

located within $4\frac{1}{2}$ miles of Tracy, California, excluding office clerical employees, guards, the shed foreman, and all other supervisors as defined in the Act.

5. Because the seasonal employment peaks in the units we have found appropriate have passed, we shall not direct that elections be held at this time. Following our customary practice in seasonal industries, we shall direct that elections be held at or about the time of the employment peak in these units, on a date to be determined by the Regional Director, among the employees in the appropriate units who are employed during the payroll period immediately preceding the date of the issuance of the notices of election.

[Text of Direction of Elections omitted from publication.]

Chairman Herzog and Member Peterson took no part in the consideration of the above Decision and Direction of Elections.

CLIFTON CONDUIT CO. (TENNESSEE) INC. *and* INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, CIO. Case No. 32-CA-282. May 27, 1953

DECISION AND ORDER

On April 7, 1953, Trial Examiner Bertram G. Eadie issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not violated Section 8 (a) (1) and (3) of the Act as alleged in the complaint and recommending that the complaint against the Respondent be dismissed, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief; the Respondent also filed a brief.

The Board¹ has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendation of the Trial Examiner, with the modifications as set forth below.

1. We agree with the Trial Examiner that the Respondent did not violate Section 8 (a) (1) and (3) of the Act, by failing to rehire the complainants after an economic layoff. We do not adopt, however, the Trial Examiner's discussion as to the legal effect of an alleged agreement to rehire the laid-off employees. The issue in this proceeding is not whether there was an agreement enforceable at law to rehire these employees.

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

The issue is whether the Respondent failed to rehire these employees for discriminatory reasons or for economic reasons. Although the Respondent advised them at the time of the layoff that they would be recalled when work was resumed, the record shows that the Respondent thereafter made a study of cost-production which revealed that the operations of these employees had been inefficient. When work was resumed, the Respondent therefore reverted to its former practice of recruiting workers from the State employment service. In view of the foregoing and the absence of evidence of hostility towards the Union, there is no basis for concluding that the Respondent was discriminatorily motivated in not recalling the complainants when work became available.

[The Board dismissed the complaint.]

Intermediate Report and Recommended Order

Upon an amended charge filed on July 3, 1952, by International Union of Electrical, Radio and Machine Workers, CIO, hereinafter referred to as the Union, the General Counsel for the National Labor Relations Board, hereinafter referred to, respectively, as the General Counsel and the Board, by the Regional Director for the Fifteenth Region (Memphis, Tennessee), issued his complaint dated October 29, 1952, against the Clifton Conduit Co. (Tennessee) Inc., hereinafter referred to as the Company, alleging that it had engaged in and was engaging in certain 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, hereinafter referred to as the Act. Copies of the charge, complaint, and notice of hearing were duly filed and served upon the Company.

With respect to the unfair labor practices the complaint alleged in substance that the Company did on or about June 10 refuse to reemploy the below-named:

Irene Cantrell
Clarice Cantrell
Katherin Dougherty
Clara Mae Fox
Lillian Garrison
Edith Howell
Laverne Holly
Dora Hardwick
Annie Ethel Hatlock
Ruth Johnson
Mabel Jackson

Mary Lannon
Pearl Messer
Dixie Moore
Jewell McLain
Gladys Nobles
Ruby G. Northcut
Beulah Polk
Louise Richardson
Louise Treadgill
Emma Thompson
Curley Walls

And thereafter failed or refused and refuses to reemploy them, because of their membership in and activities on behalf of the Union and because they engaged in concerted activities with other employees for the purposes of collective bargaining and other mutual aid and protection. From and after March 1, 1952, to and including the date of the complaint, acting through its agents, employees, superintendents, foreladies, foremen, and representatives, including but not limited to J. R. Shafnackson and James M. Colmer, interfered with, restrained, and coerced, and is now interfering with, restraining, and coercing its employees in the exercise of their rights to organize, form, or join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in activities for the purposes of collective bargaining by (a) interrogating employees concerning their union membership and activities, (b) asking employees to report employees who are sympathetic to the Union; and (c) permitting representatives of a competing labor organization to go through its plant during working hours for the purpose of soliciting membership in said competing organization during a period of time when the Union was carrying on its organizational activities among the employees of the Company.

The Company filed an answer admitting the jurisdictional allegations of the complaint but denied the commission of any unfair labor practices.

