

In the Matter of THE NATIONAL LIME AND STONE COMPANY and
UNITED CONSTRUCTION WORKERS, AFFILIATED WITH UNITED MINE
WORKERS OF AMERICA

Case No. 8-C-1809.—Decided August 26, 1946

Mr. Richard C. Swander, for the Board.

Marshall, Melhorn, Wall & Block, by *Mr. Richard S. Cole*, of Toledo, Ohio, and *Mr. Louis G. Love*, of Findlay, Ohio, for the respondent.

Mr. Frank C. Corwin, of Findlay, Ohio, for the Union.

Mr. Herbert C. Kane, of counsel to the Board.

DECISION

AND

ORDER

On May 28, 1946, Trial Examiner Sidney L. Feiler 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. On August 6, 1946, the Board, at Washington, D. C., heard oral argument in which the respondent and the Union participated.

The Board has reviewed the Trial Examiner's rulings 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 of the respondent, and the entire record in the case, and finds merit in the respondent's exceptions as stated below.

The Trial Examiner found that the respondent discriminatorily discharged Maurice Gaster because of his leadership in, and other activities in behalf of, the Union. The respondent denied that Gaster was discharged for this reason and alleged, instead, that Gaster was discharged for violating an order forbidding him to visit in the lime plant. This restriction against Gaster was imposed by

General Manager Love in June 1944 because of Gaster's excessive visiting in the plant, including parts of the plant where he was not actually engaged. Despite these instructions, Gaster admittedly continued to visit as frequently in the past as he had theretofore. On August 30, 1944, Superintendent Reynolds discovered Gaster in the lime plant visiting with other employees during these employees' working hours. Gaster was not on duty at the time and he admitted to Reynolds that this visit contravened the orders given him. Several days later, Manager Love discharged Gaster for violating his instructions and for interfering with the work of other employees.

The Trial Examiner found that the respondent's anti-union background,¹ coupled with the fact that Gaster was known to the respondent as a leader of the Union, supported the inference that the respondent's order against Gaster and his subsequent discharge for its violation were motivated by anti-union considerations. We agree that the discharge of a leading union member is to be scrutinized most carefully where the employer involved has demonstrated hostility toward the organizational efforts of his employees. However, upon the record in this case, we are not convinced that the respondent discharged Gaster for the reasons alleged in the complaint.

As Gaster's discharge is the only matter involved herein, we shall dismiss the complaint in its entirety.

ORDER.

Upon the basis of the foregoing findings of fact and 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 complaint against the respondent, The National Lime and Stone Company, Findlay, Ohio, be, and it hereby is, dismissed.

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

INTERMEDIATE REPORT

Mr. Richard C. Swander, for the Board.

Mr. Richard S. Cole, of *Marshall, Melhorn, Wall & Block, Esqs.*, of Toledo, Ohio, and *Mr. Louis G. Love*, of Findlay, Ohio, for the respondent.

Mr. Frank C. Corwin, of Findlay, Ohio, for the Union.

STATEMENT OF THE CASE

Upon a charge duly filed by United Construction Workers, affiliated with United Mine Workers of America, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Eighth Region (Cleveland, Ohio), issued its complaint dated April 22, 1946, against The National Lime and Stone Company, Carey, Ohio, herein called the respondent, al-

¹ See *Matter of The National Lime and Stone Company*, 62 N. L. R. B. 282.

leging 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, together with notice of hearing thereon, were duly served upon the respondent and the Union

With respect to unfair labor practices, the complaint alleges in substance that on or about September 6, 1944, the respondent discharged Maurice Gaster and thereafter refused to reinstate him because of his union activities. The answer of the respondent, dated May 1, 1946, admits certain jurisdictional allegations contained in the complaint, admits the discharge of Gaster, but alleges that he was discharged for cause, denies the commission of the unfair labor practices alleged in the complaint, and sets forth a separate defense of laches¹

