2. By assisting and supporting The Standard Transformer Workers, Inc., and by interfering with its administration, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (2) of the Act.

3. All production and maintenance employees of the Respondent employed at its Warren, Ohio, plant, excluding office and clerical employees, professional employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

4. International Union of Electrical, Radio & Machine Workers, CIO, was on October 31, 1950, and at all times thereafter has been, and now is, the exclusive representative of the Respondent's employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

5. By refusing on November 2, 1950, and at all times thereafter, to bargain collectively with International Union of Electrical, Radio & Machine Workers, CIO, as the exclusive representative of its employees in the appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

6. By the above conduct, and by otherwise 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 (a) (1) of the Act.

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

8. By paying a bonus to its employees in June 1950, the Respondent did not violate the Act.

[Recommended Order omitted from publication in this volume.]

PARAMOUNT TEXTILE MACHINERY CO. *and* TEXTILE WORKERS UNION OF AMERICA, CIO. *Case No. 13–CA–555. December 28, 1951*

Decision and Order

On July 30, 1951, Trial Examiner Horace A. Ruckel issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner further found that the Respondent had not committed another unfair labor practice and recommended that that allegation of the complaint be dismissed. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief; the General Counsel filed a statement in support of, and a statement of exceptions to, the Intermediate Report, and a supporting brief.

The Board [1] has reviewed the rulings made by the Trial Examiner

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

at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the supporting statement, exceptions and briefs, and the entire record in the case, and hereby adopts the findings,[2] conclusions, and recommendations [3] of the Trial Examiner, with the following additions and modifications.

1. We find, in agreement with the Trial Examiner, that the Respondent has violated Section 8 (a) (1) of the Act. In so finding, we rely on the following conduct of the Respondent found to be unlawful by the Trial Examiner:

(a) Foreman Rogers' statement to employee Willett that the Respondent would have plenty of work if the Union lost the election but that Willett could not be guaranteed any work should the Union win the election.

(b) Foreman Rogers' implied threat, by his circulation among the employees of the magazine article referred to in the Intermediate Report, that if the Union were successful in organizing the employees, the Respondent would close the plant and move elsewhere.

(c) President Pope's statement to employee Rainbolt that if the Union had won the election, Rainbolt would probably have been out of a job.

2. The Trial Examiner found that although the timing was "perhaps suspicious," the Respondent had not violated Section 8 (a) (1) of the Act by its wage increases granted between February and June, 1950. We find merit in the General Counsel's exception to this finding.

On November 15, 1949, an election was conducted among the Respondent's employees, which the Union lost. Following objections by the Union, a hearing was held, pursuant to Board order of January 5, 1950, on February 23, 1950, and the hearing officer issued his report recommending that the election be set aside on April 19, 1950. The election was set aside on June 9, 1950, and a second election was held on July 17, 1950, which the Union also lost.

The increases in question, averaging slightly more than 5 cents per hour, were granted to approximately 122 [4] employees, between the time the hearing on objections was ordered and the date of the second election. In seeking to justify these increases, the Respondent asserts that they were given (1) to make up for increases which had not

[2] The Intermediate Report contains certain minor inadvertences which do not affect the Trial Examiner's ultimate conclusions, or our agreement therewith. It is noted in this connection that the correct spelling of the name of the Respondent's plant superintendent is Mittelstadt; and that the union campaign at the Respondent's plant began in September, not October 1949.

[3] The Trial Examiner, although he included a provision for back pay to James Sage in the remedy section of his report, inadvertently omitted such a provision from his recommended order.

[4] The number of increases was inadvertently stated by the Trial Examiner to be 113, rather than 122.

been granted in the preceding fall, and (2) to raise Respondent's rates to those prevailing in the area.

With respect to (1), it is sufficient to note that wage increases were customarily granted by the Respondent in the fall of the year, and the Respondent's own records show that substantial increases were in fact made in the fall of 1949, in accordance with the Respondent's usual practice. There is thus no persuasive support in the record for the contention that the increases in question were in lieu of normal increases not made.[5] Rather it is clear that they were in addition to the usual increases.

