have the effect of disturbing the existing contract covering the production and maintenance employees.[4] Under the circumstances, we find the contract no bar to this proceeding.[5]

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

4. For the reasons set forth in paragraph numbered 3, above, 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 watchmen performing the duties of plant guards employed at the Employer's Milwaukee, Wisconsin, plant, including the watchmen chiefs,[6] but excluding office clerical employees, production employees, all other employees, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

[4] In Sonotone Corporation, 100 NLRB 1127, the Board dismissed a petition for a production and maintenance unit on the basis of American Dyewood. However, the Board on its own motion amended an existing certification to exclude "guards," because it found that although in the earlier case they had been included in a production and maintenance unit because the parties stipulated that they were not "guards," the record in the later case disclosed that they were in fact guards as defined in the Act.

[5] See Briggs Manufacturing Company, 101 NLRB 74.

[6] As the parties stipulated at the hearing that the four watchmen chiefs are not supervisors, and inasmuch as they also perform the duties of guards within the meaning of the Act, we shall include them in the unit.

LAKESIDE PACKING COMPANY *and* GENERAL DRIVERS, DAIRY PRODUCTS, EMPLOYEES AND HELPERS UNION, LOCAL NO. 56, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, A.F.L. Case No. 13-CA-1076. May 12, 1953

DECISION AND ORDER

On March 13, 1953, Trial Examiner Eugene E. Dixon 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. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board[1] has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was

[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].

committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and supporting brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.[2]

ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, Lakeside Packing Company, Sheboygan, Wisconsin, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in General Drivers, Dairy Products, Employees and Helpers Union, Local No. 56, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A.F.L., or any other labor organization of its employees, by discriminating in regard to their hire or tenure of employment or any term or condition of employment.

(b) Questioning employees concerning their union sympathies or activities.

(c) Threatening employees in their tenure of employment or with the loss of their jobs or other economic reprisals if the union organization is successful or if they join the Union.

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist General Drivers, Dairy Products, Employees and Helpers Union, Local No. 56, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A.F.L., 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, or to refrain from any or 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.

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

(a) Make whole Robert Zimbal and Orville Froh in the manner set forth in the section of the Intermediate Report entitled "The Remedy" for any loss of pay they may have suffered as a result of the discrimination against them.

(b) Upon request, make available to the Board or its agents, for examination and copying, all payroll records, social-secu-

[2] We note a reference in the last paragraph of section III, B, 4 of the Intermediate Report to the effect that the Respondent violated "Section 8 (a) (1) and (1) of the Act." It is clear from the context of the Trial Examiner's finding of a discriminatory layoff, here and elsewhere in the Intermediate Report, that this was a typographical error, and that it was intended to read "Section 8 (a) (3) and (1) of the Act." We correct this error accordingly.

rity payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of back pay and the right of reinstatement under the terms of this Order.

(c) Post at its plant in Sheboygan, Wisconsin, copies of the notice attached to the Intermediate Report and marked "Appendix."[3] Copies of such notice, to be furnished by the Regional Director for the Thirteenth Region, shall, after being duly signed by Respondent's authorized representative, be posted by Respondent immediately upon receipt thereof and maintained for 60 days in conspicuous places, including all places where notices 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.

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

[3] This notice shall be amended by substituting for the words "Pursuant to the Recommendations of a Trial Examiner" in the caption thereof, the words "Pursuant to a Decision and Order." In the event that this Order is enforced by a decree of a United States Court of Appeals, the notice shall be further amended by substituting 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

STATEMENT OF THE CASE

Upon duly filed charges by General Drivers, Dairy Products, Employees and Helpers Union, Local No. 56, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A.F.L., herein called the Union, the General Counsel of the National Labor Relations Board, herein called the General Counsel and the Board, respectively, by the Regional Director for the Thirteenth Region (Chicago, Illinois), issued a complaint dated December 2, 1952, against the Lakeside Packing Company, a corporation, herein called the Respondent, alleging that Respondent had engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. Copies of the charge, complaint, and notice of hearing were duly served upon Respondent and the Union.

With respect to the unfair labor practices, the complaint as amended at the hearing alleges in substance that Respondent interrogated its employees about their union activities, threatened them with reprisals because of their union membership or activities, and discriminatorily discharged or laid off employees Richard A. Gerold, Robert Zimbal, and Orville Froh, because of their union activities and for the same reason failed and refused to reinstate them at all times from March 3, 1952, until about June 26, 1952.

