

	Total Dos.	
	Prod. Op 15	Total Op 16
WEEK ENDING NOVEMBER 13, 1953		
Paula Davila Ramos.....	296	214
Carmen Gloria Quinones.....	210	208
Isabel Garcia.....	130	110
Mercedes Diaz.....	76	122
Ana Maria Acevedo.....	162	114
Nicolasa Catala.....	214	214
Graciela Serrano.....	204	118
Carmen Lina Avila.....	78	78
Teofila Flores.....	34	48
WEEK ENDING NOVEMBER 20, 1953		
Paula Davila Ramos.....	206	130
Carmen Gloria Quinones.....	146	134
Isabel Garcia.....	174	4
Mercedes Diaz.....	166	6
Ana Maria Acevedo.....	244	28
Nicolasa Catala.....	248	166
Graciela Serrano.....	236	106
Carmen Lina Avila.....	106	96
Teofila Flores.....	60	60

**Metco Plating Company and Local No. 1, International Union,
Metal Polishers, Buffers, Platers, and Helpers, AFL. Case No.
7-CA-1074. July 18, 1955**

DECISION AND ORDER

On February 7, 1955, Trial Examiner Lee J. Best 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. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended dismissal of those allegations. Thereafter, the Respondent, the General Counsel, and the Union filed exceptions to the Intermediate Report and supporting briefs.¹

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.²

¹ Respondent also requested oral argument. In our opinion, the record, the exceptions, and the briefs fully present the issues and the positions of the parties. Accordingly, the request is denied.

² The Trial Examiner resolved many of the credibility issues without specifically discussing evidence in the record which was contrary to his ultimate findings. The Board

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, Metco Plating Company, Detroit, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Local No. 1, International Union, Metal Polishers, Buffers, Platers, and Helpers, AFL, or in any other labor organization of its employees, by discharging or refusing to reinstate any of its employees or in any other manner discriminating against them in regard to hire or tenure of employment or any term or condition of employment.

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Local No. 1, International Union, Metal Polishers, Buffers, Platers, and Helpers, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

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

(a) Offer Gordon E. Brooks immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed.

(b) Make Gordon E. Brooks whole for any loss of pay he may have suffered as a result of the discrimination against him by paying him a sum of money computed as set forth in section V of the Intermediate Report entitled "The Remedy."

(c) Upon request make available to the National Labor Relations 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 for a determination of the amount of back pay due under the terms of this Order.

has carefully considered the entire record, and finds no reasons to upset the Trial Examiner's credibility findings. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enf'd 188 F. 2d 362 (C. A. 3). We agree with the Trial Examiner that Brooks' discharge violated both Section 8 (a) (1) and (3) of the Act. Whether the discharge be regarded as a violation of Section 8 (a) (1) or of Section 8 (a) (3), we find that it is necessary to order reinstatement and back pay, as recommended by the Trial Examiner, in order to effectuate the policies of the Act.

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

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

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed, insofar as it alleges that Respondent discharged Charles R. Carter, Joseph R. Hemsteger, Clarence Limbert, and Jesse H. Martin in violation of Section 8 (a) (3) and (1) of the Act.

³ In the event that this order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order"

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT discourage membership in Local No. 1, International Union, Metal Polishers, Buffers, Platers, and Helpers, AFL, or in any other labor organization, of our employees by discharging or refusing to reinstate any of our employees or in any other manner discriminating against them in regard to hire or tenure of employment or any term or condition of employment.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Local No. 1, International Union, Metal Polishers, Buffers, Platers, and Helpers, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3). °

WE WILL offer Gordon E. Brooks immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges previously enjoyed.

WE WILL make Gordon E. Brooks whole for any loss of pay suffered as a result 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.

METCO PLATING COMPANY,
Employer.

Dated _____ By _____
(Representative) (Title)

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

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

These proceedings authorized by Section 10 (b) of the National Labor Relations Act, as amended, 61 Stat. 136 and 65 Stat. 601-602, herein called the Act, were initiated pursuant to a charge filed on April 6, 1954, a first amended charge filed on July 1, 1954, and a second amended charge filed on July 15, 1954, by Local No. 1, Metal Polishers, Buffers, Platers, and Helpers International Union, AFL, herein called the Union, against Metco Plating Company (a corporation), herein called the Respondent or Metco. The General Counsel of the National Labor Relations Board, herein separately designated as General Counsel and the Board, issued a complaint on August 18, 1954, alleging that Respondent engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act, affecting commerce within the meaning of Section 2 (6) and (7) of the Act. Copies of the charge, amended charges, and the complaint were duly served upon the Respondent, who in due course filed an answer denying that it is engaging in commerce, and specifically denying all allegations of unfair labor practices.