Pursuant to notice, a hearing was held at Carey, Ohio, on May 6, 1946, before the undersigned, Sidney L. Feiler, the Trial Examiner designated by the Chief Trial Examiner. The Board was represented by counsel; the respondent, by counsel and a representative; the Union, by a representative. 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 outset of the hearing, the respondent moved to dismiss the complaint for laches. Decision was reserved upon this motion which also was renewed at the close of the respondent's case. It is disposed of hereinafter. The respondent also moved to dismiss the complaint on the merits at the close of the Board's case. This motion was denied. Decision was reserved when the motion was renewed at the close of the respondent's case. This motion is hereby denied. At the close of the Board's case, counsel for the Board moved to conform the pleadings to the proof as to formal matters. The motion was renewed after the presentation of all the evidence. The motion was granted without objection. After the introduction of all the evidence, counsel for the Board and the respondent presented oral argument. A brief was received from 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 is an Ohio corporation having its principal office at Findlay, Ohio. It operates plants for the production of commercial stone, railroad stone, and other lime and stone products at Findlay, Bucyrus, Carey, and Lima, Ohio. These proceedings are concerned solely with the plant at Carey, Ohio, where the respondent operates a quarry and is engaged in manufacturing products valued in excess of \$500,000 annually, of which approximately 30 percent is shipped to points outside the State of Ohio. Approximately 200 employees are employed by the respondent at its Carey plant.

The respondent concedes that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

United Construction Workers, affiliated with United Mine Workers of America, is a labor organization admitting to membership employees of the respondent.

¹ At the hearing, the respondent moved to amend paragraph 4 of its answer and insert material therein in amplification of its defense on the merits. The motion was granted without objection.

III. THE UNFAIR LABOR PRACTICES

The discriminatory discharge of Maurice Gaster

1. The defense of laches

At the outset of the hearing, counsel for the respondent moved that the complaint be dismissed for laches. The chronology of events pertinent to this application is as follows:

September 6, 1944—Maurice Gaster was discharged.

September 30, 1944—The Union filed a charge with the Regional Director of the Board for the Eighth Region, dated September 25, 1944, alleging that Gaster was discharged because of his union activities.

October 2, 1944—The Regional Director notified the respondent by letter of the filing of the charge.

October 26, 1944—The respondent advised the Regional Director by letter that Gaster was discharged for cause.

June 2, 1945—The Union requested withdrawal of the charge without prejudice.

June 4, 1945—The request was granted by the Regional Director and the respondent was notified of his action by letter dated June 6, 1945.

June 14, 1945—The Union filed a petition for certification of representatives of the respondent's employees at its plant at Carey, Ohio. The petition was docketed on June 15.

June 15, 1945—The Union filed the charge herein which was dated the preceding day. The charge in substance repeated the earlier charge.

The respondent contends in its answer that the delay in proceeding to hearing herein until May 6, 1946, had caused it hardship. Counsel for the respondent also orally advanced the argument that the withdrawal of the charge and its refiled shortly thereafter was improperly designed to facilitate the consideration of the representation petition.

The respondent did not substantiate its contention that it had suffered hardship by reason of the delay herein. There was no showing that it had been unable to properly prepare its case. Furthermore, counsel for the Board moved that back pay be tolled from August 11, 1945. Counsel for the respondent opposed the motion and it was denied.

The respondent's second argument is untenable. The Regional Director's approval of the request for withdrawal of the original charge was made in accordance with the Rules and Regulations of the Board and did not constitute an abuse of discretion.

The undersigned concludes that the defense of laches should be and is rejected in view of the failure to show any prejudice to the rights of the respondent.²

2. Background

Union activity started at the plant during the winter of 1943. The development of subsequent organizational efforts and related matters has been chronicled in detail in a prior case before the Board.³

Early in 1944, a group of employees under the leadership of Maurice Gaster, the dischargee herein, invited the Union to assist in organizing the plant. In March 1944, the Union filed a representation petition with the Board. The

² *N. L. R. B. v. Electric Vacuum Cleaner Company, Inc.*, 315 U. S. 685, reversing 120 F. (2d) 611 (C. C. A. 6), setting aside 18 N. L. R. B. 591; *N. L. R. B. v. Berkshire Knitting Mills*, 121 F. (2d) 235 (C. C. A. 3), remanding 17 N. L. R. B. 239; *The Triplex Screw Company v. N. L. R. B.*, 117 F. (2d) 858 (C. C. A. 6), enforcing 25 N. L. R. B. 1126; *Matter of English Freight Company*, 67 N. L. R. B. 643.

