

In the Matter of NATIONAL LEAD COMPANY and CHARLES BRUNCKHURST, AN INDIVIDUAL

Case No. 20-C-1301.—Decided April 10, 1946

DECISION

AND

ORDER

On October 17, 1945, the Trial Examiner 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 supporting brief. No party requested oral argument before the Board at Washington, D. C., and none was held.

The Board has reviewed the rulings of the Trial Examiner at the hearing, and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except insofar as they are inconsistent with our findings and Order hereinafter set forth.

1. We concur in the Trial Examiner's conclusion that the respondent violated Section 8 (1) of the Act, by prohibiting Charles Brunckhurst from collecting dues and engaging in other union activities on company property during his non-working time, where it was not shown that such restriction was necessary to safeguard production or to maintain discipline.¹

2. We do not agree with the Trial Examiner's conclusion that the respondent discharged Brunckhurst because of his union activity, in violation of Section 8 (3) of the Act. In our opinion, the facts set forth in the Intermediate Report and the record as a whole show that

¹ See, e. g., *Matter of Illinois Tool Works*, 61 N. L. R. B. 1129, enf'd 153 F. (2d) 811 (C. C. A. 7).

the respondent discharged Brunckhurst because it reasonably believed that Brunckhurst had unjustly accused his immediate supervisor of illegally attempting to injure him.² We shall accordingly dismiss the complaint as to him.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, National Lead Company, Oakland, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from prohibiting its employees from collecting union dues or engaging in other union activity on the respondent's premises during their non-working time.

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

(a) Post in the respondent's plant at Oakland, California, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by the respondent's representatives, be posted by them immediately upon receipt thereof and maintained by them for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

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

AND IT IS FURTHER HEREBY ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges that the respondent discriminatorily discharged Charles Brunckhurst.

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Order.

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:

² We make no finding as to whether Brunckhurst actually accused his immediate supervisor of attempting to injure him or as to whether such an attempt had been made to anyone. Our finding goes only to the respondent's belief that Brunckhurst made the accusation.

We will not in any manner prohibit our employees from collecting union dues or engaging in other union activity on company property during their non-working time.

NATIONAL LEAD COMPANY,
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. Louis E. Mercado, for the Board.

Mr. J. Paul St. Sure, of Oakland, Calif., for the Respondent.

Mr. John A. Kopke, of Oakland, Calif., for the Union.

Mr. Charles Brunckhurst, of Oakland, Calif., *Pro Se.*

STATEMENT OF THE CASE

Upon a charge duly filed by Charles Brunckhurst, the National Labor Relations Board, herein called the Board, by the Regional Director of the Twentieth Region (San Francisco, California), issued its complaint dated July 31, 1945, against National Lead Company, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, together with notice of hearing thereon, were duly served upon the respondent and Charles Brunckhurst.

With respect to the unfair labor practices, the complaint alleges in substance that the respondent, from on or about September 1, 1942, adopted a plan and entered upon a course of action with the purpose and effect of interfering with, restraining, and coercing Charles Brunckhurst from performing the duties and functions of shop steward for Paint Makers' Union, Local No. 1101, Brotherhood of Painters, Decorators and Paperhangers of America, AFL, herein called the Union. The complaint also alleges that on January 23, 1945, the respondent discharged Charles Brunckhurst and thereafter failed and refused to reemploy him, because of his membership in and activities on behalf of the Union. Respondent filed its answer dated August 21, 1945, in which it admitted certain jurisdictional allegations, but denied the commission of any unfair labor practices.

Pursuant to notice, a hearing was held on August 21 and 22, 1945, before the undersigned Sidney L. Feiler, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel, the Union by a representative, and Charles Brunckhurst appeared in person. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. At the completion of the taking of evidence, oral argument was presented by the parties. Briefs were filed by the Board 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

Respondent is a New Jersey corporation, having its principal Pacific Coast office and place of business at San Francisco, California. Among other plants, respondent operates a plant at Oakland, California, herein called the plant, where it is engaged in the manufacture, sale, and distribution of paints and related products. During the year 1944, the respondent, in the course and conduct of its business, used raw materials, machinery, and supplies at its plant valued at approximately \$750,000, of which approximately 50 percent was shipped to the plant from points outside the State of California. During the same period, the respondent produced manufactured products valued at approximately \$1,500,000, of which approximately 50 percent was shipped from the plant to points outside the State of California.

