

We find that a question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. In accordance with the agreement of the parties, we find that all persons employed by the Employer as guards, and patrolmen at waterfront installations, docks, piers, terminals, warehouses, and aboard vessels, but excluding all others including office employees, professional employees, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

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

CHAIRMAN HERZOG, dissenting:

I cannot agree with my colleagues that the recognition clause of the contract in question is ambiguous, and has been construed by the parties to require membership in the Intervenor as a condition of employment. Therefore I would find the contract a bar to an election during its term. It seems clear to me that the clause in question does not, under any interpretation, make membership in the Intervenor a condition of employment. Indeed, it does not even, as the majority says, allow the Intervenor to interview candidates before they are hired. It merely allows the Intervenor to object to persons hired if for some reason they are not satisfactory to that labor organization. Nothing in the contract requires or permits the Intervenor to object to any employee because of his union or nonunion status. If the parties are, as a matter of practice, requiring membership in the Intervenor as a condition of employment, that practice appears to me to be entirely outside the contract. It could be more appropriately dealt with under the unfair labor practice provisions of the Act where, in an adversary proceeding, the legality of the contract could be more fully litigated and more adequately judged.

QUEEN CITY VALVES, INC. *and* DISTRICT 34, INTERNATIONAL ASSOCIATION OF MACHINISTS. *Case No. 9-CA-327. April 19, 1951*

Decision and Order

On January 25, 1951, Trial Examiner Bertram G. Eadie issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent and the

General Counsel filed exceptions to the Intermediate Report and supporting briefs.

The Board¹ 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 Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings,² conclusions, and recommendations of the Trial Examiner, with the modifications and additions noted below.

1. We agree with the Trial Examiner that the conduct of the Respondent, fully set forth in the Intermediate Report, was violative of Section 8 (a) (1) of the Act. In so concluding, however, we do not adopt the Trial Examiner's finding that Joseph, the Respondent's secretary-treasurer, in his speech to the employees on May 18, 1950, impliedly promised benefits "only in the event the employees renounced the Union." The record, in our opinion, fails to support a determination that such a condition was attached to the promises. However, even absent that condition, it is clear, and we find, that these promises, made shortly before the consent election of May 22, 1950, and under the circumstances detailed in the Intermediate Report, were calculated directly to affect the decision of the employees on the issue of union representation, and were therefore unlawful.³

2. The General Counsel excepted to the Trial Examiner's failure to particularize, in his recommended order and notice, the types of conduct found violative of Section 8 (a) (1). We find merit in the General Counsel's exception. In order more fully to effectuate the purposes of the Act, we shall order the Respondent to cease and desist from the particular conduct found unlawful herein, and any other conduct interfering with, restraining, or coercing its employees in the exercise of rights guaranteed by Section 7 of the Act, and shall direct the posting of notices by the Respondent to reflect this order.

Order

Upon the entire record in this case and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board

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 [Members Houston, Murdock, and Styles]

² The Trial Examiner inadvertently found that the business of the Respondent was established in 1948, rather than in 1945. We note this correction.

³ Cf. *Minnesota Mining & Manufacturing Company*, 81 NLRB 557, enfd 179 F. 2d 323 (C. A. 8); *Joy Silk Mills, Inc. v. N. L. R. B.*, 185 F. 2d 732 (C. A. D. C.), enforcing as modified 85 NLRB 1263. We also do not adopt the Trial Examiner's finding that at the time of all of its unlawful conduct, the Respondent was aware that a date had been set for a consent election. However, the Respondent was apprised of that date before Joseph's speech on May 18, 1950, and it is clear that it was fully aware of the Union's organizational campaign at all the times in question.

hereby orders that the Respondent, Queen City Valves, Inc., Cincinnati, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees as to their union membership, activities, or sympathies.

(b) Promising benefits to employees for the purpose of inducing employees to vote against District 34, International Association of Machinists, in any representation election, or to renounce their membership in, and activities on behalf of, that labor organization.

(c) Threatening to close its plant if the above-named labor organization, or any other labor organization, is chosen as the exclusive bargaining representative of its employees.

(d) Instituting or encouraging the formation of an inside or shop union.

(e) Causing or encouraging its employees to conduct polls among themselves to determine their preference as to their exclusive bargaining representative.

