men, freight handlers, machinists "A," machinists "B," electricians, setup men "A," setup men "B," oilers, carpenters, porters, and truckdrivers, but excluding office clerical employees, plant nurse, chemist, laboratory employees, watchmen, working foremen, and supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9 (b) of the Act.[4]

[Text of Direction of Election omitted from publication.]

[4] At the close of the hearing, United Gas, Coke and Chemical Workers, CIO, requested leave to intervene for the purpose of having its name placed on the ballot. As the authorization cards constituting its showing of interest are all dated subsequent to the close of the hearing, the request is hereby denied. The United Boat Service Corporation, 55 NLRB 671 at 676.

PHILLIP DAVISSON, WILLIAM DAVISSON, OSCAR SCHERRER AND WARNER SCHERRER, d/b/a SCHERRER AND DAVISSON LOGGING COMPANY *and* INTERNATIONAL WOODWORKERS OF AMERICA, Local 23-93. Case No. 19-CA-834. April 22, 1954

DECISION AND ORDER

On November 20, 1953, Trial Examiner Wallace E. Royster issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondents filed exceptions to the Intermediate Report and a supporting brief.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief,[1] and the entire record in the case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations, with the following additions and modifications:

We agree with the Trial Examiner's conclusion that the Respondents discriminatorily refused to hire Alex Cook. However, we note certain factual omissions from the Inter-

[1] In their brief the Respondents contend, among other things, that there is no evidence in the record to support the Trial Examiner's 8 (a) (3) finding that failure to hire Cook discouraged membership in the Union. It is true that there is no specific evidence in the record to show discouragement. However, in the recent Radio Officers' case, the Supreme Court held that the Board has power to draw such an inference. Like the Trial Examiner, we find that the Respondents' discrimination against Cook warrants an inference, which we make, that the Respondents thereby discouraged membership in the Union. Radio Officers' Union of Commercial Telegraphers Union, A. F. L. v. N. L. R B., 345 U. S 962.

mediate Report. These are: (1) Mrs. William Davisson testified without direct contradiction that Cook was not in Rawlins' car when, according to the testimony of Cook and Rawlins, Cook made his second application for employment; (2) Vern Castle, the Union business agent, testified that Respondent William Davisson had said to him in June 1953 that Cook was a good man, that he (Davisson) would like to hire Cook, but that there was no room for Cook on the "crummie," and that he (Davisson) did not want to hire any more men from Granite Falls because there wasn't any more room on the "crummie"; and (3) the Respondents hired 6 employees after May 6, 1953, 5 of whom lived in the vicinity of Granite Falls. The record is silent as to how 2 of the employees who lived in Granite Falls were transported to Sultan; 3 drove from Granite Falls to Sultan; and the sixth employee lived in the Sultan area and the Respondents hauled him from there to the logging operations.

The additional findings we have here noted do not, however, affect our agreement with the Trial Examiner's resolution of the issues, or our agreement with his conclusionary findings.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondents, Phillip Davisson, William Davisson, Oscar Scherrer, and Warner Scherrer, doing business as Scherrer and Davisson Logging Company, in Granite Falls, Washington, their agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in International Woodworkers of America, Local 23-93, by refusing to hire any individual, and from discouraging concerted activity for mutual aid or protection by discriminating in regard to the hire of any individual.

(b) In any other manner interfering with, restraining, or coercing employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Woodworkers of America, Local 23-93, 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:

(a) Offer immediate employment as a power-saw operator to Alex Cook or, if logging operations are currently not in progress, place him on a list for recall in that position during the 1954 logging season. Cook's seniority standing on such list is to be as if he had been hired in 1953 when his services were required.

(b) Make Alex Cook whole for any loss of earnings in the manner set forth in the section of the Intermediate Report entitled "The Remedy."

