

As noted above, no exceptions have been filed to the Regional Director's findings on the Employer's remaining objections; those findings are accordingly adopted. Having considered the Regional Director's report on objections and the Employer's exceptions thereto, and having found the Employer's exceptions without merit, we hereby overrule them, in accordance with the recommendations of the Regional Director, and deny the Employer's request for a hearing. As the Petitioner has received a majority of the valid votes cast in the election, we shall certify it as the collective-bargaining representative of the employees in the appropriate unit.

[The Board certified International Longshoremen's and Warehousemen's Union (Ind.) as the designated collective-bargaining representative of the employees in the unit heretofore found appropriate.]

Alaska Chapter of the Associated General Contractors of America, Inc. and William H. Wright

International Hod Carriers, Building and Common Laborers Union of America, Local Union 942 and William H. Wright and Griffin F. Johnson. *Cases Nos. 19-CA-988, 19-CB-305, and 19-CB-305-1. December 6, 1957*

SUPPLEMENTAL DECISION AND ORDER

On August 3, 1954, the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding pursuant to a settlement agreement entered into by the parties. This Order was enforced by the United States Court of Appeals for the Ninth Circuit by a consent decree entered on December 10, 1954. The decree provided, *inter alia*, that International Hod Carriers, Building and Common Laborers Union of America, Local Union 942, hereinafter referred to as the Union or Respondent Union, make whole William H. Wright for losses of earnings suffered by reason of discrimination against him caused by the Union.

The Union and representatives of the Board were subsequently unable to reach agreement on the amounts of back pay due Wright under the terms of the court's decree, and the Regional Director directed a hearing to resolve the disagreement. The hearing was held on November 13 and 14, 1956, before Trial Examiner Howard Myers, who issued a Supplemental Intermediate Report on December 11, 1956. As set forth in the copy of his report attached hereto, the Trial Examiner found a specific amount of back pay due William H. Wright and recommended that the Union reimburse him in accordance with his findings. The General Counsel filed exceptions to the

Supplemental Intermediate Report and accompanying briefs and Respondent Union filed a brief in support of the report.

Pursuant to the provisions of Section 3 (b) of the Act, as amended, the Board has delegated its powers in connection with this proceeding to a three-member panel [Members Murdock, Rodgers, and Bean].

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 Supplemental Intermediate Report, the exceptions and briefs, and the entire record in this proceeding and hereby adopts only such of the Trial Examiner's findings, conclusions, and recommendations as are consistent with the following opinion.

The Order issued by the Board and enforced by the court provided that Respondent Union would be liable for loss of wages sustained by Wright from the date of the discrimination against him until the Union notified the Employer of the withdrawal of its objections to Wright's employment. The record establishes that the Union caused United Contractors, hereinafter referred to as United, to discriminatorily refuse Wright employment on January 27.¹ The loss of wages thereby caused Wright ceased when he was hired by United on May 14, the day after Respondent Union dispatched him to United.² It is also clear that Wright was unemployed between January 27 and May 14. Therefore, the only issues which must be resolved in this proceeding are, first, how much Wright would have earned during this period in the absence of the Union's unlawful conduct, and, second, whether the Union was relieved of its liability for all or a part of the back pay otherwise due Wright by his failure to make a reasonably diligent search for, or by refusing to accept, suitable interim employment.

Respondent Union contends that because the particular job United discriminatorily denied Wright lasted only 2 days, and because United would not have thereafter employed him even in the absence of the discrimination, the Union's liability for back pay should be limited to the wages Wright would have earned at this 2-day job. In any event, the Union alleges, Wright failed to make reasonable efforts to secure, and even refused, suitable interim employment.

The Trial Examiner concluded that Wright was entitled to back pay for only the 2 days immediately following the discrimination. For the reasons discussed below, we do not agree. In reaching a result contrary to that of the Trial Examiner, we have considered

¹ Unless otherwise noted, all dates which appear in this decision refer to the year 1954.

