

ployer request the customary eligibility period. As the record does not disclose any compelling reason for departing from the Board's practice of utilizing the eligibility period prescribed below, the Intervenor's request is hereby denied.

[Text of Direction of Election omitted from publication.]

SOUTHERN PINE ELECTRIC COOPERATIVE *and* LOCAL UNION NO. 676, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL. Case No. 15-CA-440. May 8, 1953

DECISION AND ORDER

On December 30, 1952, Trial Examiner W. Gerard Ryan issued his Intermediate Report in this proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices in violation of Section 8 (a) (1), (3), and (5) of the Act, 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 independent violations of Section 8 (a) (1) of the Act and recommended the dismissal of that portion of the complaint. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board has reviewed the rulings of the Trial Examiner made 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 this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following modifications:

1. We agree with the Trial Examiner that the seven complainants did not quit their employment, as contended by the Respondent, but were discharged because of their concerted activity.

As fully described in the Intermediate Report, the seven employees, after being denied a wage increase on January 17, 1952, told the Respondent that they would submit a notice of resignation on the first of the following month, unless their grievance were satisfied. Like the Trial Examiner, we find that such action did not amount to a voluntary termination of employment by the employees, but rather was merely a threat to quit in the future, designed to induce the Respondent to act favorably regarding their wage demand. As such, it constituted concerted activity for their mutual aid and protection, within the meaning of Section 7 of the Act.¹

¹Nemec Combustion Engineers, 100 NLRB 1118; see also *N. L. R. B. v. Kennametal, Inc.*, 182 F. 2d 817, enfg. 80 NLRB 1481. Cf. *Crescent Wharf and Warehouse et al.*, 104 NLRB 860, where the employees' conduct was construed on the facts to be a present resignation and hence not protected concerted activity.

The record also shows that almost immediately after the threat to quit, the Respondent sought to accelerate the termination of the employees by tendering them wages up to the first of the month. The employees refused to accept such payment and repeatedly requested the Respondent to permit them to continue their employment, thereby abandoning their threat to quit and indicating a willingness to work without a pay increase. Nevertheless, the Respondent, without any valid reason, insisted upon terminating their employment.

In these circumstances, and in view of the fact that the Respondent insisted upon speaking to the employees individually rather than in a group, we are satisfied and find, as did the Trial Examiner, that the Respondent discharged the complainants, notwithstanding their expressed willingness to continue working on the Respondent's terms, because of their concerted effort to obtain a wage increase.

The discharges constituted an independent violation of Section 8 (a) (1) as well as Section 8 (a) (3) of the Act. Whether the discharges be regarded as a violation of either section, we find that the same remedy of reinstatement and back pay is necessary in order to effectuate the policies of the Act.²

2. The Trial Examiner found, and we agree, that the Respondent violated Section 8 (a) (5) and (1) of the Act, by refusing to bargain with the Union since on or about January 22, 1952, and by granting unilateral benefits as to overtime and standby pay subsequent to that date. We also agree with the Trial Examiner's finding that the Respondent's unilateral conduct in derogation of the Union's status as majority representative constituted an independent violation of Section 8 (a) (1) of the Act.

3. As the unfair labor practices engaged in by the Respondent manifest an attitude of opposition to the basic purposes of the Act and justify an inference that commission of other unfair labor practices may be anticipated, we shall adopt the broad cease and desist order as recommended by the Trial Examiner.³

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 Southern Pine Electric Cooperative, Brewton, Alabama, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging concerted activities among its employees or discouraging membership in any labor organization of its employees, by discriminatorily discharging or refusing to reinstate any of its employees, or by discriminating in any

²Employees Freeman and Jordan have been reinstated and we shall only order the usual back pay remedy as to them.

³See *May Department Stores, et al v. N. L. R. B.*, 326 U.S. 376.

other manner in regard to their hire or tenure of employment or any term or condition of employment.

(b) Refusing to bargain collectively with Local Union No. 676, International Brotherhood of Electrical Workers, AFL, as the exclusive bargaining representative of all employees in line construction and maintenance crews, including substation, electric service, electric appliance service, electric meter department, garage department, and warehouse department employees, but excluding all other employees and supervisors as defined in the Act, with respect to rates of pay, wages, hours of employment, or other conditions of employment.

(c) By means of unilateral changes in rates of pay, wages, hours of employment, or other conditions of employment, or in any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Local Union No. 676, International Brotherhood of Electrical Workers, AFL, or any other organization, to bargain collectively through representatives of their own choosing, and to engage in collective bargaining or other mutual aid or protection, or to refrain from any and all 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, as guaranteed in Section 7 thereof.

