

Office clerks employed at Foundation community building.—These clerks maintain the time records of the Foundation employees and prepare the payroll checks; they maintain records of supplies used on the various work projects. They record the moneys received from the operations of the various Foundation facilities, e. g., dairy farm, filling station; they also record the charges for light, heat, and coal supplied to the company employees. On occasion these clerks come into contact with the operating and maintenance employees of the Foundation, but on the whole it appears that their relationship to those employees is analogous to that of office clerical employees to production and maintenance employees. We find lacking here the considerations which would justify the inclusion of these clerical employees in the unit and therefore shall exclude them.

Editor of the Foundation weekly newspaper, photographer, playground leader, and assistant playground leader.—In the instant case the titles are descriptive of the duties that these employees perform. We find it unnecessary to determine whether or not these employees are professional employees within the meaning of the Act but will exclude them from the unit herein found appropriate because their duties and interests are dissimilar to those of the maintenance and operating employees included in the unit.

We find, therefore, a single unit composed of the following employees employed by the Employer in connection with the Bemiston Village Council Foundation to be the appropriate unit for collective bargaining purposes within the meaning of Section 9 (b) of the Act: Handymen, land improvement employees, the painter, landscaper, janitors of the community building and school, auto mechanics and assistants, counter attendants, filling station and garage clerk, and storeroom clerks, but excluding dairy farm workers, office clerks, the editor of the weekly newspaper, photographer, playground leader and assistant playground leader, village superintendent, and all foremen and supervisors as defined in the Act.

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

J. I. CASE COMPANY, BETTENDORF WORKS and LOCAL 1008, INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C. I. O. *Case No. 18-CA-228.*
July 10, 1951

Decision and Order

On April 6, 1951, Trial Examiner Lloyd Buchanan issued his Intermediate Report in the above-entitled proceeding, finding that the
95 NLRB No. 14.

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. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices, and recommended that those allegations of the complaint be dismissed. Thereafter, the Respondent and the General Counsel filed exceptions to the Intermediate Report and briefs in support of their exceptions.

The Board¹ has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The Trial Examiner's rulings are affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and adopts the findings, conclusions, and recommendations of the Trial Examiner.

We find, as did the Trial Examiner, that the Respondent discriminated against Howard L. Rennaker, Edward Merck, Raymond L. Loffin, Charles E. Massey, and Julius Runge in violation of Section 8 (a) (1) and (3) of the Act.

Evidence was introduced of a rule, promulgated by Respondent in 1948, which prohibited all solicitation on company property at any time. The Trial Examiner recognized that rules established by employers which prohibit union solicitation on an employer's premises on the employees' own time are too broad and interfere with basic rights guaranteed to employees by Section 7 of the Act.² The Board has held that the prohibition against discussing union affairs or soliciting union members on the Respondent's premises on the employees' own time is *per se* violative of Section 8 (a) (1) of the Act, whether or not it is enforced, as it has the necessary effect of restraining employees in the exercise of rights guaranteed by the Act.³ The Trial Examiner found, however, and we agree, that the complaint as to this should be dismissed, because the record does not show that the rule promulgated by the Respondent in 1948 is still in effect at its Bettendorf plant.

The Trial Examiner apparently on the basis of his appraisal of the credibility of the witnesses, found no independent violations of Section 8 (a) (1) of the Act. No reason appears for reversing the

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

² *Le Tourneau Company of Georgia and Republic Aviation Corp. v. N. L. R. B.*, 324 U. S. 793.

³ *Ohio Associated Telephone Co.*, 91 NLRB 932.

credibility findings of the Trial Examiner. The complaint is therefore dismissed insofar as it alleges such violations.⁴

Order

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board orders that the J. I. Case Company, Bettendorf Works, Bettendorf, Iowa, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Local 1008, International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, C. I. O., or in any other labor organization of its employees, by discharging or laying off any of its employees, or discriminating in any other manner in respect to their hire and tenure of employment, or any 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 Local 1008, International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, C. I. O., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

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

(a) Offer to Howard L. Rennaker, Edward Merck, and Raymond L. Lofflin immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay they may have suffered by reason of the Respondent's discrimination against them, in the manner described in the section of the Intermediate Report entitled "The remedy."

