

electrical department maintenance truckdriver, and all other employees.

If a majority of employees in voting groups (A), (B), and (C), respectively, vote for the labor organization seeking to represent that group separately, they will be taken to have indicated their desire to constitute a separate unit, and the Regional Director conducting the elections herein is instructed to issue a certification of representatives to such labor organization or organizations for such unit or units, which the Board under such circumstances finds to be appropriate for purposes of collective bargaining. In the event the majority in any of the voting groups vote for the Intervenor, they will be taken to have indicated their desire to remain part of the existing production and maintenance unit, and the Regional Director will issue a certification of results of election to that effect.

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 15-RC-891 be, and it hereby is, dismissed.

[Text of Direction of Elections omitted from publication.]

JOSEPH MANSBACH, SAMUEL MANSBACH, SYLVIA MANSBACH, HANNAH MANSBACH, MINNIE RAE AUERBACH, SOPHIA POCKROS, GERTRUDE WEBER, AND GERALD MANSBACH, Co-partners d/b/a MANSBACH METAL COMPANY *and* UNITED STEELWORKERS OF AMERICA, CIO. Case No. 9-CA-540. May 6, 1953

DECISION AND ORDER

On March 9, 1953, Trial Examiner Lloyd Buchanan issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that the Respondent had not engaged in certain other alleged unfair labor practices and recommended that the complaint be dismissed with respect thereto. Thereafter, only the Respondent filed exceptions to the Intermediate Report and a supporting brief. The Respondent also moved to take testimony of two witnesses by deposition.

The Board¹ has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error

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].

was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the Respondent's exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions and modifications:

1. We find, in agreement with the Trial Examiner, that the Respondent was responsible for Soloman's conduct on March 26, 1952, and that by Soloman's threats to McClelland on that date, and also by the statement made by Foreman Lewis to employee Mullins--which Lewis did not deny--that Mullins and others who had signed cards for the Union would regret it, the Respondent interfered with, restrained, and coerced its employees in the exercise of their rights under the Act, in violation of Section 8 (a) (1) of the Act.

2. Like the Trial Examiner, we find that McClelland was discharged because he engaged in protected concerted activities, and not for an alleged refusal to pick scrap as asserted by the Respondent. The pertinent facts leading to the discharge, as found by the Trial Examiner, are as follows:

Samuel Mansbach, one of the owners and general manager of the Respondent, testified that on Wednesday, March 19, 1952, he ordered McClelland to pick scrap; that on Sunday, March 23, General Yard Foreman Gee told him that McClelland had not picked scrap on March 20 and 21; that he thereupon decided to discharge McClelland if he continued to refuse to do so and directed Gee to pull McClelland's card so that he could talk to McClelland when he reported for work the following day; and that on Monday, March 24, after talking to McClelland, he discharged him for refusing to pick scrap. However, when Mansbach was specifically asked on direct examination whether McClelland on March 24 had refused to pick scrap, Mansbach merely quoted McClelland as stating, as McClelland testified before, that he had been hired as a burner, not to pick scrap; Mansbach did not state that McClelland refused to comply with his orders in this respect.

McClelland, in turn, testified that he had picked scrap not only on March 19 after his initial talk with Mansbach, but also on March 20 and 21;² that during the March 24 interview with Mansbach, although he restated his position to be that he had been hired as a burner and not to pick scrap, he did not refuse to do so; and that he in fact informed Mansbach that he had picked scrap and would continue doing it. McClelland further testified that Mansbach then stated that "too many were following" him (McClelland). In the context in which this

²Caskey, McClelland's coworker, testified that he saw McClelland pick scrap after being ordered to do so on March 19, but did not fix the dates in precise terms. Lewis, McClelland's immediate supervisor, testified that he, too, saw McClelland pick scrap on March 19 after the Mansbach colloquy but, when asked if McClelland picked scrap the next 2 days, became vague and stated he thought McClelland quit or had been discharged on March 20. We find that the above testimony is not inconsistent with McClelland's more positive testimony. Moreover, we deem it significant that Lewis, McClelland's immediate superior, and presumably closer to the situation than anyone else in the Respondent's hierarchy, did not contradict McClelland's testimony.

remark was made, we agree with the Trial Examiner, who credited this testimony, that it could have referred only to McClelland's union activities.

