In the Matter of FRUITVALE CANNING COMPANY *and* FOOD, TOBACCO, AGRICULTURAL & ALLIED WORKERS UNION OF AMERICA, CIO *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, AND CALIFORNIA STATE COUNCIL OF CANNERY UNIONS, AFL, AND CANNERY WORKERS UNION, 20905, AFL, PARTIES TO THE CONTRACT

Case No. 20-C-1432.—Decided October 31, 1946

Mr. David Aaron, for the Board.

Messrs. Hadsell, Sweet, and Ingalls, by *Mr. S. P. Murman*, of San Francisco, Calif., for the respondent.

Messrs. Gladstein, Andersen, Resner, Sawyer, and Edises, by *Mr. Bertram Edises*, of Oakland, Calif., for the C. I. O.

Messrs. Tobriner and Lazarus, by *Mr. Mathew O. Tobriner*, of San Francisco, Calif., for the A. F. L.

DECISION

AND

ORDER

On June 17, 1946, Trial Examiner John H. Eadie 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 and the A. F. L. filed exceptions to the Intermediate Report and supporting briefs. On October 1, 1946, the Board heard oral argument at Washington, D. C., in which the A. F. L. and the C. I. O. participated.

The Board has reviewed the rulings of the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except insofar as his findings are modified below.

The Trial Examiner found that, after the Board had determined that there existed a question concerning representation[1] which the

[1] *Matter of Bercut-Richards Packing Company, et al.*, 64 N. L. R B. 133

Board thereafter [2] specifically reserved for its own determination, the contract between the respondent and the A. F. L. became automatically renewed on March 1, 1946. The respondent gave full effect to the renewal of the contract by continuing to enforce the union security provisions thereof and by relying on its terms for discriminating in other respects between the A. F. L. and the C. I. O., as more fully detailed in the Intermediate Report. We agree with the Trial Examiner's conclusion that the contract, as automatically renewed under the circumstances present here, afforded no justification for discriminating between the two unions here involved and that the respondent engaged in unfair labor practices within the meaning of Section 8 (1) and (3) of the Act by such discrimination.[3]

In view of our opinion that we shall effectuate the policies of the Act by the remedial order herein, we find it unnecessary to determine whether the renewal of the contract constituted an unfair labor practice apart from its enforcement by the respondent. The Board therefore does not adopt so much of the Trial Examiner's findings as holds that the mere automatic renewal of the earlier agreement violated 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, Fruitvale Canning Company, Oakland, California, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in Food, Tobacco, Agricultural & Allied Workers Union of America, CIO, or any other labor organization of its employees, by discriminating in regard to the hire or tenure of employment or any term or condition of employment of any of its employees;

(b) Recognizing California State Council of Cannery Unions, AFL, and Cannery Workers Union, 20905, AFL, as the exclusive representative of employees in its Oakland plant, for the purpose of collective bargaining, unless and until said organization or organizations shall have been certified by the National Labor Relations Board as the exclusive representative of such employees;

(c) Giving effect to its contract dated July 10, 1943, and renewed as of March 1, 1946, with California State Council of Cannery Unions, AFL, and Cannery Workers Union, 20905, AFL, or to any exten-

[2] *Matter of Bercut-Richards Packing Company, et al.*, 65 N. L. R. B. 1052, 1057.

[3] Cf. *Matter of Flotill Products, Inc.*, 70 N. L. R. B. 119; *Matter of Lincoln Packing Company*, 70 N. L. R. B. 135, *Matter of G. W. Hume Company*, 71 N. L. R. B. 533.

sion, renewal, modification, or supplement thereof, or to any superseding contract with those labor organizations, or any other labor organization or affiliate thereof, unless and until said organization or organizations shall have been certified by the Board as the exclusive representative of employees in its Oakland plant;

(d) In any like or related 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 Food, Tobacco, Agricultural & Allied Workers Union of America, CIO, 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 Board finds will effectuate the policies of the Act:

(a) Withdraw and withhold all recognition from California State Council of Cannery Unions, AFL, and Cannery Workers Union, 20905, AFL, as the exclusive representative of employees in its Oakland plant for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment, unless and until said organization or organizations shall have been certified by the National Labor Relations Board as the representative of such employees;

(b) Post at its plant at Oakland, California, copies of the notice attached to the Intermediate Report herein, marked "Appendix A."[4] Copies of said notice, to be furnished by the Regional Director for the Twentieth 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;

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

MR. JAMES J. REYNOLDS, JR., took no part in the consideration of the above Decision and Order.

