

In the Matter of THE INTERNATIONAL NICKEL COMPANY, INC., and
DISTRICT 50, UNITED MINE WORKERS OF AMERICA, A. F. OF L.

Case No. 9-C-2236.—Decided April 23, 1948

Mr. Allen Sinsheimer, Jr., of Cincinnati, Ohio, for the Board.
Sullivan & Cromwell, by *Mr. Charles S. Hamilton, Jr.*, and *Mr. Roy L. Steinheimer*, of New York City, for the respondent.
Messrs. M. E. Boiarsky and T. C. Townsend, of Charleston, W. Va., for the Union.

DECISION

AND

ORDER¹

On January 23, 1947, Trial Examiner Horace S. Ruckel issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had not violated Section 8 (1) or (3) of the Act,² as alleged in the complaint, and recommending that the complaint against the respondent be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, counsel for the Board and the Union filed exceptions to the Intermediate Report and supporting briefs, and the respondent filed a brief concurring in the Intermediate Report. Both counsel for the Board and the Union have requested oral argument. Because the record and the briefs, in our opinion, adequately present the issues and the positions of the parties, the requests for oral argument are hereby denied.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs filed by counsel for the Board and the Union, the brief filed by the respondent, and the entire record in the case, and hereby adopts the findings, conclusions, and recom-

¹ The power of the Board to issue a Decision and Order in a case such as this where the charging union has not complied with the filing requirements specified in Section 9 (f), (g), and (h) of the National Labor Relations Act, as amended, was decided by the Board in *Matter of Marshall and Bruce Company*, 75 N. L. R. B. 90.

² The provisions of Section 8 (1) and (3) of the National Labor Relations Act are continued in Section 8 (a) (1) and 8 (a) (3) of the Act, as amended by the Labor Management Relations Act, 1947.

mendations of the Trial Examiner, to the extent consistent with this opinion.

The question before us is whether the respondent acted lawfully in discharging Johnson and Keefer after the strike because of their conduct while it was in progress. This depends upon whether their concerted activities were of such a character as to be protected by the Act. No question is before the Board as to whether their conduct was itself unlawful so as to expose them or the Union to liability under Section 8 (b) (1) of the amended Act.

The Trial Examiner found, and we agree, that the strikers, by their picket activities, unlawfully "barred access to the plant to the respondent's supervisory and other employees, and effectively deprived the respondent of the use of its plant." The picketing activity, as detailed in the Intermediate Report, is summarized as follows: At the beginning of the strike on the evening of November 19, 1945, between 50 and 100 pickets assembled in small groups near each of the plant's two entrances or gates. When the supervisors, who were scheduled to report for duty at the changes of shift at midnight on November 19 and the following morning, approached the gates to enter the plant, they were advised individually or collectively by striker Keefer, whose discharge is discussed below, or some other picket, that no one was being permitted to enter the plant except Brown and Clappier, the respondent's general manager and production manager. The supervisors who were on duty in the plant when the strike got under way were told by picket Johnson, whose discharge is also discussed below, that they would not "be able to get back" if they went out. There is also credible testimony that, as the supervisors approached the gates on several occasions during the strike, the pickets stationed themselves so as physically to block the entrance. In these circumstances, the supervisory personnel did not attempt to enter the plant until the picketing was enjoined on December 2, 1946, by action of a State court.

In excepting to the Trial Examiner's finding, counsel for the Board and the Union contend in effect that, because the men engaged in no overt acts of violence, their activity on the picket line must be protected as "free speech." We find no merit in this contention. The activity that prevented the supervisors from entering the plant, viewed in its entirety, convinces us that Johnson and Keefer, among others, actually barred the supervisors from the plant by an implied threat of violence. The supervisors were faced with a clear and present danger of bodily harm if they had elected to enter the plant; in our opinion, only their forbearance prevented actual violence. This con-

duct went beyond peaceful persuasion and constituted concerted activity which we think unprotected by the Act.³

The Trial Examiner found, and we agree, that the respondent's discharge of Johnson and Keefer was not violative of the Act. Our finding, unlike that of the Trial Examiner,⁴ is based on the ground that, as Johnson and Keefer themselves forbade supervisors to enter or reenter the plant and otherwise personally participated in picketing activity which we have found to be unprotected, their discharges were not violations of the Act and their reinstatement should not be directed.⁵

ORDER

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint herein against The International Nickel Company, Inc., Huntington, West Virginia, be, and it hereby is, dismissed.

