

In the Matter of PRATT, READ & Co., INCORPORATED and DAVID PETERSON, CATHERINE FOSQUE, LUCILLE SMITH, SUSAN BISHOP, OLINTO MENCUCCINI, AND ELMER JOY, INDIVIDUALS

Case No. 1-UA-293.—Decided July 28, 1950

DECISION AND ORDER

On March 28, 1950, Trial Examiner C. W. Whittemore issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief, and the charging parties filed a reply brief.

The Board¹ 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,² and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.³

The Remedy

As recommended by the Trial Examiner, we shall order the Respondent to offer David Peterson, Catherine Fosque, Lucille Smith, Susan Bishop, Olinto Mencuccini, and Elmer Joy reinstatement with back pay from the date of their discharges. Since the issuance of the

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

² As the record, exceptions and briefs fully present the issues involved and the positions of the parties; the Respondent's request for oral argument is hereby denied.

³ The Intermediate Report contains two inaccuracies, neither of which affects the Trial Examiner's ultimate conclusions or our concurrence in such conclusions. Accordingly, we make the following corrections: (1) the record indicates that the AFL started organizing in the plant several months before, not "coincident with," the Respondent's announcement that it would no longer deal with the Union; and (2) contrary to the Trial Examiner's statement that only the six employees here involved were discharged on October 1, 1948, the record shows that several other employees were discharged on that day.

Trial Examiner's Intermediate Report, however, the Board has adopted a method of computing back pay different from that prescribed by the Trial Examiner.⁴ Consistent with that new policy we shall order that the loss of pay be computed on the basis of each separate calendar quarter or portion thereof during the period from the Respondent's discriminatory action to the date of a proper offer of reinstatement. The quarterly periods, hereinafter called "quarters," shall begin with the first day of January, April, July, and October. Loss of pay shall be determined by deducting from a sum equal to that which these employees would normally have earned for each quarter or portion thereof, their net earnings,⁵ if any, in other employment during that period. Earnings in one particular quarter shall have no effect upon the back-pay liability for any other quarter.

We shall also order the Respondent to make available to the Board upon request payroll and other records to facilitate the checking of the amount of back pay due.⁶

ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, Pratt, Read & Co., Incorporated, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in any labor organization of its employees by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner 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 exercising of the right to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

⁴ *F. W. Woolworth Company*, 90 NLRB No. 41.

⁵ 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, which would not have been incurred but for this unlawful discrimination, and the consequent necessity of his seeking employment elsewhere. *Crossett Lumber Company*, 8 NLRB 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered earnings. *Republic Steel Corporation v. N. L. R. B.*, 311 U. S. 7.

⁶ *F. W. Woolworth Company*, 90 NLRB No. 41.

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

(a) Offer to David Peterson, Catherine Fosque, Lucille Smith, Susan Bishop, Olinto Mencuccini, and Elmer Joy immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole, in the manner set forth in the section entitled "The Remedy," for any loss of pay they may have suffered by reason of the Respondent's discrimination against them;

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

(c) Post at its plant in Ivorytown, Connecticut, copies of the notice attached hereto and marked Appendix.⁷ Copies of said notice, to be furnished by the Regional Director for the First Region, shall, after being duly signed by the Respondent's representative, be 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;

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

APPENDIX

NOTICE TO ALL EMPLOYEES

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

WE WILL NOT discourage membership in any 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.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organ-

⁷ In the event this Order is enforced by decree of a United States Court of Appeals, there shall be inserted before the words "A Decision and Order" the words "A Decree of the United States Court of Appeals Enforcing."

ization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

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

David Peterson	Susan Bishop
Catherine Fosque	Olinto Mencuccini
Lucille Smith	Elmer Joy

All our employees are free to become or remain members of any labor organization except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the Act. 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.

PRATT, READ & Co., INCORPORATED,
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.

INTERMEDIATE REPORT

- *Mr. Torbert H. MacDonald*, of Boston, Mass., for the General Counsel.
- *Messrs. Walfrid G. Lundborg*, (Shipman & Goodwin), of Hartford, Conn., and *James J. Gould*, of Essex, Conn., for the Respondent.
- *Mr. Martin Raphael*, of New York, N. Y., for David Peterson, *et al.*

STATEMENT OF THE CASE

Upon charges duly filed by David Peterson, Catherine Fosque, Lucille Smith, Susan Bishop, Olinto Mencuccini, and Elmer Joy, individuals, the General Counsel of the National Labor Relations Board, by the Regional Director of the First Region (Boston, Massachusetts), issued his complaint, dated December 20, 1949, against Pratt, Read & Co., Incorporated, herein called the Respondent, alleging that the Respondent had engaged in, and was engaging in, unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3)

and Section 2 (6) and (7) of the National Labor Relations Act, as amended (Pub. Law 101), herein called the Act.

