

shop office employees in the plant maintenance, tool engineering, shipping and receiving, and traffic, machine repair, and gear departments and the metallurgical laboratory and the hospital department for the purposes of collective bargaining? (2) Do you desire to be represented by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO? If a majority of the professional employees in voting group (B) vote "yes" to the first question, indicating their desire to be included in a unit with the non-professional employees, they will be so included. Their votes on the second question will then be counted together with the votes of the non-professional voting group (A) to decide the representative for the whole agreed unit; and if a majority of the employees in voting groups (A) and (B) together select the Petitioner, the Regional Director conducting the elections directed herein is instructed to issue a certification of representatives to the Petitioner for a unit of such shop office and professional employees, which the Board under such circumstances finds to be appropriate for the purposes of collective bargaining. If, on the other hand, a majority of the professional employees in voting group (B) vote against inclusion in a unit with the shop office employees, they will not be included with these nonprofessional employees. In that event the votes in voting groups (A) and (B) will be counted separately to determine whether or not the Petitioner will represent the employees in separate units. The Regional Director conducting the elections directed herein is instructed to issue a certification of representatives to the Petitioner for such of these two units in which a majority select the Petitioner, which separate units the Board, in these circumstances, finds to be appropriate for the purposes of collective bargaining.

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

CHAUTAUQUA HARDWARE CORPORATION *and* LOCAL 38, METAL POLISHERS, BUFFERS, PLATERS AND HELPERS INTERNATIONAL UNION, AFL.
Case No. 3-CA-560. March 17, 1953

Decision and Order

On January 27, 1953, Trial Examiner Albert P. Wheatley issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged 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.¹

The Board² has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the Respondent's exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions,³ and recommendations of the Trial Examiner.

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, Chautauqua Hardware Corporation, Jamestown, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Local 38, Metal Polishers, Buffers, Platers and Helpers International Union, AFL, or any other labor organization of its employees, by discriminatory layoffs or by discriminating in any other manner with regard to the hire and tenure of their employment or any term or condition of employment of any of its employees.

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist Local 38, Metal Polishers, Buffers, Platers and Helpers International Union, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all 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:

¹ The Respondent's request for oral argument is hereby denied, as the record and the Respondent's exceptions and brief adequately present the issues and the positions of the parties.

² 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].

³ As we agree with the Trial Examiner's conclusion that the Respondent, in denying time off to two union shop committeemen to attend a Board hearing, was illegally motivated by a desire to interfere with the organizational activities of its employees, we consider the reasoning of the court in *N. L. R. B. v Superior Co., Inc.*, 199 F. 2d 39, inapposite, and, therefore, find it unnecessary to distinguish the factual situation in that case, as did the Trial Examiner.

(a) Make whole Erich W. Jerder and William Olson for any loss of pay they may have suffered by reason of Respondent's discrimination against them.

(b) 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 amount of back pay due.

(c) Post at its place of business in Jamestown, New York, copies of the notice attached to the Intermediate Report and marked "Appendix A."⁴ Copies of such notice, to be furnished by the Regional Director for the Third Region, shall, after being duly signed by Respondent's authorized representative, be posted by Respondent immediately upon receipt thereof in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

⁴ This notice shall be amended by substituting for the words "The Recommendations of a Trial Examiner," in the caption thereof, the words "A Decision and Order." In the event that 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."

Intermediate Report

This case concerns two employees, Erich W. Jerder and William Olson, who were laid off for a period of 4½ days because they absented themselves from Respondent's plant in order to attend a representation proceeding before this Board,¹ after having been refused time off by their foreman. The question in issue is whether Respondent's denial of time off and disciplinary layoff were motivated by a desire to frustrate the Union's organizational efforts or by legitimate business considerations.

Facts

In February 1952 Jerder and Olson, union shop committeemen, asked Allan F. Jones, president of Respondent, "if he was willing to meet with the Union officials." Jones stated that as far as he was concerned labor was a commodity bought in the open market as he saw fit and refused to meet with the Union. Jones also stated "he might and he might not meet with the Labor Board if compelled to do so."

