

guards, section supervisors, line supervisors, production expediter, head mechanic, construction department supervisor, head marker, head cutter, folding and boxing supervisor, patterns and sample making department supervisor, receiving and stock department supervisor, building and equipment superintendent, shipping department supervisor and assistant supervisor, and all other supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining.

[Text of Direction of Election omitted from publication in this volume.]

KARTARIK, INC. *and* DISTRICT LODGE 77, INTERNATIONAL ASSOCIATION OF MACHINISTS, A. F. OF L. *Case No. 18-CA-406. March 13, 1953*

Decision and Order

On January 27, 1953, Trial Examiner David London 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 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,² the Respondent's exceptions and brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.³

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, Styles, and Peterson].

² The Intermediate Report contains an inadvertency which does not affect the Trial Examiner's ultimate conclusions or our concurrence therein. Accordingly, we make the following correction: District Lodge 77, International Association of Machinists, A. F. of L., has at all times since April 11, 1952, rather than since April 1, 1952, been the exclusive bargaining representative of the Respondent's employees in the unit found appropriate therein.

³ The Respondent has excepted to the Trial Examiner's finding that "The record does not disclose what relationship, if any, was maintained between Respondent and the Union since [February 3, 1947, the date on which the Union was certified] to the period which gave rise to the controversy with which we are concerned," and has pointed out that the record discloses facts which indicate that the Union ceased to represent the Respondent's employees on or about June 15, 1949. It contends, therefore, in its brief, that the present proceeding "must be treated similarly to an initial representation case and the background of relationship between the parties is completely immaterial as it would effect [sic] the right of the complaining union to represent these employees." While we hereby correct the Trial Examiner's statement to accord with the record, neither the Trial Examiner nor the Board relied upon these background events in finding that on April 11, 1952, the Union represented a majority of the employees in the appropriate unit.

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, Kartarik, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in District Lodge 77, International Association of Machinists, A. F. of L., or in any other labor organization, by discharging, or refusing to reinstate, any of its employees, or by discriminating in any other manner in regard to their hire, tenure of employment, or any term or condition of employment.

(b) Refusing to bargain collectively concerning wages, hours, and other conditions of employment with District Lodge 77, International Association of Machinists, A. F. of L., as the exclusive representative of all employees at its St. Paul plant, but excluding office employees, guards, and supervisors as defined in the Act.

(c) Interrogating its employees concerning their union activities, threatening to shut down the plant or other reprisals, and promising them economic benefits to discourage their union affiliations and activities; and in any other manner interfering with, restraining, or coercing its employees in the exercise of the rights to self-organization, to form labor organizations, to join or assist District Lodge 77, International Association of Machinists, A. F. of L., 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 or all of such activities except to the extent that such right may be affected by an agreement requiring membership in labor organizations 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) Upon request, bargain collectively concerning wages, hours, and other conditions of employment with District Lodge 77, International Association of Machinists, A. F. of L., as the exclusive representative of all employees in the aforesaid appropriate unit, and if an understanding is reached, embody such understanding in a signed agreement.

(b) Offer Libo Napoli, John Suchan, and Frank Koch, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges.

(c) Make whole the said three individuals in the manner set forth in the section of the Intermediate Report entitled "The Remedy" for

any loss of pay they may have suffered by reason of the Respondent's discrimination against them.

(d) Upon request, make available to the National Labor Relations 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 amounts of back pay due under the terms of this Order.

(e) Post at its plant in St. Paul, Minnesota, copies of the notice attached to the Intermediate Report and marked "Appendix A."⁴ Copies of said notice, to be furnished by the Regional Director for the Eighteenth Region, shall, after having been duly signed by the Respondent or its authorized representative, 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 to employees are customarily posted. The Respondent shall take reasonable steps to see that such notices are not altered, defaced, or covered by any other material.

