

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.

EICHLEAY 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.

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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 Board <sup>1</sup> 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.<sup>2</sup>

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

<sup>1</sup> 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].

<sup>2</sup> 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.

Board hereby orders that the Respondents, Salmon River Lumber Company and Idaho Logging Company, Riggins, Idaho, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Lumber and Sawmill Workers Union, Local No. 2649, or in any other labor organization, by discharging or refusing to reinstate any of their employees or by discriminating in any other manner in regard to their hire or tenure of employment, or any term or condition of their employment.

(b) In any other manner interfering with, restraining, or coercing their employees in the exercise of the right to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in 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) Make whole Russell C. Wallace for any loss of pay he may have suffered by reason of the discrimination against him by payment to him of a sum of money equal to the amount which he normally would have earned as wages from October 15, 1951, to April 22, 1952, less his net earnings during said period.

(b) Upon request make available to the Board or its agents for examination and copying all payroll records, social-security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of back pay due under the terms of this Order.

(c) Post at their plants in Riggins, Idaho, copies of the notice attached to the Intermediate Report and marked "Appendix A."<sup>3</sup> Copies of said notice, to be furnished by the Regional Director for the Nineteenth Region, shall, after being duly signed by Respondent's representative, be posted for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees customarily are posted. Reasonable steps shall be taken by Respondents to insure that said notices are not altered, defaced, or covered by any other material.

<sup>3</sup> 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."

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

(d) Notify the Regional Director for the Nineteenth Region, in writing, within ten (10) days from the date of this Order, what steps Respondents have taken to comply therewith.

IT IS FURTHER ORDERED that the allegations of the complaint that Respondents violated Section 8 (a) (4) of the Act, be, and they hereby are, dismissed.

### Intermediate Report and Recommended Order

#### STATEMENT OF THE CASE

Upon charges duly filed by Lumber and Sawmill Workers Union, Local No. 2649, herein called the Union, the General Counsel of the National Labor Relations Board, herein respectively called the General Counsel and the Board, by the Regional Director for the Nineteenth Region (Seattle, Washington), issued his complaint on May 14, 1952, against Salmon River Lumber Company, herein called Respondent Salmon, and Idaho Lumber Company, herein called Respondent Lumber, and collectively herein called Respondents, alleging that Respondents have engaged in and are engaged in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1), (3), and (4) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act.

Copies of the charges and the complaint, together with notice of hearing thereon, were duly served upon each Respondent and upon the Union.

With respect to the unfair labor practices, the complaint, in substance, alleged that Respondents, jointly and individually, (1) laid off Russell C. Wallace on or about October 15, 1951, and thereafter refused to recall or reinstate him, because of his membership in and activities in behalf of the Union; (2) discharged said Wallace on or about October 18, 1951, and thereafter refused to reinstate him because he stated that he intended to present a grievance to the Board; (3) on or about October 19, 1951, declined to reinstate said Wallace to his former or substantially equivalent job because he had presented to the Union a grievance relative to his October 15 layoff; and (4) on or about October 25, 1951, terminated Wallace's employment, and thereafter refused him reinstatement because (a) of his union membership and activity, (b) he engaged in protected concerted activities, and (c) of his statement that he intended to submit to the Board the alleged discriminatory actions of Respondents.

Respondents duly filed a joint answer denying the commission of the alleged unfair labor practices.

Pursuant to notice, a hearing was held in Riggins, Idaho, on July 8, 1952, before the undersigned, the duly designated Trial Examiner. Each party was duly represented and participated in the hearing. Full opportunity was afforded the parties to be heard, to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues. At the conclusion of the taking of the evidence, the General Counsel moved to conform the pleadings to the proof with respect to minor inaccuracies. The motion was granted without objection. Oral argument was then heard in which the General Counsel and counsel for Respondents participated. The parties waived the filing of briefs with the undersigned.

