

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

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.

1. The Trial Examiner found, as fully detailed in the Intermediate Report, that the Respondent violated Section 8 (a) (1) of the Act by the conduct of H. L. Evans, its vice president and general manager, in (a) causing to be prepared and circulated among its employees on about July 30, 1952, and filing with the Board on August 5, a petition repudiating the Union¹ and a decertification petition; (b) warning employee Sweet that the Respondent would close its plant, or hire "women and boys" and convert the plant into a toy shop, if a new contract with the Union called for higher wages;² and (3) warning Sweet "not to talk union at the shop." We adopt these findings of the Trial Examiner, to which no exceptions have been filed.

2. The Trial Examiner found that the Respondent has not unlawfully refused to bargain with the Union since on about July 31, 1952, as alleged in the complaint. We do not agree with this finding, to which the General Counsel excepts.

For about 13 years prior to the critical period herein, the Union had, under successive contracts with the Respondent, been recognized by the Respondent as the exclusive bargaining representative of its production and maintenance employees. Article IX, section I, of the last contract between the parties, as amended on October 1, 1951, provided that "The term of this Agreement . . . shall end as of September 30, 1952. Thereafter, this agreement shall be automatically renewed for consecutive yearly periods and shall be extended and be in effect from year to year thereafter unless written notice of desire to negotiate for modification or of the termination of same shall be given by either party to the other at least sixty (60) days prior to the expiration date of the term of this agreement"

On about July 30, 1952, just before the automatic renewal date of the above-mentioned contract, the Respondent circulated among its employees the following petition, addressed to itself, which its attorney had prepared at its request:

The undersigned employees of Continental Desk Company hereby inform you that they no longer desire to be represented by . . . [the Union] respecting hours of work, rates of pay, general working conditions, or for any other purpose whatever. The undersigned further request that after September 30, 1952, you shall refuse to recognize . . . [the Union] as the bargaining representative for the undersigned employees.

On July 30, after 10 of its 12 production and maintenance employees had signed the foregoing petition,³ the Respondent sent the following letter to the Union:

¹ Referred to in the Intermediate Report, and hereinafter, as the disaffiliation statement.

² This threat was made by Evans when he submitted the disaffiliation statement to Sweet for his signature.

³ Evans himself secured most of the signatures thereto. As already noted, when he submitted the disaffiliation statement to employee Sweet, Evans threatened to close the plant, or change its operations and hire less skilled help, if a new contract with the Union required the Respondent to pay higher wages.

This letter is to notify you that the existing working agreement . . . expiring September 30, 1952, will not be renewed.

A majority of our employees having indicated that they no longer desire to be represented by you as their bargaining agent, you are further notified that said working agreement . . . shall be terminated at its termination date of September 30, 1952.

On the same day, it also advised the employer association which had theretofore represented it in its dealings with the Union that "any authority which the Association . . . [had] to speak for . . . [it] in any matters relating to negotiations or dealings of any kind" with the Union was terminated.

On July 31, following receipt of the Respondent's July 30 communication, the Union wrote to the Respondent as follows:

In compliance with the Labor Management Act of 1947, we are hereby notifying you 60 days in advance that we propose to modify our Collective Bargaining Agreement as per Article IX, Section I, of our present agreement.

There is no evidence of any further communications between the parties.⁴

At the hearing, as in its answer, the Respondent admitted, and we find, that the production and maintenance employees employed at its Rockford, Illinois, plant, excluding office and clerical employees and supervisors as defined in the Act, constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9 (b) of the Act, as the complaint alleges, and, further, that the Union was the exclusive bargaining representative of these employees until the execution of the disaffiliation statement on about July 30, 1952.⁵ In its answer, Respondent also conceded that it "has continuously since July 31, 1952 failed and refused to bargain collectively with the Union as alleged in . . . the complaint" but, relying upon the disaffiliation statement, maintained therein that it had not thereby violated the Act because the Union was not the exclusive bargaining representative of its employees at any time during this period. At the hearing, however, the Respondent's main defense to the 8 (a) (5) allegations of the complaint was that "there never was an effort of any kind or demand of any kind on the part of this union for a bargaining and there never was any notification to the union that bargaining would be fruitless since the only notification that ever came to the union was the

⁴On August 5, the disaffiliation statement and decertification petition circulated on about July 30 were filed by the Respondent with the Board, together with an RM petition. Both petitions were dismissed by the Regional Director for the Thirteenth Region on February 13, 1953.

