

mend, in accordance with the Woolworth decision, that Respondent upon request makes available to the Board and its agents all records pertinent to an analysis of amounts due as back pay.

Since Respondent has restrained, coerced, and interfered with its employees in the exercise of their rights under the Act, and has also committed acts of discrimination with regard to the hire and tenure of employment of its employees--the latter a form of unfair labor practice which has been held to "go to the heart of the Act," I am convinced that there is a danger of a repetition by Respondent of unfair labor practices directed against its employees. In order, therefore, to make effective the interdependent guarantees of Section 7 of the Act, to prevent a recurrence of unfair labor practices, and thereby minimize industrial strife which burdens and obstructs commerce, and thus to effectuate the policies of the Act, I will recommend that Respondent cease and desist from in any manner infringing upon the rights guaranteed employees in Section 7 of the Act.¹⁶

Since the Dischargees indicated that they would not return to work as long as the picket line was in existence, and since the record indicates that the picket line was maintained until the first week in July, it follows that the earliest date that their services were available to the Respondent was approximately July 1. However, it was not until July 17 that their willingness and readiness to go back to work was officially communicated to Respondent's officials by Dischargee Winland. Accordingly, it is found that back pay should run from July 17, 1952, the date of the Dischargees unconditional request for reinstatement in their jobs.

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. The Respondent, Bruns Coal Company, Inc., is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.
2. By discriminatorily discharging Philip Scanlan, Howard A. Milstead, William E. Williams, Robert E. Richardson, Rega C. Lockhart, Ray Frye, Homer V. Anderson, Joshua F. Richardson, Wayne E. Ray, and Frederick W. Dunn, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.
3. 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.
4. The aforesaid labor practices in paragraphs 2 and 3 are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.
5. The Respondent has not violated Section 8 (a) (1) of the Act by engaging in surveillance as alleged in the complaint.

[Recommendations omitted from publication.]

¹⁶ May Department Stores v. N. L. R. B., 326 U. S. 376, affirming as modified 145 F. 2d 66 (C. A. 8), enforcing 53 NLRB 1366.

HALE FIRE PUMP COMPANY *and* UNITED STEELWORKERS
OF AMERICA, C.I.O. Case No. 4-CA-818. August 6, 1953

DECISION AND ORDER

On June 9, 1953, Trial Examiner Lloyd Buchanan 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 General Counsel filed exceptions to the Intermediate Report and a supporting brief.

The Board¹ has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the General Counsel's exceptions and brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following additions.

The complaint, as amended, alleged that the Respondent violated: (a) Section 8 (a) (2) and (1) of the Act by dominating and supporting the Shop Cooperative Committee, concededly a labor organization within the meaning of the Act; (b) Section 8 (a) (3) and (1) of the Act by laying off and refusing to reinstate three of its employees; and (c) Section 8 (a) (1) of the Act by questioning employees concerning their concerted activities, threatening to discharge or discipline union adherents, and urging employees to engage in surveillance of union meetings.

After the General Counsel had adduced evidence at the hearing in support of the allegation that the Respondent unlawfully dominated and supported the Shop Cooperative Committee, the Respondent amended its answer to the complaint to admit this allegation. Accordingly, in his Intermediate Report, the Trial Examiner found that the Respondent violated Section 8 (a) (2) of the Act, and, derivatively, Section 8 (a) (1).

At the close of the hearing, the Trial Examiner granted the Respondent's motion to dismiss that portion of the complaint which alleged that the Respondent violated Section 8 (a) (3) of the Act by laying off and failing to reinstate three employees. In doing so, the Trial Examiner discredited the testimony of witnesses called on behalf of the General Counsel which related to the Respondent's knowledge as to the union activities of the three individuals whose layoff was alleged to be discriminatory. The Trial Examiner set forth his credibility findings on the record, and then concluded that the Respondent did not violate Section 8 (a) (3) of the Act with respect to the three discharges.² In his exceptions and brief, the General Counsel urged that the Trial Examiner erred in his credibility resolutions.

The Board has frequently stated that it will not overrule a Trial Examiner's resolutions as to credibility unless it is

¹Pursuant 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]

²The Trial Examiner reserved decision at the hearing on the allegations respecting independent violations of Section 8 (a) (1) of the Act. In his Intermediate Report, he dismissed all these allegations on the basis of his credibility resolutions made at the hearing, except that he found that the Respondent interrogated and threatened employee Sturgis and initiated attempts by Sturgis, one of the alleged discriminatees, to withdraw his name from the charge

convinced, on a clear preponderance of all the relevant evidence, that the Trial Examiner's resolutions are patently erroneous.³ While our review of the record in the instant case establishes considerable doubt as to the soundness of the Trial Examiner's credibility findings, and while we might not in the first instance have resolved the issues as to credibility in the same way, we are reluctant to disturb his credibility findings in the absence of a clear showing in the record that they are erroneous. Accordingly, because of the Trial Examiner's credibility resolutions, which under the circumstances we accept, we are constrained to adopt his findings, conclusions, and recommendations set forth in the Intermediate Report.

ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Hale Fire Pump Company, Conshohocken, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Dominating, interfering with the administration of, and contributing support to the Shop Cooperative Committee, or any labor organization, and from otherwise interfering with the representation of its employees through a labor organization of their own choosing.

(b) Recognizing or in any other manner dealing with the Shop Cooperative Committee, or any successor thereto, as the collective-bargaining representative of any of its employees for the purposes of dealing with the Respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or any other conditions of employment.

(c) Interrogating, threatening, and initiating attempts of employees to withdraw from concerted activities.

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist United Steelworkers of America, C.I.O., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

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

³ See Photoswitch, Inc., 99 NLRB 1366.

(a) Withdraw all recognition from the Shop Cooperative Committee as the representative of its employees for the purpose of dealing with the Respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or any other conditions of employment, and completely disestablish said organization as said representative.

(b) Post at its plant in Conshohocken, Pennsylvania, copies of the notice attached to the Intermediate Report and marked "Appendix A."⁴ Copies of said notice, to be furnished by the Regional Director for the Fourth Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and be maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to its 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.

(c) Notify the Regional Director, in writing, within ten (10) days from the date of this Order, that steps have been taken to comply herewith.

⁴This notice, however, shall be and it hereby is amended by striking from the first paragraph thereof the words "Recommendations of a Trial Examiner" and substituting in lieu 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."

Intermediate Report and Recommended Order

The complaint herein, as amended at the hearing, alleges that the Respondent has violated Section 8 (a) (2) of the National Labor Relations Act, as amended, 61 Stat. 136, by dominating and supporting the Shop Cooperative Committee; Section 8 (a) (3) by laying off and refusing to reinstate Harry Sturges, Ignatius Wodarski, and Henry McCormick; and Section 8 (a) (1) by said alleged acts and by questioning employees concerning their concerted activities, threatening to discharge or discipline union adherents, and urging employees to engage in surveillance of union meetings.

The answer as filed denied the allegations of unfair labor practices. During the course of the hearing and after a great deal of evidence was received on the issue, the Respondent amended its answer to admit the allegations of violations of Section 8 (a) (2) and of Section 8 (a) (1) to the extent that it is derivative therefrom.

A hearing was held before me at Philadelphia, Pennsylvania, from March 18 to 24, 1953, inclusive. At the close of the hearing I granted the Respondent's motion to dismiss the allegations of violation of Section 8 (a) (3).

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

FINDINGS OF FACT (with reasons therefor)

I. THE RESPONDENT'S BUSINESS AND THE LABOR ORGANIZATIONS INVOLVED

It was admitted and I find that the Respondent, a Pennsylvania corporation with principal place of business at Conshohocken, Pennsylvania, manufactures fire pumps and allied accessories; that during 1952 it purchased raw materials valued at more than \$80,000, of which approximately 30 percent was shipped to its place of business from points outside the State of Pennsylvania; and that it annually manufactures products valued at more than \$1,000,000,

of which more than 50 percent is shipped to points outside the State of Pennsylvania. It was admitted and I find that the Respondent is engaged in commerce within the meaning of the Act.

It was admitted and I find that United Steelworkers of America, C.I.O., and Shop Cooperative Committee are labor organizations within the meaning of the Act.

II. THE UNFAIR LABOR PRACTICES

Witnesses' inconsistencies and occasional amnesic difficulties do not prohibit findings based on substantial evidence offered by them and consideration of the whole record. As will be noted, I have accepted as credible the testimony of some witnesses in part only; rejecting portions, I have felt warranted in crediting other portions of given witnesses' testimony.

A. The alleged violation of Section 8 (a) (2)

The evidence indicates, it was admitted, and I find, that the Respondent has since June 10, 1952 (the limit of the statutory 6-month period), dominated and interfered with the administration of the Shop Cooperative Committee and has contributed financial and other support thereto.

(I have not overlooked the possibility or the existence of such discriminatory intent in connection with the violation of Section 8 (a) (2) as would support a finding of violation of Section 8 (a) (3). Support of the Committee started in August 1951 before a Board-conducted election in which an AFL union was defeated. But there is no proof beyond that offered and considered in connection with the 8 (a) (3) allegations that the Respondent's sponsorship of the Committee or its support at any time either prior to or after September 1952 involved or suggested discrimination against any employees. The question of the Respondent's anti-union animus was considered on the record in connection with the layoffs of McCormick and Wodarski, and it was there noted that no action had for a year been taken against McCormick despite his known activities or against other employees despite their presumably known activities which paralleled those of the alleged discriminatees. I would add at this time a reference to the testimony of Christman, who was employed in the pump department until the beginning of May 1952. His contention that he was "let go" with the explanation that there wasn't enough work when in fact there was, as he told Palmer, the Respondent's personnel manager, is answered by the latter's testimony that the foreman had said that Christman wasn't doing enough work. Again, this is noted in connection with the question of the Respondent's animus against the AFL; Christman's discharge is not in issue. His vindictiveness toward Palmer minimizes the effect of his testimony which, uncontradicted, suggests that Palmer discharged him for AFL activities¹ and indicates that Palmer stated that his own job was in danger because of the activities of Christman, who was then no longer employed by the Respondent.)

