APPENDIX A

NOTICE TO ALL EMPLOYEES

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

WE WILL NOT discourage membership by any of our employees in International Association of Machinists, Local Lodge 284, AFL, or any other labor organization, by discriminating in any manner in regard to any term or condition of employment of any of our employees.

WE WILL NOT in any other like or similar manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to join or assist International Association of Machinists, Local Lodge 284, AFL, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, and 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) of the Act.

WE WILL reinstate Lawrence Healy to the position from which he was demoted, without prejudice to his rights and privileges, at the wage rates he would have continued to receive but for his demotion, and make him whole for any loss of pay he suffered as a result of the discrimination practiced against him

All our employees are free to become or remain members of any labor organization, except to the extent that this right may be affected by an agreement conforming to the applicable provisions of Section 8 (a) (3) of the Act 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 such labor organization

MOTHER'S CAKE AND COOKIE COMPANY,
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.

NEW BIG CREEK MINING COMPANY *and* EARL RICE AND PEARL GIBSON. Case No. 9-CA-508. May 29, 1953

DECISION AND ORDER

On April 7, 1953, Trial Examiner Arthur Leff issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices in violation of Section 8 (a) (1) of the Act 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. The Trial Examiner also found that the Respondent had not violated Section 8 (a) (3) and (1) of the Act by terminating the employment of Earl Rice

and the failure to employ Pearl Gibson, and recommended the dismissal of those portions of the complaint. Thereafter, the General Counsel and the Respondent filed exceptions to the Intermediate Report and supporting briefs.

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

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, New Big Creek Mining Company, Manchester, Kentucky, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Requiring or soliciting employees to execute affidavits or other documents disavowing membership in or intention of joining any labor organization; threatening employees with reprisal for failure to make such disavowal, or in any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Post at its mine copies of the notice attached to the Intermediate Report and marked "Appendix A."[2] Copies of such notice, to be furnished by the Regional Director for the Ninth Region, shall, after being duly signed by a representative of the Respondent, be posted by the Respondent immediately upon receipt thereof, in conspicuous places, including places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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[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].

[2] This notice shall be amended by substituting for the words "The Recommendations of a Trial Examiner" in the caption thereof the words "a Decision and Order." In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order "

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

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges that the Respondent discriminated against Earl Rice and Pearl Gibson.

Intermediate Report

STATEMENT OF THE CASE

Pursuant to a charge filed by Earl Rice, the General Counsel of the National Labor Relations Board, by the Regional Director for the Ninth Region (Cincinnati, Ohio) issued his complaint, dated December 29, 1952, against New Big Creek Mining Company, herein called the Respondent, alleging that the Respondent had engaged 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, herein called the Act With respect to the unfair labor practices, the complaint alleged in substance, and the Respondent in its answer denied, that the Respondent

1 In violation of Section 8 (a) (1) of the Act interrogated employees concerning their sympathy for United Mine Workers of America, herein called the Union, (b) told its employees it could not operate its mine under a contract with the Union, (c) solicited employee affidavits disavowing the Union, and (d) told prospective employees that no union member could work for the Respondent.

2 In violation of Section 8 (a) (1) and (3) discharged Earl Rice on or about October 5, 1951, and refused to employ Pearl Gibson on or about February 1, 1952, because of their membership or sympathy for the Union

Pursuant to notice, a hearing was held at Hazard, Kentucky, on January 15 and 16, 1953, before the undersigned, Arthur Leff, the Trial Examiner duly designated by the Chief Trial Examiner The General Counsel and the Respondent were represented at the hearing by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties At the opening of the hearing, a motion was made by the Respondent to dismiss the allegations of the complaint relating to Pearl Gibson on the ground that he was not named in the charge The motion was denied. Another motion by the Respondent, to change the place of hearing to Hyden, Kentucky, was in effect withdrawn The parties waived oral argument Briefs have been filed by the General Counsel and the Respondent

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, a Kentucky corporation, with its principal office and place of business at Manchester, Kentucky, is engaged in the business of mining, producing, and selling coal During the fiscal year ended September 30, 1952, the Respondent produced and sold coal having a value in excess of $50,000, the sales being made to coal brokers in the State of Kentucky, each of whom annually sells and ships coal of a value in excess of $25,000 directly to persons, firms, and corporations located outside the State of Kentucky The Respondent admits that it is engaged in commerce within the meaning of the Act

II. THE LABOR ORGANIZATION INVOLVED

United Mine Workers of America is a labor organization within the meaning of the Act

