and maintenance employees, including the dieroom employees, may also be appropriate.

In view of the foregoing, we make no final unit determination at this time, but shall direct that the question concerning representation of the Employer's employees be resolved by separate elections, by secret ballot, among the employees in the following groups of employees at the Employer's automotive parts manufacturing plant at Marion, Ohio, excluding from each group all office clerical employees, guards, professional employees, and supervisors as defined in the Act.

Voting group (A): All employees who work on dies or parts of dies used in the manufacture and completion of forgings.

Voting group (B): All production and maintenance employees, excluding employees in voting group (A).

If a majority of the employees in voting group (A) select the union seeking to represent them separately, these employees will be taken to have indicated their desire to constitute a separate bargaining unit and the Regional Director conducting the election is instructed to issue a certification of representatives to the labor organization seeking and selected by the employees in that group for such unit, which the Board in such circumstances finds to be appropriate for purposes of collective bargaining. On the other hand, if a majority of the employees in voting group (A) do not vote for the union which is seeking to represent them in a separate unit, that group will be appropriately included in the production and maintenance unit and their votes will be pooled with those in voting group (B). If the votes are pooled, they are to be tallied in the following manner: The votes for the union seeking the separate unit shall be counted among the valid votes cast, but neither for nor against the union seeking the more comprehensive unit; all other votes are to be accorded their face value, whether for representation by the union seeking the comprehensive unit, or for no union. The Regional Director conducting the election is instructed to issue a certification of representatives to the labor organization selected by a majority of the employees in the pooled group, which the Board in such circumstances finds to be a single unit appropriate for purposes of collective bargaining.

[Text of Direction of Elections omitted from publication.]

EL MUNDO BROADCASTING CORPORATION *and* GREMIO DE PRENSA, RADIO, TEATRO Y TELEVISION DE PUERTO RICO, INDEPENDIENTE. Case No. 24-CA-470. June 10, 1954

DECISION AND ORDER

On February 11, 1954, Trial Examiner Thomas N. Kessel issued his Intermediate Report in the above-entitled pro-

ceeding, finding that 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. Thereafter, 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,[2] the 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 Respondent, El Mundo Broadcasting Corporation, San Juan, Puerto Rico, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership and activity in Gremio de Prensa, Radio, Teatro y Television de Puerto Rico, Independiente, or in any other labor organization, by discharging any of its employees, or in any other manner discriminating against them in regard to hire or tenure of employment or any term or condition of employment.

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Gremio de Prensa, Radio, Teatro y Television de Puerto Rico, Independiente, 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.[3]

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

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[1] Respondent also requested oral argument. In our opinion, the record, the exceptions, and the briefs fully present the issues and the positions of the parties. Accordingly, the request is denied.

[2] We note and correct two inadvertent typographical errors in footnote 2 of the Intermediate Report which reprints a letter of July 27, 1953, from Respondent's representative to the Regional Office of the National Labor Relations Board. The reprint is corrected in the second paragraph to read "complainant" and not complaint, and in the third paragraph to read "unfairly" and not fairly.

[3] N. L. R. B. v. Entwistle Mfg. Co., 120 F. 2d 532 (C. A. 4).

(a) Offer to Guillermo Ortega immediate and full reinstatement to his former, or a substantially equivalent, position, without prejudice to his seniority or other rights and privileges.

(b) Make whole Guillermo Ortega for any loss of pay he may have suffered by reason of the discrimination against him, in the manner provided in the section of the Intermediate Report entitled "The Remedy."

(c) Upon request, make available to the National Labor Relations 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 for a determination of the amount of back pay due and the right of reinstatement under the terms of this Order.

(d) Post at its offices, studios, and transmitter station in San Juan, Santurce, and Sabana Grande, Puerto Rico, copies of the notice attached to the Intermediate Report and marked "Appendix."[4] Copies of said notice, to be furnished by the Regional Director for the Twenty-fourth Region, shall, after being duly signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof and maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for the Twenty-fourth Region, in writing, within ten (10) days from the date of this Order, what steps Respondent has taken to comply therewith.

