WHITE OAK PARK, AETNA CONSTRUCTION, INC., BEN WEINGART AND LOUIS H. BOYAR AND WILBER F. MERRICK

LOCAL NO. 300, INTERNATIONAL HOD CARRIERS, BUILDING AND COMMON LABORERS UNION OF AMERICA, A. F. OF L. *and* WILBER F. MERRICK. *Cases Nos. 21-CA-866 and 21-CB-282. February 29, 1952*

Decision and Order

On July 13, 1951, Trial Examiner C. W. Whittemore issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent Employers and the Respondent Union 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 Employers and the Respondent Union filed exceptions to the Intermediate Report and supporting briefs. The Respondent Employers also requested oral argument. The request is denied as the record, in our opinion, adequately presents the issues and the positions of the parties.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner to the extent, and with the modifications, indicated below.

1. We agree with the Trial Examiner that in determining the commerce question in this case the Board should consider in the aggregate the operations of Aetna Construction, Inc., White Oak Park, Westchester Park, and Lakewood Park. These corporations, all operating in the construction industry, are controlled by Respondent Individuals Weingart and Boyar,[1] and some transfer of employees between the corporations has occurred. Upon the basis of the aggregate purchases in 1950 of these four corporations, set forth in the Intermediate Report, we find that the Respondent Employers are engaged in commerce within the meaning of the Act. We further find, in view of the fact that in 1950 these corporations purchased within the State of California goods originating outside the State which amounted in value to more than $1,000,000, that it will effectuate the purposes of the Act to assert jurisdiction in this case.[2]

[1] We amend the Intermediate Report to find that Weingart and Boyar own two-thirds of the capital stock of Lakewood Park.

[2] See *Galyan's Super Market, Inc.*, 92 NLRB 298; *Paul W. Speer, Inc.*, 94 NLRB 317; *Dorn's House of Miracles, Inc.*, 91 NLRB 632.

2. We agree with the Trial Examiner that Wilbur F. Merrick was discriminatorily discharged because he would not join the Respondent Union. We do not agree entirely with the Trial Examiner's findings of responsibility or his recommended remedy for this unfair labor practice.

As the Respondent Individuals Weingart and Boyar were not served with a copy of the charge in this proceeding until more than 6 months after the conduct occurred which is charged as an unfair labor practice, we do not adopt the Trial Examiner's findings and recommendations concerning them. In our opinion Section 10 (b) of the Act requires us to dismiss the complaint as to Weingart and Boyar.[3] We find, however, that the Respondent Employer White Oak Park, the corporation which employed Merrick at the time of his discharge, and the Respondent Employer Aetna Construction, Inc., a corporation which operates in the same industry and under the same control as White Oak Park, are responsible for the unlawful discharge of Merrick and have thereby violated Section 8 (a) (3) and 8 (a) (1) of the Act. We also find that the Respondent Union by causing the unlawful discharge of Merrick violated Section 8 (b) (2) and 8 (b) (1) (A) of the Act.

We shall order the Respondent Employers White Oak Park and Aetna Construction, Inc., to offer Merrick immediate and full reinstatement to his former position or, if it is not in existence, to one substantially equivalent, without prejudice to his seniority or other rights and privileges.[4] We shall order the Respondent Employers White Oak Park and Aetna Construction, Inc., and the Respondent Union jointly and severally to make Merrick 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 which he normally would have earned from the date of his discharge to the date of the Respondent Employers' offer of reinstatement, less his net earnings during said period.[5] The Respondent Union may terminate its liability for further accrual of back pay to Merrick by notifying the Respondent Employers White Oak Park and Aetna Construction, Inc., in writing that it has no objection to Merrick's reinstatement. The Respondent Union shall not thereafter be liable for any back pay accruing after 5 days from the giving of such notice. Back pay shall be computed in the manner set forth in the Intermediate Report.

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[3] We do not here pass upon the question of the possible liability of Weingart and Boyar, in their capacities as successors to White Oak Park and Aetna Construction, Inc, to effectuate the Order issued herein against the latter.

[4] *The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch,* 65 NLRB 827.

[5] *Crosset Lumber Co*, 8 NLRB 440.

