

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.]

EICHLEY CORPORATION *and* LODGE No. 34, INTERNATIONAL ASSOCIATION OF MACHINISTS. *Case No. 13-CA-910. January 27, 1953*

Decision and Order

On August 19, 1952, Trial Examiner Frederic B. Parkes, II, issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent, Eichley Corporation, 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 Board¹ 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, the brief, and the entire record in the case,² and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

Order

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, Eichley Corporation, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) The practice of conditioning the hire and tenure of employment of employees and applicants for employment in millwright positions at its project in Kenosha, Wisconsin, upon membership in United Brotherhood of Carpenters and Joiners of America, A. F. L., or any other labor organization, except under a nondiscriminatory arrangement permitted by Section 8 (a) (3) of the Act.

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

² The Respondent's request for oral argument is denied because the record and brief adequately present the issues and the positions of the Respondent.

(b) Performing, enforcing, or giving effect to, at its project in Kenosha, Wisconsin, the closed-shop or preferential-hiring provision of its current oral collective-bargaining agreement or understanding with United Brotherhood of Carpenters and Joiners of America, A. F. L., or entering into or enforcing any extension, renewal, modification, or supplement thereof or any superseding agreements with such labor organization, containing union-security provisions, except as authorized by the proviso to Section 8 (a) (3) of the Act.

(c) In any like or related manner interfering with, restraining, or coercing employees or applicants for employment at its project in Kenosha, Wisconsin, in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in 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) Post at its main office at Pittsburgh, Pennsylvania, and at its project in Kenosha, Wisconsin, copies of the notice attached to the Intermediate Report as Appendix A.³ Copies of said notice, to be furnished by the Regional Director for the Thirteenth Region, shall, after having been duly signed by the Respondent's representative, be posted by the Respondent 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 by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

³ This notice shall be amended by substituting for the words "The Recommendations of a Trial Examiner" in the caption thereof, the words "A Decision and Order." If this Order is enforced by a decree of the United States Court of Appeals, the notice shall be further amended by substituting for the words "A Decision and Order" the words "A Decree of the United States Court of Appeals, Enforcing an Order."

Intermediate Report

STATEMENT OF THE CASE

Upon charges duly filed by Lodge No. 34, International Association of Machinists, herein called the I. A. M., the General Counsel of the National Labor

Relations Board,¹ by the Acting Regional Director for the Thirteenth Region (Chicago, Illinois), issued a complaint dated June 6, 1952, against Eichleay Corporation, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce 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. Copies of the charges, complaint, and notice of hearing were duly served upon the Respondent and the I. A. M.

With respect to the unfair labor practices, the complaint alleged in substance that (1) on or about April 11, 1951, the Respondent entered into an agreement with the United Brotherhood of Carpenters and Joiners of America, A. F. L., herein called the Carpenters, providing that the Respondent would hire only members of the Carpenters to engage in machine dismantling and erection work and that such employees would be hired only through the Carpenters' business agent; (2) since April 11, 1951, the Respondent has hired only members of the Carpenters to engage in machine dismantling and erection work and has discriminatorily refused employment to members of the I. A. M. because of their membership in the I. A. M. and because they were not members of the Carpenters; and (3) on or about April 14, 1951, the Respondent caused members of the Union to abandon efforts to apply for employment with the Respondent because members of the Union had knowledge of the Respondent's agreement with the Carpenters and of the hiring practices through communications of the Respondent to employees of the Union. The complaint further alleged that by the foregoing conduct the Respondent has engaged in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act.

Thereafter, the Respondent duly filed an answer, admitting certain allegations of the complaint but denying that it was engaged in commerce within the meaning of the Act and that it had engaged in the alleged unfair labor practices. Pursuant to notice, a hearing was held on June 23, 1952, at Kenosha, Wisconsin, before Frederic B. Parkes, 2nd, the undersigned Trial Examiner duly designated by the Chief Trial Examiner. At the outset of the hearing, the motion of the Carpenters to intervene was granted. The General Counsel, the Respondent, and the Carpenters were represented by counsel and the I. A. M. by an official representative. Full opportunity to be heard, to examine and cross-examine the witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the conclusion of the General Counsel's case-in-chief, the Respondent moved that the complaint be dismissed. The motion was denied. During the course of the hearing, the Respondent offered into evidence a copy of an agreement between it and the Carpenters. However, a copy of the agreement was not then available and pursuant to arrangements made at the hearing, the Respondent subsequently submitted to the General Counsel and the official reporter a copy of the agreement, as Respondent's Exhibit No. 1, for identification. In his brief, the General Counsel objects to the receipt of the exhibit into evidence. The objections are overruled and Respondent's Exhibit No. 1 is hereby received in evidence.