(b) Make whole Charles E. Massey and Julius Runge for any loss of pay each may have suffered by reason of the Respondent's discrimi-

⁴On the basis of the record, *Member Houston* would find that the Respondent violated Section 8 (a) (1) of the Act by the statement of Don Hart, then one of Respondent's foremen, to employee Fred A. Freeman, that he was told to "get" Freeman, but that he could not do so if Freeman removed his steward's button. The clear import of this remark was a threat to discharge Freeman if he continued his union activity. That the threat was not in fact carried out in nowise negates the element of coercion implicit in the statement.

nation, in the manner set forth in the section of the Intermediate Report entitled "The remedy."

(c) Upon request, make available to the Board or its agents, for examination and copying, all payroll records and reports, social security payment cards, personnel records and reports, and all other records necessary to analyze the amount of back pay due and the right of reinstatement under the terms of this Order.

(d) Post at its plant at Bettendorf, Iowa, copies of the notice attached to the Intermediate Report and marked "Appendix A."⁵ Copies of said notice, to be furnished by the Regional Director for the Eighteenth 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.

(e) Notify the Regional Director for the Eighteenth 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 is dismissed insofar as it alleges that the Respondent prohibited the solicitation of membership in the Union on Respondent's property at any time, including the employees' nonworking time, questioned its employees regarding their union activities, warned them not to engage in union activities, and restricted the movement, in the plant, of its employees who engaged in union activities, while permitting freedom of movement of employees who did not engage in union activities.

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

Upon a charge and amended charge duly filed by Local 1008, International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, C. I. O., herein called the Union, the General Counsel of the National Labor Relations Board,¹ by the Regional Director for the Eighteenth Region (Minneapolis, Minnesota), issued a complaint dated February 7, 1951, against J. I. Case Company, Bettendorf Works, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat.

⁵ Said notice, however, is amended by striking from line 3 thereof, the words, "The Recommendations of a Trial Examiner," and substituting in lieu thereof, the words, "A Decision and Order." 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."

¹ The General Counsel and his representative at the hearing are herein referred to as the General Counsel, and the National Labor Relations Board as the Board.

136, herein called the Act. Copies of the charges, complaint, and notice of hearing were duly served by General Counsel on all other parties.

With respect to unfair labor practices, the complaint alleged in substance that the Respondent violated Section 8 (a) (3) of the Act by discharging and refusing to reinstate Howard L. Rennaker, Raymond L. Loffin, and Edward Merck, and laying off Charles E. Massey and Julius Runge² because they joined and assisted the Union and engaged in other concerted activities; and Section 8 (a) (1) of the Act by said alleged acts and by prohibiting solicitation for union membership on nonworking time, discriminatorily restricting movement of union representatives, and interrogating employees concerning and warning them against union activities.

In its answer, the Respondent denied the allegations of the complaint with respect to unfair labor practices, but admitted that it had discharged the first three employees named above and temporarily laid off the other two.

Pursuant to notice, a hearing was held at Davenport, Iowa, from March 5 to 7, 1951, inclusive, before the undersigned Trial Examiner duly designated by the Chief Trial Examiner. All parties were represented by counsel, participated in the hearing, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues.

At the opening of the hearing,³ the Respondent moved to strike paragraphs 5 and 6 of the complaint on the grounds that no charge was filed to cover such allegations and that no investigation was made with respect thereto. The undersigned ruled that the matters alleged fall within the interference charged in the original and amended charges; as for the question of failure to investigate such matters, the undersigned stated that he would not rule on the administrative actions of General Counsel. The motion to strike was therefore denied as such but, without objection, it was considered as a request for a bill of particulars. Counsel for the respective parties agreed on certain elements of particularity, which were furnished orally. The Respondent's request for a direction that further particulars be furnished was denied.

