

Evidence was also developed, over the General Counsel's objection, as to the volume of Respondent's business for the first 8 months of 1954.<sup>2</sup> Briefly stated, that evidence showed that though Respondent's business has declined, it enjoys a reasonable expectation of substantial future business. Thus, its sales through August aggregated \$54,553.49<sup>3</sup> including \$14,133.96 for tooling charges), of which more than \$32,000 were of an interstate character, as follows.

Name of Customer	Location	Amount
Basler Electric Co.....	Highland, Ill.....	\$863. 46
Central Transformer Co (Includes \$6700 for tooling charges) ..	Pine Bluff, Ark.....	9, 372. 25
Hi-Lo Antenna Corporation (Includes \$1938 for tooling charges )	Chicago, Ill.....	4, 421. 24
Sangamo Electric Co.....	Marion, Ill.....	2, 161. 82
Diamond Match Company.....	Springfield, Mass.....	1, 601. 36
Century Electric Co (Includes \$2754 for tooling charges ) .....		7, 798. 70
Emerson Electric Mfg Co.....		2, 896. 78
Hellmich Manufacturing Co.....		1 3, 549 30

<sup>1</sup> The last three amounts are subject to an appropriate adjustment to allow for the small percentage of intrastate sales made by these customers

The evidence as to tooling charges is particularly significant in evaluating Respondent's future prospects. Thus, for Central Transformer Company, a new customer, Respondent has produced only \$2,672 in goods, though Central has invested \$6,700 in tooling. In the case of Hi-Lo Antenna Co., the tooling charges are almost three-fourths as much as the sales price of the goods so far produced, and in Century Electric Co. they are more than half as much. Furthermore, Respondent's records disclosed that tooling charges were made as late as July 29 and August 30. Though Respondent has no contracts with, and no guarantees from, those customers, the foregoing facts obviously show a strong probability that it will continue to receive orders from them.<sup>4</sup>

<sup>2</sup> The General Counsel contended that as the unfair labor practices had occurred in 1953, commerce information relating to Respondent's 1954 operations was irrelevant.

<sup>3</sup> Respondent's ledger accounts, produced at the hearing, reflected a total of \$51,004.19, exclusive of the Hellmich account, which was not among those produced. Hellmich's representative testified that 1954 purchases from Respondent amounted to \$3,549.30.

<sup>4</sup> The Trial Examiner's apparent comment to the contrary at Record p 90, lines 11-12, is hereby corrected by changing the word *don't* to the word *would*

MOTOR TRUCK ASSOCIATION OF SOUTHERN CALIFORNIA AND J. A. CLARK  
DRAYING COMPANY, LTD. and JAMES D. GUTHRIE

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, AND ITS AFFILIATED LOCAL UNIONS NOS. 88, 224, 208, 692, 186, 381, 542, 467, 898, 578, 357, 396 AND 495 and JAMES D. GUTHRIE. Cases Nos. 21-CA-664 and 21-CB-229. December 27, 1954

**Decision and Order**

On August 18, 1954, Trial Examiner Howard Myers issued his Intermediate Report in the above-entitled proceeding,<sup>1</sup> finding that the

<sup>1</sup> Except for the above-mentioned cases, as a settlement agreement was reached with respect to all the other cases listed in the caption of the Trial Examiner's Intermediate Report, the latter are not before the Board for decision.

Respondents, Motor Truck Association of Southern California, herein called the Association, and J. A. Clark Draying Company, Ltd., hereinafter referred to as Clark, had not violated Section 8 (a) (1), (2), and (3) of the Act and the Respondents, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and its affiliated local unions, herein called the Unions, had not violated Section 8 (b) (1) (A) and (2) of the Act. The Trial Examiner recommended that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief. The Respondents, the Association, and Clark, filed a reply brief.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the Trial Examiner's findings,<sup>2</sup> conclusions, and recommendations with the minor correction<sup>3</sup> and modification<sup>4</sup> noted below.

