IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

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

CONCLUSIONS OF LAW

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

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

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

[Recommendations omitted from publication in this volume.]

EDWIN D. WEMYSS, AN INDIVIDUAL, D/B/A COCA-COLA BOTTLING COMPANY OF STOCKTON *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL NO. 439, AFL *and* STOCKTON BEVERAGE EMPLOYEES ASSOCIATION, SOMETIMES KNOWN AS STOCKTON BEVERAGE ASSOCIATION, PARTY TO THE CONTRACT.
Case No. 20–CA–626. January 27, 1953.

Decision and Order

On July 10, 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, 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 and the Association filed exceptions to the Intermediate Report and supporting briefs.

The Board [1] has reviewed the rulings made by the Trial Examiner

[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].

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 Trial Examiner's findings, conclusions, and recommendations.

The record shows, as set forth in the Intermediate Report, that the Respondent permitted the organizers of the Association to use the plant for balloting purposes, prepared the ballots, made the necessary arrangements for their casting and all other matters incident thereto, decided who were eligible to vote and who might join the Association, and entered into illegal union-security agreements with the Association. Upon these facts, we agree with the Trial Examiner that the Respondent formed, dominated, and interfered with the administration of the Association, and contributed support to it. Like the Trial Examiner, therefore, we find that the Respondent violated Section 8 (a) (2) and (1) of the Act.

Order

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, Edwin D. Wemyss, d/b/a Coca-Cola Bottling Company of Stockton, Stockton, California, and his agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Dominating or interfering with the administration of Stockton Beverage Employees Association or with the formation or administration of any other labor organization, or contributing support to the Association or any other labor organization.

(b) Recognizing Stockton Beverage Employees Association, or any successor thereto, as the representative of any of his employees for the purpose of dealing with him concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment.

(c) Giving effect to any and all contracts, supplements thereto, or modifications thereof, with Stockton Beverage Employees Association.

(d) In any other manner interfering with, restraining, or coercing his employees in the exercise of the right to self-organization, to form, join, or assist International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 439, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any 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 Act.

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

(a) Withdraw and withhold all recognition from, and completely disestablish, Stockton Beverage Employees Association as the representative of any of his employees for the purpose of dealing with him concerning grievances, labor disputes, wages, rates of pay, hours of employment, or any other conditions of employment.

(b) Post at his plant at Stockton, California, copies of the notice attached to the Intermediate Report and marked "Appendix A."[2] Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by the Respondent's representative, be posted by him immediately upon receipt thereof and maintained by him 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.

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

[2] Said notice is hereby amended by deleting the words "The Recommendations of a Trial Examiner," and substituting in lieu thereof the words "A Decision and Order."
In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order," the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order"

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

Upon an amended charge duly filed on February 7, 1952, by International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 439, affiliated with American Federation of Labor, 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 Twentieth Region (San Francisco, California), issued his complaint on February 29, 1952, alleging therein that Edwin D. Wemyss, d/b/a Coca-Cola Bottling Company of Stockton, herein called Respondent, had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (2) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. Copies of the complaint and the amended charge, together with notice of hearing thereon, were duly served upon Respondent, the Union, and Stockton Beverage Employees Association, sometimes known as Stockton Beverage Association,[1] herein called the Association, a labor organization alleged in the complaint to be existing in violation of the Act and which is a party to a collective-bargaining contract with Respondent covering his employees.

[1] At the hearing the Association's name was amended to read as above.

With respect to the unfair labor practices, the complaint, as amended at the hearing, alleged in substance that Respondent (1) since on or about January 1, 1951,[2] interrogated his employees with respect to their union affiliations and their interest in or attitude toward belonging to a union; (2) on or about August 8, initiated, formed, sponsored, and promoted the Association and thereafter assisted, dominated, contributed support thereto, and interfered with its administration; and (3) entered into a collective-bargaining agreement containing a provision violative of the Act.