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

(a) Upon request, bargain collectively with Local Union No. 676, International Brotherhood of Electrical Workers, AFL, as the exclusive representative of all employees in the appropriate unit described above, and embody any understanding reached in a signed contract.

(b) Offer to T. C. Bradley, Ford Holloway, C. F. Phelps, W. C. Pugh, and James L. Taylor immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make each of them, including J. D. Freeman and Ealon E. Jordan, whole for any loss of pay he may have suffered by payment to each of them of a sum of money equal to that which each normally would have earned as wages from the dates of the respective discriminations against him to the date of the offers of reinstatement, less his net earnings during said periods.

(c) Upon request make available to the Board or its agents, for examination and copying, all payroll records, social-security payment records, timecards, personnel records and reports, and all other records necessary to analyze and compute the amounts of back pay and the rights of reinstatement under the terms of this Order.

(d) Post at its plant in Brewton, Alabama, copies of the notice attached hereto and marked "Appendix A."⁴ Copies of said notice to be furnished by the Regional Director for the Fifteenth Region shall, after being signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof and 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 Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

IT IS FURTHER ORDERED that the complaint, insofar as it alleges other violations of Section 8 (a) (1) of the Act, be, and it hereby is, dismissed.

⁴In the event that this Order is enforced by 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."

APPENDIX A

NOTICE TO ALL EMPLOYEES

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

WE WILL NOT discourage concerted activities among them, or discourage membership in any labor organization, by discriminatorily discharging, refusing to reinstate, or discriminating in any other manner in regard to the hire and tenure of employment or any term or condition of employment of our employees.

WE WILL NOT by means of unilateral changes in rates of pay, wages, hours of employment, or other conditions of employment, or in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Local Union No. 676, International Brotherhood of Electrical Workers, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and 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 employees T. C. Bradley, Ford Holloway, C. F. Phelps, W. C. Pugh, and James L. Taylor

immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to any seniority or other rights and privileges previously enjoyed, and make them, including J. D. Freeman and Ealon E. Jordan, whole for any loss of pay suffered as a result of the discrimination against them.

WE WILL bargain collectively, upon request, with the above-named union as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All employees employed in line construction and maintenance crews, including substation, electric service, electric appliance service, electric meter department, garage department, and warehouse department employees, excluding all other employees and supervisors as defined in the Act.

All our employees are free to become or remain members of the above-named union or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

SOUTHERN PINE ELECTRIC COOPERATIVE,
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.

Intermediate Report

STATEMENT OF THE CASE

Upon a charge and an amended charge filed by Local Union No. 676, International Brotherhood of Electrical Workers, AFL, 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 Fifteenth Region (New Orleans, Louisiana), issued a complaint herein dated April 30, 1952, against Southern Pine Electric Cooperative, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1), (3), and (5) and Section 2 (6) and (7) of the Labor Management Relations Act, 1947, herein referred to as the Act. Copies of the complaint, the charges, and a notice of hearing were duly served upon the Respondent and the Union

With respect to the unfair labor practices, the complaint as amended at the hearing alleged in substance that: (1) The Respondent on or about January 22, 1952, discriminatorily discharged and refused reinstatement to seven named employees; (2) the Respondent on and after January 22, 1952, failed to recognize the Union and to bargain collectively with the

Union; and (3) the Respondent on or about January 17, 1952, did discourage employees' efforts to engage in group action to discuss their complaints over their working conditions by refusing to discuss certain matters with them and advising them to take up such matters individually with the Respondent; that following January 25, 1952, added to certain of its employees' regular jobs, onerous and distasteful duties because of said employees' participation in concerted activities, and after specified dates granted to its employees pay increases and other benefits.

In its answer, as amended at the hearing, the Respondent admitted certain allegations of the complaint but denied the commission of any unfair labor practices. The Respondent also pleaded in its answer that the business which it conducts is not such as affects commerce within the meaning of the Act.

Pursuant to notice, a hearing was held before me from September 29 to October 3, 1952, inclusive, in Brewton, Alabama. The General Counsel, the Respondent, and the Union participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues. On May 12, 1952, the Respondent filed a motion to dismiss the complaint on the grounds that (1) the charges on the complaint failed to state that the Union has complied with Section 9 (f), (g), and (h) of the Act, and (2) that there has been no ascertainment by the Board that the Respondent is engaged in commerce within the meaning of the Act. On August 14, 1952, Trial Examiner Eugene E. Dixon issued an order denying that motion. Also on May 12, 1952, the Respondent filed a motion to strike the complaint on the same grounds asserted in its motion to dismiss. I denied that motion at the beginning of the hearing.