² The Union gave United written notice of the withdrawal of its objections to Wright's employment on September 3. However, Wright's employment by United on May 14, with clearance from the Union, served to restore him to the position he would have held but for Respondent Union's unlawful conduct, and the General Counsel does not contend that Wright thereafter suffered further loss of wages as a result of the discrimination against him caused by the Union.

his concluding findings and are of the opinion that his reliance on certain of these findings was unwarranted.³

The facts giving rise to Wright's claim against Respondent Union for back pay are these: United Contractors, a partnership of which James Ward was a member, was engaged in the completion of various construction projects in the vicinity of Fairbanks, Alaska, in late 1953. Because the severity of the winter weather caused United, like other construction contractors working in the area, to curtail its operations, United laid off several general laborers, among them one Mike Dollinter, in early January 1954.⁴

On January 26, James Ward asked several United employees to suggest someone to perform a 2-day laborer's job on one of United's projects. Clarence Nolan, the general foreman for United then on temporary layoff, suggested his friend, William Wright. Wright, whose work Nolan had supervised and thought well of, had never been employed by United. With Ward's approval, Nolan recruited Wright later that afternoon, relaying to him Ward's instruction to apply for the job the following morning at United's office. When Wright did so, he was interviewed by Ward who said Wright would need clearance from the Union. But because the Union's hall was not open at that hour, Ward left the office with Wright to take him to the job site without first calling the Union. They soon returned to the office, however, bringing with them the battery to Ward's truck. While they waited for the battery to warm, Ward decided to call the Union to secure clearance for Wright. Ward's call was answered by Orbeck, the Union's president. The latter, when informed of the purpose of the call, objected to United's hiring Wright instead of one of several former United employees then out of work. Orbeck

³ The Trial Examiner found that Respondent Union would have dispatched Wright to United at any time United requested his dispatch and that United neither requested Wright's dispatch nor desired to employ him prior to May 13. These findings are irrelevant to this proceeding as they relate neither to the employment and earnings Wright would have had absent the discrimination against him, nor to his efforts to secure interim employment, nor to affirmative efforts made by Respondent Union to remedy the effects of the discrimination it caused against Wright. *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 182, Utica, New York and Vicinity (The Lane Construction Co.)*, 111 NLRB 952, footnote 2, enfd. 228 F. 2d 83 (C. A. 2, 1955); *Local 595, International Association of Bridge, Structural and Ornamental Iron Workers, AFL (Bechtel Corporation)*, 108 NLRB 1070, enfd. 218 F. 2d 958 (C. A. 6, 1954); *Roadway Express, Inc.*, 108 NLRB 874, footnote 14, enfd. 227 F. 2d 439 (C. A. 10, 1955); *Victor Metal Products Corporation of Delaware*, 106 NLRB 1361. Moreover, the record contains no evidence that before May 13 the Union would have dispatched Wright to United upon the latter's request. United's desire to employ Wright is herein-after discussed. The Trial Examiner found that Wright failed to exercise diligence in seeking employment "between January 27 and May 14"—a finding also discussed below—but nevertheless recommended that Wright be awarded in back pay the wages he would have earned, absent the discrimination against him, on January 27 and 28.

⁴ There is no evidence to support the Trial Examiner's finding that these employees were given assurances when they were laid off that they would be reemployed by United as soon as work was available. Ward testified that while he had not done so, someone else might have. Apparently the Trial Examiner inadvertently associated testimony concerning a temporary layoff of laborers in March with the layoff of laborers in January.

hung up and called back shortly thereafter, giving Ward the names of several such employees, among them that of Mike Dollinter. Ward indicated to Orbeck that he wished to hire Wright, Orbeck's objections notwithstanding, and would do so if clearance for Wright were forthcoming. Ward then asked Wright to speak to Orbeck. Wright was no more successful than Ward in securing his clearance. Upon the completion of the call, Ward decided that without the Union's approval, he would not hire Wright and accepted instead the Union's dispatch of Dollinter to the job. Dollinter worked for United on January 27 and 28, earning \$48.96 before being laid off upon the completion of the job at the end of the second day.

