

metropolitan area. They are all within 32 miles of the regional office,⁴ whereas the Buffalo and Boston branch offices are 400 and 227 miles distant. Moreover, the sales territory of each of the metropolitan branches is contiguous, while the territory of the Buffalo and Boston branches is widely separated and not contiguous with that of any other office. Further, there is no interchange of salesmen between the Buffalo, Boston, and metropolitan area branches. On the other hand, salesmen are interchanged among the four metropolitan branches. Thus, when the Brooklyn branch was recently established, it was staffed with salesmen from the other metropolitan branches. In addition, when a metropolitanwide advertising campaign is undertaken, all the salesmen in the four metropolitan area branches meet together to discuss the campaign.

As it appears that the salesmen in the 4 New York metropolitan branches are located in a distinct geographical area, and that, through interchange and personal contact, they have a community of interests separate and distinct from the salesmen in the other 2 widely separated branches, we find that the metropolitan salesmen constitute an appropriate unit.⁵

The parties are not in dispute as to the composition of the unit except as to the merchandising and sales promoters whom the Employer would include and the Petitioner would exclude. As their primary function is to promote the sale of the Employer's product and, in effectuating this result, they work in close association with the salesmen, we shall include the merchandising and sales promoters in the unit.

Accordingly, we find that the salesmen in the Employer's Brooklyn, Bronx, Manhattan, and Westbury, New York, branch offices including the merchandising and sales promoters and the draught beer sales and service representative,⁶ but excluding office and clerical employees, professional employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for bargaining purposes.

[Text of Direction of Election omitted from publication.]

⁴ The regional office shares space with the Bronx branch office.

⁵ *Crown Drug Company*, 108 NLRB 1126 and cases cited therein; cf. *Liebmann Breweries, Inc.*, 92 NLRB 1740, and *John F. Trommer, Inc.*, 90 NLRB 1200, which in our opinion, are distinguishable on their facts.

⁶ The parties agree to the inclusion of the draught beer sales and service representative who is in the Bronx branch office and who services accounts beyond the metropolitan area.

DINION COIL CO., INC. and LOCAL UNION 1664, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL. *Case No. 3-CA-663. October 5, 1954*

Decision and Order

On January 8, 1954, Trial Examiner C. W. Whittemore issued his Intermediate Report in the above-entitled proceeding, finding that the
110 NLRB No. 27.

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 that these allegations be dismissed. Thereafter, the Respondent and the General Counsel filed exceptions to the Intermediate Report and supporting briefs.¹

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 such modifications as are noted below:

1. In agreement with the Trial Examiner, we find that the Respondent violated Section 8 (a) (5) and (1) of the Act. Specifically, as set forth in detail in the Intermediate Report, the undisputed facts establish that the Respondent, while bargaining negotiations with the Union were in progress as to all contract terms, unilaterally effected changes in working conditions; unilaterally instituted a wage increase,² and with the promise of a wage increase, solicited individual strikers to return to work; and by letter sent directly to each of the strikers, solicited their abandonment of the strike and return to work upon threats of economic penalty.³ By engaging in the foregoing conduct, the Respondent, in our opinion, derogated from the Union's certified status as collective-bargaining agent, bypassed the Union, and tended to undermine its prestige as the employees' exclusive representative. We conclude that the Respondent thereby failed to comply with the good-faith bargaining requirements of the Act, and interfered, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. We agree with the Trial Examiner's recommended dismissal of the Section 8 (a) (3) allegations in the complaint. With respect to these allegations, the case of the General Counsel, as amended and clarified at the hearing, was specifically predicated on the theory that

¹ The Respondent requests oral argument, and in the alternative, leave to file a reply brief, because, it asserts, the General Counsel's brief raises contentions not considered in the Intermediate Report, and therefore, not discussed in the Respondent's main brief. The request for oral argument is denied, as the record and the briefs now on file, in our opinion, adequately present the issues and the positions of the parties. We likewise deny the Respondent's alternative request to file a reply brief. For its main brief to the Board, the Respondent could have relied upon the issues and contentions raised in the litigated record, rather than those discussed in the Intermediate Report. No valid basis for surprise is asserted by the Respondent. With respect to this request, moreover, the Respondent failed to submit to the Board in timely fashion proof of service upon the other parties.