[The Board dismissed the complaint.]

**MEMBER RODGERS** took no part in the consideration of the above Decision and Order.

<sup>2</sup>The Charging Party, Guthrie, testified that in January 1950 on one occasion he saw and spoke to William Schaeffer and on another to Lester Pitterson, superintendent of transportation and chief dispatcher, respectively, for Clark regarding a job. Schaeffer and Pitterson categorically denied seeing or speaking to Guthrie in January 1950. The Trial Examiner not only credited their testimony, but also concluded upon the entire record in the case that Guthrie did not make an application for employment to Clark in January 1950. The General Counsel contends that the Trial Examiner erred in finding that Guthrie did not make such an application in light of a letter dated January 16, 1950, written by Clark's attorney to a field examiner which the Trial Examiner received in evidence and which indicated, *inter alia*, that it was the attorney's understanding that Guthrie applied for employment with an unnamed Clark dispatcher on or about January 4, 1950. While we agree that the Trial Examiner properly admitted the letter as evidence of what the attorney's understanding was at the particular time, in view of its vague and ambiguous nature, the fact that it was written 4 years before the hearing and was obviously based upon hearsay information, we cannot agree with the General Counsel that the Trial Examiner, having based his determination upon the credited testimony and the record as a whole, erred in not giving it probative weight.

<sup>3</sup>In his Intermediate Report the Trial Examiner made the inadvertent statement that Guthrie, the Charging Party, testified he was accompanied by a friend, Phil Constantine, when he called at Clark's and asked William Schaeffer, Clark's superintendent of transportation, for a job. This misstatement in the Intermediate Report does not affect the ultimate conclusions. The report is hereby corrected to show that Guthrie did not testify that Constantine was with him when he spoke to Schaeffer.

<sup>4</sup>The Trial Examiner found that the union-security clause in the contract of August 20, 1948, between the Association, on behalf of its members including Clark and the Unions did not conflict with or violate Section 8 (a) (3) of the Act. The General Counsel contends that this clause was illegal. We find it unnecessary to pass upon the merit of the Trial Examiner's finding because the General Counsel states that the clause in question was modified in what he considers a legal fashion in 1951, the agreement is not under attack here, and, no remedy is sought with reference to the agreement standing by itself.

## Intermediate Report and Recommended Order

## STATEMENT OF THE CASE

Charges and amended charges having been duly filed by the 7 individuals named herein against the Respondent Association, the Respondent Employers, and the unions named in the above 14 numbered cases, herein called Respondent Unions, and the said cases having been duly consolidated, the General Counsel of the National Labor Relations Board, herein respectively called the General Counsel<sup>1</sup> and the Board, issued a consolidated complaint alleging that the Respondent Association, the Respondent Employers, and Respondent Unions, and each of them had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. More specifically, the consolidated complaint alleged that the Respondent Association and the Respondent Employers violated Section 8 (a) (1), (2), and (3) of the Act, by (1) refusing to hire, as the case may be, certain named complainants unless, and until, said complainants had been cleared for employment by, as the case may be, certain named unions; (2) entering into collective-bargaining agreements with Respondent Unions containing unlawful union-security clauses, and (3) giving unlawful assistance to Respondent Unions. That Respondent Unions violated Section 8 (b) (1) (A) and (2) by attempting to cause and causing Respondent Employers to discriminate against the complainants herein named. The Respondents duly filed answers denying generally the material allegations of the consolidated complaint imputing to them the commission of unfair labor practices.

Pursuant to due notice, a hearing was held on various dates between June 4, 1951, and July 22, 1954, at Los Angeles, California, before the duly designated Trial Examiner. All parties were represented at the hearing. Full opportunity was afforded the parties to be heard, to examine and cross-examine witnesses, to introduce relevant evidence, to argue orally at the close of the hearing, and thereafter to file briefs as well as proposed findings of fact and conclusions of law. The various motions, made by counsel during the course of the hearing, to dismiss the complaint as to Respondent Association, Respondent Unions, and J. A. Clark Draying Company, Ltd., herein called Clark, are disposed of in accordance with the findings, conclusions, and recommendations hereinafter set forth.

