

In the Matter of PHILIP VANDERNOOT AND PEARL VANDERNOOT, D/B/A  
DAVIS PRECISION MACHINE COMPANY and INTERNATIONAL UNION,  
UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA, LOCAL 683, C. I. O.

*Case No. 21-C-2435.—Decided October 29, 1945*

## DECISION

AND

## ORDER

On April 20, 1945, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report annexed hereto. No exceptions were filed to the Intermediate Report, but the respondent requested a hearing for the purpose of oral argument before the Board at Washington, D. C. A hearing for that purpose was scheduled for September 20, 1945; however, none of the parties appeared and oral argument was not held.

The Board has considered the rulings of 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 and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except as hereinafter modified.

### The Remedy

Having found that the respondents have violated Sections 8 (1) and (3) of the Act, we must order the respondents, pursuant to the mandate of Section 10 (c), to cease and desist therefrom. We also predicate our cease and desist order upon the following findings: The respondents' whole course of conduct discloses a purpose to defeat self-organization and its object among their employees. As we have found, the respondents interfered with, restrained, and coerced their employees by various acts and statements. The culmination of their illegal activities, the discharge of Monarch and Dionigi "goes to the

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very heart of the Act.”<sup>1</sup> Because of the respondents’ unlawful conduct and their underlying purpose, we are convinced that the unfair labor practices found are persuasively related to the other unfair labor practices proscribed and that danger of their commission in the future is to be anticipated from the respondents’ conduct in the past.<sup>2</sup> The preventive purpose of the Act will be thwarted unless our order is co-extensive with the threat. In order therefore, to make effective the interdependent guarantees of Section 7, to prevent a recurrence of unfair labor practices, and thereby minimize industrial strife which burdens and obstructs commerce, and thus effectuate the policies of the Act, we shall order the respondents to cease and desist from in any manner infringing upon the rights guaranteed in Section 7 of the Act. As recommended in the Intermediate Report, we shall also order the respondents to take certain affirmative action designed to effectuate the policies of the Act.

### 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 respondents, Philip Vandernoot and Pearl Vandernoot, d/b/a as Davis Precision Machine Company, Los Angeles, California, their agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, Local 683, C. I. O., or in any other labor organization of its employees, by discharging or refusing to reinstate any of their employees, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of employment;

(b) In any other manner interfering with, restraining, or coercing their employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, Local 683, C. I. O., 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:

<sup>1</sup> *N. L. R. B. v. Entwistle Manufacturing Company*, 120 F. (2d) 532, 536 (C. C. A. 4); see also, *N. L. R. B. v. Automotive Maintenance Machinery Company*, 116 F. (2d) 350, 353, (C. C. A. 7), where the Circuit Court of Appeals for the Seventh Circuit observed: “No more effective form of intimidation nor one more violative of the N. L. R. Act can be conceived than discharge of an employee because he joined a union. . . .”

<sup>2</sup> See *N. L. R. B. v. Express Publishing Company*, 312 U. S. 426

(a) Offer to Irving Monarch and Joseph Dionigi immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges;

(b) Make whole Irving Monarch and Joseph Dionigi for any loss of pay that they may have suffered by reason of the respondents' discrimination against them, by payment to each of them a sum of money equal to the amount which he normally would have earned as wages during the period from the date of his discharge to the date of the respondents' offer of reinstatement, less his net earnings during said period;

(c) Post at their plant at Los Angeles, California, copies of the notice attached to the Intermediate Report herein, marked "Appendix A."<sup>3</sup> Copies of said notice, to be furnished by the Regional Director of the Twenty-first Region shall, after being duly signed by the respondents' representative, be posted by the respondents immediately upon receipt thereof, and maintained by them 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 respondents to insure that said notices are not altered, defaced, or covered by any other material;

(d) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the respondents have taken to comply herewith.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Order.

#### INTERMEDIATE REPORT

*George H O'Brien, Esq*, for the Board

*Pearlson & Singer*, by *Albert Pearlson, Esq*, of Los Angeles, Calif., for the respondents.

