

and assistant foremen, and all other supervisors as defined in the Act, constitute, and at all times material herein did constitute, a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. United Electrical, Radio and Machine Workers of America was on April 21, 1950, and at all times thereafter has been, the exclusive representative of all Respondent's employees in said unit for the purpose of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing to bargain collectively with United Electrical, Radio and Machine Workers of America as exclusive representative of its employees in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (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, Respondent has engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

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

Respondent did not engage in unfair labor practices by discharging Laura Atkinson and Earl Oslie.

[Recommended Order omitted from publication in this volume.]

MISSION OIL COMPANY, HARRY C. LONG, AN INDIVIDUAL, PADRE OIL COMPANY, AND REAL OIL COMPANY and OIL WORKERS INTERNATIONAL UNION, CIO. *Case No. 20-CA-325. April 5, 1951*

Decision and Order

On November 29, 1950, Trial Examiner Howard Myers, 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 Respondents filed exceptions to the Intermediate Report, and a supporting brief.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Reynolds, and Styles].

The Board has reviewed the rulings made by the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions, the Respondents' brief, and the entire record in the case, and for the reasons hereinafter set forth finds merit in the Respondents' exceptions.

1. The Trial Examiner found that the Respondents discharged and refused to reinstate Robert W. Loveless, Jr., because of his union membership and activities, and more particularly because he testified

unfavorably to the Respondents in a prior proceeding before the Board,¹ and that they thereby violated Section 8 (a) (3), (4), and (1) of the Act. We do not agree.

We do not believe that the General Council has established by the preponderance of the evidence that Loveless was discharged for union membership and activities, or for testifying in the prior Board proceeding.²

There is uncontradicted evidence in the record not mentioned in the Intermediate Report, of the following instances of misconduct by Loveless:

Superintendent Wickliffe, in the spring of 1949, reprimanded Loveless for neglecting to check the heat of the polish rods on one of the Respondents' wells. Loveless reacted to the reprimand in a rude and insubordinate fashion. In the summer of 1949, according to the testimony of Long, Loveless fell asleep at the wheel while driving and damaged a truck of the Respondents. Again, in October 1949, a few weeks prior to his discharge, according to his own testimony, Loveless, without authority, took a company truck during duty hours to visit a duck pond. He became mired in a mud hole, necessitating aid to extricate himself and causing inconvenience to the Respondents.

In addition, as found by the Trial Examiner, Loveless admitted that he had on several occasions visited the properties of other oil companies during working hours and there is no dispute in the record that at least one of these visits, in the spring or early summer of 1949, was unauthorized.³

The Trial Examiner found that Long showed his displeasure with Loveless' testimony at the earlier hearing by stating on the witness stand that "I had nothing to do with Mr. Loveless at all, after they went to that hearing and said I coerced against them." We are unable to agree that this statement, read in its proper context, indicates that Long was displeased because Loveless testified unfavorably to the Respondents at the earlier hearing. As we construe it, Long's statement was intended merely to identify the hearing to which he had reference and not to indicate displeasure because Loveless testified to "coercion" by the Respondents.

The Examiner also found that after his discharge by the Respondents, Loveless, through Wickliffe, found employment with another

¹ *Mission Oil Company*, 88 NLRB 743

² The record shows that at the hearing in that case, which took place on October 11, 1949, Loveless testified to interrogation by the Respondents concerning union activities.

³ Contrary to the statement in the Intermediate Report, the record does not clearly show that employees other than Loveless frequented the oil fields of nearby companies. There is in the record no evidence of such visiting except for a general statement of witness Dienenbrock that oil field employees were in the habit of visiting each other.

The Examiner found that both Long and Wickliffe admitted that they did not reprimand Loveless for absences from work during duty hours. The record shows, however, that both testified that they reprimanded Loveless for leaving his job during duty hours.

employer as a pumper, the same position he had held with the Respondents. The only evidence in the record on this point, however, is to the effect that Wickliffe hired him for the other employer as a roustabout or watchman, positions involving less responsibility than the work of a pumper.