² See, e g, *N. L. R. B. v. Reed & Prince Mfg. Co.*, 205 F. 2d 131, 137, 138 (C. A. 1), enf. 96 NLRB 850; *A. E. Nettleton Co., et al.*, 108 NLRB 1670.

³ See *Efco Manufacturing, Inc.*, 108 NLRB 284; *McLean-Arkansas Lumber Co.*, 109 NLRB 1022.

the strike was an unfair labor practice strike, and that the Respondent discriminatorily failed to reinstate all the strikers upon their unconditional application at the termination of the strike, displacing the replacements hired during the strike to make room for the returning strikers. We are unable to find on the evidence that any unlawful conduct committed by the Respondent caused a prolongation of the strike, concededly economic in origin, thereby converting the strike into an unfair labor practice strike, as is alleged by the General Counsel. In reaching this conclusion, we do not adopt the rationale of the Trial Examiner that the threats contained in the Respondent's February 26, 1953, letter to the strikers, rather than prolong the strike, "would reasonably have tended to shorten or break the strike." Accordingly, as we find that the strike was economic throughout, and there is no specific allegation of discrimination against economic strikers, we shall dismiss the complaint insofar as it alleges that the Respondent violated Section 8 (a) (3) 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, Dinion Coil Co., Inc., Caledonia, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from :

(a) Refusing to bargain collectively with Local Union 1664, International Brotherhood of Electrical Workers, AFL, as the exclusive representative of its employees in the appropriate unit with respect to rates of pay, wages, hours of employment, or other conditions of employment, by unilaterally instituting wage increases and changes in working conditions, or by bargaining directly with or soliciting its employees in derogation of Local Union 1664, International Brotherhood of Electrical Workers, AFL, as the exclusive representative of its employees.

(b) In any manner interfering with the efforts of said Union to bargain collectively with it.

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 1664, International Brotherhood of Electrical Workers, AFL, as the exclusive representative of all employees in the appropriate unit, and embody any understanding reached in a signed agreement.

(b) Post at its Caledonia, New York, plant, copies of the notice attached hereto marked "Appendix A."⁴ Copies of such notice, to be

⁴ In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

furnished by the Regional Director for the Third Region, shall, after being duly signed by the Respondent's authorized representative, be posted by the Respondent immediately upon receipt thereof, and maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

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

IT IS FURTHER ORDERED that the complaint herein be, and it hereby is, dismissed insofar as it alleges a violation of Section 8 (a) (3) of the Act.

MEMBERS BEESON and RODGERS took no part in the consideration of the above Decision and 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 unilaterally institute wage increases and changes in working conditions or bargain directly with or solicit our employees in derogation of Local Union 1664, International Brotherhood of Electrical Workers, AFL, as the exclusive representative of our employees, or in any manner interfere with the efforts of said Union to bargain collectively with us.

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 production and maintenance employees at the Caledonia plant, exclusive of office and clerical employees, time-study personnel, engineers and all guards, professional employees, and all supervisors as defined by the Act.

DINION COIL CO., INC.,
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

Charges having been duly filed and served, a complaint and notice of hearing having been issued and served by the General Counsel of the National Labor Relations Board, and an answer having been filed by the above-named Respondent Company, a hearing involving allegations of unfair labor practices in violation of Section 8 (a) (1), (3), and (5) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act, was held in Caledonia, New York, on November 9, 10, and 11, 1953, before the duly designated Trial Examiner.

In substance the complaint alleges and the answer denies that the Respondent. (1) Since November 10, 1952, has refused to bargain collectively with the above-named Charging Union as the exclusive representative of all employees in an appropriate unit, (2) by such refusal to bargain caused its employees to go on strike on February 2, 1953; (3) solicited, generally and individually, employees to abandon the strike; (4) discharged and refused to reinstate employees because they engaged in the strike, thereby discouraging membership in the Union; and (5) by such conduct interfered with, restrained, and coerced employees in the exercise of rights guaranteed by Section 7 of the Act.