With respect to the unfair labor practices the complaint alleges in substance that the Respondent: (1) On October 1, 1948, discharged employees David Peterson, Catherine Fosque, Lucille Smith, Susan Bishop, Olinto Mencuccini, and Elmer Joy because of their activities on behalf of Local 105, United Furniture Workers of America, CIO, herein called the Union; (2) from June 1948, and continuously thereafter extended assistance to a labor organization other than the Union while restricting campaign activities of the Union, and interrogating employees concerning their activities on behalf of the Union; and (3) by these acts interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act.

Copies of the charges were duly served upon the Respondent. Copies of the complaint and notice of hearing thereon were duly served upon the Respondent and the individuals.

On January 11, 1950, the Respondent filed its answer, denying that it had engaged in any of the alleged unfair labor practices.

Pursuant to notice, a hearing was held at New Haven, Connecticut, from January 24 to February 2, 1950, inclusive, before C. W. Whittemore, the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel of the Board, the Respondent, and the charging individuals were represented by counsel, participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues. At the opening of the hearing and again at the conclusion of General Counsel's case-in-chief, counsel for the Respondent moved for dismissal of the complaint; the motions were denied. At the conclusion of the hearing opportunity was afforded all parties to argue orally before the Trial Examiner, and to file briefs and/or proposed findings of fact and conclusions of law. On March 15, 1950, briefs were received from counsel for the Respondent and counsel for the individuals.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Pratt, Read & Co., Incorporated, is a Connecticut corporation, engaged at its place of business in Ivorytown, Connecticut, in the manufacture of piano accessories. More than 50 percent of the raw materials purchased annually by the Respondent, valued at more than \$500,000, come to the Respondent's plant from points outside the State of Connecticut. More than 50 percent of the Respondent's sales of finished products, valued at more than \$1,000,000, are shipped to points outside the State of Connecticut. The Respondent concedes that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATIONS INVOLVED

Local 105, United Furniture Workers of America, CIO, and Upholsterers' International Union, AFL, are labor organizations admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Major events and issues*

The present controversy arose out of the Respondent's announced refusal in July 1948, after many years of uninterrupted contractual relationship, to deal further with the Union after October 1, terminal date of the existing agreement, because the Union had failed to file non-Communist affidavits with the Board.

Coincident with the Respondent's announcement, organizational efforts among the employees were begun by a rival union, Upholsterers' International Union of North America; AFL. At about the same time the Union's vice president and all but two of its executive board members were discharged by the Respondent for reasons not in issue in these proceedings and not fully revealed by the record. In any event, although the Union filed a grievance in behalf of these individuals, the Respondent refused to arbitrate the issues, and it does not appear that they were ever reinstated.

On September 14 a consent election was conducted by the Board, the Union not appearing on the ballot, and a few days thereafter the AFL organization was certified. During the preelection campaign a number of the union officers and stewards openly urged employees to vote "no union." The pleadings and the evidence raise the issue as to whether or not the Respondent, in fact and in law, interfered with its employees' rights by permitting AFL campaign activities which it denied to members of the Union.

The major issue, that involving six discharges, was precipitated by the Respondent's dismissal on October 1, when the union contract expired, most of its remaining officers or stewards and one individual, not an office holder, who continued to be an open union adherent.

B. *Interference, restraint, and coercion*

Undisputed testimony establishes that during the preelection campaign Foreman Murphy on two occasions told employees that if the Union remained in the plant the company would close its doors.¹ About a month before the election Foreman George Bartman told employee Elmer Joy that the company "might move the plant out west or go up to Canada some place" before it would bargain with the Union.²

During the campaign employee Flora Dickinson openly distributed AFL cards during working hours. When Catherine Fosque, a union steward, protested to Foreman George Moat that Dickinson was exercising a privilege denied to others, Moat replied that he had reported her to the "office" but could do nothing with her.³ Assistant Superintendent William Pearson admitted, as a witness, that Fosque had complained to him about Dickinson's activity, but that he "had no

¹ Former employees Salvatore Parisi and Sarah Budney so testified. On one occasion Murphy made the statement to Parisi and a group of employees during a smoking period, on the other he made the remark to Budney and another girl, at their benches, during working hours. Murphy was not called as a witness.

