

In the Matter of COOPERSVILLE COOPERATIVE ELEVATOR COMPANY and
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WARE-
HOUSEMEN AND HELPERS, TRUCK DRIVERS UNION, AFL, LOCAL 406

Case No. 7-C-1609.—Decided June 9, 1948

Mr. Jerome H. Brooks, for the Board.

Mr. E. F. Steffen, of Lansing, Mich., and *Mr. D. H. S. Rymer*, of
Spring Lake, Mich., for the Respondent.

Mr. Thomas Ward, of Grand Rapids, Mich., for the Union.

DECISION

AND

ORDER

On July 15, 1947, 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 practices¹ 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.²

The Respondent's request for oral argument is hereby denied for the reason that the record adequately shows the issues and the positions of the parties.

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 brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the additions and modifications hereinafter set forth.

¹ Those provisions of Section 8 (1) and 8 (3) of the National Labor Relations Act which the Trial Examiner found were violated, are continued in Section 8 (a) (1) and 8 (a) (3) of the Act, as amended by the Labor Management Relations Act, 1947, except that the proviso to the former Section 8 (3) has been modified in a manner not material to a determination of the issues here

² Pursuant to the provisions of Section 3 (b) of the Act, as amended, the Board has delegated its powers in connection with this case to a three-man panel consisting of the undersigned Board Members [Houston, Reynolds, and Gray]

1. In its brief the Respondent contends that the Board has no jurisdiction in this case because all its sales are local and the amount of inflow of materials from outside the State of Michigan is insubstantial. We find no merit in this contention. Although the record shows that the value of material shipped annually directly to the Respondent from outside the State of Michigan is approximately \$167,107, and not \$216,873, as found by the Trial Examiner, the amount of inflow is still substantial. We find that the Respondent's operations affect commerce within the meaning of the Act.

2. We agree with the Trial Examiner's conclusions that Hattie Julia Lambers did not disseminate any confidential information or keep company records in a manner inimical to the Respondent's interests and that the Respondent did not suspect her of having engaged in any such conduct. In addition, assuming *arguendo* that the Respondent harbored such a suspicion, under all the circumstances in the case, we are convinced, and find, that the Respondent was not motivated by such suspicion in discharging or refusing to reinstate Mrs. Lambers. In making this finding, we rely particularly on the following circumstances: (a) the fact, admitted by General Manager Rymer in his testimony, that it was not until after he had been notified that the employees had organized themselves into a union that he decided to discuss the matter of bookkeeping irregularities with Mrs. Lambers; (b) Rymer's illegal questioning of employees when he first learned that the Union was seeking to represent the employees; and (c) Rymer's statement to Mrs. Lambers at the time of her dismissal that he was discharging her because he believed her responsible for bringing the Union into the plant. By discharging and refusing to reinstate Mrs. Lambers, we find that the Respondent discriminated with respect to her hire and tenure of employment to discourage membership in the Union in violation of Section 8 (3) and (1) of the Act.

3. In its brief the Respondent also contends that, although Mrs. Lambers may not have been guilty of any irregularity, she should not be reinstated to "such an important position in which she was given absolute authority over pay-roll preparation, handling of all funds and management of the office girls"³ in view of discrepancies existing on the face of company records.⁴ It also appears that Mrs.

³ The records show that Mrs. Lambers kept the Respondent's books with the aid of two other girls, one on a part-time basis, under supervision of General Manager Rymer. Mrs. Lambers was not a supervisor as defined in the Act. So far as appears Mrs. Lambers did not have access to confidential labor relations data, the Respondent had had no dealings with the Union or any other labor organization at this time.

⁴ On the face of company records there were discrepancies between time-card punchings and pay-roll entries. However, the record shows that employees were customarily allowed by management to take short leaves with pay in cases such as illness or to attend a funeral

Lambers' husband is not only a member of the Union but is within the bargaining unit which the Board established for the Respondent's employees in a prior representation case.⁵ We believe, however, that the reinstatement of Mrs. Lambers is necessary to effectuate the policies of the Act. As an employee, she is entitled to the protection of the Act.⁶ The Respondent has unlawfully discriminated against her. She has not misconducted herself in the past. In the event of any misconduct on her part in the future, the Respondent, of course, is free to impose disciplinary measures. We shall, therefore, direct the Respondent to reinstate Mrs. Lambers.⁷

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 Respondent, Coopersville Cooperative Elevator Company, Coopersville, Michigan, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Truck Drivers Union, AFL, Local 406, or any other labor organization of its employees, by discharging or refusing to reinstate or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to join or assist International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Truck Drivers Union, AFL, Local 406, 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:

and that it was the practice not to show any explanation for full payment in such cases on company records.

