postponement impossible would like to submit from here a short statement to be incorporated into the record If the hearing can't be postponed then there can be no company representation present."

[5] The undersigned's telegram to Mr Irving and Pine Industrial Relations Committee, Inc., read
"Telegram received. Court reporter and Board witnesses are present and cannot be here Friday. Could give you until tomorrow 10 a.m If you can't be here send me any motions or statements you want in record and I will put them in Answer quick"

[6] This motion was opposed by the Union in a written reply dated January 6, 1945

accompanied by its answer dated December 29, 1944. By its answer the respondent denied the refusal to bargain and, for lack of "information sufficient to form a belief as to the truth of the allegations," denied that the unit alleged by the complaint was appropriate and that the Union was the exclusive representative of its employees in that unit. Affirmatively, the answer alleged in substance that this case was based upon a previous case brought by the Board, numbered 20-C-1195, that said case was then before the Circuit Court of Appeals for the Ninth Circuit, and that this case should be dismissed pending that Court's decision.[7] And finally the answer alleged that the respondent had received demands for recognition from another union, that it had petitioned the Board for a new election, and that the respondent believed it would tend to lead to labor disputes if it entered into a contract with the charging Union.

On January 10, 1945, the Acting Chief Trial Examiner issued an order reopening the hearing. Notice thereof was duly served upon the respondent and the Union. Pursuant to notice the reopened hearing was held in Medford, Oregon, on February 20, 1945, before the undersigned Trial Examiner duly appointed by the Chief Trial Examiner.[8] The Board and the respondent were represented by counsel and the Union by its representative. Respondent's counsel stated that he did not desire to cross-examine the witnesses who had testified for the Board; so the reopened hearing proceeded with the respondent's case. Full opportunity was afforded all parties to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the close of the reopened hearing, respondent's and Board's counsel argued orally before the undersigned. No briefs were filed.

Upon the foregoing, upon his observation of the witnesses, and upon all the evidence, the undersigned makes the following

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent is a California corporation, organized early in 1942. It operates a sawmill near Greenville, California, where it is engaged in the manufacture, sale, and distribution of lumber products, including railroad ties and studding. During the year ending June 30, 1943, the sales of the respondent amounted to approximately $285,000. During the same period the respondent manufactured approximately 17,000,000 board feet of lumber. An amount equal to approximately 8 percent of such total sales was sold and delivered outside the State of California. Its principal manufactured product are railroad ties, which are sold to the Southern Pacific and Western Pacific railroads for their own use. During the months of July, August, and September 1944, the respondent shipped 248 cars of lumber over the Western Pacific Railroad. Of these, 84 cars or approximately 33 percent were shipped to a consignee outside the State of California or to a consignee in California by a routing through Klamath Falls, Oregon, and more than 100 cars of railroad ties, more than 40 percent of the total number of cars, were waybilled to the Southern Pacific Company. The respondent concedes that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

Lumber and Sawmill Workers, Local 2647, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the respondent.

[7] Oral argument on Case 20-C-1195 was heard on March 27, 1945, and on March 31, 1945, the Circuit Court enforced the Board's Order in full with some slight modification thereof.

[8] Proof of service was waived by the parties.

III. THE UNFAIR LABOR PRACTICES

1. The appropriate unit

The complaint alleges that all of the respondent's employees at its Greenville mill, excluding the foreman and office employees, constitute a unit appropriate for the purposes of collective bargaining. The respondent and the Union agreed upon such unit as appropriate in an agreement for consent election dated May 19, 1943. At no time thereafter was any question raised as to the appropriateness of such unit until the respondent filed its answer. It is found that a unit composed of all employees of the respondent at its Greenville, California, mill, exclusive of the foreman and office employees, has at all times material herein been, and now is, appropriate for the purpose of collective bargaining.

