be closed by March 1951. The West Mifflin plant had, at the time of the hearing, 660 employees of a contemplated 1,200 to 1,400 employees.[5] This employee complement is a substantial and representative segment of the working force which will eventually be employed. In these circumstances, and in accord with our usual practice, we shall direct an immediate election.

[Text of Direction of Elections omitted from publication in this volume.]

[5] The powerhouse has its full complement of employees The Employer expects to hire approximately 20 additional machinists whenever persons with requisite skills are available.

CARPENTER & SKAER, INC., *and* GENERAL CONTRACTING EMPLOYERS ASSOCIATION *and* GEORGE MCDONALD

INTERNATIONAL HOD CARRIERS', BUILDING & COMMON LABORERS' UNION OF AMERICA, LOCAL 210, AFL *and* GEORGE MCDONALD

INTERNATIONAL HOD CARRIERS', BUILDING & COMMON LABORERS' UNION OF AMERICA, LOCAL 210, AFL *and* ROBERT H. FRANCISCO

H. F. STIMM, INCORPORATED *and* GENERAL CONTRACTING EMPLOYERS ASSOCIATION *and* HAROLD ODELL

INTERNATIONAL HOD CARRIERS', BUILDING & COMMON LABORERS' UNION OF AMERICA, LOCAL 210, AFL *and* HAROLD ODELL. *Cases Nos. 3-CA-86, 3-CB-21, 3-CB-26, 3-CA-150, 3-CB-36. February 12, 1951*

Supplemental Decision and Order

On September 28, 1950, Trial Examiner C. W. Whittemore 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 attached hereto. Thereafter, the Respondent Union filed exceptions to the Intermediate Report and a supporting brief.

The Board[1] has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Interme-

[1] 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 Reynolds and Murdock]

diate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

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:

(1) The Respondents General Contracting Employers Association; Carpenter & Skaer, Inc.; H. F. Stimm, Incorporated; and International Hod Carriers', Building & Common Laborers' Union of America, Local 210, AFL, their officers, agents, successors, and assigns, shall cease and desist from:

(a) Giving effect to the agreement of April 30, 1948, and any extension, renewal, or modification thereof, or supplement thereto, or to any superseding agreement.

(b) Entering into, renewing, or enforcing any agreement which requires employees to be members of, to join, or to maintain their membership in said labor organization, unless such an agreement has been authorized as provided by the National Labor Relations Act, as amended.

(2) The Respondents General Contracting Employers Association; Carpenter & Skaer, Inc.; and H. F. Stimm, Incorporated; their officers, agents, successors, and assigns, shall cease and desist from:

(a) Encouraging membership in International Hod Carriers', Building & Common Laborers' Union of America, Local 210, AFL, or in any other labor organization of their employees, by discharging any of their employees or discriminating in any other manner in regard to their hire or tenure of employment, or any terms or conditions of employment.

(b) In any like or related manner interfering with, restraining, or coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, 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.

(3) The Respondent International Hod Carriers', Building & Common Laborers' Union of America, Local 210, AFL, its officers, agents, successors, and assigns, shall cease and desist from:

(a) Causing or attempting to cause any employer to discriminate in any manner against employees (including applicants for employment) in violation of Section 8 (a) (3) of the Act.

(b) Restraining or coercing employees of any employer in the exercise of the rights guaranteed in Section 7 of the Act, 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.

(4) The Respondents Carpenter & Skaer, Inc., and International Hod Carriers', Building & Common Laborers' Union of America, Local 210, AFL, their successors and assigns, shall make George McDonald whole in the manner provided in the section of the Intermediate Report entitled "The remedy."

(5) The Respondents H. F. Stimm, Incorporated, and International Hod Carriers', Building & Common Laborers' Union of America, Local 210, AFL, their successors and assigns, shall make Harold Odell whole in the manner provided in the section of the Intermediate Report entitled "The remedy."