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 that:

I. The Respondent Employers White Oak Park and Aetna Construction, Inc., their officers, agents, successors, and assigns shall:

(a) Cease and desist from:

(1) Encouraging membership in Local No. 300, International Hod Carriers, Building and Common Laborers Union of America, A. F. of L., or in any other labor organization of their employees, by discharging any of the employees or discriminating in any other manner in regard to the employees' hire or tenure of employment, or any terms or conditions of employment.

(2) In any like or related manner interfering with, restraining, or coercing their employees in the exercise of the right to engage in or to refrain from engaging in activities guaranteed employees by Section 7 of the Act, 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 effectuate the policies of the Act:

(1) Offer to Wilber F. Merrick immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges.

(2) Upon request, make available to the National Labor Relations 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 for a determination of the amounts of back pay due and the right of reinstatement under the terms of this Order.

(3) Post at their operations, copies of the notice attached hereto marked "Appendix A."[6] Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by the Respondent Employers' representatives, be posted immediately upon receipt thereof, and maintained by them 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 Employers to insure that said notices are not altered, defaced, or covered by any other material.

[6] In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

(4) Notify the Regional Director for the Twenty-first Region, in writing, within ten (10) days from the date of this Order what steps they have taken to comply herewith.

II. Respondent Union, Local No. 300, International Hod Carriers, Building and Common Laborers Union of America, A. F. of L., its officers, representatives, and agents, shall:

(a) Cease and desist from:

(1) Restraining or coercing employees of the Respondent Employers White Oak Park and Aetna Construction, Inc., their successors or assigns, in the exercise of the right to refrain from any or all of the concerted activities guaranteed by Section 7 of the Act, 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 by Section 8 (a) (3) of the Act.

(2) In any manner causing or attempting to cause the Respondent Employers White Oak Park and Aetna Construction, Inc., their officers, agents, successors, or assigns to discriminate against their employees in violation of 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, in writing, the Respondent Employers White Oak Park and Aetna Construction, Inc., that it withdraws its objections to the employment of Wilber F. Merrick by them and requests them to offer him immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges.

(2) Post in conspicuous places in its business office, and where notices to its members are customarily posted, copies of the notice attached hereto and marked "Appendix B".[7] Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall after being duly signed by an official representative of the Respondent Union, be posted by it immediately upon receipt thereof and maintained by it for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by it to insure that said notices are not altered, defaced, or covered by any other material.

(3) Mail to the Regional Director for the Twenty-first Region signed copies of the notice attached hereto and marked "Appendix B," for posting, the Respondent Employers White Oak Park and Aetna Construction, Inc., willing, at the operations of these employers in places where notices to their employees are customarily posted. Copies of said notice, to be furnished by the Regional Director for the

[7] In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

Twenty-first Region, shall, after being signed as provided above, be forthwith returned to the said Regional Director for said posting.

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

III. White Oak Park and Aetna Construction, Inc., their officers, agents, successors, and assigns, and Local No. 300, International Hod Carriers, Building and Common Laborers Union of America, A. F. of L., its officers, agents, representatives, successors, and assigns, shall jointly and severally make whole Wilber F. Merrick in the manner set forth above for any loss of pay he may have suffered by reason of the Respondents' discrimination against him.

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed as to the Respondent Individuals Ben Weingart and Louis H. Boyar.

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

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 our employees that:

WE WILL NOT encourage membership in LOCAL NO. 300, INTERNATIONAL HOD CARRIERS, BUILDING AND COMMON LABORERS UNION OF AMERICA, A. F. OF L., or in any other labor organization of our employees by discharging any of our employees or discriminating in any other manner in regard to their hire or tenure of employment, or any terms or conditions of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the right to engage in or to refrain from engaging in any or all of the activities guaranteed them by Section 7 of the Act, 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 offer Wilber F. Merrick immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges, and we will make him whole for any loss of pay suffered as a result of the discrimination against him.

All our employees are free to become or remain, or 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.

WHITE OAK PARK,
Employer.

By _____
(Representative) (Title)

AETNA CONSTRUCTION, INC.,
Employer.

