

Cory Corporation, 84 NLRB 972, 974. Though the size of the picket line at some of the outlets has been considered in determining whether or not it constituted an informational technique, I find no substantial evidence that it interfered with ingress or egress.

Coca-Cola also contends that the "Friends" picketing constituted a violation of Section 8 (b) (1) (A) *per se*, citing as authority therefor the decision of the Ninth Court of Appeals in the case of Capital Service Co., 31 LRRM 2326. The General Counsel disclaims such a contention. Since the framing of the issues of violation is a function committed by Congress exclusively to the General Counsel, and not to private parties, I find this contention beyond the scope of the issues. Moore Dry Dock, 92 NLRB 547, footnote 1.

It will consequently be recommended that the allegation of violation of Section 8 (b) (1) (A) be dismissed.

#### THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth above, occurring in connection with the operations of the charging parties and the named outlets, previously described, have a close, intimate, and substantial relation to trade, traffic, and commerce within the District of Columbia, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### THE REMEDY

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

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

#### CONCLUSIONS OF LAW

1. Brewery and Beverage Drivers and Workers, Local No. 67, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By inducing and encouraging employees of suppliers to outlets of, and employees of outlets of, Washington Coca-Cola Bottling Works, Inc., to engage in a concerted refusal to perform services for their employers, with an object of requiring the outlets to cease doing business with Coca-Cola, Local 67 has engaged in unfair labor practices within the meaning of Section 8 (b) (4) (A) of the Act.

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

4. The Respondent has not committed unfair labor practices in violation of Section 8 (b) (1) (A) of the Act.

[Recommendations omitted from publication.]

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MARSHALL CAR WHEEL AND FOUNDRY CO. OF MARSHALL, TEXAS, INC. *and* UNITED STEEL WORKERS OF AMERICA, CIO. Case No. 16-CA-443. December 10, 1953

#### SUPPLEMENTAL DECISION AND ORDER DENYING MOTION FOR RECONSIDERATION

On May 28, 1953, the Board issued its Decision and Order in the above-entitled proceeding.<sup>1</sup> In its Decision the Board in substance found, in agreement with the Trial Examiner,

<sup>1</sup>105 NLRB 57.

that on October 16, 1951, the Respondent's employees in question engaged in an economic strike; that thereafter the Respondent refused to take the strikers back except as new employees, if there were vacancies, because the Respondent regarded the strikers as having quit their jobs by violating a plant rule forbidding an employee from leaving work without permission; and that the Respondent's conduct in refusing to reinstate the strikers except as new employees was tantamount to a discharge in violation of Section 8 (a) (3) and (1) of the Act.

On June 18, 1953, the Respondent filed with the Board a "Motion for Reconsideration of the Decision and Order."

## I

In point numbered I in its motion, the Respondent contends in substance that the striking employees should not be afforded the protection of the Act because the strike was "deliberately timed so as to accomplish a partial destruction of Respondent's plant and/or equipment."

The Respondent conducts foundry operations involving melting of iron in a cupola and pouring of the molten metal into molds to make car wheels. Without any advance notice, about 45 percent of the Respondent's work force walked out on an economic strike at 11 a. m. on October 16, 1951, at the peak of the foundry operations. By commandeering supervisors and employees who remained at work in the plant, the Respondent restored operations without any damage to its physical property. The Respondent asserts, however, that, if all the employees in the bargaining unit had struck, there would have resulted substantial damage to plant equipment and material.

In cases involving supervisory<sup>2</sup> and plant-protection employees,<sup>3</sup> the Board has recognized the validity of the general principle that the right of certain classes of employees to engage in concerted activity is limited by the duty to take reasonable precautions to protect the employer's physical plant from such imminent damage as foreseeably would result from their sudden cessation of work. We are of the opinion that this duty extends as well to ordinary rank-and-file employees whose work tasks are such as to involve responsibility for the property which might be damaged. Employees who strike in breach of such obligation engage in unprotected activity for which they may be discharged or subjected to other forms of discipline affecting their employment conditions. However, it is well settled that such a striker does not automatically lose his status as an employee under the Act. An employer may waive his right to discharge or discipline an employee for engaging in such conduct; and once he has made

<sup>2</sup>Carnegie-Illinois Steel Corp. (Gary Steel Works), 84 NLRB 851, affd in *Albrecht v. N. L. R. B.*, 181 F (2d) 652 (C A. 7).

