

ARMOUR AND COMPANY, D/B/A ARMOUR CREAMERIES *and* E. A. WYATT, JR.

AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL No. 127 *and* E. A. WYATT, JR. *Cases Nos. 20-CA-532 and 20-CB-174. October 1, 1951*

### Decision and Order

On June 29, 1951, Trial Examiner Wallace E. Royster issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent Union filed exceptions to the Intermediate Report, together with a supporting brief. No exceptions were filed by the Company.

The Board<sup>1</sup> 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 supporting brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

### Order

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders:

1. That Armour and Company, d/b/a Armour Creameries, Turlock, California, its officers, agents, successors, and assigns, shall:

a. Cease and desist from:

(1) Encouraging membership in Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 127, or in any other labor organization of its employees by discharging or refusing to reinstate any employee for lack of membership in, or good standing with, such organization.

(2) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form labor organizations, to 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 and protection, and to refrain

<sup>1</sup> Pursuant to Section 3 (b) of the Act, the Board has delegated its powers with respect to this case to a three-member panel [Members Houston, Reynolds, and Styles].

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 by Section 8 (a) (3) of the Act.

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

(1) Offer to E. A. Wyatt, Jr., immediate and full reinstatement to his former or a substantially equivalent position without prejudice to any seniority or other rights and privileges, and make him whole for any loss of earnings suffered in the manner set forth in the section of the Intermediate Report entitled "The Remedy."

(2) 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 or useful to an analysis of the amount of back pay due under the terms of this Order.

(3) Post at its plant in Turlock, California, copies of the notice attached hereto as Appendix A.<sup>2</sup> Copies of such notice, to be supplied by the Regional Director for the Twentieth Region, shall, after being duly signed by a representative of Armour and Company, be posted immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees customarily are posted. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by other material.

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

2. That Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 127, its officers, representatives, and agents, shall:

a. Cease and desist from:

(1) Causing or attempting to cause Armour and Company, d/b/a Armour Creameries, Turlock, California, to discriminate against any of its employees because such employees are not members or refuse to become members of the aforesaid labor organization.

(2) In any like or related manner restraining or coercing employees of Armour and Company, d/b/a Armour Creameries, its successors or assigns, in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, to engage in concerted

<sup>2</sup> If this Order is enforced by a decree of a United States Court of Appeals, the notice shall be amended by inserting before the words "A Decision and Order" in the caption thereof the words "A Decree of the United States Court of Appeals Enforcing."

activities for the purpose of collective bargaining or other mutual aid and protection, and to refrain from any or all of such activities, except to the extent that such rights 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.

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

(1) Notify Armour and Company, d/b/a Armour Creameries, Turlock, California, in writing that it has no objection to the employment of E. A. Wyatt, Jr., and notify Wyatt in writing to the same effect.

(2) Make E. A. Wyatt, Jr., whole for any loss of pay suffered by reason of the discrimination against him in the manner set forth in the section of the Intermediate Report entitled "The Remedy."

(3) Post at its business offices in the Turlock area copies of the notice attached hereto and marked "Appendix B."<sup>3</sup> Copies of such notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being signed by a representative of said Union, be posted by it immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to members customarily are posted. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by any other material.

(4) Additional copies of Appendix B, to be furnished by the said Regional Director, shall be signed by a representative of said Union and forthwith returned to the Regional Director. These notices shall be posted, Armour and Company willing, on Armour's bulletin boards where notices to employees customarily are posted.

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

## Appendix A

### 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, as amended, we hereby notify you that:

**WE WILL NOT encourage membership in AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL No. 127, or any other labor organization of our employees by**

<sup>3</sup> If this Order is enforced by a decree of a United States Court of Appeals, the notice shall be amended by inserting before the words "A Decision and Order" in the caption thereof the words "A Decree of the United States Court of Appeals Enforcing."

means of discharge, refusal to reinstate or by discriminating in any other manner in regard to hire and tenure of employment or any term or condition of employment, except to the extent authorized by Section 8 (a) (3) of the Act.

