

In the Matter of THE IRON FIREMAN MANUFACTURING COMPANY and  
PORTLAND AIRCRAFT WORKERS, LOCAL 737

*Case No. 19-C-1407.—Decided June 26, 1946*

*Mr. Erwin A. Peterson*, for the Board.

*Messrs. David L. Davies and Richard Devers*, of *Hart, Spencer, McCulloch and Rockwood*, of Portland, Oreg., for the respondent.

*Messrs. M. A. Lovay and N. Nicholson*, of Portland, Oreg., for I. A. M.

*Mr. Roy J. Jones*, of Portland, Oreg., for I. B. E. W.

*Mr. Nathan Saks*, of counsel to the Board.

DECISION

AND

ORDER

On May 13, 1946, Trial Examiner Wilson 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 a copy of the Intermediate Report attached hereto. No exceptions to the Intermediate Report have been filed.

The Board 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 and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except insofar as they are inconsistent with our findings, conclusions, and order hereinafter set forth.

Although stating his opinion that, strictly construed, the alleged closed-shop provision in the contract between the respondent and the I. B. E. W. did not, in fact, create a closed shop, the Trial Examiner treated it as such, in accordance with the interpretation which appears to have been placed thereon by the parties to the contract and at the hearing. Accordingly, in arriving at his conclusion that by its discharge of Adeline Kirchem on November 14, 1945, and its failure thereafter to reinstate her, the respondent discriminated in regard

to her hire and tenure of employment, thereby discouraging membership in the I. A. M. in violation of Section 8 (3) of the Act, the Trial Examiner based his result on the application of the *Rutland Court*<sup>1</sup> doctrine to a closed-shop contract. We agree with the Trial Examiner's conclusion that the discharge of Adeline Kirchem constituted a violation of Section 8 (3) of the Act. However, we are of the opinion that this conclusion is properly premised upon the finding which we make, that the alleged closed-shop provision did not, in fact, create a closed shop, and hence, cannot constitute a defence to the discriminatory discharge.<sup>2</sup>

The alleged closed-shop provision in question provides that:

All new employees who are employed by the Employer shall be given a trial period of thirty days or less. If found satisfactory at the expiration of thirty days, they shall make application to join the Union.

It is clear that the clause requires an employee found satisfactory at the expiration of his 30-day trial period to *make application* to join the Union; but there is nothing that states he must *become a member of the Union*, either at that time or at any other time. Under ordinary rules of construction, the act of *making application* to join the Union at the end of his 30-day trial period fulfills an employee's obligation under the clause, and it is immaterial whether or not his application is favorably acted upon and he is accepted into membership in the Union. Moreover, the clause lays down no requirement that an employee must *remain* a member of the Union during the life of the contract, or for any length of time. Accordingly, there is a fatal omission from the clause of the two essential requirements for a closed shop: (1) that an employee must become a member of the contracting union; and (2) must retain such membership during the life of the contract, as conditions of employment. In view of the stringent requirements of closed-shop provisions, it is not too much to require that the parties thereto express the essentials of such provisions in unmistakable language.

As found by the Trial Examiner, the respondent had knowledge on and prior to November 14, 1945, the date of the discharge, that the I. B. E. W. was requesting the discharge of Adeline Kirchem because she was a member of the I. A. M., and because it believed that she was active in seeking members for the I. A. M. Accordingly, the respondent, by such discharge, not only discouraged membership in the I. A. M., but as a necessary consequence also encouraged membership in the I. B. E. W., in violation of Section 8 (3) of the Act, and the

<sup>1</sup> *Matter of Rutland Court Owners, Inc.*, 44 N. L. R. B. 587.

<sup>2</sup> Under this view it becomes, of course, unnecessary to apply the *Rutland Court* doctrine.

alleged closed-shop provision was not effective to bring the discharge within the protection of the proviso to Section 8 (3) of the Act.

Moreover, even if it be assumed that the clause in question was sufficient to create a closed shop, we are of the opinion that the discharge was nevertheless discriminatory within the meaning of Section 8 (3) of the Act. The record shows that the discharged employee commenced her employment on October 22, 1945, and that she was discharged less than 30 days later on November 14, 1945, at the request of the I. B. E. W. for the stated reason that she had not been accepted as a member of the I. B. E. W., which automatically prevented her from being in good standing in the I. B. E. W. By its express terms, the clause in question requires an employee to make application to join the I. B. E. W. only *at the expiration* of the 30-day trial period. Obviously, therefore, there could be no obligation to become a member of the Union during the 30-day trial period, and an employee's failure to do so prior to the expiration of the 30 days could not validly constitute a basis under the clause either for a request of discharge or a discharge.

