practices found and also from infringing in any other manner upon the rights guaranteed in Section 7 of the Act.

It will be affirmatively recommended that the Respondent offer or cause to be offered to each of the seven persons found to have been discriminated against immediate reinstatement to his former or a substantially equivalent position, without prejudice to his seniority and other rights and privileges previously enjoyed, and make each whole for any loss of earnings he may have suffered because of the discrimination against him, by paying to him a sum of money equal to the amount he normally would have earned from the date of the discrimination against him, to the date of the offer of reinstatement less his net earnings during said period. Such loss of pay shall be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289. It will also be recommended that the Respondent make available to the Board, upon request, payroll and other records to facilitate the determination of the amounts due these employees under this recommended remedy.

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

CONCLUSIONS OF LAW

1. Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 282, AFL–CIO, and Retail Clerks International Association, Local Union No. 1636, AFL–CIO, are labor organizations within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Emery A. Thompkins, Mabel McCorkle, Hilda Weaver, Leighton A. White, Thomas Robert Wisher, Robert C. Luke, and Dennis James McGaughey, and by discouraging membership in the above-named labor organizations, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

3. By such conduct, and by other acts interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

4. The above-described unfair labor practices tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce and constitute unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

5. The Respondent has not refused to bargain with Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 282, AFL–CIO.

[Recommendations omitted from publication.]

Banner Die Fixture Company *and* International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Local 155 (UAW–AFL–CIO). *Case No. 7–CA–693. June 22, 1956*

SUPPLEMENTAL DECISION AND ORDER

On September 12, 1955, Trial Examiner C. W. Whittemore 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, a supporting brief, and a request for oral argument. The request for oral argument is here-

by denied, as the record, including the exceptions and brief, 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 brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions, exceptions, and modifications.

1. We agree with the Trial Examiner, as more fully set forth in the Intermediate Report, that the Respondent discriminated with respect to the hire and tenure of employment of Primo Petrucci, Arthur Richards, Russell Bagley, and Leonard N. LePage, thereby discouraging membership in the Union in violation of Section 8 (a) (3) and (1) of the Act. However, in reaching this conclusion, unlike the Trial Examiner, we do not rely on the testimony of witnesses that former supervisors had made statements, relating to the reasons for the discharge, at a time when they were no longer employed by the Respondent. In all other respects, we adopt the reasoning of the Trial Examiner in reaching his conclusion that the Respondent selected these four employees for dismissal because of their union activities.

2. The Trial Examiner recommended an award of full back pay for these four employees. We believe that, in doing so, the Trial Examiner failed to take into consideration the special circumstances of this case. The Trial Examiner heard the case *de novo* after the Board had set aside an earlier Intermediate Report, recommending dismissal of the complaint on its merits, issued by another Trial Examiner, because of his prejudicial exclusion of evidence.[1] In view of the recommendations contained in the first Trial Examiner's Intermediate Report, the Respondent could not have been expected to reinstate the four employees after it received that Intermediate Report to the date when the Board remanded the case for a new hearing, and therefore the Respondent should not be required to pay back pay for such period. Accordingly, we shall exclude this period, namely, February 9, 1954, to September 17, 1954, in computing the amount of back pay due the four employees.

3. The Trial Examiner found that the Respondent did not interrogate employees with respect to their union activities in violation of Section 8 (a) (1) of the Act. As no exception has been taken to this finding, we adopt it.

4. The Trial Examiner also found that management voiced no threats that employees would subject themselves to reprisal for union activities. However, he did find that "such threats to other employees were implicit in the discriminatory discharges themselves, and explicit

[1] *Banner Die Fixture Company*, 109 NLRB 1401.

in (Supervisor) Soennichsen's attributing the dismissals to union activities. . . ." We make no independent 8 (a) (1) finding based upon threats implicit in the discriminatory discharges; however, we find that the Respondent violated Section 8 (a) (1) of the Act by the statements made to employees by supervisors, including Mike Soennichsen and Mike Rossman, attributing the discharges to union activities as more fully set forth in the Intermediate Report.

5. The Respondent contends that the Trial Examiner did not afford it a fair hearing. We have examined the entire record and find no merit in this contention.

ORDER

Upon the entire record in the 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, Banner Die Fixture Company, Detroit, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Local 155 (UAW–AFL–CIO), or in any other labor organization of its employees, by discriminating in regard to their 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 their right to self-organization, to form, join, or assist the aforesaid or any other labor organization, 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 and 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) Offer to Primo Petrucci, Arthur Richards, Russell Bagley, and Leonard N. LePage immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, and make them whole by the payment of back pay in the manner set forth in the section of the Intermediate Report entitled "The Remedy," as modified in the Decision above.