² Joy's testimony on this point is unrefuted.

³ The finding rests upon Fosque's credible testimony. On direct examination, when Moat was asked if anyone ever spoke to him about other employees distributing literature in the plant, Moat replied: "Not to my recollection. I could say, I think positively no." On cross-examination, however, Moat said that he could recall no specific conversation with Fosque as to Dickinson, but that he "may have made that statement to Miss Fosque" and that he had reported Dickinson to the office for distributing literature.

occasion" to stop this conduct because he did not see it, and that he made no effort to "observe" Dickinson.

When employee Susan Bishop saw Dickinson and Mary Becker, the latter a daughter-in-law of Foreman Joseph Becker, openly hand out AFL literature during working hours, she asked the foreman why such conduct was allowed in view of the posted notice "No passing out leaflets during working hours." Becker gave her no reply. Bishop then reported the matter to Superintendent Myers,⁴ who merely said that he would see what he could do about it.⁵ Both Dickinson and Mary Becker are still employed by the Respondent. There is no evidence that either was disciplined or warned. On the other hand, Bishop was discharged shortly after the above incident, the Respondent's counsel claiming at the hearing that her dismissal was because of "her personal activities in talking with other people."

Employees Louis Smelki and Fred Maier also openly distributed AFL cards during working hours.

It is found that responsible officials and foremen permitted employees to campaign for the AFL before the election. By condoning and sanctioning such conduct the superintendent and foremen plainly negated the notice posted on August 6 which stated, in part:

The Company does not condone, nor "bless", Union activity on the part of any individual on Company premises during Company time.

* * * * *

Any employee, violating any of these rules will be subject to immediate disciplinary action, ranging from suspension to discharge.

On September 3 management posted another notice, which loaned further significance to the conduct permitted the AFL organizers. This notice said, in part:

There has not been, and will not be, any deviation on the Company's part from the policy . . . that it will not bargain with Local 105, U. F. W. A., C. I. O.

* * * * *

It is good Americanism and good Unionism to observe the law. The U. I. U. [AFL] is recognized by the National Labor Relations Board as a labor organization authorized to represent the Employees of this Plant and entitled to appear on the ballot at the election on September 14. Local 105, U. F. W. A., C. I. O. has failed to comply with the Law and thus cannot appear on the ballot.

. . . The Company will, therefore, refuse to bargain with Local 105, U. F. W. A., C. I. O., *whatever the result of the election.*

If a majority of eligible voters do not elect the U. I. U., A. F. of L. on September 14, the Plant will have no Union for the next twelve months, regardless of what you hear from sound trucks or read in hand-bills. [Emphasis supplied.]

Although the General Counsel makes no claim that the latter notice is violative of the Act, it plainly establishes the Respondent's partisan attitude. In this atmosphere, created by management itself, the sanctioning of conduct on the part of AFL organizers in violation of its own posted rules, and the threats

⁴ Also spelled Maier and Meyers in the record.

⁵ Bishop's testimony on this matter is uncontradicted, and is corroborated by that of Lucille Smith.

to close the plant constituted weighty assistance to one organization during an election campaign, and interfered with the rights of the employees, as guaranteed by Section 7 of the Act, to free and uncoerced choice of their bargaining representative.

C. *The discharges*

1. Facts bearing upon the six discharges of October 1

Without prior notification, the Respondent summarily discharged employees David Peterson, Catherine Fosque, Lucille Smith, Susan Bishop, Elmer Joy, and Olinto Mencuccini on October 1, the day after its contract with the Union formally expired. Personnel Manager F. B. Wilson, as a witness, testified that he was responsible for each of the discharges, and admitted knowledge that all but Mencuccini were holding or had recently held offices or stewardships in the Union.

Peterson, first employed by the Respondent in 1905, had been the chief leader of the Union since its organization in the plant; he had been its president from 1941 to 1947, at the time of his discharge was an executive board member, and both during and after the election campaign publicly urged employees to support the Union despite the absence of its name from the ballot. Fosque, Joy, and Bishop were stewards, Bishop also having previously been recording secretary. Smith was an executive officer. Mencuccini, although not an office holder of the organization, had long been an openly avowed union advocate, and credible testimony makes clear that he was familiarly called "Mr. C. I. O." by the employees. All six actively participated in the preelection campaign, having gathered for frequent conferences with the Union's business agent at a point outside the plant but in full view of Wilson's office; having distributed leaflets at the main entrance; or having been present at a loud speaker, immediately after the election, when the union business agent and Peterson announced to employees at the plant that although the election had been "lost," loyal members of the Union would continue efforts to regain bargaining rights.