For the purpose of this proceeding, the respondent admits it is engaged in interstate commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

Paint Makers' Union, Local No. 1101, Brotherhood of Painters, Decorators and Paperhangers of America, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A *Interference, restraint, and coercion*

1. Introduction

The Union has had contractual relations with respondent since 1937. From 1937 to April 1940, these took the form of verbal "understandings." Since April 1940, there have been written agreements.

An examination of the existing agreement reveals that it was entered into by the Union and United Employers, Inc., a collective bargaining representative of paint manufacturers, including the respondent, operating plants in Alameda County, California. The agreement sets forth a procedure for the adjustment of controversies. It provides for an Adjustment Board of six members, three from labor, three from management. This Board acts as an appeals body to which may be brought grievances involving individual companies. At all times here relevant, the labor members of the Adjustment Board were John A. Kopke, business representative of the Union, Brunckhurst, and Kenneth M. Phelps. Kopke has acted as secretary of the Board since its inception in March 1943. The employer representatives included C. H. Sondhaus¹ and J. Hunter Clark. Clark always has been chairman.

2. The activities of Plant Superintendent Sanders

Brunckhurst testified that he was appointed shop steward at the plant in September 1942. He further testified that Sanders at various times took action

¹ The following supervisory officials employed by respondent are concerned in this case:

L. A. Thompson—General Production Manager, West Coast Division.

C. H. Sondhaus—Comptroller.

K. J. Sanders—Plant Superintendent.

W. A. Anderson—Assistant Plant Superintendent.

Sanders, Anderson and Brunckhurst were employed at the plant. Thompson and Sondhaus did not have offices at the plant, but Sondhaus was actively concerned in labor relations problems there from January 1943.

to restrict his activities as steward, that in March 1943, Sanders told him that he could not collect any more dues or carry on any union activities on company property. This restriction applied to his activities during his free time, and, Brunckhurst declared, it was applied solely to him.

Brunckhurst further testified that after a protest at a grievance meeting the restriction was removed, but that it was reapplied from time to time. This practice was protested to the Adjustment Board on two occasions. Brunckhurst further testified that the Union was upheld on those occasions and respondent was directed not to interfere with the steward's activities on his own free time. Nevertheless, he declared, Sanders continued to apply the restrictions at various intervals and they were in effect from September 5, 1944, until the date of his discharge.

Former employee William J. Adams, who succeeded Brunckhurst as steward, testified that Sanders placed similar restrictions on his activities.

Respondent introduced no witnesses to refute the testimony of Brunckhurst and Adams on this point. The undersigned credits their testimony and concludes and finds that Sanders engaged in a course of conduct designed to hinder the union activities of shop stewards on their free time, and that by such activities the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.²

B. *The discriminatory discharge*

1. Brunckhurst's employment record

Brunckhurst began working for respondent in 1934 and remained in its employ until his discharge on January 23, 1945. His first work was as a laborer at a salary of 50 cents per hour. Thereafter, he received changes in assignments and wage increases and, at the time of his discharge, was working as a furnace operator at a salary varying from \$1.06 to \$1.17 per hour. He further testified that his work had never been criticised and that new men had been assigned to him for training until that practice was discontinued in 1942. Respondent did not challenge Brunckhurst's testimony as to the quality of his work. Assistant Plant Superintendent Anderson, his immediate supervisor, testified that he was a competent and efficient worker.

2. The alleged attempts to poison Brunckhurst

The production work performed at the plant necessarily entailed the danger of lead poisoning. Several employees, including Brunckhurst, had been poisoned. The workmen wore respirators to combat this danger.