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[4] This notice, however, shall be, and it hereby is, amended by 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." In the event that this order is enforced by decree of a Circuit Court of Appeals, there shall be inserted, before the words "A Decision and Order," the words: "A DECREE OF THE UNITED STATES CIRCUIT COURT OF APPEALS ENFORCING."

INTERMEDIATE REPORT

Mr David Aaron, for the Board.

Messrs. Hadsell, Sweet, and Ingalls, by *Mr. S. P. Murman*, of San Francisco, Calif., for the respondent.

Messrs, Gladstein, Andersen, Resner, Sawyer and Edises, by *Mr. Bertram Edises*, of Oakland, Calif., for the C. I. O.

Messrs. Tobriner and Lazarus, by *Mr. Mathew O. Tobriner*, of San Francisco, Calif, for the A. F L

STATEMENT OF THE CASE

Upon a first amended charge duly filed on March 21, 1946, by Food, Tobacco, Agriculture and Allied Workers Union of America, CIO, herein called the C. I O., the National Labor Relations Board, herein called the Board, by the Regional Director for the Twentieth Region (San Francisco, California), issued its complaint on April 30, 1946, against Fruitvale Canning Company, herein called the respondent, alleging that the respondent had engaged in and is 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 and notice of hearing were duly served upon the C. I. O., the respondent and three affiliates of the American Federation of Labor, namely the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Teamsters, California State Council of Cannery Unions, herein called the Council, and Cannery Workers Union, 20905, herein called the Local, designated in the complaint as parties to the contract The Council and the Local are collectively referred to herein as the A. F L.

With respect to the unfair labor practices, the complaint alleged in substance: (1) that on July 10, 1943, the respondent executed a collective bargaining agreement with the A. F. L ; (2) that on or about May 1945, respondent recognized the Teamsters as the successor to the interest in said contract which terminated on February 28, 1946;[1] (3) that respondent since on or about March 1, 1946, has enforced and given effect to said contract although respondent knew on or about said date that the question of representation of its employees was still pending and unresolved before the Board and that the Board in its supplemental decision on February 15, 1946, in the *Matter of Bercut-Richards Packing Co., et al.*,[2] had provided that while the question of representation was unresolved, and pending a new election, the respondent should not grant exclusive recognition to any union; (4) that said contract is illegal and void; and (5) that by said acts the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The respondent thereafter filed its answer wherein it admitted the allegations in the complaint as to the nature and extent of the respondent's business and the execution of the collective bargaining contract with the A F. L ; but denied that said contract is illegal and void, that the respondent recognized the Teamsters as the successor to the interest in said contract of the A. F. L , and the commission of any unfair labor practices The answer also contains a number of special defenses to the complaint The A. F. L. filed an answer at the hearing wherein it denied all allegations of the complaint pertaining to the alleged unfair labor practices This answer also contains a separate defense

Pursuant to notice, a hearing was held at San Francisco, California, on May 16 and 22, 1946, before the undersigned Trial Examiner, duly designated by the

[1] The complaint alleged the date to be February 29, but this error was corrected by motion to amend at the hearing

[2] Case No 20-R-1414, *et al*, 65 N L R B. 1052

Chief Trial Examiner At the hearing the Board, the respondent, the A F. L., and the C. I. O. were represented by counsel. All parties 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, the A. F L filed a written motion to dismiss the complaint. At the request of counsel for the A F. L. ruling on the motion was deferred until all evidence had been submitted, at which time ruling on the motion was reserved The motion is now denied. At the conclusion of the Board's case, the respondent moved to dismiss the complaint The motion was denied The respondent renewed its motion to dismiss at the close of the hearing. Ruling was reserved. The motion to dismiss is now denied. At the conclusion of the evidence the Board's counsel moved to conform the pleadings to the proof as to formal matters such as names and dates. The motion was granted over the respondent's objection. The parties, except the C. I. O., argued orally on the record before the undersigned at the close of the hearing All the parties were afforded an opportunity to file briefs with the undersigned No briefs have been filed.

