600 is hired by those shippers to help unload trucks; and (2) refrain from receiving or otherwise handling merchandise delivered by nonunion truckdrivers.

LOCAL NO. 600, TRUCK DRIVERS AND HELPERS, GASOLINE & OIL DRIVERS, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, A.F.of L.,
Labor Organization.

Dated ..... By .....
(Title of Officer)

Dated ..... By .....
Trustee, Local No. 600

WAREHOUSE AND DISTRIBUTION WORKERS' UNION, LOCAL 688, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, A. F. of L.,
Labor Organization.

Dated ..... By .....
(Title of Officer)

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, A.F.of L.,
Labor Organization.

Dated ..... By .....

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

GRAFF MOTOR SUPPLY COMPANY *and* LOCAL 687, INTERNATIONAL UNION, UNITED AUTOMOBILE WORKERS OF AMERICA, A. F. of L. Case No. 18-CA-470. November 25, 1953

DECISION AND ORDER

On June 19, 1953, Trial Examiner Dent D. Dalby 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. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has

considered the Intermediate Report, the exceptions, the brief, 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 this case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, Graff Motor Supply Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in the United Automobile Workers of America, A. F. of L., or any other labor organization of its employees, by discharging or refusing to reinstate any of them, or by discriminating in any other manner in regard to their hire, tenure of employment, or any term or condition of employment.

(b) In any like or related 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 Automobile Workers of America, A. F. of L., or any other labor 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 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) Offer to Harlan Herbert immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority and other rights and privileges, and make him whole in the manner set forth in the section of the Intermediate Report entitled "The Remedy."

(b) Upon request, make available to the Board or its agents for examination and copying all payroll records, social-security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of back pay due.

(c) Post at its place of business in Sioux Falls, South Dakota, copies of the notice attached to the Intermediate Report marked "Appendix A."[1] Copies of such notice, to be

[1] 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 the 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."

furnished by the Regional Director for the Eighteenth Region, Minneapolis, Minnesota, shall, after being duly signed by the Respondent's authorized representative, be posted by the Respondent immediately upon receipt thereof, and maintained by the Respondent for sixty (60) consecutive days thereafter, in conspicuous places, including all 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.

(d) Notify the Regional Director for the Eighteenth Region in writing, within ten (10) days from date to this Order, what steps the Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint insofar as it alleges violations other than violations of Section 8 (a) (1) and (3) found herein be, and it hereby is, dismissed.

Intermediate Report

STATEMENT OF THE CASE

Local 687, International Union, United Automobile Workers of America, A. F. of L., hereinafter called the Union, filed a charge with the National Labor Relations Board, hereinafter called the Board, on January 13, 1953. This charge resulted in a complaint filed by the General Counsel of the Board on February 27, 1953, alleging that Graff Motor Supply Co., hereinafter called Respondent, violated Section 8 (a) (1), (3), and (5) of the National Labor Relations Act, as amended (61 Stat. 136), hereinafter called the Act. The complaint in substance alleges that Respondent, a South Dakota corporation, discharged Harlan Herbert on January 2, 1953, because he joined and assisted the Union and engaged in concerted activities protected by Section 7 of the Act; that Respondent since January 2, 1953, has refused to bargain collectively with the Union, which represents a majority of Respondent's employees in an appropriate unit; and that Respondent on or about January 2, 1953, interrogated its employees concerning union membership and activities and threatened and warned them to refrain from assisting, becoming members of, or remaining members of, the Union. In an answer filed with the Board on March 24, 1953, Respondent denied the alleged unfair labor practices.

Upon notice a hearing was held on May 4 and 5, 1953, at Sioux Falls, South Dakota. All parties were present at the hearing and were afforded an opportunity to introduce relevant evidence, to examine and cross-examine witnesses, to argue the issues orally upon the record, and to file briefs, proposed findings of fact, and conclusions of law. Oral argument was presented at the conclusion of the hearing by the General Counsel and the Respondent.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent is incorporated under the laws of the State of South Dakota, with its principal office at Sioux Falls, South Dakota. Respondent operates plants at Sioux Falls, Huron, Brookings, and Rapid City, South Dakota, and Worthington, Minnesota. At its Sioux Falls, South Dakota, establishment, the one involved in this proceeding, Respondent is engaged in the wholesale distribution of automotive supplies, radios, and television sets. During the calendar year 1952 Respondent purchased automotive supplies, radios, television sets, and other materials in an amount exceeding $500,000 of which approximately 90 percent represented purchases and shipments to its Sioux Falls, South Dakota, establishment from points outside the State of South Dakota. During 1952 Respondent sold automotive supplies, radios, television sets, and other materials in an amount exceeding $500,000, of which approximately

25 percent was sold and shipped from its Sioux Falls, South Dakota, establishment to points outside the State of South Dakota.