⁵Although the Respondent in fact admitted that the Union was the exclusive bargaining representative of its employees until July 31, it would appear from the entire record that it only meant to concede the Union's representative status prior to the employees' execution of the disaffiliation statement.

letter of July 30 which was written strictly in conformity with the provisions of the contract."⁵

In concluding that the Respondent did not violate Section 8 (a) (5) of the Act, the Trial Examiner relied principally upon the following subsidiary findings: (1) There was no request for bargaining by the Union during the critical period herein, and hence no "direct" refusal to bargain by the Respondent, and (2) by its 8 (a) (1) conduct, the Respondent was not guilty of an "anticipatory refusal to bargain."⁶

As already indicated, we do not agree with the Trial Examiner's ultimate conclusion on this aspect of the case. In our opinion, there is ample evidence in the record to show that the Respondent refused to bargain with the Union within the meaning of the Act even if we assume, as the Trial Examiner found, that the Union's July 31 communication to the Respondent contained no specific request for bargaining and the Respondent's 8 (a) (1) conduct was not an anticipatory refusal to bargain.⁷ Thus, as more fully detailed above, the record establishes that on July 30, after securing the signatures of a majority of its employees to a petition repudiating the Union, the Respondent terminated the authority which the employer association to which it belonged then had to deal with the Union on its behalf and notified the Union that their contract which was about to expire would not be renewed because a majority of its employees had indicated that they no longer desired representation by the Union. It is manifest from these facts and the record as a whole, and we find, that, by July 30 at least, the Respondent had decided not to bargain with the Union as the exclusive representative of its employees concerning the renewal of its current contract or the execution of any new contract and that it made this fact unequivocally plain to the Union in its letter of July 30.⁸ Clearly, any request for bargaining by the Union thereafter would have been a futile gesture. In these circumstances, a finding is warranted that the Respondent has refused to bargain with the Union since July 30, 1952.⁹ We so find.

There remains to be considered the Respondent's contention that at no time after the execution of the disaffiliation statement was the Union the exclusive bargaining representative of its employees. This contention lacks merit. For even assuming,

⁶ The Trial Examiner thus found it unnecessary to determine whether the Union "retained its majority in fact or constructively" following the execution of the disaffiliation statement. As for the Respondent's statement in its answer that it had "failed and refused" to bargain with the Union, the Trial Examiner states: "The failure is clear; but there is no evidence of a direct refusal." In this connection, we note that the Respondent's entire course of conduct during the critical period in this case, and not simply its conduct found to have violated Section 8 (a) (1), as the Trial Examiner seems to hold in footnote 1 of the Intermediate Report, was alleged in the complaint to be violative of Section 8 (a) (5) and relied upon by the General Counsel at the hearing to establish an unlawful refusal to bargain. The Respondent's full awareness thereof is evident from the above-stated position taken by it at the hearing.

⁷ We need not, therefore, pass on the validity of these findings by the Trial Examiner.

⁸ The Respondent's contention to the effect that this letter to the Union served simply to forestall the operation of the automatic-renewal clause of its existing contract is patently without merit.

⁹ See Toolcraft Corporation, 92 NLRB 655; Old Town Shoe Company, 91 NLRB 240.

as the Respondent argues, that all the employees who signed the disaffiliation statement actually intended thereby to terminate the authority of the Union to represent them, such repudiation is, we find, under all the surrounding circumstances set forth above and in the Intermediate Report, attributable to the Respondent's unlawful conduct¹⁰ and consequently cannot be considered as affecting the representative status theretofore enjoyed by the Union.¹¹ Accordingly, we find that at all times material herein the Union was, and now is, the exclusive bargaining representative of all the employees in the appropriate unit described above.

On the basis of all the foregoing, and the entire record, we conclude that since July 30, 1952, the Respondent has refused to bargain with the Union, in violation of Section 8 (a) (5) and 8 (a) (1) of the Act.

THE REMEDY

Having found that the Respondent has engaged in the unfair labor practices set forth above, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Since we have found, contrary to the Trial Examiner, that the Respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, we shall order that the Respondent, upon request, bargain collectively with the Union.

We are also of the opinion that the commission of other unfair practices by the Respondent is to be anticipated from its conduct in the past. Consequently, we shall order the Respondent to cease and desist, not only from the unfair labor practices herein found, but also from in any other manner infringing upon the rights guaranteed to its employees in Section 7 of the Act.

ORDER

Upon the entire record in the 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, Continental Desk Company, Rockford, Illinois, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

¹⁰ Although, as noted in the Intermediate Report, the record discloses some employee dissatisfaction with the Union since sometime in 1951, it cannot be said that, absent the Respondent's unlawful conduct in preparing and circulating the disaffiliation statement, a majority of the employees in the unit would nevertheless have repudiated the Union as their bargaining agent. It is noteworthy in this connection that, prior to the appearance of the disaffiliation statement, none of the Respondent's employees who were members of the Union had terminated his union membership. Cf. Pure Oil Company, 62 NLRB 1039.

