or educational background or as to degree of skill, if any required of them by their work on experimental equipment. Whatever special aptitude they may possess for this work appears to have been acquired primarily as a result of the experience they acquired at their job. Under these circumstances, we find that the maintenance employees at the Pine Street plant are not technical employees within the meaning of the Act, and we shall therefore include them in the unit.[10]

Leadmen: The Employer would exclude leadmen from the unit on the ground that they are supervisors as defined in the Act.

At full production, the Employer employs a total of 9 leadmen, who, with 3 foremen, are in charge of a total of approximately 75 employees on the third floor of the Pine Street plant. Leadmen are paid 25 cents an hour more than the other employees. They have the authority to replace, or to recommend to their foremen the replacement of, employees who do not properly perform their jobs. They can effectively recommend the discipline and discharge of employees and are called upon to make independent judgments in making those recommendations. We find that the leadmen are supervisors as defined in the Act, and we shall therefore exclude them from the unit.[11]

Accordingly, we find that all production, maintenance, and warehouse employees at the Employer's three plants at 2622 Pine Street, Eighth and Spruce Streets, and 308 South Eighth Street, in St. Louis, Missouri, including materials handlers, the truckdriver, toolroom employees, the injection maintenance molding helper, maintenance employees at the Eighth and Pine Street plant, shipping clerks, and quality control personnel, but excluding the inventory clerk and other office clerical employees, professional employees, the laboratory engineer, guards, watchmen, toolroom supervisor, the injection maintenance molding man, the quality control personnel supervisor, foremen, forewomen, leadmen, and other 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.]

[10] *Goodyear Engineering Corporation,* footnote 5, *supra.*

[11] There was uncontradicted testimony in the record that the authority of the leadmen has been considerably increased since the date of the Board's earlier decision (footnote 2, *supra*) in which the Board found that the leadmen were not supervisors. The present record clearly shows that the leadmen now have the power to "effectively recommend discharge or discipline of employees."

Miners Coal Company *and* John R. Smith, Homer Cartwright, Jr., Reuben S. Smith, Wilma Smith. *Case No. 9–CA–867. August 5, 1955*

DECISION AND ORDER

On April 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. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.[1]

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 Respondent's exceptions and brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions:

1. We find, in agreement with the Trial Examiner, that the Respondent violated Section 8 (a) (1) by discharging Cartwright, John Smith, and Reuben Smith for discriminatory reasons. However, in addition to the facts specifically relied on by the Trial Examiner, we also rely on the following: Superintendent Fugate's investigation, upon first learning of the petition, consisted only of questioning employees and supervisors as to its contents and the names of the employees involved, and searching Cartwright's clothing for a copy of the petition; he was not concerned with, nor does the record show, that circulation of the petition had any effect on production or safety. The choice of Cartwright as one of the employees to be discharged is further evidence of the Respondent's illegal motive, because Cartwright did not circulate the petition nor engage in any related activity during the time when he or other employees should have been working; he was, however, the one who set this concerted activity in motion. As he, as well as the Smiths, shared the general ignorance of the existence of any no-solicitation rule, there is no basis for the Respondent's contention that they were responsible for its alleged violation by others. Nor do we find merit in the Respondent's contention that the no-solicitation rule applied only to actual worktime, and, as supervisors had not circulated petitions while employees were working, no discriminatory enforcement was involved. The rule, as defined by President Snarr and Supervisors McCormick and Dupree, made no such distinction, and it was unknown to the employees in any form.[2]

[1] The Respondent also filed a motion to reopen the record, as to events occurring subsequent to the instant hearing, to which the General Counsel filed an opposition. In view of the basis for the Board's decision herein with respect to the violation of Section 8 (a) (1), we find that the proffered evidence is immaterial The motion is therefore denied. The request for oral argument by the Respondent is also denied as the record, including the exceptions and briefs, in our opinion, adequately presents the issues and the positions of the parties