Finally, the Examiner found, on conflicting evidence, that the incident alleged by the Respondents as the precipitating cause of Loveless' discharge—namely, Wickliffe's finding him asleep on the job on October 26, 1949—did not in fact occur. Accepting the Examiner's finding on this point, we are left with a record which shows merely that Loveless, who was proved to be an unsatisfactory employee, was discharged about 2 weeks after he testified in the prior Board proceeding.⁴ Absent any evidence in this record that Loveless was otherwise active on behalf of the Union and that the Respondents engaged in any antiunion conduct subsequent to the events found in the prior proceeding, we are not convinced that a preponderance of the evidence warrants a finding that Loveless was discharged because he testified in the Board proceeding or because of his union membership and activities.

Order

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint issued herein against the Respondents, Mission Oil Company, Harry C. Long, an individual, Padre Oil Company, and Real Oil Company, be, and it hereby is, dismissed.

Intermediate Report

Benjamin B. Law, Esq., for the General Counsel.

Messrs. Orris R. Hedges and Delbert C. Thomas, for the Respondents.

Homer Coffman, Esq., for the Union.

STATEMENT OF THE CASE

Upon an amended charge duly filed on January 3, 1950, by Oil Workers International Union, affiliated with the Congress of Industrial Organizations, herein called the Union, the General Counsel of the National Labor Relations Board, referred to herein, respectively, as the General Counsel and the Board, by the Regional Director for the Twentieth Region (San Francisco, California), issued his complaint on August 31, 1950, alleging that Mission Oil Company, Harry C. Long, Padre Oil Company, and Real Oil Company of Raisin City Field at Kerman, California, collectively referred to herein as the Respondents, had engaged in and were engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (a) (1), (3), and (4) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act.

⁴Two other employees who also testified in the prior proceeding adversely to the Respondents, were not discharged.

Copies of the complaint, the amended charge, together with notice of hearing thereon, were duly served upon each Respondent and upon the Union.

With respect to the unfair labor practices, the complaint alleged, in substance, that each of the Respondents discharged Robert W. Loveless, Jr., on October 27, 1949, and have at all times thereafter failed and refused to reinstate him because of his membership and activity in and on behalf of the Union, and because he testified on October 11, 1949, at the hearing before a Trial Examiner of the Board in *Mission Oil Company, et al*, and *Oil Workers International Union, CIO*, Cases Nos. 20-CA-214, 258, 259 and 260.

On September 11, 1950, the Respondents filed a joint answer admitting certain allegations of the complaint with respect to the nature and extent of their respective businesses, but denying the commission of the alleged unfair labor practices.

Pursuant to notice, a hearing was held in Fresno, California, on October 10 and 11, 1950, before Howard Myers,¹ the duly designated Trial Examiner. The Respondents and the General Counsel were represented by counsel; the Union by a representative thereof. All parties participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues.

At the conclusion of the General Counsel's case-in-chief, the Respondents' motions to dismiss the complaint in its entirety or, in the alternative, certain portions thereof, were denied. At the conclusion of the taking of the evidence, the General Counsel's motion to conform the pleadings to the proof with respect to minor variances, but not to include any new unfair labor practices, was granted without objection. Counsel for the Respondents then renewed the motions to dismiss the complaint made by him at the conclusion of the General Counsel's case-in-chief. Decision thereon was reserved. The motions are hereby denied. The General Counsel then argued orally. Counsel for the Respondents waived oral argument. The parties were then advised that they might file with the undersigned briefs or proposed findings of fact and conclusions of law, or both, on or before October 26.² A brief has been received from the Respondents' counsel which has been carefully considered by the undersigned.

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

FINDINGS OF FACT

I. THE BUSINESSES OF THE RESPONDENTS

Mission Oil Company, herein called Mission, is, and at all times material herein has been, a California corporation with its principal offices in Los Angeles, California, and is and has been engaged in the production, manufacture, transportation, sale, and distribution of crude oil. It owns and operates wells producing crude oil in the Raisin City Field located at Kerman, California.

Mission annually produces crude oil valued at more than \$100,000 and sells such oil within the State of California to the Shell Oil Company, the Union Oil Company, and to the Standard Oil Company of California. The said three named companies are engaged, as the Board has on numerous occasions found, in interstate commerce within the meaning of the Act. Each of the said companies refines the said crude oil sold to each of them by Mission and intermingles it with their other refined petroleum products which are sold and

¹ Erroneously referred to in the stenographic transcript of the hearing as Harold Myers.