³ *Matter of The National Lime and Stone Company and Labor Relations Institute*, 62 N. L. R. B. 282.

respondent signed a stipulation for a consent election in May. The Union lost the election which was held on May 23 and it then filed charges alleging that the respondent had been guilty of unfair labor practices. It also requested that the election be set aside.

The Board, after a hearing, found that the respondent had committed unfair labor practices. It also set aside the election. Some of the acts that the Board found violative of the Act were the activities of General Manager Louis G. Love in questioning Gaster concerning the extent of union organization at the plant, vilifying and disparaging the Union,⁴ addressing groups of the employees prior to the election urging them to vote against the Union and to set up an independent union, and urging Gaster and another employee to form an independent union after the election.⁵ The Board further found that the respondent employed the Labor Relations Institute, a private firm of labor relations consultants, to help defeat the Union and to encourage the formation of an inside union. The Board also found that an employee had been discharged because of his union activities. The Board then ordered that the respondent take certain action to remedy the effect of the unfair labor practices and the respondent complied with the order.

In June 1945, the Union filed a new representation petition. The Union won an election held on September 18, 1945, and was certified as collective bargaining representative on September 25. Since that time the respondent and the Union have entered into a contract and labor relations at the plant have apparently been satisfactory.

3. The discharge

Maurice Gaster had two periods of employment with the respondent. His last employment began in 1940 and ended with his discharge on September 6, 1944. During this period, Gaster was employed as a welder.

When the employees at the plant began to consider self-organization Gaster took a leading part. He was the chairman of the various meetings held. He also was active in distributing membership cards for the Union. His activities were duly noted by management. The record of the prior hearing, hereinbefore referred to, as well as that of the present hearing indicates clearly that Manager Love knew of his activities and dealt with him as a leader of the union faction at the plant.

The day after the election of May 23, 1944, Love called Gaster from his work and discussed with him the possibility of forming an independent or inside union. He authorized Gaster and another employee, who already had books prepared to sign up the men for an independent union, to talk to the employees during working time to sound them out, stating that he would go 100 percent with them. Gaster testified that he carried out Love's plan and discussed with the men the possibility of forming an independent union. The men, he testified, were cold to this idea and were desirous of continuing organizational efforts on behalf of the Union. He then reported to Love that the employees were not in favor of forming an independent union and the plan was dropped. Gaster testified that

⁴ Love's attitude towards the Union is illustrated by Gaster's credited testimony that in March 1944, Love referred to the Union as a "blood-thirsty outfit" which had used violence against workers in a specific instance in the past, which he mentioned, and that there would be bloodshed.

⁵ Detailed testimony was introduced in the prior case to prove these unfair labor practices. Testimony to the same effect was introduced in the present proceeding. It was undenied and, in fact, was corroborated by Love. The undersigned independently finds that the above acts occurred and were violative of the Act.

thereafter he continued to organize the employees on behalf of the Union His testimony is credited.

During the month of June 1944, Love spoke to Gaster concerning his visiting other employees; that is, talking with them on non-company matters either on or off his shift. The respondent's attitude toward this practice was summarized by Love, as follows:

Our operation at Carey covers quite a large extent. It is something over a mile in one way, east and west, and something over half a mile north and south. There are at least six or seven entirely separate operations usually going on simultaneously. The property is crossed by two highways and three railroads.

We have a very fine group of men, very fine group of employees, native mostly to this territory.

