certify it as the bargaining representative of the employees in the appropriate unit.

Certification of Representatives

IT IS HEREBY CERTIFIED that Local 154, United Furniture Workers of America, CIO has been designated and selected by a majority of the employees of the above-named Employer, in the unit heretofore found appropriate, as their representative for the purposes of collective bargaining and that pursuant to Section 9 (a) of the Act, as amended, the said organization is the exclusive representative of all the employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

MEMBERS HOUSTON and REYNOLDS took no part in the consideration of the above Supplemental Decision and Certification of Representatives.

SOMERVILLE BUICK, INC.[1] *and* LOCAL 841, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, A. F. L., AND LODGE 1898 OF DISTRICT 38 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS. *Case No. 1–CA–693. April 20, 1951*

Decision and Order

On January 25, 1951, Trial Examiner C. W. Whittemore 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 filed exceptions to the Intermediate Report and a brief in support of its exceptions.

The Board [2] 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.[3] The Board has considered the

[1] The complaint and other formal papers were amended at the hearing to show the correct name of the Respondent.

[2] 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].

[3] We find no merit in the Respondent's contention that the Trial Examiner erred by denying the Respondent's motion for a continuance of the hearing for 1 week. The Respondent does not show that it was prejudiced in any manner by the Trial Examiner's denial of its motion and it does not appear that there has been any abuse of discretion on the part of the Trial Examiner. *A. J. Siris Products Corporation of Virginia,* 90 NLRB 132, enforced, *N. L. R. B.* v. *A. J. Siris Products Corporation of Virginia,* 186 F. 2d 502 (C. A. 4, 1951). We also find no merit in the Respondent's contention that the Trial Examiner failed to consider the Respondent's brief.

Intermediate Report, the Respondent's exceptions and brief, and the entire record in the case,[4] and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following additions and modifications:

1. Upon the entire record, we find that the Respondent is engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act to assert jurisdiction over the Respondent.[5]

2. Contrary to the conclusions of the Trial Examiner, we do not find that on the record herein it has been established that Joseph Hayes, Haig Demarjian, and Carl Craig are supervisors within the meaning of the Act. Accordingly, contrary to the Trial Examiner, we do not find that the questioning of other employees by Hayes, Demarjian, and Craig is evidence of violations of the Act on the part of the Respondent. However, we agree with the Trial Examiner that the questioning of employees LoCicero and Politano by Peter Adamian, president of the Respondent, Adamian's statement to employees that he would close his doors before he would "see a union" in there, and Adamian's polling of employees with respect to whether or not they wanted a union, constituted interference with, restraint, and coercion of employees in the exercise of rights guaranteed them in Section 7 of the Act.

3. We agree with the Trial Examiner's conclusion that Harris, Ahern, and Gould were discharged on April 20, 1950, because of their organizational activities in the plant and not, as contended by the Respondent, because they were the least satisfactory employees. The Respondent also contends that there is no evidence in the record which would impute to the Respondent knowledge of the union activities of these employees. However, we find, as did the Trial Examiner, that a preponderance of the evidence in the record supports the inference that the Respondent had knowledge of the union activities of the three employees. We rely especially upon the fact that the Respondent operates a small shop through which its supervisors are constantly circulating; that shortly before the discharge of these employees, Union Organizer Weir on at least two occasions discussed union activities with Harris and Ahern in the shop; and that the three discharged employees, who were the most active proponents of the Union in the plant, were simultaneously and precipitately discharged the day before the Respondent's president openly engaged in conduct designed to intimidate Respondent's employees and to interfere with, restrain, and coerce its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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[4] The request of the Respondent for oral argument is hereby denied, as the record, the exceptions, and the Respondent's brief, in our opinion, adequately present the issues and the positions of the parties

[5] *The Strang Garage Company*, 93 NLRB 900; *Conover Motor Company*, 93 NLRB 867; *Baxter Bros*, 91 NLRB 1480.