When the weather moderated in early March, United decided to secure additional laborers to complete its various projects then in progress. It was United's policy, when hiring personnel for projects near completion, to employ former employees already familiar with its methods of operation. Ed Wilson was United's labor foreman and usually selected the men to be recalled at such times. He testified that had his supervisor,⁵ Clarence Nolan, asked him to request Wright's dispatch, he would have deferred to Nolan's wishes. And apart from this fact, Wilson testified, he would have given Wright, whom he later found to be a satisfactory worker, the same consideration for reemployment that he gave other former employees had Wright been employed by United on January 27 and 28. After discussing the matter, however, Wilson and Nolan decided that in view of the Union's failure to honor United's first request for Wright's clearance, they would not make a second such request. For this reason Wright was not among the laborers—Dollinter and other former employees of United—whom United requested by name and the Union dispatched in early March. Dollinter began work for United on March 4, and his earnings from that day to and including May 13 amounted to \$1,652.29.

The record establishes that Wright was at least as well qualified as Dollinter to perform work for which United was hiring in March. Since October 1953, United had been engaged principally in cleanup work and some concrete pouring in finishing its Fairbanks projects. This work required employees qualified as general laborers in construction. Wright was so qualified, having been employed since 1947 in the Alaska construction industry as both a general laborer and labor foreman. While United contemplated assigning Wright to cleanup work at a single project on January 27, United employed both Dollinter and Wright for a variety of jobs at several different projects after hiring them on March 4 and May 14, respectively. United cus-

⁵ Nolan, who was returned to the payroll in February after a temporary layoff, was carried on United's payroll as a carpenter foreman but actually functioned as United's general foreman and as such was Ed Wilson's supervisor.

tomarily hired laborers without reference to a particular project, moving them from one project to another as it found convenient. Wilson, United's labor foreman, testified that both Wright and Dollinter were satisfactory workers. These facts lend weight to the testimony of both Ward and Wilson that had Wright been employed by United on January 27 and 28, United might well have hired both Wright and Dollinter on March 4. However, as the Board customarily measures the loss of earnings of back-pay claimants by the earnings of either their replacements⁶ or comparable employees,⁷ it is unnecessary to determine whether Dollinter can be considered the employee who replaced Wright or simply an employee of comparable classification and skills whose earnings would have been no greater than Wright's had both men been employed by United during this period.⁸ The measure of the back pay due Wright—the amount earned by Dollinter—would be the same in either event. Accordingly, we find that an appropriate measure of Wright's loss of wages unlawfully caused by the Union is the amount Dollinter earned in the employ of United during the back-pay period.

Respondent Union argues that even in the absence of its unlawful conduct, United would not have in early March hired Wright because United was then following a policy of hiring only former United employees and Wright had never worked for United. This argument is completely refuted by the evidence which shows that: (1) Ward attempted to hire Wright in January in spite of United's usual policy on the matter and the fact—forcefully brought to his attention by the union president—that other laborers shortly before laid off by United were seeking work; (2) had Wright been cleared by the Union for the 2-day job in January, he would then have been eligible, as a former United employee, for reemployment pursuant to United's policy in March;⁹ (3) Nolan and Wilson, through Ward,¹⁰ would have requested the Union to dispatch Wright to United in early March

⁶ *Somerville Cream Company, Inc.*, 106 NLRB 1155; *C & D Coal Company*, 93 NLRB 799, 803.

⁷ *East Texas Steel Castings Company, Inc.*, 116 NLRB 1336; *Kartarik, Inc.*, 111 NLRB 630, 634, *enfd.* 227 F. 2d 190 (C. A. 8, 1955).

⁸ The fact that Wright was qualified as a labor foreman, the fact that United at one time contemplated hiring him with the intention of promoting him to that classification, and the fact that Nolan, United's general foreman, evidently sought to use his influence on Wright's behalf, all give rise to the possibility that Wright's earnings would have been greater than those of Dollinter who, so far as appears from the record, enjoyed none of these advantages. However, as the General Counsel has neither claimed nor demonstrated that Wright's earnings would have been greater, and as that possibility is speculative, we have limited our finding of the amount Wright would have earned from United, absent the discrimination, to the amount actually earned by Dollinter.