Upon the conclusion of the hearing, ruling was reserved upon the renewal of the Respondent's motion to dismiss the complaint. The motion is disposed of in accordance with the findings of fact and conclusions of law reached below. At the conclusion of the hearing, the undersigned advised the parties that they might argue before and file briefs or proposed findings of fact and conclusions of law, or both, with the Trial Examiner. The parties waived oral argument. Thereafter, the Respondent and the General Counsel each filed a brief with the undersigned.

¹ The General Counsel and his representative at the hearing are referred to as the General Counsel. The National Labor Relations Board is herein called the Board.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Eichleay Corporation, a Delaware corporation with its principal office in Pittsburgh, Pennsylvania, and a branch office in San Francisco, California, is engaged in general construction work at various job sites throughout the United States. The nature of the Respondent's operations was summarized in the following testimony of Norris Stoddard, project engineer in charge of the Respondent's operations:

Well, we work on what is classed as heavy construction in industrial fields such as installation of foundations and machinery and equipment in steel mills and other industrial plants, and building moving, house moving. Our specialty, however, is mostly machinery installation and building moving. We do some other general work connected with projects which require that all types of work be performed by a general contractor.

Approximately 10 percent of the construction work performed by the Respondent was in the Pittsburgh area and the remainder was performed throughout the United States. The present proceeding arose out of the Respondent's operations in Kenosha, Wisconsin, where it was engaged in installing machinery, foundations, and alterations to a hot mill of the American Brass Company. The Respondent began work on its second project for the American Brass Company in July 1951, and estimated that in 18 months' time the project would be completed and that the value of services rendered therein would total approximately \$1,000,000. The machinery to be installed and structural steel for the project were furnished by the American Brass Company. The Respondent transported from outside the State of Wisconsin to the Kenosha project approximately \$20,000 worth of small tools. Larger tools and equipment were rented locally; and supplies—such as concrete, lumber, gasoline, and oil, incidental to the performance of the Respondent's services—were purchased locally by the Respondent. The Respondent also brought to the Kenosha project from outside the State of Wisconsin four supervisory employees.

At the time of the hearing, the Respondent was currently engaged in projects in 8 States other than Wisconsin. In Illinois, it was performing services valued at approximately \$350,000 in a project of 7 or 8 months' duration, for the Republic Steel Corporation. In Indiana it was midway through a 3-year project for the Youngstown Sheet and Tube Company, for whom it was rendering services totaling approximately \$2,000,000 in value. In Colorado, the Respondent was engaged in erecting a mill for the Colorado Fuel & Iron Corporation; the value of the Respondent's services therein for the next year was estimated at approximately \$1,000,000. In California, it was engaged, under a contract with the United States Government, in installing machinery in an air tunnel for Moffet Field, rendering services valued at approximately \$500,000. Its operations in Texas concerned the installation of machinery for the Aluminum Company of America; the value of the Respondent's services in such project in the next year was estimated at approximately \$700,000. Its Ohio project was for the Mullins Manufacturing Corporation, for whom the Respondent had contracted to perform services valued at approximately \$40,000 within the next 12 months. In Pennsylvania, it was involved in about 12 projects, the largest of which was for the National Tube Company, for whom the Respondent was rendering services valued between \$100,000 and \$300,000. In Virginia, the Re-

spondent was near the completion of a 2-year project, valued at approximately \$2,000,000, performed under contract with the United States Government for the installation of machinery and equipment in a wind tunnel at Langley Field Air Base. Judicial notice is taken of the fact that the Board has heretofore asserted jurisdiction over the American Brass Company, Republic Steel Corporation, Youngstown Sheet and Tube Company, Colorado Fuel and Iron Corporation, Aluminum Company of America, Mullins Manufacturing Corporation, and National Tube Company.