(f) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist District 34, International Association of Machinists, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

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

(a) Post at its plant in Cincinnati, Ohio, copies of the notice attached hereto and marked Appendix A.⁴ Copies of said notice, to be furnished by the Regional Director for the Ninth Region, after having been duly signed by representatives of the Respondent, shall be posted by it immediately upon receipt thereof and be maintained by it for a period of at least sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that such notices are not altered, defaced, or covered by any other material.

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

⁴ 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 Decision and Order," the words "A Decree of the United States Court of Appeals Enforcing."

Appendix A

NOTICE TO ALL EMPLOYEES

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

WE WILL NOT interrogate our employees as to their union membership, activities, or sympathies.

WE WILL NOT promise benefits to our employees for the purpose of inducing them to vote against DISTRICT 34, INTERNATIONAL ASSOCIATION OF MACHINISTS, in any representation election, or to renounce their membership in, and activities on behalf of, that labor organization.

WE WILL NOT threaten to close our plant if the above-named labor organization or any other labor organization is chosen as the exclusive bargaining representative of our employees.

WE WILL NOT institute or encourage the formation of an inside or shop union.

WE WILL NOT cause or encourage our employees to conduct polls among themselves to determine their preference as to their exclusive bargaining representative.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist DISTRICT 34, INTERNATIONAL ASSOCIATION OF MACHINISTS, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

All our employees are free to become, remain, or to refrain from becoming or remaining members 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.

QUEEN CITY VALVES, INC.,
Employer.

Dated _____ By _____
(Representative) (Title)

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

Lloyd R. Fraker, Esq., for the General Counsel.

Mr. D. J. Omer, Grand Lodge Representative, of Cleveland, Ohio, for the Petitioner.

Robert G. McIntosh, Esq., of Cincinnati, Ohio, for the Respondent.

STATEMENT OF THE CASE

Upon a charge duly filed by District 34, International Association of Machinists, herein referred to as the Union, the General Counsel of the National Labor Relations Board, herein referred to as the General Counsel, and the National Labor Relations Board, herein referred to as the Board, by the Regional Director of the Ninth Region (Cincinnati, Ohio) issued a complaint against Queen City Valves, Inc., herein referred to as the Respondent. Copies of the charge and of the complaint were duly served on the Respondent. The complaint set forth that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, hereinafter called the Act.

With respect to the unfair labor practices, the complaint alleges jurisdictional facts, and also, that commencing on or about March 25, 1950, and at numerous times thereafter, the Respondent, by its officers, agents, and employees, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act by: (a) Interrogating said employees as to their union membership and activities, as to their sympathies for or against the Union and as to attendance at union meetings; (b) promising and granting to said employees improved working conditions, increased wages, holiday and vacation pay, for the purpose of inducing them to vote against the Union in the representation election which was conducted by the Board on May 22, 1950, and to renounce their union membership and activities; (c) threatening reprisals against said employees because of their union membership and activities, and by telling them that the Respondent could not deal with the Union and that the plant would be closed if the Union came in; (d) instituting and fostering a movement among said employees to form an inside union for the purpose of inducing them to renounce their union membership and activities; and (e) causing and encouraging employees to conduct a poll among said employees to determine their preference between the Union and an inside union, permitting such poll to be conducted on its time and property, surveying said poll and interrogating said employees as to the outcome thereof.

The Respondent filed an answer in which it admitted the jurisdictional allegations in the complaint but denied the commission of unfair labor practices.

Pursuant to notice, a hearing was scheduled and held on November 28 and 29, 1950, at Cincinnati, Ohio, before the undersigned Bertram G. Eadie, the Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel and the Respondent were represented at the hearing. 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 on the issues. A motion was made by counsel for the Respondent for the dismissal of the complaint at the close of General Counsel's case; decision thereon was reserved by the Trial Examiner and is now denied. During the hearing counsel for the Respondent offered the Respondent's Exhibits 1 to 7 for identification in evidence; upon objection by General Counsel the ruling thereon was reserved by the Trial Examiner. The objection urged by the General Counsel is now overruled and said exhibits are marked in evidence as the Respondent's Exhibits

1 to 7 respectively. At the conclusion of the hearing, the Respondent reserved his motion to dismiss the complaint for lack of proof. Decision, which was reserved upon the motion, is now denied. Briefs have been submitted on behalf of the General Counsel and 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 RESPONDENT

