the Respondent's offer of reinstatement, less the net earnings of each during said period;[10] (3) the Respondent shall, upon request, make available to the Board payroll and other records to facilitate the checking of the amount of back pay, which shall be computed in accordance with the Board's customary formula,[11] and (4) that the Respondent be ordered to cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed by the Act

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

CONCLUSIONS OF LAW

1. The Respondent, Reliance Clay Products Company, is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.
2. United Stone & Allied Products Workers of America, CIO, is a labor organization as defined in Section 2 (5) of the Act.
3. By discharging Roy Alvey, Travis H. Morris, and James G. Sitton, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.
4. By interfering with, restraining, and coercing its employees in the exercise of the 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.
5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act
6. The Respondent has not engaged in the unfair labor practices alleged in the complaint of discharging Foreman C. E. McClenny because he refused to discourage union activities among the employees, or of engaging in acts of surveillance.

[Recommendations omitted from publication.]

[10] Crossett Lumber Company, 8 NLRB 440; Republic Steel Corporation v. N. L. R. B., 311 U. S. 7.

[11] F. W. Woolworth Company, 90 NLRB 289.

CROSBY CHEMICALS, INC. *and* LODGE 1225, INTERNATIONAL ASSOCIATION OF MACHINISTS. Case No. 15-CA-378. May 29, 1953

DECISION AND ORDER

On February 13, 1953, Trial Examiner David London issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report.

The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errror was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions of the Respondent, and the entire record in the case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations to the limited extent consistent with the findings, conclusions, and order hereinafter provided.

The Trial Examiner found that by denying the request for reinstatement made on June 4, 1951, the Respondent violated Section 8 (a) (3) and (1) of the Act. With this conclusion we do not agree.

On April 1, 1947, the members of the Union honored the picket line of the International Union of Operating Engineers, and on April 10, 1947, the Union itself decided to go out on strike for recognition. The record does not establish that the Union set up a picket line in addition to the one maintained by the Operating Engineers. At that time the Respondent engaged in activity, including conduct on behalf of the Beaureguard Chemicals Association (BCA), found by the Board (Crosby Chemicals, Inc., 85 NLRB 791, August 24, 1949) to be violative of Section 8 (a) (1) and (2) of the Act. The Respondent resumed plant operations on April 23, 1947; and on April 28 and 29, 1947, it hired 13 replacements and on May 9, 1947, employed 1 more, thereby replacing the 14 strikers. The Union on May 2, 1947, made a request for reinstatement. After July 1947 there was no picket line at the Respondent's plant.

The Board in its decision of August 24, 1949, found, among other things, that the economic strike had been converted into an unfair labor practice strike by the Respondent's activities in connection with the BCA; the BCA should be disestablished; the request for reinstatement made on May 2, 1947, was unconditional; and the strikers were entitled to reinstatement.

At the hearing in that proceeding the Respondent acknowledged that its supervisors had interfered with the formation of the BCA. After the hearing, in November 1948, the Respondent announced to its supervisors that the BCA was no longer in existence as far as the Respondent was concerned, and the BCA held no meetings or elections, collected no membership dues or assessments, and had no meetings with management. No BCA dues were checked off by the Respondent after November 5, 1948.

On April 3, 1951, the Court of Appeals for the Fifth Circuit, upon petition for enforcement of the Board's Order, held that the May 2, 1947, request for reinstatement which the Board had found was unconditional was in fact conditioned upon the Respondent's agreeing to a consent election. The court entered its decree on May 12, 1951, enforcing the Board's Order except for that portion requiring the reinstatement of the strikers.

The Respondent on May 31, 1951, posted the notice as ordered by the court. On June 4, 1951, the Union unconditionally requested reinstatement of its members, and on June 21, 1951, the Respondent denied the request on the ground that it did not need the services of these men.

In the prior decision the Board held that the Respondent's illegal conduct about April 10, 1947, and following, in connection with the BCA prolonged the strike and consequently transformed the economic strike into an unfair labor practice strike. Since then a considerable period of time has elapsed and conditions have changed. It is now 6 years since the men struck

on April 10, 1947, and all 14 were replaced within 1 month of the walkout. In 1947 the 14 machine shop employees were employed on construction work being done at that time. When this work was completed, the work of the machine shop was reduced, and there are now only 6 employees working in the machine shop. The Respondent resumed plant operations on April 23, 1947; the picket line was removed sometime in May, June, or July of 1947, almost 6 years ago; and the Respondent has been in normal operation for several years.

Other than the refusal to reinstate, it is not alleged that the Respondent has engaged in any additional unfair labor practices. Indeed, the record shows that in effect the Respondent-dominated BCA ceased to exist and that, although the prior unfair labor practices were not fully remedied until it did so, the Respondent posted the notice as modified by the court, with reasonable promptness after the decree was entered.