(b) Preserve and make available to the Board or its agents upon request, for examination and copying, all payroll records, social-security payment records, timecards, personnel records and reports,

and all other records necessary to analyze the amount of back pay due under the terms of this Order.

(c) Post at its plants in Detroit, Michigan, copies of the notice attached hereto marked "Appendix A."[2] Copies of such notice, to be furnished by the Regional Director for the Seventh Region, shall, after being duly signed by an authorized representative of the Respondent, be posted by the Respondent immediately upon receipt thereof and be 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 the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

MEMBER RODGERS, dissenting:

I am not persuaded that the evidence relied upon by the majority is adequate to support its findings of unlawful discrimination unless it is their intention to give independent and controlling weight to the "background" evidence of conduct occurring more than 6 months prior to the filing of the charge. Because we are precluded by statute from giving controlling weight to such evidence,[3] I would dismiss the complaint.

[2] 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 a United States Court of Appeals, Enforcing an Order."

[3] See *N. L. R. B.* v *General Shoe Corp.*, 192 F. 2d 504, 507 (C. A. 6).

APPENDIX A

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 International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Local 155 (UAW–AFL–CIO), or any other labor organization, by discriminating in regard to the hire or tenure of employment or any term or condition of employment of any of our employees.

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 the aforesaid or any other labor organization, 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 and 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 offer Primo Petrucci, Arthur Richards, Russell Bagley, and Leonard N. LePage immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges and make them whole for any loss of pay suffered as a result of the discrimination against them.

All our employees are free to become, remain, or refrain from becoming or remaining members of any labor organization, except as that 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 not discriminate in regard to the hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any labor organization.

BANNER DIE FIXTURE 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

STATEMENT OF THE CASE

This proceeding, brought under Section 10 (b) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act, and an order of the National Labor Relations Board issued September 17, 1954,[1] was heard before the duly designated Trial Examiner at Detroit, Michigan, on August 15 through 19, 1955, pursuant to due notice to all parties. All parties were represented at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence relevant and material to the issues, to argue orally upon the record, and to file briefs and proposed findings. General Counsel and counsel for the Respondent argued orally upon the record. A memorandum of citations has been received from the counsel for the Respondent.

The complaint, issued by the General Counsel of the National Labor Relations Board, alleges in substance that Banner Die Fixture Company, herein called Respondent: (1) Discriminatorily and to discourage union activity terminated the employment of employees Primo Petrucci, Arthur Richards, and Russell Bagley on December 26, 1951, and Leonard N. LePage on January 4, 1952; (2) coercively threatened employees with discharge for participating in union activities, interrogated them as to their union sympathies, and attributed the above-cited terminations of employment to their union activities; and (3) by such conduct interfered with, restrained, and coerced employees in the exercise of rights guaranteed by Section 7 of the Act. In its answer, duly filed, the Respondent denied the commission of unfair labor practices, admitted that the named individuals were laid off, and set forth certain affirmative defenses.

[1] 109 NLRB 1401.

At the conclusion of the hearing ruling was reserved upon a motion by counsel for the Respondent to dismiss the complaint. Said motion is disposed of by the following findings, conclusions, and recommendations.

Upon the record made in these proceedings, and from his observation of the witnesses appearing before him, the Trial Examiner makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Banner Die Fixture Company is a Michigan corporation, with principal office and place of business in Detroit, Michigan, engaged in the business of manufacturing die fixtures. During the calendar year 1952, which is representative of all times material to this proceeding, the Respondent caused to be purchased and transported to its Detroit place of business, from points outside the State of Michigan, raw materials and supplies valued at more than $25,000. During the same period it sold and shipped in interstate and foreign commerce, to customers located outside the State of Michigan, products valued at more than $500,000.

The Respondent concedes in its answer and it is found that it is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Local 155 (UAW–CIO), is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Background*

In order clearly to appraise evidence of matters immediately—in point of time—relevant to the four layoffs in December 1951 and January 1952 here raised as the major issue, it is necessary to reconstruct, from certain evidence properly characterized by counsel as "background," the setting in which the layoffs occurred.