From the foregoing it appears, as the Trial Examiner found, that McClelland's testimony of what had transpired March 24, insofar as it pertained to the Respondent's purported reason for McClelland's discharge, was not substantially contradicted by Mansbach's own version, and that the evidence in this regard clearly negated the Respondent's present contention that McClelland had refused to pick scrap and was discharged for that reason. On the other hand McClelland, as the acknowledged leader of the employees, discussed wage increases for the men with Joseph Mansbach in February 1952, as he had also done in 1950. He contacted a union representative and made arrangements for an organizational meeting which was held on Friday evening, March 21, 1952, at which 19 of the employees signed union-authorization cards. He was discharged the following Monday, the first working day after the meeting, and Samuel Mansbach, in discharging him, stated that "too many were following" him.

Under the circumstances, and on the basis of the entire record, we conclude, as did the Trial Examiner, that McClelland was discharged because he had engaged in protected concerted activities, and that such discharge constituted interference, restraint, and coercion within the meaning of Section 8 (a) (1), as well as discrimination in regard to hire or tenure of employment within the meaning of Section 8 (a) (3).³ Whether the discriminatory conduct is viewed as a violation of Section 8 (a) (1) or 8 (a) (3) of the Act, we find that effectuation of the policies of the Act requires that McClelland be offered reinstatement with back pay, as recommended by the Trial Examiner.

3. Subsequent to the close of the hearing, the Respondent moved for leave to take the depositions of Gee and Soloman. The Trial Examiner denied the motion. The Respondent now renews its motion to the Board. The motion states that Gee would testify that McClelland did not pick scrap on March 20 and 21, 1952, and that he reported this to Mansbach, and that Soloman would testify that he overheard the conversation between Mansbach and McClelland on March 24 and that McClelland had refused to pick scrap. The Respondent further states that Gee was not called as a witness because of illness. No reason is given for the failure to recall Soloman, who was a witness, for the purpose of questioning him with respect to the matters now sought to be adduced.

In his opinion denying the Respondent's motion, the Trial Examiner stated that although at the hearing the Respondent had at first indicated that Gee was ill and that it wished to adduce his testimony either by deposition or by taking his

³As stated above, the record adequately supports the Trial Examiner's finding, which we adopt, that the Respondent, prior to March 24, 1952, had knowledge of McClelland's activities on behalf of the employees with respect to wage increases as well as his activities on behalf of the Union.

testimony at home, it abandoned this request and decided to go ahead without his testimony. Like the Trial Examiner, we find no merit in the Respondent's motion. Not having proceeded with a request for Gee's deposition in timely fashion at or before the hearing, the Respondent may not at this late stage delay the final adjudication of this case. As to Soloman, the Respondent could have recalled him, but did not, for the purpose of giving the testimony in question as he was present at the hearing and had, indeed, testified as a witness for the Respondent. The Respondent's motion is therefore denied.⁴

ORDER

Upon the entire record in this case and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Joseph Mansbach, Samuel Mansbach, Sylvia Mansbach, Hannah Mansbach, Minnie Rae Auerbach, Sophia Pockros, Gertrude Weber, and Gerald Mansbach, Co-partners d/b/a Mansbach Metal Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in United Steelworkers of America, CIO, by discharging or failing to reinstate any of its employees or discriminating in any other manner in respect to hire or tenure of employment, or any term or condition of employment.

(b) Threatening employees with assault or reprisal in connection with union activities.

(c) In any other manner interfering with, restraining, or coercing their employees in the exercise of the right of self-organization, to form labor organizations, to join or assist United Steelworkers of America, CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in 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 rights 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 Act.

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

(a) Offer Thomas McClelland immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, in the manner set forth in the section of the Intermediate Report entitled "The Remedy."

(b) Make said Thomas McClelland whole for any loss of pay he may have suffered by reason of the interference, restraint, coercion, and discrimination against him, in the manner set

⁴Vogue-Wright Studios, Inc., 76 NLRB 773.

forth in the section of the Intermediate Report entitled "The Remedy."

(c) Post at its plant in Ashland, Kentucky, copies of the notice attached to the Intermediate Report as Appendix A.⁵ Copies of said notice, to be furnished by the Regional Director for the Ninth Region, shall, after being duly signed by the Respondent, be posted immediately upon receipt thereof, and be maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for the Ninth Region, in writing, within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint, insofar as it alleges violations of the Act other than those found herein to have been committed by the Respondent, be, and it hereby is, dismissed.

