

NORTHERN FRUIT COMPANY, INC. *and* CANNERY, WAREHOUSEMEN, FOOD PROCESSORS, DRIVERS & HELPERS, LOCAL UNION NO. 318. Case No. 19-CA-801. May 25, 1954

DECISION AND ORDER

On December 2, 1953, Trial Examiner Wallace E. Royster 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 Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner only insofar as they are consistent with the Decision and Order.

1. We agree with the Trial Examiner that the Respondent independently violated Section 8 (a) (1) of the Act by the following statements of Warehouse Foreman Fred Richmond: (1) Telling Alfred Zude in December 1952, that removal of the Union's contract with the Respondent from the warehouse wall where it was posted would cause "things to be different," (2) warning Adam Warnett in December 1952, that failure to take this action would result in the Respondent making it "tough" on employees, and (3) promising Zude in January 1953, full-time employment if he abandoned his union membership.

2. The Trial Examiner also found that the series of layoffs of Alfred Zude and Henry A. Berry during the slack season of December 1952-February 1953 were motivated by antiunion rather than economic considerations. While the findings of statements violative of Section 8 (a) (1) are evidence in support of the Trial Examiner's conclusion, the record reveals other substantial evidence leading to a contrary result. This evidence and the necessary background information may be summarized as follows:

The Union was certified as the collective-bargaining representative of these employees in October 1951. Thereafter the parties entered into negotiations and a contract was concluded in October of the following year. The first slack period after the advent of the Union occurred during the winter of 1951-52. Despite alleged threats of discrimination because they had joined the Union, no employees were laid off by the Respondent during this season. Rather, the Respondent continued its prior practice of full employment whether or not there was adequate work for its staff. The Respondent is alleged to have promised its employees a 10-cent an hour increase if they gave up the

Union. None of the employees gave up the Union. Nevertheless, apparently with the consent of the Union, the employees were granted a 20-cent an hour increase in May 1952. It was only thereafter during a slack period in September of that year and during the following slack winter season that any employees were laid off because of lack of work. We note that Adam Warnett, one of the union adherents who was laid off in September, was given other work at Respondent President Tedford's ranch so that Warnett actually lost no pay. The record shows that at the time of the 1952-53 winter layoff there was an actual shortage of work. While it is true that the Respondent had followed the practice of permitting its employees to play cards when work was not available, a practice that continued after the advent of the Union during the winter of 1951-52, this practice antedated the substantial increase in wages granted the employees in May 1952. It might have been anticipated therefore that the Respondent for economic reasons would discontinue its previous practice of full employment, which may well have been based on the lower wage scale then in existence. The record, moreover, clearly reveals that the Respondent did not follow a discriminatory layoff policy as between union and nonunion adherents.

On the basis of the foregoing, we are unable to conclude that there is a preponderance of evidence to support a finding that the 1952-53 layoffs were violative of Section 8 (a) (3) of the Act. Accordingly, we shall dismiss this portion of the complaint.

THE REMEDY

In view of the foregoing, we are not persuaded that the Respondent's conduct is indicative of a predilection to commit other unfair labor practices in the future. We shall therefore not adopt the Trial Examiner's recommended broad cease and desist order, but shall order the Respondent to cease and desist only from engaging in the unfair labor practices found and any like or related conduct.

ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, Northern Fruit Company Inc., Wenatchee, Washington, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

- (a) Promising steady employment on condition of abandoning union membership, telling employees that removal of the union contract from the warehouse wall would cause things to be dif-

ferent, and that failure to do so would make it tough on the employees.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to join or assist Cannery, Warehousemen, Food Processors, Drivers & Helpers, Local Union No. 318, 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 purposes of the Act:

(a) Post at its warehouse in Wenatchee, Washington, copies of the notice attached hereto and marked "Appendix A."¹ Copies of said notice, to be furnished by the Regional Director for the Nineteenth Region, shall, after being duly signed by the Respondent, be posted by it immediately upon receipt thereof and be maintained by it for a period of 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 Respondent to insure that such notices are not altered, defaced, or covered by other material.

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

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges that the Respondent, in violation of Section 8 (a) (1) and (3) of the Act, discriminated against Alfred Zude and Henry A. Berry.

