

therefrom, and that it take certain affirmative action designed to effectuate the policies of the Act. Having also found that the Union represented and now represents a majority of the employees in the appropriate unit, and that Respondent has refused to bargain collectively with it, I recommend that Respondent, upon request, bargain collectively with the Union.

Upon the basis of the above findings of fact and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. International Brotherhood of Electrical Workers, Local 790, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All employees in the electrical operations in the Jacksonville Division of Respondent employed at its Jacksonville plant, exclusive of all employees of the Central Division, ice plant employees, professional employees, clerical employees, guards, watchmen, shift operators, and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9, subdivision (b), of the Act.

3. International Brotherhood of Electrical Workers, Local 790, was on July 17, 1950, and at all times thereafter, has been and is, the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing on September 19, 1950, and at all times thereafter, to bargain collectively with International Brotherhood of Electrical Workers, Local 790, as the exclusive representative of its employees in the aforesaid appropriate unit, Respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

5. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

6. 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.]

KEN ROSE MOTORS, INC. and LOCAL 841, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, AND LODGE 1898 OF DISTRICT 38, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL. Case No. 1-UA-765. May 28, 1951

Decision and Order

On March 5, 1951, Trial Examiner Hamilton Gardner 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,

and the General Counsel filed a brief in support of the Intermediate Report.

The Board¹ has reviewed the rulings made by 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 briefs, and the entire record in the case,² and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions and modifications:

We agree with the Trial Examiner's conclusion that the Respondent refused to bargain with the Unions, and thereby violated Section 8 (a) (5) and (1) of the Act.

On June 1, 1950, the Unions informed the Respondent by letter that they represented a majority of the Respondent's employees in an appropriate unit; at the same time they also requested a bargaining conference. As the Trial Examiner found, when the Unions made their bargaining request on June 1, they jointly represented eight of the nine employees in the unit involved, and were therefore the duly designated bargaining representative of such employees.

Upon receipt of the Unions' letter, the Respondent immediately embarked upon the course of unlawful antiunion conduct which is detailed in the Intermediate Report. Such conduct began on June 2 when the Respondent's president threatened the employees with reprisals in the event that the Unions were brought into the Respondent's shop, and it continued throughout July and most of August.³

On June 7, the Respondent replied to the Unions' June 1 letter, but merely referred the Unions to the Respondent's attorney "for further information." However, before the reply was received, the Unions on June 8 filed a representation petition in Case No. 1-RC-

¹ Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Reynolds, and Styles].

² The Board has also officially noticed the record in *Ken Rose Motors, Inc.*, Case No. 1-RC-1614 (unpublished Decision and Direction of Election dated July 28, 1950), the representation proceeding before the Board cited in the Intermediate Report, which involves the Respondent's employees. Pursuant to Section 7 (d) of the Administrative Procedure Act, the parties will be given the opportunity to show, upon filing a timely motion for reconsideration, the contrary of any fact of which the Board takes official notice herein. See *J S Abercrombie Company*, 33 NLRB 524, enforced, 180 F. 2d 578 (C. A. 5).

³ As set forth fully in the Intermediate Report, the Respondent's antiunion activities consisted of the June 2 speech by its president and a series of statements, remarks, and interrogations by its service manager. In the course of such antiunion activities, the Respondent, we find, (1) interrogated its employees concerning their union affiliations; (2) warned its employees not to assist, remain, or become members of the Unions; (3) promised economic benefits to its employees for so refraining; and (4) threatened its employees with reprisals for assisting the Unions. Like the Trial Examiner, we find that by such conduct the Respondent violated Section 8 (a) (1) of the Act. In so concluding, we do not rely, however, upon the remark attributed to the Respondent's president, and cited in the Intermediate Report, to the effect that he was unable to understand why the Unions were trying to organize a small dealer like himself.

1614, on the basis of which the Board directed an election among the employees in the appropriate unit.⁴

The election directed by the Board was scheduled for August 24, 1950. Before that date, however, the Unions, learning of the Respondent's course of unlawful, antiunion conduct referred to above, requested, and were granted, permission to withdraw their petition, and the scheduled election was not held.