⁵This notice shall be amended by substituting for the words "The Recommendations of a Trial Examiner" the words "A Decision and Order." In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order," the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

Intermediate Report and Recommended Order

The complaint herein, as amended at the hearing, alleges that the joint partners,¹ as the Respondent, have violated Section 8 (a) (3) of the National Labor Relations Act, as amended, 61 Stat. 136, by discharging and failing to reinstate, because of their union activities and membership, Thomas McClelland on March 24, 1952, Roy Davis and Charles Mullins on March 31, 1952, and Curtis Davis, Ben Ruce, Sam Biggs, and Ray Davis on April 7, 1952; and Section 8 (a) (1) of the Act by said alleged acts and by threatening to assault employees because of their concerted activity, threatening in their presence to assault a representative of employees, interrogating employees concerning their union membership, preference, and activities, engaging in surveillance of employees in regard to their concerted activities, and threatening to reduce employees' earnings by reduction in working hours in order to discourage union membership. The answer denies the allegations of unfair labor practices.

A hearing was held before me at Catlettsburg and Ashland, Kentucky, on February 2 and 3, 1953. Pursuant to leave granted to all parties, briefs were thereafter filed by General Counsel and the Respondent.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE RESPONDENT'S BUSINESS AND THE LABOR ORGANIZATION INVOLVED

It was admitted and I find that the Respondent is engaged at Ashland, Kentucky, and Logan, West Virginia, only the former location being involved herein, in the collection, purchase, sale, and distribution of scrap metal, that in 1952 it purchased and caused to be shipped from points outside the State of Kentucky to its plant at Ashland, material valued at more than \$50,000, and sold, shipped, and delivered material valued at more than \$50,000, more than 50 percent of which was sold, shipped, and delivered from the Ashland plant to points outside the State of Kentucky; and that the Respondent is engaged in commerce within the meaning of the Act.

¹As amended at the hearing. Hannah Mansbach is now Hannah Soloman.

It was admitted and I find that the Union is a labor organization within the meaning of the Act.

II. THE UNFAIR LABOR PRACTICES

A. The alleged independent violation of Section 8 (a) (1)

The allegations that the Respondent threatened assault and engaged in surveillance refer to an incident which occurred on March 26. McClelland, who had been discharged on March 24, obtained union cards for signature, and entered into conversation with some half a dozen employees who were eating lunch in or near their automobiles on the sidewalk or between the sidewalk and street adjoining the Respondent's premises. At this point Sanford Soloman drove up to within a foot of where McClelland was standing on the curb and, still in his automobile, ordered McClelland away. When the latter pointed out that he was on a public street, Soloman referred to the Union as foreigners and Communists, told McClelland that he could put him off with a "38", and threatened to use it on him if he found him in the Respondent's yard.

Soloman testified that he thought McClelland, while not coercing the men, was trying to get them to do something which they would later regret; his main reason for saying what he did was that he thought McClelland was trying to talk the men into joining the Union. This is clearly interference with employees' organizational activities. The threat is prohibited whatever the employer may think of the wisdom of employees' proposed or possible action. But the question remains whether it is attributable to the Respondent.

This is a family partnership. Joseph Mansbach is the father, Sylvia the mother, and the other partners are their children. Soloman is a son-in-law, married to Hannah, and has been employed by the firm for 14 years. It is his job, in the metal room, to purchase scrap as it is brought to the Respondent's yard. He testified that he consults with the foreman concerning the quality and price to be paid. He pays the sellers, or "customers." His immediate superiors are Joseph and Samuel Mansbach, not the foreman. He makes recommendations concerning the hiring of new men, but testified that, while "they weigh" his recommendations, they do as they please.

Further on the issue of Soloman's authority, the Respondent's letterhead lists three names in the upper left-hand corner: Joseph Mansbach, Samuel Mansbach, and Sanford M. Soloman. Their respective capacities are not shown, but the grouping is significant. Joseph is the head of the business; Samuel is immediately below him in authority and is general manager in charge of operations of the plant. Explaining his name on the letterhead, Soloman stated that he is very well known to the customers: when they write in, he replies. He is apparently known to the customers because of his contacts with them; the listing of his name, first about a year ago, followed such contacts. It does not appear, nor is it suggested, that such listing prompts letters to Soloman, or that it facilitates replies.

