A. SIEGEL & SONS *and* LOCAL 80–A, PACKINGHOUSE WORKERS, CIO, PETITIONER. *Case No. 4–RC–1636. December 19, 1952*

Order

On November 21, 1952, following the conviction of Anthony Valentino, in a United States district court, for having previously made false statements in a non-Communist affidavit filed with the Board under Section 9 (h) of the Act, the Board issued and sent to all parties a notice to show cause, returnable on or before December 1, 1952, why its certification of August 11, 1952, issued in the above-entitled proceeding, should not be revoked for abuse of its processes.

Upon request of the Union, an enlargement of time in which to answer was granted to all parties. The Union filed a brief in response and requested opportunity to be heard and to present the facts and the position of the Union to the Board. Pursuant to notice to all parties, the Board heard oral argument on December 16, 1952. The Union and the C. I. O., which was permitted to intervene and file a brief, participated in the argument. The A. F. of L. was permitted to, and did, file a brief. The Employer did not reply or participate in the argument.

The Board having duly considered the response, briefs, and arguments, concludes that, in the interest of protecting its own processes from further abuse, its certification of August 11, 1952, should be considered of no further force and effect.

NOW THEREFORE said certification is adjudged and declared to be of no further force and effect.

By direction of the Board:[1]

OGDEN W. FIELDS,
Executive Secretary.

[1] *Member Houston* did not participate in this matter because of his absence from official duty due to illness.

101 NLRB No. 228.

AUSTIN COMPANY *and* LOUIS C. LINKER

LABORERS AND HOD CARRIERS UNION LOCAL NO. 300 *and* LOUIS C. LINKER. *Cases Nos. 21–CA–1037 and 21–CB–335. December 22, 1952*

Decision and Order

On February 4, 1952, Trial Examiner Wallace E. Royster issued his Intermediate Report in the above-entitled proceeding, finding that each of the Respondents had engaged in and was engaging in certain unfair labor practices, and recommending that each of them cease and

desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, both of the Respondents filed exceptions to the Intermediate Report and supporting briefs.

Oral argument was heard by the Board on October 9, 1952; the General Counsel, Austin, and Local 300 participated.

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, with the modifications noted below.

We agree with the Trial Examiner's finding that Austin committed an unfair labor practice in having the three Pinkerton guards removed from its construction project. As set forth more fully in the Intermediate Report, Austin, a general construction firm, contracted with Pinkerton to supply guards for Austin's large construction project in Los Angeles. Local 300, which represented the large group of construction employees on the job, voiced to Austin its objection to the presence of the guards on the project because they were not members of Local 300. In consequence of this complaint, Austin and Pinkerton canceled their contract; the guards were thereupon removed from the Austin job, and Austin made other arrangements for guard service. The contract between Austin and Pinkerton provided that "Guards not acceptable to the Contractor and/or owner shall be removed and replaced by an acceptable guard immediately upon notification." Apart from this right reserved in the contract to remove any nonacceptable guard, there is no other evidence that Austin exercised any control over the guards, who were assigned, directed, and paid entirely by Pinkerton.

Austin's defense rests squarely on the assertion that an employer cannot violate Section 8 (a) (3) of the Act except with respect to its own employees, and as these guards were employees of Pinkerton, no violation can be found against Austin. At oral argument, it contended that the guards were independent contractors with relation to Austin because they dealt with Austin only through Pinkerton. We view his latter assertion as but a restatement of Austin's basic argument.

It is evident, as the Trial Examiner found, and as the General Counsel concedes, that these guards were not employees of Austin. However, Austin's defense, grounded on this fact alone, finds no statutory support. Rather, the statute, read literally, precludes any employer from discriminating with respect to any employee, for Section 8 (a) (3) does not limit its prohibitions to acts of an employer

vis-à-vis his own employees. Significantly, other sections of the Act do limit their coverage to employees of a particular employer. Thus, Section 8 (a) (5) makes it an unfair labor practice for an employer "to refuse to bargain collectively with the representative of *his* employees . . ." and Section 8 (b) (4) (B) prohibits a labor organization from striking to force or require any other employer to recognize the labor organization "as the representative of *his* employees . . ." [emphasis supplied]. Thus, the omission of qualifying language in Section 8 (a) (3) cannot be called accidental. Moreover, Section 2 (3), in defining the term "employee," provides that the term ". . . shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise . . ." The statutory language therefore clearly manifests a congressional intent not to delimit the scope of Section 8 (a) (3) in the manner urged here by Respondent Austin.[1]