We find, therefore, for the reasons set forth above, that by its discharge of Adeline Kirchem on November 14, 1945, and its failure thereafter to reinstate her, the respondent discriminated in regard to her hire and tenure of employment, thereby discouraging membership in the I. A. M. and encouraging membership in the I. B. E. W. in violation of Section 8 (3) of the Act.

### ORDER

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, The Iron Fireman Manufacturing Company, Portland, Oregon, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in Portland Aircraft Workers, Local 737, affiliated with the International Association of Machinists, or any other labor organization of its employees, or encouraging membership in International Brotherhood of Electrical Workers, Local 48, affiliated with the American Federation of Labor, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees.

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

(a) Offer to Adeline Kirchem immediate and full reinstatement to her former or a substantially equivalent position, without prejudice to her seniority and other rights and privileges;

(b) Make whole Adeline Kirchem for any loss of pay she may have suffered by reason of the respondent's discrimination against her by payment to her of a sum of money equal to the amount which she normally would have earned as wages from November 14, 1945, the date of her discriminatory discharge, to the date of the respondent's offer of reinstatement, less her net earnings during said period;

(c) Post at its Teeple plant at Portland, Oregon, copies of the notice attached to the Intermediate Report marked "Appendix A."<sup>3</sup> Copies of said notice, to be furnished by the Regional Director for the Nineteenth Region, after being duly signed by the respondent's representative, shall be posted by the respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

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

#### INTERMEDIATE REPORT

*Mr. Erwin A. Peterson*, for the Board.

*Messrs. David L. Davies and Richard Devers*, of *Hart, Spencer, McCulloch and Rockwood*, of Portland, Oreg., for the Respondent.

*Messrs. M. A. Lovay and N. Nicholson*, of Portland, Oreg., for I. A. M.

*Mr. Roy J. Jones*, of Portland, Oreg., for I. B. E. W.

#### STATEMENT OF THE CASE

Upon a charge duly filed on November 21, 1945, by Portland Aircraft Workers, Local 737, affiliated with International Association of Machinists, herein called I. A. M., the National Labor Relations Board, herein called the Board, by its Regional Director for the Nineteenth Region (Seattle, Washington), issued its complaint dated March 12, 1946, against The Iron Fireman Manufacturing Company, Heating Control Division,<sup>1</sup> 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 (1) and (3), and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat 449, herein called the Act. Copies of the complaint, notice of hearing, and the charge were duly served upon the Respondent, I. A. M., and International Brotherhood of Electrical Workers, Local 48, A. F. L., herein called I. B. E. W.

<sup>3</sup> Said notice, however, shall be, and it hereby is, amended by (1) striking from the first paragraph thereof the words "The Recommendations of a Trial Examiner" and substituting in lieu thereof the words "A Decision and Order," and (2) adding to the second paragraph thereof between "or any other labor organization of our employees," and "by discharging or refusing to reinstate any of our employees," the words "encourage membership in International Brotherhood of Electrical Workers, Local 48, affiliated with the American Federation of Labor, or any other labor organization of our employees."

<sup>1</sup> At the hearing, upon motion of the Board, made without objection, the Board was allowed to amend all the papers in this case to show the correct name of the Respondent as shown in the caption hereon.

With respect to the unfair labor practices, the complaint alleged in substance that (1) on or about November 14, 1945, the respondent discharged Mrs. Adeline Kirchem and at all times thereafter has refused to reinstate her, thereby discriminating in regard to her hire and tenure of employment, and (2) that by said discharge and refusal to reinstate said employee the respondent interfered with, restrained, and coerced its employees

On or about March 22, Respondent filed its answer in which it admitted certain allegations of the complaint but denied that it had committed any unfair labor practices, and affirmatively alleged that Kirchem had been discharged at the request of I. B. E. W. in accordance with the terms of the collective bargaining agreement between the respondent and the I. B. E. W.

