2. By inducing and encouraging employees of Sound Shingle Co. to refuse in the course of their employment to perform work for their Employer, an object thereof being to force and require Sound Shingle Co. to cease doing business with North Shore Shingle Company, Ltd., and other Canadian shingle manufacturers, the Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (b) (4) (A) of the Act.

3. 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.]

## Appendix A

NOTICE

TO ALL MEMBERS OF EVERETT LOCAL 2580 SHINGLE WEAVERS UNION AND TO ALL MEMBERS OF CONSTITUENT LOCALS OF WASHINGTON-OREGON SHINGLE WEAVERS' DISTRICT COUNCIL

Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our members that:

WE WILL NOT engage in or induce or encourage the employees of SOUND SHINGLE Co., Marysville, Washington, or of any other employer, to engage in a strike or a concerted refusal in the course of their employment to perform services for such an employer where an object thereof is to require SOUND SHINGLE Co., or any other employer, to cease doing business with NORTH SHORE SHINGLE COMPANY, LTD., or any other Canadian shingle manufacturer.

WE WILL NOT for the above-proscribed object interfere with the right of any member to work for SOUND SHINGLE Co., if offered employment, and will not for that object prejudice the rights, privileges, and standing of any member in our organization.

WASHINGTON-OREGON SHINGLE WEAVERS' DISTRICT COUNCIL,
EVERETT LOCAL 2580 SHINGLE WEAVERS UNION,
By _____
(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.

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MELVIN R. SMITH AND LEIGHTON G. EVERLY, CO-PARTNERS, D/B/A SERVICE PARTS COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL NO. 1491, AFL. *Case No. 19-CA-631. December 19, 1952*

## Decision and Order

On July 31, 1952, Trial Examiner William E. Spencer 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. Thereafter, the Respondent filed exceptions to the Intermediate Report, and a supporting brief.

The Board[1] has reviewed the rulings of the Trial Examiner 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 this case and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions:

The Trial Examiner found, and we agree, that the Respondent, by certain statements and actions, detailed in the Intermediate Report, violated Section 8 (a) (1), 8 (a) (3), and 8 (a) (5) of the Act. The Respondent, in substance, contends, among other things, that its conduct, if unlawful, was "fully corrected" by its subsequent suggestion that a consent election be conducted and by its subsequent reinstatement of discriminatorily discharged employees, without loss of pay. We find no merit in these contentions.

As stated in the Intermediate Report, the Respondent, in February, 1952, threatened its employees with economic reprisals in the event of union representation. Subsequently, on March 10, 1952, immediately after the Union requested recognition, the Respondent interrogated its employees concerning their union affiliation and, of the five employees in the appropriate unit, dismissed the four who admitted such affiliation. Under these circumstances, it is clear, and we find, that the Respondent's proposal, on March 11, 1952, for a consent election was not motivated by a good-faith doubt as to the Union's representative status, but rather by a rejection of the collective bargaining principle.[2] We further find that the Respondent's reinstatement, later on March 11, 1952, of the discriminatorily discharged employees, with no loss of pay, did not serve to neutralize its prior unlawful conduct.[3]

## Order

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, Melvin R. Smith and Leighton G. Everly, copartners, doing business as Service Parts Company, Boise, Idaho, their agents, successors, and assigns, shall:

[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, Styles, and Peterson].

[2] *Dismuke Tire and Rubber Company, Inc.*, 93 NLRB 479; see *Sam Zall Milling Co.*, 94 NLRB 1749, 1751.

[3] Cf. *N. L. R. B. v. Oertel Brewing Co. et al.*, 197 F. 2d 59 (C. A. 6), enforcing 93 NLRB 530, and *William A. Mosow*, 92 NLRB 1727.

1. Cease and desist from:

(a) Refusing to bargain collectively with the Union as the exclusive representative of all its employees in the appropriate unit, as found in the Intermediate Report and set forth in Appendix A herein, with respect to rates of pay, wages, hours of employment, and other conditions of employment.