With respect to unfair labor practices, the complaint more specifically alleges in substance that Respondent, by reason of their affiliation with the Union and concerted activities for the purposes of collective bargaining or other mutual aid or protection, unlawfully discharged, refused to reinstate and continually refuses to re-employ its employees, Gordon E. Brooks, Charles R. Carter, Joseph R. Hemsteger, Clarence Limbert, and Jesse H. Martin, thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and discriminating in regard to their hire or tenure of employment or other terms or conditions of employment to discourage membership in a labor organization.

Upon due notice to all interested parties, a hearing was conducted at Detroit, Michigan, on November 2, 3, 4, 5, and 6, 1954, before the Trial Examiner duly designated by the Chief Trial Examiner. All parties were represented and participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues involved.¹ When all evidence had been introduced, motion by the General Counsel to conform the pleadings to the proof as to minor irregularities such as typographical errors, the spelling of names, dates, etc., was allowed without objection. Ruling on

¹ Counsel for Respondent filed exception to invocation of Section 102.87 of the Board's Rules and Regulations, Series 6, by counsel for the General Counsel in answer to *subpoena duces tecum* directing the Regional Director to produce written statement made by Gordon Brooks to a field examiner of the Board, and the ruling of the Trial Examiner thereon.

motion by Respondent to dismiss the complaint in its entirety at the close of all the evidence was reserved by the Trial Examiner, and is now denied to the extent set forth in this Intermediate Report. Oral argument on the record was waived by all parties. All parties were allowed 20 days from the close of the hearing to file written briefs and/or proposed findings and conclusions. Written brief was filed only by counsel for the General Counsel, and has been given due consideration.

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

FINDINGS OF FACT

I. BUSINESS OF RESPONDENT

Metco Plating Company and Ajax Manufacturing Company are separate corporations organized and existing under and by virtue of the laws of the State of Michigan, having a jointly occupied principal office and operating space in adjacent buildings in the city of Detroit. The operations of both corporations are directed and controlled by the same management officials. At the present time the officers of both corporations are Edward Torosian, president and treasurer, Milton K. Pitts, vice president and general manager, and Vera Elliott, secretary. Pitts is in charge of overall labor and personnel policies and the coordination of operations. Although separate books are kept, the office employees of Ajax currently perform all clerical work for Metco, including the preparation of payrolls. Both corporations employ the same auditor. Ajax employees perform maintenance and janitorial services for Metco. Employees of both corporations punch a common time clock, but are distinguished by the use of different colored timecards. Operating space is leased separately, but the two rooms devoted to Metco's operations are separated by a third room used by Ajax, and a conveyor belt used by Metco passes through this room. A dividing wall between the buildings has been broken through to facilitate combined operations. Metco Plating Company was incorporated to perform the finishing operations on automobile hardware manufactured, sold, and delivered to Chrysler Corporation. It purchased from Ajax the machinery and equipment formerly used to perform its own finishing operations. The finishing operations include deburring, polishing, buffing, and plating of hood ornaments, grill bars, nameplates, ashtrays, and other accessories for new automobiles manufactured by Chrysler Corporation. Ajax delivers its fabricated die castings in skid boxes or tubs to the buffing room of Metco, where they are deburred, polished, buffed, and placed on the conveyor belt moving to inspectors and rackers prior to plating. After passing inspection, the parts are placed on racks and processed through an automatic chrome plating machine. After plating and further inspection, the finished parts are returned by conveyor to employees of Ajax in another room, where they are packed and shipped to Chrysler Corporation.

In the representative annual period from July 1, 1952, through June 30, 1953, Metco purchased supplies valued in excess of \$112,000 primarily within the State of Michigan. During the same period it furnished products services and supplies to Ajax Manufacturing Company valued in excess of \$200,000. During the same period Ajax sold and delivered to Chrysler Corporation its entire output of products valued in excess of \$1,200,000. It is admitted that Chrysler Corporation engages in interstate commerce on a large scale making annual shipments of newly manufactured automobiles, parts, accessories, etc., valued in excess of \$1,000,000 to points outside the State of Michigan.