⁹ Ward testified that had Wright worked for United on the 2-day job in January, Wright "probably would have been called back in the same position in March."

¹⁰ Although United's requests for the dispatch of specific employees were usually communicated to the Union by Ward, he relied upon Wilson to determine the number and identity of the employees to be so requested.

but for the fact that the Union failed to honor a like request in January.

On the basis of the above facts we find that Respondent Union's unlawful failure to grant Wright clearance for employment by United on January 27 was the proximate cause of United's failure to employ Wright on January 27 and 28, and from March 4 to and including May 13, and that as a consequence thereof Wright suffered a loss of wages in the amount of \$1,701.25.

There remains for consideration the issue of whether Wright made a reasonable search for suitable employment during the periods the Union was liable to him for back pay. Between January 27 and May 13, Wright sought employment by registering on the referral list maintained by the Union at its hall, by regularly appearing at the "work calls" conducted by the Union at its hall twice each working day,¹¹ and by maintaining a current registration with the Alaska Territorial Employment Service where he drew unemployment compensation and regularly inquired for employment. The Union's job referral system was based upon a priority list of Respondent's unemployed members arranged in the order of their registration for work. To maintain his position on the list, each member was required by the Union to appear at the hall and check his name on the list at least once every 2 weeks. Requests from employers in the area for construction laborers were filled at the work calls by a union official calling aloud the names on the referral list in the order of their appearance. The first member present and answering to his name was dispatched to the job. However, except for the single instance when Wright was denied clearance on January 27, the Union also dispatched employees without regard for their position on the referral list when employers requested specific employees by name. Taking advantage of this fact, laborers sometimes secured jobs by applying directly to employers, persuading them to request the job applicants from the Union by name. As Wright was aware of this practice, Respondent Union contends that his failure to apply to individual employers for work was unreasonable. We think not. It is clear that virtually all construction contractors in the Fairbanks area hired only employees dispatched by the Union, whether these employees were selected by the Union pursuant to its referral system or by the employers in specifying to the Union the particular individuals they wished to employ.¹²

¹¹ The Trial Examiner credited Wright's testimony that he appeared at every work call during this period but erroneously stated that this testimony was uncontradicted. Wiegert, the Union's secretary-treasurer and business representative, who conducted about half of the work calls each week, testified that Wright did not appear at several work calls during the period in question but could not recall any such instance specifically. We find, therefore, that Wright's attendance at work calls, if not perfect, was at least sufficiently regular and frequent to warrant the conclusion that he was diligently seeking employment through the Union's referral system.

¹² The contract in effect between the Union and the Alaska Chapter of Associated General Contractors of America, Inc., required members of the latter organization to

Therefore, had Wright prevailed upon an employer to hire him, his clearance would have been again requested from the Union. But the Union having already denied Wright clearance under such circumstances and having thereafter given him no reason to believe the contrary,¹³ Wright could reasonably expect that the Union would refuse him clearance again. We do not think that it was incumbent upon Wright to make efforts to secure employment by means which he had been given good reason to believe would be rendered futile by the Union.¹⁴

The Trial Examiner credited the testimony of Joel Wiegert, the Union's secretary-treasurer and business representative, that on March 15 he conducted a work call for a laborer's job with the Lawrence Warehouse Company, and that Wright refused this job by failing to respond when his name was called although present at the hall.¹⁵ The Union takes the view that this episode demonstrates that Wright had voluntarily withdrawn from the labor market at this time¹⁶ and that his refusal of the job should at least serve to cut off the Union's liability for back pay on this date. Although credited by the Trial Examiner, Wiegert's independent recollection of events occurring in early 1954 would seem on the record substantially limited, if not inaccurate; his testimony consisted principally of inferences he drew from information contained in records of the Union to which he referred frequently while testifying.¹⁷ The accuracy of the Union's records would appear equally doubtful, particularly the Union's referral list dated January 3, on which Wright's name

secure laborers from the Union. Wright, who had served in at least two offices of the Union, testified that the necessity of union clearance for a laborer's job in the Fairbanks area was "exclusive." Ward testified that although not a member of Associated General Contractors nor a party to the Union's contract, United followed the provisions for hiring provided in that contract.