In its answer to the complaint herein, the Respondent admits that it refused to bargain with the Unions. It contends, however, that its refusal to bargain was not unlawful because it is not engaged in commerce within the meaning of the Act,⁵ and because the Unions do not represent a majority of the employees in the appropriate unit.⁶

The issue of whether the Respondent's operations affect commerce within the meaning of the Act was decided by the Board adversely to the Respondent in the representation proceeding and we see no reason for reaching a contrary conclusion in this proceeding. Moreover, since the decision in the representation proceeding the Board has specifically considered this type of problem and concluded that the operations such as those engaged in by the Respondent affect commerce within the meaning of the Act and that it would effectuate the policies of the Act to assert jurisdiction over them.⁷

Nor do we believe that the Respondent's refusal to bargain with the Unions was the result of a bona fide doubt as to the Unions' majority status. No such doubt was expressed in the Respondent's reply on June 7 to the Unions' request for a bargaining conference, which merely referred the Unions to the Respondent's attorney; nor did the Respondent at any other time express any such doubt to the Unions. The question of the Unions' majority status was, in fact, raised for the first time in the Respondent's answer to the complaint herein. In view of this fact and, particularly, in view of the Respondent's extensive antiunion campaign, the inception of which coincided with the Unions' request for a bargaining conference, we are convinced and find that the Respondent did not in fact entertain any doubt as to the Unions' majority status, but that its failure to accede to the request for a bargaining conference was motivated solely by a rejection

⁴ The findings in the paragraph of the text preceding this footnote reference are based on the record in Case No. 1-RC-1614, of which we hereby take official notice. See footnote 2, above.

⁵ We take official notice that at the hearing in Case No. 1-RC-1614, the Respondent's principal contention was that it was not engaged in commerce within the meaning of the Act. The contention was expressly rejected by the Board in its Decision and Direction of Election.

⁶ The Respondent's answer denies the Unions' majority status. Both at the hearing and in its exceptions to the Intermediate Report, the Respondent took the position that it would concede the jurisdictional question if the issue with respect to the Unions' majority status were to be settled by an election.

⁷ *Baxter Bros.*, 91 NLRB 1480.

of the principles of collective bargaining and by a desire to gain time in which to dissipate the Union's strength.

While the Respondent at the hearing in this case stated its present willingness to bargain with the Unions if certified pursuant to a Board election, this statement does not, in our opinion, reflect the Respondent's acceptance of the collective bargaining principle, but rather a belief that its antiunion campaign has obviated any likelihood that the Unions would win such an election.⁸

Accordingly, upon the entire record we conclude that the Respondent's admitted refusal to bargain with the Unions was not in good faith, and that it thereby violated Section 8 (a) (5) of the Act.⁹

The Remedy

As stated above, we are convinced and find that the Respondent, by refusing to bargain with the Unions, and by its other unlawful conduct, has displayed an attitude of general opposition to the purposes of the Act. The violations of the Act which the Respondent committed are, we think, related to other unfair labor practices proscribed by the Act, and the danger of their commission in the future is to be anticipated from the Respondent's conduct in the past. The preventative purposes of the Act will be thwarted unless our order is coextensive with the threat. In order, therefore, to make more effective the interdependent guarantees of Section 7 and prevent a recurrence of unfair labor practices, and thereby minimize industrial strife which burdens and obstructs commerce, and thus effectuate the policies of the Act, we shall order the Respondent to cease and desist from infringing in any manner upon the rights guaranteed in Section 7 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, Ken Rose Motors, Inc., Wakefield, Massachusetts; its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

- (a) Interrogating its employees concerning their union affiliations.
- (b) Warning its employees to refrain from assisting, becoming members of, or remaining members of Local 841, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of

⁸ See *Dismuke Tire and Rubber Company, Inc.*, 93 NLRB 479.

⁹ *Joy Silk Mills, Inc.*, 85 NLRB 1263, enforced *Joy Silk Mills, Inc. v. N. L. R. B.*, 185 F. 2d 732 (C. A., D. C.); *Long-Lewis Hardware Company*, 90 NLRB 1403; *Dismuke Tire and Rubber Company, Inc.*, *supra*.

