

not covered by bargaining contract until 1950? To new employees who did not ask whether membership in District 50 was required? The record is devoid of evidence of any notice to these groups of employees that the clause would not be enforced. How were these employees to know that the Respondents and District 50 did not intend to carry out the union-security provision of their contracts? It is not enough to show that some of the employees received notice to free them from the otherwise coercive effect of the contracts. Moreover, I question the weight accorded by the majority to the testimony of the Respondents' secretary that it had come to his attention in grievance proceedings and otherwise that it was common knowledge among employees that the Respondents did not operate under a union shop. I doubt that this testimony--"uncontradicted" as it may be--warrants a finding that all the Respondents' employees were aware that the union-security provision of the contracts was not in effect. Viewing all the evidence pointed to by the majority, I must conclude that it does not cure the "ambiguity" of the deferral clause, assuming, arguendo, that anything less than a clearly expressed deferral can be effective.

Finding nothing in the language of the deferral clause or the extrinsic evidence effectively deferring application of the union-security provision of the contracts which exceeded the security permitted by Section 8(a) (3) and were made with a union not authorized to contract for such security, I conclude that the Respondents by maintaining such provision interfered with the rights guaranteed their employees by Section 7 of the Act and unlawfully assisted District 50. I would therefore enter the customary order to remedy such violations.

Member Beeson took no part in the consideration of the above Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order.

BARBY'S FROSTED FOODS, INC. *and* LOCAL 2, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK & DISTILLERY WORKERS OF AMERICA, CIO. Case No. 4-CA-809. May 7, 1954

DECISION AND ORDER

On December 17, 1953, Trial Examiner Max M. Goldman 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. The Trial Examiner also found that

the Respondent had not engaged in certain other alleged unfair labor practices, and recommended that the complaint be dismissed with respect to such allegations. Thereafter, the Respondent filed exceptions to the Intermediate Report, and a supporting brief.¹

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 Respondent's exceptions and 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 the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, Barby's Frosted Foods, Inc., Perth Amboy, New Jersey, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Local 2, International Union of United Brewery, Flour, Cereal, Soft Drink & Distillery Workers of America, CIO, or any other organization of its employees by discriminatorily discharging employees or by discriminating in any other manner with regard to their hire and tenure of employment or any term or condition of employment.

(b) Interrogating employees concerning union interests and activities; declaring that a wage increase cannot be obtained through the Union; threatening to move the plant out of town if the Union's organizational efforts continue; declaring that it will never bargain with the Union; or offering a wage increase but never with the Union as representative.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to join or assist Local 2, International Union of United Brewery, Flour, Cereal, Soft Drink & Distillery Workers of America, CIO, 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:

¹The Respondent's request for oral argument is hereby denied, as the record and the Respondent's exceptions and brief adequately present the issues and the positions of the parties.

(a) Offer Sophie Straffey immediate and full reinstatement to her former or substantially equivalent position without prejudice to her seniority or other rights and privileges and make her whole in the manner set forth in the section of the Intermediate Report entitled "The Remedy" for any loss of pay she may have suffered by reason of the Respondent's discrimination against her.

(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 plant at Perth Amboy, New Jersey, copies of the notice attached to the Intermediate Report and marked "Appendix."² Copies of such notice, to be furnished by the Regional Director for the Fourth Region, shall, after being duly signed by the Respondent's authorized representative, be posted by the Respondent immediately upon receipt thereof, and be maintained by it for a period of at least 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 the notices are not altered, defaced, or covered by any other material.

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

IT IS FURTHER ORDERED that the complaint, insofar as it alleges that the Respondents violated the Act in respects other than herein found, be, and it hereby is, dismissed.