Notwithstanding the absence of a direct employer-employee relationship between Austin and the guards, the association between Austin and Pinkerton had an intimate business character. Their community of interests, as employers, is emphasized by the recognition in their contract of Austin's right to remove the guards. We cannot say, as did the Trial Examiner, that Austin had no control over the guards, for, together with Pinkerton, Austin held a veto power over a most significant aspect of their employment, the right to work at the Austin project, which Pinkerton would normally have. Added to this clear picture is the equally clear fact that Austin exercised its control at the behest of Local 300, and only in order to quiet that union's dissatisfaction with the guards' particular union affiliation. That Austin thereby discriminated in regard to the guards' "tenure of employment" to encourage membership in Local 300 is inescapable. On these facts, therefore, and on the record as a whole, we find, like the Trial Examiner, that Austin violated Section 8 (a) (3) and 8 (a) (1) of the Act by having the guards, Spohr, Linker, and Schuler, removed from its construction project.

In reaching this conclusion in the case here presented, we deem it unnecessary to delineate the extent of the area in which a respondent employer's conduct may violate the prohibition of Section 8 (a) (3)

[1] The Supreme Court, in different factual situations, has recognized, and attached great weight to, this lack of delimiting language in Section 8 (a) (3). In *N. L. R. B.* v. *Hearst Publications, Inc , et al.,* 322 U. S. 111, that Court said, "Congress . . . was not thinking solely of the immediate technical relation of employer and employee. It had in mind at least some other persons than those standing in the proximate legal relation of employee to the particular employer involved in the labor dispute." And in *Phelps Dodge Corp.* v. *N. L. R. B.,* 313 U. S. 177, the Court said, "The broad definition of 'employee,' 'unless the Act explicitly states othewise,' . . . expressed the conviction of Congress 'that disputes may arise regardless of whether the disputants stand in the proximate relation of employer and employee . . .' "

despite the absence of a direct employer-employee relationship or a measure of association with the direct employer. Therefore, although we agree with the Trial Examiner's conclusion, we do not adopt his broad rationale to the effect that conduct of any employer which results in coercion of any employee necessarily constitutes an unfair labor practice.

2. Unlike the Trial Examiner, we are of the opinion that Austin's letter of March 15, offering to employ the guards at its project "as per terms of your former employment," constituted an offer of reinstatement to them. We shall not, therefore, order the guards reinstated, and shall award them back pay only from the date of their removal from the project to March 15, 1951, the date of Austin's offer.

The Respondents also argue that because it does not appear that the guards were severed from Pinkerton's payroll, no back pay should be awarded at all. For aught that the record shows, it may well be that the guards never ceased work, for apparently they continued in Pinkerton's employ after being transferred from the Austin project. It is equally possible, as the Trial Examiner states, that Pinkerton's needs for guards having *pro tanto* diminished by the loss of the Austin contract, the earnings of Spohr, Linker, and Schuler may have been adversely affected. On the record as made we cannot finally decide this question now. Accordingly, we shall leave to the compliance stages of this proceeding the question of whether or not the guards are to receive any back pay in order to be made whole under our Order.

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:

A. Respondent Austin Company, Los Angeles, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Encouraging membership in Laborers and Hod Carriers Union, Local No. 300, or in any other labor organization, by discriminating in regard to terms or conditions of employment at any of its projects in the Los Angeles area except in the manner permitted by Section 8 (a) (3) of the Act.

(b) In any like or similar manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

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

(a) Notify Pinkerton's National Detective Agency, Inc., Los Angeles, California, that it does not object to the assignment of guards to

its projects who are not members of Laborers and Hod Carriers Union, Local No. 300.

(b) Post at its projects in the Los Angeles, California, area, copies of the notice attached hereto and marked "Appendix A."[2] Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by a representative of Austin, be posted immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by any other material.