(6) The Respondent International Hod Carriers', Building & Common Laborers' Union of America, Local 210, AFL, its successors and assigns, shall make Robert H. Francisco whole, in the manner provided in the section of the Intermediate Report entitled "The remedy."

(7) The Respondents General Contracting Employers Association; Carpenter & Skaer, Inc.; H. F. Stimm, Incorporated; and International Hod Carriers', Building & Common Laborers' Union of America, Local 210, AFL, shall post immediately in conspicuous places, in all locations where notices are customarily posted, the respective copies of the notices attached hereto, and marked Appendix A for the Association, Appendix B for Carpenter, Appendix C for Stimm, and Appendix D for the Union.[2] Copies of said notices, to be furnished by the Regional Director for the Third Region, shall, after being signed by a duly authorized officer or agent, be posted and maintained by each of said Respondents for a period of sixty (60) consecutive days. Reasonable steps shall be taken by the respective Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(8) Each of said Respondents shall notify the Regional Director of the Third Region in writing within ten (10) days from the date of this Order what steps have been taken to comply herewith.

Appendix A

Notice to All Members of General Contracting Employers Association

Pursuant to a Supplemental Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

[2] In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted before the words "A Supplemental Decision and Order," the words "A Decree of the United States Court of Appeals Enforcing"

WE WILL CEASE performing or giving effect to our contract dated April 30, 1948, with INTERNATIONAL HOD CARRIERS', BUILDING & COMMON LABORERS' UNION OF AMERICA, LOCAL 210, AFL.

WE WILL NOT enter into, renew, or enforce any agreement with INTERNATIONAL HOD CARRIERS', BUILDING & COMMON LABORERS' UNION OF AMERICA, LOCAL 210, AFL, which requires employees of our members to be members of, to join, or maintain their membership in such labor organization, unless and until such agreement has been authorized as provided in the National Labor Relations Act, as amended.

GENERAL CONTRACTING EMPLOYERS ASSOCIATION.

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.

Appendix B

NOTICE TO ALL EMPLOYEES

Pursuant to a Supplemental Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL CEASE performing or giving effect to our contract dated April 30, 1948, with INTERNATIONAL HOD CARRIERS' BUILDING & COMMON LABORERS' UNION OF AMERICA, LOCAL 210, AFL.

WE WILL NOT enter into, renew, or enforce any agreement with said labor organization which requires our employees to be members of, to join, or to maintain membership in such labor organization, unless and until such agreement has been authorized as provided in the National Labor Relations Act, as amended.

WE WILL NOT encourage membership in said labor organization, or in any other labor organization, by discriminatorily discharging any of our employees or discriminating in any other manner in regard to their hire or tenure of employment or any terms or conditions of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act, 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 make George McDonald whole for any loss of pay suffered as a result of the discrimination against him.

All our employees are free to become, remain, or to refrain from becoming or remaining, members in good standing of the above-named union or any other labor organization, except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the Act.

CARPENTER & SKAER, INC.,
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.

Appendix C

NOTICE TO ALL EMPLOYEES

Pursuant to a Supplemental Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL CEASE performing or giving effect to our contract dated April 30, 1948, with INTERNATIONAL HOD CARRIERS' BUILDING & COMMON LABORERS' UNION OF AMERICA, LOCAL 210, AFL.

WE WILL NOT enter into, renew, or enforce any agreement with said labor organization which requires our employees to be members of, to join, or to maintain membership in such labor organization, unless and until such agreement has been authorized as provided in the National Labor Relations Act, as amended.

WE WILL NOT encourage membership in said labor organization, or in any other labor organization, by discriminatorily discharging any of our employees or discriminating in any other manner in regard to their hire or tenure of employment or any terms or conditions of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act, 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 make Harold Odell whole for any loss of pay suffered as a result of the discrimination against him.

All our employees are free to become, to remain, or to refrain from becoming or remaining, members in good standing of the above-named union or any other labor organization, except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the Act.