During 1951 and 1952 the Respondent operated a so-called "job shop" that made jigs, fixtures, and tools for the automotive, ordnance, and aircraft industries. Its employees, for the most part, were tool- and die-makers highly skilled and of long experience in a craft that, in common knowledge, ranks near the top in one of the Nation's largest industries. During this same period the Respondent operated two plants, the smaller housing equipment and employees who mainly assembled the products made at the larger. One payroll covered both plants, however, and employees were interchangeable.

Theodore M. Curtis is the president, responsible for all policy-making At the material time, Walter Schreiber was the superintendent, directly accountable to Curtis, and in full charge of both plants. At the hearing the Respondent took the position that, except for Schreiber, neither plant had any supervisor within the meaning of the Act exercising authority over some 130 employees. According to General Counsel, however, there were in fact other individuals, variously called foremen or area leaders, who were supervisors within the meaning of the Act and for whose conduct the Respondent must be held responsible. The identity and capacity of these individuals will be set out below.

During the material period the Respondent operated what is frequently called an open shop. The employees were not represented, in dealing with management, by any collective-bargaining agent. A number of such employees were, nevertheless, members of the Charging Union. According to Curtis he assumed that some of them, hired from other shops where the Union was recognized by contract, were union members. And Schreiber, as a witness, admitted, ". . . the people I worked with before I came to Banner, yes, I knew they belonged to the union."

That the Respondent early in 1951 opposed organization among its employees is established by credible and unrefuted testimony. Thus, Schreiber did not specifically deny having approached employee Primo Petrucci, the morning after the Charging Union had "handbilled" the plant in January, asked him if he had received one of the cards, told him he suspected him and another employee, informed him that he "didn't want the union in there," and warned him that he was "going to find out who was at the bottom of it, and he was going to chop their head off." The "other"

employee was let go a few days later.[2] When hired in December 1950, employee Walter Materski was asked by Schreiber if he was a union member and was told that Banner was a nonunion shop.[3] Shortly after he was hired, also in December 1950, employee Curtis Smith was interrogated by Schreiber. Schreiber asked him if he "was instrumental in any way of talking to any of the fellows about union activity in the shop." When Curtis admitted that he and others were members of the Union, but that he "wasn't going around advertising the fact," the superintendent told him that while the Company would be run under union rules and pay union wages, "we don't care to have a union in the shop."[4]

That Schreiber's concern, as to the organization of the plant, was a continuing concern, and was expressed at about the time of the layoffs herein involved as claimed unfair labor practices, is established by the undisputed testimony of employee Melvin Centmayer. According to this testimony Schreiber called him into the office at about the time union activity in the plant was revived in December 1951, as described more fully below, discussed with the employee his membership in the Union, and asked him if he was satisfied with conditions at the plant. (This incident was revealed during cross-examination of Centmayer by counsel for the Respondent, and was not pursued on redirect. The employee was not questioned as to the details of the interview and for this reason, as well as the employee's admission that on this occasion Schreiber made no effort to intimidate him, the Trial Examiner considers the evidence insufficient to support a finding that Schreiber's conduct in questioning Centmayer violated Section 8 (a) (1) of the Act. The event, however, is a factor to be considered in appraising other evidence relative to layoffs occurring at about the same time, for which Schreiber as a witness assumed full responsibility.)

It does not appear from the evidence that any sustained effort to organize the Respondent's employees followed the single handbill campaign early in 1951 until December of that year. There is, however, credible testimony to the effect that a number of the employees openly voiced, among themselves and to their supervisors, their dissatisfaction with certain working conditions, notably the failure to pay double time, during the latter part of the year. Credible testimony likewise supports a finding that such dissatisfaction was brought directly to the attention of the superintendent. Thus, although Schreiber said he could not recall any complaints about working conditions or wages, he did not deny Primo Petrucci's testimony that on several occasions he raised with Schreiber the question of Sunday overtime and that the superintendent gave him "prompt action" when he asked for "at least one week's vacation with pay."

In mid-December, discussions among the layout department employees (three in the main plant) finally crystallized in a telephonic request by Primo Petrucci to his brother, Peter, an international representative of the Charging Union, to start an organizing campaign at the plant after the Christmas holidays. These three men, Petrucci, Bagley, and Richards, actively began arousing union interest among employees and group leaders at the plant. Just before Christmas an employee not here involved was laid off. Petrucci called his brother again, urging him not to wait until after New Year's to start the campaign.