Also casting some light on his status is the fact that when Joseph and Samuel Mansbach go away, they leave a memorandum with Soloman, who in turn passes it on to the foreman. Aside from his actual authority, Soloman's relationship to the Mansbach family and his activities "so closely identify him with management that his conduct should be imputed to the Respondent."² It is significant that he could and did indulge his interest in the employees' welfare to tell men whom we knew in the shop not to drink but to take their money home to their wives. (The interest and advice are laudable, but they do indicate his position vis-a-vis the employees, who, it is clear from their demeanor, would not take to advice from a mere fellow employee.) Of further significance in this connection is the fact that when Soloman ordered McClelland away, no one questioned his status. McClelland pointed out that he was on public property. But Soloman's authority as representative of the Respondent was taken for granted.

I find that the Respondent is responsible for Soloman's threat. Whether McClelland was an employee, or representative of employees, or both, at the time is immaterial; the acts constitute interference with employees in the exercise of their rights under the Act, and would be noted were he a stranger. I find no surveillance.

Charles Mullins testified that a few days before his discharge on March 31, Foreman Lewis, stipulated to be a supervisor within the meaning of the Act, said that he and others who signed cards would regret it. Lewis did not deny this threat and interference.

Mullins testified also that at about the same time Samuel Mansbach, in the course of remarks apparently favorable to the Union, declared that, if it got in, the men wouldn't work

² Trimfit of California, Inc., 101 NLRB 706. See also R. & J. Underwear Co., Inc., 101 NLRB 299.

more than 40 hours a week and wouldn't receive a higher rate. Whether this statement was an anticipatory refusal to deal with the Union or an indication of the futility of designating it,³ General Counsel does not point to it as interference, and I do not credit Mullins' statement in the face of Mansbach's that he told several crews that whether or not they joined, their jobs would not be affected. Neither is reliance placed on the statement attributed by Curtis Davis to Samuel Mansbach when the latter, asked by an employee whether union membership would be required, allegedly pointed to the Government's restriction of the Respondent's effort to effect an increase. Davis appears to have confused this occasion with that in February, when McClelland asked Joseph Mansbach for an increase.

B. The alleged violation of Section 8 (a) (3)

1. McClelland

McClelland's part in concerted activities is clear. He had earlier (the last time in February 1952) spoken to the Respondent concerning wage increases for the men, and he arranged a meeting at the union hall at which 19 employees attended on March 21. The suggestion for such a meeting was discussed at the plant earlier that day, and considering the size⁴ of the plant, I find that despite Samuel Mansbach's disclaimer of knowledge of union activities until March 26, the Respondent was aware of McClelland's activities in that connection and the talk about the Union among the men as they worked, in addition to its evident knowledge of his earlier activities. (I note that if on March 24 the Respondent was unaware of McClelland's activities, Solomon's admitted knowledge as he drove up to the group talking at lunchtime 2 days later is unexplained in view of his alleged lack of contact with the men.)

One day in mid-March (it appears to have been Wednesday, March 19), Samuel Mansbach approached a group of pickers and burners working on a scrap pile and told Bernie Caskey and McClelland, both burners, that they were expected to pick scrap when they had no burning to do. We note here disagreement or a difference of opinion between Mansbach and McClelland regarding the advisability of rolling up the hose needed for burning and the rate at which scrap was being uncovered by the pickers and made ready for burning. At any rate McClelland testified that he picked scrap that day, the next day, and the day after, which was Friday, March 21.

Mansbach testified that Gee, the general yard foreman, told him on Sunday that McClelland had not picked scrap after the day of the colloquy aforementioned, and that he thereupon directed Gee to pull McClelland's card so that he could talk to the latter when he reported on Monday morning. On Monday, when McClelland asked why his card had been pulled, Mansbach charged him with failing to pick scrap. Their stories diverge at this point but are not contradictory.

Mansbach testified further that McClelland maintained that he was hired as a burner, not to pick scrap; that McClelland, yelling, recalled an incident a year or more before when the burners were sustained in their refusal to pick scrap in a situation which Mansbach noted was quite different; and that he fired McClelland for refusing to pick scrap. Recalled and testifying concerning this conversation, McClelland denied only that he had yelled. His reference to the earlier refusal, which Joseph Mansbach sustained, indicates that he was reluctant to pick, as does his reference the week before to the trouble involved in rolling up the hose before picking only to have to unroll it again as scrap was being uncovered all the time. Yet, however reluctant he may have been, it does not appear, beyond the report from Gee to Samuel Mansbach, that McClelland did in fact fail or refuse to pick. Mansbach did not suggest that after he told McClelland to pick, the latter was reminded about it or admonished by either Gee or Lewis, his immediate foreman, for failing to do it, or that Mansbach again saw him neglect his duties. (Lewis testified that both Caskey and McClelland picked scrap after Samuel Mansbach spoke to them about it.)