There exists no disagreement between us and our dissenting colleague on the general principle that unfair labor practice strikers who unconditionally request reinstatement are entitled to their jobs back. This right is not one which continues without time limit however, but must be exercised within a reasonable time after a strike ceases to be current. Under the circumstances of this case recited above, we are unable to find that the unconditional request for reinstatement of June 4, 1951, was made within a reasonable time after the Union's strike ceased to be current. We note the absence of any evidence in the record of affirmative acts by members of the Union indicating that they resumed their strike following the Respondent's rejection of their May 2, 1947, request for reinstatement. Obviously strikers decide to give up their strike when they make a request for reinstatement. It was not until January 29, 1948, nearly 9 months after rejection of the request for reinstatement, that the Union amended an earlier charge filed November 8, 1946, (long prior to the strike) to allege the refusal to reinstate the strikers to be an unfair labor practice. Plainly, under these circumstances our dissenting colleague is not justified in characterizing this belated submission to the Board of the question of the denial of reinstatement as a substitute for affirmative acts indicating that the strike was resumed and maintained after rejection of the May 2, 1947, request for reinstatement.

Our dissenting colleague's suggestion that the making of the June 4, 1951, request for reinstatement after the court's decision is "decisive of the issue in favor of the strikers," is without merit. The court's decision did not purport to pass and, on a record of events ending in 1947, could not have passed on the question whether the strike was still current in 1951 when the court made its decision. As the Respondent was under no obligation to grant the June 4, 1951, request because it was too late and its refusal to grant it was not violative of the Act, we shall dismiss the complaint.

[The Board dismissed the complaint.]

Member Houston, dissenting:

I must disagree with the views of my colleagues in the majority which nullify the rights of these unfair labor practice strikers by the use of a standard in such a way as to be peculiarly unrealistic in the present case. My colleagues state that these employees should have made an unconditional application for reinstatement within "a reasonable time after [the] strike ceases to be current" in order to preserve their rights to reinstatement. One might agree in the abstract with this statement of principle and yet doubt the validity of its application, as I must, in the present circumstances. While it is undoubtedly true that the picketing ceased in 1947--and emphasis is placed on this, albeit inferentially--I do not find that my colleagues are satisfied to accept this fact as dispositive of the currency of the strike and the concomitant reinstatement rights of the strikers, because they find it necessary to comment further on "the absence of any evidence in the record of affirmative acts by members of the Union indicating that they resumed their strike." What kind of "affirmative acts" is required is left undisclosed. Certainly the peaceful submission of their cases to the Board and the Court of Appeals for the Fifth Circuit is not an insignificant piece of evidence in behalf of these employees. I would be willing to characterize it as an adequate substitute for "affirmative acts." But I cannot assume that my colleagues would insist, as they appear to, that these employees must engage in picketing rather than come to us and the court for relief. And I should have thought that my colleagues would have welcomed the unconditional application for reinstatement of June 4, 1951, consonant as it was with the court's views, as decisive of the issue in favor of the strikers.

In sum, the gist of the majority opinion seems to lie in the regretably long period of time which has passed since this case was submitted to the Board and the court. I can find nothing in the majority's view of this case other than the passage of time due to litigation which has been made the basis for a denial to these employees of what my colleagues appear to agree are rights under the Act they surely were entitled to earlier. I am aware of the sad and real fact of delay in proceedings of this character. It is a fact to be deplored. But I will not rely on it to penalize employees who are in no way at fault for it.

Chairman Herzog took no part in the consideration of the above Decision and Order.

Intermediate Report

STATEMENT OF THE CASE

Upon a charge filed July 13, 1951, by Lodge 1225, International Association of Machinists, herein called the Union, the General Counsel of the National Labor Relations Board issued a complaint against Crosby Chemicals, Inc., herein called Respondent or the Company, alleging that Respondent had engaged in and was engaging in unfair labor practices within the meaning

of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 61 Stat. 136, herein called the Act. Copies of the charge, complaint, and notice of hearing were duly served on the appropriate parties.

With respect to the unfair labor practices, the complaint, as amended at the hearing, alleged, in substance, that on or about April 1, 1947, the employees of Respondent ceased work and went on strike; that from April 1 until April 10, 1947, the employees of Respondent's machine shop, including those with whom this proceeding is concerned, ceased work and observed the picket line maintained by a labor organization representing other Respondent employees; that on or about April 10, 1947, the machine-shop employees, including those involved in this proceeding,[1] ceased work and went on strike; that on August 24, 1949, the Board issued a Decision and Order finding that Respondent, from on or about August 26, 1946, and at all times material thereafter, had engaged in and was engaging in unfair labor practices, including violations of Section 8 (a) (1), (2), and (3) of the Act and that the strike above described was prolonged by the unfair labor practices of Respondent. The complaint further alleged that on or about June 4, 1951, and thereafter, the striking employees named in footnote 1, supra, made collective and individual unconditional offers to return to work and that Respondent, on or about June 4, 1951, and thereafter, refused to reinstate said employees for the reason that they had assisted and had become members of the Union and had participated in the strike above described and had refused to work during said strike, and that by said refusal Respondent violated Section 8 (a) (1) and (3) of the Act. By its answer, Respondent denied it had committed any unfair labor practices.

