

Summit Mining Corporation and United Cement, Lime & Gypsum Workers' International Union, AFL-CIO. *Case No. 4-CA-1471. February 21, 1958*

DECISION AND ORDER

On September 25, 1957, Trial Examiner A. Bruce Hunt 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

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

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

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, Summit Mining Corporation, Carlisle, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Cement, Lime & Gypsum Workers' International Union, AFL-CIO, as the exclusive representative of all its employees in the appropriate unit with respect to rates of pay, wages, hours of employment, and other conditions of employment.

(b) Discouraging membership in United Cement, Lime & Gypsum Workers' International Union, AFL-CIO, or in any other labor organization of its employees, by discharging or refusing to reinstate any of its employees because of their concerted or union activities, or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of employment.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form

¹ The Respondent's request for oral argument is hereby denied as, in our opinion, the record, exceptions, and brief adequately present the issues and positions of the parties.

labor organizations, to join or assist United Cement, Lime & Gypsum Workers' International Union, AFL-CIO, 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 or all of such activities, except to the extent that such right may be affected by an agreement in conformity with 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) Upon request, bargain collectively with United Cement, Lime & Gypsum Workers' International Union, AFL-CIO, as the exclusive representative of all the employees in the aforesaid unit and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Make whole Harold Baltzley, Richard Orner, and Jack Southerly, in the manner set forth in the section of the Intermediate Report entitled "The Remedy," for any loss of pay each may have suffered as a result of the Respondent's discrimination against him.

(c) 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 amounts of back pay due under the terms of this Order.

(d) Post in conspicuous places at its plant and mine, including all places where notices to employees are customarily posted, copies of the notice attached to the Intermediate Report and marked "Appendix."² Copies of said notice, to be furnished by the Regional Director for the Fourth Region, shall, after being duly signed by the Respondent's representative, be posted by it immediately upon receipt thereof, and maintained by it for at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

²In the event that this Order is enforced by 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."

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

Charges having been duly filed, a complaint and notice of hearing thereon having been served by the General Counsel, and an answer having been filed by Summit Mining Corporation, herein called the Respondent, a hearing involving allegations of unfair labor practices in violation of the National Labor Relations Act, 61 Stat.

136, herein called the Act, was held upon due notice at York, Pennsylvania, on July 9 and 10, 1957, before the duly designated Trial Examiner. The allegations of the complaint as amended at the hearing, denied by the answer, are that (a) on August 24 and September 21, 1956, and continuously thereafter, the Respondent refused to bargain collectively with United Cement, Lime & Gypsum Workers' International Union, AFL-CIO, herein called the Union, as the exclusive representative of its employees in an appropriate unit, although a majority of said employees had designated the Union as their representative for such purposes, in violation of Section 8 (a) (5) and (1) of the Act; (b) on September 21, 1956, certain of the Respondent's employees ceased work concertedly and went on strike; (c) on September 21, 1956, the Respondent discharged Terry Baltzley, Richard Scott, Raymond Wagner, Harold Baltzley, Richard Orner, and Jack Southerly because of their participation in the strike; (d) on November 12, 1956, the three last named employees ceased participating therein and requested reinstatement, but the Respondent refused to reinstate Southerly until November 23, Orner until December 20, and Harold Baltzley until February 23, 1957, because of such participation; and (e) by the discharges and refusals to reinstate, the Respondent violated Section 8 (a) (3) and (1) of the Act. The General Counsel and the Respondent were represented by counsel, were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the issues, to argue orally upon the record, and to file briefs and proposed findings and conclusions. No appearance was entered at the hearing on behalf of the Union. On August 12, the Respondent filed a brief. The Respondent's motion to dismiss the complaint, made at the close of the hearing, is disposed of in accordance with the determinations below.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, a Pennsylvania corporation, has its principal office in Carlisle, Pennsylvania, and its plant and mine at Aspers, Pennsylvania, where it is engaged in quarrying and processing soapstone. The Respondent annually produces and ships products exceeding \$50,000 in value to points outside the Commonwealth of Pennsylvania. There is no dispute, and I find, that the Respondent is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

United Cement, Lime & Gypsum Workers' International Union, AFL-CIO, is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Chronology of events*¹

The Respondent's mine is located about 5 miles from its plant. The employees involved herein work at both places. On August 23, 1956, 13 of the employees signed applications for membership in the Union and designated it as their representative for the purposes of collective bargaining. Every employee in the appropriate unit described below was a signer along with three foremen, Carl Ankney, Gerald Day, and John Baltzley. The record does not disclose the circumstances under which most of the 13 persons signed the cards, but Ankney testified without contradiction that he received his card from John Baltzley, who asked him to sign it, and that 2 employees, Terry Baltzley, John's son, and Herbert Griest, were given cards at the same time. Ankney testified further that no one explained to him "the portent" of the card.