By _____
(Representative) (Title)

Dated _____

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 LOCAL NO. 300, INTERNATIONAL HOD CARRIERS, BUILDING AND COMMON LABORERS UNION OF AMERICA, A. F. OF L., AND TO ALL EMPLOYEES OF WHITE OAK PARK AND AETNA CONSTRUCTION, INC.

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 restrain or coerce employees of WHITE OAK PARK and AETNA CONSTRUCTION, INC., their successors or assigns, in the exercise of their right to refrain from any or all the concerted activities guaranteed to them by Section 7 of the Act, 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 NOT in any manner cause or attempt to cause the above-named employers, their officers, agents, successors, or assigns, to discriminate against their employees in violation of Section 8 (a) (3) of the Act.

WE WILL make Wilbert F. Merrick whole for any loss of pay suffered because of the discrimination against him.

LOCAL NO. 300, INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA, A. F. OF L.,
Labor Organization.

By _____
(Representative) (Title)

Dated _____

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

Upon charges and amended charges duly filed by Wilber F. Merrick, an individual, in Case No. 21–CA–866 against White Oak Park, Aetna Construction, Inc., Ben Weingart, and Louis H. Boyar,[1] herein called the Respondent Employers, and in Case No. 21–CB–282 against Local No. 300, International Hod Carriers, Building and Common Laborers Union of America, A. F. of L., herein called the Respondent Union, the General Counsel of the National Labor Relations Board, herein respectively called General Counsel and the Board, by the Regional Director for the Twenty-first Region (Los Angeles, California), on May 14, 1951, consolidated the cases for hearing and issued a complaint, alleging that the Employers had engaged in and were engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act, that the Union had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (b) (1) (A) and (2) of the Act, and that said unfair labor practices affected commerce within the meaning of Section 2 (6) and (7) of the Act. Copies of the charges, the order consolidating the cases, the complaint, and notice of hearing were duly served upon the Respondents and Merrick.

With respect to unfair labor practices the complaint alleges, in substance, that: (1) certain of the Respondent Employers in August 1950, discharged employee Merrick because he was not a member of the Respondent Union; and (2) that the Union caused the Employers to discharge Merrick because he was not a member of the Union.

Answers were duly filed by the Respondents in which they denied engaging in the unfair labor practices alleged.

Pursuant to notice, a hearing was held in Los Angeles, California, on June 18, 1951, before the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The General Counsel and the Respondents were represented by counsel, participated in the hearing, and were afforded full opportunity to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues. At the conclusion of the hearing ruling was reserved upon motions by the Respondents to dismiss the complaint. Disposition of these motions is made in the findings, conclusions, and recommendations appearing below.

At the close of the hearing a discussion, in the nature of oral argument, was had, and opportunity was given for filing briefs. A brief has been received from counsel for the Respondent Union.

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

Findings of Fact

I. THE BUSINESS OF THE EMPLOYERS

Ben Weingart and *Louis H. Boyar* are individuals engaged in the business of acquiring tracts of undeveloped land in the vicinity of Los Angeles, California, laying out and constructing streets and rights-of-way, subdividing such tracts into individual parcels, erecting residence and other buildings on such individual parcels, and selling the land and buildings to purchasers.

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[1] Certain changes have been made in the title of the case, in conformity with motions granted during the hearing: to conform the pleadings to the proof and to strike therefrom the name of Harold Larson.

They finance these operations by forming a separate corporation for each development. In the course and conduct of their business Weingart and Boyar have organized, managed, and controlled the following California corporations: Aetna Construction, Inc., White Oak Park, Westchester Park, and Lakewood Park.

Aetna Construction, Inc. Aetna is engaged in the business of general contracting. Weingart and Boyar own all of its outstanding stock and since early in 1949 have controlled its operations. In 1950 Aetna purchased building materials, consisting principally of Douglas fir, from a California supplier, valued at about $4,100, of which about 80 percent originated from points outside the State of California.

White Oak Park. This corporation, formed in June 1949, existed until the latter part of December 1950. It was controlled by Weingart and Boyar. During its existence it erected 341 residences, valued at about $3,500,000. In 1950 this corporation purchased building materials, of the same nature and from the same supplier noted above, valued at about $150,500, of which about 80 percent originated from points outside the State of California.