The Union filed a petition for certification of representatives with the Regional Office of the National Labor Relations Board and the parties were advised that a hearing would be held on April 9, 1952. This hearing was thereafter postponed to April 25, 1952, but the Union did not receive notice of such postponement until after the time set for the hearing. Meanwhile the Union anticipated the hearing would be held as scheduled and appeared at the designated place

¹ Case No. 3-RC-916.

at the appropriate time. During the morning of April 9, 1952, Jerder, on behalf of himself and Olson (the two members of the union shop committee), requested permission from their foreman, Carl Johnson, to take time off to attend "a meeting" at 10 a. m. that morning.² Foreman Johnson told them they could go. Jerder and Olson appeared at the place designated for the hearing and upon learning that the hearing had been postponed returned to Respondent's place of business and resumed their work. During their absence Jones, on a trip through the plant, noted their absence and asked Foreman Johnson where they were. Johnson told Jones they had gone to a Labor Board hearing.³ Jones replied, "Well, there is no hearing. Any hearing that there was is postponed." It also appears from this record that during this conversation Jones gave Johnson some instructions regarding the granting of permission to leave the plant, but it is not clear what these instructions were. Jones testified that, in anticipation of a "shutdown by the Government on the use of scarce materials," Respondent experienced a "boom period" of business in the spring of 1951; that on July 1, 1951, it had on hand \$1,300,000 worth of orders; that because of "Government regulations" many of these orders could not be filled and the furniture industry (of which Respondent is a part⁴) suffered a recession; that the Government suddenly lifted its restrictions and upon lifting of these restrictions Respondent, in anticipation of cancellations of orders on hand, endeavored to fill these orders before receipt of such cancellations but that nevertheless Respondent's business decreased to such an extent that on July 1, 1952, Respondent's orders on hand totaled only \$43,000. Jones further testified that because of its race to fill orders before receipt of cancellations, Respondent was especially busy during the month of April 1952 (the period of time material herein) despite the decline in its business and that when he (Jones) first learned, on April 9, 1952, of the absences of Jerder and Olson he then instructed Foreman Johnson that "no one was to be given any time off for any reason whatsoever." Johnson testified:

Q. And had you talked with Mr. Jones before this [before April 25, 1952] about men taking time off?

A. No.

Q. He hadn't said anything to you about men taking time off?

A. Well, he told me, he don't like to have them taking too much time off as long as those jobs are coming through.

During the morning of April 25, 1952, Jerder, accompanied by Olson, requested from Foreman Johnson time off that afternoon⁵ so that he and Olson could

² On the basis of observations of witnesses and the entire record herein, Johnson's denial that Jerder told him "why he wanted to go" is not credited by the undersigned. In determining credibility in this proceeding the undersigned has considered, *inter alia*: The demeanor and conduct of witnesses, their candor or lack thereof; their apparent fairness, bias, or prejudice; their interest or lack thereof; their ability to know, comprehend, and understand matters about which they have testified; whether they have been contradicted or otherwise impeached; and consistency and inherent probability of the testimony.

³ Jones testified he laid off Jerder and Olson "for leaving their work a second time without permission," that the first time was on April 9, and that Johnson told him (Jones) on that date that they had left without permission. Johnson did not corroborate this testimony and testified that on April 9 Jerder and Olson left the plant with his permission. Jones' testimony that upon inquiry Johnson told him (Jones) that Jerder and Olson had left the plant without permission is not credited by the undersigned.

⁴ Respondent, a New York corporation, having its principal office and place of business at Jamestown, New York, engages in the manufacture, sale, and distribution of metal furniture trim and related products. There is no issue herein concerning, the facts reveal, and the undersigned finds, that Respondent is engaged in commerce within the meaning of the National Labor Relations Act, as amended, herein called the Act.