Brunckhurst testified that in the period 1939 to 1942 attempts were made to tamper with his safety equipment, that on various occasions he found the filters in his respirator removed or holes punched through them, that litharge, a material produced at the plant, had been put on his cigar, that his lunch had been tampered with and that acid had been put on his respirator. Brunckhurst believed, he testified, that someone was trying to cause him injury.

This matter was finally taken up at a grievance meeting held on March 11, 1943. Kopke, Brunckhurst, Thompson, Sanders, and Sondhaus were present. Brunckhurst related in detail the incidents that had occurred. There is a dispute among the witnesses as to whether Brunckhurst then voiced any suspicions as to the identity of the person responsible for the acts against his safety. Brunck-

² *Peyton Packing Company, Inc.*, 49 N. L. R. B. 828, enf'd 142 F. (2d) 1009 (C. C. A. 5), cert. den. 323 U. S. 730, *Republic Aviation Corporation v. N. L. R. B.*; *N. L. R. B. v. Le Tourneau Company of Georgia*, 324 U. S. 793

hurst, corroborated by Kopke, denied that he had done so. He also denied that he thought Anderson was involved or voiced any such thoughts.

After the meeting, Kopke sent a letter, dated March 12, 1943, to Brunckhurst, then acting as shop steward. In this letter, Kopke summarized for the members of the Union the results of grievance negotiations with respondent. As to this matter, the letter contains the following statement:

26. There was considerable discussion on "apparent" malicious tampering with workers' equipment both wearing and working materials. If the reported petty "sabotage" is ever discovered to be the work of any individual or individuals, both the company and the union agree to immediate discharge and court procedure is recommended, O. K.

A copy of this letter was sent to Sondhaus.

Sondhaus testified that at that meeting Brunckhurst eventually named Anderson as the guilty person. Thereupon, Sondhaus continued, he demanded proof and that when none was forthcoming he refused to take action. Sondhaus also testified that he kept notes of the discussion at the meeting and prepared minutes from them the day after the meeting and that copies of these minutes were given to all of respondent's officials present at the meeting. In regard to the tampering grievance, the minutes as quoted by Sondhaus in part, are as follows:

It at length became apparent Mr. Brunckhurst thought that Mr. Anderson was responsible for these overt acts. When Mr. Brunckhurst had finally finished his statements under Point 2, the Employer Representatives stated that unless Mr. Brunckhurst could substantiate his charges with indisputable evidence, the management could take no action. He was asked to submit such proofs if he could obtain them.

The minutes do not contain the exact language used by Brunckhurst from which Sondhaus came to the conclusion stated therein.

The undersigned credits the testimony of Brunckhurst and Kopke as corroborated by the written evidence and finds that Brunckhurst did not actually name Anderson as the guilty person. However, the undersigned finds that Sondhaus, as a result of the discussion, came to the conclusion that Brunckhurst implied that Anderson was the person responsible for the tampering.

Anderson was never given a copy of respondent's minutes of the meeting nor was he informed of the discussion. As to this, Sondhaus testified:

It was a serious charge, unproven, which would inevitably have created trouble, in my opinion. We were striving for harmonious relations with our employees. We were considering all of the grievances which had been presented to us, and we were trying to follow a conciliatory course which would result in settling grievances to the Union's satisfaction and restore harmony.

If we had injected this poisoning charge into the situation it would have made it impossible to achieve the objective that we were trying to reach. Therefore we said nothing about it. I said nothing about it to Mr. Anderson.

Sondhaus also testified that no investigation was made of the charges. When he was asked why, he testified:

In my opinion, because the charges seemed to be to me not worth serious consideration and it was a subject which, if you said very much about you would do more damage than good.

In any event, there was no further formal consideration of Brunckhurst's complaint. The matter lapsed, and was not revived until January, 1945.