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

B. Respondent Laborers and Hod Carriers Union, Local No. 300, its officers, representatives, and agents, shall:

1. Cease and desist from:

(a) Causing or attempting to cause Austin Company, Los Angeles, California, to discriminate in regard to terms or conditions of employment, except in the manner permitted by Section 8 (a) (3) of the Act.

(b) Restraining or coercing employees in the exercise of their rights under Section 7 of the Act to engage in or refrain from engaging in any or all the concerted activities therein listed.

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

(a) Notify Austin Company, Los Angeles, California, in writing, that it has no objections, based upon considerations of union membership or nonmembership, to the assignment by Pinkerton's National Detective Agency, Inc., of any guards to any of the projects of Austin Company.

(b) Post at its business offices in the Los Angeles area copies of the notice attached hereto and marked "Appendix B."[3] Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by a representative of Local 300, be posted by it immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by any other material.

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[2] In the event that this Order is enforced by 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."

[3] See footnote 2.

(c) Additional copies of Appendix B, to be furnished by the said Regional Director, shall be signed by a representative of Local 300 and forthwith returned to the Regional Director for posting, Austin and Pinkerton willing, on the bulletin boards of each where notices to employees are customarily posted.

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

C. The Respondents, Austin Company, Los Angeles, California, and Laborers and Hod Carriers Union, Local No. 300, and their officers, representatives, successors, agents, and assigns, shall jointly and severally, in the manner set forth in the section of the Intermediate Report entitled "The Remedy," make whole Herman Spohr, Louis C. Linker, and William Schuler for any loss of pay each of them may have suffered as a result of the discrimination against him from the date of such discrimination to March 15, 1951, the date of Austin's offer to reinstate them.

MEMBER MURDOCK 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 you that:

WE WILL NOT encourage membership in LABORERS AND HOD CARRIERS UNION, LOCAL NO. 300, or in any other labor organization by requiring guards furnished to us by Pinkerton's National Detective Agency, Inc., to be members of or approved by that labor organization.

WE DO NOT object to the assignment of guards by Pinkerton's National Detective Agency, Inc., for duty on our projects in the Los Angeles area who are not members of LABORERS AND HOD CARRIERS UNION, LOCAL NO. 300 and we will make HERMAN SPOHR, LOUIS C. LINKER, and WILLIAM SCHULER whole for any loss of earnings caused by the discrimination against them.

WE WILL NOT, by means of contract cancellation or in any like or related manner, interfere with, restrain, or coerce employees in the exercise of rights guaranteed them in Section 7 of the Act.

AUSTIN COMPANY,

Employer.

Dated ---------- By ----------

(Representative) (Title)

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

Appendix B

NOTICE TO ALL MEMBERS OF LABORERS AND HOD CARRIERS UNION, LOCAL NO. 300, AND TO ALL EMPLOYEES OF AUSTIN COMPANY AND PINKERTON'S NATIONAL DETECTIVE AGENCY, 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 cause or attempt to cause AUSTIN COMPANY, its officers, agents, successors, or assigns, to refuse to permit assignment of guards to projects of that company by Pinkerton's National Detective Agency, Inc.

WE WILL NOT, in any like or similar manner, restrain, or coerce employees in the exercise of rights guaranteed by Section 7 of the Act.

WE WILL withdraw any objection to the assignment by PINKERTON'S NATIONAL DETECTIVE AGENCY, INC., of Herman Spohr, Louis C. Linker, and William Schuler, as guards to any project of AUSTIN COMPANY and we will make them whole for any loss of pay suffered as a result of the discrimination against them.

LABORERS AND HOD CARRIERS
UNION, LOCAL NO. 300,
Labor Organization.

Dated ---------- By ----------
(Representative) (Title)

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

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

Upon separate charges duly filed by Louis C. Linker, an individual, against Austin Company, herein called Austin, and against Laborers and Hod Carriers Union, Local No. 300, herein called Local 300, the General Counsel of the National Labor Relations Board, herein called, respectively, the General Counsel and the Board, caused the cases to be consolidated and issued a complaint dated December 12, 1951, against Austin and Local 300 alleging violations of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act, within the meaning of Sections 8 (a) (1) and (3); 8 (b) (1) (A) and (2); and 2 (6) and (7). Copies of the charges, the complaint, an order consolidating the cases, and notice of hearing were duly served upon the parties herein.