On June 8, 1951, during the course of the presentation of his case-in-chief, the General Counsel stated on the record that the parties had been working on a settlement stipulation and he believed that if given an opportunity to confer the parties would reach an agreement to settle the controversy. The General Counsel's unopposed motion to continue the hearing indefinitely was granted. Thereafter, a settlement agreement was reached with respect to all cases involved in the consolidated proceeding except Case No. 21-CA-664 and Case No. 21-CB-229 which concerned the issues raised by the charges filed by James D. Guthrie.

Under date of June 23, 1954, the Acting Regional Director for the Twenty-first Region issued an order, which was duly served on all Respondents in the consolidated proceeding, severing Cases Nos. 21-CA-664 and 21-CB-229 from their companion cases and resetting the hearing thereon for July 19, 1954. Pursuant to said order, the hearing was continued in said two cases.

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 OPERATIONS OF J. A. CLARK DRAYING COMPANY, LTD.

J. A. Clark Draying Company, Ltd, herein called Clark, is a common carrier engaged in the transportation of freight and general merchandise in interstate commerce by motortruck and other means of transportation and maintains a terminal in Los Angeles, California. Clark, during all times material herein, held, and still holds, certificates of public convenience and necessity issued by the Interstate Commerce Commission. During 1950, Clark transported freight and merchandise in interstate the revenue from which exceeded \$100,000.

Motor Truck Association of Southern California, a California corporation having its offices and principal place of business in Los Angeles, California, is composed of motortrucking operators, including Clark. It was organized, and exists, for the

<sup>1</sup> This term specifically includes counsel for the General Counsel appearing at the hearing

purpose of performing various services for its members who during 1950, transported freight and merchandise in interstate commerce valued at more than \$50,000,000, a substantial portion of which emanated from Los Angeles, California. At all times material herein Respondent Association was the duly authorized representative of various of its members, including Clark, for the purpose of entering into collective-bargaining contracts with the unions here involved covering certain employees of said members.

Upon the above undisputed facts the Trial Examiner finds that during all times material herein Clark and Respondent Association (being an employer within the meaning of the Act) were engaged in commerce within the meaning of the Act.

## II. THE LABOR ORGANIZATION INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Unions Nos. 88, 224, 208, 692, 186, 381, 542, 467, 898, 578, 357, 396 and 495, affiliated with American Federation of Labor, herein called Teamsters, are labor organizations admitting to membership employee members of Respondent Association, including employees of Clark.

## III. THE ALLEGED UNFAIR LABOR PRACTICES

James D. Guthrie, the Charging Party in Cases Nos. 21-CA-664 and 21-CB-229, was employed by Clark as a truckdriver from February 7, 1947, until he quit the following August 29. While thus employed, Guthrie was a member of Local 208, an affiliate of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. At the commencement of Guthrie's employment with Clark, he took a physical examination in accordance with the Interstate Commerce Commission's regulations.

Under date of August 20, 1948, Respondent Association, on behalf of those members, including Clark, who had given it expressed authority to enter into collective-bargaining agreements, entered into a contract covering, among others, Clark's truckdrivers. Said contract provided in part that

. . . All employees covered by this agreement shall become and remain members of the Union in good standing as a condition of continued employment. If the Union is unable to furnish employees satisfactory to an Association member, non-union men may be employed, provided however, that when non-union men are employed the member shall notify the Union in writing of such fact within 48 hours; and such new employees will make application for membership in the Union within 30 days (15 days if and when permitted by law) after their employment, and unless found unworthy, such new employees shall be admitted to membership by the Union . . .