3. Brunckhurst's union activities

Brunckhurst was appointed shop steward for the plant on September 1, 1942. He held this post until his discharge. The evidence clearly indicates that he immediately embarked upon a vigorous campaign to redress asserted grievances. Brunckhurst testified that during the period of his stewardship he presented approximately 100 grievances to management and, in addition, 15 matters were presented to the Adjustment Board. His testimony is credited.

Whether Brunckhurst's activity was primarily due to an accumulation of grievances at the time he took office and respondent's unwillingness to take action on complaints, as Brunckhurst testified, or whether Brunckhurst went out of his way to stir up trouble, as respondent implied, is immaterial to the issues. It is clear that respondent became increasingly concerned with Brunckhurst's activities. Brunckhurst testified that in April, 1943, Sondhaus asked him to forget a lot of issues, that he and Thompson did not want to keep coming to the plant because of them. He also testified that in that same month, Sondhaus told him that anything or anyone causing trouble could always be eliminated. This testimony is credited.

Matters came to a climax at a meeting of the Adjustment Board held on January 11, 1945. Brunckhurst testified that he presented a grievance at that time. Sondhaus answered him as to the merits of the grievance and also complained of all the "trouble" at the plant. Brunckhurst, continuing his testimony, stated that in reply he reviewed all the grievances that had arisen and endeavored to show that management was continually breaking promises. When he had finished his extended remarks Sondhaus said, according to Brunckhurst, "What do you want us to do . . . get rid of the bosses or get rid of the shop steward? I want to give you some advice Charlie. Why don't you look around and get a job with better environment where you would be happy?"

J Hunter Clark, chairman of the Board and an employee representative, corroborated Brunckhurst on this point. His version was as follows:

Mr. Sondhaus, yes—stated, as a part of his remarks, something to this effect: that something would have to be done; that the employees in the plant were being kept in a state of turmoil, and that it would be necessary to rectify it, even to the point of asking Mr. Brunckhurst to find employment at other places . . . he asked Mr. Brunckhurst . . . if he was so dissatisfied with company policy and the company's way of treating its employees, why didn't he, in this time of opportunity of employment, seek employment some place else under more congenial circumstances and surroundings.

Sondhaus did not deny making the statements attributed to him by Clark and Brunckhurst. Their testimony is credited.

Two other points concerning the January 11th meeting are in dispute; whether Brunckhurst discussed the tampering with his equipment and, if he did, whether he mentioned Anderson in connection with it. Sondhaus testified that Brunckhurst mentioned the subject in his long review of past grievances and stated that he thought Anderson was the guilty person. The record does not contain any testimony that Sondhaus ever mentioned this alleged accusation to Anderson.

Clark testified that according to his recollection Brunckhurst did mention the tampering incidents. He also testified that Anderson's name was mentioned under the following circumstances:

After Mr. Brunckhurst had recited some of his difficulties, I asked him if he had any idea as to the reasons for the difficulties which he was having, and which the other Union people reported they were having and the answer was "Yes, it was Mr. Anderson, the foreman."

Clark later clarified his testimony and stated this interchange had taken place after Sondhaus had spoken and before Brunckhurst had made his lengthy review of past grievances. Clark also testified that this avenue of inquiry was not pursued further.

The undersigned credits the testimony of Clark and finds that Brunckhurst did mention the tampering with his equipment. It is clear, however, that Brunckhurst did not make any specific accusation against Anderson in respect thereto, but mentioned him as the person whose activities were giving rise to grievances. Sondhaus certainly had not mentioned the poisoning charge and Brunckhurst's remark came at the conclusion of Sondhaus' statements. It is also significant that Sondhaus never mentioned this incident to Anderson when he discussed the poisoning charge with Anderson shortly thereafter.