<sup>3</sup>Reynolds & Manley Lumber Co., 104 NLRB 827; U. S. Steel Company (Joliet Coke Works), 196 F (2d) 459 (C A. 7), setting aside 95 NLRB 763.

the waiver, an employer may not later assert the misconduct as a valid reason for discharge or refusal to reinstate. Thus, if an employer in fact discharges an employee for an unlawful reason, the circumstances that the employer might have discharged him for a valid reason, for example, as here, participation in unprotected activities, is not subsequently available as a defense to the unlawful discharge.<sup>4</sup>

The Board appears to be unanimous in its determination that at least some of the strikers engaged in unprotected activity. We are in disagreement with our dissenting colleague on the issue of whether the Respondent did in fact condone or waive the strikers' misconduct in this case. In our opinion the record discloses clear and convincing evidence of such condonation; the Chairman can find no real evidence. Thus, this issue upon which we are divided is purely a factual one. We turn now to a consideration of the evidence on this issue.

At the time of the strike, the Respondent had in force a rule which prohibited "any employee to leave the employer's premises without permission during working hours." In the event of a breach of this rule, "it was presumed he had quit his job." Within an hour after the commencement of the strike, when the Union offered to supply workers to pour the metal, the Respondent notified the Union that the strikers could apply for work, but only as new employees; the Respondent further made it clear that it had not discharged the strikers and that its unwillingness to take them back except as new employees was based on the fact that the strikers had voluntarily severed their employment relationship by leaving work without permission in violation of the plant rule.<sup>5</sup>

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<sup>4</sup>See, for example, the following cases involving strikers in breach of contract: Alabama Marble, 83 NLRB 1047, enfd. in 185 F.2d 1022 (C. A. 5); E. A. Laboratories, 80 NLRB 615, enfd. in 188 F.2d 855 (C. A. 2); Fafnir Bearing, 73 NLRB 1008. See, also, for example, Hoover Co., 90 NLRB 1614, 1622 (mass picketing), set aside on other grounds, 191 F.2d 380 (C. A. 6); Acme Evans, 24 NLRB 71, 100 (violence), enfd. in 130 F.2d 477 (C. A. 7), cert. den 318 U. S. 732. See, particularly, Clearfield Cheese Co., Inc., 106 NLRB 417, and cases cited therein, decided July 29, 1953, where the Board held that an employer condoned strikers' picket-line violence and waived any right to refuse their reinstatement by indicating that strikers would be reinstated to available jobs while failing to mention misconduct as a reason for not reemploying them.

<sup>5</sup>The Trial Examiner so found; there was no exception thereto; and the Board adopted these findings in its decision. At the hearing, Vice President Fry credibly testified as follows:

- Q. Did you fire them for walking out?  
 A. No. I did not.  
 Q. You just told them they would have to come back as new employees?  
 A. That is right.  
 Q. You told them at that time the foremen may or may not take them back, is that correct?  
 A. I told them that it was strictly up to the foremen; if we needed a fellow and he hadn't been replaced-  
 Q. So far as you were concerned the employees quit when they walked out at 11 o'clock?  
 A. Well, I think so, yes  
 Q. That was your position, they quit their employment when they walked out at 11 o'clock.  
 A. Yes.

Later that same day, about 3:30 p.m., when the Union unconditionally offered to return all the strikers to work, the Respondent repeated this position to the Union. Contrary to the opinion of our dissenting colleague, the same position was maintained by the Respondent throughout subsequent negotiations with the Union. And consistent with this position, some of the strikers were later reemployed by the Respondent as new employees, with loss of vacation and Christmas bonus privileges.

At no time did the Respondent in any manner indicate, or even intimate, that its treatment of the strikers as new employees was a disciplinary measure for the strikers' conduct in failing to take appropriate steps to protect the Respondent's property from the damage which might result from an effective strike, although the Respondent was at all times fully aware of the nature of the strikers' conduct and the possible damaging consequences thereof.