Guthrie testified that early in January 1950, he, accompanied by a friend, Phil Constantine, called at Clark's and asked William Schaeffer, Clark's superintendent of transportation for a job; that Schaeffer inquired whether he had not previously worked for Clark, that when he replied in the affirmative, Schaeffer said, to quote Guthrie, "He needed a couple of drivers and I could leave my name and phone number and he would get in touch with me"; that the following day a neighbor of his left a message at his house stating that Schaeffer had telephoned; that on January 5, pursuant to this telephone call he, again accompanied by Constantine, called on Lester Pitterson,<sup>2</sup> a Clark dispatcher, at the National Carloading Docks, and told Pitterson that Schaeffer had left word that he should see Pitterson about employment; that Pitterson said, "All right," handed him a little white card upon which Pitterson had written, "Please admit James D. Guthrie for employment"; that Pitterson signed said card and also noted thereon, "See Karl"; and that Pitterson then instructed him "to go and get squared up with the union" and then return to Clark.

Guthrie further testified that upon leaving Pitterson he and Constantine went to the Teamsters Hall; that upon arriving there he handed the receptionist the card Pitterson had given him and then stated that he wanted to see Karl; that the receptionist took the card, said "in this case" he would have to see the business agent, and then went into a private office and returned with a gentleman; that said gentleman said, to again quote Guthrie, "I couldn't get an O. K. to go to work because I was four months behind in dues, because he had three hundred and so many men in the hall now, that did not have work and he could not put me to work furthermore"; that when he told this gentleman (whose name he never knew nor did he know

<sup>2</sup> Also referred to in the record as Peterson.

whether he was employed in any capacity by Local 208) that he had secured a job and could not understand why he could not receive Local 208's approval, the gentleman replied that he, in any event, would have to pay the required \$50 reinstatement fee before he could be given an approval; that said gentleman then said that if "Clark can go out and pick their men off the street, it would tear up the charter"; that thereupon the gentleman said he would telephone Schaeffer, that the gentleman went into a private office, returned in about 5 minutes and said, to quote Guthrie, "I wouldn't go to work for Clark or for any one else," and then tore up the card which Pitterson had handed him; and that he and Constantine then left the Teamsters Hall.

William H. Schaeffer, Clark's superintendent of transportation for the past 20 years, testified that Guthrie was employed by Clark from February 7, 1947, until he quit on August 29, 1947; that on February 7, 1947, Guthrie, as required of all truckdrivers under the Interstate Commerce Commission rulings, took his physical examination on the first day of his employment by Clark; that he knew Guthrie when the latter worked for Clark in 1947; that he never saw or spoke to Guthrie from the time Guthrie had quit Clark's employ on August 29, 1947, until the opening of the hearing herein; that since Guthrie's 1947 termination of employment with Clark he did not have any telephone conversation with Guthrie, or with anyone else, regarding rehiring Guthrie; that the only persons besides himself with authority to hire or fire truckdrivers are the head and assistant dispatcher; that the only dock at which Clark handled freight in 1950 was the one located at its main offices; that from 1938 to January 31, 1949, Clark also handled freight at the docks of the National Carloading Corporation located about 2 blocks from Clark's docks; and that since January 1949, Clark has performed no services for National Carloading Corporation and therefore no Clark employee had any occasion to go to the docks of National Carloading on any business for Clark.

Lester Pitterson, Clark's now chief dispatcher, testified that in 1947, he was a roving dispatcher and knew Guthrie at that time; that he had not seen Guthrie since Guthrie left Clark's employ in 1947 until July 20, 1954, the day after the hearing herein opened; that he did not have any conversation with Guthrie in January 1950 nor did he ever give Guthrie "a card or a piece of paper with writing on it with directions to [Guthrie] to go to the" Teamsters Hall; that he knows no one connected with the Teamsters Hall whose first or last name is Karl, that he does not now know, nor did he in 1950 know, any person whose first or last name is Karl, that the only time he ever sent any truckdriver to the Teamsters Hall was when he gave the driver a note addressed to Local 208 requesting that Local 208 arrange for the bearer of the note to receive a physical examination, that Schaeffer never sent him any truckdriver with instructions to hire the driver; and that he did not work at the National Carloading Docks, nor did he have any occasion to go there, in 1950.