[2] In the absence of exceptions thereto, we adopt without comment the Trial Examiner's findings, expressed and implied, that the Respondent did not otherwise violate the Act. However, in view of the nature of the unfair labor practices committed by the Respondent in discriminatorily discharging three employees because they engaged in protected con-

ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Miners Coal Company, Madisonville, Kentucky, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging its employees, or in any manner discriminating in regard to their hire or tenure of employment, because they engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all 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) Make whole Homer Cartwright, Jr., John R. Smith, and Reuben S. Smith for any loss of pay suffered by reason of the discrimination against them in the manner set forth in the section of the Intermediate Report entitled "The Remedy" as modified herein.[3]

(b) Post at its coal mine and plant in Fies City, Kentucky, copies of the notice attached hereto marked "Appendix."[4] Copies of said notice, to be furnished by the Regional Director or Acting Regional Director for the Ninth Region, shall, after being duly signed by the Respondent's representative, be posted by it immediately upon receipt thereof, and maintained 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 Respondent to insure that such notices are not altered, defaced, or covered by any other material.

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certed activity, a type of unfair labor practice which goes to the very heart of the Act, we shall order the Respondent to cease and desist from such acts and from interfering in any other manner with the rights of employees guaranteed by Section 7 of the Act. *Salt River Valley Water Users Association*, 99 NLRB 849, enfd. 206 F. 2d 325 (C. A. 9).

[3] The record shows, contrary to the Trial Examiner, that Reuben Smith was not offered reinstatement until January 14, 1955, and that he declined the offer on the same day. The section of the Intermediate Report entitled "The Remedy" is therefore modified to terminate his back pay on that date instead of on January 10, 1955.

[4] 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."

(c) Upon request make available to the Board and its agents all timecards, payrolls, and other records necessary to analyze, compute and determine the back pay and other emoluments to which Homer Cartwright, Jr., John R. Smith, and Reuben S. Smith may be entitled under the requirements of this Order.

(d) Notify the Regional Director or Acting Regional Director for the Ninth Region (Cincinnati, Ohio) in writing, within ten (10) days from date of this Order, what steps Respondent has taken to comply herewith.

MEMBER RODGERS took no part in the consideration of the above Decision and 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 Labor Management Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT discharge our employees, or in any manner discriminate in regard to their hire or tenure of employment, because they engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

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, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all 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.

WE WILL make whole John R. Smith, Reuben S. Smith, and Homer Cartwright, Jr., for any loss of pay suffered as a result of our discrimination against them.

MINERS COAL COMPANY,
Employer.

Dated_____ By_____
(Representative) (Title)

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

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

This proceeding authorized by Section 10 (b) of the National Labor Relations Act, 61 Stat. 136, as amended (29 U. S. C. Supp. 5, Section 141, *et seq.*), herein called the Act, was heard before the Trial Examiner, duly designated by the Chief Trial Examiner, at Madisonville, Kentucky, on February 16 and 17, 1955, pursuant to notice to all parties. All parties were represented at the hearing, were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence relevant and material to the issues involved, to argue orally upon the record, and to file written briefs and/or proposed findings and conclusions. A written brief was thereafter filed only by counsel for the Respondent, and has been given due consideration.

Pursuant to a charge filed on September 27, 1954, by individuals, John R. Smith, Homer Cartwright, Jr., Reuben S. Smith, and Wilma Smith, the General Counsel of the National Labor Relations Board, herein separately designated as General Counsel and the Board, issued a complaint on December 20, 1954, alleging that Miners Coal Company, herein called Respondent, engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act, and affecting commerce within the meaning of Section 2 (6) and (7) of the Act. Copies of the charge, the complaint, and other pertinent processes were duly served upon the Respondent, who in due course filed an answer admitting that it is engaged in commerce, but denying all allegations of unfair labor practices.

