

The Exclusions from the Requested Unit

The Petitioner seeks to exclude from the requested unit employees listed in the categories of methods engineers, junior engineers, the nurse, application engineers in the order service department, and the traffic analyst. The methods engineers and junior engineers, although concededly professional employees, are presently represented in a certified unit by a union whose contract would bar a representation proceeding with respect to those categories. Accordingly, they will be excluded from the unit.⁴ The next category listed by the Petitioner, namely, the nurse, we shall exclude upon the ground that her interests are dissimilar from those of the other professional employees in the unit here sought.⁵ As regards the application engineers in the order service department together with the traffic analysts, it does not appear from the record that the employees in these categories are professional employees; accordingly, they will be excluded from the unit.⁶

We find that all engineers in the engineering department known as associate engineers, senior and fellow engineers; all engineers in the new sales department known as application engineers I and II; all engineers in the service sales department known as headquarters and service engineers I and II; and works engineering design and layout engineers at the Employer's Jersey City plant, New Jersey, excluding method engineers, junior engineers, application engineers in the order service department, traffic analysts, nurses, all other employees, guards, and 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.

[Text of Direction of Election omitted from publication.]

MEMBER LEEDOM took no part in the consideration of the above Decision and Direction of Election.

⁴ *American Cable and Radio Corporation*, 101 NLRB 1759, 1762

⁵ *Standard Oil Company*, *supra*

⁶ Although under some circumstances they might, as technical employees, be included in a larger professional group (see *Standard Oil Company*, *supra*) no labor organization here seeks their inclusion in what is otherwise a residual unit of professional engineers.

O. W. Burke Company and Loy Gittings

Local 25, International Association of Bridge, Structural and Ornamental Iron Workers, AFL and Loy Gittings. *Cases Nos. 7-CA-1064 and 7-CB-192. May 5, 1955*

DECISION AND ORDER

On December 27, 1954, Trial Examiner Robert E. Mullin issued his Intermediate Report in the above-entitled proceeding, finding that the
112 NLRB No. 86.

Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondents and the General Counsel filed exceptions to the Intermediate Report, and the Respondents filed supporting briefs.

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 entire record in the case and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner except as noted below.¹

ORDER

Upon the entire record in these cases, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that :

1. The Respondent Company, O. W. Burke Company, and its officers, agents, successors, and assigns, shall :

a. Cease and desist from :

(1) Encouraging membership in the Respondent Union, Local 25, International Association of Bridge, Structural and Ornamental Iron Workers, AFL, or any other labor organization of its employees, by discharging, suspending, or laying off any of its employees, or by refusing employment to qualified applicants, because of their nonmembership in, or their failure to obtain work referrals or clearances from, their labor organizations, or by discriminating against them in any other manner in regard to their hire or tenure of employment or any term or condition of their employment, except to the extent permitted by Section 8 (a) (3) of the Act.

(2) In any other manner interfering with, restraining, or coercing its employees, or applicants for employment, in the exercise of the rights guaranteed in Section 7 of the Act, 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 by Section 8 (a) (3) of the Act.

b. Take the following affirmative action which the Board finds will effectuate the policies of the Act :

¹As is customary in violations of the type involved here, we shall provide that the Respondent Union notify Loy Gittings and the Respondent Employer that it has no objection to Gittings' employment. Further, inasmuch as two separate instances of discrimination are involved, *viz.*, December 29, 1953, and March 22, 1954, we shall modify the Trial Examiner's recommendation that the back-pay period extend "from December 29, 1953, until he would have been laid off absent unfair labor practices" to provide that the Respondents make whole Loy Gittings for any loss of pay he may have suffered by reason of the discrimination against him on the two dates involved.

(1) Jointly and severally with Respondent Union make whole Loy Gittings for any loss of pay suffered as a result of the discrimination against him in the manner set forth in the section of the Intermediate Report entitled "The Remedy," as amended herein.

(2) Upon request, make available to the Board, or its agents, for examination and copying, all payroll records, social-security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of back pay due.