The General Counsel and the Respondent participated in oral argument at the conclusion of the evidence and were afforded an opportunity to file briefs, proposed findings of fact, and conclusions of law. Only the Respondent has filed a brief.¹

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

FINDINGS OF FACT²

1. THE BUSINESS OF THE RESPONDENT

The Respondent is a nonstock, nonprofit cooperative, incorporated in the State of Alabama pursuant to a special enabling act of the Alabama State Legislature, with its principal office and place of business in Brewton, Alabama, where it purchases wholesale and distributes at retail electric energy to rural farmers and others. The Respondent serves the rural areas of parts of Baldwin, Conecuh, Escambia, and Monroe Counties in southwest Alabama. Besides its principal office in Brewton, the Respondent operates 5 substations near the cities of Evergreen, Brewton, Conecuh, Excel, and Frisco City, Alabama. During 1951 the Respondent sold power with the value of \$351,799.38, none of which was sold outside the State of Alabama. During that same year it made purchases of a total value of \$266,256.07, of which amount 14.01 percent was purchased directly outside the State of Alabama. The Respondent has approximately 6,800 members and purchases its power from the Alabama Power Company and the Alabama Electric Cooperative.³ The Respondent, together with 2 Florida and several Alabama cooperatives, is a member of the Alabama Electric Cooperative. The Alabama Electric Cooperative sells power only in Alabama and generates all of its power within the State of Alabama. During 1951, the Respondent purchased from the Alabama Electric Cooperative electric power whose value was \$75,844.43. During 1951, the Respondent purchased from the Alabama Power Company electric power whose value was \$20,518.36. During 1951, the Respondent purchased materials including poles, electric wires, transformers, and other items of hardware, whose value was \$169,893.28, of which amount \$37,319.04 represented the value of materials purchased directly from States other than the State of Alabama. In 1951, the amount of electric power sold to farmers amounted to \$337,486.82; and the amount of electric power sold to industrial users amounted to \$13,312.56. The Respondent has been financed by loans from the Rural Electrification Administration, a division of the Department of Agriculture, which loans have amounted to approximately 2½ million dollars.

¹ The time for briefs was extended to November 7, 1952.

² In making the findings herein I have considered and weighed the entire evidence. It would needlessly burden this report to set up all the testimony on disputed points. Such testimony or other evidence as is in conflict with the findings herein is not credited.

³ The Board has asserted jurisdiction over Alabama Power Company, 18 NLRB 652, and Alabama Electric Cooperative, 78 NLRB 634.

The Respondent maintains that the Board has no jurisdiction since it does not operate such a business as affects commerce within the meaning of the Act and that its business operations are such as to require the application of the *de minimis* doctrine. The Board has held that a cooperative utility of the type involved herein should, for these purposes, be treated as a public utility and that, in accordance with the Board's established policy to take jurisdiction over public utilities, jurisdiction should be asserted.⁴ On the basis of the foregoing facts, I find the Respondent is engaged in operations affecting commerce within the meaning of the Act; that its operations are not within the rule of *de minimis*; and that it falls within the class of enterprise over which the Board, as a matter of policy, asserts its jurisdiction.

II. THE LABOR ORGANIZATION INVOLVED

Local Union No. 676, International Brotherhood of Electrical Workers, AFL, is a labor organization admitting employees of the Respondent to membership.

III. THE UNFAIR LABOR PRACTICES

A. The discriminatory discharges

The complaint alleged that the Respondent on or about January 22, 1952, discriminatorily discharged and thereafter failed and refused to reinstate T. C. Bradley, J. D. Freeman, Ford Holloway, Ealon E. Jordan,⁵ C. F. Phelps, W. C. Pugh, and James L. Taylor because of their membership in and activities on behalf of the Union and because they engaged in concerted activities with other employees for the purposes of collective bargaining and other mutual aid and protection. The answer denied they were discriminatorily discharged and averred that they had resigned and their resignations were accepted.

Commencing in December 1950, the Respondent adopted a policy of merit pay increases payable on a semiannual basis in January and July in variable amounts up to but not exceeding 5 percent of an employee's salary. On January 16, 1952,⁶ paychecks were distributed. Some employees received increases and others did not. Some employees received raises of eight-tenths of 1 cent and others received fractional amounts of 1 cent per hour up to the limit of 5 percent. On January 16, employees James L. Taylor and W. C. Pugh complained to Fee Martin, the Respondent's president, about the increases. Martin did not testify. Taylor told Martin he was dissatisfied but did not tell him he was going to quit his job. Taylor admitted that he did tell Martin the boys might walk out with him or words to that effect. At approximately 6 o'clock that same evening, 6 employees, T. C. Bradley, J. D. Freeman, Ernie Ford Holloway, Ealon E. Jordan, W. C. Pugh, and Taylor sought out Joseph L. Arnold, assistant manager,⁷ and for approximately 20 minutes, Taylor discussed with him their dissatisfaction about the increases and working conditions. Arnold told Taylor there was not much that Arnold could do about the matter. Taylor told Arnold they would see the manager, Joe T. Larkins,⁸ to find out what he could do about it.