With respect to unfair labor practices, the complaint alleges in substance that Respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act by interrogating them concerning their protected concerted activities, and discriminated in regard to hire and tenure of employment by discharging its employees, John R. Smith, Homer Cartwright, Jr., and Reuben S. Smith, because they sponsored and caused to be distributed among other employees a petition to Respondent concerning rates of pay and engaged in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.[1]

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

FINDINGS OF FACT

I. BUSINESS OF RESPONDENT

Miners Coal Company is a corporation organized and existing under and by virtue of the laws of Kentucky, having its main office and place of business at Madisonville in said State. In the same vicinity Respondent is engaged in the operation of a coal mine at Fies City, Kentucky. During the calendar year 1954, Respondent sold, shipped, and delivered coal valued in excess of $1,500,000 from its Fies City coal mine directly to points outside the State of Kentucky. It is admitted and I find that Respondent was at all times material herein engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

There is no labor organization, formally organized as such, involved in this proceeding.

III. THE UNFAIR LABOR PRACTICES

A. *Mining operations*

In 1949 the Respondent opened its coal mine at Fies City, Kentucky, and has thereafter employed approximately 300 men on an open-shop basis. The mine is continually operated in 3 shifts of 8 hours each, and employees are paid an hourly wage from portal to portal. In addition to the hourly wages, the Respondent for several years paid a royalty of 30 cents per ton on all coal produced, which was distributed on a pro rata basis to employees. In addition, Respondent contributed a royalty of 10 cents per ton to a welfare or insurance fund. In the early part of 1954, Respondent unilaterally adopted a profit-sharing plan, and abandoned the royalty payments supplementary to wages. This profit-sharing plan provided less take-home pay than the royalty payments theretofore received by the employees.

[1] The charge with respect to Wilma Smith was dropped.

Work in the mine is completely mechanized with modern equipment. Employees working underground in the mine are organized into units of approximately 12 men each under the supervision of a face boss, who is admittedly a supervisor within the meaning of Section 2 (11) of the Act. A unit is ordinarily composed of cutting machine operators, drillers, shooters, stopers, shuttle car operators, and a loading machine operator. Production is measured by the tonnage of coal loaded for shipment. Mechanics work independently in the maintenance of equipment. Work in the mine moves in a cycle. In sequence the cutting machine operators, drillers, and shooters operate upon the solid face of the coal, causing it to fall in broken lots suitable for loading. The loading machine operator moves in and with his machine loads it on motorized shuttle cars. Shuttle car operators maneuver their vehicles into position for loading, and thereafter dump the coal upon a moving belt or other conveyors by means of which it is transported above ground. It is the duty of stopers to secure the overhead ceiling within the mine by the use of bolts and other materials to prevent collapse.

On the premises above ground Respondent provides a bathhouse with showers and clothes hangers or baskets where the miners don their work clothes before entering the mine and also clean up after work hours. At the beginning of each shift the workers assemble in units outside the mouth of the mine. They enter the mine on foot and proceed to a lower level called the bottom. From there each unit in charge of its face boss is transported in a motorized vehicle considerable distances underground to an unloading point near the face of the coal. This journey is called a "man trip." Upon detraining, the face boss proceeds immediately to the face of the coal to test for gas, while his operators make ready for work with their equipment. Theoretically there is no delay and the loading of coal is continuous throughout the shift. No break periods are permitted except a staggered lunch period of 30 minutes on company time. In practice, however, frequent delays of short duration do occur by reason of face preparation, trip change outs, mechanical trouble, equipment conflicts, procurement of supplies, removal of obstacles, defective coordination, etc. In an effort to eliminate delay in loading time, Respondent makes frequent time studies to remedy the situation, because such delays necessarily reduce production. A typical time study of a regular 8-hour shift on October 19, 1954, was introduced in evidence by Respondent to show that 35.83 percent of the entire shift was consumed by nonloading time.