With respect to the Respondent's second contention, namely that the purpose of its increases in the first part of 1950 was also to bring its rates up to those prevalent in the area, we find it too, without merit. As already mentioned, these increases were made between the time of the hearing on objections to the first election and the conduct of the second election, and at a time other than customarily utilized by the Respondent for granting wage increases. Moreover, it appears that the promise to pay going rates was initially made by the Respondent shortly before the first election and was one of the very reasons relied on by the hearing officer for recommending that the first election be set aside. No exceptions were taken to that report and recommendation. Yet the Respondent proceeded to effectuate that promise by the increases here in question, the majority of which were made *after* the hearing officer's report finding the promise to be improper and shortly before the second election.

Under all these circumstances, we believe that the granting of the increases was calculated to affect the employees' decision on the issue of union representation by emphasizing that there was no need for a collective bargaining representative.[6] We therefore find, contrary to the Trial Examiner, that the granting of the increases in the first part of 1950 was violative of Section 8 (a) (1) of the Act.[7]

3. For the reasons fully set forth in the Intermediate Report, we agree with the finding of the Trial Examiner that the discharge of

[5] Indeed, in the prior representation proceeding involving these parties (Case No. 13–RC–941), the granting of increases in late 1949 was urged by the Union as one of the grounds for setting aside the first election, and the Respondent did not, in that case, seriously controvert that increases had been made, but argued rather that they were in accord with its usual practice. After the Board-ordered hearing, the hearing officer found that the 1949 increases had in fact been made in accord with the Respondent's practice, and no exceptions were taken to this finding See *Paramount Textile Machinery Co.*, 90 NLRB No 40 (not reported in printed volumes of Board decisions)

Although the information above referred to is not part of the record herein, it is part of the record in the prior proceeding before the Board, of which we hereby take judicial notice See *J. S. Abercrombie Company*, 83 NLRB 524, petition to set aside order denied, 180 F. 2d 578 (C A. 5).

[6] *Macon Textiles, Inc*, 80 NLRB 1525.

[7] Cf *M H Ritzwoller* v. *N. L. R. B*, 114 F. 2d 432 (C A. 7); *Western Cartridge Co* v. *N. L R B*, 134 F. 2d 240 (C. A. 7); *Joy Silk Mills* v. *N. L R. B.*, 185 F. 2d 732 (C. A. D C)

James Sage by the Respondent, with knowledge of the antiunion motivation of the employees seeking the discharge, was violative of Section 8 (a) (3) and 8 (a) (1) of the Act.

Order

Upon the entire record in this case and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, Paramount Textile Machinery Co., Kankakee, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening that it would have plenty of work if the Union were defeated, but that it could not guarantee any work if Textile Workers Union of America, CIO, or any other labor organization, is chosen as the exclusive bargaining representative of its employees.

(b) Threatening to close its plant, or to move it elsewhere if the above-named labor organization, or any other labor organization, is chosen as the exclusive bargaining representative of its employees.

(c) Threatening employees that they might be without jobs if the above-named labor organization, or any other labor organization, is chosen as the exclusive bargaining representative.

(d) Granting benefits to employees to cause them to refrain from joining, or to abandon membership in, Textile Workers Union of America, CIO, or any other labor organization.

(e) Discouraging membership in Textile Workers Union of America, CIO, or any other labor organization of its employees, by discharging any of them or by discriminating in any other manner in regard to hire or tenure of employment or any term or condition of employment.

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

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

(a) Offer to James Sage full and immediate reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges.

(b) Make James Sage whole in the manner set forth in the section of the Intermediate Report entitled "The Remedy."

(c) Upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records necessary to analyze the amounts of back pay due.