II. THE LABOR ORGANIZATION

Local 687, International Union, United Automobile Workers of America is a labor organization affiliated with the American Federation of Labor.

III. THE UNFAIR LABOR PRACTICES

A. The discharge

Of Respondent's 5 establishments only 1, the Sioux Falls, South Dakota, plant, is involved in this proceeding. At this plant incoming stock is received by the stockroom and shipping employees, unpacked, and placed in stock bins or storage facilities. Sales are made by outside salesmen and countermen. A relatively minor amount of sales are made through mail orders. The salesmen's orders and the mail orders are filled by the stockroom and shipping employees from the stock bins. The countermen receive orders direct from the customers who visit the plant or call by telephone. These orders are filled by the countermen from the same stock bins used by the stockroom employees. The merchandise is delivered direct to the customer by the countermen. Salesmen's orders and mail orders are delivered by Respondent's delivery trucks, by express, or parcel post. Prior to January 2, 1952, 6 employees worked in the stockroom under the supervision of a stock supervisor and a shipping clerk. In the front part of the plant 2 countermen worked under the supervision of a head counterman. One of these is the dischargee involved in this proceeding.

Herbert was first employed by Respondent in 1942 as a truckdriver and continued in this position until 1944 when he entered the armed services. After his discharge from the Army in March 1946 he returned to Respondent's employ in the shipping room. Approximately 1 year later he was promoted to counterman. In November 1948 he resigned to work for another employer. He was reemployed by Respondent in July 1951 and was again assigned to work as counterman. This employment was obtained through the influence of his uncle by marriage, Gordon Graff, Respondent's second vice president and secretary. Ray Graff, Respondent's president, had been reluctant to reemploy Herbert allegedly because he had not proved to be an entirely satisfactory worker and because his reemployment was contrary to Respondent's policy not to rehire workers who had quit. Respondent's head counterman, Leslie Bush, testified that Herbert was rehired on a probationary basis although he was never so advised.

In December 1951 union activities first began at Respondent's plant. Herbert attended a union meeting, obtained a few membership cards, and distributed them to his fellow employees. On December 24, 1951, Ray Graff called him into the office of one of the Company's employees and asked him whether he was starting a union. Herbert denied that he was and Graff told Herbert that if he was starting a union, the working hours would be reduced and more help hired and he would be released.[1]

[1] Ray Graff denied that this conversation ever took place Herbert's testimony is credited, however, because in my opinion Graff's testimony suffers through conflict with that of credible witnesses in other respects and by an inconsistency in portions of his own statement. Footnotes 2, 3, 4, and 5 disclose conflicts of Graff's testimony with other witnesses The following excerpts from the record show conflicts in portions of his own testimony:

Q. And I believe you testified that someone communicated to you that the boys were dissatisfied with the bonus?
A. That's right.
Q When was that first communicated to you?
A. That was communicated to me on the second day of January
Q. That is the first inkling that you had that they were dissatisfied?
A That's right.

