

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Farmer and Members Murdock and Peterson].

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

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.<sup>1</sup>
2. The labor organization named above claims to represent certain employees of the Employer.
3. A question affecting commerce exists concerning the representation of certain employees of the Employer, within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.
4. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All truckdrivers and warehouse employees at the Employer's Memphis, Tennessee, warehouses, including the maid,<sup>2</sup> but excluding all office clerical employees, professional employees, technical employees, watchmen, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

<sup>1</sup> The Employer is a Tennessee corporation with its principal office and place of business at Memphis, Tennessee, where it owns two warehouses and is engaged in the dry storage of merchandise for various customers. This merchandise is delivered to the docks of its warehouses by interstate trucking firms and railroads. During the 1954 calendar year, the Employer furnished warehouse facilities for which it received \$183,928.06, of which 80 percent was received for storage services on goods which originated outside the State of Tennessee. Upon receiving instructions from its customers, the Employer released about 80 percent of the stored merchandise at its docks for shipment outside the State of Tennessee. As the Employer's warehouse activities constitute a link in the chain of interstate commerce and its annual income received for these storage and shipping services rendered which constitute a part of interstate commerce totals in excess of \$100,000, we find that it would effectuate the purposes of the Act to assert jurisdiction over the Employer. *Breeding Transfer Company*, 110 NLRB 493.

<sup>2</sup> The parties agree generally upon the composition of the requested unit. However, the Petitioner would exclude a maid who performs cleaning duties in the warehouse office and goes on errands for the warehouse employees. The Employer is neutral. We find that she has interests in common with the trucking and warehouse employees and therefore include her in the unit. *United States Gypsum Company*, 109 NLRB 1402.

**Florence Pipe Foundry & Machine Co. and Pattern Makers  
League of North America, Philadelphia Association, AFL**

**Local 2040, United Steelworkers of America, CIO and Pattern  
Makers League of North America, Philadelphia Association,  
AFL. Cases Nos. 4-CA-1038 and 4-CB-219. May 27, 1955**

#### DECISION AND ORDER

On February 2, 1955, Trial Examiner Ralph Winkler issued his Intermediate Report in the above-entitled proceeding, finding that the 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 filed exceptions to the Intermediate Report and supporting briefs, and requested oral argument. The requests for oral argument are hereby denied because the record and briefs, in our opinion, adequately present the issues and the positions 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 and briefs, and the entire record in the case, and hereby adopts the findings and conclusions of the Trial Examiner insofar as they are consistent with the findings, conclusions, and order set forth below.

1. We agree with the Trial Examiner that employees engaged in the work of pattern mounting in the Company's pattern shop are within the unit description of the Pattern Makers' certification and outside the production and maintenance unit which the Steelworkers is entitled to represent.

The record shows, as set forth in the Intermediate Report, that on September 28, 1953, as the result of a craft severance proceeding initiated by the Pattern Makers (Case No. 4-RC-1971), the Board certified that union as the collective-bargaining representative of the Company's patternmakers and patternmaker apprentices, who, until then, had been included in an overall production and maintenance unit represented by the Steelworkers. No mention was made in the Board's decision in the severance proceeding<sup>1</sup> of the work of pattern mounting. The record in the instant case shows, however, that at the time of the certification and for many years previously, the Company's patternmakers and apprentices had performed the function of pattern mounting in the pattern shop, that this work requires the use of the same tools as patternmaking, and that it involves the exercise of skills acquired by patternmakers in the course of their apprenticeship. We therefore find, as did the Trial Examiner, that the work of pattern mounting in the Company's pattern shop is directly related and incidental to the work of patternmaking, and that employees engaged in such work are therefore within the scope of the Pattern Makers' certification in Case No. 4-RC-1971.<sup>2</sup>

<sup>1</sup> 106 NLRB 828

<sup>2</sup> Although the Steelworkers and the Company, in 1951, had negotiated a job evaluation plan which included a new job classification of pattern moulder in the pattern shop, and a job description had been drawn up, the job had not been filled at the time of the certification of the Pattern Makers. As our unit finding relates to conditions existing at the time of the Board's decision in the representation proceeding, the fact that the pattern moulder's job was subsequently filled by a production and maintenance employee who is neither a patternmaker nor a patternmaker apprentice is clearly immaterial to a determination of the unit issue.