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

² This notice shall be amended by substituting for the words "The Recommendations of a Trial Examiner," 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

STATEMENT OF THE CASE

Upon a charge filed by Local 2, International Union of United Brewery, Flour, Cereal, Soft Drink & Distillery Workers of America, CIO, herein called the Union or the CIO, the General Counsel by the Regional Director for the Fourth Region (Philadelphia, Pennsylvania), of the National Labor Relations Board, herein called the Board, issued his complaint dated April 7, 1953, against Barby's Frosted Foods, Inc., 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 (3), and Section 2 (6) and (7) of the Labor Management Relations Act, 1947, 61 Stat. 136, herein called the Act. Copies of the complaint and the charge together with notice of hearing were duly served upon the Respondent and the Union.

With respect to the unfair labor practices, the complaint alleges in substance that the Respondent discharged certain six persons from its employ on or about November 7, 1952, and engaged in certain acts of interference, restraint, and coercion. The Respondent's answer denies the commission of unfair labor practices.

Pursuant to notice, a hearing was held on certain days between June 22 and 29, 1953, at Perth Amboy, New Jersey, before the undersigned, the Trial Examiner designated by the Chief Trial Examiner. The General Counsel, the Union, and the Respondent were represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded the parties.

At the close of the testimony the General Counsel and the Respondent presented oral argument. A brief was received only from the Respondent.

Upon the entire record in the case, and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, a New Jersey corporation, has its principal office and plant in Perth Amboy, New Jersey, where it is engaged in the purchase, preparation, freezing, packing, and sale of poultry. During the year 1952, the Respondent caused products valued at more than \$100,000 to be shipped and transported from its plant in interstate commerce to and through States of the United States other than the State of New Jersey. The undersigned accordingly finds that the Respondent is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Local 2, International Union of United Brewery, Flour, Cereal, Soft Drink & Distillery Workers of America, CIO, is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. Interference, restraint, and coercion

1. The events

In August 1951, the Respondent entered into a contract with the Amalgamated Meat Cutters Union, Local 464, AFL, herein called the AFL. The Charging Party, as already noted, is referred to as either the Union or the CIO. In June 1952, Benno Merker, a representative of the CIO, met with several of the then employees of the Respondent at the home of Mabel Brown, an alleged discriminatee. Among the employees present were the then AFL stewardess of the plant, Sophie Straffey, another alleged discriminatee. Merker distributed cards to those present to organize the Respondent's employees in the CIO. These cards were later turned in to Merker. Straffey became stewardess of the CIO, and sometime during that summer almost all of the employees disaffiliated from the AFL and signed cards for the CIO.

On Friday, August 8, during working time and with the Respondent's consent, Merker, Straffey, and a group of employees, including alleged discriminatees Lucille Clark and Madelyn Kurtz, appeared at the Respondent's office and requested recognition on behalf of the Union. Present in the office which was shared by both Samuel B. Kagan and Martin Singer, president and secretary-treasurer of the Respondent respectively, were Kagan and Singer. Kagan pointed out that the Respondent had a contract with the AFL and suggested that they take up the matter with the Respondent's attorney on Monday when he returned to town. Merker then with Kagan's permission talked to the employees on working time and explained what had transpired at the meeting in an effort to avert a work stoppage. There was no cessation of work at this time.

On Monday, August 11, Merker and Straffey met with Kagan and Singer at the office of the Respondent's attorney. The Respondent declined recognition to the CIO for the reason that it had a valid contract with the AFL, relying on the contract that they had entered into on August 31, 1951, which provided that the contract would remain in effect until August 31, 1952, and thereafter from year to year unless notice were given by either party 90 days prior to the anniversary date.

When the employees received word of the outcome of the conference that day, August 11, they went on strike. The strike for recognition lasted until September 18, when the parties entered into a strike settlement agreement and the employees returned to work. Recognition for the CIO as bargaining agent was not obtained. During the course of the strike Straffey was in charge of the picket line.

On an occasion apparently in October, during working time, Sidney Penn,¹ foreman, arranged in series for the relief of employees from their immediate work on the production line and instructed them to see an AFL representative elsewhere on the premises. In speaking to the employees the AFL representative solicited their affiliation with the AFL.