WE WILL reinstate E. A. Wyatt, Jr., to his former or substantially equivalent position and make him whole for any loss of pay suffered as a result of the discrimination against him.

WE WILL not in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to form labor organizations, to 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, and 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 by Section 8 (a) (3) of the Act.

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

ARMOUR AND COMPANY, D/B/A  
ARMOUR CREAMERIES,

*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.

### Appendix B

NOTICE TO ALL MEMBERS OF AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL No. 127, AND TO ALL EMPLOYEES OF ARMOUR CREAMERIES

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, as amended, we hereby notify you that:

WE WILL NOT cause or attempt to cause ARMOUR AND COMPANY, d/b/a ARMOUR CREAMERIES, its officers, agents, successors or assigns to discharge or refuse to reemploy, or in any other manner to discriminate against, any employee because he is not a union member.

WE WILL NOT in any like or related manner restrain or coerce any employee of ARMOUR AND COMPANY, d/b/a ARMOUR CREAMERIES in the exercise of their rights to self-organization, to form,

join, or assist labor organizations, 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, and 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 by Section 8 (a) (3) of the Act.

WE WILL withdraw any objection to the employment of E. A. Wyatt, Jr., and make him whole for any loss of pay suffered as a result of the discrimination against him.

AMALGAMATED MEAT CUTTERS AND BUTCHER  
WORKMEN OF NORTH AMERICA, LOCAL NO. 127,  
*Labor Organization.*

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 and Recommended Order

#### STATEMENT OF THE CASE

Upon separate charges duly filed by E. A. Wyatt, Jr., an individual, against Armour and Company, d/b/a Armour Creameries, herein called the Respondent Employer or Armour, and against Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 127, herein called the Respondent Union or the Union, the General Counsel of the National Labor Relations Board, herein called respectively the General Counsel and the Board, caused the cases to be consolidated and issued a consolidated complaint dated March 30, 1951, against Armour and the Union alleging violations of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act, within the meaning of Sections 8 (a) (1) and (3); 8 (b) (1) (A) and (2); and 2 (6) and (7). Copies of the charges, the consolidated complaint, the order consolidating the cases, and a notice of hearing were duly served upon Armour, the Union, and Wyatt.

With respect to unfair labor practices, the complaint alleged in substance that on December 5, 1950, the Union caused Armour to discharge Wyatt because Wyatt was not a member in good standing of the Union, thereafter caused Armour to refuse to reinstate him, and on the same date told employees of Armour that they would have to join the Union and could not otherwise continue in the employ of Armour because of a closed-shop agreement between Armour and the Union. The complaint further alleged that Armour discharged Wyatt on December 5 because he was not a member of the Union in good standing and thereafter refused to reinstate him for the same reason.

Armour filed an answer admitting the jurisdictional allegations of the complaint, denying the commission of unfair labor practices, asserting that Wyatt was laid off on December 5, 1950, for cause and that he was thereafter refused reinstatement for the same reason. The Union's answer denied the jurisdiction of the Board, asserted the unconstitutionality of the sections of the Act which it was alleged were violated by the Union, and denied the commission of unfair labor practices.

A motion to dismiss the complaint filed by the Union on April 23, 1951, was denied by Trial Examiner Martin S. Bennett who in the same order granted in part and denied in part the Union's contemporaneous motion for a bill of particulars.