2. Representation of a majority in the appropriate unit

On May 22, 1943, under the auspices of the Regional Director, a consent election[9] was held, in which all the respondent's employees exclusive of the foreman and office employees, voted to determine whether or not they desired to be represented by the Union for purposes of collective bargaining. The result of the election was a vote of 16 for and 16 against the Union out of a total of 38 eligible to vote, with two additional ballots challenged. The two challenged ballots were those of employees who had been discharged on May 21, the day before the election. The challenged ballots remained unopened pending a decision by the Board in a complaint case[10] in which it was charged that the respondent had committed an unfair labor practice in discharging these two, among four included in the complaint On December 30, 1943, the Board rendered its decision, finding that all four men included in the complaint had been discriminatorily discharged and ordering the respondent to offer them reinstatement[11] On January 4, 1944, the Regional Director issued a Supplemental Report on Consent Election, ruling that the challenged ballots be opened and counted. On February 2, 1944, the challenged ballots were opened and counted. They were for the Union. On February 11, 1944, the Regional Director issued a Consent Determination of Representatives deciding that the Union was the exclusive representative of all the employees in the agreed unit

The respondent now contends that there was a large labor turnover during the operating season of 1943 and that by February 1944 another union claimed to represent a majority of the employees in the unit These contentions are found to be without merit[12]

It is accordingly found that on May 22, 1943, and at all times thereafter, the Union represented a majority of the employees in said appropriate unit.

3 The refusal to bargain

a History

On February 4, 1944, Charles Langdon, International Representative of United Brotherhood of Carpenters and Joiners, by whom the Union is chartered, wrote to the respondent asking it to fix a date for negotiations for a contract He received no

[9] The consent election agreement provided that the employees eligible to vote would be determined by the pay-roll for the period ending May 15, 1943, "but excluding employees who have since quit or been discharged for cause" It further provided that the determination of the Regional Director should be final and binding upon any question raised by either party, including questions of the eligibility of voters

[10] Case No 20-C-1195

[11] 54 N L R B 205

[12] See discussion hereinafter under title "Conclusions"

reply. On February 7, 1944, Leslie A. Sehorn, Secretary-Treasurer of the Northern California District Council of the Union, who had, on February 1, been authorized by the Local to bargain for it, wrote to the respondent's attorney, Francis I. Cheney, requesting that a date be set for negotiating a contract and asking the respondent to notify him if it wished to deal through the Pine Industrial Relations Committee, Inc. On February 11, Langdon went to the mill and was told by the then manager that all negotiations would have to go through the Pine Industrial Relations Committee, Inc., which is located in Oregon. On February 18, Langdon telephoned C. L. Irving of that committee and asked if the committee would negotiate for the respondent. Irving informed Langdon that another organization at the respondent's mill had asked for an election and that, pending determination of that problem, there could be no negotiating. On February 24, 1944, Langdon encountered Francis Cheney and Ben Cheney, the respondent's president, in Greenville and personally asked for a date for negotiating a contract He was again referred to the Pine Industrial Relations Committee, Inc. When Sehorn, who was apparently not informed of Langdon's encountering the Cheneys the day before, got no reply to his letter of February 7 to Francis Cheney, he wrote again, on February 25, 1944, asking for a reply and stating that, unless he heard from Cheney by March 6, he would have to take "whatever actions is necessary to bring about these negotiations." On the same day, February 25, Langdon, who apparently was acting independently of Sehorn, sent a registered letter to the respondent in care of Ben Cheney asking a date for negotiations. He received no reply. Under date of March 7, 1944, Francis Cheney wrote to Sehorn stating that he was writing to Pine Industrial Relations Committee to ask Irving to set a date and notify each of them. Sehorn, on receipt of this letter, telephoned Irving and March 27 was set as a conference date.

On March 27, Sehorn, Langdon, and Boyd Wyatt, secretary of the Union's Local in Greenville, met Francis Cheney, Irving, and Keith Henry, also of the Pine Industrial Relations Committee at the offices of the committee in Klamath Falls, Oregon. Cheney told the union representatives that he was not authorized by the respondent to enter into a contract with the Union and that his purpose in being there was to pacify them. At this meeting the terms of a proposed contract were discussed and exception was raised by Cheney to only two provisions one for a union shop, and one for vacation pay for the year 1943 At the conclusion of the meeting Cheney said that in a week or so he and Ben Cheney would be in Greenville and he would contact Wyatt regarding a meeting there. On about April 6 or 7, Ben Cheney was in Greenville, and Wyatt telephoned the mill to talk with him, but he was informed that Cheney was too busy to come to the telephone Wyatt gave his name to the party answering the telephone, but Cheney did not get in touch with him.

