

fully set out in its decisions involving those operations,¹ the Board finds that the contract between the Employer and the UE is not a bar to this proceeding.

Accordingly, we find that a question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The prior certification of the Intervenor in Case 2-RC-4634 (not reported in printed volumes of Board Decisions and Orders) stated the unit as all hourly rated production and maintenance employees. The Employer and the Petitioner desire the unit composition stated as "all hourly rated production, maintenance and warehouse employees." It appears that the latter definition is a further clarification of the former unit definition and includes the same employees. Therefore, we find that all hourly rated production, maintenance, and warehouse employees at the Employer's reconditioning shop located at 21-02 44 Avenue, Long Island City, New York, including working leaders, but excluding salaried office and clerical employees, guards, watchmen, professional employees, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[Text of Direction of Election omitted from publication.]

MEMBERS MURDOCK and RODGERS took no part in the consideration of the above Decision and Direction of Election.

¹ *General Electric Company*, 108 NLRB 1290; 108 NLRB 1294; 109 NLRB 747. Member Peterson, although he concurred in the decisions in 108 NLRB No. 183 and 184 on other grounds, considered himself bound by the majority view in those cases.

SCOTT LUMBER COMPANY, INC. and INTERNATIONAL WOODWORKERS OF AMERICA, LOCAL 13-269, CIO. *Case No. 20-CA-835, September 17, 1954*

Decision and Order

On January 8, 1954, Trial Examiner Martin S. Bennett issued his Intermediate Report in this proceeding recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief. The Respondent filed a brief in support of the Intermediate Report.

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 General Counsel's exceptions and brief, the Respondent's brief, and the entire record in the case, and hereby adopts

the findings, conclusions, and recommendations of the Trial Examiner with the following modifications and additions:

The Board has carefully reviewed the record in this proceeding, and like the Trial Examiner, has concluded that the Respondent has not engaged in unfair labor practices within the meaning of 8 (a) (3) and (1) of the Act. However, unlike the Trial Examiner who recommended dismissal of the complaint on the basis of a settlement agreement, the Board predicates this conclusion on the merits of the case.¹

During the evening of April 9, 1953, the complainants, four lumber pilers on the night-shift green chain gang, who performed part of their work in areas that were not fully protected from the elements, selected one of their group, employee Snelling, to speak to Foreman Martin about closing down operations of the mill² several hours before the end of the shift. Martin agreed to close down at 8 p. m., and employee Snelling so informed the others. The lumber pilers then piled up all remaining lumber. The whistle blew at 8 p. m., and they, together with the rest of the green chain crew, and most of the mill employees, punched out and left. However, Foreman Martin later reported to Superintendent Startt that the green chain crew had left without permission and thereby caused the mill to close down.

When Vice-President Berry arrived at the mill the next morning, April 10, Startt informed him of the incident of the preceding evening, and added that the same employees had been warned with respect to similar conduct during the prior month. Thereupon, Berry told Startt, that under these circumstances, the 7 members of the green chain crew, including the 4 lumber pilers, should be terminated, and requested that a meeting with the union committee be arranged. The meeting was held at 11 a. m. that day. Berry informed the committee that all seven would be discharged unless the Union could show they were not at fault. At a subsequent meeting later that day, the Union stated that 3 of the 7 could not possibly have been involved as they were not exposed to the elements, and that the 4 lumber pilers probably "influenced them." The Respondent then put the 3 back to work that evening, but adhered to its decision that the 4 lumber pilers had left without permission and accordingly refused to reinstate them at that time.

It further appears from the record, and the Trial Examiner so found, that there was no evidence of antiunion animus on the part of either Vice-President Berry or Superintendent Startt with respect to these four complainants, and that both Berry and Startt in discharging them did so because they entertained a good-faith belief

¹ See *West Texas Utilities Company*, 108 NLRB 407, footnote 1.

² The record indicates that the sawmill can operate for only a brief period of time without the services of the green chain crew.

that they had left without permission. Moreover, the record is clear, and the Trial Examiner found, that the Respondent acted in good faith in all its dealings with the Union. Thus, in view of the absence of evidence that these discharges were prompted by antiunion considerations, we perceive no basis for finding a violation of the Act.³ Under these circumstances, we are persuaded that the evidence adduced by the General Counsel did not preponderate in favor of a finding that the Respondent had discharged the four complainants for reasons deemed discriminatory under the Act.