(3) Post at its principal place of business copies of the notice attached hereto marked "Appendix A."² Copies of such notice, to be furnished by the Regional Director for the Seventh Region, shall, after being duly signed by the Respondent Company's representative, be posted by the Company immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent Company to insure that said notices are not altered, defaced, or covered by any other material.

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

2. The Respondent Union, Local 25, International Association of Bridge, Structural and Ornamental Iron Workers, AFL, and its officers, representatives, agents, successors, and assigns, shall:

a. Cease and desist from:

(1) Causing or attempting to cause the Respondent, O. W. Burke Company, its officers, agents, successors, and assigns, to discharge, suspend, lay off, or in any other manner discriminate against its employees or applicants for employment in violation of Section 8 (a) (3) of the Act.

(2) In any other manner restraining or coercing employees of, or applicants for employment with the Respondent, O. W. Burke Company, its successors or assigns, in the exercise of the rights guaranteed in Section 7 of the Act, 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 by Section 8 (a) (3) of the Act.

b. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(1) Notify Loy Gittings and the Respondent O. W. Burke Company, immediately in writing, that it does not object to Loy Gittings' employment.

² In the event that this Order is enforced by 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."

(2) Jointly and severally with Respondent Company, make whole Loy Gittings for any loss of pay suffered by reason of the discrimination against him in the manner set forth in the section of the Intermediate Report entitled "The Remedy," as amended herein.

(3) Post at its business office and meeting hall in Detroit, Michigan, copies of the notice attached hereto as "Appendix B."³ Copies of said notice, to be furnished by the Regional Director for the Seventh Region, shall, after being duly signed by an official representative of the Respondent Union, be posted by the Respondent Union 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 its members are customarily posted. Reasonable steps shall be taken by the Respondent Union to insure that said notices are not altered, defaced, or covered by any other material.

(4) Mail to the Regional Director for the Seventh Region signed copies of the notice attached hereto marked "Appendix B," for posting, if the Respondent Company is willing, at the Company's place of business in Detroit, Michigan, in places where notices to employees are customarily posted.

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

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

³ In the event that this Order is enforced by 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 AND APPLICANTS FOR EMPLOYMENT

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 and applicants for employment that:

WE WILL NOT encourage membership in Local 25, International Association of Bridge, Structural and Ornamental Iron Workers, AFL, or in any other labor organization of our employees, by discharging, suspending, or laying off any of our employees or by refusing employment to qualified applicants because of their non-membership in, or their failure to obtain a work permit or a clearance from that labor organization, or by discriminating against them in any other manner in regard to their hire or tenure of em-

ployment, or any terms or conditions of employment, except to the extent permitted by Section 8 (a) (3) of the Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees or applicants for employment, in the exercise of the rights guaranteed in Section 7 of the Act, except that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by Section 8 (a) (3) of the Act.

WE WILL make Loy Gittings whole for any loss of pay he may have suffered by reason of the discrimination against him.

All our employees are free to become, remain, or to refrain from becoming, or remaining, members of the above-named Union or any other labor organization, except to the extent that this right may be affected by an agreement authorized by Section 8 (a) (3) of the Act.

O. W. BURKE COMPANY,
Employer.

Dated_____ By_____

(Representative)

(Title)

This notice must remain posted for 60 consecutive days from the date hereof, and must not be altered, defaced, or covered by any other material.

APPENDIX B

NOTICE TO ALL MEMBERS OF LOCAL 25, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL, AND TO ALL EMPLOYEES OF O. W. BURKE COMPANY

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 you that:

WE WILL NOT cause or attempt to cause O. W. Burke Company, its officers, agents, successors, or assigns, to discharge, suspend, lay off, or in any other manner to discriminate against employees or applicants for employment because of their nonmembership in, or their failure to obtain a work permit or clearance from our organization, except as authorized by Section 8 (a) (3) of the Act.

WE WILL NOT in any other manner restrain or coerce employees of, or applicants for employment with, O. W. Burke Company, its successors or assigns, in the exercise of the rights guaranteed by Section 7 of the Act, 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 by Section 8 (a) (3) of the Act.