2. The Trial Examiner further found that the Company violated Section 8 (a) (1) and (5) of the Act by negotiating or otherwise treating with the Steelworkers and by applying the Steelworkers' contract in regard to posting and filling the pattern mounting job in the pattern shop; that it violated Section 8 (a) (1) and (3) by acceding to the Steelworkers' pressures to reassign the pattern mounting work in reprisal against the patternmakers for voting out the Steelworkers and selecting the Pattern Makers as their bargaining representative; and that the Steelworkers violated Section 8 (b) (1) (A) and (2) by attempting to cause and actually causing the Company to so discriminate against the patternmakers. We deem it unnecessary to pass upon these findings, for even assuming, without deciding, that the Respondents have violated the Act, we are of the opinion that, under the special circumstances of this case, no remedial order is required. The only unfair labor practices alleged have arisen out of a dispute between the two unions as to the scope of the Board's certification of the Pattern Makers; there is no contention or evidence that the Company has refused to bargain with the Pattern Makers on any other issue or that any patternmaker or apprentice has lost his job or any wages as a result of the assignment of pattern mounting to the Steelworkers. As the unit question has been fully litigated in this proceeding, and as there appears no reason to believe that the parties will refuse to accede to our determination of this question, we shall dismiss the complaint in its entirety.

[The Board dismissed the complaint.]

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

#### INTERMEDIATE REPORT AND RECOMMENDED ORDER

##### STATEMENT OF THE CASE

Upon charges filed by Pattern Makers League of North America, Philadelphia Association, AFL (a labor organization herein called the Pattern Makers), the General Counsel issued a consolidated complaint on June 24, 1954, against Florence Pipe Foundry & Machine Co and against Local 2040, United Steelworkers of America, CIO (a labor organization herein called the Steelworkers), alleging violations of Section 8 (a) (1), (3), and (5) as to the Company and of Section 8 (b) (1) (A) and (2) as to the Steelworkers. Copies of the complaint and charges were served upon the Respondents, and the Respondents thereupon filed answers denying the commission of the unfair labor practices alleged.

Pursuant to notice, a hearing was held in Trenton, New Jersey, on August 12 and September 30, 1954, before the duly designated Trial Examiner. All parties were represented by counsel and were afforded full opportunity to be heard, to adduce relevant evidence, to present oral argument, and to file briefs and proposed findings and conclusions. Motions of the Respondents to dismiss the complaints are disposed of in accordance with the following findings of fact and conclusions of law.

Upon the record, and upon the observation of the demeanor of witnesses, I make the following:

## FINDINGS OF FACT

## I. THE BUSINESS OF THE COMPANY

Respondent Company is a New Jersey corporation with its principal plant at Florence, New Jersey, where it is engaged in the manufacture of pipe and related products. The value of Respondent's interstate shipments exceeded \$500,000 in 1953.

I find that the Company is engaged in commerce within the meaning of the Act.

## II. UNFAIR LABOR PRACTICES

A. *Chronology of events*

Respondent Steelworkers was certified by the Board in 1940 as exclusive bargaining representative of all production and maintenance employees of the Company,<sup>1</sup> including patternmaking employees, and the Steelworkers has had contracts with the Company since then. In April 1953, the Pattern Makers instituted representation proceedings seeking certification of the Company's patternmakers and patternmaker apprentices, the Steelworkers intervened in that case and opposed the Pattern Makers' proposed unit. The Board overruled the Steelworkers' contention and directed an election in the unit requested (106 NLRB 828), and on September 28, 1953, the Board certified the Pattern Makers, after an election won by the Pattern Makers, as statutory bargaining representative of the Company's "patternmakers and patternmaker apprentices." The effect of this certification was to sever approximately 10 patternmakers and apprentices from the plantwide unit of approximately 1,100 employees represented by the Steelworkers.