¹¹ Long-Lewis Hardware Company, 90 NLRB 1403; Consolidated Machine Tool Corporation, 67 NLRB 737; Pure Oil Company, supra.

(a) Assisting in the preparation and filing of disaffiliation letters and decertification petitions, and threatening and warning against employees' union activities.

(b) Refusing to bargain collectively with United Furniture Workers of America, CIO, as the exclusive representative of its employees in the following appropriate unit: All production and maintenance employees at the Respondent's Rockford, Illinois, plant, excluding office and clerical employees and supervisors as defined in the Act.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist United Furniture Workers of America, CIO, 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) Upon request, bargain collectively with United Furniture Workers of America, CIO, as the exclusive representative of the employees in the above-described unit, with respect to rates of pay, hours of employment, and other conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its plant at Rockford, Illinois, copies of the notice attached hereto marked "Appendix A."¹² Copies of such notice, to be furnished by the Regional Director for the Thirteenth Region, shall, after being duly signed by Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and maintained by it for sixty (60) days thereafter, in conspicuous places, including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

¹²In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order "

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, as amended, we hereby notify our employees that:

WE WILL NOT assist in the preparation and filing of disaffiliation letters and decertification petitions, or threaten or warn against employees' union activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist United Furniture Workers of America, CIO, 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 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 bargain collectively, upon request, with United Furniture Workers of America, CIO, as the exclusive representative of all employees in the bargaining unit described herein, with respect to rates of pay, hours of employment, and other conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees at our Rockford, Illinois, plant, excluding office and clerical employees and supervisors as defined in the Act.

All our employees are free to become, remain, or refrain from becoming or remaining, members of the above-named union, or any other labor organization, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

CONTINENTAL DESK 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.

Intermediate Report and Recommended Order

The complaint herein, as amended at the hearing, alleges that the Respondent has violated Section 8 (a) (5) and (1) of the National Labor Relations Act, as amended, 61 Stat. 136, by failing and refusing to bargain with the Union as demonstrated by its conduct in assisting with a decertification petition, soliciting signatures to a disaffiliation letter, and threatening and warning employees against union activity and the result of such activity. The answer, as

amended, denies the allegations of unfair labor practices.¹ A hearing was held before me at Rockford, Illinois, on January 12 and 13, 1953.

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

FINDINGS OF FACT

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

It was admitted and I find that the Respondent, an Illinois corporation, is engaged in the manufacture of occasional tables and other furniture items, and that during the year preceding the hearing it sold products valued at more than \$155,000, more than 50 percent of which was shipped from its plant in Rockford, Illinois, to points outside the State of Illinois. It was admitted and I find that the Respondent is engaged in commerce within the meaning of the Act.

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

II. THE UNFAIR LABOR PRACTICES

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

For several years, the Respondent, as a member of Rockford Furniture Manufacturers Association, had been covered by a collective-bargaining agreement with the Union. Under the union-shop provision, 10 of the Respondent's employees were members of the Union in July 1952, 2 others in the unit having not yet completed the grace period. There is evidence that employees were displeased with the Union because of a strike the year before, and became more so over an increase in their dues. A few days before the end of July, George Johnson, who had formerly been union steward, told Evans, the Respondent's vice president and general manager, that the men were complaining about the dues increase, they wanted to get out of the Union, and 2 or 3 had come to him to do something about it. When Evans pointed out that the contract was still in effect, Johnson remarked that they did not know how to go about it and asked Evans to help them get out. According to the latter, several employees spoke to him about getting out of the Union, but he could specifically recall only George Johnson and Oscar Nelson. He thereupon obtained from his attorney a proposed disaffiliation statement addressed to himself and to be signed by the employees, and a Board form of petition for decertification. As prepared, the petition called for signature by Carl Johnson, Oscar Nelson, and George Johnson; Evans presented it to them on July 30, and all three signed and returned it to Evans. According to George Johnson, Evans did not say what he was going to do with the petition.

On or about the same day, Evans submitted the disaffiliation statement for signature by the employees. He testified that it was circulated both by the employees and by himself; at times, while it was being circulated, it was "out of (his) possession." It is clear that Evans presented the statement to at least half of the employees, no one ever asked him to circulate it, nor were any of the employees identified as having submitted it to others for signature. It was signed by all 10 of the union members, singly or in small groups.