Members Murdock and Peterson, concurring in part and dissenting in part:

We agree with the majority that the Respondent independently violated Section 8 (a) (1) of the Act for the reasons stated in the Intermediate Report. However, we disagree with the majority's finding that the layoffs of Henry A. Berry and Alfred Zude during the period December 1952-February 1953 were not discriminatorily motivated. We would therefore adopt the Trial Examiner's finding that these layoffs violated Section 8 (a) (1) and (3) of the Act for the reasons set forth in the Intermediate Report.

¹In 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."

APPENDIX A

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 by means of promises of full-time employment, or by threats of punishment or offers of benefit, request the removal of the union contract from the warehouse wall, or in any like or related 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 Cannery, Warehousemen, Food Processors, Drivers & Helpers, Local Union No. 318, 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 National Labor Relations Act.

NORTHERN FRUIT COMPANY, 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.

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

This proceeding brought under Section 10 (b) of the National Labor Relations Act, as amended (61 Stat 136), was heard in Wenatchee and Seattle, Washington, on October 27 and 30, 1953, pursuant to due notice. The complaint, issued on June 29, 1953, by the General Counsel of the National Labor Relations Board,¹ and based on charges duly filed and served alleges in substance that the Respondent has engaged in unfair labor practices proscribed by Section 8 (a) (3) and (1) of the Act, by stating to its employees an intention to get rid of the Union one way or another, by promising employees more work opportunities if they would withdraw from the Union or cease to designate the Union as collective-bargaining

¹The General Counsel and his representative at the hearing are referred to herein as the General Counsel and the National Labor Relations Board as the Board. The above-named Respondent is referred to herein as the Respondent and the charging Union as the Union. The summary of the pleadings made herein includes amendments made at the hearing.

representative, by threatening employees to make it harder on them unless they withdrew from the Union or denounced the contract between the Union and the Respondent, and by reducing work opportunities of employees Al Zude and Henry A. Berry by means of temporary layoffs and by employing them on other occasions for less than 8 hours a day. It is alleged that the Respondent's conduct in these particulars was dictated by a purpose to retaliate and to discriminate against employees because of their union membership and activity. The Respondent by its answer denies the commission of unfair labor practices as alleged.

The Respondent and the General Counsel were represented at the hearing by counsel and were afforded full opportunity to participate in the hearing and to file briefs and proposed findings of fact and conclusions of law. A brief has been received from counsel for the Respondent.

The hearing closed on October 27 in Wenatchee with the understanding, stated on the record, that the General Counsel might thereafter move for the admission of certain documentary evidence not then available to him. The General Counsel made such a motion to me in Seattle, Washington, on October 30. Upon representations of the General Counsel that counsel for the Respondent did not desire to appear and was content to have his opposition to the introduction of certain documentary evidence voiced by the General Counsel, I reopened the hearing, considered the General Counsel's offer and admitted a certain exhibit to which it was stated the Respondent had no objection. I also reserved ruling on the General Counsel's offer of his Exhibits Nos. 6A, C, and D. Upon consideration, the exhibits are hereby admitted to evidence as it appears that they tend to indicate knowledge on the part of the Respondent of opposition to the Union on the part of certain employees.

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

FINDING OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent is a Washington corporation with its principal office and place of business at Wenatchee, Washington, where it is engaged in the business of packing, warehousing, storing, and shipping fresh fruit. The Respondent purchases fruit from growers in the vicinity of Wenatchee, processes it, and ships it. The annual value of such shipments directly to customers located outside the State of Washington is in excess of \$500,000.

II. THE ORGANIZATION INVOLVED

The Union is a labor organization admitting to membership employees of the Respondent.

III. THE ALLEGED UNFAIR LABOR PRACTICES

After an election in October 1951, the Union was certified as the bargaining representative of a group of warehouse employees then numbering 8. Since that time by reason of quits the unit has dwindled to 5. After bargaining, the Respondent and the Union entered into a contract in October 1952 which was terminated in May of this year. The employees in the unit are those who have substantially full-time employment as warehousemen throughout the year. It is the contention of the General Counsel that following the advent of the Union and particularly in the winter of 1952-53, the Respondent departed from its earlier practice of providing full-time employment to such employees by laying them off for short periods of time and on other occasions providing only a few hours work for them in any given day. This change from earlier practice is explained, the General Counsel asserts, by the Respondent's purpose to retaliate against employees for having selected a bargaining representative and to encourage them to abandon that representative.