(d) Post at its plant in Kankakee, Illinois, copies of the notice attached hereto and marked "Appendix A."[8] Copies of said notice, to be furnished by the Regional Director for the Thirteenth Region, after having been duly signed by representatives of the Respondent, shall be posted by it immediately upon receipt thereof, and be maintained by it for a period of at least 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 such notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for the Thirteenth 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, we hereby notify our employees that:

WE WILL NOT threaten that we would have plenty of work if the union were defeated, but that we could not guarantee any work if TEXTILE WORKERS UNION OF AMERICA, CIO, or any other labor organization, is chosen as the exclusive bargaining representative of our employees.

WE WILL NOT threaten to close our plant, or to move it elsewhere, if the above-named labor organization, or any other labor organization, is chosen as the exclusive bargaining representative of our employees.

WE WILL NOT threaten that employees may be without jobs if the above-named labor organization, or any other labor organization, is chosen as the exclusive bargaining representative of our employees.

WE WILL NOT grant benefits to employees to cause them to refrain from joining, or to abandon membership in, TEXTILE WORKERS UNION OF AMERICA, CIO, or any other labor organization.

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

WE WILL NOT discourage membership in TEXTILE WORKERS UNION OF AMERICA, CIO, or any other labor organization of our employees, by discharging any of them or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of employment.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join TEXTILE WORKERS UNION OF AMERICA, CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collectively bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

WE WILL offer to James Sage immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay suffered as a result of the discrimination against him.

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

PARAMOUNT TEXTILE MACHINERY CO.,
Employer.

Dated_____ By_____
(Representative) (Title)

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

Intermediate Report

STATEMENT OF THE CASE

Upon a first amended charge filed on July 20, 1950, by Textile Workers Union of America, CIO, herein called the Union, the General Counsel of the National Labor Relations Board, herein called respectively the General Counsel and the Board, by the Regional Director for the Thirteenth Region (Chicago, Illinois), issued his complaint dated April 4, 1951, against Paramount Textile Machinery Company, at Kankakee, Illinois, herein called Respondent, alleging that Respondent had engaged in and was engaging in certain unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat 136, herein called the Act. A copy of the charge, the complaint, and a notice of hearing were duly served upon Respondent and the Union.

With respect to the unfair labor practices the complaint alleged in substance that Respondent: (1) In about December 1950 and January 1951 questioned employees concerning specific union activities in which they had engaged, on or about November 14, 1949, threatened to move its plant if the employees selected the Union as their bargaining agent, on or about November 18, 1949, and April 21, 1950, threatened to close the plant under such conditions, and shortly prior to a second election conducted by the Board granted a wage increase to the employees; and (2) on or about July 20, 1950, discharged James Sage, an employee, and since that time has failed and refused to employ him in the same or equivalent job because of his activities on behalf of the Union, thereby interfering with, restraining, and coercing its employees in the exercise of rights guaranteed by Section 7 of the Act.

Respondent filed an answer dated April 16, 1951, admitting certain allegations of the complaint with respect to the nature of its business, but denying that it had engaged in any unfair labor practices.

Pursuant to notice, a hearing was held on April 24, 25, and 26, 1951, at Kankakee, Illinois, before Horace A. Ruckel, the undersigned Trial Examiner duly appointed by the Chief Trial Examiner. The General Counsel, Respondent, and the Union 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 hearing the complaint was amended to allege further that on or about November 19, 1950, and during the latter part of the following January, Henry Pope, Jr., Respondent's president, threatened employees with loss of their jobs, and on or about the same date in November made a promise of benefit to an employee for the purpose of persuading him not to engage in union activities.

At the conclusion of the hearing the Trial Examiner granted a motion by the General Counsel to conform the pleadings to the proof in formal matters and reserved ruling upon motions of the Respondent to dismiss portions of the complaint and the complaint as a whole. These motions are disposed of by the recommendations hereinafter made. The parties waived oral argument before the Trial Examiner and were granted until May 16, 1951, to file briefs herein. Both the General Counsel and Respondent filed briefs.