4. Events between January 12 and January 22, 1945³

On the morning of January 12, employee Briggs told Anderson that Brunckhurst had declared to a group of employees that Anderson was the person who had tampered with his respirator.⁴ Anderson thereafter spoke to three other employees who were supposed to have heard that remark. One of them, Herman, corroborated Briggs. He spoke to the other two employees, Schleicher and Henderson, the next day. Schleicher partially corroborated Briggs. Henderson did not. Anderson spoke to Sanders on the 12th and related the information he had received. Sanders replied, "This isn't the first time I have heard all of this," and showed Anderson his copy of the minutes of the meeting of March 11, 1943, heretofore mentioned, which minutes contained the statement that Brunckhurst had accused Anderson of tampering with his equipment. Anderson then demanded a meeting with top officials to ascertain why he had not been previously notified of the accusation.

Anderson met with Sondhaus, Thompson, and Sanders during the following week.⁵ He demanded an explanation for the failure to notify him of the alleged accusation of Brunckhurst which purportedly had been made in 1943. Sondhaus replied that he thought the charges were preposterous and that he did not think it necessary to notify Anderson of them. Thereupon Anderson demanded that something be done, that he (Anderson) wanted the charges proved or disproved. It was agreed that a meeting would be held at which Brunckhurst would be present. Later in the week Sanders suggested that Anderson make a formal request for the meeting.

Anderson prepared a formal request for a meeting and submitted it to Sanders on January 20 together with a statement signed by Briggs.⁶ Anderson was unable to obtain written statements from other employees and so informed Sanders.

³ The findings in this section are based primarily on the testimony of Anderson, which is credited.

⁴ Brunckhurst denied that he had accused Anderson of poisoning him or tampering with his equipment. He admitted that in a talk with employees on January 11 he had mentioned the tampering with his equipment. He further testified that he had told the employees that a notebook was missing from his locker and that Anderson was one of the persons having a key to it. Briggs was not available. There is no other direct testimony as to what was said on that occasion.

⁵ Sondhaus fixed the date as January 15.

⁶ Sondhaus testified that the statement was supplied at his request.

Anderson also prepared a retraction, which he wanted Brunckhurst to sign. He did not ask for Brunckhurst's discharge and never requested it. He first learned of the intention to discharge Brunckhurst when it was actually made.

Sondhaus testified that the Briggs statement was received by him on January 22. He further testified that at that time, prior to any further meeting, Thompson decided that Brunckhurst should be discharged.⁷

5. The meeting on January 23

On January 23, Kopke and Brunckhurst were summoned to a meeting. They had not been given any advance information as to the subjects to be discussed. Sanders, Anderson, Thompson, and Sondhaus were also present. A stenographer was present and a transcript was prepared. All parties agreed that this transcript, which was introduced into evidence, accurately records what was said at the meeting.

Sondhaus opened the meeting by stating that the subject of the meeting was the purported charges made by Brunckhurst against Anderson. He referred to his minutes of the meeting of March 11, 1943, and the conclusion therein that Brunckhurst had accused Anderson of tampering with his equipment. He then stated that on January 12, 1945, Brunckhurst had accused Anderson of attempting to poison him. He also read Anderson's letter demanding a meeting so that he could deny that charge, which letter concluded :

In consideration of the seriousness of the accusation against me and because of the unfavorable effect that the accusation has had upon my peace of mind in my contacts and relations with my fellow employees while allowing the accusation to go unchallenged, I cannot be satisfied with anything less than an apology from Brunckhurst and a statement signed by him acknowledging that his accusation of me is false.

The minutes of the meeting then continue as follows :

That puts it right up to us. That is our reason for calling this meeting. Now, we want to know, Mr. Brunckhurst, did you or did you not make the alleged statement on Friday, January 12, which you were reported to have made to Mr. Anderson?

[Brunckhurst] You mean to say, did I make the statement Mr. Anderson was trying to poison me? I will deny that.

[Sondhaus] We have a signed statement by an employee who overheard you make the statement. (Sondhaus reads statement)

"To Whom it May Concern . On Friday morning, January 12, 1945, shortly before eight o'clock Charles Brunckhurst, in the presence of and in the hearing of myself and several of my fellow employees of the National Lead Company, and in the plant welfare building made a statement or statements to the effect that Walter L. Anderson had attempted to poison him. (Signed) Floyd Briggs."