The Respondent's answer admitted that its annual sales or gross receipts were in excess of \$10,000,000. According to Project Engineer Stoddard, the Respondent used in all projects in the last 12 months raw materials valued at \$1,500,000, of which approximately 5 percent crossed State boundaries in order to reach the Respondent's job sites. One and sometimes two supervisory employees have been sent from the Respondent's Pittsburgh office to each of its projects in other States.

The Respondent, considering only its operations in Kenosha, contends that "the performance of the contract" with the American Brass Company "is entirely an intrastate proposition" and that the Respondent is not subject to the Board's jurisdiction. The contention is without merit. Even if the Respondent's operations outside of Wisconsin are ignored, it is clear that because of the relationship of its operations to the American Brass Company, the Respondent is engaged in commerce within the meaning of the Act. The record reveals that its contract in connection with its construction work of a hot mill for the American Brass Company requires the Respondent to render services valued at approximately \$1,000,000 which were necessary to the operation of the American Brass Company, over whom the Board has asserted jurisdiction.³ Moreover, in view of its operations in various States for concerns subject to the Board's jurisdiction, it is clear that the Respondent is a multistate enterprise which is clearly engaged in interstate commerce within the meaning of the Act.⁴ Moreover, its contracts with the United States Government for construction work on military installations in California and Virginia make the Respondent's operations a part of the national defense effort and thus subject to the Board's jurisdiction, in view of the Board's announced policy "to assert jurisdiction over enterprises which substantially affect the national defense."⁴ Upon the foregoing, the undersigned concludes and finds that the Respondent is engaged in commerce within the meaning of the Act.⁵

II. THE ORGANIZATIONS INVOLVED

Lodge No. 34, International Association of Machinists and United Brotherhood of Carpenters and Joiners of America are labor organizations affiliated with the American Federation of Labor, admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. Sequence of events

On July 8, 1948, the Respondent and the Carpenters executed the following "International Agreement" which is still in effect:

We the firm of EICHLEAY CORPORATION . . . AGREE to recognize the jurisdiction claims of the United Brotherhood of Carpenters and Joiners

³ *Hollow Tree Lumber Company*, 91 NLRB 635.

⁴ *The Borden Company, Southern Division*, 91 NLRB 628.

⁴ *Westport Moving and Storage Company*, 91 NLRB 902.

⁵ *Cf. Utah Construction Co.*, 95 NLRB 196.

of America, to work the hours, pay the wages and abide by the rules and regulations established or agreed upon by the United Brotherhood of Carpenters and Joiners of America of the locality in which any work of our company is being done, and employ members of the United Brotherhood of Carpenters and Joiners.

No change to be made in the hours and wages in any locality, and no conditions imposed other than enforced on all Local firms.

In consideration of the foregoing, the United Brotherhood of Carpenters and Joiners of America agree that no stoppage of work or any strike of its members, either collectively or individually, shall be entered into pending any dispute being investigated and all peaceable means taken to bring about a settlement.

On July 7, 1950, Marshall Johnson, the Respondent's field superintendent, arrived in Kenosha, Wisconsin, to make arrangements for the commencement of work on the Respondent's project for the American Brass Company. It appears from General Counsel's Exhibit No. 4 that the Respondent completed one project for the American Brass Company under their contracts numbered 5125 and 5045 in 1950 and 1951 and that the current project under contract numbered 5165 and 5170XM1 commenced in July 1951.

Shortly after Superintendent Johnson arrived in Kenosha, he conferred with William H. Byrne, business representative of Local No. 161 of Carpenters, in respect to the prospective employment of members of the Carpenters as carpenters and millwrights on the project. As a result of the discussion "it was understood," according to Byrne's testimony, that upon Johnson's request for employees, the Carpenters would furnish carpenters and millwrights for the project. On the first project, the Respondent hired five millwrights, the last on April 16, 1951, all of whom were referred to the Respondent by the Carpenters.⁶

In the spring of 1951, a similar understanding was reached between Johnson and Byrne that at the request of the Respondent, the Carpenters would supply millwrights for the Respondent's second project at the American Brass Company which started in mid-July 1951.