Furthermore, we perceive no valid basis for finding that the four employees left work in concert during the evening of April 9, and thereby engaged in a protected concerted activity. On the contrary, as the record shows, and the Trial Examiner found, that the employees left with permission, the facts clearly do not support a finding that the occurrence of April 9 in any sense constituted a concerted withholding of employment for their mutual aid or protection. Nor do we find any merit in the General Counsel's contention that during the negotiations for an extension of the contract, the Respondent utilized the discharge of the complainants and ultimate reinstatement as a means of forcing the Union to capitulate to the Respondent's demand that the parties renew the 1952 agreement rather than consummate a new contract containing increased wage rates and other additional benefits. The General Counsel's own witnesses testified that the reason the Respondent gave during all of the negotiations for refusing to grant economic concessions was its asserted financial inability to do so.

Accordingly, we find that the Respondent, by discharging and refusing to reinstate the four complainants, did not violate Section 8 (a) (3) and (1) of the Act, and we shall therefore dismiss the complaint in its entirety.⁴ In view of this determination, we find it unnecessary to pass upon what effect, if any, should be given to the May 15 settlement agreement upon which the Trial Examiner predicated his recommended dismissal of the complaint.

[The Board dismissed the complaint.]

MEMBERS MURDOCK and PETERSON took no part in the consideration of the above Decision and Order.

³ *Des Moines, Springfield and Southern Route*, 78 NLRB 1215, at pp. 1218, 1219.

⁴ In agreement with the Trial Examiner, we find that allegations of coercive threats were not established by the record and, in any event, would not warrant the issuance of a remedial order.

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

This proceeding, brought under Section 10 (b) of the National Labor Relations Act, 61 Stat. 136, herein called the Act, is based upon charges duly filed by Inter-

national Woodworkers of America, Local 13-269, CIO, herein called the Union, against Scott Lumber Company, Inc., herein called Respondent. Pursuant to said charges, the General Counsel of the National Labor Relations Board issued a complaint dated July 29, 1953, against Respondent, alleging that Respondent had engaged in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act. Copies of the charges, the complaint, and notice of hearing thereon were duly served upon Respondent.

Specifically, the complaint alleged that Respondent, on April 10, 1953, had discharged four employees, James Snelling, Tomilee Armour,¹ Edward Brewer, and Olen Bray, and had failed to reinstate them until a later date because of their union and concerted activities; the complaint also alleged two instances of coercive threats by representatives of management. The answer of Respondent denied the commission of any unfair labor practices; it alleged that the four above-named employees had quit the employ of Respondent on the indicated date, and that Respondent had offered to reemploy them on or about May 20, 1953.

Pursuant to notice, a hearing was held at Redding, California, from November 5 through 13, 1953, before the undersigned Trial Examiner, Martin S. Bennett, duly designated by the Associate Chief Trial Examiner. All parties were represented by counsel who participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce relevant evidence. At the close of the hearing, the parties were given an opportunity to argue orally and to file briefs and/or proposed findings and conclusions. Oral argument was presented and a brief has been received from Respondent.

After the expiration of the time for filing briefs, and in response to Respondent's brief, the General Counsel filed a motion on December 15 to reopen the record for the purpose of litigating subject matter relied upon by Respondent in its brief. Respondent, on December 16, responded thereto and opposed the motion. The motion to reopen has been duly considered and is hereby denied for, as will appear below in more detail and as I now find, the matter in question was litigated at the hearing.

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

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Scott Lumber Company, Inc., is a New Jersey corporation which maintains a plant at Burney, California, where it is engaged in the manufacture and sale of lumber and lumber products. During the year 1952, Respondent sold lumber and lumber products valued in excess of \$100,000; of this, lumber and lumber products valued at \$100,000 were shipped from the Burney plant to points outside the State of California. I find that Respondent is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

International Woodworkers of America, Local 13-269, CIO, is a labor organization admitting to membership the employees of Respondent.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Introduction and background

The primary issue herein is whether Respondent on April 10 unlawfully discharged four employees who left work in concert on April 9. The Union has been the recognized representative of the employees of Respondent for a number of years and still is. A 1952 agreement between the parties expired on April 1, 1953, and the conduct of Respondent attacked herein by the General Counsel took place thereafter during the months of April and May. As will appear, the parties agreed on May 15, 1953, *inter alia*, to extend the previous contract until April 1, 1954, and that has been done.