America, AFL, or Lodge 1898 of District 38, International Association of Machinists, AFL, or any other labor organization, from offering its employees economic benefits for so refraining, and from threatening its employees with discharge and other reprisals for joining and assisting the aforesaid labor organizations.

(c) Refusing to bargain collectively with Local 841, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and with Lodge 1898 of District 38, International Association of Machinists, AFL, as the exclusive representative of all the Respondent's employees engaged at its Wakefield shop in repairing, servicing, and maintaining automotive equipment, including mechanics, body men, painters, helpers, on-the-job trainees, parts men, greasers, and washers, but excluding office and clerical employees, guards, professional employees, and supervisors as defined in the Act.

(d) 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 Local 841, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, or Lodge 1898 of District 38, International Association of Machinists, AFL, 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 and 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 National Labor Relations Act.

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

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

(b) Post at its shop in Wakefield, Massachusetts, copies of the notice attached hereto and marked Appendix A.¹⁰ Copies of said notice, to be furnished by the Regional Director for the First Region, shall, after being duly signed by the Respondent's representative, be

¹⁰ In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted before the words, "A Decision and Order," the words, "A Decree of the United States Court of Appeals Enforcing"

posted by the Respondent immediately upon receipt thereof, and be maintained by it 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.

(c) 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 interrogate our employees concerning their union affiliations.

WE WILL NOT warn our employees to refrain from assisting, becoming members of, or remaining members of LOCAL 841, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, or LODGE 1898 OF DISTRICT 38, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL, or any other labor organization. Nor will we offer our employees economic benefits for so refraining, or threaten them with discharge and other reprisals for joining and assisting the aforesaid labor organizations.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist LOCAL 841, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, or LODGE 1898 OF DISTRICT 38, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL, 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.

WE WILL bargain collectively upon request with the above-named labor organizations as the exclusive representative of all employees in the appropriate bargaining unit described below,

with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and, if an understanding is reached, we will embody such understanding in a signed agreement. The bargaining unit is:

All employees engaged at our Wakefield shop in repairing, servicing, and maintaining automotive equipment, including mechanics, body men, painters, helpers, on-the-job trainees, parts men, greasers, and washers, but excluding office and clerical employees, guards, professional employees, and supervisors as defined in the Act.

KEN ROSE MOTORS, INC.,
Employer.

Dated ----- By -----
(Representative) (Title)

This notice must be remained posted for sixty (60) days from the date hereof, and must not be altered, defaced, or covered by any other material.

Intermediate Report

Robert S. Fuchs, Esq., for the General Counsel.

Edmund J. Blake, Esq., Boston, MBass., for the Respondent.

STATEMENT OF THE CASE

This proceeding arose upon a charge filed on August 25, 1950, by Local 841, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and Lodge 1898 of District 38, International Association of Machinists against Ken Rose Motors, Inc.¹ Upon the basis of such charge, the General Counsel of the National Labor Relations Board, acting through the Regional Director of the First Region (Boston, Massachusetts), issued a complaint against the named company on December 20, 1950. This alleged that the Respondent had engaged in, and was engaging in, unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the Act. Copies of the complaint and the charge upon which it was based, together with notice of hearing thereon, were duly served upon the Respondent and the Unions.

The complaint alleged in substance that the Respondent engaged in unfair labor practices: (1) On and since June 2, 1950, by interfering with, restraining, and coercing its employees through interrogating them concerning their union affiliations and activities, warning them to refrain from joining the Unions, offering them economic benefits for so refusing, threatening them with reprisals for join-

¹ References in this Report will be: Ken Rose Motors, Inc., as the Respondent or the Company; Local 841, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and Lodge 1898 of District 38, International Association of Machinists, as the Unions or the Carpenters or Machinists, respectively; the General Counsel and his representative at the hearing, as the General Counsel; the National Labor Relations Board, as the Board; the National Labor Relations Act, as amended by the Labor Management Relations Act (61 Stat. 136), as the Act.

ing or assisting the Unions and keeping their union and concerted activities under surveillance; and (2) on and since June 3, 1950, by refusing to bargain collectively with the Unions as the exclusive representative of the employees. Thereby, it is alleged, the Respondent had violated Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the Act and deprived its employees of the exercise of the rights guaranteed in Section 7.

