All our employees are free to become, remain, or to refrain from becoming or remaining, members of any labor organization except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the National Labor Relations Act.

POLYNESIAN ARTS, INC.,
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.

JERRY FAIRBANKS, INC. *and* STUDIO CARPENTERS LOCAL 946, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL

INTERNATIONAL ALLIANCE OF THEATRICAL AND STAGE EMPLOYEES AND ITS LOCAL UNION 44 *and* STUDIO CARPENTERS LOCAL 946, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL

JERRY FAIRBANKS, INC. *and* JACK A. BAER. *Cases Nos. 21–CA–1090, 21–CB–349, and 21–CA–1166. August 8, 1952*

Decision and Order

On January 28, 1952, Trial Examiner Martin S. Bennett issued his Intermediate Report in the above-entitled proceeding, finding, as set forth in the Intermediate Report attached hereto, that the Respondents had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety. Thereafter, the charging Union filed exceptions to the Intermediate Report and a supporting brief.

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 brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.[1]

We agree with the Trial Examiner's finding that the Respondent Company did not violate the Act by adopting a policy of hiring its

[1] The request of the charging Union for oral argument is denied, inasmuch as the record, including the exceptions and brief, adequately present the issues and the positions of the parties

We note and correct the following inadvertent inaccuracies in the Intermediate Report, which do not affect the Trial Examiner's findings nor our concurrence therein: (1) The correct citation to the representation case referred to in section III, A, of the Report is *Jerry Fairbanks, Inc.*, 21–RC–1719; (2) the two versions of the terminal conversation between Latham and Price were given by the latter and not by Latham; and (3) Pluso was not "laid off at the same time as *Price*," late in March 1951, as Price was not employed at all by the Company during that month; it was *Gores*, not Price, who was laid off at or about the same time as Pluso in the latter part of March.

carpenters through IATSE, as well as through the charging Union. There is insufficient evidence in the record that, in referring employees to the Company, IATSE discriminated against nonmembers of IATSE or that the Company declined to hire employees referred by IATSE unless they were, in fact, members of IATSE.[2] Furthermore, the evidence shows that the Respondent Company was utilizing both unions as employment agencies and that they were virtually the only sources of carpenters in the area. There is no evidence that the Respondent Company refused to hire applicants from any other source.

Order

IT IS ORDERED that the complaint herein be, and it hereby is, dismissed in its entirety.

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

[2] See *The Hunkin-Conkey Construction Co.*, 95 NLRB 433; *Pacific American Shipowners Association*, 90 NLRB 1099

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

Upon charges filed by Studio Carpenters Local 946, United Brotherhood of Carpenters and Joiners of America, AFL, herein called Carpenters, against Jerry Fairbanks, Inc., herein called Respondent Company, and against International Alliance of Theatrical and Stage Employees and its Local Union 44, both herein called Respondent Union and IATSE, and on a charge filed by Jack A. Baer, an individual, against Respondent Company, the General Counsel of the National Labor Relations Board, by the Regional Director for the Twenty-first Region (Los Angeles, California), caused the cases to be consolidated and issued a consolidated complaint dated October 17, 1951, against Respondents. The complaint alleged that Respondents had engaged in unfair labor practices, Respondent Company within the meaning of Section 8 (a) (1), (2), and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 61 Stat. 136, herein called the Act, and Respondent Union within the meaning of Section 8 (b) (1) (A) and (2) and Section 2 (6) and (7) of the Act. Copies of the charges, consolidated complaint, the order consolidating cases, and notice of hearing thereon were duly served upon Respondents.

Specifically, the complaint alleged (1) that Respondent Company had discharged and thereafter refused to reinstate five named employees[1] for the reason that they were not members of Respondent Union, and (2) that such acts of discrimination had been caused by Respondent Union. In its answer, Respondent Union denied the commission of any unfair labor practices. Respondent Company affirmatively admitted, in its answer, that the five named employees had been laid off on or about the indicated dates because of lack of work, and denied the commission of any unfair labor practices.

[1] Their names and alleged dates of discharge are as follows: Henry Bush, George Pluso, and Edward Gores, March 3, 1951, Benjamin Price, April 3, 1951, and Jack A. Baer, July 23, 1951.

Pursuant to notice, a hearing was held at Los Angeles, California, from November 13 through 16, 1951, before the undersigned Trial Examiner, Martin S. Bennett. All parties were represented by counsel, who participated in the hearing and who were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the close of the hearing ruling was reserved on a motion by Respondent Union to dismiss the complaint; this is disposed of by the findings hereinafter made. All parties were afforded an opportunity to argue orally and to file briefs and/or proposed findings or conclusions. The General Counsel presented argument, and briefs have been received from all counsel save the General Counsel.