On December 4, 1953, the Pattern Makers and the Company executed a collective-bargaining agreement, to expire in January 1955, covering the Pattern Makers' unit. This contract contains, *inter alia*, grievance and arbitration provisions, union-security provisions, and a management clause (article XVII) which states that "Management of the plant and the direction of the working forces, including the right to hire, suspend or discharge for proper cause, and the right to relieve employees from duties because of lack of work or for other legitimate reasons is vested exclusively in the Company, provided that this will not be used for the purpose of discrimination against any member of the Union."

The work of the Company's patternmakers at the time of the aforementioned representation case, and during a period of approximately 30 years before, included a function known as pattern mounting. In October 1953, shortly after the Pattern Makers' certification, the Steelworkers filed a grievance under its then current contract with the Company, the Steelworkers thereby claimed that "the job of pattern mounting was beyond the scope of [the Pattern Makers'] bargaining unit" and demanded that the Company "fulfill their obligations under the [Steelworkers'] contract, to post the [pattern mounting] job that existed in the pattern shop." According to the testimony of Steelworkers' Representative John Kelley, the Steelworkers thus "wanted a member of the production and maintenance employees . . . to handle that [pattern mounting] job, rather than a pattern maker." The Company rejected the Steelworkers' grievance in the initial and intermediate stages of the contract grievance procedure, the Company's stated position being that "it has always been a function of patternmakers to mount patterns. We believe this practice should continue." The Steelworkers thereupon took the matter to arbitration in accordance with arbitration provisions of the Steelworkers' contract with the Company.

The arbitration hearing was held on January 20, 1954. The Pattern Makers did not appear or otherwise participate although invited by the Company to do so. In addition to opposing the Steelworkers' claim on the merits, the Company also contended at the arbitration hearing that the pattern mounting matter was not arbitrable. On February 23, 1954, the arbitrator issued his award and opinion; he rejected the Company's contention that the matter was not arbitrable and he otherwise sustained the Steelworkers' claim that pattern mounting belongs within the Steelworkers' bargaining unit in accordance with the recognition clause, article I, of the Steelworkers' contract. (This article provides that "the term 'employees' as used in this agreement [and as to whom the Steelworkers is recognized "as the sole collective bargaining agency"] refers to production and maintenance men only. . . . Pattern Makers and Pattern Makers' apprentices are excluded from this agreement, pending determination of their jurisdiction.")

The Steelworkers advised the Company at the conclusion of the arbitration proceeding that several avenues were available to the Steelworkers to compel the Com-

<sup>1</sup> 20 NLRB 450

pany's compliance with the award: an unfair labor practice action before the Board; a suit in the State court for performance of the award, or a strike at the expiration of the Steelworkers' then current contract with the Company. The Steelworkers made it "perfectly clear" to the Company in this connection, according to Steelworkers' testimony, "that if in the interim, prior to the expiration of our then contract, the Company would not abide by the arbitrator's award and if the dispute so resultant would not be otherwise decided in such interim, then at the expiration of the contract, in the absence of an agreement, we would resort to our right to strike."

On March 3, 1954, the Company requested the Board's Regional Director to meet with the Company and the two rival unions in an effort to reach an amicable resolution of the pattern mounting dispute; the parties accordingly met on March 24, but without success. Meanwhile, on March 8, 1954, the Company acceded to the Steelworkers' demands and posted a notice on its bulletin boards announcing an opening for a pattern moulder in the pattern shop, the notice also stating, in effect, that the job would be filled in accordance with applicable seniority and other provisions of the Steelworkers' contract with the Company. On April 9, the Company accordingly appointed to the job one George Lee whom it transferred, in conformity with the Steelworkers' contract, from another department within the Steelworkers' unit. Lee had been and was then required to be a member of the Steelworkers, for the Steelworkers' contract contained a union-shop provision.