WE WILL notify O. W. Burke Company that we have no objection to the hiring or employment of Loy Gittings, or any other person without being a member of, or being hired pursuant to permit issued by, our organization.

WE WILL notify Loy Gittings that we have no objection to his employment by O. W. Burke Company.

WE WILL make Loy Gittings whole for any loss of pay suffered because of the discrimination against him.

LOCAL 25, INTERNATIONAL ASSOCIATION OF
BRIDGE, STRUCTURAL AND ORNAMENTAL IRON
WORKERS, AFL,

Labor Organization.

Dated----- By-----
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date hereof, and must not be altered, defaced, or covered by any other material.

INTERMEDIATE REPORT

STATEMENT OF THE CASE

This proceeding, brought under Section 10 (b) of the National Labor Relations Act, as amended, 61 Stat. 136 (herein called the Act), was heard in Detroit, Michigan, on October 26 and 27, 1954, pursuant to an order of consolidation and due notice to all parties.¹ The complaint in Case No. 7-CA-1064 alleged that the Respondent Employer, in violation of Section 8 (a) (1) and (3) of the Act, had terminated or refused to continue the employment of Loy Gittings because he had neither a working permit nor a clearance from Local 25 and that since about December 15, 1953, it has required membership in, or clearance from, the Union as a condition of employment in an ironworker's job. The complaint in Case No. 7-CB-192 alleged that Local 25, in violation of Section 8 (b) (1) (A) and (2) of the Act, caused the Company to terminate Gittings' employment. In its answer, the Company conceded certain facts with respect to its business operations² but denied the commission of any unfair labor practices. The Union, in its answer, admitted that it had caused the Company to: (1) Refuse to continue the employment of Gittings; (2) prefer members of and holders of permits from Local 25; and (3) terminate the employment of those engaged in ironworkers' jobs who had failed to pay dues and initiation fees. At the same time the Respondent Union denied that it had violated the Act.

The General Counsel, the Company, and Local 25 were represented at the hearing by their attorneys. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce all evidence pertinent to the issues was afforded all parties. At the conclusion of the General Counsel's case, the Company moved to dismiss the complaint. This motion was denied. At the conclusion of the hearing this motion was renewed and ruling was reserved thereon. It is now denied. The parties waived oral argument. Subsequent to the hearing a brief was received from the Respondent Company.

¹The General Counsel and the staff attorney appearing for him at the hearing are referred to herein as the General Counsel and the National Labor Relations Board as the Board, the above-named Company is referred to as the Respondent Employer and the Respondent Union as Local 25 or the Iron Workers

²This concession was limited to the instant case and was without waiver of, or prejudice to, the Respondent Employer's position in any proceedings subsequently instituted before the Board

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT COMPANY

O. W. Burke Company, a Michigan corporation, having its principal office and place of business in Detroit, is engaged as a general contractor in commercial and industrial construction. Its annual purchases of materials such as lumber, steel, mortar, bricks, cement, and gravel exceed \$1,000,000, of which in excess of \$500,000 in value are received by the Company at its Michigan construction sites directly from points located outside the State. Annually, the Company provides goods and services valued in excess of \$200,000 for concerns, each of which annually ships goods valued in excess of \$50,000 to points located outside of the State in which said concerns are located. On the foregoing facts,³ the Respondent Company concedes, and I find, that it is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Local 25 is a labor organization within the meaning of the Act.

III. THE UNFAIR LABOR PRACTICES

It was stipulated by the parties that at no period relevant to the issues herein did the Company and Local 25 have a collective-bargaining agreement. On the other hand, Stephen D. Butts, engineer and project manager for the Respondent Employer, testified that the Company regularly made voluntary payments to an insurance fund maintained by Local 25, the amount of such payments being based upon the number of hours worked by its employees assigned to structural ironwork.

Over a period of years, Loy Gittings, the Charging Party in both cases, had been a member of several different locals of the International Association of Bridge, Structural and Ornamental Iron Workers. Several months prior to the period relevant to the matters now in issue, Gittings had been suspended by a local union of the aforesaid association in Casper, Wyoming.