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 COMPANY

Jerry Fairbanks, Inc, is a Delaware corporation with its principal office at Los Angeles, California, where it is engaged in the production of motion pictures for television, commercial, and industrial purposes, as well as a minor number of short subjects for theatrical use. The Company, under the same name, was originally a California corporation which changed its name in December 1950 to Jerry Fairbanks Productions, Inc, but transferred its business and assets to the Delaware corporation, which has continued to operate the business in the same manner and form as its predecessor

During the year 1950, Respondent Company's predecessor purchased equipment and film valued at approximately $200,000, of which 10 to 20 percent was shipped direct to its place of business from points outside the State of California; approximately 80 percent of the total purchases originated outside the State of California. The motion pictures annually produced by the Company are valued in excess of $750,000 and these are released for showing throughout the United States either by television or theater projection In excess of 50 percent of the revenues of the Company are derived from such activities outside the State of California The Board has previously exercised jurisdiction over the operations of Respondent Company in *Jerry Fairbanks, Inc.*, 93 NLRB 898, and 96 NLRB 1140, and the undersigned finds that Respondent Company is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

International Alliance of Theatrical and Stage Employees and its Local Union 44, and Studio Carpenters Local 946, United Brotherhood of Carpenters and Joiners of America, AFL, are labor organizations admitting to membership employees of Respondent Company.

III THE ALLEGED UNFAIR LABOR PRACTICES

A. *Introduction*

It is the contention of the General Counsel that the five persons named in the complaint, who were members of Carpenters, lost their employment with Respondent Company on the indicated dates as the result of the insistence by Respondent Union, IATSE, that the Company hire members of its organization. The purpose of such action on the part of IATSE, it is claimed, was to place its own members on the payroll in order to qualify them to vote in a Board election scheduled to be held among the employees of the Company in this particular unit which embraced workers engaged in carpentry and set construction.

With respect to prior representation of employees of the Company, the record discloses the following. The Company had been under contract with Respondent Union for several years prior to the period material herein which is March through July 1951. This contract covered employees engaged in maintenance and set erection work and was signed by Local 44 of IATSE as well as its Local 468. The jobs in question herein were originally subject to the jurisdiction of Local 468 of IATSE, although since November 1950, by decision of their international president, the positions were transferred to the jurisdiction of Local 44. In June of 1949, Respondent Company terminated its contract with Local 44. It is not clear just when in 1949 this termination was effective, but in any event there has been no contract with or recognition of any labor organization by the Company since 1949.

The representation case on which the General Counsel relies to establish the purported discriminatory motive of IATSE, is *Jerry Fairbanks, Inc., supra.* Carpenters filed a representation petition on December 10, 1950,[2] for an election among all employees performing work as carpenters, set constructors, millmen, millwrights, and woodworking machine operators. Hearings were held on March 20 and April 3, 1951. No election has been directed and it would appear that the matter has been held in abeyance pending the disposition of the instant proceeding.

One other factor may be noted at this point. The volume of the carpentry work in question is of an elastic nature. While the Company generally had need for two employees to perform this type of work, its practice was to call in several additional men when a picture was to be filmed. These additional men would work for several days and then be laid off upon completion of the film. However, the two regular employees, who were members of Carpenters, were usually retained. The largest number working at one time never exceeded six or seven during the period material herein. It is also undisputed that the Company can obtain employees who possess the particular skills needed for this type of work from *two sources only,* Carpenters and IATSE. The General Counsel's position is that members of IATSE were called in to work, whereas, absent the allegedly unlawful pressure from IATSE, members of Carpenters and specifically the five complainants herein would have received this work at such time as their services were required.

The Company claims solely that it attempted to distribute this work equally among the members of both labor organizations and Respondent Union in effect claims solely that it requested the Company to give its members opportunities at this work.[3]

B. *The facts*

1. Favoritism to Carpenters

Louis Latham was superintendent of construction during most of the period material herein. He was a member of Carpenters for many years and was hired as a carpenter by the Company sometime in June of 1949. After 1 or 1½ months, he was promoted to superintendent of construction and held this position until discharged in July of 1951 for reasons not material herein.[4]

[2] Erroneously appearing in this transcript as 1951

[3] Carpenters refers to its members as carpenters or maintenance men, whereas IATSE refers to its members as set erectors. However, they were capable of performing the same work and usually did.

