Mildred Peterson, and Ruth Wonn, thereby discouraging membership in the Union, Sharp Point has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) 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.

6. Sharp Point did not violate Section 8 (a) (3) of the Act by discharging Ernest Bingham and Adeline Benedict, as alleged in the complaint.

[Recommendations omitted from publication in this volume.]

BLUE PLATE FOODS, INC. *and* WAREHOUSE EMPLOYEES UNION #322, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL. *Case No. 5-CA-578. February 5, 1953*

Decision and Order

On November 12, 1952, Trial Examiner Ralph Winkler issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board [1] has reviewed the rulings made by the Trial Examiner and finds that no prejudicial error was committed. The rulings made by the Trial Examiner are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations.

Order

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Blue Plate Foods, Inc., Richmond, Virginia, its agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening to close down its plant or to lay off employees or to remove operations because of union activities, and holding out union benefits to cause employees to desist from union membership and activities.

---

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

(b) Discharging, laying off, refusing to reinstate, or otherwise discriminating against employees in any other manner in regard to hire and tenure of employment or any term or condition of employment because of union membership or activities.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Warehouse Employees Union #322, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities except to the extent that such rights 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) Offer to William Bullock and Boyd Hambright immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges and make them whole for any loss of pay they may have suffered because of the Respondent's discrimination against them in the manner set forth in that portion of the Intermediate Report entitled "The Remedy."

(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 and the right of reinstatement under the terms of this Order.

(c) Post at its plant at Richmond, Virginia, copies of the notice attached to the Intermediate Report as an appendix.[2] Copies of said notice, to be furnished by the Regional Director for the Fifth Region, shall, after being duly signed by the Respondent, be posted immediately upon receipt thereof and be maintained by it for sixty (60) consecutive days thereafter in conspicuous places including all places where notices are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

---

[2] This notice, however, shall be, and it hereby is, amended by striking from the first paragraph thereof 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 the 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."

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

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

Upon charges filed by Warehouse Employees Union #322, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, a labor organization herein called the Union, the General Counsel for the National Labor Relations Board issued a complaint on August 15, 1952, against Blue Plate Foods, Inc., herein called the Respondent, alleging that the Respondent had engaged in specified conduct violating Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the Labor Management Relations Act, 1947, 61 Stat. 136, herein called the Act. Copies of the complaint and charges were served upon the Respondent, and the Respondent in turn filed an answer denying the commission of the unfair labor practices alleged.

Pursuant to notice, a hearing was held in Richmond, Virginia, on September 23 and 24, 1952, before the undersigned Trial Examiner. The General Counsel, the Respondent, and the Union were represented at the hearing and all parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The parties were given opportunity to present oral argument before the Trial Examiner and also to file briefs and proposed findings of fact and conclusions of law. The Respondent has moved to dismiss the complaint, which motion is disposed of in accordance with the following findings of fact and conclusions of law.

Upon the entire record in the case, and upon observation of the demeanor of witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent is a Louisiana corporation with plants in several States including a plant at Richmond, Virginia, where the present action arose. During the past year, the interstate purchase of materials and sale of finished products of the Richmond plant were approximately valued at $185,000 and $180,000, respectively.

I find that the Respondent is engaged in commerce with the meaning of the Act.

II. THE UNFAIR LABOR PRACTICES

A. *The union campaign*

The principal issue in this case is whether the Respondent discriminatorily discharged William Bullock and Boyd Hambright on April 10, 1952.

Organizational activities among the Respondent's employees in March 1952 began when Union Business Agent Campbell distributed union-designation cards to several employees in the latter part of the month. A number of employees signed such cards during the next few days and about April 1 a committee of Bullock and Hambright accompanied Campbell in soliciting other employees at their homes. The day after the committee and Campbell signed up the latter group, Campbell notified Plant Superintendent Herman Cheek that the Union represented a majority of the employees. Cheek replied that he was already

aware of the union campaign and that he would cooperate with Campbell in any way he could. Cheek testified that he knew of the aforementioned solicitation by Bullock and Hambright before he discharged them on April 10.

On or about April 2, the day after Hambright, Bullock, and Campbell visited employees to solicit their union support, Cheek approached Bullock and Hambright at work. Cheek told Bullock that he had heard about the union campaign; that he didn't believe the Union would do any good; and that without paying union dues, the Richmond employees would receive the same benefits as the employees at the Respondent's Atlanta plant which was unionized. Cheek told Hambright that Hambright was "cutting [his] own throat" by trying to get others to join the Union; that Cheek had laid off Hambright before and could do so again; and that Hambright might be placed at machine work but only if the union drive was unsuccessful. Cheek also called employee Daisy Basket into his office and inquired whether the employees were interested in the Union and that if they were, he would like to discuss the matter with her. Cheek also disparaged the Union to employee Sam Simpson during this period. Cheek told Simpson that the Union wasn't "such a good thing" and he suggested that Simpson speak to the other employees about the Union because the others are "kind of young" and don't know "what they are getting into."