The Trial Examiner is convinced by the preponderance of credible evidence that Personnel Manager Wilson well knew that each of the six employees was and continued to be an active adherent, following the election, of the Union with which, in his posted notice of September 3, he had announced the Respondent would refuse to bargain "whatever the result of the election."

All but Mencuccini were given their discharge slips on October 1 by their foremen. None of the foremen gave reasons for the action. Foreman White volunteered the statement to Peterson that he had nothing to do with it, as did Foreman Moat to Fosque, and Foreman Ray to Joy. When Bishop and Smith asked Foreman Becker the reason for their dismissal they were merely told to see Superintendent Myers. Myers gave them no reason but sent them to Wilson. Fosque, Smith, and Bishop promptly sought Wilson. According to the personnel manager's own testimony, he could not recall "for sure" giving any reasons to the three girls. It is undisputed that when Smith challenged Wilson with the stated belief that she was being fired for being a C. I. O. officer he did not reply. When Mencuccini was given his discharge slip by Wilson himself, the personnel manager merely told him that "fifteen more" were likewise being dismissed. Records introduced by the Respondent of dismissals during 1948 show no one being discharged on October 1 except the six employees here involved.

Each of the 6 termination slips given to the employees states only, as a purported reason for dismissal, "unsatisfactory employee." Records introduced by

the Respondent list 73 other discharges during 1948. Although a large variety of reasons are set forth on this compilation from company records, not one of the 73 listed appears to have been dismissed upon the stated claim of being an "unsatisfactory employee," as were the 6 here involved.

Assistant Superintendent Pearson testified that he did not recommend and did not know that Smith, Fosque, and Bishop were to be fired, although they were employees in departments under his supervision. As to Fosque, Pearson said he had never spoken to her about her work; as to Bishop he said she had never given any trouble in the department and when asked if he knew she was a good employee he replied: "I would say she was, you bet your life." Foreman Moat testified that he did not recommend the discharge of Fosque.

Foreman White admitted that he never spoke to Wilson about Peterson's discharge. No foreman was called to testify either as to Joy or Mencuccini. Wilson testified that he had not discussed any of the six discharges with Superintendent Myers; there is no credible evidence that he discussed his action with any other supervisor and, as noted above, he ordered the dismissals upon his own responsibility.

2. Reasons advanced by the Respondent for the discharges

As noted above, no immediate supervisor recommended the discharge of any of the six employees for any reason. Personnel Manager Wilson was the only management witness to testify as to reasons for the group dismissal.

As to *Fosque*, Wilson testified on direct examination, in substance, that he discharged her because she had been "absent an extraordinary amount," and "seemed to have a very unsociable attitude." He also claimed that sometime "in the spring of '48" he had personally warned Fosque about her attendance. On cross-examination, however, he admitted having previously testified, before the Connecticut Unemployment Commission, that he had *never* warned Fosque about her attendance. Wilson further admitted that: (1) he did not know whether anyone else in her department had worse attendance records than Fosque, and (2) before the same commission had previously testified that he knew of two others with "absentee records as bad" who were still employed by the Respondent. Although Fosque's immediate foreman, Moat, was questioned at length about Fosque, there is no evidence that he ever complained to higher authorities about her attendance or had occasion to. Neither Wilson nor any other company representative denied Fosque's testimony that she had been absent on various occasions because of her health, due to her period of life, that she had provided doctor's certificates and had notified the company on each occasion. Indeed, counsel for the Respondent conceded that management was aware of Fosque's health.

As to *Peterson*, Wilson claimed that he was discharged because he "would not work the scheduled hours," and in his "opinion," did "his best to prevent other people from working scheduled hours." The sole support in the record for his latter claim is his own testimony that in November 1947, nearly a year before the discharge, he had seen Peterson and his wife go out of the plant early "one day," and as he was going out the door "in my considered opinion" the employee "made motions to drag other people out." Foreman White's testimony fully establishes: (1) That for a period of about 30 days in the latter part of 1947 the workweek was increased to 55 hours, (2) that Peterson informed him he could not work the extra hour each day because of a "bad leg," (3) that he "took

it for granted the man had a bad leg" and so merely told him "if you can't work you can't work," and (4) that there was no occasion after the "emergency" period of 4 weeks beginning in 1947 for him to report Peterson for not working scheduled hours.

