

**St. Johnsbury Trucking Co., Inc. and Herman Ericksen and Local 478, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America**

**Local 478, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Herman Ericksen and St. Johnsbury Trucking Co., Inc. Cases Nos. 22-CA-5 (formerly 2-CA-5126) and 22-CB-8 (formerly 2-CB-1838). April 28, 1958**

**DECISION AND ORDER**

On February 19, 1957, Trial Examiner David London issued his Intermediate Report in this consolidated proceeding, finding that the Respondents had engaged in some, but not in others, of the unfair labor practices alleged in the complaints, and recommending that they cease and desist therefrom and take certain affirmative action as set forth in the copy of the Intermediate Report attached hereto. He also recommended that the complaint be dismissed in part. Thereafter, the General Counsel filed exceptions, and a brief in support thereof. Respondent Union filed a brief in answer to the exceptions and the General Counsel filed a reply brief thereto.

The Board<sup>1</sup> has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings,<sup>2</sup> conclusions, and recommendations<sup>3</sup> of the Trial Examiner.

**ORDER**

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that:

<sup>1</sup> Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, as amended, the Board has delegated its powers in connection with the case to a three-member panel [Chairman Leedom and Members Bean and Jenkins].

<sup>2</sup> Having found that the contract provision is not unlawful, we agree with the Trial Examiner that it is unnecessary to decide whether the single incident of discrimination remaining in the case is also violative of Section 8 (a) (2). The Board does not generally find that a single violation of Section 8 (a) (3) constitutes, without more, a violation of Section 8 (a) (2).

<sup>3</sup> Before the close of the hearing, the parties restored Herman Ericksen to number 4 position on the seniority list. As the Board was not a party to the settlement among the parties, it is not limited thereby. *N. L. R. B. v. Hekman Furniture Company*, 207 F. 2d 561, 562 (C. A. 6); *N. L. R. B. v. Spitzer Motor Sales, Inc.*, 211 F. 2d 235 (C. A. 2). The discontinuance of the unlawful conduct does not divest the Board of jurisdiction to issue an order to ensure against possible future violations of the same character and to require that Ericksen be made whole for the discrimination against him. See *N. L. R. B. v. Bell Aircraft Corporation*, 206 F. 2d 235, 238 (C. A. 2); *N. L. R. B. v. George W. Reed*, 206 F. 2d 184, 191 (C. A. 9).

A. The Respondent, St. Johnsbury Trucking Co., Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Encouraging membership in the Respondent Union, or in any other labor organization of its employees, by refusing employment to any of its employees, or by down-grading the seniority of any of its employees, pursuant to the request of the Union, or by discriminating against them in any manner in regard to their hire or tenure of employment or any term or condition of employment, except to the extent permitted by Section 8 (a) (3) of the Act.

(b) Interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights 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) Restore Herman Ericksen on the seniority list of employees at its Newark terminal at his rightful position, no lower than number 4, and grant him all the rights pertaining to that position which he would now be enjoying if it were not for the discrimination against him.

(b) Post at its terminal at Newark, New Jersey, copies of the notice attached hereto marked "Appendix A."<sup>4</sup> Copies of said notice, to be furnished by the Regional Director for the Twenty-second Region, shall, after being duly signed by an authorized representative of the Company, be posted by it immediately upon receipt thereof and maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Company to insure that said notices are not altered, defaced, or covered by any other material.

(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 amount of back pay due and the rights of employees under the terms of this Order.

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

<sup>4</sup>In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

B. The Respondent, Local 478, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, its officers, representatives, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Causing or attempting to cause Respondent Company to discriminate against Herman Ericksen in violation of Section 8 (a) (3) of the Act.

(b) In any other manner restraining or coercing the Company's employees in the exercise of the rights guaranteed by Section 7 of the Act, except to the extent permitted by 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) Give its approval to the restoration of Herman Ericksen at his rightful position on the seniority list of the Company's employees at its Newark terminal, no lower than number 4 thereon.