Pursuant to notice, a hearing was held at Memphis, Tennessee, on February 9-10, 1953, before the undersigned Trial Examiner who had been duly appointed by the Chief Trial Examiner to conduct said hearing. The General Counsel and the Company were represented by counsel while the Union appeared by its representative. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. The Trial Examiner granted a motion made by the General Counsel to conform the pleadings to the proof. A motion was made by counsel for the Company to dismiss the complaint at the close of the General Counsel's case, decision on the motion was reserved, it was renewed at the close of the Company's case, and the decision thereon was also reserved. The motions are disposed of by the findings hereinafter made. Oral argument was made by counsel for the respective parties at the close of the hearing. Counsel were granted 20 days from the date of the hearing to file briefs. The time was thereafter extended by the Chief Trial Examiner to March 12, 1953. Counsel for the Company has duly filed his brief which has been duly considered by the Trial Examiner.

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 COMPANY

The Company is a Tennessee corporation engaged in the manufacture and assembling of certain electrical equipment with its plant located in Memphis, Tennessee. It employs approximately 20 employees, consisting of men and women, and on occasion increases said force temporarily to upwards of 40. The Company in the course and conduct of its business at its Memphis, Tennessee, plant annually processes, sells, and distributes in excess of \$300,000 worth of its finished products, of which amount in excess of 50 percent is shipped from its Memphis, Tennessee, plant to and through States of the United States other than the State of Tennessee.

The Trial Examiner finds that said Company is engaged in commerce within the meaning of Section 2 (6) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

International Union of Electrical, Radio and Machine Workers, CIO,¹ is a labor organization which admits to membership therein employees of the Company.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

The Company was incorporated on February 15, 1952. Prior to its organization, the business was conducted by the Clifton Conduit Company, Inc., of Jersey City, New Jersey. The president of the Respondent Company was an employee of the New Jersey corporation at the time when the Company was organized. The Company manufactures a nonmetallic sheet cable, which is an insulation that goes around copper wire. The work is done by braiding machines, extrusion machines, and saturation machines. The Memphis plant was established originally to do work which had been previously done by the New Jersey corporation. The necessary employees for the operation of the plant were approximately 12. The plant had 20,000 feet of floor space of which 60 percent was required for the work in the manufacture of the nonmetallic sheet cable. By reason of its excess floor space over its needs it undertook to assemble certain conductors of electrical energy, known to the trade and throughout this record as "Pierceway Senior

¹ On April 7, 1952. The Union requested the Board in Case No. 32-RC-475 for an election to have the Board certify it as representative of the employees of the Company. A hearing was held thereon on April 25, 1952. The International Brotherhood of Electrical Workers, AFL, petitioned the Board to intervene therein which was granted, and its name thereafter was placed on the ballot. An election was ordered by the Board and set for September 9, 1952. On September 8, 1952, the Union requested that its name be removed from the ballot, and waived the charges of unfair labor practices which it had previously filed. The Intervenor, however, refused to consent to such action. On September 17, 1952, the International Brotherhood of Electrical Workers, AFL, the Intervenor, was designated as the exclusive representative of the employees. Clifton Conduit Co., Case No. 32-RC-475.

Assembly line" and "Pierceway Junior Assembly line." Most of the necessary materials in the operation were leased from the Pierce Laboratory and are still its property. The substantial difference in these two products is that, when assembled both are connected electrical outlets, assembled on rigid and flexible bases respectively. The labor necessary to assemble this equipment is unskilled and requires only a few minutes of instruction or direction to qualify an operator. On receipt of several orders for such assemblies the Company hired on March 25, 26, and April 1, 1952, through the Tennessee State Employment Service, approximately 24 women as temporary employees in addition to, and separate from, its skilled employees engaged in the manufacture of the nonmetallic sheet cable. The Company did not stock such assemblies but only manufactured or assembled them against orders received.

On May 1, 1952, the employees who had been previously employed in March and April on this operation were laid off, due to the then pending steel strike causing cancellations of orders then in the process of being filled by the Company.

There is no claim urged in this case by the General Counsel that the said layoffs by the Company were discriminatory and in violation of the Act, in fact, the General Counsel's position was clearly stated at the hearing on this point by his statements, as follows:

The lay-off, we do not claim that the lay-off on May 1 was discriminatory.

. . . These people were all laid off on May 1, 1952, and the alleged violations in the refusal to rehire, we do not urge that the layoff was discriminatory. We have no proof on that but we are alleging the rehire. . . .