The Company had not met with the Pattern Makers concerning the pattern mounting matter before posting the job notice of March 8; it did meet with the Pattern Makers afterward, however, but only to advise the Pattern Makers that the Company "was going" to transfer Lee to the position. The Pattern Makers, meanwhile, had not specifically requested the Company to bargain concerning the matter, or in behalf of Lee; however, throughout the entire period under consideration it has taken the position, and as it advised the Company, that the pattern mounting function was within its certification and that the Company could not lawfully deal with the Steelworkers in the premises.

In July 1954, after issuance of the complaint in this case, the Company filed a motion with the Board by which it sought to reopen the 1953 representation case so that the Board might clarify the unit description and thus resolve the issues presented by the complaint in the present case. The Steelworkers opposed the motion on the ground that the matter should be resolved in the instant complaint case. The Board denied the Company's motion on July 26, 1954.

#### B. *The pattern mounting work in question*

In its 1953 Decision and Direction of Election upon the Pattern Makers' petition, the Board described the unit of patternmakers and apprentices as follows (106 NLRB 828, at p. 830):

The Employer is engaged in the manufacture of cast iron pipe, hydrants, valves, and related fittings and machinery castings. The pattern shop is located in a separate building adjacent to 2 pattern storage buildings and the main machine shop. There are 9 patternmakers, 2 apprentice patternmakers, a pattern storageman, a janitor, a flaskmaker, a truckdriver, and a helper assigned to the pattern shop. They are all under the immediate supervision of the pattern shop foreman who is directly responsible to the assistant to the general foundry foreman. The patternmakers perform the usual tasks of their craft and exercise the customary skills of journeymen patternmakers. They are engaged in repairing metal patterns, making new patterns, and checking the dimensions of patterns against blueprint specifications. They do not perform any production work. The pattern storageman, although a former patternmaker, no longer performs the duties assigned to the craftsmen in the pattern shop. The Petitioner seeks to represent only the patternmakers and apprentices. . . .

The decision does not mention pattern mounting work; the record in that case shows, however, that patternmakers were performing such work at the time and the present record further shows, as already stated, that patternmakers alone had been doing pattern mounting work in the pattern shop for many years.

Pattern mounting in the Company's pattern shop consists generally of centering a finished wood pattern on a plate, of either wood or metal, with risers and gates so that a mold can be made from the pattern. This task involves the use of the same tools and equipment employed in making or repairing a pattern, such as woodturning tools, chisels, shrinking rules, bandsaws, rip saws, planers, sanders, lathes, and core-box machines. The skill and knowledge utilized in pattern mounting is acquired by patternmakers during their apprenticeship. This pattern mounting, according to

George H. Smith, the Company's assistant foreman in charge of the pattern shop, is "part of pattern making."

During the 2-year period before Lee was transferred to pattern mounting and thus came under pattern shop supervision, there was insufficient pattern mounting to keep even one patternmaker fully occupied at that work alone; upon Lee's transfer, however, the job became a full-time one, one reason being that Lee's skills and training are not those of a patternmaker and he has taken longer than a patternmaker to do the work. Moreover, even since Lee's accession to pattern mounting, the patternmakers have still been given some of the more difficult mounting assignments and the patternmakers have otherwise been required to assist Lee in the job.

In addition to the pattern mounting in the pattern shop, with which we are concerned here, the Company has pattern mounters in its foundry department under foundry department supervision. These foundry pattern mounters do not use wood-working tools; they use, instead, production tools such as cranes and drill presses. On those occasions when pattern mounting in the foundry requires gates and risers, such work is performed in the pattern shop by pattern shop personnel. Pattern mounting in the pattern shop thus differs in skills and job content from foundry pattern mounting, as Company Personnel Director Louis H. Kite testified; and the jobs are not interchangeable, Kite also testified. The Pattern Makers does not claim to represent the employees who mount patterns in the foundry.