B. *The layoffs*

Shortly after reporting for work on the morning of December 26, 1951, the day after Christmas, Petrucci, Richards, and Bagley were, without previous warning, laid off and paid in full. They were told of their dismissal and later given their checks by Mike Soennichsen, who told them in a group that they were being laid off before they organized the place.[5] Before Soennichsen brought their checks, Schreiber

[2] Schreiber denied, generally, that he knew Petrucci was a union man, that he ever talked to him about union activities, or that he ever threatened him. The superintendent similarly gave general denials to similar questions asked concerning employees Arthur Richards and Russell Bagley, although neither of these employees had claimed he had interrogated or threatened them. Under the circumstances, the Trial Examiner does not consider that such general denials fairly meet the specific and detailed testimony of Petrucci.

[3] Schreiber was not questioned about this incident. Materski's testimony stands undisputed.

[4] Schreiber was not questioned about this incident. Smith's testimony stands undisputed.

[5] The testimony of Petrucci, Richards, and Bagley as to Soennichsen's statement on this occasion is credible and undisputed. Soennichsen was not a witness. Although counsel for the Respondent assured the Trial Examiner that before and during the hearing

approached Petrucci and offered to shake hands. Petrucci asked why he was being laid off, since he was the oldest bench hand at the plant. Schreiber told him only that "things on the surface sometimes didn't look like they were underneath." [6]

Later the same day the three laid-off layout men distributed union leaflets just outside the plant to employees.

A few days later, on January 3, 1952, Leonard N. LePage, a tool leader on the night shift, was asked to help organize that shift by Petrucci and International Representative Robert Doen. LePage agreed, was given cards, and that night while at the plant obtained signatures upon them.

The next day, while at home during his off-duty hours, LePage received the following telegram:

LAID OFF UNTIL FURTHER NOTICE
BANNER DIE FIXTURE CO.

LePage called the plant and asked Superintendent Schreiber why he was laid off. Schreiber replied that he had received a "note" to lay him off from Mike Rossman, night foreman over LePage, and that he was laying off according to seniority. Later the same day LePage went back to the plant to pick up his tools. He spoke to Rossman and remarked that it was tough to be fired by wire. Rossman said, "Didn't you kind of expect it?" LePage countered, "There wasn't anything wrong with my work, was there?" And the foreman said, "No. You know the company doesn't want a union, and if you stick your neck out you are going to get it chopped off." [7]

Other incidents occurred, after LePage's layoff, which are relevant to General Counsel's claim that the four dismissals were to discourage union activity. At a bowling alley, sometime after January 3, 1952, Rossman said to Mike Soennichsen, in the hearing of Russell Bagley, "If you do as well on your shift as I do on mine, the place will never be organized." [8] About a week after the layoffs, employee Richard Corcoran asked Mike Soennichsen if the men in the layout department had been laid off for union activities. Soennichsen at first shook his head and said: "Well, you know how it is, Dick," and then nodded affirmatively.[9] Early in May 1952, after Soennichsen had left the Respondent's employ, he asked Arthur Richards, identified above, why union representatives wanted to see him. Richards replied, "Mike. All they want is the truth. You know we were laid off at Banner for union activities." Soennichsen replied, "Yes." [10] Richards told Primo Petrucci of this conversation, and apparently shortly before the original hearing in this case (in September 1953) Petrucci telephoned to Soennichsen and asked him if he had admitted to Richards that they had been fired for union activities. Soennichsen's reply was, "Are you going to hold me to that?" [11]

C. *The Respondent's position*

To rebut General Counsel's contention that the layoffs were for the illegal motive expressed in the remarks of Soennichsen and Rossman, the Respondent claims that: (1) Both of these individuals were without authority to bind management; and (2) the layoffs were actually caused by an economic reduction in force.

The weight of credible evidence does not support the claim that Soennichsen and Rossman were not supervisors within the meaning of the Act. The Respondent concedes that both served in the same capacity, at the time herein material. The testimony of employees is undisputed that they were orally informed by Schreiber in 1951 that Mike Soennichsen was a foreman. A notice to this effect was posted upon the bulletin board. Although management referred to them as "area leaders," unrefuted evidence establishes that they exercised authority over group leaders, authorized absences, made pay increase recommendations, and generally performed the duties usually ascribed to foremen. It is undisputed that it was Soennichsen who told the layout employees on December 26 that they were laid off and gave them

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he had made an effort to obtain Soennichsen's presence and had been given to understand that he would appear, and although a full day's recess was granted for further effort, counsel rested his case without seeking further recess or requesting a subpena to require his presence.

[6] Petrucci's account of this incident is undisputed.

[7] LePage's account of his conversations with Schreiber and Rossman, upon which the findings are made, is undisputed.

[8] Bagley's testimony on this point is uncontradicted.