As to *Mencuccini*, Wilson said he was discharged because:

he was upsetting morale in the shop by going around talking a lot of political arguments which had nothing to do with Pratt Read business whatsoever.

Despite this broad claim, Wilson further testified that: (1) he had never had *any* conversation himself with Mencuccini "whatsoever"; (2) he "scarcely knew" the employee was "in the shop"; (3) he *never* discussed the employee's discharge with anyone before the event; (4) there had been no complaint about his work; and (5) Mencuccini had never been warned, verbally or otherwise, before his discharge. No evidence was adduced from anyone to support Wilson's claim that Mencuccini "was upsetting morale" by any conduct.

As to *Joy*, Wilson testified that he was discharged because of his "attendance mark," because during his employment he had once "admitted to the superintendent" that he had been smoking, because he had, on company time, made a cribbage board for himself, and because he had removed a notice from the bulletin board. On cross-examination, however, Wilson admitted that there had been no "overt" act by Joy immediately before the discharge. Nor is there any credible evidence in the record that Joy had ever repeated any of the conduct for which he had previously merely been warned.

As to *Bishop*, Wilson gave no explanation for discharging her, or for having noted on her discharge slip "unsatisfactory employee." He admitted, moreover, that she was given no warning before her dismissal. In the absence of any supporting evidence the Trial Examiner finds no probative value in the gratuitous claim by counsel for the Respondent, made during examination of Bishop, that the employee was not discharged because of her work but because of her "personal activities in talking with other people and not applying herself to her job," particularly since the assistant superintendent frankly said that Bishop was a "good" employee,—"you bet your life."

As to *Smith*, Wilson said she was discharged because of her attendance record, but admitted that the only warning she had been given was a "year and a half anyway" before the dismissal.

3. Conclusions as to the discharges

By a wide margin Wilson's testimony, much of it self-contradictory, falls short of confirming the Respondent's broad claim that all or any of the six employees were discharged on October 1 because "unsatisfactory," as that term would normally apply to their workmanship, conduct, or attendance. On the contrary, the evidence establishes that none of the discharges had been sought by foremen who actually supervised their work. Even if Wilson's incredible and unsupported assertions as reasons for labelling all six as "unsatisfactory employees" were accepted at face value, the record shows that: (1) As to absenteeism none of the three employees involved had been cautioned within a year; (2) as to the minor derelictions of Joy, each had been wholly disposed of by warning at the time and was not repeated; and (3) as to Bishop no probative evidence at all was offered. The Trial Examiner finds no merit in the reasons advanced by the personnel manager.

Other undisputed and credible evidence, considered in the light of Wilson's expressed antipathy toward the Union in his September bulletin, leads to the

reasonable conclusion that the six were "unsatisfactory" to management only because they continued to remain active union adherents. These six (plus one other girl also discharged on October 1, who apparently filed no charge) were, so far as the record shows, the only individuals who openly avowed their intention to continue union activity after the election.⁶

From the preponderance of credible evidence the Trial Examiner is convinced and finds that these six discharges in effect constituted a unit dismissal, by which Wilson intended to rid the plant of its union leaders and to discourage further union activity.

Support for this reasonable conclusion is found in the facts revealed by the subsequent reemployment of Fosque. In the fall of 1949 she made repeated efforts to regain employment. Finally, in October of that year, she was hired as a new employee, being told specifically by Wilson that she had lost her seniority. Wilson further required her to sign a waiver of any claim for back pay "arising out of" her "discharge on October 1, 1948," although the Respondent had long been aware that she had filed unfair labor practice charges with the Board. At the same time Wilson warned her to "keep her mouth shut" and not engage in "union talk." She returned to her regular job, but was permitted to retain it only 2 or 3 weeks, and then, in rapid succession, was shifted from one new job to another, some of them clearly unsuited to her health, of which the Respondent concedes it was cognizant. Finally, after being assigned to a saw, she became ill and, with her foreman's permission, went home. That night Wilson called her at her home and told her she was fired for walking off the job.⁷ The Trial Examiner finds that Fosque, since October 1948, has not been offered full or equivalent reinstatement with all rights and privileges.