The operations of Respondent include logging and the operation of a sawmill; most of its work is conducted on a two-shift basis. In connection with the sawmill, Respondent operates a mechanism known as the "green chain" which is an endless chain whereby cut lumber is automatically moved from the sawmill to a

¹ Inadvertently referred to in the complaint as Tommy Armour.

location where it is assorted by size and type and stacked by lumber pilers. The incident giving rise to the present proceeding took place among the members of the night shift of the green chain crew. This night shift crew consisted of 7 men, 4 of whom are lumber pilers and are the complainants herein; the other 3 men performed other operations such as sorting and tagging the lumber. The primary function of the pilers was to pile the lumber after it came to rest at various locations.

The foreman of the green chain crew is one Asa Lakey. As is the case with every other foreman but one, he works the day shift from 7 a. m. to 4 p. m. but is on call during the other shift as well. The one exception is Edward Martin, night foreman of the sawmill, who plays a leading role in the instant problem. Respondent contends that Martin has no authority over the green chain crew and that his responsibility is limited solely to the sawmill proper. The record will not support this contention.

Respondent has a line of authority descending from Vice-President Berry and Production Superintendent Startt to the various foremen. Martin is the only representative of management on duty during the entire night shift. If this contention of Respondent were accepted, the end result would be that the entire operation, save the sawmill itself, would be operating without any supervision. Respondent's theory that employees on the night shift, not in the sawmill proper, were to look to absent supervisors for instructions via telephone, is, in my view, incredible. The simple fact is that Martin was the sole agent of management on the premises at night; he was regarded by the night-shift employees as the management representative to contact on major problems and the employees have never been instructed that Martin's authority to represent management in this area was less than his apparent authority. In addition, Martin admittedly sends the green chain crew home early, along with other employees, when mechanical failure causes a breakdown in operations.

Accordingly, I find that Martin had ostensible authority to act as an agent of Respondent in the area of deciding to close down the mill during a shift, a basic issue herein, despite the fact that he may have been under instructions from top management to clear with Production Superintendent Startt or another level of supervision. See *International Longshoremen & Warehousemen's Union, C. I. O., (Sunset Line and Twine Company)*, 79 NLRB 1487. I further find that the employees of the green chain properly looked to him for instructions in the matter of closing down operations due to adverse weather conditions.

B. Sequence of events

The evidence concerning relevant events on April 9, 1953, may be summarized as follows. The four lumber pilers on the night-shift green chain gang, the complainants herein, perform a portion of their work in areas where they are not fully protected from the elements. On the evening of April 9, a light to moderate storm passed through the Burney area, with accompanying wind, snow, and rain. The four lumber pilers were getting wet in varying degrees as a result of the stormy condition, which is not unusual in winter in the Burney area. At approximately 7:40 or 7:45 p. m., they delegated James Snelling to speak to Foreman Martin relevant to closing down operations of the mill prior to the end of the shift at 1:30 a. m. It may be noted that the sawmill proper cannot operate unless the green chain is also in operation for the purpose of removing cut lumber from the mill.

Snelling immediately went to the sawmill and spoke to Martin in the presence of one Beacher Songer, sawyer of the night shift; it was then approximately 7:48 p. m. According to Snelling, he stated that, "It is pretty rough out there. How about closing the mill down?" Martin then stated, "How about running it until 8:00 o'clock so the timercards will punch out even?" Snelling agreed to this and left to inform his colleagues of the conversation.

The testimony of Songer substantially corroborates that of Snelling, although it does contain one partial inconsistency. His initial testimony on the topic of this conversation is closely parallel to that of Snelling and, in a later version, he repeated this original testimony to the effect that Snelling announced the elements were rough on the lumber pilers, whereupon Martin proposed that the men work until 8 o'clock. Songer, in his initial testimony, stated that Snelling asked Martin "about shutting down," but he later testified that he did not hear Snelling ask Martin if it was possible to shut the mill down.

Martin was an unimpressive witness who demonstrated reluctance to testify, apparently in an effort to refrain from presenting testimony adverse to Respondent. I believe that his demonstrated lack of comprehension of some of the questions put to him was for the above-stated reason. Even he, however, originally testified, in

substantial agreement with Snelling, that Snelling approached him shortly before 8 p. m., announced that the lumber pilers wanted to go in because of the elements, and that he, Martin, told him to wait until 8 p. m. He later testified substantially to the same effect.