Pursuant to notice, a hearing was held December 15-16, 1952, at De Ridder, Louisiana, before the undersigned Trial Examiner. All parties appeared and were represented by counsel or other representative, were afforded full opportunity to be heard, to examine and cross-examine witnesses, to argue orally at the conclusion of the evidence, and to file briefs. Since the close of the hearing, briefs have been received from the General Counsel and Respondent, both of which have been duly considered.

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

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is a Mississippi corporation licensed to do business in the State of Louisiana and maintains an office and plant at De Ridder, Louisiana, where it is engaged in the manufacture, sale, and distribution of pine oil and related products. In the course and conduct of its business operations during the year preceding the filing of the complaint herein, Respondent manufactured and sold finished products consisting principally of pine oil, turpentine, and related products, valued in excess of $1,000,000, over 80 percent of which was sold and shipped to customers in States other than the State of Louisiana. By its answer, Respondent admitted, and I find, that at all times material herein Respondent has been engaged in commerce within the meaning of Section 2 (6) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Lodge 1225, International Association of Machinists, during all times material herein, was a labor organization within the meaning of Section 2 (5) of the Act.

III. THE UNFAIR LABOR PRACTICES

In a prior proceeding against this Respondent, the Board, by its Decision and Order of August 24, 1949, reported in 85 NLRB 791, found the following facts:

In March 1947, after Respondent had threatened its employees with reprisals if they joined certain labor organizations of their choice, International Union of Operating Engineers, AFL, demanded and was refused recognition as a bargaining agent for all employees in the plant. At about the same time, the charging Union herein demanded and was refused recognition as the bargaining agent for employees in the machine shop, the department in which the 14 employees named in footnote 1, supra, were employed, and the only department with which

[1] George G. Buchanan, T. E. Downs, T. L. Dans, C. F. Fleming, Roy Grantham, Fred Henderson, J. E. Langston, R. J. Lester, Calvin Miers, J. M. Offutt, R. O. Sells, Carl Shirley, J. H. Swearengen, W. D. Woodley

the instant proceeding is concerned. On April 1, 1947, the Operating Engineers began its strike for recognition and established a picket line about Respondent's plant. Employees of Respondent, including the 14 with whom we are concerned, refused to cross the picket line. On April 10, after Respondent had on April 8 refused to negotiate with the charging Union on their behalf, the machine-shop employees met and decided to consider themselves as on strike for recognition and agreed that they would return to work only if Respondent reemployed the entire machine-shop crew and recognized the Union as their bargaining representative. Thus, by April 10, 1947, the machine-shop employees were on strike for economic reasons of their own.

Respondent began to encourage the formation of an "inside" union. Organizational activity on behalf of such a union, known as the Beauregard Chemicals Association, hereinafter referred to as BCA, began on or about April 10, 1947, during the period when the plant was closed down because of the strike aforementioned. Without detailing the evidence found by the Board, it is sufficient for present purposes to note that in its Decision and Order aforementioned, the Board found and concluded that from April 10, 1947, Respondent's activities in behalf of BCA

> clearly constituted not only interference and support of the BCA, but also domination. . as well. . . . This conduct of the Respondent, favoring, as it did, the BCA over the Union representing the striking employees, was manifestly designed to deplete the ranks of the latter organization and thereby to frustrate the striking employees' efforts for representation by a labor organization of their own choosing. This unwarranted intrusion by the Respondent upon the desires for representation of its employees inevitably served to prolong their strike. Consequently, that which theretofore had been an economic strike was transformed into an unfair labor practice strike by the Respondent's illegal conduct.

On April 26, 1947, Respondent's president ordered the preparation of a "Do not reemploy" list containing the names of all the employees then on strike, including the 14 involved herein, and caused that list to be distributed to Respondent's supervisors. During the same month, Foreman Allston told the employees that they would have to join the BCA to keep their jobs with Respondent. On April 28 and April 29, Respondent hired 13 replacements in the machine shop and on May 9 hired 1 more. On May 2, 1947, a union committee sent the following telegram to the Respondent which telegram the Board construed to be an unconditional offer by the 14 men to return to work:

> In order to restore industrial peace to De Ridder, Louisiana, earnestly request that your Company restore all employees who are on your payroll as of April 1, 1947, back on your payroll. In return the Unions will rest the matter of representation before the NLRB and will abide by their findings.