⁵ *Matter of Coopersville Cooperative Elevator Company*, 73 N. L. R. B. 480. In that case the Board excluded office employees, such as Mrs. Lambers, from the appropriate unit.

⁶ Cf. *Matter of So. Colorado Power Co.*, 13 N. L. R. B. 699, enfd in 111 F. (2d) 539 (C. C. A. 10), in which the Board held that the Act does not withhold the exercise of the right to form, join, or assist in the formation of a labor union from confidential employees as a class.

⁷ The Respondent also urges us to deny reinstatement because of the absence of any showing that Mrs. Lambers authorized the Union to request her reinstatement and because the record does not affirmatively show that Mrs. Lambers desires reinstatement. These contentions have no merit.

(a) Offer to Hattie Julia Lambers immediate and full reinstatement to the position which she occupied on May 31, 1946, prior to the Respondent's discrimination against her, or to a substantially equivalent position, without prejudice to her seniority and other rights and privileges; and make her whole for any loss of pay that she may have suffered by reason of the Respondent's discrimination against her, in the manner provided in the section of the Intermediate Report entitled "The remedy";

(b) Post immediately at its plant in Coopersville, Michigan, copies of the notice attached to the Intermediate Report and marked "Appendix A."⁸ Copies of such notice, to be furnished by the Regional Director for the Seventh 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 Seventh Region (Detroit, Michigan), in writing within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

INTERMEDIATE REPORT

Mr. Jerome H. Brooks, for the Board.

Mr. E. F. Steffen, of Lansing, Mich., and *Mr. D. H. S. Rymer*, of Spring Lake, Mich., for the respondent.

Mr. M. Thomas Ward, of Grand Rapids, Mich., for the Union.

STATEMENT OF THE CASE

Upon an amended charge filed May 19, 1947, by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Truck Drivers Union, AFL, Local 406, herein called the Union, the National Labor Relations Board, herein called the Board, by its Acting Regional Director for the Seventh Region (Detroit, Michigan), issued its complaint dated May 22, 1947, against Coopersville Cooperative Elevator Company, Coopersville, Michigan, herein called the respondent. The complaint alleged that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, the charge, and a notice of hearing were served upon the respondent and the Union.

⁸ Said 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."

With respect to the unfair labor practices the complaint alleged in substance: (1) that the respondent violated Section 8 (1) and (3) of the Act by discriminatorily discharging and refusing to reinstate Hattie Julia Lambers because she joined and assisted the Union; and (2) that the respondent violated Section 8 (1) of the Act by questioning its employees as to whether or not they had joined the Union.

In its answer, filed June 2, 1947, the respondent (1) denied that it is engaged in commerce within the meaning of the Act; (2) denied generally its commission of the unfair labor practices alleged in the complaint; and (3) alleged certain affirmative reasons for the discharge of Lambers, which will be discussed below.

Pursuant to notice, a hearing was held in Coopersville, Michigan, on June 16 and 17, 1947, before the undersigned, the Hearing Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, and the Union appeared 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.

The hearing was closed after oral argument before the Examiner by counsel for the Board, for the respondent, and for the Union. Opportunity was afforded to all counsel for the filing with the Examiner of briefs and proposed findings of fact and conclusions of law. A brief has been received from counsel for the Union.

After the close of the hearing a communication was sent by counsel for the Board to all parties and to the Examiner, pointing out that the transcript of the hearing does not record the receipt in evidence of Board Exhibit 12-A, offered in evidence, and asking that ruling be made in the Intermediate Report. No objection to its receipt was voiced at the hearing, nor has any objection been received since the hearing by the Examiner. Board Exhibit 12-A is hereby received in evidence. (The document itself, already included in the official record, was apparently marked by the official reporter as having been received in evidence on June 17, 1947.)

Also after the hearing, on July 7, 1947, counsel for the Board filed with the Examiner a motion to make a part of the record the original charge in this case, filed at the Regional Office on June 20, 1946. On July 11, 1947, counsel for the respondent objected to the granting of the motion. The objection is hereby sustained.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, Coopersville Cooperative Elevator Company, is a Michigan corporation having its principal office and place of business in Coopersville, Michigan, where it is engaged in the business of buying, processing, and selling farmers' supplies.

