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 earnings during such period (*Crossett Lumber Company*, 8 NLRB 440). The back pay shall be computed in the manner established by the Board, and the Respondent shall make available to the Board payroll and other records to facilitate the computation of the amount due (*F. W. Woolworth Company*, 90 NLRB 289).

Post notices addressed to its employees stating that it will not engage in the conduct found herein to constitute unfair labor practices.

The character and scope of the unfair labor practices engaged in indicates an intent generally to interfere with the organizational rights of employees and constitutes, potentially, a threat of commission of other unfair labor practices in the future. The remedy should be coextensive with the threat. 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. (*May Department Stores* v. *N. L. R. B.*, 326 U. S. 376.)

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. International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO (UAW–CIO), Region 6, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire, tenure, and conditions of employment of Charles Atherton, Eldridge Arnold, and Robert Sayre, thereby discouraging membership in the Union, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) and 8 (a) (3) of the Act.

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

4. 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 Respondent has not engaged in unfair labor practies by discriminating in regard to the hire, tenure and conditions of employment of Marion Duty and Plez Aldridge; promising benefits to employees if they would remove their union buttons; causing the Union to be hung in effigy; questioning Barbara Ruffin and leadman Knapp concerning their union activities; transferring, isolating, or confining Robert Atkinson, N. Straley, and Bruce Rice.

[Recommendations omitted from publication in this volume.]

VALENCIA SERVICE CO. *and* UNIDAD GENERAL DE TRABAJADORES DE P. R. *Case No. 24–CA–227. March 26, 1953*

Decision and Order

On February 5, 1953, Trial Examiner Sidney Lindner issued his Intermediate Report in the above-entitled proceeding, a copy of which

is attached hereto, finding that the Respondent had not engaged in and was not engaging in unfair labor practices as alleged in the complaint, and recommending that the complaint be dismissed in its entirety. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief. The Respondent filed a brief in support of the Intermediate Report.

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

Order

IT IS HEREBY ORDERED that the complaint be, and it hereby is, dismissed in its entirety.

[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].

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

Upon a charge and amended charge duly filed by Unidad General de Trabajadores de P. R., hereinafter called the Union, the General Counsel of the National Labor Relations Board by the Regional Director for the Twenty-fourth Region (San Juan, Puerto Rico), issued a complaint dated November 3, 1952, against Valencia Service Co., hereinafter called the Respondent, alleging that the latter had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, 29 USC, subsection 1, Section 141, *et seq.*, hereinafter referred to as the Act.

With respect to the unfair labor practices, the complaint alleged in substance, that: (1) The Respondent discharged Herminio Cintron Malpas, Francisco Flores, Francisco Millet Martinez, Joaquin Rivera, and Rafael Torres on or about October 4, 1951, and has at all times since said date refused or failed to reinstate said employees to their former or substantially equivalent positions because of their affiliation and sympathy with and activities on behalf of the Union, and because they engaged in concerted activities with other employees of Respondent for the purpose of collective bargaining or other mutual aid or protection; and (2) Respondent by its officers, agents, and supervisory employees since on or about September 1, 1951, to the date of the issuance of the complaint herein, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act by threats of reprisal or force or promise of benefit, by threats of loss of employment, by changing the regular schedule of hours of work of its employees, and by decreasing the compensation of its employees.

By its answer duly filed the Respondent admitted that it is engaged in commerce within the meaning of the Act, denied that the Union is a labor organization within the meaning of the Act and denied the commission of any unfair

labor practices. The answer affirmatively alleged that the employees named in the complaint as having been discriminatorily discharged were engaged in temporary work and upon information and belief were terminated due to the character and nature of said work and for the further reason that the termination was caused by their own voluntary acts and deeds.