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

IT IS FURTHER ORDERED that the complaint, insofar as it alleges that the Respondent granted its employees wage increases and increased vacation benefits to discourage their engaging in union activities, be, and it hereby is, dismissed.

⁴ This notice, however, shall be, and it hereby is, amended by striking from the first paragraph thereof the words "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

STATEMENT OF THE CASE

Upon a charge filed April 22, 1952, by District Lodge 77, International Association of Machinists, A. F. of L., herein called the Union, the General Counsel of the National Labor Relations Board issued a complaint against Kartarik, Inc., herein called Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (a) (1), (3), and (5), and Section 2 (6) and (7) of the National Labor Relations Act, 61 Stat. 136, herein called the Act. Copies of the charge, complaint, and notice of hearing were duly served on the appropriate parties.

With respect to the unfair labor practices, the complaint alleged, in substance, that since April 16, 1952, Respondent interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed by the Act by (a) questioning them regarding their concerted and union activities, (b) making promises of benefits if they refrained from engaging in concerted and union activities and

making threats of reprisals if they engaged in such activities, and (c) granting a wage raise and increased vacation benefits to discourage the same activities. The complaint also alleged that on or about April 17, 1952, Respondent discharged its employees Libo Napoli, John Suchan, and Frank J. Koch, and has since failed and refused to reinstate them because they joined or assisted the Union and have otherwise engaged in concerted protective activities. It further alleged that on and after April 16, 1952, Respondent failed and refused to bargain collectively with the Union, although the latter was at all times on and after April 16, 1952, the exclusive bargaining representative of all employees in an appropriate unit.

By its answer Respondent denied, generally, that it committed any of the unfair labor practices alleged in the complaint. It specifically denied having discharged Napoli and Koch, and pleaded that these employees had only been temporarily terminated in their employment; with respect to Suchan, Respondent pleaded that it discharged him because of insubordination.

Pursuant to notice, a hearing was held November 3-6, 1952, at Minneapolis, Minnesota, before the undersigned Trial Examiner.¹ All parties appeared and were represented by counsel or other representative, were afforded full opportunity to be heard, to examine and cross-examine witnesses, to argue orally at the conclusion of the evidence, and to file briefs. Respondent filed a brief which has been duly considered.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent is a Minnesota corporation having its principal office and place of business at St. Paul, Minnesota, where it operates and maintains a tool and die shop engaged in the manufacture, sale, and distribution of tools, dies, and related products. In the course and conduct of its business operation at said plant during the period from September 1, 1951, to September 1, 1952, Respondent "sold to firms in interstate commerce and directly in interstate commerce, including sales to various defense projects," products having a value of \$105,027.87. During the same period, Respondent sold products of the value of \$47,226.61 to defense plants having a direct contract or subcontract with the United States Government. By its answer Respondent admitted, and I find, that at all times material herein Respondent has been engaged in commerce within the meaning of Section 2 (6) of the Act.²

II. THE LABOR ORGANIZATION INVOLVED

District Lodge 77, International Association of Machinists, A. F. of L., is a labor organization within the meaning of Section 2 (5) of the Act admitting to membership employees of Respondent.

¹ Respondent's objection to General Counsel Exhibits 5A-5B, on which ruling was reserved, is hereby sustained.

² Though admitting in its brief that Respondent "is engaged in interstate commerce under existing labor laws," Respondent urges that "due to the size of the plant and its very incidental effect upon interstate commerce" that the Board should decline to assume jurisdiction and relegate the dispute to "the jurisdiction of the State of Minnesota." By a series of decisions issued in October 1950, the Board announced its policy to govern the future exercise of jurisdiction. The commerce facts found in the text bring this proceeding into two of the class of cases in which the Board will assert its jurisdiction. *Stanislaus Implement & Hardware Company, Ltd.*, 91 NLRB 618; *Westport Moving & Storage Co.*, 91 NLRB 902.