In January 1951 the Company and the Steelworkers, the latter then representing the patternmakers and all other plant personnel, initiated a job evaluation program; and in July 1952 they accordingly negotiated a job classification called pattern mounting in the pattern shop, the job description specifying a lower wage rate than that paid to patternmakers. This pattern shop mounting job remained a "paper" one, as the Pattern Makers asserts here; for the patternmakers continued doing that mounting work as they always had done, and at their regular patternmaker rate; and it was not until the Pattern Makers obtained its certification upon winning the election in 1953 that the Steelworkers urged that an actual pattern mounting job in the pattern shop should be set up and filled in accordance with the 1952 classification, separate and apart from so-called patternmaking functions.

### C. Resolution of issues

The General Counsel contends that the Company violated Section 8 (a) (1) and (5) of the Act by recognizing the Steelworkers as bargaining agent as to pattern mounting work in the pattern shop, the theory being that such function is covered by the Pattern Makers' certification and that only the Pattern Makers is entitled to deal with the Company in that regard. The General Counsel also contends that the Company violated Section 8 (a) (1) and (3) of the Act by removing pattern mounting from patternmakers and assigning it instead to an employee (Lee) who was within the Steelworkers' bargaining unit and who was therefore obliged to be a member of the Steelworkers under the latter's contract with the Company. The General Counsel also claims that the Steelworkers violated Section 8 (b) (1) (A) and (2) of the Act by causing the Company to discriminate against the patternmakers in violation of Section 8 (a) (1) and (3) of the Act. The Company contends, on the other hand, that it acted in good faith in complying with the arbitrator's award and it further asserts that the complaint should be dismissed because the Pattern Makers never requested the Company to bargain concerning pattern mounting work and also because there is no showing, in effect, that the Company had failed or otherwise refused to take up the matter as a grievance under the grievance provisions of the Pattern Makers' contract. The Steelworkers asserts, *inter alia*, that the Pattern Makers' certification does not encompass pattern mounting and is therefore covered by the Steelworkers' certification, and it therefore also contends that the aforementioned strike threat and its other action does not, in the circumstances of this case, constitute a violation of the Act.

Presumably, when the Board establishes a unit on a craft basis it certifies a union to represent employees who use the skills of their trade on their job. There is no question here, the Board has already so determined, that the Company's patternmakers are skilled employees who employ their craft skills in the pattern shop. Citing the testimony of the Pattern Makers' President Protheroe in the representation case that the Company's patternmakers are employed "100% of their time in the making, altering, and repairing of patterns" and that Protheroe disclaimed other jobs in the pattern shop, the Steelworkers contends that the Pattern Makers thereby also disclaimed pattern mounting particularly in view of the fact that the Steelworkers and the Company had negotiated a pattern mounting classification in July 1952. As the patternmakers were performing pattern mounting at the time and as the pattern mounting classification had never been put into effect, I would interpret Protheroe's

remarks as meaning that he considered such mounting to fall within the phrase "making, altering, and repairing"; and it further seems to me that the functions which Protheroe did not claim were those which patternmakers were not performing and which are specifically mentioned in the Board's decision, namely, "a pattern storage-man, a janitor, a flaskmaker, a truckdriver, and a helper." While pattern mounting in the pattern shop may not involve the fullest scope of a patternmaker's skills, such pattern mounting as historically performed by the Company's patternmakers does entail a degree of such craftsmanship. The record fully establishes that this pattern mounting is "part of pattern making," as Mr. Smith testified, and is, in any event, directly related and incidental to it. I conclude, therefore, that employees engaged in such work are within the scope of the unit description of the Pattern Makers' certification and necessarily outside the unit which the Steelworkers is entitled to represent. Cf. *National Oats Company*, 110 NLRB 623 (as to the pellet machine operator); *Westinghouse Radio Stations, Inc.*, 107 NLRB 1407 (as to Emmel and McKinney); *Local 211, United Association of Journeyman and Apprentices of the Plumbing and Pipe Fitting Industry*, 107 NLRB 463.