At the hearing before the Trial Examiner, the Respondent again denied that it had discharged the strikers and reiterated its position that the strikers had quit their employment by violating the plant rule prohibiting employees from absenting themselves from work without permission.<sup>6</sup> We have already alluded to Vice President Fry's testimony in footnote 5. The record also contains the following colloquy:

Trial Examiner: . . . as I understand the pleadings, no employee was discharged or refused reinstatement because of this potential serious situation in the plant.

Mr. Gooch (representing the Respondent): That's right.

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Trial Examiner: But these men were not penalized or discharged, so where is the issue?

Mr. Gooch: I don't think we have a case, but that is what we are trying down here.

And in its brief submitted to the Trial Examiner, Respondent stated that the position which Fry expressed at the hearing was in conformity with the Respondent's established policy.

Even to this day the Respondent makes no claim that it disciplined the strikers for failing to take appropriate measures to avoid potential damage to the Respondent's property. Thus in its very motion for reconsideration the Respondent "denies that it discharged any of the men" and contends that "although it had a legal right to do so, the Respondent did not discharge the strikers." Construed most favorably to the Respondent,

<sup>6</sup>In paragraph 16 of its answer to the complaint issued by the General Counsel, the Respondent merely alleged that 45 percent of its employees ceased work without taking appropriate measures to safeguard the plant from the serious damage which would have resulted if the strike was 100 percent effective. However, nowhere in its answer does it allege or claim that it disciplined the strikers for such conduct by treating them as new employees.

its position in its motion for reconsideration is that, by engaging in unprotected activity, the employee status of the strikers was automatically severed, a position apparently embraced by our dissenting colleague but consistently repudiated by the Board and the courts.<sup>7</sup>

We are as ever ready as the Chairman to recognize and condemn unprotected conduct wherever it may occur. And we are just as vigilant to protect an employer's right to discipline strikers or any employee for engaging in such misconduct. But we are equally vigilant to protect the employees' statutory rights against infringement by an employer for reasons other than their misconduct. Our position is not a novel one. It has been applied in cases (too numerous to cite) wherein, despite the existence of a valid reason for discharge or discipline, the employer effects the discharge or takes disciplinary action for a discriminatory reason proscribed by the Act. In all such cases the finding of a statutory violation rests upon the ground that the failure to invoke the valid reason affirmatively demonstrates that the employer has condoned such conduct or forgiven the employee for it. It rests, too, upon the entire circumstances surrounding each case; and, in this connection, the employer's continual silence on the matter is just as eloquent as a pronouncement of condonation.

In this case the record shows that from the very inception of the strike the Respondent was fully aware of the nature of the strikers' conduct and the danger of damage to plant facilities. For the Respondent to indicate in some manner that it was treating the strikers as new employees because of their failure to take proper precautions to safeguard the property from damage, requires no use of magic words, nor any technical legal formula, nor imposes any undue burden upon it. Yet, to this day, no evidence has been called to our attention which would indicate that as the Respondent's reason for treating the strikers as new employees; nor does the Respondent even contend that such was the case. On the other hand, the evidence at every turn affirmatively demonstrates that the Respondent was not concerned with this aspect of their conduct but treated the strikers as applicants for new employment solely because of their violation of the plant rule prohibiting an employee from leaving work without prior permission. Its position at the hearing could not be any more specific when it bluntly stated that the strikers were not penalized because of the potential damage to the plant equipment. From the very beginning the Respondent steadfastly maintained that it was the violation of the plant rule which caused the Respondent to refuse to reinstate the strikers except as new employees. It

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<sup>7</sup>In addition to the cases cited in footnote 4, *supra*, see *Stewart Die Casting Corp. v. N. L. R. B.*, 114 F. 2d 849, 855 (C. A. 7), cert. denied, 312 U. S. 680, holding that the employee status of sit-down strikers is not automatically terminated in the absence of affirmative action by the employer for engaging in such misconduct.

was the violation of the plant rule, and that alone, which Respondent refused to condone or forgive. As the Trial Examiner correctly concluded that such a plant rule cannot abrogate the statutory right of employees to engage in concerted activity, the evidence compels us to find that the Respondent condoned the strikers' participation in any alleged unprotected activities and thereby waived any right it might have had to discipline them for it.<sup>8</sup> Hence we find no merit in point numbered I of the Respondent's motion for reconsideration.<sup>9</sup>

The Respondent's motion raises no other matter not previously considered by the Board.