The Respondent is an Ohio corporation engaged in the business of manufacturing plumbing supplies, having its principal place of business at Cincinnati, Ohio. Its annual purchases of raw materials and supplies are valued at a sum in excess of \$100,000, of which more than 15 percent is shipped to it from points outside the State of Ohio. Its annual sales of finished products are in excess of \$150,000, approximately 70 percent of which is shipped to points outside of the State of Ohio. The allegations of the complaint, pertinent to jurisdiction of the Board, are admitted by the Respondent in its answer. At the hearing the Respondent admitted that it is engaged in commerce within the meaning of the Act. The Trial Examiner finds that the Respondent is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

District 34, International Association of Machinists, is a labor organization which admits to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*

1. Sequence of events

The Respondent, a manufacturer of plumbing supplies, commenced business in 1948, employing 30 employees. At the time of the hearing herein, it had approximately 100 on its payroll. An organizational campaign was commenced by the Union on or about March 7, 1950, when a personal contact with several of the employees was made. Handbilling of the plant was thereafter commenced by the Union on March 22, 1950. On April 12, 1950, a written demand for recognition was made by the Union to the Respondent. A conference between the Union and the Respondent followed shortly thereafter at which time a consent election was agreed upon. The date set for the election by the Board was May 22, 1950.

On or about April 14, 1950, Palmer McArthur, an employee, after consulting with Aaron Joseph, the secretary-treasurer of the Respondent, and with his consent, appointed a committee of six, including himself, to meet with the Respondent and discuss various grievances of the employees. Such a meeting thereafter was held. Joseph started the conversation and wanted to know what the main complaint of the employees was and why they wanted a union. He was told among other things that the pay should be increased, working conditions improved, and in one instance, asked why one of the committee members present was always the first to be laid off.

The economic condition of the Company was discussed by William T. McLaughlin, the president, and Joseph, with members of the committee at the meeting. The meeting lasted about 2 hours.

Concerning this meeting with the committee, Joseph was questioned and testified as follows:

A. . . . We had a round table discussion, and there was a lot of things talked about, and naturally the union was brought up. So I will assume I said "If you folks agree to join the union and your demands are too great, we will have to close."

* * * * *

Q. At this meeting, did you tell this committee of employees you are going to have a big lay-off anyway?

A. We anticipated one.

* * * * *

Q. You said you contemplated a big lay-off?

A. Yes.

* * * * *

A. I told them we were going to do everything possible as soon as business warranted it, we would restore their vacations. We were continually trying to better their working conditions. And I think that is the normal trend today.

* * * * *

Q. Did you tell them you would try to give them paid holidays?

A. Yes.

Joseph, questioned further, testified concerning his talks with employees, as follows:

Q. During the period after you first saw the union passing out handbills to the employees, did you talk to practically all of the employees and ask them what the union could do for them that you could not do?

A. No, I never talked to all the employees. I have about 15 or 20 people there that I've always been friendly to.

Q. Confining it to the 15 or 20, did you talk to them at the time I indicated in my question, and ask them what the union could do for them that you could not do?

A. Perhaps I did, yes.

Q. Don't you know that you did?

A. I said perhaps I did.

Q. Well, don't you know you did?

A. I don't know if I said it to all 15 or 20, but to some of them, yes.

Following the committee meeting by several days, McArthur, with Joseph's approval and consent, arranged to hold an election prior to the scheduled Board election of the Respondent's employees to determine whether they wanted an inside union or an outside union. The election was held on the Respondent's time and property. Upon receipt of the results, Joseph directed the employees to assemble and he made a speech to them. The meeting was held at 2:30 p. m. on May 18 and at its conclusion the employees were dismissed for the balance of the day with full pay. Joseph's version of his speech to the employees was that he would try to get the employees five paid holidays, increased wages when the Respondent was able to do so, better working conditions, and that the Respondent would try to restore vacations.

2. Credited testimony of the witnesses

a. *Louis Young*

Young, a witness called by the General Counsel, testified in substance that about April 14, 1950, McArthur came to the machine where Young was working and

said he was getting a group together to go in the office, and wanted Young to go along. The others who went in the office were employees Meadows, Ballow, Hines, and Willis. Joseph and McLaughlin were there. Joseph started the conversation by asking what the main gripe was and why the committee wanted a union. The committee stated that they wanted more money and better working conditions. Joseph discussed with them the working conditions, about being poor, and that the Company was in the red and not making much money. He asked them about the Union, why they wanted the Union, and he told them if the Union got in he would not be able to meet the union demand. He said in the event the Union got in, the Company would be able to operate only about 30 days, and then it would have to close down. Young asked Joseph, "Bud, you mean if the union gets in the company will only be able to operate about 30 days," and he said, "Yes, that is right."