Pursuant to notice a hearing was held on May 22, 1951, at Modesto, California, before the undersigned Trial Examiner duly designated by the Associate Chief Trial Examiner. The General Counsel, Armour, and the Union 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 on the issues. All parties were offered opportunity to argue upon the record and to file briefs. No argument was had and none expressed a desire to file a brief.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF ARMOUR

Armour is an Illinois corporation with its principal office and place of business in Chicago, Illinois, where it is engaged in purchasing and slaughtering live stock and processing and distributing meat products and byproducts. It also processes and sells poultry, eggs, dairy products, and other allied products, and manufactures and distributes soap, toilet articles, fertilizer, margarine, vegetable oils, wool, and leather. Armour is one of the 4 largest meat processing houses in the United States, operating 31 packing plants in 24 States, and approximately 300 branch houses throughout the United States. Its gross sales for the year ending December 31, 1950, were in excess of \$700,000,000. In the course and conduct of its business Armour causes substantial amounts of products to be sold and shipped to various States of the United States, its territories and possessions, including the State of California.

In connection with its business described above, Armour operates dairy and poultry plants throughout the Central Western portion of the United States in over 50 locations among the several States, one such plant being located at Turlock, California, where Armour does business under the trade name and style of Armour Creameries. In 1950, at Turlock, Armour's purchases totaled about \$8,657,000, of which about \$99,000 represents purchases made outside the State of California. In the same year, sales amounted to about \$9,600,000, of which about 35 percent represents the value of shipments to points outside the State of California.

##### II. THE UNION

Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 127, is a labor organization admitting to membership employees of Armour.

##### III. THE UNFAIR LABOR PRACTICES

###### A. Background

Since 1947 Armour and the Union have been parties to collective bargaining agreements covering production employees. None of the agreements have contained a union-shop provision and the evidence is that Armour's position has been consistently to refuse to accord such security to the Union. During November and December of 1950, there was an average of 654 employees in the bar-

gaining unit. All but about 100 of these had filed voluntary dues-deduction authorizations with Armour running in favor of the Union. J. W. Post, Armour's manager of industrial relations with respect to such plants as the one at Turlock, testified credibly that management at Turlock was directed by him particularly to observe that the contract with the Union contained no provision for union security and that no test of membership or nonmembership in any labor organization could be applied in connection with employment.

*B. The discharge of E. A. Wyatt, Jr.; the coercion of Rosemary Wyatt*

Wyatt and his wife Rosemary both applied for employment on November 6, 1950, and both were hired by Foreman Noble Graves as turkey pickers on a piece-rate basis. In this work employees are guaranteed a minimum rate of 75 cents an hour and may earn more depending upon the amount of their production. For the first 6 weeks of her employment, Rosemary Wyatt testified, she failed to pick enough birds to earn the minimum rate. E. A. Wyatt testified that he exceeded the minimum after the first day. Armour's records show that Wyatt earned less than the minimum for the first 3 days that he worked. After working 7 days as a turkey picker, Wyatt was transferred to an hourly rated job working on a truck which went about the countryside picking up poultry purchased from growers. After about 2 weeks of this he worked a day or two in the shipping department and on other odd jobs about the plant. About December 1 he was assigned to work hanging chickens on a conveyor chain. This work too was compensated by an hourly payment not conditioned upon production. Wyatt understood that the assignment was temporary and that he was filling the place of an employee on leave.

On December 5, while he was at work, Wyatt was approached by Paul Weborg, the Union's business agent, who asked Wyatt if he was a member of the Union. When Wyatt replied that he was not but that he held a paid-up card in another labor organization, Weborg replied that Wyatt was "supposed to belong" to the Union in order to work for Armour. Wyatt then asked if the Union had a closed shop in the plant. Weborg replied that it had not. Wyatt then went on to explain that his assignment was temporary and that he wished to avoid the expense of union membership if he could. In response to a further question by Wyatt, Weborg explained that Wyatt could work on the job of picking up turkeys in the truck (work outside the plant) but that if he wished to remain at work inside he would have to join the Union. Wyatt still refused to apply and Weborg left saying that he would see Roy Gearhart, the plant superintendent, to discover, if he could, about how long Wyatt would be employed in hanging chickens. Weborg returned in about an hour and told Wyatt that Gearhart's plans for him were indefinite, but that if Wyatt would join the Union, he could work any place in the plant. Wyatt still refused so Weborg left saying that he would see Wyatt on his next regular visit the following week.