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 RESPONDENT

Respondent now and at all times herein mentioned has been an Illinois corporation having its principal offices and manufacturing plant at Kankakee, Illinois, where it is engaged in the manufacture and sale of textile machinery and hosiery drying equipment. Respondent, in the conduct of its business, causes and at all times material herein has caused, large quantities of raw materials to be purchased and transported in interstate commerce to its Kankakee plant from and through States of the United States other than the State of Illinois. During the year 1950 the value of materials so transported was in excess of $25,000, of which dollar volume more than 50 percent was shipped to it from points outside the State of Illinois.

During the same period the value of finished products sold and transported by Respondent was in excess of $75,000, of which dollar volume more than 50 percent was shipped by Respondent from Kankakee to points outside the State of Illinois.

Respondent admits that it is engaged in commerce within the meaning of the Act

II. THE LABOR ORGANIZATION INVOLVED

Textile Workers Union of America, affiliated with Congress of Industrial Organizations, is a labor organization admitting employees of Respondent to membership.

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*

In October 1949 the Union became engaged in organizing the employees of Respondent. James Sage, whose subsequent discharge on July 20, 1950, is hereinafter considered, was elected chairman of the organizing committee shortly after the campaign had begun. On November 15, 1949, a representation election was held under the auspices of the Board which the Union lost. On July 17, 1950, the Union lost a second election.

On November 11, 1949, 4 days prior to the first election, Respondent, over the signature of its president, Pope, mailed a letter to all Respondent's employees which in substance amounted to a general attack upon the Union and urged the employees to vote against it in the election. It is not urged that this letter was violative of the Act. On the following day, November 12, the Union distributed a letter to the employees answering Pope's letter. This letter was signed by Sage and five other members of the organizing committee as well as G. H. Litney, the Union's representative.

During the period between the latter part of November 1949 and March 1950, Paul Schopflin, a material expediter for Respondent and admittedly Respondent's agent for this purpose, acting upon instructions of Pope, visited the homes of all of Respondent's employees. Pope's instructions to Schopflin were to ascertain what complaints the employees had concerning their working conditions and what changes therein they would recommend to correct them, and to state at the same time that he, Pope, was not interested in union matters and that he did not care how anyone voted. Since Pope, according to Schopflin, felt that the Union's letter of November 12 cast a personal reflection upon his honesty and truthfulness, he told Schopflin that he did not care whether Schopflin included the six signers in his visits.

Schopflin, however, called upon the six employees along with the others, and he admitted that he discussed the letter with them, stating that he believed they did not mean some of the personal statements which it contained and that he doubted whether they themselves wrote it. The clear implication of this latter remark is, and the undersigned finds, that Litney was responsible for its phraseology and that the six employees only affixed their signatures. The General Counsel contends that Respondent's inquiry as to the authorship of this letter constituted interference with the employees' concerted activity. Respondent urges that Schopflin's interrogations were motivated merely by Pope's feeling that he had been reflected upon personally and by his desire to find out whether the employees felt toward him the way the letter indicated.

Respondent's letter of November 11, consisting of three pages, was a comprehensive and detailed statement of reasons why its employees should vote against the Union in the election. Among other things, it specifically accused the Union of making "false accusations, and flowery promises." The Union's reply the following day was a paragraph by paragraph answer to Respondent's letter, and attempted to refute each and every allegation in it. It similarly accused Pope of making false statements, some of which it characterized as "bunk" and "baloney." Both of these letters were caustic, but hardly more. The Trial Examiner fails to

find in the Union's letter anything other than a vigorous answer to that of Respondent. It set forth the reasons why the employees should vote for the Union as Respondent's letter set forth the reasons why they should vote against it. There is nothing in it which could remotely injure Respondent in the conduct of its business, and such was not its intent.