Upon the entire record and from his observation of the witnesses, the undersigned makes the following·

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Fruitvale Canning Company is a California corporation operating a plant at Oakland, California, where it is engaged in the canning and processing of fruits and vegetables. Respondent, in the course and conduct of its business, causes, and at all times herein mentioned continuously has caused in excess of 75 percent of the products of its said plant, valued at in excess of $5,000,000 annually, to be sold and transported in interstate and foreign commerce from its said Oakland plant to States and territories of the United States other than the State of California, and to foreign countries.

In the course of its canning operations, the respondent steadily employs approximately 250 persons, but at times employs up to 900, depending upon the pack involved.

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

II. THE ORGANIZATIONS INVOLVED

Food, Tobacco, Agricultural and Allied Workers Union of America, CIO; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL; California State Council of Cannery Unions, AFL; and Cannery Workers Union, 20905, AFL, are labor organizations admitting to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

1. Background

On July 10, 1943, the respondent and the Council and the Local executed an agreement which contains the following clauses: [3]

[3] Prior contracts between the respondent and the A. F L. were introduced in evidence. The undersigned, however, finds that comment upon them is unnecessary in order to determine the issues in the instant proceeding. There is no substantial evidence in the case that on or about May of 1945 the respondent recognized the Teamsters as the successor to the interest in the above-mentioned contract of the A. F. L., as alleged in the complaint.

1. That the contents of the printed agreement which represents a collective bargaining agreement between the CALIFORNIA PROCESSORS AND GROWERS, INC, and the AMERICAN FEDERATION OF LABOR and the CALIFORNIA STATE COUNCIL OF CANNERY UNIONS and the CANNERY WORKERS UNIONS chartered by the AMERICAN FEDERATION OF LABOR negotiated by the parties hereto during the year 1941, be and the same is hereby reaffirmed, and adopted as to all its contents, with the provisions embodied in such printed amendments attached thereto (excepting however in reference or references to the CALIFORNIA PROCESSORS AND GROWERS, INC., that in their place and stead shall be substituted the name of the cannery or canneries signatory hereto, as though they were direct parties thereto) and the contents of said printed agreement and printed amendments thereto are hereby incorporated herein by this reference in same force and effect as if fully set forth herein.

2 That the terms of said agreement in their entirety shall be operative as of the date hereof, subject to acceptance in writing by all parties hereto.

As to the contract term, the printed agreement referred to in Clause No. 1 above contains the following:

Section 18 TERM OF AGREEMENT

The term of this agreement shall be until March 1, 1945, provided, however, that either party may, by written notice given fifteen (15) days prior to December 31, 1943, or fifteen (15) days prior to December 31st of any subsequent year during the life of this agreement, reopen the same for the adjustment of wages, hours and working conditions. Any changes desired shall be reduced to writing and delivered to the other party prior to, and negotiations must start not later than, the first business day in January next following receipt of such written notice and such negotiations must be completed before March 1st of the same year In the event that this agreement shall not have been modified previously, and in the event that no notice shall be given by either party to the other, as hereinabove provided, then the terms of this agreement shall automatically be extended for an additional period of one (1) year, and thereafter shall automatically be extended from year to year unless one of the parties shall give notice to the other of a desire to modify said agreement, at least fifteen (15) days prior to December 31st in any following year of the life of this agreement. In the event that such notice is given prior to December 31st as hereinabove provided, and negotiations are begun, the terms of the agreement as of the date of such notice shall remain in full force and effect during and until the following March 1st, and if negotiations continue beyond such date by mutual agreement, any agreement reached thereafter shall be effective retroactively to said March 1st. In the event no agreement is reached by said March 1st, however, either party may give notice to the other of the termination of negotiations and thereby cancel said negotiations and this agreement.