In its answer, Respondent denies that it engaged in or is engaging in any unfair labor practices, and further alleges as defenses that Gerold was not an employee within the meaning of the Act; that Gerold, Froh, and Zimbal were laid off for business reasons and that Froh and Zimbal were offered reemployment June 18, 1952, as soon as employment became available; and that it was without knowledge of the union activity of Froh and Zimbal.

Pursuant to notice, a hearing was held at Sheboygan, Wisconsin, December 15 and 16, 1952 All parties were represented at the hearing, were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence, to argue orally upon the record, and to file briefs. Briefs have been duly received from the General Counsel and the Respondent.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

At all times material herein, Respondent has been a corporation duly organized and existing under the laws of the State of Wisconsin, with its principal plant and office located at Manitowoc, Wisconsin. Besides its plant in Manitowoc, 1 in Amery, Wisconsin, 1 in Plainview, Minnesota, it operates a plant in Sheboygan, Wisconsin, where it is engaged in the processing and packing of foodstuffs

In the course and conduct of its operation of the Sheboygan, Wisconsin, plant (which is the sole subject of this proceeding and is referred to herein as the plant), Respondent purchases annually approximately $140,000 worth of raw material from points within the State of Wisconsin. During the year 1951, Respondent processed and manufactured at its Sheboygan plant and shipped from it to points outside the State of Wisconsin products valued in excess of $500,000.

Respondent admits, and I find, that it is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

General Drivers, Dairy Products, Employees and Helpers Union, Local No 56, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A.F.L., is a labor organization within the meaning of the Act

III. THE UNFAIR LABOR PRACTICES

A. Interference, restraint, and coercion

1. The discharge of Richard Gerold

Gerold was discharged by Respondent on March 3, 1952. The complaint alleges his discharge to have been discriminatory, being motivated by his union activity Since he does not desire reinstatement and has no back pay due him, the General Counsel contends only that Respondent has violated Section 8 (a) (1) of the Act regarding Gerold's discharge

Because on the record herein I am unable to reach a satisfactory conclusion as to Gerold's status with Respondent, I shall not resolve the issue. Finding as I do that Respondent in several other respects has violated Section 8 (a) (1) of the Act, I deem it unnecessary under the circumstances to consider the effect of Gerold's discharge, since my failure to do so will not affect the remedy.

2. The interrogation, threats, and other 8 (a) (1) violations [1]

Having heard a rumor Saturday, March 1, about union activity by the Sheboygan employees, Plant Manager Brady made a hurried trip to Maintowoc the following Monday morning to report the matter to his superior, Sylvester Ferguson. Brady returned to the plant early that afternoon and proceeded to call each employee to his office individually. There, in the presence of Supervisor Paul Kraska, and pursuant to Ferguson's instructions, he interrogated the employees about their union sympathies and, according to his testimony, presented the Company's position regarding a union in the plant.

These interviews lead off with an inquiry by Brady as to how the employee felt about the Union. In addition to the lead question, Brady mentioned to Alois Stahl the union meeting of the coming evening, telling him the employees could attend but that if they joined they "would be out."

Harold Roeder, the then office manager, was asked if he knew of the union activities in the plant and why he had not reported his knowledge He was also asked how he felt about the Union.

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[1] John Brady, plant manager, admitted on the stand interrogating the employees about their union sympathies. While not specifically denying any of the other 8 (a) (1) violations found herein, he did testify that he told all employees interviewed that regardless how they felt about the Union "it would have no bearing on their employment." Brady did not impress me as favorably as did the General Counsel's witnesses, on whom I rely in these findings. Detrimental to his credibility, besides his reactions and appearance on the stand, was his crucial lack of memory.

Marlin Meseck was told, after a discussion of wages, benefits, and working conditions, that Respondent would not stand for a union in the plant, and that if one got in "they'd definitely close down the shop."

Kraska "explained" to Meseck that if a union came in costs would be high and they would have to cut down on the hours worked.