On April 7, 1952, Respondent duly filed an answer denying the commission of the alleged unfair labor practices. On the same day, the Association duly filed an answer affirmatively averring that the Board did not have jurisdiction over Respondent or over his employees.[3] The Association's answer also denied that it was formed, or is existing, in violation of the Act.

Pursuant to notice, a hearing was duly held from May 6 to May 16, 1952, at Stockton, California, before the undersigned, the duly designated Trial Examiner. The General Counsel, Respondent, the Union, and the Association were represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence relevant to the issues was afforded all parties. At the conclusion of the taking of the evidence, oral argument was had in which counsel for the Union and the General Counsel participated. The undersigned then advised the parties that they might file briefs with him on or before June 5, 1952.[4] Briefs have been received from Respondent and the Association which have been duly considered.[5]

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 RESPONDENT

Edwin D. Wemyss, doing business as Coca-Cola Bottling Company of Stockton, has his principal offices and plant at Stockton, California, where he is, and during all times material herein was, engaged in bottling, selling, and distributing at wholesale bottled Coca-Cola, a nationally advertised and distributed carbonated beverage. Respondent operates under and pursuant to an agreement with the Coca-Cola Bottling Company of Stockton, Ltd., herein called the Corporation. Wemyss controls the Corporation and owns all but 2 shares of its capital stock; his wife, Wilma, owns 1 share; and a third party, C. H. Blemker, owns the other share. Wemyss is the Corporation's president-treasurer; his wife, its secretary; and Blemker, its vice president. The Corporation, which has no employees, owns a building which it leases to Wemyss where he conducts his Coca-Cola business and other enterprises.

The corporation has a direct franchise granted by Pacific Coast Coca-Cola Bottling Company, herein called Pacific Coast, which vests in the Corporation the exclusive right to bottle and distribute bottled Coca-Cola in two California counties. The Pacific Coast, in turn, has an agreement with The Coca-Cola

[2] Unless otherwise noted all dates refer to 1951.

[3] Respondent, by separate motion, challenged the Board's jurisdiction. This motion was denied at the hearing.

[4] At the request of counsel for Respondent and the Association the time was extended to June 20, 1952.

[5] Respondent also filed proposed findings of fact and conclusions of law which are disposed of in accordance with the findings, conclusions, and recommendations hereinafter set forth.

Company, a Delaware corporation, which owns an undisclosed amount of capital stock in Pacific Coast, and grants the latter certain rights and privileges to bottle and sell Coca-Cola.

By the provisions of a certain royalty agreement entered into by and between the Corporation and Wemyss all the rights of the Corporation under its agreement with Pacific Coast are vested in Wemyss for a stated period.

All the syrup or extract—the essence of the drink Coca-Cola—is received by Respondent from the Corporation which, in turn, receives it from Pacific Coast. The said syrup or extract is manufactured by The Coca-Cola Company at one of its many multistate plants located at San Francisco, California.

During 1951, Respondent purchased supplies and materials valued at $192,699.66, of which amount $6,340.54 was shipped directly to Respondent's plant from outside the State of California and $22,522.94, although secured locally, originated from points outside the State of California. All Respondent's sales are made either locally or within the State of California.

Counsel for Respondent and for the Association contended at the hearing, and in their respective briefs, that the complaint should be dismissed for the reason, among others, that Respondent is not engaged in commerce within the meaning of the Act because of the local character of his business. The contentions are without merit. The Board's policy, as enunciated in several recent decisions,[6] of asserting jurisdiction over enterprises such as here involved, which constitute an integral part of a nationwide distribution system for a nationally advertised product, without regard to whether the volume of its out-of-State imports or exports would, standing alone, lead the Board to assert jurisdiction, is part of the Board's "current practice" to which the Supreme Court referred with approval in *N. L. R. B.* v. *Denver Building Trades Council*, 341 U. S. 675 at 685, footnote 14.[7] Since the Board's apparent reason for asserting jurisdiction is the fact that a strike or other labor dispute at an enterprise such as Respondent's would affect the manufacture and distribution of a nationally marketed product and since this would occur whether or not the particular enterprise involved is also tied to other units in the system by bonds of common ownership or management, the Board seems to regard the presence or absence of such additional bonds as irrelevant for the purpose of its jurisdictional policy. The undersigned therefore finds that since Respondent operates as an essential link and element in a multistate system devoted to the manufacture and distribution of a nationally advertised product, it will effectuate the policies of the Act for the Board to assert jurisdiction over the Respondent and over his employees.