No further union activity occurred until December 1952. Six of Respondent's employees, not including Herbert, attended a union meeting on December 30, 1952 All of these employees signed union-application cards. On the following day 3 additional employees, including Herbert, signed application cards. These 3 cards were collected by Herbert who gave them to one of Respondent's truckdrivers for delivery to the Union. The Union thus represented all of the Sioux Falls, South Dakota, employees working for Respondent in other than supervisory, office, or outside selling jobs. At about 11:30 a. m. on January 2, 1952, the Union's financial secretary and business agent, Oscar L. Lokken, called upon Ray Graff and advised him that all of his employees who would be included in an appropriate bargaining unit had signed union-membership cards.[2] Lokken, evidently seeking recognition of the Union as the bargaining agent for Respondent's employees, informed Graff that such recognition could be evidenced by signing a prepared form which was presented to Graff or Respondent could request an election to be conducted by the Board. Graff stated that the matter came as a surprise to him and he wanted time to consider it. He further stated that he would advise Lokken of his decision. Thereafter Lokken made no further inquiry of Graff concerning recognition or collective bargaining and Graff never advised Lokken of his decision. At the conclusion of the conference with Graff, Lokken, on his way out of the plant, stopped momentarily and informed Herbert that he was not obliged to answer questions about union activity directed to him by Respondent's supervisors.

Subsequent to his conversation with Lokken, Ray Graff and at least one other company employee went out either for coffee or lunch.[3] They stopped enroute in the front part of the plant where the countermen worked and tossed a coin to determine who would pay for the refreshments. The coin fell in a roll of dust. Graff directed Herbert to clean it up and left the plant. Herbert made no attempt to comply with this request. Bush having overheard the conversation between Graff and Herbert then asked the other counterman to clean up the dust. Graff returned and went upstairs to his office. Sometime later in the day, he asked Bush whether the plant had been cleaned in accordance with his request, and Bush advised

Q. You hadn't heard anything until then?
A. That's right.
Q Who communicated that to you?
A. Jim Loffgren

* * * * * * *

Q. My question is who first told you that they were dissatisfied
A. I believe it was my brother Gordon.
Q Your brother Gordon?
A. Yes, he came to the back room--our department is joined, and he came down through there.
Q What did your brother Gordon tell you?
A. He told me he thought the boys were dissatisfied with the size of the bonus checks.
Q. And when did he tell you that?
A He told me that around the last of the month.

[2] Lokken testified that he advised Graff that all of his employees had signed application cards Graff testified that Lokken told him "a few of our boys signed up." Since the evidence discloses that at the time of this conversation all of the employees had actually signed union-application cards and it would be in the interest of the Union to make the maximum claim of union membership, I credit Lokken's testimony

[3] Graff testified that this occurred before his conversation with Lokken. However, Bush testified that this occurred at "lunch time." On being reminded by Respondent's counsel, "Mr. Graff testified he was going out to coffee. I wonder if you could be mistaken as to time?" Bush stated, "I think it was afternoon. I can't just remember." In other portions of Bush's testimony, he times this incident by reference to "when they went out to lunch." Consequently I am convinced that the incident occurred after Graff's conversation with Lokken

Graff that he had finally asked the other counterman to do it.[4] In this conversation, Bush also allegedly complained about Herbert's general inefficiency.[5]

---

[4] Graff testified that this conversation took place immediately after he returned from coffee. With reference to the events of January 2, 1953, he stated:

> Q. Did I understand you to say that you didn't know until that morning that Mr. Herbert had been holding down another job.
> A. Less told me at the time we were talking prior to my going upstairs--after we came back from coffee that is the first time I knew he was working nights.

(The "working nights" portion of the testimony had reference to Herbert's employment 3 nights a week and on Saturday at Adam's Food Market.) Head Counterman "Les" Bush's testimony discloses not only that he had had no conversation with Graff between the time he returned for coffee and went upstairs but that he did not advise Graff of Herbert's night employment until after Herbert's discharge. With reference to the time of the January 2 conversation with Graff, Bush testified:

> Q. Now, when Graff came back from his coffee, it was cleaned up?
> A I never seen them when they came back in, so I don't know if he seen it or knew it actually had been done the way it should have been done.
> Q Did you go to Graff and tell him that Herbert hadn't done what he had told him to do?
> A. On this deal here?
> Q Yes.
> A. No; we had a conversation a little later on that. We was talking over there and I told him, we talked about it, and he said, "Did you get that cleaned up over there?" And I said, "Finally, Wally went and done it."
> Q. When was this conversation?
> A. Shortly after they went out for lunch.
> Q. This same day?
> A Yes.
> Q. How did this subject come up again in the subsequent conversation?
> A. Well, I suppose he thought about it and asked me about it. He had been upstairs and came down and we just went around there by the fishing tackle, our corner there, and he said, "Did you get that cleaned up over there?" and I said, "Yes." Well, we talked about it and talked about Bud and the conversation ended right then and he went back upstairs and I went on back to the counter.

