IV. THE EFFECTS OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

V. THE REMEDY

It has been found that the Respondent has engaged in and is engaging in unfair labor practices. It will be recommended 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 has discriminated against Camille Werner and Mable Arnold. It will therefore be recommended that it offer them immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay they may have suffered by reason of the discrimination by payment to each of them of a sum of money equal to that which she would normally have earned from January 28, 1953, to the date of an appropriate offer of reinstatement, less her net earnings,[1] which sum shall be computed on a quarterly basis in accordance with Board policy set out in *F. W. Woolworth Company*, 90 NLRB 289. It will also be recommended that the Respondent make available to the Board, upon request, payroll and other records to facilitate the checking of the amount of back pay due.

The discrimination found herein indicates a purpose to limit the lawful rights of the Respondent's employees. Such purpose is related to other unfair labor practices, and it is found that the danger of their commission is reasonably to be apprehended. It will therefore be recommended that the Respondent cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed by the Act.

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

CONCLUSIONS OF LAW

1. Miami Joint Council, International Ladies' Garment Workers Union, Composed Of Locals 339 and 415, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Camille Werner and Mable Arnold, thereby discouraging membership in a labor organization, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

3. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed by 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.

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

[Recommendations omitted from publication.]

[1] *Crossett Lumber Company*, 8 NLRB 440

HOMER W. ROBINSON D/B/A ALASKA BEVERAGE CO. *and* TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION NO. 183, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL. *Case No. 19–CA–1158. March 17, 1955*

Decision and Order

On January 7, 1955, Trial Examiner Ralph Winkler issued his Intermediate Report in the above-entitled proceeding, finding that

it would not effectuate the policies of the Act for the Board to assert jurisdiction in this case, and recommending 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 Respondent filed a brief in support of the Intermediate Report.

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

As stated in the Intermediate Report, the Respondent is engaged in the manufacture, sale, and distribution of carbonated beverages in Fairbanks, Alaska. During the past year its purchases amounted to approximately $75,500, of which 95 percent was obtained from outside the Territory; Respondent's sales during the same period amounted to approximately $226,000, all of which were made within the Territory.

Since the Intermediate Report was issued in this case, the Board's decision in *Conrado Forestier d/b/a Cantera Providencia*, 111 NLRB 848, has been issued, in which the Board made clear that its jurisdictional standards would be uniformly applied in the Territories as in the several States. Accordingly, as the Respondent's operations fail to meet any of the Board's jurisdictional standards,[1] we find, for the reasons stated in *Cantera Providencia*, that it would not effectuate the policies of the Act to assert jurisdiction in this case. We shall therefore dismiss the complaint in its entirety.[2]

[The Board dismissed the complaint.]

[1] *Jonesboro Grain Drying Cooperative*, 110 NLRB 481.

[2] Member Murdock, in signing this decision, directs attention to the fact that he dissented from the adoption of this policy of applying United States standards to the Territories in place of the Board's former plenary policy, in the *Cantera Providencia* case.

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

Upon a charge filed by the above-named labor organization, herein called the Union, the General Counsel of the National Labor Relations Board issued a complaint, dated November 4, 1954, against Homer W. Robinson d/b/a Alaska Beverage Co., herein called the Respondent, alleging that the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the Labor Management Relations Act, 1947, 61 Stat. 136, herein called the Act. Copies of the complaint and the charge were duly served upon the Respondent, in response to which the Respondent filed an answer denying the unfair labor practices alleged.

Pursuant to notice, a hearing was held on November 22 and 23, 1954, at Fairbanks, Alaska, before the duly designated Trial Examiner. All parties were represented at the hearing, were given full opportunity to examine and cross-examine witnesses, and to introduce evidence bearing on the issues; they were also given opportunity for oral argument at the close of the hearing and to file briefs as well.

Respondent Robinson is engaged in the manufacture, sale, and distribution of carbonated beverages in Fairbanks, Alaska. During the past year the Respondent's purchases for this enterprise were valued at approximately $75,500, of which amount 95 percent was obtained from outside the Territory; Respondent's sales during the same period amounted to approximately $226,000, all such sales being made within the Territory.

In June 1953, following a Board-conducted election, the Union was certified as the statutory bargaining representative of Respondent's employees, and the Respondent concedes that the Union has been the majority representative at all times since. The complaint alleges in substance that the Respondent has refused to bargain with the Union. Because, in my opinion, recent decisions of the Board require the dismissal of the present proceedings on grounds of jurisdictional policy, I shall not discuss the merits of the unfair labor practice issue presented by the complaint.

The Act, both in its original 1935 form and in the amended 1947 version, empowers the Board to prevent any person from engaging in unfair labor practices affecting "trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, *or within the District of Columbia or any Territory*,[1] or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country." [Emphasis supplied.] Congress has thus invoked its full plenary powers in making the Act applicable to all commerce "within" the Territories and the District of Columbia, and the statutory authority of the Board within the Territories and the District of Columbia is, therefore, equally comprehensive. See *N. L. R. B.* v. *Gonzalez Padin Company*, 161 F. 2d 353 (C. A. 1); *Panaderia Sucesion Alonso*, 87 NLRB 877, 878.

The Board has exercised its plenary jurisdiction in the Territories and the District of Columbia since the Act's inception in 1935; and, though the legislative debates attending the 1947 amendments were long and vigorous, there is nothing in the Amendments and pertinent committee reports [2] to indicate that Congress did not intend to preserve the jurisdictional distinction prescribed in the Act between the Territories and the District of Columbia on one hand and the States on the other or that Congress disapproved of the Board's exercise of plenary authority in the Territories and the District of Columbia.