The next morning, January 17, Taylor received a telephone call from Martin telling him not to see Larkins. Undeterred by that message, the same six employees, joined now by employee C. F. Phelps, held a meeting at which Phelps protested that he could not go in with them to see Larkins as he was getting old and could not afford to quit. Taylor reassured him that no one was going to make him quit, that they were just going in to see what could be done about the pay increases. Phelps with the other six employees then met with Larkins in his office. Discussion was had concerning the pay increases and Taylor stated to Larkins that if something were not done about it, by the first of the month, they were "working a two-weeks notice."⁹ After consideration of all the testimony surrounding what was said in order to

⁴See *Farmers' Electric Cooperative, Inc.*, 100 NLRB 746, and cases cited in footnotes 4 and 5 therein.

⁵The complaint was amended at the hearing to change the name Earl F. Jordan to Ealon E. Jordan.

⁶All dates hereinafter mentioned refer to the year 1952 unless otherwise stated.

⁷At times referred to in the record as Little Joe.

⁸At times referred to in the record as Mr. Joe.

⁹The Respondent claims the 7 men tendered their resignations to him, giving 2 weeks' notice, which Larkins later accepted. The General Counsel contends that none resigned but were thereafter discharged by the Respondent because of their concerted activity in protesting in a group to Larkins about their pay increases. On the question as to what was said at the meeting, eight witnesses testified (Taylor, Phelps, Bradley, Larkins, Holloway, Pugh, Jordan, and Freeman). Taylor testified on direct examination:

determine whether the said 7 employees in fact did resign, then and there, on January 17, effective 2 weeks later, I find that they did not resign. The testimony of Larkins corroborates the testimony of Taylor. that Taylor stated they would resign unless something were done about granting to the men a decent raise. Larkins told them to go back to work and he would consider it. The position of the men was that they would resign on the first of the following month unless something was done in the meantime about their increases. The testimony of credible witnesses supports and corroborates such version.¹⁰

Later in the day of January 17, approximately 5 or 10 minutes before closing time at 5 p. m., Larkins approached Taylor and remarked that he and Taylor would have to get together "on this thing." Taylor replied that he and Larkins could not get together on it, but that Taylor, Larkins, and the rest of the employees could get together on it. Larkins stated to Taylor that Taylor had embarrassed him that morning. Taylor rejoined that Larkins had embarrassed him when he gave those fellows eight-tenths of a cent raise and Larkins said he was accepting Taylor's resignation. Taylor replied if he was accepting his, he was going to accept all the rest. Then Larkins said he would talk to the rest individually and Taylor told him it would not do any good.

Friday, January 18, was uneventful. On Saturday evening, January 19, 14 employees met at Taylor's house and all signed a paper in which they agreed that they would have the Union represent them.¹¹ Taylor telephoned to Robert F. Rhodes, a union representative, and arrangements were made for a meeting with Rhodes the day following. On Sunday afternoon, January 20, the same 14 employees met at employee McDonald's home with Rhodes and cards authorizing the Union to act as collective-bargaining representative were signed by all.¹² It was decided at that meeting that Rhodes would write a letter to Larkins asking for union

So, I told Mr. Larkins if something couldn't be done by the first of the month, we was working two-weeks notice. Mr. Larkins told all of us that he would talk to us as individuals, one at a time and to go back to work and he would consider it.

On cross-examination, Taylor testified:

Q. When he refused to talk as a group, did you or did you not say "We are resigning effective two weeks from this date"?

A. No, sir.

Q. What did you say?

A. I told him if something wasn't done about this by the first of the month, we was going to work two weeks notice.

Q. Did you give two weeks notice then?

A. No, sir, I told him if something wasn't done.

Larkins testified on direct examination:

He (Taylor) . . . went on to tell me they weren't satisfied with their raises and wanted something done about it and I told him that I would be glad to consider it, their raise or whatever they had to say about their raise; and he said that they were serving notice on me, two weeks from that day, "We are resigning if we don't get something more than this. We want a decent raise."

On cross-examination, Larkins testified:

He (Taylor) said: "If we don't get something done about it, we are resigning, giving you two-week's notice. Resigning with two week's notice from today, two weeks from today our time is up."

¹⁰ The testimony of Jordan and Freeman is not credited.