That evening Wyatt asked his foreman, Harry Boatwright, what time he should report in the morning. Boatwright answered that the crew would go to work at 8 a. m. but that Wyatt should consult Gearhart. Wyatt did so and remarked to Gearhart that he hoped Weborg had not caused any trouble. Gearhart replied that Weborg did not trouble him; that he was not fighting Wyatt's battles; but that Armour could not have "everybody stirred up for one or two." When Wyatt asked if he should return to hanging chickens in the morning, Gearhart answered, "No. He told me I couldn't use you anywhere in the plant because you wouldn't

join the Union."<sup>1</sup> Wyatt inquired if he could not work on the truck crew, picking up poultry. Gearhart answered that he needed no one on that crew. Wyatt suggested that Gearhart get in touch with Weborg to tell the latter that Wyatt was now willing to join the Union. Gearhart replied that Wyatt could do that himself.

The following day Wyatt returned to the plant to see if any job had developed. Gearhart told him that nothing had. So Wyatt telephoned Weborg to tell him that he was now willing to join the Union. Weborg told Wyatt to meet him at another plant in Turlock on December 8. Wyatt did so and asked Weborg if the latter was ready to "sign him up." Weborg replied that he would have to see Gearhart to discover if Wyatt had been replaced with a union member and suggested that Wyatt meet him at the Armour plant later in the day. That afternoon Wyatt saw Weborg and Gearhart in conversation and shortly thereafter was told by Weborg that there was no work for him.

Wyatt remained in the plant for a short time and got into a conversation with Graves—the foreman who had hired him. Graves remarked that he understood that Wyatt had "got messed up with the union." Wyatt admitted that this was so and asked for work as a picker. Graves answered that his crew was full, so Wyatt went on. Meeting Foreman Boatwright, Wyatt said that he had lost his job because he had refused to join the Union. After commiserating with him Boatwright said, "Well, there isn't any union representation here in the plant; the union isn't for the working man. We all know it. It is a company union for the company. But there is nothing I can do about it. I just work here, take orders from [Gearhart], and if he says you can't work here, why, you can't. I'm sorry to hear about it."

Rosemary Wyatt testified that she, too, was approached by Weborg on December 5, and that, when Weborg told her that closed-shop conditions were in effect and that she must do so in order to keep her job, she signed an application card and authorized Armour to deduct her dues from her wages.

Foreman Earl Ruess testified that Wyatt worked for him for a day and a half in the shipping department and that Wyatt was a talkative individual whose proclivity for conversation slowed down the operations of the crew to which he was assigned. Ruess testified that he told Gearhart that members of Wyatt's crew had complained about this characteristic in Wyatt. On cross-examination, when confronted with a pretrial statement, Ruess admitted that Wyatt had worked directly under him for only 3 hours and that he was unsure that he had reported to Gearhart as he earlier testified.

Plant Superintendent Roy Gearhart testified that he learned from Ruess and others that Wyatt was too talkative and that he thus interfered with the work of others. On December 5, according to Gearhart, he learned that an employee with seniority rights was entitled to the work that Wyatt was doing (Wyatt having on that date not completed 60 days of service had no seniority rights under the agreement with the Union), that in consequence Wyatt was let go, that there was no other work for him. Gearhart denied that Weborg had asked for Wyatt's discharge or that any representative of the Union had ever asked for the discharge of an employee. Gearhart testified that Wyatt came back on two occasions looking for work, but that, although jobs were open, he did not care to reemploy him.

<sup>1</sup> Page 22, line 22, of the transcript is hereby corrected in punctuation to conform with this quotation. As the objection of counsel for the Union, interposed at this point, clearly shows, "Wyatt's testimony was that Gearhart uttered the entire sentence beginning with 'He told me . . .'" Thus, crediting Wyatt as I do, Gearhart was saying that Weborg would not consent to Wyatt's employment anywhere in the plant. See Wyatt's further testimony on this point, transcript pages 175, 176.