4. We agree with the Trial Examiner that the Respondent has refused and continues to refuse to bargain collectively with the representatives of its employees. In addition to the factors relied upon by the Trial Examiner, we also base our conclusion upon the Respondent's failure to answer the April 18, 1950, letter from the Teamsters and Machinists requesting a meeting for the purpose of negotiating a contract. Because we have found that Craig and Hayes are not supervisors, they shall be included in the bargaining unit.[6] The addition of these employees to the appropriate bargaining unit does not alter the Trial Examiner's finding, which we adopt, that by April 18, 1950, a majority of the employees in the said unit had designated the Teamsters and Machinists as their collective bargaining representatives.[7] Accordingly, we find that on and after April 21, 1950, the Respondent in violation of Section 8 (a) (5) refused and continues to refuse to bargain collectively with the Teamsters and Machinists as the exclusive representatives of the Respondent's employees in the appropriate bargaining unit and that by such refusals has interfered with, restrained, and coerced employees in the exercise of rights guaranteed in the Act.

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 hereby orders that the Respondent, Somerville Buick, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Local 841, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L., and Lodge 1898 of District 38 of the International Association of Machinists, or in any other labor organization of its employees by discriminatorily discharging any of its employees, or by discriminating in any other manner in regard to their hire, tenure of employment, or any term or condition of employment.

(b) Interrogating its employees concerning their union affiliations, activities, or sympathies, or threatening their employees with reprisals or economic loss because of their union affiliations, activities, or sympathies.

(c) Refusing to bargain collectively with Local 841, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L., and Lodge 1898 of District 38 of the International Association of Machinists, as the exclusive representatives of all its employees engaged in repairing, servicing, and mainte-

[6] Although we have found that Demarjian is not a supervisor, he is not included in the bargaining unit because of the Board's general policy of excluding close relatives of management from bargaining units.

[7] The record now shows that 15 of 21 employees had signed union-authorization cards.

nance of automotive equipment, including mechanics, bodymen, painters, testers, helpers, apprentices, learners, truck drivers, parts men, cleaners, washers, floormen, and porters, but excluding executives, foremen, salesmen, office and clerical employees, guards, and supervisors as defined in Section 2 (11) of the Act, with respect to rates of pay, wages, hours of employment, or other conditions of employment.

(d) In any other manner interfering with, restraining, or coercing its employees in the right to self-organization, to form labor organizations, to join or assist the above-named labor organizations 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.

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

(a) Offer to Ernest L. Harris, Daniel F. Ahern, and Harry E. Gould immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges.

(b) Make whole the said individuals for any loss of pay and other incidents of the employment relationship which they may have suffered because of the discrimination against them in the manner set forth in the section of the Intermediate Report entitled "The remedy."

(c) Upon request, make available to the Board or its agents for examination and copying all payroll records, social security payment records, time cards, personnel records and reports, and all other records necessary to analyze the amounts of back pay due.

(d) Upon request, bargain collectively with Local 841, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L., and Lodge 1898 of District 38 of International Association of Machinists, as the exclusive representatives of all the employees in the appropriate unit described above, with respect to rates of pay, wages, hours of employment, and other conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(e) Post at its shop in Somerville, Massachusetts, copies of the notice attached hereto and marked Appendix A.[8] Copies of such

[8] In the event 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."

notice, to be furnished by the Regional Director for the First Region, shall, after being duly signed by the Respondent's authorized representative, be posted by the Respondent, immediately upon receipt thereof, and maintained for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

Appendix A

NOTICE TO ALL EMPLOYEES

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

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist LOCAL 841, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, A. F. L., AND LODGE 1898 OF DISTRICT 38 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all 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.

WE WILL offer to Ernest L. Harris, Daniel F. Ahern, and Harry E. Gould immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, and make them whole for any loss of pay suffered as a result of the discrimination against them.

WE WILL bargain collectively, upon request, with the above-named unions as the exclusive representatives of all employees in the bargaining unit described herein, with respect to wages, rates of pay, hours of employment, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All employees engaged in repairing, servicing, and maintenance of automotive equipment, including mechanics, body-

men, painters, testers, helpers, apprentices, learners, truck drivers, parts men, cleaners, washers, floormen, and porters, but excluding executives, foremen, salesmen, office and clerical employees, guards, and supervisors as defined in Section 2 (11) of the Act.