III. THE UNFAIR LABOR PRACTICES

A. *Background and sequence of events*

On February 3, 1947, following a Board-conducted election (Case No. 18-R-1786), the Union was certified as bargaining representative of Respondent's employees. Shortly thereafter, differences arose between Respondent and its employees resulting in a strike. The record does not disclose what relationship, if any, was maintained between Respondent and the Union since that time to the period which gave rise to the controversy with which we are concerned.

In March 1952, employee Libo Napoli, having at that time been refused a wage increase, talked to 11 of the total complement of 12 men then employed in the shop and asked if they would like to join the Union.³ Receiving a favorable reply from "most of them," Napoli conferred with Fred C. Lutz, business representative of the Union, obtained from him a supply of union-authorization cards and distributed them among Respondent's employees. Seven of the employees, including the 3 men alleged to have been discriminatorily terminated, signed the cards and returned them to Napoli. The latter delivered the cards to Lutz on or about April 15.

At about noon of April 16, Lutz went to Respondent's office and met Joseph Kartarik, its president.⁴ He advised Kartarik that the Union represented a majority of Respondent's employees and presented to him a letter containing the same information. Kartarik invited Lutz to a cafe across the street where Lutz asked him whether Respondent "would recognize [the Union] and negotiate an agreement with [it]." Kartarik stated that he didn't believe that the Union represented a majority of the employees. When Lutz tried to assure him that it did, Kartarik asked what the Union was "going to demand." Lutz answered that if Respondent recognized the Union the latter was prepared to submit its demands immediately, but that otherwise it would serve no purpose to submit demands at that time. During the course of the conversation Kartarik "repeatedly stated that if the Union is not reasonable in their demands that [he] will close the shop." The two men returned to the plant where they met John Suchan who exchanged greetings with Lutz. Lutz admonished Kartarik "not to interfere with the rights of his employees" to which Kartarik merely replied, "We will see."

Shortly after noon of the same day, April 16, Kartarik approached Suchan, told him he understood "the boys have a majority for a union," and inquired what Suchan knew about the matter and who was involved. When Suchan replied that "nearly all" the men had joined, Kartarik countered with the threat that if the Union came into the plant he would "chop the place down." At about 9:30 a. m. of the following day, April 17, Kartarik approached Suchan and said to him: "Consider this your last day. I am shutting down the plant. I am not going to have a union telling me what to do." During that afternoon Kartarik met Suchan and Napoli, told them that Respondent was discontinuing its Government work, and tendered a check to each of them. Their regular payday being Monday, 4 days away, both men declined the checks.

During the same day, Kartarik approached Frank Koch and, after telling him he was to impose some layoffs that evening, asked whether Koch wanted "to go with them . . . or to stick with [Respondent]." Koch, who had previously signed a card authorizing the Union to bargain for him, answered that while he

³ It was stipulated that on April 16, 1952, Respondent had in its employ 12 full-time and part-time employees.

⁴ Unless otherwise specified, all references herein to Kartarik are to Joseph Kartarik.

had no objection to working for Respondent he would not go through a picket line. When Koch went to the timecard rack the next day to punch out, his card was missing. Kartarik approached him, told him he was being laid off and that his "check and the excuse for the lay-off [was] in the envelope" which Kartarik then handed him. The enclosed memorandum, in relevant part, read as follows: "Your employment with our Company is hereby terminated. . . . Reason for lay-off: your job on Hobbing Press no longer exists and when you took the job on Hobbing Press—with 10¢ hourly increase in wages—your old job on Punch Press had been filled by other new men."

On April 18, while Suchan was on his way to the dentist, he passed Respondent's plant. LaMott, one of Respondent's employees, stuck his head out of a shop window and asked Suchan to surrender a key to the plant which Kartarik had given him when he was first engaged in 1948. Suchan replied that the key was given to him by Kartarik and would be returned to Kartarik and no one else. On the following day, Suchan and Napoli received in the mail the checks due them and a memorandum purporting to give the reason for their termination. Suchan was advised that he was being discharged for "insubordination—refusing to give up shop key . . . when asked for it." Napoli was informed that his employment "was being terminated" for the following reason: "Tooling on government work is completed—have no suitable work for you as a die and tool maker—and several weeks past we were paying tool makers wages, but you were working as a polisher."