MEMBERS HOUSTON and MURDOCK took no part in the consideration of the above Decision and Order.

INTERMEDIATE REPORT

Mr. Allen Simsheimer, Jr., for the Board

Messrs. M. E. Boiarsky and T. C. Townsend of Charleston, W. Va., for the Union.

Sullivan and Cromwell, by *Messrs. Charles S. Hamilton, Jr.*, and *Roy L. Stemheimer*, of New York, N. Y., for the respondent.

STATEMENT OF THE CASE

Upon a charge filed on August 27, 1946, by District 50, United Mine Workers of America, A. F. of L., herein called the Union, the National Labor Relations Board, hereinafter called the Board, by its Regional Director for the Ninth Region (Cincinnati, Ohio), issued a complaint dated August 28, 1946, against the International Nickel Company, Inc., herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

With respect to the unfair labor practices the complaint alleged that on or about December 4, 1945, the respondent discharged James Johnson and A. O. Keefer, and since then has failed and refused to reinstate them, because of their

³ Cf. *Milk Wagon Drivers Union of Chicago, Local 373 v. Meadowmoor Dairies, Inc.*, 312 U. S. 287, 293; *N. L. R. B. v. Perfect Circle Company*, 162 F. (2d) 566 (C. C. A. 7).

⁴ We find it unnecessary to pass on the Trial Examiner's finding that Johnson and Keefer (who were officers of the local union) "inspired and determined the manner in which the strike as a whole, including the picketing, was conducted," and that the "respondent discharged them because of the manner in which they conducted the strike of November 19." We do not express any views herein concerning their responsibility for the conduct of others or the Union's responsibility for their conduct.

⁵ *N. L. R. B. v. Perfect Circle Company*, 162 F. (2d) 566 (C. C. A. 7); *N. L. R. B. v. Indiana Desk Company*, 149 F. (2d) 987 (C. C. A. 7).

membership in and activities on behalf of the Union, and because they engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection. No interference, restraint, or coercion other than the discharges was alleged.

The respondent filed an answer dated September 6, 1946, admitting some of the allegations of the complaint with respect to the nature of its business, but denying that it had engaged in any unfair labor practices. As an affirmative defense, the answer stated that the respondent discharged Johnson and Keefer because of illegal acts committed during and prior to a strike of the respondent's employees, itself alleged to have been illegal in both its inception and conduct.

Pursuant to notice, a hearing was held from October 29 to 31, 1946, at Huntington, West Virginia, before Horace A. Ruckel, the undersigned Trial Examiner duly appointed by the Chief Trial Examiner. The Board, the Union, and the respondent were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues, was afforded all parties.

At the conclusion of the hearing the parties were afforded an opportunity to argue orally before the Trial Examiner, and to file briefs and/or proposed findings of fact and conclusions of law with the Trial Examiner by November 14, 1946. Thereafter the time for filing briefs was extended. No oral argument was had. On December 3, 1946, briefs were filed by all parties.

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 International Nickel Company, Inc., is a Delaware corporation having its principal office at New York, New York, and plants located at Bayonne, New Jersey, and Huntington, West Virginia. At the Huntington plant, the only one involved in this proceeding, the respondent is engaged solely in refining and rolling nickel alloys. The products of the Huntington plant are valued in excess of \$500,000 annually, of which more than 50 percent is sold and delivered to points outside the State of West Virginia. The raw materials used by the Huntington plant are valued in excess of \$500,000, of which more than 50 percent is received from points outside the State of West Virginia. The respondent admits that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

District 50, United Mine Workers of America, is a labor organization admitting to membership employees of the respondent. The United Mine Workers of America is affiliated with the American Federation of Labor.

III. THE UNFAIR LABOR PRACTICES

A. *The discharges*

1. Background

In November 1946, at the time of the events herein related, the respondent employed approximately 2500 employees at its Huntington plant, of whom approximately 2000 were production and maintenance workers. The Union has been

the certified representative of the latter categories of employees since May 1945. In June of that year negotiations for a contract were begun, and in July an interim agreement was entered into adopting such provisions of a proposed contract as had been agreed upon up to that time. Remaining unresolved issues were certified to the War Labor Board, in August. Two panel hearings were held, the second on November 18, and on November 19 representatives of the respondent and the Union met and discussed the differences which still separated them. The Union's representatives at this meeting, as at previous meetings, consisted of a negotiating committee of eight members, six of whom were employees, including James Johnson, president of the plant local, and A. O. Keefer, chairman of the mill grievance committee. The meeting of November 19 broke up about 5 p. m. without any further agreement having been reached, and shortly before the change of shift at midnight the respondent's production and maintenance employees went on strike. The strike lasted until December 4. Upon its conclusion all the striking employees, with the exception of Johnson and Keefer, were permitted to resume their jobs. Contract negotiations were resumed, eventuating in an agreement dated December 15, 1945, in effect at the time of the hearing.