Respondent's response, however, was an offer of jobs only to those who had not been replaced by that time, which the Board construed as a refusal to reinstate. Accordingly, by its Decision and Order, the Board, on August 24, 1949, ordered the immediate reinstatement of the 14 men and that they be made whole for any loss of pay they may have suffered from May 2, 1947, by reason of Respondent's discrimination against each of them. To further remedy the unfair labor practices found by the Board, it ordered, inter alia, that Respondent withdraw all recognition from, and completely disestablish, BCA and to post at its plant a notice advising its employees that it would not discourage membership in the Union by discharging or refusing to reinstate any of them, would cease its domination of interference with, and contributions to, the BCA, would no longer recognize it as the representative of its employees for the purpose of collective bargaining, and would completely disestablish said Association.

Respondent failed and refused to comply with substantial portions of the Decision and Order aforementioned including a failure to reinstate and make whole the named 14 employees and a failure to post the notice aforementioned. The Board sought enforcement of its Decision and Order in the United States Court of Appeals for the Fifth Circuit, which application was resisted by Respondent. That court, by an opinion reported in 188 F. 2d 91, concurred in and affirmed all of the Board's findings, conclusions, and remedial order, save and except only in one respect. In the opinion of the court, the union committee's telegram of May 2, 1947, was not an unconditional request for reinstatement. For that reason alone it held that the contested portion of the Board's Order requiring reinstatement of, and payment of back pay to, the 14 men and the posting of notices with respect thereto, could not be enforced. The re-

mainder of the Board's Order was ordered enforced by the court decree entered May 12, 1951. On May 31, 1951, pursuant to the decree of the court of appeals, Respondent posted a notice at its plant which notice was identical in substance and form to that which the Board by its prior Decision and Order had ordered Respondent to post except that there was omitted therefrom all reference to the reinstatement or making whole of the 14 employees under consideration.

On or about June 2, 1951, the Union, at a meeting of its members, voted to abandon the strike and return to work. On June 4, Respondent was notified by a union secretary, in writing, that the Union had taken the action just mentioned and made, in behalf of the 14 men named in footnote 1, supra, unconditional offers to return to work. Respondent acknowledged this letter on June 21 and advised the Union that it had no present need for the 14 men, or any of them, and that it considered itself under no legal obligation to reemploy or reinstate them. None of the men has been reinstated or reemployed by Respondent.

Concluding Findings

An interesting threshold problem is presented by Respondent's contention that the complaint should be dismissed for the reason that, in violation of Section 10 (b) of the Act,[2] it is based upon alleged unfair labor practices occurring more than 6 months prior to the filing and service of the charge herein. Specifically, Respondent asserts that the present case is analogous to, and controlled by, Greenville Cotton Oil Company, 92 NLRB 1033, in which the Board held that the findings of an unfair labor practice strike was precluded under Section 10 (b), where the only charge under consideration was filed more than 6 months after the unfair labor practice which caused the strike, although timely with respect to that company's failure to reinstate the strikers upon application.

Here, however, the determination and finding that Respondent provoked an unfair labor practice strike in April 1947 was made by the Trial Examiner in the prior proceeding which was instituted, admittedly, pursuant to charges timely filed, and which determination was affirmed by both the Board and the court of appeals. It would be presumptuous, indeed legally improper, for me to determine and find, anew, that by the interjection of BCA into the Company's relationship with its employees in 1947, Respondent did, or did not, convert the strike into an unfair labor practice strike. The only unfair labor practice concerning which I must make the determination is the illegal refusal to reinstate the 14 men pursuant to their unconditional request for reinstatement made on or about June 4, 1951. Concerning this unfair labor practice, and it is the only unfair labor practice on which the complaint herein is "based," a charge was filed on July 3, 1951, and served on Respondent on July 16, 1951. The recitals in the instant complaint pertaining to the origin and conversion of the strike are no more than a narrative of the evidence which establish that in a prior proceeding, based on a proper and timely filed charge, the Board made the finding which the Respondent asserts, and properly so, I cannot for the first time make in the instant proceeding.

By its previous decision, the Board found that Respondent committed a number of unfair labor practices since 1946. Among them was its interjection of the company-dominated BCA by which the strike pending in April 1947 was converted into an unfair labor practice strike. That determination was made and put to rest in the first proceeding. Respondent committed another unfair labor practice in June 1951 when it discriminated against the 14 men in question by refusing their unconditional request for reinstatement, their replacements having been hired after the strike had been converted into an unfair labor practice strike. That is the only unfair labor practice on which the instant complaint is "based."