Our contention is the refusal to rehire the union membership, favoritism shown to the AFL at a time when there was a petition pending before the Board for an election and through the testimony of Mrs. Madden in connection with Mrs. Colmer's remark about the CIO and where he thought the main part of the organization campaign of the CIO was taking place with these new girls.

B. Union activities

An organizational campaign was commenced by the Union about the middle of March 1952, and a first meeting was held at which 7 to 10 employees attended, signed union cards, and took other cards for distribution and signing by and among the employees. The following week another meeting was held at which further signed cards were received. A petition to the Board for an election was filed on April 7, 1952, by the Union.

The Union complained to the Company by letter April 17, 1952, that it had permitted an AFL representative to visit the plant. Thereafter the Company learned that one Benny Goggins had been employed by the Company. He apparently was soliciting memberships for the AFL union and was immediately discharged by the Company. His discharge was protested by the AFL union. He was reinstated upon consent by the Company on April 25, 1952, the date of the hearing held on the Union's petition for an election.

The only evidence of the alleged violative acts of the Company in its failure to reemploy those employees who had been laid off on or about May 1, 1952, is to be found in the testimony of the following named witnesses: Madden, Polk, Patterson, Smith, Messer, Haley, Garrison, Hardwich, Northcutt, respectively. The testimony of each of said witnesses is summarized as follows:

(1) Ruby Madden, a member of the Union, testified to the following incident:

Q. Did you have occasion to observe any individual who claimed to be from the AFL union down there at the plant?

A. Yes, I did.

Q. Can you tell us about that, how you happened to see that?

A. Well, I was back at the braider machine right after lunch. The AFL representative came back to me-- . . . [The witness:] Yes, and wanted to give me an AFL card and I told him I wasn't interested, so I turned around and went up to the front where the girls were working in the Pierceway Division.

* * * * *

Q. Were the other girls working?

A. Yes.

Q. All of you take lunch hour at the same time?

A. Yes.

- Q. Were they working when this man was going around?
 A. Yes sir.
 Q. What did you see him do?
 A. Well, he was up there talking to some of the girls and trying to give them cards.
 Q. You saw him do that?
 A. Yes.
 Q. Do you know how long he was in the plant?
 A. No I don't.
 Q. Now, around that time did you have any conversation with a Mr. Colmer, C-o-l-m-e-r?
 A. Not the same day, No.
 Q. When was the conversation with him?
 A. Well, it was a few days after.

* * * * *

- Q. Now, can you tell us how you happened to have a conversation with Mr. Colmer and where it took place and what was said?
 A. Yes, he was working on a machine back there.
 Q. What were you doing?
 A. Well, I was standing there watching him.
 Q. This was during working hours?

* * * * *

- Q. (By Mr. Kyle) Now, tell us what was said. You-all were standing there and what happened?
 A. Well, he asked me did I know they were getting a union in there and I said, "What Union". He said, "The CIO." I told him that that wasn't a CIO man that was in there, it was an AFL. He said yes, he knew it and he said he thought it was the new girls.
 Q. Thought what?
 A. It was the new girls that was getting the CIO in there and he hoped they knew what they were doing, getting a union.

* * * * *

- Q. (By Mr. Kyle) Anything else?
 A. He asked me to find out who had signed the cards approximately how many.

* * * * *

- Q. Did he tell you what to do after you found out?
 A. He said yes, let him know; there wasn't anything else mentioned between he and I about the union.

* * * * *

The Witness: Yes, because we never discussed anything after he left the braiders, never mentioned to me after that.

(2) Beulah Polk, a member of the Union, testified to the following incident:

- Q. Now, were you working in the plant around the middle of April 1952?
 A. Yes.
 Q. Did you have an occasion to talk with anyone who represented the AFL in the plant?
 A. Yes, he came by my machine.
 Q. Can you tell us about that?
 A. Well, he came by my machine and handed me a card and he stated to me like this, he said, "Would you like to sign one of our cards." I said, "No, I don't care for a card, so he taken it and walked on.

* * * * *

- Q. Was it during working hours?
 A. Yes, sir.
 Q. Were you working at the time?
 A. Yes, sir.
 Q. Where was Mr. Colmer at the time, if you know?
 A. I don't remember. I didn't see him.