II. THE ORGANIZATIONS INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 439, affiliated with American Federation of Labor, and Stockton Beverage Employees Association, sometimes known as Stockton Beverage Association, unaffiliated, are labor organizations admitting to membership employees of Respondent.

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[6] *Seven-Up Bottling Company of Miami, Inc.*, 92 NLRB 1622, enfd. as mod. 196 F. 2d 424 (C. A. 5); *Coca-Cola Bottling Co of St. Louis* v. *N. L. R. B.*, 95 NLRB 284, enfd. as mod. 195 F. 2d 955 (C. A 8); *Squirt Distributing Company*, 92 NLRB 1667; *Coca-Cola Bottling Company of Ashville, N. C.*, 97 NLRB 151; *Coca-Cola Bottling Company of Pottsville*, 97 NLRB 503; *Bireley's Bottling Company*, 98 NLRB 447; *American Bottling Company*, 99 NLRB 345.

[7] See also *Local Union No. 12, Progressive Mine Workers of America* v. *N. L. R. B.*, 189 F. 2d 1 (C. A 7), *N. L. R. B.* v *Red Rock Co.*, 187 F. 2d 76 (C. A. 5).

III. THE UNFAIR LABOR PRACTICES

Formation and Domination of, Interference With, and Support of the Association. Interference, Restraint, and Coercion

1. The sequence of the pertinent facts

So far as it appears from the record there were no organizational activities among Respondent's Stockton plant employees prior to July 1951. On July 6, at Respondent's invitation,. C. C. Allen, the Union's secretary-treasurer, and several representatives of other affiliates of the American Federation of Labor met with Respondent at his office. There, Respondent complained that the representatives of the Teamsters' Modesto, California, local had wronged him by placing a Modesto Coca-Cola plant, in which he had a financial interest, on the Teamsters' unfair labor list. Respondent, after discussion was had regarding his complaint, then stated that if the Modesto union was kept separate and apart from the Stockton union, then he would be glad to talk to the representatives of the Stockton union about organizing his Stockton employees.

On July 13, Respondent and William R. Howell, Respondent's general manager, met with Allen and several others representing labor unions in the Stockton area. After discussion was had regarding the situation at the aforesaid Modesto plant, Allen suggested that he and his associates be permitted to talk to Respondent's employees regarding organizing them. Respondent replied that when the employees were hired he informed each of them that the plant was nonunion, and "since times have changed" he thought it advisable that he should speak to the employees before the Union's representative did. In this arrangement the union representatives acquiesced, presumably on the basis of Respondent's indication that he would deal with the Union if the employees were willing to join it.

On August 1, Allen telephoned Respondent inquiring whether the Union's representatives could come to the plant and talk to the employees. Respondent replied that he was not in accord with Allen's suggestion because "somebody" had already spoken to the employees about the Teamsters' Union thereby upsetting his plans. Respondent then said that he would communicate with Allen at a later date.

On August 7, Allen again telephoned Wemyss and again requested permission to talk to the employees. Again Wemyss advised against such action on the ground that he was still endeavoring to get "an expression" from his employees.

On August 8, Morgan Logan, after speaking to about 8 or 10 of his coworkers about forming a labor organization of their own, asked Howell for permission to hold a balloting on Respondent's premises for the purpose of ascertaining the employees' desires regarding such an organization. Contrary to Howell's testimony, which is marked by evasions and subterfuges cleverly designed to mislead, the undersigned is convinced, and finds, that Howell prepared the list of employees who were to be permitted to vote at such balloting; selected the persons who were to be permitted to join the proposed organization; and prepared the ballot.[8] Admittedly, that same day, Howell caused to be posted in the plant the eligibility list of voters, had a ballot box prepared, and had the requisite number of ballots typed by one of Respondent's clerical force, and Wemyss succeeded in having his accountant, Emile R. Jardine, agree to supervise the balloting.