Pursuant to notice a hearing was held in Portland, Oregon, on March 26 and 27, 1946, before the undersigned, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the Respondent were represented by counsel and I. B. E. W. and I. A. M. by union officials. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. At the close of the Board's case, the Respondent's motion to dismiss the complaint for lack of proof was denied. A similar motion made at the end of the hearing was taken under advisement and is hereby denied. At the close of the hearing, the Board's motion to conform the pleadings to the proof was allowed without objection. The Respondent and the Board argued orally at the close of the hearing and the Respondent filed a brief with the undersigned thereafter.

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 Iron Fireman Manufacturing Company is an Oregon corporation, having its principal office and place of business at Portland, Oregon, where it operates two plants. At the plant involved in this hearing, herein called the Teeple plant, Respondent is engaged in the production of electrical controls for use in connection with heating equipment. It annually uses in excess of \$250,000 worth of raw materials, a substantial portion of which is obtained from outside the State of Oregon. The Respondent's annual sales are in excess of \$250,000 and the majority of the articles produced is shipped out of the State of Oregon. The respondent acknowledges that it is engaged in commerce within the meaning of the Act.

##### II. THE ORGANIZATIONS INVOLVED

Portland Aircraft Workers, Local 737, affiliated with the International Association of Machinists, and International Brotherhood of Electrical Workers, Local 48, affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Respondent.

##### III THE UNFAIR LABOR PRACTICES

###### A. *The discharge of Adeline Kirchem*

###### 1. The facts

As stated by counsel for the respondent during oral argument, the witnesses in the instant proceeding, without exception, strove "honestly to tell the truth"

with the result that the facts are not in conflict and are conceded by all the parties.

There is no evidence in the record of any prior anti-union activity by the respondent and, in fact, it appeared that the friendliest of relationships existed between the respondent and both I. A. M. and I. B. E. W.

The respondent operates two factories in Portland at one of which, known as plant No. 1, it has had continuously since 1940, at least, labor agreements with I. A. M. At its other plant, known as the Teeple plant, L. R. Teeple Company had an agreement with I. B. E. W. in 1945. By agreement, dated July 26, 1945, the Respondent leased the Teeple plant from L. R. Teeple Company and agreed therein to assume and carry out the existing labor agreement between the lessor and I. B. E. W.<sup>2</sup>

The agreement between L. R. Teeple Company and I. B. E. W., assumed by the Respondent, was by its terms to remain "in effect until November 20, 1945" and contained a typical automatic renewal clause which is of no importance here. This agreement further provided, in part, as follows:

#### ARTICLE IX

##### *Employment*

Section 1 All new employees who are employed by the Employer shall be given a trial period of thirty days or less. If found satisfactory at the expiration of thirty days, they shall make application to join the Union.

Section 2. All new employees so employed by the Employer shall be advised of this condition of employment.

Section 3. Temporary employees planning to go to school within ninety days (or following the recognized school vacation period) shall not be required to apply for membership. However, the company shall notify such employees before hiring them that they will be expected to pay the regular monthly Union dues (\$1.50), such payment to be credited toward the Union initiation fee in case membership is applied for within two years.

In September 1945, immediately after learning that the Respondent had leased the Teeple plant, I. A. M. investigated the type of work being done therein and concluded from this investigation that the work of the plant fell within its jurisdiction. Also commencing in September 1945, Respondent and I. B. E. W. began negotiations on work classifications and wage scales under the existing I. B. E. W. agreement.

I. A. M. thereafter commenced negotiations with I. B. E. W., looking toward the assumption of jurisdiction over the employees of the Teeple plant by I. A. M. By letter, dated October 22, 1945, I. A. M. notified the Respondent of these negotiations and made "formal request for the right to represent the employees in that (Teeple) plant."

Beginning October 18, 1945, the I. A. M. began actively campaigning for members among the Teeple plant employees by passing out circulars to the employees at the gate of that plant, after informing Wayne Strong, Respondent's manager at the Teeple plant, of its intentions so to do and agreeing to furnish him with copies of the circulars distributed.<sup>3</sup> I. A. M. continued to pass out circulars intermittently at the gate and to deliver them to Strong from that day until approximately November 30.

<sup>2</sup> Contractual relations between L. R. Teeple Company and I. B. E. W. had been continuous since 1936 or 1937.

<sup>3</sup> Prior to this time representatives of the I. A. M. had talked privately with a number of the employees from this plant but had engaged in no open campaign.

About this same time I. B. E. W. refused to turn over the representation of the employees of the Teeple plant to I. A. M.