b. *Charles Willis*

Willis, a witness called for the General Counsel, testified in substance that subsequent to the start of the organizational campaign, McArthur asked Willis to go in the office as one of a committee which he was getting together to represent the other workers. Ballow, Hines, Meadows, McArthur, Young, and Willis constituted the committee. The committee was received by McLaughlin and Joseph. Joseph asked the members what their main gripe was, why they wanted a union, and what their reasons were for wanting it. Some wanted higher wages and one of the committee members asked why he was always first to be laid off. Joseph said, "he couldn't meet the demands the union would ask for." He said the plant would have to close down in 30 days, and the employees would have to find other jobs if that happened. The meeting lasted about 2 hours or until quitting time.

Willis recalled the occasion of an election being conducted in the plant at a meeting called by McArthur. At that meeting, McArthur said he thought the employees should have a union of some kind, as it seemed that the Machinists Union was a dead duck.

Willis was also present when Joseph made a speech to the assembled employees on May 18, 1950. There was a notice in the shop stating that there would be a meeting of all employees at 2:30 and they were to stop work at 2 o'clock and get ready for the meeting. Willis heard Joseph's speech, in which he said, "Whether the union got in or not there would be vacations with pay and five paid holidays and wage increases whenever possible." After the meeting Willis heard Young ask Joseph "if the union got in if we wouldn't get vacations and holidays with pay." Joseph did not answer him.

c. *Erma Meadows*

Meadows, a witness called by the General Counsel, testified in substance that the Union started handing out their handbills sometime in February. Joseph came to her table and asked how she felt about it. Meadows told him that she signed a union card on March 23, 1950, sent it in, and therefore was a member of the Union. There was a meeting among Joseph, McLaughlin, and a committee of employees at which Committee Member Meadows was present. Joseph first spoke to her about such a meeting several days in advance. He asked if they could not get a group of people to come into the office and discuss why they wanted the Union. Meadows told him she did not think that was her duty. McArthur spoke to her about it the same afternoon, and she told McArthur that she would not serve on the committee. McArthur got 4 other men and went into the office. Joseph thereupon came to Meadows' table and again asked her to

come in to represent the 10 women in the machine shop. Meadows did not want to attend the meeting; but upon Joseph's insistence, consented to, rather than have an argument. Joseph showed the committee a report on the financial position of the Company. She couldn't tell whether it was or not. She did not know those things. It was made clear to them that the Company was in no position to pay higher wages and that was what the Union would no doubt want. When Joseph was asked point blank what would happen if the Union came in, he said, "The only thing he could do would be to close down the plant."

Meadows remembered having a conversation with Joseph on May 8, following a union meeting that had been held on the preceding Friday night. The conversation took place at her table in the shop. He asked her, "How our union meeting went last Friday night?" and she told him "That he probably already knew." He said, "He heard that there were only nine people there." And that was right. Joseph discussed with her the question of a shop union. She told him that she did not think it was her duty to try to talk to the other people about it; thereafter McArthur appointed a committee of which she was made a member.

The day McArthur told her the employees were going to get together at 12 o'clock, right after lunch, to take a vote on whether they preferred a shop union or another union, the employees welcomed it as a chance to have an hour or so off. McArthur was in charge of the meeting and made a speech in which he said, "it was a common belief that the I. A. M. could not get in, that we all believed they didn't have enough cards for representation. . . ." A vote was taken; "We had little pieces of paper to write yes or no, for shop union or no union, and the vote was for a shop union."

d. *Palmer McArthur*

McArthur, a witness called by Respondent, testified in substance that Joseph called him into his office and a discussion was had about the formation of a committee to represent the people in the plant. Pursuant to that conversation he went through the plant and picked a committee of six. The committee met with McLaughlin and Joseph in the office. The idea was that there would be a grievance committee without a union. One of the purposes of the committee was to discuss grievances of the employees generally.

Witnesses McArthur, Bischoff, Perkins, Ramsey, Hummel, Stagg, Knecht, McLaughlin, and Joseph called by the Respondent, gave their respective versions of Joseph's speech and surrounding circumstances of the May 18 meeting in substance as follows:

Joseph addressed the gathering of employees at which there were from 80 to 100 employees present. As he addressed them he held in his hand a paper, from which he was apparently reading. In the speech he made no definite promises but did say he would try to get them: (a) Raises in pay; (b) five paid holidays during the year; (c) vacations; and (d) better working conditions.