(b) Post at its business offices and meeting halls in Newark, New Jersey, copies of the notice attached hereto marked "Appendix B."<sup>5</sup> Copies of the notice, to be furnished by the Regional Director for the Twenty-second Region, shall be posted by the Respondent Union immediately upon their receipt, after being duly signed by an official representative of the Union. When posted, they shall be maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by said Union to insure that these notices are not altered, defaced, or covered by any other material.

(c) Mail copies of the said notice to the Regional Director for the Twenty-second Region, for posting at Respondent Company's Newark offices and terminal, in places where notices to drivers are customarily posted. Copies of the notice, to be furnished by the Regional Director for the Twenty-second Region, shall be returned forthwith to the Regional Director after they have been signed by an official representative of the Union, for such posting.

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

C. The Respondent Company and the Respondent Union shall jointly and severally take the following action which the Board finds will effectuate the policies of the Act:

Make whole Herman Ericksen for any loss of pay he may have suffered by reason of the discrimination against him in the manner set forth in the section of the Intermediate Report entitled "The Remedy."

<sup>5</sup> See footnote 4, *supra*.

IT IS FURTHER ORDERED that the allegations of the complaint that the Company violated Section 8 (a) (2) of the Act be, and hereby are, dismissed.

## 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 Labor Management Relations Act, we hereby notify our employees that:

WE WILL NOT encourage membership in, or activities in behalf of, Local 478, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or in behalf of any other labor organization of our employees, by discriminating in any manner in regard to hire, tenure, or any term or condition of employment.

WE WILL offer to Herman Ericksen immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights previously enjoyed by him, and make him whole for any loss of earnings as a result of the discrimination against him.

WE WILL NOT in any 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 the above-named or any other labor organization, to bargain collectively through representative of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from engaging in any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment in conformity with Section 8 (a) (3) of the Act.

All our employees are free to become or remain, or to refrain from becoming or remaining, members of any labor organization except to the extent above stated.

St. JOHNSBURY TRUCKING Co., INC.,  
*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.

## APPENDIX B

NOTICE TO ALL MEMBERS OF LOCAL 478, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA AND TO ALL EMPLOYEES OF ST. JOHNSBURY TRUCKING CO., INC.

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 you that:

WE WILL NOT cause or attempt to cause St. Johnsbury Trucking Co., Inc., its officers, agents, successors, or assigns, to discriminate against its employees within the meaning of Section 8 (a) (3) of the Act.

WE WILL NOT in any other manner restrain or coerce employees of the above Company in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent permitted by Section 8 (a) (3) of the Act, as amended.

WE WILL, jointly with St. Johnsbury Trucking Co., Inc., restore Herman Ericksen's name to his rightful position on the seniority list at its Newark terminal, and grant him all rights pertaining to that position.

WE WILL make whole Herman Ericksen for any loss of pay he may have suffered because of the discrimination against him.

LOCAL 478, INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMERICA,  
*Labor Organization.*

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

Upon charges, and an amended charge, filed by Herman Ericksen, the General Counsel of the National Labor Relations Board, by the Regional Director for the Second Region, issued an order consolidating the above-entitled cases, and a complaint, dated November 20, 1956, against St. Johnsbury Trucking Co., Inc., hereinafter called the Company, and Local 478, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, herein called the Union.

The complaint alleges that on or about October 5, 1956, the Company and the Union executed, and since then have maintained in effect and enforced, a collective-bargaining agreement relating to hire, tenure, terms, and conditions of employment of the Company's employees at its Newark plant which agreement contains, *inter alia*, provisions which give and delegate to the Union final and exclusive control over the seniority ranking of the Company's employees and which seniority ranking determines the order of employment and layoff of said employees. The complaint also

charges that on or about October 8, 1956, and since that date, the Union required and demanded that the Company reduce the seniority ranking of Herman Ericksen from 4th place to 15th place on the seniority list pursuant to the provisions of the aforementioned agreement because said Ericksen refrained from assisting the Union and from engaging in other concerted activities for the purposes of collective bargaining or other mutual aid or protection. The complaint further alleges that since on or about October 8, 1956, the Company failed and refused to continue the employment of Ericksen in accordance with his previous seniority ranking, and refused thereafter to reinstate or reemploy him, because he had refrained from assisting the Union and from engaging in other union activities. By the complaint, the General Counsel concludes that the conduct of the Company aforementioned was violative of Section 8 (a) (1), (2), and (3) of the Act, and that of the Union as violative of Section 8 (b) (1) (A) and 8 (b) (2) of the Act.