Late on April 17, Kartarik approached employee William J. Shonka and asked him if he "knew anything about the boys being signed up . . . and if Libo Napoli had anything to do with the organizing of the boys." On the following day, Kartarik informed Shonka that he didn't want "the union in the shop and that if they did come in . . . he would lock the place up, close the doors." Three or four days later, Kartarik again talked to Shonka about the Union and promised him a 2 weeks' vacation and a raise of pay if he would "get away from the Union."

About April 18 or 19, Kartarik asked employee Wallace Brindamour if he knew anything about the Union and Brindamour replied that he was not interested. At about the same time, he got a 10-cent hourly increase. The parties stipulated that another employee, Arletta Costello, received a 10-cent hourly raise, first reflected in his paycheck of April 21, 1952. Brindamour and Costello were not among the 7 employees whose cards authorizing the Union to represent them were received in evidence.

Though Respondent admitted that it had hired 1 temporary and 2 permanent employees since April 1952, none of the 3 employees whose services were terminated as above described have been recalled to work. No evidence was offered that Respondent has bargained with the Union for the appropriate unit hereafter found with respect to rates of pay, wages, hours, and other conditions of employment.

B. Concluding findings

1. Interference, restraint, and coercion

By Kartarik's interrogation of Suchan, Shonka, and Brindamour concerning their union membership or activities, and by his threats to Suchan and Shonka, all as found above, Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act and thereby violated Section 8 (a) (1) thereof. Respondent likewise violated

Section 8 (a) (1) by Kartarik's promise to Shonka of a 2 weeks' vacation and raise in pay if he would "get away from the Union." With respect to other conduct claimed by the General Counsel to be in violation of the same section, I find that he has not sustained the burden of proving such additional violative conduct by a preponderance of the evidence.

2. Discrimination

On the entire record I am convinced and find that Respondent terminated the employment of Napoli, Suchan, and Koch for the reasons pleaded in the complaint. The union animus displayed by Kartarik, his interrogation to ascertain union strength and activities, his threats to close the plant, when coupled with the precipitate nature and timing of the terminations, all combine to establish a *prima facie* case of discrimination. While the burden of proof to establish discrimination remains on the General Counsel throughout the proceeding, the *prima facie* case heretofore detailed made it incumbent on Respondent to go forward with the evidence and to offer a satisfactory explanation for the discharges. This, Respondent has failed to do.

In its brief, Respondent argues that "poor business conditions" arising out of the cancellation of a contract with the Remington Arms Company, and a "threatened" cancellation of another contract with the same Company, made it "necessary to terminate three of the employees."⁵ However, the first contract referred to was not terminated until May 24, 1952, more than a month after these 3 employees were laid off. The second contract was only "threatened" with cancellation on September 5, 1952, almost 5 months after the 3 men were laid off.

While there was loose and generalized testimony that Respondent "was in bad financial condition," no credible, probative evidence was offered to establish that fact. Kartarik testified that he decided to reduce the staff about 3 months before the terminations actually took place. If business conditions were actually as bad as Kartarik generalized, no satisfactory explanation was offered why these layoffs were postponed 2 to 3 months and then imposed, without notice, in the middle of a pay period, on the day following the Union's demand for recognition. Nor is the defense of "poor business conditions" consistent with other portions of Kartarik's testimony.⁶ Thus, he testified that at the time of the layoffs the men "were working about 60 hours a week," and had been doing so "for somewhere around 5 months," since the award of the Remington Arms contract on October 31, 1951.

