

In the Matter of PENOKEE VENEER COMPANY, SPLICEDWOOD CORPORATION, AND F. A. MACDONALD COMPANY¹ and LOCAL No. 12-381, INTERNATIONAL WOODWORKERS OF AMERICA, C. I. O.

Case No. 18-C-1250.—Decided August 21, 1947

Mr. Stephen M. Reynolds, for the Board.

Messrs. O. S. Hoebreckæ, of Milwaukee, Wis., and *R. J. Prittie*, of Ashland, Wis., for the respondents.

Mr. Henry Paul, by *Mr. A. E. Badin*, of Duluth, Minn., and *Mr. Clifford A. Baker*, of Ironwood, Mich., for the CIO.

Mr. Wm. C. Baisinger, Jr., of counsel to the Board.

DECISION
AND
ORDER

On November 1, 1946, Trial Examiner Wallace E. Royster issued his Intermediate Report in the above-entitled proceeding, finding that the respondents, Penokee Veneer Company, Splicedwood Corporation, and F. A. MacDonald Company, had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that the respondents had not engaged in unfair labor practices within the meaning of Section 8 (3) of the Act, as alleged in the complaint, and recommended dismissal of that allegation. Thereafter, the respondents and the CIO 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 briefs filed by the respondent and the CIO, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the exception and addition noted below :

¹ In the caption and throughout the Intermediate Report the name "Splicedwood" appear incorrectly as "Splicewood."

1. The Trial Examiner found, and we agree, that the respondents, after having bargained to an impasse with the CIO as to wages and other matters, violated Section 8 (1) of the Act by attempting to poll each striker, as to whether he individually would return to work "under the wages, hours, and working conditions" proposed by the respondents and rejected by his exclusive bargaining representative. In agreeing with the Trial Examiner, we have considered the respondents' conduct in the light of our dismissal of the complaint in the *United Welding Company* case,² and we are satisfied that the present case is distinguishable. In the *United Welding Company* case, the employer wrote letters to its striking employees in an effort to convince them of the reasonableness of its wage offer which their bargaining representative had rejected and of the futility of continuing the strike, but at the same time it urged the strikers to consult with their *union* so that the strike could be settled by the process of collective bargaining on a mutually satisfactory basis. Furthermore, there the employer "made no direct offer to its employees in its letter" and, as we found, did not seek to "bargain with the employees apart from the Union in violation of the Act." In the present case, the explicit language of the respondent's letter and accompanying ballot requires a contrary conclusion. The ballot sent to the strikers provided for a yes or no response to the question "Do you desire to return to work under the wage, hours, and working conditions as proposed by the Company to the Union at the meeting of April 9?" The letter stated, in part, that "If employees in sufficient numbers to commence operations indicate they desire to return to work, the company will at a later date announce the reopening of the plant." In these circumstances, we are convinced and find that the respondents sought to bypass the CIO as the exclusive bargaining representative of the strikers and to deal with each striker on an individual basis.

2. Inasmuch as it appears that after May 6, 1946, the respondent MacDonald ceased to be the employer of any of the employees affected by the unfair labor practice here involved and that substantially all of its former employees are now employed by the respondent Penokee, we do not deem it necessary, to effectuate the policies of the Act, to name the respondent MacDonald in our remedial order, as 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 respondents, Penokee Veneer

² *Matter of United Welding Company*, 72 N L R B 954.

Company and Splicedwood Corporation, Mellen, Wisconsin, and each of them, and their officers, agents, successors, and assigns shall:

1. Cease and desist from interfering with the right of their employees to bargain collectively through Local No. 12-381, International Woodworkers of America, C. I. O., or any other representative of their own choosing, and to engage in concerted activities for the purpose of collective bargaining, by attempting to bargain with their employees individually or by any like or related acts.