At the hearing all parties were represented, were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the issues, to argue orally upon the record, and to file briefs and proposed findings of fact and conclusions of law. Briefs have been received from General Counsel and the Respondent.

Upon the entire record in the case, and from his observation of the witnesses, the Trial Examiner makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Dinion Coil Co., Inc., is a New York corporation with principal office and place of business in Caledonia, New York, where it is engaged in the business of the manufacture, sale, and distribution of electrical coils, transformers, and related products. During the year 1952, it purchased and had delivered to its Caledonia plant raw materials valued at more than \$100,000, about 95 percent of which was transported to it in interstate and foreign commerce. During the same period it made and sold finished products valued at more than \$100,000, about 25 percent of which was shipped from its plants to other States and to foreign countries.

The Respondent is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Local Union 1664, International Brotherhood of Electrical Workers, AFL, is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Background and issues*

As to the major issues in the case the evidence is notably free of dispute. The parties appear to agree as to what happened, but disagree as to the interpretation of certain events in terms of the Act. Almost all of the findings appearing below are based upon a stipulation of facts entered into by all parties at the hearing.

The points in issue arose during a long period of negotiation, beginning in November 1952, looking toward agreement concerning certain union-proposed amendments to an existing contract. Many such negotiation meetings were held before, during, and after a strike called by the Union early in February 1953, and abandoned early in May.

Although in his complaint General Counsel alleges that the Respondent illegally refused to bargain beginning on November 10, and further alleges that the refusal on that date and thereafter caused the strike, at the hearing these two contentions were in effect withdrawn when he conceded that the strike was economic in nature at its inception. In substance, General Counsel then voiced his new position that by a letter soliciting employees to return to work, dated February 26, 1953, the Respondent converted the economic strike on that date into an unfair labor practice strike.

In the complaint and in his brief General Counsel points to other conduct occurring after February 26 by which the Respondent failed or refused to bargain in good faith and discriminated against employees upon their unconditional offer to return to work. These points will be discussed in the sections below.

B. *The refusal to bargain*

Two of the essential elements in a refusal-to-bargain case are in no dispute—the appropriateness of the bargaining unit and the majority representation of the Union in that unit. Following a consent election conducted by the Board on August 15, 1950, the Union was certified as the exclusive bargaining representative for an appropriate unit consisting of all production and maintenance employees at the Caledonia plant excluding office and clerical employees, time-study personnel, engineers, guards, professional employees, and supervisors as defined by the Act. In March 1951 the Respondent and the Union entered into a collective-bargaining agreement covering the employees in said unit.

It is concluded and found that at all times material herein the Union has been and is the exclusive bargaining representative of all employees in the above-described appropriate unit.

On October 20, 1952, the Union notified the Respondent in writing that it desired to negotiate amendments to the existing contract; the specific points being a wage increase, an additional holiday, time and a half for Saturday work, and clarification of certain phraseology of the contract.

The parties first met, after the Union's request, on November 10, 1952, and many meetings were thereafter held until June 22, 1953. The stipulation of facts, entered into at the hearing, summarizes events at each of the meetings. Much of such evidence the Trial Examiner considers to be of such remote bearing upon the specific issues raised by General Counsel that recital of it in the body of this report seems unnecessary. As reference, however, a summary of it is contained in Appendix A, attached hereto.

General Counsel claims that certain specific acts by the Respondent, during the course of negotiations, constituted acts of refusal to bargain in good faith. They are here considered in the order he presents them for argument in his brief.