We think the situation has grown intolerable and that it has to be corrected.

[Sanders] Under the circumstances, I have to state this. I think we have been fairly long suffering in the way this matter has developed. It is our error for thinking this accusation was so preposterous that it could

⁷ In December 1944, according to the credited testimony of Brunckhurst and Kopke, a question arose over the right of Briggs and another employee, Bancroft, to a particular assignment. Brunckhurst had supported Bancroft in negotiations with respondent and Sondhaus knew this.

just be dropped. But the situation is such now that we realize it is hampering plant operations and that we can only have efficient and satisfactory plant operations where peace and harmony exist; and we certainly can't have peace and harmony where accusations are passed back and forth, as this accusation has been—and it is an unfounded accusation. Under the circumstances, I don't see that I have any other choice, as Superintendent of the Plant here, but to ask for your resignation and dismiss you from the service.

[Sondhaus] I think the Company's management will have to sustain Mr. Sanders. However, that does not give Mr. Anderson satisfaction. He has a statement here that he wants you to sign. (Sondhaus reads statement):

'To all concerned: I, Charles Brunckhurst, herewith acknowledge that a statement or statements made by me on Friday, January 12, 1945, in the presence of and in the hearing of a group of fellow employees in the welfare building of the National Lead Company, 4701 San Leandro St., Oakland, California, to the effect that Walter L Anderson had attempted to poison me is untrue.'

Brunckhurst refused to sign the statement. Kopke then stated that he had no recollection of Brunckhurst making any charge against Anderson. Sondhaus declared that his recollection was to the contrary. Kopke suggested that further investigation be made, but this suggestion was not accepted.⁸

Concluding findings

There is little dispute concerning key facts. Brunckhurst had a ten-year record as a satisfactory employee. However, his activities as a union steward had brought him into frequent clashes with management. These clashes reached the point where Sondhaus intimated that either the plant managers or Brunckhurst would have to be replaced.

At the same time, Anderson was informed by an employee that Brunckhurst had told a group of employees that Anderson had tampered with his equipment and thus had attempted to poison him. It is clear, and the undersigned finds, that Anderson believed that report. He immediately demanded that action be taken to clear his name. He demanded that a meeting be held where he could confront Brunckhurst and deny the accusation. Anderson was asked to put his request in writing and secure written evidence that Brunckhurst had made the accusation. Anderson did so.

When those papers were received, Sondhaus testified, respondent decided to discharge Brunckhurst. It made no effort to investigate to determine what was said or the surrounding circumstances. From its experience in 1943, respondent may have determined that Brunckhurst may have made the remarks attributed to him, but that certainly did not constitute a determination based on full knowledge of the facts. Respondent never knew what Brunckhurst had said at the meeting held on January 11 or 12. Briggs' statement did not purport to quote Brunckhurst. It merely alleged that Brunckhurst had made statements "to the effect" that Anderson had tried to poison him. No effort was made to ascertain from Briggs or the other employees who had been present, especially those who refused to sign statements, exactly what had been said.

The central issue in this case is respondent's motive in making the discharge. Sondhaus testified, "We believed he did make the statements and we thought,

⁸ Subsequently, Anderson requested the District Attorney to take action. After a hearing, at which Briggs testified, the District Attorney refused to proceed. Respondent, while aware of this development, took no further action.

under the circumstances, it was impossible to keep him on at the plant because of his relation with Anderson, who had to supervise him." This determination was made without any discussion with Anderson concerning its necessity. Anderson had never asked for Brunckhurst's discharge and admittedly never knew it was contemplated.

The undersigned was impressed by the fact that respondent brushed aside any claim to consideration that Brunckhurst might have had because of his years of satisfactory service. It made no effort to get to the bottom of the charge against him and determine what, if anything, was said. There was no hearing on January 23. Brunckhurst, after denying the charges, was discharged. He then was asked to sign a retraction of statements he had denied making. This procedure was followed even though Kopke expressed his uncertainty as to the facts and earnestly urged further investigation.