¹¹ These employees were: Linesmen John L. Barron, J. D. Freeman, A. E. Griffin, Ealon Jordan, William C. Peavy, W. C. Pugh, James L. Taylor, and Henry H. White; groundmen T. C. Bradley, Jim Crawford, Ford Holloway, and C. F. Phelps; and warehousemen Earl F. McDonald and Charlie Porterfield.

¹² These cards though actually signed on Sunday, January 20, were dated January 19, following discussion as to the legality of signing them on Sunday and also so they would correspond with the meeting of the day before.

recognition. Rhodes advised them that if Larkins offered them their checks to refuse them and telephone to Rhodes. Employee Henry H. White was selected to be the spokesman for the employees.

All employees worked on Monday, January 21, and on Tuesday, January 22. After Larkins had consulted an attorney earlier in the morning on January 22, Larkins told employee McDonald between 9 and 9 30 a. m. that he was going to let the boys go who were in his office and to get up their time so he could get them their checks by 12 o'clock. Larkins called off the names as McDonald wrote them. Larkins told McDonald to give them full time to the end of the month because he was going to let them go and that would give them time to get jobs elsewhere. About 10 minutes before quitting time on January 22, Larkins offered a check to Taylor saying, "Jimmie, here is your check--I paid you up to the first of the month so you can be getting out and get another job." Taylor refused the check remarking to Larkins that it was a cloudy night and he did not want to leave Larkins "out on a limb." The significance of that remark was that there might be bad weather and if an emergency arose Taylor would be available for work if Larkins called upon him. Larkins told Taylor to leave the company truck inside the garage. The usual custom had been that Taylor took the truck to his home so that it would be available for use if work during the night became necessary. Larkins then offered Holloway his check but it was refused. At the home of employee Pugh that evening, the same 14 employees were present. No representative for the Union was there, but Rhodes was informed by telephone that Larkins had offered the checks to the 7 men who had called on him in his office as a group on January 17, and they had refused to accept the checks. Rhodes instructed them to talk to Larkins again in an attempt to persuade him to let the said 7 men continue to work for the Respondent and, if no good was accomplished, to "pull the pin" (to strike) White thereupon telephoned to Larkins at his home and was told by Larkins that he could not see them that evening as he had already retired; that he had an early appointment in the morning and would try to meet them later in the morning.¹³

A few minutes before 8 a. m., on Wednesday, January 23, the same 14 employees arrived at the plant and asked to see Larkins. Both Arnold and Larkins, as already shown, now knew that the Union was claiming to represent a majority of employees by reason of reading the letter from the Union on the previous evening. Arnold informed the group that Larkins was away and he would be glad to take any message for Larkins but he had no authority to tell Larkins what to do.¹⁴ None of the employees worked that day but sat in the linesmen's room awaiting Larkins' return. When Larkins entered that room about 3 p. m., he was asked by White if he would consider putting the 7 men who had been in Larkins' office as a group on January 17 back to work.¹⁵ Larkins replied that he no longer considered those 7 men to be employees of the Respondent; and said he would have to know whether the remaining 7 men were going to return to work. Larkins requested White to let him know by 7 o'clock that evening whether the remaining employees were going to return to work so that he could inform the board of directors that evening concerning the situation. That same evening, all the aforesaid 14 employees met at Taylor's house with Rhodes, the union representative. It was decided at that meeting that the employees would not report for work the next day (January 24) but that the union representatives, Rhodes and Hopper, with employee White, would call on Larkins. On Thursday, January 24, Rhodes, Hopper, and White called on Larkins. Hopper told Larkins he was representing the employees, asked for a meeting to discuss the possibility of putting these employees back on the job, recognition of the Union and negotiation of an agreement. Larkins replied he was too busy to talk about union business and said he had referred the Union's letter of January 21 to an attorney in Montgomery.¹⁶ As Hopper and Rhodes were leaving Larkins' office, White asked Larkins to talk to them concerning putting the 7 men back to work but Larkins refused. Later that day, the 14 employees met at employee McDonald's home with Hopper and Rhodes who gave them a report of their visit to Larkins.¹⁷ It was de-

¹³A letter from the Union dated January 21 which set forth the claim that the Union represented a majority of the employees and asking for recognition was received by the Respondent during January 22 and placed unopened on Larkins' desk. It was not opened until 9 o'clock that same evening when Larkins opened and read it at the office in the presence of Arnold.

¹⁴Arnold testified that White said to him "I understand that you received a letter from a local union in Pensacola and Mr. Larkins immediately thereafter had the checks typed up."

¹⁵Upon entering the room, Larkins inquired "What do you call this--a strike or what?" White answered, "You name it."