Upon the resumption of production on December 4, the respondent sent Johnson and Keefer identical telegrams as follows:

EFFECTIVE TODAY YOU ARE HEREBY DISCHARGED FROM OUR EMPLOYMENT BECAUSE OF THE PART YOU TOOK IN THE ILLEGAL ACTIONS AGAINST THE COMPANY DURING THE PAST WEEK. YOUR CHECK FOR WAGES DUE YOU WILL BE MAILED TO YOU.

2 Events immediately preceding and during the strike, the activities of Johnson and Keefer

The strike on November 19 is alleged to have been illegal, and Johnson and Keefer are alleged to have engaged in unlawful concerted activity and by reason thereof to have forfeited their right to the protection of the Act, because the strike was called without notice of a labor dispute first having been given as required by the War Labor Disputes Act.¹ Admittedly, the requirements of the War Labor Disputes Act were not complied with. It may further be admitted for the sake of argument, although it is not conceded by the Board or the Union, that Jackson and Keefer, as president of the plant local and chairman of the mill grievance committee, were among the officers of the Union who might fairly be held responsible for such non-compliance. The Board in several cases,² however, has held adversely to the respondent's contentions that because of such failure of compliance employees are thereby deprived of the protection of the Act and may for that reason be lawfully discharged.

The respondent asserts, however, that during the strike pickets systematically barred certain of its supervisory employees from the plant, thereby illegally depriving the respondent of the use of its property, and that under the decisions in the *Fansteel*³ and *Clunchfield* cases⁴ such conduct removes the participants

¹ 57 Stat. 163. The act required service of notice upon the Board, the Secretary of Labor, and the National War Labor Board.

² *Matter of Union City Body Company*, 69 N. L. R. B. 172; *Matter of Kalamazoo Stationery Company*, 66 N. L. R. B. 930, *Matter of Fairmont Creamery Company*, 64 N. L. R. B. 824; *Matter of Republic Steel Corp.*, 62 N. L. R. B. 1008.

³ *N. L. R. B. v. Fansteel Metallurgical Corp.*, 306 U. S. 240.

⁴ *N. L. R. B. v. Clunchfield Coal Corp.*, 145 F. (2d) 66 (C. C. A. 4).

from the protection of the Act, and constitutes valid grounds for their discharge. The manner in which the strike was conducted and Johnson's and Keefer's responsibility therefor, as revealed by the record, are hereinafter related.

The Huntington plant is surrounded by a high fence and wall. Aside from a railroad entrance, ingress is restricted to two gates, the west gate and the east, or main, gate. Each of these gates is approximately 35 feet wide. Upon the commencement of the strike on the night of November 19, and prior to the change of shifts at midnight, pickets clustered around the east and west gates in numbers which witnesses for the Board and for the respondent variously estimated to be from 50 to 100. The number of pickets increased by 8 o'clock the following morning, when the morning shift would normally have come on duty. The exact manner in which the pickets were grouped is in dispute, the respondent contending, and the Union denying, that the picketing was practically shoulder to shoulder, and amounted to mass picketing of such a nature as effectively to deny the respondent access to and hence the use of its plant. It is not contended, and witnesses called by the respondent as well as those called by the Board, denied, that any acts of violence were committed, or threats of violence uttered, during the entire pendency of the strike.

When the strike was called, most of the supervisory employees of the respondent then on duty remained in the plant. Various foremen testified that they did so because they were under the belief that if they left they would not be permitted to return. This belief was well grounded. M. H. Gibson, night superintendent, and H. G. Burgess, relief night superintendent, testified that shortly before the midnight shift change they went to the west gate and asked Johnson, who was circulating among the pickets, if any employees were going to be admitted to the plant. Johnson replied, according to the testimony of both Gibson and Burgess, that only H. M. Brown, general manager of the plant, and R. R. Clappier, production manager, were going to be admitted. About 11:30 p. m. Burgess asked Johnson, according to the former's testimony, if it would be possible to have some stationary engineers passed through the picket lines, to which Johnson repeated his assertion that no one was going to be admitted other than Brown and Clappier. Johnson, called as a witness in rebuttal, denied the substance of the conversation testified to by Burgess and Gibson. The undersigned was not impressed by Johnson's testimony, which was pervaded by evasions and euphemisms seriously affecting his credibility as a witness, and finds that Johnson made, in substance, the declarations attributed to him by Gibson and Burgess, both of whom he found to be credible witnesses.