[The Board denied the motion.]

Chairman Farmer, dissenting:

I cannot agree with my colleagues that the Respondent violated the Act in refusing to reinstate the strikers.

The Respondent is a small manufacturer of car wheels, soil pipe, and related products. Its total annual business approximates \$500,000. In connection with its manufacturing operations, the Respondent operates a foundry. It melts iron in a cupola or furnace. The hot molten metal is tapped into a bull ladle for cooling and then poured into smaller ladles for transportation to other parts of the plant where it is poured into molds. About 11 a. m. each morning, the cupola is full of molten metal and must be emptied immediately or severe damage to plant and equipment will result.

The Union was fully aware of the importance of the 11 o'clock hour in the pouring operations, and, by its own admission, deliberately timed the strike so as to cause the maximum physical damage and financial loss to the employer. The Respondent's witnesses testified, without contradiction, that the damage to the plant from such an event would be "hardly less than \$75,000" besides the loss of business which would result

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<sup>8</sup>Contrary to the assertion of our dissenting colleague, in the Clearfield Cheese Co case (106 NLRB 417) where the Board as recently as last July found condonation, the employer, as in this case, had offered to reinstate the strikers with penalty, that is, as new employees. A full reading of the decision also discloses that, as in this case, the manner in which the employer affirmatively indicated an intent to condone the misconduct was solely by (1) offering to take all strikers back as new employees because the employer considered them as having quit and (2) by never mentioning their misconduct as the reason for treating them as new employees, although fully aware of such misconduct.

The other cases on which the dissenting opinion relies are inapposite. Thus in The Longview Furniture case, unlike in the instant case, there was no work available for the strikers at the time of the refusal to reinstate them and the employer never offered to reinstate the strikers even as new employees when work should become available. In the Dorsey Trailer case, the court, in disagreement with the Board, found that the employer did make it clear that its reason for not recalling the strike leaders to work was because of the unprotected character of their activity. The Warner Bros Pictures, Inc., and the W. T. Rawleigh Co cases turned on their own peculiar facts.

<sup>9</sup>In view of our decision herein, we find it unnecessary to determine which, if any, of the strikers engaged in unprotected activity under the circumstances of this case.

while ruined parts of the plant and equipment were being rebuilt, a process which was likely to take several months. This would have gone far to bankrupt this Employer and deprive all of the employees of their job opportunities.

With the admitted intent, in event the Respondent did not capitulate immediately, of doing the maximum amount of damage to the Respondent's property, the Union, without prior warning to the Employer, called the employees out on strike at 11 a. m. on October 16, 1951. The timing of the strike so as to cause the maximum physical damage and crippling of the plant was boldly announced by the Union at a union meeting preceding the strike. Thus, R. C. Lisman, the president of the Union's local, on cross-examination, testified substantially as follows:

11 o'clock in morning is the time "when they were pouring off the wheels and taking them out"; that is "about the time when the crucible that carried the molten metal is about the hottest;" if they don't pour the molten metal off at 11 o'clock "it will come off the cupola and run off down the sides the railroad tracks" and "run everybody out of there;" if there are wooden legs under the crucible, it would burn them, if they didn't take the molten metal out of the crucible.<sup>10</sup>

J. A. Lee, union international representative, gave substantially the following testimony:

We decided 11 o'clock would be the most effective time to come out; that would be time when operation of plant would be at its highest peak of activity; I knew that at that time the cupola had been fully charged and would be full of molten metal that would have to be poured off, requiring some "hasty labor," unless it were dumped; and, if all employes had walked out, there would not be any labor to take care of it. . . . It was the crippling time for all the employees to come out. Unless the molten metal could be poured off quickly at 11 o'clock, I knew that it possibly would be a severe blow to the company financially and "otherwise."<sup>10</sup>

Fortuitously, by calling upon its supervisors, including its vice president and general manager, and the employees who did not answer the strike call, the Respondent was able to muster enough emergency help to prevent the damage to its physical property which the Union foresaw, and, in fact, admittedly planned.