In view of the foregoing, I believe and find that Snelling's testimony substantially reflects what took place on April 9 in this respect. I find that the four lumber pilers in concert delegated Snelling to ask Martin to close the mill down early, that Martin, as the General Counsel contends, agreed to do so at 8 p. m.; that Snelling assented to this proposal; and that Snelling duly informed his coworkers to this effect. Snelling and his colleagues proceeded to pile up all lumber remaining to be piled within a matter of minutes. The whistle blew at 8 p. m., whereupon they, together with the remainder of the green chain crew and all other employees of the sawmill, punched out and left.

Respondent attempted to adduce testimony to the effect that the whistle was blown for the purpose of changing saws. The record does not support this contention. While it was time to change saws at 8 p. m. on April 9, the testimony of Sawyer Songer, which I credit, demonstrates that Martin decided that Songer should not change saws, although he later reversed his decision *after* the whistle had been blown. Significantly, Songer customarily blows the whistle for the brief shutdown when saws are to be changed, but he did not, pursuant to Martin's instructions, blow the whistle on April 9.

On the following morning, top management of the mill concluded that the departure of the green chain crew had been unauthorized. Presumably this conclusion must have resulted from talks with or a communication with Martin, although his testimony in this respect is unimpressive and not clear. Be that as it may, both Vice-President Berry and Superintendent Startt were of the belief that the men had left without permission. I further believe and find that they entertained this belief in good faith. I can only conclude that Martin granted permission to the green chain crew to leave, later decided that his decision was unsound, and subsequently reported to his superiors that the departure had not been authorized by him. It may be noted that there is no evidence of antiunion animus on the part of Berry or Startt directed to the complainants herein; the evidence shows only that Berry bore a hostility to some members or leaders of the Union because of what he considered to be their radical views, but that, significantly, none of this hostility was directed at the complainants herein.

A word may be devoted to Respondent's contention that the men were under instructions from Foreman Lakey of the green chain crew to call him if anything untoward took place. Much testimony was developed on this topic, most of which is immaterial herein. The fact is, as found, that Martin was the only agent of Respondent on the premises during the night shift of April 9; that he was the only night foreman of Respondent, and that the men properly went to him on the occasion under discussion. Moreover, while Martin may have privately contemplated telephoning Lakey or may have unsuccessfully attempted to telephone Lakey, as he testified, the controlling fact is that Martin admittedly did not tell the men on April 9 that he had to clear the shutdown with Lakey. Significant here, too, is the fact that on an earlier occasion in March Martin had discussed with the green chain crew the possibility of closing the plant down early due to adverse weather conditions, never told them that the matter was one to be taken up with Lakey, and had in fact sent them home early that night.²

At approximately 11 a. m. on April 10, Respondent decided to discharge the 7 members of the green chain crew, including the 4 lumber pilers, the complainants herein. A representation was made to management by a union committee that the members of this crew were innocent of any wrongdoing. Later that day, management concluded that the three other members of the crew were innocent of any wrongdoing and they were put back to work that evening without any loss of time. Respondent adhered to its decision that the lumber pilers had left without permission and decided not to reinstate the four complainants, although they were offered reinstatement at a later date, as described below. Accordingly, I find that they were discharged on April 10; it may further be noted that these discharges were carried out prior to any hiring of replacements for them.

² I deem it unnecessary therefore to determine whether, as Respondent contended, members of the green chain crew had previously been instructed by Lakey to contact him in the event a crisis of any nature developed or whether, as the witnesses for the General Counsel testified, Lakey had merely told them to contact him in the event of a mechanical breakdown

C. Analysis and conclusions

(1) There are several troublesome aspects of the case which I deem unnecessary to develop in full, inasmuch as in my belief the last-enumerated paragraph below disposes of the entire matter. On the basis of the primary position maintained by the General Counsel, and as found above, the men left work on April 9 with the permission of a representative of management. I have serious doubts whether, in the absence of any antiunion animus, their discharge on the following day, carried out in good faith by top management, constitutes a violation of the Act. The fact that they left with permission would seem to rebut the existence of a concerted withholding of employment for their mutual aid or protection in the customary sense of the term.