Altogether, 17 of the respondent's supervisory employees testified credibly that either at midnight on November 19, or on the morning of November 20, they approached the gates singly or in small groups with the intention of entering the plant, but were refused admission by pickets. The substance of their testimony is that although they observed no act, and heard no overt threat, of violence, pickets at the two gates were so numerous and so close together as effectively to bar their entrance without physical contact and the use of some degree of force. This the foremen were not prepared to employ.⁵

⁵ Typical excerpts from the testimony of these witnesses are here set forth. L. A. Roberts, chief engineer, testified as follows:

Trial Examiner RUCKEL Tell us what happened

The WITNESS I drove up to the plant about a quarter past eleven. The west gate was well filled with men, so I proceeded on up to the east gate—the main gate—and started to turn off the road into the plant, and I just got the wheels turned and

Various foremen testified credibly that they also attempted to enter the plant by one or both gates on various occasions after November 20, only to be met by a converging group of pickets who refused them admission.

The record shows that although as the strike wore on the pickets stationed at the gates decreased in number, the line was frequently reinforced shortly before the normal shift change times, presumably on the theory that any concerted

Footnote 5—Continued

that was all I wasn't able to go any further without running over some one So, I sat around for a few minutes and they told me no one was going in, so, after a few moments I left the premises—

Q (By Mr. Steinheimer) Would you tell us about how many men you saw at the west gate on that night?

A I judge there may have been possibly 150 at the west gate

Q How many at the main gate?

A Between 70 and 100 at the main gate

Q (By Mr. Steinheimer) When was the next time, Mr. Roberts that you attempted to enter the plant?

A —Tuesday morning, the 20th I was up there again about between 7:30 and a quarter of eight —At that time I didn't make any attempt to drive in I parked the car up above the entrance and walked back and I saw fellows that I recognized and some that I did not, and asked them, "How about getting me in?" And they said no one was going in except Mr. Brown and I told them who I was and what—well, just roughly—what we had to do in the plant to keep the thing going, but most of the fellows at the gate knew me, I'm sure of that, but I didn't get in anyway

Q (By Mr. Steinheimer) About how many men were there standing in front of the gate that morning?

A It looked very much like it did the night before I couldn't notice any appreciable difference in numbers or in station

Q Could you have walked through the men standing in front of the gate without pushing your way through?

The WITNESS I could not, sir

Q (By Mr. Steinheimer) Did you see Mr. Keefer at any time?

A I saw Mr. Keefer that morning

Q Did you talk to Mr. Keefer?

A Mr. Keefer—yes, I did Mr. Keefer was on the other end of the picket line from where I attempted to enter, and after being unsuccessful at that end I went down to where Mr. Keefer and Mr. Baribeau were and asked Otis (Keefer) what it was all about,—and he said, "There's no work today"

Q (By Mr. Steinheimer) Did you think what would happen if you tried to go on through the men standing in front of the gate?

The WITNESS To be perfectly frank with you, I didn't know I might have gotten through; I might not I doubt very much, though, if I would have gotten through except with some violence I am sure there would have been that

Hairy Patterson, carpenter foreman, attempted to enter the plant on the morning of November 20 He testified as follows

Q Can you tell us what happened?

A I drove to the main gate and there was a lot of men standing in the gateway—in the driveway—and I cut my car over towards the line of men

Q Did you turn up a little bit into the drive?

A Yes, sir, and Mr. Keefer, he stepped out beside my car and I asked him if I could get in the plant—and he stated "No," no one but Mr. Brown and Bob Clappier was going in So, I backed my car out and drove up the road, turned around and went back home

Q About how many men would you estimate were at the gate?

A There was approximately fifty or seventy-five men

Q. And were they standing between your car and the entrance to the gate?

attempt on the part of supervisory employees to force their way into the plant would be most likely to occur at those times.

On December 2, a temporary injunction was issued by the Supreme Court of Appeals of West Virginia, restraining the Union and its officers, including Johnson and Keefer, from preventing access to the Huntington plant. Upon the issuance of this injunction, supervisory and other employees who presented themselves at the gates were permitted to enter.