With respect to unfair labor practices, the complaint alleges, in substance, that on or about February 15, 1951, upon the demand of Local 300, Austin caused the layoff of Herman H. Spohr, Louis C. Linker, and William Schuler, employees of Pinkerton's National Detective Agency, Inc., herein called Pinkerton, by canceling a contract with Pinkerton because the named individuals were not members of Local 300.

Austin's answer denies the commission of unfair labor practices and alleges that it is not an employer in the premises. Local 300, by its answer, denies each of the allegations set forth in the complaint.

Pursuant to notice, a hearing was held on January 17, 1952, at Los Angeles, California, before the undersigned Trial Examiner. The General Counsel, Austin, and Local 300 were represented by counsel, participated in the hearing, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. Some discussion in the nature of oral argument was had upon the record at the close of the hearing. Permission to file briefs with the undersigned was not requested.

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 AUSTIN

Austin is an Ohio corporation engaged in Los Angeles, California, in engineering and building construction. During the calendar year ending December 31, 1950, Austin purchased material valued at approximately $1,225,000, 20 percent of which in value was shipped to Austin from points outside the State of California. During the same period Austin sold products and services for approximately $2,000,000, of which about 2 percent in value was shipped to points outside the State of California. The Board has previously asserted jurisdiction over its operations.

II. THE LABOR ORGANIZATION INVOLVED

Local 300 is a labor organization admitting to membership employees of Austin.

III. THE UNFAIR LABOR PRACTICES

In January 1951 Austin was engaged in the construction of a building in the City of Los Angeles for the Ford Motor Company. On January 9 Austin arranged with Pinkerton for the latter to supply guards at the building site during all hours when construction was not in progress. Under the terms of the contract, Austin undertook to pay Pinkerton an hourly rate for each guard detailed and reserved the right to reject any guard not acceptable to it. The contract appears not to have been made for any specified period and presumably was terminable by either party at any time.

Pinkerton assigned Spohr, Linker, and Schuler to perform guard duty at the place of construction and for a period of several days or perhaps weeks these three continued to work without incident. On a date not entirely clear from the record but probably in early February, Joseph D'Amico, the business agent for Local 300, remarked to Superintendent Maddox that the guards were not members of Local 300 and that, as his local had "jurisdiction" over the work being done on the project, the guards should be members of that local.[1] Maddox

[1] D'Amico did not testify The evidence, however, sufficiently identifies him as a responsible agent for Local 300.

answered that he would discuss the question with Pinkerton. Maddox telephoned the Pinkerton office to report that there was some labor trouble he desired to discuss. Pinkerton's manager, Wadsworth, and another came to Maddox' office, where Maddox explained what D'Amico had told him. Wadsworth said that the guards belonged to a union other than Local 300 and that he believed that the one to which they belonged was appropriate for the work they were doing. Maddox explained that the construction contract would not permit of delay. Wadsworth answered that he did not want to cause any trouble and that if necessary the guards would be removed from the job. Later in the day in another conversation with D'Amico, Maddox was told by the former that the matter had to be "straightened up" pretty soon.

When he learned of the difficulty, Wadsworth telephoned D'Amico concerning it and was told, he testified credibly, that D'Amico insisted upon the removal of the guards because they were not members of Local 300.[2] Wadsworth answered that another labor organization had been certified by the Board as bargaining representative for Pinkerton guards and that he questioned the legality of D'Amico's demand. In a second conversation later in the day, D'Amico told Wadsworth that if the guards were not removed it would be necessary for Local 300 to place a picket line about the project. Thereupon Wadsworth conferred with Maddox again and still later with Howard Knapp, district auditor for Austin. Wadsworth told Knapp that he did not want to embarrass Austin or place that company in a position where it might be damaged and that although he was willing to continue detailing guards as long as Austin desired, he was also willing to discontinue the service if Austin requested it. As a result of this conference, it was decided that Pinkerton no longer would furnish guard service to Austin and a formal cancellation reading, "This cancels the original Subcontract Purchase Order in its entirety due to circumstances beyond the control of the Vendor and purchaser," was executed effective February 16.

Thereupon, Austin made other arrangements for guard service.