The Board has previously found in Case No. 7-RC-2424, and, by reason of the interrelated character of their operations and common control of their labor relations, I find that the operations of Metco Plating Company and Ajax Manufacturing Company as an integrated business constitute a single employer for the purpose of asserting jurisdiction.² It will, therefore, effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Local No. 1, International Union, Metal Polishers, Buffers, Platers, and Helpers, AFL, is a labor organization within the meaning of Section 2 (5) of the Act admitting to membership employees of the Respondent.

² See *F Hilgemeier & Bro Inc* 108 NLRB 352; *Marvel Roofing Products, Inc, et al*, 108 NLRB 292, *Rushville Metal Products Inc*, 107 NLRB 1146.

III. THE UNFAIR LABOR PRACTICES

A. *The regime of Foreman Weimer*

Respondent customarily employed approximately 20 experienced metal polishers and buffers to perform the finishing work on die castings for Ajax Manufacturing Company. These operations were conducted in a separate buffing room under the plenary jurisdiction of a foreman with full authority to hire, promote, and discharge employees. In January 1953, Respondent hired Homer E. Weimer, and placed him in complete charge of its polishing and buffing operations. Weimer informed the Respondent that he was a member of the Union, and thereafter hired and fired whoever he pleased without consultation with General Manager Pitts or anyone else. He never discriminated against any employee by reason of his affiliation with any labor organization. On March 5, 1953, an election was conducted by consent, and the Union failed to receive a majority of the votes required for certification. No objections or exceptions were filed to the conduct or results of the election. In December 1953 Robert W. Riley joined the Union, and distributed membership application cards to employees in the buffing room. Thereafter, Riley, Limbert, and Wondolkowski requested leave of absence to work for another employer. While on leave, Riley received a request from Foreman Weimer by telephone to pick up two union application cards for Limbert and Wondolkowski, and to tell them "If they don't join the Union they are not going to get back over here to work."³ About January 1, 1954, Charles R. Carter told Foreman Weimer that all employees in the buffing room were joining the Union again, and had paid their dues. During the first week in January General Manager Pitts inquired whether he knew that the men had signed up for the Union, and Foreman Weimer denied any knowledge of the organizational activities.

B. *Discharge of Gordon E. Brooks*

In November 1953, Foreman Weimer hired Gordon E. Brooks, who had practiced his vocation as a buffer and been a member of the Union for more than 40 years. Thereafter, Brooks promoted organizational activities among Respondent's employees, and procured approximately 15 applications for membership in the Union. He conferred with Foreman Weimer, and requested his cooperation. He was not personally acquainted with General Manager Pitts, and there is no evidence that his union activities came to the attention of management other than his immediate foreman. In the meantime, Foreman Weimer admittedly became disgruntled by reason of an inadequate bonus tendered to him at Christmas and by failure of Respondent to grant him an increase in salary. Consequently, Weimer began looking around for other employment.

During the afternoon of January 14, 1954, Gordon E. Brooks reported to Foreman Weimer that the blower system, designed to protect workers at their machines from dust and filth, was out of order. Weimer reported this deficiency to Maintenance Foreman Herman Reckley. Reckley ascertained that a new pulley was needed to make the necessary repairs, but was delayed until the following morning in obtaining the required materials. At 7 o'clock on the morning of January 15, 1954, employees in the buffer room, as a group, refused to start up their machines and go to work. Brooks and others again complained to Foreman Weimer and threatened to go home. Weimer said to them: "The only way you would get that blower fixed is if you do go home. The quicker you go home that's when you get it fixed." Thereupon, Gordon E. Brooks and another went home immediately. All other employees remained idle in the shop to await developments. In the meantime, another foreman reported the situation to General Manager Pitts at his home by telephone. Pitts called Foreman Weimer to the phone and said: "Well, Red, if you don't have any more control over those men than that, and they don't stay here and work, when they go home you might just as well go home with them." Foreman Weimer replied: "Well that suits me all right. When can I get my money?" General Manager Pitts proceeded to the buffer room and ordered all striking employees to go home and stay until notified to return to work. Charles R. Carter and Clarence Young on behalf of the employees attempted to discuss the situation with General Manager Pitts, but received scant consideration. Thereupon, the buffers left the plant. Foreman Weimer was then called into the office and discharged. Upon investigation thereafter, General Manager Pitts reached the conclusion that Gordon E. Brooks was the chief instigator of the work stoppage. For that reason, he dis-

³ From testimony of Homer E. Weimer and Robert W. Riley.

charged Brooks by telegram that afternoon, and at the same time notified all of the other employees to return to work on Monday.