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

(a) Post immediately at their respective plants in Mellen, Wisconsin, copies of the notice attached hereto, marked "Appendix A."³ Copies of said notice, to be furnished by the Regional Director for the Eighteenth Region, shall, after being duly signed by the respondents' respective representatives, be posted by the respondents immediately upon receipt thereof and maintained by them for sixty (60) consecutive days thereafter, in conspicuous places in the plants, including all places where notices to employees customarily are posted. Reasonable steps shall be taken by the respondents to insure that said notices are not altered, defaced, or covered by other materials;

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

IT IS FURTHER ORDERED that the complaint, insofar as it alleges that the respondents discriminated against John Gregor, William Kruzan, Alec Pufall, George Ellias, William Pray, and Bart Carbon, within the meaning of Section 8 (3) of the Act, be, and it hereby is dismissed.

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Order.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT interfere with the right of our employees to bargain collectively through Local No. 12-381, International Woodworkers of America, C. I. O., or any other representative of their own

³ In the event this Order is enforced by decree of a Circuit Court of Appeals, there shall that Porter asked Pittman whether he could work overtime in order to repay the loan, was States Circuit Court of Appeals Enforcing "

choosing, and to engage in concerted activities for the purpose of collective bargaining, by attempting to bargain with our employees individually, or by any like or related acts.

PENOKEE VENEER COMPANY

Employer.

By -----

(Representative) (Title)

SPLICEDWOOD CORPORATION

Employer.

Dated -----

By -----

(Representative) (Title)

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

INTERMEDIATE REPORT

Mr. Stephen M. Reynolds, for the Board

Messrs. O S. Hoebrockx, of Milwaukee, Wis., and *R J Prittie*, of Ashland, Wis., for the respondents.

Mr. Henry Paul, by *Mr. A E Baden*, of Duluth, Minn., and *Mr. Clifford A. Baker*, of Ironwood, Mich., for the CIO.

STATEMENT OF THE CASE

Upon an amended charge filed July 30, 1946, by Local No. 12-381, International Woodworkers of America, C. I. O., herein called the CIO, the National Labor Relations Board, herein called the Board, by its Regional Director for the Eighteenth Region (Minneapolis, Minnesota), issued its complaint dated August 12, 1946, against Penokee Veneer Company, Splicewood Corporation, and F. A. MacDonald Company, herein respectively called Penokee, Splicewood, and MacDonald and collectively called the respondents, alleging that the respondents had engaged in and were engaging in unfair labor practices within the meaning of Section 8 (1) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act, and that Penokee and MacDonald additionally had engaged in and were engaging in unfair labor practices within the meaning of Section 8 (3) of the Act. Copies of the complaint, accompanied by notice of hearing, were served upon the respondents and the CIO.

With respect to unfair labor practices, the complaint alleged, in substance, that from on or about March 2, 1946, the respondents questioned employees about CIO membership and activity; discouraged employees from engaging in CIO activity, threatened reprisals against CIO members; solicited employees to abandon the strike and the CIO; urged employees to affiliate with a union other than the CIO; granted wage increases to certain employees while the CIO was seeking to negotiate with the respondents; and disparaged and ridiculed the CIO and its leaders. As amended at the hearing,¹ the complaint further alleged that MacDonald on or about June 22, 1946, discriminatorily discharged John Gregor, William Kruzan, Alec Pufall, George Elias, William Pray, and Bart Carbon, and

¹ On motion of Board's counsel the complaint was amended to allege that Bart Carbon was discriminatorily discharged by MacDonald on June 22, and that Penokee, on July 1, discriminatorily refused to hire him. The motion was granted by the undersigned over objection of respondent's counsel who, however, conceded that he required no more time to meet the evidence with respect to Carbon.

that Penokee on various subsequent dates in June and July 1946, discriminatorily refused to hire the same individuals.

In a joint answer, docketed in the Regional Office of the Board on August 19, 1946, the respondents severally and collectively admitted certain of the jurisdictional allegations of the complaint, denied others, and denied the commission of unfair labor practices

Pursuant to notice, a hearing was held in Mellen, Wisconsin, on September 17 and 18, 1946, before the undersigned, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondents, and the CIO were represented by counsel and participated in the hearing. All parties were afforded opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the conclusion of the Board's case-in-chief, counsel for the respondents moved to dismiss certain sections of the complaint. Such motion with respect to the allegations that the respondents questioned employees about CIO membership and activities; threatened reprisals against CIO members and solicited employees to affiliate with a union other than the CIO were granted; others were denied with permission to renew at a later point in the hearing. At the close of the hearing the motions, not previously granted, were renewed and an additional motion made to dismiss the complaint in its entirety. Rulings on these motions were reserved by the undersigned and are disposed of in this report. Counsel for the Board argued orally on the record; counsel for the respondents did not take such opportunity. A motion by Board's counsel to conform the pleadings to the proof in formal matters was granted without objection. All parties were given until October 9 for the filing of briefs or proposed findings of fact and conclusions of law, or both. A brief has been received from counsel for the respondents.