The charges and amended charge, order of consolidation, the complaint, and notice of hearing were duly served upon all the parties thereto. Both Respondents denied the commission of any conduct violative of the Act. Pursuant to notice, a hearing was held at New York, New York, on various dates between December 20, 1956, and February 1, 1957, before the Trial Examiner duly designated to conduct the hearing. The General Counsel and the Union appeared through counsel, the Charging Party appeared in person, and the Company by its district manager and terminal manager. Full opportunity to be heard, to examine and cross-examine witness, and to produce evidence was afforded all parties.

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 COMPANY

St. Johnsbury Trucking Co., Inc., is engaged in the business of providing transportation and related services and maintains a terminal at Newark, New Jersey. During the past year, its gross revenue exceeded \$1,000,000 of which in excess of \$100,000 was derived from its interstate operations between and among the States of New Jersey, Massachusetts, Vermont, and other States. The Company concedes, and I find, that it is engaged in commerce within the meaning of the Act.

##### II. THE LABOR ORGANIZATION INVOLVED

Local 478, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, the Union herein, is a labor organization within the meaning of Section 2 (5) of the Act.

##### III. THE UNFAIR LABOR PRACTICES

In or about March 1956, the Company and the Union entered into a collective-bargaining agreement covering the Company's truckdrivers and other employees which agreement, as subsequently amended, was made effective until August 31, 1958. The agreement contains a valid union-security agreement and the following relevant provisions concerning seniority:

Section 5: Seniority.

(a) Seniority—according to job classification—shall prevail at all times.

(b) The employer shall compile a Seniority List from the regular payroll records, subject to the approval of the Union.

Herman Ericksen has been employed by the Company since January 1952 as a truck-trailer driver out of its Newark terminal. In accordance with a collective-bargaining agreement between the Company and the Union, drivers receive their work assignments every morning in the order of their respective standing on the seniority list. On September 1, 1956, while Ericksen was a member of the Union in good standing, a strike occurred at the Newark terminal causing a complete cessation of operations until the morning of the following October 8. At the time of the strike, Ericksen had achieved the number 4 position on the seniority roster.

Though drivers normally commenced work between 7 and 8 a. m., Ericksen reported for work on the morning of October 8 at about 6:30. At approximately 6:55, Devlin, the Union's shop steward, after talking with Peter Gallo, the Company's terminal manager, told Ericksen that he had been placed at the bottom of the seniority list under instruction from Milton Liss, the Union's president, because he had not performed enough picketing duty during the strike. After all of approximately 15 drivers left with their trucks that morning, Ericksen went to Gallo and asked why,

in view of his number 4 position on the list, he had not been put to work. Gallo answered that he had been informed by Devlin that Ericksen had been relegated to the bottom of the seniority list. Gallo stated that he did not think the Union could so dispose of Ericksen's seniority and that as far as he, Gallo, was concerned, Ericksen "was number 4 man." He added, however, that he could do nothing about the matter because of "union orders." Though Gallo had authority to assign work, Ericksen received no assignment. Ericksen asked Gallo whether he could go to the Union and see Liss, and Gallo gave his approval. Ericksen waited until shortly after the last driver left the terminal and went to see Liss.

Liss told him that he had been placed at the bottom of the seniority list to "punish" him because he had not "done enough picket duty during the strike." Liss also told him that the foregoing neglect of duty would be brought to the attention of the Union's executive board. Ericksen vainly reported for work "a couple of times" thereafter until about October 19, when he received a telegram from Gallo asking him "to come in." Though the two men talked, Ericksen was not returned to work.