On August 24, Vincent Speciale, a representative of the Union, wrote to the Respondent, claiming to represent a majority of the Respondent's employees and to have been authorized to enter into a collective labor agreement on their behalf, and asking that a date be set for a conference. On August 30, George W. Ahl, Jr., the Respondent's president, responded to Speciale's letter, suggesting that Speciale telephone him so that a date for a conference could be fixed. On September 7, the conference was held. Attorney Smith, spokesman for the Respondent, asked Speciale for suggestions concerning a method of resolving the Union's claim.

¹ The factual situation described below is largely undisputed and there are no major conflicts in testimony.

Speciale replied that there were two methods: (1) an agreement that the Union would be recognized upon proof of majority status, which would be followed by a cardcheck, and (2) an election conducted by the Board. Smith chose the latter method. At one point during the conference, Smith asked Speciale how many employees the Union represented and Speciale, although representing all employees in the appropriate unit, answered: "Let's say we have all but one." On the same day, the Union filed a petition with the Regional Office of the Board.²

On September 12, the Regional Director issued a notice of hearing in the representation case, fixing the date of hearing as September 21. Prior to the latter date, two discharges occurred. On September 19, Foreman John Baltzley³ recommended the discharge of Merl Phillips, a non-supervisory employee. The Respondent investigated Baltzley's recommendation and adopted it. Phillips was discharged on that day. Although the record does not disclose the basis of the recommendation, the parties are agreed that the discharge was valid. On the following day, in accord with the Respondent's practice in such matters, it sent to Baltzley for his signature a statement in connection with the discharge. Baltzley, apparently having sustained a change of mind, refused to sign it and he was discharged forthwith because of the refusal. That night a substantial majority of the employees met with Roland S. Roth, another representative of the Union. The time was within 24 hours of the representation hearing, and there was a discussion of working conditions. The employees also discussed the discharges of John Baltzley and Phillips, both of whom had signed applications for membership in the Union, and they asked Roth to talk with Ahl at the hearing the next day and to seek reinstatements, saying too that if need be they would strike to support their demand for reinstatements.

On September 21, the hearing was held. At its conclusion, Roth asked Ahl to reinstate the two men. Ahl refused and explained why the men had been discharged. Roth then reiterated his request for reinstatements, saying that reinstatements would "avoid trouble."⁴ The request was rejected again. As related, there is no issue here concerning the validity of Phillips' discharge, nor is there one concerning Baltzley's discharge. After leaving the hearing site, Roth met Baltzley and Phillips, to whom he related his conversation with Ahl. In Roth's automobile there were picket signs which bore the name of the Union, above which was printed "This Plant On Strike," and which did not bear the name of an employer. Baltzley and Phillips asked Roth to give them several of the signs, which Roth did, and they left him with the remark that they would contact employees at the plant.

Later that day, two employees, Harold Baltzley, brother of John, and Richard Scott, bearing picket signs, left their places of work at the mine and went to the plant. There they spoke with Production Manager Edward C. Beard. Harold Baltzley told Beard that if the plant was not closed within 30 minutes the Union would not be responsible for what happened, and Beard instructed Foreman Ankney to close it. While operations were being suspended, Harold Baltzley told Beard that there would be a strike unless the Respondent reinstated John Baltzley and Phillips and apologized to them. Beard rejected the demand and telephoned Ahl to relate what had occurred. Six employees, who may have constituted the entire number of employees in the appropriate unit at work on the day shift, left the plant and formed a picket line outside. They are Harold Baltzley, Terry Baltzley, Richard Orner, Richard Scott, Jack Southerly, and Raymond Wagner. The three other employees in the appropriate unit, who were not at work then, did not join in the strike.⁵ Later that afternoon the Respondent decided to discharge the six men and their "final" paychecks were prepared with the notation, "services terminated." On the next day, the checks were mailed to the employees. According to Ahl, he discharged the six men as a "management prerogative—disciplinary action" and not because of their union activities.