At a meeting of the Union on April 14, Sehorn was authorized to go to Central Point, Oregon, where it was understood that Francis Cheney then was, and to use his judgment in concluding a contract. Sehorn went to Central Point, but Francis Cheney had already left for Portland, Oregon Being informed that Francis Cheney would be in Medford, Oregon, on April 21, Sehorn there waited for him On that date Sehorn met with Francis and Ben Cheney and Keith Henry of Pine Industrial Relations Committee At this meeting Sehorn relinquished the Union's request for 1943 vacation pay and accepted a maintenance of membership clause in lieu of the union shop proposal Francis Cheney offered to have the contract typed and sent to Sehorn at Greenville, where Ben Cheney expected to be in a week or so. When the contract was prepared, Sehorn, on about May 1, telephoned Ben Cheney in Greenville saying that he would come from Susanville to sign it. After correcting a typographical error, to which Cheney agreed, Sehorn got Ben Garfield, the president of the Local Union,

and Wyatt to sign the contract Sehorn then delivered it to Ben Cheney, expecting him to sign it. Cheney, however, saying that he would have to submit the contract to the Board of Directors, retained the contract. For some time Sehorn heard nothing from Cheney. Finally he sent Ben Cheney a telegram to ascertain what was causing the delay Cheney telephoned him that he was going to be in Greenville soon June 8 was set as a date for a meeting there. On that day Sehorn, Langdon and H H. Williams, an international representative of the Carpenters and Joiners, met Ben Cheney in his office in Greenville Cheney there handed Sehorn a letter which said that the signing of the agreement was being held up only until the directors meeting, which "should be scheduled within the next two weeks at our office in Central Point, Oregon."[13]

When Sehorn got no further word from the respondent about the contract he sent a telegram on July 5, to Ben Cheney at Tacoma, Washington, stating that since no action had been taken on the contract, the Union was asking for aid from the United States Conciliation Service On July 28 Sehorn, Langdon, Robert Giesick, the Union's president and Francis Wiley, the Union's new secretary, met with Ben Cheney, Francis Cheney, and M A. Disch, the respondent's local manager, and Commissioner Garst, of the United States Conciliation Service, in the offices of the respondent When Cheney was asked why the contract had not been signed, he replied, according to Sehorn's testimony, that he had not yet had any response from the four dischargees as to whether they would come back if they were offered reinstatement, that he had not yet received a stipulation as to the amount of back pay due, that he was willing to take only one of the men back, and that until this matter was settled, he would not sign the contract.

At the reopened hearing, Francis Cheney testified that the question of reinstatement of these employees had little to do with the failure to sign the contract; that the respondent never recognized the Union as the majority representative of the employees and negotiated with reference to a contract only because the Board required it by its certification of the Union; that the contract was satisfactory but that, because the respondent had observed from buttons being worn by the employees and statements made by them that a majority had affiliated with another union, it suspended further negotiations on the contract "pending the determination as to the union of the men's own choosing"; that it contemplated the possibility of labor trouble if it signed the contract with the Union, and that he had advised the respondent's directors that the Union was not representative of the men in the plant and not to sign the contract

b Conclusions

The Union became the certified representative of the majority of the respondent's employees as a result of the election and the Regional Director's consent determination of representatives Until the validity of the challenged ballots had been determined there could have been no certification of the Union. When the Union was certified on February 11, 1944, the respondent was obliged to bargain with it, but the respondent on February 18 refused to bargain because of the claims of another union and delayed for a month before it showed a disposition to bargain. It is established law that, during the reasonable period for which the certification is recognized as valid, the force of the certification will not be affected by a shift in majority,[14] and the Board will not entertain

[13] The letter also indicated that the respondent expected to hear from the Union regarding "the four employees in question" before the directors' meeting This apparently referred to the question of whether the respondent would reinstate the four employees found by the Board to have been discriminatorily discharged.

