

In the Matter of ILLINOIS TOOL WORKS and UNITED ELECTRICAL, RADIO  
& MACHINE WORKERS OF AMERICA, C. I. O., LOCAL 1114

*Case No. 13-C-2373.—Decided February 19, 1946*

DECISION

AND

ORDER

On October 12, 1945, the Trial Examiner issued his Intermediate Report<sup>1</sup> in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action as set forth in the copy of the Intermediate Report attached hereto. No exceptions to the Intermediate Report, briefs, or requests for oral argument before the Board in Washington, D. C., were thereafter filed with the Board. 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 and the entire record in the case. As previously noted, the respondent has filed no exceptions to the Intermediate Report. The Board, accordingly, adopts the findings, conclusions, and recommendations of the Trial Examiner.

THE REMEDY

In a prior proceeding<sup>2</sup> the Board has found that the respondent by varying methods has engaged in unfair labor practices. The respondent's persistent attempts to defeat self-organization among its employees culminated in the instant case in the discriminatory discharge of employee Louis Friedman, conduct which "goes to the very heart of the Act."<sup>3</sup> The respondent's anti-union background and the entire record in the instant case convinces us, and we find, that the

<sup>1</sup> By a document styled "Erratum In Intermediate Report," dated November 29, 1945, the Trial Examiner corrected an inadvertent error in the Intermediate Report

<sup>2</sup> *Matter of Illinois Tool Works and Amalgamated Machine, Tool & Die Local 1114—United Electrical, Radio & Machine Workers of America, C. I. O.* 61 N. L. R. B. 1129

<sup>3</sup> *N. L. R. B. v. Entwistle Manufacturing Co.*, 120 F. (2d) 532, 536 (C. C. A. 4), see also *N. L. R. B. v. Automotive Maintenance Machinery Co.*, 116 F. (2d) 350, 353 (C. C. A. 7), where the Court observed, "No more effective form of intimidation, nor one more violative of the N. L. R. Act can be conceived than discharge of an employee because he joined a union. . . ."

respondent has displayed an attitude of opposition to the purposes of the Act.<sup>4</sup> Because of the respondent's unlawful conduct, and the underlying purpose manifested thereby, we are convinced that the unfair labor practices found are persuasively related to the other unfair labor practices proscribed by the Act, and that danger of their commission in the future is to be anticipated from the respondent's conduct in the past.<sup>5</sup> The preventive purposes of the Act will be thwarted unless our order is coextensive with the threat. Like the Trial Examiner, we shall therefore order the respondent to cease and desist not only from the unfair labor practices herein found, but also from in any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act. In addition, we shall order the respondent to take the affirmative action recommended by the Trial Examiner.

### ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Illinois Tool Works, Chicago, Illinois, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in United Electrical, Radio & Machine Workers of America, C. I. O., Local 1114, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire or tenure of employment, or any term or condition of employment;

(b) Discriminating against any employee because he has given testimony under the Act;

(c) 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 United Electrical, Radio & Machine Workers of America, C. I. O., Local 1114, 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, as guaranteed in Section 7 of the Act.

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

(a) Offer to Louis Friedman immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority and other rights and privileges;

<sup>4</sup> *N. L. R. B. v. Bradley Lumber Company of Arkansas*, 128 F. (2d) 768 (C. C. A. 8).

<sup>5</sup> See *May Department Stores Company v. N. L. R. B.*, 66 S. Ct. 203.

(b) Make whole Louis Friedman for any loss of pay he has suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to the amount which he would normally have earned as wages from the date of the discrimination against him to the date of the respondent's offer of reinstatement, less his net earnings during said period;

(c) Post at its plant at Chicago, Illinois, copies of the notice attached to the Intermediate Report herein, marked "Appendix A."<sup>6</sup> Copies of said notice, to be furnished by the Regional Director for the Thirteenth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for the Thirteenth Region in writing, within ten (10) days from the receipt of this Order, what steps the respondent has taken to comply therewith.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Order.