Schopflin's specific interrogation of the six employees as to whether they had composed the letter, with its implication that if they had not the representative of the Union had, was an interrogation of these employees as to their activities on behalf of the Union. Such interrogations the Board has consistently found to constitute interference with the employees' collective activities.[1]

On November 11, 1949, 4 days prior to the first election, Lloyd Willett complained to his foreman, Ed Rogers, that other employees had received a higher raise than he had, referring to a number of increases which had just been given employees, and added that if a satisfactory explanation was not given he could be put down for a vote for the Union. On the following Monday, the day previous to the election, Rogers approached Willett and asked him in effect whether it would make any difference in the way Willett felt if Rogers talked to Pope and obtained a further wage increase for Willett. Upon the latter's replying that he wanted something more definite to go on, and that he would not tell Rogers how he would vote in the election, Rogers told Willett that he had better think it over carefully because the Company would have plenty of work to do if the Union was defeated but if it won he could not promise Willett one day's work. Willett's testimony as to the above conversation was not contradicted, and the undersigned finds that Rogers made in substance the statements attributed to him. His statement that Respondent would have plenty of work if the Union was defeated but that no work could be guaranteed Willett if it won the election constitutes the threat of the loss of employment, and the undersigned so finds.

It is not disputed that on the same day Rogers circulated among the employees on the first floor of the plant, handed them a copy of a magazine "Hosiery Industry Weekly," and called their attention to a column entitled "Odd Lots," saying that Pope would like to have them read it. The column in question states that the result of the Union's campaign in northern plants has had the result of causing many of them to move to Southern States, and that if the campaign were wholly successful the Union would have many new members with no mills in which to work. The undersigned finds that the circulation of this column among the employees constituted an implied threat to close Respondent's plant if the Union were successful in organizing its employees. As such, it was violative of the Act.

Approximately 1 week after the first election, and pursuant to Respondent's invitation, employee Rainbolt had a conversation with Pope in his office. After some talk concerning the Union's letter of November 12, which Rainbolt had signed, Pope asked him if he felt that he was doing the "right thing" to continue to work for a person such as the letter described, adding that if the Union had won the election Rainbolt probably would have been out of a job. Pope's statement clearly implies that if and when the Union won an election one or more employees would lose their jobs as a result. It is thus violative of the Act.

Early in 1950, between the two elections, Pope instructed Plant Superintendent Mittelstatt to conduct an investigation and compare the job rates paid Respond-

[1] See *Standard-Coosa-Thatcher Company*, 85 NLRB 1358 and cases cited therein. In this case the Board expressly held that interrogation is not protected by Section 8 (c) of the amended Act as an expression of "views, arguments, or opinion" within the meaning of that provision. The Board's rationale is that "a subtle pressure created by interrogation results from the realization by the interrogated employee that his employer is *concerned* with his union affiliation or activities and will, therefore, act to the employee's detriment. [Emphasis in original.]

ent's employees with similar job rates elsewhere in Kankakee. Upon Mittelstatt's submission of his report, Respondent put into effect rate increases for approximately 113 employees. The General Counsel contends that the granting of these raises was intended to dissuade the employees from engaging in union activities, and cites as other evidence of this intention the fact that wage raises for the preceding years of 1947, 1948, and 1949 occurred during the fall months of those years, and the further fact that in a notice to employees dated April 21, 1950, Respondent stated: "We have paid and are going to continue to pay in the future the going rates in Kankakee for comparable work in comparable jobs." The timing of these 1950 raises is perhaps suspicious, but the undersigned finds it no more than that, and that they were made for legitimate business reasons and not in an attempt to thwart organization of the employees.

B. *The discharge of James Sage*

With the exception of a 2-year period between 1942 and 1944, Sage was an employee of Respondent from January 1941 until his discharge on July 20, 1950. As has been stated, in October 1949 Sage was elected chairman of the Union's organizing committee It is not disputed that Respondent had knowledge of Sage's activity in this respect.