(3) Inous Patterson, a member of the Union, testified to the following incident:

Q. . . . Now did you have an occasion to observe the person who represented himself as a representative of the AFL out at the plant, Clifton Conduit plant?

- A. You mean did I see him come through?
 Q. Yes.

* * * * *

- Q. When was that?
 A. About the middle of April, I believe.

* * * * *

Q. Can you tell us how you happened to observe that individual?
 A. Well, someone come where I was working and said there was an AFL representative in there and he came on around where I was at and asked me did I want one of his cards and he laid it down by me and went off.

- Q. Did you have any discussion with him over it?
 A. No.
 Q. Did you look at the card?
 A. Yes, sir.

(4) Ruby Smith, a member of the Union, testified to the following incident:

Q. Now, during, directing your attention to around the middle of April, 1952, did you have an occasion to talk with any individual who represented himself to be an AFL man?

- A. Yes sir.
 Q. Suppose you tell us just how you came to talk with this individual?

A. Well, he came in the door and was back in the plant quite a ways before I saw that he was there. I didn't know who he was and I approached him and questioned him as to what his business was or could I help him in any way. He told me that he was an AFL representative and thought he had permission to come into the plant, I told him that I couldn't let him go through and so I went to the office and told Mr. Shafnacker that he was there and so he told me to let him go through and he did.

- Q. Did you tell Mr. Shafnacker who the man said he was?
 A. Yes, I did.

Q. What did you tell Mr. Shafnacker?

A. I told him there was a man out there and he told me that he was a representative of the AFL Union.

Q. What did Mr. Shafnacker say to you?

A. He said, "Let him go through."

Q. What did you do?

A. I told the man it was all right for him to go through.

Q. Did he go through the plant?

A. As far as I know he went through it. He wasn't in the plant but a very short time.

Q. About how long would you estimate?

A. I would say he wasn't in there over ten, maybe fifteen minutes, I am sure it was a very short time.

(5) Pearl Messer, a member of the Union, testified to the following incident:

Q. Now, around the middle of April, did you see a man go through the plant?

A. I certainly did,

Q. Can you tell us about that?

A. Well, I was working over there on a testing, I was working on the Senior side then and testing out the receptacles and he came by and he didn't say a word to me. He laid an AFL card by where I was working. He didn't say a thing and I didn't either.

Q. You saw the card?

A. Yes, sir, I saw the card.

Q. What kind of a card was it?

A. It was an AFL card. I didn't pick it up and read it. I raked it off on the floor. I never did pick it up.

A stipulation was entered on the record that if the remaining employees mentioned in the complaint were to be called as witnesses they would testify that they were working out there for the Company; that they were laid off on May 1; and that they were not recalled thereafter.

The Company called as its witnesses J. R. Schafnacker, its president, and James M. Colmer, its plant manager, who testified as to their respective connections with the related incidents as follows:

J. R. Schafnacker:

A. That is a letter from Mr. Allen [representative of the Union], attesting the fact that the AFL man was permitted to go through the plant.

Mr. Chandler: This paper-writing signed by Roy Allen bearing the date of April 17, 1952, is offered as Exhibit No. 4 to the testimony of this witness.

* * * * *

Q. (By Mr. Chandler) I will ask whether or not subsequent to the receipt of this letter a man named Bennie Goggins was employed by the Company and apparently was soliciting memberships for the American Federation of Labor Union and was discharged by the Company?

A. That is correct.

Q. I will ask whether or not a protest was filed by the AFL before the Labor Relations Board against the discharge of this man Benny Goggins?

A. Yes, sir, there was a protest filed.

Q. Why did you discharge Benny Goggins?

A. In view of that letter.

Q. Do you know whether he was a member of the American Federation of Labor, Goggins?

A. No, sir, I don't know.

* * * * *

Q. Was he subsequently reinstated after the hearing?

A. Yes, sir, he was.

Mr. Chandler: I will try to supply that date.

Mr. Allen: It was the date of the hearing.

Mr. Kyle: The date of the hearing was April 25.

* * * * *

Q. Where did you get the employees whom you employed to work on that time?

A. From the Tennessee Department of Labor, the employment office, Tennessee Employment Office.

Q. State whether or not there was any purpose on the part of the Clifton Conduit Company of Tennessee or any of its employees to discriminate against the employees who previously had been laid off?