### ERRATUM IN INTERMEDIATE REPORT

A paragraph having inadvertently been omitted from the Recommendations contained in the Intermediate Report issued in the above entitled matter by the undersigned on October 12, 1945, Part 2 of such Recommendations is now corrected to read as follows:

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

(a) Offer to Louis Friedman immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority and other rights and privileges;

(b) Make whole Louis Friedman for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to the amount which he would normally have earned as wages from the date of the discrimination against him to the date of the respondent's offer of reinstatement, less his net earnings during said period;

(c) Post at its plant at Chicago, Illinois, copies of the notice attached hereto, marked "Appendix A". Copies of said notice, to be

<sup>6</sup> Said notice, however, shall be, and it hereby is, amended by striking from the first paragraph thereof the words "RECOMMENDATIONS OF A TRIAL EXAMINER" and substituting in lieu thereof the words "A DECISION AND ORDER"

furnished by the Regional Director for the Thirteenth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for the Thirteenth Region in writing within ten (10) days from the receipt of this amended Intermediate Report what steps the respondent has taken to comply therewith.

It is further recommended that unless on or before ten (10) days from the date of the receipt of this amended Intermediate Report, the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

In view of the amendment of the Intermediate Report, any party or counsel for the Board may within fifteen days from the date of the receipt hereof file with the Board, Rochambeau Building, Washington 25, D. C., an original and four copies of a statement in writing setting forth such exceptions to the amended Intermediate Report or to any part of the record or proceedings (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy upon each of the parties and shall file a copy with the Regional Director. Should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of the receipt of this amended Intermediate Report.

FREDERIC B. PARKES, 2ND,

*Trial Examiner.*

Dated November 29, 1945.

#### INTERMEDIATE REPORT

*Mr. Robert T. Drake*, for the Board.

*Mr. Erwin W. Roemer*, of Chicago, Ill., for the respondent.

*Miss Florence L. Atkinson* and *Mr. Thomas M. McKenna*, of Chicago, Ill., for the Union.

#### STATEMENT OF THE CASE

Upon a second amended charge duly filed by United Electrical, Radio & Machine Workers of America, C. I. O., Local 1114, herein called the Union, the National Labor Relations Board, herein called the Board, by its Acting Regional Director for the Thirteenth Region (Chicago, Illinois), issued its complaint dated June 30, 1945, against Illinois Tool Works, Chicago, Illinois, 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 (1), (3), and (4) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by notice of hearing, were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance that the respondent: (1) on or about March 31, 1944, discharged Louis Friedman and has thereafter failed and refused to reinstate him for the reason that he joined and assisted the Union, engaged in concerted activities with other of the respondent's employees, and appeared and gave testimony before a Trial Examiner of the Board on March 8, 1944, in Case No. 13-C-2147, in which the respondent was concerned;<sup>1</sup> and (2) by the foregoing conduct engaged in unfair labor practices within the meaning of Section 8 (1), (3), and (4) of the Act.

Pursuant to notice, a hearing was held at Chicago, Illinois, on July 24, 1945, before Frederic B Parkes, 2nd, the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel and the Union by official representatives. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the close of the hearing the undersigned granted a motion by counsel for the Board to conform the pleadings to the proof as to dates and minor variances. On August 6 and 8, 1945, the respondent and the Union filed briefs, respectively.

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

Illinois Tool Works, an Illinois corporation with its principal place of business in Chicago, Illinois, is engaged in the manufacture, sale, and distribution of cutting tools, saws, bits, gears, measuring machines, and other machine tools. The Company also operates plants at Elgin, Illinois, and Toronto, Canada.<sup>2</sup> During the year 1944, it purchased for use at its Chicago plant, metals and materials valued in excess of \$100,000, of which more than 25 percent in value was shipped to the plant from points outside the State of Illinois. During the same period, the respondent sold finished products valued in excess of \$200,000, of which more than 25 percent in value was transported to points outside the State of Illinois. The respondent concedes that it is subject to the Board's jurisdiction.

##### II. THE ORGANIZATION INVOLVED

United Electrical, Radio & Machine Workers of America, Local 1114, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the respondent.