² Upon request of counsel for the Respondents the time was extended to November 6, 1950.

delivered in interstate commerce in various States of the United States. In the course and conduct of its business, Mission annually purchases tools, gasoline, supplies, and equipment valued at approximately \$5,000, of which 50 percent originate outside the State of California.

Harry C. Long, herein called Long, is, and during all times material herein has been, engaged in the production, manufacture, transportation, sale, and distribution of crude oil. Long has his principal offices in Los Angeles, California, and owns and operates wells in the Raisin City Field located at Kerman, California, which annually produce crude oil valued at more than \$10,000. Long sells such crude oil to Shell Oil Company, Union Oil Company, and Standard Oil Company of California, which refines it and intermingles it with other refined petroleum products which are sold and delivered in interstate commerce in various States of the United States. In the course and conduct of his business, Long purchases tools, gasoline, supplies, and equipment valued in excess of \$5,000, of which more than 50 percent originate outside the State of California.

Real Oil Company, herein called Real, is, and during all times material herein has been, a California corporation with its principal offices in Los Angeles, California, and is and has been engaged in the production, manufacture, transportation, sale, and distribution of crude oil. It owns and operates wells producing crude oil in the Raisin City Field located at Kerman, California.

Real annually produces crude oil in excess of \$10,000 which it sells to Shell Oil Company, Union Oil Company, and Standard Oil Company of California. The said three companies refine the crude oil sold to them by Real and intermingle it with their other refined petroleum products which are sold and delivered in interstate commerce in various States of the United States. In the course and conduct of its business, Real annually purchases tools, gasoline, supplies, and equipment valued at approximately \$5,000, of which more than 50 percent originate outside the State of California.

Padre Oil Company, herein called Padre, is, and at all times material herein has been, a California corporation with its principal offices in Los Angeles, California, and is and has been engaged in the production, manufacture, transportation, sale, and distribution of crude oil. It owns and operates wells producing crude oil in the Raisin City Field located at Kerman, California.

Padre annually produces crude oil valued at more than \$50,000 which it sells to Shell Oil Company, Union Oil Company, and Standard Oil Company of California. The three named companies refine the crude oil sold to them by Padre and intermingle it with their other refined petroleum products which are sold and delivered in interstate commerce in various States of the United States. In the course and conduct of its business, Padre annually purchases tools, gasoline, supplies, and equipment valued in excess of \$20,000, of which more than 50 percent originate outside the State of California.

The four named Respondents annually jointly produce and sell to Shell Oil Company, Union Oil Company and Standard Oil Company of California crude oil valued at more than \$500,000.

Each Respondent concedes, and the undersigned finds, it, or he, is, and during all times material herein has been, engaged in commerce, within the meaning of the Act.³

II. THE ORGANIZATION INVOLVED

Oil Workers International Union, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of each Respondent.

³ In *Mission Oil Company, et al*, 88 NLRB 743, decided February 24, 1950, the Board found that each Respondent herein was subject to its jurisdiction.

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion; the discharge of Loveless*

This case involves the very narrow issue whether the Respondents⁴ on October 27, 1949, discharged Robert W. Loveless, Jr., because of his membership and activity in behalf of the Union, and because he gave testimony in a former Board proceeding to which each of the Respondents herein was a party or whether Loveless was discharged because, as maintained by the Respondents, "of his continuous neglect to conduct himself in a workmanlike manner while on duty in the scope and course of his employment which negligent conduct was of such a nature as to jeopardize the safety of property and other interests of Respondents."

Loveless was first employed by the Respondents on or about October 24, 1947, and worked continuously for them until his discharge on October 27, 1949, first as a roustabout and then as a pumper. Long testified, and the undersigned finds, that he promoted Loveless to a pumper, after the latter had been employed for a few months, because it was a better job and a better paying job.

On October 11, 1949, Loveless testified as a witness for the General Counsel in a proceeding before the Board entitled, *Mission Oil Company, et al. and Oil Workers International Union, CIO*, Cases Nos. 20-CA-214, 258, 259, 260. The complaint in that case alleged, among other things, that, in violation of Section 8 (a) (3) of the Act, the Respondents had discharged four named employees in March 1949, because of their union and concerted activities; had violated Section 8 (a) (5) of the Act by refusing to bargain collectively with the Union although the Union had been selected and designated the collective bargaining representative by their employees in a certain appropriate unit; and had violated Section 8 (a) (1) of the Act by engaging in certain stated conduct and acts constituting interference, restraint, and coercion.