B. *Disciplinary rules and practices*

All supervisory personnel of Respondent including the face bosses are licensed by the State of Kentucky as a prerequisite of employment, and the Respondent employs a full-time safety director. Respondent has published and posted written rules to prohibit fighting, smoking, and the carrying of inflammable materials into the mine and has delegated to its supervisors the maintenance of other disciplinary measures to promote safety and production. President Kenneth Snarr credibly testified that Respondent has an unwritten rule against solicitation in the mine, and that on several occasions he has personally instructed his office manager and the mine superintendent to prohibit solicitation of employees and the circulation of documents underground. Respondent permits its face bosses to sell raffle tickets for the benefit of miner welfare organizations. On many occasions Respondent has prepared and circulated written authorizations for deductions from pay as donations to the families of its employees in cases of sickness or death. To encourage such donations Respondent customarily agreed to match all deductions in pay by contributions from its own treasury. The face bosses customarily made such solicitation around the bathhouse and at other times when the men were not actually at work in the mine. Several witnesses, including Homer Cartwright, Jr., Ruby Davis, Charles Duff, Willie Killough, James C. Oldham, John R. Smith, and Reuben S. Smith, credibly testified, however, that they had often observed and been solicited by the face bosses during working hours in the mine, and that they had no notice of any company rule to prohibit such conduct. Sometimes contributions were solicited in the mine to purchase Christmas gifts for the supervisors, who in turn gave gifts to the employees. Other witnesses, including Marian Marks, Harold Whitmer, Harold Taylor, and Walter Higgins, testified that they had been solicited only at the bathhouse or other places above round. Face Boss Kenneth Dupree admitted that on one occasion he sold raffle tickets to Reuben S. Smith in the mine during the lunch hour.

C. *The concerted activities*

On Friday, August 20, 1954, a group of employees, including Paul Allen, Thomas Brown, Homer Cartwright, Jr., A. Cummings, Ruby Davis, Raymond Miller, James

Smith, and John R. Smith, discussed and proposed that their Employer (Respondent) be requested to restore the tonnage royalty payments in lieu of the profit-sharing plan. Homer Cartwright, Jr., proposed and agreed to prepare a petition to that effect for presentation to Respondent. During the weekend he prepared such a petition and brought 16 copies to the mine premises on Monday, August 23, 1954, reading as follows:

> TO: Officials of Miners Coal Company
>
> The undersigned, all employees of Miners Coal Co., who are entitled to Health and Welfare payments on tonnage produced, do hereby make it known by their signature the dissatisfaction and discontent over nonpayment of same.
>
> We believe that we are entitled to full payment of royalities due to Non-Union Working Conditions. Union employees do at least have their pensions whereas we are getting nothing or at least a small part every other month.
>
> We would like a meeting with the management to discuss these problems and to work out a satisfactory working agreement as soon as possible.

Cartwright delivered eight copies to John R. Smith and additional copies to James C. Oldham and others for the purpose of obtaining thereon the signatures of employees on their respective shifts. Cartwright retained two copies which were left in his clothes at the bathhouse. John R. Smith in turn distributed copies to Raymond Miller, Ruby Davis, and James Loven for the same purpose. At least six copies of the royalty petition were thereafter circulated in the mine, and were introduced in evidence as General Counsel's Exhibits Nos. 2–A, B, C, D, E, and F. Copy identified as General Counsel's Exhibit No. 2–A contains 17 signatures, including Face Boss James Morgan. One of the signers (Charles Duff) credibly testified that he first saw the paper lying on a bench, where it was signed by Mechanic J. C. Landers and called to the attention of others. Copy identified as General Counsel's Exhibit No. 2–B contains 12 signatures including in first place the name of Everett Palley, who was either at that time or later a face boss. Copy identified as General Counsel's Exhibit No. 2–C was carried into the mine by John R. Smith, laid on top of the motor at the end of the man trip, and there signed by himself and others, including Face Boss Thomas Bearden. This copy contains a total of 13 signatures. Copy identified as General Counsel's Exhibit No. 2–D contains 10 signatures, including Paul Allen, who was present in the original group of employees at the mouth of the mine on August 20, 1954, when the circulation of a petition was first proposed and agreed upon. Copy identified as General Counsel's Exhibit No. 2–E contains 19 signatures and was signed first by James C. Oldham, who had been presented with a copy by Homer Cartwright, Jr., prior to entering the mine. Copy identified as General Counsel's Exhibit No. 2–F contains 22 signatures and was signed first by Homer Cartwright, Jr., at the mechanics shop in the mine during his lunch period. At that time he read the petition aloud to other employees, and remarked "Well, I'll be the first to sign it." At quitting time he presented the same copy to Reuben S. Smith, whose signature appears last thereon. Reuben S. Smith credibly testified that he presented a copy of the petition to Face Boss Joe Head, but that Head refused to sign it because he was a supervisor. It is significant that face bosses of the Respondent raised no objections to circulation of the petition in their presence and three of them placed their signatures thereon. When the petition was presented to Face Boss Kenneth Dupree by Ray Smith (employee), he read and handed it back, saying: "Don't you know that you are not suppose to pass anything down here while working? I can't sign this paper." He also inquired of Ray Smith whether the mine superintendent knew about the petition, but took no timely action, and made no report to higher officials until the next day. At that time he discovered that Superintendent Fugate had already been apprised of the incident.[2]