In the conduct of its business and in the operation of its plant the respondent annually purchases and sells feeds, seeds, fertilizers, lime, farm machinery, paint, coal, oil and sundry hardware items. The total value of such purchases approximates \$448,370 annually. Of this total, materials valued at about \$216,873 are shipped directly to the respondent from points outside the State of Michigan, and materials valued at about \$72,389, purchased through a Michigan dealer, have their origin outside the State of Michigan. Materials of

purchase value at about \$100,000 are mixed together by the respondent to form feed and mash for the farm and are sold, in converted form, at local retail. All sales, valued at about \$500,000 annually, are made within the State of Michigan.

It is clear that a substantial portion of the respondent's business is of an interstate character, and that any labor dispute affecting its operation would burden and obstruct commerce and the free flow of commerce. It is found, contrary to the contention of the respondent, that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Truck Drivers Union, AFL, Local 406, is a labor organization admitting to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The issues and related, undisputed events*

During the period relevant to the issues, from 11 to 15 workers were employed by the respondent. There is no evidence of self-organizational efforts among them before early May 1946.

Self-organization apparently grew out of dissatisfaction with management's abandonment, in the spring of 1946, of a previously existing policy of paying employees for limited absences when ill or attending a funeral. On the morning of April 17 the employees "sat down" in protest against the altered policy. Employee Ben Lambers, upon the request of his fellow-employees, approached the Union involved in these proceedings, for assistance in organizing. Two meetings were then held at the home of one of the respondent's employees. Membership application cards were distributed and signed.

On May 28 Manager D. H. S. Rymer received a telephone call from a Union official, informing him that all of the respondent's employees had joined the Union, and requesting a meeting to negotiate a contract.

Immediately after receiving this information, Rymer turned to Mrs. Hattie Julia Lambers, the respondent's bookkeeper, and asked her if she belonged to the Union and who the president was. Rymer similarly questioned two other girls in the office. According to his own testimony, he asked one of the girls "when they organized and where they met."

Four days later, on June 1, Rymer discharged Mrs. Lambers and thereafter, when the Union interceded for her, refused to reinstate her.

The major issue in these proceedings concerns the discharge of Mrs. Lambers. (The question of the Board's jurisdiction, raised by the respondent, has been disposed of in Section I of this Intermediate Report.)

B. *Events relevant to contentions of the Board as to the discharge of Hattie Julia Lambers*

The complaint alleges that Mrs. Lambers was discharged because she joined or assisted the Union, thereby discouraging membership in that organization.

Mrs. Lambers began working for the respondent in February 1944, as bookkeeper. Until her discharge on June 1, 1946, she received two increases in pay. Under the direct supervision of Manager Rymer, her major duty was to maintain the respondent's pay-roll records. There is no evidence that Rymer ever complained to Mrs. Lambers about her work or conduct. She was away from

the office, ill, from February 12 to March 23, 1946. During the final 3-week period of her convalescence, she performed the bookkeeping tasks at her home.

Upon her return to work she was informed by Rymer that employees were thereafter to be "docked" for all absences. She carried out these instructions. As noted above, following this change in policy, the employees sought organization. Mrs. Lambers attended both meetings of the Union held before her discharge. She signed a membership application card at the meeting of May 28. Also as found above, upon being informed by a Union official that the organization represented his employees, Rymer asked Mrs. Lambers if she had joined. She replied that she had not joined, as yet. Previously Mrs. Lambers had informed Rymer that she had been a union steward in a plant where she had worked before joining the respondent's staff.

At the close of the workday on May 31, Rymer asked Mrs. Lambers to attend a special meeting of the Board of Directors to be held that evening. He gave her no reason for this unusual request. During her employment she had never before been asked to attend. Mrs. Lambers sought the advice of Millard Gates, the Union steward in the plant, who urged her not to go. She did not attend the meeting.

In the early afternoon of the following day, and upon his first appearance in the office that day, Rymer informed Mrs. Lambers that she was discharged and told her, according to her credible testimony, that the discharge was for "insubordination." She asked what he meant. He replied, also according to her credible testimony, "This Union business; you are the one [who] got it in here, you knew it all the time and you never told me." Rymer informed her that Ann Sabo, an office girl who had previously assisted Mrs. Lambers, would take her place. Mrs. Lambers told him that Sabo had also joined the Union. Rymer replied that Sabo had not paid any money down. Mrs. Lambers turned to George Vanderveelde, an independent trucker who had just come into the office, and asked him to get Gates, the Union steward. Gates arrived. In Rymer's presence Mrs. Lambers told Gates that she had been fired for joining the Union. Gates declared that he did not believe Rymer could "get away with it." Rymer made no comment and Mrs. Lambers left the office.¹

Early the next week two Union officials requested Rymer to reinstate Mrs. Lambers. The manager refused. At the time of the hearing Mrs. Lambers had not been reinstated by the respondent.