From Samuel Mansbach's testimony it appears that Caskey, to whom he spoke about picking just before he spoke to McClelland on the 19th, said that he would pick if the other burners did. (Caskey testified that he picked thereafter, as did McClelland.) Caskey's reluctance was evidently overcome as McClelland did pick; there is no claim that Caskey thereafter failed to pick. I do not believe that Mansbach discharged McClelland, in the absence of any on-the-job complaint or other evidence (which could have included further observation by Mansbach himself, and would have contradicted the testimony of Lewis, McClelland, and

³Salant & Salant, Incorporated, 92 NLRB 343; Charles R. Krimm Lumber Company, et al., 97 NLRB 1574.

⁴Standard Service Bureau, 87 NLRB 1405, and cases cited therein.

Caskey), because of a report⁵ that he failed or refused to pick scrap. Nor may the discharge be justified by the provoked reply that he was hired as a burner, not to pick scrap. His concerted activities alone explain such provocation in the absence as noted of proof that he had failed to pick; and, again, he had in fact picked.

As for the actual reason for McClelland's discharge, we are not limited to the inference that, in the absence of valid explanation, it was due to his concerted activities.⁶ McClelland testified that when he was discharged on March 24, Mansbach, after charging him with refusal to pick scrap, which charge he denied, remarked that "too many men were following" McClelland, in apparent reference to his concerted activities. (The context of his testimony indicated such a reference; and again, it does not appear that any burner thereafter "followed" in refusing to pick scrap.) This was not denied by Mansbach.

Despite the Respondent's history of favorable labor relations, there is no adequate explanation of the discharge of the individual who played the leading part in organizational activities. The record shows that Caskey had been standing still, neither burning nor picking, while McClelland was burning, and their comparative work would suggest Caskey's discharge if action were to be taken against either. As noted, the only adverse factor affecting McClelland alone was the alleged report by Gee; but as likewise noted, this is contradicted by the absence of criticism or rebuke to support it, the testimony of various witnesses, and Samuel Mansbach's presumed knowledge of the facts.

I find that McClelland was discharged because he was engaged in concerted activities.

2. The other alleged discriminatees

The other alleged discriminatees were discharged for failing to work on the Sunday before their respective discharge. It does not appear that they or any of them were active in connection with concerted activities, or that all of them attended the meeting at the union hall or signed a union card. The majority of those who attended the meeting at the union hall on March 21 were not discharged. Clearly there is no correlation between such attendance and the discharges.

Whatever the reason or lack of reason,⁷ in the absence of connection with concerted activities, we need not go into the detailed evidence concerning these and others who did not work on Sundays, the excuses they gave, and their discharge or retention. If discharges were discriminatory and the policy Draconian (although Samuel Mansbach justified it), it still needs to be shown that such discrimination was connected with concerted activities. The only feature distinctive of the alleged discriminatees is that they, with Ronald Mullins, were present at the time of the Soloman incident. But there is no warrant for finding that they were then engaged in concerted activities (this was not even voluntary attendance at a meeting; they were eating lunch in a usual place), or for inferring that such presence motivated the discharges.

In fact, General Counsel relies solely on their presence when this incident occurred as the basis for the Respondent's knowledge or belief that they were engaged in concerted activities and as providing the motivation for their discharge. This argument proves too much for under it every passive and even accidental association with one engaged in concerted activities would *per se* place under suspicion the discharge of anyone so associated. It has not been shown that these six engaged in concerted activities or that the Respondent thought that they had because of their presence at this usual gathering place for lunch; nor that they were discharged to discourage membership in a labor organization.

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent, set forth in section II, above, occurring in connection with the operations described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

⁵The Respondent's motion to take the deposition of Gee having been denied, I note at this time that the evidence herein considered would in any case warrant the findings made even were Gee to testify as indicated by Mansbach in his testimony concerning Gee's report to him.

⁶W. C. Nabors Company, 89 NLRB 538.

⁷Samuel Mansbach testified that others had been discharged for the same reason while on the other hand some were not discharged under similar circumstances, the alleged distinction being that the latter's excuses were good. Which, if any, in either group engaged in concerted activities does not appear.