¹⁶Larkins testified he gave them the name of the Respondent's attorney in Montgomery but Rhodes, Hopper, and White testified that they did not understand the attorney's name.

¹⁷The 14 employees remained away from work the entire day on January 24.

cided that another attempt would be made the next day to persuade Larkins to put the 7 men back to work; and this time, if Larkins still refused, the remaining 7 employees would then go back to work.

A few minutes after 8 o'clock in the morning of Friday, January 25, all 14 employees went to the plant and White asked Larkins if he would consider putting back to work the 7 men who had been in his office on January 17. Arnold was also present. Larkins refused, saying "The seven men that went in my office can consider themselves no more employees of Southern Pine Cooperative." He continued, "You seven that didn't come in, if you want to work, it is all right, but come to my office now." Larkins then gave the 7 men who had gone to his office in a group on January 17 their paychecks¹⁸ and after getting their personal effects they left the plant. The remaining 7 employees¹⁹ reported to his office and lined up in a row by Larkins' desk, where he asked each employee individually if he was ready to return to work. McDonald asked if there would be any ill will against him for his participation in this Union but received no reply.²⁰ The 7 employees then returned to work.

By letter dated February 8, the Union on behalf of Bradley, Freeman, Holloway, Jordan, Phelps, Pugh, and Taylor, made an unconditional request for their reinstatement. None of the 7 employees had been reinstated, except Freeman who was rehired about the middle of April and Jordan who was rehired on or about April 21. The Respondent has hired only 2 replacements, viz, Johns and Gurney.

Conclusions

Upon the basis of the foregoing facts and the entire record, I find that T. C. Bradley, J. D. Freeman, Ford Holloway, Ealon E. Jordan, C. F. Phelps, W. C. Pugh, and James L. Taylor did not quit their employment but were discharged by the Respondent and thereafter refused reinstatement in violation of Section 8 (a) (3) and (1) of the Act because of their concerted activity in protesting the amount of their pay increases. On January 17, they threatened to quit on the first of the following month, if something were not done about their dissatisfaction. Larkins understood that to be the fact for he told them to return to work and he would consider it. At the very outset, Larkins resented the men going to him as a group and he voiced his opposition by announcing that he would discuss the matter with them individually but not as a group. The Respondent's contention that this was because he did not wish to embarrass any employee by discussing individual shortcomings before the others has been considered and rejected by me. The sequence of events subsequent to January 17 does not bear out the theory that they had voluntarily quit their employment. Their threat to quit if something were not done by the first of the month was designed to move the Respondent to take favorable action on their demands for better wages. The employees refused their paychecks when tendered on January 22, and on 3 separate days, January 23, 24, and 25, sought to persuade Larkins to change his mind and permit them to continue working. Such concerted action by employees has been held to be protected activity under the Act.²¹

B. The refusal to bargain

1. The appropriate unit

The complaint alleged, the Respondent stipulated,²² and I find that all employees of the Respondent employed in line construction and maintenance crews, including substation, electric service, electric appliance service, electric meter department, garage department, and warehouse department, and excluding all other employees and supervisors as defined in the Act constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

¹⁸ They were Bradley, Freeman, Holloway, Jordan, Phelps, Pugh, and Taylor.

¹⁹ They were Barron, Griffin, Peavy, White, Crawford, McDonald, and Porterfield.

²⁰ The evidence is in conflict as to whether McDonald actually used the word "union." It is immaterial whether he did or not as the Respondent well knew by that time that the 14 employees were represented by the Union.

²¹ See, Gullett Gin Company, Inc., 83 NLRB 1, enforced 179 F. 2d 499 (C. A. 5), reversed and remanded 340 U.S. 361.

²² The stipulation was subject to the reservation that the Respondent did not thereby admit the identity of any persons forming or composing the unit.

2. The majority

Fourteen out of eighteen employees (linesmen, groundmen, and warehousemen) signed cards on January 20 which designated the Union to be their statutory bargaining representative.²³ The evidence shows and I find that the Union did represent a majority in the appropriate unit since on and after January 20, 1952, and, by virtue of Section 9 (a) of the Act, has been and is now the exclusive representative of all the employees in said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment.