D. *The discriminatory discharges*

From uncontradicted testimony it appears that Mine Superintendent Fugate made an investigation to determine which employees were primarily responsible for circulation of the petition in the mine. In company with Safety Director Sterling Harris, Foreman Charles Hicklin, and Office Manager Yates, he searched the clothing basket of Homer Cartwright, Jr., and found copies of the petition therein. Thereafter, Fugate showed a copy to Assistant Mine Superintendent Wynn McCormick. Fugate made inquiries of employees Audrie Sellers, Charles Duff, and Willie Killough concerning the petition and expressed displeasure because of their reluctance to furnish

[2] Superintendent Fugate did not appear as a witness at the hearing.

information. McCormick later told Duff that Superintendent Fugate thinks you have "let him down," and that it would simplify matters for him to tell all he knew about it. Foreman Rudolph Kirkwood told James C. Oldham that he was going to be discharged on account of the petition, but when Oldham approached Superintendent Fugate he was told, "When your foot gets well come on back to the mine and your job is waiting for you. When you're fired, I'll tell you when you're fired." Oldham was at the time disabled for work on account of an injured foot. Superintendent Fugate reported to President Snarr that John R. Smith, Reuben S. Smith, and Homer Cartwright, Jr., were the parties responsible for circulation of the petition. Snarr expressed the opinion that they had violated a rule of the Company and should be discharged. Face Boss Kenneth Dupree reported to Assistant Superintendent McCormick that these three men were the responsible parties. Following these discussions Assistant Mine Superintendent McCormick made the decision to discharge Homer Cartwright, Jr., John R. Smith, and Reuben S. Smith.

On August 28, 1954, Assistant Mine Superintendent Wynn McCormick instructed Foreman Charles Hicklin to send the three men to his office at the end of their shift. Upon their arrival McCormick said, "Well, boys let's go down to the supply house where we will be private." Upon arrival at the supply house McCormick said: "Boys, I have a very unpleasant task to perform. The officials and management of this Company feel that you have circulated a paper around among the men during their working hours, and caused others to circulate a paper around among the men in their regular working hours, and I am going to have to let you go."

Thereafter, on or about December 30, 1954, Respondent offered reinstatement in their former or substantially equivalent positions to each of the three dischargees. John R. Smith and Homer Cartwright, Jr., accepted the offer, and returned to work on January 10, 1955. For personal reasons, Reuben S. Smith declined the offer of reinstatement.

Concluding Findings

The pertinent facts in this case are clear and undisputed. After a complete investigation, Respondent discharged three employees in the belief that they were responsible for the circulation of a petition concerning wages and working conditions in its coal mine during working hours. In defense of the action taken, Respondent contends that it discharged these men for cause in that they violated a rule of the Company against solicitation of its employees at work, and thereby interfered with safety and the orderly operation of its business.

Section 7 of the Labor Management Relations Act, 1947, as amended, provides:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, 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 shall also have the right 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).