During the period between the two elections a group of employees led by Leo Ostrowski and including Emerson Hammer, Urbain Fortier, John Harris, Tom Rodgers, and Martin Pushay, circulated a petition among the employees, which was later given Respondent, stating that they did not want union organization of the plant and that they were satisfied with their working conditions. On February 24, 1950, the day following a hearing upon the Union's objections to the first election, Rogers, foreman of the first floor where Sage worked, reported to Mittelstatt that a number of employees on that floor, including the above named, wanted to know what Respondent was going to do about Sage Mittelstatt got in touch with Vice-President William Pope and Albert J. Smith, Respondent's attorney, and as a result Smith, Mittelstatt, and Rogers went to the plant and called in Ostrowski, Fortier, Pushay, Rodgers, and Hammer. Smith, who did most of the interviewing, asked them to state their complaint against Sage. Ostrowski, who acted as spokesman, said that the men on the first floor were "tired of Sage and his insulting remarks and his trouble making" and they wanted to get rid of him, that "either he goes out or we go out." The other employees present agreed with this. Smith asked if the reason they didn't like Sage was because of his union activities, to which Ostrowski replied that it was not, that they were merely tired of his insulting remarks. Smith asked the employees to continue to work and let the matter blow over.

Following this meeting, and up until after the second election on July 17 and Sage's discharge on July 20, these 5 employees continued to make complaints to management as to Sage They were to the general effect that they were tired of Sage's making insulting remarks to them and using bad language. Following this, Rogers told Mittelstatt that the employees were "putting pressure" on him to discharge Sage.

Fortier testified that he asked Rogers what was to be done with Sage because they had had "quite a lot of trouble" with him. He did not specify what the trouble consisted of. Rodgers testified that he asked Respondent to "do something" about Sage because many of the employees were complaining about extra work they were having to do because of him. Rodgers, however, did not specify any particular incident in which Sage caused them to do more work. On one occasion, according to Rodgers, Sage accused him of "sucking for a foreman's job." Hammer's complaint was that on that occasion Sage asked him how he would vote in the second election, and apparently upon receiving an unfavorable

answer, added: "Well, you had better not vote at all." Casino, another employee, testified that on July 19, the day before Sage's discharge, he asked Rogers what was to be done with Sage, giving a reason for his dislike of Sage that on one occasion the latter accused him of "selling out" to Respondent for $200, apparently the cost of furnishing equipment for a baseball team organized during the period of the Union's organizing. The testimony of Ostrowski was that Sage similarly accused him of "selling out for a baseball team," and that he resented Sage's comments concerning the circulation of Ostrowski's antiunion petition, during which Sage asked him if he was putting in his time at this without "getting anything for it," and Ostrowski asked Sage what the Union was paying him for his organizing.

John Harris testified that in June 1950 he asked Rogers what was going to be done about Sage, giving as a reason for his objection to that individual that on one occasion Sage had told him that 90 percent of the employees had signed up for the Union, which statement Harris believed not to be true.

It is clear that each of the employees who testified as above against Sage were opposed to the Union The conversations between them and Sage concerning the Union were such as can normally be expected to occur between opposing factions in an election campaign. It is noted that none of these witnesses testified that they bore any grievance against Sage during the 7 years they had worked with him prior to the advent of the Union. Casino admitted while testifying that he asked Rogers "now that the election is over, what are [you] going to do about Mr. Sage?" and "are [you] going to get rid of him or is he going to stay here?" This clearly related Sage's tenure of employment to the loss of the election, as if one depended upon the other.

On July 19, the day before Sage's discharge, Rogers reported to Mittelstatt: "I don't know what we are going to do—we are going to have to do something. The workers are putting the pressure on me something terrible downstairs."

Respondent admits, indeed it asserts, that it discharged Sage because of this pressure by antiunion employees, although it contends that this pressure originated in the employees' personal dislike of Sage. However, at the hearing it asserted that it had had complaints as to Sage's work during the period between elections.

That this pressure was the determinating factor is seen by the testimony of Superintendent Mittelstatt which was that even if Sage's work had been satisfactory "I think we would have had to lay him off," and by the further fact that when Sage was discharged nothing was said about the quality of his work. In view of the fact that the complaints of antiunion employees as to Sage and their threat to strike unless something was done about him was the motivating reason for the discharge, the undersigned does not find it necessary to consider Sage's efficiency as an employee.