[4] Latham testified that he entered the Company's employ in 1948. His testimony was vague and inconsistent in many respects and other evidence indicates that he was hired in 1949. In any event, the year of his entry to the Company's employ is not material.

The testimony of Latham clearly demonstrates that he followed a policy during his tenure as construction superintendent of employing solely members of *Carpenters*. He uncontrovertedly testified that he had been given instructions to this effect by Oscar Yerg, the art director of the Company and Latham's superior. And, in addition to this purported instruction, his testimony discloses that he was not only a long-time member and supporter of Carpenters, but also favored giving them the work assignments. In fact, this is the crux of the General Counsel's position herein, namely, that Carpenters received all the work assignments prior to the period material herein at which time a charge was made. There was no request to IATSE by the Company for employees prior to the pertinent period and subsequent to May 10, 1948. According to Assistant Business Agent Joseph Singleton of Local 44, on the latter date he referred two employees to the Company and there were no subsequent referrals.

In sum, a policy was uniformly followed from 1949 until the spring of 1951 of giving out these work assignments only to *Carpenters*. Latham's practice was to call up the office of Carpenters and request employees as and when needed. On occasion, when he desired to recall a particular member of Carpenters whom he had previously requisitioned, Latham would telephone his home directly. But in either event, Carpenters was the sole source of supply for carpenter, maintenance, or set erection employees until March of 1951, save for one occasion in December of 1950, to be discussed hereinafter.[5]

2. The individual cases

Edward Gores, a member of Carpenters, was hired by the Company on or about March 13, 1951. The project to which he was assigned ended several days later and he was laid off. Gores was recalled to work on March 21 and worked through March 22, at which time he was again laid off by Latham who informed him that he would be recalled when further work was available. On March 28 Gores went to the studio to pick up his pay check and noticed a stranger performing carpenter work. There were in fact two members of IATSE, Knudsen and Updegraff, who had started work that very day. Latham informed Gores, according to the latter, that he had put on the two IATSE members to "balance things between the two labor organizations." According to Latham, he had been instructed on March 27 to hire some members of IATSE for a project which was about to commence, and he proceeded to telephone the IATSE office on that day for two men. There is no question but that the project on which Gores had worked ended on March 22 and that the project on March 28 was another project.[6]

It appears that the contention of the General Counsel is that Gores would have been utilized on the project which commenced on March 28, absent a discriminatory motive on the part of the Company. In this connection, it is to be noted that Respondent Company did recall Gores to work approximately 1 month after March 22, but that he declined the offer.

[5] Although his conduct, in the view of the undersigned, would constitute unlawful assistance to Carpenters, there is no evidence that any charges were filed with respect thereto It appears that there has been and is a jurisdictional battle between the labor organizations involved herein; to what extent this influenced Latham's or the Company's policy would, however, be pure speculation.

[6] Latham gave a number of versions in a roundabout and inconsistent manner concerning what took place during this period The more reliable of these, in the view of the undersigned, is a version which he gave after his recollection was refreshed by inspection of a record book he had maintained, although this testimony was also later changed. Wherever reliance is placed on the testimony of Latham, it is to that version.

Henry Bush (also appearing in the transcript as Henley Bush) a member of Carpenters, entered the employ of the Company on February 16, 1951. He worked until March 5 and was laid off for approximately 5 days. Bush testified that he was recalled to work and did work until March 24, when Latham laid him off, stating that he had to "put in I. A men next Monday." Bush has not been called in to work since that date

The Company records indicate, however, that no one started work in this department on the following Monday, March 26. In fact, as Latham testified, it was not until March 27 that Studio Manager Molton instructed him to thereafter hire the same number of I. A members as Carpenter members. Latham also testified that Molton had spoken to him in a similar vein on March 16, but the record demonstrates that Latham had disregarded this earlier instruction, having hired Carpenter members thereafter Thus, the undersigned concludes that there was no basis for Latham's statement to Bush that he had to hire I. A. men on Monday, March 26, as the record does not bear him out. Moreover, the direction to hire and the hiring of I. A. members on March 27, do not, in the view of the undersigned, constitute under these circumstances an unfair labor practice, as is hereinafter discussed

Benjamin Price, a member of Carpenters, entered the employ of the Company in December 1950. He worked some days during December, was laid off, and then went to work at a nearby plant. Price performed no work for the Company during 1951 until on or about April 3, when he sought out Latham and requested work.