This, then, was the legislative context in which the Union invoked the Board's processes and went to an election in the aforementioned representation case in 1953, and the Union has instituted the present case to implement its status as a certified bargaining representative.

In November 1954, however, the Board issued its decision in *The Virgin Isles Hotel, Inc.*, 110 NLRB 558, a proceeding arising in St. Thomas Island, Virgin Islands. The Board decided, with Member Murdock dissenting, that there was no warrant for excepting hotels in the Territories and the District of Columbia from the Board's policy of not entertaining cases involving such industry in the States. Noting that "the Act gives the Board plenary jurisdiction over all business enterprises operating in ['the District of Columbia or any Territory']" the Board's stated rationale was that "the relationship to commerce is no greater here than in the case of a hotel operating in any of the 48 States and we do not believe that the impact on commerce is sufficient in either instance to warrant the assertion of jurisdiction." Member Murdock stated in his dissent that this case constitutes "a major alteration in this agency's jurisdictional policy," his argument being that a determination not to exercise plenary jurisdiction within the Territories and thus to withhold protection of the Act is one "which properly should be made by Congress."

Shortly after the decision in the *Virgin Isles Hotel* case, the Board issued its decision in *Sixto Ortega d/b/a Sixto*, 110 NLRB 1917 (December 16, 1954), a proceeding involving a retail selling establishment in Santurce, Puerto Rico. In this case the Board, with Member Murdock dissenting, held that it would apply the same jurisdictional tests to retail selling organizations in Puerto Rico as it does to similar establishments in the 48 States. "Moreover," said the majority, "in future cases involving other types of business or operations for which the Board has established specially applicable standards for taking jurisdiction in the 48 States, we shall apply

[1] To be compared, for example, with the Fair Labor Standards Act of 1938 which defines "commerce" for purposes of that Act as trade, commerce, etc. "among the several States" and which specifically provides that "State means any State of the United States or the District of Columbia or any Territory or possession of the United States." 29 U. S C. A Section 203

[2] H. Rept. 510, 80th Cong., 1st Sess. (1947); S. Rept. 105, 80th Cong., 1st Sess. (1947); H. Rept. 245, 80th Cong, 1st Sess. (1947).

the same standards for asserting jurisdiction in Puerto Rico." Member Murdock's dissent protested the Board's refusal to exercise plenary jurisdiction in the premises.

Decided the same day as the *Sixto* case was *Union Cab Company,* 110 NLRB 1921 (December 16, 1954), a proceeding involving several taxicab companies in Anchorage, Alaska. Citing another recent taxicab case [3] in which "the Board ruled that it would not assert jurisdiction over taxicab enterprises [in the 48 States]," a Board majority announced its decision "to adhere to that policy with respect to taxicab enterprises located in the Territories, despite the fact that the Act gives the Board plenary jurisdiction over all business enterprises operating in such places." [4] Member Murdock's dissent restated his position that "the Board is bound to exercise plenary jurisdiction with respect to labor relations in the Territories. . . ."

Although one may conjecture regarding the phrase "specially applicable standards" appearing in the aforementioned *Sixto* case, I am unable to interpret the *Sixto, Virgin Isles Hotel,* and *Union Cab* cases other than as holding that the Board applies in all respects the same jurisdictional tests to the Territories as it does to the States. For the Board has jurisdiction over all the trade and commerce within the Territories and I do not perceive on what basis the Board would apply tests A, B, and C and not tests D, E, and F. I must conclude, therefore, in accordance with the aforementioned cases and *Jonesboro Grain Drying Cooperative,* 110 NLRB 481, that it would not effectuate the policies of the Act to assert jurisdiction in this matter and I shall accordingly recommend that the complaint herein be dismissed.

[Recommendations omitted from publication.]

[3] *Checker Cab Co and Baton Rouge Yellow Cab Co., Inc.,* 110 NLRB 683.

[4] And also despite the fact that the Board has not entered into an agreement with any agency of the Territory of Alaska in which the Board has ceded jurisdiction over any cases in any industry to such territorial agency, in accordance with Section 10 (a) of the Act See S Rept 105, 80th Cong 1st Sess., p 26 (1947) ; H. Rept. 510, 80th Cong , 1st Sess , p 52 (1947).

ARMSTRONG TIRE & RUBBER COMPANY, TIRE TEST FLEET BRANCH *and* HERMAN L. LOYD. *Case No. 39-CA-426. March 17, 1955*

Decision and Order

On November 19, 1954, Trial Examiner Herbert Silberman issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not violated Section 8 (a) (1) and (3) of the Act, as alleged in the complaint, and recommending that the complaint be dismissed, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel and the Respondent filed exceptions to the Intermediate Report and supporting briefs.

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.[1] The Board has considered the

[1] The General Counsel asserts he was seriously and irreparably handicapped in the presentation of his case by the Trial Examiner's action, at the opening of the hearing, excluding the Charging Party from the hearing room along with other witnesses. However, the Trial Examiner subsequently changed his ruling, and the Charging Party was permitted in the hearing room during the examination of 3 of the General Counsel's 8 witnesses and all of the Respondent's witnesses. Under such circumstances, we find that the Trial Examiner did not exceed the bounds of his discretionary control of the hearing and that the General Counsel was not prejudiced by the Trial Examiner's initial ruling.

The General Counsel excepts further to the Trial Examiner's refusal to permit him to make an offer of proof on matter the Trial Examiner ruled was inadmissible as evidence We find no merit in the exception because the General Counsel has failed to show, either at the hearing or in his brief to the Board, how the Trial Examiner's ruling was prejudicial