All our employees are free to become or remain members of the above-named unions or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

SOMERVILLE BUICK, 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

Mr. Leo J. Halloran, for the General Counsel.
Messrs. Julius Kirle, George Locus, and *Joseph Sahagen*, all of Boston, Mass., for the Respondent.
Mr. Harold F. Reardon, of Boston, Mass., for the Machinists

STATEMENT OF THE CASE

Upon a charge duly filed by Local 841, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L., and Lodge 1898 of District 38 of the International Association of Machinists, herein respectively called Teamsters and Machinists, the General Counsel of the National Labor Relations Board, herein respectively called General Counsel and the Board, by the Regional Director for the First Region (Boston, Massachusetts), issued a complaint dated November 29, 1950, against Somerville Buick, Inc., Somerville, Massachusetts, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. Copies of the charge, the complaint, and notice of hearing were duly served upon the parties.

With respect to unfair labor practices the complaint alleges, in substance, that the Respondent: (1) on April 20, 1950, discriminatorily discharged, because they assisted the Teamsters and Machinists, employees Daniel F. Ahern, Harry E. Gould, and Ernest L. Harris; (2) interrogated, threatened, and penalized its employees; (3) by the foregoing acts, on and after April 18, 1950, refused to bargain collectively with the Teamsters and Machinists as the exclusive representative of its employees in an appropriate unit; and (4) by said conduct interfered with, restrained, and coerced employees in the exercise of rights guaranteed by Section 7 of the Act.

Thereafter the Respondent filed its answer, in which it denied that it had engaged in the unfair labor practices alleged.

Pursuant to notice, a hearing was held before the undersigned Trial Examiner, duly designated by the Chief Trial Examiner, at Boston, Massachusetts, on December 12, 13, and 14, 1950. The General Counsel and the Respondent were represented by counsel; the Machinists by an official. All parties participated in the hearing, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues. During the hearing a motion by the Respondent was granted to dismiss an allegation in the complaint relating to the institution of a flat rate system of pay.[1] At the close of the hearing ruling was reserved upon a motion by the Respondent to dismiss the complaint in its entirety. Disposition of this motion is made in the findings, conclusions, and recommendations appearing below. Following the receipt of evidence counsel for the Respondent and General Counsel argued orally upon the record. Briefs have been received.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Somerville Buick, Inc., is a Massachusetts corporation engaged in the sales and service of new and used cars and parts of cars. It is a direct dealer of, and under franchise with, the General Motors Corporation. New cars are shipped to the Respondent from General Motors Corporation assembly plant in Framingham, Massachusetts. During 1949 the Respondent purchased new cars valued at more than $500,000, and sold new and used cars valued at more than $600,000 No sales were made outside the Commonwealth of Massachusetts.

II. THE LABOR ORGANIZATIONS INVOLVED

Local 841, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L, and Lodge 1898 of District 38 of the International Association of Machinists are labor organizations admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The discriminatory discharges, restraint, and coercion*

Three of the Respondent's employees: Ernest L. Harris, Daniel F. Ahern, and Harry E. Gould, assumed leadership of the self-organizational campaign begun at the Respondent's shop in the spring of 1950. First steps were taken early in March, when George Weir, representative of the Machinists, visited Harris at the latter's work bench. A few days later Weir returned to the shop and discussed organizing possibilities with both Harris and Ahern. Weir visited Harris at his home and left with him a number of cards authorizing the "Joint Committee for Organization for Automotive Workers," of the Teamsters and Machinists, to represent the signing employees as collective bargaining agent. Harris gave a supply of these cards to Ahern and Gould; all three then solicited signatures among their fellow employees. By April 10, 15 employees had signed authorization cards, which Harris then turned over to Weir. Upon receipt of them Weir called a meeting outside the plant, which was attended by all but 1 of the 15 employees.

On April 18 representatives of the two unions wrote a joint letter to the Respondent, claiming that the Machinists and Teamsters represented a majority

[1] Paragraph 13f of the complaint.

of its service department employees and requesting a meeting for the purpose of negotiating a collective bargaining agreement. So far as the record reveals, the Respondent did not reply to this request.