About December 1951, the Respondent decided to convert some hand or semi-automatic work to machine operations at the Richmond plant. Cheek advised the employees at the time that this conversion would result in fewer jobs, as it did. The machinery was installed in January 1952, and when operations resumed that same month, the Respondent reduced its employee complement from approximately 20 to 12, the latter figure being the Respondent's estimated need for the new operation. Shortly afterward, the Respondent recalled a few other employees.

John Geiger is the Respondent's General Superintendent in charge of production at plants in Richmond, Atlanta, and New Orleans. Geiger testified that he visited the Richmond plant in April 1952 during the period of the Union's campaign although he denies knowledge of such activities before making the trip, and he testified that the purpose of the trip was to check on the new machine operations and to determine whether the Respondent's estimation of 12 employees was appropriate to production requirements. During this visit Geiger revised the estimate to 15 employees.

On or about April 7 Geiger assembled all the employees in Cheek's office to explain to them, according to Geiger, the reasons for the Company's change to machine operations and also to give them "a general speech on unionism." Geiger stated, among other things, that Cheek had informed him of the union campaign, but that he, Geiger, didn't see what good the Union could do for the employees; that the employees without a union would receive the same benefits as the employees received at the Respondent's unionized plants; that employees in the unionized plants had regretted their organization; and that the Respondent could remove the machinery and close down the Richmond plant. Geiger also stated that it made no difference to the Respondent whether there was a union in the plant and that the employees themselves could decide whether or not to have a union, but that he hoped that they would "vote it out."

Geiger testified that while discussing personnel matters with Cheek during this April visit, he learned that Hambright and Bullock were under 18 years of age and were working with work permits required by the State Labor Department for persons under 18. (Such permits for underage employees prohibited them to work on machines or to work more than 40 hours weekly or 8 hours daily.) Geiger testified that the Respondent has an established

policy not to employ persons younger than 18 and he testified that he accordingly advised Cheek of this policy. Although Cheek had been in charge of the Richmond plant for 12 years, he testified that he had been unaware of such purported policy until Geiger advised him respecting the matter on this occasion. The explanation of Geiger and Cheek for Cheek's claimed lack of knowledge of this claimed company policy is that Richmond is quite distant from the Respondent's main office in New Orleans, that company officials therefore made fewer visits to Richmond than they did to the Atlanta and New Orleans operations, and that Cheek had been exercising almost autonomous authority in personnel matters. Geiger testified, however, that with the conversion to machine production he took a closer interest in details, personnel matters included, of the Richmond operations; and he also stated in this connection that, with the changeover, the New Orleans office received more records than theretofore from the Richmond plant which would bring the Richmond plant within closer scrutiny at New Orleans. It does not appear, however, that these records contained more information concerning the vital statistics of employees. On the other hand, it does appear that the New Orleans office has always processed the social-security records of the Richmond employees, before and since the changeover, and that these records contain the ages of employees.

B. *The discharges*

Bullock and Hambright were 16 years old when their employment began in April and July 1951, respectively. Cheek knew this fact at the time and both employees obtained the aforementioned work permits which they then gave to Cheek. Bullock was laid off for a 2-week period together with other employees during the installation of machinery in January 1952. Cheek told Bullock at the time that he could look for another job if he wanted to, but that he could return to the Respondent's employ when the machinery was installed. Bullock did return in January and he operated a machine and performed other work during the following 2-month period. A few days before his discharge, and after his aforementioned conversation concerning the Union with Cheek, he was removed from machine work. Hambright's work was of a utility nonskilled nature; the Respondent did not lay him off but kept him steadily employed during the installation period.[1]

Sometime before the Union began organizing, Cheek told Bullock he was considering Bullock for a job as shipping clerk,[2] which would have meant a wage increase for Bullock. Also before the outset of union activities, Cheek advised Bullock that Bullock would be unable to fill such position because the job required someone older than Bullock. However, on the same day as Cheek's aforementioned union conversation with Bullock, Cheek again mentioned the shipping job to Bullock and Cheek told Bullock that he could not have the job if he was a union member and Cheek suggested that Bullock consider the matter. Foreman Hubert Johnson asked Bullock later the same day whether Bullock would prefer the Union or the shipping job, and Bullock replied that he chose the Union.[3]

[1] See footnote 4, below.

[2] There was a great deal of inconsistency in the Respondent's testimony on this matter.

[3] The shipping clerk's job had been excluded from the coverage of a contract between the Respondent and the Union before the events under consideration. (The record does not explain why the Union did not continue as bargaining representative.) And Cheek testified that the alternatives offered Bullock were therefore legitimate. The Respondent does not satisfactorily explain by credible testimony, however, why the Respondent brought up the subject of the shipping job even after Cheek had advised Bullock, under advice from Check's own superior, that the job required someone older than Bullock.