##### III. THE UNFAIR LABOR PRACTICES

###### A Background

The hearing in Case No. 13-C-2147, referred to in the complaint, was held before a Trial Examiner on March 6 to 10, 1944, Louis Friedman, employed by

<sup>1</sup> *Matter of Illinois Tool Works and Amalgamated Machine, Tool & Die Local 1114—United Electrical, Radio & Machine Workers of America, C. I. O.*, Case No. 13-C-2147, 61 N L R B 1129

<sup>2</sup> The instant proceeding is concerned only with the respondent's Chicago plant, as was Case No. 13-C-2147.

the respondent from 1921 to 1926 and from 1933 to March 31, 1944, testified as a witness for the Board at that hearing and was present during the first three days thereof. The Board in its Decision and Order in that case, dated May 12, 1945, found that the respondent, by discriminatorily discharging Victor Marsich, had violated Section 8 (3) of the Act and that the discriminatory discharge of Marsich, the discriminatory lay-off of Thomas McKenna, certain anti-union statements and conduct, and the promulgation of rules prohibiting the collection of union dues and solicitation of members on the respondent's premises during non-working hours were integral parts of a course of conduct pursued by the respondent which interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act<sup>3</sup> According to the Board's official records at the date of this report in the instant proceeding, the respondent has not complied with the Board's Decision and Order

#### B *The discriminatory discharge of Friedman*

Friedman, who had been in the respondent's employ for two periods totalling 16 years, was employed at the time of his discharge as a-turret lathe operator in the cutter department on the day shift from 7 a. m. to 4:30 p. m. According to Friedman's unadmitted and credible testimony, he was the highest paid employee in the department.<sup>4</sup> On August 5, 1942, he joined the Union, and, as a member of its organizing committee, became one of the Union's most active adherents in the solicitation of members and the preparation and distribution of leaflets

In Case No. 13-C-2147, the Board found that in November 1942, after the distribution of the first leaflet by the Union naming the members of its organizing committee, employees Friedman and Marsich were summoned to the office of Raymond G. Mulder, general foreman of the cutter department, who told them that there was to be no union solicitation at any time on the respondent's premises, that they had been soliciting, and that if they were caught again, they would be discharged. The Board further found that the respondent, in its letter to employees of April 23, 1943, and in its booklet to employees of May 14, 1943, inaugurated a rule against solicitation of members which was unduly restrictive of legitimate union activities conducted during non-working hours and ordered that the rule be rescinded.

However, Friedman testified without contradiction and the undersigned finds that since the hearing in Case No. 13-C-2147, there had been no further interpretation or clarification by the respondent of the no-solicitation rule; but Friedman admitted that from his 3-day attendance at the earlier hearing, he was aware that the respondent's rules forbade union solicitation during working hours on company property. He denied having sought to enlist the membership of any employee during working hours subsequent to the earlier hearing, although he admitted in his testimony given therein that he had prior to that time solicited memberships during working hours "on the q. t."

With respect to the events subsequent to the earlier hearing and leading to his discharge on March 31, 1944, Friedman testified as follows: He continued his union activities in his free time by distributing pamphlets and union application cards and by soliciting memberships. During the last week of his employment by the respondent, Friedman in this manner enlisted the memberships of 33 employees in the Union. A day or two after the conclusion of the earlier hearing, Friedman talked in the plant cafeteria to employee George Roschman about joining the union. During this conversation, Friedman gave Roschman a leaflet

<sup>3</sup> See footnote 1, *supra*.