On April 20, General Manager John Soursourian, without previous notice to them, discharged Harris, Ahern, and Gould.

On April 21, Peter Adamian,[2] president of the Respondent, assembled all employees, including supervisors, in his office. He told them he had heard talk around the shop about a union, and had received a letter from the Teamsters and Machinists. He said he would close his doors before he would "see a union" in there.[3] He asked, generally, why they wanted a union. After some discussion he inquired how many of them "wanted a union," at first calling for a show of hands, and then altering this request to ask for a secret ballot. In the presence of Adamian, Soursourian, and other supervisors the employees wrote "Y" or "N" on slips of paper prepared by the office girls. Only 3 employees voted affirmatively, although 15 had, a few days before, signed union authorization cards. Adamian's polling of his employees on April 21, especially after having told them he would close the plant if, in effect, they chose to have a union, constituted interference, restraint, and coercion of employees in the exercise of rights guaranteed by the Act.[4]

Before the meeting in the president's office above described, Adamian and Supervisors Joseph Hayes, Haig Demarjian, and Carl Craig interrogated employees concerning their union affiliation. On the same day of the meeting Adamian asked employees L. A. LoCicero and Alexander Politano if they were satisfied with "working there," if they had "anything to do with the Union" and why the Union was being brought in.[5] Also that day Demarjian, who is also Adamian's nephew, asked employee Nasson if he had joined.[6] About April 13 employee Archie Berberian was asked by Hayes if he had joined the Union.[7] Sometime after signing and distributing the cards, it is undisputed that Harris was asked by Craig if he was in the Union. When the employee admitted that he was, Craig told him he was "crazy," and that Adamian would not tolerate it but would close the plant down in 6 months.

The preponderance of credible evidence establishes, and the Trial Examiner finds, that Hayes, Demarjian, and Craig are all supervisors within the meaning of the Act, and as such are representatives of management,[8] and that their questioning, as well as that by Adamian himself, of employees as to their union

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[2] Also referred to in the record as Adams.

[3] The quotation is from the credible testimony of former employee Alexander Nasson. Adamian was not called as a witness.

[4] *N. L. R. B.* v. *Stocker Manufacturing Company,* 185 F. 2d 451 (C. A 3), enforcing 86 NLRB 666

[5] Lo Cicero's testimony as to this interview is uncontradicted.

[6] Nasson's testimony on this point is undisputed.

[7] Berberian's testimony on this point is undisputed.

[8] Although Soursourian testified that Hayes has no authority to discharge or discipline employees, it appears from his testimony that Hayes is in charge of the new and used car department, assigns individuals to specific work, and only occasionally does manual work himself The credible testimony of employees Harris, himself a former foreman at the shop, Berberian, Ahern, and Gould, is to the effect that Hayes was generally known to be foreman of this department. Demarjian, according to Soursourian's own testimony, assisted him "on the floor," and was a salaried employee at a time when others in the repair department were paid on a "flat rate" system. The credible testimony of several employees is to the effect that Demarjian did no work himself, but assigned and shifted employees as new jobs required. Craig, known among employees as foreman of the body shop, was paid a weekly salary higher than any other in the service department except Soursourian, and assigned both work and employees in his department.

affiliation constituted interference, restraint, and coercion proscribed by the Act.[9]

Although the answer alleged no affirmative reasons for the three discharges, at the hearing counsel for the Respondent claimed that the employees were released because they "were the least satisfactory of the employees at the time when there was a reduction due to the lack of business" As to the discharges, Soursourian testified, in part:

> I probably brought that to a head on my own account, because the men that were mentioned here weren't producing the work. They were inefficient, and they weren't attending to their jobs like they should have.

The claim of a general reduction in force is flatly refuted by the facts that: (1) At lesat one new mechanic was hired for the same department the next day after the discharges, and (2) within a few days the Respondent advertised in a Boston newspaper for mechanics. Soursourian's testimony that he considered the three to be inefficient and unreliable was negated by documents which he admitted having given to each of the three on the date of the discharge. Each letter of recommendation stated:

> . . has been with us for a considerable time and has proven himself capable of doing any type of mechanical work during his stay here.
>
> From a personal standpoint we have found him reliable and cooperative.