The employees were requested to vote at the Board election to be held on May 22, whether their vote was to be yes or no.

B. *Conclusions reached on the facts*

The Trial Examiner finds on substantial material evidence based on a preponderance thereof, and to a great extent on the testimony of the secretary-treasurer of the Respondent, that it committed unfair labor practices in the conduct of its business, in that it interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act by: (a) Interrogating its employees as to their union membership and activities, their sympathies for or against the Union, and their attendance at union meetings; (b) promising to its employees, if business conditions warrant, improved

working conditions, increased wages, holiday and vacation pay, for the purpose of inducing them to vote against the Union in a representation election thereafter to be conducted by the Board on May 22, 1950, and to renounce their union membership and activities; (c) threatening reprisals against the employees because of their union membership and activities, by telling them that the Respondent could not deal with the Union and that the plant would be closed if the Union came in; (d) instituting and fostering a movement among its employees to form an inside or shop union or a grievance committee for the purpose of inducing them to renounce their union membership and activities; (e) causing and encouraging its employees to conduct a poll among themselves to determine their preference between the Union and an inside or shop union, and permitting and encouraging such poll to be conducted on its premises, and partly on its time, during the progress of a union campaign then being carried on by the Union at its plant to organize its employees for the purpose of collective bargaining.

The Respondent by such acts engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

It is uncontradicted that Joseph conferred with and encouraged McArthur to appoint certain of the personnel of a committee of employees to wait upon the Respondent and present and discuss complaints of the employees. He also conferred with and encouraged McArthur in holding a poll or election to determine the consensus of the Respondent's employees as to whether they wanted the Union, or an inside or shop union, as their collective bargaining agent.

At all of the aforesaid times Joseph had full notice and knowledge that a campaign for unionization of the Respondent's plant was in progress by the Union, and that a date had been set for a consent election to be held under the auspices of the Board.

It is uncontradicted that Joseph in his speech to the employees on May 18, 1950, promised that the Respondent would try to give the employees better working conditions, increased wages, etc. There is no evidence that Joseph directly stated that this promise was conditioned upon renunciation of the Union by the employees. However, considering all the circumstances and particularly the date set for the election which was scheduled to be conducted a few days after his speech, it is a reasonable and inescapable conclusion that Joseph impliedly promised most if not all of the above benefits only in the event the employees renounced the Union, and the Trial Examiner so finds¹

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, it will be recommended that the Respondent cease and desist therefrom and take certain affirmative action which the undersigned finds necessary to effectuate the policies of the Act.

¹ *F. C. Russell Company*, 92 NLRB 206, 27 LRRM 1071; *Standard-Coosa-Thatcher Company*, 85 NLRB 1358; *Ames Spot Welder Co., Inc.*, 75 NLRB 352; *Stocker Manufacturing Company*, 86 NLRB 666; *Minnesota Mining & Manufacturing Company*, 81 NLRB 557; *Eastman Cotton Mills*, 90 NLRB 31, *S. W. Evans & Son*, 81 NLRB 161; *Happ Brothers Company, Inc.*, 90 NLRB 1513.

The number and variety of unfair labor practices found above clearly indicates that the Respondent has been, and now is, disposed to defeat concerted activity and self-organization among its employees by any conceivable means, and discloses an attitude on the part of the Respondent of fundamental hostility to the purposes of the Act. This attitude and conduct also indicates the likelihood that the Respondent may resort in the future to the similar or related unfair practices proscribed by the Act. The preventive purposes of the Act will be thwarted unless the recommendation herein and the Board's order thereon are coextensive with this threat. The undersigned will, therefore, recommend that the Respondent cease and desist from in any manner infringing upon the rights of the employees guaranteed in Section 7 of the Act.

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

CONCLUSIONS OF LAW

1. District 34, International Association of Machinists, 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 Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.
3. 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.]

FROST LUMBER INDUSTRIES, INC., OF TEXAS *and* CORNELIUS REED. *Case No. 16-CA-217. April 19, 1951*

Decision and Order

On January 22, 1951, Trial Examiner Lee J. Best issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action as set forth in the Intermediate Report attached hereto. No exceptions were filed by the Respondent to these findings of unfair labor practices. However, the General Counsel filed exceptions to the Intermediate Report insofar as the Trial Examiner found that the May 2, 1950, offer of employment to Reed by the Respondent was an offer of employment substantially equivalent to his former position with the Respondent. We agree with the Trial Examiner's conclusion.

The Board¹ 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 Inter-

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].