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 RESPONDENTS

Respondent Penokee, a Wisconsin corporation, is engaged in the manufacture of wood veneers at its plant in Mellen, Wisconsin. During December 1945, and January and February 1946, Penokee purchased raw materials, consisting principally of logs, in the amount of 7,684 tons of which 86 percent was shipped to it from points outside Wisconsin. During the same period, Penokee sold finished products weighing 1,227 tons of which 85 percent was shipped to points outside the State of Wisconsin.

Respondent Splicewood, a Wisconsin corporation, is engaged at Mellen, Wisconsin, in the manufacture of plywood from veneer which it secures principally from Penokee. During the same period, stated above, Splicewood sold 543 tons of finished products of which 85 percent was shipped to points outside the State of Wisconsin.²

Respondent MacDonald, a Wisconsin corporation, from May 1942, until May 1946, was under contract with Penokee to perform certain operations for the latter corporation. In the performance of this contract, MacDonald assisted in the procurement of logs for Penokee, and stacked, moved, cut, and placed the logs in processing vats for further treatment by Penokee. Thus MacDonald performed an integral and essential part of the operation of Penokee, necessary to

² These findings as to Penokee and Splicewood are based upon the allegations in the complaint undenied in the respondent's answer and upon the testimony of R. J. Prittie, secretary of the respondent corporations

the manufacture of veneer. Without controverting this conclusion, the respondents contend, however, that MacDonald's work ceased on March 2, 1946, when employees of all respondents struck and caused the closing of Penokee and Splicewood and that since that date, not having performed its function, MacDonald has not been engaged in commerce or in any activity affecting commerce. There is no merit in this contention. Until May 6, at least, when its contract with Penokee was terminated, MacDonald was prevented from continuing its work only by virtue of the strike and the function which it performed was taken over by Penokee when the strike ended. During the strike and until May 6, MacDonald in cooperation with Penokee and Splicewood, as will appear, attempted to persuade the striking employees to return to the tasks which they had previously performed. The strike did not remove MacDonald's operations from commerce but occasioned merely an interruption. It is found that MacDonald was engaged in activities affecting commerce from the date of its contract with Penokee, May 5, 1942, until the termination of the contract May 6, 1946.

The complaint alleges, and the respondents deny, that they at all times material have been engaged in a common enterprise, with various divisions of function, in the procurement of logs and the manufacture of veneers. Stock in the three corporations is held by a small group of individuals, M. C. McIver and E. H. Muehlmeier are among the principal stockholders of each, Muehlmeier and R. C. Prittie are directors; Prittie and Nelson Petrie are officers. None of the respondents, however, owns stock in either of the others. The contract between the respondents and the CIO preserved the individual identity of each employer and, while treating the employees of all as a single bargaining unit for some purposes, recognized that each respondent was the employer only of the workers in its separate operation and provided for seniority based upon service with only a single employer. Agreement was reached, however, on preferential hiring by any company of the laid-off employees of another. During the period when it is alleged that the unfair labor practices occurred, the employees of each respondent were under the separate supervision of each, pay-roll records were separate, and each did hiring for its own account only. The undersigned finds that the respondents were at all times material herein engaged in separate ventures.

II. THE ORGANIZATION INVOLVED

Local No. 12-381, International Woodworkers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the respondents.

III. THE UNFAIR LABOR PRACTICES

A. Background

Penokee was incorporated in 1939 and began its operations in the manufacture of veneers in that year. In the beginning, it performed the "yard" operations with its own employees bringing the logs to the plant, moving them about the yard, and depositing them in the vats. In 1940, Penokee's president, M. C. McIver, entered into a partnership arrangement with one F. A. MacDonald and the partnership contracted to do Penokee's yard work. In 1942, the partnership was dissolved and MacDonald incorporated. The function of MacDonald was the same as that of the partnership and there was no change in the number or duties of the employees. In early 1943, Splicewood was incorporated and since that time has been engaged in the manufacture of plywood made principally from veneers produced by Penokee.