The answer of the Respondent admitted its corporate existence and the general nature of its business; denied that it was engaged in interstate commerce; admitted that it refused to bargain collectively with the Unions and denied specifically the unfair labor practices alleged.

Pursuant to notice, a hearing was held at Boston, Massachusetts, on January 9, 1951, before Hamilton Gardner, the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The General Counsel and the Respondent were represented by counsel. Full opportunity was afforded all parties to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the beginning of the hearing the General Counsel filed a written motion to amend paragraph 4 of the complaint which in effect rearranged the titles of the Unions. In the absence of objection the Trial Examiner granted this motion. At the end of the hearing he also granted a motion of the General Counsel, to which no objection was entered, to amend the pleadings in minor matters to conform to the proof.

The Respondent opened his case with a brief statement, but both counsel waived closing oral arguments. The parties were advised of their right to file proposed findings of fact, conclusions of law, and briefs. Briefs have been received from counsel for both parties.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Ken Rose Motors, Inc. is a corporation of the Commonwealth of Massachusetts with its office and place of business at Wakefield, near Boston, therein. It is engaged in the sale and service of Ford passenger cars, trucks, and automotive parts under a franchise from Ford Motor Company, of Dearborn, Michigan, which is in evidence. All new cars, trucks, and 90 percent of the parts sold by the company is purchased from the Somerville, Massachusetts, plant of the Ford Motor Company. Annual purchases of the Respondent amount to approximately \$100,000 of which 70 percent is expended for cars and trucks. Annual sales total about \$130,000 of which 50 percent represents sales of used cars and trucks. The Company also sells oils, the annual purchases and sales being \$6,000 and gasoline with \$4,000 annual purchases and sales. All purchases and sales by the Respondent are made within the Commonwealth of Massachusetts.

The foregoing facts were stipulated at the hearing.

In addition, Kenneth M. Rose, president of the Company, testified for the Respondent that the Fords purchased at Somerville, Massachusetts, were assembled there from parts manufactured in Dearborn, Michigan, and in other States and shipped to Somerville. One-half of 1 percent of the spare parts purchased were shipped directly to the Company from New Jersey. It also sells General tires which are made at Akron, Ohio. The gasoline and oil it retails are produced in Texas and other States. But all its purchases of tires, gasoline, and oil are bought through local Massachusetts dealers. Rose testified that he advertised the Company's goods, but did not disclose the media.

The franchise under which the Respondent sells Ford cars, trucks, and parts contains provisions as to the retail sale prices of Ford products; details as to the specific manner of conducting the Company's business, including the type of its premises, its method of bookkeeping, its manner of advertising; rendering periodic reports to Ford Motor Company; the restricted use of Ford names and trademarks; the amount of stock it may maintain; the manner of demonstrating cars and trucks; the avoidance of competition with other Ford dealers; and certain kinds of protective advantage from Ford in its dealership. The Ford Somerville plant is part of a Nation-wide organization engaged in the manufacture, assembly, and distribution of Ford products.

The Respondent denies it is engaged in interstate commerce as defined by the Act.

Very recently the Board passed upon the jurisdictional question involved in the retail automobile business. That was in the *Baxter Bros.* case,² where the facts were identical with those at bar, including the sale of cars exclusively within the State. In assuming jurisdiction, the Board said:

Having recently reexamined Board policy concerning the exercise of jurisdiction, we are of the opinion that when an employer is an integral part of a multistate enterprise, the Board should exercise its discretion in favor of taking jurisdiction. We consider franchised automobile dealers . . . to be enterprises of this nature, even though, as here, the business may be locally owned and make all its sales within the State. In reaching this conclusion, the Board has considered the franchise arrangements under which the Respondents operate and the fact that they function as an essential element in a Nation-wide system devoted to the manufacture and distribution of automobiles. Accordingly, we find that it will effectuate the policies of the Act to assert jurisdiction over the Respondents.

Under the evidence of record I find that the Respondent is engaged in commerce within the meaning of the Act.³

II. THE LABOR ORGANIZATIONS INVOLVED

It was stipulated by the parties in open hearing that International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America and Local 841 thereof, affiliated with the American Federation of Labor; and International Association of Machinists, unaffiliated, and Lodge 1898 of District 38 thereof, unaffiliated, are labor organizations within the meaning of Section 2 (5) of the Act.