(c) Post at their logging operations copies of the notice attached hereto marked "Appendix."[2] Copies of such notice, to be furnished by the Regional Director for the Nineteenth Region, Seattle, Washington, shall, after being signed by the Respondents or their duly authorized representative, be posted by the Respondents immediately upon receipt thereof or, if operations are currently not in progress, within 10 days after the beginning of 1954 operations, and be maintained by them for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees customarily are posted. Reasonable steps shall be taken by the Respondents to insure that such notices are not altered, defaced, or covered by other material.

(d) Notify the said Regional Director in writing, within ten (10) days from the date of this Order, what steps they have taken to comply herewith.

Member Beeson took no part in the consideration of the above Decision and Order.

[2] 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, "Decision and Order" the words, "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order 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 International Woodworkers of America, Local 23-93, or in any other labor organization; and we will not discourage any individual from engaging in concerted activities for mutual aid or protection by refusing to hire such individual, or by discriminating in any manner in regard to hire, or tenure of employment, or any term or condition of employment.

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 the above-named union 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 activity, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

WE WILL offer employment to Alex Cook and make him whole for any loss of earnings suffered.

SCHERRER AND DAVISSON LOGGING 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 other material.

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

Upon charges filed by International Woodworkers of America, Local 23-93, affiliated with International Woodworkers of America, CIO, herein called the Union, the General Counsel of the National Labor Relations Board, by the Regional Director for the Nineteenth Region, issued his complaint dated August 7, 1953, against Phillip Davisson, William Davisson, Oscar Scherrer, and Warner Scherrer, doing business as Scherrer and Davisson Logging Company, herein called Respondents, alleging that the Respondents had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 61 Stat. 136, herein called the Act.

In respect to unfair labor practices, the complaint alleges that on or about May 6, 1953, the Respondents refused to employ Alex Cook because of Cook's Union and concerted activities

Respondents' answer denies the commission of unfair labor practices.

Pursuant to notice, a hearing was held before the undersigned in Everett, Washington, on October 8, 1953 All parties were represented, were afforded opportunity to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues. A motion of counsel for the Respondents to dismiss the complaint upon which ruling was reserved at the close of the hearing is disposed of by the findings, conclusions, and recommendations below.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENTS

Respondents constitute a partnership with a principal place of business in Granite Falls, Washington As contract loggers for Scott Paper Company, the Respondents in 1952 cut

approximately 7½ to 8 million feet of logs To the date of hearing in 1953, they had cut approximately 3½ million feet all for Scott Paper Company. All of the timber cut was converted by Scott Paper Company into products moving in interstate commerce. The value of Respondents' services in 1952 to the Scott Paper Company approximated $105,000. I find that the operations of Respondents affect commerce within the meaning of Section 2 (6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

International Woodworkers of America, Local 23-93, is a labor organization affiliated with the International Woodworkers of America, CIO, and admits employees of the Respondents to membership.

III. THE UNFAIR LABOR PRACTICES

For the past several years Alex Cook has been employed in the Granite Falls, Washington, area as a power saw operator and has worked in that capacity for the WRW Logging Company and more recently for the Wilmac Logging Company A Mr. Mackie is described in the testimony as one of the owners of Wilmac. Oscar Scherrer, one of the respondents, is the husband of Mrs. Mackie's daughter Two of Mrs. Mackie's sons operate WRW

Cook is a member of the Union, vice president of its Granite Falls district, and, while employed at Wilmac, was the Union's shop steward. In the spring of 1952 the employees of WRW and Wilmac went on strike Sometime after the strike ended, another strike, apparently for different objectives, took place at the 2 operations. Cook was a striker on both occasions. The second strike lasted for 10 or 11 weeks and the strikers returned to work only 18 days before the ending of the 1952 logging season Cook testified that he has since retained his position on Wilmac's seniority roster and that he presumably will be recalled to work there when employees of comparable seniority are reached

In early March of 1953 Cook went to the home of William Davisson and asked Davisson for work when the latter began his logging operations that season. According to Cook, Davisson answered that he would need a number of men but would not provide transportation from Granite Falls to the cutting operation near Sultan, about 50 miles away Cook replied, he testified, that he would drive his own car to work and asked Davisson to let him know when a job developed. Davisson testified that he told Cook on this occasion that he would need a number of men, that he would attempt to hire all that he could from the Sultan area, and that all who had not worked for him before would have to supply their own transportation To Cook's request that he be notified when work was available, Davisson answered "O.K."