Besides being asked what he thought about the Union, Arvin Milm was asked if he was going to the meeting. He replied that he was--that he wanted to learn more about it Brady told him, as well as several others, that it would be a good idea to go

Robert Zimbal and Orville Froh were also asked what they thought of the Union Zimbal was told that if a union was going to get in expenses would have to be cut Accordingly he was then and there discharged Froh, in answer to the question how he felt about the Union, stated that he felt it was a good thing. Brady then informed him that he was being laid off, but that the layoff was not because of the Union. Both Froh and Simbal were ordered to leave immediately and not permitted to finish the day which had 2 or 3 hours still to run.

The above interrogation,[2] the threat to close the plant if the Union came in,[3] the statement that Respondent would not stand for a union being in the plant,[4] that if the Union came in the number of hours worked would be cut,[5] and that if the employees joined the Union they "would be out"[6] clearly exceeded any rights of Respondent under Section 8 (c) of the Act, and on their face constituted interference, restraint, and coercion of its employees in the exercise of rights guaranteed them in Section 7 of the Act. That Respondent's conduct actually had the pernicious effect attributed to such conduct, as a matter of law,[7] is apparent from the fact that out of about 10 employees who had planned to attend the union meeting the evening of March 3, only 5 or 6 actually attended. Moreover, that Respondent intended its conduct to have the above effect would appear from the undenied, credited testimony of Roeder, amounting to an admission by Respondent, that Brady told him in substance that it was essential that the union campaign in the plant be stopped; that it would have to be stopped before the meeting that night, and that by discharging some of the men, others would be deterred from attending and the union campaign would be defeated.

B. The discrimination against Zimbal and Froh

1 The employees' union activity

About the middle of February 1952, the Union contacted several of Respondent's employees at their homes, discussed the benefits of organization with them, and showed them copies of collective-bargaining contracts in effect at other plants in the industry The first employee so contacted was Froh, who furnished the Union with the names and addresses of Zimbal and Meseck and also the name of Stahl Zimbal and Meseck were similarly visited by the Union Thereafter, Zimbal, Froh, and Meseck related their information to the other employees in the plant, telling them that the Union would hold an organizational meeting for them whenever they were ready

Gerold also became interested in the Union, and took upon himself the task of convincing the more "difficult" employees. On the evening of February 28, Gerold attended a union meeting of Respondent's Maintowoc employees at Maintowoc where he reported the favorable reaction of the Sheboygan employees toward organization. At this time, he learned that an initial meeting was planned for the Sheboygan employees Monday evening, March 3. The other Sheboygan employees subsequently received notice of the meeting through the mail.

2. The employment and termination of Zimbal and Froh

Zimbal had started with Respondent during the canning season of 1949. Rehired for the 1950 canning season, he was kept on thereafter as a regular year-round employee. His experience in the plant was varied as was that of most regular employees. He was an experienced closing machine operator and had acted as a troubleshooter eliminating jams during the canning season

[2] Homedale Tractor and Equipment Co., 101 NLRB 167; Wengie Tent & Duck Company, 101 NLRB 217; General Shoe Corporation, 100 NLRB 774.

[3] Homedale Tractor and Equipment Co., supra; Longview Furniture Company, 100 NLRB 456.

[4] Southland Manufacturing Company, 98 NLRB 53.

[5] George Noroian Company, 101 NLRB 1127.

[6] San Diego Gas and Electric Company, 98 NLRB 879.

[7] Chicopee Manufacturing Corporation of Georgia, 85 NLRB 1439.

On January 9, 1952, Zimbal took his army physical. Prior to this time, he had planned to take a Florida vacation which he had discussed with Brady. His impending call to the Army accentuated his desire for a holiday, which he voiced again to Brady after his physical At that time, the latter asked Zimbal to delay his trip because of a large order to be filled Zimbal postponed his leaving a few days but finally took off about January 15, returning to work some 3 weeks later There is no question but that it was understood between him and Brady he would return to work if his service status permitted A week or two after he returned to work, Brady informed Zimbal that it was necessary to cut expenses, and that because he was expected to go into the service he was being cut from $1.05 to 95 cents per hour

Froh had been a regular full-time employee since July 1950 He had had no complaints about his work and no intimation of his impending layoff He had started at 85 cents per hour and was earning $1 per hour at the time he was laid off Both he and Zimbal were terminated March 3, under the circumstances already indicated Both were also offered reemployment the following June, Froh declining it but Zimbal accepting. Zimbal thereafter worked for Respondent until October, just prior to his induction into the Army. After returning to work in June, Kraska told Zimbal that the Company would try to get him a deferment to finish the canning season if he desired. Zimbal declined the offer.