About the middle of April 1951, before the commencement of work on the second project, Business Agent Young of the I. A. M. and Elmer A. Ritter, who was a grand lodge representative of the I. A. M., assigned "to coordinate on construction work for our membership," called upon Superintendent Johnson and told him, according to Ritter's credible testimony, that the I. A. M. was "ready and willing to furnish him men" for millwright work "at any time that he needed them."⁷ According to Ritter's undenied and credible testimony, Johnson replied "that he was awfully sorry but he couldn't do business with us because the Eichleay Corporation was a member of the General Contractors' Association and the General Contractors' Association has a contract with the Carpenters Union that covers carpenters and millwrights, and therefore his instructions out of the Pittsburgh office were that he had to do business with the Carpenters

⁶ Events occurring more than 6 months before the filing and service of the charges on September 6, 1951, have been set forth for the purpose of background alone, and findings as to the Respondent's unfair labor practices are based upon occurrences after April 6, 1951, within the 6-month period limited by Section 10 (b). The record is not clear as to the date of the initial conference between Johnson and Byrne, but the findings made in the text above are based upon a consideration of the entire record and upon the following and the inference inherent therein: (1) Byrne's testimony that he first conferred with Johnson shortly after the latter's arrival in Kenosha; (2) Johnson's testimony that he arrived in Kenosha in early July 1950; and (3) the fact that on its first project for the American Brass Company, the Respondent employed five millwrights referred to it by the Carpenters.

⁷ The I. A. M. was the statutory representative of the employees of the American Brass Company.

Union and he would have to hire all of his millwrights out of the Carpenters Union." In addition, Johnson told them, as shown by the former's credible testimony, that it had been his practice "to hire millwrights who were members of the Carpenters and Joiners of America due to jurisdictional claims. In other words, I am hiring carpenters and iron workers, millwrights and so forth, laborers, and of course my contention was that if I hired machinists, consequently I wouldn't have any carpenters working on my job." Johnson also suggested that the I. A. M. should attempt to solve its jurisdictional dispute over millwrights with the Carpenters at their common international level.

In early July 1951, Ritter and Business Agent Young again discussed with Johnson the possibility of the Respondent's employing members of the I. A. M. as millwrights and Johnson told them that "that was going to be the deal, that they were going to use millwrights from the Carpenters Union" exclusively.

In the latter part of July 1951, the Respondent hired eight millwrights, who were referred by the Carpenters to the Respondent at its request. Each of the millwrights was a member of the Carpenters. Business Representative Byrne testified that one of the working rules of the Carpenters was that its members might not work on a job with nonmembers, that he never referred anyone but members for a job, that when the Carpenters had no members available in the Kenosha area as millwrights, he obtained such employees for the Respondent through another local in Milwaukee and gave them working cards so that they might work on the Respondent's project, and that the Carpenters would not issue a working permit to a nonmember.

Johnson admitted that he knew that the Carpenters would fulfill his requests for millwrights by referring only members of the Carpenters. Although no individual members of the I. A. M. sought and were denied employment as millwrights, Johnson testified that had a member of the I. A. M. applied for millwright work, Johnson would "have referred the applicant to Mr. Byrne." In this regard, Johnson further testified as follows:

Q. You wouldn't hire a man, though, without referring him to Mr. Byrne first?

A. No, it has always been our practice to procure our men through the business agent of the respective trades.

Q. So that in effect you delegated to the business agent of the Carpenters the function of doing the hiring for the company, is that correct?

A. In that respective trade, yes, sir.

B. Conclusions

Upon the foregoing, it is clear that the hiring practices of the Respondent were violative of Section 8 (a) (3) of the Act. All of the Respondent's millwrights were obtained through the Carpenters' referrals and none was hired by the Respondent from applicants at the job site or through employment agencies. Although neither the Respondent nor the Carpenters specifically stated in discussions regarding the Carpenters furnishing the Respondent with millwrights that the Respondent would hire only those millwrights who were members of the Carpenters, nevertheless, Superintendent Johnson's testimony as to his practices in employing millwrights and his statements to the representatives of the I. A. M. reveal that the basic condition of the understanding with the Carpenters was that the Respondent would hire only millwrights referred by that organization. Thus, Superintendent Johnson twice refused the I. A. M.'s offer to furnish from its membership employees for millwright work and told the I. A. M.'s representative on each occasion that he was going to rely exclusively

upon the Carpenters to supply him with millwrights. Moreover, Johnson admitted that he knew that his requests to the Carpenters for millwrights would be fulfilled by the Carpenters referring to him only their members. He further admitted that had a member of the I. A. M. applied for employment as a millwright, Johnson would have referred the applicant to the Carpenters. As shown by Byrne's testimony, however, the Carpenters would not issue a working permit to a nonmember. The undersigned accordingly infers that the understanding between the Respondent and the Carpenters was that the Respondent would call upon the Carpenters for millwrights and would hire only millwrights referred by the Carpenters. Such an understanding and employment practice established an unlawful hiring hall tantamount to a closed shop and hence fell within the proscriptions of the Act with regard to conditioning the hire or tenure of employment upon union membership.⁸ The foregoing factors distinguish and render inapplicable to the issues of the instant proceeding the court's opinion in the *Webb* case,⁹ relied upon by the Respondent.