The construction of Section 10 (b) for which Respondent contends would compel the conclusion that in an industry having a 6-month season, an employer could provoke an unfair labor practice strike near the end of one season, replace the strikers, and plead Section 10 (b) in defense when, at the opening of the next season 6 months or more later, he denies unconditional requests for reinstatement to the strikers. This would be the result achieved in the industry just described, and indeed in the case of every unfair labor practice strike lasting 6 months or more occurring in any industry, notwithstanding that the strikers had, as

[2] Section 10 (b) of the Act, in pertinent part, read as follows:

> . . . Provided, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made . . . .

the Union did in the instant case, filed a timely charge [3] and received an adjudication that the employer had been guilty of the unfair labor practice which caused or prolonged the strike. Congress certainly intended no such result. The undoubted purpose of the Section 10 (b) proviso, as is apparent in its express terms, was merely to discourage dilatory filing of charges.[4] As such, the Board and the courts have construed the proviso to be a statute of limitations, and not a rule of evidence to bar testimony of all events occurring more than 6 months prior to the filing of the charge. [5]

I conclude that the Greenville case is inapposite, and that there is no merit to Respondent's contention that the complaint should be dismissed because issued in violation of Section 10 (b) of the Act. Ozark Dam Constructors, et al., 99 NLRB 1031.

Respondent further contends

> that the April 1947 strike was not . . . prolonged by any unfair labor practice of Respondent and, in the alternative, if it is finally determined and held that such strike was caused or prolonged by unfair labor practices of Respondent, and then and only in such event [it is Respondent's contention], that said unlawful conduct of Respondent ceased on or about December 1, 1948, and that Respondent was not guilty of any unlawful conduct in violation of the Act at any time during the year 1949 or thereafter or caused or could have caused said strike to be prolonged or continued at any time during the years 1949, 1950, or 1951, or any of them.

With respect to the first above-quoted contention, viz, "that the April 1947 strike was not . . . prolonged by any unfair labor practice of Respondent," as I ruled at the hearing and indicated earlier in this report, I was and am foreclosed by the earlier reported decisions of the Board and the court of appeals, [6] and of which I have taken official notice, from giving renewed consideration to that contention.[7] Respondent, while vigorously in disagreement with the Board's finding, does not seriously, and in any event cannot successfully, challenge that the issue was, in fact, determined by the Board in its earlier decision. That finding, not being disturbed by the court of appeals, is now binding and conclusive on me. Indeed, it is my considered opinion, notwithstanding Respondent's contention that the court "never reached that point," that the court expressly approved the finding which Respondent now seeks to challenge.

In its opinion, the court summarized the contention of Respondent and the decision of the Board as follows:

> Respondent resists enforcement of the order only insofar as it relates to the alleged discriminatory refusal to reinstate fourteen machinists. As to the other violations found by the Board, which are either admitted or not contested by Respondent [which includes the unlawful interjection of BCA by Respondent], it is sufficient to say that the findings of the Board are fully supported by the evidence as a whole, and the Order based on these violations should and will be enforced. . . .
>
> The Board found that Respondent discriminated in regard to hire and tenure of employment of the fourteen machinists. It concluded that the machine shop employees, as of April 10, 1947, were on strike for economic reasons of their own. But when [BCA] made its appearance on that date and Respondent immediately began to assist and support that organization, it thereby intruded upon the employees' right to freedom of choice of representatives, with the consequent effect of prolonging the strike, and by so doing the economic strike was transformed into an unfair labor practice strike. The Board then

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[3] By filing this early charge, the employees have avoided the dilemma to which Board Member Styles alluded in footnote 7 of the Greenville decision.

[4] Senate Report No. 105 on S. 1126, p 27; House Conference Report No 510 on H.R 3020, p. 53.

[5] The Board's Sixteenth Annual Report, 1951, page 237. N L. R B. v Luzerne Hide & Tallow Co., 188 F 2d 439 (C A. 3), cert. den 342 U. S. 868; Axelson Manufacturing Company, 88 NLRB 761, 766; N. L R B v. General Shoe Corporation, 192 F 2d 504 (C. A 6), cert. den. 343 U. S 904.

[6] Reported in 85 NLRB 791 and 188 F 2d 91 (C. A. 5), respectively.

[7] J. S. Abercrombie Company, 83 NLRB 524; International Longshoremen's and Warehousemen's Union and True Knowledge, 102 NLRB 907.

referred to the telegram of May 2, as an unconditional request for reinstatement and concluded that in the absence of some valid reason for discharge Respondent was duty bound to reinstate the machinists, even though in some instances other employees had been assigned to their jobs.