<sup>4</sup> From January 1 to March 31, 1944, Friedman earned \$1,014.

then being distributed by the Union and some application cards. In Friedman's opinion Roschman was influential with a group of employees in his section of the shop and Friedman hoped that by enlisting Roschman's membership, he might succeed in persuading the entire group to join the Union. According to Friedman, his next discussion with Roschman concerning the Union occurred during working hours on the morning of March 26 or 27, 1944, when Roschman voluntarily came over to Friedman's machine<sup>5</sup> and asked, "How is the union?" Friedman replied, "It is fine", and a conversation ensued lasting 10 or 15 minutes, during which they talked of "the good old times" when they "made four dollars a week". In the course of the conversation, Friedman gave his "union talk" to Roschman. Friedman explained that his "union talk" consisted of a theory expounded to the effect that had the employees been organized in "the good old days," they would have been assured at least a half day's pay on the occasions when they checked in, but found no work to be done. Friedman also indicated that he would like for a union organizer to meet with Roschman and his group in order to answer their questions accurately. According to Friedman, he never again spoke with Roschman other than a greeting of "hello" or "what do you say" in passing. Without prior warning at 3:55 in the afternoon of March 31, 1944, Foreman Mulder ordered Friedman to report to the personnel office. Friedman complied and in the office was told by Mulder in the presence of one Larson, "Louie, of all the people, you should know the rules of the company." When Friedman inquired, "What was the matter?" Mulder replied that Friedman was "fired for soliciting union members" during working hours. Friedman denied that he had engaged in such activities and inquired who had so informed Mulder and the time the alleged solicitation had occurred. Mulder refused to give any information. Friedman was requested to sign a discharge slip giving as the reason for discharge, "Discharged because of soliciting membership in the union during working hours, contrary to the published rule of the company." Friedman signed but beneath his signature wrote a denial of the alleged reason given for discharge.

In regard to the conversations in question, Roschman testified that during working hours on the morning of March 26 or 27, 1944, as Roschman was walking up an aisle in the vicinity of Friedman's machine en route to the washroom, Friedman beckoned for Roschman to come to Friedman's machine and the following conversation ensued:

I just asked him how the union was coming along. He said it was good, and we talked about what our pays were back a few years . . . And we talked about the union, and . . . he asked me if I was going to sign up with him, and it was he who decided that I was a little leader of a small group back at the other end of the shop—it wasn't myself that made that decision. He thought that I had pretty fair control over the boys at the other end of the shop, and I didn't disagree or agree with him . . . I told him there was quite a few questions that I couldn't understand, as to how the union ran and operated, and he said he couldn't answer all of them, but if I got the boys together, that Louis Friedman would get an organizer and he would be more than glad to answer all the questions so we would be satisfied.

According to Roschman, he was given 4 or 5 application cards by Friedman during this conversation. Roschman denied that he ever told any management representative about the colloquy above set forth.

Roschman testified that he had a second conversation with Friedman on March 31, 1944, about 8:15 or 8:30 a. m., during working hours, when Friedman came

<sup>5</sup> Friedman and Roschman worked on machines about 140 feet apart.

to the tool crib in the vicinity of Roschman's machine. According to Roschman, Friedman inquired, "Are you ready to sign?," referring to the union application card, and a discussion ensued for 8 or 10 minutes in which Friedman "talked for the union" and Roschman repeated as he had before that he "couldn't see it, and unless things got a little cleared up" he would not be interested in joining. They also talked about general plant affairs.

Roschman testified that upon ruining 3 pieces of equipment shortly after the above conversation, he told his immediate supervisor, Jerry Quirk, "This looks like my bad day . . . I spoiled three jobs, and I am going home." A few minutes later Assistant General Foreman Edward Fabisch came over and Roschman, according to his testimony, told Fabisch of the work spoilage and his decision to go home for the day. Roschman testified that Fabisch stated that he had "seen me talking to Lou Friedman" and "wanted to know what the discussion was about;" that Roschman replied that Friedman had asked him "to sign up;" and that they had a discussion about the Union.