On March 15, 1951, Austin sent separate letters to Spohr, Linker, and Schuler, reading:

> We hereby request that you report back to work as a guard as per terms of your former employment, at the Ford Warehouse project at 4940 Sheila Street, Los Angeles, California, on Tuesday, March 20th, 1951 at 4:00 P. M.
>
> Please report to Mr. Everett Maddox at that address.
>
> Kindly advise of your acceptance upon receipt of this letter.

There is no evidence that Austin exercised any control over the guards. They were paid, assigned, and worked under the direction of Pinkerton, solely. I am sure that under any common law construction of the word the guards were not employees of Austin and that fact is relied upon by counsel for Austin to exculpate it for any action that it took in respect to them. However, in enacting the National Labor Relations Act, as amended, the Congress was concerned with removing impediments to the flow of commerce among the several States and territories stemming from labor disputes, and, as a means of diminishing the number of such disputes, sought to encourage the collective bargaining process and to protect employees from discrimination in their employment because they chose to become or to refrain from becoming members of a labor organization. In enforcing the provisions of the Act, the Board and the courts have found an employer-employee relationship to exist where under common-law principles there perhaps was none. Thus, in the *Phelps Dodge* case,[3] the United States Supreme

[2] This incident is not alleged in the complaint as an unfair labor practice.

[3] *Phelps Dodge Corporation* v. *N. L. R. B.*, 313 U. S. 177.

Court found an employer to have violated Section 8 (3) of the Act, before amendment, by refusing to hire two individuals for discriminatory reasons. The employer's argument that the individuals could not be considered as employees until they had been hired, was rejected. In the *Hearst* case,[4] the same Court said that Congress had in mind in enacting the statute "at least some other persons than those standing in the proximate legal relationship of employee to the particular employer involved in the labor dispute." It seems almost unnecessary to say that here the guards were not employees of Austin for some purposes: collective bargaining, for example. But they were employees in a generic sense and as such had rights which the Act purports to protect. Among these is the right to select a bargaining representative of their own and to be free from employer and union hindrance in the field of their employment no matter what their election in that respect. Austin is, of course, an employer and is prohibited by the terms of the Act from discriminating in regard to hire or tenure of employment to encourage or discourage membership in any labor organization. Section 8 (a) (3) of the Act, which is here brought into focus, with seeming intention does not limit the prohibition to situations arising between an employer and his employees. In establishing a broad national policy in respect to employer-employee relationships, as set forth in Sections 7 and 8 of the Act, Congress proscribed the imposition of employment conditions which encourage or discourage membership in labor organizations. One who finds that his opportunities to work at his trade are circumscribed because he belongs or fails to belong to a particular labor organization has, of course, suffered a discrimination and it would seem to follow that the one responsible for the discrimination, if he be amenable to the Act, has violated its provisions. To hold otherwise would limit the usefulness of the Act and to that extent defeat its purposes. Little more than a recital of the statutory objective coupled with Board and Court interpretations is needed to convince that Congress intended all those within the reach of the jurisdiction conferred upon the Board to conform to the Act's provisions and all those within the definition of employee to receive the protection that the Act affords. By apt language the force of the Act is not limited to those situations arising between an employee and his employer. Little imagination is needed to foresee the consequences of a different interpretation. In the construction industry, for example, a dominant union might uniformly insist that employees of another employer and with other representation, not work on the project without becoming its members.[5] Similarly, an employer might impose conditions of union membership or nonmembership on such employees on the theory that as he was not the direct employer he need not concern himself with their rights under Section 7.

I find that Austin is an employer within the meaning of Section 2 (2) of the Act and that Spohr, Linker, and Schuler are employees within the meaning of Section 2 (3) of the Act. I further find that by canceling its contract with Pinkerton because the guards supplied by Pinkerton were not members of Local 300, Austin discriminated in regard to the terms and conditions of employment of Spohr, Linker, and Schuler, thereby encouraging membership in Local 300, and that Austin thereby violated Section 8 (a) (3) of the Act. By such discrimination I find Austin interfered with, restrained, and coerced employees in the exercise of their rights under Section 7 of the Act and thereby violated Section 8 (a) (1) of the Act.

By the same reasoning Local 300 caused Austin to discriminate against Spohr, Linker, and Schuler, in violation of Section 8 (a) (3) and thereby violated

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[4] *N L R B* v. *Hearst Publications, Incorporated, et al.*, 322 U. S. 111.