In October employee Victoria Pawloski was instructed by Penn to appear at the Respondent's office. When she appeared at the office she found the Respondent's counsel present. Singer was present during only part of the incident. Pawloski, like other employees, was wearing a CIO button and counsel asked her what labor organization she was for, and she replied the CIO. Counsel asked her why she wanted the CIO, and she inquired whether she had to reply. He stated that she had to give a reply. Pawloski thereupon replied that she wanted the CIO in order to obtain better working conditions. Upon counsel's further questioning about working conditions, Pawloski pointed out as something she had in mind which needed betterment, a pool of water at a certain part of the plant which had been there for some time and was dangerous. The attorney told her that she did not need a labor union for that and suggested to Singer that he look into the matter. Pawloski also stated that she felt that the employees would get a raise through the CIO, and the attorney declared that she had already gotten her pay increase when she got a 5-cent pay raise. Counsel further questioned Pawloski as to whether she had picketed during the strike and had received any strike benefits. Pawloski replied that she had picketed and received \$5 as strike benefits. Counsel also inquired of Pawloski as to whether she had attended a certain union meeting and whether Merker had been present. Pawloski stated that she had been present but that Merker had not. The attorney then questioned Pawloski as to whether Straffey had prevented any of the employees from going to a certain AFL meeting, and Pawloski replied that she had not heard of such an incident and that Straffey had declared that she was going to attend that meeting. Counsel stated that Straffey was not as nice as Pawloski thought she was and that sometimes Straffey was with the employees and sometimes she was not. The attorney also asked Pawloski whether the employees had paid dues to the CIO, and she replied that she had not.

According to Straffey's credible testimony, on November 5 she was called to the Respondent's office and found Kagan, Singer, the Respondent's attorney, and employee Elizabeth Wilgus present. The attorney stated that he noted that she was wearing her CIO button, and Straffey acknowledged that fact. The attorney then asked Straffey what she thought of Wilgus breaking down during a representation hearing in which the CIO and the Respondent had been participating and the way Wilgus had been treated in the course of that hearing. Straffey's retort was that he was still wearing the CIO button. There was also some reference to politics. Counsel thereafter pointed out that "if this keeps up" Kagan could move the plant out of town, and Straffey replied that she had worked for Kagan for 5 years and she did not want to put Kagan out of business, but that she was still with the CIO. The attorney declared that he could state that they would never sit down with the CIO and if Kagan consented to doing so, Kagan would have to get himself another attorney. Counsel also declared that he could promise a few cents pay increase, but never with the CIO. The attorney thereupon asked Straffey if she was the leader of the employees and Straffey replied that she did not know whether she was the leader but that she was shop stewardess. The attorney then repeated that he could promise a pay raise of a few cents but never with the CIO.²

¹The General Counsel takes the position that Penn is a supervisor as defined in the Act and the Respondent takes a contrary view. The Respondent operates on a production-line basis. Penn generally receives instructions from Kagan or Singer in the mornings as to how or in what manner certain poultry is to be processed that day; and it is Penn's job as foreman to supervise production, although on occasion he performs production work to relieve an employee. There are about 50 persons employed on production work and Penn has complete control over the assignment and transfer of these production employees. Penn has authority to discharge only after consulting with Kagan. It is accordingly found that Penn is a supervisor as defined in the Act.

²The undersigned was more favorably impressed with Straffey than Kagan as witnesses. Kagan's version of the November 5 incident, although consistent with Straffey's version in

Two days later, November 7, events arose which the General Counsel relies upon for his allegation of the discriminatory discharge involving Straffey and five other persons.