The contract also contains a type of preferential hiring clause

On or about October 5, 1945, and subsequent to a hearing, the Board entered an order and directed that an election be held among the respondent's employees at its Oakland plant, as a separate appropriate bargaining unit, apart from that of California Processors and Growers, Inc Pursuant to said direction, an election was conducted on or about October 17, 1945. In this election 56 votes were cast for the A. F. L. and 178 votes were cast for the C. I. O On or about February 15, 1946, the Board issued a supplemental decision and order in

which it directed that the election should be set aside and that a new election should be conducted In its supplemental decision and order the Board states as follows:

> While we view the record as requiring this result, we reach it with considerable reluctance because it means that the employees will have no bargaining representative to negotiate an exclusive collective agreement to cover the coming season, until a new election can be held which may result in one of the rival unions being certified. The current AFL contract will expire on March 1, and since the legal effect of the foregoing determination is to keep the question of representation pending before the Board, none of the unions is entitled to an exclusive status as the bargaining agent after that date. In accordance with well-established principles, the employers may not, pending a new election, give preferential treatment to any of the labor organizations involved, although they may recognize each one as the representative of its members In this state of the record, no legal effect may be given the closed-shop provision contained in the current collective agreements after their expiration date; the inclusion of any such provision in any new agreements, or action pursuant thereto, would clearly be contrary to the proviso in Subsection 8 (3). Nothing in our decision, however, should be construed as requiring any change in the substantive conditions of employment now existing by virtue of the foregoing agreements.

No canning operations were performed at the respondent's plant during 1946 until April 2, at which time the spinach pack was commenced It appears that the spinach pack was completed during April

2. The discriminatory acts of the respondent

On or about March 6, 1946, Claudia Williams and James Cuthill, representatives of the C. I O, had a conference at the plant office with A D Poggetto and George E Smitman, president and secretary-treasurer, respectively, of the respondent, and Dan Hadsell, respondent's attorney. During the conference the C I. O. representatives requested permission to enter the plant on the same basis as afforded representatives of the A. F. L, and for a check-off of C I O dues, but their requests were refused. Hadsell stated, in substance, that he considered the contract with the A F L. to be in full force and effect, since it contained an automatic renewal clause; that he was so advising the respondent; that the representatives of the A. F L would have full access to the plant accordingly; and that the pay-roll check-off for the A F L dues would continue[4]

As heretofore related, the first canning operation for 1946 started with the spinach pack on April 2. Workers for this pack were hired in accordance with a seniority list maintained by the respondent for a number of years Respondent notified its employees to come to the plant in order to register. Registration

[4] Williams testified to the above conversation and the undersigned credits her testimony in this respect Hadsell was unable to attend the hearing Smitman denied that Hadsell had refused permission to the C I O to enter the plant He testified that Hadsell stated that the respondent had not determined its policy as of that time and that his recommendations to the respondent would be a day to day proposition The statement that representatives of the A F L were to be admitted to the plant was denied, in effect, by both Poggetto and Smitman who testified that the plant watchmen had standing orders to exclude all persons except employees from the "plant," as distinguished from the office. Williams' version of the conversation is confirmed, however, by the actions of the respondent, hereinafter set forth

of workers for the pack was performed in the personnel office inside the plant and took place shortly before April 2.[5]

Before employees were registered by the respondent, it required them first to be approved by the A. F. L. and to sign authorization cards for pay-roll deductions of A. F. L. dues. Respondent made available to representatives of the A. F. L. a room in the plant for this purpose.[6] The union dues were deducted from the wages of employees by the respondent during the spinach pack.

Marcella Wood, an International Representative of the C. I. O., testified and the undersigned finds that on April 2, 1946, three identified representatives of the Teamsters continuously walked into and out of the plant without being molested by the watchman who was present at the time.