⁵ Although Jerder may have and probably did use the terms "we decided to have the afternoon" it is clear from this record as a whole that the individuals involved interpreted his remarks as a request for time off.

attend the scheduled hearing. Johnson was informed that the Union had requested Jerder and Olson to be present.⁶ Foreman Johnson told Jerder and Olson that he would not grant them "permission to go" and that if they did take time off they did so at their "own risk." The evidence is conflicting, and Johnson's testimony is not clear, as to whether Johnson told Jerder and Olson that he had work on hand which needed to be completed that day and that in view of this he would not grant time off. On the basis of the entire record and observations of the witnesses the undersigned finds that Johnson did not say why he refused to grant the request for time off.

The denial of time off to Jerder and Olson was in marked contrast to Respondent's normally liberal practice of granting permission to take time off.

The two employees, Jerder and Olson, left the plant at noon on Friday, April 25, 1952, and attended the hearing (apparently scheduled for 2 p. m.). They had not been subpoenaed and did not enter a formal appearance on behalf of the Union or testify. However, they did sit at counsel table and assist the Union in presenting the Union's position.⁷ They were observed, of course, by Respondent's attorney (J. Russell Rogerson) and by Jones who appeared at the hearing. The employees and Jones remained at the hearing until it terminated at about 4:15 p. m. Jerder and Olson were not replaced at Respondent's plant that afternoon and there is no evidence that other employees performed the work these employees were to have performed.

Jones testified that after the hearing on April 25, 1952, he "went back in the plant that night and asked the foreman there whether or not he had given them [Jerder and Olson] permission to leave because I had previously given instructions no one was to be given any time off for any reason whatsoever"⁸ and that Johnson said "he had not given them permission to leave." On cross-examination by counsel for the General Counsel (William J. Cavers), Johnson was not "sure" whether Jones talked to him that afternoon about the absence of Jerder and Olson and did not give his version of any conversation that may have ensued. In response to questions by the undersigned, Johnson testified that upon inquiry by Jones, he (Johnson) told Jones, around 2 or 3 o'clock on April 25, 1952, that Jerder and Olson "went home at noon without my permission." Johnson's testimony in this regard is not persuasive. Thus it is not clear when and how Jones learned that Jerder and Olson had left the plant without permission.

On Monday, April 28, 1952, Jones told Johnson he was "going to have the boys for a meeting at 11 o'clock. Tell them to be in there." At about 11 a. m. that morning all polishers, including Jerder and Olson, were addressed by Jones. The evidence concerning the remarks made by Jones is conflicting and vague and it is difficult to reconstruct the situation and determine, with a reasonable degree of accuracy, the specific comments made. However, it does appear, and the undersigned finds, that Jones informed the assemblage that Respondent had been in business for a considerable length of time without "outsiders" and did not want "outsiders" and suggested that the employees think it over and not

⁶ Johnson testified nothing was said as to why they wanted time off and that at that time he (Johnson) did not know there was a hearing scheduled for that afternoon. On the basis of the entire record herein the undersigned finds it difficult to believe that Johnson was not aware of the scheduled hearing and was not informed that Jerder and Olson desired to attend this hearing to assist the Union in the presentation of its case in support of its petition for certification. The undersigned finds the facts to be as stated above.

⁷ Apparently they were present at the hearing for the purpose of testifying in the event an issue arose concerning the work of polishers, but were not called as witnesses because the Union was satisfied with the testimony of Jones concerning their work.

⁸ As noted above it is by no means clear that such instructions had been given.

bring them in. Jones also told the employees that he could not permit employees to do as they pleased and at the same time maintain plant discipline and that the two employees (Jerder and Olson) who had left the plant without permission on Friday to attend the Labor Board hearing were laid off for the balance of the week.

Jerder and Olson left the plant about noon that day (April 28) and did not return to their jobs until the following Monday, May 5, 1952. During their absence they were not replaced and there is no evidence that during their disciplinary layoff their work was performed by other employees.