I so find.

III. THE UNFAIR LABOR PRACTICES

A. *The over-all surrounding circumstances*

A brief historical sketch of the events occurring in this case will facilitate an understanding of the issues involved. Only undisputed facts are here set forth.

The first steps toward union organization began on April 18, 1950, when Theodore Hustler, service manager of the Company, told its nine maintenance

² 91 NLRB 1480 See also *Ivy-Russell Motor Company*, 90 NLRB No. 260, which was a case of a Ford agency operating under a franchise identical with that at bar.

³ See: *Ken Rose Motors, Inc., Employer, and Local 841 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, et al.*, Case No. 1-RC-1614, decided by the Board July 28, 1950 (unpublished).

employees that they must work the next day, which was Patriot's Day, a legal holiday in Massachusetts. They had not worked formerly on this holiday. Several of the employees then made contact with the Unions and a few days later five of them met with Thomas M. Hawes, a union organizer for the Joint Committee for Organization of Automotive Repair Workers, made up of representatives of the Carpenters and the Machinists. Hawes explained the union setup to them and all five signed union cards authorizing the Unions to represent them in collective bargaining negotiations and otherwise. Within the next few days three other employees signed similar cards and mailed them to the Unions. These eight cards are in file.

Following this, on June 1, 1950, the Joint Committee wrote the following letter to the Respondent:

In accordance with the provisions of the National Labor Relations Act, the International Brotherhood of Teamsters and the International Association of Machinists desire to notify you that we represent a majority of the employees of your Wakefield Garage and desire to make arrangements with you for a meeting for the purpose of negotiating a contract covering the questions of wages, hours, and other conditions of employment for these employees.

Hoping for an early answer to this request, we are, . . .

This letter was never answered.

Immediately upon its receipt, Rose, company president, gathered his nine maintenance employees together in the shop during the noon lunch hour. Hustler, service manager, was also present. Rose read the Unions' letter to the gathering and then made some remarks.

A few days thereafter the Unions petitioned the Board for a representation election and a hearing was held June 28, 1950. The Board, by decision of July 28, 1950, directed that an election be held. This was later fixed for August 24. But one day before that time the Unions withdrew their petition and on August 24 the Board cancelled its election order. Then followed the charge in the present case which was filed August 25.

I find the facts to be as stated above.

B. Interference, restraint, and coercion

Before considering the proof of alleged violations of Section 8 (a) (1), it is necessary to determine whether Hustler, service manager, was a supervisor as determined by the Act. The Respondent contends he was not.

John Ozoonian, an employee of the Company for 3 years, testified for the General Counsel that President Rose introduced him to Hustler as the service manager. He stated that Hustler's duties included: To assign work-jobs to the employees; to write up repair orders; to transfer workmen from one job to another; to take charge of the shop in the absence of President Rose; to authorize overtime; to reprimand and discipline the employees. Hustler performed no physical labor and was paid by salary instead of by the day, as were the other employees. Alvin D. Brewer, a former company employee, included the foregoing as Hustler's duties and added that he granted permission to be absent from duty. Herbert R. Crocker, currently in the Respondent's service, testified to the same effect. Hustler did not appear at the hearing to take the witness stand.

Rose, president, agreed that Hustler exercised the duties listed, but denied he had any authority to hire or fire, as testified by Ozoonian, Brewer, and Crocker.

Rose's denial, however, was thoroughly impeached when he was confronted with his testimony at the earlier representation hearing where he had sworn that Hustler did have power to hire and fire. Moreover he frankly admitted on cross-examination that Hustler possessed a "supervisory status."

I credit the testimony of Ozoonian, Brewer, and Crocker on this point.

I find, therefore, that Hustler, service manager, was a supervisor in accordance with the definitions contained in the Act.

1. The speech by President Rose

It has already been found that immediately after receiving the Unions' letter of June 1, 1950, quoted above, President Rose met with all of his nine maintenance men in the shop during the lunch hour, read the letter to them, and then made some remarks about it. An abundance of proof was placed in the record concerning what he said.