In the latter part of November, Kagan addressed the employees at the plant. In the course of his talk, Kagan discussed a Christmas club and disputed certain assertions made by the CIO in a leaflet as untrue. Kagan also declared that it would not have made any difference to him if the employees had initially been organized by the AFL or the CIO, but that in view of the assertions made by the CIO, he would not sit down and talk with the CIO. Kagan then turned to Singer for confirmation, and Singer declared that that was right. Kagan stated further that an election was going to be held when the employees would have a choice between the AFL, the CIO, and no union, that the employees should think before they voted, and that they could vote as they desired.³

2. Conclusions

It is found that by the following acts and conduct the Respondent engaged in interference, restraint, and coercion in violation of Section 8 (a) (1) of the Act, (1) the Respondent's attorneys (a) inquiry of Pawloski as to which labor organization she favored, (b) inquiry of Pawloski as to why she wanted the CIO, (c) declaration to Pawloski that she had already gotten a pay increase and, in effect, that she could not expect a pay increase from the CIO, (d) inquiry of Pawloski as to whether she attended a certain CIO meeting, (e) declaration to Straffey, in effect, that if the CIO organizational efforts continued, the plant would be moved out of town, (f) declaration to Straffey that the Respondent would never bargain with the CIO, and (g) offer to the employees of a pay increase through Straffey but never with the CIO as a representative; and (2) Kagan's declaration to the employees that he would not bargain with the CIO in view of its campaign assertions.

In view of the Respondent's granting the CIO permission to address the employees on its property and during working time although for the purpose of averting a possible strike and the Respondent's consent for a group of employees to accompany the CIO in making a request for recognition on the Respondent's time, the undersigned finds without merit and dismisses the General Counsel's allegation that the Respondent violated Section 8 (a) (1) of the Act by Penn's conduct in relieving employees from work and instructing them to confer with an AFL representative on the premises.

some respects, was for the most part contradictory. The explanation Kagan gave for Wilgus' presence in his office on the day involved was that the Respondent's attorney had come to the office on some corporate business and that the attorney, referring to Wilgus' unfortunate experience at the representation hearing, asked how Wilgus felt. Kagan continued that he replied that he did not know how Wilgus felt and had not had a chance to talk to her. According to Kagan he then suggested that Wilgus be called up and that they could find out how she felt, explaining that both he and the attorney were quite concerned as to how Wilgus felt. More than a week had elapsed between this event and the day a hearing was last held in the representation proceeding. Wilgus did not appear as a witness in this proceeding. Wilgus had appeared as a witness for the CIO in the representation proceeding and according to the Respondent's counsel he had possession of a statement which Wilgus had prepared concerning this event. Neither Singer nor the Respondent's attorney, the only other persons present at this event, appeared as a witness.

³The findings as to Kagan's address are based upon the credible testimony of Pawloski, Elizabeth Kiraly, and Ciel Mutilitis. Kagan gave a version of the speech that differed in some respects particularly in that, according to his version, he had stated that he could not talk with either the CIO or the AFL until after the election. Singer as already noted did not testify. The only other persons who were present during Kagan's talk and who testified on the subject were Anna Vrablic, Catherine Ryan, and Anna Porvaznik. Their testimony does not, however, provide much aid in resolving the significant issues. Vrablic testified that she was not certain as to what Kagan had said regarding dealing with the CIO. Ryan testified that she did not pay much attention to anything that transpired except the Christmas club. Porvaznik testified that Kagan stated he could not at that time sit down and talk to the CIO. According to an affidavit this witness executed on January 16, 1953, for a field examiner connected with the Regional Office which she testified at the hearing that she had not read before signing, Kagan stated at the meeting that he did not care which labor union the employees voted for, and that Kagan would not sit down with the CIO and discuss anything.

B. The discrimination

The General Counsel alleges that on November 7, 1952, the Respondent discharged Sophie Straffey because of her activities on behalf of the CIO. The General Counsel also alleges that later the same day the Respondent discharged Mable Brown, Lucille Clark, Madelyn Kurtz, Gloria Lavin, and Margaret Shannon for engaging in or attempting to engage in a concerted protest over the Straffey discharge. The Respondent's position is that all the persons named, including Straffey, quit their employment with the Respondent.