[4] 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 the United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

Upon a charge filed by Gremio de Prensa, Radio, Teatro y Television de Puerto Rico, Independiente, herein called the Gremio, the General Counsel of the National Labor Relations Board, by the Regional Director for the Twenty-fourth Region (Santurce, Puerto Rico), issued his complaint dated against El Mundo Broadcasting Corporation, 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) (3) and (1) and Section 2 (6) and (7) of the National Labor Relations Act, 61 Stat. 136, herein called the Act. Copies of the complaint, the charge, and a notice of hearing were duly served upon the Respondent and the Gremio.

With respect to the unfair labor practices, the complaint alleged that on or about June 12, 1953, the Respondent unlawfully discharged Guillermo Ortega, its employee, because of his activities in behalf of the Gremio. The Respondent filed an answer in which it denied commission of conduct violative of the Act as alleged.

Pursuant to notice, a hearing was held at Santurce, Puerto Rico, on October 27 and November 2, 1953, before Thomas N. Kessel, the undersigned Trial Examiner, duly designated

by the Chief Trial Examiner. The General Counsel and the Respondent were represented by counsel. The Gremio was represented by its secretary-general. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence was afforded all parties. Opportunity was given the parties to file briefs, but none has been received.

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 is a Puerto Rico corporation with its principal office and place of business in San Juan, Puerto Rico, where it is engaged in broadcasting and transmitting radio programs. Its main station, WKAQ, and studios are located in Santurce and its transmitter station at Sabana Grande, Puerto Rico. During the 12-month period preceding the hearing the Respondent's gross revenues from its broadcasting operations were approximately $300,000 of which approximately 80 percent was derived from sponsors who ship goods, supplies, and materials from the continental United States. The parties stipulated and it is found that the Respondent is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Gremio de Prensa, Radio, Teatro y Television de Puerto Rico, Independiente, is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. Facts relevant to the discharge of Guillermo Ortega

Ortega worked as a narrator, actor, and announcer for the Respondent from December 16, 1951, until he was discharged on June 12, 1953. The circumstances relating to his discharge are these. After he was employed by the Respondent, Ortega joined the Association Independiente de Artistas, herein called the Association, which he believed to be a labor organization. It is parenthetically observed that an undetermined number of the Respondent's employees belonged to the Association during the period in which the critical events herein occurred. The Respondent would neither admit that the Association is a labor organization, nor does the record substantiate such fact. Ortega maintained his membership in the Association for 8 or 10 months, and at the end of that time notified its president that he was resigning. In May 1953 he joined the Gremio and on May 13, 1953, he signed an authorization pursuant to which the Respondent deducted Gremio dues from his earnings.[1]

Upon joining the Gremio, Ortega decided to explain his reasons for this action to those of his fellow employees who belonged to the Association. He thereupon drafted a message to them which he presented to Ismael Delgado, the Gremio's secretary-general. Following a discussion with Delgado who made suggestions as to the "tone" of the message, Ortega discarded his original draft and prepared a new one which was also submitted to Delgado. The Gremio thereupon mimeographed copies which were mailed from its office at its expense to 45 or 50 employees of the Respondent most of whom belonged to the Association. Except for 2 or 3, all these letters were addressed to the Respondent's radio station where the employees worked. All their names were furnished by Ortega to Delgado.

This is the communication from Ortega to his fellow employees:

(Translation)

MESSAGE TO ALL MY FELLOW WORKERS
OF THE ASSOCIACION INDEPENDIENTE
DE ARTISTAS

Dear fellow workers:

My decision of giving up the Asociacion Independiente de Artistas, my decision of joining the Gremio de Prensa, Radio, Teatro y Television de Puerto Rico and the

[1] The parties stipulated that Ortega is a member of the bargaining unit covered by a collective-bargaining contract between the Respondent and the Gremio

reason I have had in mind when taking this step is something which I feel I have the duty to explain to you.

The major reason, among all which induced me, was the following: THE POSITION WHICH A MEMBER OF THE ASOCIACION INDEPENDIENTE DE ARTISTAS HOLDS IS COMPLETELY INSECURE, EXCLUSIVELY AT THE MERCY OF THE COMPANY. That is to say, the income and the more or less participation and prestige to which a member can aspire are plainly a matter of favoritism.