3. Respondent's defenses

Respondent relies on two defenses--(1) that it had no knowledge of the union activities of Froh and Zimbal, and (2) that in order to keep within the purpose of its budget it was necessary to curtail its work force. Accordingly, Zimbal was the logical one to be laid off, since he was expected to be called to the service at any time. Froh was chosen as one to go because he was not considered a "good" employee.[8]

In order to get the full flavor of Respondent's defenses, its story is set forth as presented by Respondent:

Respondent processes only peas and corn at its Sheboygan plant, its combined canning season running from sometime in June to early October During the fall and winter off-season months, Respondent maintains a combined factory, warehouse, and office crew of about 15 people. These people are chosen from the canning season employees on the basis of their past performance, capabilities, and availability for the next canning season. This off-season crew constitutes the nucleus of the next canning season force, its personnel becoming and being recognized as year-round regular employees Their off-season duties are to fill orders from stock, labeling the merchandise as specified, do the necessary maintenance work on plant, machinery, and equipment; and generally to prepare for the ensuing canning season To a large extent, the reason for maintaining the year-round crew is to have a trained, competent nucleus for the canning season operations. In this connection, Respondent's testimony repeatedly adverts to the make-work, standby character of its off-season operations and employment. Ferguson testified that the amount of work actually done did not require the number of employees kept through the off season, because "a great deal of the work that is done in the factory is made work "

At each of Respondent's plants, including the Sheboygan plant, a weekly labor budget is established within which the plant must operate.[9] For the 1951 to 1952 off season, this budget limitation at the Sheboygan plant was $800 per week From the beginning of that season until about the first of March, the plant had spent on its labor costs an average of $799 49 per week This was within 99 6 percent of its total accrued allowance. Although not exceeding the amount of its budget at this time, it is Respondent's position that the permissible rate of expenditure was being exceeded Respondent's explanation was that during the last few weeks of the off season its labor expenditures are substantially and necessarily increased by last-minute requirements, and that these expenditures must come out of the overall budget. Thus, during the forepart of the off season the plants are expected to stay sufficiently below their weekly maximum allowance to provide an accumulated cushion within the total budget for this last-minute activity.

According to Ferguson's testimony, for some 2 years prior to March 1952, Respondent had been dissatisfied with the results of its Sheboygan operation. Believing the fault to be

[8] Brady so testified. Ferguson testified that Froh had been the leader of a group that had been engaged in warehousing duties for Respondent in leased quarters the past season, and that the inventory on the work was "relatively inaccurate"; that his knowledge of the job indicated to Ferguson that Froh had "contributed to that confustion."

[9] Respondent's desire that its plants stay within the established budget was described as a "stay within or else" proposition. What happened if the budget was exceeded does not appear.

with its local management, on December 1, 1951, Gerold, the plant superintendent, was displaced by John Brady, who was transferred to the Sheboygan plant from Respondent's Plainview plant Brady, although an experienced field man, had no knowledge of the factory end of the business Conversely, Gerold who had been plant superintendent in charge of the factory work for 2 years, was inexperienced in the field work, that portion of the Sheboygan operation being handled by the Maintowoc office.[10]

According to Brady's testimony, the transfer to Sheboygan was first mentioned to him about November 1, 1951 Called to Manitowoc to discuss it, he agreed to it provided he could get some help on the factory end of the work Ferguson, having anticipated that problem, had already suggested to top management that Kraska, a former employee of 30 years experience in the canning business, be called out of a 5-year, old-age, ill-health retirement to act as Brady's adviser. Ferguson had previously sounded out Kraska on the proposition. He was to have reported October 31.[11] On that day, however, Ferguson received word from Kraska's wife that he had suffered a "slight heart attack" indefinitely postponing his employment with Respondent

This left Ferguson, as he put it, "between wind and water." He didn't know what to do. He "finally decided the thing to do was to get Brady down just as fast as possible and hold in abeyance any decisions on further action until he learned more about Kraska's condition. Ferguson made it clear that while he had confidence in Brady's ability to handle men, he was not sure Brady would be able to decide without help "just who to keep and who not to keep." Just what Ferguson had reference to in this connection is not clear. The evidence shows that the 1951 to 1952 off-season crew had been picked much before the date upon which Brady was to report, and presumably before the date Kraska was to report. Moreover, the picking of that crew was the decision of Plant Manager Miller of Manitowoc At any rate, Brady reported at Sheboygan on December 1 and took over the full management of the plant, Miller's connection therewith ceasing at that time and Gerold being demoted to warehouse foreman.