In the absence of other unlawful conduct, the concerted work stoppage on January 15, 1954, was clearly a protected activity within the meaning of the Act. By discharging Gordon E. Brooks, the Respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and also discriminated in regard to hire or tenure of employment to discourage membership in a labor organization.⁴

C. *The regime of Foreman Riley*

Following the blower incident on January 15, 1954, Respondent recalled Robert W. Riley and Clarence Limbert from leave status. Riley was appointed as foreman to succeed Homer E. Weimer (discharged). Clarence Limbert was designated as a subforeman to set up and operate automatic buffing machines. Riley told Respondent that he was a member of the Union, and no objection was raised.

Charles R. Carter credibly testified that before resuming work on January 18, 1954, he told Foreman Robert W. Riley that all employees in the buffing room had joined the Union, and wanted fair treatment. Riley assured him of cooperation, because he was himself a member of the Union. At the same time Riley was informed that Charles R. Carter and Clarence Young had been designated as a committee to represent the employees.

In February 1954 Charles R. Carter consulted Foreman Riley concerning the possibilities of a new election. Riley cautioned Carter to go slow with the organizational activities until the volume of work increased, when there would be a better chance to succeed. In the meantime, Foreman Riley had rehired Joseph R. Hemsteger, who had also been a member of the Union for approximately 43 years. Although solicitation was prohibited during working hours, no effort was made to conceal the continuing organizational activities during the lunch period and other off-duty time.

In March 1954, Charles R. Carter, Joseph R. Hemsteger, and Jesse H. Martin procured authorization cards to be signed by a majority of the buffing room employees, and requested the Union to file petition for a new election.⁵

Foreman Robert W. Riley credibly testified that Weimer, Brooks, Carter, Hemsteger, and Limbert had been his friends and fellow workers in the buffing trade for many years. After his appointment as foreman, he did not attend union meetings, but continued to send in his dues by other union members including Hemsteger. He knew that most of the "old timers" belonged to the Union, but some of the younger employees did not.

D. *Alleged discriminatory discharges*

In March 1954 General Manager Pitts repeatedly complained to Foreman Riley that excessive amounts of work and materials were being scrapped and remelted on account of faulty buffing.⁶ Foreman Riley himself discovered and complained to Clarence Limbert in the automatic machine section that windshield wiper pivot covers were not properly deburred. Limbert failed to correct the defective work, and also had trouble in getting adequate production on the automatic machines. General Manager Pitts closed down that section, and Limbert was transferred to work on the manually operated polishing and buffing machines. Thereafter, a large number of hood ornaments buffed by Limbert were rejected, and he worked overtime at full pay to repair them. Foreman Riley complained to Charles R. Carter and Jesse H. Martin about wheel marks on vertical grill bars, and insisted that they do a better job. Martin said to Foreman Riley: "By God, if I have to do them any better, I will just quit." Foreman Riley complained to Joseph R. Hemsteger about faulty buffing on "Custom" nameplates, and instructed him to repair a large number of the pieces. Hemsteger disregarded his instructions.

On April 2, 1954, General Manager Pitts pointed out to Foreman Riley a large amount of accumulated scrap, called him to the office, and demanded that some ac-

⁴ *Southern Silk Mills Inc.*, 101 NLRB 1, 209 F. 2d 155 (C. A. 6); *N. L. R. B. v. Kennametal, Inc.* 182 F. 2d 817 (C. A. 3); *Carter Carburetor Corp. v. N. L. R. B.*, 140 F. 2d 714-18 (C. A. 8); *N. L. R. B. v. J. I. Case Company*, 198 F. 2d 919-22 (C. A. 8); *N. L. R. B. v. Globe Wireless Ltd.*, 193 F. 2d. 748-50 (C. A. 9); *Automobile Workers v. O'Brien*, 339 U. S 454-459

⁵ See *Metco Plating Co.*, Case No. 7-RC-2424, 110 NLRB 615.