H. F. STIMM, INCORPORATED,
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.

Appendix D

NOTICE TO ALL OFFICERS, REPRESENTATIVES, AGENTS AND MEMBERS OF INTERNATIONAL HOD CARRIERS' BUILDING & COMMON LABORERS' UNION OF AMERICA, LOCAL 210, AFL.

Pursuant to a Supplemental Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL CEASE performing or giving effect to our contract dated April 30, 1948, with GENERAL CONTRACTING EMPLOYERS ASSOCIATION.

WE WILL NOT enter into, renew, or enforce any agreement with GENERAL CONTRACTING EMPLOYERS ASSOCIATION which requires employees to be members of, to join, or to maintain membership in our organization, unless and until such agreement has been authorized as provided in the National Labor Relations Act, as amended.

WE WILL NOT cause or attempt to cause any employer to discharge or otherwise discriminate against employees in regard to their hire or tenure of employment or any term or condition of employment in violation of Section 8 (a) (3) of the Act.

WE WILL NOT in any manner restrain or coerce employees of any employer in the exercise of the rights guaranteed by Section 7 of the Act, 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 make George McDonald, Harold Odell, and Robert H. Francisco whole for any loss of pay suffered because of the discrimination against them.

INTERNATIONAL HOD CARRIERS', BUILDING & COMMON LABORERS' UNION OF AMERICA, LOCAL 210, AFL.,
Union.

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

Messrs David F. Doyle and *Richard Lipsitz*, for the General Counsel.

Mr. Edward D. Flaherty, of Buffalo, N. Y., for the Respondent, General Contracting Employers Association, Carpenter & Skaer, Inc., and H. F. Stimm, Incorporated.

Mr. Anthony Manguso, of Buffalo, N. Y., for the Respondent Union.

STATEMENT OF THE CASE

Upon charges duly filed by George McDonald, Harold Odell, and Robert Francisco, individuals, the General Counsel of the National Labor Relations Board,[1] on behalf of the Board by the Regional Director for the Third Region (Buffalo, New York) on June 22, 1949, issued complaints against: (1) Carpenter & Skaer, Inc., and General Contracting Employers Association in Case No. 3-CA-86; (2) H. F. Stimm, Incorporated, in Case No. 3-CA-150; and (3) International Hod Carriers', Building & Common Laborers' Union of America, Local 210, AFL, in Cases Nos. 3-CB-21, 3-CB-36 and 3-CB-26; on the same day issued an order consolidating cases; and on July 7, 1949, issued an amended complaint against H. F. Stimm, Incorporated and General Contracting Employers Association in Case No. 3-CA-150; alleging in substance: (a) That the Respondent Employers and Association were engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act; (b) that the Respondent Union was engaging in unfair labor practices within the meaning of Section 8 (b) (1) (A) and (2); and (c) that said unfair labor practices affected commerce within the meaning of Section 2 (6) and (7) of the Act.

With respect to the unfair labor practices, the complaints, as amended, alleged: (1) That the Respondent Employers, Association, and Union in April 1948 entered into and thereafter enforced an illegal contract requiring membership in the Respondent Union as a condition of employment; (2) that in September 1948, employee George McDonald was discharged and for a stated period denied reinstatement by the Respondent Carpenter; (3) that in March 1949, employee Harold Odell was discharged and for a stated period denied reinstatement by the Respondent Stimm; (4) that the Respondent Union caused the Respondent Employers above named to discharge McDonald and Odell, and

[1] The representatives of the General Counsel at the hearing are herein called General Counsel, and the National Labor Relations Board, the Board.

caused Fred Seitz, Inc, also an employer member of the Respondent Association,[2] similarly to discharge employee Robert H. Francisco in November 1948.

Answers were thereafter filed by the Respondents, in which they denied the commission of the unfair labor practices alleged in the complaints.