*Ross P. Athof, Esq.*, of Los Angeles, Calif., for the Union

#### STATEMENT OF THE CASE

Upon an amended charge duly filed on January 11, 1945, by International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, Local 683, affiliated with the Congress of Industrial Organizations, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twenty-first Region (Los Angeles, California), issued its complaint dated January 11, 1945, against Philip Vandernoot<sup>1</sup> and Pearl Vandernoot, doing business as Davis Precision Machine Company, herein called the respondents, alleging that the respondents had engaged in and

<sup>3</sup> Said notice, however, shall be, and it hereby is, amended by striking from the first paragraph thereof the words "Recommendation of a Trial Examiner" and substituting in lieu thereof the words "A Decision and Order."

<sup>1</sup> Vandernoot is variously referred to as Vandernoot and as Davis in the record.

were engaging in unfair labor practices within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

Copies of the complaint and notice of hearing were duly served upon the respondents and the Union. With respect to unfair labor practices the complaint alleged in substance: (1) that since on or about May 5, 1944, the respondents advised their employees to remove their union buttons and warned them that they would receive no benefits from the Union; (2) that on or about August 18, 1944, the respondents discharged and refused to reinstate Irving Monarch and Joseph Dionigi because of their union membership and activities; and (3) thereby interfered with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

On January 16, 1944, the respondents filed an answer denying the alleged unfair labor practices.

Pursuant to notice, a hearing was held from January 30 to February 1, 1945, inclusive, at Los Angeles, California, before the undersigned, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondents, and the Union were represented by counsel. All parties participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues. At the close of the Board's case, and again at the close of the hearing, the respondents moved to dismiss the complaint. The motions were denied by the undersigned. At the close of the hearing, the attorney for the Board moved to conform the complaint to the proof with respect to such matters as dates, names, and typographical errors; the respondents made a similar motion with respect to the answer. Both motions were granted without objection. All parties argued orally on the record. The parties were afforded an opportunity to file briefs with the undersigned. A brief has been received from the attorney for the respondent.

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

#### FINDINGS OF FACT

##### I THE BUSINESS OF THE RESPONDENTS

Philip Vandernoot and Pearl Vandernoot, doing business as Davis Precision Machine Company, have their principal place of business in Los Angeles, California. They are engaged in the manufacture and sale of precision gauges and aircraft parts for the United States Army and Navy Air Forces through various aircraft manufacturing companies. The respondents, during the 12 months immediately prior to the hearing, purchased raw materials consisting principally of steel to the value of \$25,000. The greater part of such raw materials originated from sources outside the State of California. During the same period the respondents sold their manufactured products to the value of \$100,000, to Consolidated Vultee Aircraft Corporation, Northrop Aircraft, Inc., Douglas Aircraft, Inc. and California Institute of Technology. The products sold and delivered by the respondents to these organizations are products essential to their operations. The respondents concede the jurisdiction of the Board.

##### II. THE ORGANIZATION INVOLVED

International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, Local 683, C. I. O., is a labor organization admitting to membership employees of the respondents

## III THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*<sup>2</sup>

On May 5, 1944, the respondents received a letter from the Union, the contents of which are not disclosed by the record. The Union had previously organized the respondents' employees, but this organizing activity was unknown to the respondents. The same day, at about 9:30 a. m., David Zietz, the respondents' superintendent, approached Oscar Wolfberg, one of the respondents' employees, at his work, and asked him what he knew of the Union and who had brought the authorization cards into the shop. Zietz also asked Wolfberg how he "stood" on the Union. Wolfberg replied that he favored the Union, Zietz then left with the remark, "Well, I don't think you can get away with the Union in this shop because I was a shop steward at one time and the only thing we got out of it was a vacation. We got a lot of promises and had a vacation." A few minutes later Philip Vandernoot called Wolfberg into the office and asked him what he knew of the Union; who had brought in the cards, and how he "stood" Wolfberg told Vandernoot that he favored the Union, whereupon Vandernoot said to him, "You know where that puts you."

On or about May 15, Zietz entered into a conversation with Emerson Thompson, one of the respondents' employees, in which he asked Thompson how he felt about the Union and then told Thompson that he (Zietz) had once belonged to a union and derived no benefits therefrom.

On May 17, the Board's Regional office conducted a consent election for the purpose of determining a bargaining representative among the respondents' employees. On the morning of the election some of the employees appeared at their work wearing union buttons. This was the first occasion that the Union's insignia had been worn by any of them in the plant. At about 9:30 a. m., before the poll was taken, Vandernoot spoke to Irving Monarch, at that time employed by the respondents, while he was at his machine, and, pointing at the union button Monarch was wearing, ordered him to "take off this damn button."