On October 25, 1945 I. A. M. sent the following letter to T. H. Banfield, President of the Respondent, which was received in due course of the mails:

Dear Mr. Banfield:

The International Association of Machinists claims to represent the majority of the employees in the Iron Fireman Heat Control division, formerly the L. R. Teeple Mfg. Co., and now protest any negotiations with the I. B. E. W. until such time as a certification by the National Labor Relations Board through an election of the employees involved determine who shall represent them in collective bargaining.

We are petitioning the Board to hold an election in the plant to determine the proper agency to represent the employees at this time and, any negotiations with any organization until that determination is made, will constitute an unfair labor practice.<sup>4</sup>

We trust that we may have your cooperation in this matter until that determination is made.

Very truly yours,

/s/ M. A. LOVAY,  
Grand Lodge Representative.

The negotiations between the respondent and I. B. E. W. continued until October 23, 1945, when the parties had tentatively arrived at a new agreement mutually satisfactory to them. The agreement had to be submitted to Banfield for the respondent's final approval. This was done on October 26, 1945, when Banfield executed the agreement on behalf of the respondent. Thereafter it was executed by the I. B. E. W. on or about October 28 by Strong and the respondent's Secretary on the following day. This agreement by its terms was to go into effect on November 20, 1945, at the expiration of the then existing contract. It contained provisions identical to those quoted above.

On October 22, 1945, Adeline Kirchem commenced her employment with the respondent at the Teeple plant.<sup>5</sup> Kirchem had applied for work at the latter plant sometime in September 1945 and was informed by the respondent that, in accordance with the terms of its agreement with I. B. E. W. at the Teeple plant, she would have to join the I. B. E. W. within 30 days of her employment. Kirchem was agreeable to this.

On either the first morning of Kirchem's employment at the Teeple plant or a day or so thereafter, Roy J. Jones, business agent for I. B. E. W. approached Kirchem at her work and told her that, if she wanted to work there, she "would have to keep her mouth shut and not talk in favor of I. A. M." He then took from his pocket a few of the I. A. M. circulars which had been passed out and stated that they would have to stop. He concluded by saying that he knew she was connected with the I. A. M. and working for it in the plant.

Shortly after this conversation, Jones also spoke to Strong stating that Kirchem had been "talking considerably" and had been creating "quite a bit of dissension" among the assembly employees and that he, Jones, thought that this was creating a "bad effect, due to the fact it upset the other employees and

<sup>4</sup> I. A. M. has never filed the petition for certification with the Board mentioned in its October 25 letter but filed this charge of unfair labor practice against the respondent on November 21, 1945.

<sup>5</sup> Kirchem had been employed at the respondent's plant No. 1 from May 22, 1944 until August 24, 1945, when she was laid off in a reduction of force following V-J Day. At plant No. 1, she was a member of and a shop steward for I. A. M. These facts were known to both the respondent and I. B. E. W.

probably cut down production, and also, it stirred up unrest amongst the employees." According to Jones, Strong was not much interested in this report because "after all, he (Strong) thought that that was our problem."

In order to determine within the 30-day probationary period which of the new employees would be satisfactory to the respondent, it was customary for the respondent to make a routine check of these probationary employees. Such a check was made at Kirchem and this indicated that she was a good employee although it was reported that she talked "too much." However, Strong testified that this criticism was not considered of sufficient importance by the respondent to justify bringing it to Kirchem's attention. The respondent at all times was satisfied with Kirchem as an employee.

During her employment at the Teeple plant, Kirchem did no active proselyting for I. A. M. except that during lunch hours and rest periods she would answer questions put to her by fellow-employees regarding the difference in wage rates an dworking conditions between plant No. 1 under I. A. M. and the Teeple plant under I. B. E. W.

Jones received further complaints from the I. B. E. W. shop steward at the Teeple plant that Kirchem continued to "talk too much and cause dissension." As a result of these complaints Jones again spoke to Strong a few days prior to November 14, 1945, and requested the discharge of Kirchem on the ground that "she would not be acceptable to the union" because she "was talking too much down there, and that she was causing dissension on the line, and that I had had these complaints through the steward, and that she would not be acceptable to the (I. B. E. W.), and that the only thing that I could do, was to ask for her termination." Strong asked if Jones would "be willing to put that in writing." Jones agreed to do so, stating that under the terms of the agreement, respondent was obligated to discharge Kirchem.

On November 14, 1945, Jones handed Strong the following letter:

IRON FIREMAN MANUFACTURING Co.