There is nothing in this record establishing that Respondent was busier on April 25 (when the employees were denied time off) than on April 9 (when they were granted time off) except for the fact that April 25 was the last work-day of the week and Respondent had certain orders it wanted filled that day. However, there is no direct evidence that because of the absence of Jerder and Olson shipments which otherwise would have been made were not actually made. There is an innuendo to this effect in the testimony of Jones, but he evaded answering a specific question as to whether there were any orders that were canceled as a result of Jerder's and Olson's absence on April 25. On the basis of the entire record, the undersigned is not persuaded that the absence of Jerder and Olson created any substantial production problem or that it was anticipated that such a problem would be created by their absence on that date.

Conclusions

Section 8 (a) (1) of the National Labor Relations Act, as amended, herein called the Act, safeguards employees from employer infringement of their right to engage in self-organization, collective bargaining, or other concerted activities for mutual aid or protection, and Section 8 (a) (3) of the Act protects employees from discriminatory impairment of their employment tenure or terms because of union activity. If animus against the exercise of these rights underlay its action, Respondent violated these provisions by denying time off to Jerder and Olson and by suspending them. For, while the Act does not affect the "normal exercise" by an employer of his right to hire, discharge, or determine the conditions of employment of his employees, an employer may not under cover of that right interfere with the self-organization, representation, or concerted activities of his employees, or take any action with regard to their conditions of employment for the purpose of discouraging membership in, or action on behalf of, a union. In view of the fact that time off was requested, and the hearing attended, for the purpose of processing the representation petition filed by the Union, there can be no doubt that Jerder and Olson were exercising the rights guaranteed them by Section 7 of the Act "to self-organization," to "assist labor organizations" and "to engage in" concerted activities for "collective bargaining or other mutual aid or protection." Thus the question in issue is whether Respondent's denial of time off and disciplinary layoff were in reprisal for this protected activity.

In determining whether these employees were disciplined for leaving the plant without permission or for their union activities, it is noteworthy that Jones testified he laid them off "for leaving their work a second time without permission" and that this testimony does not stand up under scrutiny. In addition, Jones' statements at the time of the layoff (on April 28), in the light of the entire record, indicate that he was concerned about "outsiders" and that the leaving of the plant without permission may not have been the true reason for the layoff.

Respondent claims it refused the request for time off on April 25 because the plant was busy during the month of April and that employees could not be spared. As noted above, Jerder and Olson were granted time off on April 9 but not on April 25, and no reason was given them for such denial. There is nothing in this record establishing that Respondent was busier on April 25 than on April 9 except for the fact that it was the end of the workweek and Respondent had certain orders it wanted filled that day. However, the record does not establish that a substantial production problem was anticipated or created by the absence of Jerder and Olson on that date. Cf. *Apex Toledo Corporation*, 101 NLRB 807. They were not replaced, there is no evidence that other employees (or officials) did the work which these employees were to have performed, and the evidence does not establish a lack of shipments which otherwise would have been made. In addition, the denial of time off was a disparate application of Respondent's customarily liberal practice of granting requests for time off for a variety of personal reasons. The record reflects that even chronic and unnotified absenteeism was permitted. Furthermore, if the legitimate business consideration of avoiding production delays during a busy season motivated the refusal to grant time off on short notice on April 25, it is difficult to understand why the services of these employees could be dispensed with, with no apparent difficulty, on April 9 and for the 4½ workdays immediately after April 25 when they were subjected to disciplinary layoff.

That Respondent was concerned over the advent of the Union in its plant is indicated by certain statements by its officials. Jones, as noted above, stated that labor was a commodity bought in the open market, that Respondent would not meet with the Union and might not meet with the Labor Board. Foreman Johnson stated to Henry Norton in December 1951 that "if you go in the Union you will all get fired. Jones will fire all of us." Johnson immediately retracted this statement by stating, "I don't think he will fire you. He will probably forget it." These statements, at the very least, indicate that Respondent was concerned over the advent of the Union and are of significance in appraising Respondent's motive in denying time off on April 25 and in laying off the employees on April 28. It is also significant that when time off was granted on April 9 to attend a hearing Respondent knew, and the employees did not, that it was a useless trip since the hearing had been postponed, but that such was not the situation on April 25, when Respondent was aware of the scheduled hearing, was aware of the purpose for the request for time off, and was aware that these two employees were active proponents of the Union.