Adam Warnett who was hired as a warehouseman in September 1950, worked until his resignation in December 1952. Warnett testified that in September 1951, shortly after the Union had filed its petition, he with other warehouse employees, was called to the office of Stanley Meredith, the Respondent's secretary-treasurer. Still according to Warnett, Meredith asked them how they thought they would benefit by belonging to a union. Respondent's president, Rex Tedford, who also was present, asked if the men had ever thought that additional help might be hired so that the men would not get the number of hours they were

then working. A few days before the election which was held on October 11 of that year, Meredith again called the employees to the office and said according to Warnett, that he would like to have the problem settled without the interposition of the Union. Meredith said that he was willing to adopt the terms and conditions in a contract of another employer in Washington governing working conditions and wages and put those conditions and wages into effect at the Respondent's warehouse. Meredith went on to say that he would attempt to get the employees a 10-cent an hour raise if the Union could be stopped. About 2 weeks after the election, Meredith again spoke to the warehouse employees asking them if they would consider making a contract directly with him leaving the Union out of it. In September 1952, Warnett was called again to Meredith's office where Meredith asked Warnett how he felt about the Union, saying that a petition was to be filed to get another election and asking if Warnett would be willing to sign such a petition. A little later in that month a decertification petition was circulated in the plant.

Henry A. Berry, a warehouseman who has been in Respondent's employ since March 1946, was the Union's observer on the occasion of the 1951 election. According to Berry, in September 1951, Meredith spoke to him separately asking Berry how he felt about the Union and how he thought he would be benefited by joining it. A few days before the election according to Berry, he and other warehouse employees were in President Tedford's office, when Meredith said that he would go along with a contract which another employer in Washington had if the Union were not a party. Meredith also said that the Respondent along with other warehouses in town would give a 10-cent hourly raise to the employees if the Union was kept out. Sometime in the fall of 1952, according to Berry, Meredith called him to the office and said "Well, we would like to get this deal back to a big happy family like it used to be." Meredith went on to say there was some sentiment for another election among the employees and asked Berry if he would sign a petition designed to bring this about.

Alfred Zude was first employed by the Respondent in 1940 and has worked for it substantially all of the time since. Zude corroborated the testimony of Berry and Warnett about the interrogation by Meredith in September 1951 and the offer later in the fall of that year to abide by the terms of another contract if the Union was not permitted to act as the employees' representative. Berry too, Zude testified, was asked by Meredith to support a petition for a new election in the fall of 1952.

Stanley Meredith testified that when the Union filed its petition in September 1951, he consulted counsel for advice concerning how he should conduct himself in this, to him, unfamiliar situation. He was told, he testified, that he should do nothing to influence the decision of the men Meredith testified that he told the men that if they thought they would gain by it to go ahead and join the Union but to be sure that they were aware of what they were doing. Meredith did not mention in his testimony any offer to increase wages if the employees would forego the choice of a bargaining representative or deny that he had called them to his office on the occasions mentioned by the General Counsel's witnesses. I am convinced that Warnett, Berry, and Zude testified truthfully and with substantial accuracy concerning the inquiries made of them by Meredith and that Meredith did in fact offer an increase in wages and to put into effect more favorable working conditions if the men would abandon the Union. This conduct is not alleged to constitute an unfair labor practice as it occurred more than 6 months before the filing of any charge. It is however, evident, that the Respondent looked with misgiving upon the advent of the Union and attempted by promises of benefit to sway the employees away from it. Opposition on the part of the Respondent to the Union persisted at least until the fall of 1952. I credit the undenied testimony of Warnett, Berry, and Zude that Meredith asked them to sign a decertification petition and expressed the hope that the Union would no longer be a bargaining representative.