¹³ It appears that Wright first received notice on the afternoon of May 13 from an agent of the Board that the Union was willing to dispatch him to United without requiring that he await selection by means of the Union's priority referral system.

¹⁴ Compare *Carpenters Local Union No. 1028, United Brotherhood of Carpenters & Joiners of America, AFL (Dennehy Construction Company)*, 111 NLRB 1025, 1031.

¹⁵ The Trial Examiner, in setting forth and relying upon Wiegert's testimony, did not indicate whether he was aware of Wright's categorical declaration that he did not hear his name called at any work call between January 27 and May 14.

¹⁶ The Union also relies upon the testimony of James Day, a member of the Union, who testified that in early April he met Wright at the union hall and asked him why he was not working. Wright allegedly replied that "he was making money every day." We do not consider this vague and ambiguous remark, which Wright denies having made, to be significant, particularly in view of the unreliability of Day's additional testimony about this incident. Day, in first relating the incident, stated that he asked Wright, "What do you mean, Bill?" and Wright answered, "Well, you will find out." However, when asked on cross-examination whether he had asked Wright to explain his remark, Day first testified that he had not, then that he could not remember whether he had asked for an explanation or not.

¹⁷ For example, Wiegert, after examining the Union's job referral list dated January 3, 1954, testified that Dollinter's name was not contained therein and purported to recall that Dollinter was working at that time. As later discovered by Wiegert, however, Dollinter's name in fact appears on that list and he was in fact unemployed at that time.

appears before that of Richardson¹⁸ and which, Wiegert contended, substantiates his recollection that Wright's name was called before Richardson's on March 15.¹⁹ Accepting, however, the Trial Examiner's resolution of credibility in favor of Wiegert to the effect that Wright refused the Union's offer to dispatch him to the Lawrence Warehouse job on March 15,²⁰ that single incident is insufficient to rebut the evidence set forth above, and credited by the Trial Examiner, which we find, establishes that Wright was diligent in his search for employment during the back-pay period of January 27 to May 14.²¹

Wright's refusal of the dispatch to the Lawrence Warehouse job would, at most, warrant tolling the Union's liability for back pay during the period he would have been employed had he accepted the dispatch.²² But the evidence adduced by the Union shows only that Richardson, another member of the Union, accepted the dispatch which Wright refused; it does not establish whether, or when, Richardson was actually hired by Lawrence Warehouse Company as a conse-

¹⁸ The Union sought to demonstrate that Wright was not, after January 27, actively seeking employment by showing that a number of union members whose names appeared after his on the January 3 list secured jobs through referrals by the Union between January 27 and May 14. Apart from the fact that most of these employees were specifically requested by the employers to whom they were dispatched—and therefore were not selected in the order of their appearance on the list—it is quite apparent that the list itself is not what it purports to be. Although the list is dated January 3, and contains approximately 210 names, Wright, who registered for employment on this list on January 3, according to his uncontradicted testimony, appears approximately 80 names from the end of the list. And Dollinter, who was terminated by United on December 31, 1953, 3 days before, appears approximately 155 places from the end of the list. More incredible, however, is the fact that the names of both Luther Banks and Ronald Thorne appear on this list although they were not terminated by United until January 9, 6 days after this list of unemployed members of the Union was purportedly compiled.

¹⁹ Wiegert further testified that he could think of no plausible reason why Wright's name should drop behind Richardson's between January 3 and March 15. In later testimony he purported to explain as plausible the fact that Wright's name actually retrogressed on the referral list between January 3 and March 22.