[5] Possibly, but not surely, violating another section of the Act, 8 (b) (4) (A) and (B).

Section 8 (b) (2) of the Act. By this conduct I further find that Local 300 restrained and coerced employees in the exercise of rights guaranteed in Section 7 of the Act, in violation of Section 8 (b) (1) (A) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Austin and Local 300, described in section III, above, considered in connection with the business of Austin, set forth in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and such of them as have been found to constitute unfair labor practices tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Austin and Local 300 have committed certain unfair labor practices, it will be recommended that each cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Local 300 has restrained and coerced employees in the exercise of rights guaranteed in Section 7 of the Act, and has caused Austin to discriminate against Spohr, Linker, and Schuler, it will be recommended that Local 300 cease and desist from such conduct.

Having found that Austin has interfered with, restrained, and coerced employees in the exercise of rights guaranteed in Section 7 of the Act, and has encouraged membership in Local 300 by preventing Spohr, Linker, and Schuler from pursuing their employment as guards on its premises because they were not members of Local 300, it will be recommended that Austin cease and desist from such conduct.

When the contract with Pinkerton was terminated, Pinkerton's need for guards was *pro tanto* diminished. Whether this affected the employment opportunities of Spohr, Linker, and Schuler is uncertain.[6] Pinkerton's situation may have been such that the three could have been assigned elsewhere without loss of earnings, or it may have resulted in one or more of the three being given less work than otherwise would have been available to him, or still other guards, not named in the complaint, may have been deprived of employment. In order, as nearly as possible, to restore the status quo, it will be recommended that to the extent, if at all, Spohr, Linker, or Schuler suffered any loss of earnings because of the discrimination against them, Austin and Local 300, severally, make them whole in that respect by payment to each of a sum of money equal to that which he normally would have earned as wages from February 16 to the date that the need for guards on this particular project ended, less his net earnings during that period. Loss of pay shall be computed upon the basis of each calendar quarter or portion thereof during the period from February 16 to the time when no guards were used by Austin at the Ford Building. Loss of pay shall be determined by deducting from a sum equal to that which each would have earned for each quarter or portion thereof his net earnings, if any, for that period. Earnings in one particular quarter shall have no effect upon back pay liability for any other quarter. It will also be recommended that Austin be ordered to make available to the Board or its agents, upon request, all pertinent records in order to facilitate the checking of the amount of back pay due.

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[6] The offer of employment by Austin on March 15 did not permit them to work on Austin's premises as *Pinkerton* guards.

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

CONCLUSIONS OF LAW

1. Laborers and Hod Carriers Union, Local No. 300 is a labor organization within the meaning of Section 2 (5) of the Act.

2. Austin Company is an employer within the meaning of Section 2 (2) of the Act.

3. By causing Austin Company to discriminate in regard to the terms of employment of Herman H. Spohr, Louis C. Linker, and William Schuler, Laborers and Hod Carriers Union, Local No. 300, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (2) of the Act.

4. By such conduct Laborers and Hod Carriers Union, Local No. 300, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

5. By discriminating in regard to the terms of employment of Herman H. Spohr, Louis C. Linker, and William Schuler, thus encouraging membership in a labor organization, Austin Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

6. By such conduct, Austin Company has interfered with, restrained, and coerced employees in the exercise of rights guaranteed in Section 7 of the Act and thus 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.]

MATSON NAVIGATION COMPANY *and* LESLIE E. BOATWRIGHT AND ROBERT B. STEWART

NATIONAL UNION OF MARINE COOKS AND STEWARDS *and* LESLIE E. BOATWRIGHT AND ROBERT B. STEWART. *Cases Nos. 20–CA–524 and 20–CB–172. December 22, 1952*

Decision and Order

On May 15, 1952, Trial Examiner Wallace E. Royster issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner further found that the Respondent Matson had not engaged in other unfair labor practices alleged to violate Section 8 (a) (4), and dismissed the pertinent allegations of the complaint.[1] Thereafter, the Respond-

[1] Absent exceptions, and in view of our determination herein, we deem it unnecessary to pass upon the merits of this action of the Trial Examiner.