Pursuant to notice a hearing was held at Santurce, Puerto Rico, on different dates between December 1 and December 12, 1952, before the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel and Respondent were represented by counsel, the Union by its representative. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce relevant evidence, to argue the issues orally upon the record, and to file briefs and proposed findings and conclusions. At the conclusion of the General Counsel's case the Respondent moved for dismissal of the complaint, the motion was denied. Upon the completion of the taking of all testimony the General Counsel moved to conform the pleadings to the proof with respect to formal matters, not involving substance. The motion was granted over the objection of counsel for the Respondent. Ruling was reserved on Respondent's counsel's motion to dismiss the complaint at the conclusion of the hearing and is disposed of by the following findings and recommendations. The parties argued orally, but did not submit briefs. Upon the entire record in the case and from his observation of the witnesses, the Trial Examiner makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Valencia Service Co. is a corporation duly organized under and existing by virtue of the laws of the Territory of Puerto Rico with its principal office and place of business at San Juan, Puerto Rico, where it is engaged in the transportation and warehousing of goods, materials, and merchandise as a common carrier. In the course of its business operations during the 12-month period immediately preceding the hearing herein, the Respondent hauled and stored goods and materials valued at approximately $100,000, a substantial part of which was carried in interstate commerce. The Respondent owns trucks and other equipment valued at approximately $80,000. The Respondent admits and it is hereby found that it is engaged in commerce within the definition of the Act.

II. THE ORGANIZATION INVOLVED

Unidad General de Trabajadores de P. R. is a labor organization admitting to membership employees of the Respondent.[1]

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The alleged discriminatory discharges*

As noted above under the section "The business of the Respondent," the Valencia Service Co. hauls and stores cargo in and about Puerto Rico, the major proportion of which is received from and delivered to the incoming and outgoing boats.

Luis Valencia, president and general manager of the Respondent, testified that it is traditional in its business that the number of workers (chauffeurs and

[1] This finding is based upon the testimony of Frank Ruiz. See also the Board Decision and Direction of Election in Case No. 24–RC–252 (not reported in printed volumes of Board decisions).

laborers) on a given day is in direct proportion to the amount of orders for hauling and storing of goods and materials the Respondent has for that day. Thus, Valencia testified that in the afternoons a list of assignments for the next day is prepared and posted on a daily assignment sheet.[2] Participating in the preparation of the assignment sheet during the times material herein were Valencia, Emilio Arrieta, in charge of personnel, and Pedro Alfaro Torres, the dispatcher, herein referred to as Alfaro. It was Alfaro's function to receive all bills of lading and then assign to each unit or truck the cargo to be hauled, the driver, and the time of departure from the garage. The assignment of the laborers who did the loading and unloading of the trucks was Arrieta's duty, except that on occasion Valencia and Alfaro would also hire laborers.

Because of the daily fluctuation in the amount of hauling and storing, the Respondent maintained on its payroll, in addition to its regular supervisory staff, only a few permanent employees, paid on a regular weekly basis. These were several mechanics, the body worker, a finger-lift operator, and several truck and trailer-truck drivers. The others were known as regular, temporary, and casual employees, all of whom were paid on an hourly basis for the time they actually worked. Other than the fact that the regular worker is given preference in assignments in order to give him as steady work as possible, there is no significant difference in the record between this group and the temporary worker. All report regularly in the mornings at the garage depot seeking assignments, they are paid the same hourly rate for similar work, and are entitled to the same vacation pay.[3] Casual workers, on the other hand, are those who are sought after by the Respondent on occasions when it is very busy and there are no regular or temporary workers left at the garage depot to assign.

The Respondent did not keep a list of its regular and temporary employees. Arrieta testified that he arrived at the depot at 7 a. m. to select and assign the laborers to work on the different trucks.[4] Using his judgment as to their efficiency, he chose the men from the group which shaped up regularly.

Organizational activities among the Respondent's employees started in the latter part of August 1951. It was stipulated between the parties that the Union filed a represenation petition on August 24, 1951, and an amended petition on October 10, 1951. A hearing relative to the petition was held on November 5, 1951. The Board issued its Decision and Direction of Election on January 10, 1952. An election was held on February 9, 1952. On May 27, 1952, the Board certified the Union as the bargaining representative of certain employees of the Respondent. The record also reveals that on October 4, 1951, at a joint conference held between the parties on the representation petition attended by the union representatives, a Board field examiner, Valencia, and Paul Stawinski, attorney for the Respondent, a list containing the names of 24 of Respondent's employees, including the names of 4 of the alleged discriminatees was returned by Attorney Stawinski to Frank Ruiz, secretary of the Union. Ruiz testified that in a conference held with Attorney Stawinski in the latter's office about a week before the October 4 conference, he presented the list as the names of employees supporting the Union.