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 RESPONDENTS

Salmon River Lumber Company, an Idaho corporation, has its principal offices and place of business at or near Riggins, Idaho, where it owns and operates a sawmill.

Idaho Logging Company, an Idaho corporation, a wholly owned subsidiary of Respondent Salmon, is engaged at or near Riggins in logging operations. Respondent Lumber's output, all of which is sold to Respondent Salmon, exceeds \$1,000,000 a year. More than 80 percent of Respondent Lumber's output is shipped by Respondent Salmon, either directly or indirectly, to points located outside the State of Idaho.

The same persons are the officers of each Respondent and the business transactions of each Respondent are conducted in the same offices.

The undersigned finds, upon the above uncontroverted facts, that the Respondents are, and each of them is, engaged in commerce within the meaning of the Act. The undersigned further finds, upon the record as a whole, that Respondent Salmon and Respondent Idaho constitute integral parts of a unitary enterprise and that they are a single employer engaged in commerce within the meaning of the Act.<sup>1</sup>

## II. THE ORGANIZATION INVOLVED

Lumber and Sawmill Workers Union, Local No. 2649, is a labor organization admitting to membership employees of Respondent Idaho.

## III. THE UNFAIR LABOR PRACTICES

The discriminatory discharge of Russell C. Wallace; interference, restraint, and coercion

## 1. The pertinent facts

Shortly after becoming employed as a sawyer on August 8, 1951, by Respondent Lumber, C. B. Bishop wrote to Russell C. Wallace, who was then in Boise, Idaho, that said Respondent was hiring sawyers. In response to Bishop's letter, Wallace applied for a sawyer's job and was put to work as such by Respondent Lumber on August 22. Shortly thereafter Wallace joined the Union.

After working 1 day on the job without a partner, Woods Foreman John Thompson informed Wallace that in the future he and Bishop would work as a team. Despite Wallace's reluctance to team up with another sawyer because he could earn money working alone, he, nevertheless, worked with Bishop as partner through Friday, October 13.

Shortly after reporting for work in the woods on October 15, and while Bishop and Wallace were waiting for the scaler to assign them to another strip, for the one upon which they had been working was finished, Thompson approached them. They informed Thompson, after greeting him the time of the day, that they had finished their strip and were ready for another one. Thereupon, Thompson stated, "That's all, boys, you are laid off." Wallace testified that he then asked for the reason for Thompson's action; that Thompson replied, "You are just laid

<sup>1</sup> *McCarron Company*, 100 NLRB 1537, and cases cited in footnote 2 thereof; *N. L. R. B. v. Pennsylvania Greyhound Lines*, 303 U. S. 261; *Hill Transportation Co., et al.*, 75 NLRB 1203; *N. L. R. B. v. Condenser Corp.*, 123 F. 2d 67 (C. A. 3); *N. L. R. B. v. Arnoldt*, 173 F. 2d 597 (C. A. 7); *Gifford-Hill & Company, Inc., et al.*, 90 NLRB 428.

off, no work"; that when he called Thompson's attention to the fact that several other sawyers with less seniority than he and Bishop were still on the job and therefore he thought he was entitled to a "definite reason" why he and Bishop were selected for the layoff, Thompson stated, "There is just no reason, you are laid off"; that he then said to Thompson, "In that case, I am going to go over and see the union steward and take it up with the union and find out why we are being laid off"; and that Thompson replied, "Your — damn union can't do no good for you."