In summary, the Trial Examiner concludes and finds that the real reason for the six discharges on October 1 was the continued activity of the employees in behalf of the Union, and that by such discriminatory dismissals the Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 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

Because 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 affirmative action designed to effectuate the policies of the Act.

Since the Respondent discharged David Peterson, Catherine Fosque, Lucille Smith, Susan Bishop, Olinto Mencuccini, and Elmer Joy because of their activities

⁶ The Respondent introduced into evidence a list of 27 employees, former officers or stewards of the Union, who remained on the payroll after October 1, 1948. Unrefuted evidence, however, shows that all but 2 or 3 of this number had resigned from their offices long before the election, had actively participated in the AFL campaign, or had ceased activity in the Union.

⁷ Fosque's testimony regarding her reemployment, the treatment accorded to her, the illegal restrictions placed upon her by Wilson, and her second discharge, is undisputed.

on behalf of the Union, it will be recommended that the Respondent offer to them immediate and full reinstatement to their former or substantially equivalent positions,⁸ without prejudice to their seniority and other rights and privileges. It will be further recommended that the Respondent make each of them whole for any loss of pay the individual may have suffered by reason of the Respondent's discrimination, by payment to the individual of a sum of money equal to the amount he or she normally would have earned as wages from October 1, 1948, to the date of the Respondent's offer of reinstatement, less net earnings during said period.⁹

The Trial Examiner is convinced that the Respondent's conduct described herein and the unfair labor practices found indicate on the part of the Respondent "an attitude of opposition to the purposes of the Act to protect the rights of employees generally,"¹⁰ and the consequent likelihood of the Respondent's resorting to other acts of restraint, interference, and coercion in violation of the Act. It will therefore be recommended that the Respondent be ordered to cease and desist from in any manner infringing upon the rights of employees as guaranteed by Section 7 of the Act.

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

CONCLUSIONS OF LAW

1. Local 105, United Furniture Workers of America, CIO, and Upholsterers' International Union, AFL, 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 David Peterson, Catherine Fosque, Lucille Smith, Susan Bishop, Olinto Mennuccini, and Elmer Joy, thereby discouraging membership in a labor organization, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act;

3. By 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;

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, and upon the entire record in the case, the Trial Examiner recommends that the Respondent, Pratt, Read & Co., Incorporated, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) discouraging membership in any labor organization, by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire and tenure of employment or any term or condition of employment;

⁸ Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch, 65 NLRB 827.

⁹ Crosssett Lumber Company, 8 NLRB 440.

¹⁰ May Department Stores v. N. L. R. B., 326 U. S. 376.

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to join or assist any labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action, which the Trial Examiner finds is required to effectuate the policies of the Act:

(a) Offer to David Peterson, Catherine Fosque, Lucille Smith, Susan Bishop, Olinto Mencuccini, and Elmer Joy full and immediate reinstatement to their former or substantially equivalent positions, and make them whole for any loss of pay in the manner described in the Section entitled "The remedy";

(b) Post at its plant copies of the notice attached hereto and marked Appendix A. Copies of said notice, to be furnished by the Regional Director for the First Region, shall, after being duly signed by the Respondent's representative, be immediately posted by the Respondent 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 First Region in writing, within twenty (20) days from the receipt of this Intermediate Report what steps the Respondent has taken to comply herewith.

It is further recommended that unless on or before twenty (20) days from the date of the receipt of this Intermediate Report, the Respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the Board issue an order requiring the Respondent to take the aforesaid action.

As provided in Section 203.46 of the Rules and Regulations of the Board any party may, within twenty (20) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.45 of said Rules and Regulations, file with the Board, Washington, D. C., an original and six 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, or it, relies upon, together with the original and six copies of a brief in support thereof; and any party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other parties. Statements of exceptions and briefs shall designate by precise citation the portions of the record relied upon and shall be legibly printed or mimeographed, and if mimeographed shall be double spaced. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in said Section 203.46 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 service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations, and recommended order herein contained shall, as provided in Section 203.48 of said Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.

Dated at Washington, D. C., this 28th day of March 1950.

C. W. WHITTEMORE,
Trial Examiner.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to 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 any labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be effected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

WE WILL 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.

David Peterson
Lucille Smith
Olinto Mencuccini

Catherine Fosque
Susan Bishop
Elmer Joy

All our employees are free to become or remain members of any 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 labor organization.

PRATT, READ & Co., INCORPORATED, &
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.