Westchester Park. This corporation, formed in July 1949, existed until September 1950. It was controlled by Weingart and Boyar. The value of the completed development was about $3,500,000. During 1950, the corporation purchased building materials, of the same nature and from the same supplier noted above, valued at about $254,300, of which about 80 percent originated from points outside the State of California.

Lakewood Park. This corporation, caused to be formed by Weingart and Boyar in January 1950, is wholly owned by these two individuals. It is engaged in the construction of about 7,300 residences and other structures. The value of the development, when completed and as estimated by Boyar, will be more than $50,000,000. During 1950 the corporation purchased building materials, of the same nature and from the same supplier noted above, valued at about $6,614,700, of which about 80 percent originated from points outside the State of California.

At the time of the discharge of Merrick, in August 1950, three of the above-described corporations were operating: Aetna, White Oak Park, and Lakewood Park. Development of Westchester Park, according to counsel for the Respondent Employers, was completed shortly before operations at White Oak Park were begun.

In August 1950, H. D. Hoon was general superintendent at the White Oak Park development. At the time of the hearing he was connected with Lakewood Park.

In November 1949, Merrick was employed as a guard at Westchester Park by the chief of guards, Todd Moss, now deceased. Upon completion of this development Merrick was, in effect, transferred by Moss to similar duties at White Oak Park, where he was employed at the time of his discharge, which is the major issue in these proceedings.

Conclusions as to Jurisdiction

It is General Counsel's contention, opposed by the Respondents, that in determining the question of commerce and of exercising its jurisdiction the Board should consider the operations controlled by Weingart and Boyar, described above, in the aggregate. The Trial Examiner finds merit in General Counsel's position.

It appears that here the nature of the enterprise or industry—admittedly owned and controlled by Weingart and Boyar, is the determining factor. That for each development a new corporation is set up and later dissolved seems

to the undersigned to be immaterial to the issues raised under the Act. Ownership and directing control were and are the same during the period material in these proceedings; it is established that Hoon, as general superintendent at one operation, moved upon its completion to another, and that Merrick, as a guard, was transferred by the same chief of guards from one to another development of Weingart and Boyar.

Considering in the aggregate the 1950 purchases of the Respondent Employers, originating outside the State of California, the Trial Examiner concludes and finds that the Respondent Employers are, and have been during the period material, engaged in commerce within the meaning of the Act. He is further of the opinion that the policies of the Act would be effectuated by the Board's assertion of jurisdiction.

II. THE LABOR ORGANIZATIONS INVOLVED [2]

Local No. 300, International Hod Carriers, Building and Common Laborers Union of America, A. F. of L., is a labor organization admitting to membership employees of the Respondent Employers.

III. THE UNFAIR LABOR PRACTICES

There is little dispute as to the issue of Merrick's discharge. On August 1, 1950, Business Agents Micelli and Quevado of the Union came to the White Oak Park development and informed General Superintendent Hoon and Chief of Guards Moss that all watchmen must belong to Local 300. Hoon's testimony is unchallenged that "They intended to have these men join 300 or they would have a picket line on the job the next morning." Hoon thereupon instructed Moss to have his men "sign up with Local 300."

In the presence of the union officials Moss telephoned to Merrick, then employed as a night watchman at White Oak Park, and told him he would have to join the Union if he wanted to continue to work. Merrick replied that he would not join. Moss then told him that he would have to replace him with another man that night. Since then Merrick has not been offered reinstatement by any of the Respondent Employers.

No evidence was offered to show that any agreement, legal or otherwise, oral or written, existed between the parties requiring membership in the Union.

The Trial Examiner concludes and finds that the Respondent Employers discriminatorily discharged Merrick on August 1, 1950, because he would not join the Respondent Union, thereby encouraging membership in the Union, in violation of Section 8 (a) (3) of the Act, and interfering with, restraining, and coercing employees in the exercise of rights guaranteed by the Act.

The Trial Examiner further concludes and finds that the Respondent Union, through its business agents, caused the Respondent Employers discriminatorily to discharge Merrick in violation of Section 8 (a) (3), thereby itself violating Section 8 (b) (2) of the Act. By such conduct the Respondent Union restrained and coerced employees in the exercise of rights guaranteed by the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondents set forth in Section III, above, occurring in connection with the operations of the Employers, described in Section I, above,

[2] The complaint alleges that in addition to the labor organization described in this section two others are labor organizations within the meaning of the Act: Local No. 1, American Federation of Guards, and Local No. 193, Building Service Employees International Union, A. F. of L Not only is the proof insufficient for the Trial Examiner to base an accurate finding as to these two organizations, but only Local No 1, of which Merrick said he was a member, appears even incidentally involved in these proceedings.