The poll was conducted on a lot adjoining the respondents' premises. At about 4:30 p. m. Vandernoot appeared at the polling place and ordered Monarch, who was acting as a watcher for the Union, to leave the lot.

The record is clear that all the above related acts occurred prior to and during a consent election conducted among the respondents' employees by the Board's Regional Office for the purpose of determining a bargaining agent. In the election the Union was chosen by the employees as their representative.<sup>3</sup>

The undersigned finds that by inquiring into the union membership and sympathies of its employees; disparaging the Union by referring to the Union's alleged inability to gain advantages for its members; and by its expression of hostility to the Union in ordering an employee to remove his union button, and on the entire record, the respondents have interfered with, restrained and coerced their employees in the rights guaranteed in Section 7 of the Act<sup>4</sup>

On May 19, the respondents discharged Monarch, Joseph Berger, and Carl Anderson without previous notice. Monarch and Berger were union officials. The following morning the respondents' employees struck because of these discharges.

<sup>2</sup> The findings in this section of the report are based on uncontradicted or mutually corroborative testimony, except as otherwise indicated.

<sup>3</sup> The results of the election were:

Votes cast for the Union.....	21
Votes against the Union.....	8
Challenged ballots.....	2

<sup>4</sup> *Swift and Company*, 30 N. L. R. B. 550, *Botany Worsted Mills*, 4 N. L. R. B. 292

After a conference between the Union, the respondents, and a representative of the United States Army, the discharged employees were reinstated without loss of pay and the striking employees returned to work.

On June 2, the respondents laid off seven employees, allegedly for lack of work. Monarch was included in this lay-off. The following day, after a conference between the Union and the respondents, five of the employees, including Monarch, were reinstated, and the respondents agreed that future lay-offs were to be made according to seniority.

On August 10, the Union presented a contract to the respondents and negotiations thereon were held on August 10 and 11. The conferences closed with an agreement that the respondents would submit counterproposals within 2 or 3 days. These were never submitted, as far as the record shows.

#### *B. The discriminatory discharge of Irving Monarch*

Irving Monarch was the Union's shop steward and very active in its behalf. On August 18, 1944, Monarch began work at 7 a. m. and continued working for about 55 minutes. He then "rang out" his time card, left the plant, and did not return until approximately 11 a. m. Just prior to his departure Monarch informed Joseph Dionigi, one of the respondents' set-up men, in charge of the operation of Monarch's machine, that he was leaving. Dionigi told Monarch to "go ahead." When Monarch left the plant he was observed through the office window by David Zietz, the respondents' plant superintendent. Zietz asked Dionigi why Monarch had left, where he was going, and when he expected to return. Dionigi replied that he did not know Monarch's reason for leaving, his destination, or when he would return. At about 9 a. m. Vandernoot arrived at the plant. Zietz informed Vandernoot of Monarch's departure; the two men discussed the incident; and Vandernoot removed Monarch's time card from the rack, thereby intending to and in fact discharging him. Monarch returned to the plant, discovered that his time card had been removed from the rack, and immediately informed Dionigi that he (Monarch) had been discharged; he then left the plant. At about 12 o'clock the Union's business agent and its committee conferred with the respondents' officers and were told that Monarch had been discharged for leaving the plant without permission, and that the respondents would not reinstate him.<sup>5</sup>

The record shows that Dionigi was a lead and set-up man, responsible for the mechanical operation of certain machinery. He was also responsible to some extent for the work of certain of the respondents' employees, among whom was Monarch. Dionigi testified that on previous occasions he had authorized employees to leave the plant, upon their requests to him for such permission and that on a previous occasion he had given Monarch permission to leave.

Zietz testified that only he and Vandernoot had authority to grant employees permission to leave and that at all the times Dionigi had authorized employees to leave the plant, while it was true that the request had come through Dionigi, the latter had first informed Zietz that the employee had made the request, the reason for the request, where the employee was going, and when he would return. Zietz further testified that on the previous occasion Monarch had asked permission to leave, Dionigi had first brought the request to Zietz for approval. Zietz testified that "it was understood [by the set-up men, Dionigi included] that if any of the employees wanted to leave it was all right with me, but I wanted to know before they left so I would know where they had

<sup>5</sup> Dionigi was also a member of the Union and on the Union's negotiating committee.

gone." Zietz testified that the set-up men brought requests for permission to leave to him and that no employee had ever come directly to him for permission to leave.