² Official notice is taken of proceedings in Case No. 4-RC-3140.

³ At an undisclosed time in September, the Respondent decided to relieve John Baltzley of his supervisory duties and to classify him as a mill operator. A reason was that there were too many foremen. The reclassification was not to occur until October 1, however.

⁴ Roth testified that he definitely used the words "avoid trouble." On the other hand, Ahl testified that to the best of his recollection the "essence" of Roth's statement was that "there will be trouble." In any event, it is clear that Roth did not say expressly that the refusal to reinstate would result in a strike.

⁵ As will appear, on September 21 there were nine employees in the appropriate unit. Six went on strike; three did not. Ahl testified that some of the employees in the unit worked on a different shift and that he and Wallace C. Wilson, assistant general manager, visited the homes of those employees on September 21 and brought them to the plant in order to resume operations.

On October 1, the Union requested permission to withdraw its petition in the representation case, and on the next day it filed the initial charge in this proceeding. On November 12, Southerly, Orner, and Harold Baltzley applied for reinstatement. They received it on the following November 23, December 20, and February 23, respectively. As appears below, we have no issue concerning a denial of reinstatement to the remaining three strikers.

On June 4, 1957, the complaint was issued in this proceeding. On June 11, the Board issued an order dismissing the petition in the representation case because the complaint alleges *inter alia* a refusal to bargain by the Respondent.

B. Discharge of the strikers

As we have seen, on September 21 six employees went on strike to secure the reinstatement of Phillips and John Baltzley, and on the same day they were discharged for having done so. As we have seen too, Phillips and Baltzley had been validly discharged. Our issue is whether the six employees, in striking for the object stated, were engaged in protected activity so that they could not be discharged lawfully until persons had been hired to replace them.

As recited, John Baltzley was a foreman although he would have become a rank-and-file employee in 10 days had he not been discharged. See footnote 3. Phillips, on the other hand, was a rank-and-file employee. The Respondent cites several cases in support of its contention that employees are not engaged in protected activity when they strike to protest a foreman's discharge. Those cases need not be discussed but they are cited in the footnote.⁶ It suffices to observe that the law most favorable to the Respondent appears to be as set forth in *Fontaine Converting Works, Inc.*, 77 NLRB 1386, where employees struck, "not to advance *their own* interests, but merely to further the interest of their foreman who they believed was demoted. . . ." The Board, distinguishing other cases, held that the strike was unprotected activity for the reason quoted and that the strikers could be discharged validly for participating therein. The *Fontaine* case is not dispositive of the issue here, however. The factual situations in the two cases differ substantially. Here the strike was in protest of the discharge of Phillips, as well as John Baltzley, and it is reasonable to conclude that the employees believed that their own interests were involved. Thus, both Phillips and John Baltzley were applicants for membership in the Union; the movement for reinstatement perhaps originated and definitely gained approval at a meeting of employees who had applied for membership in the Union; the demand for reinstatement was made by a union representative to the Respondent; the strike was to obtain reinstatement of fellow applicants for membership; the picket signs indicated that the strike was approved by the Union; and the initial and amended charges in this proceeding allege that the discharges of Phillips and Baltzley were violative of the Act.

In *N. L. R. B. v. J. I. Case Co.*, 198 F. 2d 919 (C. A. 8), enfg. as mod. 95 NLRB 47, cert. denied 345 U. S. 917, five employees sought to procure a walkout of employees to protest the valid discharge of a union steward. Three of the 5 employees were discharged and 2 were laid off, all, it was held, in violation of the Act. The court said:

. . . "Section 7 gives employees the right 'to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.' This 'mutual aid' and 'concerted activities' include, we think, the right to join other workers in quitting work in protest over the treatment of a coemployee, or supporting him in any other grievance connected with his work or his employer's conduct."

In *Colonial Fashions, Inc.*, 110 NLRB 1197, 1203, the Board said:

. . . Thus, it has been generally recognized that strikes arising over the nondiscriminatory [valid] discharge of employees or other economic issues . . . constitute protected concerted activity. [Citations omitted.]