At some time during the first week of the spinach pack, or shortly after April 2, Williams and two other representatives of the C. I. O. had another conference with Poggetto and Smitman at the respondent's office. During this conversation the C. I. O. representatives advised Poggetto that representatives of the A. F. L. were being permitted to enter the plant and that employees who were working were being required to clear with and pay dues to the A. F. L. Poggetto replied that he did not know whether or not the A. F. L. representatives were in the plant. The C. I. O representatives renewed their demand that they be permitted inside the plant but Poggetto refused the request.[7]

Immediately after the above conversation, the C. I. O. representatives attempted to enter the plant proper, but were refused admittance by the watchman at the gate Williams testified that at that time she saw a woman representative of the A. F. L. in the plant and the undersigned credits her testimony in this connection.[8]

3. Concluding findings

There is no dispute in the case that at the two conferences between the C. I O. and the respondent the C. I. O. requested that it be treated on an equal basis with

[5] Williams testified that employees were registering for work on March 6, whereas both Poggetto and Smitman testified that registration took place on March 20 or 21. Louise Varela, a witness for the Board, testified that she registered about one week before she started work. The undersigned believes that it is unnecessary to resolve this conflict, as the date is not material to the issues in the case

[6] Louise Varela testified in substance and without contradiction, that when she went to the plant to register, her foreLady, Farrell, told her that she would have to clear with the A. F. L before she could register for work; that in a room of the plant she then talked to a woman identified by her as "Mabel" and who was one of the three women in the room interviewing employees, that Mabel required her to prove that she was not delinquent in her A F L. dues; that Mabel refused to send her to the respondent's office to register when she (Varela) would not sign the check-off authorization card; that after she signed the authorization card Mabel gave her a yellow slip of paper which she then took to the respondent's office, and that a girl in the office, upon presentation of the yellow slip of paper, gave her a button which entitled her to work. The undersigned finds that the three women including Mabel, concerning whom Varela testified, were representatives of the A F L. The above facts were not denied by the respondent, except that Poggetto testified that representatives of the A. F L. were not given permission to enter the plant. However, neither Poggetto nor Smitman appeared to be familiar with the registration procedure and did not specifically deny that registration took place as outlined above.

[7] Williams testified to the above conversation and the undersigned credits her testimony in this respect. The substance of the conversation was not denied by either Poggetto or Smitman. However, Poggetto stated that the conversation took place on March 20 or 21 and Smitman testified that it took place on March 21. Williams was certain in her testimony that the meeting took place while the plant was in production, although she was not sure as to the exact date.

[8] Williams was unable to identify the representative of the A. F. L. by name.

the A. F. L Nor is there any dispute that the respondent refused to grant a check-off of the C. I. O dues and permission for C. I. O. representatives to enter the plant. The fact that the respondent did deduct A F. L dues stands uncontradicted. Further, the undersigned has found above that prospective workers for the spinach pack were required to prove membership in good standing in the A. F L. and to sign authorization cards for a dues check-off before being permitted to register for work and that A F L. representatives were permitted to enter the plant while C I. O representatives were excluded. These facts also stand undenied except for the testimony of Poggetto and Smitman that standing orders were issued to the watchman to exclude all but employees from the plant. In this connection it is worthy of note that Hadsell stated at the conference on March 6 that in his opinion the contract with the A. F L was valid. This statement of Hadsell was admitted by both Poggetto and Smitman It is clear that the respondent accepted Hadsell's opinion and accordingly recognized the A F L as the exclusive bargaining representative of its employees, disregarding the warning in the Board's supplemental decision of February 15, 1946

Respondent apparently relies on the validity of its contract with the A F L. as justification for its actions.[9] In this connection the respondent contends that the contract was automatically and validly renewed for one year in accordance with Article 18 thereof and runs from December 31, 1945 to December 31, 1946. The undersigned finds no merit in the contention that there was a valid renewal. Article 18 of the contract clearly specifies the term of the contract as running until March 1.