It is undisputed that Straffey, who was first employed by the Respondent in 1947, was called to the office at about 10 o'clock in the morning of November 7. There is a dispute as to what occurred at the office at that time. The General Counsel's version is that Straffey was then discharged and that the reason given Straffey for her discharge was that the employees were afraid of her. The Respondent's version is that after certain complaints were raised with Straffey, she quit her employment. It is undisputed that immediately after the incident at the office, Straffey walked down the production line declaring to the employees that she was discharged and asking if the employees were afraid of her. It is also undisputed that thereafter the production line became disorganized and production ceased. It was at this time that the events occurred which give rise to the General Counsel's allegation that Brown, Clark, Kurtz, Lavin, and Shannon were discharged for engaging in protected activities--engaging or attempting to engage in a protest over Straffey's discharge. The Respondent, as has been noted, disagrees, taking the position that a voluntary abandonment of employment then occurred.

Concerning the incident which transpired at the office between Straffey and the Respondent, Kagan gave the following version. He testified that Singer was present in the office during the entire time and that he, Kagan, took up certain complaints with Straffey. The complaints Kagan took up were that Straffey had played cards on the Respondent's time a few weeks earlier, she had been reporting late for work, she was slow in returning to work after rest periods, and she had been talking to and bothering her fellow employees. When Kagan mentioned that he had had some complaints from the employees that Straffey had been intimidating them, Straffey stated that that was not true and asserted that she was called to the office because of her CIO activities. Kagan then denied that Straffey's CIO activities had anything to do with it and explained that the matter had been brought to a head when he had received the day before, November 6, a complaint from an employee who had stated that unless Straffey stopped bothering her she would quit. Straffey asked Kagan to name the employee and Kagan declined stating that the important thing was that Straffey be aware of this matter and that he did not want it to happen again. Straffey after making a certain anti-Semitic remark declared that she did not have to listen to Kagan or work for him and asked for her pay. Kagan instructed the bookkeeper to make up Straffey's pay and the incident ended. Kagan explained in his testimony that he had been informed of the substance of the complaints by Penn, the foreman, as they occurred, but when the unnamed employee told Kagan that she was going to leave on account of Straffey he then decided, "now is the time to get Mrs. Straffey--I want to straighten her out on all these factors." Kagan explained further in his testimony that at that time he could not afford to lose any employees.

The Respondent's bookkeeper testified that when Straffey left Kagan's office, both Straffey and Kagan said to each other, in effect, if that is the way you feel about it. He testified further that he was then instructed to make up Straffey's pay and that from his location in the outer office he could state that Singer was in the office with Kagan and Straffey during the entire time, a period of about 10 or 15 minutes. Singer as has already been noted did not testify.

Straffey's version of what occurred that morning in the office follows. Singer was present in the office when she first entered but left the office prior to the conversation with Kagan. Kagan informed Straffey that she was discharged and upon Straffey's request for an explanation, Kagan gave as the reason for the discharge that the girls were afraid of her. Straffey asked Kagan to name the employees involved and Kagan declined. Straffey declared that Kagan's explanation was not correct and asserted that the reason for her discharge was her CIO activities. At the close of the conversation Straffey asked for her pay and Kagan stated that her pay was being made up. After Straffey was paid, as already reported, she walked down the production line inquiring of the employees if they were afraid of her and declaring that she was discharged. Straffey specifically denied quitting her employment and making the anti-Semitic remark. Straffey also denied that any of the following subjects arose: Gambling or card-playing, reporting late for work, slowness in returning to work after rest periods, talking with the employees at work, or that Straffey was after one of the girls because she had too much to do with the Respondent.

Upon the basis of the undersigned's observation of the witnesses, and particularly in view of the failure to call Singer as a witness, and Straffey's immediate declaration to the employees that she had been discharged because the girls were afraid of her, the undersigned finds that the conversation involved between Kagan and Straffey occurred substantially as related by Straffey and that Kagan discharged Straffey giving her as the reason that she was intimidating the employees.