The exclusive bargaining mandate of Section 8 (a) (5) of the Act carries with it "the negative duty to treat with no other" as to matters pertaining to the affected unit. *N. L. R. B. v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 44-45; *Medo Photo Supply Corp. v. N. L. R. B.*, 321 U. S. 678, 683-684. Unless it is otherwise privileged here, the Company has therefore violated this exclusive bargaining mandate by negotiating or otherwise treating with the Steelworkers and by applying the Steelworkers' contract in regard to posting and filling the pattern mounting job in the pattern shop. It is true, as the Company contends, that a demand by the statutory bargaining representative is ordinarily a necessary condition to establishing a violation of Section 8 (a) (5) of the Act. Implicitly, however, the demand always was present here, for the Pattern Makers made it pellucidly clear to the Company throughout the entire situation that the Pattern Makers alone, and not the Steelworkers, was entitled to treat with the Company concerning pattern mounting. Moreover, there was really nothing left to discuss, for the Company advised the Pattern Makers what it "was going" to do, and that was that. Furthermore, where a union has been certified by the Board, it would seem fundamental that the union is not then required to negotiate as to whether the employer may deal with another union in disregard of the certification.

Leaving the 8 (a) (5) issue for a moment, and considering the 8 (a) (3) aspect of the case, we have a situation where the Steelworkers has caused the Company to remove mounting work from the patternmakers. The record establishes that the patternmakers, exclusively and traditionally, have performed this work, even during the period while the Steelworkers represented the patternmakers as part of the plantwide unit and even after the Steelworkers and the Company had negotiated the "paper" job classification for the function. It was only when the patternmakers designated the Pattern Makers to represent them that the Steelworkers suddenly bestirs itself and causes the Company—over the Company's objections—to remove the work from the patternmakers and Pattern Makers' members and to reassign it to a Steelworkers' member who is employed within the Steelworkers' bargaining unit. It seems clear, within the factual context present here, that the Steelworkers' obvious motive was one of reprisal against the patternmakers for voting out the Steelworkers and instead selecting the Pattern Makers as their bargaining representative. By acceding to the Steelworkers' pressures to reassign the mounting work for the reason found, I conclude that the Company thereby encouraged membership in the Steelworkers and discouraged membership in the Pattern Makers in violation of Section 8 (a) (3) and (1) of the Act. See *Radio Officers v. N. L. R. B.*, 347 U. S. 17, 42-46; *Bickford Shoes, Inc.*, 109 NLRB 1346; *Utley Co. v. N. L. R. B.*, 217 F. 2d 885 (C. A. 6), and cases cited therein.

Calling attention to the aforesaid management clause in the Pattern Makers' contract and asserting, in addition, that "the assignment of work among different employees is a management prerogative and is not a subject of bargaining," the Company further contends, in connection with both the 8 (a) (3) and (5) issues, that the Company did not violate these sections of the Act because the Pattern Makers did not resort to its contract grievance machinery and because the Company also invited the Pattern Makers to participate in the Steelworkers' arbitration proceeding. The Company cites *McDonnell Aircraft Corp.*, 109 NLRB 930.