Regarding his advising Graff on Herbert's night employment Bush stated:

> Q. Some weeks prior to January 2, 1953, did you have a conference with Mr. Ray Graff concerning Herbert's work?
> A. I did.
> Q. At that time, did you know Herbert was holding down a job outside of Graff's?
> A When I went--I knew it myself but Ray Graff didn't know it. I'm the guy that told him.
> Q. When did you tell him?
> A I didn't tell him before. That has just been a short-time ago. It was after.
> Q. Did you tell him the day this man was fired?
> A. No, no. That has just been lately I told him that.

[5] Doubt is cast upon the cleanup incident by Herbert's testimony that "I don't recalled that particular instance," and by the conflict in details between the Graff version and the Bush version. Graff places the incident as having occurred in the morning, Bush at lunch time or in the afternoon. Graff testified that the discovery of the dust was occasioned by the coin which fell into it. Bush, however, indicated that the dust was discovered because "one of the boys bumped into that trolley tray that we have on the floor and it fell over to one side and there was a bunch of fuzz there." Lastly, Graff testified that he heard Bush give instructions to the other counterman to clean it up. Whereas Bush testified that this occurred after Graff had left the plant. The two other persons who could have affirmed or refuted the testimony,

At 5 o'clock on the same day, January 2, 1953, Ray Graff called a meeting of the employees. He addressed this meeting briefly advising them that he had heard the employees were dissatisfied because of the relatively small amount of the annual bonus that had been awarded this year as compared with previous years. He explained that the bonus had been reduced because the Company had failed to make as much profit as in previous years. The reduction in profit resulted from an increased cost of freight and a $300,000 reduction in volume of sales. Although there is a conflict in the testimony as to whether the Union or union activity was referred to by Graff there is no evidence that Graff made any threat of reprisal for union activity. After the meeting Graff returned to his office and sent for Herbert. Graff advised Herbert that he was to be discharged at the conclusion of the workweek on the following day. Graff told Herbert that he was being released because he had not been properly attending to work and because the Company could get along without his services.

At the hearing, Respondent assigned two reasons for Herbert's discharge: (1) his services were not economically required; and (2) he was inefficient. Both of these reasons are consistent with the advice given Herbert at the time of his discharge. However, the evidence offered by Respondent of Herbert's inefficiency is unconvincing. Respondent first hired him in 1942 as a truckdriver and twice promoted him, first by assigning him to the shipping room on his return from the service and then by reassigning him in 1947 to work as counterman. This employment record argues against Respondent's claim of inefficiency. Still another argument against his inefficiency exists in his reemployment in July 1951. While it is true that Respondent now says that this reemployment was reluctant and probationary, the validity of this claim is open to challenge because Respondent never informed Herbert at the time that he was being reemployed on a probationary basis. The illustrations of inefficiency offered at the hearing fail to establish that Herbert was in fact inefficient. The first example was that Herbert too often asked Respondent's credit man for information on credit standing of the customers rather than the head counterman. This deficiency could easily have been corrected by a simple instruction to consult the proper source for this information. The second example was the improper extension of credit to a customer resulting in a $300 loss to Respondent. This error was evidently not considered serious enough in October or November 1952 when it occurred to warrant even a reprimand. In fact, at no time prior to his discharge was Herbert admonished regarding his work performance or advised that it was unsatisfactory. The failure of Respondent to act in this respect in a manner which would normally be expected of an employer creates the suspicion that inefficiency was not the real reason for discharge.

The second reason advanced by Respondent--that a second counterman was not necessary--although more convincing is nevertheless subject to doubt. Respondent relies for support of this reason on the fact that, up to the date of the hearing, another counterman had not been employed to take Herbert's place. The void left by Herbert's departure had been filled by using one of the office employees during the busy periods. However, it is evident that up to the last of December 1952, Herbert's services had not become so unsatisfactory or unnecessary as to warrant his release. On December 30 or 31 Herbert was given his semimonthly pay along with Respondent's other employees. No mention of discharge was made to him at that time. And Respondent admittedly did not make the decision until January 2, 1953. It was the events of that day that precipitated the discharge. The two events presented by the evidence which could have done so are Herbert's failure to clean up the dust and Respondent's learning of the union activity. The failure of Herbert to clean up the dust, considered alone, hardly formed a logical reason for the discharge. Nor would it form any justification for determining that he was not economically needed. It could conceivably have been the last of a series of incidents of inefficiency. But having discounted inefficiency as the real motive the dust incident is unconvincing.