In the summer of 1943, the CIO began organizational activities among the employees. In a representation proceeding initiated by that organization, the

Board on August 3, 1943, directed the conduct of an election among the employees of the three respondents³. The CIO won the election and was duly certified by the Board as exclusive collective bargaining representative. On April 2, 1945, following protracted proceedings before the Regional and National War Labor Board, the respondents and the CIO entered into a collective bargaining contract for a period ending October 30, 1945. By agreement of the parties, in September 1945, the life of the contract was extended for an additional 60 days. Bargaining on the terms of a new contract began in December 1945, and continued through January and February 1946. Although in substantial agreement on many points, the parties were unable to come to an accord on wages, overtime payments, and union security. In consequence, the employees struck on March 2, 1946.

B *Interference, restraint and coercion*

Within a few days after the commencement of the strike the respondents instituted a policy of mailing to the strikers mimeographed letters setting forth the respondents' position on the disagreement between the respondents and the CIO. These letters were couched in temperate language and purported fairly to analyze the points of difference and to persuade the employees that the position of the CIO in refusing the respondents' offers was wrong and contrary to the interests of the employees. Thus in two such letters, the respondents calculated the amount of wages lost as a result of the strike and the number of weeks of work required to repair this loss even under a higher wage rate. In others the suggestion was made that the CIO did not represent the wishes of the employees and the desire expressed that the employees have opportunity by means of a secret ballot to accept or reject the terms of settlement offered by the respondents. Counsel for the Board made no contention at the hearing with respect to this campaign of the respondents except to assert that its action on April 15, constituted a violation of Section 8 (1) of the Act. Under that date the respondents again addressed their employees recounting fruitless bargaining with the CIO on April 9, describing the additional concessions offered by the respondents on that date, and expressing a belief that a majority of employees did not favor the strike. Attached to the letter was a ballot in the following form:

BALLOT

Do you desire to return to work under the wages, hours, and working conditions as proposed by the Company to the Union at the meeting of April 9?

YES

NO

The letter concluded with the statement:

As we have repeatedly stated, no employee is under any compulsion to return to work under the conditions offered. We wish to emphasize that those employees who elect to remain out on strike will be accorded their full rights under State and Federal labor laws.

Enclosed with the letter and the ballot were the respondents' offers on wages and working conditions, as proposed in a meeting with a United States Commissioner of Conciliation, including a statement then made by counsel for the respondents that "On Union security, the company stated some time ago that it did not

³ *Matter of Penokee Veneer Company, Splicewood Corporation and The F. A. MacDonald Company*, 51 N L R B 997

feel the Union had sufficient responsibility and integrity to warrant the companies' assistance in maintaining union membership. We still feel very much the same way." It is the contention of Board's counsel that the respondents engaged in an unfair labor practice by the attempted poll of the employees and that by publishing the criticism of the CIO, the respondents disparaged that organization and its leadership.

That an employer may not go behind a designated bargaining representative and attempt to deal directly with his employees is no longer debatable. Once such a representative has been selected the Act requires an employer to deal with it on matters of bargaining and with none other. Here the CIO had been certified by the Board in September 1943, and on April 15, 1946, no intervening circumstance had indicated that it no longer occupied that status. Indeed, the employees by strike action had demonstrated dramatically their support of the CIO. The undersigned finds that by attempting to poll the employees to secure repudiation of the CIO and its leadership, the respondents, and each of them, violated Section 8 (1) of the Act.⁴ The publication, however, of the offer of the respondents to the CIO including the incidental remarks of respondents' counsel concerning alleged lack of responsibility and integrity on the part of the CIO, appears to the undersigned to be an exercise by the respondents of their undoubted right to publicize their position to the employees and to explain why they refused to accord any form of union security to the CIO.⁵

About May 15, 1946, another labor organization, affiliated with the American Federation of Labor, filed a petition with the Board's Regional Office in Minneapolis, Minnesota, seeking certification as bargaining representative of respondents' employees in the contract unit. Upon receipt of information concerning the filing of this petition, the respondents refused further to bargain with the CIO until the alleged question concerning representation was resolved. The complaint does not allege this refusal to be in violation of the Act. Sometime subsequent to July 1, 1946, the petition was withdrawn and similar action instituted before the Wisconsin Employment Relations Board. At the time of the hearing the respondents recognized no labor organization as the representative of the employees.