On the second day of the hearing, the undersigned was advised that the Respondent had moved to quash a most exhaustive subpoena *duces tecum* served on it by General Counsel, which motion had been referred, so it was further stated, to the undersigned. By that time the Respondent had produced the employment records of the five employees involved, General Counsel was satisfied, and without action on the motion to quash (which had not yet reached the undersigned) it was agreed that no further steps would be taken under the subpoena or the motion.

At the close of the hearing, the Respondent moved to dismiss the complaint. Decision was reserved, and said motion is now disposed of in accordance with the conclusions and recommendations below. Counsel for the Union availed himself of the opportunity to argue orally; pursuant to leave granted to all parties, a brief was thereafter filed by the Respondent.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, a Wisconsin corporation, operates a plant at Bettendorf, Iowa, where it is engaged in the manufacture and sale of farm implements. In this operation during the year ending October 31, 1949, the Respondent purchased raw

² Initials have been supplied as warranted by the evidence.

³ A motion to strike had been made with service of the answer.

material valued at more than \$1,000,000, of which more than 90 percent was shipped to the plant from points outside the State of Iowa. Sales of manufactured products during the same period exceeded \$1,000,000, more than 90 percent of which represented shipments to points outside of the State of Iowa. It was stipulated at the hearing that the figures for interstate operations during 1950 are substantially the same as those set forth above.

It was admitted and it is found that the Respondent is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It was admitted and it is found that Local 1008, International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, C. I. O., is a labor organization and admits to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

References hereinafter made to the evidence, not ascribed to named witnesses, represent uncontradicted testimony, or findings where conflicts have been resolved; findings are made herein on the basis of reliable, probative, and substantial evidence on the record considered as a whole and the preponderance of the evidence taken.

Except in connection with the paragraph received in evidence as General Counsel's Exhibit 3, hereinafter considered, no reference is made or reliance placed in these findings on the evidence concerning matters which occurred more than 6 months prior to the filing and service of the charge herein. Such evidence was received on the assurance that it was "relevant and material" as showing "the setting and background (in) which the acts complain(ed) of took place"; and further that without it "some of the facts . . . in this case might not be intelligible." The background evidence here submitted is not necessary or helpful either to cast light on the acts complained of or to make them intelligible.⁴

A. *The alleged violation⁵ of Section 8 (a) (1)*

There was received in evidence as General Counsel's Exhibit 3 a paragraph headed "Solicitations,"⁶ which it was stipulated is part of a 35-page booklet entitled "Where We Work Together" published by the Respondent in April 1948 and distributed among its employees. It was specifically noted that it was not stipulated that the exhibit is now in effect. Beyond the stipulation as noted, the only evidence of distribution is that Rennaker and Merck received copies at about the time they were employed in October and January 1948 respectively.

It does not appear that the rule, which is unwarranted to the extent that it forbids solicitation of union membership on nonworking time, was ever formally

⁴The findings of concerted activity and the Respondent's knowledge thereof do not depend upon the fact that the Union had previously been certified as collective bargaining representative. Nor does the background warrant a finding of other interference as herein alleged.

⁵"Independent," so-called, as distinguished from "derivative" violation of Section 8 (a) (1).

⁶"Solicitations. The company and its employees cooperate in many worthwhile charitable drives but obviously cannot lend their support to every fund-raising enterprise that is launched. Hat-passing, the sale of tickets, circulation of petitions, etc., are regarded by many people as a nuisance. Therefore the solicitation of funds, the sale of tickets for any purpose, the operation of raffles and lotteries, the distribution of literature and the solicitation of membership in any organization on company time or on company property is absolutely prohibited unless specific permission has been obtained in advance from the Industrial Relations Supervisor who will arrange for the posting of approved notices."

discontinued or recalled from employees to whom it was distributed, or that the employees have been notified that it is no longer in effect.⁷ But, on the other hand, while prohibition of union solicitation by employees on nonworking time constitutes unlawful interference and restraint,⁸ there is no evidence that the rule has been recognized or enforced; and any presumption of continuance is outweighed by the absence of evidence of recognition by employees or issuance or enforcement by the Respondent during the last 2½ years. No interference is found on the basis of this paragraph.