Now, it isn't operating a plant of that extent and of that nature—it isn't like running a machine shop which has brick walls all around it and is all closed up. We do not have any barricades or wire fences or any formal entrance. We have several times in the years past gotten a little bothered by too much visiting and have put up signs such as were mentioned here, "No Admittance," and "No Trespassing," and "No Admittance Without Permit from Office," and so forth.

But, by and large, we operate on a quite informal basis. We have no objection to one of the employees talking to another employee or even going over to some other part of the property to see some improvement that has just gone in. We have no objection to neighbors or children or wives bringing a man his lunch or coming down to tell him the baby has arrived, or the life insurance salesmen collecting premiums.

We have since I have been around here, since 1926, operated on what would seem to outsiders away from this plant to be a pretty free and easy basis. There has only been a couple of times when an effort was made to tighten up and know who was coming on the property. One of these, of course, was at war time . . .

I would say that, by and large, visiting by employees on their own time or their free time, or by outsiders, has not been excessive. It has not been burdensome. I do not recall in 20 years that any particular complaint was made against any particular man. There were times that general complaints were made, at which time we put up signs and tried to shoo them away—

Several employees testified concerning visiting by employees with one another. They were in substantial agreement that while "No Visiting" signs of various kinds were posted at the plant during the war period, there was no enforcement of this notice by management and that employees and others were free to enter the plant on non-company purposes and did so. This testimony was not controverted by the respondent and, in fact, was corroborated by Love's testimony.

Gaster testified that sometime in June 1944, Love spoke to him and a group of employees, showed them a document, and said, "All you boys wanted the Union so * * bad, well, you wanted a raise, and the raise has been delayed." Gaster could not specify to what the document related, but his testimony indicates that he understood that Love was blaming the Union for the delay in the salary increase. Gaster further testified that Love, after the aforesaid remark to the men, followed him to his place of work and then said, "From now on stay the * out of the lime plant and mind your own * * business." Love testified that he did speak with Gaster, that he was prompted to do so by complaints from Jack Reynolds, superintendent of operations at the plant,

concerning Gaster. Love testified that Reynolds told him "The fellow has gone haywire. He's running all over the place all the time; he's bothering all the people. His own work is suffering, and he's bothering other people."⁶ Love testified that after receiving Reynolds' report he spoke to Gaster and said to him:

"Maurice, it has come to my attention that you are bothering people at their work, and the quality and the quantity of your work is suffering because of visiting around and talking to employees. You are being paid for work, and you are coming back at night and bothering other people that are being paid by the Company for working" . . .

"From now on you conduct yourself this way. This is your station, this welding shop. Now, when your foreman sends you to some other part of the property to weld, you go and do what he tells you to do and return immediately to your station here and do not visit or waste time with anyone, and don't come back at night and interfere with employees."

Gaster denied that Love had told him that he was bothering others or that his own work was suffering. Love did not directly advert to Gaster's testimony that discussion of the Union and wage increases had preceded Love's order to him. The undersigned credits Gaster's version of Love's warning to him.

No further incidents took place until August 30, 1944. Gaster, by his own testimony, continued to visit at the plant very much as he had done prior to Love's order. He further testified that no supervisor ever spoke to him about it. This activity did not come to Love's attention. He testified that he received no complaints of Gaster's conduct and was told that Gaster was doing "all right."

The period from June to August 30 was not one of stable labor relations at the plant. Adherents of the Union, according to Gaster's credited testimony, were continuing their organizing efforts. Gaster was participating in the campaign and was passing out cards. Charges of unfair labor practices had been filed by the Union in June. These charges and the objections filed to the May 23 election were being investigated. On August 21, a complaint was issued against the respondent and a hearing was set for September 6.

On August 30, 1944, Gaster returned to the plant after his regular shift. His purpose, he testified, was to speak with Clyde Zender, a lime kiln operator, on a personal matter. There were 14 lime kilns at the section of the plant Gaster visited. They were operated by four employees. Gaster entered the plant about 9:30 p. m. and found the four operators and one other who had come early for the next shift which was scheduled to start at 10 p. m. It is clear from the testimony of two of the operators, McKernan and Puckett, that the men had completed their tasks except for routine checking. McKernan was eating some lunch.