C. Alleged discrimination in regard to hire and tenure of employment

1. The discharges

On or about May 6, 1946, Penokee terminated its contract with MacDonald and on June 22, following, MacDonald notified its employees that their services no longer were required. Counsel for the Board contends that the contract was terminated for the purpose of affording the respondents an opportunity to discharge the MacDonald employees who as a group, allegedly, had been the most active on the picket line in support of the strike. Penokee and MacDonald assert that the contract was terminated solely because Penokee could perform

⁴ See *N. L. R. B. v. Montgomery Ward & Co.*, 133 F. (2d) 676, 681, where the Court stated, "This attempt to deal individually with the employees at a time when a strike was in progress, apparently the result of unproductive efforts in collective bargaining, is within the prohibition of Section 8 (1) of the Act. . . . By attempting to deal with the individual employees, Wards, in this instance, ignored and disregarded the employees' chosen representative, selected for the purpose of collective bargaining, and thereby engaged in an unfair labor practice."

⁵ Lack of "responsibility" on the part of a union was a reason frequently advanced by the National War Labor Board in refusing to recommend the incorporation of a maintenance-of-membership provision in a contract. See in re *Humble Oil and Refining Company*, Case No. 111-1819-D (8-D-67), April 1, 1944. 14 L. R. R. M. 1570.

the work directly at less cost and with greater expedition than by contract. The proof is not convincing that the termination of the contract was discriminatorily motivated. In consequence no violation of the Act is found with respect to the discharge of Gregor, Kruzan, Pufall, Elias, Pray, and Carbon on June 22.

2. The refusals to hire

Commencing about June 19, agents of Respondents Penokee and Splicewood made further attempts to resume operations by visiting employees and urging them to return to work. This campaign seems to have enjoyed a measure of success and a considerable number of employees responded to the invitation. On June 22, Penokee and Splicewood mailed letters to all their employees who had not returned inviting them to do so and announcing that the plants would be open for full operations on June 25. On June 23, the community was visited by a disastrous flood: on June 24, the picket line was abandoned and all turned to the task of rescuing lives and property threatened thereby. On June 26, the CIO wrote Penokee suggesting a truce in the strike on condition that the respondents sign a contract with the CIO embodying the terms of the respondents' last offer of settlement. Penokee responded, expressing hope that the strike would be terminated but asserting its inability under the Act to sign a contract with any labor organization until the question concerning representation was determined. In a meeting on June 27, the employees voted to discontinue the strike and to return to work "on or before Monday, July 1st". All striking employees of Penokee and Splicewood were given employment when they appeared for work. Penokee also hired a substantial number of MacDonald's old employees but, it is alleged, discriminatorily refused to hire others. These individual cases will be discussed in the following paragraphs.

Bart Carbon worked for MacDonald over 2 years and struck with the other employees on March 2. During the strike he spent only 5 days on the picket line. His activity on behalf of the CIO was not particularly conspicuous. Shortly after the flood, he requested employment of Penokee's yard foreman, Joe Neibauer, and was told that no work would be available until fall and that he would be notified when he was needed. Before the strike Carbon had worked principally in the decking of logs but had also done other yard work. After the strike, George Nordell, hired June 26, and Herman Neibauer, hired June 15, did such work. Shortly after this refusal of employment, Carbon was advised by Herman Neibauer, group leader in the yard, that Penokee wanted Carbon to return to work. Carbon visited the employment office but finding the personnel manager, De Gracie, to be out, left and did not return. A few weeks later, Carbon was informed by an employee, Fred Flesch, that Superintendent Barabe and De Gracie wanted him to work. Carbon replied, in substance, that if they wanted him they could come to get him and did not respond to this invitation. De Gracie testified that he had asked Flesch to convey this message to Carbon and that he had similarly invited others to return. In this context, the undersigned finds no merit in the contention that Carbon was discriminatorily refused employment.