There is no question but that where a strike is initially undertaken for economic reasons but is prolonged by reason of the employer's intervening unfair labor practices, the employer is in the same position he would have been in had his unfair labor practice caused the strike in the first place and is bound to reinstate all strikers and discharge all those hired to replace them during the strike. N. L. R. B. v. Remington-Rand, Inc., 2 Cir., 130 F. 2d 919. Indeed, Respondent does not question this general rule but contends that the Board erred in concluding that the telegram of May 2, 1947, constituted an unconditional request for reinstatement. Respondent insists that the material and controlling fact as established by the undisputed testimony of the Board's witnesses, is that an agreement to a consent election was made a condition of the proposal . . . and that, therefore, the record compels the conclusion that no unconditional request for reinstatement was ever made on behalf of the machinists, either by the telegram of May 2nd or otherwise. We agree with the Respondent. . . .

Concluding as we do, that there was no unconditional request for reinstatement by the striking machinists, it follows that the contested portion of the Board's Order requiring reinstatement of and payment of back pay to the fourteen machinists and the posting of notices with respect thereto cannot be enforced. (Emphasis supplied.)

It is unmistakably apparent from a reading of the court's opinion that if it had been in agreement with the Board that the request for reinstatement was in fact unconditional, it would have ordered reinstatement. And, having been replaced, they would have been entitled to such reinstatement only if they were unfair labor practice strikers. Accordingly, I adhere to my ruling at the hearing that Respondent is foreclosed in this proceeding from relitigating the issue of whether or not the 14 machinists became unfair labor practice strikers before their replacements were hired.

We turn next to Respondent's alternative contention that "the said strike ceased to be an unfair labor practice strike on or about December 1, 1948 . . . and reverted to its original economic character," and that thereafter there was no legal obligation on the part of Respondent to reinstate the striking employees.

In connection with that contention, the record establishes that on or about November 19, 1948, at and during the course of the hearing in the prior case before Trial Examiner Whittemore, Respondent's attorneys admitted, in the presence of representatives of the Union, that "in violation of the Act . . . supervisors of the Company interfered with the affairs of [BCA]." The record herein also establishes that after the hearing before Examiner Whittemore, BCA held no meetings or elections, collected no membership dues or assessments, and had no meetings or conferences with management pertaining to grievances, wages, hours, or other terms or conditions of employment. It was also established that though Respondent's contract with BCA provided for a monthly checkoff of dues, no such dues were deducted after November 5, 1948. However, insofar as the record discloses, the only other notice pertaining to BCA given by Respondent, until May 31, 1951, was an oral announcement to Respondent's supervisors in late November 1948, by R. H. Crosby, Respondent's president, "that the BCA was no longer in existence as far as the company is concerned."

Though the Company admitted part of its illegal conduct with reference to BCA at the hearing before Examiner Whittemore, it failed to comply with his requirement, or that of the Board, that it post a notice advising its employees that it had completely renunciated and disestablished BCA and would no longer interfere with, recognize, or contribute support to it, or any successor thereto. No notice with reference to the disestablishment of BCA was given to the employees until May 31, 1951, when the decree of the circuit court of appeals was entered.[8] Two days later, the charging Union voted to abandon the strike. Two days after that meeting, on June 4, the unconditional request for reinstatement was made in behalf of the 14 machinists.

I cannot agree with Respondent that the inactivity of BCA after the hearing before Trial Examiner Whittemore, and the notice given by Respondent to its supervisors, reconverted

[8] Though Respondent may plead in excuse for its failure to post the notice prescribed by both the Trial Examiner and the Board the inclusion therein of an offer to reinstate and make whole the 14 employees, that fact did not preclude Respondent from posting the required, or a similar, notice restricted to its renunciation and disestablishment of BCA.

the existing unfair labor practice strike into an economic strike. Prescription of the manner and means necessary to adequately remedy an unfair labor practice are matters that are left to the discretion and judgment of the Board, and not that of the Respondent. In the thousands of decisions that have been rendered by the Board since the passage of the Act, every one, in which a violation of Section 8 has been found, has required the posting of a notice to the employees that the employer will no longer engage in the violative conduct and will remedy the unfair labor practice found. Thus, in the Board's first reported case, Pennsylvania Greyhound Lines, Inc., 1 NLRB 1, where the Board found that the employer had created and fostered a labor organization in violation of what is now Section 8 (a) (2) of the Act, it concluded, in order to "effectuate the policies of the Act... [that the company] post notices in all the places of business wherein their employees . . . are engaged, stating that said [company-dominated union] is disestablished and that respondents will refrain from any such recognition thereof." When the case reached the Supreme Court, 303 U. S. 261, that Court affirmed the Board's conclusion that posting of the notice aforementioned "was an appropriate way to give effect to the policy of the Act."