²⁰ *Sterling Cabinet Corp.*, 109 NLRB 6, footnote 11; *N. L. R. B. v. Pyne Molding Corporation*, 226 F. 2d 818 (C. A. 2, 1955); *N. L. R. B. v. Ephraim Haspel*, 228 F. 2d 155 (C. A. 2, 1955); *N. L. R. B. v. Chauffeurs, Teamsters, Warehousemen & Helpers Local Union No. 135*, 212 F. 2d 216 (C. A. 7, 1954); *N. L. R. B. v. Chautauqua Hardware Corporation*, 192 F. 2d 492 (C. A. 2, 1951).

²¹ At the outset of the hearing the Trial Examiner, with the apparent agreement of counsel for the General Counsel, erroneously stated that the burden of proof was on the General Counsel to establish that Wright made a reasonable search for interim employment. The burden of proof was, of course, on the Respondent Union to establish that Wright failed to make such a search. *Phelps Dodge Corp. v. N. L. R. B.*, 313 U. S. 177, at 197-200; *N. L. R. B. v. J. G. Boswell Co.*, 136 F. 2d 585, at 597 (C. A. 9, 1943); *Southern Silk Mills*, 116 NLRB 769, at 770. In his exceptions to the Supplemental Intermediate Report counsel for the General Counsel states that he did not intend to assent to the Trial Examiner's statement of the rule, but intended merely to agree that the question of Wright's diligence was an issue in this case. No matter how the General Counsel's remarks at the hearing were intended or construed, Respondent was not prejudiced as the General Counsel has proved by a preponderance of the credible evidence that Wright made an adequate effort to obtain interim employment.

²² *Brotherhood of Painters, Decorators & Paperhangers of America, Carpet, Linoleum and Resilient Tile Layers Local Union No. 419, AFL-CIO (Spoon Tile Company)*, 117 NLRB 1596; *East Texas Steel Castings Company, Inc.*, 116 NLRB 1336, at 1347-1348, and cases cited in footnote 21 therein.

quence of the dispatch²³ or the duration of that employment.²⁴ Lacking proof that by refusing the dispatch to the Lawrence Warehouse Company Wright thereby forfeited employment for an ascertainable period, we find that his refusal of the dispatch does not warrant a reduction or tolling of the back pay owed Wright by the Union.

Having determined that the discrimination against Wright caused by Respondent Union resulted in his loss of wages in the amount Dollinter earned while in the employ of United Contractors during the period from January 27 to and including May 13, 1954, and that Dollinter's earnings while so employed amounted to \$1,701.25, we find this amount to be the back pay which Respondent Union is required to pay Wright pursuant to the order previously issued by the Board in this proceeding and enforced by the Court of Appeals for the Ninth Circuit.

ORDER

Upon the basis of this Supplemental Decision and 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 Respondent International Hod Carriers, Building and Common Laborers Union of America, Local Union 942, its officers, representatives, agents, successors, and assigns, shall pay to William H. Wright the amount of \$1,701.25 as back pay pursuant to the Decision and Order of the Board issued on August 3, 1954, and enforced by the Court of Appeals for the Ninth Circuit on December 10, 1954.

²³ Although the Union's personnel card for Richardson shows him to have been dispatched to Lawrence Warehouse Company on March 15, the record in this case will not support a conclusion that the Union's referral of an employee to a particular job is tantamount to proof of the employment of that individual. The Union's personnel cards show that employees Dollinter, Willie Rathcliff, and Elmer Miller were dispatched to United on February 13, 1954. But United's payroll records show, according to a stipulation agreed to by the Union, that these employees were not actually employed by United until March 4 and 6, 1954. The Union's records also show that Luther Banks was dispatched to United on February 13, but United's records show him to have been hired by United on January 23, and not terminated until the following June.