Ozoonian, a forthright witness for the General Counsel, narrated Rose's statements as substantially: He didn't know what "you fellows think you're doing, but there's no power on earth that can make this shop a Union shop"; 3 or 4 years ago the Unions would have stood a better chance because of slack conditions; he had just sent a large check to an insurance company for sick and benefit policies and this would be dropped if the Unions came in; in that event "I'll close down the doors and myself and one other will polish and service new cars"; he would also send out his body work and make 15 percent on that; he had once been a union member "and the Union never did anything for him"; he asked why the men had not come directly to him if they had a gripe; if slack times come and the Unions are in the shop he would have to send the men home.

Brewer, a former company employee, testified to the foregoing and added that Rose had stated he could not understand why the Unions "were trying to start an organization with a small dealer like himself."

Crocker corroborated this testimony in full detail.

Rose agreed with this testimony in part and denied it in part. He admitted saying he felt like cancelling the sick and benefit insurance; that he believed the employees were misinformed about the Unions; that he told employee Goudreau he would have to close the shop if the coming of the Unions resulted in his not being able to meet expenses, but insisted this was on another occasion. He denied saying that no power on earth could make his garage a union shop; that he related his previous experience with a union, although in fact he had been a member; that he mentioned sending out his body work or laying off the men in slack times. Rose readily agreed that he was intensely surprised and upset by the Union's letter and that his memory of all the things he said could be "somewhat hazy."

It is noteworthy that Hustler, who was present at the meeting, did not testify.

The stories of Ozoonian, Brewer, and Crocker were not merely preponderant but more convincing than the mixed admission-denial version of Rose. I credit them.

The Board has many times decided that threats by an employer to close a plant, to reduce working time, to eliminate benefits such as sick insurance, and to lay employees off if a union organizes his plant are coercive *per se* and violate the Act.

2. Statements by Hustler, service manager

The evidence shows numerous statements concerning union affairs made to several employees at various times following the Rose speech on June 2, 1950. The first three witnesses appeared for the General Counsel.

a. To Ozoonian

Ozoonian testified that early in June Hustler came to the witness' place of work, told him that Rose had received a letter from the Unions, and asked him what he knew about the Unions. Ozoonian replied that the men wanted job security.

A few days later Hustler again approached the witness about the Unions and when Rose joined them told him to repeat to Rose what he had previously told Hustler. This Ozoonian did. Hustler then added that if slack periods came and the shop were unionized the men would not be kept on odd jobs but laid off.

Later in July Hustler told Ozoonian that if the Unions entered the shop the men would lose the privilege of taking "coffee time."

Finally in August Hustler informed the witness that whereas he had previously thought Ozoonian was the instigator of the union drive, he had learned on inquiry it was someone else.

b. To Brewer

Brewer, formerly an employee who left the Company voluntarily, testified that a few weeks after Rose's speech in early June, Hustler asked him who was the union instigator. Brewer replied it was none of his business. Later Hustler informed the witness that if the Unions come in the men would be placed on a flat piece-rate basis instead of the present hourly basis. Brewer explained that under Ford repair standards workmen would be paid only for the time actually allowed for a specific job, which would result in less take-home pay.

c. To Crocker

Shortly after the Rose speech and at successive times, Hustler, according to Crocker, asked him who instigated the union drive in the shop and asked him how he felt about the Unions and how he would vote. Crocker declined to answer.

d. To Kells

Douglas J. Kells, an employee, testified for the Respondent. On cross-examination he admitted that Hustler had questioned him as to what he thought of the Unions.

e. To Fairfield

Earle R. Fairfield likewise took the witness stand for the Respondent. He also admitted on cross-examination that Hustler questioned him regarding his feelings toward the Unions.

Hustler did not testify. The testimony of these five witnesses, therefore, remains undisputed. I regarded them as credible witnesses. I find their versions of Hustler's remarks to be correct.

The Board has repeatedly held that when an employer interrogates his employees concerning their union views, sympathies, or activities he interferes with their rights under Section 7 of the Act and violates it.