There was no rule announced to the respondents' employees orally or in writing telling them who had authority to grant permission to leave the plant. Zietz testified:

" . . . it was understood generally, as it would be in any plant, I assume, a lead man would have no authority to let any one go out of the plant, unless the information was related to his superior . . ."

Regarding the alleged rule that only Zietz or he could grant respondents' employees permission to leave the plant, Vandernoot testified:

Q. How would the employees know about this rule?

A. How did the employees know about this rule?

Q. Yes, was it written. Did you tell them. Did Mr. Zietz tell them?

A. Why it is a common fact.

Whether or not Dionigi had authority to give employees permission to leave the plant, the record is clear that the respondents had never informed its employees who could give them such permission. Dionigi's authority may well have been limited to the conveying of a request for leave to Zietz for final decision, but the record does not show that the respondents' employees were aware of any limitation on Dionigi's authority. Requests for permission to leave the plant were infrequent, and the granting of permission to leave was hardly more than a formality. As previously stated, Zietz testified ". . . if any of the employees wanted to go it was all right with me, but I wanted to know before they left so I would know where they had gone." Monarch had previously left the plant on permission granted, if not by, at least through Dionigi, and he surely cannot be bound by the respondents' instructions to Dionigi, not known to Monarch.

In view of Zietz' testimony to the effect that requests to leave the plant were never made directly to him, and that when such requests were made "it was all right" provided he knew where the employee was going, it seems highly significant to the undersigned that Monarch was discharged without being asked to explain his action or disclose his reason for leaving. No investigation was made. Monarch was given no opportunity to present any excuse.

In view of the respondents' previous course of conduct toward Monarch; Vandernoot's order to him to remove his union button, and to leave the polling place; Monarch's two previous discharges; and the respondents' express hostility towards the Union; the undersigned is convinced that Monarch's leaving the plant was not the reason but merely a convenient excuse for his discharge.

From the entire record in the case, the undersigned finds that the respondents discharged Irving Monarch on August 18, 1944, because of his membership in and activities on behalf of the Union, and that by such discharge and its subsequent refusal to reinstate Monarch the respondents have discriminated in regard to his hire and tenure of employment and discouraged membership in a labor organization and thereby interfered with, restrained, and coerced their employees in the exercise of rights guaranteed in Section 7 of the Act.

*C. The discriminatory discharge of Joseph Dionigi*

Joseph Dionigi was employed by the respondents in May 1943, and was discharged August 18, 1944. At the time of his discharge Dionigi was a set-up man. Dionigi was a member of the Union's negotiating committee.

As heretofore discussed, Monarch left his work at the respondents' plant on August 18, 1945 and when upon his return discovered that his time card had been removed from the rack he informed Dionigi that he (Monarch) had been discharged. Dionigi spoke to Zietz about Monarch's discharge, telling him, *inter alia*, "You had better get that card in the rack or you are looking for trouble." Shortly after Dionigi's conversation with Zietz, Vandernoot entered the plant. Dionigi thereupon shut off his machine and went up to Vandernoot and asked him why he had discharged Monarch. He also told Vandernoot that he was leaving the plant at noon<sup>6</sup> and stated, "I am going down and turn you in to the F. B. I." Dionigi spoke in a very loud voice. Vandernoot did not answer.

Margaret Arbuckle, one of the respondents' employees, and a union member, testified that at about 11:30 a. m., on August 18, Dionigi came to her place of work and informed her and two other employees that Monarch had been discharged and that the respondents' employees were "to walk out" at noon and not return to work and that later he returned and told them the "walk out" was set for 1 o'clock.

Charles Christensen, one of the respondents' employees, and a Union member, testified that on August 18, he was working with Dionigi and that Dionigi said to him "we are leaving at 1 p m" Dionigi denied making the statements attributed to him by Arbuckle and Christensen. The undersigned was impressed by the testimony of both Arbuckle and Christensen; considers them to be honest and forthright witnesses, and credits their testimony.