III. THE UNFAIR LABOR PRACTICES

A. Introduction

Much of the evidence adduced by the General Counsel related to events occurring more than 6 months before the filing of the charge At the hearing, the Respondent objected to the intro-

duction of evidence concerning events prior to August 20, 1951.[1] However, the evidence objected to was received, not for the purpose of establishing unfair labor practices before that date, but solely for such effect as it might have in elucidating and explaining the character and quality of the Respondent's alleged illegal conduct after that date. It is well settled that Section 10 (b) allows consideration of related events prior to the limitation date for the purpose of throwing light on the specific conduct within the period in issue attacked by the complaint as an unfair labor practice. See N. L. R. B. v. Luzerne Hide & Tallow Co., 188 F 2d 439 (C. A. 3).

Within the limitation period, the specific occurrences upon which the General Counsel would predicate unfair labor practice findings are confined to the following: (1) The Respondent's solicitation of employee Kelly Hensley, in line with a procedure earlier adopted, to sign a so-called "yellow-dog" affidavit; and (2) the Respondent's discharge of employee Earl Rice on or about October 5, 1951, allegedly because of his sympathy for and membership in the Union, and (3) a conversation between General Foreman Charles Gibson and Rice about 3 or 4 days before Rice's discharge in which Gibson is claimed to have interrogated Rice as to his sympathy for and ideas about the Union and to have expressed the view that the Respondent could not operate its mine with the Union as bargaining agent.[2] Since the occurrences referred to in (2) and (3) above are associated in context, they will be considered together in the subsection of this report devoted to the discharge of Rice As for the so-called "background" material, i.e , the events occurring before the Section 10 (b) cutoff date, the background evidence relating to the "yellow-dog" affidavit will be considered in the subsection of this report dealing with that subject, although such evidence also has some bearing on the issue of the Respondent's motivation in effecting Rice's discharge The remaining background evidence--presented to show the Respondent's antipathy to the Union and the likelihood of its taking retaliatory action against union members--is relevant to this case only for the light it may shed on the issue of discriminatory motivation in Rice's discharge case and, accordingly, will be dealt with as part of the consideration of that case

B. The "yellow-dog" affidavits

It is undisputed that during the summer of 1951--probably in July--all employees in the mine were required to, and did, execute so-called "yellow-dog" affidavits. These affidavits were presented to the men for signature by the Respondent's bookkeeper, Redman, when they came to the scalehouse on a payday to receive their wages. At least one of the Respondent's supervisory officials was present at the time. As appears from the undenied and credited testimony of Earl Rice, Redman, while handing out these affidavits, explained in response to a question from one of the men that their purpose was to find out who was in the Union and who was not. At the same time he also advised the employees that it was necessary for them to sign the affidavits if they desired to retain their jobs. There were two forms of affidavits, one to be signed by those employees who previously had worked in union-organized mines, the other by employees who had not Only one of them is in evidence--that required of employees who had not previously worked in union-organized mines It reads as follows

Affidavit

The affiant, , upon his oath says that he is a citizen and resident of County, Kentucky, and is a bona fide employee of Coal Company; that he has never signed a membership card or an application for membership with the United Mine Workers of America, that he does not want to, or intend to sign with such organization, and if there is on file with said organization a membership card or an application for membership,

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[1] The charge was filed February 20, 1952. The cutoff date before which no unfair labor practices may be found is thus August 20, 1951

[2] Evidence was also offered at the hearing to support an allegation in the complaint that the Respondent refused to employ one Pearl Gibson because of his union membership However, the General Counsel in his brief quite properly concedes that the evidence presented on this allegation was insufficient to make out a prima facie case, and suggests its dismissal. He makes a like concession and suggestion with regard to another allegation of the complaint, that the Respondent violated Section 8 (a) (1) by "telling prospective employees that it was afraid they belonged to the Union and that no member of the Union could work in the Respondent's mine " In accordance with the General Counsel's suggestion, dismissal will be recommended of the allegations particularly referred to in this footnote.

that same is a forgery and has been filed against his will and without his consent thereto, that he has not been intimidated, forced or coerced into signing this affidavit and that he signs the same hereunto of his own free will and accord without any promise of remuneration or reward for signing same, that he is perfectly satisfied with his working conditions and does not desire that they be changed in any way by unionization

This day of , 1951

(Notary public acknowledgment)

