of reinstatement to such employee. Loss of pay for each employee will be computed on the basis of each separate quarter or portion thereof during the period from the date of discharge of such employee to the date of a proper offer of reinstatement The quarterly periods shall begin with the respective first days of January, April, July, and October. Loss of pay shall be determined by deducting from a sum equal to that which the employee normally would have earned in each such quarter or portion thereof, his net earnings,[37] if any, in other employment during that period. Earnings in one quarter shall have no effect upon the back-pay liability for any other quarter.[38] The Respondents will be required, upon reasonable request, to make available to the Board and its agents all records pertinent to an analysis of the amount due as back pay and to the reinstatement recommended herein.

Upon the basis of the foregoing findings of fact, and upon the entire record in these proceedings, I make the following:

CONCLUSIONS OF LAW

1 American Federation of Labor is a labor organization within the meaning of Section 2 (5) of the Act.

2. By interfering with, restraining, and coercing employees, as found above, in the exercise of rights guaranteed to them by Section 7 of the Act, the Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

3. By discriminating in regard to the tenure of employment of Harry H. Darr and Clara P. Ferrill, thereby discouraging membership in a labor organization, the Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Sections 2 (6) and 2 (7) of the Act.

[Recommendations omitted from publication.]

[37] See Crossett Lumber Company, 8 NLRB 440 for a construction of "net earnings."

[38] F. W. Woolworth Company, 90 NLRB 289.

TERMINAL STORAGE COMPANY, Petitioner *and* CHAUFFEURS, TEAMSTERS AND HELPERS, GENERAL LOCAL NO. 200, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL. Case No. 13-RM-151. April 27, 1953

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 Joseph Cohen, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent employees of the Employer.

3. The Employer, which is engaged in warehousing and public cold-storage operations in Milwaukee, Wisconsin, requests that an election be held among all of its employees, contending that these employees constitute a separate appropriate unit. The Union contends that the only appropriate unit is a multiemployer unit of employees of all employer members of

the Milwaukee Warehousemen's Association and that therefore the Employer's petition be dismissed.

Although the Employer was a member of the Association from 1940 to 1948, and participated in joint bargaining negotiations with other members on a multiemployer basis, the record is clear that since 1948 it has had no contract with any labor organization and has pursued a course of individual action with regard to its labor relations. In these circumstances, we find, with the Employer, that its employees consititute a separate appropriate unit.[1]

The record shows that on several occasions in 1952, the Union requested recognition of the Employer for its employees and submitted a proposed contract. The Employer declined to recognize the Union until it was certified by the Board. Thereafter, the Union engaged in a strike at the Employer's plant from December 5, 1952, to January 20, 1953, and filed a charge against the Employer alleging an unlawful refusal to bargain. The Regional Director dismissed the charge.[2]

At the hearing, the Union stated that it was now claiming to represent the Employer's employees only in a multiemployer unit, which it claimed to be the only appropriate unit. It asserted that it did not desire to appear on the ballot in the event a single-employer unit were found appropriate, because the Employer's alleged unfair labor practices had precluded it from winning an election in such smaller unit. At about the time of the hearing, the Union appealed the Regional Director's dismissal of its refusal-to-bargain charge against the Employer, urging that the alleged refusal to bargain occurred either in a multiemployer unit or, alternatively, in a single-employer unit.

Under all these circumstances, we do not find that the Union has so clearly and unequivocally disclaimed interest in representing the Employer's employees in a separate unit, as to negate the existence of a present question concerning representation in such unit. We therefore believe that the policies of the Act will best be served by directing an election.[3]

A question affecting commerce exists concerning the representation of certain employees of the Employer, within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All employees of Terminal Storage Company, Milwaukee, Wisconsin, excluding office clerical employees, engineers, maintenance men, guards, professional employees, and supervisors as defined in the Act.[4]

[Text of Direction of Election omitted from publication.]

[1] See C. & H. Foods, Inc., 100 NLRB 1483, and cases cited therein.

[2] We find no merit in the Union's contention that the pendency of an appeal from the Regional Director's dismissal of its charge alleging unfair labor practices by the Employer, constitutes a bar to this proceeding. The Alliance Manufacturing Company, 101 NLRB 112.

[3] See Jack Cooper Transport Company, Inc., 101 NLRB 1754; Kimel Shoe Company, 97 NLRB 127; The Johnson Brothers Furniture Co., 97 NLRB 246. Cf. Smith's Transfer Corporation of Staunton, Virginia, 97 NLRB 1456.

[4] The parties were in substantial agreement as to the composition of the above unit.