When Gaster entered the kiln room he proceeded to talk with Zender, the employee whom he came to visit. Shortly thereafter, other employees on the firing floor joined them. In about 10 minutes, Reynolds entered the room and took Gaster outside. According to Gaster, the following conversation then occurred:

REYNOLDS: Didn't the boss tell you to stay out of here?

GASTER: He made some remark about that, . . . But this is my own time, and there is no guards outside, and I don't know whether there is any rules to

⁶ Reynolds did not testify and no evidence was introduced in amplification and corroboration of these general charges.

keep a man from visiting outside of his requirements—when he is on his own time . . . When does this rule take effect.

REYNOLDS: From now on.

Gaster's undenied testimony concerning this conversation is credited.

Love's duties required him to be absent from the plant occasionally. He testified that he was at the plant on September 5 and received a report from Reynolds that he had found Gaster in a corner of the lime kiln section talking to the men. Love then telephoned Richard S. Cole, of counsel to the respondent, and discussed Gaster's case with him. Cole advised that no action be taken until he investigated the case at the plant. On the afternoon of September 6, Cole testified, he spoke with some of the employees who had been present during Gaster's visit on August 30. He ascertained that Gaster had in fact been there and had spoken with the men. He did not check as to whether Gaster had called the men together or whether they gathered around him of their own accord. Nor did he endeavor to ascertain to what extent Gaster had interfered with operations. Cole testified that the only point in which he was interested was whether Gaster was present at the plant on the evening of August 30, and whether he was talking to the men. After he had completed his investigation, Cole reported to Love and the latter decided to discharge Gaster.

There is no disagreement as to what took place at the time of the discharge. Love and Cole proceeded to Gaster's place of work. Love called over two other workmen and the following conversation took place:

LOVE: Maurice, Jack Reynolds tells me he found you up on the firing floor last Wednesday night talking to all of the men employed there. Is that right?

GASTER: Yes.

LOVE: Do you remember that back in the summer I told you specifically what you were to do and what you weren't to do, were not to do?

GASTER: Yes.

LOVE: Did you think I was kidding at the time?

GASTER: No, I thought you meant it.

(Gaster then asked whether Love had any proof that he was interfering with the men.)

LOVE: We have proof.

GASTER: I wasn't talking about the unions.

LOVE: I don't care what you were talking about. You remember your instructions from me. You understood your instructions from me. You knew that I was serious in the matter, and you elected to violate my orders to you of your own will?

GASTER: Yes.

LOVE: You're discharged, get your tools together and get your time at the office. You're no longer an employee.⁷

Gaster testified that at the office, when he was paid off, Love said to him, "Now, I hope you'll go out and mind your own business from now on." His undenied testimony is credited.

Gaster was admittedly the only employee who had ever received orders against visiting. No other employee had ever been reprimanded or discharged because of visiting.

⁷ The foregoing is taken from Love's testimony which was corroborated by Cole and the two employees who were present, Kitzler and Bare. The undersigned credits Love's testimony.

4. Contentions of the parties; conclusions

The respondent contends that Gaster had received specific orders against visiting and that these orders were given him because he was bothering other employees. It also points to the admitted fact that Gaster violated these orders and contends that Gaster was fired for disobedience and that he was not discharged for his union activities. The Board contends that in singling out Gaster for a prohibition against any visiting, when full freedom was allowed other employees and strangers, and in the strict application of that rule to Gaster, the respondent was actuated by Gaster's prominence in union activities and that he was discharged because of it.

The incidents herein can best be evaluated in the light of the surrounding circumstances. In the early part of 1944, the Union had started its organizing campaign at the plant. The respondent had countered with a campaign to break the drive by vilification and disparagement of the Union and its leaders, attempts to form an inside union, and the discharge of a union leader. The election of May 23, 1944, did not resolve the labor difficulties at the plant. Love attempted to have the plan of the formation of an inside union carried out, but the employees were not receptive. The Union filed objections to the election and charges of unfair labor practices against the respondent. These matters were under investigation during the summer months and came on to be heard on September 6. The Union, meanwhile, was continuing its organizing campaign.