The evidence is substantial and convincing, however, that from the beginning of the strike until restrained by Court order, the strikers barred access to the

Footnote 5—Continued

A Yes, sir

Q Were they so close together that you could not have driven your car into the plant?

* * * * *
The WITNESS I couldn't have went in without shoving someone back.

G C Goff, construction engineer, testified as follows

Q Tell us what happened when you got out to the plant

A I approached the line standing in front of the east gate—About the middle of the line I was told that there was no one going in, and seeing an acquaintance that I knew at the left portale of the gate—at my left—I approached him hoping that he may give me permission through his influence to let me into the plant

* * * * *
Trial Examiner RUCKEL Who was it?

The WITNESS Otis Keefer

Q (By Mr Steinheimer) What did you say to Mr Keefer?

A I wanted permission to go into the plant to get my wrist watch out of my desk and return

Q This was after you found that they weren't letting anyone go into the plant?

A That's right

Q What did Mr Keefer say?

A "There's no one going in"

* * * * *
Q Will you tell us about how many men there were standing in front of the main gate that morning?

A I'd say—estimate about approximately seventy-five to eighty men

Q Where were they standing?

A They were standing in the gate about three to four deep, the full length of the gate

Q Could you have walked through those men without pushing someone aside?

* * * * *
The WITNESS. I could not

The testimony of Lester Walcutt, assistant chief engineer, was as follows:

Q Did you come to enter the plant on November 20, 1945?

A I did

Q Will you tell us what happened on that day?

A. —I went up to the plant I noticed our group of men standing in front of the gate

Q Which gate?

A The main gate—I walked over to the picket line to see if I could get in,—and they said, "No, the only ones going in today are Mr Brown and Mr Clappier"

Q Where were these pickets standing?

A About from the gate to a forward towards the road, the full width of the gate, no formation, but, generally speaking, at an average depth of three or four

* * * * *
Q Were they standing so close together that you couldn't walk through the line without shoving someone over to the side?

* * * * *
The WITNESS They were

Q (By Mr Steinheimer) Would you tell me what your state of mind was when you saw this picket line and talked to pickets about getting through?

plant to the respondent's supervisory and other employees, and effectively deprived the respondent of the use of its plant.⁶

The remaining question to be resolved is the responsibility of Johnson and Keefer for the conduct of the strike, and whether the respondent discharged them therefor, and not because of their legitimate activities on behalf of the Union including permissible strike action.

The record leaves little doubt that Johnson and Keefer, as president of the local and chairman of the mill grievance committee, respectively, were among the leaders of the strike, and were so regarded by both the strikers and the respondent's officials. Johnson and Keefer admitted their presence among the pickets on the evening of November 19 as well as on the morning of November 20 and on various other occasions, and that they gave advice and assistance to the other pickets, although Johnson, in particular, attempted to distinguish between advice and assistance on the one hand and mandatory instructions on the other. Indeed, much of Johnson's testimony is transparently designed to obscure the nature of the events and to minimize his share in them. He admitted that immediately after negotiations were broken off, on the afternoon of November 19, he went to the Union's hall and consulted with other officers of the organization concerning the resulting situation; that he called several shop foremen on the telephone to ask them the reaction of the employees to the breaking off of negotiations; and that he gave it as his "opinion" that a strike might take place. While testifying, he admitted that he knew by 9 or 10 o'clock on the night of November 19, that the strike would take place. Johnson's attempts to distinguish between mere prophecy on the one hand, and advocacy and authorization on the other, do not carry conviction, and affect adversely the credibility of his testimony as to his responsibility for the conduct of the strike.

With respect to the latter, Johnson admitted that on occasion he addressed employees who gathered around him on the picket line, although he denied that he had any hand in actually placing the pickets. Indeed, Johnson studiously refrained from admitting that there were any pickets, and referred instead to "boys standing around." He admitted that he "might have made a statement that the fellows decided not to let the office workers in," but denied that he

Footnote 5—Continued

The WITNESS This was my first experience with anything like that, and I was rather confused, but it seemed futile to get through a crowd determined to keep you out.