[8] Which reads . Are you in favor of Stockton Beverage Employees Association representing you in collective bargaining with Coca-Cola Bottling Company of Stockton?

Yes _____ No _____

On August 9, Jardine, assisted by Logan, conducted the balloting on company time[9] and property, which resulted in 18 "Yes" and 2 "No" votes being cast. Two employees, however, did not vote.

On August 10, at Wemyss' invitation, Allen and two of his associates conferred at the plant with Wemyss and Howell. There, Wemyss stated that his employees had formed an association of their own; that the Association had requested a bargaining conference; and that his attorney had advised him to honor the request. In response to Allen's request for permission to speak to the employees, Wemyss asked Howell to convey to the president of the Association[10] Allen's request. On or about August 13, Wemyss telephoned Henry Hansen, secretary of the Central Labor Council of San Joaquin County and one of the persons attending the aforesaid August 10 meeting, and informed Hansen that the Association's president "had decided not to meet with any representatives of the Teamsters' union or the Central Labor Council."

In September, Respondent and the Association entered into a 6-month collective-bargaining contract, which, however, was not actually signed until November, containing a clause reading as follows:

> Any employee covered by this agreement who is now or who shall become a member of the Union shall remain a member in good standing for the duration of this agreement as a condition of employment. Any new employee hired after the effective date of this agreement shall, as a condition of employment, become a member of the Union within 30 days.

Exclusive of the union-security clause the only other changes made in the employees' working conditions by the said contract were the installation of hot-water equipment in certain parts of the plant, 3 paid holidays to certain female employees, and an additional paid vacation week after 5 years of service to the male employees within the bargaining unit.

In March 1952, after the service of the complaint herein, Respondent and the Association entered into another agreement for approximately a year's duration. This agreement, except changing the normal workweek from 8 hours each day from Monday through Friday and 4 hours on Saturday to 8½ hours from Monday through Friday and changing the last sentence of the union-security clause to read "Any employee hired after the effective date of this agreement shall, as a condition of employment, become a member of the Union no later than 30 days after date of hire" embodied all the terms and conditions of the former agreement.

2. Concluding findings

The right of employees, under Section 7 of the Act, "to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing . . . [and] to refrain from any or all of such activities" is effectively implemented by section 8 (a) (1) and (2). These provisions forbid employers to "interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7," and likewise prohibit employers from dominating, interfering with, or supporting labor organizations of their employees. The employer's economic hold over his employees, which inheres in their relationship, is thereby neutralized in matters of organization and representation, which are peculiarly the concern of the employees. Interdictions against employer intrusion in such matters are essential if employees are to be free from the coercive

[9] Some employees voted prior to their regular starting time.

[10] Meaning Logan, who, incidentally, was not elected president until sometime in September.

influence of their employers, for employees are, as the courts have repeatedly found, not insensitive to the advantages in their employment that they consider are likely to flow from their choice of a representative to coincide with the wishes of their employer, nor the disadvantages which may attend their choice of a representative opposed by their employer. And for the same reason, employees cannot be expected to derive the full benefit from their protected right of self-organization if they believe, from "circumstances which the employer created or for which he was fairly responsible," [11] that their representative, however chosen, is subject to the employer's compulsive will. Consequently, the Act prohibits all forms of employer assistance to, or domination of, his employees' labor organizations and interference in their organizing campaigns which might operate to preclude an uninhibited exercise by employees of their collective-bargaining rights.[12]

In open disregard of their duty of neutrality, Wemyss and Howell foisted upon the employees a labor organization which met with Respondent's approval. Not only did Respondent permit the organizers of the Association to use the plant for balloting purposes but Howell prepared the ballots and made the necessary arrangements for their casting and for all other matters incident thereto. Likewise, Respondent decided who were eligible to vote at the balloting and who may join the Association. Furthermore, after the Association came into being, Respondent and the Association entered into a contract providing for a certain form of union security in violation of the Act for admittedly no election was conducted by the Board authorizing the making of such an agreement as provided for in Section 9 (e) (1) of the Act.[13] Admittedly, the Association has never complied with the provisions of Section 9 (f), (g), and (h) of the Act and hence, by entering into the September 1951 and the March 1952 agreements, Respondent lent further support to the Association.