The compelling conclusion to be drawn from the facts is that, upon learning of the union activity, Respondent executed the threat made the year before and discharged Herbert in the belief that he was instrumental in unionizing Respondent's employees. It is therefore found that Herbert's discharge was discriminatory and violative of Section 8 (a) (1) and (3) of the Act.

---

the employee who went out with Graff for refreshments and the other counterman, were not called as witnesses. In view, however, of the indefinite nature of Herbert's denial, and the fact that the incident was testified to by two of Respondent's witnesses, I accept it as having been established by the evidence.

B. The interrogation

Kenneth Gusarson, shortly after Herbert's discharge, asked one of the stockroom employees, James Bezpaletz, if he belonged to the Union and if he knew what other employees belonged and how many had joined. Bezpaletz denied knowledge of union activity. At about the same time Gusarson also asked Lowell Saunders, a shipping and receiving room employee, if he knew who started the Union. Gusarson also asked if they (evidently referring to persons who were engaging in union activity) had mentioned to Saunders that he would get docked for lunch time if Respondent were to install time clocks. Implicit in this statement is the threat of reprisal for union activity by installation of a time clock. Gusarson worked in Respondent's office as a stockman. The evidence does not establish that he was one of Respondent's supervisors, officers, or directors or that he was acting pursuant to instructions or under authority of any of them. Bezpaletz testified that Gusarson was "just a fellow employee" and had no authority or responsibility other than the stock cards. Gusarson was, however, a stockholder owning 5 percent of Respondent's outstanding stock. An employer is not responsible for anti-union conduct of an employee on the theory that by reason of stock ownership he is identified with the management when there is no evidence that employees regard him as a supervisor, Wayne Works, 47 NLRB 1437. See also N. L. R. B. v. Glenn L. Martin-Nebraska Co., 141 F. 2d 371 (C. A. 8) (1944). Consequently, I find that Respondent was not responsible for the activities or statements of Kenneth Gusarson and did not therefore interrogate or threaten its employees.

C. The refusal to bargain

At the hearing Respondent's president expressed a willingness to bargain with the Union. However, a question was raised as to whether the countermen should be included in a bargaining unit with the stockroom and receiving employees. The countermen and shipping and receiving employees work in close proximity. They handle the same merchandise, have the same working conditions, hours, and vacations. The principal difference in duties is that the countermen fill orders given to them direct by the customers making direct merchandise deliveries and the other employees involved fill orders transmitted by Respondent's salesmen. There can be little doubt that countermen and shipping and receiving employees have a community of interest. They should be included in a single bargaining unit. See N. L. R. B. v. Conlon Bros. Mfg. Co., 187 F. 2d 329 (C. A. 7); Grossman Department Store Inc., 90 NLRB No. 275, August 16, 1950. Whether Respondent's doubts in this respect were bona fide or conveniently manufactured for the hearing, the fact remains that Respondent never made an outright refusal to bargain or to recognize the Union.

In order to establish a refusal to bargain it must be established that the Union not only, as here, represented a majority of the employees concerned but also that it requested the employees to enter into bargaining negotiations. "The employer cannot, under the statute, be charged with refusal of that which is not proffered." N. L. R. B. v. Columbian Enameling and Stamping Company, Inc., 306 U. S. 292. Here the evidence discloses that the Union did not request Respondent to bargain collectively concerning the usual subjects of bargaining negotiations. Actually, no unequivocal demand was made by the Union for recognition as the employees' designated bargaining agent The union representative merely outlined the alternative courses of procedure available to Respondent to settle any question which might exist as to whether the Union represented a majority of the employees in an appropriate unit. In The Solomon Company, 84 NLRB 226, the Board held that written notification by the Union to the Company of its intention to file a petition for certification and asking to participate in a cross-check of union cards to determine majority status was not a "clear and unequivocal demand for recognition" necessary to support a finding of violation of Section 8 (a) (5). Again in Eaton Brothers Corporation, 98 NLRB 464, the Board affirmed the Examiner's Intermediate Report finding no refusal to bargain on a factual situation substantially equivalent of the instant case. In confirmation of this principle is the decision in N. L. R. B. v. Valley Broadcasting Company, 189 F. 2d 582 (C. A. 6). Under the stated facts the Union had advised the employer that unless he recognized the union it would file a petition for certification with the Board and upon being asked categorically if he would recognize the Union, the employer answered that he would not. The court refused to grant an order enforcing Section 8 (a) (5) because there was no substantial evidence that the union ever presented the company with "a clear demand to bargain."