Charlie Rose, the Respondent's secretary, the only officer who testified for the Respondent, denied that he personally authorized or instructed Redman to secure these affidavits from the employees. He did not deny, however, that Redman might have been asked to do so by some other officer of the Respondent, and made no claim that Redman was acting without authority.[3]

Though the Respondent would have it believed that save for the one occasion in July 1951--which was before the Section 10 (b) cutoff date--no employee was requested to sign a "yellow-dog" affidavit, there is credible evidence in the record to the contrary Kelly Hensley, who was first employed by the Respondent less than 6 months before the filing and service of the charge,[4] testified in substance as follows. A few days after he was first hired he called at the scalehouse to receive from Redman his first paycheck At that time Redman handed him a paper to sign. Redman told Hensley, who is unable to read, "Sign this, it may have something to do with your job." Redman then read aloud from the paper. Its substance, as Hensley recalled it, was a statement to the effect that Hensley did not belong to the Union. According to Hensley, Rose was standing close by and in a position to hear when the statement was read to him.

Although Rose denied that he was present at the time, I do not credit his denial I think it significant that the Respondent refrained from calling its bookkeeper, Redman, either to deny Hensley's testimony or to testify concerning the contents of the paper which Hensley testified without direct contradiction was presented to him at the time. In these circumstances, it may fairly be concluded that had Redman been called as a witness, his testimony would have been unfavorable to the Respondent Wigmore, Evidence §286 From Hensley's credited testimony and the Respondent's failure to produce the paper Hensley signed on that occasion or to offer any other explanation of its contents, it is only reasonable to infer that Hensley was in fact required to sign an affidavit similar to the one that other employees admittedly were obliged to sign in July in order to protect their job security. It is so found

I conclude and find that by soliciting Hensley to sign a document disavowing membership in the Union or interest in unionization, and by indicating to him that his job security might depend on whether or not he signed, the Respondent engaged in illegal interference, restraint, and coercion within the meaning of Section 8 (a) (1)

[3] According to Rose, he was away on a trip at the time the affidavits were distributed to all employees for signature, and upon his return indicated his personal disapproval of the action taken because he considered the affidavits ineffective to accomplish any purpose Though he says he gave orders to Redman not to have any more distributed and made arrangements to have those already distributed destroyed--without, however, notifying the employees, his testimony in that respect was vague, vacillating, and unconvincing, and I do not credit it. On cross-examination, he conceded that since all employees who were on the Respondent's payroll had already executed the affidavits, there was then no need for additional distribution, and presumably, therefore, no occasion then for giving Redman the instructions he says he gave. Moreover, while testifying positively at one point that the signed affidavits had been destroyed, he admitted in almost the next breath that he did not know whether they had or not He conceded the possibility that Redman might later have been given different instructions by other management representatives

[4] Hensley testified that he went to work for the Respondent in the fall of 1951, without, however, giving the exact date. At another point, he testified that he left the Respondent's employ in December 1951, after working about 4 weeks, thus indicating that he was employed sometime in November. The Respondent made no effort to dispute Hensley's testimony in this respect.

C. The discharge of Earl Rice

1. Background evidence

Following is the "background" evidence of events occurring more than 6 months before the filing of the charge, though in most instances less than 6 months before the discharge of Rice, against which the General Counsel asserts the discharge of Rice should be appraised:

(a) The evidence relating to the "yellow-dog" affidavits already considered.

(b) Testimony of former employee Wiley Couch, who worked for the Respondent between April and June 1951, that on one occasion during the period of his employment, Al Crase, owner of a one-third stock interest in the Respondent and part-time manager of the mine, delivered a speech to the employees in which he asserted that the Respondent could not have the Union in its mine as it was in no position to pay union wage scales, and in which he further asserted that the Respondent could not have union men working in the mine. Couch's testimony was undenied and is credited.

(c) Testimony of former employee James Estep, who worked for the Respondent for about 5 or 6 months prior to August 7, 1951, that Charles Rose, the Respondent's secretary, asked him several times during the period of his employment whether he belonged to the Union, and told him that if he, Rose, ever found out for sure that he did, he would be discharged. Rose did not specifically deny making these statements to Estep. Although at one point, Rose denied ever mentioning the Union to Estep, he later contradicted himself and admitted that he had, but stated that he had talked to Estep "about" but not "against" the Union. His testimony does not indicate what he claims to have said "about" the Union. Under all the circumstances and on the basis of my observation of the witnesses, I credit Estep's testimony in this regard.

(d) Further testimony by Estep that Crase and Rose told him during the period of his employment that they had a source of information as to what occurred at the union hall. Estep's testimony in this respect was not denied and is credited.