Respondent contends that the decision of the Court of Appeals for the Sixth Circuit in *N. L. R. B. v. Superior Co., Inc.*, 199 F. 2d 39, is applicable herein and that the complaint should be dismissed because of the absence of a request by the Board, or by the Union, that Jerder and Olson be excused from work to attend the hearing.

In the *Superior* case the Board found the employer discriminatorily denied leave to a union committee of five employees, who had requested a day off to attend an informal conference with a field examiner of the Board convened to discuss a consent-election agreement with the employer, and discriminatorily suspended these employees in reprisal for attending the meeting (94 NLRB 586). The court of appeals denied enforcement of the Board's order holding that the evidence failed to establish that the disciplinary action taken was because of union activities rather than because of violation of the order prohibiting the employees from taking the day off. The court held that the refusal to grant the requested leave of absence was valid—"justifiable"—and that the disciplinary action which followed for violation of the order prohibiting the employees from taking the

day off was not improper. The court held that the facts in the *Superior* case revealed that the request for leave had "no justifiable reason" because the employer "had unequivocally stated it would not participate in such a conference" (a conference with the union participating) and hence the employees were requesting leave to make a "useless trip." The court further held that leave to attend an informal conference between the union and the Board's agent (which took place when the employer refused to participate in a conference with the union) was not "justifiable" because the record in the *Superior* case did not show that such a meeting was "necessary or advisable," or that the information elicited, if not already in the Board agent's possession, could not have been obtained by telephone, correspondence, or after working hours. However, the court indicated that it believed a formal hearing has a superior status to an informal conference and agreed that "it would be a violation of the Act for [an employer] to refuse to permit an employee to attend a formal hearing of the Board where his presence was requested by the Board."

In the instant matter, a formal hearing before the Board (not an informal conference) was involved and the employees' presence was "advisable" because they were in a position to assist in the presentation of the Union's case. Furthermore, any information already in the Board agent's *ex parte* possession was useless to the Board because the Board's determination must be made only on the facts spread "upon the record of such hearing" (Section 9 (c) (1) of the Act). A hearing, of course, cannot be held by telephone or correspondence, nor as a general rule after working hours. Thus the question for determination narrows to: Is the absence of request by the Board that employees be present at the formal hearing critical? The undersigned believes such absence not critical. Usually in representation proceedings, the Board does not occupy an adversary prosecutory role, but instead relies primarily on the union, the employer, and employee parties to the proceeding to adduce the necessary information, and the Board does not normally request employee presence. (See National Labor Relations Board Rules and Regulations and Statements of Procedure, Section 101.20.) Had subpoenas been requested, which they were not since the Union did not foresee any difficulty in obtaining employee presence without subpoenas, they would have been issued as a matter of course (Section 11 (1) of the Act) and the presence of the employees would then have been at the request of the Board. In these circumstances the voluntary presence of the employees without subpoenas makes no difference. *N. L. R. B. v. Fulton Bag & Cotton Mills*, 180 F. 2d 68, 70 (C. A. 10), cited with approval in the *Superior* case. It appears to the undersigned that the basis for the court's decision distinguishes the *Superior* case from the present one and that the decision in that case does not require a dismissal of the complaint herein.