Kedich, the general foreman, approached Merck on the job one day and, according to the latter, stated "he didn't think it was right the way we was going about organizing." Kedich's explanation was not questioned; he had remonstrated with Merck concerning his dropping hooks on a fellow employee's head to get him to join the Union. Further, while Kedich denied telling Merck that he had learned from his own experience as a member of a union that there was no point messing around the Union if he couldn't be president, such a statement would, if made, be a privileged expression of opinion. Neither of these items constitutes unlawful interference.

Statements attributed to Clafin, at that time superintendent of assembly, and Kedich at the time of Merck's discharge and to the effect that the strike was not the "right way," that these employees "went too far," and that Merck could have been a foreman are part of and merged in the discriminatory discharge hereinafter found.

Another employee, Radford P. Johnston, uncertain of the date when the remarks were made, testified that his former foreman warned him against wearing union buttons and "talking union around and from the time (he) entered the shop in the morning until (he) left in the evening." Neither the foreman nor any of the other employees named by Johnston as being present on these occasions is still in the Respondent's employ. It is clear that many employees wore union buttons, a circumstance which did not appear to cause the "pretty hot time" allegedly mentioned. As for the testimony concerning union activities, the reference is isolated; as noted above, Kedich, when he discussed organizing activities with Merck, referred to the methods used, not to the activities as such.

No more impressive as to credibility was Fred A. Freeman, a former employee, who testified that another foreman, likewise no longer in the Respondent's employ, stated that he was told to "get" Freeman but that he could not do so if the latter removed his steward's button. Freeman continued to wear his union buttons until he left some 2 months later. Nor, if made, would the foreman's statement to this steward that he had heard that the latter was trying to sign up members on company time be a violation of the Act since, without more, it would constitute a lawful act of policing.

Rennaker handed his foreman a union leaflet outside the plant one day. Thereafter the foreman remarked to him that he noted his distribution of such "propaganda." The foreman expressed to the distributor of the leaflet his opinion of it without threat; that was no violation.

On the basis of lack of credibility where that is involved or as a matter of law, the undersigned dismisses the allegations of "independent" violation of Section 8 (a) (1) of the Act. Reference is made particularly to the extensive violations

⁷ We can only speculate whether, if the Respondent decided to discontinue the rule, it was influenced to make no announcement to that effect by any knowledge that its employees had not read the booklet. Rennaker and Merck, although intimately concerned with union activities, indicated a marked lack of interest in the booklet; it does not appear that they ever read it.

⁸ *Peyton Packing Company, Inc.*, 49 NLRB 828.

indicated by General Counsel in his oral bill of particulars at the hearing, concerning which no proof was offered.

B. The alleged violation of Section 8 (a) (3)

At about or shortly after noon on June 5, 1950, Rennaker, Merck, Lofflin, Massey, and Runge attempted to organize and themselves joined an incipient strike in protest against the discharge that morning of a union steward,⁹ and to prevent similar action against other representatives of the Union.

After discussion in the plant cafeteria, a group of employees marched in file down several aisles seeking support from other employees. There were accretions and withdrawals from the line of march, the greatest number at any one time being 12 or 15; the anticipated or hoped for support did not materialize. It was testified on the one hand, that this march took place between noon and 12:15 p. m.¹⁰ directly from the cafeteria; and on the other, that the first 3 named left their work stations at 12:15 and marched to the main aisle, where they joined the other 2. It is not disputed that just before the marchers returned to their jobs, whether at 12:15 or 12:30, the 5 alleged discriminatees were the only protestants, and were observed by supervisors.

The Respondent attempted to justify the discharge of Rennaker, Merck, and Lofflin on June 6, 1950, on the stated ground that they had "walked off job without the permission of foreman and attempted to incite a plant walkout"; and the 2-day layoff imposed on Massey and Runge on June 7, 1950, for the following reason in each case: "Helping & participating in unlawful walkout, June 5, 1950, 12:15 to 12:30."