On January 21, the Union wrote to the Respondent's manager and stated that the majority of the employees in line construction and maintenance crews, including substation, electric service, electric appliance service, electric meter department, garage department, and warehouse department had designated the Union as their representative for collective bargaining; requested the Respondent to recognize the Union; and requested a reply as to whether the Respondent would extend such recognition. The Union also therein indicated its readiness to confer on the subject. That letter came to the notice of the Respondent for the first time on January 22, between 8 and 9 o'clock in the evening, when it was opened and read by the manager and assistant manager. On January 23, Rhodes and Hopper, who were union representatives, and employee Henry White visited Larkins at the plant, stating they had come to discuss with him putting back to work the seven men whom Larkins had maintained had resigned and to discuss negotiations for a contract. Larkins informed them that he was too busy to talk with them on union matters and referred them to the Respondent's attorney. On February 1, the Respondent in a letter signed by its manager, Larkins, wrote to the Union that it was not convinced that the Union represented a majority of the maintenance and construction employees and asserted the Respondent's belief that its business did not affect commerce within the meaning of the Act. The letter concluded by referring to the petition which the Union had filed with the Board on January 24 for certification as representative of the employees.²⁴ On February 8, the Union wrote to the Respondent making an unconditional request for reinstatement of Bradley, Freeman, Holloway, Jordan, Phelps, Pugh, and Taylor. Also on the same date, the Union wrote to the Respondent's manager requesting a meeting with the Union to discuss matters concerning wages, hours, working conditions, and other conditions of employment. The letter stated further "If you have designated someone to represent you in this matter, I have not yet been formally notified of his name."²⁵ By letter dated February 13, the Respondent's attorney, J. M. Williams, Jr., acknowledged receipt of the Union's letter of February 8 which requested that a meeting be arranged, stating that he had been designated to represent the Respondent in all matters affecting its employees, the local union, and the National Labor Relations Board. Williams stated that he felt the Union's request should be given further consideration by the Respondent's board of trustees so that Williams would receive definite instructions before accepting or rejecting the Union's request, and accordingly that the matter would be presented to the trustees at the next meeting on February 19. By letter dated February 22, Williams further advised the Union with respect to its letters of February 8, as follows:

For further answer to your two letters of February 8 1952 addressed to Mr. Joe Larkins, Manager of the Southern Pine Electric Cooperative, I wish to advise you that at a meeting of the Board of Trustees of this cooperative I was presented with an amendment to your charge that this cooperative terminated the employment of some seven of its employees because of their membership and activities on behalf of your local union and refuses to reinstate them. This charge the Cooperative denies, and reiterates its former position that these employees resigned. That at the time of their resignation the cooperative had no knowledge of any union activity among its employees.

As to reinstating these employees, the cooperative takes the position that it could not grant your request for reinstatement of the employees unless it recognized your union as the bargaining agent for its employees.

The cooperative also denies that it has refused to bargain collectively with your local union and refers you to its former correspondence in which it advised you that it was not

²³See footnotes 11 and 12, *supra*.

²⁴That petition was withdrawn by the Union on March 27 and the withdrawal was approved by the Regional Director on March 31. The Union filed the original charge on January 28 and the amended charge on February 18.

²⁵See footnote 16, *supra*.

convinced that you represented a majority of its employees, and further that it was not convinced that it conducts a business which affects commerce within the meaning of the Labor Management Relations Act.

The Union thereafter made no further requests for recognition or for conference.

The Respondent's defense to the charge that it has refused to bargain with the Union is based on its claims that its business does not affect commerce within the meaning of the Act and that the Union does not represent a majority of its employees in the unit.

There is no basis for any bona fide doubt on the part of the Respondent that the Union represented a majority of its employees in the aforesaid unit. It became aware of the Union's claim for the first time during the evening of January 22, which the Union renewed on January 24. The Respondent had visual evidence of the fact that the Union's claim to represent the majority was well founded because of the work stoppages on January 23 and 24, participated in by the 14 employees. Nowhere in the record is there any claim or evidence that the Union's majority has been dissipated. Since the Respondent did not have a bona fide doubt that the Union represented a majority of its employees in the appropriate unit and since the Respondent is engaged in commerce within the meaning of the Act, as found above, I conclude that the Respondent's reasons for refusing to bargain with the Union did not justify the Respondent's conduct in refusing to recognize the Union and for refusing to meet with it in negotiation sessions.²⁶ Further evidences leading to the conclusion that the Respondent failed to bargain in good faith is found in its conduct of increasing payment for overtime work and for inaugurating payment for weekend standby pay without consultation with the Union. I therefore find, on the entire record, that on or about January 22, 1952, and at all times thereafter, the Respondent refused to bargain collectively with the Union in violation of Section 8 (a) (5) of the Act, thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8 (a) (1) thereof.