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 Respondents engaged in unfair labor practices the Trial Examiner will recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Since it appears that White Oak Park, as a corporation, has been dissolved since the commission of unfair labor practices, no recommendation as to it will be made. Lakewood Park, although now being operated by Weingart and Boyar, is not named in the complaint. Aetna Construction, Inc., although a corporate creature still functioning under the control of Weingart and Boyar, appears to have been involved only as part of the entire enterprise set up and directed by these two individuals Weingart and Boyar are, and have been, the prime and controlling individuals in the development enterprise with which this proceeding is concerned. Accordingly it will be recommended that the Respondent Employers Weingart and Boyar offer Merrick immediate and full reinstatement to his former position or one substantially equivalent, without prejudice to his seniority or other rights and privileges.[3] It will likewise be recommended that the Respondents Boyar and Weingart and the Respondent Union jointly and severally make Merrick 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 which he normally would have earned from the date of his discharge on August 1, 1950, to the date of the Respondent Employers' offer of reinstatement, less his net earnings during said period.[4] The Respondent Union may terminate its liability for further accrual of back pay to Merrick by notifying the Respondents Weingart and Boyar in writing that it has no objection to Merrick's reinstatement. The Respondent Union shall not thereafter be liable for any back pay accruing after 5 days from the giving of such notice. Absent such notification, the Respondent Union shall remain jointly liable with the Respondent Employers for all back pay to Merrick that may accrue until Merrick is offered reinstatement.

For the reasons stated in *F. W. Woolworth Company*,[5] the loss of pay on the part of Merrick shall be computed on the basis of each separate calendar quarter or portion thereof during the period from the discriminatory discharge to the date of a proper offer of reinstatement. The quarterly periods shall begin with the first day of January, April, July, and October. Loss of pay shall be determined by deducting from a sum equal to that which Merrick normally would have earned for each such quarter or portions thereof, his net earnings, 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 The Respondent Employers, upon request, shall make available to the Board and its agents all pertinent records.

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

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[3] 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, 497–98.

[5] 90 NLRB 289.

CONCLUSIONS OF LAW

1. The Respondents Ben Weingart, Louis H. Boyar, and Aetna Construction, Inc., are engaged in activities affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

2. The Respondent Union, Local No. 300, International Hod Carriers, Building and Common Laborers Union of America, A. F. of L., is a labor organization within the meaning of Section 2 (5) of the Act.

3. By discriminating with respect to the hire and tenure of employment of Wilbur F. Merrick, thereby encouraging membership in the Respondent Union, Respondent Employers had engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

4. By interfering with, restraining, and coercing their employees in the exercise of rights guaranteed by Section 7 of the Act, the Respondent Employers have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

5. By causing the Respondent Employers to discriminate against an employee in violation of Section 8 (a) (3) of the Act, the Respondent Union has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (b) (2) of the Act.

6. By restraining and coercing employees in the exercise of rights guaranteed by Section 7 of the Act, the Respondent Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

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

[Recommendations omitted from publication in this volume.]

METALLIC BUILDING COMPANY (A PARTNERSHIP) *and* HUGO S. BAKER, ET AL. *Case No. 39–CA–59. February 29, 1952*

Decision and Order

On March 20, 1950, Trial Examiner Hamilton Gardner issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged 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 also found that the Respondent had not engaged in certain other unfair labor practices. Thereafter, the Respondent and the General Counsel filed exceptions to the Intermediate Report and supporting briefs.[1]

On June 13, 1950, the Board reopened the record and remanded the case to the Trial Examiner for the limited purpose of a further hearing to adduce additional evidence with regard to the commerce facts involved. On December 26, 1951, a stipulation by the parties, con-

[1] The Respondent's request for oral argument is hereby denied because the record and the exceptions and briefs, in our opinion, adequately present the issues and the positions of the parties.