Upon consideration of the testimony of Schaeffer, Pitterson, and Guthrie, the Trial Examiner credits the versions of Schaeffer and Pitterson and rejects that of Guthrie. In crediting the testimony of Schaeffer and Pitterson, the Trial Examiner was particularly influenced by the fact that their testimony, both on direct and on cross-examination, was consistent, clear, and definite. Neither attempted at any time to give his testimony new direction or emphasis to meet situations developed on cross-examination or as a result of afterthoughts brought to mind by questions of counsel. The same cannot be said of Guthrie's, which is not only unconvincing but is replete with self-contradictory statements. In addition, the Trial Examiner specifically finds that: (1) Guthrie did not see or speak to either Schaeffer or Pitterson in January 1950; (2) neither Schaeffer nor Pitterson in January 1950, instructed Guthrie to go to the Teamsters Hall; (3) Schaeffer did not have any telephone conversation with Guthrie or with any one else in January 1950, regarding reemploying Guthrie; (4) in January 1950, Pitterson did not give Guthrie a card or a piece of paper directed to Karl, to Local 208, or to any one else; and (5) the only time Schaeffer or Pitterson requested a Clark truckdriver or an applicant for a truckdriver's job to go to the Teamsters Hall was for the purpose of having such a person take a physical examination.

According to the unadmitted and credible testimony of John W. Filipoff, the secretary of Local 208 since 1948, there has never been any person whose first or last name is Karl connected in any official capacity with Local 208 since 1948.

Upon the entire record in the case the Trial Examiner is convinced, and finds, that Guthrie never applied to Clark in January 1950 for reemployment nor was Local 208 in January 1950 ever requested to approve or clear Guthrie for employment with Clark. The Trial Examiner also finds, upon the basis of the entire record in the case, that the union-security clause of the contract of August 20, 1948, did not

conflict with or violate Section 8 (a) (3) of the Act.<sup>3</sup> Furthermore, the record affirmatively shows that Clark did not require its truckdrivers or applicants for a truckdriver's job to be cleared or be approved by Local 208 as a condition of employment.

The statement in said union-security clause, "If the Union is unable to furnish employees satisfactory to an Association member, non-union men may be employed . . .", coupled with the fact that the union-security clause was otherwise valid, does not of necessity imply that Clark contracted to hire only members of Local 208 to fill truckdriver jobs.

Upon the record as a whole the Trial Examiner will recommend that the complaint in Cases Nos. 21-CA-664 and 21-CB-229 be dismissed in its entirety.

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. J. A. Clark Draying Company, Ltd., Los Angeles, California, is, and at all times material herein was, engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and its affiliated Local Unions Nos. 88, 224, 208, 692, 186, 381, 542, 467, 898, 578, 357, 396 and 495, are labor organizations within the meaning of Section 2 (5) of the Act.

3. Respondent Association, Respondent Unions, and Clark, have not, as alleged in the complaint, engaged in unfair labor practices within the meaning of the Act.

[Recommendations omitted from publication.]

<sup>3</sup> *Al Massera, Inc., et al.*, 101 NLRB 837.

AMERICAN STEEL BUCK CORPORATION *and* ARCHITECTURAL AND ENGINEERING GUILD, LOCAL 66, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, AFL. *Case No. 2-CA-3719. December 28, 1954*

#### Decision and Order

On September 30, 1954, Trial Examiner Sidney Lindner 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 Respondent's request for oral argument is hereby denied as the record, exceptions, and brief, adequately present the issues and position of the parties.

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