C. Interference, restraint, and coercion

In addition to the derivative violations of Section 8 (a) (1) of the Act, heretofore found, the complaint, as amended at the hearing, alleged that beginning on or about June 15 the Respondent increased pay for overtime work; on or about July 1, granted pay increases; beginning August 1952 paid telephone bills of its employees; and beginning at the end of August 1952 began paying for weekend standby duty, *viz.*, 4 hours pay at time-and-one-half when employees were not called for work or made no service calls. The complaint alleged further that following January 25 the Respondent added to certain of its employees' regular jobs onerous and distasteful duties because of said employees' participation in concerted union activities. The bill of particulars specified that employee McDonald had been removed as the Respondent's radio operator and forced to perform the following jobs: hauling of sodded grass, sodding ditches, digging up pipe, hauling gravel, hauling poles, loading poles, transporting, moving, loading, and unloading transformers, working with the line crew and the ground crew, both away from the plant; sowing of grass seed and the planting of grass runners. The Respondent introduced evidence that the pay increases of July 1 were the regular semi-annual increases which had been in effect beginning January 1, 1951; and that the installation of telephones and the payment of telephone bills of employees were suggested by the Rural Electrification Administration as ways to improve the service to customers in cases of emergency. On the whole record, I find that the Respondent did not violate the Act by the pay increases on July 1 or by the installation of free telephones in the homes of certain of its employees. With respect to the onerous and distasteful duties which it is alleged were given to McDonald, the Respondent introduced evidence that the office radio had been mislocated in the first instance in the warehouse and not in the office where it should have been. During the temporary time while the radio was in the warehouse before its removal to the office, McDonald had operated it without having the required license and he was not a licensed operator. After its removal to the office it was operated by licensed operators. I find that McDonald's failure to operate the radio after its removal to the office was not a violation of the Act on the part of the Respondent. Prior to January 1952, McDonald, in addition to his duties as payroll and inventory clerk, on several occasions had performed many and arduous duties involving heavy work. Particularly with reference to the sodding that McDonald was alleged to have been required to do, 1 or 2 other employees had attempted unsuccessfully to stop the rain water from washing away the terrace and McDonald volunteered to do it in such a way that it would be successful. McDonald was given a truck with 2 men to help

²⁶See Farmers' Electric Cooperative, Inc., 100 NLRB 746.

him and he was successful in stopping the water flow by sodding the terrace. In addition he suggested the planting of Bermuda grass which he did and furthermore set out some sprigs on the sod, thereby completing a workmanlike job. Upon consideration of all the evidence, I conclude and find that the Respondent did not add to McDonald's regular job onerous and distasteful duties because of his participation in concerted union activities. I find that the Respondent by increasing payment for overtime work and by inaugurating payment for weekend standby pay without consultation with the Union, thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8 (a) (1) thereof.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent, set forth in section III, above, occurring in connection with the operations of the Respondent set forth 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.

V. THE REMEDY

Having found that the Respondent had engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

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

CONCLUSIONS OF LAW

1. Local Union No. 676, International Brotherhood of Electrical Workers, AFL, is a labor organization within the meaning of the Act.

2. All employees of the Respondent employed in line construction and maintenance crews, including substation, electric service, electric appliance service, electric meter department, garage department, and warehouse department, and excluding all other employees and supervisors as defined in the Act constitute a unit appropriate for the purposes of collective bargaining within the meaning of the Act.

3. Local Union No. 676, International Brotherhood of Electrical Workers, AFL, was on January 20, 1952, and at all times thereafter has been the exclusive representative of all of the employees in the above appropriate unit within the meaning of the Act.

4. T. C. Bradley, J. D. Freeman, Ford Holloway, Ealon E. Jordan, C. F. Phelps, W. C. Pugh, and James L. Taylor, in the exercise of their concerted activities, constituted a labor organization within the meaning of the Act.

5. By discriminating in regard to the tenure of employment of T. C. Bradley, J. D. Freeman, Ford Holloway, Ealon E. Jordan, C. F. Phelps, W. C. Pugh, and James L. Taylor, the Respondent discouraged membership in a labor organization, as defined in the Act, in violation of Section 8 (a) (3) of the Act, and has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed to them by Section 7, in violation of Section 8 (a) (1) of the Act.

6. By increasing pay for overtime work and inaugurating payment for weekend standby duty without prior consultation with the Union, the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed to them by Section 7, in violation of Section 8 (a) (1) of the Act.

7. By refusing on or about January 22, 1952, and at all times thereafter to bargain collectively with Local Union No. 676, International Brotherhood of Electrical Workers, AFL, as the exclusive representative of all its employees in the aforesaid appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) and (1) of the Act.

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

9. The Respondent did not violate Section 8 (a) (1) of the Act by granting pay increases, paying telephone bills of its employees; nor by adding to certain of its employees' regular jobs onerous and distasteful duties because of said employees' participation in concerted union activities.

[Recommendations omitted from publication.]