I don't believe that you are not aware of the fact that the members of the "Asociacion" are divided in two categories: the ones who earn more, have access to the most important work and are declared "great figures". . . and the ones in the heap. The situation would not be so bad if all of us had the same opportunities to get the best positions. But it does not happen that way.

It is too verified that the merits of each artist do not determine neither his category nor his income. What, then, determines both? The greater or lesser willingness with which each worker accepts without protest the company's orders, even though these are unjust. I am going to name definite examples of what I classify with the term "Unjust": the Company through its own volition decided to rescind the guarantee agreements (convenios de garantia de sueldo minimo) which it had with its employees. It decided to reduce the number of work hours of its announcers. Decided to merge every two novels of 1/4 hour into one novel of 1/2 hour, to pay for this novel double what is paid for one.

To every worker who does not want to waive his right to justice within his job, every disposition of this kind, any established discrimination, any attempt to force him to perform a task for less than the usual price (they wanted to force me to act as master of ceremonies during the ½ hour program "Musica Triumfal" for $5.00, which I refused to do) provoke ill-feelings. However, this reaction will be the indelible sign which will prevent the one bearing it his entrance to form part of the group of privileged ones. The ones who are already inside[said group] will have no objection to accept the undervaluation of the work as reciprocity for the high level of their income. That is why the Company's rule has come to be "voluntary" cooperation, understandable to a group of persons, preposterous to the other.

The selection[method] of the leading figures which the WKAQ has been following since some time ago, gives way to thinking that legitimate talent instead of being the key to progress is a handicap, or that the company in order to reduce its payroll has decided to reduce the number of artists, beginning with the real good ones which are naturally the more inclined to make claims, but we don't know if it is willing to eliminate the greatest possible number. Life was made impossible at the WKAQ for Jose Hernandez Zamora, German Negroni, Peggy Walker, Arturo Correa, Raul Delgado Cue, Raul Nacer, Gonzalo Gonzalez, Ana Gomez, Jaime Taronji. Which one of you, after me, will be the next victim?

Some members of the "Asociacion" have at present very good opportunities, but how long will they last? What is their support? Is it absolutely sure that none of you will state later on: "This is not right." or "This is not fair." And at the moment in which he so states, the star of the one who said so will stop glittering.

What has the Asociacion Independiente de Artistas done in regard to the reduction of the announcers-artists, in regard to the rescission of the guarantee agreements, and in regard to the decrease in the "rate" of the ½ hour novels? What did the Asociacion do in the case of Peggy Walker, extraordinary actress, to whom the company gratuitously paid the guarantee rather than give her work?

The above deficiencies compelled me to turn my eyes over to the Gremio de Prensa, Radio, Teatro y Television. I admitted my past misake, which I am not willing to repeat in the future, and, as in good faith I joined the Asociacion, in good faith I abandon it. The Gremio de Prensa, Radio, Teatro y Television de P. R. is an organization created precisely to "claim" all the rights to which a worker is entitled to, not to expect them as a favor. It offers to its members the opportunity to work in all the radio stations of of Puerto Rico and opposes in an open and orderly manner every discrimination to which the men and women of the Porto Rican radio are subjected to This letter, however, is not aimed to induce you to join the Gremio de Prensa, Radio, Teatro y Television. I only have a message from this group to you:

IT IS FALSE THAT IT AIMS TO TAKE ADVANTAGE OF ANY DIFFICULTIES WHICH YOU MAY SUFFER BECAUSE OF YOUR CLAIM FOR RIGHTS. On the contrary, the

Gremio de Prensa, Radio Teatro y Television de Puerto Rico will support each and every one of the claims which you, individually, may want to make. The deep grudge caused in the past by our attitude against the strike has been completely forgotten by the Grenio de Prensa, Radio, Teatro y Television de Puerto Rico in its desire to establish, above all things, justice for the workers of the Radio. And I add: even when there is justice only for the largest number: because I give in, this time voluntarily and for the benefit of the majority, those rights which the Gremio, after hearing my arguments, decides to deny to strangers.