On October 5, 1945, the Board directed an election. The election was held on or about October 17, and in the election a majority of the respondent's employees indicated its preference for the C. I O as bargaining agent Objections to the election were filed by the A F. L On the basis of these objections the Board set aside the results of the election in its supplemental decision of February 15, 1946, and ordered that a new election be held, but did not dismiss the petition of the C. I. O. for certification Therefore, it is clear that as a matter of law a question concerning representation was pending before the Board from at least the date of the direction of the election on October 5, 1945, and is still pending before the Board. So that even if the contract term ran to December 31, 1945, and was automatically renewed for a period of 1 year since neither party gave notice of intention to terminate 15 days prior to December 31, as respondent contends, nevertheless the renewal of the contract was invalid since the question concerning representation was pending as of that time As stated in the Board's decision it would be illegal for the respondent to grant exclusive recognition or preferential treatment to any labor organization after the expiration date of the contract and pending a new election.

The above pronouncement by the Board in the *Bercut-Richards* case was merely a statement of "well established principles" of law and served as a warning to the respondent Even if the Board had deleted the above statement of established principles from its supplemental decision, the respondent would have been bound thereby[10] Accordingly, the undersigned also finds no merit in the

[9] The evidence shows that neither party to the contract gave the required notice 15 days prior to December 31, 1945, in accordance with Article 18 of said contract.

[10] In the *Matter of Phelps Dodge Copper Products Corporation, Habirshaw Cable and Wire Division*, 63 N L R B 686, wherein the Board states at page 687 :

> We are of the opinion that if, during the pendency of an election directed by the Board to resolve a question concerning representation, an employer extends or renews an existing contract with a labor organization, or makes a new one, he violates the Act insofar as that organization is accorded recognition as exclusive bargaining representa-

respondent's contentions to the effect that the Board's pronouncement [cited above] in its decision of February 15, 1946, was invalid and void and that the institution and maintenance of proceedings under Section 9 of the Act, "— do not, prior to the conclusion thereof with the certification of a bargaining agent other than the bargaining agent who represented employees in making a collective bargaining agreement prior to the institution of such proceedings, invalidate any such collective bargaining agreement which remains in effect according to its terms while said proceedings are in progress and remain unconcluded"

The undersigned therefore finds that the respondent's contract, as renewed, with the A .F L is illegal and void

By its action in requiring employees to first obtain clearance from the A. F L. before permitting them to register for work, the respondent clearly was according full force and effect to the terms of the preferential hiring provision in the contract, and the undersigned so finds Such action on the part of the respondent was clearly contrary to the proviso in Section 8 (3) of the Act, since the contract had terminated on March 1, 1946, and the question of representation was then pending before the Board. The evidence in the case not only shows that the respondent renewed and gave full force and effect to its contract with the A. F L, but further shows that the respondent gave prefential treatment to the A F L by excluding C I O representatives from the plant and otherwise refused the C I O's requests for treatment on an equal basis with the A. F. L.

Accordingly, the undersigned finds that the respondent, by renewing its contract with the A F L on March 1, 1946, by giving full force and effect to the provisions of said contract on and after March 1, 1946, and by otherwise giving preferential treatment to the A F. L over the C. I O, with knowledge of the pending proceedings before the Board for the determination of representatives, indicated its approval of the A. F. L., encouraged membership therein, discouraged membership in the C. I. O, and thereby rendered unlawful assistance to the A. F. L, which interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The undersigned further finds that by the provisions of its contract with the A. F L, as renewed on March 1, 1946, the respondent has discriminated in regard to the terms and conditions of employment of its employees in order to encourage membership in the A. F. L. and to discourage membership in the C. I. O by compelling them to clear with the A. F. L. before permitting them to work, and has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

IV THE REMEDY

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

It has been found that the respondent has unlawfully assisted the A F. L. to the detriment of the C. I. O. by recognizing and renewing its contract with the A. F. L., as the exclusive representative of its employees. Accordingly, it will be recommended that the respondent cease and desist from recognizing the A F. L as the exclusive representative of its employees and from giving effect

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tive or employees are required to become or remain members thereof as a condition of employment

See also *Matter of Midwest Piping and Supply Co, Inc*, 63 N L. R B 1060, *Matter of Elastic Stop Nut Corporation*, 51 N. L R. B 694, enf'd 142 F (2d) 371 (C. C A 8), cert. den. 323 U S. 722

to its contract with the A. F. L., as renewed on March 1, 1946, or to any extension, renewal, modification or supplement thereof, until such time as that organization is certified by the Board as the exclusive representative of the respondent's employees.