From the start of his tenure at the plant, Brady was made fully aware of the importance of his staying within his off-season labor budget Presumably, in this connection and pursuant to pressure for lower expenditures, Brady laid off two people in December--Gerold's wife and a man named Albrecht.

In January, Ferguson got word that Kraska would be able to report to work about March 1 As indicated by Ferguson, this was "a little bit late in the season to attempt to weld a good force together . " Nevertheless, on February 29, Brady, Ferguson, and Kraska convened at Manitowoc for a conference about the Sheboygan plant.[12]

According to Ferguson's direct testimony, Brady suggested "a method of cutting cost down there, and he knew about who he wanted to let go in the event he just had to get his budget down to a figure I thought would be reasonable " Brady's suggestion was to terminate Gerold, Froh, and Zimbal The tenor of this part of Ferguson's testimony was that Brady's suggestion was entirely his own idea made in accordance with Respondent's policy of giving its managers great latitude in their choice of employees

Brady's suggestion was forthwith approved. According to Brady's testimony, he was told to "get rid of them" as soon as possible Informing Ferguson that he could not get back before quitting time, he asked if he should inform the three by phone the next day, a Saturday. His instructions were to wait until Monday morning

On Monday morning, Brady's heart was heavy because of the onerous task he had to perform--particularly with respect to Zimbal and Gerold. So, instead of following his instructions regarding the terminations, after looking over the morning mail, he hurried to Manitowoc to report the rumor he had heard the previous Saturday about the union activity

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[10] Field work involved all the functions necessary to arrange in the area an adequate supply of produce for the canning operation. Ferguson testified that it was Respondent's desire to combine both the field work and factory work under one manager, and that it was more difficult to train a man for the field work than factory work. Gerold was under the supervision of Earl Miller, who at that time was in full charge of both the Manitowoc and Sheboygan plants, but who lived in and had his headquarters in Manitowoc.

[11] The arrangement must have been made before the transfer had been discussed with Brady. Either Respondent was quite sure of Brady's acceptance, or Kraska's employment has some other significance. When Kraska eventually came on the payroll, his salary was $125 per week.

[12] Exactly what was on the agenda is not clear. The only clue from Ferguson's testimony is that he opened the meeting with a recapitulation of Respondent's position about its labor budget, making a point of the precarious condition the Sheboygan plant was in in that respect.

of the Sheboygan employees His return, his discussions with the individual employees, and the terminations of Zimbal and Froh (also of Gerold) complete Respondent's story.[13]

4. Concluding findings

In my opinion the preponderance of the evidence supports the General Counsel's allegations, Respondent's explanations lacking in so many respects the persuasiveness necessary to support their acceptance.

Thus, the evidence as to Respondent's knowledge of the union activity of its employees is overwhelming. The rumor of union activity reaching Brady on Saturday, March 1; his trip to Manitowoc the morning of March 3 specifically to apprise Ferguson of the rumor, Brady's question that afternoon to Gerold as to whether he knew about the union meeting to take place that night and his reference about the meeting to Stahl; also, as brought out by Ferguson's testimony, his admitted knowledge of the Manitowoc meeting,[14] Gerold's attendance thereat, and the nature of some of the things discussed at the meeting all lead to the conclusion that Respondent was fully informed concerning the organizational activities of its employees.

As for Respondent's affirmative defenses, an examination of the entire record with its inconsistencies, discrepancies, and conflicts adds skepticism to an explanation dubious enough on its face.

In the latter connection, there is something inherently unconvincing about Respondent's position regarding its off-season labor budget. According to Respondent's testimony, it picks a crew at the end of the canning season chiefly to hold over as a nucleus for the next canning season Admittedly the crew is much larger than the volume of the off-season work requires. Yet in the middle of the off season, defeating the main purpose of its professed policy, it lets some of this standby crew go.