(e) Testimony of Couch concerning the circumstances under which he was discharged in June 1951. Couch was discharged about a week after he had attended a union meeting, to which he had openly gone in the company of a union organizer. Couch testified that Rose told him at the time of his discharge that he, Rose, would not have the Union in his mine as he could not pay the union scale, that he had heard that Couch belonged to the Union, and that since he now knew it for sure, Couch was "automatically" fired. Rose while testifying did not specifically deny making the statements attributed to him by Couch. Although he denied learning of Couch's attendance at the union meeting, Foreman Gibson admitted that he had heard of it before Couch was discharged. According to Rose, he discharged Couch because Charles Woods, the night boss, told him he did not need Couch any longer and that he so told Couch. He did not, however, elaborate further as to the reasons why Couch's services were no longer required. Woods was not called as a witness. Upon all the evidence and from my observation of the witnesses, I credit Couch's testimony, and find that Rose made the statements attributed to him by Couch and that he discharged Couch for the reasons expressed

(f) Testimony of Estep concerning the circumstances under which he was discharged on August 7, 1951. Estep's testimony reveals that for some time before his discharge Rose had indicated that he suspected Estep of being a union member, as in fact he was. Certain remarks made by Rose to Estep in that connection have already been adverted to. When, finally, Estep was discharged, the reason given him, according to Rose's testimony, undenied by Estep, was irregular attendance. That, according to Rose and Gibson, was the true reason. There is no evidence that the Respondent ever actually learned of Estep's union membership. Estep's own testimony shows that he was discharged following a 2-day absence from work. Estep admitted that shortly before his last absence, he had been cautioned by Gibson about absenteeism and had been warned of the Respondent's intention thereafter to follow a strict policy in that regard. Under all the circumstances, I am not satisfied that Estep was discharged for a reason other than that assigned by the Respondent.

2. The facts as to Earl Rice

When Earl Rice was hired by the Respondent in January 1951, he was not a member of the Union. He joined the Union, according to his testimony, in July 1951, shortly before the Respondent's employees were called upon to sign the "yellow-dog" affidavits. Rice concealed his union membership from the Respondent at the time, and, so far as appears, never disclosed it thereafter. If, after joining, Rice was at all active in the Union, the record does not show it. There is no evidence that Rice participated in any way in union activities, even to the extent of attending a union meeting, or that he ever so much as discussed the Union or revealed his union membership while engaged in conversation with men in the mine.

Rice testified that about 4 days before his discharge, he had an apparently friendly talk with Foreman Gibson inside the mine. In the course of their conversation the subject of the Union came up. Gibson asked Rice what he thought of the Union, and Rice replied that he thought it was all right. It "seemed" to Rice, according to his testimony, that Gibson commented in the course of the conversation that "they couldn't operate under the Union." [5]

Not long after his conversation with Gibson, Rice was absent from the mine for a period of 2 days without notifying the Respondent. When he returned on the morning of October 5, 1951, he was informed by Gibson that he was discharged.

Gibson testified that he discharged Rice because Rice had been injured while violating a safety rule at the mine; because after his injury he had not seemed "interested in his work," and missed an average of about 1 day of work every other week, because he had had some difficulty with Rice shortly before Rice's last layoff, when Rice without good excuse had started to leave the mine in the middle of a workday and had been persuaded to stay on only after considerable effort on Gibson's part, and because Rice had then laid off for 2 days without adequate excuse.

Much of the explanation given by Gibson left me unimpressed. Thus, while it is conceded by Rice that he was injured while at work, it appears that the accident causing the injury had occurred several months before his discharge. Gibson's statement that Rice had thereafter shown a lack of interest in his work was unsupported except by conclusive testimony. His testimony that Rice had been frequently absent was disputed, and is found unsupported by the credible evidence.[6] The incident shortly before Rice's discharge when he had sought to leave the job in the middle of the workday does not appear too significant since Rice on that occasion had acceded to Gibson's request to stay on.[7]

That leaves, then, only the final reason advanced by Gibson, that Rice was absent for 2 days, without notice and without excuse. Rice's absence, of course, is not disputed. The record reflects that the Respondent, because of the mechanized operations in its mine, insisted upon regular attendance by its employees. According to Gibson, the Respondent had a rule making a 2-day absence without adequate excuse a dischargeable offense.[8] It is undisputed that employees when hired were instructed that they would not be permitted to lay off without a doctor's certificate, and that employees were called together at intervals, and admonished about the need of regular attendance. Rice, on cross-examination, admitted that about 3 or 4 days before his layoff, Gibson had made a statement in the mine that men were supposed to work regularly and not lay off. Rice did not deny that he failed to give the Respondent notice of his absence.[9] He explained his failure, however, upon the ground that he was confined to his home on account of illness, and had no means available to him to communicate with the Respondent. Rice took sharp issue with Gibson's assertion that he offered no proper excuse for his absence upon his return. According to his testimony, which I credit, he informed Gibson when questioned as to the reason for his absence that he had been home sick.[10] He admitted he did not offer Gibson a doctor's statement, but testified that Gibson had not asked for any.