The Respondents defaulted at the aforesaid hearing, but purchased a copy of the stenographic transcript of the hearing from the official reporter on October 24, 1950.

In the course of his testimony in the aforesaid proceeding⁵ Loveless related the conversation he had with Long, summarized in the Board's findings

⁴ In the prior proceeding, referred to above, the Board found the Respondents were jointly and severally answerable for the commission of the unfair labor practices found therein. The facts herein unmistakably show, as the Board found in the said prior proceeding, "that although the employees, or some of them, were paid by Mission checks, they were hired by Respondent Long, or his agent, were subject to his orders and directions, and worked at the operations of each pursuant to his directions . . . Long is president of each of the respondents and generally controls and directs the operations of each in the Raisin City Field. In any event, it is clear that Respondent Long acted in a managerial capacity on behalf of each of the respondents in matters affecting personnel, including the hiring and discharging of employees. His actions and conduct in his said managerial capacity are therefore binding on each of the respondents."

Admittedly, Padre, Real and Long have no employees of their own and whatever work that is done at their respective oil fields is performed by Mission employees at Long's behest. Mission either advances the employees' wages for the work performed at Padre's, Real's, or Long's fields or they are paid direct by the party for whom they are performing work.

⁵ At the hearing herein, and in his brief, counsel for the Respondents contended that neither the undersigned nor the Board may take judicial or official notice of the Board's decision and order in the prior case. The contention is without merit. An administrative agency, like a court, "has a right to examine its own records and take judicial notice thereof in regard to proceedings formerly had therein by one of the parties to the proceedings now before it." *Dimmock v. Tompkins*, 194 U. S. 540, 548; *Freshman v. Atkins*, 269 U. S. 121; *National Fire Insurance Company v. Thompson*, 281 U. S. 331; *Bienville*

in the prior case, as tending to show the Respondents' discriminatory treatment of one of the four persons discharged in March 1949, and what might befall Loveless if he did not forsake the Union.

Superintendent Wickliffe testified that at about 9:30 in the evening of October 26, 1949, he and James King, a friend of the former, drove to the Respondents' oil field in order to inspect the wells; that when he reached the doghouse, a little shack where the men change clothes, lounge about and write their daily reports, the following ensued:

I got out of the car, went to the doghouse and opened the door; and I let the door slam very hard because when he (Loveless) wasn't in the doghouse I knew where he was. But I let the door slam very hard to the doghouse. I thought perhaps it would wake him up. I went around and went to the door on the driver's side and shook the car.

Before I get to that—I will lead up to it—he had his head lying right on the seat, his mouth wide open, his eyes were closed. I shook the car a couple of times before he woke up. He lowered the window and I asked him how everything was going. I didn't reprimand him at that time. I didn't think it would do any good anyhow. He was only about half awake.

Wickliffe further testified that after Loveless informed him that everything was in order, he drove away; that the following day, he looked up Loveless, who was in town, and that the following conversation then took place between him and Loveless:

I said, "Junior, you know I found you asleep in the pickup last night."

He said, "Yes." [I said]

"I'm going to have to let you go. You know that is against the policy of the company, particularly to sleep at that time of day" . . .⁴

"A man should get also enough sleep at home without having to sleep on afternoon tour."

He said, "Well, I guess you just want to let me go anyhow."

I said, "No, that is against my religion." That I didn't like to let anybody go without a good reason.

Those are the very words I told him.

He said, "Well, O. K."

Wickliffe further testified that before informing Loveless of his discharge, he spoke to Long who "more or less" instructed him to discharge Loveless.

On cross-examination, Wickliffe testified that he did not discuss the Loveless sleeping incident of October 26, with King while the two were driving back to town that evening; that the decision to discharge Loveless "was more or less up to both" him and Long, with the former making the final decision; that Long did not "exactly" tell him to discharge Loveless; and that after he had decided to discharge Loveless he informed Long of his plan.