Moreover, the evidence, as epitomized above, leads to the inescapable conclusion that the Association was formed by Respondent and that it exists and functions only through Respondent's control, participation, and sufferance. In short, the Association is being used by Respondent as a substitute for collective bargaining and, as such, is a device which repeatedly has been held to be an outlawed form of labor organization.[14] Therefore, upon the entire record in the case, the undersigned finds that Respondent formed, dominated, and interfered with the administration of the Association within the meaning of Section 8 (a) (2) and (1) of the Act, thereby interfering with, restraining, and coercing his employees in the exercise of the rights guaranteed in Section 7 thereof.

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[11] *N. L. R. B.* v. *Link-Belt Co*, 311 U S. 584, 588.

[12] See *N. L. R. B.* v. *Link-Belt Co.*, 311 U. S. 584; *I. A. M.* v. *N. L. R. B.*, 311 U. S. 72; *N. L. R. B.* v. *Electric Vacuum Cleaner Co*, 315 U. S. 685; *N. L. R. B.* v. *Southern Bell Telephone & Telegraph Co.*, 319 U. S. 50; *N. L. R. B.* v. *S H Kress Co.*, 194 F. 2d 444 (C. A. 6); *Harrison Sheet Steel Co.* v. *N. L. R. B.*, 194 F. 2d 407 (C. A. 7).

[13] At the time the first contract was agreed upon Section 8 (a) (3) of the Act permitted agreements between an employer and a union requiring as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of the agreement, whichever was later, provided that the union was the bargaining representative of the employees to be covered by the agreement and had been authorized by the employees in a Board-conducted election to make such agreement. On October 22, 1952, prior to the actual execution or agreement of the aforesaid contract, Congress amended the Act eliminating the requirement of a Board election but left intact the other requirements for a permissible union-security agreement.

[14] See *N L. R B.* v *Newport News Shipbuilding & Drydock Co.*, 308 U. S. 241; *N. L. R. B.* v. *Baldwin Locomotive Works*, 128 F. 2d 39 (C. A. 3); *Bethlehem Steel Co.* v. *N. L. R. B.*, 120 F. 2d 641 (App. D. C.); *Westinghouse Electric & Mfg. Co.* v. *N. L. R. B.*, 112 F. 2d 657 (C. A. 2); *Budd Mfg Co.* v. *N. L. R. B.*, 138 F. 2d 86 (C. A. 3); and *N. L. R. B.* v. *Rath Packing Co*, 123 F. 2d 684 (C. A. 8).

The undersigned further finds that Respondent violated Section 8 (a) (1) of the Act by entering into the 1951 and 1952 agreements with the Association.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with Respondent's operations described in section I, above, have a close, intimate, and substantial relationship 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 Respondent has engaged in unfair labor practices in violation of Section 8 (a) (1) and (2) of the Act, the undersigned will recommend that he cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

As found above, Respondent formed, dominated, and interfered with the administration of the Association and contributed support to it The undersigned is convinced, and finds, that the present existence of the Association and Respondent's continued recognition thereof constitute a continuing obstacle to the exercise by the employees of the rights guaranteed them under the Act. Therefore, in order to effectuate the policies of the Act and to free the employees from the effects of Respondent's unfair labor practices, the undersigned will recommend that Respondent withdraw all recognition from the Association as a representative of any of his employees for the purpose of dealing with him concerning grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of employment and to completely disestablish it as such representative.