On about December 9, 1953, and upon payment of \$2, Gittings received a temporary work permit from Local 25, issued over the signature of T. Pasell, its business agent. After a union referral to one employer proved fruitless because no work was available, on about December 17, Gittings and one Donald Rasmussen went to the union hall and there, following a conversation with Harry Brittingham, assistant business agent, the latter gave them work referrals to the O. W. Burke Company. Gittings and Rasmussen reported to the Burke construction site where the timekeeper signed them up and told them to report to Foreman Eugene Moss. After they had done so, Moss told them to "check in"⁴ with the Iron Workers' steward. According to Gittings, when he and Rasmussen went to the steward, the latter looked at their permits and made some notation in his own records.⁵ The two men then returned to the foreman who assigned them jobs.

The permit which Gittings received from Local 25 expired on December 24. On the morning of December 29, Rasmussen, who had become the union steward the preceding week,⁶ checked Gittings' permit, told him that it would have to be renewed and that he would be unable to work until that was done.⁷ According to Gittings, he then contacted Moss, and after telling him what Rasmussen had said, the foreman stated that the steward was correct and that Gittings could not work until the permit was renewed. The employee then left the job site and went to the headquarters of Local 25 where the secretary to the business agent told him that his permit would not be renewed until Local 25 received the membership book Gittings had held while affiliated with the local in Wyoming. According to Gittings, he then returned to the

³ To which the Company agreed for the purposes of this case.

⁴ This quotation is from Moss' testimony.

⁵ Moss conceded that he told Gittings to see the steward and explained that this was a customary practice which was designed only to enable the steward to keep an accurate record of the hours each man worked and thus check on the accuracy of the employer's contribution to the union insurance fund.

⁶ Rasmussen was a member of Local 25.

⁷ The foregoing finding is based on the credited testimony of Gittings. Rasmussen testified that he told Gittings he would have to get Local 25 to renew the permit but became very evasive and noncommittal in his responses when asked whether he had said anything about what the consequences of nonrenewal would be.

job, and, upon informing Moss the Union would not renew his permit, was told by the foreman that he could not go back to work until he was "fixed up"⁸ with Local 25. Gittings then departed.

Early in January 1954, in a conversation with Brittingham, the assistant business agent advised Gittings to have the local in Wyoming send him a telegram setting forth Gittings' standing. The latter did so and received a response which he brought to the union hall later in the month. He was then told, however, that no work was available. Thereafter Gittings left the Detroit area and did not return until March. On about March 12 he saw Brittingham at the hall and obtained a work referral to a job which lasted slightly over a day. On March 14, the assistant business agent referred him to another job that lasted 3 days. On March 22, Gittings again visited the union hall. Brittingham told him that the Burke Company had requested that he send them six men that morning. According to Gittings, Brittingham at first promised to send him out on this request but then reconsidered and refused to do so.

Gittings testified that he then went directly to the Burke job site and there, after seeking out Moss and asking whether he could go back to work, the foreman told him that it would not be possible until he had obtained union clearance. Gittings then went to the Regional Office of the Board to inquire as to his rights in the matter and it was suggested that he apply for reemployment. As a result, Gittings returned to the job site that afternoon, again sought out Moss, and once more asked if there would be any chance for him to go to work. According to Gittings, Moss replied "No, not until your union slip is back." Gittings then left the scene and subsequently filed the charges on which the complaints in these cases are based.

Moss, when called as a witness for Respondent Company, testified that on December 29 Gittings asked if he could get paid that morning so that he could "straighten up [his] union dues," that the employee's request was granted and that after Gittings left the job, presumably on his way to the payroll office, he never returned to work. Moss testified that he did not see Gittings again until the afternoon of March 22. As the foreman described this occasion,⁹ after greeting the man and asking him if he was coming back to work, Gittings replied in the negative and explained that he had only come out to pick up his overalls. Moss testified that on December 29 and after Gittings had left the job, Rasmussen, the union steward, told him that he had sent Gittings to the union hall "to get his permit straightened out." He denied ever having seen Gittings' permit or having questioned him as to his union standing. He further denied ever having told Gittings that he would have to be in good standing with Local 25 to continue on the job or that a union permit was a requisite to reemployment. Moss testified that he had no complaints about Gittings' work and that both on December 29 and on March 22 he was in need of ironworkers. According to Moss, on the latter date he had telephoned Brittingham to ask for 6 men and that Local 25 only sent out 5, including 1 apprentice. In this respect Moss' testimony corroborates Gittings' account of what Brittingham told him on the same day.