Except for Kagan's testimony of reports of intimidation involving Straffey, the record does not support this assertion. No employees were named at the hearing by Kagan as having made complaints to him of intimidation by Straffey. The record does show, as already reported, that during the month prior to Straffey's discharge employee Pawloski was questioned by the Respondent as to whether Straffey had prevented employees from attending a certain AFL meeting, and Pawloski replied that she had not heard of such incident and that Straffey had declared that she was going to attend that meeting. It is accordingly found that there is no substance to the assertion that Kagan had complaints from employees that Straffey was engaged in intimidation.

The undersigned views as afterthoughts the other matters which Kagan raised for the first time at the hearing and not at the time of Straffey's discharge. Concerning card-playing, it appears that about 2 weeks after the strike which ended September 18, production was at a standstill for a lack of poultry and Penn assigned the employees to prepare cellophane for use in the wrapping or packing work. At that time Straffey and about five other employees were in the lunchroom where Straffey was using playing cards to tell the employees their fortunes. According to Straffey, Penn appeared and told them that they were fired, but they continued to work thereafter. According to Penn he told the employees that he would talk to Kagan about it. When Penn took the matter up with Kagan, Kagan told Penn to forget about it. Concerning tardiness it appears that Penn had talked to Straffey about this matter. It appears, however, that Straffey had not been late since the close of the strike. Straffey's credible testimony is that Penn never criticized her for being slow in returning to work after rest periods and that she was never told that she was interfering with work by talking. There appears to be no question that there was no rule against talking at work. It appears also that the employees not only talked but also sang while at work.

In view of the Respondent's antagonism toward the CIO, the absence of other reasons for discharge, and the Respondent's interview with Straffey only 2 days before her discharge, as already reported, when Straffey was asked if she was the leader of the employees and the wage increase was offered but never with the CIO and Straffey showed no inclination toward giving up the CIO, the undersigned finds that Sophie Straffey was discharged on November 7, 1952, in violation of Section 8 (a) (3) of the Act.

Concerning the five other persons alleged as discriminatees, the undersigned is not convinced that the General Counsel has sustained the burden of proof of establishing their discharge as having arisen from a concerted protest of Straffey's discharge because of the unreliability of the testimony adduced in support of the allegation. For example, when the testimony of some of the persons involved as to their movements on the morning of November 7 in relation to the time they testified they were told that they were discharged and they punched their timecards is compared with the timecards adduced by the Respondent showing the record of their check-out time, their testimony is in this respect viewed as unreliable. Certain improbabilities also appear in their testimony. Thus, although there appears to be no fixed practice among the employees as to whether they changed their uniforms or covered them with other clothes when going to the Respondent's office, when the persons involved went toward the office on this occasion for the purpose, by their version, of protesting Straffey's discharge, each had by then changed to street clothes. Moreover, concerted protest does not appear to be the likely explanation for their conduct inasmuch as when these five persons appeared at the office, although by their version they had been told that they were discharged, not a word of protest according to their own testimony was uttered concerning Straffey's or their own discharge.

Accordingly, it is found that the Respondent did not violate the Act with respect to Mable Brown, Lucille Clark, Madelyn Kurtz, Gloria Lavin, and Margaret Shannon.

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.

VI. THE REMEDY

Having found that the Respondent has engaged in unfair labor practices violative of Section 8 (a) (1) and (3) of the Act, it will be recommended that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent interfered with, restrained, and coerced its employees by the conduct enumerated in the section herein entitled "Conclusions," the undersigned will recommend that the Respondent cease and desist from this conduct.

Having found that beginning November 7, 1952, the Respondent discriminated against Sophie Straffey, it will be recommended that the Respondent be ordered to offer Straffey immediate and full reinstatement to her former or substantially equivalent position⁴ without prejudice to her seniority or other rights and privileges and make her whole for any loss of pay suffered by her as a result of the discrimination, by payment to her a sum of money equal to the amount she would have earned from November 7, 1952, the date of the discharge, to the date of the offer of reinstatement less her net earnings⁵ to be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Co.*, 90 NLRB 289. Earnings in one particular quarter shall have no effect upon the back-pay liability for any other such period. It will be also recommended that the Respondent make available to the Board upon request payroll and other records to facilitate the checking of the amount due.