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[2] The daily assignment sheet, a copy of which was received in evidence, is a printed form which contains spaces for the truck number, the name of the driver of the truck, the assignment showing in some detail a description, the weight, and destination of the cargo, and the time the truck leaves and returns to the garage.

[3] Insular law provides that vacation pay shall be paid to all employees at the rate of 8 hours pay for every 100 hours of work performance.

[4] It will be recalled that the truckdrivers were assigned by Alfaro on the previous afternoon when the assignment sheets were prepared.

The General Counsel alleges in his complaint that the five named employees were discriminatorily discharged because of their union activities and membership in violation of Section 8 (a) (3) of the Act.

In support of the allegation of the complaint under discussion Herminio Cintron, Francisco Millet, Joaquin Rivera, and Rafael Torres[5] testified similarly in all respects concerning their terminations. They stated that the last time they shaped up at the depot seeking a work assignment, the date they could not remember, they were congregated in a group when Alfaro approached them and told them there was no more work for them because of the Union and their organizational activities. Rivera testified that he and the four other alleged discriminatees were all discharged at the same time, and that none of them worked for the Respondent thereafter. The last dates of employment of the alleged discriminatees appear on the payroll records in evidence as follows: Cintron, October 2; Flores, October 3; Torres, October 4; and Millet and Rivera, October 5. In this regard Cintron's testimony that after his termination he never went back to seek employment from the Respondent is noteworthy. Cintron's testimony is in conflict with the testimony of Millet, who stated that after Alfaro discharged them, the group went back to the Respondent to ask for work on 2 or 3 occasions.

Alfaro denied that he spoke to any of the alleged discriminatees regarding their union activities or that their employment was terminated because of their union membership and activities.

Cintron was in the Respondent's employ from April 26 to October 2, 1951, as a trailer-truck driver. His rate of pay was 55 cents per hour. Cintron was a member of the union organizing committee and testified that his organizational activities consisted of arriving at the depot before work started and proselytizing the cause of the Union by talking to his fellow employees.

It is the Respondent's contention that Cintron was not discharged as he testified but quit his job after he was reprimanded by Valencia for not cooperating with the laborers in the loading and unloading of the trucks.

Valencia testified that over a period of about 1½ months prior to October 2, he received complaints from various supervisors and drivers that Cintron did not assist with the loading and unloading of the trucks. This situation created a personnel problem since other drivers said they would not help with the loading and unloading if Cintron did not do it.[6] Thus it became necessary for Valencia to speak to Cintron about these complaints on 6 or 7 occasions. Valencia stated that the last time he spoke to Cintron he told him that if he was not willing to cooperate with the laborers and help in the loading and unloading of trucks he would have to leave the Respondent's employ. Cintron did not shape up for work assignments thereafter. Arrieta and Alfaro corroborated Valencia's testimony in this regard. Arrieta also testified that several times he found it necessary to call Cintron's attention to his work.

Saturnino Rodriguez, supervisor of drivers and laborers at the docks, testified that frequently Cintron would drive his truck onto the pier, walk away from the truck, and leave the laborers with the entire job of loading and unloading the cargo. On other occasions Cintron would stand in front of the truck but would not help. Rodriguez complained to Valencia about Cintron's lack of cooperation.

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[5] Francisco Flores, also alleged in the complaint to have been discriminatorily discharged, did not appear or testify at the hearing.

[6] Based on the testimony of Cintron and Jose Perez Vazquez, a driver in the Respondent's employ testifying as a witness for the Respondent, I find that loading and unloading of trucks was not a specific duty of the driver. In spite of this finding, however, it is clear from the record that all drivers with the exception of Cintron cooperated with the laborers in the performance of this job and it became the accepted practice that it was part of the driver's duty.