In view of all the circumstances the undersigned concludes that in denying time off Respondent was not motivated by legitimate business considerations, but rather by a desire to interfere with the organizational activities of its employees. See *Stratford Furniture Corporation*, 96 NLRB 1031 and *American Thread Co.*, 101 NLRB 1374. Since the refusal to grant the requested time off was invalid under the Act, the disciplinary action which followed was likewise invalid. *Republic Aviation Corp. v. N. L. R. B.*, 324 U. S. 793, 805.⁹ By denying the request, and by subsequently imposing a disciplinary layoff on Jerder and Olson, Respondent interfered with, restrained, and coerced its employees in the exercise of rights

⁹ In view of the conclusions above stated no determination is made herein as to whether Respondent, absent motivation against the Union, nevertheless, discriminated against attendance at a Board hearing.

guaranteed by Section 7 of the Act, thereby violating Section 8 (a) (1) of the Act. Because such conduct amounts to a discrimination in the hire and tenure of employment which necessarily discouraged membership in the Union, it also violated Section 8 (a) (3) of the Act.

In summary, the undersigned concludes and finds that: (1) Respondent discriminated in regard to the terms and conditions of employment of Erich W. Jerder and William Olson in violation of Section 8 (a) (3) and (1) of the Act; (2) Respondent interfered with, restrained, and coerced its employees, in the manner outlined herein, in violation of Section 8 (a) (1) of the Act; and (3) these unfair labor practices occurring in connection with the operations of Respondent's business 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.

The Remedy

Having found that Respondent has engaged in unfair labor practices in violation of the Act, the undersigned recommends that Respondent, to effectuate the policies of the Act, cease and desist therefrom and take the affirmative action hereinafter specified.

Whether Respondent's conduct be viewed as a violation of Section 8 (a) (1) or of Section 8 (a) (3) of the Act, the undersigned believes that in order to effectuate the policies of the Act, Respondent should be required to make Jerder and Olson whole for any loss of pay they may have suffered. *Stratford Furniture Corporation, supra.*

[Recommendations omitted from publication in this volume.]

Appendix A

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist LOCAL 38, METAL POLISHERS, BUFFERS, PLATERS AND HELPERS INTERNATIONAL UNION, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all 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 NOT discourage membership in LOCAL 38, METAL POLISHERS, BUFFERS, PLATERS AND HELPERS INTERNATIONAL UNION, AFL, or any other labor organization of our employees, by discriminating in any manner with regard to their hire and tenure of employment, or any term or condition of employment.

WE WILL make whole Erich W. Jerder and William Olson for any loss of pay suffered by them by reason of the discrimination practices against them, without prejudice to their seniority and other rights and privileges previously enjoyed.

All our employees are free to become, remain, or refrain from becoming 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.

CHAUTAQUA HARDWARE CORPORATION,

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.

GRIFFIN MANUFACTURING COMPANY *and* UNITED STEELWORKERS OF AMERICA, CIO. *Case No. 16-CA-392. March 17, 1953*

Decision and Order

On November 3, 1952, 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 and the General Counsel filed exceptions to the Intermediate Report, and the General Counsel filed a supporting brief.

The Board¹ has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the Respondent's exceptions,² the General Counsel's exceptions and brief, and the entire record in the 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 [Chairman Herzog and Members Styles and Peterson].

² The Respondent excepted to the failure of the Trial Examiner to strike paragraph 9 of the complaint because more than 6 months had elapsed between the occurrence of the unfair labor practices set forth in paragraph 9 and the issuance of the complaint. We find no merit in this contention. Section 10 (b) of the Act prohibits the issuance of a complaint based upon an unfair labor practice occurring more than 6 months before the filing and service of a charge. The original charge in this case was timely filed; it is immaterial that the complaint was issued more than 6 months after the occurrence of the unfair labor practices alleged therein.

The Respondent also contends that the Board lacks jurisdiction over the unfair labor practices set forth in paragraph 9 of the complaint because such unfair labor practices are not expressly alleged in the original or amended charges filed herein. We find no merit in this contention. *Cathey Lumber Company*, 86 NLRB 157.

³ The Trial Examiner stated that Fannie Rose was transferred to a new position every night before she was discharged by the Respondent. While the record shows that she was frequently transferred, there is no evidence that such transfers occurred every night. However, this error does not affect our concurrence in the Trial Examiner's finding that the Respondent did not discriminate against Rose.