About an hour after the start of the strike, the Union's representative telephoned Fry, the Respondent's vice president and

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<sup>10</sup> Except for that portion set out in quotation marks, the above is a paraphrase of the testimony of Lisman and Lee.

general manager, who was then himself pouring molten metal, and belatedly offered to furnish a number of strikers to help pour the metal in the cupola. It was then too late for the strikers to be of assistance, and Fry told the Union's representative that he considered the strikers had quit their jobs, that they would have to apply to their respective foremen for employment, that it was up to the foremen as to whether the employees were taken back, and that if they did come back, they would do so as new employees. The Board in its original decision, in which I did not participate, found that, by this action, the Respondent discharged the striking employees. I agree with this interpretation of the Respondent's conduct.

There are two questions presented for decision in this posture of the case: (1) Whether the strikers were engaged in protected concerted activity; and (2) whether, if unprotected, the Respondent waived or condoned such action so that the discharge of the strikers was unlawful.

As to the first question, the majority states a general principle with which I wholeheartedly agree, namely, that the right of rank-and-file employees, as well as that of supervisors and plant-protection employees, to engage in concerted activity carries with it the concomitant duty to take reasonable precautions to protect the employer's physical plant from such imminent damage as would result from their sudden cessation of work. However, after stating the principle, the majority find it "unnecessary to determine which . . . of the strikers engaged in unprotected activity under the circumstances of this case." I have no hesitancy in holding that, when employees strike without warning with the purpose and expectation that the employer's physical plant will be seriously damaged thereby, they engage in a form of sabotage which is not entitled to the protection of the Act. By its own admission, this was the purpose and expectation of the Union in this case.

The majority does not gainsay this, but nevertheless finds that the Respondent condoned the strikers' conduct and thereby waived its right to discharge or discipline them. I am not convinced that the doctrine of condonation has any application to a case of this kind, since I view this type of activity as outside the protection of the Act.<sup>11</sup> Moreover, even if applicable, when we (both the majority and I) agree that the strikers' conduct, motivated by a vindictive desire to destroy the enterprise which provides them employment, that finding should be dispositive of the case. The majority, in my view, affords too easy an escape for the strikers from the normal consequences of their wanton and deliberate conduct. Our democratic society, contrary to the attitude of other political philosophies which we abhor, safeguards and grants protection to employees to strike in furtherance of economic aims. But, it seems to me basic in our scheme of free collective bargaining and the right to strike,

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<sup>11</sup>Fansteel, 306 U. S. 240; Southern Steamship, 316 U. S. 31.

that the strike weapon shall be used as an instrument of union policy to exert economic strength to attain economic objectives, and not as a weapon of destruction so planned and so timed as to result in the physical destruction of property of such nature as to deal a crippling blow to the continued existence of the very enterprise from which the strikers gain their livelihood. The distinction, of course, is between the financial loss which is incidental to the withholding of the strikers' labor and the physical destruction and loss resulting from a planned attempt to destroy property by a surprise abandonment of job responsibility. The latter has no place in our society and is not entitled to protection insofar as I am concerned.

But, meeting the majority on their own artificially created issue, there is no real evidence of condonation in this case. Within an hour after the strike, the Respondent's vice president, who was then himself laboring in the foundry to prevent the damage planned by the strikers, told a union representative in substance that the strikers were discharged. Throughout subsequent negotiations between the Union and the Respondent, the latter never receded from the position it had taken on October 16. At no time did it indicate forgiveness of the strikers.<sup>12</sup> On the contrary, Respondent's whole course of conduct indicated unforgiveness. I do not think it decisive that the Respondent did not immediately say, in so many words, that it discharged the strikers because of the timing of their walkout. The Respondent's spokesman was not a labor lawyer, and he was not required to know the magic word formula which had he chanted correctly might have excused his discharge of the strikers. It strikes me as completely disingenuous to ascribe an attitude of forgiveness to Vice-President Fry, 1 hour after the walkout while Fry himself was working as a foundry hand to prevent serious damage to his plant. When the offense is potentially so serious and the Respondent's action so instantaneously follows on the offense, we should require more substantial evidence than is available in this case to find condonation.