While it is understandable that Respondent feared the economic consequences of a strike by antiunion employees if Sage, the leader of the Union, was continued in his employment after the Union lost the second election, such a fear of economic consequences has been repeatedly held by the Board not to constitute a valid reason for discharge.[2]

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[2] See *Majestic Metal Specialties, Inc*, 92 NLRB 1854. In this case the Board found that two employees were discriminatorily transferred to another department because of the hostility of an antiunion group of employees who demonstrated their hostility toward one employee by evicting him from the plant and toward the other by engaging in a sit-down strike. The Board said: "It is well established that an employer is under a duty to insure that its right to hire, discharge, or transfer is not delegated to any antiunion or prounion group of employees. This duty exists even where the failure to yield to employee pressure might cause disruption to the employer's operations," citing *Randolph Corporation*, 89 NLRB 1490, and other cases.

The undersigned finds that Respondent discharged James Sage on July 20, 1950, because of his activity in behalf of the Union and not for any legitimate business reason. In doing so, Respondent discouraged membership in the Union and interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in Section III, above, occurring in connection with its operations as 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 Respondent has engaged in unfair labor practices the Trial Examiner will recommend that it cease and desist therefrom and take certain affirmative action which will effectuate the policies of the Act.

Having found that Respondent has discriminated in regard to the hire and tenure of employment of James Sage, it will be recommended that Respondent offer him immediate and full reinstatement to his former or substantially equivalent position [3] without prejudice to his seniority and other rights and privileges, and make him whole for any loss of pay he may have suffered by reason of Respondent's discrimination against him, by payment to him of a sum of money equal to the amount of wages he would have earned from July 20, 1950, the date of his discharge, to the date of the offer of reinstatement. Loss of pay will be computed on the basis of each separate calendar quarter or portion thereof during the period from July 20, 1950, to the date of a proper offer of reinstatement. The quarterly periods, herein called quarters, shall begin with the first day of October, January, April, and July. Loss of pay shall be determined by deducting from a sum equal to that which he normally would have earned for each quarter or portion thereof, his net earnings,[4] if any, in other employment during that period. Earnings in one particular quarter shall have no effect upon the back-pay liability for any other quarter.[5]

In accordance with the *Woolworth* decision it will be recommended that Respondent, upon reasonable request, make available to the Board and its agents all records pertinent to an analysis of the amount due as back pay.

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

CONCLUSIONS OF LAW

1. Textile Workers Union of America, affiliated with Congress of Industrial Organizations, 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 James Sage, thereby discouraging membership in a labor organization, Respondent has engaged in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

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[3] In accordance with the Board's consistent interpretation of the term, the expression "former or substantially equivalent position" is interpreted to mean "former position whenever possible and if such position is no longer in existence, then to a substantially equivalent position." See *The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch*, 65 NLRB 827.

[4] *Crossett Lumber Co.*, 8 NLRB 440.

[5] *F. W. Woolworth Company*, 90 NLRB 289.

3. By interfering with, restraining, and coercing its employees in the rights guaranteed in Section 7 of the Act, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (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.

5. Respondent has not, by granting wage raises to its employees, violated the Act.

[Recommended Order omitted from publication in this volume.]

G. W. THOMAS DRAYAGE & RIGGING CO., INC. *and* INTERNATIONAL ASSOCIATION OF MACHINISTS

MILLWRIGHTS LOCAL UNION NO. 102, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, AFL, *and* INTERNATIONAL ASSOCIATION OF MACHINISTS. *Cases Nos. 20–CA–541 and 20–CB–181. December 28, 1951*

Decision and Order

On August 6, 1951, Trial Examiner A. Bruce Hunt issued his Intermediate Report in the above-entitled proceedings, 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 thereto. Thereafter the Respondent Union filed exceptions to the Intermediate Report and a supporting brief.

The Board [1] has reviewed the rulings made by 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, the brief, and the entire record in these cases, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

Order

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

I. G. W. Thomas Drayage & Rigging Co., Inc., its officers, agents, successors, and assigns, shall:

(a) Cease and desist from:

(1) Encouraging membership in Millwrights Local Union No. 102, United Brotherhood of Carpenters & Joiners of America, AFL, or

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