IV. THE REMEDY

Since it has been found that the Respondent has engaged in and is engaging in certain unfair labor practices affecting commerce, I shall recommend that it cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act.

It has been found that Respondent, by discharging and failing to reinstate Thomas McClelland, discriminated against him in respect to his hire and tenure of employment in violation of Section 8 (a) (3) of the Act. I shall therefore recommend that the Respondent offer to said Thomas McClelland immediate reinstatement to his former or substantially equivalent position,⁸ without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay he may have suffered by reason of the discriminatory action aforementioned by payment to him of a sum of money equal to that which he would normally have earned less his net earnings,⁹ which sum shall be computed¹⁰ on a quarterly basis during the period from the discriminatory discharge or failure to recall to the date of a proper offer of reinstatement. It is also recommended that the Board order the Respondent to make available to it upon request payroll and other records to facilitate the checking of the amount of back pay due.¹¹

It has been further found that the Respondent, by threats of assault and reprisal, interfered with, restrained, and coerced its employees in violation of Section 8 (a) (1) of the Act. I shall therefore further recommend that the Respondent cease and desist therefrom.

The unfair labor practices found herein indicate a purpose to limit the lawful concerted activities of the Respondent's employees. Such purpose is related to other unfair labor practices, and it is found that the danger of their commission is reasonably to be apprehended. I shall therefore recommend a broad cease-and-desist order, prohibiting infringement in any manner upon the rights guaranteed in Section 7 of the Act.

For the reasons stated in the subsection entitled "The other alleged discriminatees," I shall recommend that the complaint be dismissed insofar as it alleges the discriminatory discharge of and failure to reinstate Roy Davis, Charles Mullins, Curtis Davis, Ben Rice, Sam Biggs, and Ray Davis.

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

CONCLUSIONS OF LAW

1. United Steelworkers of America, CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Thomas McClelland, thereby discouraging membership in the Union, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

3. By such discrimination and by threats of assault and reprisal, thereby interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

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

5. The Respondent has not engaged in unfair labor practices within the meaning of the Act by discharging and failing to reinstate Roy Davis, Charles Mullins, Curtis Davis, Ben Rice, Sam Biggs, and Ray Davis.

[Recommendations omitted from publication.]

⁸ The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch, 65 NLRB 827.

⁹ Crossett Lumber Company, 8 NLRB 440. See also Republic Steel Corporation v. N. L. R. B., 311 U. S. 7.

¹⁰ F. W. Woolworth Company, 90 NLRB 289.

¹¹ Ibid.

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, as amended, we hereby notify our employees that:

WE WILL NOT discourage membership in United Steelworkers of America, CIO, or in any other labor organization of our employees by discharging or failing to reinstate any of our employees or discriminating in any other manner in respect to their hire or tenure of employment, or any term or condition of employment.

WE WILL NOT threaten our employees with assault or reprisal in connection with union activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist United Steelworkers of America, CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in 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 Act.

WE WILL offer to Thomas McClelland immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay suffered as a result of the interference, restraint, coercion, and discrimination against him.

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

JOSEPH MANSBACH, SAMUEL MANSBACH,
SYLVIA MANSBACH, HANNAH MANSBACH,
MINNIE RAE AUERBACH, SOPHIA POCKROS,
GERTRUDE WEBER, AND GERALD MANS-
BACH, CO-PARTNERS DOING BUSINESS AS
MANSBACH METAL 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.

INTERNATIONAL TYPOGRAPHICAL UNION AND ITS AGENTS,
WOODRUFF RANDOLPH, LARRY TAYLOR, ELMER BROWN
AND DON HURD *and* AMERICAN NEWSPAPER PUBLISHERS
ASSOCIATION. Case No. 9-CB-5. May 6, 1953

SUPPLEMENTAL DECISION AND ORDER

On March 11, 1953, the Board¹ issued its Proposed Supplemental Findings of Fact, Conclusions of Law, and Order in the above-entitled proceeding. Thereafter the charging party filed a brief in support thereof, and the Respondents filed exceptions thereto and a supporting brief.² The Respondents also requested oral argument. As the briefs and record adequately

¹ Members Peterson and Styles not participating.

²Pursuant to timely request of the Respondents for an extension of time within which to file exceptions, the Board granted all parties an extension to April 20, 1953. The charging party's brief and the Respondents' exceptions and brief were filed with the Board on April 20, 1953.