Pursuant to notice, hearing was held at Buffalo, New York, on July 18, 19, and 20, 1949, before the undersigned duly designated Trial Examiner. The General Counsel and the Respondents were represented by counsel. All participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues. Ruling was reserved upon motions by the Respondents for dismissal of the complaints. Briefs were thereafter received

On November 1, 1949, the Trial Examiner issued an Order granting the motions to dismiss and dismissing the complaints in their entirety, citing *Indianapolis Cleaners & Launderers Club* (85 NLRB 1198) as grounds for such dismissal upon jurisdictional grounds. Thereafter General Counsel filed a request for review of the Trial Examiner's order. On June 19, 1950, the Board issued an Order Dismissing Certain Complaints[3] and Order Remanding Proceeding to Trial Examiner, in which it determined to assert jurisdiction over the Respondent Association and its member respondents, citing *Indianapolis Cleaners and Launderers Club*, 87 NLRB 472, reversing 85 NLRB 1198. The order remanding the cases provided for the preparation and issuance of an Intermediate Report, setting forth findings of fact, conclusions of law, and recommendations with respect to the unfair labor practices alleged in the complaints.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT ASSOCIATION AND ITS MEMBERS

The Association, of Buffalo, New York, is an organization comprised of 42 general contractors and 80 subcontractors engaged in the building-construction industry in Erie County, New York Since 1936, the Association, in behalf of its employer-members, has negotiated and signed collective bargaining contracts with the Respondent Union covering laborers, the classification of employees involved in this proceeding During the year 1948, 90 per cent of all the industrial and commercial construction in Erie County was performed by members of the Association. The volume of such construction amounted to approximately $20,000,000, of which amount approximately $2,000,000 represented purchases of materials received from outside the State of New York. A substantial number of construction jobs were performed by members of the Association for firms engaged in interstate commerce, within the meaning of the Act.

Carpenter & Skaer, Inc ; H F. Stimm, Incorporated; and Fred Seitz, Inc., are employer members of the Association.

II THE LABOR ORGANIZATION INVOLVED

International Hod Carriers', Building & Common Laborers' Union of America, Local 210, AFL, is a labor organization admitting to membership employees of the Respondent Employers and of Fred Seitz, Inc.

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[2] No complaint was issued against this employer

[3] Cases Nos. 3-CA-152, 3-CB-37, 3-CA-172, and 3-CB-45, originally consolidated with the cases here involved.

III. THE UNFAIR LABOR PRACTICES

A. *The setting and issues*

On April 30, 1948, there was executed a collective bargaining agreement between the Respondent Union and the Respondent Association, as to the latter on behalf of its employer members, which contained, among others, the following provision:

> 3. The Employer shall have an optional right to hire men, either direct or through the representative of the Union, *provided such men are members of the union.* [Emphasis supplied.]

The agreement was to be effective "until May 1, 1949 and thereafter from year to year unless it shall have been changed or amended . . ." At the hearing the Association conceded that "the entire contract is in effect and has been from May 1, 1948." Although it appears that at the time of the hearing in July 1949, the parties were engaged in negotiating terms of a new agreement, there is no convincing evidence refuting the concession of the Respondent Association It is found that at all times material herein the aforesaid agreement has been in full force and effect.

Three separate discharges are involved: Of McDonald by the Respondent Carpenter, of Odell by the Respondent Stimm, and of Francisco by Fred Seitz, Inc., all employers who were members of the Association The major issue is whether or not these discharges were made upon demand of the Respondent Union and pursuant to the provisions of the agreement

B. *The discharge of George McDonald*

When McDonald was hired by the Respondent Carpenter on September 3, 1948, he was asked by Richard T Carpenter, treasurer of the company, if he was a member of the Union, and upon giving a negative reply was told to "get straightened out with the union." McDonald went to the union headquarters in an effort to join, but was told by a union officer, John Termini, that he could do nothing for him McDonald then went to the Board's Regional Office, someone there called Carpenter, and the following day the employee was put to work. A few days later Michael Rossiter, president of the Union, came to the office of the Respondent Carpenter and asked Townsend Carpenter, president, what he was going to do about McDonald Carpenter replied that he had been directed by the Regional Office to "put him on" Rossiter made it clear that McDonald must be discharged. On September 13, when work on the job became slack, McDonald was laid off. The testimony of Townsend Carpenter establishes that absent pressure from the Union, McDonald would have been transferred to another job, and not discharged, on September 13

