

in common with the employees in the unit found appropriate and we shall therefore exclude them from the unit.⁷

We find that all of the Employer's automotive mechanics, radio repairmen, lubrication men, used car repairmen, service salesmen, body, fender, paint, and trim men, janitors, battery men, washers, polishers, helpers, greasemen, porters, tiremen, laborers, the towerman, parts department employees, and the two service station employees,⁸ but excluding all professional and technical employees, office and clerical employees, salesmen, guards, watchmen, and all other employees, and all executives 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.]

⁷ Cf. *Gastoma Weaving Company*, 91 NLRB 899; *The E. J. Kelly Company*, 90 NLRB No. 239.

⁸ It appears that the Employer may employ several apprentices or learners in some of the categories of employees included in the unit. Learners or apprentices in these categories are included in the unit.

WILLIAM S. FRAZIER *and* NATIONAL BROTHERHOOD OF OPERATIVE POTTERS, A. F. L. *Cases Nos. 21-CA-710, 21-CA-755, and 21-CA-791. May 10, 1951*

Decision and Order

Upon charges duly filed on February 23, April 18, and June 5, 1950, by National Brotherhood of Operative Potters, A. F. L., herein called the Union, the General Counsel of the National Labor Relations Board, herein called the General Counsel, by the Regional Director for the Twenty-first Region (Los Angeles, California), issued a consolidated complaint¹ dated December 4, 1950, against William S. Frazier, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in certain unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, as amended by the Labor Management Relations Act, 1947, 61 Stat. 136. Copies of the charges and the consolidated complaint, together with notice of hearing, were duly served upon Respondent.

With respect to the unfair labor practices, the complaint alleged in substance (1) that the Respondent discharged Mary Plainer and Marion Fausett on April 13, 1950, Howard Koher, Virginia Sanders,

¹ The above-numbered cases were consolidated by an order of the Regional Director dated December 4, 1950.

and George Sanders on May 3, 1950, and Elnora Reynolds on May 8, 1950, because they engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection; (2) that the Respondent laid off Louis V. Givvin from April 12 to 19, 1950, for the same reasons; and (3) that on and after February 1, 1950, the Respondent interfered with, restrained, and coerced his employees in the exercise of their rights guaranteed in Section 7 of the Act by (a) conducting an open poll at which the employees were required to divulge their interest in the Union, (b) questioning employees and prospective employees as to their union affiliations and the union affiliations of other employees, (c) soliciting the aid of employees in combating the Union by making promises of benefit to them, and (d) according disparate treatment to union adherents and to their opponents in the use of paid working time for employee activity relating to collective bargaining.

The Respondent duly filed his answer admitting certain allegations contained in the consolidated complaint but denying that he committed unfair labor practices.

Pursuant to notice, a hearing was held at Los Angeles, California, on January 8, 9, and 10, 1951, before William E. Spencer, the Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel, the National Brotherhood of Operative Potters, A. F. L., and the Respondent were represented by counsel or other representative and participated in the hearing. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.

At the hearing the Trial Examiner granted the General Counsel's motion to amend the complaint by striking therefrom paragraph V which alleged that the Respondent discriminatorily discharged Mary Plainer, Marion Fausett, Howard Koher, Virginia Sanders, George Sanders, and Elnora Reynolds. Pursuant to the agreement of counsel, the Trial Examiner also struck from the complaint item 3 of paragraph VI which alleged that the Respondent solicited the aid of employees, by promises of benefit, in combating the Union.

The Respondent at the hearing moved to dismiss the entire complaint on the ground that the General Counsel failed to prove a *prima facie* case. With the consent of all the parties, the Trial Examiner orally analyzed the evidence and stated his findings of fact, conclusions of law, and recommended order on the record in lieu of issuing an intermediate report.

The Trial Examiner found that the Respondent had violated Section 8 (a) (1) of the Act by conducting a poll of his employees to determine their attitude toward the Union, by questioning some of his employees concerning their union activities, and by threats of re-

praisal to them in the event the Union's campaign was successful. He ordered the complaint dismissed insofar as it alleged the discriminatory layoff of Givvin, the disparate treatment of union adherents, and promises of benefit to employees for their opposition to the Union.

The Board² 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.

After the close of the hearing, the General Counsel filed exceptions and a brief in support thereof to so much of the Trial Examiner's recommended order as provided that unless on or before twenty (20) days from the date of the Trial Examiner's recommended order the Respondent notifies the Regional Director in writing that he will comply with the Trial Examiner's recommendations, the National Labor Relations Board should issue an order requiring the Respondent to take the action recommended. No exceptions were filed by any of the parties to the Trial Examiner's findings of fact and conclusions of law, or to any other portions of the Trial Examiner's recommended order.