Delbert Rawlins, also a member of the Union, in 1952 worked for WRW and was one of the strikers during the spring and fall of that year. He too, in March or April in 1953, applied to Davisson for work. In 1951 and for a few days in 1952, Rawlins had worked for the Respondents. On the occasion of his application, Davisson told Rawlins that some men would be needed Davisson testified that he told Rawlins that the latter would have to sever his connection with WRW where he was in layoff status and that Rawlins agreed to do so. In early April, according to Rawlins, Davisson came to his home and said that Rawlins could not be hired "because of the Union activity, because of that strike." Davisson explained, Rawlins testified, that Oscar Sherrer and Mr Mackie insisted that Rawlins not be hired, that Davisson personally would like to have him as an employee. Still according to Rawlins, Davisson said he would take up the matter further with his partners, would try to persuade them to permit Rawlins' hire, and that it appeared as if "they" were trying to starve Rawlins and Cook "out "

In late April Cook applied for and received a State permit to log on his own property and he and Rawlins purchased a donkey engine to be used in the logging. At about the same time as this equipment was acquired Rawlins spoke again to Davisson about a job and was told, he testified, that Scherrer had withdrawn his objection that Rawlins would be hired. Shortly thereafter Rawlins notified Davisson that he could not take the job as long as Cook remained unemployed for the latter could not handle the logging on which they were engaged alone

Rawlins and Cook testified that in early May, on the same occasion when Rawlins was offered employment, Cook renewed his application to Davisson. Davisson answered that he had, as yet, no need for Cook. Cook asked if "the trail at the Wilmac, if they didn't have something to do with it "[1] Davisson answered, according to Cook, "That is the whole damn thing."

[1] "Trail" may be an erroneous transcription of trouble. My notes taken at the hearing so indicate.

Davisson denied that any such conversation took place and denied that Cook ever spoke to him about employment subsequent to the March application.

Cook and Rawlins occupied themselves to an extent not shown in the record in logging the former's land The Respondents assembled a crew, some of them new employees living near Granite Falls, and got on with their cutting. In June Davisson asked Vernon Castle, the Union's business agent, if he knew of any power-saw operators who were seeking employment. Castle, then apparently being unaware of Cook's applications, said that he knew of none.

Fred Roberts, Cook's brother-in-law, testified that in May Davisson told him that he would like to hire Cook but that his partners would not permit it Shortly thereafter, Davisson hired Roberts. About a week after his employment began, according to Roberts, Oscar Scherrer remarked that he would not hire Cook because Cook was too active in the Union Scherrer went on to express the fear that Cook would foment a strike among the crew and the belief that Cook was an instigator of other strikes that had occurred.

Davisson denied that any consideration of Union activity came into play regarding Cook's application for employment and denied having any conversation with Rawlins to the effect that the Respondents or any of them were trying to retaliate against Cook in any respect. Davisson explained that he did not want to hire Cook because he did not wish to provide transportation from Granite Falls to Sultan for any more employees and because of an understanding among the Respondents, WRW, and Wilmac, that none would hire employees of the other Davisson denied telling Roberts that his partners objected to Cook's hire

Scherrer, too, denied that he opposed Cook's hire for any reason connected with Union or concerted activity and firmly denied that he at any time told Roberts of any reason for Cook's failure to be employed.

Counsel for the Respondents points out the unlikelihood of any Union animus coming into play in Respondents' hiring practices in view of the fact that Scherrer and Davisson both have been members of the Union and deal with it as the representative of their employees. It is also suggested that Roberts' testimony should be rejected, first, because of the relationship existing between him and Cook, and second, because of the utter improbability that Scherrer would make such admissions to Cook's relative. Finally, it is urged, Cook did not seek or desire employment after getting the permit to log his land.