⁶ Defects were often also attributable to die casting and plating, but this case is only concerned with defective work done in the buffing room.

tion be taken to remedy the situation. Riley explained that he had already talked to his men about their defective work, and that he deemed it necessary to discharge them. He named Carter, Hemsteger, Limbert, and Martin as the responsible parties. Pitts expressed surprise, because he regarded all of these men as good buffers of long experience. He agreed, however, that the foreman take such action as he saw fit, and consented to the discharges. Thereupon, Foreman Riley returned to the buffing room shortly before quitting time on April 2, 1954, and discharged Charles R. Carter, Joseph R. Hemsteger, and Jesse H. Martin. Clarence Limbert was notified of his discharge by telegram, because he was absent from work on that date.

Counsel for the General Counsel introduced in evidence a written statement made by Robert W. Riley through attorneys for Respondent to the National Labor Relations Board on May 10, 1954, as follows:

I have been employed by Metco Plating Co. since January, 1953, beginning first as a buffer. I have held my position as foreman of the day shift since February, 1954, supervising alternately the work of approximately twenty (20) men who are engaged in deburring, buffing and polishing zinc die castings.

As the supervisor and foreman of these men, I was given, by the company, the responsibility of hiring, that is, the maintenance of a complement of twenty (20) men when, in my opinion, the work in the plant requires such a number. I have likewise been given the authority to discharge an employee when, in my opinion, his work or conduct does not meet the standards of the company. With this authority the company has likewise charged me with the responsibility of producing quality work.

I have been engaged in the work of buffing and polishing for twenty-seven years and have held a position as foreman with four different companies. I am, and have been, a member of the Metal Polishers, Buffers, Platers and Helpers Union, A. F. of L., since January of 1953, having previously been a member of United Automobile Workers Union since 1937.

Joseph R. Hemsteger, hired by the company February 23, 1953, laid off April 14, 1953 and re-hired February 22, 1954; Charles Carter, hired by the company August 14, 1953, who worked intermittently together with Jesse Martin, hired February 9, 1953, and who likewise worked intermittently, were all discharged by myself on April 2, 1954 because of unsatisfactory work.

I had on a number of previous occasions called defective work to their attention, with the direction that they correct same. These men were all engaged in buffing and polishing zinc die castings preparatory for chroming, and their work required that no scale or scratches be left on the same.

A few days before April 2, 1954, I found Joseph Hemsteger, who was working with a man by the name of Al Rimas, leaving scale on his work. I showed him a whole box which should have been redone by Hemsteger; somehow it got through inspection and was chromed, after which the defect was again found with the result that all of this work had to be scrapped.

On April 2, 1954, it was brought to my attention that some 1,400 castings finished by Messrs. Carter and Martin were found, after having been chromed, in the same condition as afore-mentioned and this work likewise had to be scrapped.

The result of all of the foregoing compelled the discharge of these men on April 2, 1954. They were personal friends of mine whom I had known for some period of time, I feel that I should have discharged them before this date but kept them on thinking that their work would improve. I had, and do not now have any knowledge as to whether these men were engaged in Union activity. To my knowledge, they were not creating any dissension among any of the other employees. The sole and only reason for their discharge was because that even after it was brought to their attention on a number of occasions that they were producing unsatisfactory work, they failed to correct it.

Concluding Findings

Having found as a matter of law that the discharge of Gordon E. Brooks for engaging in the concerted work stoppage of January 15, 1954, was in violation of the Act, the question remains whether Respondent for the purpose of discouraging membership in a labor organization also discharged Charles R. Carter, Joseph R. Hemsteger, Clarence Limbert, and Jesse H. Martin on April 2, 1954. Despite his professed lack of knowledge of the organizational activities of Respondent's employees in his written statement of May 10, 1954, it is apparent from all the evidence, including testimony of Riley himself at the hearing, that Foreman Robert W. Riley

was apprised of and cooperated to large extent with employees in their efforts on behalf of the Union. By reason of his membership in the Union and friendly relationship with other members, I cannot find from a preponderance of the evidence that he completely aligned himself with Respondent and against the Union. Undoubtedly, Riley realized that Respondent preferred not to deal with a labor organization, and advisedly cautioned his fellow union members to go slow in their organizational efforts until the employment situation was more favorable, but the evidence is not convincing that he interfered with, restrained, or coerced employees or indicated any intention to discriminate in regard to their hire or tenure of employment or other terms or conditions of employment prior to the discharges on April 2, 1954. Foreman Riley had complete authority to hire and fire employees in the buffing room without consultation with General Manager Pitts or any other higher official. The record fails to show that any hostility to the organizational activities was exhibited or communicated to the rank and file employees by General Manager Pitts or anyone else, other than the discharge of Gordon E. Brooks for participation in the work stoppage of January 15, 1954.