*Heat Control Division*

Attention: Mr. Wayne Strong

GENTLEMEN: This is to inform you that Adeline Kirchem was not accepted as a member at the last meeting. To explain further, it is necessary in accordance with our Constitution that new members coming into the organization be accepted by the members of Local 48 and if they are not accepted, they are not in good standing in our Union.

Therefore, it is necessary in this case to terminate Adeline Kirchem.

Very truly yours,

[S] ROY JONES, *Asst. Business Mgr.*

While in Strong's office that afternoon at about 3:30 or 4 p. m. Jones inquired if the respondent had agreed to terminate Kirchem. Jones stated that under the terms of the agreement the respondent had no other alternative. Jones then asked "would it relieve you of any embarrassment if I took this situation into my hands, since it is strictly a union problem . . ." and offered to hand Kirchem the documents of discharge. Strong, who had only recently assumed the manager's position, agreed that it would relieve him a great deal and gave Jones the pay check already made out to Kirchem and also the withholding tax statement.

Thereupon Jones went to Kirchem's place of work where he handed her the papers and said, "I told you that if anything came up, I would fire you, and there it is." In answer to Kirchem's request for the reason of the discharge Jones stated that her name had been brought up at a union meeting and that she was not acceptable to the I. B. E. W. With that he departed.

Very soon thereafter, at about 4:45 p. m., after seeing respondent's superintendent who sent her to see Strong, Kirchem was admitted to Strong's office

and said to Strong, "I guess you know why I am here." Strong agreed and invited her to sit down. Kirchem then discovered that Jones was also in the room and turned her attention to him with the result that, while Strong remained in the room throughout the ensuing conversation, he became an onlooker and not a participant therein. Kirchem asked Jones why she had been fired. Jones answered that he had told her that she would be fired if she "did not keep (her) mouth shut" and that her name had been brought up at a union meeting and found unacceptable. Thereupon Kirchem stated that he was "a damn liar" for there were 15 or 20 girls who had told her that her name had never been brought up at a union meeting. Jones replied that it was immaterial whether her name had been brought up or not, that he had still fired her and that was all there was to it. Kirchem then continued with a statement that Jones thought she was working for Neil Broady<sup>6</sup> but that actually she was not. To this Jones replied that she "was not fooling him any; that he knew why (she) was there, and he knew who (she) was working for." After a few more remarks Kirchem departed without any further words with Strong.

Regarding this conversation Strong testified that that was "the first time (he) had ever heard her directly accused of organizing for (I. A. M.) in the shop" and that "there were a number of things said there that I had never heard before regarding her activities." There can be no question but that at this time the respondent knew that Kirchem was being discharged at the request of I. B. E. W. for her supposed activities on behalf of I. A. M. The undersigned so finds.

The following day, November 15, Broady called upon Strong protesting the discharge as an unfair labor practice. During the conversation Broady stated that Jones had told Kirchem in Strong's office that she was being discharged for union activities and that she had been "planted" in the shop to organize for I. A. M. Broady inquired if Strong believed that I. A. M. had planted Kirchem. Strong denied that he believed this as he gave Broady credit for better judgment and added that, if Jones thought that Kirchem had been put in the shop to organize, then he (Strong) believed Jones was mistaken. However, Strong refused to reinstate Kirchem and she has not been reinstated as of the time of the hearing.

## 2 Conclusions

At the hearing the respondent and I. B. E. W. maintained that Article IX of the I. B. E. W. agreement, quoted above, created a closed-shop. Counsel for the Board appeared to acquiesce in this interpretation. Under ordinary rules of construction these clauses do not spell out a closed-shop agreement. Oral testimony indicated that the parties to the agreement considered it to be a closed-shop although the record is devoid of any evidence of prior practice indicating such was their interpretation. If this agreement is treated in accordance with its strict interpretation, then it is clear from facts enumerated above that the discharge was a violation of 8 (3). However, as this case was tried by all parties on the theory that the agreement was a closed-shop, the undersigned will so treat it.