The testimony of Gallo, and Joseph Cirnigliaro, the assistant terminal manager, and the Company's letter to the Board dated November 26, 1956, which served as its answer to the complaint herein, are to the effect that on and after October 8 Ericksen failed to make himself "available for work." This appears to be the only defense presented by the Company to the charge that it discriminated against Ericksen as alleged in the complaint. I find no credible evidence in the record to support that defense. On the contrary, I find that Ericksen presented himself to work early on the morning of October 8, and on several occasions thereafter, and that he was denied employment by the Company pursuant to instructions from the Union, which in turn were prompted by Ericksen's alleged failure to perform satisfactory picket duty during the strike which ended on October 7. By that conduct, the Company interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and discriminated in regard to the hire and tenure of employment and other terms and conditions of employment of its employees, all in violation of Section 8 (a) (1) and (3) of the Act. *Radio Officers' Union v. N. L. R. B.*, 347 U. S. 17.<sup>1</sup>

By requiring and demanding since October 8, 1956, that the Company reduce Ericksen's seniority rating because he had not allegedly engaged in sufficient picket duty, the Union restrained and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act and thereby violated Section 8 (b) (1) (A) of the Act. By causing the Company to discriminate against Ericksen, the Union violated Section 8 (b) (2) of the Act.

There remains for consideration the allegations of the complaint that by executing and maintaining in effect, since October 5, 1956, the agreement containing the seniority provision heretofore quoted, the Company granted to the Union "final and exclusive control over the seniority ranking of the Company's employees." The General Counsel contends that by incorporating that provision in the contract the Company violated Section 8 (a) (1), (2), and (3), and the Union violated Section 8 (b) (1) (A) and 8 (b) (2) of the Act. As support for that contention, the General Counsel relies on *Pacific Intermountain Express Company*, 107 NLRB 837, enfd. as mod. 225 F. 2d 343 (C. A. 8).

In that case, however, the contract provided that "[a]ny controversy over the seniority standing of any employee . . . shall be referred to the Union for settlement." The Board, with court approval, concluded that by that grant of authority, the "Company delegated to the Respondent Union complete control over the determination of seniority; and seniority, in turn, was made the determinative factor in the assignment of jobs and making layoffs. Thus the Company in effect delegated to the Union complete authority in both instances to determine work assignments and reductions in force." [Emphasis supplied.] Other cases<sup>2</sup> in which similar findings of violation were entered also involved agreements couched in almost the identical language by which the Union was given complete control over the determination of seniority in *Pacific Intermountain*.

<sup>1</sup> I find it unnecessary to determine whether the foregoing conduct by the Company was also violative of Section 8 (a) (2) of the Act as alleged in the complaint. I refrain from doing so, not only because of the doubts I entertain whether this isolated act of assistance is of the character proscribed by that section, but also because, assuming that a violation of Section 8 (a) (2) were found, the remedy for that violation would be no broader or more extensive than that hereafter prescribed for the violation of Section 8 (a) (1) which I have already found.

<sup>2</sup> *Minneapolis Star and Tribune Company*, 109 NLRB 727, *Chief Freight Lines Company*, 111 NLRB 22; *Kenosha Auto Transport Corporation*, 113 NLRB 643.

In the agreement before me, however, there was no such abdication by the Employer. Here, the only provision in the contract which is under attack directed the Company to "compile a seniority list from [its] regular payroll records, subject to the approval of the Union." Such a provision, however, does not "delegate to the Respondent Union complete control over the determination of seniority" which was condemned in *Pacific Intermountain*. Here, if the Union did not approve of the seniority list prepared by the Company, the Union was not given authority to settle the dispute as it was in *Pacific Intermountain* and the cases which followed that decision. Here, the contract provides that if the Union did not approve of the seniority lists prepared by the Company, either party could invoke the arbitration machinery provided by section 17 of the contract. By that section, the parties agreed that "[s]hould any dispute arise between . . . the employer and the Union . . . concerning any term or condition of employment, or otherwise, the representatives of the employer and the representatives of the Union shall attempt to adjust the controversy between themselves. In the event they are unable to adjust the same, the dispute shall within two (2) days after the request of either party, be submitted to arbitration to the New Jersey State Board of Mediation, Newark, New Jersey [the arbitration authority] whose decision shall be final and binding upon the parties hereto. The disputes referred to herein shall include but shall not be limited to disputes concerning the discharge of an employee." [Emphasis supplied.]