(b) Discouraging membership in the Union, or any other labor organization of its employees, by discharging any of its employees, or by discriminating in any manner in regard to their hire or tenure of employment or any term or condition of employment.

(c) Interrogating its employees concerning their union affiliation and activities, threatening them with loss of benefits and job security in the event the Respondent is required to negotiate with the Union, or in any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the Union, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or 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 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) Upon request, bargain collectively with the Union as the exclusive representative of the employees in the aforestated appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post in conspicuous places at its store in Boise, Idaho, including all places where notices to employees are customarily posted, copies of the notice attached hereto as Appendix A.[4] Copies of said notice, to be furnished by the Regional Director for the Nineteenth Region, shall, after being duly signed by the Respondent's representative, be posted by it immediately upon receipt thereof and maintained by it for at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

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[4] 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."

## 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, upon request, bargain collectively with INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL No. 1491, AFL, as the exclusive representative of all employees in the following bargaining unit with respect to rates of pay, wages, hours of employment, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement:

> All employees of our Boise, Idaho, operations, excluding salesmen, office and clerical employees, and supervisors as defined by the Act.

WE WILL NOT discourage membership in INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL No. 1491, AFL, or in any other labor organization, by discriminatorily discharging any of our employees, 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 threaten any of our employees with loss of employment or any other economic reprisal because of their union membership, activities, or sympathies.

WE WILL NOT interrogate our employees as to their union membership, activities, or sympathies.

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 or assist INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL No. 1491, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, or 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 in Section 8 (a) (3) of the Act.

All our employees are free to become or remain members of INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL No. 1491, AFL, or any other labor organization or to refrain from any such activity, 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.

MELVIN R. SMITH and LEIGHTON G. EVERLY,
Co-Partners, d/b/a SERVICE PARTS COMPANY,
*Employer.*

By _____
(Representative) (Title)

Date _____

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

A charge having been duly filed by International Association of Machinists, Local No. 1491, AFL, herein called the Union; a complaint and notice of hearing thereon having been issued and served by the General Counsel of the National Labor Relations Board, herein called respectively the General Counsel and the Board; and an answer having been filed by Melvin R. Smith and Leighton G. Everly, copartners, d/b/a Service Parts Company, herein called the Company or the Respondent, a hearing involving allegations of unfair labor practices in violation of the National Labor Relations Act, 61 Stat. 136, herein called the Act, was held upon due notice at Boise, Idaho, on July 18, 1952, before the undersigned Trial Examiner. The allegations, in substance, are that on or about March 10, 1952, and at all times thereafter, the Respondent, in violation of Section 8 (a) (1) and (5) of the Act, refused to bargain with the Union, the duly authorized bargaining representative of its employees in an appropriate unit; in violation of Section 8 (a) (1) and (3) of the Act, discharged four named employees because of their union and concerted activities; and in violation of Section 8 (a) (1) of the Act, interrogated its employees concerning their union and concerted activities and threatened them with discharge should it be forced to negotiate with the Union. All parties were represented at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence on the issues, to argue orally upon the record, and to file briefs and/or proposed findings and conclusions. Oral argument and the filing of briefs were waived by all parties.

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 THE RESPONDENT

Respondent is a copartnership engaged in the conduct of a wholesale and retail automotive parts business in the States of Idaho and Oregon, where it operates stores at the following locations in Idaho: Caldwell, Boise, Nampa, Weiser, and Payette; and in Oregon, the one store at Nyssa. It purchases merchandise for resale, stores it at a central warehouse at Caldwell, and delivers and exchanges merchandise by means of its own delivery trucks to and among its various stores, including the Nyssa, Oregon, store. The merchandise thus distributed is shipped to Respondent's warehouse at Caldwell by common carriers. Approximately 25 percent of total merchandise purchased is shipped directly to

the requisitioning store. All of its stores are centrally managed and controlled by it through its local managers in each locality.