A. There was none, sir.

James M. Colmer:

A. I was back at the braiding machines making some adjustments to the braiding machines when Mrs. Madden came to me and started the conversation about Union and union activities in the building and I made no comment other to say, "Oh, is that so," and so forth until she finished and walked away.

Q. Was there any other conversation between you and Mrs. Madden concerning union activities out there?

A. About unions, No, sir.

Argument and Conclusions on the Facts and Law

There is little or no dispute as to the facts in this case. The Company engaged the services of approximately 26 women to perform unskilled labor in its plant on a temporary basis. The work the Company had undertaken was a sideline in addition to its customary work of manufacturing nonmetallic sheet conduit. It recruited the great majority of these women at the Tennessee State Employment Department, and several of the others from those known to its employees. In the employment of these women there was no interrogation by the Company of their previous or present union activities. The Company and its forerunner or predecessor had on two previous occasions used the services of the Tennessee State Employment Department in recruiting the temporary employees to handle the work on the Pierceway projects. On each of those occasions, when the contracts for the Company's products were completed, it had laid off the employees so engaged and when further help was required the employment services of the State were called upon to fill its needs.

In the instant situation the services of these employees were no longer required by the Company because the steel strike had effectively shut down the market for its product and the Company was forced to close this temporary branch of its business.

The entire crew working on this temporary operation was laid off with the exception of one employee (CIO union) who had previously worked for the Company in its manufacture of the nonmetallic conduit where work was found for her.

All these employees had signed cards for the Union and at the time of the layoff were told in substance that the only reason of the layoff was on account of the steel strike. At that time they were given to believe that when the Company resumed operation on this class of work they would again be accepted in its employ.

Approximately 3 months after the layoff of these employees, the Company reverted to or continued its former procedure of employment by calling on the employment agency of the State in the recruitment of its needs. Again applicants were engaged on a temporary basis without any inquiry as to their union activities. In their employment no seniority was considered.

Prior to the enactment of the National Labor Relations Act, and the amendment thereto, the rights of employees pertaining to their employment, discharge, or reemployment were variable and altogether contractual. If the contract or agreement between employer and employees omitted or did not provide, *inter alia*, for reemployment after a layoff of the employee, the employer then had the right to exercise its discretion and to employ only those individuals it saw fit to employ.

The Act has made no change in this situation. The employer still has the right to hire or discharge under the agreement or contract of employment, except that Sections 7 and 8 (a) (3) of the Act must be read into, or incorporated into, the agreement or contract of employment. See *N. L. R. E. v. Jones & Laughlin Steel Corp.*²

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right 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 a labor organization as a condition of employment as authorized in section 8 (a) (3).

² *N. L. R. B. v. James & Laughlin Steel Corp.*, 301 U. S. 1.

The Act does not interfere with the normal exercise of the right of the employer to select its employees or to discharge them. The employer may not, under cover of that right, intimidate or coerce its employees with respect to their self-organization and representation, and on the other hand, the Board is not entitled to make its authority a pretext for interference with the right of discharge when that right is exercised for other reasons than such intimidation and coercion.

Sec. 8. (a) It shall be an unfair labor practice for an employer--

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: . . .

A violation of the rights of employees created by Sections 7 and 8 (a) (3) is enforceable by the Board, under Section 10 (a) of the Act.

The above sections clearly govern the rights of the Company and the employees following their layoff on May 1, 1952, as to their further employment on the refusal to employ on the part of the Company, except insofar that contractual obligations intervened.

In the instant case the question arises: Whether the reputed promise by the Company to reemploy, after the layoff, was enforceable, or became obligatory, on the part of the Company, to reemploy them when its need for additional help arose.

Assuming that a promise of reemployment was made by the Company to the employees at the time of their layoff, it did not ripen into a valid, enforceable agreement or contract between the Company and the employees for the reason that it was a naked promise to employ at some future date and was not supported by any consideration.

The Trial Examiner finds that the General Counsel has failed to prove, by a fair preponderance of substantial evidence, that a valid enforceable agreement or contract existed between the Company and the employees, for the reemployment of these temporary employees who had been laid off on May 1, 1952; and that there was no contractual obligation on the part of the Company to reemploy them. Their rights, if any, to reemployment are to be found in Sections 7 and 8 (a) (3) of the Act.

The complaint sets forth in substance that the reason the Company did not engage or reemploy the employees after they had been laid off was because of "their membership in and activities on behalf of the Union and because they engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection."