Gaster from the beginning took a leading part in the union campaign and was especially active in recruiting members. Management had knowledge of his activities. This was evidenced when Love singled out Gaster as his source of information as to union activities and when he used Gaster in his effort to have an independent union formed. Love, by his own testimony, knew that Gaster was a leader in the Union.

Love's knowledge of Gaster's active interest in the Union cannot be ignored in his treatment of Gaster. The undersigned is convinced that when Reynolds, as Love testified, reported to him that Gaster was talking to the men and "bothering" them, Love concluded that the subject of Gaster's discussions was the Union. That he had this thought in mind is evidenced by the fact that he ordered Gaster not to visit the lime plant immediately after he had spoken to a group of the men and implied that the Union was blocking their wage increase.

The testimony clearly indicates that employees and others were allowed full freedom to visit the plant on personal matters and did so without hindrance. That the respondent was not particularly concerned with this practice is shown by Love's testimony that no employee had ever been reprimanded or discharged for visiting, other than Gaster. This is not to say that the respondent could not take action if an individual abused the privilege allowed the employees. However, in Gaster's case, conceding that he was abusing the privilege of visiting (of which there was no evidence), the respondent did more than attempt to have Gaster conform to the standard presumably followed by others. It sought to stop his visiting altogether. In other words, from the time of Love's order to him, there were two standards set for the employees with respect to visiting, one for Gaster and one for all the other employees. The undersigned concludes and finds that Love, aware of Gaster's union activities, sought to halt those activities by prohibiting his visiting employees while permitting all other employees full freedom.

Later developments indicate clearly that there was one standard for Gaster and one for all other employees. Love had word that Gaster has visited the

plant on his own business Love thereupon discharged him. Yet Gaster had actually done nothing more than other employees were doing all the time and for which they did not even receive a reprimand. The undersigned concludes that the disparate treatment of Gaster and the imposition of a hard penalty upon him for doing something for which other employees had tacit approval was attributable to Gaster's leadership in and activity on behalf of the Union and the respondent's desire to interfere with and curtail his union activities.

The respondent contends that there is no evidence that Love discussed the Union with Gaster or that the respondent committed any anti-union acts for several months prior to the discharge. It also argues that if it had wished to discharge Gaster for his union activities it would have done so prior to the May 1944 election and not afterward. It is true that there was no testimony of any independent acts of unfair labor practices by the respondent, except for Gaster's case, for several months prior to the discharge herein. However, it is equally true that the unfair labor practices committed prior thereto were unremedied during the period and that they still evidenced the respondent's attitude and position. It is not germane to the issues herein to ascertain when the respondent would have deemed it best to get rid of Gaster. At the time of his discharge, the Union was pressing its campaign. There were also in existence outstanding charges of unfair labor practices which were set for hearing the next day. There was ample reason for the respondent to fear Gaster's union activities and the undersigned concludes and finds that the respondent determined to stop those activities and discharged Gaster because of his failure to conform to the discriminatory standard set for him which was calculated to achieve that purpose. Accordingly, the undersigned finds that the respondent discharged Maurice Gaster because of his union leadership and activities and by such conduct has discriminated in regard to his hire and tenure of employment, thereby discouraging membership in the Union and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.⁸

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 such of them as have been found to be unfair labor practices tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the respondent has violated Section 8 (1) and (3) of the Act, it will be recommended that the respondent, pursuant to the mandate of Section 10 (c), cease and desist therefrom. The Board's decision in the prior