B. The alleged independent violation of Section 8 (a) (1)

Beyond the question of the breadth of the order to be recommended, the remedy proposed infra for violation of Section 8(a)(2) makes it unnecessary to consider the alleged independent violations of Section 8 (a) (1). But the testimony concerning the latter casts light on the credibility of witnesses and the 8 (a) (3) issues disposed of at the hearing.

Sturges testified that between the latter part of July and the end of August 1952, Palmer came to see him in the paint shop about every day, staying most of the time² for an hour or two. The nature of Sturges' work required that he desist while he and Palmer talked. (He also testified to other conversations with Palmer in the equipment office.) Palmer testified that he went through the plant periodically and merely passed the time of day with

¹ The nature and extent of such activities while Christman was employed are not set forth.

² Sturges appears to have been the talkative one: In July he sent for Hoffer, superintendent of the equipment department, and spoke of the Norristown union meeting, and later he called Palmer and Hoffer to show them a union card in his lunchbox and denied that he was mixed up in the union business.

Sturges about once a week. Early one morning during the course of these conversations, Palmer allegedly told Sturges that management had an idea that those who had organized for the AFL in 1951 were now organizing for the CIO, and if it found out who they were, they'd be thrown out. Palmer also asked whether McCormick or Sturges had anything to do with the Union, and Sturges replied that he didn't and didn't think that McCormick did. While the Respondent's attitude of noninterference may have changed during the intervening year, I do not credit this testimony that it apparently had; I accept Palmer's denials.

I also credit the denial that Palmer suggested and threatened that Sturges stay away from union meetings, and that Palmer, indicating unlawful surveillance, pointed McCormick out as the Union's chief committeeman. As for the so-called corroboration by McCormick on the basis of Sturges' repetition of Palmer's alleged remarks, we need not now determine whether such hearsay may be relied on as support for competent testimony; McCormick's later testimony indicated no such accuracy or exceptional recollection either of events the year before or even of his own earlier testimony as he claimed for his ability to recall events and dates because he had "been thinking his mind over." In fact, his later uncertain manner so contrasted with his earlier glibness as to suggest that his purported recollection was at least fanciful.

Unlawful questioning and surveillance are suggested in Sturges' testimony that Palmer several times asked how many attended union meetings and, when Sturges mentioned numbers, contradicted him and cited lower figures. Palmer denied making any such remarks, and Hoffer denied that they occurred in his office. I find no violation here or in McCormick's statement that Palmer asked him in August about the Union's progress and its possibilities for achievement. McCormick here appeared to anticipate the question asked him.

After Sturges was recalled to work on January 16, 1953, Palmer directed him to see Wendell, the Respondent's president, who asked him whether he was a member of and had paid dues to the Union. Such inquiries are violative of the Act.

On January 28, 1953, Sturges wrote a letter to the Board, requesting that the charge herein be withdrawn and pointing out that he had been recalled to work and was firmly convinced that the layoff had been due to lack of work. The circumstances surrounding the writing of this letter are in dispute. According to Sturges, Palmer had said to him in the paint shop a day or so before that he (Sturges) had gotten himself into a great deal of trouble (with the Board and the Union), he was the key witness in the case, and it would be best to clear things up; Sturges then declared that he would write a letter, and Palmer stated that he would arrange things so that Sturges could write the letter (just what arrangements were necessary does not appear); on the 28th, Palmer called him to the office, referred to "that letter to Philadelphia," and spelled the words as Sturges wrote them, the wording being Palmer's.

According to Palmer, Sturges approached him in the office, said that he would like to do something about the mess and get out of it, to which Palmer replied, "It's all in your hands"; Sturges then wrote the letter, asking Palmer what to say and the latter telling him to say that he wanted to get out of it; Palmer agreed that the wording and spelling were his; at Sturges' request, the letter was mailed by the Respondent.