Latham stated that he could use him and put him to work on April 3 However, Latham informed him that evening that he would have to release him. The testimony of Latham provides two versions of the terminal conversation. In the first, Latham stated, "The pressure is on again. We will have to lay you off . . We expect some work to come up soon and we will put you back." Latham, in that version, provided no explanation of the term "pressure." He later gave another version, testifying that he informed Price, "The pressure has been put on. We will have to keep some of the set erectors (I. A. members) and pay you guys off (Carpenter members) but as soon as there is an opening I will put you back." As is apparent, the second version introduces IATSE as the moving factor behind the "pressure."

The surrounding facts, however, do not lend support to the General Counsel's case. For the Company had also hired on April 3, along with Price, a member of I. A. by the name of Cox; and he too was laid off on the evening of April 3 together with Price. Nor was Price replaced by a member of I. A. at the time. There were no new hirings until April 11 when two I. A members, Nelson and Siegel, were called in for 1 day's work. This demonstrates that the project to which Price and Cox had been assigned was in fact complete.

George Pluso, a member of Carpenters, entered the employ of the Company on March 13, 1951, together with Edward Gores whose case has been discussed above. The two men were laid off approximately 4 days later because of lack of work; Pluso was given several days' work on or about March 21 and 22 and was laid off at the same time as Price. He was called into work on April 3 and was released that night by Latham, who informed him that he would be recalled when there was more work.[7]

[7] Presumably the General Counsel relies hereon on the conversation between Price and Latham on the evening of April 3, which is set forth above in the discussion of Price's case. Pluso attributed statements to Latham to the effect that he was required to hire I. A. members, but was vague concerning the date of the conversation.

Pluso, however, was recalled to work in mid-June and worked 21 days during June and July. He was again laid off but was called back in October 1951. In fact, he was still working for the Company at the time of the hearing. It is assumed that the General Counsel seeks a remedy in this case restricted to those portions of 1951 when Pluso was not working for the Company.

Jack Baer, a member of Carpenters, entered the employ of the Company, in his most recent term, in October 1950. He worked steadily until July 23, 1951, save for a layoff of several weeks in late May and June. Baer was considered by Latham as his number two man, this meaning that all other workers in the unit would be laid off, save one, Maxwell, before Baer would be released. Latham was discharged late in July and was replaced by Foreman Reed. Two days later, on July 23, Reed informed Baer that work would be slow for a week or 10 days and that he was to be laid off. Baer testified that an I A. member was laid off at the same time and it appears from the records that this was one Savage.

Baer was recalled on August 25 and was still working for the Company at the time of the hearing. Savage was not recalled. According to Baer, there were but two employees working in the unit during the month of his layoff, Maxwell and an I. A. member; Baer thereafter became the third man on the payroll. It is assumed that the theory of the General Counsel is that Baer received a discriminatory layoff of approximately 1 month in that an I. A. member was retained in his place.

3. Conclusions

The five complainants herein were hired by the Company as a result of the discriminatory policy in favor of Carpenters followed since 1949 by Superintendent Latham, himself a Carpenter member. There is no question, and the General Counsel expressly contends, that Latham had regularly hired carpenters from one source only, namely Carpenters; in fact, his case is bottomed on the theory that Respondent Company would have continued this practice absent IATSE interference. But as the only other source of skilled help was IATSE, this policy perforce deprived members of the latter of employment opportunities at the plant. As demonstrated, this one-sided policy in favor of Carpenters continued until March of 1951.

Latham has attributed various statements to company officials, including President Fairbanks, Studio Manager Molton, and the latter's successor, Pagel. These are all uncontroverted. The sum and substance of them is that from March 1951 on, the Company would abandon its discriminatory policy of favoring Carpenters and would thereafter hire and employ equally from the sole two sources of labor supply. That this decision may have resulted from pressure by IATSE is deemed to be immaterial. The fact is that on this record, the Company promulgated a new nondiscriminatory policy. Nor is it a distinction of any substance that on occasion, the respective members of the two groups may have been used separately on alternate projects, rather than simultaneously on the same project. Controlling herein is the premise, conceded to be such by the General Counsel, that this employer could obtain his skilled labor supply from these two sources alone.

While it is true that the Company was thus in the position of obtaining employees through the hiring hall facilities of a labor organization, IATSE, without any agreement providing for union security, the case of the General Counsel is bottomed upon the continued use of similar facilities provided by Carpenters. Furthermore, the record does not establish with any degree of certainty whether

or not these labor organizations refused to refer other than their own members for employment at the Company. Cf. *Hunkin-Conkey Construction Co.*, 95 NLRB 433.