C. Contentions of the respondent and events relevant thereto

The respondent's answer alleges that Mrs. Lambers was discharged because the respondent "discovered confidential information was being released to other employees and had cause to believe that Hattie Julia Lambers was responsible for such dissemination." The answer further alleges that the respondent has refused to reinstate her because after her discharge it found, upon examination of her records, that she had been engaging in "a course of conduct in keeping company records and preparing payrolls inimical to the best interests" of the respondent

¹The findings as to events on the day of Mrs. Lambers' discharge rest mainly upon her own credible testimony, in large part undisputed by Rymer, and supported in essential details by the testimony of her husband, of Millard Gates, and of Vanderveelde (previously identified as an independent trucker). Rymer's version of the discharge is discussed in the next section.

Although Rymer testified that he told Mrs. Lambers, on June 1, that she was "fired" for "dissemination of confidential information and other reasons," and although upon being asked by his counsel to state the reason for the discharge he replied: "for dissemination of confidential information and other reasons," no evidence was adduced from Rymer or any other witness to support this serious charge. When asked by counsel for the respondent if he was "aware," on about May 1, 1946, "that some confidential information was getting out," Rymer replied in the affirmative. Questioned for more specific details by the same counsel, Rymer testified that he learned of this state of affairs "mostly from hearsay in the mill and around town," but that what he heard was "just general rumors, I can't put my finger on it." Pressed for a more specific answer, Rymer stated that the "general rumors" he heard were to the effect that the company "couldn't meet its payrolls and we were financially busted, and different things like that." Later in his testimony Rymer admitted: (1) that the "rumors" he heard about the company's financial condition were not true; (2) that he was not certain, even at the time of the hearing, that Mrs. Lambers had given out such information; and (3) that the charge of "dissemination of confidential information" was not based upon fact, but only upon "suspicion." It thus appears, from Rymer's own testimony, that the allegations of the answer, and of his claims both as to the reason for the discharge and as to what he told her was the reason,—all charging her with actual "dissemination of confidential information,"—are wholly without foundation in fact or reasonable probability. There is no credible evidence that "confidential information" was "disseminated" to anyone, by anyone.

Nor did Rymer offer any credible reason for suspecting that Mrs. Lambers was spreading false rumors about the financial condition of the company. He testified, also in answer to questions asked by counsel for the respondent, that these rumors were "common gossip," and that he did not know whether they were started by Mrs. Lambers, or by members of the Board of Directors.

As to the allegation that Mrs. Lambers was refused reinstatement because it was discovered, after her discharge, that she had kept company records in a manner "inimical" to company interests, Rymer's testimony is equally contradictory and confusing. He testified, in substance, when first called as a witness, that "irregularities" in the pay roll were called to his attention by Tom Koning, a Director, at a board meeting about the middle of May 1946. Upon Koning's advice, according to Rymer's further testimony, he checked the pay rolls and discovered "irregularities." He testified that a "committee" meeting was held on May 31, at the office of the company auditor, Stewart A. Lutz, who recommended that a special Directors' meeting be held that night and Mrs. Lambers be present. He admitted that although Mrs. Lambers was asked to attend, no reason for the request was given to her. At the meeting, Rymer testified, Lutz checked the pay roll and recommended the discharge of Mrs. Lambers because of pay-roll "irregularities" and because of "leakage of information." Following this recommendation, according to Rymer, the Board members "generally discussed that I should discharge her." Acting upon this advice, Rymer testified, he "discharged her for dissemination of confidential information and other reasons." Rymer was immediately asked by counsel for the respondent:

Then you did not discharge her for any irregularities in the payroll?

Rymer replied:

No, I didn't.

Asked by the same counsel on direct examination to state why he did "not want to take Mrs. Lambers back to work," Rymer answered :

Well, because of suspicion that information was reaching the employees through Mrs Lambers and her husband. Ben worked in the mill and she worked in the office. She had access to all of the confidential information and her husband worked in the mill with the rest of the employees. It seemed like a very logical place for a leak. That is what we wanted to discuss with her the night she didn't come to the Board meeting.

Q (By same counsel) Is that the only reason you do not want to take her back?

A Well, we was a little suspicious of her honesty.