Also on July 30, the Respondent notified the Union that the agreement would not be renewed on September 30, its termination date, since its employees had indicated that they no longer desired to be represented by the Union. Thereafter, and as Evans declared, simultaneously with the petition for decertification to which was attached the employees' disaffiliation statement, the Respondent on August 5 filed with the Board an RM petition under Section 9 (c) (1) (B) of the Act.

Neither by manner nor by word did Evans coerce employees to sign the papers which he presented to them, he told the men that it was "entirely in their hands as to whether or not they wanted to sign." (To the extent that Lange suggested the contrary, I do not credit his testimony.) But the Respondent and its individual employees are not on a par; and while

¹ While admitting that it has "failed and refused to bargain collectively with the Union" (emphasis supplied), the Respondent denies that it was requested to do so. The failure is clear; but there is no evidence of a direct refusal. The complaint alleges and General Counsel declared at the hearing that he relies on the matters alleged in paragraph 7 of the complaint to prove the refusal.

employees retain the nominal right to engage in concerted activities, that right is interfered with by an employer's assistance in preparation and distribution of a disaffiliation petition, as here.² Such assistance by an employer qua employer constitutes subtle (in effect even if not in intent) interference or tendency to interfere. As employees must find the means, method, and mechanics to organize without aid from the employer, so must they to disaffiliate. An employer may not, to quote the Respondent's attorney, "obtain the machinery" which the employees seek. The issue is not, of course, whether employees may disaffiliate, but whether an employer may, as here, provide the machinery for disaffiliation.

As for the claim that the Respondent was merely executing the wishes of its employees, some two appear to have advised Evans that they wanted to withdraw from the Union. He submitted the disaffiliation statement not only to those employees, but to others with whom he had never before discussed it. While he put no pressure on them, he was surely doing more than complying with their requests. With respect to the decertification petition proper, we have at most the testimony that some employees requested that steps be taken and three of them signed the petition which was submitted to them. But acting on such request, the Respondent admittedly obtained the form, prepared it for the signature of the three employees (of whom it can hardly be said that they appreciated the significance of the procedure), and followed through thereafter without even explaining to the employees what was being done with the document which they were ostensibly submitting! In fact, the testimony of 2 of the 3 employees who signed the petition indicates that they desired and it was their impression that they were merely themselves withdrawing from the Union.

In *N. L. R. B. v. West Ohio Gas Company*, 175 F. 2d 685 (C. A. 6), cited by the Respondent, despite the general reference to the employer as "assisting in the preparation and circulation of the petition," the court expressly stated that "the petitions (for withdrawal from and for retention of the Union) were circulated by the president and secretary of the union." The finding there was that the employer assisted to the extent of having a secretary type the petitions. The case is clearly distinguishable from the instant one.

The interference noted herein is alleged in the complaint as proving the unlawful refusal to bargain. The acts, clearly alleged and proven, constitute interference even if they are not violations of the duty to bargain.³

When he submitted the disaffiliation statement to Sweet for signature, Evans remarked that he could not afford to pay higher wages under a new contract, and that if wages went higher, he would hire women and boys; further, referring to the possibility of having to close down, he added that if he hired kids, he'd change the plant into a toy shop. This was no mere expression of opinion regarding the possible effect of unionization,⁴ but a threat of action to be taken by the Respondent and an indication of the futility of designating the Union.⁵ If it be argued that this was merely a prediction, a statement purporting to indicate only the natural result of give and take in collective bargaining may be coercive when made by one "who has the power to change prophecies into realities."⁶ The thought of possible loss to be imposed by one who has already foreseen and warned against it remains supernatant in the minds of employees and interferes with their right to self-organization.

Again, whether in August or in October is not clear, after Sweet had on his own time asked some new men what they thought about the Union (there had previously been discussions about the Union on working time among the employees and between Evans and employees, and apparently no rule against talking), Evans told him that he had previously spoken to him about talking Union in the shop and wanted this to be the last. These latter two incidents, by themselves, might not warrant remedial action. But in the context of the other interference noted, and the first of them occurring at the time when the Respondent was unlawfully assisting employees to disaffiliate from the Union, I find that they constituted further interference.

B. The alleged violation of Section 8 (a) (5)

On July 31, immediately on receipt of the Respondent's notice of termination of the agreement on September 30, the Union wrote to the Respondent as follows:

²The Respondent, not its employees, paid its attorney for preparing the various documents.

³*Royal Palm Ice Company*, 92 NLRB 1295; *Nash San Diego, Inc.*, 90 NLRB 86.

⁴*Cf. Gary Lumber Company*, 102 NLRB 406.

⁵*Salant & Salant, Incorporated*, 92 NLRB 343.

⁶*N. L. R. B. v. W. C. Nabors Company*, 196 F. 2d 272 (C. A. 5).