Moreover, the condonation or waiver doctrine rests on something more than the failure to raise the defense of unprotected activity in a given time.<sup>13</sup> Before condonation can be found,

<sup>12</sup> Webster's New International Dictionary (1950) defines condonation as follows: "Pardon of an offense; voluntary overlooking or implied forgiveness of an offense by treating the offender as if it had not been committed"

<sup>13</sup> Longview Furniture Company, 100 NLRB 301, 306, where the Board said:

It is true . . . that the Respondent did not disclose a determination not to reinstate the strikers who had engaged in misconduct when the Union applied on their behalf, but relied on its representation that it had no job vacancies. However, this fact is insufficient to establish an intent by the Respondent to condone the misconduct in question. (Emphasis supplied) 6 N. L. R. B. v. Dorsey Trailers, Inc., 179 F. 2d 589, 592 (C. A. 5), where in reversing a Board finding of condonation, the court said:

If we could agree with their [Board's] . . . view that respondent did not make it clear from the beginning to these three that they would not be treated differently from the

there must also be affirmative, positive action by the employer which indicates that he is forgiving the unprotected activity of an employee. Most frequently, this affirmative action has taken the form of an invitation from, or agreement by, the employer to reinstate strikers without penalty. The relevant cases cited by the majority in support of their waiver finding (footnote 4) are of this character.<sup>14</sup> There is no affirmative evidence of condonation in this case. The Respondent did not promise to reemploy the strikers without penalty; nor did it invite them to return to work under such circumstances as to indicate an intent to overlook their conduct in the strike.

To me it is clear that the strikers engaged in unprotected activity; that, even if relevant which I reject, Respondent did not condone or waive such activities; and therefore that the Respondent was lawfully entitled to discharge the strikers. I would so find and dismiss the complaint.

Member Murdock took no part in the consideration of the above Supplemental Decision and Order Denying Motion for Reconsideration.

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rank and file of the workers, we could not agree with it that this would be a waiver of their breach of contract, and a condonation of their wrong headedness, their injurious and harmful action both to the company and to the employees.

<sup>14</sup>Alabama Marble Company, 83 NLRB 1047, enfd. 185 F. 2d 1022 (C. A. 2) (Respondent agreed to permit and did permit employees who struck in violation of a no-strike clause to return to work without reserving the right to discipline any striker); E. A. Laboratories, Inc., 86 NLRB 711, enfd. 188 F. 2d 855 (C. A. 2) (Respondent agreed to reemploy strikers who struck in violation of a no-strike clause); The Fafnir Bearing Company, 73 NLRB 1008 (Respondent invited strikers in violation of a no-strike clause to return to work and promised them reinstatement to their former positions without exception or qualification); The Hoover Company, 90 NLRB 1614, 1622, enfd as modified 191 F. 2d 380 (Respondent invited all employees who engaged in mass picketing to return to work; in court decision, court found that when Respondent invited employees engaged in boycotting activities to return to work if they first disassociated themselves from such activity, it thereby waived right to refuse to reinstate employees who complied with its invitation); Clearfield Cheese Company, Inc., 106 NLRB 417 ("In addition to its delay in raising the misconduct issue, despite the numerous opportunities to do so, until long after the termination of the strike, the Respondent affirmatively indicated at the time of the applications for reinstatement on November 13, and in its letters to, and conversations with, its employees an intent to condone the misconduct"). See also the following court decisions reversing Board findings of condonation: N. L. R. B. v. Dorsey Trailers, Inc., *supra*; N. L. R. B. v. Warner Bros. Pictures, Inc., 191 F. 2d 217 (C. A. 9), setting aside 82 NLRB 568; W. T. Rawleigh Co. v. N. L. R. B., 190 F. 2d 832 (C. A. 7), enfd. as modified 90 NLRB 1924.

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BROTHERHOOD OF PAINTERS, DECORATORS & PAPERHANGERS OF AMERICA, LOCAL UNION NO. 365, AND HUGH J. SMITH, its Business Agent *and* JOHN SALANSKY and ELMER LEE RIDGWAY. Case No. 10-CB-145. December 11, 1953

### DECISION AND ORDER

On September 14, 1953, Trial Examiner Robert L. Piper issued his Intermediate Report in the above-entitled proceed-