. . . the record clearly establishes . . . that they [employees] concertedly walked out because of their belief that the Crump group had been unlawfully discharged. Irrespective of the correctness of their belief, we find that this action constituted concerted activity protected by the Act. [Citations omitted.]

⁶ *N. L. R. B. v. Reynolds International Pen Company*, 162 F. 2d 680 (C. A. 7), setting aside 70 NLRB 932; *Joanna Cotton Mills v. N. L. R. B.*, 176 F. 2d 749 (C. A. 4), setting aside 81 NLRB 1398; *N. L. R. B. v. Wallick and Schwalm Company*, 198 F. 2d 477 (C. A. 3), enfg. 95 NLRB 1262; *N. L. R. B. v. Coal Creek Coal Company*, 204 F. 2d 579 (C. A. 10), enfg. as mod. 97 NLRB 14.

In *N. L. R. B. v. J. E. McCatron et al., d/b/a Price Valley Lumber Co.*, 216 F. 2d 212 (C. A. 9), enfg. as mod. 106 NLRB 26, cert. denied 348 U. S. 943, the court said:

. . . In the case of *N. L. R. B. v. Globe Wireless, Ltd.*, 1951, 193 F. 2d 748, this Court held that a strike called to bring about the reinstatement of an employee properly discharged for insubordination was a concerted activity protected by § 7 of the Act. In the instant case we have the additional fact that the strikers mistakenly but in good faith thought that the employees whose reinstatement they sought had been discharged because of union activities. Some of the strikers testified that they feared that unless effective action was taken they too would be discharged because of their union activity. The walkout was a concerted activity protected by § 7. The discharge of the employees participating in the walkout by McCatron without having first replaced them interfered with, restrained, and coerced the employees in the exercise of that concerted activity.

Insofar as I am aware, the Board has considered but one case in which employees quit work to protest the discharge of both a supervisor and a nonsupervisory employee. In *Solo Cup Company*, 114 NLRB 121, enf. 237 F. 2d 521 (C. A. 8), employees quit work for about 1 hour to argue against the discharge of a supervisor and a rank-and-file employee, and to obtain a "satisfactory" explanation thereof. According to the Board, the employees were more concerned with the discharge of the rank-and-file employee than with the discharge of the supervisor, and they also were concerned that their own job security may have been in jeopardy. The Board held that the employees were engaged in concerted activities for their mutual aid and protection and that their layoff by the Employer was violative of the Act. The court, in affirming the Board, apparently did not view as significant the fact that 1 of the 2 persons discharged was a supervisor since that person is referred to in the opinion merely as "the other discharged employee."

Applying the applicable law to the factual situation described above, I must reject the Respondent's contention that its striking employees were engaged in unprotected activity. I conclude that applicants for union membership who strike to protest the valid discharge of other such applicants are engaged in concerted activities for their mutual aid or protection, although one of the discharged applicants be a supervisor. It follows that the Respondent's striking employees were economic strikers whom the Respondent was free to replace at any time prior to their applications for reinstatement but that they retained their status as employees and could not be validly discharged for their strike activity. Cf. *United Grinding Service, Inc.*, 118 NLRB 67. Their discharge was violative of Section 8 (a) (3) and (1) of the Act.

C. The refusal to bargain collectively

1. The appropriate unit; the Union's majority status

The complaint alleges, the answer admits, and I find, that all of the Respondent's production and maintenance employees, excluding office clerical employees, professional employees, technical employees, guards, and 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.

Between August 23 and September 19, 1956, inclusive, there were 10 employees in the unit, namely, Phillips, who was discharged on September 19, Herbert Griest, James Jones,⁷ and Charles Shank, the three employees who did not go on the strike described above, and Harold Baltzley, Terry Baltzley, Orner, Scott, Southerly, and Wagner, who did go on strike. On September 20, following Phillips' discharge, the number in the unit was nine. As related, there is no dispute and I find that on August 23, the 10 named employees, as well as Foremen John Baltzley, Ankney, and Day, signed applications for membership in the Union which authorized the Union to represent them in collective bargaining. Accordingly, I find further that on August 23, 1956, and at all times thereafter, the Union was the duly designated representative of a majority of the employees in the appropriate unit and, pursuant to Section 9 (a) of the Act, was the exclusive representative of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

⁷ The transcript, at page 24, lines 1 and 2, incorrectly refers to James Jones as "James Scott," reflecting an apparent confusion of Jones with Richard Scott. The word "Scott" on line 2 is hereby corrected to read "Jones."