From the testimony summarized above, it is thus clear that Roschman and Friedman are in substantial agreement as to the colloquy occurring on March 26 or 27, 1944. Friedman, however, insisted that he gave application cards to Roschman in the plant cafeteria several days before this conversation; but Roschman testified on cross-examination by Board's counsel that he received them during the course of the March 26 conversation. Friedman denied that the March 31 conversation with Roschman occurred as testified to by the latter. Roschman impressed the undersigned as an intelligent forthright witness whose testimony is entitled to credence. Friedman, on the other hand, was particularly vague in recalling the lay-out of that portion of the plant in which he had worked and the undersigned was not impressed as to the accuracy of his testimony as a whole. As to the date the application cards were given Roschman, it is reasonable to assume that they would have been given Roschman during the conversation of March 26 or 27 when they were talking of the group of employees to whom Roschman was allegedly a counselor. The undersigned finds that they were distributed during that conversation. The undersigned cannot accept Friedman's testimony that nothing occurred on March 31 to motivate his discharge. Certainly, Roschman did not appear to the undersigned to be the type of person who would have fabricated the incident in order to precipitate Friedman's discharge. The undersigned credits Roschman's testimony and finds the conversations between Roschman and Friedman occurred as testified to by Roschman.

### C. Conclusions

The incidence and circumstances surrounding Friedman's discharge are identical in pattern to those involved in the discharge of Victor Marsich, who the Board found in Case No. 13-C-2147 was discriminatorily discharged on April 30, 1943, for allegedly soliciting union memberships during working hours. As noted above, only once, in the fall of 1942, were Marsich and Friedman warned by Foreman Mulder that they would be discharged if they solicited union memberships on the respondent's premises. Like Marsich, Friedman was discharged upon information given as to only one incident of alleged solicitation, namely, the conversation with Roschman on March 31, 1944.<sup>6</sup> In both cases, the respondent had not been informed at the time of the respective discharges of earlier incidents possibly violative of the no-solicitation rule.

<sup>6</sup> As previously noted, Friedman had testified at the earlier hearing that prior to that time he had solicited memberships in the Union during working hours, and the respondent, of course, had knowledge of such testimony. However, the reason given for Friedman's discharge was confined to the single alleged solicitation of Roschman on March 31.

As in the case of Marsich, the respondent's investigation of the incident was plainly unfair and incomplete. In both cases, the respondent refused to listen to the dischargee's version of what had occurred. Had the respondent made an impartial investigation, it might have concluded that there was no real violation of the rule; or that it would impose a lesser penalty or none at all. In any event, the respondent's failure to conduct a fair investigation, viewed in the light of the Board's earlier finding of the respondent's antipathy to the Union, its attempt to prohibit all solicitation for the Union at the plant, its discriminatory discharge of Marsich, and its discriminatory lay-off of McKenna, evidences the respondent's eagerness to rid itself of still another outstanding union adherent and indicates that the real motive for the discharge of Friedman was the respondent's anti-union animus. That Friedman was an outspoken and active participant in union affairs was well known to the respondent; he had been present during three days of the hearing in Case No. 13-C-2147 and had testified therein as a witness for the Board, clearly demonstrating that he was one of the most active union adherents. That the respondent was searching for an excuse to discharge him is revealed by the fact that Assistant General Foreman Fabisch took the initiative in seeking to determine the subject matter of the discussion between Friedman and Roschman on March 31. Furthermore, the record establishes that Friedman had been in the respondent's employ for 16 years, that he had never had any complaints about his work, that he was one of the most skillful employees in his department, and that he earned more than any of the other employees in his department. It thus appears that his production and efficiency records gave the respondent no ground for his discharge.

Also noteworthy is the disparity of treatment accorded employee Adam Kamysz, who, according to the Board's finding in Case No. 13-C-2147, was merely laid off for a few days for admittedly violating the no-solicitation rule, in contrast to the extreme penalty of immediate discharge meted out to Marsich and Friedman. The Board's finding of real disparity of treatment between Marsich and Kamysz is equally applicable to Friedman. Only one warning against solicitation was given either Friedman or Marsich, as compared with two or three such warnings accorded Kamysz; the warning to Friedman was given almost a year and a half before his discharge, whereas all warnings to Kamysz were given within 1 month prior to his lay-off; and as previously noted, Kamysz clearly admitted to the respondent his violation of the no-solicitation rule, immediately prior to his lay-off, while there was no such admission by Friedman at the time of his discharge.