In early September 1952, Warnett, Berry, and Zude were notified that they were to take a few days off without pay. Fred Richmond, the foreman who announced the layoff, said to Warnett that he disliked this development and, when Warnett asked what the trouble was, answered cryptically, "Well, you know." Warnett actually lost no time for he was given other employment during the following week. Berry lost a week's pay. Zude was off for 2 days. As this incident occurred more than 6 months before the filing of any charge, it has no significance here other than to mark the first occasion according to the testimony of the General Counsel's witnesses, when the permanent warehouse employees were required to take any time off from work without pay.

For the week ending December 12, 1952, Adam Warnett, Sewell Morgan, Russell Barnhart, Berry, Zude, and C. W. Barnhart were working as warehousemen. All but the last were

last were laid off for a portion of that week. Barnhart, it was testified credibly, was working on a flat monthly salary and was apparently on duty at the warehouse at all times during the winter months. In addition to performing work of the same character as that done by the other warehousemen, Barnhart had the responsibility for checking the progress of fruit ripening. Of the 6 warehouse employees last named, the 2 Barnharts and Morgan appear not to have been members of the Union and Morgan, in September of that year, had circulated a petition looking toward the Union's decertification. During that week Warnett upon being recalled to work, protested Respondent's practice of working the men on a part-time basis and quit when no assurance was given him that the practice would be changed. Thereafter, through January 27, 1953, on a number of days none of the crew, other than C. W. Barnhart, worked at all. On still other days they worked less than 8 hours. On January 27 Morgan left the warehouse crew and did not return to that work until March. In February, also, on a number of days the crew either did not work or worked less than 8 hours. On some occasions, the union members, Zude and Berry, worked more hours than the others. On other occasions, the reverse was true. The evidence does not establish that Respondent discriminated between union and nonunion workers in providing opportunities for employment. Warnett testified that when the first layoff occurred in December, he and Zude were told by Foreman Fred Richmond that he, Zude, and Berry had better have the contract removed from the wall where it was posted. Richmond went on to say, according to Warnett, that President Tedford was "burned up about it" and "is going to make it tough on you if you didn't." Zude corroborated the testimony of Warnett but did not refer to any remark of Richmond purporting to quote Tedford. Berry was laid off at the same time but did not testify to any remarks coming from Richmond in connection with the layoff.

The work of the warehousemen is greatly increased during the early months of summer when soft fruits (cherries, apricots, peaches, and prunes) are being handled. Because of perishability such fruits must be graded, packed, and shipped as expeditiously as possible with the result that the warehouse employees work extended hours. It is the contention of the General Counsel that for several weeks in the summer of 1953, because of their adherence to the Union, Berry and Zude were not permitted to work overtime to the extent that the two Barnharts, who opposed the Union, were. The hours worked in June, July, and August, 1953, by C. W. Barnhart are not reflected in any exhibit. He worked on a salary basis and, perhaps, his earnings were not related to the hours worked. The following table shows the hours worked during the given weeks by:

	Alfred Zude	H. A. Berry	Russell Barnhart
June 27	50	50	61
July 4	53½	52½	69½
11	59	58½	73
18	67½	69	83
25	51	64	86½
Aug. 1	57½	59	81

Thereafter, all three worked substantially the same hours. Obviously, Barnhart worked considerably more than Berry or Zude and, as his rate was the same as Zude's, earned more wages than the latter. During the soft-fruit season, Berry operated a boxmaking machine at a piece rate and a lidding machine at an hourly rate higher than that paid for regular warehouse work. His earnings generally equalled or exceeded those of Russell Barnhart even though working fewer hours.

Respondent's records covering previous seasons show as to the permanent warehousemen, the following

	Zude	Berry	C. W. Barnhart	Russell Barnhart	Joe Warnett	Adam Warnett
1951						
Week ending						
June 23	54	51	60½	55	55½	
30	61½	66½	75½	72	69½	67½

	Zude	Berry	C. W. Barnhart	Russell Barnhart	Joe Warnett	Adam Warnett
1951						
Week ending						
July 7	66	57½	77	81½	74½	73½
14	54	46	68	67	69	68
21	66½	67½		74½		79½
1952						
June 14	51½	49		58		52½
21	59½	61½		73½		72½
28	62	58½		60		76½
July 5	33½	38		43		50
12	59½	67		70		74
19		84		89		89
26	61	56½				76½

It is evident that fewer hours of employment for Zude and Berry in comparison with other warehousemen was not a situation developing suddenly in 1953. The same condition prevailed in 1951 and 1952. I find no significant change in this respect in 1953. Zude testified that on one Saturday in the summer of 1953 he applied for and was refused opportunity to work on that evening. Foreman Richmond testified that during the early years of Zude's employment, Zude consistently refused opportunities to work evenings in the rush season and that thereafter Richmond rarely has asked him to do so.