The Respondent contends that since no employees or applicants for employment were called as witnesses, the record is barren of evidence to support the complaint's allegations that the Respondent interfered with, restrained, and coerced employees or prospective applicants for employment in the exercise of the rights guaranteed in Section 7 of the Act. The Respondent's argument is without merit, even though the record does not reveal that any individual applicant was denied employment because of the Respondent's discriminatory hiring practices. The Board has held that the definition of the term "employee" in Section 2 (3) of the Act covers "in addition to employees of a particular employer, also employees of another employer, or former employees of a particular employer, or even applicants for employment . . . the term must be interpreted to include members of the working class generally, as well as persons standing in the proximate employer-employee relationship."¹⁰ The Respondent's unlawful hiring practices not only coerced employees into becoming or remaining members of the Carpenters but also restrained employees from refraining from union activities within the meaning of Section 7 of the Act and obviously discouraged membership in the I. A. M.¹¹ Since the Respondent's hiring practices were violative of Section 8 (a) (3) and (1) of the Act and since the Respondent had informed the representatives of the I. A. M. of the Respondent's discriminatory hiring practices, it is immaterial that employees represented by the I. A. M. did not make the futile gesture of applying for employment as millwrights. Such an application was unnecessary under the facts of the instant proceeding to establish the illegality of the Respondent's hiring practices and could have served only to establish a claim for a back-pay award.¹²

The second argument of the Respondent relates to implications which it avers are inherent in Section 8 (b) (4) (D) of the Act, making unlawful a strike by a labor organization where an object of the strike is to force or require "any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board." The Respondent argues that since the I. A. M. claims exclusive jurisdiction over millwrights, it is seek-

⁸ *F. H. McGraw and Company*, 99 NLRB 695; *Consolidated Western Steel Corporation*, 94 NLRB 1590; *Newspaper and Mail Deliverers' Union*, 93 NLRB 237.

⁹ *Del E. Webb Construction Company v. N. L. R. B.*, 196 F. 2d 841 (C. A. 8).

¹⁰ *Briggs Manufacturing Company*, 75 NLRB 569, 571.

¹¹ *Hager and Sons Hinge Manufacturing Company*, 80 NLRB 163; *Julius Resnick, Inc.*, 86 NLRB 38.

¹² *Cf. F. H. McGraw and Company*, 99 NLRB 695.

ing through the instant proceeding to achieve an end which "cannot be accomplished by the economic power of the charging party" inasmuch as the foregoing section of the Act forbids jurisdictional strikes. The Respondent further argues that "the clear implication of" Section 8 (b) (4) (D) of the Act "is that an employer has the right to avoid jurisdictional disputes by assigning work in accordance with established practice and/or written obligation."

Generally speaking, it is true that an employer has a certain freedom of choice in assigning work to employees, but that right is not without limitation. That is, in assigning work, the employer may not infringe upon the prohibition against discrimination contained in Section 8 (a) (3) of the Act, and numerous decisions of the Board have rejected the Respondent's argument that Section 8 (b) (4) (D) implies an exception to the proscription of Section 8 (a) (3) as to unlawful hiring practices. Thus, the Board has stated;

As we read Sections 8 (b) (4) (D) and 10 (k), these sections do not deprive an employer of the right to assign work to his own employees; nor were they intended to interfere with an employer's freedom to hire, subject only to the requirement against discrimination as contained in Section 8 (a) (3).¹³

Furthermore, in making determinations as to disputes brought before it under Section 10 (k) of the Act, the Board has stressed the controlling impact of Section 8 (a) (3) upon Sections 8 (b) (4) (D) and 10 (k) by including the following reservation in its award:

We are not by this action to be regarded as "assigning" the work in question to the Machinists. Because an affirmative award to either labor organization would be tantamount to allowing that organization to require Westinghouse to employ only its members and therefore to violate Section 8 (a) (3) of the Act, we believe we can make no such award.¹⁴