The Respondent contends that it discharged both employees because of the company policy respecting underage persons. Cheek testified that he had been very much pleased with their work, and it also appears that when he discharged them he stated that he would do whatever he could to enable them to obtain other employment.

Cheek testified that he had laid off both boys during the installation period in January and that he advised each of them on recall that their employment would be of a temporary nature. The Respondent also adduced testimony to the effect that Hambright and Bullock both acknowledged to Cheek at the time of their discharge that he had told them that their positions were temporary. The sense of Bullock's and Hambright's testimony is that Cheek had not advised them to this effect. The record shows that Hambright never had been laid off during the installation period.[4]

Although the Respondent claims, as stated above, that Cheek first learned of the alleged company policy in April 1952 and that this was the reason for discharging Bullock and Hambright, Cheek testified at one point that, when the machinery was installed in January, he had then planned not to retain Bullock and Hambright in the new operations because of the delimiting impact of their age on their working hours and on their availability for work on machines. As indicated above, Bullock did machine operations for 2 months following his recall in January.

Upon a consideration of all the circumstances, including the fact that Bullock and Hambright were able workmen and had been employed under the new setup for at least 2 months, that the Respondent was opposed to the Union, that Cheek sought to dissuade both employees from further organizational activities, that Cheek reopened the matter of the shipping job on a nonunion basis immediately upon the advent of the Union and despite the fact that Bullock was not old enough to hold the job, that the Respondent gave self-conflicting testimony on the shipping job matter and that its testimony respecting Hambright's alleged layoff and recall was refuted by its own records, and in view of the timing of the events under consideration—I am impelled to find that the evidence preponderantly supports the conclusion that the Respondent discriminatorily discharged Hambright and Bullock because of their role in organizing the employees and that it thereby has violated Section 8 (a) (1) and (3) of the Act. I also find that the Respondent violated Section 8 (a) (1) of the Act by threatening employees with loss of employment through shutdown or discharge and by holding out job advantages, for the purpose of discouraging their participation in organizational activities.

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent, set forth in section II, 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.

IV. 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

[4] The Respondent's personnel records show that Hambright was absent from work on only 1 day during this period, and Cheek was without knowledge concerning the reason for this absence. Hambright testified, as I find, that he had not been laid off at the time in question.

take certain affirmative action designed to effectuate the policies of the Act.

The Respondent asserts that the usual reinstatement remedy in the case of discriminatory discharges should not be applied here because Hambright and Bullock are not yet 18 years of age as required by the alleged company rule and because they are not permitted under State law to work more than 8 hours daily or 40 hours weekly or to work on machines. The record shows that the Respondent had work for both employees after the changeover to machine operations, and I perceive no reason why the Respondent cannot continue to employ them on a proper basis. The Respondent appears to have disregarded its claimed rules as to Bullock and Hambright before their participation in union activities, and I consider such defense to reinstatement to be without merit under the circumstances. The recommended order, however, is not intended to require the Respondent to breach any obligations under State law.

I shall recommend that the Respondent offer immediate and full reinstatement to Hambright and Bullock to their former or substantially equivalent positions [5] without prejudice to their seniority or other rights and privileges and make them whole for any loss of pay resulting from the discrimination against them, by paying them a sum of money equal to the amount they would have earned from the dates of their discharge to the date of offer of reinstatement less their net earnings [6] to be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289, 291–294. Earnings in one quarter shall have no effect upon the back-pay liability for any other such period. It will also be recommended that the Respondent make available to the Board, upon request, payroll and other records to facilitate checking the back pay due. *F. W. Woolworth Company, supra.*

In view of the nature of the unfair labor practices committed, I shall also recommend that the Respondent cease and desist from infringing in any manner upon the rights guaranteed in Section 7 of the Act.

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

Conclusions of Law

1. The Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act.
2. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

---

[5] *The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch*, 65 NLRB 827.

[6] *Crossett Lumber Company*, 8 NLRB 444, 497–98.

[Recommendations omitted from publication in this volume.]

Appendix

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 threaten to shut down our plant or remove operations or lay off employees because of union activities.

WE WILL NOT discharge or otherwise discriminate against employees because of membership in or activities in behalf of WAREHOUSE EMPLOYEES UNION #322, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist 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.

WE WILL offer to the following named employees immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed and make them whole for any loss of pay suffered as a result of the discrimination against them:

William Bullock
Boyd Hambright

BLUE PLATE FOODS, INC.,
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.

THE KROGER COMPANY *and* LOCAL 1583, RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL. *Case No. 32–CA–171. February 5, 1953*

Decision and Order

On August 29, 1952, Trial Examiner Charles L. Ferguson 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. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint, and recommended dismissal of those allegations. Thereafter, the Respondent filed exceptions only to the Trial Examiner's recommendation that the Respondent post notices at its Malvern, Arkansas, store. The Respondent also filed a brief.

The Board [1] has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The

[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].