During the year 1951 Respondent made purchases from over 200 manufacturers, jobbers, and suppliers located outside the States of Oregon and Idaho. It is a party to sales agreements, none of which is an exclusive area franchise, with 13 of this number. The agreements, among other things, provide for percentage of refund upon merchandise returned due to obsolescence, price alteration and adjustment, discounts, standard prices, terms of sales, etc.

During the year 1951 merchandise returned by Respondent to vendors, shipped by Respondent to points outside the States of Idaho and Oregon was valued in excess of $1,000. The valuation of returned merchandise for the year 1952 is anticipated to be in excess of $15,000.

During the year 1951 Respondent's purchases from points outside the State of Idaho, which were shipped to Respondent within the State of Idaho, amounted to $360,763.95. During the same period Respondent's purchases from outside the State of Oregon, which were shipped directly to Respondent within the State of Oregon, amounted to $7,175.77. Both valuations constitute the cost to Respondent.

During the year 1951 Respondent transported merchandise between its Nyssa, Oregon, store and its Idaho operations valued at $17,704.82, computed on a cost basis, and $25,292.60, computed upon its resale value.

During the year 1951 Respondent sold merchandise to automobile dealer agencies within the States of Idaho and Oregon valued at $310,676.12, which constitutes about 45 percent of the total sales volume of Respondent. Additionally, approximately 5 percent of Respondent's sales volume is made to automobile truck and fleet owners, the Idaho Power Company, heavy construction contractors engaged in the construction of highways and river dams, and Trailways Bus System, a Nation-wide common carrier, all of which are engaged in interstate commerce.

Upon the basis of these facts, stipulated to by the parties, it is found that the Respondent is engaged in commerce within the meaning of the Act, and that the Board, as a matter of policy respecting multi-state operations, will assert jurisdiction.

## II. THE LABOR ORGANIZATION INVOLVED

International Association of Machinists, Local No. 1491, AFL, is a labor organization admitting to membership employees of the Respondent.

## III. THE UNFAIR LABOR PRACTICES

### A. *The refusal to bargain collectively*

#### 1. The appropriate unit

The complaint alleges, and Respondent's answer admits, that the following is an appropriate unit:

> All employees at Respondent's Boise, Idaho, operations, excluding salesmen, office and clerical employees, and supervisory employees as defined in the Act.

The Respondent at the hearing, however, in view of the stipulated facts on which the General Counsel bases his claim of jurisdiction, changed its position and now contends that a unit limited to the employees of a single store is not appropriate.

As stated in the stipulation on commerce, Respondent's stores are centrally managed by the copartners, Melvin R. Smith and Leighton G. Everly, through

the managers, respectively, of the several stores, and for the most part are centrally supplied with merchandise through the warehouse which Respondent maintains at Caldwell, Idaho. The distances between the stores are not such as to render a unit composed of the employees of all the stores inappropriate. Employees of the stores in the vicinity of Boise, such as the Caldwell and Nampa stores, are shifted, temporarily, from one store to another during inventory, or when there is a shortage of labor at one of the stores. These are factors which argue persuasively that a unit composed of the employees of all Respondent's stores, or of those in the vicinity of Boise which fall under the particular jurisdiction of copartner Smith, would be appropriate. That a unit composed of the employees of a single store, such as is alleged in the complaint, is therefore *inappropriate*, is *non sequitur*.

Each of the stores is under the immediate supervision of a store manager. Payrolls are maintained separately. There is no evidence that employees are hired centrally for all the stores, or that there is a uniform wage policy for all the stores. Employee Francis Meyers testified, without contradiction, that there was no uniform starting wage, and that the Boise store closed during the noon hour and on Saturday afternoons whereas the other stores did not.[1] And while employees of the various stores in the vicinity of Boise may be concentrated at one of these stores for taking inventory, or during a labor shortage or rush period, this, according to Meyers' credited testimony, is normally for no more than a day or so at a time, and does not involve removal of the employee from the payroll of the store where he is regularly employed. I conclude that the unit alleged in the complaint is appropriate and that it would be in derogation of the policies of the Act to deny employees of the Boise store the privileges of collective bargaining merely because the organizational objectives of the Union are here confined to the one store.