On October 7 McDonald was reinstated by the Respondent Carpenter. General Counsel concedes that the employee was not refused reinstatement after that date, and that any order for back pay should run only from September 13 to October 7, 1948

The preponderance of evidence establishes that McDonald was discharged on September 13 because of the pressure put upon the company by the Respondent Union, that pressure was applied by the Union because McDonald was not a member, and that the Union refused to permit McDonald to join The discriminatory action was pursuant to and the result of the illegal provisions in the above-described contract.

C *The discharge of Harold Odell*

When Harold Odell was hired by the Respondent Stimm on March 23, 1949, he was asked by Field Superintendent Kolkman if he was a member of the "Hodcarriers local." Odell replied that he was, and went to work. Later the same morning he was approached by Angelo Abramo, a union steward, who asked for his union "book" Odell displayed a card from another local. Abramo called the union headquarters, returned to the employee and told him "they wouldn't allow" him "to work" Odell went to Kolkman, who said he could do nothing about it. He went to his foreman, William Clabeaux, who gave him a similar answer and added that if he were allowed to work the Union "would tie the job up." The employee proceeded to the union hall, saw John Termini, previously identified as a union official, and tried either to transfer his membership to Local 210 or to join it Termini refused both alternatives. Odell then went to the Regional Office of the Board

Odell was offered reinstatement by the employer on March 30, worked for a time, and quit voluntarily General Counsel claims only that Odell should be made whole for the period from March 23 to March 30, the week during which he was denied employment.

The preponderance of evidence establishes that Odell was refused membership in the Respondent Union, that the Union demanded his discharge pursuant to the illegal contract, and that pursuant to the contract and the union demand the Respondent Stimm discriminatorily discharged him

D. *The discharge of Robert H Francisco*

Francisco was hired by Fred Seitz about October 1, 1948· On November 18 he was approached by the union steward, Joseph Puglisi, and asked if he belonged to the Union Francisco replied in the negative A few minutes later Puglisi returned and brought him to Seitz' office In the office Francisco was interviewed by Ian Hudson, son of Leslie Hudson, associated with Seitz on the construction job Leslie Hudson came in during the discussion with Puglisi, was informed that Francisco was not a member of the Union, and according to his own testimony promptly said: "Fire him and get him out of here" Francisco was further told, however, that he could come back if he could "get into the union."

Francisco went to the union hall, but was told by Termini that he "couldn't belong"

He was rehired by Seitz on December 21, 1948. On January 19, 1949, Seitz, Francisco, and the Regional Director executed a settlement agreement in Case No. 3–CA–104, by terms of which, among other things, the employer agreed to make Francisco whole for "its proportionate share of the amount necessary."

The preponderance of evidence established that Francisco was denied membership in the Union, and that the Respondent Union caused employer Seitz to discharge him pursuant to the illegal contract.

E. *Conclusions*

The closed-shop provision of the contract existing between the Respondents is proscribed by the Act, and is plainly illegal. By entering into it, by enforcing it, and by discharging employees pursuant to its illegal provisions, as set out above, the Respondents Association, Carpenter, and Stimm engaged in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act. By entering into it, by enforcing it, and by causing employers to discriminate

against employees in violation of Section 8 (a) (3) of the Act, as described above, the Respondent Union engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) and (2) of the Act.[4]