Water Supply Co. v. Mobile, 186 U. S. 212; *Administrative Procedure in Government Agencies*, Report of the Committee on Administrative Procedure appointed by the Attorney General, Senate Document No. 8, 77th Cong. 1st Session P. 71, 399-400. And this is particularly so because the matters which the undersigned is taking notice, namely Respondents' attitude of hostility to the Union, as evidenced by their prior acts of interference, restraint, coercion and discrimination, are all relevant to the issues involved in the instant case.

⁴ Long testified that the Respondents did not care particularly if the men slept while on the night shift (11:30 p. m. to 7 a. m.), but they were extremely perturbed when they found any employee asleep on any other shift. In fact, Long, Wickliffe, and other witnesses for the Respondents testified that no employee was ever reprimanded when found asleep on the night shift.

However, when confronted with the affidavit given to a field examiner of the Board, sworn to December 19, 1949, wherein he stated in part, "I personally and exclusively made the decision to discharge R. W. Loveless, Jr. the night of October 26, 1949. I did not consult or confer or receive any instructions or advice on the matter from Harry C. Long or anyone else," Wickliffe testified that he "may have" or "did call" Long on the telephone regarding the incident but added that he could not recall "what he did tell me"; that he thought the statement in the aforesaid affidavit that after leaving Loveless on the evening of October 26, he "then got back into my car and drove away with Ed King. Both King and I said to each other that it was damn funny that a man who had all morning and evening to sleep should sleep in the evening on the job. King said to me that he definitely saw Junior asleep in the pickup, that it was an awfully strange position to be in if he was not asleep," was correct and that his previous testimony to the effect that he had not spoken to King on their way back to town regarding Loveless was incorrect.

King testified on direct examination that he drove to the Respondents' oil fields with Wickliffe on the evening of October 26; that upon arriving there, Wickliffe got out of the car, went to the doghouse and upon seeing no one therein, walked toward the parked pickup truck; and that he did not notice Loveless in the truck prior to the time that Wickliffe "took hold of the door handle. Then I saw Junior in the truck. Now, whether he was laying down or not, I couldn't say"; and that when he saw Loveless, the latter was sitting in an upright position.

On cross-examination by the General Counsel, King testified that Wickliffe and Loveless conversed together about 3 to 5 minutes; that throughout the entire incident he remained in Wickliffe's car which was parked about 30 feet from the pickup truck; and that on the way back to town that evening neither he nor Wickliffe discussed the Loveless incident, but confined their conversation to other matters.

Long testified that Wickliffe gives him a daily report by telephone every morning at about 7:30; that on October 27, Wickliffe included in his report that he had found Loveless asleep the previous evening while on duty; that he thereupon said to Wickliffe:

We just can't continue to put up with this. I've talked to Junior's father.⁷ I've done about everything. We have caught him asleep. He is not taking care of his job. He gets out a mile away from our lease, from the nearest well with the company car and gets stuck in the mud. We have to send trouble men out there on company time to pull him out. We just can't continue to put up with that.

So I told Mr. Wickliffe, "I will call Mr. Hedges⁸ and see, so we will know what the Union should do about it. We will let them know what we are going to do."

Long then testified as follows:

Q. Did you call me [Hedges] that day?

A. I called you on the 27th. I imagine it was about ten or eleven in the morning. I told Mr. Wickliffe not to do a thing until I talked to you. And I talked to you and I explained just exactly what happened at the period and you said, "Well, you cannot put up with it," so I called Mr. Wickliffe back and told him that we were just going to have to let him [Loveless] go."

⁷ Loveless' father had been in the Respondents' employ for a good many years prior to his death which occurred about 2 weeks before the opening of the hearing herein.

⁸ Respondents' counsel.

Loveless denied that he was asleep the evening of October 26. He further denied the various and sundry charges made about the unworkmanlike manner in which he performed his duties while employed by the Respondents about which Long, Wickliffe, and other Respondents' witnesses testified. Loveless emphatically denied that any managerial official of the Respondents ever found him asleep while on duty.

Loveless admitted that he occasionally visited the employees of the oil companies whose properties are adjacent to the Respondents', but those occasions were many months prior to his discharge. Although testifying that Loveless was away from his place of work on numerous occasions, both Long and Wickliffe admitted that neither of them reprimanded Loveless for this infraction nor thought to discharge him for so doing. While complaining about Loveless' poor workmanship, Long admitted that Wickliffe hired Loveless as a pumper or roustabout for a concern for whom Wickliffe was also superintendent. Moreover, the record clearly shows that other employees, while on duty, with the knowledge of the Respondents, frequented the oil fields of the nearby companies.