At 12 o'clock the Union's representatives, consisting of Ross P. Althof, the Union's business agent, Joseph Berger, one of the respondents' employees, Dionigi, and Monarch called at the respondents' office and conferred with Vandernoot and Zietz regarding Monarch's discharge. During this conference, Dionigi, who was very angry, said to Vandernoot, "God damn you, I am not through with you yet. I am going to break you<sup>7</sup> I have taken enough off you" Althof tried to quiet Dionigi, several times, but did not succeed. Vandernoot made no reply. The conference closed at about 12:30 p. m.; the respondents refusing to reinstate Monarch. At about 12:50 p. m., several employees came to Zietz and asked for permission to leave, stating that the respondents' employees were leaving their work at 1 p. m. and that those asking for permission to leave did not wish to be involved. Zietz granted permission to leave to all those who made such requests. At 1 o'clock some of the respondents' employees left their work and the plant. That afternoon, at about 2 o'clock, a second conference took place between the respondents' officials, Vandernoot and Zietz, and the Union, represented by Althof and Berger. A representative of the United States Army was also present. During the course of this conference, Dionigi entered the room and stated that the employees who had left were outside, and that as it was pay day they wanted to know if their checks were ready. Zietz thereupon handed Dionigi checks, and availability slips indicating discharge for 10 employees. Monarch and Dionigi were included among the 10. Althof advised Dionigi not to give the employees the certificates of availability and Zietz then gave Althof a list of the employees who were being discharged. With the exception of Monarch who was already discharged, and Dionigi who was in reality on vacation, they were those employees who had left their work at

<sup>6</sup> Dionigi was scheduled to leave on his vacation at noon on August 18

<sup>7</sup> Dionigi testified that during the conference above related he did not say to Vandernoot "I am going to break you" but that he did say "I am going to break you of those bad habits." He admitted the other statements attributed to him. Monarch first testified that he said to Vandernoot "I will break you of those bad habits" and later changed his testimony to say that Dionigi made the statement.

1 p. m.<sup>8</sup> Zietz testified that these employees were discharged by the respondents "for holding up the war effort and walking off the job".<sup>9</sup>

Dionigi testified that he first learned of his discharge when the pay checks were handed him for distribution. Vandernoot testified that the respondents discharged Dionigi because of "direct insubordination" and for calling an "unauthorized walk out," and that he made the decision to discharge Dionigi at 1 p. m. immediately after the "walk-out."

Counsel for the respondents in his oral argument, and again in his brief, explained that by "insubordination" the respondents meant the use of intemperate, abusive, and threatening language to Vandernoot. Dionigi admitted using such language. With one exception the intemperate, abusive, and threatening language referred to was used by Dionigi at formal meetings between the respondents and the Union's representatives. No outside persons were present during these conferences. The only time Dionigi threatened Vandernoot, other than at a joint conference was in the plant immediately following Monarch's discharge on August 18.

The respondents did not discharge or even reprimand Dionigi at the time he threatened Vandernoot during the two conferences preceding the one relating to Monarch's discharge; he was not discharged at the time he threatened to report Vandernoot to the F. B. I., immediately following Monarch's discharge; and he was not discharged immediately following the use of his threatening and abusive language during the conference regarding Monarch's discharge on August 18. Vandernoot testified that it was after he learned that Dionigi had instigated a strike in the respondents' plant that he decided to discharge Dionigi.

It is clear from Vandernoot's testimony, and the position of the respondents, that Dionigi's use of threatening and abusive language was not the sole reason for his discharge. Another material reason, indeed the principal reason, was that Dionigi had called a strike of the employees, as above related. Whatever may be said, one way or the other, as to the calling of strikes in times like the present, the fact remains that such strikes are not unlawful. Since Dionigi's language is obviously a valid cause for discharge, we thus have here two causes, one legal, the other illegal. But unless Dionigi would have been discharged absent the illegal motivation, responsibility remains,<sup>10</sup> and the burden was on the respondents to disentangle the legal from the illegal.<sup>11</sup> This it has not done. On the contrary, the undersigned is convinced and finds that Dionigi's action in calling the strike was the fact which principally motivated the respondents in dispensing with his services.

The undersigned finds, on the entire record, that the respondents discharged Joseph Dionigi on August 18, 1944, because of his membership in and activities on behalf of the Union, and that by such discharge and their subsequent refusal to reinstate Dionigi, the respondents have discriminated in regard to his hire and tenure of employment and have discouraged membership in a labor organization and thereby have interfered with, restrained, and coerced their employees in the exercise of rights guaranteed in Section 7 of the Act.