Nothing herein, however, should be construed as requiring the respondent to vary any wage, hour, seniority or other substantive features of its relations with the employees themselves, which the respondent has established in the performance of said contract, or to prejudice the assertion by the employees of any rights they may have under said contract.

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. Food, Tobacco, Agricultural & Allied Workers Union of America, CIO; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL; California State Council of Cannery Unions, AFL; and Cannery Workers Union, 20905, AFL, are labor organizations within the meaning of Section 2 (5) of the Act.

2. 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.

3. By discriminating in regard to terms and conditions of employment, thereby encouraging membership in California State Council of Cannery Unions, AFL, and Cannery Workers Union, 20905, AFL, and discouraging membership in the Food, Tobacco, Agricultural and Allied Workers Union of America, CIO, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

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 above findings of fact and conclusions of law, the undersigned recommends that the respondent, Fruitvale Canning Company, Oakdale, California, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in the Food, Tobacco, Agricultural and Allied Workers Union of America, CIO, or any other labor organization of its employees, by discriminating in regard to terms and conditions of employment;

(b) Recognizing California State Council of Cannery Unions, AFL, and Cannery Workers Union, 20905, AFL, as the exclusive representative of any of its employees, in its Oakland plant, for the purposes of collective bargaining unless and until said organizations, or either of them, shall have been certified by the National Labor Relations Board as the exclusive representative of such employees;

(c) Giving effect to its contract dated July 10, 1943, and renewed as of March 1, 1946, with California State Council of Cannery Unions, AFL, and Cannery Workers Union, 20905, AFL, or to any extension, renewal, modification, or supplement thereof, or to any superseding contract with those labor organizations or any labor organizations or affiliate thereof, unless or until said organizations, or either of them, shall have been certified by the Board as the representative of the employees in its Oakland plant;

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist Food, Tobacco, Agricultural and Allied Workers Union of America, CIO, 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) Withdraw and withhold all recognition of California State Council of Cannery Unions, AFL, and Cannery Workers Union, 20905, AFL, as the exclusive representatives of any of its employees in its Oakland plant, for the purposes of collective bargaining, with respect to rates of pay, wages, hours of employment, and other conditions of employment, unless and until said organizations, or either of them, shall have been certified by the National Labor Relations Board as the representatives of such employees;

(b) Post at its plant at Oakland, California, copies of the notice attached hereto marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Twentieth Region shall, after being duly signed by 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;

(c) File with the Regional Director for the Twentieth Region on or before ten (10) days from the receipt of this Intermediate Report, a report 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

JOHN H. EADIE,
Trial Examiner.

Dated June 17, 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 recognize CALIFORNIA STATE COUNCIL OF CANNERY UNIONS, AFL, and CANNERY WORKERS UNION, 20905, AFL, as the exclusive representative of any of our employees in our Oakland plant, for the purposes of collective bargaining, unless and until said organizations, or either of them, shall have been certified by the Board as the representative of such employees.

WE WILL NOT give effect to our contract dated July 10, 1943, and renewed as of March 1, 1946, with CALIFORNIA STATE COUNCIL OF CANNERY UNIONS, AFL, and CANNERY WORKERS UNION, 20905, AFL, or to any extension, renewal, modification or supplement thereof, or to any superseding contract with said labor organizations, or either of them, unless and until said organizations, or either of them, shall have been certified by the Board as the representative of the employees in our Oakland plant

WE WILL NOT in any like or related 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 the FOOD, TOBACCO, AGRICULTURAL AND ALLIED WORKERS UNION OF AMERICA, CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection.

All our employees are free to become or remain members of the FOOD, TOBACCO, AGRICULTURAL AND ALLIED WORKERS UNION OF AMERICA, CIO, 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.

FRUITVALE CANNING COMPANY,
Employer.

Dated_____ By_____ _____
(Representative) (Title)

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