Jose Perez Vazquez employed by the Respondent as a finger-lift operator on the docks during 1951 testified that Cintron would drive his truck on the pier, park it, and leave. After the truck was fully loaded it was necessary for Perez and other workers to look for Cintron so that he could drive the truck away.

Evidence was also adduced by the Respondent regarding several accidents involving Cintron's truck. Since Cintron's accident record was not a factor in his termination or quitting I find it unnecessary to detail the said testimony. Suffice it to say that when Cintron was questioned regarding these matters his memory was a complete failure.

Cintron admitted that while laborers were loading or unloading his truck he did nothing but watch and after the work was completed he would help place a cover over the cargo. His testimony as to the time when Valencia spoke to him regarding his "poor work" was conflicting. At one point he stated that it was a week before his termination. At another he stated that the only time that Valencia reprimanded him because of his work performance was on the day Alfaro told him there was no more work because of his union activities. Cintron also admitted that it was on the latter occasion that Valencia told him he could not work for the Respondent because he "was fooling around."

The testimony of Cintron as well as the other alleged discriminatees that they were all discharged by Alfaro at the same time is not reconcilable with the payroll records in evidence which as previously noted show different last dates of employment. Moreover, Cintron's testimony that he did not report for work after he was discharged is in conflict with the testimony of Millet that all of the alleged discriminatees sought work at Respondent's depot on 2 or 3 occasions after their discharge. From his demeanor on the witness stand Cintron did not impress me as a reliable witness. The testimony and demeanor of the witnesses Valencia, Arrieta, Alfaro, Rodriguez, and Perez convince me that Cintron did not cooperate with other employees on the job and after a series of reprimands by Valencia and other supervisors because of such complaints he quit his job.

Francisco Flores was a driver in the Respondent's employ from March 9 to October 3, 1951. His rate of pay was 50 cents per hour. Flores drove a small panel truck which was used primarily for local deliveries. Flores did not testify as a witness in the instant proceeding.

Valencia testified that Flores drove a 1942 truck which was laid up for repairs from time to time. At such times Flores did not work. Valencia stated that during August and September Flores asked to be assigned to a newer model truck so that he could earn more money. In October Flores again spoke to Valencia along the same line. When Valencia told Flores he did not have any other truck to give him Flores said he would have to leave because as a married man with a large family he was earning too little money in the Respondent's employ. Flores requested and was given his vacation pay and thereafter did not shape up at the depot seeking employment. Alfaro and Arrieta corroborated Valencia's testimony. I credit such testimony and am convinced and find that Flores was not discharged for the reasons alleged in the complaint.

Millet, Torres, and Rivera were employed as laborers at 35 cents per hour. Their respective dates of employment were as follows: Millet, February 9 to October 5, 1951; Torres, March 27 to October 4, 1951; Rivera, July 2 to October 5, 1951. They testified they were members of the union organizing committee, talked to their fellow workers urging them to join the Union, and distributed union leaflets.

Millet testified that when the organizing committee was formed about a month prior to his termination, he participated in the distribution of union handbills

at the depot where the employees reported for work. He stated that no supervisor spoke to him regarding this activity prior to his termination. On further questioning Millet changed his testimony and stated that Alfaro spoke to him about his organizational activities about a week before his termination.

Alfaro denied that he knew of the union activities of any of the alleged discriminatees. He further denied that he spoke to any of them individually or collectively regarding their organizational activities or that he terminated their employment because of such activity. Arrieta testified that the 3 laborers were good workers. Arrieta denied that he ordered Alfaro to suspend any of the 5 alleged discriminatees and also denied that he knew of their union activities. He stated that it was not unusual for the laborers, all of whom shaped up in the mornings for work assignments, not to notify the Respondent that they were leaving its employ. They merely did not return to seek work.