In their interpretation of the Act, it is well established by decisions of the Board and the courts that the circulation of a petition by employees to redress grievances concerning wages and working conditions is a protected concerted activity within the meaning of the Act.[3] Protection of the Act is not extended to disorderly conduct, and does not preclude an employer from adopting and publishing reasonable rules to restrict the activities of its employees during working hours. It follows, however, that such rules must be made known to employees in order to be valid or effective.

In this case there is no history of organizational activities prior to August 20, 1954, and Respondent had no occasion prior thereto to invoke any rule against solicitation of its employees at any time. With impunity supervisors of Respondent solicited employees during working hours to purchase raffle tickets and to authorize deductions in pay for charitable purposes. At no time did Respondent make known to employees or enforce any rule against such solicitations. Supervisors did not invoke any rule against solicitation when the royalty petition was circulated in their presence on August 23, 1954. In fact some of the face bosses encouraged and participated in the circulation by signing the petition. Others read the petition, and raised no serious objection to its circulation. The employees were clearly engaged in protected concerted activities, and there was no reprehensible conduct engaged in sufficient to forfeit protection provided by the Act. I am, there-

[3] *Pennsylvania Dutch Farms*, 101 NLRB 1600; *Morrison Knitting Mills*, 80 NLRB 731; *Wood Parts, Inc.*, 101 NLRB 445; *School-Timer Frocks, Inc.*, 110 NLRB 1659.

fore, constrained to find from a preponderance of the evidence and all the circumstances of the case that the arbitrary selection for discharge of Homer Cartwright, Jr., John R. Smith, and Reuben S. Smith was an afterthought by higher officials to punish employees for engaging in concerted activities distasteful to the Respondent. Thereby the Respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

No labor organization is involved in this case, and it does not appear that Respondent's employees had any intention of forming or joining a labor organization. I do not find that Respondent discriminated in regard to hire or tenure of employment *to discourage membership in a labor organization.* Findings of unfair labor practices herein by the Respondent will be limited to violation of Section 8 (a) (1) of the Act; but in any event the remedy will be the same.[4]

The courts have held that "there can be no violation of Section 8 (a) (3) of the Act unless the conduct complained of can have the proximate and predictable effect of encouraging or discouraging membership in a labor organization.[5]

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 set forth in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

It appearing that John R. Smith and Homer Cartwright, Jr., were reinstated by Respondent to their former or substantially equivalent employment on or about January 10, 1955, and on the same date Respondent offered similar reinstatement to Reuben S. Smith, who declined for personal reasons to accept employment, no order to require reinstatement is presently necessary. Having found, however, that Respondent discharged said employees by reason of their protected concerted activities, 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 make each of them whole for any loss of pay he may have suffered by reason of the discrimination, by payment to each of a sum of money equal to that which he normally would have earned from August 28, 1954, to the date when Respondent offered to each of them, respectively, reinstatement to his former or substantially equivalent position,[6] less his net earnings [7] to be computed on a quarterly basis in the manner set forth in *F. W. Woolworth Company,* 90 NLRB 289, and *N. L. R. B.* v. *Seven-up Bottling Company of Miami, Inc.*, 344 U. S. 344. 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 timecards, payrolls, and other records necessary to compute and determine the amount of 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 Miners Coal Company is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.
2. By discriminating in regard to the hire and tenure of employment of John R. Smith, Reuben S. Smith, and Homer Cartwright, Jr., because they engaged in protected concerted activities for the purposes of collective bargaining and other mutual aid or protection, Respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.
3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication.]

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[4] *The Ohio Oil Company,* 92 NLRB 1598

[5] *N. L. R. B.* v *Del E. Webb Construction et al*, 196 F. 2d 702 (C. A. 8); *N. L. R. B.* v *J. I. Case Company, Bettendorf Works,* 198 F. 2d 919 (C. A. 8); *Modern Motors, Inc.* v. *N. L. R. B*, 198 F. 2d 925 (C. A. 8).

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

[7] See *Crossett Lumber Company,* 8 NLRB 440, 447–448