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[5] Rice's testimony concerning his conversation with Gibson is credited. Gibson testified that while the Union was a common topic of discussion among the men in the mine, he could not recall this particular conversation with Rice

[6] Rice testified that before his last 2-day layoff he had been absent on only 2 occasions, once for a period of 4 days as a result of the injury he had sustained in the mine, and again for 1 day about a month and a half before his discharge, when he had been required to take his daughter to the hospital On this conflict between Gibson and Rice, I accept Rice's testimony. Rice was definite in his recollection. Gibson, on the other hand, conceded that his testimony was based on an indefinite impression, and that he had made no effort to check the Respondent's payroll records, though he was aware in advance that he would be called on to testify concerning Rice's absences The Respondent's payroll records, which would have revealed the precise number of absences, were not produced by the Respondent at the hearing.

[7] Although Rice testified that he had no recollection of this incident, Gibson's testimony concerning it was detailed and convincing, and I am persuaded that the incident occurred substantially as testified to by him.

[8] Rice in his testimony referred to another employee who had been absent longer and had not been discharged, but was unable to say whether or not that other employee had provided a doctor's certificate. Except for the single example supplied by Rice, the General Counsel made no effort to show, by calling for the production of the Respondent's records, or otherwise, that the rule referred to by Gibson was not generally applied

[9] The record is silent on whether the Respondent had a rule requiring such notice.

[10] I do not credit Gibson's testimony that Rice told him he had been away because he had to see a man.

Despite the shortcomings of much of the Respondent's defense, and what may be viewed as unnecessarily drastic action against Rice whose overall attendance record had been a good one, I am nevertheless not persuaded, after balancing the consideration on both sides, that the General Counsel has succeeded in establishing the allegations of his complaint. As stated in N. L. R. B. v. Montgomery Ward & Co., Inc., 157 F. 2d 486, 490 (C. A. 8), "In considering the propriety of [alleged discriminatory] discharges the question is not whether they were merited or unmerited, just or unjust, nor whether as disciplinary measures they were mild or drastic ... the jurisdiction of the Board being limited to [determining] whether or not the discharges were for union activities or affiliation of the employee." It is not the burden of the employer to show the absence of discrimination, but that of the General Counsel to establish its presence.

In this case the General Counsel would have a finding of discrimination inferred largely from the background evidence reflecting the Respondent's strong opposition to the Union, its threats to other employees, and the action it had earlier taken with regard to Couch. These, of course, are relevant considerations in determining the question of discriminatory motivation. But antiunion motivation alone is not enough to make out a case, unless that motivation is sufficiently connected up with the particular employee whose discharge is alleged to be illegal. And that is the weak link in the chain of circumstantial evidence on which the General Counsel would support his case. There is no direct evidence that the Respondent had knowledge of Rice's union membership. Nor do I think there is sufficient circumstantial evidence from which such knowledge may be imputed to the Respondent. Certainly, it cannot be inferred from union activity on Rice's part of a character that was likely to have come to the Respondent's notice, for, so far as the record discloses, Rice was completely inactive. The General Counsel suggests that such knowledge is properly to be inferred from the statements found to have been made by Crase and Rose to Estep, implying that the Respondent had an informant at the union hall. But there is no evidence that Rice ever so much as attended a union meeting. And even were it assumed that the Respondent's informant, if indeed there were such, had access to the Union's membership rolls, it would be difficult to understand why the Respondent should have waited from July, when Rice became a member, until October before taking action. The General Counsel would bridge that gap with the explanation that the Respondent was awaiting a pretext to discharge Rice upon ostensibly legitimate grounds, and did not find one until it was supplied by Rice's absence. But the difficulty with that hypothesis is that it would attribute to the Respondent in its antiunion actions a subtlety that is refuted by the very background evidence upon which the General Counsel relies. Surely the "yellow-dog" affidavits showed no such craftiness in approach, nor did the declarations accompanying the Respondent's discharge of Couch.