²⁴ Initially, Wiegert testified that Richardson's personnel card kept by the Union did not show the duration of the Lawrence Warehouse job. Because Richardson was next dispatched in the following August, Wiegert stated that Richardson "was either working out there or was out of work 5 months later." On cross-examination he first alleged that "It was a steady job. It lasted most of the summer." But when reminded of his previous testimony on the subject, he stated, "I don't know now how long it would last, but I said the job was a steady job [meaning that it lasted over a week]. It wasn't a 2-day job." Apart from this testimony, no evidence was introduced to establish either the fact that Richardson was employed by Lawrence Warehouse Company or the period during which he was so employed.

SUPPLEMENTAL INTERMEDIATE REPORT

STATEMENT OF THE CASE

On August 3, 1954,¹ the National Labor Relations Board, herein called the Board, issued its Decision and Order in the above-entitled case finding, among other things, that Alaska Chapter of the Associated General Contractors of America, Inc., herein called AGC, had violated Section 8 (a) (3) and (1) of the Act, and that International Hod Carriers, Building and Common Laborers Union of America, Local

¹ Unless otherwise noted all dates refer to 1954.

Union 942, herein called Respondent Union, had violated Section 8 (b) (2) of the Act.

The Board, as part of its remedy, ordered Respondent Union to make William H. Wright and Griffin F. Johnson whole for any loss of wages they might have suffered as a result of the discrimination against them.

In due course, the Board petitioned the United States Court of Appeals for the Ninth Circuit for enforcement of its Order. On December 10 the court granted enforcement.

The parties having been unable, through informal negotiations, to agree upon the back pay due the discriminatees,² the Regional Director for the Nineteenth Region, on January 16, 1956, pursuant to Section 102.51a of the Board's Rules and Regulations, Series 6, as amended, served upon Respondent Union back-pay specifications as called for by the aforesaid rule.

At the hearing herein, which was held, pursuant to due notice, at Fairbanks, Alaska, on November 13 and 14, 1956, the Board's counsel contended that Wright's back pay should be equivalent to that which Mike Dollinter received from United Contractors, herein called United, for the period during which Dollinter worked for United between January 27 and May 14, on the theory that had not Respondent Union refused Wright a clearance and instead dispatched Dollinter to the United job, Wright would have been hired on said job.

Respondent Union's contentions, as expressed at the hearing and in its brief,³ are: (1) The job offered Wright by United on January 27 was but a 2-day job, and that his back-pay compensation should be limited to the amount Dollinter received for the work performed by Dollinter on those days; (2) the job for which Dollinter was hired on March 3 was on a different contract, of a different type, and at a different location than the January job; (3) since Dollinter was in the employ of United prior to January he would have been selected to perform this subsequent job in preference to Wright; and (4) Wright took himself out of the labor market by not diligently seeking work during the period in question.

A. *The pertinent facts*

On January 26, Clarence Nolan,⁴ a neighbor and a personal friend of Wright, telephoned Wright and informed him that there was a laborer's job open at United and that if he went to the job site the following morning he would undoubtedly be hired.⁵

Pursuant to Nolan's suggestion, Wright went to the offices of United about 8 o'clock the following morning. There a secretary made out his tax withholding statement and gave him a gate pass. About 20 minutes later James Ward, a United partner, came into the office and explained to Wright the nature of the job and that it was a 2-day job.

Ward and Wright then left the office en route to the job site. Because Ward's pickup truck would not start due to battery trouble, the pair returned to the office. Ward then telephoned the Respondent Union's office and requested a clearance for Wright. Regarding this telephone conversation, Ward credibly testified that after he had requested the clearance the following ensued:

I talked to Ed Orbeck (President of Local 942) and he reminded me there were quite a few men on the bench and quite a few men who had worked for us before and I don't know if he absolutely refused a dispatch slip—I don't believe he did, but he reminded me of these other men, so he said he would call back and give me the names. I didn't know too many of the men. . . . He called back and gave me the names of some of the men who had been working for us off and on.