The payroll records do not demonstrate any discrimination against Berry and Zude in the assignment of overtime work in 1953.

Zude testified that sometime in January 1953 Richmond told him that if he would get out of the Union he would be worked 5½ days a week. This was during a period of frequent layoffs.

From late November until early March work at the warehouse is at its lowest point. Little, if any, fruit is then received and shipments appear not to be heavy. In other years, the members of the permanent warehouse crew were afforded steady employment even though it meant that on some days they had not much to occupy them and filled out the hours in playing cards. I suppose that no employer desires to pay for unproductive time and prefers, if practicable, to have on the payroll at any particular moment only those who are performing work useful to him. But there are situations where an employer in order to have workers available when needed will retain them when they are not. Thus an employer faced with such a problem normally, I will assume, considers the cost of paying for unproductive hours and weighs it against the possibility of losing experienced workers if he does not do so. Of course other considerations, such as an implicit understanding that he will provide continuous employment, may come into play. The evidence here is that the permanent warehouse employees until September 1952 suffered no temporary layoffs. When the first layoff occurred Warnett was immediately given other employment by 1 of Respondent's officials, Zude was off for 2 days, Berry for 5, Morgan for the entire week, and Russell Barnhart was not affected. Foreman Richmond said that the layoff was directed by someone superior to him, either Meredith or Tedford. Respondent's counsel points out in his brief that the men worked less than the usual number of hours in the weeks ending November 14 and 28. It would seem that the Armistice Day and Thanksgiving holidays would explain that Berry testified that he was laid off for 4 hours on November 26. As all worked the same number of hours that week, it is probable that all were laid off at the same time. There is no testimony concerning any statement by a representative of the Respondent to the men at the time of this layoff. On December 2, also, the crew worked only 4 hours although Warnett put in a total of 64 hours that week. From December 10 on through February layoffs were frequent. For this period Zude worked about 347 hours, Berry and Russell Barnhart about 275, Berry having missed 1 day of work because of illness. The testimony of Berry, Zude, and Warnett that in previous years they had worked continuously is undisputed and credited. Had that practice been continued, Zude, Berry, and Russell Barnhart would have worked about 448 hours from December 10 through February.

Of course there is an explanation for this and Respondent's counsel says it is an innocent one, that the Respondent in May 1952 had raised hourly wages from \$1.25 to \$1.45 and that

it could not at that rate keep men on the payroll when there was little or nothing for them to do. In short, the layoffs were dictated by economic considerations. If this is true, it is a complete defense to the allegations of discrimination in the complaint. The suggested explanation is so unexceptionable and has such an appeal to reason that one would expect to hear Respondent's witnesses testify clearly about it; but they did not.

The sum of Meredith's testimony on this point is that who worked and for how long was left to the judgment of Foreman Richmond. Despite leading questions from Respondent's counsel, Meredith gave no forthright explanation of the new layoff practice and did not testify that he instructed Richmond to start or continue the series of layoffs in December, January, and February.

Foreman Fred Richmond's testimony is consistent with that of Meredith. According to Richmond the December layoffs and those that followed were made on his initiative and because there was insufficient work to occupy the crew. He denied that Zude and Berry were treated differently than the other warehouse workers and the payroll records corroborate him in this respect. I do not place C. W. Barnhart in the same category as the others as a salaried worker and as the one who checked the ripening progress of the stored fruit it is reasonable that he would be retained when hourly paid workers were laid off.

Thus the testimony of both Meredith and Richmond is that the latter was responsible for the layoffs in the winter months of 1952 and 1953 and the question still remains, why? Richmond said it was because there was no work for the men to do. Meredith said that he did not want to pay men just for sitting around. But Warnett and Zude testified, and Richmond did not contradict them, that on December 9 or 11 Richmond told them that if they and Berry (the only union members) would "get that contract off of the wall, things would be different." Zude also testified, and again without dispute, that in January 1953 Richmond told him he would be working 5½ days a week if he would get out of the Union.