In sum, the Company from 1949 to March 1951 was in the position of actively leading support to Carpenters, conduct which normally would be found to be violative of Section 8 (a) (1), (2), and (3) of the Act. Under these circumstances, dictated by a labor supply restricted to the two labor organizations, the Company adopted a policy of nondiscrimination which was completely consonant with the objectives of the Act. In effect, the position of the General Counsel reduces itself to a contention that the prior discriminatory policy should have been retained.[8]

All of the conversations attributed by Latham to management representatives refer to the hiring of IATSE members and maintaining an equal amount of the members of the two organizations as employees. Significantly, none of these conversations with Latham were followed by a layoff of any of the Carpenters and their replacement with I. A. members on the same project. Finally, the testimony of Latham, even if fully credited, despite its repeated contradictions, does not under the circumstances herein present disclose evidence of unlawful conduct.[9]

Accordingly, the undersigned is of the belief and finds that Respondent Company, by adopting and applying the above-described policy with respect to the hiring and employment of carpenter and set construction personnel, has not, on this record, discriminated against the five complainants herein. It is likewise found that Respondent Union has not engaged in conduct violative of the Act by causing or attempting to cause Respondent Company to discriminate against its employees or by restraining or coercing employees in the exercise of the rights guaranteed by the Act.

One other matter may be mentioned During Respondent's cases, it developed that Respondent Company utilizes an employment notice form which is filled out by the construction superintendent when hiring employees. The form has a line which reads "Local No." and has a space beside the phrase for insertion of a number by the superintendent. It is used when craft employees are hired by the studio. The record does not disclose whether the employee is actually asked for this information, although in view of the manner in which the company obtains the employees for carpentry and maintenance work, this would hardly seem necessary. The complaint does not allege the use of this form to be an unfair labor practice.

Moreover, according to the uncontroverted testimony of Assistant Secretary Kenneth Rossal of the Company, as supported by payroll records, members

[8] Certain testimony by Latham attributed to Molton, on one occasion, the instruction to lay off IATSE men and replace them with Carpenters. Elsewhere, Latham testified that one man was thus replaced. If the General Counsel's theory be valid, it would follows that in this instance, which appears to have taken place in April 1951, a finding of discrimination would lie against Carpenters.

[9] There is testimony by Baer and Price to the effect that in December of 1950, they were laid off on a Monday by Latham, replaced by IATSE members forthwith, but recalled on the following Friday when the IATSE men were released. Save for this isolated instance, no members of Carpenters were actually replaced on a current project by members of IATSE. Moreover, the General Counsel conceded at the hearing that he did not urge that this December conduct, which was beyond the purview of the complaint, be found an unfair labor practice

The company records for the weeks of October 20 and 27, 1951, do show an influx of IATSE personnel which abated prior to the instant hearing This was not litigated and in any event would be pertinent solely in the cases of those two of the complainants not reinstated or offered reinstatement.

of the two labor organizations are not paid on the same basis. While both organizations seek and receive the same hourly rate of pay, members of Carpenters receive time and one-half for hours worked in excess of six daily, whereas members of IATSE do not receive the higher rate until the daily hours have exceeded eight. Thus, based upon an 8-hour day, carpenters receive a higher daily rate of pay. According to Rossal, this information relative to *which* organization the employee is affiliated with is provided by the superintendent solely for the assistance of the payroll department in computing payrolls. It would appear that these varying overtime pay practices are promulgated by the respective labor organizations and not the Company. Under the foregoing circumstances, the undersigned makes no finding of an unfair labor practice predicated upon the use of this form.

The undersigned will therefore recommend that the complaint be dismissed in its entirety.

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

Conclusions of Law

1. The operations of Respondent Company affect commerce within the meaning of Section 2 (6) and (7) of the Act.
2. International Alliance of Theatrical and Stage Employees and its Local Union 44, and Studio Carpenters Local 946, United Brotherhood of Carpenters and Joiners of America, AFL, are labor organizations within the meaning of Section 2 (5) of the Act.
3. Respondent Company has not engaged in unfair labor practices within the meaning of Section 8 (a) (1), (2), and (3) of the Act.
4. Respondent Union has not engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) and (2) of the Act.

[Recommendations omitted from publication in this volume.]

Rheem Manufacturing Company *and* International Brotherhood of Electrical Workers, Local Union 11, American Federation of Labor, Petitioner. *Case No. 21–RC–2516. August 8, 1952*

Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Fred W. Davis, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.[1]

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Styles and Peterson].

[1] At the hearing the Employer moved to dismiss the petition on the ground that the unit sought by the Petitioner is inappropriate. For the reasons expressed in paragraph numbered 4, *infra*, his motion is denied.