The wage increase of April 14, 1953: At all bargaining conferences before April 11 the Company had insisted that it had no money to permit any wage increase, although the Union had repeatedly requested that an increase be granted, its latest demand being for 15 cents an hour. Late during the meeting of April 11 the company officials offered a 3-cent-an-hour increase "across the board," and the Union rejected the offer. It was the first counterproposal as to wages which the Company had offered since sessions began the preceding November 10. The stipulated facts show that no impasse had been reached, either on this subject or generally, at the close of the meeting on April 11. As noted in Appendix A, the parties left the meeting with the understanding that the Company would draft certain of its proposals in writing for submission to the Union so that they might be voted upon by a membership meeting on April 13. Its written proposals, thus submitted, did not relate to the wage question. On April 14, without previous consultation with the Union, or even informing it of its proposed action, the Respondent suddenly and unilaterally put into effect the 3-cent increase.

The Respondent admits the facts but claims its action was "proper," and cites *N. L. R. B. v. Crompton-Highland Mills*, 337 U. S. 217. The cited case bears only remotely, if at all, upon the issues in the instant case. There, upon somewhat similar facts, the Supreme Court sustained the Board's conclusion that a unilateral increase was violative of the Act. It is true that in the cited case the increase granted was more than had previously been offered and rejected, but it was not granted until after the Union had broken off negotiations. Here no impasse had been reached in negotiations, nor does the Respondent claim in its brief that it had.¹ For many weeks the Respondent had, in effect, completely barred the subject of a wage increase from the bargaining table by insisting that it had no money to cover any increase. Its sudden offer, at the close of a bargaining meeting, followed within a few hours by its unilateral action and before the Union had had a reasonable opportunity to

¹ The facts would not support such a claim. At the close of the April 11 meeting the Respondent agreed to submit certain proposals in writing to the Union for its consideration at a union meeting on April 13. The proposals were submitted and were rejected by the Union at its April 13 meeting. The Respondent, however, was not notified of the rejection until April 17—3 days after it had put into effect the wage increase, and that notification was coupled with counterproposals of the Union.

bring in any counterproposal, lacks the semblance of good-faith bargaining. The real purpose of the increase, the Trial Examiner is convinced, is revealed by the undisputed testimony of at least three employees who said that they were called by management representatives, were asked to return to work and were told that they would get a 3-cent increase. While the dates of such solicitation are not made certain by the record, the evidence warrants an inference that such offers were not made until after the general increase had been put into effect. The real purpose of the wage increase, then, was to win the strikers away from the collective action they had embarked upon, and to persuade them to return to work as individuals. While this end may have not been illegal, the action in effectuating the increase, at a time when this subject had just been opened for negotiation by the Respondent, could reasonably have had no other effect than to undermine the Union's prestige as the legal bargaining agent, and was violative of the Act's provisions for good-faith bargaining. In summary the Trial Examiner is convinced and finds that by its unilateral wage increase of April 14 and by its individual solicitation of employees based upon the promise of an increase illegally effected the Respondent failed to perform its statutory duty to bargain collectively with the Union and thereby interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by the Act.

Change in working hours: In March the Respondent unilaterally changed working conditions by altering the starting time, rest periods, and lunch periods. It is undisputed that these changes were inaugurated without either consultation with or specific proposals to the Union. In its brief the Respondent says that "this change affected only persons whose interests the Union was not seeking to protect," and so it was "justified in taking this action without procuring the prior approval of the Union." Its contention that the Union did not claim to represent strikers who had returned to work is without basis in fact. Its position that it did not require the Union's approval is beside the point at issue here. It had made no proposal, either for acceptance or rejection. No impasse had been reached. It affected working conditions, a subject still under negotiation. The Trial Examiner concludes and finds that by such unilateral action the Respondent failed to bargain in good faith with the Union, and thereby interfered with, restrained, and coerced employees in the exercise of rights guaranteed by the Act.

Solicitation of strikers to return to work: General Counsel contends that the Respondent, by sending certain letters² to all employees during the course of the strike, also refused to bargain in good faith with the Union.

Since the items relied upon by General Counsel must reasonably be considered in their context, the three letters in question are quoted in full.

February 26, 1953.