Wallace further testified that he walked over to the union steward and informed him of the layoff; that Bishop and Thompson then became embroiled in a heated argument during which Bishop engaged in some name calling; that after he and the union steward had agreed that the matter should be brought before the union meeting which was scheduled to be held that evening, he walked to his parked automobile with the intention of leaving the woods; that thereupon Thompson came over to him and said, "Wallace, you've just got the wrong partner, I've nothing against you, but I don't like Bishop"; that he replied, "Well, John, could I team up with another man and saw, then?" to which Thompson replied, "Well, who [have] you got"; that when he mentioned Harold Downing as a partner, Thompson replied that he did not want to take Downing off the job he was doing; that he then stated, "Well, John, in that case the only thing I see is for us to go ahead and take the grievance up with the Union committee and see what we can do about it"; that Thompson suggested that he and Bishop work on the landing as hourly paid workers; and that he told Thompson that such an arrangement was unsatisfactory to him because he had been hired as a sawyer, that sawyering was his vocation, and that sawyers with less seniority and with less experience<sup>2</sup> than he should not be retained in preference to him. Wallace also testified that he declined the proffered landing job not only because it paid much less than he was receiving as a sawyer, but because it was too hazardous a job for a man of his age, he being 53 years of age.

Regarding the October 15 Wallace incident, Thompson testified that prior to talking to Wallace that day he had instructed Rivers "to take [Wallace] up and show him something to cut"; that after he had finished his argument with Bishop he asked Wallace, "if he cared to stay, if he wanted to cut logs, that Mr. Rivers would take him up and show him some trees to cut"; that Wallace replied, "No, John, . . . under the circumstances I think I shall go now before the snowballs fly and find me a job," to which I said, "O. K."; that Wallace, after saying that he was going to take the matter up with the Union "and get satisfaction," walked over to the union steward.

Ellis Rivers, a scaler, testified that Thompson instructed him to tell Bishop and Wallace that when they had finished the strip upon which they were working they were being laid off; that he did not relay the message to Bishop and Wallace because he was new on the job but, instead, told Bishop and Wallace to report to Thompson; that he was about 30 feet away from Bishop and Thompson while they were engaged in the above-mentioned argument and heard what was said; that at the conclusion of said argument he saw Thompson go over and talk to Wallace but could not hear what either said because he was talking to Bishop; that he did not hear Thompson ask him to show Wallace where "to cut," but did hear Thompson ask Wallace "if he was going up and saw" and Wallace reply, "No, I guess I won't, there would be more trouble if I did." Rivers further testified that he did not hear Wallace say that he intended to get another job before the snowballs caught up with him.

<sup>2</sup> Wallace has been a sawyer for approximately 12 or 13 years.

Upon the record as a whole, coupled with the fact that Wallace was a credible witness whereas Thompson and Rivers were not, the undersigned finds Wallace's version of what transpired on the morning of October 15 to be substantially correct. The undersigned further finds that Thompson did not offer Wallace a sawyer's job that morning but offered Wallace only a day job on the landing.

Pursuant to arrangements, Harvey M. Hawkins, the manager of both Respondents and Thompson's immediate superior, met with the Union's bargaining committee, which also handles grievances, on October 18. There, Wallace, who was invited to attend, opened the discussion by asking Hawkins why he was terminated. Hawkins replied, "You [were] fired for insubordination." A lengthy discussion then was had respecting Wallace's and Bishop's conduct on the day of the layoff, during which Wallace explained to Hawkins, apparently to the latter's satisfaction, that he had not engaged in any argument with Thompson and that Bishop was the person who called Thompson vile names. Discussion then ensued relative to the reasons for Wallace's layoff and the reasons why he was not given a sawyer's job. When it became apparent that Hawkins would not rehire him as a sawyer, Wallace announced that if he could not get the matter amicably settled "before this committee" he intended to call upon the conciliation service for assistance. Hawkins then asked Wallace if he thought he could work for Thompson "after all this trouble?" When Wallace replied in the affirmative, Hawkins suggested that Wallace speak to Thompson in order to "get this thing ironed out satisfactorily."

The next day, October 19, Wallace met Thompson and told him of the grievance meeting and about Hawkins' suggestion that he talk to him. Wallace credibly testified that Thompson replied that Hawkins already had informed him of what had transpired at the meeting the night before; that he then asked, "What's the word, John?"; that Thompson replied, "I will put you on day work, Wallace, but I don't want any part of that Bishop"; that he then said that if he was not rehired as a sawyer, since he was qualified to handle such a job, he intended to "take this thing up with . . . the Labor Board or whatever it may be"; that Thompson remarked, "I just don't like to have a man around that's running to the union with every little thing that comes up"; and that the conversation ended when he said, "that's up to you, John."