⁸ The respondent argues that assuming that there was a discriminatory discharge there must be direct proof that it had the effect of discouraging membership in the Union. It alleges that there was no such proof and, in fact, the Union eventually secured collective bargaining rights of the plant. This contention is contrary to the weight of authority. A discriminatory discharge may reasonably be inferred as discouraging union membership. *N. L. R. B. v. Walt Disney Productions*, 146 F. (2d) 44 (C. C. A. 9); *N. L. R. B. v. Brezner Tanning Co.*, 141 F. (2d) 62 (C. C. A. 1); *N. L. R. B. v. J. G. Boswell Co.*, 136 F. (2d) 585 (C. C. A. 9). The case of *N. L. R. B. v. Air Associates, Incorporated*, 121 F. (2d) 586 (C. C. A. 2), cited by the respondent, is not authority for the contrary view. See *N. L. R. B. v. Cities Service Oil Company*, 120 F. (2d) 933 (C. C. A. 2).

proceeding heretofore referred to and the findings herein establish the fact that when the Union attempted to carry on an organizational campaign at the plant in 1944 the respondent countered with an active campaign designed to hinder and defeat the free expression of the will of its employees with respect to their choice of a bargaining representative. Key officials of the respondent were active in this campaign of interference. They sought to have the employees form an inside union, which presumably would be more amenable to their will. Only the opposition of the employees prevented the formation of such an organization. In addition, the respondent discriminatorily discharged two union leaders. The totality of the respondent's conduct is indicative of a fixed purpose by varying methods to interfere with the rights of its employees under the Act. While the recent history of labor relations at the plant indicates that there has been a period of tranquility, the record of the extensive violations of the Act in the past indicates that steps must be taken to insure that there be no recurrence of unfair labor practices in the future. In order therefore to make effective the interdependent guarantees of Section 7 of the Act, and thus effectuate the policies of the Act, it will be recommended that the respondent be ordered to cease and desist from in any manner infringing upon the rights guaranteed in Section 7 of the Act.

It has been found that the respondent discriminated in regard to the hire and tenure of employment of Maurice Gaster. It will therefore be recommended that the respondent offer him immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority and other rights and privileges. It will be further recommended that the respondent make him whole for any loss of pay that he may have suffered by reason of the respondent's discrimination against him by payment to him of a sum of money equal to the amount he would have earned as wages from the date of the discrimination to the date of the respondent's offer of reinstatement less his net earnings⁹ during said period.

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

CONCLUSIONS OF LAW

1. United Construction Workers, affiliated with the United Mine Workers of America, 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 Maurice Gaster, thereby discouraging membership in the Union, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) 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 (1) of the Act.

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

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

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law the undersigned recommends that the respondent, The National Lime and Stone Company, Carey, Ohio, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in the United Construction Workers, affiliated with United Mine Workers of America, or any other labor organization of its employees, by laying off, discharging or refusing to reinstate any of its employees and from refusing to employ any member of that Union or in any other manner discriminating in regard to their hire and tenure of employment or any term or condition of employment;

(b) In any other manner interfering with, restraining or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist United Construction Workers, affiliated with United Mine Workers of America, 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 as guaranteed in Section 7 of the Act.

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

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

(b) Make whole Maurice Gaster for any loss of pay he may have suffered by reason of the respondent's discrimination against him by payment to him of a sum of money equal to the amount he would normally have earned as wages from the date of the discrimination to the date of the respondent's offer of reinstatement less his net earnings¹⁰ during said period;

(c) Post immediately at its plant at Carey, Ohio, 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 Eighth Region, after being signed by the respondent's representative, shall be posted by the respondent immediately upon the receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced or covered by any other material;

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

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.

¹⁰ See footnote 9, *supra*.

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

SIDNEY L. FEILER,
Trial Examiner.

Dated May 28, 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 in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist UNITED CONSTRUCTION WORKERS, affiliated with UNITED MINE WORKERS OF AMERICA, 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.

We will offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination.

Maurice Gaster

All our employees are free to become or remain members of the above-named union or any other labor organization. We will not discriminate in

regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

THE NATIONAL LIME AND STONE COMPANY,

Employer.

Dated-----

By-----

(Representative)

(Title)

NOTE—Any of the above-named employees, presently serving in the armed forces of the United States will be offered full reinstatement upon application in accordance with the Selective Service Act after discharge from the armed forces.

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