That, in determining jurisdiction, the Board considers the entire operations of the employer for their impact on commerce, is not of course determinative of the matter of an appropriate unit. A labor dispute at the Boise store would have its impact upon the Respondent's entire operations and, therefore, while finding a unit of employees of the Boise store appropriate, the Board would still necessarily look at Respondent's entire operations in determining whether a labor dispute at that one store would affect commerce within the meaning of the Act.

### 2. The Union's majority

As of March 10, 1952, there were five employees of the Boise store in the unit found herein to be appropriate. On March 10, certain of these employees decided that they would seek union representation and summoned the Union's business representative, Allin K. Walker, to the store. Walker presented them with authorization cards and buttons and four of the five employees in the unit signed cards designating the Union their bargaining representative.

### 3. The refusal

On the afternoon of March 10, Walker and R. H. Powell, a Grand Lodge representative of the Union, called on copartner Smith at the office of the Boise store, informed him that the Union represented a majority of his employees, and requested recognition and bargaining rights. Smith replied that he would confer with them on the following morning, whereupon they left his office.

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[1] Copartner Smith testified that closing hours conformed to local custom prevailing among its customers with respect to their closing hours.

Upon the departure of the Union's representatives, Smith questioned each of the employees of the Boise store whether he had signed a union card, and on being advised by employees Harlan Jenne, Richard Madden, Francis Meyers, and William Morehouse that they had signed such cards, he told them that he considered them disloyal and that they were "through." These four employees thereupon checked out their individually owned equipment and left Respondent's place of business.

On the following morning, March 11, Union Representatives Walker and Powell met with Smith and his attorney, Eli Weston, at the latter's office. There they repeated their recognition and bargaining demands and were met with the proposal that the employees of the Boise store be returned to their jobs and that the matter of union representation be determined by a consent election. The Union's representatives refused to submit the matter to an election.

The four employees who had left the Boise store at Smith's direction were, subsequent to the conference between employer and union representatives on March 11, reinstated to their jobs and paid for the time of their enforced absence from their jobs. Jenne, Meyers, and Morehouse severed their employment with the Respondent on the following dates, respectively: March 24, March 29, July 10.

From the foregoing it is clear that when, on March 10, the Union presented its demand for recognition and bargaining rights, it had been authorized by four of the five employees in the appropriate unit as their bargaining representative. The Respondent did not challenge the Union's majority representation, and ascertained by its own unlawful interrogation of its employees that the Union had, in fact, been designated bargaining representative by a majority of its employees. It met the Union's demand for recognition by ordering the four union employees off their jobs. This action constituted a refusal to bargain in its most extreme form. Under these circumstances, the Respondent was not, as a matter of law, entitled to have the matter of representation settled by an election. It already knew that a majority of its employees had designated the Union, and by its coercive act in expelling them from their jobs, it had prejudiced the settlement of the issue of representation through the election process.

Smith, to whom the announcement of the Union's representatives came as a shock, and who had no prior experience in such matters, doubtless acted in haste and without knowledge of the legal significance of his acts, but this does not, and cannot, alter that legal significance. When his second meeting with union representatives occurred on March 11, after he had consulted with his attorney, he agreed that the men he had dismissed on the previous day would be returned to their jobs without loss of pay, but again refused to recognize and bargain with the Union except on the condition that the Union prove its majority through a consent election—a condition which, under the circumstances, he could not lawfully rest on in lieu of forthwith recognition of the Union.