Sturges testified that he did not mean "I am firmly convinced that I was laid off for lack of work," that he had not known what was going to be put into the letter, and that he had not read it and did not yet know what was in it. What he thought he was signing does not appear; he did not quite suggest that a fraud had been perpetrated upon him. In fact, he denied that he understands the phrase "firmly convinced." I noted that such phrases as "isolated conversation" and "volunteered the information" were not beyond his comprehension. I noted also that he can read; while he would not himself employ the language of the letter, he can understand it. Further, he was exceptionally hesitant throughout this portion of his testimony, and I do not believe that the idea conveyed in the letter, as distinguished from the phraseology and spelling, was Palmer's, even if the latter was not as passive as his testimony suggests.

On the related question of activity immediately prior to the letter, I credit Palmer's testimony that Sturges approached him, said that he wanted to get out of the mess, and asked what to say in the letter.

Previously, however, and approximately a week after his return, or about January 23, Sturges had volunteered to Palmer the information that he had lost 3 or 4 days while employed elsewhere during his layoff. Palmer replied that he had "a lot more to lose." Palmer did not

deny this conversation. Despite Sturges' attempt, which I have not credited, to bolster his position with respect to the letter, the evidence indicates that the warning or threat implicit in Palmer's statement that he had a lot more to lose not only tended to interfere but actually prompted the letter as an attempt to make his job more secure.

Concentrating as did the General Counsel on the testimony concerning the conversations more immediately preceding the letter, the Respondent conceded that had Palmer initiated the attempted withdrawal, such an act would constitute coercion because of the restraint under which the employee would thus be put. It is unnecessary to decide whether, as the General Counsel maintains, it is interference to assist an employee, at his request, to "withdraw" a charge. I find that Palmer, in the conversation on or about January 23, prompted the letter. The threat and the assistance in issuing the letter under such circumstances restrained and interfered with organizational activities.

Thereafter, Sturges remarked to Palmer that he realized that he was in pretty deep in connection with the pending proceeding. Palmer suggested that he consult an attorney and, when Sturges replied that he didn't know an attorney, offered to arrange for him to meet the Respondent's attorney. Later, and a few weeks before the hearing, Palmer told Sturges that the Respondent's attorney was in the plant and would see him, but Sturges then refused, saying that he had been so advised. Palmer at no time threatened Sturges with respect to any such interview, nor did he even order him to see the attorney. I find no interference here.

Several times Palmer claimed ignorance of what he might reasonably be expected to know, and appeared confused. This might lead to different conclusions were the General Counsel's case stronger. As it is, we have weakness on each side, and inconsistency. But the Respondent's inconsistencies are no substitute for the proof which the General Counsel's case lacks.

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent, set forth in section II, above, occurring in connection with the 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.

IV. THE REMEDY

Since it has been found that the Respondent has engaged in and is engaging in certain unfair labor practices affecting commerce, I shall recommend that it cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act.

It has been found that the Respondent's activities in connection with the Committee constituted domination of that labor organization in violation of Section 8 (a) (2) of the Act. I shall therefore recommend that the Respondent withhold all recognition from and disestablish the Committee as the representative of any of its employees for the purpose of dealing with it concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment.

It has been further found that the Respondent, by interrogation, threat, and initiation of an attempt to withdraw from concerted activities, interfered with, restrained, and coerced its employees in violation of Section 8 (a) (1) of the Act. I shall therefore further recommend that the Respondent cease and desist therefrom.

The unfair labor practices found herein indicate a purpose to limit the lawful concerted activities of the Respondent's employees. Such purpose is related to other unfair labor practices, and it is found that the danger of their commission is reasonably to be apprehended. I shall therefore recommend a broad⁴ cease-and-desist order, prohibiting infringement in any manner upon the rights guaranteed in Section 7 of the Act.

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

³The Carpenter Steel Company, 76 NLRB 670.

⁴James R Kearney Corp., 81 NLRB 26, cited in C. Ray Randall Manufacturing Company, 88 NLRB 140

CONCLUSIONS OF LAW

1. United Steelworkers of America, C.I.O., and Shop Cooperative Committee are labor organizations within the meaning of Section 2 (5) of the Act.

2. By dominating, interfering with the administration of, and contributing support to the Committee, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (2) of the Act.

3. By such domination, interference, and support, and by interrogation, threat, and initiation of an attempt to withdraw from concerted activities, thereby interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

4. The aforesaid labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

[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, as amended, we hereby notify our employees that:

WE WILL NOT dominate, interfere with the administration of, or support Shop Cooperative Committee, or any other labor organization of our employees.

WE WILL NOT recognize or in any other manner deal with Shop Cooperative Committee or any successor thereto as the representative of any of our employees for the purpose of collective bargaining.

WE WILL NOT interrogate, threaten, or initiate attempts of our employees to withdraw from concerted activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist United Steelworkers of America, C.I.O., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, 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.

WE hereby disestablish Shop Cooperative Committee as the representative of any of our employees for the purpose of dealing with us concerning grievances, labor disputes, wages, rates of pay, hours of employment, or any other condition of employment.

HALE FIRE PUMP 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.