Loveless impressed the undersigned as a forthright and honest witness. Neither Long nor Wickliffe so impressed the undersigned. Not only do their testimonies conflict, with respect to material matters, with each other, but the testimony of each is replete with self-contradictory statements. Under the circumstances, the undersigned finds Loveless' account of what took place on the evening of October 26, 1949, to be substantially in accord with the facts. The undersigned also finds that Loveless was not asleep while on duty on October 26.

Upon the entire record in the instant case the undersigned is convinced, and finds, that Loveless was discharged by the Respondents on October 27, 1949, because of his union membership and activities and because he testified adversely to the Respondents shortly before his discharge in violation of Section 8 (a) (3) and (4) of the Act, thereby violating Section 8 (a) (1) thereof.

As found above, Loveless testified on October 11, and was discharged on October 27. Viewed against the antiunion background of the Respondents, as found by the Board in the prior proceeding, his discharge within 16 days after testifying and within 6 months of the discriminatory discharges of four other employees becomes more than a mere coincidence. This finding is buttressed by the undenied and credible testimony of Loveless that on October 10, 1949, in response to his request for permission to attend the hearing in the prior proceedings, Wickliffe said, to quote Loveless, "I would be better off to leave it alone." Moreover, Long clearly showed that he was displeased because Loveless testified adversely to the Respondents when Long admitted on the witness stand that he "had nothing to do with Mr. Loveless at all after they went to that hearing and said I coerced against them."

The Respondents offered certain testimony to the effect that Loveless did not attend to his duties in a proper manner, that while on duty he left the grounds of the Respondents without permission, and that he fell asleep while driving a truck and damaged it. It would serve no useful purpose to discuss here at length the conflicts in testimony with respect to these incidents for, on consideration of the entire testimony, the undersigned is convinced that these matters were adduced by the Respondents at the hearing for the sole purpose of beclouding the issues and constituted no actual motivating cause in the Respondents' decision to discharge Loveless.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondents, and each of them, set forth in Section III above, occurring in connection with the operations of the Respondents 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 each of the Respondents has engaged in unfair labor practices, the undersigned will recommend that each of them cease and desist therefrom and take certain affirmative action which the undersigned finds is required to effectuate the policies of the Act.

Having found that each Respondent has discriminated in regard to the hire and tenure of employment of Robert W. Loveless, Jr., by discharging him on October 27, 1949, because of his union and concerted activities, it will be recommended that each Respondent offer him immediate and full reinstatement to his former or substantially equivalent position⁹ without prejudice to his seniority and other rights and privileges and make him whole for any loss of pay he may have suffered by reason of the Respondents' discrimination against him, by payment to him of a sum of money equal to the amount he normally would have earned as wages from the date of his discharge to the date of the Respondents' offer of reinstatement, less his net earnings during the said period.¹⁰ Loss of pay shall be paid in accordance with the formula enunciated in *F. W. Woolworth*, 90 NLRB 289.

Having found that the Respondents, and each of them, interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act, by discriminating in regard to the hire and tenure of employment of Robert W. Loveless, Jr., because of his union affiliation and activities and because he gave testimony in a prior proceeding under the Act, it will be recommended that the Respondents, and each of them, cease and desist from in any manner interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed them by the Act.¹¹

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

CONCLUSIONS OF LAW

1. Oil Workers International Union, affiliated with the Congress of Industrial Organizations, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Robert W. Loveless, Jr., thereby discouraging membership in a labor organization, the Respondents have engaged in, and are engaging in, unfair labor practices, within the meaning of Section 8 (a) (3) of the Act.

3. By discharging and otherwise discriminating against Robert W. Loveless, Jr., because he had given testimony under the Act the Respondents have engaged in unfair labor practices, within the meaning of Section 8 (a) (4) of the Act.

4. By interfering with, restraining, and coercing their 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 (a) (1) of the Act.

5. 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.]

⁹ *The Chase National Bank of the City of New York, San Juan, Puerto Rico Branch*, 65 NLRB 827.

¹⁰ *Crossett Lumber Co.*, 8 NLRB 440.

¹¹ *May Department Stores*, 326 U. S. 376.