DEAR FELLOW EMPLOYEE: I have heard rumors that during the current strike you have been advised by Union representatives that anyone attempting to work during the strike will be fired by the Union, after the strike is over. This is a lie—the Union cannot hire nor fire anybody—now—nor in the past—nor in the future. Only management can hire and fire employees. Anyone coming to work now will have complete protection and security now and in the future. The local police and the sheriff's office assure protection to and from work and the company provides protection on the job.

As of March 3, 1953, all your insurance paid for by the Company lapses, leaving you without protection. You should take steps to protect yourself with other insurance, if you are not coming back by March 3, 1953. Also as of March 3, 1953, all your other benefits run out including vacation credits, holiday credits, seniority credits—everything you have worked for in the past for yourself and your family. Just new employee status after March 3rd.

We urge you to think this through, for yourself, your family and your position in your community. This is still America. Don't let anyone scare you out of your legal right to work. Come back to work by March 3, 1953 and help yourself—your family—and your position in your community.

² Although in his brief General Counsel points to 4 letters which he claims were of a nature violating the Act, only 3 will here be reviewed. While the record is not definite on the point, it appears that a letter sent to all employees on February 18 was merely a copy of a letter which had previously been addressed to and delivered to the union representative. As such, it can hardly be considered to be a personal appeal to the employee, one made by circumventing the bargaining agent.

March 25, 1953.

DEAR FELLOW EMPLOYEE: Just a few lines on the strike. The union story about picking up the time card of each employee they do not like, when the strike is off, so that such persons will not be paid is bunk. Just think of these facts.

1. The union *pays nobody!*
2. The union *hires nobody!*
3. The company *does hire* you!
4. The company *does pay* you! So you can pay your bills!
5. The company does its best to keep you busy the year around so you have regular pay checks!
6. The company provides the comfortable plant to work in!
7. The company deducted union dues from your pay check only when you asked them to!
8. The company does not want to deduct union dues from your pay check!
9. Why are you out of work!
10. Do you know the plant operated all through 1952 *without* a contract because the *union did not sign?* The company *did* sign.
11. Do you know you got *two 5 cent raises* in 1952 *without* the union signing the contract?
12. This proves good faith by the company.
13. You still got your pay—Why not now!
14. Over \$50,000—in payrolls have been lost during the strike!
15. Think about these things—Then act—Come to work!
16. Make up your mind—Come in ready to work—Now—Today!
17. Nothing to lose—Plenty to gain!

April 17, 1953.

DEAR FELLOW EMPLOYEE: Just a few lines to let you know how things stand. We are *hiring* people every day—building up *fast* now—mostly *your* fellow employees prior to the strike.

Now is the time to act—Get back on the job making *money*. Don't wait any longer—all the jobs may be filled! There is no way to tell—so you ought to come in Monday—Ready for work.

Nothing to lose—Plenty to gain—Lets get going!

General Counsel claims that the letters of March 25 and April 17 contain—in the words “Nothing to lose—Plenty to gain”—an implied promise of gain if the employees abandoned the strike and returned to work. The text of each letter, however, makes it plain that the employer meant no more than he said—that the gain would be the pay they would earn while on the job. The Trial Examiner is unable to find that this type of solicitation is violative of the Act.

The letter of February 26, however, is of a different nature. There the employer specifically warns the strikers that unless they return to work by a specified date they will lose all previously earned rights. The recipient is told, in effect, that if he continues to support the bargaining agent of his choice, in maintaining the strike, he will be penalized. This constitutes an illegal threat. Counsel for the Respondent, in his brief, argues as to this letter: “In considering its effect and meaning, it appears as though any vice is more a sin of omission than of commission. If we but add to the words ‘new employee status after March 3’ a phrase such as ‘if you are permanently replaced in your job,’ the letter is perfectly proper.”