William Kruzan was employed by MacDonald in May 1945, and worked steadily as a crane operator until the strike. He was on the picket line every day of the strike and with two other employees made a trip to Minneapolis to raise funds to aid the strikers. According to Kruzan, MacDonald's employees were present on the picket line in disproportionate numbers. Kruzan also participated in a radio program in support of the strike. On a date alleged in the complaint to have been June 28 but according to Kruzan "a couple of weeks after [the strike]

or a week afterwards" he approached De Gracie and "asked him if my job was open; he said 'no, there was no jobs open' he said 'if there was one opened up he would let me know' and that was all there was to it" At the time of his application, the crane was being operated by Charles Larvey, who before the strike had worked in a relief capacity. Larvey was hired by Penokee on June 26, a week or two before Kruzan applied. According to Kruzan, the crane was being operated by Louis Digivanni at the time of the hearing. Digivanni was a new employee hired July 8, apparently to do common labor. From the record, it cannot be determined with certainty whether Digivanni was hired before or after Kruzan made application. Kruzan further testified to a conversation with F. A. MacDonald, one of the officers and the active manager of MacDonald, occurring about July 20 in a nearby town. According to Kruzan, "We were first talking about the picket line and the strike, then Mr. MacDonald says to me, he says, 'Bill, do you know you were my key man down there?' and then I says 'why haven't I got my job back?' He says 'you talked too much' 'What do you mean' I says 'I talked too much'" He says 'You didn't exactly talk too much, but you were on the picket line too much' he said 'there was too many on the picket line from the yard' if I had gone home everything would have been okay. I says, and he says 'that is right' And that was about all there was to it' F. A. MacDonald denied having such a conversation and denied making the remarks attributed to him. The undersigned finds no necessity of resolving this conflict. Assuming that Kruzan testified truthfully, it does not follow that a discriminatory motive on the part of Penokee was thereby disclosed. MacDonald, at the time of the conversation, was employed by Penokee as a log buyer and had no authority over the yard employees. There is no showing that he was consulted by Penokee with respect to which of his old employees should be given work or that he was in any way privy to Penokee's reasons for rejecting Kruzan's application. The undersigned finds that any admission he may have made was not the admission of Penokee.⁶ Upon all the evidence, the undersigned finds that the allegation with respect to discrimination in the refusal to hire Kruzan has not been sustained. Having found no discrimination in the discharge of Kruzan and others by MacDonald, Kruzan was not entitled as of right to work as a crane operator and since that position was filled when he applied for it, Penokee was under no obligation to hire him. The undersigned is further convinced that Kruzan desired no employment other than as crane operator and that De Gracie so understood him.

Alec Pufall was employed by MacDonald in May 1945. After operating a bulldozer for several months, he was assigned to driving a log truck. For the first 2 months of the strike, Pufall was present on the picket line daily; for the last 2 months for family reasons, he remained at home. About July 10, nearly 2 weeks after the end of the strike, he applied to Joe Neubauer, yard foreman, for work and was told that the only jobs open were at digging ditches and "you wouldn't want that." Pufall thereafter made two trips to the plant to see De Gracie but found him to be out on both occasions. He made no further effort to be employed. Penokee's records of employees engaged in yard work after the strike lists none engaged as a log truck driver. De Gracie testified that only one driver was needed for the log truck and that this employee was one long employed by Penokee. Here again evidence that the refusal to hire Pufall, if indeed he was refused employment, falls short of convincing that the refusal was discriminatorily motivated. There is no evidence that Penokee had need

⁶ Carbon testified that he had a conversation with F. A. MacDonald similar in content, at about the same time and place. For the reasons stated, the undersigned concludes that the conversation is not evidence of discrimination on the part of Penokee.

for a log truck driver and Pufall did not pursue his search for employment to the point of ascertaining if Penokee would have employed him in another capacity.