Valencia testified that the duties of Millet, Torres, and Rivera consisted primarily of loading and unloading dining hall foods. Respondent lost its contract with the Department of Education to haul dining hall foods on or about August 29. As a result it did not have the need for as many employees and the hours of work were cut down. It is the Respondent's contention that since Millet, Torres, and Rivera were not getting much work they abandoned their jobs. The payroll records in evidence appear to bear out this contention. They reveal the following with respect to the aforesaid alleged discriminatees subsequent to August 29; Millet for a 6-week period worked an average of 2⅝ days per week and earned an average of $7.98; Rivera's average work was 2½ days per week with average earnings of $6.71; Torres performed no work for 3 weeks after August 29. For the next 3 weeks until the last day of his employment he worked an average of 2⅔ days per week with average weekly earnings of $7.50. It is also noted that subsequent to the cessation of employment of the 5 alleged discriminatees the Respondent did not replace them and its work force for weeks thereafter was reduced from 65 employees[7] to 55 employees.

True the following factors: (1) The alleged terminations took place shortly after the Union filed its representation petition with the Board; (2) all of the alleged discriminatees were on the organizing committee of the Union; (3) the names of four of the alleged discriminatees were on the list of employees interested in the Union, given Attorney Stawinski by the union secretary, raises a suspicion that discriminatory action was taken against the said employees. But suspicion is not proof and a finding of violation of the Act cannot be based on suspicion alone. *Punch and Judy Togs, Inc., of California*, 85 NLRB 499. As previously noted the testimony of the alleged discriminatees is in conflict and irreconcilable with their last dates of employment as shown on the payroll records. I cannot accept their testimony. Other than this testimony the record contains no background or context of union animus or antiunion activity on the part of the Respondent.

Upon the entire record I am convinced and find that Millet, Torres, and Rivera were not discharged for the reasons alleged in the complaint. Accordingly, it will be recommended that the complaint herein be dismissed in its entirety.

CONCLUSIONS OF LAW

1. The operations of the Respondent, Valencia Service Co., constitute and affect trade, traffic, and commerce among the several States and the Territory of Puerto Rico within the meaning of Section 2 (6) and (7) of the Act.

[7] This figure includes supervisors.

2. Unidad General de Trabajadores de P. R. is a labor organization within the meaning of Section 2 (5) of the Act.

3. The Respondent has not engaged in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act.

[Recommendations omitted from publication in this volume.]

GLOBE STEEL TUBES CO. *and* DISTRICT NO. 10, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL, PETITIONER

GLOBE STEEL TUBES CO. *and* LOCAL 663, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL, PETITIONER

GLOBE STEEL TUBES CO. *and* UNITED STEELWORKERS OF AMERICA, CIO, PETITIONER

GLOBE STEEL TUBES CO. *and* DISTRICT NO. 10, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL, PETITIONER. *Cases Nos. 13–RC–2532, 13–RC–2594, 13–RC–2601, and 13–RC–2636. March 26, 1953*

Supplemental Decision and Certification of Representatives

On December 5, 1952, the Board issued a Decision and Direction of Elections in this proceeding.[1] On December 8, 1952, the Employer filed a motion for reconsideration and a request for oral argument which was denied by a Board Order on December 24, 1952.

Pursuant to the Decision and Direction of Elections, on December 30, 1952, elections were conducted, under the direction and supervision of the Regional Director for the Thirteenth Region, among certain employees of the Employer to determine their desires with respect to representation for purposes of collective bargaining. The Decision established seven separate voting groups as follows: (1) All journeymen machinists, journeymen specialists, nonjourneymen specialists, classes A and B, machinists' helpers, tool and die makers, and welders classes A, B, and C in department 80; (2) all tinsmiths and helpers; (3) all pipefitters classes, A, B, and C and pipefitters' helpers; (4) all powerhouse employees; (5) all blacksmiths and helpers; (6) all electricians classes A and B and helpers, excluding the electrical oiler; and (7) all production and maintenance employees, including employees in departments 82 and 97, lubricators, and the electrical oiler, but excluding all employees in voting groups 1, 2, 3, 4, 5, and 6.

The employees in groups 1, 2, 3, 4, and 5 voted on whether they desired to be represented by District No. 10, International Association of Machinists, AFL, herein called the IAM, by United Steel-

[1] 101 NLRB 772.