Q. Are you referring now to the irregularities in the payroll?

A. Irregularities, yes.

Q Are you charging her with dishonesty now?

A. I am not.

Q. You are not?

A. No.

On cross-examination, Rymer stated that he was not accusing Mrs. Lambers of "anything," but was "suspicious" of her "honesty" because of "irregularities" in the pay-roll records. When asked for the basis of his suspicion, he cited only certain information received from Koning on May 15 to the effect that Ben Lambers had been paid for 2 days when he actually had not worked, more than a year before. Questioned further on the matter, Rymer admitted: (1) that during the year 1945 it had been company policy to pay employees "when they were sick for two or three days"; (2) that he made no investigation as to whether or not Lambers had been sick during the 2 days referred to, and (3) that he had only a "suspicion" that Ben Lambers had been wrongfully paid for those 2 days. He further testified that he had never brought the alleged discrepancy to Mrs Lambers' attention, and that he did not even consider asking her about it *until after the Union, on May 28, had notified him that it represented his employees.*

The minutes of the Board of Directors do not support the claim of Rymer and Koning that in mid-May the latter, at a regular meeting, urged checking of the pay-roll records. The minutes of the June 4 meeting, *after* the discharge of Mrs. Lambers, indicate that not until then did Koning move that the records be checked. According to these minutes, the motion was carried. Rymer admitted, however, that thereafter, and up to the time of the hearing, no such check of the records had been made. Asked why the Directors' instructions had not been complied with, Rymer stated:

Well, I think it was because we didn't intend to go any further with this charge, didn't expect—[interruption]—I would say because the Board decided at that time that they wasn't going to press these charges,—wasn't going to go any further unless—well, it never was completed.

Thus it is clear, from Rymer's testimony, that no "later examination of the records," as alleged in the answer, has ever been made by the respondent. Since no examination was made, and in the absence of evidence of some other means of discovery, it reasonably follows that there was revealed "no course of conduct . . . inimical to the best interests" of the respondent.²

²After the completion of Rymer's testimony and through an office girl as a witness, counsel for the respondent introduced into evidence certain records purporting to show that

D. Conclusions as to the discharge

As found in the preceding section, the respondent offered no evidence to support the allegations of its answer: (1) that Mrs. Lambers had "disseminated confidential information"; and (2) that Mrs. Lambers was discovered to have kept records in a manner "inimical" to the respondent's interests. It is therefore concluded and found that there is no merit in either contention.

At the hearing, statements by counsel for the respondent and certain parts of Rymer's testimony made it apparent that the respondent had abandoned its position as set forth in the answer, and was claiming only that Rymer had "suspicions" upon which he based the discharge of Mrs. Lambers. The Examiner agrees with the general position urged by counsel for the respondent, to the effect that the Act does not prohibit an employer from discharging a worker upon mere suspicion of misconduct. The suspicion may arise only from imagination, have no basis in fact, and be acted upon without any investigation. Suspicion must exist, however, in order to serve as a cause for discharge. It may not validly be urged as a pretext, or as an afterthought, created in an effort to cloak the real reason for discharge, when that real reason is to discourage union membership.

The Examiner is convinced that suspicion did not actually exist in Rymer's mind. The manager's testimony is so replete with contradictions and inconsistencies that no reliance can be placed upon it. The failure of the manager to make any personal investigation in this small plant, or to make any inquiry of Mrs. Lambers, deprives the surrounding circumstances of any reasonable probability that suspicion existed in Rymer's mind.

The Examiner is convinced, and finds, that there is no merit in Rymer's claim that the discharge and refusal to reinstate were caused by his suspicion of misconduct or of "irregularities" by Mrs. Lambers.

The preponderance of credible evidence supports the allegations of the complaint. Peck, a member of the Board of Directors, testified that Rymer had told him, shortly before the discharge, that he had not believed Mrs. Lambers and Gates "would do a thing like that to him," and that the Directors "didn't like to have [the] Union in there . . . if they could get by without it." It is reasonably inferred and found that Rymer was referring to the Union activities of Mrs. Lambers, since he had knowledge of her service as a union steward at her preceding place of work. It has also been found, above, that upon discharging her, he accused her of bringing the Union into the plant.