Persuasive in arriving at my ultimate conclusion as to the termination is the fact that though it was Respondent's position, at least with respect to Napoli and Koch, that they were only temporarily laid off and had not been discharged, neither man was recalled when Respondent apparently found need to employ additional help thereafter. Thus, Joseph Keyser and Robert Siegel were hired in August and October 1952, respectively, and were working for Respondent at the time of the hearing herein. These new employees were hired notwithstanding that Kartarik considered Napoli 1 of the 2 "best men in the plant"; that Suchan had approximately 15 years' machine-shop experience, had been steadily employed by Respondent for almost 4 years, and had received an increase in pay about a month before his discharge. Similarly, Koch had been

⁵ Kartarik testified he lost between \$10,000 and \$15,000 as a result of the cancellation of the first Remington Rand contract. As has previously been pointed out, this contract was not canceled until more than a month after the terminations under consideration.

⁶ Kartarik was a most unconvincing witness and displayed an almost flippant demeanor while on the stand.

steadily employed by Respondent for about a year and had been awarded a pay increase 2 months before the layoff.⁷ The testimony does not establish what type of work was performed by the new employees hired after the layoffs. However, Henry Kartarik, who has "immediate supervision of the employees," testified that Respondent always maintained the "general practice of [shifting] employees all around over the shop."

Nor is there any merit to Respondent's contention that Suchan was discharged on April 18 for "insubordination—refusing to give up shop key . . . when asked for it." Suchan was acting reasonably, and within his rights, in refusing to surrender the key to a fellow employee without express directions to do so from management. When Suchan tendered delivery of the key to Kartarik several days later, the latter refused to accept it and informed Suchan that the latter's earlier failure to deliver the key gave Kartarik the "excuse to fire" that he wanted. I am in agreement with Kartarik that the key incident was only an "excuse," and find that it was a mere subterfuge to cover Kartarik's real discriminatory intent.

Equally without merit is Respondent's contention that the General Counsel has failed to prove that Respondent had any knowledge of the union membership or activities of the 3 employees involved, an element which admittedly must be established before a finding of discrimination can be entered. However, direct evidence, or admissions of such knowledge, is rare in cases of this type and it is therefore well settled that resort may be had to the attendant circumstances to determine whether the employer had such knowledge. Thus, as in this case, where the Union's organizational activities occur in a very small plant having only 12 employees, it is reasonable to infer that such activities have come to the attention of management.⁸ Napoli was the employee who secured and distributed the union cards among the employees and solicited membership from at least 11 of the 12 employees. It would be unrealistic to assume that management was not apprised of his activities. Furthermore, Kartarik's blunt statement to Suchan on the morning of April 17 that he was discharging him because he was "not going to have [any] union telling [him] what to do" could only mean that Kartarik knew, or believed, that Suchan had been instrumental in bringing the Union into the picture. With respect to Koch, it will be recalled that his services were terminated only after he had informed Kartarik of his union sympathies and obligations. On the entire record I find that Respondent on April 17, 1952, discharged Suchan, Napoli, and Koch and thereby violated Section 8 (a) (1) and (3) of the Act.

3. The refusal to bargain

The parties stipulated, and on the entire record I find, that all of Respondent's employees at its plant in St. Paul, Minnesota, excluding office employees, guards, and supervisors as defined in the Act, constitute an appropriate unit for the purpose of collective bargaining. At the hearing, there was received in evidence a list of 12 employees representing the full complement of workers in the above unit appearing on Respondent's payroll on April 16, 1952. There were also

⁷ The record has not persuaded me that Koch was laid off because he had negligently broken one or more hobs. The cause of these breaks was the subject of several conferences in the shop. Those participating in these conferences "all thought that it had something to do with the steel structure." Thereafter various other types of steel were used. In any event, on April 17, Kartarik asked Koch whether he wanted "to go" with the men Kartarik was laying off, or to stay on the job.