In view of the foregoing, and upon the entire record, the undersigned finds that the respondent discharged Friedman because of his union membership and union activities. The undersigned infers and finds that an additional reason for Friedman's discharge was that he had given testimony before a Trial Examiner of the Board on March 8, 1944, in Case No. 13-C-2147. By thus discriminating against Friedman, the respondent has violated Section 8 (3) and (4) of the Act and has discouraged membership in the Union and interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.<sup>7</sup>

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III, above, occurring in connection with the operations of the respondent described in Section I, above,

<sup>7</sup> *Matter of Shell Oil Co*, 34 N. L. R. B. 866, enf'd 128 F. (2d) 206 (C. C. A. 5); *Matter of American Smelting & Refining Co.*, 34 N. L. R. B. 968, enf'd 128 F. (2d) 345 (C. C. A. 5); *Matter of May Department Stores Co*, d/b/a *Famous-Barr Co.*, 59 N. L. R. B. 976.

have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

Having found that the respondent has engaged in certain unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act.

The undersigned has found that the respondent has discriminated in regard to the hire and tenure of employment of Louis Friedman. The undersigned will therefore recommend that the respondent offer Friedman immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority and other rights and privileges. He will further recommend that the respondent make whole Louis Friedman for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by the payment to Friedman of a sum of money equal to the amount which he would normally have earned as wages from March 31, 1943, the date of such discrimination, to the date of the offer of reinstatement, less his net earnings,<sup>8</sup> during such period.

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

#### CONCLUSIONS OF LAW

1. United Electrical, Radio & Machine Workers of America, C I O., Local 1114, is a labor organization, within the meaning of Section 2 (5) of the Act.
2. By discriminating in regard to the hire and tenure of employment of Louis Friedman, thereby discouraging membership in a labor organization, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act; and by discriminating against Louis Friedman for the reason that he testified at a hearing conducted under the provisions of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (4) of the Act.
3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (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

Upon the basis of the above findings of fact and conclusions of law, the undersigned recommends that the respondent, Illinois Tool Works, Chicago, Illinois, its officers, agents, successors, and assigns shall:

1. Cease and desist from:
  - (a) Discouraging membership in United Electrical, Radio & Machine Workers of America, C. I. O., Local 1114, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other man-

<sup>8</sup> By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company*, 8 N L R B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N. L. R. B.* 311 U. S. 7.

ner discriminating in regard to their hire or tenure of employment, or any term or condition of employment;

(b) Discriminating against any employee because he has given testimony under the Act;

(c) 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 United Electrical, Radio & Machine Workers of America, C. I. O., Local 1114, 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, as guaranteed in Section 7 of the Act.

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

(a) Make whole Louis Friedman for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to the amount which he would normally have earned as wages from the date of the discrimination against him to the date of the respondent's offer of reinstatement, less his net earnings<sup>9</sup> during said period;

(b) Post at its plant at Chicago, Illinois, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Thirteenth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the Thirteenth Region in writing within ten (10) days from the receipt of this Intermediate Report what steps the respondent has taken to comply therewith.

It is further recommended that unless on or before ten (10) days from the date of the receipt of this Intermediate Report, the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, effective July 12, 1944, any party or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report<sup>9</sup> or to any other part of the record or proceedings (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy upon each of the parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board.

FREDERIC B PARKES, 2ND,  
*Trial Examiner.*

Dated October 12, 1945.

<sup>9</sup> See footnote 8, *supra*.

APPENDIX A

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 in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist United Electrical, Radio & Machine Workers of America, C. I. O., Local 1114 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.

We will offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination.

Louis Friedman

All our employees are free to become or remain members of the above-named union or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization, and will not discriminate against any employee because of his appearance as a witness in any proceeding of the National Labor Relations Board.

ILLINOIS TOOL WORKS,  
*Employer.*

Dated-----

By-----  
(Representative) (Title)

NOTE.—Any of the above-named employees presently serving in the armed forces of the United States will be offered full reinstatement upon application in accordance with the Selective Service Act after discharge from the Armed Forces.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.