At the time of the hearing Mr. Moss had been with the Burke Company since 1926, had been superintendent and foreman of ironwork for many years, and, as such, hired all the ironworkers.¹⁰ He testified that the Company had never advertised for such craftsmen and that it was customary to call Local 25 when men were needed because "that is the only place that I know that a fellow can get ironworkers." It is also customary that when new employees first report for work on the job site they are paid from the time they leave the hall of Local 25. Moss further testified that ". . . in all my experience I don't think I have had half a dozen iron workers come to me on a job and ask for work." The superintendent is an active member of Local 25 and has been for many years. By way of explanation he stated that "if they took my card . . . they would take my bread and butter away from me."

It is the duty of the Trial Examiner to resolve the sharp conflicts between the testimony of Moss and Gittings. In his brief, counsel for the Company assails the credibility of Gittings as being confused, self-contradictory, and incredible. He further argues that the explanation for Gittings' unemployment is to be found in the employee's apparent penchant for transient drifting and irresponsibility rather than in unlawful conduct on Moss' part. It is true Gittings did not appear to have a record for employment stability. On the other hand, Moss frankly stated that he had no complaints about the man's work while on the job. Moreover, in determining the credibility issues here involved it is necessary to consider not only Gittings' self-in-

⁸ This quotation is from the testimony of Gittings

⁹ According to the testimony of both men, this meeting took place on the 14th story level of one of the apartment house units then under construction

¹⁰ Mr. Butts testified that the hiring of all those employed in that craft was entrusted entirely to Moss.

terest in testifying as he did, but also that of Moss who, though an agent for the Respondent Employer, very obviously had a deep, abiding, and understandable loyalty to the Union of which he had been a lifelong member. On the material points in issue Gittings' testimony was neither self-contradictory nor inconsistent. Consequently, based upon my observation of these witnesses on the stand and the apparent reliability there displayed, it is my conclusion that Gittings is the more credible with respect to the incidents on the 2 days in question. It is, therefore, my conclusion, and I find that on December 29 Moss told the employee that he would not be reemployed until he was in good standing with Local 25 and that on two occasions on March 22 Moss reiterated that Gittings would not be rehired until he had a permit from the Respondent Union.

Concluding Findings

Although these cases were consolidated for hearing, as counsel for the Respondent Company states, correctly, in his brief, the evidence as to each Respondent must be considered separately. Insofar as Case No. 7-CA-1064 is concerned, I have found that on December 29 Gittings told Foreman Moss that he had been unable to get his work permit renewed at the hall of Local 25 and that the latter then informed Gittings he could not work until he had settled his difficulties with the Union. I have also found that on two occasions on March 22 the foreman reiterated this position. It was conceded that Moss did all the hiring of ironworker personnel. It was likewise conceded that there was no collective-bargaining agreement in force between the Company and Local 25. As a result, the Company was not free to require membership in the Iron Workers, or a work permit or a clearance from that Union as a prerequisite to employment. That, however, was the net effect of Moss' action. By so doing, at a time when no lawful contractual obligation for such action existed, the Company's foreman permitted a labor organization to determine who would be hired. It is well established, and I find, that by engaging in such a course of conduct the Respondent Employer violated Section 8 (a) (1) and (3) of the Act. *Grove Shepherd Wilson & Kruge, Inc., et al.*, 109 NLRB 209; *American Pipe and Steel Corp.*, 93 NLRB 54, 55-57; *Engineers Limited Pipeline Company*, 95 NLRB 176, 177.