Under the law established by these decisions the Union did not present a clear demand to bargain and Respondent could not therefore have refused. There was no violation of Section 8 (a) (5).

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, 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

To effectuate the policies of the Act it will be recommended that the Respondent cease and desist from engaging in conduct found herein to constitute unfair labor practices, and take the following affirmative action:

Offer to Harlan Herbert immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay he may have suffered by reason of the discrimination against him, by payment to him of a sum of money equal to that which he normally would have earned as wages from the date of discrimination to the date of offer of reinstatement, less his net earnings during such period. The back pay shall be computed in the manner established by the Board (F. W. Woolworth Company, 90 NLRB 289), and the Respondent shall make available to the Board payroll and other records to facilitate the computation of the amount due.

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

CONCLUSIONS OF LAW

1. Local 687, International Union, United Automobile Workers of America, A.F. of L., is a labor organization within the meaning of Section 2 (5) of the Act.
2. By discriminating in regard to the hire, tenure, and conditions of employment of Harlan Herbert, thereby discouraging membership in Local 687, International Union, United Automobile Workers of America, A.F. of L., the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) and 8 (a) (3) of the Act.
3. By interfering with, restraining, and coercing its employees in the exercise of 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 unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.
5. Respondent did not violate Section 8 (a) (5) 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, we hereby notify our employees that:

> WE WILL NOT discourage membership in Local 687, International Union, United Automobile Workers of America, AFL, or in any other labor organization of our employees, by discharging any of our employees, or in any like or related manner discriminating in regard to their hire or tenure of employment, or any term or condition of their employment.
>
> WE WILL make whole Harlan Herbert for any loss of pay he may have suffered as a result of the discrimination against him and offer him immediate and full reinstatement to his former or substantially equivalent position, without prejudice to any seniority or other rights and privileges.

All our employees are free to become or remain members of the above-named union, or any other labor organization. We will not discriminate in regard to the hire or tenure of employment or any term or condition of employment because of membership in, or activity on behalf of, any such labor organization.

GRAFF MOTOR SUPPLY CO.,
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.

UNION MANUFACTURING COMPANY *and* AMERICAN FEDERATION OF HOSIERY WORKERS, AFL. Case No. 5-CA-717. November 25, 1953

DECISION AND ORDER

STATEMENT OF THE CASE

Upon a charge filed on April 21, 1953, by American Federation of Hosiery Workers, AFL, herein called the Union, the General Counsel of the National Labor Relations Board, herein called respectively the General Counsel and the Board, by the Acting Regional Director for the Fifth Region, issued a complaint dated April 30, 1953, against Union Manufacturing Company, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing, were duly served upon the Respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance that the Respondent (1) on or about April 13, 1953, and at all times thereafter, has continuously failed and refused to bargain collectively in good faith with the Union as the exclusive representative of its employees in an appropriate unit, although the Union had been certified as the representative of the employees in such unit on March 17, 1953; and (2) such acts and conduct constitute unfair labor practices within the meaning of Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the Act.

Thereafter, on July 9, 1953, all the parties entered into a stipulation setting forth an agreed statement of facts. The stipulation further includes provisions that: (1) The stipulation and attached exhibits, together with the charge, complaint, notice of hearing, answer of Respondent, affidavits of service of the charge, complaint, notice of hearing, and the entire record in the Union Manufacturing Company, Case No. 5-RC-1103, shall constitute the entire record herein and shall be