It is now well established through court and Board decisions that it is an unfair labor practice violative of Section 8 (3) of the Act for an employer to discharge an employee, even at the request of a union holding a closed-shop contract in the plant, where the employer knows at the time of the discharge that the dominant union has requested such discharge because the employee was a member of, or had been active on behalf of, a rival union in the plant at a time appropriate for

<sup>6</sup> Neil Broady was at that time the business agent for I. A. M. and had been distributing circulars at the Teeple plant gate.

a change, or an attempted change, of bargaining representative there. Under such circumstances the existence of a closed-shop agreement and the fact that the request for discharge is fair on its face will not protect the employer against an unfair labor practice charge.<sup>1</sup>

Respondent contends that two of the above elements are lacking in the instant case, to wit: (1) a lack of activities on behalf of the rival union by the discharged employee, and (2) a total lack of knowledge on the part of the employer of the discriminatory basis of the request for discharge prior to the time of that discharge.

The evidence proved that Kirchem was a member of I. A. M., that she was not actively proselyting on its behalf and that her activities in that regard had been limited to answering questions by her fellow employees concerning differences in pay and working conditions between plant No 1, under an I. A. M. contract and the Teeple plant under an I B E W contract. Although, in fact, this activity was minor, the evidence also proved that I. B. E. W. considered it of sufficient import to request Kirchem's discharge. The fact that I. B. E. W. was in error as to the extent and importance of her activities does not lessen the discrimination practiced against Kirchem. There is no doubt that the real reason for the demand of I. B. E. W. that Kirchem be discharged was her membership in, and activities on behalf of, I. A. M. and the undersigned so finds.

Nor can there be any doubt that the respondent knew, at least from the conversation on November 14 between Kirchem and Jones in Strong's presence, the true and illegal reason for her requested discharge. The respondent admits having such knowledge at this time but contends that this knowledge was gained subsequent to the actual discharge. Hence, according to its theory, the respondent having no knowledge that Kirchem was being discharged because of her interest in the rival union, was not guilty of committing an unfair labor practice at the time she was discharged. Counsel for the Board in turn advanced a theory that, as the respondent made the business agent of I. B. E. W., who knew the true reason for the discharge, its agent to effect that discharge, the respondent became chargeable with the knowledge of its agent. Neither theory is completely sound.

An employer who has once entered into a contract of employment with an individual and thereafter decides to terminate the agreement owes that individual the duty of giving him an authoritative notice of discharge. Until such notice has been given by an authorized representative of the employer, the termination of the contract cannot be deemed completed. Nor can the respondent contend that this condition has been fulfilled until it has confirmed the agency of Jones in this particular instance. Besides, promptly upon receiving notice of the respondent's intent, Kirchem commenced searching for an authoritative source for confirmation of the notice she had received through the business agent of the I. B. E. W. Within a matter of minutes thereafter, she was in Strong's office on this mission. What occurred there must be considered a part of the *res gestae* of the whole transaction of the discharge.

Assuming, for the moment, that respondent did not know the true facts and the discriminatory nature of the discharge prior to the conversation in Strong's office on November 14, the respondent learned them from the conversation which took place at this time. There can be no doubt of this and the undersigned so finds. Therefore it must necessarily be found that the respondent knew prior to the completion of the discharge on November 14, 1945, that Kirchem was

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<sup>1</sup> *The Wallace Corporation v. N. L. R. B.*, 323 U. S. 248; *Matter of Rutland Court Owners, Inc.*, 44 N. L. R. B. 587; 46 N. L. R. B. 1040; *Matter of Portland Lumber Mills*, 64 N. L. R. B. 159; *Matter of Diamond T Motor Car Company*, 64 N. L. R. B. 1225; *Matter of Southeastern Portland Cement Company*, 65 N. L. R. B. 1; *Matter of The Cliffs Dow Chemical Company*, 64 N. L. R. B. 1419.

being discharged because she was a member of I. A. M. and active on behalf of that organization.

In addition, the evidence proved that on two occasions, first in late October and second a few days before November 14 during the period when I. A. M. was openly campaigning for members, the I. B. E. W. business agent complained to respondent's manager that Kirchem, a known member of I. A. M., was "talking too much and causing dissension" among the respondent's employees. A reasonable man hearing this criticism from the business agent of the contracting union at a time when its position as the dominant union in the plant was being challenged concerning a known member of the competing organization, would reasonably conclude that this phrase, with its well known connotation in labor circles, meant that Kirchem was talking too much in favor of the rival union and that this talk was jeopardizing the position of the then dominant union. Respondent's contention made during the hearing that these criticisms of Kirchem referred only to idle gossip which interfered with production was effectively disproved by the respondent's own routine investigation and favorable report on Kirchem as an employee. The respondent is chargeable with the knowledge a reasonable man would have acquired from these circumstances.