Since the work is largely made work and the crew larger than the work requires, it would hardly seem likely that it would be necessary to put in any time in excess of a standard workweek preapproved by top management. Thus it would seem that the hours, the rate of pay, and the number of employees would normally be fixed at the beginning of the off season providing for a fixed rate of expenditure throughout the off season. If such is the case it would follow that from the first week of its off-season operations at the Sheboygan plant, with the knowledge and approval of the home office, the rate of expenditure for labor was exactly what it was on or about the 1st of March, namely $799.49 per week. Unfortunately, there is no clarifying evidence on this matter confirming or contradicting the plausibility of this conjecture.

Out of the realm of conjecture, however, and amply exemplified in the record, are the numerous facets of the evidence which militate against the good faith of Respondent's defenses

First there is the admission by Brady, based on the undenied credited testimony of Roeder, of Respondent's purpose to stop the organization efforts at the Sheboygan plant by means of some discharges.

In addition to the illogical nature of Respondent's position regarding its budget, the need to curtail the working force to accumulate a cushion for increased labor expenditures the last few weeks before the canning season is contradicted by the hiring of three additional warehouse employees, John Stanska, Alfred Opgenorth, and William Albrecht on March 22, 1952. Respondent also hired an additional factory employee, Erwin Geuther, on April 19. Geuther and Opgenorth were previous canning season employees but apparently had never before achieved full-time status.

Brady's testimony about Froh in substance was that he did not think much of Froh as an employee. Ferguson's attempt to strengthen the case against Froh was based largely on self-serving conclusions. Although by his testimony, Ferguson was aware of Froh's alleged faults

[13] As indicated, although Gerold was discharged the same day as Zimbal and Froh, I have made no findings as to the effect of his discharge because of my doubt as to his status with Respondent. Nevertheless I find that Gerold was the first to be called in and interrogated by Brady immediately before being discharged and that at that time Brady asked Gerold if he knew of a meeting that was to be held that evening. In making this finding I do not rely on it as a basis for any violation of the Act attributed to Respondent.

[14] Ferguson testified that at the time the decision was made to lay off Gerold on February 29, "There had been an unconfirmed rumor that he was present at an organization meeting at Manitowoc." This information, he testified, "confirmed" his decision to lay off Gerold.

as early as October 1951 he did nothing about it. Furthermore, when it became necessary in December to lay someone off Froh was retained in preference to Albrecht.[15]

In any event, Brady's estimate of Froh apparently had undergone a sudden change shortly before his layoff. By the undenied and credited testimony of Roeder, it appears that about a month before Froh's layoff Brady had Roeder compose and type a confidential report for Ferguson on the efficiency and merit of all the employees based on information supplied to Roeder by Brady. In this report, which was transmitted to Ferguson, Froh was rated as a good worker and competent employee. Significantly, Brady was unable to remember how he had rated Froh in the report.

There is no doubt that Zimbal appeared to be going to the Army at any time after his physical. Brady testified that in December when Albrecht was laid off he knew that Zimbal was going to be called for a physical. It is understandable that not yet having had his examination he would be retained in preference to Albrecht, particularly when it is considered that Zimbal was Respondent's only experienced closing machine operator

When Zimbal came back from his vacation, having already had his physical, the reason for taking him back is somewhat less understandable, but Respondent's explanation that it did not want to be considered as an employer who would take advantage of a man because he was going in the services is appealing and commendable. However, this explanation loses considerable force when that attitude suddenly changed on March 3 and Respondent's worthy attitude is sullied by the abrupt and arbitrary way in which Zimbal was terminated not even having the opportunity to finish out the day

Conceivably Zimbal was nearer induction in June than he was in March. In June his draft status was no impediment to Respondent's hiring him. True, Respondent held out the hope of a deferment for him at that time. While there is no evidence that such was a possibility in March, there is no showing that it was not then considered by Respondent.

In addition to the foregoing reasons why I am unconvinced by Respondent's defenses there are several further examples from the record.

1. Although Respondent contended that Gerold was a supervisor at the time of his discharge, Ferguson, explaining in part why Gerold was discharged, testified that he could not "conceive of somebody wanting to continue work at a reduced capacity in a factory where he had been working as a supervisor . . . ."

2. Although Ferguson testified that it was necessary to await Kraska's counsel to accomplish changes at the plant it is clear that Kraska contributed nothing and was in position to contribute nothing to the conference of February 29.