As noted earlier, in its answer the Respondent Union conceded that it had caused the Company to terminate Gittings' employment and that it had done so because Gittings, as a suspended member of other locals affiliated with the International Association of Ironworkers, was no longer in good standing. Local 25 called only one witness, Mr. James Jenkins, presently its financial secretary and business representative, whose testimony related solely to a communication from the International Association on Gittings' record as a union member. Jenkins was not elected to his office until August 1954, and concededly had no personal knowledge of any of the incidents involved in Gittings' difficulties with Local 25. From the answer filed by the Respondent Union and from the position it took at the hearing it apparently assumed that no violation could be proved under Section 8 (b) (2) and (1) (A) of the Act if the Charging Party involved had lost his good standing in a union through failure to pay such dues and initiation fees as are uniformly required of all members. Such a defense ignores completely the fact that the Act permits a union to cause the termination of an employee for such reasons only in the event there is in force a collective-bargaining agreement that conforms to the requirements of Section 8 (a) (3). *Byers Transportation Company, Inc.*, 94 NLRB 1494, 1495, *enfd. sub nom. N. L. R. B. v. Radio Officers, et al.*, 347 U. S. 17; *Operative Plasterers' and Cement Finishers' International Association, Local 555, AFL*, 110 NLRB 463; *cf. South Texas Chapter, Associated General Contractors of America, Inc.*, 107 NLRB 965. Here the parties stipulated that there was no such agreement between Local 25 and the Respondent Company. Under these circumstances and in view of the credible evidence in the record as well as the admissions of the Respondent Union, I conclude and find that Gittings' termination by, and failure to secure reemployment with, the Company resulted from his failure to obtain a renewal of his work permit from Local 25 and the latter's objections to his continuance on the job. By such conduct, Local 25 engaged in unfair labor practices within the meaning of Section 8 (b) (2) and 8 (b) (1) (A) of the Act. I so find. *Consolidated Western Steel Corp.*, 94 NLRB 1590, 1593; *N. L. R. B. v. Local 57, Operating Engineers*, 201 F. 2d 771, 773-775 (C. A. 1); *Jarka Corporation*, 94 NLRB 320, 322-323, *enfd.* 198 F. 2d 618 (C. A. 3).

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondents set forth in section III, above, occurring in connection with the operations of the Company 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 Respondents have violated the Act, I shall recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. I shall thus recommend, among other things, that the Respondents, jointly and severally, make Loy Gittings whole for any loss of pay suffered by reason of the discrimination against him, by payment to him of a sum of money equal to that which he normally would have earned from December 29, 1953, until he would have been laid off absent unfair labor practices, less his net earnings during this period. Back pay shall be computed in accordance with the formula stated in *F. W. Woolworth Company*, 90 NLRB 289.

CONCLUSIONS OF LAW

Upon these findings of fact, and upon the entire record in the case, I make the following conclusions of law:

1. The Respondent Company is engaged in commerce and business activities which affect commerce within the meaning of Section 2 (6) and (7) of the Act.

2. Local 25, International Association of Bridge, Structural and Ornamental Iron Workers, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

3. By its interference with, restraint, and coercion of its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent Company has engaged in and continues to engage in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

4. By its acceptance of the Respondent Union's determination as to the identity of those who should be permitted to work for it, in the absence of any lawful contractual obligation to accept such a determination, the Respondent Company has engaged in and has continued to engage in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

5. By attempting to cause, and causing, the Respondent Company to discriminate against Loy Gittings, and thus to commit an unfair labor practice within the meaning of Section 8 (a) (3) of the Act, the Respondent Union has engaged in and has continued to engage in unfair labor practices within the meaning of Section 8 (b) (2) of the Act.

6. By its restraint and coercion of employees in the exercise of certain rights guaranteed in Section 7 of the Act, the Respondent Union has engaged in and has continued to engage in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

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

[Recommendations omitted from publication.]

Southeastern Motor Truck Lines, Inc. and Teamsters, Chauffeurs, Helpers and Taxicab Drivers Local Union No. 327, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, Petitioner. *Case No. 10-RC-2769.*
May 5, 1955

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

On May 20, 1954, pursuant to a stipulation for certification upon consent election, an election by secret ballot was conducted under the direction and supervision of the Regional Director for the Tenth Region, among the employees in the unit herein found appropriate. At