The Board has considered the entire record in this case, including the Trial Examiner's findings of fact, conclusions of law, and recommended order, and the General Counsel's exceptions thereto. The Board finds that there is no merit to the exceptions filed by counsel for the General Counsel, and as no exceptions were filed to the other recommendations of the Trial Examiner concerning the Respondent's unfair labor practices we accordingly hereby adopt his findings, conclusions, and recommendations.

Upon the entire record in the case the Board makes the following:

Findings of Fact and Conclusions of Law

1. The Respondent is engaged in commerce within the meaning of the National Labor Relations Act.

2. National Brotherhood of Operative Potters, A. F. L., is a labor organization admitting to membership employees of the Respondent.

3. The General Counsel has not established by a preponderance of the testimony that the Respondent discriminated against Louis V. Givvin in violation of Section 8 (a) (3) of the Act by his layoff for the period from April 12 to 19, 1950, and accordingly failed to sustain the allegations contained in paragraph IV of the complaint. The General Counsel also failed to establish by preponderance of the testimony that the Respondent accorded disparate treatment to union adherents and to their opponents in the use of paid working time for

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].

employee activity relating to collective bargaining and accordingly failed to sustain the allegations contained in item 4 of paragraph V. of the complaint.

4. The Respondent by conducting a poll of his employees to determine their attitude concerning the Union and by questioning employees concerning their union activities, and by threats of reprisal in the event the Union was successful, interfered with, restrained, and coerced his employees in their exercise of the rights guaranteed in Section 7 of the Act and by such conduct has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

5. The activities of Respondent, set forth above, occurring in connection with the operations of the Respondent 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.

6. In order to effectuate the purposes of the Act, we shall order the Respondent to cease and desist from the unfair labor practices found and from any like or related act or conduct. In addition, we shall order the Respondent to take certain affirmative action designed to effectuate the policies of 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, William S. Frazier, his agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating his employees concerning their union affiliations, activities, or sympathies, and threatening his employees with economic reprisals for exercising their right to self-organization, to form, join, and assist labor organizations.

(b) By engaging in any like or related act or conduct, interfering with, restraining, or coercing his employees in the exercise of the right to self-organization, to form labor organizations, to join or assist National Brotherhood of Operative Potters, A. F. L., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose 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 his plant in Los Angeles, California, copies of the notice attached hereto marked "Appendix A."³ Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being signed by the Respondent or his representative, be posted by the Respondent immediately upon receipt thereof, and maintained by him for a period of 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 Twenty-first Region, in writing, within ten (10) days from the date of this Order what steps the Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint, insofar as it alleges that Louis V. Givvin was discriminatorily laid off for the period from April 12 to 19, 1950, that the Respondent solicited the aid of employees, by promises of benefit, in combating the Union, and that the Respondent accorded disparate treatment to union adherents and to their opponents in the use of paid working time for employee activity relating to collective bargaining be, and it hereby is, dismissed.

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, I hereby notify my employees that:

I WILL NOT interrogate my employees concerning their union affiliations, activities, or sympathies or threaten my employees with economic reprisals for exercising their rights to self-organization, to form, join, or assist labor organizations.

I WILL NOT, by engaging in any like or related act or conduct, interfere with, restrain, or coerce my employees in the exercise of their right to self-organization, to form labor organizations, to join or assist NATIONAL BROTHERHOOD OF OPERATIVE POTTERS, A. F. L., 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

³ In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted in the notice before the words, "A Decision and Order," the words, "A Decree of the United States Court of Appeals Enforcing."

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.

WILLIAM S. FRAZIER

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.

DIRECT LABORATORIES, INC. *and* UNITED GAS, COKE, AND CHEMICAL WORKERS OF AMERICA, CIO, PETITIONER. *Case No. 3-RC-541. May 10, 1951*

Decision and Order

Pursuant to a stipulation for certification upon consent election, an election by secret ballot among the Employer's production and maintenance employees was conducted on October 3, 1950, under the direction and supervision of the Regional Director for the Third Region. Upon completion of the election, a tally of ballots was issued and duly served upon the parties. The tally reveals that of approximately 24 eligible voters, 23 cast valid ballots, of which 10 were for and 13 against the Petitioner; 1 ballot was void.

The Petitioner filed timely objections to conduct affecting the results of the election. Thereafter, on December 15, 1950, following an investigation, the Regional Director issued and duly served upon the parties his report on objections, wherein he recommended that a hearing be held on the objections. The Employer filed timely exceptions to the Regional Director's report.

On February 28, 1951, the Board, having duly considered the matter, issued an Order directing a hearing on the issues raised by the objections and exceptions. Upon notice duly served, a hearing was held on March 16, 1951, before John H. Garver, hearing officer. On March 26, 1951, the hearing officer issued and duly served upon the parties his report on objections, in which he found that the Employer had engaged in conduct improperly affecting the results of the election, and recommended that the election be set aside and a new election directed. He based his recommendation on a finding that immediately before the election the Employer promised a wage increase to each of the employees in the voting group, and that no justifi-