All five had engaged in union activities: Rennaker and Lofflin were officers of the Union, all were members, and all but Runge were stewards. It is found that the Respondent knew that they had engaged in such activities, the bases of such knowledge being, among others, their display of union buttons, the distribution of union literature, talks between them and representatives of the Respondent, and the fact that they had been observed "participating in (the) unlawful walkout."

Rennaker's foreman, who it is found was a supervisor within the meaning of the Act, was among those who witnessed the abortive strike. Further, Kedich, who was apparently immediately subordinate to Clafin, had discussed union organizational activity with Merck, as noted above. At Clafin's request, he had investigated and reported to the latter on the incident of June 5. Yet Clafin, who effected the discharges, maintained that he did not then know the reason or "purpose" of the walkout. He was dramatically close to a solution when he pointedly asked Merck whether the incident had any relation to the steward against whom action had been taken the previous day. But Merck said, "No,"¹¹ and although Clafin stressed the importance of what had happened by pointing out to him that he could have caused a plant walkout,¹² Kedich likewise does not appear to have told him what the purpose of the walkout was: In fact, the morning before, Clafin had seen Rennaker and Merck talking with the previously discharged steward, and had ordered the two back to work. He was at least consistent, and testified on cross-examination that he first learned that Rennaker, Merck, and Lofflin were active in the Union when he spoke with

⁹ The latter was reinstated 4 days later.

¹⁰ These employees' lunch period ended at 12:15.

¹¹ Kedich did not hear this.

¹² Clafin testified that Merck replied that only he, Rennaker, and Lofflin were involved. But admittedly at least five were "involved" and known to be even if Clafin did not then know who the other two were; and Lofflin later told him that they were seeking recognition of the Union, which again indicated more than three.

them on June 6. But this testimony and his denial of knowledge of the facts (even as he denied recollection on the stand) are not credited in view of the investigation made at his direction, the report to him, the history of occurrences which preceded the discharges, and the importance of the facts. It is found that the Respondent¹³ and Clafin specifically, prior to the discharges on June 6, had knowledge that those involved in the walkout of June 5 were engaging in concerted activity within the meaning of Section 7 of the Act.

If the attempt to organize a strike on June 6 was on the employees' own time, as General Counsel's witnesses urged, they were clearly engaging in lawful concerted activities. They were lawfully on the Respondent's premises; they had as much right to plan and to attempt to strike as to spend their time in any other legal pursuit. That a strike might adversely affect the Respondent's interests or cause its displeasure is no more reason for banning it under such circumstances than under any other: the adverse effect and the displeasure are not unique. True, the group decided against continuing their efforts when their number dwindled. But to the extent that they acted, theirs was an incipient strike and constituted concerted activity.

The otherwise unexplained¹⁴ 20-minute delay in returning to work on the part of Rennaker and his working crew and the deduction by Massey and Runge of 15 minutes from their working time, suggest that at least some of the strike effort was on working time. But that fact does not change its character as concerted activity.¹⁵ It is not charged that they acted unlawfully unless the walkout was *per se* unlawful, and the reference to it as such in the supervisor's reports on Massey and Runge was not descriptive but emphatic. There is no warrant for holding that this concerted activity was unlawful. Had this small group been at work and "walked off the job without the permission of the foreman," only to return a few minutes later, theirs would be recognized as lawful concerted activity. There is no claim that they did any more here.¹⁶ (If General Counsel's version be accepted, they did less since the element of walking off the job would be missing.) The attempted justification for the discharges of June 6 and the layoffs of June 7 is insufficient. It is found that the Respondent by said acts discriminated¹⁷ against these five employees in violation of Section 8 (a) (3) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in Section III, above, occurring in connection with 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.

¹³ See also *Quest-Shon Mark Brassiere Co., Inc.*, 80 NLRB 1149.

¹⁴ Rennaker had "nothing to say" when Clafin, at the time of the discharge, charged him with walking off the job.

¹⁵ *Kennametal, Inc.*, 80 NLRB 1481.

¹⁶ The concerted nature of the activities is not affected by the fact that the Respondent made no deduction for the working time lost in the case of some of these employees, nor by the fact that the latter did not list such time as nonworking time. This was not a so-called "partial strike," with employees refusing to work while remaining on the job. No secret was made of the fact that they were not on the job; they were rather thwarted by the failure of others to join in a walkout.