[14] *Valley Mould & Iron Corp.* v. *N. L R B*, 116 F (2d) 760 (C C A 7), *N L R B* v *Whittier Mills Company*, 111 F. (2d) 474 (C. C A 5).

a petition for election by another union[15] Francis Cheney testified that during the 1943 operating season there was a large labor turn-over. This has been held insufficient to prove that the Union has lost its majority[16] Even if the Union's majority had been dissipated, that fact could not be relied upon, where, as here, an unfair labor practice remained unremedied.[17]

In March 1944, the Board dismissed a petition for an election by the rival union and the respondent began negotiations with the Union The respondent's negotiating agents, without power to bind the respondent, reached agreement on terms of a contract with the Union by May 1, 1944, but thereafter the respondent failed to sign the contract although the Union had signed it, and although no objection was raised by the respondent to its terms. The respondent's failure and refusal to sign resulted from the recommendation of its attorney Francis Cheney not to sign because he thought the Union was not the majority representative of the employees in the mill The respondent's return to a reason which it had previously abandoned when it met with the Union to negotiate a contract is evidence that the respondent was not sincere in its bargaining negotiations. The respondent at no time considered itself as bound by the proposed contract, but, even if it had, it would not have discharged its obligation to bargain as long as it refused to consummate the bargaining process by signing the written memorial of the agreement reached[18]

From the foregoing facts the undersigned finds that the respondent on February 18, July 28, 1944, on various intervening dates, and at all times after July 28, 1944, refused to negotiate with the Union as the exclusive representative of its employees in the appropriate unit described above[19] By such refusal the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in 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 described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Since it has been found that the respondent has engaged in unfair labor practices, it will be recommended that it cease and desist therefrom and taken certain affirmative action designed to effectuate the policies of the Act.

It has been found that the respondent failed and refused to bargain collectively with the Union as the representative of its employees within the appropriate unit as contemplated by the Act.

It will therefore be recommended that the respondent, upon request, bargain collectively with the Union for the purpose of reaching an agreement covering wages, hours, and working conditions, and, if an understanding is reached on any of such mattters, and if the respondent is requested by the Union to do so, that the respondent embody such understanding in a written signed agreement

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[15] *N L R. B* v *Botany Worsted Mills, et al*, 133 F (2d) 876 (C C A 3).

[16] *Matter of Century Oxford Manufacturing Corp*, 47 N L. R B 835

[17] *Matter of Porcelain Steels, Inc*, 46 N L R B 1235, and see *Bussman Mfg. Co* v *N L R B*, 111 F (2d) 783 (C C A 8)

[18] *H J Heinz Co* v *N L R. B*, 311 U S. 514

[19] Francis Cheney conceded that negotiations were "suspended" sometime in June or July

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

CONCLUSIONS OF LAW

1. Lumber & Sawmill Workers, Local No. 2647, A F. L., is a labor organization within the meaning of Section 2 (5) of the Act.

2 All of the respondent's employees at its Greenville, California, mill, excluding the foreman and office employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act

3 Lumber & Sawmill Workers, Local No 2647, A F L, was on May 22, 1943, and at all times thereafter has been, the exclusive representative of all the employees in the above-described unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act

4 By failing and refusing on February 18, July 28, 1944, on various intervening dates, and at all times after July 28, 1944, to bargain collectively with Lumber & Sawmill Workers, Local 2647, A F L., as the exclusive representative of all its employees in the appropriate unit, the respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8 (5) of the Act.

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

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

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, the undersigned recommends that the respondent, Cheney California Lumber Company, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Lumber & Sawmill Workers, Local 2647, A. F L, as the exclusive representative of all its employees in the above-described appropriate unit;

(b) Engaging in like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Lumber & Sawmill Workers, Local 2647, A F. L, 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, as guaranteed in Section 7 of the Act.

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

(a) Upon request, bargain collectively with Lumber & Sawmill Workers, Local No 2647, A. F. L, as the exclusive representative of all its employees in the above-described appropriate unit, and, if an understanding is reached, embody such understanding in a written signed agreement,

(b) Post at its mill in Greenville, California, copies of the notice attached hereto, marked "Appendix A" Copies of said notice, to be furnished by the Regional Director of the Twentieth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted Reasonable steps shall

be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Twentieth Region (San Francisco, California) in writing, within ten (10) days from the date of the receipt of this Intermediate Report, of what steps the respondent has taken to comply herewith.

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

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, effective July 12, 1944, any party or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, D. C, an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing within ten (10) days from the date of the order transferring the case to the Board.

JAMES R. HEMINGWAY
Trial Examiner

Dated April 12, 1945