Weborg denied that he represented either to Wyatt or to Rosemary Wyatt that the Union had a closed-shop agreement with Armour or that there was any requirement of union membership as a condition of employment. He further denied that he had requested Gearhart to discharge Wyatt, or any other employee, because of lack of membership in the Union.

### C. Conclusions

I have no doubt that the central management of Armour has a policy in opposition to the granting of union-shop conditions in bargaining agreements and that the management at Turlock was aware of this policy. I doubt seriously that John Granahan, general manager of the Turlock plant, had any knowledge concerning the discharge of Wyatt and I doubt that he had any reason to believe that work in that plant was being in any way conditioned upon membership in the Union. But it was.

As business agent for the Union, Weborg was fulfilling his function in visiting the Armour plant, policing the contract, and soliciting new workers to join. Of course there was nothing unlawful about this as long as he refrained from restraining or coercing those who, in the exercise of their rights under Section 7 of the Act, preferred not to join. Clearly he overstepped the bounds of permissible conduct in respect to Rosemary Wyatt. Her testimony that Weborg told her that closed-shop conditions prevailed and that she *must* join the Union in order to remain at work is believed. Indeed, Weborg's denial that he so expressed himself to her was forthcoming only after he first answered that he did not recall doing so.

Neither Graves nor Boatwright was called as a witness and Wyatt's testimony concerning his conversations with them stands undenied in the record. The evidence establishes that both of these foremen possessed and exercised effective authority in connection with hire and discharge of employees and both, therefore, were supervisors within the meaning of the Act. However, what Graves said indicates no more than a belief on the part of Graves that Wyatt was in trouble with the Union and thus out of work. It is not evidence that Wyatt was discharged at the request of the Union or because of any consideration of good standing in the Union. The same is true as to the remarks of Boatwright. But I do credit the testimony of the two Wyatts that each of them was told by Weborg that they must become members of the Union in order to remain as employees.

Now to consider the motivation of Gearhart in discharging Wyatt. Gearhart testified that the moving consideration was the necessity to provide work for an employee who had seniority rights. This might serve adequately to explain Wyatt's transfer from the chicken-picking job, but not his discharge. As Gearhart testified, in reaffirming a statement earlier given to a representative of the Board, Wyatt could have been employed as a turkey picker, but was not told so. Gearhart also testified that on December 5 he knew of no department foreman who wanted Wyatt on his crew. Boatwright's observations to Wyatt, however, indicate that Wyatt was acceptable to Boatwright. The incidents of complaint which Gearhart related concerning Wyatt are remarkable in their triviality. I do not believe that they played any part in the decision to discharge Wyatt. Finally, Gearhart testified that there was a demand for employees in early December and that others were being hired at the time that Wyatt was discharged. I find that Wyatt was not discharged because of dissatisfaction with his services or because there was a lack of work of a character that he could perform. I conclude that Wyatt's testimony—that Gearhart said that the Union would not permit his employment in the plant—against the entire background of evidence adduced in this case, merits belief. I find that Gearhart, believ-

ing that the continued employment of one who refused to join the Union might cause some disruption in the plant and being in no serious need for Wyatt's services, decided upon and effected Wyatt's discharge. By the discharge, Armour encouraged membership in the Union in violation of Section 8 (a) (3) of the Act. By the same act Armour interfered with, restrained, and coerced employees in the exercise of rights guaranteed by Section 7 of the Act and thereby violated Section 8 (a) (1) of the Act.