George Elias was employed by MacDonald in March 1942, and after a period in military service, returned to work in January 1946. Elias joined the CIO and was on the picket line nearly every day during the strike. He also participated in a radio program which was broadcast in the community publicizing the cause of the strikers. Before the strike, Elias worked as "hooker on the jammer." On July 15, he applied for work to De Gracie and was sent to Joe Neibauer. Neibauer told Elias that he had no work for him but that Penokee was hiring men to dig ditches and put in culverts. This ended the employment interview. The undersigned finds here an offer by Penokee to employ Elias at common labor and a refusal by Elias to accept such work. Since after July 15 Penokee hired no new employees in classifications other than common labor except for a scaler on August 20, work which it is not asserted Elias was qualified to perform, the undersigned finds that Elias was offered the only job which Penokee had open and which Elias was qualified to fill and that, therefore, there was no discriminatory refusal to hire within the meaning of the Act.

William Pray was one of the older employees of MacDonald. Prior to the strike he worked as a hooker and loader and also operated a crane. During the strike he spent much time on the picket line, participated in two radio programs in behalf of the CIO and with two others went to Minneapolis to raise funds to support the strike. Sometime during the week of July 8, 10 days to 2 weeks after the end of the strike, Pray met De Gracie on the street and asked for employment at his old job. De Gracie answered that he would "look around" and advise Pray later. No offer of employment resulted and no further effort in that direction was made by Pray. De Gracie testified that he understood Pray to apply only for his old job and that he was not interested in employment at common labor. As in the case of Elias, Penokee has hired no workers since Pray's application in classifications other than unskilled labor except by hiring Alvin Steger, one of the strikers, as vat filler, and replacing on August 20, a scaler who had quit on August 9. In the opinion of the undersigned the allegation of discriminatory refusal to hire with respect to William Pray has not been sustained.

John Gregor, the most senior of MacDonald employees, was employed before the strike as a truck driver and "hooker on the jammer." Gregor joined the CIO in January 1946 and appeared on the picket line three or four times during the strike. Clearly his activity in support of the strike was not notable. On June 22, at a time when Gregor was employed elsewhere cutting pulp, De Gracie and Superintendent Barabe offered him work at Penokee. Gregor refused. On June 28 after the strike, due to the fact that the flood had terminated his pulp cutting work, Gregor applied to Foreman Neibauer for work and was offered employment at common labor. On the same day he applied to De Gracie. De Gracie reminded Gregor that he had refused work a few days before and stated that he had no job open for him. Gregor admitted that he told De Gracie and Barabe when employment was offered him on June 22 that he was making more money than Penokee offered. He also testified that his reason for refusing the offer was the currency of the strike, a reason which he did not then express. If his application was refused on June 28 because he would not abandon the strike on June 22, the refusal was unlawful. If on the other hand, De Gracie was disinclined to hire him because Gregor refused work when his other employment was more attractive, a different situation is presented. The record would support either conclusion. In this situation the undersigned believes that Penokee is entitled to the benefit of the doubt. No hookers were hired after June 26 and no truck drivers, except one on a part-time basis, were hired after

that date. The undersigned finds upon all the evidence that when Gregor applied for work on June 28, Penokee had filled all its hooker and truck driver jobs and had available only employment at common labor. This Gregor did not accept. No unlawful refusal to hire is found as to Gregor.

3. Conclusions

The undersigned has found that discrimination in refusing to hire the six individuals named in the complaint has not been proved. This finding is based, of course, on the factual situation as to each such individual as detailed above, viewed against the background of labor relations concerning the three respondents. In the opinion of undersigned, the respondents were not, jointly, the employees of all the workers at the three operations. None was subsidiary to another and the separate corporate identities cannot be ignored. When the contract with MacDonald was terminated, no duty devolved upon Penokee to hire MacDonald's employees any more than such a duty could be imputed to a third party if Penokee had awarded to it a contract to perform the yard work. Thus MacDonald's erstwhile employees after the strike were in the situation of new applicants in seeking work with Penokee.⁷ They were entitled to no greater consideration, as a matter of law, than any other applicant and were clothed only with the right to have their applications considered without reference to their participation in the strike. Of course Penokee was under no obligation to discharge those hired during the strike to make room for them. Considering that some of them appear actually to have refused offers of work; that others evidenced no great eagerness to obtain work; and that all the officers of the CIO were taken back by Penokee, some of them in more desirable positions than they held before the strike, the conclusion is reached that no discrimination was practiced.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondents set forth in Section III, above, occurring in connection with the operations of the respondents described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and such of them as have been found to constitute unfair labor practices, tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the respondents have engaged in certain unfair labor practices, it will be recommended that they cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the Respondents Penokee and MacDonald did not discriminate in regard to the hire and tenure of employment of the individuals named in the complaint and it will be recommended that the complaint be dismissed in that respect. The sole finding that the respondents violated Section 8 (1) of the Act by attempting during the strike to deal individually with their employees is not such a violation which tends to indicate a general purpose on the part of respondents to deny to their employees generally their rights under the Act. In consequence it will not be recommended that the respondents cease and desist from violating the Act in any other manner than by conducting such unlawful polls or by engaging in similar violations. MacDonald ceased to be