in August 1945, Ben Lambers had taken an extra afternoon off with pay. Rymer was recalled, and although he had previously testified that no examination of such records had ever been made, he then stated that he and the auditor "went through" them "probably in June, I'd say after—June 1946." Thereafter Rymer testified that he had made no investigation to ascertain whether or not the extra half day was in just compensation for extra time previously worked by Lambers, and conceded that this may have been the case. The respondent offers no evidence to refute the rebuttal testimony of Lambers that he had, in fact, worked an extra half day, during another employee's vacation in August 1945, and that the half day off, in question, had actually been due him according to company policy. On the basis of Lambers' undisputed and credible testimony, the Examiner finds that no irregularity, for which Mrs. Lambers was responsible, appears in the pay-roll record as to the August 1945, incident. In any event, because of Rymer's testimony when first a witness, to the effect that no examination had been made of the pay-roll records in June 1946, or thereafter, the Examiner is convinced that the manager had no knowledge of this detail in the pay-roll records until after he was first a witness. Having no knowledge of it, it could hardly have served as foundation even for a "suspicion" that Mrs. Lambers had engaged in "irregularities."

The Examiner concludes and finds that the real reason for the respondent's discharge of Mrs Lambers was to discourage membership in the Union, and because of Rymer's belief that she was a leader of the organizational efforts.

It is further concluded and found that by thus discharging Mrs. Lambers, and by Rymer's questioning of her and other employees on May 28 as to their Union affiliation and other Union matters, the respondent has interfered with and is interfering with the exercise of rights guaranteed by 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

Having found that the respondent has engaged in certain unfair labor practices the undersigned will recommend that it cease and desist therefrom and take certain affirmative action which the Examiner finds will effectuate the policies of the Act.

It has been found that the respondent has discriminated against Mr. Lambers. It will therefore be recommended that the respondent offer to her immediate and full reinstatement to her former or substantially equivalent position³ without prejudice to her seniority or other rights and privileges, and that it make her whole for any loss or pay she may have suffered by reason of the discrimination against her, by payment to her of a sum of money equivalent to that which she would normally have earned as wages from the date of her discharge to the date of offer of reinstatement, less her net earnings⁴ during said period.

In view of the unfair labor practices found to have been committed by the respondent, constituting violations of Section 8 (1) and (3) of the Act, the Examiner is of the opinion and finds that there is danger of the commission of other and additional unfair labor practices, since the violations thus far engaged in by the respondent indicate an intent to interfere generally with the rights of the employees as guaranteed by the Act. It will therefore be recommended that the respondent cease and desist from in any manner interfering with, restraining, or coercing its employees in their right to self-organization.⁵

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

CONCLUSIONS OF LAW

1. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Truck Drivers Union, AFL, Local 406, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Hattie Julia Lambers, the respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8 (3) of the Act.

³ In accordance with the Board's consistent interpretation of the term, the expression "former or substantially equivalent position" is intended to mean "former position wherever possible, but if such position is no longer in existence, then to a substantially equivalent position" See *Matter of The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch*, 65 N. L. R. B. 827.

⁴ *Matter of Crossett Lumber Co*, S N L R. B 440, 497-498.

⁵ See *May Department Stores Company v N L R B*, 326 U. S 376

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 foregoing findings of fact and conclusions of law, the Examiner recommends that Coopersville Cooperative Elevator Company, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Truck Drivers Union, AFL, Local 406, or any other labor organization of its employees by in any manner discriminating in regard to their hire and tenure of employment or any term or condition of employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to join or assist International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Truck Drivers Union, AFL, Local 406, 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 Examiner finds will effectuate the policies of the Act:

(a) Offer to Hattie Julia Lambers immediate and full reinstatement to the position which she occupied on May 31, 1946, prior to the respondent's discrimination against her, or to a substantially equivalent position, without prejudice to her seniority and other rights and privileges; and make her whole for any loss of pay she may have suffered by reason of the respondent's discrimination against her, in the manner provided herein in the section entitled "The remedy";

(b) Post immediately at its plant in Coopersville, Michigan, copies of the notice attached hereto marked "Appendix A." Copies of such notice, to be furnished by the Regional Director for the Seventh 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 Seventh Region (Detroit, Michigan), in writing within ten (10) days from the date of the receipt of this Intermediate Report what steps the respondent has taken to comply therewith.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report, the respondent notifies the 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 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.

C W WHITTEMORE,
Hearing Examiner.

Dated July 15, 1947.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Hearing 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 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, TRUCK DRIVERS UNION, AFL, LOCAL 406, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

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

Hattie Juha Lambers

All our employees are free to become or remain members of the above-named union or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

COOPERSVILLE COOPERATIVE ELEVATOR COMPANY,
Employer.

By _____
(Representative) (Title)

Dated _____

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

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