The undersigned finds that the respondent had knowledge on and prior to November 14, 1945, that I. B. E. W. was requesting the discharge of Kirchem because she was a member of I. A. M. and because it believed that she was active in seeking members for I. A. M.

The undersigned therefore finds from all the evidence that by its discharge of Adeline Kirchem on November 14, 1945, and its failure thereafter to reinstate her, the respondent discriminated in regard to her hire and tenure of employment, thereby discouraging membership in I. A. M. in violation of Section 8 (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.

#### V. THE REMEDY

Since it has been found that the respondent has engaged in an unfair labor practice, it will be recommended that it cease and desist therefrom and take certain affirmative action necessary to effectuate the policies of the Act

It has been found that on November 14, 1945, the respondent discriminatorily discharged Adeline Kirchem. It will therefore be recommended that the respondent offer Adeline Kirchem immediate and full reinstatement to her former or substantially equivalent position without prejudice to her seniority or other rights and privileges, and that the respondent make her whole for any loss of pay she may have suffered by reason of the discrimination against her by payment to her of a sum of money equal to that which she normally would have earned as wages from November 14, 1945, the date of her discriminatory discharge, to the date of the offer of reinstatement, less her net earnings<sup>8</sup> during said period.

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

It is generally the policy of the Board when an employer discriminatorily discharges an employee, a violation which goes to the "very heart" of the Act itself, to enter a broad cease and desist order against such employer. However, in this case, the undersigned is convinced that the employer, although it violated the Act, has no intentions or desires which threaten discriminatory actions in the future which would require such a broad cease and desist order and, therefore, such broad order will not be recommended here.

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. Portland Aircraft Workers, Local 737, affiliated with the International Association of Machinists, and International Brotherhood of Electrical Workers, Local 48, affiliated with the American Federation of Labor, are labor organizations within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Adeline Kirchem, thereby discouraging membership in Portland Aircraft Workers, Local 737, affiliated with the International Association of Machinists, respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

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

#### RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law the undersigned recommends that the respondent, The Iron Fireman Manufacturing Company, its officers, agents, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in Portland Aircraft Workers, Local 737, affiliated with the International Association of Machinists, or any other labor organization of its employees by discharging or refusing to reinstate any of its employees

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

(a) Offer to Adeline Kirchem immediate and full reinstatement to her former or substantially equivalent position without prejudice to her seniority and other rights and privileges;

(b) Make whole Adeline Kirchem for any loss of pay she may have suffered by reason of the respondent's discrimination against her by payment to her of a sum of money equal to that which she normally would have earned as wages from the date of respondent's discrimination against her to the date of the respondent's offer of reinstatement, less her net earnings<sup>9</sup> during such period;

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

(d) File with the Regional Director for the Nineteenth Region on or before ten (10) days from the date of the receipt of the Intermediate Report, a report

<sup>9</sup> See footnote 8, *supra*.

in writing, setting forth in detail the manner and form in which the respondent has complied with the foregoing recommendations.

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

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, effective November 27, 1945, any party or counsel for the Board may, within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board. Any party desiring to submit a brief in support of the Intermediate Report shall do so within fifteen (15) days from the date of the entry of the order transferring the case to the Board, by filing with the Board an original and four copies thereof, and by immediately serving a copy thereof upon each of the other parties and the Regional Director.

THOMAS S WILSON,

*Trial Examiner.*

Dated May 13, 1946

#### APPENDIX A

##### NOTICE TO ALL EMPLOYEES

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

**WE WILL NOT** discourage membership in PORTLAND AIRCRAFT WORKERS, LOCAL 737, affiliated with the International Association of Machinists, or any other labor organization of our employees, by discharging or refusing to reinstate any of our employees, or by discriminating in any other manner in regard to their hire or tenure of employment, or any term or condition of employment, except insofar as said conduct is protected by the proviso to Section 8 (3) of the Act.

**WE WILL OFFER** to Adeline Kirchem immediate and full reinstatement to her former or substantially equivalent position without prejudice to any seniority or other rights and privileges previously enjoyed, and make her whole for any loss of pay suffered as a result of the discrimination.

THE IRON FIREMAN MANUFACTURING COMPANY,

*Employer.*

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

This notice must remain posted for 60 days from the date hereon, and must not be altered, defaced, or covered by any other material.