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 Respondent Employers 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 contract of April 30, 1948, between the Respondents contains illegal provisions, the Trial Examiner will recommend that the Respondents cease and desist from giving effect to the entire contract,[5] and from entering into, renewing, or enforcing any agreement which requires membership in the Respondent Union as a condition of employment, unless such agreement is authorized as provided by the Act.[6]

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

It has been found: (1) That from September 13 to October 7, 1948, the Respondent Carpenter discriminated against George McDonald as to his hire and tenure of employment; (2) that from March 23 to March 30, 1949, the Respondent Stimm likewise discriminated against Harold Odell; (3) that from November 18 to December 21, 1948, Employer Seitz likewise discriminated against Robert H. Francisco; (4) that such conduct by employers encourage membership in the Respondent Union and interfered with, restrained, and coerced employees in the exercise of rights guaranteed by Section 7 of the Act; and (5) that the Respondent Union engaged in unfair labor practices by causing the above-named employers thus to discriminate, thereby restraining employees in the exercise of rights guaranteed by the Act. Since it appears that each of the three employees were reinstated to their respective positions, it will not be recommended that reinstatement now be offered to them.

Having found that the Respondents were jointly responsible for the discrimination in hire and tenure of employment, the Trial Examiner will recommend that: (1) The Respondents Carpenter and the Union jointly and severally make George McDonald whole; (2) the Respondents Stimm and the Union jointly and severally make Harold Odell whole; and (3) that the Respondent Union make Robert H. Francisco whole; for any loss of pay they may have suffered by reason of the discrimination against them by payment to each of them of a sum of money equal to the amount he would normally have earned as wages during the period of discrimination against him, less his net earnings during this period.[7]

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[4] *Pacific Maritime Association,* 89 NLRB 894, *Clara-Val Packing Company,* 87 NLRB 703.

[5] Nothing in these recommendations shall be deemed to require the Respondents to vary or abandon any substantive provision of such agreement, or to prejudice the assertion by employees of any rights they may have acquired thereunder.

[6] *Pacific Maritime Association,* 89 NLRB 894.

[7] As noted above, in the case of Francisco, it appears that the employer has, by terms of a settlement agreement, made the employee whole for its proportionate share of back pay.

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

CONCLUSIONS OF LAW

1. International Hod Carriers', Building & Common Laborers' Union of America, Local 210, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By executing and enforcing the contract of April 30, 1948, the Respondents, General Contracting Employers Association, Carpenter & Skaer, Inc., and H F. Stimm, Incorporated, have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

3. By discriminating in regard to the hire and tenure of employment, thereby encouraging membership in the Respondent Union, of George McDonald and Harold Odell, respectively, the Respondents Carpenter and Stimm have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

4. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed in Section 7 of the Act, the Respondents Association, Carpenter and Stimm, have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

5. By causing the Respondents, Carpenter and Stimm, and employer Seitz to discriminate against employees in violation of Section 8 (a) (3) of the Act, the Respondent Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (2) of the Act.

6. By restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent Union has engaged in and is engaging in unfair labor practices within the meaning of Section (b) (1) (A) of the Act.

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

[Recommended Order omitted from publication in this volume.]

PURITY STORES, LTD. *and* WAREHOUSE UNION, LOCAL NO. 12, AFL, PETITIONER

R. C. PELL, AN INDIVIDUAL D/B/A PELICAN PAPER COMPANY *and* WAREHOUSE UNION, LOCAL NO. 12, AFL, PETITIONER

FRANK A. SMITH, RICHARD E. LOVE, AND ELLEN J. SMITH, A PARTNERSHIP, D/B/A SMITH, LYNDEN AND COMPANY *and* WAREHOUSE UNION, LOCAL NO. 12, AFL, PETITIONER. *Cases Nos. 20-RC-965, 20-RC-1011, and 20-RC-1012. February 12, 1951*

Decision and Order

Upon separate petitions duly filed under Section 9 (c) of the National Labor Relations Act, a consolidated hearing was held before Benjamin B. Law, hearing officer. The hearing officer's rulings made