2. The refusal to bargain

The General Counsel contends that the Respondent refused to bargain on August 24 and September 21 and continuously thereafter. On the other hand, the Respondent, while acknowledging that it did not recognize the Union as the representative of its employees in the appropriate unit and did not bargain with it, denies that it refused to bargain in violation of the Act. As an initial defense, the Respondent asserts that there was no demand by the Union that it bargain. According to the Respondent, the Union's letter of August 24 to the Respondent did not constitute a demand that the Union be recognized. This defense is without merit. As we have seen, in that letter the Union claimed to possess majority status, asserted that it had been authorized to enter into a collective-labor agreement on behalf of the employees, and asked that a date be set for a conference. When the conference was held, the Union offered to prove its majority status by a cardcheck or an election, and the Respondent chose the latter method. Thereafter, a representation hearing was held upon the Union's petition. Under these circumstances, it is unrealistic to assert that the Union did not request recognition. As was said in *Joy Silk Mills v. N. L. R. B.*, 185 F. 2d 732 (C. A., D. C.), enfg. as mod. 85 NLRB 1263, cert. denied 341 U. S. 914: "Nor must the request to bargain be in *haec verba*, so long as there was one by clear implication. . . ."

Next, the Respondent asserts that it was entitled to await a certification of the Union by the Board before bargaining. As we have seen, the Respondent engaged in no unfair labor practice until the discharges of September 21. Prior thereto it had shown no hostility to the Union and had accepted the Union's alternative method of proving majority status through an election. Contrary to the contention of the General Counsel, I find that there was no refusal to bargain on August 24. On September 21, however, the Respondent invalidly discharged 6 of the 9 employees in the appropriate unit, following which the Union withdrew its petition and chose not to proceed further with the representation case. The issue whether the Respondent unlawfully refused to bargain turns upon whether the effect of the six discharges was to render a free election impossible. According to the Respondent, Ahl's discharge of the six strikers was made in good faith, without any intent or desire to destroy the Union's majority status, and solely for the purpose of maintaining discipline in the plant. On the other hand, the General Counsel asserts that Ahl acted in bad faith, and we have seen that Ahl knew that the Union had requested the reinstatement of John Baltzley and Phillips, that the six employees were striking in protest of Ahl's rejection of that request, and that the picket signs reflected the Union's approval of the strike. I do not believe, however, that Ahl's good or bad faith need be explored further and a specific determination made. The law dictates the conclusion that the discharge of the strikers made a free election impossible.

The Respondent asserts that the Union's majority was not dissipated by the 6 discharges, that percentage-wise the majority was 100 both before and after the discharges, and that, had the Union "proceeded with the election," it "would surely have been certified as the bargaining agent. . . ." While it may be that the Union would have won an election, if conducted before several new employees were hired,⁸ it cannot be said as a fact that such is true. On the other hand, it is a fact that the invalid discharges, on the day of a representation hearing, of two-thirds of the employees in an appropriate unit restrains and coerces the remaining one-third employees in their exercise of the ballot. This is so regardless of an employer's good faith in erroneously concluding that the discharges could be made lawfully. As was said in *N. L. R. B. v. Entwistle Mfg. Co.*, 120 F. 2d 532, 536 (C. A. 4), an invalid discharge "goes to the very heart of the Act." A fundamental principle of the Act is that the inevitable effect of such a discharge is to restrain and coerce employees. It follows that the Respondent's conduct made a free election impossible. That being so, the Union had no realistic course of action but to withdraw its petition in the representation case and to have its majority status determined in a complaint proceeding. See *Aiello Dairy Farms*, 110 NLRB 1365. In summary, I find that on September 21, 1956, the Respondent refused to bargain collectively in violation of Section 8 (a) (5) and (1) of the Act.

⁸ On October 2 the Respondent hired a new employee, on October 19 it hired another, on October 23 still another, and on October 29 two others. Additional persons were hired thereafter. The transcript at page 56, line 15, recites that Earl Toner was hired on October 29, whereas at page 98, lines 11 and 12, Toner's date of hire is recited as October 19. My trial notes reflect that the latter date is correct, and the transcript at page 56, line 15, is hereby corrected accordingly.