The fact is, of course, that the letter did not contain the phrase which would, even in Respondent's opinion, have made the letter “proper.” His further claim that the striker should have known what the employer meant, even if he did not say it, hardly requires comment. Certainly there was little reason for the strikers to assume that the employer meant “if permanently replaced,” since at that time the plant was not operating, and by March 1 only 6 employees were working out of a total complement of more than 150. The employees generally knew full well that their positions had not been filled.³ They reasonably could have interpreted the letter of February 26 to have meant no more than what it clearly implied—that unless they abandoned the strike within a week, thereby divorcing themselves from the Union of their choice and ceasing their protected concerted activities, they would be penalized by losing their seniority standing and other rights. The Trial Examiner concludes and finds that the threats contained in this letter constituted refusal to bargain and interfered with, restrained, and coerced employees in the exercise of rights guaranteed by the Act.

³ The record shows that the first replacement was not hired until March 14.

The evidence is insufficient to sustain the allegation of the complaint that the Respondent has refused, since April 10, 1953, to furnish the Union with requested wage information.

C. The issue of discrimination and an unfair labor practice strike

General Counsel contends that the above-quoted letter of February 26 converted the strike, originally economic, into an unfair labor practice strike. The Trial Examiner is not persuaded that such a finding would be reasonable. Although it has been found, above, that certain threats contained therein were violative of Section 8 (a) (1) and (5) of the Act, they were not of a nature which, absent any proof, would reasonably have prolonged the strike. On the contrary, the threats would reasonably have tended to shorten, or break, the strike. Indeed, General Counsel argues in this vein, when he points to the "Respondent's continued solicitation . . . had a telling effect in undermining the Union because by the week ending May 3rd, 116 employees had returned to work."

Nor does the Trial Examiner believe that the same evidence supports General Counsel's claim that the letter of February 26 effectively discharged the strikers, as of March 3. The letters of March 25 and April 17, quoted above, were addressed to all strikers as "Dear Fellow Employee," a salutation inconsistent with a claim of discharge. And it is undisputed that all strikers who returned to work "on and after March 4, 1953," retained their accrued seniority in accordance with the 1952 contract as to vacation pay and holiday pay. It is likewise undisputed that upon the formal abandonment of the strike, on May 4, the strikers were reemployed on a preferential hiring basis. General Counsel makes no specific claim that any striker who sought work on and after May 4 has been denied reemployment. On the contrary, the Respondent introduced evidence to establish that all strikers who did not personally apply were communicated with, by letter, as to whether or not they wished to return to work after the strike was called off.

In summary, the Trial Examiner concludes and finds that the credible evidence is insufficient to sustain the allegation that the economic strike was converted into an unfair labor practice strike on February 26, 1953, or at any other time during its duration, or to sustain the allegation that the Respondent has discriminated against any striking employee.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

Certain of 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, 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 has engaged in unfair labor practices, the Trial Examiner will recommend that it cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

It has been found that the Respondent has refused to bargain collectively with the Union, thereby interfering with, restraining, and coercing its employees. It will therefore be recommended that the Respondent cease and desist therefrom and, also, that upon request it bargain collectively with the Union with respect to wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed contract.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1. Local Union 1664, International Brotherhood of Electrical Workers, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All production and maintenance employees of the Respondent employed at its Caledonia plant, exclusive of office and clerical employees, time-study personnel, engineers and all guards, professional employees, and all 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.

3. The above-named Union was, on August 15, 1950, and at all times since then has been, the exclusive representative within the meaning of Section 9 (a) of the Act of all employees in the aforesaid unit for the purposes of collective bargaining.

4. By refusing to bargain collectively with the above-named Union as the exclusive bargaining representative of the 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) of the Act.

5. By said acts the Respondent has interfered with, restrained, and coerced employees in the exercise of rights guaranteed in Section 7 of the Act, thereby engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

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

[Text of Direction of Election omitted from publication.]

Appendix A

November 20, 1952.

General discussion about transfers, guarantee of piece-work rates, recall of laid-off employees with seniority before hiring of new employees, super-seniority of union officials and stewards, production work by foremen, and a general wage increase. Company representative present stated at opening he had no authority to agree on any point, but stated company position that no money available for any wage increase.

November 23, 1952.