Affectionately,

(sgd.) Gil de Ortegas
GIL DE ORTEGAS

Ventura Lamas, Jr., manager of Respondent's radio station, testified that a few days after Ortega sent out his June 5 letter he found a copy on his desk, and, because the letter "falsely represented the policies of the management and . . . tended to incite our employees against the management" he discharged him. Lamas had felt that Ortega's letter was sufficient "to incite" the employees "to make a lot of comments against the policies of the management" with respect to matters of employment, and that by discharging Ortega he could stop discussions of this sort. Ortega was notified of his discharge by the following letter:

(Translation)

June 12, 1953

Mr. Guillermo Ortega
Announcer and Narrator

Sir:

After reading your message dated June 5, 1953 to all the members of the Asociacion Independiente de Artistas, I come to the conclusion that in said message you make a series of accusations against this radio station which in my opinion are unfounded and unjust.

I think, therefore, that your permanence here might be interpreted to mean that this radio station accepts as true the statements made in your message.

For that reason, I believe I have no other alternative but to discharge you from employment as of this date until you can prove to us the unjust statements made in your message.

Very truly yours,

EL MUNDO BROADCASTING CORP.

(sgd.) V. Lamas, Jr.)
V. LAMAS Jr.
Commerce Manager

Ortega responded to this notice by the following letter:

(Translation)

Rio Piedras, June 17, 1953

Mr. Ventura Lamas
Commercial Manager of "El Mundo
Broadcasting Corporation"
Santurce

Sir:

As per your letter of June 12 instant I have been discharged from my work at the WKAQ radio station and deprived of salary, as set forth by you in your communication

because of the fact that my message to the fellow workers of the Asociacion Independiente de Artistas contains unjust and unfounded accusations.

Really, the message was not made to "accuse the company; nor to take from it the esteem which my fellow workers feel for it. As regards the company, I was moved to do this because I wanted to set before it in an objective and generalized manner (in case it reached it) the unjust situations which my fellow workers as well as I were suffering in order that the company remedy same. But the real purpose of the message was to inform my fellow workers the reasons I had to join the Gremio de Prensa y Radio. That is to say, an analysis of the facts from my own point of view to show to my fellow workers that my change in attitude had not been due to stingy motives.

I think that the reasons which compelled me to join [the Gremio] are strong ones, but the company could eliminate them without creating ill-feelings among its employees by just giving way to a more just treatment to all. And this is for the purpose of asking you to reinstate me.

I think I can be of service to the WKAQ in many aspects: as news announcer, as narrator and even rewrite-man of radio comments on international affairs, as narrator, as commercial announcer, as master of ceremonies, and as writer. All I would ask from the Company would be that for these task I be paid in a just manner. It being understood, of course, that the same advantages must be granted to the fellow workers whose tasks are comparable to mine.

You cannot overlook the fact that the reading of a news program in the way I do it and with the time I devote to its preparation is comparable to the narration of a novel. Why then, it is not paid separately? The same can be said about the reading of comments and of commercial programs.

As to the work which has never been assigned to me, such as actor and director of any program, I call your attention to the fact that I have worked in the biggest radio stations of the U.S.A. and that I have been in charge of four comedies at WAPA. It is then, clear, that my work would benefit the company and that it would be fair to at least include me among the fellow workers who regularly work in the programs of the radio station.

To conclude, this letter is for the purpose of asking you to reinstate me and not only that, but to ask you to grant the conditions which I have always requested and which I believe I deserve. If this last thing is not possible, I request that I be reinstated under the conditions in which I was when the guarantee agreement (convenio de garantis de sueldo minimo) was respected and my income fluctuated between 60 odd and 90 odd dollars per week.

Very truly yours,

(sgd.) G. De O.
Gil de Ortegas
#1014 Celso Barbosa, Rio Piedras

The Respondent replied to Ortega as follows:

(Translation)

June 22, 1953

Mr. Gil de Ortegas
#1014 Celso Barbosa
Rio Piedras, Puerto Rico

Sir:

In answer to your letter of June 17, I am sorry to inform you that I see no reason why the decision set forth in my letter of the 12th instant should be changed.