D. The refusals to reinstate

On November 12, 1956, Harold Baltzley, Orner, and Southerly ceased their participation in the strike and requested reinstatement. Having been discharged invalidly while striking, those three employees were entitled to reinstatement upon ceasing their strike activity and applying therefor. It was not until the next November 23, December 20, and February 23 that Southerly, Orner, and Baltzley, respectively, were reinstated. By the failure to reinstate them promptly, the Respondent violated Section 8 (a) (3) and (1) of the Act.

The remaining three strikers did not request or receive reinstatement insofar as appears, and there is no issue on this subject because of certain conduct in which they engaged as strikers.

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, I shall recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the Union represented a majority of the employees in the appropriate unit and that the Respondent refused to bargain collectively with it. Accordingly, I shall recommend that the Respondent, upon request, bargain with the Union as the exclusive representative of the employees in the appropriate unit.

It has been found also that the striking employees were invalidly discharged on September 21, 1956, that Southerly, Orner, and Harold Baltzley continued their participation in the strike until November 12 when they applied for reinstatement, and that they were reinstated, respectively, on the next November 23, December 20, and February 23. The General Counsel contends, in accord with *Leach et al. d/b/a Brookville Glove Co.*, 114 NLRB 213, that back pay for the three named employees should commence upon the date of the requests for reinstatement, rather than upon the earlier date of discharge, since they were on strike when discharged and continued their strike activity. I shall recommend that the Respondent make whole each of the three named employees for any loss of pay he may have suffered by reason of the Respondent's refusal to reinstate him earlier than the date given above, by payment to him of a sum of money equal to that which he normally would have earned from the date of the request for reinstatement to the date of reinstatement, less his net earnings (*Crossett Lumber Company*, 8 NLRB 440, 497-498) during said period, the payment to be computed upon a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289. See also *N. L. R. B. v. Seven-Up Bottling Company, etc.*, 344 U. S. 344. I shall recommend also that the Respondent 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 amounts of back pay due under the terms of these recommendations.

I shall recommend further, in order to make effective the interdependent guaranties of Section 7 of the Act, that the Respondent cease and desist from, in any manner, infringing upon the rights guaranteed in said Section. *N. L. R. B. v. Express Publishing Company*, 312 U. S. 426; *Entwistle Manufacturing Company, supra*.

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

CONCLUSIONS OF LAW

1. The Union is a labor organization within the meaning of Section 2 (5) of the Act.
2. All of the Respondent's production and maintenance employees, excluding office clerical employees, professional employees, technical employees, guards, and 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.

3. The Union, on August 23, 1956, was, and at all times thereafter has been, the exclusive representative of all employees in such unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

5. By discriminating in regard to the hire and tenure of employment of Harold Baltzley, Terry Baltzley, Richard Orner, Richard Scott, Jack Southerly, and Raymond Wagner, and each of them, and thereby discouraging membership in a labor organization, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

6. By interfering with, restraining, and coercing its employees in the exercise of the 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.

7. The aforesaid unfair labor practices affect commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication.]

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT discourage membership in United Cement, Lime & Gypsum Workers' International Union, AFL-CIO, or in any other labor organization of our employees, by discharging or refusing to reinstate any of our employees or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of their employment.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist United Cement, Lime & Gypsum Workers' International Union, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or 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 authorized in Section 8 (a) (3) of the National Labor Relations Act.

WE WILL, upon request, bargain collectively with United Cement, Lime & Gypsum Workers' International Union, AFL-CIO, as the exclusive representative of all employees in the following bargaining unit with respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All our production and maintenance employees, excluding office clerical employees, professional employees, technical employees, guards, and supervisors as defined in the Act.

WE WILL make whole Harold Baltzley, Richard Orner, and Jack Southerly for any loss of pay each of them may have suffered as a result of our discrimination against him.

All our employees are free to become or remain, or to refrain from becoming or remaining, members in good standing of United Cement, Lime & Gypsum Workers' International Union, AFL-CIO, or any other labor organization, except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the National Labor Relations Act.

SUMMIT MINING CORPORATION,
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.