If the layoffs were made only for economic reasons, it is difficult to understand why Richmond did not tell the employees just that. A possible explanation is that a lack of work caused the layoffs but that Richmond, knowing, as he testified, that Meredith "wasn't in love" with the Union, considered the opportunity a good one for impressing on the warehousemen the disadvantages of union membership. Another, which might be mentioned, is that the contract which Richmond wanted removed presumably called for the payment of wages somewhat higher than those in effect in prior years. Perhaps it could be said that Richmond was not objecting to the contract as such but only to the higher wage scale. But other warehouses in the area, if not all them, were paying the same rate. I am convinced, however, that the cost of maintaining a crew at times when there was not work for them does not explain the layoffs. This conviction stems from the remarks of Richmond concerning the removal of the contract, his warning that Tedford was "burned up" and prepared to "make it tough, and his offer to full employment to Zude if the latter would drop his union membership. I find that the Respondent through Richmond by means of layoffs retaliated against the warehouse employees because they had chosen a union to represent them and offered the bribe of full-time employment to one of them if he would renounce his representative. Economic conditions provided no more than a transparent cloak for this conduct.

Considering Respondent's early opposition to the Union, its attempt to have the employees deal directly with it even after the Union had won the election, and Richmond's unexplained statements to the employees in December 1952 and January 1953 concerning the reasons for the layoffs, I find that the General Counsel has sustained by a preponderance of the evidence, the burden of establishing the allegation that the layoffs were discriminatorily motivated. I find that the layoffs beginning about December 9 or 11, 1952, were motivated by the fact that some of the employees were members of the Union.

By telling employees that removal of the contract, which I equate with abandoning the Union, would cause "things to be different" in regard to layoffs, by warning them that failure to take this action would result in Respondent making it "tough" on them, by promising Zude full-time employment if he would drop his union membership, and by a series of layoffs in December 1952 and January and February 1953, the Respondent interfered with, restrained, and coerced employees in the exercise of rights guaranteed in Section 7 of the Act and thereby violated Section 8 (a) (1) of the Act.

By instituting a series of layoffs on December 9 or 11, 1952, and continuing them through February 1953, because of the membership of some employees in the Union, the Respondent has discouraged membership in the Union and, by such discrimination, has violated Section 8 (a) (3) of the Act.

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 its operations described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Having found that the Respondent discriminated against employees because some of them were members of the Union by denying them full employment, it will be recommended that Zude and Berry be made whole for any loss of earnings suffered because of the layoff practice and that the Respondent cease and desist from making layoffs for the purpose of discouraging union membership. Russell Barnhart too lost earnings as a result of this discrimination but as no claim to be made whole is made in his behalf no recommendation to that effect will be made.

Loss of earnings as to Zude and Berry shall be calculated by payment to them of that sum of money they would have earned in full employment with the Respondent from December 9 or 11, 1952, through February 1953, less actual earnings in the employment afforded by the Respondent and whatever amounts they may have earned as wages in other employment. Back pay shall be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289. It will also be recommended that the Respondent upon reasonable request make available to the Board or its agents, for examination and copying, all pertinent records necessary or convenient for a calculation of the amount of back pay due.

Considering the character of the Respondent's unfair labor practices and the manifestations of union animus recited in this report, it will be recommended that the Respondent cease and desist from infringing in any manner upon the rights of employees guaranteed in Section 7 of the Act.

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. Cannery, Warehousemen, Food Processors, Drivers & Helpers, Local Union No. 318, is a labor organization within the meaning of Section 2 (5) of the Act.
2. By failing to afford steady employment to its permanent warehouse workers for the purpose of discouraging membership in the Union, 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 such conduct and by stating that steady employment would be given if an employee resigned union membership and that the situation regarding layoffs would be different if the Union's contract was canceled, the Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act and 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.

[Recommendations omitted from publication.]

HUMBLE OIL & REFINING COMPANY and R. C. BITTRICK,
 Petitioner *and* **BAYTOWN EMPLOYEES FEDERATION.** Case
 No. 39-RD-29. May 25, 1954

DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Clarence L.