Upon a reasonable appraisal of human conduct, the undersigned concludes that, absent Brunckhurst's union activities, he would have at least been given the opportunity to state what had actually occurred and, upon the basis of *facts*, not surmises, the respondent would have been able to decide whether any accusation had been made against Anderson. Then, the respondent, if it found Brunckhurst guilty, would have offered him the probable alternative of making an apology or suffering discharge. On the basis of the outcome, it could then have reasonably determined whether Anderson and Brunckhurst could work together. Instead, respondent by its conduct closed all avenues for Brunckhurst to remain in its employ, even if he had not in fact made any charges against Anderson and without finding out whether Anderson did want his discharge.

The undersigned concludes and finds that respondent took advantage of Anderson's complaint to rid itself of Brunckhurst, and that his discharge was due to his union activities. It made no effort to have a frank discussion to bring out the facts and to bring about a reconciliation between the men. Instead, it adopted a course of action which resulted in Brunckhurst's discharge and in Anderson not obtaining the relief he sought in clearing his name. The only result that was obtained at the January 23rd meeting was that the respondent by such action had rid itself of a satisfactory employee, whose activities as a shop steward had made him objectionable to management.

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 among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Since it has been found that the respondent has engaged in certain unfair labor practices affecting commerce, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

It has been found that the respondent has discriminated in regard to the hire and tenure of employment of Charles Brunckhurst. It will therefore be recommended that the respondent offer him immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority and other rights and privileges. It will be further recommended that the respondent make him whole for any loss of pay that he may have suf-

ferred by reason of the respondent's discrimination against him by payment to him of a sum of money equal to the amount that he would have earned as wages from the date of the discrimination against him to the date of the respondent's offer of reinstatement, less his net earnings during said period.⁹

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. Paint Makers' Union, Local No. 1101, Brotherhood of Painters, Decorators and Paperhangers of America, affiliated with the American Federation of Labor, 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 (1) of the Act.

3. By discriminating in regard to the hire and tenure of employment of Charles Brunckhurst, thereby discouraging membership in Paint Makers' Union, Local No. 1101, Brotherhood of Painters, Decorators and Paperhangers of America, AFL, respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

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

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law the undersigned recommends that National Lead Company, Oakland, California, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in Paint Makers' Union, Local No. 1101, Brotherhood of Painters, Decorators and Paperhangers of America, AFL, or any other labor organization of its employees by laying off, discharging, or refusing to reinstate any of its employees and from refusing to employ any member of that union or in any other manner discriminating in regard to their hire and tenure of employment or any other term or condition of employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Paint Makers' Union, Local No. 1101, Brotherhood of Painters, Decorators and Paperhangers of America, AFL, 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 as guaranteed in Section 7 of the Act.

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

(a) Offer to Charles Brunckhurst immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges;

⁹ By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company*, 8 N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N. L. R. B.*, 311 U. S. 7.

(b) Make whole Charles Brunckhurst for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages from the date of discrimination to the date of respondent's offer of reinstatement, less the net earnings during said period;¹⁰

(c) Post immediately at its plant at Oakland, California, copies of the notice attached to the Intermediate Report herein marked "Appendix A." Copies of said notice, to be furnished by the Regional Director of the Twentieth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

(d) Notify the Regional Director of the Second Region in writing within ten (10) days from the receipt of this Intermediate Report what steps the respondent has taken to comply herewith

It is further recommended that unless the respondent notifies said Regional Director in writing within ten (10) days from the receipt of this Intermediate Report that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, effective July 12, 1944, any party or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such a statement of exceptions and/or brief, the party or counsel for the Board filing same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board.

SIDNEY L. FEILER,
Trial Examiner.

Dated October 17, 1945.

APPENDIX A

NOTICE TO ALL EMPLOYEES

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

We will not in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Paint Makers' Union, Local No. 1101, Brotherhood of Painters, Decorators and Paperhangers of America, AFL, or any other labor

¹⁰ See footnote 9, *supra*.