[9] Corcoran's testimony on this point is uncontradicted.

[10] Richards' account of this interview is uncontradicted.

[11] Petrucci's account of this conversation is undisputed.

their checks. It is undisputed that Schreiber told LePage that Rossman had left him a "note" to lay the employee off. Furthermore, the Board has already passed upon the supervisory capacity of such "area leaders" as Soennichsen and Rossman. In its Decision and Direction of Election, issued April 8, 1953, in Case No. 7–RC–2059 (not reported in printed volumes of Board Decisions and Orders), covering this same plant, the Board specifically excluded area leaders "as supervisors," finding that they "responsibly direct other employees." Consequently the Trial Examiner concludes and finds that the remarks made to the employees at the time of their layoff, above described, were such that the Respondent must be held accountable. Soennichsen and Rossman, the representatives of management actually effectuating the layoffs and voicing an explanation for them, clearly came within their general scope of authority.

As to the question of economic, instead of illegal, motive, credible testimony on the part of Curtis, supported by company records, establishes the fact that on December 26, 1951, the same day that the 3 layout men above identified were dismissed, 16 other employees were let go. Thus the Respondent on that day reduced its force from a total of 139 to 120 employees. Both Curtis and Schreiber said this move was made economically necessary because a number of orders were to be completed at the end of the year and new orders had not yet been received. Their testimony is likewise credible as to the abandonment of a specific area in the plant for a layout department after the dismissals of December 26. Moreover, the testimony of management witnesses is not successfully rebutted in the matter of subsequent necessity for less layout work. It appears that ordnance and aircraft orders, received early in 1952 required less layout work than automotive work received in 1951. Not all layout work was abandoned, however, it was thereafter performed at the benches, and mainly by group leaders.

D. *Conclusions*

From the credible testimony of Curtis and his records, the Trial Examiner is convinced that at the close of 1951 a situation existed which raised doubt in the mind of management as to the future course of its business, and that management in good faith met it by deciding to lay off a number of employees.

The Trial Examiner is not convinced, however, that management in good faith and by economic necessity selected and included in the layoff the three layout employees here involved. While it may be true that later events demonstrated the need for less layout work, it is obvious that in December management had no assurance of what type of orders it would receive in the future. All three men laid off, permanently, were highly skilled, capable of bench work. Petrucci, for example, in his long service with the Respondent, had not only worked at the bench but, at Schreiber's request, had been assigned to serve as a tool leader for a time in order to get out certain special work.

Of special significance, in the opinion of the Trial Examiner, is the fact—established by the undisputed testimony of Clarence Brown, the fourth member of the layout group on December 26—that although he had less seniority than any of the others he was offered that day, by Schreiber, a position as tool leader. Brown, the credible evidence shows, was the only 1 of the 4 in layout who was not active on behalf of the Union. Thus it is plain that even on the very day of the layoffs, there was work available for at least 1 of the 3 individuals here involved.[12]

Furthermore, according to Curtis' testimony, shortly after the December 26 layoff seven individuals were recalled. Early in February the Respondent advertised in a Detroit newspaper for skilled employees. Company records, received in evidence, establish that between January 1 and June 30, 1952, the Respondent hired as new employees 25 jig and fixture builders, 20 toolmakers, and 6 leaders—all jobs which the 3 layout men were capable of filling.

Not only were none of the three layout men recalled—as Curtis admits he recalled others—but the credible testimony of Robert Doen, the union representative, shows that late in the afternoon of January 3, 1952, the day before LePage was dismissed, he specifically requested Schreiber to reinstate Petrucci and Bagley, who were with him, to jobs as leaders or bench hands, if he had no layout work for them, but that Schreiber refused.

Finally, the circumstances of LePage's dismissal, described above, leave no reasonable doubt not only as to his layoff, but also as to those of Petrucci, Bagley, and Richards. Nor did the Respondent attempt, in other than a brief and casual way,

[12] This offer of another job to Brown, moreover, disposes of Curtis' claim that the layout men were not recalled because they were "higher rated."

to explain the summary dismissal of this leader. He was not listed among the December 26 layoffs, cited by Curtis as having been decided upon before that date. And Schreiber, when asked why LePage had been laid off, at first could not recall the man, and then said only that "we didn't have very much work." If, as Schreiber agreed after a leading question by his counsel, LePage had been on the December layoff list, the record is barren of any explanation as to why he was not let go on December 26, as were all the others, but in fact was summarily dismissed more than a week later.