Shortly thereafter, the Supreme Court again had occasion to consider the importance of the notice and its contents in a proceeding also involving a company-dominated union. In that case, N. L. R. B. v. Falk Corporation, 308 U. S. 453, the intervening court of appeals had modified the Board's order (6 NLRB 654) by omitting the requirement that the notices to be posted contain a statement that the company cease and desist from its unlawful activities. In reversing the court of appeals, the Supreme Court stated:

> The purpose of the Board in requiring the company to publish notice assuring its employees that it would "cease and desist" had been "to convey to the employees the knowledge of a guarantee of an unhampered right in the future to determine their own labor affiliations." Knowledge on the part of the men that the company would cease and desist from hampering, interfering with and coercing them in selection of a bargaining agent, which the Board found the company had done successfully in the past, was essential if the employees were to feel free to exercise their rights without incurring the company's disfavor. . . . The modified notices neither renounced the company's unlawful practices nor promised their abandonment, and left as a candidate the Independent, [the company-dominated union], toward which the unrenounced unlawful activities of the company had been directed. We think the plant notices as modified by the Court's order fell far short of conveying "to the employees the knowledge of a guarantee of an unhampered right in the future to determine their labor affiliations."

In evaluating the evidence upon which Respondent relies that notice of its alleged renunciation of BCA was effectively and sufficiently brought home to the employees, the fact that Crosby told Respondent's supervisors "that BCA was no longer in existence as far as the Company was concerned" has no legal significance. Notice to Respondent's supervisors is not notice to its rank-and-file employees. And, even if it be assumed, arguendo, that the admissions of Respondent's attorneys at the hearing before Examiner Whittemore, in the presence of union representatives, may be considered notice of these admissions to the 14 men under consideration, it would avail Respondent nothing. The statements were admissions made expressly "for the record" in that proceeding, and did not even pretend to be a statement of management policy to govern its future conduct. There is no evidence that they were communicated to the employees, or that it was so intended.[9] They were mere legal admissions that supervisors had interfered in the affairs of BCA.

The Trial Examiner, the Board, and the court of appeals, all had before them the admissions and statements made at the 1948 hearing, and yet all were in agreement, as late as May 1951, that Respondent's illegal domination of BCA had not yet been adequately remedied. All were still of the opinion that in order to completely remedy that domination, not only that a notice be posted but that the notice include more than Respondent admitted at the hearing. All were in agreement in 1951 that Respondent was required "to convey to the employees the knowledge of a guarantee of an unhampered right in the future to determine their own labor affiliations." N. L. R. B. v. Falk Corporation, 309 U. S. 453. A violator must completely "dissipate the unwholesome effect of violations of the Act." N. L. R. B. v. Franks Co., Inc., 321 U. S. 702. An admission of guilt for past violative conduct was, and is, not sufficient. As the Board recently held, an employer's "offer to the strikers [which] did not include any remedy for the unfair labor practices which caused and prolonged the strike--did not convert

[9] Cf. M. Snower & Company, 83 NLRB 290.

the unfair labor practice strike into a mere economic strike." Star Beef Company, 92 NLRB 1018; enfd. 193 F. 2d 8 (C. A. 1).

"Nor is it material that the [BCA] has in fact been inactive since [November 1948]. Its inactive status is not necessarily permanent. It has never been disestablished by the corporate Respondent, and the possibility that it may be revived still exists." Russell Manufacturing Company, 82 NLRB 1081, 1085; enfd. in pertinent part 187 F. 2d 296 (C. A. 5); Raybestos-Manhattan, Inc., 80 NLRB 1208, 1209-1210.

By reason of all the foregoing, and by virtue of Section 2 (3) of the Act,[10] I find and conclude that the unfair labor practice strike continued until June 4, 1951, when Respondent was notified of its termination by the Union and the 14 men made an unconditional request for reinstatement. Wilson & Company, Inc., 77 NLRB 959; Massey Gin & Machine Works, 78 NLRB 189; Kallaher & Mee, Inc., 87 NLRB 410; Globe Wireless, Ltd., 88 NLRB 1262, enfd. 193 F. 2d 748 (C. A. 9). Accordingly, I find that by denying that request, Respondent discriminated against these employees in violation of Section 8 (a) (3) of the Act. By that denial, Respondent also restrained and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act and thereby violated Section 8 (a) (1) thereof.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I will recommend that it cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

It has been found that Respondent has discriminated in regard to the hire and tenure of employment of the 14 employees named in footnote 1, supra. I will therefore recommend that Respondent offer them immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and to make them whole for any loss of pay they may have suffered as a result of Respondent's discrimination.