By telling both the Wyatts that the price of continued employment with Armour was to be paid by applying for membership in the Union, that organization restrained and coerced them in the exercise of their rights under Section 7 of the Act and thereby violated Section 8 (b) (1) (A) of the Act. There is no direct evidence that Weborg demanded or requested of Gearhart that E. A. Wyatt be discharged. Both denied it. I have found that Gearhart told Wyatt that the Union would not permit the latter to work in the plant and it is reasonably to be inferred from what Gearhart said on that occasion that he was imputing to the Union a demand for Wyatt's discharge. However, on the basis of this, to find that the Union actually made such a demand would be to rely upon hearsay. I am convinced, nevertheless, that some representation was made to Gearhart by Weborg that resulted in Wyatt's discharge. The circumstances surrounding the entire incident—(1) Wyatt was told that he must join the Union to protect his employment, (2) Weborg spoke to Gearhart concerning Wyatt, (3) Weborg again urged Wyatt to join, and (4) Gearhart told Wyatt that he was discharged, that the Union would not permit his further employment—compel the conclusion that except for a demand, request, suggestion, or other expression from the Union of some nature, Wyatt would not have been discharged. I do not find that there was any general arrangement between Weborg and Gearhart that new employees would be forced to join the Union. That would have been in direct violation of Gearhart's instructions. Further, there is evidence that perhaps as many as 100 employees were not members of the Union and presumably were not disturbed in their jobs. However, the circumstances set forth in the evidence establish that in the case of E. A. Wyatt, Gearhart must have been told by the Union that the Union objected to the continuation of Wyatt's employment. Gearhart acted upon the objection. I find that the Union thus caused Wyatt's discharge and thus violated Section 8 (b) (1) (A) and (2) of the Act.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Armour and the Union, described in Section III, above, considered in connection with the business of Armour, set forth in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and such of them as have been found to constitute unfair labor practices tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

Having found that Armour and the Union have committed certain unfair labor practices, it will be recommended that each cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Union has restrained and coerced employees in the exercise of rights under Section 7 of the Act and as it is my opinion that such conduct is persuasively related to the possible commission of other unfair labor practices on the part of the Union in the future, it will be recommended that the Union be required to cease and desist from in any manner violating the Act.

Having found that the Union by securing the discharge of, and Armour by discharging, E. A. Wyatt, Jr., have violated the Act, it will be recommended that the Union withdraw its objection to the employment of Wyatt and that Armour offer him immediate and full reinstatement to his former or substantially equivalent position<sup>2</sup> without prejudice to his seniority or other rights and privileges, and that each make him whole for any loss of pay he may have suffered by reason of the discrimination against him by payment to him of a sum of money equal to that he normally would have earned as wages from the date of discharge to the date in the case of the Union when it withdraws objection to his employment, and in the case of Armour, of the offer of reinstatement, less his net earnings<sup>3</sup> during such periods. Loss of pay shall be computed upon the basis of each calendar quarter or portion thereof during the period from Armour's discriminatory action to the offer of reinstatement except that the Union may toll its back-pay liability by notifying Armour in writing that it withdraws any objection to the employment of Wyatt. Loss of pay shall be determined by deducting from a sum equal to that which Wyatt would have earned for each quarter or portion thereof his net earnings, if any, during that period. Earnings in one particular quarter shall have no effect upon back-pay liability for any other quarter.<sup>4</sup> It will also be recommended that Armour be ordered to make available to the Board or its agents upon request payroll and other records in order to facilitate the checking of the amount of back pay due.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, I make the following:

#### CONCLUSIONS OF LAW

1. Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 127, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By causing Armour and Company to discriminate in regard to the hire and tenure of employment of E. A. Wyatt, Jr., Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 127, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (2) of the Act.

3. By such conduct and by threatening employees of Armour and Company with loss of employment if they failed to apply for membership in Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 127, that organization has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

4. By discharging E. A. Wyatt, Jr., and thus encouraging membership in a labor organization, Armour and Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

5. By such conduct Armour and Company has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act and has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

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

[Recommended Order omitted from publication in this volume.]

<sup>2</sup> *The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch*, 65 NLRB 827.

<sup>3</sup> *Crossett Lumber Company*, 8 NLRB 440

<sup>4</sup> *F. W. Woolworth Company*, 90 NLRB 289.