I have considered the argument and the factual circumstances to which it is addressed but I find the testimony of the General Counsel's witnesses to be convincing I am persuaded that Cook's strike activity did engender resentment and a disposition to retaliate in some quarter and that influence was brought to bear upon the Respondents to refuse him employment. It is obvious that Davisson was an unwilling participant in this plan, thus his admission to Cook and Rawlins that Wilmac had something to do with Cook's inability to get on Respondents' payroll and his exculpatory explanation to Roberts that only his partners blocked Cook's hire. I agree that only an indiscreet individual will confess a wrongdoing to a relative of the victim but I am sure that Scherrer did just that to Roberts and I credit the latter's testimony in that connection. I find that Cook made a bona fide application for employment to Davisson in March and in May, that Cook's residence in Granite Falls constituted no obstacle to his hire as others from that area were hired, that Respondents in May had need for employees with Cook's qualifications and experience, and that Cook was not employed because of his participation in strike activity in the past. I find that Cook did not remove himself from the labor market by logging his own land. His explanation that he engaged in this only when it appeared that he would not get other employment and intended to log for himself only at times when he was not on a payroll is reasonable and is accepted.

By refusing to hire Cook because of his participation in strike activity the Respondents discouraged membership in a labor organization and thus violated Section 8 (a) (3) of the Act.

By refusing employment to Cook because of his participation in strike activity, the Respondents interfered with, restrained, and coerced Cook in the exercise of rights guaranteed in Section 7 of the Act and thereby have violated Section 8 (a) (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondents set forth in section III, above, occurring in connection with their operations set forth 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 thereof.

V. THE REMEDY

Having found that the Respondents have engaged in unfair labor practices, it will be recommended that they cease and desist therefrom and take certain affirmative action designed to effectuate the purposes of the Act.

Whether the failure to hire Cook be regarded as discrimination cognizable under Section 8 (a) (3) of the Act, or interference, restraint, and coercion under Section 8 (a) (1), or both, an offer of employment and compensation for lost earnings is the appropriate remedy. It will be recommended, therefore, that the Respondents offer immediate employment as a power-saw operator to Cook. If Respondents' 1953 operations have ended, Cook's name shall be added to the list for recall in the spring of 1954 in that position which it would have occupied had he been hired in March, April, or May of 1953 absent discrimination. Cook shall be made whole for any loss of earnings by payment to him of that sum of money he would have earned in employment during 1953 with the Respondents less his net earnings during that period. I do not pass upon the question of Cook's earnings in logging his own land. The record suggests that Cook planned to do this logging in off-seasons or when for economic reasons other employment was not to be had. If, because of the unfair labor practice of the Respondents, he had lost this economic cushion, it may be that Respondents are not entitled to set off his earnings therefrom.

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. International Woodworkers of America, Local 23-93, is a labor organization within the meaning of Section 2 (5) of the Act.
2. By discriminating in regard to the hire of Alex Cook the Respondents have engaged in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.
3. By such discrimination, the Respondents have interfered with, restrained, and coerced Cook in the exercise of rights guaranteed in Section 7 of the Act and have thereby engaged 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.

[Recommendations omitted from publication.]

LOCAL UNION NO. 55, AND CARPENTERS' DISTRICT COUNCIL OF DENVER AND VICINITY, AFFILIATED WITH UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, A. F. OF L. *and* PROFESSIONAL AND BUSINESS MEN'S LIFE INSURANCE COMPANY. Case No. 30-CC-19. April 22, 1954

DECISION AND ORDER

On August 7, 1953, Trial Examiner William E. Spencer issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents, Local 55 and Carpenters' District Council of Denver and Vicinity, had not engaged in the unfair labor practices alleged in the complaint as amended and recommending that the complaint as amended be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel and