

FRANKLIN COUNTY SUGAR COMPANY *and* BEET SUGAR REFINERY EMPLOYEES FEDERAL LABOR UNION No. 24792

FRANKLIN COUNTY SUGAR COMPANY AND THE FIRST NATIONAL BANK OF COLORADO SPRINGS AND WILLIAM I. HOWBERT, TRUSTEES *and* BEET SUGAR REFINERY EMPLOYEES FEDERAL LABOR UNION No. 24792.
Cases Nos. 19-CA-508 and 19-CA-509. July 15, 1952

Decision and Order

On November 26, 1951, Trial Examiner Howard Myers issued his Intermediate Report and Recommended Order in the above-entitled proceeding finding that the Respondent Company had engaged in certain unfair labor practices under Section 8 (a) (1) and recommending that it take certain affirmative action to remedy such unfair labor practices. The Trial Examiner further found that Respondent Company and Respondent Trustees had not engaged in other unfair labor practices in violation of Section 8 (a) (1) and 8 (a) (3) and recommended that the complaint be dismissed as to those allegations.

Pursuant to the Union's request, filed with all parties, an extension of time, to January 4, 1952, was granted by the Board for filing of exceptions to the Intermediate Report. On January 4, 1952, the Union filed exceptions and a supporting brief with the Washington, D. C., offices of the Board. Counsel for the Union has informed the Board that a copy of these exceptions were sent to counsel for the Respondents. No service of the exceptions was made upon the Regional Director. On January 7, 1952, the Respondent Company posted the notice recommended by the Trial Examiner and, on April 15, 1952, effected complete compliance with the recommendations of the Intermediate Report.

The Board's Rules and Regulations, Series 6, state, in Section 102.46, that "immediately upon such filing [of exceptions with the Board] *copies shall be served on each of the other parties.*" (Emphasis added.) In Section 102.8, the Rules provide that "the term 'party' as used herein shall mean the Regional Director in whose region the proceeding is pending. . . ."¹ As the Union did not serve the Regional Director in the instant case with a copy of its exceptions, it is clear that the Union's exceptions have not been filed in accordance with the Board's Rules and Regulations. Moreover, as a result of the failure of the Union to serve the Regional Director, the terms and conditions of the Trial Examiner's recommended order have been complied with by the Respondent Company. Accordingly, pursuant to Section 10 (c) of the National Labor Relations Act, as amended,

¹ See *Collins Baking Company*, 83 NLRB 599.

100 NLRB No. 40.

and Section 102.48 of the Board's Rules and Regulations, because the Board declines to entertain the Union's exceptions, we hereby adopt the findings, conclusions, and recommendations of the Trial Examiner as contained in the Intermediate Report and Recommended Order attached hereto.

Order

IT IS HEREBY ORDERED that the Respondent Franklin County Sugar Company, Preston, Idaho, its officers, successors, and assigns shall cease and desist from interrogating its employees regarding their union sympathies, threatening its employees with reprisals if they continue their union adherence, or 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 Beet Sugar Refinery Employees Federal Labor Union No. 24792, affiliated with American Federation of Labor, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in any other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the amended Act.

Inasmuch as the Respondent Company has complied with the affirmative action recommended by the Trial Examiner, we shall not order that Respondent Company again post the notice attached to the Intermediate Report as Appendix A.

IT IS FURTHER ORDERED that the allegations in the complaint that the Respondent Company discriminated against Adrian Hampton, Charles A. Ransom, Harold W. Gayman, Merlin Durrant, S. R. Jensen, J. B. Dursteler, Daniel Johnson, and Frank Van Fleet in violation of Section 8 (a) (3) of the Act, and the entire complaint with respect to the Respondent Trustees, be, and it hereby is, dismissed.

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

Upon two separate charges and an amended charge duly filed by Beet Sugar Refinery Employees Federal Labor Union No. 24792, affiliated with American Federation of Labor, herein called the Union, the General Counsel of the National Labor Relations Board, herein respectively called the General Counsel and the Board, by the Regional Director for the Nineteenth Region (Seattle, Washington), issued his complaint¹ on September 17, 1951, against Franklin County Sugar Company, Preston, Idaho, herein called Respondent Company, and The First National Bank of Colorado Springs and William I. Howbert,

¹ By order dated September 17, 1951, the aforesaid Regional Director consolidated Case No. 19-CA-508 and Case No. 19-CA-509.

Trustees, herein called Respondent Trustees, and collectively herein called the Respondents, alleging that the Respondents have engaged in, and are engaging in, unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act.

Copies of the charges, amended charge, and complaint, together with notice of hearing thereon, were duly served upon each respondent and upon the Union.

With respect to the unfair labor practices, the complaint, as amended at the hearing, alleged that:

A. The Respondent Company (1) since September 1950, by means of certain statements, acts, and conduct of its managerial personnel interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act; (2) on certain stated dates discharged seven employees,² and thereafter refused them reinstatement, because they, and each of them, had joined and assisted the Union or had engaged in concerted activities with their coworkers for the purpose of mutual aid or protection; and (3) denied sickness pay to Adrian Hampton for the month of February 1951, because he had joined or assisted the Union or had engaged in protected concerted activities.

B. Respondent Trustees discriminatorily discharged Charles A. Ransom on or about March 7, 1951, and thereafter refused to reinstate him, because of his activities in behalf of the Union or for engaging in protected activities with the employees of Respondent Company.

The Respondents duly filed separate answers in which each respondent denied the commission of the alleged unfair labor practices.

Pursuant to notice, a hearing was held in Preston, Idaho, on October 1 and 2, 1951, before the undersigned, the duly designated Trial Examiner. The General Counsel and each respondent were represented by counsel; the Union by an official thereof. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues was afforded the parties. At the conclusion of the General Counsel's case-in-chief, Respondents' counsel moved to dismiss the complaint in its entirety or, in the alternative, to dismiss certain portions thereof for lack of proof. Each motion was denied, except the motion with respect to the discharge of S. R. Jensen upon which decision was reserved. That motion is hereby granted. At the conclusion of the taking of the evidence, Respondents' counsel renewed the motions to dismiss which he had made at the conclusion of the General Counsel's case-in-chief. Decision thereon was reserved. The motions are disposed of in accordance with the findings, conclusions, and recommendations hereinafter set forth. The parties were then advised that they might file briefs with the undersigned on or before October 19, 1951. A brief has been received from the Union which has been carefully considered by the undersigned.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESSES OF THE RESPONDENTS

Franklin County Sugar Company, a Utah corporation, has its principal office in Colorado Springs, Colorado, and operates a beet sugar refinery in Preston, Idaho. The annual purchases of the Respondent Company's refinery received from points located outside the State of Idaho exceed \$150,000. The Respondent

² The complaint, before amendment, alleged that 11 employees had been discriminatorily discharged.

Company's annual sales aggregate in excess of \$900,000, of which 75 or 80 percent is shipped to points located outside the State of Idaho.

The First National Bank of Colorado Springs and William I. Howbert act jointly as trustees under and pursuant to a certain trust agreement made by and between the Respondent Company and five national banks, including The First National Bank of Colorado Springs, whereby the said banks each year loan the Respondent Company sufficient working capital to enable it to carry on its business for that year.

As security for the loans made by the said banks, the Respondent Company places in a certain warehouse at Preston, Idaho, which warehouse the Respondent Company leases to the Respondent Trustees, all the sugar it refines during the year. The leased warehouse is under the complete supervision and control of the Respondent Trustees during the period when there is sugar therein pledged to the Respondent Trustees.

The said banks loan the Respondent Company 80 percent of the market value of the refined sugar placed in the said warehouse by the Respondent Company and the custodian permits no sugar to be withdrawn therefrom unless and until he receives instructions from the Respondent Trustees to allow withdrawals. Withdrawals are permitted only as and when Respondent Company reimburses the Respondent Trustees the full amount of the loan which had been borrowed on the withdrawn sugar.

The Respondents concede for the purposes of this proceeding, and the undersigned finds, that they are, and each is, engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

Beet Sugar Refinery Employees Federal Labor Union No. 24792 is a labor organization admitting to membership employees of the Respondent Company.

III. THE UNFAIR LABOR PRACTICES OF THE RESPONDENT COMPANY

A. Background³

The Union commenced an organizational drive among the Respondent Company's intercampaign (year-round) employees in the fall of 1950.⁴

In an effort to thwart the employees' unionizational activities, Thomas Heath, the Respondent Company's vice president and general manager, in September 1950, assembled the refinery, agricultural, and clerical employees and stated to them, among other things, according to the credited testimony of Employee Harold W. Gayman, that the company "could not afford" a union; that its advent into the plant would increase production costs which the company

³ Since the events detailed in this section occurred 6 months prior to the service of the original charge upon Respondent Company they do not constitute unfair labor practices. They are material and relevant, however, to a consideration of Respondent Company's conduct and practices subsequent to the 6 months' period and to a determination of the issues raised by the pleadings herein regarding events which transpired after the permissive period. Cf. *N. L. R. B. v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261; *N. L. R. B. v. Pacific Greyhound Lines, Inc.*, 303 U. S. 272; *N. L. R. B. v. Newport News Shipbuilding & Dry Dock Co.*, 30 U. S. 241.

⁴ At that time the employees were being organized by Beet Sugar Refinery Employees Federal Labor Union No. 23818. Shortly after that Union had won a Board-conducted election and the Board had issued its certificate (dated February 19, 1951) certifying it as the collective bargaining representative of the employees here involved, Beet Sugar Refinery Employees Federal Labor Union No. 24792 was chartered and the said employees immediately affiliated themselves with that organization. For the sake of brevity No. 23818 and No. 24792 will be referred to herein as "the Union."

could not stand; and that if the Union successfully organized the employees the refinery would probably close its doors within the course of a few years.

Employee Victor Christenson credibly testified that on or about September 27, Heath said to him, "I hear you boys have been messing around again with this union.⁵ I don't know what your idea is, but I hear you are raving about no compensation or sick leave. We can't afford to have a union in our small plant, our company can't afford it." Christenson further credibly testified that during the afore-mentioned conversation he asked Heath whether he would be able to vote in the forthcoming Board election if he were at the Mt. Clemons, Michigan, plant⁶ and that Heath replied, "There will be no vote at this sugar mill."

Employee Merlin W. Durrant credibly testified, and without contradiction, that in September 1950, he had a conversation with Heath during which, to quote Durrant, Heath "asked me if I realized what I was involved in" and that Heath then stated, to further quote Durrant, "he felt I was quite young for some of the things I was trying to do . . . that probably I didn't realize how serious is to organize a union in a plant of such small means."

On October 5, 1950, L. H. Fullmer, a then American Federation of Labor organizer, notified Heath by telephone that the Union represented a majority of the intercampaign employees and then requested an appointment with Heath. The latter invited Fullmer to come to his refinery office the following day.

When Fullmer arrived at the refinery on October 6, Heath was in conference with the president of the Beet Growers Association, an employers' organization. Heath nevertheless invited Fullmer into the conference, introduced him to the Association's official, and during the course of the conversation which then ensued between the three, Heath remarked, according to Fullmer's credited testimony, that the Union's attempt to organize the Respondent Company's employees would have an adverse effect upon all concerned in that the movement would increase the company's costs, would necessitate closing the plant, which closing would be detrimental to the farmers who supply the plant with sugar beets, and to the city of Preston because the employees would lose their jobs and hence the city would lose a source of revenue.

After the association's president had left Heath's office, Fullmer requested Heath to enter into a consent election agreement. Heath refused, adding, to quote Fullmer's credible testimony, "he would do everything . . . in his power to prevent a union being in his plant."

Fullmer further credibly testified that on October 12, he was informed by some employees that Heath had gone into "the plant that day, contacting employees, threatening in some cases discharge if they signed union applications, and in some cases asking employees if they had signed, or if they were going to sign . . . and telling them not to join the union"; that he went to Heath, informed him that such actions were violative of the Act, and requested Heath to discontinue them; and that Heath replied that he would not only not discontinue them but also would do everything in his power to discourage the employees from engaging in organizational activities.

⁵ In 1941 the Union unsuccessfully attempted to organize certain employees of the Respondent Company.

⁶ For many years prior to 1950, the Respondent Company operated a sugar beet refinery at Mt. Clemons, Michigan, to which place the Respondent Company sent, during the busy season (normally from early October to the latter part of November), some of its Preston refinery key men.

B. Interference, restraint, and coercion

Pursuant to the Board's Decision and Direction of Election,⁷ dated January 15, 1951, the Regional Director for the Nineteenth Region scheduled the election for the following February 7. In order to defeat the Union at the polls, Heath engaged in certain proscribed activities. Thus, according to the undenied and credible testimony of employee Joseph Stone, Heath called him into his private office shortly before the said election, and there the following ensued:

He (Heath) asked me if I had seen those bulletins—those signs out hanging around, stating that there would be an election, and I told him yes; and he told me that he had me counted on his list as being with the company, and asked me if he could rely on that. . . . I told him I didn't make any commitments to no one in regards to that. . . .

Christenson testified credibly, and without contradiction, that sometime in February, but prior to the Board election, Heath said to him, "I hear that you boys are having a meeting in town, and I hear that you blatted out and invited all our boys to attend your meeting. . . . You go right on to this meeting, and listen to Mr. James (the president of the International Council of Sugar Workers and Allied Industries Unions and also an American Federation of Labor organizer), and before long Mr. James will be making out your check."

The undersigned finds that by Heath's inquiry of Stone in February 1951, if he could rely on Stone "being with the company," which inquiry, in the context in which it was made, was tantamount to asking Stone how he intended to vote at the scheduled Board election,⁸ and by Heath's remarks to Christenson, in the same month, regarding a meeting the employees had planned with James, which remarks clearly contained a threat of reprisal if Christenson continued his union activities, the Respondent Company interfered with, restrained, and coerced its employees in violation of Section 8 (a) (1) of the Act.

C. The alleged discriminatory discharges

On April 2, 1951, Heath assembled the employees of the various departments and informed them that the Respondent Company's 1951 contracts for beet sugar acreage with the neighboring farmers were far below normal and therefore it might be necessary to lay off 11 intercampaign employees within the near future. Heath added that if a layoff occurred it would be made on the basis of seniority. He then suggested that if any employee, whether he be a refinery or an agricultural department man, could obtain employment elsewhere, he should do so in order to cut down the number contemplated to be laid off.

Under date of April 6, the Respondent Company wrote identical letters to 11 intercampaign employees⁹ stating that their services would be terminated on April 15. The letters then stated that as soon as jobs opened up, in the refinery they would be recalled in accordance with their respective seniorities, but the possibility of recall prior to October was doubtful.

Commencing sometime in August and continuing through September, each of the 11 laid-off persons was notified to return to his former job. Some accepted

⁷ 92 NLRB 1341.

⁸ Such conduct constitutes an unlawful invasion of the employee's right to privacy in his union affairs. *Joy Silk Mills v. N. L. R. B.*, 185 F. 2d 732 (C. A. D. C.); *Standard-Coosa-Thatcher Co.*, 85 NLRB 1358.

⁹ This number included Joseph Stone, Leslie Gregory, Heber Taylor, and Marion Winn who normally left the Respondent Company's employ each spring in order to attend to their respective farms.

reemployment and were immediately put to work. Others declined the offers because they were employed elsewhere.

Heath testified without contradiction, and the undersigned finds, that for the past few years the planting and raising of sugar beets in the Cache Valley, in which Preston, Idaho, is located, has become less and less attractive to the farmers; that because of the farmers' disinclination to raise sugar beets the refineries have suffered;¹⁰ that the farmers have gradually turned to more profitable crops; that in 1947, the scarcity of sugar beets was brought to the attention of the United States Secretary of Agriculture who immediately granted the farmers a higher guaranteed price for sugar beets; that it was not until 1949,¹¹ when the guaranteed price was raised to \$14.50 per ton, that the farmers produced a plentiful supply of sugar beets; that the Korean situation, with the resulting difficulty of securing competent farm hands coupled with the attractiveness of other more profitable crops, caused the farmers to again abandon the sugar beet crops; that as a result of the farmers' actions, the Respondent Company found itself on March 31, 1951, with but 3,583 acres under contract with the local farmers compared to 4,648 acres under contract on March 31, 1950; that the Respondent Company's total 1951 contracted acreage amounted to 4,347 compared to 5,864 acres in 1950;¹² and that because of its inability to obtain more acreage under contract for the 1951 season, the Respondent Company was compelled to reduce the number of its intercampaign employees.

Heath further testified, and the undersigned finds, that the layoffs were necessary because the Respondent Company found itself with too many intercampaign employees due to the following reasons: (1) It was no longer necessary to send three or five Preston plant intercampaign employees to its Mt. Clemons, Michigan, plant because that plant ceased operations in November 1950; (2) that in 1950, the intercampaign employees made extensive repairs to the mill's machinery and therefore little work on that machinery was necessary in 1951; and (3) that it was able to purchase higher grade lime rock for almost the same price it cost to mine inferior lime rock at its own quarry, therefore the need for intercampaign help to work the quarry was not present in 1951.

There is no dispute as to the foregoing facts. The issue, as it arises from them, turns on the question whether the six persons¹³ here involved were discharged, as the General Counsel contended, in violation of the Act, or whether they were temporarily laid off for economic reasons as contended by Respondent Company. The question must be resolved against the General Counsel.

The uncontroverted evidence clearly shows that when the layoffs were made in April 1951, the Respondent Company was faced with a grave economic problem and the necessity for reducing the intercampaign staff was clearly apparent. It sought to reduce the number to be laid off by suggesting that those who could obtain other employment do so. When this suggestion failed, 11 intercampaign employees were laid off on a strict seniority basis.¹⁴ When jobs

¹⁰ Formerly there were five Cache Valley refineries. At the present time there are but two.

¹¹ The record indicates, although it is not clear, that the Secretary's guarantee of \$14.50 per ton was for the 1950 crop.

¹² The 1949 contracted acreage amounted to 4,664 and the 1948 contracted acreage was 5,007.

¹³ The case of Charles A. Ransom is discussed separately in section IV.

¹⁴ The only person not laid off, although he had less seniority than Daniel Johnson, was Lawrence Mitton. Heath testified without contradiction, and the undersigned finds, that he transferred Mitton to the agricultural department instead of laying him off because Mitton was an experienced agriculturist and a vacancy existed in that department which Mitton was able to fill. Moreover, Ivan Olsen, who was number 6 on the seniority list, was transferred to the agricultural department at the same time Mitton was and for the same reason.

opened up in the summer and fall of 1951, no new employees were hired but the laid-off persons were recalled.

The undersigned is not unmindful of Heath's unconcealed antiunion animus, but the record does not disclose that Heath's antipathy for the Union, or for any other labor organization, played any part in the selection of those to be laid off. Nor does the record support the Union's contention, as expressed in its brief, that the layoffs were made in order to defeat the Union in a UA election for which the Union had petitioned the Board. On the contrary, the credible evidence shows that the Respondent Company was not aware that such a petition had been filed until several days after the afore-mentioned April 2 meeting. Moreover, about a month prior to the said layoffs, according to Adrian Hampton's credited testimony, Master Mechanic Fisher told some employees, "some of the boys would be laid off on the fifteenth" of April.

As evidence that the layoffs were made in order to discourage membership in the Union and in order to defeat the Union in a UA election, the General Counsel and the Union point to the fact that when Harold W. Gayman, the Union's recording secretary, received his layoff letter, he requested Heath to permit him to drive a bus to bring Indians¹⁵ from Arizona to Preston, as he did occasionally in 1949 and in 1950, and that Heath replied he would give Gayman that employment provided Gayman would demit from the Union.

Heath testified without contradiction, and the undersigned finds, that in 1949, when Hampton made a trip to bring some Indians to Preston, Hampton wanted to be paid for the "extra time" he was away from Preston;¹⁶ that because of Hampton's request for additional compensation the agricultural department, under whose exclusive jurisdiction the Indians were transported, decided it would thereafter select only agricultural department employees, whose workweek was not standardized at 40 hours, to haul the Indians; that when Gayman requested the job hauling Indians, he replied, "Now, when they start going after the Indians,"¹⁷ Harold, you might find it necessary to get a demit from the union, so that you won't be affected by this long hour period, so that the agricultural department might use you"; and that he made the above-quoted statement to Gayman because he had been advised that when employees were transferred from the refinery to the agricultural department the employees "usually demit from the union, so that they are not covered by the" 40-hour per week schedule.¹⁸

Upon the record as a whole, the undersigned is convinced and finds, that the April 1951 layoffs were necessitated by economic reasons and hence were not violative of the Act. Accordingly, the undersigned will recommend that the allegations of the complaint that Harold W. Gayman, Merlin Durrant, S. R. Jensen, J. B. Dursteler, Daniel Johnson, and Frank Van Fleet were discharged, and thereafter refused reinstatement, in violation of Section 8 (a) (3) of the Act, be dismissed.

D. The alleged discriminatory refusal to give Adrian Hampton sickness pay

About 2 years ago Hampton, who is the Union's financial secretary and who acted as a union observer at the February 1951 Board election, was injured while

¹⁵ For the past 2 years the Respondent Company has been transporting Indians from Arizona to work on the farms with which it had contracts for sugar beets. In 1949, when the transportation of Indians started, several intercampaign employees were used to drive the busses to and from Arizona. In 1950, with the advent of a new superintendent of the agricultural department, certain employees of that department were used exclusively for that purpose.

¹⁶ To make the round trip to and from the point in Arizona where the Indians were obtained, it took about 3 days.

¹⁷ Which is usually in May or June.

¹⁸ Heath testified that he believed Fullmer so advised him.

at work. He remained away from work for approximately 60 days during which time the Respondent Company paid him his full salary and also paid his medical, hospital, and doctor bills, less the amount paid by the employees' sick benefit fund.

In December 1950, Hampton again remained away from the refinery claiming that he was unable to work because of the illness due to the previous injury. The Respondent Company continued to pay him his full salary from the date of his illness until the middle of February 1951.¹⁹

Heath testified that since the Respondent Company had paid all Hampton's salary, medical, hospital (less what the employees' sick benefit fund had paid), and doctors' bill for both illnesses, he "ordered [Hampton] cut off the payroll [as of February 15, 1951] because his illness account amounted to well over a thousand dollars. The company had to draw the line somewhere as to how far they will go in those extreme cases." Heath further testified without contradiction, and the undersigned finds, that Hampton's doctor informed him that Hampton's December illness was not caused by his previous injury.

Heath's explanation as to why he ordered Hampton "cut off the payroll" as of February 15, seems to the undersigned reasonable and fair. Under the circumstances, the undersigned finds that Hampton was not refused his salary for the last 2 weeks of February 1951, for the reasons alleged in the complaint. Accordingly, the undersigned will recommend that the allegations of the complaint as to Adrian Hampton be dismissed.

IV. THE ALLEGED UNFAIR LABOR PRACTICES OF THE RESPONDENT TRUSTEES

The complaint alleged that the Respondent Trustees discharged Charles A. Ransom on or about March 7, 1951, and thereafter refused to reinstate him, because of Ransom's activities on behalf of the Union or because Ransom had engaged in protected concerted activities with the Respondent Company's employees. The answer admits the discharge but denies that it was violative of the Act.

On June 1, 1950, Ransom was hired by the Respondent Trustees. On June 22, he was handed a letter which confirmed his employment, fixed his compensation, and outlined his duties. The letter specifically stated that he was being employed as watchman and that it was his duty to carefully watch and protect the warehouse which houses the sugar which the Respondent Company had pledged to the Respondent Trustees.

When the campaign is in progress, that is, when the sugar beet crops have been harvested and the sugar is being refined, there is no need for a person to guard the warehouse. During that period, Ransom is dropped from the Respondent Trustees' payroll and he then becomes a laborer for the Respondent Company. When the campaign closes, Ransom returns to the employ of Respondent Trustees.

Because of this dual employment, Ransom believed that he was eligible to join the Union and to vote in the February 1951 Board election. The Union denied Ransom membership because he was a watchman²⁰ and the Board's field examiner who conducted the election challenged Ransom's right to vote for the same reason.

Ransom testified that on February 25, 1951, Heath said to him, "Charley, . . . I would advise you to find another job, I don't care to have anyone around here that isn't satisfied with the way things are going, there will be some more of the boys will have to leave"; that he never had any previous discussion

¹⁹ Hampton returned to work on or about March 1, and has been employed since.

²⁰ The campaign season lasts about 5 or 7 weeks.

with Heath regarding his job, except that in October 1950, while on the Respondent's payroll, he asked Heath for a higher rate of pay; and that on March 9, 1951, he was handed a letter notifying him of his discharge, effective the next day.

Regarding the discharge of Ransom, Heath frankly testified as follows:

Well, the situation was reported that he (Ransom) was quite unhappy with his work, he was complaining about his pay, grumbling about working seven days a week; and that situation was reported to the custodian, and the custodian reported it to me, and we reported it to the Trustees. I think in our report I said just about what Mr. Ransom testified to yesterday, that it looked that he ought to look for something else to do . . .

Ransom frankly admitted that he had told the two other watchmen that they were not receiving enough pay for the work they were doing.

There is absolutely no evidence in the record, either direct or indirect, that the Respondent Trustees were ever advised that Ransom was interested in the Union, that he applied in October 1950, for membership therein, that in February 1951, he presented himself at the polling place and attempted to cast a ballot in the Board election, or that he attended a union meeting in February 1951. Under those circumstances, it cannot properly be found that the Respondent Trustees discharged Ransom, and thereafter refused to reinstate him, for the reasons alleged in the complaint. Nor can the Respondent Company properly be charged with violating the Act because of Ransom's discharge for at the time of his discharge, Ransom was not an employee of the Respondent Company within the meaning of Section 2 (3) of the Act.²¹ Accordingly, the undersigned will recommend that the complaint as to the Respondent Trustees be dismissed.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent Company set forth in section III, above, occurring in connection with the operations of the Respondent Company 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 Respondent Company has engaged in unfair labor practices, violative of Section 8 (a) (1) of the Act, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

The unfair labor practices found to have been engaged in by the Respondent Company are of such a character and scope that in order to insure the employees their full rights guaranteed them by the Act it will be recommended that the Respondent Company cease and desist from in any manner interfering with, restraining, and coercing its employees in their right to self-organization.²²

It will be further recommended that the allegations of the complaint that the Respondent Company discharged Charles A. Ransom, Harold W. Gayman, Merlin Durrant, S. R. Jensen, J. B. Dursteler, Daniel Johnson, and Frank Van Fleet, and thereafter refused to reinstate them, in violation of Section 8 (a) (3) of the Act, be dismissed.

²¹ Cf. *May Department Stores*, 59 NLRB 976, affd. 154 F. 2d 533 (C. A. 8). *Butler Bros.*, 41 NLRB 843, affd. as mod. 134 F. 2d 981 (C. A. 7).

²² *May Department Stores v. N. L. R. B.*, 326 U. S. 876.

It will be further recommended that the allegations of the complaint that the Respondent Company refused sickness pay to Adrian Hampton for the month of February 1951, in violation of Section 8 (a) (3) of the Act, be dismissed.

Since it has been found that the Respondent Trustees have not engaged in unfair labor practices, the undersigned will recommend that the allegations of the complaint with respect to them, be dismissed.

On 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. Beet Sugar Refinery Employees Federal Labor Union No. 24792, affiliated with American Federation of Labor, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By interrogating an employee regarding his union sympathies, by threatening an employee with reprisal if he persisted in his unionization efforts, and by otherwise 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 engaged in, unfair labor practices, within the meaning of Section 8 (a) (1) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2 (6) and (7) of the Act.

4. By laying off Charles A. Ransom, Harold W. Gayman, Merlin Durrant, S. R. Jensen, J. B. Dursteler, Daniel Johnson, and Frank Van Fleet, the Respondent Company did not violate the Act.

5. By not giving Adrian Hampton sickness pay for the month of February 1951, the Respondent Company did not violate the Act.

6. Respondent Trustees did not violate the Act as alleged in the complaint.

[Recommendations omitted from publication in this volume.]

HAMPTON ROADS BROADCASTING CORPORATION (WGH) *and* AMERICAN FEDERATION OF RADIO ARTISTS, AFL, PETITIONER. *Case No. 5-RC-1969. July 15, 1952*

Supplemental Decision and Second Direction of Election

On April 4, 1952, the Board issued a Decision and Direction of Election¹ in the above-entitled case in which a majority of the Board rejected the Petitioner's request for a unit confined to all employees appearing before the microphone and found that the *sole* appropriate unit was one encompassing all employees engaged in announcing and programing duties. Member Styles dissented in a separate opinion on the ground that the unit confined to the employees appearing before the microphone was also appropriate. Member Peterson did not participate in that decision.

¹ 98 NLRB 1090.

100 NLRB No. 1.