The matter of the appropriateness of the unit was raised at the hearing, but was not at any time raised during the conferences between Smith, his attorney, and the Union's representatives. There can be no doubt that Smith understood that the Union claimed to represent the employees of the Boise store solely, for otherwise his own action in interrogating his employees would not have stopped with the Boise operation, and it is equally clear that the appropriateness of a unit limited to the Boise operations had no bearing on his refusal to recognize and bargain with the Union.[3]

[3] As previously noted, in its answer to the complaint the Respondent admitted the appropriateness of the Boise unit and while it might properly attack the appropriateness

At the time of the hearing three of the four employees who had designated the Union their bargaining agent had severed their employment with the Respondent. This does not operate to free the Respondent from its duty to bargain with the Union. Had the Union obtained bargaining rights to which it was entitled on March 10, its representative status would have been preserved for a reasonable time regardless of changes in the personnel of the bargaining unit, and Respondent's unlawful refusal to recognize and bargain with it cannot operate to deprive it of this reasonable period of representation.

I find that on March 10, 1952, and thereafter, the Respondent refused to bargain collectively with the Union, in violation of Section 8 (a) (5) and (1) of the Act.

### B. *Discrimination; interference, restraint, coercion*

In February 1952, copartner Smith assembled the employees of the Boise store, told them that he understood that they had been approached concerning union representation, and expressed his objections to having his employees organized. Among other things, he stated that union representation would result in the withdrawal of certain benefits then accorded the employees, and that if he was required to negotiate with the Union he would do so but some of those present would not be on hand to enjoy the fruits of such negotiations.[8] These statements were coercive and violative of Section 8 (a) (1) of the Act because they threatened loss of benefits and job security in the event the employees chose union representation.

Smith's interrogation of employees on March 10 concerning their union affiliation, followed by his dismissal of those who answered in the affirmative, was also violative of Section 8 (a) (1) of the Act, and his act in dismissing the four employees who answered that they had signed union cards, whether it be regarded as a discharge or a layoff, was discriminatory and violative of Section 8 (a) (1) and (3) of the Act, for there can be no question that this action was taken in retaliation of what Smith regarded as the employees' disloyalty in seeking union representation and had the reasonable and necessary effect of discouraging union affiliation.

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

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## V. THE REMEDY

It will be recommended that the Respondent cease and desist from engaging in the unfair labor practices found herein, and take certain affirmative action designed to effectuate the policies of the Act.

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of that unit at the hearing in view of developments there, in view of its own prior admissions it could not consistently contend, and apparently does not, that it had a bona fide doubt on the unit at the time the demand for recognition was made or that its refusal was based on such a doubt.

[8] Smith testified to the effect that he explained that in order to meet union demands it would be necessary to reduce personnel and that certain benefits, such as bonuses and gifts, could not be maintained under union representation. Clearly, the object of his discussion was to discourage union affiliation among his employees and to convince them that such representation could only work to their disadvantage. The tenor of his remarks was not, in my opinion, merely persuasive but had the reasonable impact of threats of reprisal.

Having found that the Respondent has refused to bargain with the Union as the duly designated representative of employees in an appropriate unit, I shall recommend that the Respondent, upon request, bargain collectively with the Union as the exclusive bargaining representative of the employees in said unit.

The Respondent's refusal to bargain, its action in dismissing its union employees from their jobs, and its threats of reprisal should its employees win union representation, show an intent generally to interfere with its employees' rights under the Act. Therefore it will be recommended that the Respondent cease and desist from in any manner interfering with its employees' rights under the Act.

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

CONCLUSIONS OF LAW

1. The Union is a labor organization within the meaning of Section 2 (5) of the Act.

2. All employees of Respondent's Boise, Idaho, operations, excluding salesmen, office and clerical employees, 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.

3. The Union on March 10, 1952, was, and at all times thereafter has been, the exclusive representative of employees in such unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing to bargain collectively with the Union as the exclusive representative of its employees in an 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.

5. By expelling its employees from their jobs, thereby discouraging membership in a labor organization, the Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

(6) By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) 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.]

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T. H. BURNS AND R. H. GILLESPIE, D/B/A BURNS AND GILLESPIE *and* AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL. *Case No. 32–CA–215. December 19, 1952*

## Decision and Order

On June 30, 1952, Trial Examiner Stephen S. Bean issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the Act, and recommending that it cease and desist therefrom and take certain affirmative action, as set