(2) If it is claimed that the men left without permission, this presents a serious question whether their departure was a protected concerted activity for their mutual aid or protection, in an effort to better conditions of employment (see *N. L. R. B. v. Gullett Gin Company, Inc.*, 179 F. 2d 499 (C. A. 5) enforced in this respect) or whether, on the other hand, their departure, because of their unwillingness to work in stormy weather, a not unusual circumstance, constituted insubordination and an unprotected rejection of their terms of employment. (See *Robert H. Snow, d/b/a Auto Parts Co.*, 107 NLRB 242.)

(3) Respondent adamantly insisted that the discharge of the four men was proper and refused to reinstate them. I deem it unnecessary to set forth the extensive evidence with respect to subsequent negotiations between the parties, both as to a new contract and concerning reinstatement of the four men. The simple fact is that the Union, as the recognized representative of the employees, continued to negotiate in behalf of a new contract, as it had since March, and that it also sought to bring about the reinstatement of the four men. While the testimony is conflicting as to whether Respondent insisted on treating the two matters in the conjunctive or in the disjunctive, this too is not controlling. The dispositive factor, as I view the issue, is that the parties executed an agreement on May 15 which disposed of all matters in dispute between them. And, save for the filing of charges herein, the agreement has been honored and lived up to.

This agreement was signed by Vice-President Berry and General Superintendent Startt in behalf of Respondent, and by a six-man negotiating committee in behalf of the Union. It reads as follows:

STIPULATION

Scott Lumber Company, Inc. agrees to accept the offer of Local No. 13-269 in full settlement of all issues now pending between Local 13-269 IWA-CIO and Scott Lumber Company, Inc. The agreement is as follows:

1. The contract as agreed upon and set forth in Stipulation and Supplement dated June 27, 1952 which contract expired as of April 1, 1953, together with the wage scale as existed under this contract shall be renewed and continued until April 1st, 1954.

2. With regard to the issue concerning four (4) employees, to wit: Tommy Armour, Olen Bray, James Snelling and Edward Brewer, it is agreed that they shall be rehired as of May 18, 1953 with the further understanding between the Company and the Union that although then rehired their seniority shall date as of the date of their original employment by the Company and that they shall have reserved intact for them all contractual benefits that inure by virtue of their seniority; it being further agreed and provided that in the case of Olen Bray his rehiring shall not begin as of May 18 but as of such date as his physical condition may warrant, as approved by the Company doctor and if there is any question on the part of said Bray, or the Union, with regard to the decision of the Company doctor, then, and in that event, upon notice, a committee of three doctors, one appointed by the Union and one by the Company and a third by the other two doctors shall be accepted by the Company, the Union and said Bray.

It is further understood that in the rehiring of these men there is no back pay due and that their rehiring shall date as and from the 18th of May as to the three (3) now qualified to be rehired and that Bray's wages shall start from the day he is able to commence employment. [Emphasis supplied.]

Contrary to the contention of the General Counsel, (1) the circumstances surrounding this settlement were fully developed at the hearing and (2) it did not purport to be only a partial settlement of the issues between the parties. In fact, the stipulation states just the opposite on its face, declaring that it is "in full settlement of all issues now pending between Local 13-269 IWA-CIO and Scott Lumber Company, Inc."

Nor, as the General Counsel contends, is there any evidence that the parties understood the topic of back pay to remain as an item of dispute. While Respondent may have bargained hard with the Union, that is its right. *N. L. R. B. v. American National Insurance Co.*, 343 U. S. 395, and *N. L. R. B. v. Dealers Engine Rebuilders, Inc.*, 199 F. 2d 249 (C. A. 8). The simple answer is that the parties did compose all their differences. Indeed, Berry desired precisely to compose all disputes with the Union and agreed to reinstate the men despite his long-standing opposition to their reinstatement. Nor is there any evidence of animus directed at the Union in this episode. Here the Union was the bargaining agent charged with the responsibility of representing all the employees in the unit and it did precisely that in this instance. The May 15 agreement, I find, clearly constituted what the parties considered to be a final settlement between them of the two outstanding issues. See *Ford Motor Company v. Huffman*, 345 U. S. 330.