Upon the entire record in the case, it cannot be convincingly contended that during the latter part of March 1954 the Respondent was not seriously concerned and disturbed in its operations on account of an unusual amount of defective work resulting in the scrapping of valuable work and materials, and that a considerable part of the deficiency was traceable to faulty buffing of the hardware. In the absence of adequate records and other information to fix responsibility for the situation, it was logical for General Manager Pitts to hold his foreman responsible and demand a remedy. When he did so, Foreman Riley indicated that it would be necessary to discharge certain men who in his opinion were performing unsatisfactory work. There is no evidence that General Manager Pitts participated in or suggested that responsibility be attributed to any particular employees, and there is scant evidence that he had knowledge of the organizational activities of any particular individuals. At the time, practically all employees in the buffing room had joined the Union. Pitts authorized Foreman Riley to take such action as he deemed best. Thereupon, Foreman Riley, while himself a member of the Union, assumed full responsibility, made his own decision, and discharged Charles R. Carter, Joseph R. Hemsteger, Clarence Limbert, and Jesse H. Martin.⁷ A preponderance of the evidence supports a finding that the aforesaid employees were discharged for cause. In that respect, I shall therefore recommend that the complaint be dismissed.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations 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 Respondent engaged in certain unfair labor practices by discriminatorily discharging Gordon E. Brooks because he participated in a concerted work stoppage with other employees on January 15, 1954, for the purposes of collective bargaining, or other mutual aid or protection, thereby discriminating in regard to hire or tenure of employment, or other terms and conditions of employment, to discourage membership in a labor organization, and thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, it will be recommended that Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It will be recommended that Respondent offer to Gordon E. Brooks immediate and full reinstatement in his former or substantially equivalent position⁸ without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay suffered by reason of the discrimination against him by the payment to him of a sum of money equal to that which he would normally have earned since the date of his discharge on January 15, 1954, to the date when a proper offer of

⁷ Limbert had not participated in the union activities, and it would be purely conjectural to find from the testimony of Carter and Hemsteger that Respondent had knowledge that they had in a public beer garden on the preceding night solicited the membership of Limbert.

⁸ See *The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch*, 65 NLRB 827.

reinstatement is made by Respondent, less his net earnings⁹ to be computed on a quarterly basis in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289. Earnings in one particular quarter shall have no effect upon the back-pay liability for any other such period. It will be further recommended that Respondent make available to the Board and its agents, upon request, all payroll records, time-cards, and other records necessary to compute the back pay herein awarded.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. Respondent, Metco Plating Company, is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. Local No. 1, International Union, Metal Polishers, Buffers, Platers, and Helpers, AFL, is a labor organization within the meaning of Section 2 (5) of the Act admitting to membership employees of Respondent.

3. By discriminatorily discharging Gordon E. Brooks because he participated in a concerted work stoppage with other employees for the purpose of collective bargaining or other mutual aid or protection, thereby discriminating in regard to hire or tenure of employment or other terms or conditions of employment, to discourage membership in a labor organization, and thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, Respondent, Metco Plating Company, engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (3) 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.]

⁹ See *Crossett Lumber Company*, 8 NLRB 440, 497-8.

Charles Hart and Local 450, International Union of Operating Engineers, AFL and Ernest H. Liles. *Case No. 39-CB-69. July 18, 1955*

DECISION AND ORDER

On February 28, 1955, Trial Examiner Reeves R. Hilton issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents, Charles Hart and Local 450, International Union of Operating Engineers, AFL, herein called Local 450, had not engaged in any unfair labor practices and recommending that the complaint be dismissed, as set forth in the copy of the Intermediate Report attached hereto.

On May 5, 1955, the Board denied the General Counsel's motion to reopen the record on the basis of newly discovered evidence which was not particularized. Thereafter, on May 9, 1955, the General Counsel renewed the motion, alleging specifically that the newly discovered evidence consists of a letter drafted by a duly authorized representative of Local 450 on April 1, 1955, subsequent to the hearing herein; that the letter allegedly states that a representative of Local 450 requested Ernest H. Liles, the Charging Party, not to work on the job on which he was then working and that this request covers the same work involved in this proceeding. The General Counsel asserts that