Very truly yours,

W. K. A. Q., Radio El Mundo
(sgd.) V. Lamas Jr.

B. Findings and conclusions with respect to Ortega's discharge

The General Counsel contends that Ortega's letter of June 5, 1953, constituted concerted activity protected by the Act for which he was discharged by the Respondent in violation of Section 8 (a) (3) and (1) of the Act. The Respondent defends, in substance, on the ground that Ortega's letter did not constitute protected activity because it contained intentional misrepresentation calculated to foment employee discontent.[2] The General Counsel cited

[2] The Respondent stipulated that its defense herein is completely detailed in the following letter sent by its attorneys of record to the Regional Office of the Board in connection with the investigation of this case:

San Juan 17, P. R
July 27, 1953

National Labor Relations Board
Twenty-Fourth Region
P. O. Box 9176
Santurce, Puerto Rico

Attention: Mr. Robert J. Cannella,
Field Examiner

Re: El Mundo Broadcasting
Corporation
Case No. 24-CA-470

Dear Sirs:

We refer to Mr. Cannella's letter of July 7th inviting us as counsel for the employer, to visit your office on Tuesday, July 14th, at 10:00 A. M to discuss the possibility of informally settling the above-designated charge. On the date and hour suggested, our Mr. Nido and Mr. Lamas of El Mundo Broadcasting Corporation conferred informally with your Mr. Romero on the facts surrounding this case, inasmuch as Mr. Cannella was ill on that day.

Our discussion was somewhat general in nature, although Mr. Romero expressed his personal view--after making it clear that no official conclusion had yet been reached--that the facts involved did not seem to justify the dismissal of the complaint except upon a motivation violative of the National Labor Relations Act. As he put it, the statements contained in the circular which was prepared and distributed by Mr. Guillermo Ortega and which culminated in his suspension by the employer, should have been construed as part of his so-called union activity or propaganda on behalf of the Gremio and that the employer, instead of dismissing Ortega, should have prepared and circulated a statement refuting the employee's mistaken accusations.

The employer fully recognizes the rights granted to an employee under Section 7 of the Act and is cognizant of the provisions of Section 8 (a) (1) and (3) thereof. On the other hand, the employer in good faith believes that it has the right to suspend an employee for a bona fide nondiscriminatory reason. In this instance, Mr. Ortega did not merely change his union affiliation and engage in the ordinary and accepted form of union activity. He went further, and without a reasonable basis or justification, falsely represented material facts relating to the employer's administrative practices and policies and accused the employer squarely of exercising discrimination as to tenure and conditions of employment against the members of the labor organization to which Ortega formerly belonged, thus fairly and by misrepresentation inciting the employees against the employer.

The above occurred in the absence of any labor activity, dispute or agitation for collective bargaining at employer's shop. The employer has a collective bargaining agreement in force with a certain group of its employees. Ortega has never distinguished himself as a union member, leader or agitator. The employer has been formerly advised of changes in affiliation of many of its employees and has always accepted such changes as the employees' valid exercise of their legal rights to belong to any union which they select.

several precedents in his closing argument to support his theory of the case, of which only the Board's decisions in American Shuffleboard Company, et al., 92 NLRB 1272,[3] and Westinghouse Electric Corporation, Ansonia Plant, 77 NLRB 1058,[4] are apposite. The Respondent cited only the decision of the United States Fifth Circuit Court of Appeals in N. L. R. B. v. Atlantic Towing Company, 180 F. 2d 726, to support its position. These decisions have been fully considered and are discussed below in connection with the conclusions herein set forth.

Analysis of Ortega's letter which provoked his discharge reveals accusations against the Respondent of employee favoritism, disregard of merit in assignment of work and income opportunities, certain unilateral changes in working conditions adversely affecting employee earnings, elimination from its payroll of employees unwilling to accept these conditions without protest, and fostering employee insecurity. In connection with these accusations Ortega mentioned the names of various persons as victims of these injustices, and alleged instances by which he himself was victimized by the Respondent's policies. The letter also attacks the Association as an ineffective protector of members from the Respondent's abuses, and praises the Gremio as a staunch defender of the rights of all employees.

Ortega's disclaimer that his letter was an inducement to employees to join the Gremio, is a transparent subtlety, and his intention to create Association disaffection and Gremio support among the Respondent's employees is sufficiently apparent to obviate explication. This was sheer propaganda calculated to win members for the Gremio and should so have been reasonably construed by the Respondent. As such it plainly constituted assistance to a union which unquestionably falls within the area of protection guaranteed in the Act.[5] As to that there there appears to be no issue in this case. The defense is essentially predicated on the theory that Ortega's conduct was removed from the area of permissible conduct because of his allegedly false and malicious statements concerning the Respondent's treatment of its employees.