After Ward had finished talking to Orbeck the second time, he handed the telephone to Wright. Wright then asked Orbeck for a clearance which the latter declined to issue, adding, to quote Wright's credited testimony, "According to the Taft-Hartley Law I don't have to give you a dispatch slip, however, I cannot tell you not to go to work either." Ward then went to the Union Hall and picked up

² At the hearing herein, the Board's unopposed motion to dismiss the proceedings as to Griffin was granted.

³ Briefs were received from counsel for the Board and from counsel for Respondent Union which have been carefully considered.

⁴ Erroneously referred to in the transcript of the hearing as Clarence Knowland.

⁵ Prior to this date, January 26, Nolan had been a United job superintendent, but was not in the United's employ at this particular time. Nolan was subsequently rehired as superintendent.

Dollinter and took him to the job site. As estimated, Dollinter worked but 2 days on the job.

The record discloses, and the Trial Examiner finds, that: When Dollinter and four other laborers were laid off about January 1, 1954, Edward Wilson, United's then labor foreman, told them that they would be rehired as soon as work opened up; on or about March 3, Dollinter was rehired by United but not on the same job site on which he had worked in January; Dollinter worked on this job until on or about June 22; Dollinter was rehired in March, after Wilson had specifically requested Respondent Union to dispatch him; and all other laborers hired in or after March 1954 were dispatched by Respondent Union after Wilson had specified the persons wanted.

The credited evidence further discloses that: In late February or early March, Nolan returned to United as superintendent of the job on which Dollinter and the other laborers were rehired in March; in March Nolan was Wilson's immediate superior; Nolan and Wilson discussed the advisability of hiring Wright in March, but decided against it for the time being because they were of the opinion that Wright had become *persona non grata* with Respondent Union; if Nolan had requested Wilson or Ward to hire Wright in March, either would have requested Respondent Union to dispatch Wright; Nolan made no request for Wright until May 13; had Respondent Union been requested in March to dispatch Wright, he would have been given the necessary clearance; and when United requested Respondent Union on or about May 13 to dispatch Wright it immediately did so.

Wright testified without contradiction, and the Trial Examiner finds, that: Commencing on January 27, and continuing until he was dispatched to United on May 14, he checked with the Union Hall at least twice daily at the hours when Respondent Union "called jobs"; shortly after January 27, he commenced to draw unemployment compensation through the Territorial Employment Service, with which he had registered in 1953; he regularly, and as often as required, checked with the Territorial Employment Service in an effort to obtain employment; and he did not seek employment after January 27 by applying to any source other than at Respondent Union and at the Territorial Employment Service.

Joel Wiegert, secretary-treasurer and business representative of Respondent Union and one of the several persons who "call jobs" at the Union Hall, testified, and the Trial Examiner finds, that on March 15, Wright was in the Union Hall when a laborer's job at Lawrence Warehouse Company was called; that when Wright's name was called, Wright made no response; and that the job was then given to Oliver Richardson, whose name appeared below Wright's on the March 14 unemployed members list.

B. Concluding findings

Upon the entire record in the case, the Trial Examiner concludes: (1) Absent Respondent Union's discrimination, Wright would have been employed by United on January 27 and 28, 1954, and he would have received as wages for working those days the amount of \$48.96; (2) Wright did not exercise due diligence in seeking employment between January 27 and May 14, 1954; (3) Respondent Union would have dispatched Wright to United anytime United requested that Wright be dispatched; (4) United did not request Respondent Union to dispatch Wright prior to May 13, 1954; (5) Dollinter's hiring by United on or about March 4 had no bearing upon Wright's failure to obtain that employment; (6) United did not desire to employ Wright prior to May 14; and (7) Wright refused the proffered Lawrence Warehouse job on March 15, 1954, for reasons best known to himself. Accordingly, the Trial Examiner finds that the gross back pay due Wright is \$48.96.

[Recommendations omitted from publication.]

Vernon T. Mercer and Charles Leo Harrison. *Case No. 4-CA-1395. December 6, 1957*

DECISION AND ORDER

On March 20, 1957, Trial Examiner Sydney S. Asher, Jr., issued his Intermediate Report in the above-entitled proceeding, finding

119 NLRB No. 90.