The proof offered herein is to the effect that while a petition had been filed that an election be held, an individual was seen by an employee to have entered the plant claiming that he was a member of the AFL and that he had a right to go through the plant. This information was relayed to the president who thereupon told the employee to permit him to do so. The man was in the plant for about 15 minutes and left application cards for the AFL union with the employees. The information that such a person had visited the plant was promptly relayed to the Union which protested in writing that the Company had violated the Act in granting permission for the individual to enter the plant. No permission was asked by the Union of the Company to have a representative visit the plant under like circumstances. Shortly thereafter one of the employees of the Company undertook on his own behalf to solicit applicants to join the AFL union. Upon that information reaching the president of the Company he discharged the employee at once. He was thereafter reinstated by the Company at the time of the hearing on the petition for an election on the application of the AFL Union.

The Trial Examiner finds that the appearance of the individual at the plant and the further consent and authorization of the president that he be permitted to proceed through the plant, in no wise violates the provisions of the Act on the part of the Company. It could very well be a basis on which an unfair labor practice charge against the Company could be predicated provided that a like right or permission was to be refused to a union representative. The record in this case is barren of any request by the Union or any one else that permission to visit the plant was refused by the Company.

The testimony offered by Madden, to the effect that Colmer had asked her to find out who had signed the cards and approximately how many, is discredited by the Trial Examiner for the reason that the petition claiming a majority of the employees had been filed with the Board and the date of the hearing had been set. The surrounding circumstances under which the related conversation took place, the indefiniteness of the time at which it was held, together with the denial by Colmer whose testimony is credited, referring to that incident of the conversation, leads the Trial Examiner to reject the version of the General Counsel that the conversation established or tended to establish that the Company interrogated its employees in violation of the provisions of the Act.

Under such facts and circumstances the Trial Examiner finds and concludes that the charge that the Company failed to employ these employees, upon its resumption of work, after it had

laid them off on May 1, 1952, for the reason that they had engaged in union activities, failed to meet the burden of required proof in that it has not been proven by a fair preponderance of the substantial evidence.

Summarizing the foregoing the Trial Examiner finds that the Company did not violate Sections 7 and 8 (a) (1) and (3) and Section 2 (6) and (7) of the Act.

CONCLUSIONS OF LAW

1. International Union of Electrical, Radio and Machine Workers, CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

2. Respondent Clifton Conduit Co. (Tennessee) Inc., is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

3. Respondent Clifton Conduit Co. (Tennessee) Inc., has not engaged in any unfair labor practices within the meaning of the Act.

[Recommendations omitted from publication.]

EVERETT PLYWOOD & DOOR CORPORATION, Petitioner *and* LUMBER AND SAWMILL WORKERS UNION, LOCAL NO. 2781, chartered by the UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, A. F. of L.

EVERETT PLYWOOD & DOOR CORPORATION *and* PLYWOOD AND DOOR EMPLOYEES OF EVERETT, LOCAL NO. 1, Petitioner. Cases Nos. 19-RM-73 and 19-RC-1187. May 27, 1953

DECISION AND DIRECTION OF ELECTION

Upon separate petitions duly filed under Section 9 (c) of the National Labor Relations Act, a consolidated hearing was held before Robert E. Tillman, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Lumber and Sawmill Workers Union, Local No. 2781, United Brotherhood of Carpenters and Joiners of America, A. F. of L., herein called Local 2781, made an offer of proof, consisting of voluminous documentary and other evidence, which the hearing officer rejected. The evidence was intended to support Local 2781's contention that Everett Plywood & Door Corporation, the named Employer in the two proceedings here consolidated, is not in fact the Employer of the employees involved, and that Plywood and Door Employees of Everett, Local No. 1, herein called Local No. 1, is not a labor organization as defined in the Act.

Local 2781 submitted this same evidence to the Board's Regional Office in support of its charges in Cases Nos. 19-CA-506 and 19-CA-630. In the first case Local 2781 charged a violation of Section 8 (a) (5) of the Act and alleged that the Employer was the alter ego of Robinson Plywood and Timber Company, which had sold the plant here involved to the Employer. In the second case Local 2781 charged a violation of Section 8 (a) (2) of the Act, and named Local No. 1 as the unlawfully dominated labor organization. After investigation, the Regional Director refused to issue complaint on either of these charges. On appeal, the General Counsel sustained the Regional