The Board has explicitly declared that the Act does not protect everything an employee may do or say in the course of union or concerted activity,[6] and has ruled that there are certain standards of conduct which must be observed in the course of such activity for an employee to retain the Act's protection.[7] The Board, however, has determined that publication of "false" "misleading," or "inaccurate" statements made in the course of concerted activity do not deprive such activity of the Act's protection, provided that the statements were not "delib-

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Under the above circumstances, the employer feels that it was not compelled to blandly ignore, or engage in a public debate with Ortega regarding his false statements, but that sound administrative policy required it to act and to act firmly so as to preserve the moral prestige which every employer must maintain with its employees. Ortega was suspended solely because he made deliberate misstatements of fact well known to him, for the only purpose of exposing the employer to ridicule and unfairly creating discontent between the employer and its employees. Employer was and is convinced that Ortega did not make these erroneous statements in good faith.

For the above reasons, and much as the employer would like to cooperate with that office, the employer believes that morally and legally it did not discriminatorily discharge Mr. Ortega in violation of the Act.

Very truly yours,

Fiddler, Gonzalez y Nido

[3] Enfg. 190 F. 2d 898 (C. A. 3).

[4] Enf. denied 179 F. 2d 507 (C. A. 6). The Court's denial of enforcement of the Board's order did not disturb the principal declared by the Board in its decision and upon which the General Counsel relies in the instant case.

[5] The Act specifically provides in Section 7 that employees shall have the right to assist labor organizations. Section 8 (a) (1) of the Act makes it an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7.

[6] Westinghouse Electric Corporation, Ansonia Plan, supra.

[7] E. A. Laboratories, Inc., 88 NLRB 673 (calling the company president a "Fascist" or a "Fascist lover" while distributing union literature.)

erately or maliciously false," and further that it is immaterial to a determination that an employer has unlawfully discharged an employee for giving currency to inaccurate information in the course of concerted activity that the employer acted upon a good-faith belief that the information was deliberately or maliciously false if such was not the case.[8] Thus, in the American Shuffleboard Company case, alluded to above, the Board made the foregoing pronouncements in holding that an employer unlawfully discharged an employee who had participated as an employee and union representative at a conference during which the employer's attorney had reported that the company's purchases and sales in a recent year had exceeded $500,000 but who, in reporting to his shop committee, quoted the attorney as having stated that the company's profits exceeded $500,000. In concluding that the employer in that case had violated Section 8 (a) (3) and (1) of the Act by discharging the employee for having deliberately and maliciously lied in reporting that it had made "fantastic earnings" the Board found no evidence in the record that the report, "even if inaccurate, was deliberately or maliciously false." Of similar import is the Board's ruling in the Westinghouse Electric Corporation case, hereinabove cited, in which an employee was discharged for circulating untrue statements among fellow employees to the effect that their wage rates were less than those paid comparable employees at another of the employer's plants, thereby creating "unrest" and "dissension." In that case the Board had found that the employees' statements were made in the course of unionization. In holding the employer's conduct violative of the Act (Section 8 (3) and (1) of the Act before the current amendments) the Board said,

> The Respondent also contends that, . . . it was nonetheless privileged to discharge him [the employee involved] for his particular conduct because the "lies" about the comparative wage rates were reprehensible and therefore beyond the Act's protection. We disagree. The statute does not protect everything an employee may do or say in the course of union or concerted activity, but we believe that Fouty's [the employee involved] conduct in this case was well within the ambit of statutory protection. For all the record shows, Fouty did not carefully investigate the facts before asserting that the wage rates were higher at Lima, but neither did he make those inaccurate statements with any malice or deliberate intention to falsify. The record shows, indeed, that there was some basis in fact for his assertions, inasmuch as the incentive bonuses earned by the Lima plant employees were generally higher than those averaged by the less experienced Ansonia workers. Employees do not forfeit the protection of the Act if, in discussing a matter of such vital common concern as wages, they give currency to inaccurate or incomplete information.