The Respondent contends that no reinstatement order should be issued in the Straffey case on the theory that when the eviscerating department where she was employed to do a certain operation was eliminated in April 1953, her particular job was abolished. Some of the operations in the eviscerating department which the Respondent considered less skilled than its other work are still being performed and some of the employees of that department continued to perform the same operations after the elimination of the department. Straffey had not performed this particular operation while in Respondent's employ but her work was not so different in this less skilled class that it can be said that under usual circumstances the Respondent would not have transferred Straffey to this work. Straffey had been treated by the Respondent as having continuous service although she had been away from work for about 4½ months because of illness. Accordingly, in view of the fact that Straffey had greater seniority than at least 1 of the employees in the eliminated department who remained in the Respondent's employ and the Respondent's recognition of the seniority principle in the conduct of its business, it is found that Straffey's employment would not have been discontinued at the time of the elimination of the eviscerating department.

The Respondent's infractions of Section 8 (a) (1) and (3) of the Act, herein found, disclose a fixed purpose to defeat self-organization and its objectives. Because of the Respondent's unlawful conduct and its underlying purposes, the undersigned is persuaded that the unfair labor practices found to have been committed are related to the other unfair labor practices proscribed by the Act, and that the danger of their commission in the future is to be anticipated from the course of the Respondent's conduct in the past. The preventive purposes of the Act will be thwarted unless the remedial order is coextensive with the threat. In order, therefore, to make effective the interdependent guarantees of Section 7, to prevent the recurrence of unfair labor practices, and thus to effectuate the purposes of the Act, and thereby minimize industrial strife which burdens and obstructs commerce, it will be recommended that the Respondent cease and desist from interfering in any manner with the rights guaranteed by Section 7 of the Act.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1. Local 2, International Union of United Brewery, Flour, Cereal, Soft Drink & Distillery Workers of America, CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

⁴ The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch, 65 NLRB 827.

⁵ *Crossett Lumber Co.*, 8 NLRB 440; *Republic Steel Corporation v. N. L. R. B.*, 311 U. S. 7.

2. By discriminating with regard to the hire and tenure of employment of Sophie Straffey and thereby discouraging membership in the above-named labor organization, 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 (1) engaging in interrogation as to union interests and activities, (2) declaring that a wage increase could not be obtained through the Union, (3) threatening to move the plant out of town if the Union's organizational efforts continued, (4) declaring that it would never bargain with the Union as representative, and by engaging in discrimination and thus 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 unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

5. The Respondent has not engaged in discrimination against Mabel Brown, Lucille Clark, Madelyn Kurtz, Gloria Lavin, and Margaret Shannon as alleged.

[Recommendations omitted from publication.]

APPENDIX

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, or activities on behalf of Local 2, International Union of United Brewery, Flour, Cereal, Soft Drink & Distillery Workers of America, CIO, or in any other labor organization, by discriminating in regard to the hire or tenure of employment or any term or condition of employment.

WE WILL NOT inquire of our employees as to their union interests and activities, declare that a wage increase cannot be obtained through a labor organization, threaten to move our plant out of town if organizational activities are engaged in, declare that we will never bargain with a labor organization, offer a wage increase but never with a certain labor organization as representative of our employees.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to join or form a labor organization, to join or assist Local 2, International Union of United Brewery, Flour, Cereal, Soft Drink & Distillery Workers of America, CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

WE WILL offer Sophie Straffey immediate and full reinstatement to her former or substantially equivalent position without prejudice to her seniority or other rights and privileges and make her whole for any loss of pay suffered as a result of discrimination against her.

All our employees are free to become or remain members of the above-named Union, or any other labor organization.

BARBY'S FROSTED FOODS, INC.,
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.