Thompson admitted that during his conversation with Wallace on October 19, Wallace told him of the meeting between Hawkins and the Union's committee and of Hawkins' suggestion that Wallace speak to him about getting "this thing straightened out"; that he told Wallace, "Well, we are moving today, I can't put you on today but tomorrow if you care to come to work I have a day job for you"; and in answer to Wallace's inquiry as to what the proffered job entailed he replied "it might be various different things, whatever I [can] find for [you] to do."

On October 25 Hawkins, Thompson, and Rivers met with Wallace and the bargaining committee. There the committee asked Hawkins to reinstate Wallace as a sawyer without prejudice to his seniority and other rights and without loss of pay. Hawkins replied, "I refuse." After some discussion was had regarding Wallace's employment status, and after Wallace realized that Hawkins would not rehire him as a sawyer, he stated that he would take the matter up with the National Labor Relations Board. Thereupon Hawkins stated, "If you are going to threaten me with the National Labor Relations Board, you can just consider yourself done, you are fired."

Hawkins testified that on the evening of October 15, Thompson, prior to the Union's request for a meeting regarding Wallace's layoff, told him of the layoff of Bishop and Wallace, of the "trouble" with Bishop, of Thompson's offering

Wallace a sawyer's job, of Wallace's refusal thereof, and of Wallace's statement of going "down the road before the snowballs hit him"; that at the grievance meeting of October 18, Wallace in a belligerent and halfway indignant manner demanded reinstatement, otherwise he would call upon the Labor Board or the conciliation service to settle the question of reinstatement; that he advised Wallace to contact Thompson about reemployment; that shortly after the first meeting with the Union's committee or shortly after the second one, Wallace came into the office to obtain his paycheck at which time he asked Wallace whether he had contacted Thompson; that after Wallace had answered in the affirmative, he inquired if the interview was satisfactory, to which Wallace answered in the negative; and that, for the third time, Wallace threatened to take the matter to the Labor Board.

Hawkins further testified, "We offered [Wallace] a job twice, once we offered . . . him a sawing job, and the second time as a day laborer"; and that he "believed" Wallace had quit his job voluntarily and had drawn his pay prior to the time Wallace stated he would take the matter to the Labor Board.

Sometime after the service of the amended charge in this proceeding had been served upon Respondents alleging the discriminatory discharge of Wallace, Respondents rehired him as a sawyer and he has been employed as such ever since.<sup>3</sup>

## 2. Concluding findings

The credible evidence, as epitomized above, clearly discloses that Wallace was laid off on October 15, 1951, for a nondiscriminatory reason, in that, among other things, Thompson was dissatisfied with Bishop's workmanship and Thompson decided to lay off the Bishop-Wallace team. However, when Wallace protested his layoff to the union steward, as found above, Wallace therewith incurred the enmity of Thompson, for instead of assigning Wallace to a sawyer's job, Thompson admitted that such a job was then open, Wallace was offered a hazardous job on the landing at less pay than a sawyer's job.<sup>4</sup> The finding that Thompson resented the fact that Wallace took his grievance to the Union is evidenced by Thompson's statement on October 15, "Your — damned union can't do no good for you" and his October 19 statement, "I just don't like to have a man around that's running to the union with ever little thing that comes up."

The contention of Respondents that Thompson offered Wallace reemployment as a sawyer is unsupported by the credible evidence. It is not unreasonable to infer that if Thompson had, in fact, made such an offer to Wallace on October 15, Hawkins, a man of much business acumen, would have so informed the Union's president when that official requested a meeting with Hawkins to discuss Wallace's layoff instead of arranging to meet with the Union's committee 3 days hence, for admittedly Thompson had told Hawkins about the Bishop-Wallace incident before the Union's president had requested the meeting. Likewise, it is not unreasonable to infer that had Thompson made said offer on October 15, Hawkins would have so informed the Union's committee at the October 18 meeting. Such an announcement would, in all likelihood, have ended the matter but, as the credible evidence shows, no such announcement was made. Furthermore, had Thompson offered Wallace a job as sawyer the October 25 meeting between Hawkins, Thompson, Rivers, and the Union's committee and Wallace would not have been held and if it were held management, without question, would have

<sup>3</sup> The fact that Wallace readily accepted, as the record clearly shows, Respondents' offer of reemployment as sawyer at this time is, of course, further evidence in support of the above conclusion that no such job was offered Wallace prior to October 25.

<sup>4</sup> Respondents admit that Wallace was a capable sawyer.

advised the Union that Wallace had been offered, and had refused, a sawyer's job. Moreover, had Wallace been offered reemployment as a sawyer prior to the October 25 meeting, he would not have announced thereat that he would take his grievance to the Board if it could not be settled "before this committee," nor would Hawkins have retorted to that remark by saying to Wallace, "If you are going to threaten me with the National Labor Relations Board, you can just consider yourself done, you are fired."

Upon the entire record in the case, the undersigned finds that Wallace was refused a sawyer's job on October 15, 1951, because he protested his layoff to the Union and the Union thereafter processed the grievance. By engaging in such action, which is violative of Section 8 (a) (3) and (1), Respondents interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

The undersigned further finds that Respondents have not engaged in conduct violative of Section 8 (a) (4) of the Act. Accordingly, the undersigned will recommend that the allegations of the violation of Section 8 (a) (4) of the Act, be dismissed.

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

The activities of Respondents, and each of them, set forth in section III, above, occurring in connection with their operations 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 thereof.

#### V. THE REMEDY

Having found that Respondents have engaged in certain unfair labor practices affecting commerce, the undersigned will recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondents discriminatorily discharged Russell C. Wallace on October 15, 1951, and refused him employment as a sawyer from that date until April 22, 1952, because he had engaged in protected activities, it will be recommended that Respondents make Wallace whole for any loss of pay he may have suffered from October 15, 1951, to April 22, 1952, by payment to him of a sum of money equal to the amount he normally would have earned as wages between those dates, less his net earnings during said period.<sup>5</sup>

Loss of pay to be computed and paid in accordance with the formula adopted by the Board in *F. W. Woolworth Company*, 90 NLRB 289.

Having found that Respondents did not violate Section 8 (a) (4) of the Act, it will be recommended that the complaint with respect to those allegations be dismissed.

It is further recommended that Respondents be ordered and directed to make available to the Board and its agents all their records pertaining to an analysis of the amounts due as back pay.

The unfair labor practices found to have been engaged in by Respondents are of such a character and scope that in order to insure the employees their full rights guaranteed them by the Act it will be recommended that Respondents be ordered to cease and desist from in any manner interfering with, restraining, and coercing its employees in their rights to self-organization.

<sup>5</sup> *Crossett Lumber Company*, 8 NLRB 440.

Upon the basis of the foregoing findings of fact, and upon the record as a whole, the undersigned makes the following:

#### CONCLUSIONS OF LAW

1. Lumber and Sawmill Workers Union, Local No. 2649, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Russell C. Wallace, thereby discouraging membership in the Union, Respondents have engaged in and are engaging in unfair labor practices, within the meaning of Section 8 (a) (3) of the Act.

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

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

5. Respondents did not engage in conduct violative of Section 8 (a) (4) 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 in any 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 LUMBER AND SAWMILL WORKERS UNION, LOCAL No. 2649, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the National Labor Relations Act.

WE WILL make Russell C. Wallace whole for any loss of pay suffered as a result of our discrimination against him.

All our employees are free to become or remain 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 amended Act. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

SALMON RIVER LUMBER COMPANY and  
IDAHO LOGGING COMPANY,

*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.