Soursourian cited no credible instance of inefficiency or unreliability on the part of any one of the three. His explanation that he gave the letters of recommendation because there existed a "gentlemen's agreement" among dealers not to hire a mechanic unless "fully released" is wholly implausible. Even if such an agreement exists, none of the letters state that the employee named has been "fully released" by the Respondent.

No credible evidence supports the Respondent's contentions as to the discharges.

On the other hand, credible and undisputed evidence establishes circumstances from which it is reasonably inferred that the three employees were actually discharged because they had been actively soliciting signatures to the authorization cards. Solicitation had openly been engaged in by them, and organization discussed, in a small shop of about 20 employees. It is concluded and found that management was well aware of the identity of the three men as the leaders of the union movement in the shop.

It is further concluded and found that Harris, Ahern, and Gould were discriminatorily discharged on April 20, 1950, to discourage membership in the Teamsters and Machinists, and that thereby the Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by the Act.

B. *The refusal to bargain*

The complaint alleges that a unit of the Respondent's employees appropriate for collective bargaining purposes consists of:

> All employees . . . engaged in repairing, servicing and maintenance of automotive equipment including mechanics, bodymen, painters, testers, helpers, apprentices, learners, truck drivers, parts men, cleaners, washers, floormen and porters but excluding executives, foremen, salesmen, office and clerical employees, guards and supervisors as defined in Section 2 (11) of the Act.

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[9] The Trial Examiner finds insufficient evidence in the record to support an allegation in the complaint that the Respondent discriminatorily "deducted various amounts of money from the wages of certain employees."

Except for certain categories excluded by mandate of the Act, the foregoing unit is in substance the same as that which the Teamsters and Machinists claimed to represent in its letter of April 18. In numerous cases, involving the same two labor organizations and similar companies, the Board has found the same unit to be appropriate. The Respondent offered no evidence at the hearing to show that the unit as alleged in the complaint was not appropriate.

It is therefore concluded and found that the above-described unit of the Respondent's employees is appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

Credible documentary evidence establishes, and the Trial Examiner finds, that between March 21 and April 10, 1950, 15 of the Respondent's employees then on the payroll in the above-described unit had designated the Teamsters and Machinists as their representative for the purpose of collective bargaining A list of employees in the said unit, prepared by the Respondent, shows that as of April 18 there were 19 such employees (excluding Craig, Demarjian, and Hayes, previously found to be supervisors). It is clear, and the Trial Examiner finds, that by April 18, 1950, a majority of the employees in the said unit had designated the Teamsters and Machinists as their collective bargaining agent, and that on that date and at all times since then the Teamsters and Machinists have been the exclusive representatives of all employees in the above-described appropriate unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

It is General Counsel's contention that by discharging the three union leaders and by the acts of interference, restraint, and coercion described in the preceding section of the Intermediate Report, the Respondent has refused to bargain in good faith with the Teamsters and Machinists. The preponderance of credible evidence fully supports this contention. By summary reprisals and threatened reprisals the Respondent replied in no uncertain terms to the request for recognition and negotiation, and thus, by positive action, plainly expressed its resolution to refuse, as required by the Act, to bargain collectively. It is therefore concluded and found that the Respondent, by its discriminatory treatment of Harris, Ahern, and Gould, by its interrogation and polling of employees, and by its threats of reprisals, as described above, has refused and continues to refuse to bargain collectively with Teamsters and Machinists as the exclusive representatives of all employees in the appropriate unit, and further, by such refusals has interfered with, restrained, and coerced employees in the exercise of rights guaranteed by the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

V. THE REMEDY

Having found that the Respondent has engaged in unfair labor practices, the Trial Examiner will recommend that it cease and desist therefrom and take certain affirmative action which will effectuate the policies of the Act.