That brings us to the conversation between Gibson and Rice, several days before Rice's discharge, upon which the General Counsel places principal reliance. I have considerable hestitancy on this record in drawing the conclusion that the Respondent decided to discharge Rice because of his comment to Gibson in the course of a friendly conversation that he thought the Union "all right." There is undisputed testimony that the Union was perhaps the most common topic of conversation among the men in the mine, and it is expected that general views of this kind were frequently expressed. There is no clear evidence on which to base a finding that Gibson drew from this remark the belief that Rice was a union member. Such a finding would have to be inferred, and to infer on top of it that Rice was discharged for that reason, as would be necessary if the General Counsel's position is to be sustained, would be to pile inference on inference. Moreover, the background evidence upon which the General Counsel relies shows that in the past the Respondent had not acted on suspicion alone, but only after it had satisfied itself through other means that the suspected employee was in fact a union member.

Unlike the General Counsel, I am unable to view Gibson's question of Rice in the context of their discussion, as designed to determine whether or not Rice was a union member. Nor do I read Gibson's comment to Rice, that "they couldn't operate under the Union," as a threat of reprisal inspired by Rice's disclosure of what he thought about the Union. In the context in which the statement was made, I think it was intended and understood merely as an expression of opinion that the Respondent economically would be unable to survive under union wages and working conditions.[11]

In sum, though there may be suspicious circumstances in this case, I am left unsatisfied by my appraisal of the entire record that the General Counsel has met the burden of establish-

[11] For the reasons indicated, I shall recommend dismissal of the complaint's allegations of unlawful interrogation and coercion that Gibson's testimony is claimed to support, and with regard to which there is no other record evidence.

ing by a fair preponderance of evidence that the Respondent discharged Rice for discriminatory reasons. Consequently, I shall recommend dismissal of the complaint's allegation to that effect.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent as set forth in section III, above, to the extent they have been found to constitute unfair labor practices, occurring in connection with the operations of the Respondent 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 the Respondent has engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act. Because I regard the unfair labor practices found of such a character as to disclose a propensity on the part of the Respondent to continue, although not necessarily by the same means, to trespass upon employees' self-organizational rights, I shall also recommend that the Respondent be ordered to cease and desist from infringing in any manner upon the employee rights guaranteed in Section 7 of 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. 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.
2. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 8 (a) (1).
3. The Respondent has not engaged in unfair labor practices as alleged in the complaint by reason of its discharge of Earl Rice and its failure to employ Pearl Gibson.

[Recommendations omitted from publication.]

APPENDIX A

NOTICE TO ALL EMPLOYEES

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

> WE WILL NOT require or solicit employees to execute affidavits or other documents disavowing membership in or intention of joining any labor organization, or threaten employees with reprisal for failure to make such disavowal.
> WE WILL NOT, in any other manner, interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

All our employees are free to become, remain, or refrain from becoming or remaining members of any labor organization, except as that right may be affected by an agreement re-

quiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

NEW BIG CREEK MINING COMPANY,
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.

PERFECTING SERVICE COMPANY *and* UNITED STEEL WORKERS OF AMERICA, CIO. Case No. 11-CA-502. May 29, 1953

DECISION AND ORDER

On April 13, 1953, Trial Examiner C. W. Whittemore issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices in violation of Section 8 (a) (1), (3), and (5) of the Act 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 unlawfully laid off Elbert L. Eagle, Jr., Walter G. Cooper, and Brady E. Johnson, and recommended dismissal of the complaint as to them.[1] Thereafter, the Respondent filed exceptions to the Intermediate Report; and the General Counsel filed exceptions, supported by a memorandum, to the Trial Examiner's failure to find that the Respondent engaged in certain additional conduct violative of Section 8 (a) (1) of the Act.

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. The Board has considered the Intermediate Report, the exceptions, the memorandum, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions and exceptions.

1. As detailed in the Intermediate Report, we find, as did the Trial Examiner, that the Respondent engaged in independent violations of Section 8 (a) (1) of the Act. The General Counsel has excepted to the Trial Examiner's failure to find that the Respondent also violated Section 8 (a) (1) of the Act by making additional statements and inquiries not mentioned in the Inter-

[1] As no exceptions have been filed with respect to the Trial Examiner's findings that the Respondent did not discriminate as to the tenure of Eagle, Jr., Cooper, and Johnson, we shall dismiss the complaint as to them.

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