Conclusion as to Interference, Restraint, and Coercion

Under the facts thus set forth, I find that, beginning June 1, 1950, the Respondent interfered with, restrained, and coerced its employees in violation of Section 8 (a) (1) of the Act.

C. The appropriate unit and representation by the Unions of a majority therein

In its answer the Respondent admits paragraph 5 of the complaint, which sets forth:

All employees of Respondent employed at its Wakefield plant, engaged in the repairing, servicing and maintaining of automotive equipment, including mechanics, bodymen, painters, helpers, on the job trainees, partsmen, greasers, and washers, but excluding office and clerical employees, guards, professional employees, and all supervisors as defined in Section 2 (11) of the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9 (b) of the Act.

It is so found.

It has already been found in this Report that the number of employees in the unit was nine. A finding has likewise been made that shortly after Patriot's Day, April 19, 1950, five of the employees met with Hawes, the Union's organizer and signed union-authorization cards. These were Alvin D Brewer, Herbert R. Crocker, John Ozoonian, Earle R. Fairfield, and George R. J. Goudreau. Similarly it appears that shortly thereafter three more employees—Douglas J. Kells, Ralph R. Perry, Sr, and Frank E. Robinson—signed similar cards and mailed or sent them to the Unions. Thus on June 1, 1950, when the Unions sent the letter, quoted hereinbefore, requesting that the Respondent bargain with them, they represented eight of the nine employees in the unit.

Consequently I find that on June 1, 1950, and at all times thereafter, the Unions were the duly designated bargaining representatives of a majority of the employees in the unit described above, and that, in accordance with Section 9 (a) of the Act, the Unions were on said date and thereafter, have been and now are the exclusive representatives of all the employees in said unit for the purpose of collective bargaining with respect to pay, wages, hours, and other terms and conditions of employment.

D The refusal to bargain

The request of the Unions that the Respondent enter into collective bargaining negotiations with them is indisputably clear in their letter of June 1, 1950, which appears in full in the earlier portion of this Report. The refusal of the Respondent to bargain is admitted in its answer. The only defense offered to this unfair labor practice was a statement by Respondent's counsel at the hearing that the Company was now willing to participate in a Board election and bargain with the chosen representatives. The record shows, however, that at the representation hearing on June 18, 1950, the Respondent opposed such an election. Under these facts the Respondent not only refused to bargain collectively but its manner of doing so clearly evidences lack of good faith. Thus it stands without defense as to this phase of the case.

Conclusion as to Refusal to Bargain

I find that on June 2, 1950, and at all times thereafter the Respondent has refused to bargain collectively and in good faith with the Unions as the exclusive representatives of its employees in an appropriate unit; has thereby violated Section 8 (a) (5) of the Act; and has deprived its employees of the exercise of the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

I find that the activities of the Respondent set forth in Section III, above occurring in connection with its operations 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 unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. It having been found that the Respondent has refused to bargain collectively with the Unions as the exclusive representative of its employees in an appropriate unit, it will be recommended that the Respondent, upon request, bargain collectively with the Unions.

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

CONCLUSIONS OF LAW

1. Ken Rose Motors, Inc., is engaged in commerce within the meaning of the Act.

2. International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America and Local 841 thereof, affiliated with the American Federation of Labor; and International Association of Machinists, unaffiliated, and Lodge 1898 of District 38 thereof, unaffiliated, are labor organizations within the meaning of Section 2 (5) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent has engaged in, and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

4. All production and maintenance employees at the Respondent's Wakefield, Massachusetts, shop, excluding office clerical employees, watchmen, guards, and supervisory employees, 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.

5. By refusing on June 2, 1950, and at all times thereafter to bargain collectively with the said Unions last hereinabove named, as the exclusive representatives of all its employees in the aforesaid 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. The above-named labor practices are unlawful labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommended Order omitted from publication in this volume.]

BEACON MANUFACTURING COMPANY *and* UNITED TEXTILE WORKERS OF AMERICA, A. F. OF L., PETITIONER. *Case No. 34-RC-181. May 28, 1951*

Decision and Order

Pursuant to a Stipulation for Certification Upon Consent Election entered into between the parties hereto, an election by secret ballot was conducted in the above-entitled proceeding on March 17, 1950,

94 NLRB No. 28.