<sup>8</sup> At a conference between the respondents and the Union the following day, all the employees except Monarch and Dionigi were reinstated. The plant was in full operation on August 21.

<sup>9</sup> Vandernoot testified "We went back and checked those that had actually got up and walked out."

<sup>10</sup> *N. L. R. B. v. Remington Rand, Inc*, 94 F. (2d) 862, 872 (C. C. A. 2), cert. den. 304 U. S. 576, *N. L. R. B. v. Stackpole Carbon Co*, 105 F. (2d) 167, 176 (C. C. A. 3); *Woolworth Co. v. N. L. R. B.*, 121 F. (2d) 658 (C. C. A. 2).

<sup>11</sup> *Ibid.*

## IV THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondents set forth in Section III above, occurring in connection with the operations of the respondents described in Section 1 above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## V. THE REMEDY

Having found that the respondents have engaged in certain unfair labor practices, within the meaning of the Act, it will be recommended that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the respondents discriminated in regard to the hire and tenure of employment of Irving Monarch and Joseph Dionigi, by discharging them on August 18, 1944 and thereafter by refusing to reinstate them as hereinbefore set forth, the undersigned will recommend that the respondents offer to Irving Monarch and Joseph Dionigi immediate and full reinstatement to their former or substantially equivalent positions. The undersigned will further recommend that the respondents make them whole for any loss of pay they may have suffered by reason of the discrimination, by payment to each of them of a sum of money equal to the amount he would have earned as wages during the period from the date of his discharge to the date of the offer of reinstatement, less his net earnings<sup>12</sup> during such 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. International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, Local 683, C. I. O., is a labor organization within the meaning of Section 2 (5) of the Act.

2. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

3. By discriminating in regard to the hire and tenure of employment of Irving Monarch and Joseph Dionigi, thereby discouraging membership in International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Local 683, C. I. O., the respondents have engaged in unfair labor practices, within the meaning of Section 8 (3) 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 basis of the above findings of fact and conclusions of law, the undersigned recommends that the respondents Philip Vandernoot and Pearl Vandernoot

<sup>12</sup> 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 than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *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. See *Republic Steel Corporation v N. L. R. B.*, 311 U. S. 7.

doing business as Davis Precision Machine Company, Los Angeles, California, their agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, Local 683, C. I. O., or in any other labor organization of its employees, by discharging or refusing to reinstate any of their employees, or in any other manner discriminating in regard to the hire and tenure of employment

(b) In any manner interfering with, restraining, or coercing their employees in the exercise of the rights to self-organization, to form labor organizations, to join or assist International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, Local 683, C I O, or any other labor organization to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

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

(a) Offer to Irving Monarch and Joseph Dionigi immediate and full reinstatement to their former or substantially equivalent position without prejudice to their seniority or other rights and privileges;

(b) Make whole Irving Monarch and Joseph Dionigi each for any loss of pay they may have suffered by reason of the respondents' discrimination against them in the manner set forth in the Section entitled "The remedy" above.

(c) Post at their plant at Los Angeles, California, copies of the notice attached hereto, marked "Appendix A". Copies of said notice, to be furnished by the Regional Office of the Twenty-first Region shall, after being duly signed by the respondents' 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 respondents to insure that said notices are not altered, defaced, or covered by any other material;

(d) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of the receipt of this Intermediate Report what steps the respondents have taken to comply therewith.

It is further recommended that, unless on or before ten (10) days from the receipt of this Intermediate Report the respondents notify the said Regional Director in writing that they will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondents 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 25, 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 parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire per-

mission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board.

LOUIS PLOST,  
*Trial Examiner.*

Dated April 20, 1945.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a trial examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will not in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, Local 683, C. I. O. 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.

Irving Monarch  
Joseph Dionigi

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.

PHILIP VANDERNOOT AND PEARL VANDERNOOT,  
D. B A DAVIS PRECISION MACHINE COMPANY,  
(Employer)

By -----  
(Representative) (Title)

Dated -----

NOTE: Any of the above-named employees presently serving in the armed forces of the United States will be offered full reinstatement upon application in accordance with the selective service act after discharge from the armed forces.

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