In brief, the Trial Examiner concludes and finds that the Respondent's management, openly opposed to organization among its employees, became aware of the increasing union activity on the part of three of its layout men, and selected them for layoff at a time when other layoffs were being made, in order to rid itself of the union leaders. For the same reason, within a few hours after LePage first began his organizing activities, he received similar treatment. All four were dismissed, quite as their supervisors candidly told them, because of their union activities. And for the same reason they were thereafter refused reinstatement. Such discrimination was clearly not only in violation of Section 8 (a) (3) of the Act, but also interfered with, restrained, and coerced employees in the exercise of rights guaranteed by Section 7 of the Act.

The Trial Examiner finds no evidence of management's interrogation of employees, within the 6-months' period of the filing of the charge, other than the single minor instance noted above, in the case of Centmayer. No finding is made that this incident was an unfair labor practice.

As to the allegation in the complaint of "threatening to discharge employees who became members of or who were active in the Union," there is no evidence of such threats being voiced by any member of management. It is clear, however, that such threats to other employees were implicit in the discriminatory discharges themselves, and explicit in Soennichsen's attributing the dismissals to union activities, in response to Corcoran's question, above described.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, the Trial Examiner will recommend that it cease and desist therefrom, and take certain affirmative action in order to effectuate the policies of the Act.

Having found that the Respondent discriminated in regard to the hire and tenure of employment of Primo Petrucci, Arthur Richards, Russell Bagley, and Leonard N. LePage, it will be recommended that the Respondent offer them immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay suffered as a result of the discrimination against them, by payment to each of them of a sum of money equal to that which he would have earned from the date of the discrimination to the date of the offer of reinstatement, less net earnings, to be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289, 291–294. Earnings in any one particular quarter shall have no effect upon the back-pay liability for any other such period. It will also be recommended that the Respondent preserve and make available to the Board upon request, payroll and other records to facilitate the checking of back pay due.

As the unfair labor practices committed by the Respondent were of a character striking at the roots of employees' rights safeguarded by the Act, and disclose a propensity on the part of the Respondent to continue, although not necessarily by the same means, to defeat self-organization of its employees, it will also be recommended that the Respondent cease and desist from infringing in any manner upon the employee rights guaranteed in Section 7 of the Act.

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

CONCLUSIONS OF LAW

1. International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Local 155, (UAW–CIO), is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of employees Primo Petrucci, Arthur Richards, Russell Bagley, and Leonard N. LePage, thereby discouraging membership in the Union, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.
3. By interfering with, restraining, and coercing employees in the exercise of the rights guaranteed by Section 7 of the Act, the Respondent has engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication.]

CBS-Hytron, a Division of Columbia Broadcasting System, Inc. *and* International Association of Machinists, AFL–CIO, Petitioner

CBS-Hytron, a Division of Columbia Broadcasting System, Inc. *and* International Brotherhood of Electrical Workers, AFL–CIO, Petitioner

CBS-Hytron, a Division of Columbia [1] Broadcasting System, Inc. *and* International Union of Electrical, Radio and Machine Workers, AFL–CIO, Petitioner. *Cases Nos. 1–RC–4297, 1–RC–4307,[2] and 1–RC–4325. June 22, 1956*

DECISION, ORDER, AND DIRECTION OF ELECTION

Upon separate petitions filed under Section 9 (c) of the National Labor Relations Act, a consolidated hearing was held in these cases before M. Alice Fountain, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.[3]

Upon the entire record in these cases, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organizations involved claim to represent certain employees of the Employer.

3. At the plants here involved, the Employer is engaged in the manufacture and sale of electronic equipment and other diverse businesses. For approximately 13 years, the Employer and the Inde-

[1] The name of the Employer appears in the caption of Case No 1–RC–4325 as amended at the hearing.

[2] During the hearing, the Regional Director granted the request of the Petitioner in Case No. 1–RC–4307 to withdraw its petition.

[3] The hearing officer referred to the Board a motion by CBS-Hytron Employees Union, Independent, herein called the Independent, to strike all testimony with respect to minutes of meetings of its membership and executive board because of their confidential nature. The motion is denied. Evidence relevant to an issue in a case before the Board may be admitted into evidence, even where it involves the internal affairs of a union. See *Babcock & Wilcox Co.*, 105 NLRB 339, 341. Minutes of union meetings have been considered by the Board in other cases. See *Grinnell Corporation*, 97 NLRB 1268, 1269; *Kingston Cake Company, Inc.*, 91 NLRB 447, 461.