⁸ *N. L. R. B. v. Abbott-Worsted Mills*, 127 F. 2d 438, 440 (C. A. 1); *Jackson Daily News*, 90 NLRB 565; *H and H Manufacturing Company*, 87 NLRB 1373; *Firestone Tire and Rubber Company*, 62 NLRB 1316.

received in evidence cards, dated between April 9, 1952, and April 11, 1952, signed by 7 of the 12 employees in the above unit designating the Union as their bargaining representative. Accordingly, I find that on April 11, 1952, the Union represented a majority of Respondent's employees in the above-described appropriate unit and that at all times since then the Union has been and is now the exclusive representative of all employees in the appropriate unit for the purpose of collective bargaining.

As I have found in a preceding section, Lutz, a union official, met Kartarik on April 16 and informed him, both in writing and orally, that the Union represented a majority of Respondent's employees. It has also been found that at the same time Lutz asked Kartarik whether he would recognize the Union and negotiate an agreement with it. Kartarik gave no unequivocal answer but instead insisted upon finding out what demands the Union was making, coupled with the threat that if the Union should demand terms that he would not consider reasonable that he would "close the shop." Without deciding whether Kartarik's queries as to the demands which the Union would make constituted a recognition of the Union's right to make demands for the employees, I am convinced that Kartarik's additional statement to Lutz that he would bargain with the Union only after an election and certification constitutes no defense to the case established by the General Counsel.

As the Board had occasion to say in a recent case,⁹ "an employer may in good faith insist on a Board election as proof of the Union's majority but—it unlawfully refuses to bargain if its insistence on such an election is motivated, not by any bona fide doubt as to the Union's majority, but rather by a rejection of the collective bargaining principle, or by a desire to gain time within which to undermine the Union. In cases of this type, the question of whether an employer is acting in good faith or bad faith at the time of the refusal is, of course, one which of necessity must be determined in the light of all relevant facts in the case, including any unlawful conduct of the employer, the sequence of events, and the time lapse between the refusal and the unlawful conduct."

Thus, although under the Act the Union was entitled to recognition as the exclusive collective-bargaining agent for the employees in question, Respondent could have entertained and given effect to a bona fide doubt that the Union actually represented the required majority. However, as clearly revealed in preceding portions of this report, Respondent here was not troubled with such a doubt as to the Union's majority status. Immediately upon discovering that the Union sought recognition in the shop, Respondent embarked upon a campaign designed to undermine and eliminate the Union,¹⁰ committing in the process the numerous acts found above which were unlawful in themselves. Having thus clearly indicated that Respondent had no intention of recognizing the Union it would be futile for the Union to propose specific demands, as Respondent in its brief urges the Union was required to submit, before Respondent could be charged with a violation of its duty to bargain under the Act.

On the entire record I find that on April 16, 1952, and at all times thereafter, Respondent has refused to bargain with the Union as the exclusive representative of all its employees in the appropriate unit, and that by such refusal it has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by the Act, all in violation of Section 8 (a) (1) and (5) thereof. *Joy Silk Mills, Inc., supra*; *Long-Lewis Hardware Company*, 90 NLRB 1403.

⁹ *Joy Silk Mills, Inc.*, 85 NLRB 1263, enforced 185 F. 2d 732 (C. A. D. C.); cert. den. 341 U. S. 914.

¹⁰ By discharging the three employees, the Union's majority was destroyed.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent, set forth in section III, above, occurring in connection with the operations of Respondent set forth 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 Respondent has engaged in unfair labor practices, I will recommend that it cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

It has been found that Respondent has discriminated in regard to the hire and tenure of employment of Napoli, Suchan, and Koch. It will be recommended that Respondent offer to all of them immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and that they be made whole for any loss of pay they may have suffered by reason of the discrimination against them, by payment to each of them of a sum of money equal to that which he normally would have earned as wages from the date of discrimination to the date of offer of reinstatement, less his net earnings¹¹ during such period. The back pay shall be computed in the manner established by the Board, and Respondent shall make available to the Board payroll and other records to facilitate the checking of amounts due.¹²

Since it has been found that Respondent has refused to bargain collectively with the Union, the statutory representative of all employees in an appropriate unit, it will be recommended that Respondent bargain collectively with the Union and embody any understanding reached in a signed agreement.