⁷The expired contract provided that a laid off employee of one respondent would be preferred by the others in giving employment. Seniority, however, did not follow such an individual to his new job.

an employer of any of the workers after June 22, 1946, but since it participated in the commission of the unfair labor practice herein found, it will be recommended that it participate in remedying that violation.

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

CONCLUSIONS OF LAW

1. Local 12-381, International Woodworkers of America, C. I. O., is a labor organization within the meaning of Section 2 (5) of the Act.

2. By attempting to deal directly with the employees on matters of collective bargaining instead of with the labor organization then the designated bargaining representative of the employees, the respondents, and each of them, interfered with, restrained, and coerced their employees in the exercise of rights guaranteed in Section 7 of the Act and thereby violated Section 8 (1) of the Act.

3. The aforesaid unfair labor practice is an unfair labor practice affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

4. Respondents Penokee and MacDonald have not discriminated in regard to the hire and tenure of employment of John Gregor, William Kruzan, Alec Pufall, George Ellias, William Pray, and Bart Carbon.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, the undersigned recommends that the respondent, Penokee Veneer Company, Splicewood Corporation, and F. A. MacDonald Company, and each of them, their officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Interfering with the rights of the employees of each to bargain collectively through representatives of their own choosing by attempting to bargain with such employees individually.

(b) In any like or related manner attempting to deprive the employees of their enjoyment of the rights 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) Post immediately at the plants in Mellen, Wisconsin, copies of the notice attached hereto marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Eighteenth Region, shall, after being duly signed by the respondents' representatives, be posted by respondents immediately upon receipt thereof and maintained by them for sixty (60) consecutive days thereafter, in conspicuous places, in the plants and including all places where notices to employees customarily are posted. Reasonable steps shall be taken by respondents to insure that said notices are not altered, defaced, or covered by other material;

(b) Notify the Regional Director for the Eighteenth Region (Minneapolis, Minnesota), in writing, within ten (10) days from the date of the receipt of this Intermediate Report what steps the respondents have taken to comply herewith.

It is recommended that the allegations of the complaint as to John Gregor, William Kruzan, Alex Pufall, George Ellias, William Pray, and Bart Carbon, be dismissed.

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

As provided in Section 203.39 of the Rules and Regulations of the National Labor Relations Board, Series 4, effective September 11, 1946, any party or counsel for the Board may, within fifteen (15) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.38 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 or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof; and any party or counsel for the Board may, within the same period, file an original and four copies of a brief in support of the Intermediate Report immediately upon the filing of such statement of exceptions and/or briefs, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. Proof of service on other parties of all papers filed with the Board shall be promptly made as required by Section 203.65. As further provided in said Section 203.39, 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 service of the order transferring the case to the Board

WALLACE E ROYSTER,
Trial Examiner.

Dated November 1, 1946.

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 and the former employees of the F. A MacDonald Company that

WE WILL NOT interfere with the right of employees to bargain through a representative of their own choosing by attempting to bargain individually with them.

WE WILL NOT in any like or similar manner interfere with, restrain, or coerce the employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Local No 12-381, International Woodworkers of America, C I. O., or any other labor organization, to select a bargaining representative of their choice, to bargain collectively through such representative, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

PENOKEE VENEER COMPANY,
Employer

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

SPLICEWOOD CORPORATION,
Employer

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

F A MACDONALD COMPANY,
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.