Having found that the Respondent has discriminated in regard to the hire and tenure of employment of Ernest L. Harris, Daniel F. Ahern, and Harry E. Gould, it will be recommended that the Respondent offer to them immediate and full

reinstatement to their former or substantially equivalent positions,[10] and make them whole for any loss of pay they may have suffered as a result of the discrimination against them by payment to each of them of a sum of money equal to that which he would have earned as wages from April 20, 1950, to the date of the offer of reinstatement. Loss of pay will be computed on the basis of each separate calendar quarter or portion thereof during the period from the first day of January, April, July, and October Loss of pay shall be determined by deducting from a sum equal to that which each normally would have earned for each such quarter or portion thereof, his net earnings,[11] if any, in other employment during that period. Earnings in one particular quarter shall have no effect upon the back pay liability for any other quarter.[12] In accordance with the *Woolworth* decision, it will be recommended that the Respondent, upon reasonable request, make available to the Board and its agents all records pertinent to an analysis of the amount due as back pay.

It has been found that the Respondent has refused to bargain collectively with the Teamsters and Machinists. It will therefore be recommended that the Respondent cease and desist therefrom, and also that it bargain collectively with them with respect to wages, hours, and other terms and conditions of employment, and if an understanding is reached, embody such understanding in a signed contract.

The unfair labor practices found reveal on the part of the Respondent such a fundamental antipathy to the objectives of the Act as to justify an inference that the commission of other unfair labor practices may be anticipated. The preventive purposes of the Act may be frustrated unless the Respondent is required to take some affirmative action to dispel the threat. It will be recommended, therefore, that the Respondent cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed by the Act.

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. Local 841, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L., and Lodge 1898 of District 38 of the International Association of Machinists, are labor organizations within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Ernest L. Harris, Daniel F. Ahern, and Harry E. Gould the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

3. All employees of the Respondent engaged in repairing, servicing, and maintenance of automotive equipment including mechanics, bodymen, painters, testers, helpers, apprentices, learners, truck drivers, parts men, cleaners, washers, floormen, and porters, but excluding executives, foremen, salesmen, office and clerical employees, guards, and supervisors as defined in Section 2 (11) of the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

4. Local 841, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L, and Lodge 1898 of District 38 of the International Association of Machinists, were, on April 18, 1950, and at all

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

[11] *Crossett Lumber Company,* 8 NLRB 440.

[12] *F. W. Woolworth Company,* 90 NLRB 289.

times since have been, the exclusive representatives within the meaning of Section 9 (a) of the Act of all employees in the aforesaid unit for the purposes of collective bargaining.

5. By refusing to bargain collectively with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L. and Lodge 1898 of District 38 of the International Association of Machinists, as the exclusive bargaining representatives of the employees in the appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

6. By interfering with, restraining, and coercing its employees in the exercise of 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.

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.]

EISNER GROCERY COMPANY *and* LOCAL UNION NO. 1025, RETAIL CLERKS INTERNATIONAL ASSOCIATION, A. F. L., PETITIONER. *Case No. 13–RC–1613. April 20, 1951*

Decision and Order

On November 29, 1950, pursuant to a stipulation for certification upon consent election, an election by secret ballot was conducted under the direction and supervision of the Regional Director for the Thirteenth Region among the employees in the stipulated appropriate unit. Upon the conclusion of the election, a tally of ballots was furnished the parties, showing that of approximately 64 eligible voters, 63 cast valid ballots, of which 24 were for the Petitioner, and 38 were against the Petitioner. There was 1 challenged ballot.

Thereafter, the Petitioner filed timely [1] objections to the conduct of the election, and to conduct affecting the results of the election, alleging *inter alia* that the Employer interfered with the election by granting wage increases and other benefits to its employees after the Petitioner had claimed representation rights. As the challenged ballot was insufficient to affect the results of the election, the Regional Director thereupon, in accordance with the Board's Rules and Regulations, conducted an investigation and issued and duly served upon the parties his report on objections, finding merit in the foregoing objection, and recommending that the election be set aside.[2] There-

[1] In his report on objections, the Regional Director stated that the Petitioner's objections were filed on December 7, 1950 The record establishes, however, that such objections were in fact filed on December 4, 1950 Accordingly, we find without merit the Employer's contention that the Petitioner's objections were not timely filed.

[2] The Petitioner also objected on various other grounds to the conduct of the election, and to conduct affecting the results of the election. The Regional Director recommended that these objections be overruled In the absence of exceptions thereto, we hereby adopt the Regional Director's recommendation and overrule these objections.