Applying these controlling Board precedents to the instant case, the critical matter to be resolved is whether Ortega's letter has been proved to be deliberately or maliciously false. Lamas, the aforesaid station manager, testified only that he had discharged Ortega because his June 5 letter "falsely represented the policies of the management." This is the sum total of all the evidence in the record to prove the falsity of the letter. Ortega testified that his letter explained to his fellow employees the manner in which he and they had been treated by the Respondent. He was not directly questioned either on direct or cross-examination as to the truth or falsity of his specific charges against the Respondent, but indicated that events relating to some of the employees mentioned in the letter occurred while he was employed by the Respondent, evidently to show that he had opportunity to learn about these events during the course of his employment. The undersigned is not impressed with this circumstance as bearing on the truthfulness of the letter. There is additionally in evidence Ortega's affirmation of its truthfulness in his letter of June 17, 1953, written in reply to the Respondent's June 12, 1953, letter which notified Ortega that his discharge was final unless he could prove to the Respondent "the unjust statements made in [his] message." This affirmation by letter also does not establish the accuracy or truthfulness of the assertions in Ortega's June 5 letter regarding the Respondent's policies. On the other hand, neither does Lamas' testimony prove that Ortega had misrepresented the Respondent's policies. Certainly, his bare assertion to that effect falls short of proving that Ortega's letter was maliciously inspired.

[8] Cf. N. L. R. B. v. Industrial Cotton Mills (Division of J P. Stevens Co.), 208 F. 2d 87 (C. A. 4).

The Respondent's position would have been better supported had there been proof that Ortega's letter was a gross fabrication, and that the specific actions ascribed therein to the Respondent had no basis in fact whatever. No such showing has been made. Lamas' conclusionary testimony did not go to the heart of this matter. Granting that his testimony chargine Ortega with misrepresenting the Respondent's policies goes to prove that in his view these policies were in fact just, fair, and without favoritism to any employee group, it nevertheless does not prove, as Ortega wrote, that the Respondent had not unilaterally rescinded certain guarantee agreements to employees, paid Peggy Walker her guarantee rather than give her work, reduced the number of hours of work for announcers, merged two quarter-hour novels into a single novel of a half hour, and pressured Ortega to act as master of ceremonies on the "Musica Triumfal" program for $5. These were the factors upon which Ortega in his letter expressly based his criticisms of the Respondent's policies. It can hardly be said, without proof that these actions never occurred and were purely inventive on Ortega's part and without any other proof to show malicious intent,[9] that Ortega was motivated by malice in giving currency to his appraisal of the Respondent's policies toward employees. As the undersigned views the evidence, there is no clear preponderance to establish that Ortega's letter was deliberately or maliciously false. At most there appears a difference of opinion between Ortega and Lamas as to the fairness and justice of the Respondent's policies. It is concluded that in the absence of proof of deliberate or malicious falsification in Ortega's letter the Respondent has failed to sustain its defense of justification for Ortega's discharge.

In reaching this conclusion, consideration has been given to the Atlantic Towing Company case, supra, relied upon by the Respondent in support of its position. In that case an employee was discharged, allegedly for falsely reporting to fellow employees at an open meeting attended by management representatives that he had overheard the employer's manager utter certain remarks which constituted a violation of the Act. In its decision, reported at 74 NLRB 1169, the Board found that the employee had at most made an unintentional and negligent misstatement but not a deliberately false statement, and held his discharge to be violative of Section 8 (a) (3) and (1) of the Act. In so doing the Board reversed the finding of the Trial Examiner who had heard the case and who had found that the employee had deliberately and falsely accused the employer of conduct constituting an unfair labor practice violative of the Act. Thereafter, the United States Fifth Circuit Court of Appeals granted an order[10] of enforcement of the Board's decision on the ground that there was substantial evidence in the record to support the Board's finding that the employee had not deliberately lied as the employer had alleged. Subsequently, this court, on a petition for rehearing, set aside its order for enforcement previously granted on the ground that it was convinced upon reconsideration of the record that there was not substantial evidence to warrant the Board's finding that the employee had not deliberately lied. In its decision[11] the court said, "It is admitted that the statement [by the employee involved] was false. That statement falsely charged the Company with a violation of the labor law. Respondent had the right to discharge [the employee] for making the statement, irrespective of whether [he] knew or did not know that the statement was false." Thus, the controlling consideration for the court's final position was its conclusion that the mere utterance by an employee attributing to his employer a statement which the employer in fact did not make and which purportedly constitutes an unfair labor practice by the employer is ground for a justifiable discharge of that employee, and this conclusion does not depend on whether the employee's utterance was knowingly false and hence malicious. This case then is distinguishable from the instant one, for here there is no attribution by Ortega in his June 5 letter of conduct on the Respondent's part which could be regarded as an unfair labor practice, or of like conduct with equal sinister import; nor, as the court ultimately found in the cited case, is it here established that Ortega had falsely accused the Respondent of such conduct.