As previously found, Respondent's conduct in executing the 1951 and 1952 contracts with the Association constituted unlawful assistance to the Association. These contracts have been a means whereby Respondent has utilized the unlawfully formed, dominated, and supported Association to frustrate self-organization and to defeat genuine collective bargaining by the employees. The undersigned, therefore, recommends that Respondent cease and desist from giving effect to said contracts or to any renewal, extension, modification, or supplement thereof. Nothing herein shall be taken to require Respondent to vary the wages, hours, seniority, and other substantive features of his relations with the employees, themselves, which Respondent has established in performance of the said contracts or any revision, extension, renewal, or modification thereof.

The unfair labor practices found to have been engaged in by Respondent are of such a character and scope that in order to insure the employees here involved their full rights guaranteed them by the Act it will be recommended that Respondent cease and desist from in any manner interfering with, restraining, and coercing his employees in their right to self-organization.[15]

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. International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 439, affiliated with American Federation of Labor,

[15] See *May Department Stores* v. *N. L. R. B.*, 326 U. S. 376.

and Stockton Beverage Employees Association, sometimes known as Stockton Beverage Association, unaffiliated, are labor organizations within the meaning of Section 2 (5) of the Act.

2. By forming, dominating, and interfering with the administration of the Association and by contributing support to it, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (2) of the Act.

3. By entering into and giving effect to the 1951 and 1952 contracts with the Association, which contracts were executed in violation of the Act, Respondent engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

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

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

[Recommendations omitted from publication in this volume.]

Appendix A

NOTICE TO ALL 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, I hereby notify my employees that:

> I HEREBY DISESTABLISH STOCKTON BEVERAGE EMPLOYEES ASSOCIATION, sometimes known as STOCKTON BEVERAGE ASSOCIATION, as the representative of any of my employees for the purpose of dealing with me concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and I will not recognize it or any successor thereto for any of the above purposes.
>
> I WILL NOT dominate or interfere with the formation or administration of any labor organization or contribute support to it.
>
> I WILL NOT give effect to any and all agreements and contracts, supplements thereto or modifications thereof, or any superseding contract with STOCKTON BEVERAGE EMPLOYEES ASSOCIATION, sometimes known as STOCKTON BEVERAGE ASSOCIATION, or any successor thereto.
>
> I WILL NOT influence my employees in their choice of bargaining representatives, or in any other manner interfere with, restrain, or coerce my employees in the exercise of their right to self-organization, to form labor organizations, to join or assist INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL No. 439, affiliated with AMERICAN FEDERATION OF LABOR, or any other 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 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.

All my 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. I 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.

EDWIN D. WEMYSS, d/b/a COCA-COLA BOTTLING COMPANY OF STOCKTON,
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.

FLOYD DRUMMOND D/B/A DRUMMOND IMPLEMENT COMPANY *and* LODGE #349, INTERNATIONAL ASSOCIATION OF MACHINISTS. *Case No. 9-CA-440. January 27, 1953*

Decision and Order

On June 25, 1952, Trial Examiner James A. Shaw issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent engaged in and was engaging in certain unfair labor practices in violation of Section 8 (a) (1) and (5) of the Labor Management Relations Act, as amended, and recommending that the Respondent cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that the Respondent had not engaged in certain unfair labor practices in violation of Section 8 (a) (3) of the Act and recommended dismissal of those portions of the complaint herein alleging the discriminatory discharges of Emery Sparks and George E. Penny. Thereafter, the Respondent and the General Counsel filed exceptions to the Intermediate Report and supporting briefs.

Pursuant to 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 Murdock and Peterson].

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 this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions, modifications, and corrections.[1]

[1] We make the following corrections of misstatements of fact appearing in the Intermediate Report which do not affect the ultimate conclusions.

At page 601: The charge and amended charge were filed on July 3 and 31, 1951, respectively, rather than on July 12 and 30, 1951.

At page 605: The second signature on the quoted letter should read Kenneth Ferneau.