¹⁷ The evidence does not support the allegation of the complaint that the Respondent "has refused to reinstate" Rennaker, Merck, and Loffin; they did not seek reemployment. This is not to suggest that any of them was under obligation to seek reemployment. Rather, it was the Respondent's duty to offer reinstatement after it had wrongfully discharged them.

V. THE REMEDY

Since it has been found that the Respondent has engaged in and is engaging in certain unfair labor practices affecting commerce, it will be recommended that it cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act.

It has been found that the Respondent, by discharging Rennaker, Merck, and Lofflin, and by temporarily laying off Massey and Runge, discriminated against them in regard to their hire and tenure of employment in violation of Section 8 (a) (3) of the Act. It will therefore be recommended that the Respondent offer to Rennaker and Merck immediate reinstatement to their former or substantially equivalent positions,¹⁸ without prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay they may have suffered by reason of the discriminatory action afore-mentioned, by payment to each of them of a sum of money equal to that which he would normally have earned less his net earnings,¹⁹ which sum shall be computed²⁰ on a quarterly basis during the period from the discriminatory discharge to the date of a proper offer of reinstatement. It is also recommended that the Board order the Respondent to make available to the Board upon request payroll and other records to facilitate the checking of the amount of back pay due.²¹ In the case of Lofflin, who was in the Army at the time of the hearing, it will be recommended that the Respondent offer reinstatement upon his reapplication within ninety (90) days after his discharge from the Army, and make payment as indicated above for the period from the discriminatory discharge to the date of his induction and further from his reapplication to the date of a proper offer of reinstatement.

It will be further recommended that the Respondent make Massey and Runge whole as above indicated for their 2-day layoff.

The discrimination found herein indicates a purpose to limit the lawful concerted activities of the Respondent's employees. Such purpose is related to other unfair labor practices, and it is found that the danger of their commission is reasonably to be apprehended. A broad cease and desist order will therefore be recommended, prohibiting infringement in any manner upon the rights guaranteed in Section 7 of the Act.

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

CONCLUSIONS OF LAW

1. Local 1008, International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, C. I. O., is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Howard L. Rennaker, Edward Merck, Raymond L. Lofflin, Charles E. Massey, and Julius Runge, thereby discouraging membership in the Union, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

3. By such discrimination, thereby interfering with, restraining and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, the

¹⁸ *The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch*, 65 NLRB 827.

¹⁹ *Crossett Lumber Company*, 8 NLRB 440. See also *Republic Steel Corporation v. N. L. R. B.*, 311 U. S. 7.

²⁰ *F. W. Woolworth Company*, 90 NLRB 289.

²¹ *Ibid.*

Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

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

5. The Respondent has not engaged in other unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

[Recommended Order omitted from publication in this volume.]

TOM THUMB STORES, INC. *and* RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL UNION 368, AFL. *Case No. 16-CA-190. July 10, 1951*

Decision and Order

On March 9, 1951, Trial Examiner George A. Downing 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.

The Board¹ has reviewed the rulings of the Trial Examiner made at the hearing, and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and, for the reasons indicated below, finds merit in certain of the Respondent's exceptions.

On August 16, 1949, November 15, 1949, and November 28, 1949, respectively, a charge, amended charge, and a second amended charge were filed in this proceeding, alleging various violations by the Respondent of Section 8 (a) (3) and 8 (a) (1) of the Act. On December 16, 1949, before any complaint in this matter was issued, the Board dismissed a petition of the charging party herein for certification as bargaining representative of the Respondent's employees,² stating: "Although we do not find that the Employer's operations are unrelated to commerce, we do not believe that the effect of such operations on interstate commerce is so substantial that we should assert jurisdiction over an enterprise of the character here involved."

Despite the Board's refusal to assert jurisdiction over the Respondent's operations in December of 1949, the former General Counsel, who by statute had sole authority over the disposition of charges, did not

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 *Tom Thumb Stores, Inc.*, 87 NLRB 1062.