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[9] It is assumed that the Board used the term "malicious" in its American Shuffleboard and Westinghouse decisions, supra, in accordance with its accepted legal connotation. In this sense this term refers to a state of mind on the part of one person involving ill-will, hatred, or hostility toward another, with a positive desire and intention to annoy or injure that person. 34 Amer. Juris 681, sec. 2.

[10] 179 F 2d 497.

[11] 180 F. 2d 726.

On the basis of all the relevant facts of this case, it is found that the Respondent discharged its employee Ortega for engaging in activities constituting assistance to a labor organization thereby violating Section 8 (a) (3) and (1) 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 Territories 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.

It has been found that the Respondent discriminated in regard to the hire and tenure of employment of Guillermo Ortega. It will therefore be recommended that the Respondent be ordered to offer to Guillermo Ortega immediate and full reinstatement to his former or substantially equivalent position without prejudice to seniority or other rights and privileges. See The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch, 65 NLRB 827. It will further be recommended that Respondent make Ortega whole for any loss of pay suffered by reason of the discrimination against him. Said loss of pay, based upon earnings which he would normally have earned from June 12, 1953, the date of the discrimination against him, to the date of the offer of reinstatement, less net earnings, shall be computed on a quarterly basis in the manner established by the Board in F. W. Woolworth Company, 90 NLRB 289, N. L. R. B. v Seven-Up Bottling Company of Miami, Inc. 344 U. S. 344.

Because the Respondent's infringement of fundamental rights guaranteed by the Act strikes at its very heart, the commission of other unfair labor practices may thereby reasonably be anticipated. It will therefore be recommended that Respondent cease and desist from in any manner infringing upon the rights guaranteed its employees by 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. Gremio de Prensa, Radio, Teatro y Television de Puerto Rico, Independiente is a labor organization within the meaning of Section 2 (5) of the Act.
2. By discriminating with respect to the hire and tenure of employment of Guillermo Ortega, thereby discouraging free exercise of the rights guaranteed in Section 7 of the Act and discouraging membership and activity in the above-mentioned labor organization, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) and (1) of the Act.
3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[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 and activity in Gremio de Prensa, Radio, Teatro y Television de Puerto Rico, Independiente, or in any other labor organization

of our employees, by discriminating in any manner in regard to hire, tenure, or any other term or condition of employment.

WE WILL OFFER to Guillermo Ortega immediate and full reinstatement to his former or substantially equivalent position, without prejudice to any seniority or other rights and privileges, and make him whole for any loss of pay suffered as a result of the discrimination against him.

WE WILL NOT in any 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 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 engaging in 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 in conformity with Section 8 (a) (3) of the Act.

All our employees are free to become or remain, or to refrain from becoming or remaining members of any labor organization, except to the extent above-stated.

EL MUNDO BROADCASTING CORPORATION,
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.

SYLVANIA ELECTRIC PRODUCTS, INC. *and* DISTRICT 98, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL, Petitioner *and* INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS, CIO *and* UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA. Case No. 4-RC-2113. June 10, 1954

DECISION AND ORDER

On October 12, 1953, pursuant to a stipulation for certification upon consent election, an election was conducted under the direction and supervision of the Regional Director for the Fourth Region among the production and maintenance employees at the Employer's York, Pennsylvania, plant. At the conclusion of the election, it appeared that none of the 4 choices on the ballot had received a majority of the valid votes cast. Accordingly, on October 26, 1953, the Regional Director conducted a runoff election with the Intervenor, United Electrical, Radio & Machine Workers of America, herein called UE, as the only labor organization on the ballot. The tally of ballots prepared at the conclusion of the runoff election showed that 9 ballots challenged by the UE were determinative of the outcome of the