Louis Reasor, superintendent of standards, gave the following description of the picket line:

* * * * *

Q. Where were the pickets stationed?

A. Stretching across the flood wall opening

Q. Were they between you and the gate?

A. They were between me and the gate

* * * * *

Q. In your judgment, Mr. Reasor, could you have gotten into the gate at that time without pushing someone aside?

* * * * *

A. The formation of men across the gate opening was rather close, and for me to have gotten into the plant property would have necessitated shoving or pushing my way between men

⁶ In the *Climchfield* case strikers picketed the entrance to a coal mine and refused the request of a foreman for permission to remove an electric motor car which was blocking the mine entrance. The request was refused, and the foreman did not persist in the face of the strikers' opposition. The Court held that the actions of the strikers amounted to a seizure of the mine, and held lawful the employer's discharge of strike leaders responsible therefore.

personally participated in any such decision, stating that such information as he had on the point was based upon "gossip" and "hearsay." With respect to the erection of a tent at one of the gates where pickets kept warm before a stove and were served coffee, Johnson professed lack of prior knowledge of such arrangements. Although denying that he had any hand in issuing instructions that Brown and Clappier, alone of the respondent's officials, should be admitted to the plant, he admitted that he might have said on occasion that he "understood" that this was the case. Similarly, although denying that he stated to anyone that any foreman leaving the plant would not be permitted to return, he admitted that he might have discussed the matter in a "round about way," and might have said something to the effect that "maybe those guys, when they go out, they won't be able to get back."

One day during the course of the strike, Crosby, production superintendent, telephoned Johnson that a number of salaried employees were going to attempt to get into the plant to do some work. Johnson admitted that upon receiving this telephone call he made arrangements with a local broadcasting station to make spot announcements at regular intervals requesting all striking employees to report at the plant gates at shift change time that afternoon, an appeal to which some 75 or 100 strikers responded. Johnson denied, however, that this appeal had any connection with Crosby's telephone call, or that the summoning of additional strikers to the gates was for the purpose of reinforcing the picket lines. He testified that the strikers just "wanted to get together" in a "pleasant meeting."

On November 28, the Union, over Johnson's signature, wrote the respondent as follows:

We suggested to Mr Cabell November 25, 1945 in the presence of Mr. Charles Sattler, Commissioner of Labor for The State of West Virginia that we were willing to see that men were taken through the picket line in order to take care of the maintenance of your plant, this offer has not as yet been accepted We again made the same offer November 27, 1945 in the Circuit Court of Cabell County to allow fifteen men to go into your plant, for the purpose of maintaining the equipment and this offer was refused by your lawyer.

Please accept this letter as a renewal of our offer in regard to 15 men going into the plant to safeguard your equipment.

Conclusions as to the discharges

The evidence is substantial, and the undersigned finds, that the respondent had reasonable cause to believe that James Johnson and A. O. Keefer were among the leaders of the Union responsible for the illegal conduct of the strike. It is difficult to escape the conclusion, on the basis of the findings of fact set forth above, that Johnson in particular, and Keefer only less so, inspired and determined the manner in which the strike as a whole, including the picketing, was conducted. Johnson's letter of November 28, offering to permit a limited number of employees to enter the plant, confirms his own responsibility for the exclusion of the supervisory employees from the plant. Keefer's responsibility, so far as it is revealed by the record, rests principally upon his refusing admission to the plant to Roberts, chief engineer, Patterson, carpenter foreman, and Goff, construction engineer, whose testimony to this effect is set forth above.

In the absence of any evidence whatsoever of anti-union bias or hostility, or of evidence that the respondent was motivated in discharging Johnson and Keefer

by their legitimate collective activity, it must be concluded, and the undersigned finds, that the respondent discharged them because of the manner in which they conducted the strike of November 19. Accordingly, the undersigned recommends that the complaint herein be dismissed.

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

CONCLUSIONS OF LAW

1. District 50, *United Mine Workers of America*, affiliated with the American Federation of Labor, is a labor organization within the meaning of Section 2 (5) of the Act.

2. The respondent is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

3. The respondent has not engaged in any unfair labor practices within the meaning of Section 8 (1) and (3) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record in the case the undersigned recommends that the complaint against the respondent, *The International Nickel Company, Inc.*, be dismissed in its entirety.

As provided in Section 203.39, of the Rules and Regulations of the National Labor Relations Board, Series 4, effective September 11, 1946, any party or counsel for the Board may, within fifteen (15) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.38 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, and any party or counsel for the Board may, within the same period, file an original and four copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, 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. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.65. As further provided in said Section 203.39, 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.

HORACE A. RUCKEL,
Trial Examiner

Dated January 23, 1947