It having been established that the employees were engaged in a strike to protest Respondent's unfair labor practices, and that thereafter Respondent discriminatorily refused to reemploy said employees when they unconditionally applied for reinstatement on June 4, 1951, it will therefore be recommended that Respondent offer the employees listed in the Appendix hereto attached immediate and full reinstatement to their former or substantially equivalent positions, dismissing, if necessary, any employees hired since the strike was converted into an unfair labor practice strike on April 10, 1947. If, after such dismissal, there are insufficient positions remaining for all these employees,[11] the available positions shall be distributed among them, without discrimination because of their union membership, activity, or participation in the strike, following such system of seniority or other nondiscriminatory practice as heretofore has been applied in the conduct of Respondent's business. Those strikers for whom no employment is immediately available after such distribution, shall be placed upon a preferential hiring list with priority determined among them by such system of seniority or other nondiscriminatory practice as has heretofore been applied in the conduct of Respondent's business and thereafter, in accordance with such list, shall be offered reinstatement as positions become available, and before other persons are hired for such work. Reinstatement, as provided herein shall be without prejudice to the employees' seniority or other rights and privileges.

It will also be recommended that Respondent make whole the employee aforementioned for any loss of pay they may have suffered by reason of Respondent's discrimination against them. As the discrimination occurred at the time of the denial of their unconditional application for

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[10] "The term 'employee' shall include . . any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment . . "

[11] There is evidence that Respondent has been operating with a curtailed staff after the unfair labor practice strike began.

reinstatement, but after Respondent curtailed its operations, it will be recommended that Respondent pay each of them a sum of money equal to the amount which he normally would have earned as wages from the date following June 4, 1951, when he would be entitled to reinstatement in accordance with the reinstatement formula described above, less his net earnings during said period. The back pay shall be computed in the manner established by the Board, and Respondent shall make available to the Board payroll and other records to facilitate the checking of amounts due. F. W. Woolworth Company, 90 NLRB 289; N. L. R. B. v. Seven-Up Bottling Company, 344 U. S. 344.

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

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

CONCLUSIONS OF LAW

1. Lodge 1225, International Association of Machinists, was, during all times material herein, a labor organization within the meaning of Section 2 (5) of the Act.
2. By discriminating in regard to the hire and tenure of employment of the employees named in the Appendix hereto attached, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act.
3. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication.]

APPENDIX

NOTICE TO ALL EMPLOYEES

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

WE WILL NOT discourage membership in any labor organization of our employees, by discharging or refusing to reinstate any of our employees or in any other manner discriminating in regard to their hire or tenure of employment, or any term or condition of their employment.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in labor organizations as a condition of employment, as authorized by Section 8 (a) (3) of the Act.

WE WILL offer the employees named below immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination against them, in the manner set forth in the section entitled "The Remedy" of the Intermediate Report of the Trial Examiner herein

George G. Buchanan	Fred Henderson	R. O. Sells
T. E. Downs	J. E. Langston	Carl Shirley
T. L. Dans	R. J. Lester	J. H. Swearengen
C. F. Fleming	Calvin Miers	W. D. Woodley
Roy Grantham	J. M. Offutt	

All our employees are free to become or remain members of any labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of

employment against any employee because of membership in or activity on behalf of any labor organization

CROSBY CHEMICALS, INC.,
Employer.

Dated ..... By .....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material

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ACME BOOT MANUFACTURING COMPANY, INC. *and* UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, CIO. Case No. 10-CA-1394. May 29, 1953

DECISION AND ORDER

On February 26, 1953, Trial Examiner Thomas S. Wilson 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. He also found that the Respondent had not engaged in other unfair labor practices alleged in the complaint and recommended dismissal of those allegations. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.[1]

The Board[2] 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.[3] The Board has considered the Intermediate Report,[4] the Respondent's

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[1] The Respondent's request for oral argument is hereby denied because the record, including the Respondent's exceptions and brief, in our opinion, 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] The Respondent excepted to the Trial Examiner granting the General Counsel's motion that the official papers in connection with the original charge filed on October 23, 1951, be amended to change the name of the Respondent from "Acme Boot Corporation" to "Acme Boot Manufacturing Company, Inc." The Respondent conceded at the hearing that it had received all papers in connection with this charge, and disclaimed any element of surprise. Accordingly, we find no merit in this exception. See Lee E. Stine, d/b/a Fairchild Cafeteria, 92 NLRB 809.

[4] The Trial Examiner found that the General Counsel failed to prove by a preponderance of the evidence the allegation of the complaint that the Respondent discriminatorily selected Edith Hiett Clark for layoff because of her activities on behalf of the Union. As no exceptions have been filed to this finding, we adopt it pro forma. Moreover, as the General Counsel did not except to the Trial Examiner's failure to find that the Respondent interrogated its employees concerning their union activities during the months of June and July 1951, we shall dismiss this allegation.