Upon the foregoing, the undersigned rejects the Respondent's arguments that Section 8 (b) (4) (D) by implication gives an employer the right to assign work without regard to the prohibition against discrimination contained in Section 8 (a) (3) of the Act. The fact that Section 8 (b) (4) (D) would forbid the I. A. M. from protesting the Respondent's discriminatory hiring practice by strike action cannot in any way estop the I. A. M. from bringing in issue such practices by filing charges that the Respondent has engaged in unfair labor practices within the meaning of Section 8 (a) (3) of the Act. In conclusion, the undersigned finds (1) that since April 6, 1951, the Respondent has violated Section 8 (a) (3) of the Act by entering into and/or continuing and enforcing its discriminatory oral agreement or understanding with the Carpenters that the Respondent would employ as millwrights only members of the Carpenters, and (2) that by the foregoing conduct, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of 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

¹³ *Juneau Spruce Corporation*, 82 NLRB 650, 660. See also, *United Brotherhood of Carpenters and Joiners of America, et al.*, 88 NLRB 844; *National Association of Broadcast Engineers and Technicians, Independent, et al.*, 95 NLRB 1470.

¹⁴ *Los Angeles Building and Construction Trades Council, A. F. L., et al.*, 83 NLRB 477, 482. See also *Moore Drydock Company*, 81 NLRB 1108, 1119.

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 Respondent has engaged in unfair labor practices, the undersigned will recommend that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

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

CONCLUSIONS OF LAW

1. The operations of Eichleay Corporation constitute trade, traffic, and commerce among the several States within the meaning of Section 2 (6) and (7) of the Act.

2. Lodge No. 34, International Association of Machinists and United Brotherhood of Carpenters and Joiners of America, A. F. L., are labor organizations within the meaning of Section 2 (5) of the Act.

3. By entering into and/or continuing and enforcing, on and after April 6, 1951, an oral agreement or understanding, conditioning the hire and tenure of employment of millwrights upon membership in the Carpenters in contravention of Section 8 (a) (3) of the Act, the Respondent discriminated in regard to the hire and tenure of employment and terms and conditions of employment of employees and applicants for employment, thereby encouraging membership in the Carpenters and discouraging membership in the I. A. M. and other labor organizations, and interfered with, restrained, and coerced employees in the exercise of rights guaranteed in Section 7 of the Act.

4. The aforesaid 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 EMPLOYEES

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 employees that:

WE WILL NOT condition the hire and tenure of employment of employees and applicants for employment in millwright positions upon membership in UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, A. F. L., or any other labor organization, except under a nondiscriminatory arrangement permitted by Section 8 (a) (3) of the Act.

WE WILL NOT perform, enforce, or give effect to the closed-shop or preferential-hiring provisions of our current oral collective-bargaining agreement or understanding with UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, A. F. L., or enter into or enforce any extension, renewal, modification, or supplement thereof, or any superseding agreement with the said labor organization containing union-security provisions, except as authorized by the proviso to Section 8 (a) (3) of the Act.

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

All our employees are free to become, remain, or to refrain from becoming or remaining, members of the above-named union, or any other labor organization, except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the Act. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee or applicant for employment because of membership or nonmembership in any such labor organization.

EICHELEY CORPORATION,

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.

SALMON RIVER LUMBER COMPANY AND IDAHO LOGGING COMPANY *and*
LUMBER AND SAWMILL WORKERS UNION, LOCAL No. 2649. *Case No.*
19-A-575. January 27, 1953

Decision and Order

On September 4, 1952, Trial Examiner Howard Myers 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 forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board¹ has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in this case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations.²

Upon the entire record in this case and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations

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 [Chairman Herzog and Members Houston and Murdock].

² The Trial Examiner correctly concluded that by refusing employment to Wallace because he insisted on dealing with his employer through the Union's grievance committee, the Respondent unlawfully discouraged him in his union activity and thereby violated Section 8 (a) (3) of the Act. We think it clear that recourse to union committee action in employer-employee relationships is as intimate a form of union activity as direct acquisition or retention of union membership. By discriminating economically against Wallace for his participation in the Union's grievance procedures, therefore, the Respondent necessarily discouraged all its employees from continuing their membership in the Union.