The character and scope of the unfair labor practices engaged in indicate an intent to defeat self-organization of the employees. It will therefore be recommended that the Respondent cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed by the Act.

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

CONCLUSIONS OF LAW

1. District Lodge 77, International Association of Machinists, A. F. of L., 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 Libo Napoli, John Suchan, and Frank J. Koch, thereby discouraging membership in the Union, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.
3. All employees at Respondent's St. Paul plant, but excluding office employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.
4. District Lodge 77, International Association of Machinists, A. F. of L., is now, and has been at all times since April 1, 1952, the exclusive representative of

¹¹ *Crossett Lumber Company*, 8 NLRB 440.

¹² *F. W. Woolworth Company*, 90 NLRB 289; see *N. L. R. B. v. Seven-Up Bottling Co.*, 344 U. S. 344 (January 12, 1953).

all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

5. By refusing on April 16, 1952, and at all times thereafter, to bargain collectively with District Lodge 77, International Association of Machinists, A. F. of L., as the exclusive representative of its employees in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

6. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in 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.

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

[Recommendations omitted from publication in this volume.]

Appendix

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendation 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 discourage membership in DISTRICT LODGE 77, INTERNATIONAL ASSOCIATION OF MACHINISTS, A. F. OF L., or in any labor organization of our employees, by discharging, or refusing to reinstate, any of our employees, or in any other manner discriminating in regard to their hire or tenure of employment, or any term or condition of their employment.

WE WILL NOT interrogate our employees concerning their union activities, threatened to shut down the plant or other reprisals, promise economic benefits to discourage union affiliation and activities, or in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-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 labor organizations as a condition of employment, as authorized by Section 8 (a) (3) of the Act.

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

Libo Napoli
John Suchan
Frank Koch

WE WILL bargain collectively upon request with the above-named labor organization as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All our employees, but excluding the office employees, guards, and supervisors, as defined in the Act.

All our employees are free to become, remain, or refrain from becoming members of the above-named union, or any other organization except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the Act.

KARTARIK, 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.

MASTRO PLASTICS CORP. AND FRENCH-AMERICAN REEDS MANUFACTURING Co., INC. and LOCAL 3127, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA. Case No. 2-CA-1799. March 13, 1953

Decision and Order

On June 11, 1952, Trial Examiner Arthur Leff issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondents and the General Counsel filed exceptions to the Intermediate Report together with supporting briefs.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed.¹ The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the

¹ During the course of the hearing, the Board denied the Respondents leave to appeal several rulings of the Trial Examiner on the ground that the issues could best be resolved on the basis of a full record. The Respondents moved to strike all allegations of the complaint which concerned the strike at the Respondents' plant and the strikers on the ground that the employee status of the strikers had become a representation matter. During the strike at the Respondents' plant, the Board issued a Decision and Direction of Election, Case No. 2-RC-3170, January 29, 1951, not reported in printed volumes of Board decisions. The petition in that case was filed by the charging Union herein. The direction contained the proviso that strikers and replacements could vote under challenge and was later amended to defer the election until "such time as the Regional Director deemed appropriate" because of the filing of the charges in the instant case. The Respondents contend, in their motions to strike, that the Board was without power to refer issues concerning the strikers to a Trial Examiner and that the Trial Examiner was without jurisdiction to hear evidence on such issues because Section 9 (c) of the Act provides that representation matters should be heard by an officer or agent of the Board who can make no recommendations. The Trial Examiner denied the motions based on this argument and his ruling is hereby affirmed. Cf. *Times Square Stores Corporation*, 79 NLRB 361.