In compliance with the Labor Management Act of 1947, we are hereby notifying you 60 days in advance that we propose to modify our Collective Bargaining Agreement as per Article IX, Section I, of our present agreement.

General Counsel argues that this letter contains a request to bargain, and that the Respondent's failure to reply to it constitutes an unlawful failure or refusal to bargain. Yet General Counsel more correctly points out that the letter was written to comply with article IX of the agreement which refers to automatic renewal in the absence of written notice at least 60 days prior to the termination date.

There is here no request to bargain, but mere reference to a proposal to modify the agreement. In fact, there is neither a request to bargain nor a present proposal to modify, "hereby" refers to the giving of notice, indicating that the proposal to modify is to be made at a later date. The letter meets the statutory and contract requirement of notice. Neither in its wording, which is plain enough, nor under the statute is the Respondent called upon to act in reply. Failure to take action cannot then be charged against the Respondent as an unfair labor practice.

General Counsel argues contrariwise that by its interference⁷ the Respondent made futile any request for a date to meet for further negotiations, and thus was guilty of anticipatory refusal to bargain. By definition, an anticipatory refusal can exist only where there has been no demand. The inconsistency of a claim that there was a demand with the claim of anticipatory refusal is thus evident; General Counsel urges that a demand was made after its futility became clear.

Under General Counsel's theory any instance of interference in a potential bargaining situation would constitute anticipatory refusal to bargain. Such a sense of anticipation is too keen; the cases do not so hold. Rather, the Board has held that unfair labor practices are no substitute for a request to bargain.⁸ I find no unlawful failure or refusal to bargain. (It becomes unnecessary to determine the question whether the Union retained its majority in fact or constructively. Further in this connection, and conversely on the issue of interference which has been found, we need not consider the discontinuance of the checkoff and the authority for such discontinuance.)

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

IV. THE REMEDY

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

It has been found that the Respondent, by assisting in the preparation and filing of a disaffiliation letter and decertification petition, and by threatening and warning against employees' union activities, interfered with, restrained, and coerced its employees in violation of Section 8 (a) (1) of the Act. I shall therefore recommend that the Respondent cease and desist therefrom.

For the reasons stated in the subsection entitled "The alleged violation of Section 8 (a) (5)," I shall recommend that the complaint be dismissed insofar as it alleges an unlawful refusal to bargain with the Union.

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

CONCLUSIONS OF LAW

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

⁷ Although not alleged, General Counsel also urged in closing argument that the Respondent's notice of termination constituted a refusal to bargain and made futile a request "for a date to meet" (not to bargain). Yet, as pointed out, General Counsel also argued that upon receipt of the notice of termination, the Union in its letter of July 31 requested bargaining.

⁸ Eaton Brothers Corp., 98 NLRB 464. See also Jefferson Standard Broadcasting Company, 94 NLRB 1507.

2. By assisting in the preparation and filing of a disaffiliation letter and decertification petition, and by threatening and warning against employees' union activities, thereby interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

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

4. The Respondent has not engaged in unfair labor practices within the meaning of the Act by an alleged unlawful refusal to bargain.

[Recommendations omitted from publication.]

SWIFT & COMPANY *and* UNITED PACKINGHOUSE WORKERS OF AMERICA, CIO, Petitioner. Case No. 20-RC-2045. May 12, 1953

DECISION AND ORDER

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

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].

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

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organization involved claims to represent certain employees of the Employer.
3. The Employer contends that its employees are not "employees" within the meaning of Section 2 (3) of the Act, but are "agricultural laborers" to whom the Act does not apply.

The Employer is engaged in the raising and feeding of livestock, principally cattle, which it buys and fattens for slaughter on its 129-acre feed lot, located approximately $4\frac{1}{2}$ miles from Firebaugh, California. The Employer also operates a number of packing plants throughout the United States, the nearest of which is located at San Francisco, approximately 160 miles from the Firebaugh feed lot. The instant case concerns 16 workers, classified as feed truckdrivers, corral workers, shopmen, millworkers, bin feeders, feedmixers, and molasses mixers, who work on this feed lot. The feed lot, situated on a country road, includes a 25-acre piece, on which are various farm buildings, and a 7-acre piece for pasturage for sick animals. The buildings include 13 houses (9 for workers and their families), a grain elevator for storing 2,600 tons of grain, 2 warehouses, a building for grinding barley, a building where feeds are mixed, and a shop for repairing tools and tractors. The feed lot is equipped to feed and fatten approximately 6,500 head of cattle at a given time. Cattle, obtained from breeders from Texas to Wyoming, are intensively fed for