3. Although Earl Miller was still in charge of the Manitowoc plant, and had been responsible for the choosing of the holdover crews the 2 previous years and presumably was the one management man most familiar with the Sheboygan personnel, he did not participate in the February 29 discussion.

4 Ferguson testified he believed it was March 3 when he first learned about the union activity at the Sheboygan plant, yet in spite of Brady's ready admission of reporting such facts to Ferguson on that date, Ferguson testified he did not remember from whom he got such information.

5. Bearing in mind the importance of the time Brady got back to the plant on February 29, in connection with the terminations he was to make as soon as possible, Brady testified that the conference on the 29th was held in the afternoon. Ferguson testified that the conference took place in the morning--then quickly changed this testimony saying the conference lasted all day.

In view of the foregoing I find that Respondent discriminatorily laid off Zimbal and Froh on March 3, 1952, thereby violating Section 8 (a) (1) and (3) of the Act. In making this finding I am cognizant of the fact that Meseck was considered at the time to be the instigator of the Union, having told Brady as much when Brady called him into the office that day.[16]

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 described in section I, above, have a close, intimate,

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[15] That Albrecht's layoff was executed by Brady does not necessarily explain the action. Brady at this time was new and Ferguson must have watched his conduct closely. Ferguson testified that while he trusted Brady's ability to handle men, he was not sure that Brady would be able to decide without help who to keep and who to let go. This was one of the things Kraska was to help Brady with.

[16] This does not warrant an inference that the terminations of Froh and Zimbal were not discriminatory. See W. C. Nabors Company, 89 NLRB 538, enforced 196 F. 2d 272 (C. A. 5).

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

It has been found that Respondent has engaged in unfair labor practices. It will therefore be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act

It has been found that Respondent discriminated with respect to the hire and tenure of Robert Zimbal and Orville Froh. It will be recommended that each of these employees be made whole for any loss of pay he may have suffered by reason of the Respondent's discrimination against him. It will be recommended that the loss of pay for each such employee be computed on the basis of each separate calendar quarter or portion thereof during the period from the Respondent's discriminatory action to the date of a proper offer of reinstatement; the quarterly periods, hereinafter called quarters, shall begin with the first day of January, April, July, and October, loss of pay shall be determined by deducting from the sum equal to that which each employee would normally have earned for each quarter or portion thereof his net earnings, if any, in other employment during that period; earnings in one particular quarter shall have no effect upon the back-pay liability for any other quarter. It is also recommended that the Respondent be ordered to make available to the Board upon request payroll and other records to facilitate the checking of the amount of back pay due.

In view of the nature of the unfair labor practices committed, consisting of violations of Section 8 (a) (1) and (3) of the Act, I shall also recommend, in order to make effective the interdependent guarantees of Section 7, that the Respondent cease and desist from in any manner infringing upon the rights guaranteed in Section 7 of the Act. N. L. R. B. v. Express Publishing Co., 312 U. S. 426; N. L. R. B. v. Entwistle Manufacturing Co., 120 F. 2d 532, 536 (C. A. 4).

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. General Drivers, Dairy Products, Employees and Helpers Union, Local No. 56, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A.F.L., 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 the employees listed in the Appendix hereto annexed, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.
3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, 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 unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication.]

APPENDIX

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, we hereby notify our employees that:

WE WILL NOT discourage membership in or activities on behalf of General Drivers, Dairy Products, Employees and Helpers Union, Local No. 56, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A.F.L., or in any other labor organization, by discriminating in regard to the hire or tenure of employment or any term or condition of employment.

WE WILL NOT interrogate our employees concerning their union activities or sympathies or threaten them with reprisal or economic loss if they join the union or if the union organization is successful.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to join or assist General Drivers, Dairy Products, Employees and Helpers Union, Local No. 56, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A.F.L., or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in 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 make whole Robert Zimbal and Orville Froh for any loss of pay they may have suffered by reason of our discrimination against them.

All our employees are free to become, remain, or refrain from becoming members in the above-named union 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.

LAKESIDE PACKING 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

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CONTINENTAL DESK COMPANY *and* UNITED FURNITURE WORKERS OF AMERICA, CIO. Case No. 13-CA-1200. May 12, 1953

DECISION AND ORDER

On February 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 unfair labor practices alleged in the complaint, and recommended dismissal of those allegations. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief.

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 [Members Houston, Styles, and Peterson].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the exceptions, modifications, and additions noted below.