The General Counsel does not claim that Respondent has violated the settlement agreement but rather contends that this private agreement to which the Board was not a party cannot constitute a defense to unfair labor practices which public policy requires the Board to remedy. However, it is noteworthy that, in another context, an agreement between a labor organization and an employer has been accepted by the Board and the circuit court as a defense to secondary boycott charges although the conduct under consideration appeared to constitute an otherwise unlawful secondary boycott. *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 294*, 87 NLRB 972, affd. in *Raboun, d/b/a Conway's Express v. N. L. R. B.*, 195 F. 2d 906 (C. A. 2).³

It would seem therefore that an agreement as the one in the instant case, entered into after the commission of and with knowledge of unfair labor practices, assuming the discharge of the men to be such, should be accorded, at the very least, equal dignity with the agreement referred to in the above-cited case which was executed prior to the commission of the otherwise unlawful conduct.

(4) But in the final analysis, an even more fundamental consideration is present herein. One of the basic purposes of the Act, as it states, is to encourage "the practice and procedure of collective bargaining." In the instant case a voluntary settlement of all outstanding issues was reached through collective bargaining as a result of which Respondent gave up a claim that it had the right to terminate the services of the four men. Significant here is the fact that Berry, in my belief, acted in personal good faith throughout the negotiations. Moreover, as found, there was no reservation of any right to process the matter further before the Board and Respondent was rightly under the belief that the matter had been disposed of. There was no claim of intent to proceed before the Board, yet, but 10 days later on or about May 25, the Union itself, although signatory to the settlement, filed the charges herein. It cannot be contended therefore that Respondent settled the matter with knowledge of pending charges. Moreover, insofar as the record indicates, the settlement agreement has not been violated, at least not by Respondent.

In view of the foregoing considerations, I do not believe that the policies of the Act would be effectuated were the Board to go behind this agreement between the parties which was arrived at through the processes of collective bargaining. This is not a situation where a settlement agreement is in basic derogation of employees' rights as guaranteed by the Act. Accordingly, even on the assumption that the complainants herein were discharged because they had engaged in a protected concerted activity, I shall nevertheless recommend that the instant complaint be dismissed in its entirety. *Corn Products Refining Company*, 49 NLRB 1377; cf. *Sherry & Gordon Company, Inc.*, 107 NLRB 113.⁴

³ The dissent of former member Reynolds points out that a contract between the parties was being permitted to "nullify the provisions of the Act"

⁴ The evidence with respect to the two instances of alleged coercive threats is not substantial. The first, attributed to Foreman Martin, is not established by the evidence. There are varying versions concerning the second. Vice President Berry is alleged to have said on about May 13, at a bargaining meeting, that he was considering closing down the mill over the winter months, as did his competitors, in an effort to make the Union less adamant at negotiations in the spring. Another version attributes to Berry the statement that he would have to take such action if the Union persisted in its wage demands. I

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. The operations of Respondent, Scott Lumber Company, Inc., affect commerce within the meaning of Section 2 (6) and (7) of the Act.
2. International Woodworkers of America, Local 13-269, CIO, is a labor organization within the meaning of Section 2 (5) of the Act.
3. Respondent has not engaged in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act.

[Recommendations omitted from publication.]

deem it unnecessary to pass upon this statement for it is clear that, in the light most favorable to the General Counsel, it was an isolated incident and the issuance of a remedial order is not warranted under the circumstances. See *Bob Morgan Motor Company, Inc.*, 106 NLRB 334; *Waffle Corporation of America*, 103 NLRB 895; and *The American Thread Company*, 97 NLRB 810.

HARRISON STEEL CASTINGS COMPANY and UNITED STEELWORKERS OF AMERICA, CIO. *Case No. 35-CA-519. September 17, 1954*

Decision and Order

On April 13, 1954, Trial Examiner Lloyd Buchanan issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint, and recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel and the Union filed exceptions to the Intermediate Report and supporting briefs.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and the briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

[The Board dismissed the complaint.]

MEMBER MURDOCK took no part in the consideration of the above Decision and Order.

Intermediate Report and Recommended Order

The complaint herein, as amended at the hearing, alleges that the Company has violated Section 8 (a) (3) of the National Labor Relations Act, as amended, 61 Stat. 136, by laying off on April 10, 1953, and failing and refusing¹ to reinstate, because they engaged in union activities, Garnet B. Price, Edgar Rager, Jesse W.

¹ Except in the case of Johnnie Lyons, the General Counsel does not claim that there were refusals to reinstate; he relies on the Company's failure to reinstate the other seven named when the duty to do so allegedly existed. The Company admits that the eight were laid off on or about the respective dates listed.