In the *McDonnell Aircraft* case the employer, for nondiscriminatory business reasons, unilaterally transferred certain work from employees within a bargaining unit to unrepresented employees outside the unit. In dismissing an 8 (a) (5) allega-

tion the Board held that the employer satisfied its bargaining obligation by treating the union's complaint about reassignment of work as a grievance under applicable contract provisions and by otherwise evincing a willingness to arbitrate the matter. However, the Board distinguished the case from the "usual" situation of unlawful unilateral action which, *inter alia*, "undermines the authority of the bargaining representative." The *McDonnell* case is thus clearly distinguishable from the instant matter, for the Company took the action under consideration here, not for economic reasons unrelated to considerations of union membership or union representation, but because of the strike threat and other urgings of the rival Steelworkers' union. The management clause cannot immunize an employer for conduct which is otherwise unlawful—indeed, the clause itself limits such application; and the failure of the Pattern Makers to resort to its grievance procedure and the possibility that the Company might have to defend an enforcement action on the arbitration award similarly are no defenses here. *National Licorice Co v. N. L. R. B.*, 309 U. S. 350, 365; *N. L. R. B. v. Newark Morning Ledger Co.*, 120 F. 2d 262, at 266 (on rehearing) (C. A. 3), cert. denied 314 U. S. 693; *N. L. R. B. v. Walt Disney Productions*, 146 F. 2d 44, 47-49 (C. A. 9), cert. denied 324 U. S. 877; *Hamilton-Scheu & Walsh Shoe Co.*, 80 NLRB 1496, 1497; *Dant & Russell, Ltd.*, 92 NLRB 307, 312, 207 F. 2d 165 (C. A. 9), 344 U. S. 375

The Steelworkers has filed a scholarly brief analyzing the legislative history of the Act and some of the Board's leading decisions under Section 8 (b) (1) (A) and (2) of the Act. This analysis supports the Steelworkers' contention, so the Steelworkers asserts, that it has not violated the Act as the complaint alleges. But the premise underlying the Steelworkers' entire argument, and which I have rejected, is that the pattern mounting function is within its certification and outside the Pattern Makers' certification as statutory bargaining representative.

The gravamen of the Steelworkers' conduct is not that the Steelworkers caused or attempted to cause the Company to violate Section 8 (a) (5) as to the Pattern Makers. Cf. *Miami Copper Company*, 92 NLRB 322, 324. Rather, what the Steelworkers has done in this matter, as I have already found, is attempt to cause and actually cause the Company to discriminate against the patternmakers by taking pattern mounting work from them in reprisal for their selection of the Pattern Makers and their rejection of the Steelworkers. Clearly, even within the principles enunciated in cases cited by the Steelworkers, this conduct by the Steelworkers violates Section 8 (b) (1) (A) and (2) of the Act by threats of, and conduct accomplishing, economic reprisal against a particular group of individuals. E. g., *National Maritime Union of America (Texas Company)*, 78 NLRB 971, 978, 985-986; *Perry-Norvell Company*, 80 NLRB 225, 239. See, also the *Radio Officers*, at pp. 32, 42, and *Utley* cases, *supra*; *Fox Midwest Amusement Corp.*, 98 NLRB 699, 719. Cf. *Salt River Valley Water Users' Assn v. N. L. R. B.*, 206 F. 2d 325 (C. A. 9).

#### CONCLUSIONS OF LAW

1. The Company has violated and is violating Section 8 (a) (1), (3), and (5) and Section 2 (6) and (7) of the Act.

2. The Steelworkers has violated and is violating Section 8 (b) (1) (A) and (2) and Section 2 (6) and (7) of the Act.

#### III. THE REMEDY

I shall recommend that each of the Respondents cease and desist from the unfair labor practices found, and I shall also recommend such affirmative relief as I consider necessary to effectuate the policies of the Act, including the restoration of pattern mounting work to the pattern mounters. This does not mean, of course, that the Company may not make whatever work assignments it chooses for nondiscriminatory reasons; it does mean that it may not take such action for reasons relating to union membership or to the exercise of other rights of employees guaranteed by Section 7 of the Act, including the right to refrain from such membership and other activities.

The record shows that no patternmaker has lost his job or even any wages as a result of the reassignment of pattern mounting, although the wage item must be speculative. If permitted to go unremedied, however, such discrimination as occurred here would take on greater significance in a changing economic situation. *Radio Officers v. N. L. R. B.*, *supra*, at pp. 38, 54-55.

[Recommendations omitted from publication.]