Union specifically requested: superseniority for officers and stewards; foremen cease doing production work; payment of average earnings to incentive workers on temporary transfer, recall of old employees before new hired; time and a half for Saturday, addition of one paid holiday; 2 weeks' vacation after 3 years' service; and wage increase. Company agreed to two points: time and a half for Saturday and addition of one paid holiday. No agreement on others. On wage increase question Company again said no money available.

December 19, 1952.

Parties discussed but reached no agreement on: superseniority, working of foremen on production, holidays, and vacations. Company offered to cease paying for present insurance cost, of 6 cents per hour per employee, and give employees this amount as increase in hourly wage. Union asked 15 cents' hourly wage increase.

January 28, 1953.

At union request representative of New York State Board of Mediation present. Company offered to try to give preference to old employees in rehiring, said no money available for present increase but would agree to reopen wage clause on July 1, 1953. Company asked Union to put all its demands in form of written proposal for submission at next meeting, a week later.

February 5, 1953. (First meeting after beginning of strike on February 3.)

Parties met but Union offered no written proposals. Discussed without agreement plantwide seniority.

February 18, 1953.

Parties discussed various provisions of old agreement and Union's new proposals—latter having been received in writing by Company about February 10. Only item in agreement was method of computing incentive rates. Union proposed and Company rejected return of all strikers conditioned upon submission to arbitration of all points then under negotiation. Late in day Company presented Union with written counterproposals, which Union rejected at its meeting that night, so informing the Company by letter of same date.

March 3, 1953.

Company stated that since Union had rejected its proposals, negotiations must start from "scratch" on basis of previous notification given to Union in letter of February 23, in reply to Union's rejection of its proposals. Company's letter stated: ". . . this action . . . leaves the Company no alternative except to withdraw the proposal and to reopen the entire field of negotiation. . . . This returns us to the position where we were after your Union was first certified and any future bargaining will begin at the point—not with our proposal. . . ." Mediation representative asked Company if any money available for wage increase and Company implied that there was but no offer would be made at that time.

March 10, 1953.

Company proposed that Union take vote about returning to work on following conditions, in part: (1) That employees return as new employees for 30 days; (2) wages as of December 31, 1952; (3) no union security during the 30 days; (4) Company to pay but half of insurance cost during this period; and (5) reemployment of strikers on basis of seniority, "flexibility and ability," by departments.

By ballot later that day the Union rejected the proposal, 93-3.

March 27, 1953.

At suggestion of representative of New York Conciliation Service, parties discussed provisions of old contract, tentative agreement being reached on some points. No agreement reached on any economic issue.

April 1 and 2, 1953.

Long discussions without agreement on various subjects. Apparent disagreement among company representatives as to meaning of its letter of February 26, 1953; one stating that all strikers would return as new employees and all strikers had lost seniority rights, two stating that "rights of the people as to seniority and their position on return is a matter of negotiation here." Conciliation representative agreed to attempt draft of a tentative contract to be ready for next meeting.

April 10 and 11, 1953.

Various points discussed generally. Company refuses to renew union-security clause. Union accepts company proposal as to vacations and holidays. Company agreed to draft certain new proposals for submission to union meeting on April 13. At April 11 meeting company for first time offered a wage increase—of 3 cents per hour. The Union rejected the offer.

At union meeting of April 13, Union rejected company proposals, and so advised the Company by letter of April 17, 1953, in which it submitted counterproposals.

April 30, 1953.

No agreement reached on various proposals and counterproposals. Mediator agrees to try another draft proposal, for submission to both parties before next meeting.

June 19, 1953.

(After strike called off) Company declines to negotiate for contract "under the same conditions as previous, but rather under conditions after the strike." No agreement reached on various points discussed.

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA (AFL), LOCAL 106; INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (AFL), LOCAL No. 969; AND INTERNATIONAL UNION OF OPERATING ENGINEERS (AFL), LOCAL No. 406 and COLUMBIA-SOUTHERN CHEMICAL CORPORATION. *Case No. 15-CC-37. October 5, 1954*

Decision and Order

On February 15, 1954, Trial Examiner Frederic B. Parkes, 2nd, issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent Pipefitters 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 other Respondents had not engaged in