It thus appears that if the Company and the Union are unable to resolve their differences with respect to the seniority list, the dispute is to be decided by the State Board of Mediation, and not by the Union. Accordingly I cannot conclude, as the complaint alleges, that the contract under consideration gave to the Union "final and exclusive control over the seniority ranking of [the Company's] employees, which seniority ranking determines the order of employment and layoff of said employees." It will, therefore, be recommended that the allegations of the complaint charging that the Company and the Union violated the Act by incorporating in their contract and maintaining in effect the provisions concerning seniority presently under consideration be dismissed.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

#### V. THE REMEDY

Having found that the Respondents have engaged in unfair labor practices, I shall recommend that each of them cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.<sup>3</sup>

The respective Respondents having discriminated against and caused the discrimination against Herman Ericksen at all times since October 8, 1956, I recommend that they immediately restore him on the seniority list for the Newark terminal at his rightful position thereon, no lower than number 4, with all rights attached thereto. It is also recommended that the Company and the Union, jointly and severally, make him whole for any loss of pay he may have suffered by reason of the discrimination against him by payment to him of a sum of money equal to that which he normally would have earned as wages had he been occupying said fourth position on the list from October 8, 1956, to the date when, pursuant to the

<sup>3</sup> After a recess during the course of the hearing, counsel for the Union announced that Ericksen, the Company, and the Union had arrived at a settlement of the proceeding. Under their agreement Ericksen was to be returned to work on the following morning "with his full seniority as number 4 . . . as if he were never out of employment," and that Ericksen would "not seek or accept back pay from either of the parties." The General Counsel however, did not give his consent to the proposed settlement because of the refusal by the Company and the Union to incorporate in the notice customarily required to be posted by the parties a provision that Ericksen be "made whole for any discrimination that may have been caused him" Counsel for the Union then announced that it would not further participate in the hearing because, in his opinion, the Union had "a settlement whether the Board has or not." The hearing was thereafter resumed without the presence of counsel or representative of either the Company or the Union. Under the circumstances, and the record as it presently exists, I see no reason for prescribing any remedy other than that which the Board has uniformly and consistently invoked to remedy unfair labor practices of the type found herein.

recommendations herein contained, Respondents shall restore him to his rightful position, less his net earnings during said period. Back pay is to be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289. As provided in the *Woolworth* case, I recommend further that Respondent Company make available to the Board, upon request, payroll and other records, in order to facilitate the checking of the amount of back pay due.

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

#### CONCLUSIONS OF LAW

1. St. Johnsbury Trucking Co., Inc., is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.
2. Local 478, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, is a labor organization within the meaning of the Act.
3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Company has engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.
4. By discriminating in regard to the hire and tenure of employment and other terms and conditions of employment of Herman Ericksen, the Company has engaged in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.
5. By attempting to cause and causing the Company to discriminate against Herman Ericksen, and thus to commit an unfair labor practice within the meaning of Section 8 (a) (3) of the Act, the Union has engaged in unfair labor practices within the meaning of Section 8 (b) (2) of the Act.
6. By restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, the Union has engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.
7. The unfair labor practices herein found are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.
8. The collective-bargaining agreement between the Company and the Union does not give and delegate to the Union final and exclusive control over the seniority ranking of the Company's employees, or the final and exclusive right to determine the order of employment of the Company's employees.
9. The Company has not engaged in unfair labor practices within the meaning of Section 8 (a) (2) of the Act.

[Recommendations omitted from publication.]

**Allis-Chalmers Manufacturing Company and International Union, United Automobile, Aircraft and Agricultural Implementation Workers of America, AFL-CIO.** *Case No. 6-CA-1142.*  
*April 28, 1958*

#### DECISION AND ORDER

On January 23, 1958, Trial Examiner Charles L. Ferguson 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 with a supporting brief.<sup>1</sup>

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with

<sup>1</sup> 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.