

In this case, however, Respondent elected to disregard the orderly procedure set up by the Board under the Act and arrogated to itself the resolution of the representation question

Relying heavily on *Globe Iron Foundry*, 112 NLRB 1200, Respondent seeks to defend its circulation of the affidavit as a proper procedure to bring to the Board's attention its claim that the cards submitted by the Union to the Board were not signed by its employees or, in the alternative, if its employees, in fact, had signed the cards the employees were not aware of their purport. That case is distinguishable from the present one. Here, Respondent first interrogated its employees as to union matters, then polled the employees as to their union affiliations and the sympathies. Even though Respondent's purpose in the interrogation and the subsequent polling of the employees may have been intended, as Respondent contends, merely to bring to the Board's attention Respondent's doubts that its employees desired to be represented by the Union, the interrogation and the subsequent polling, under all the circumstances here present, extended beyond the permissible limits of employer interrogation.<sup>10</sup>

Upon the entire record in the case, the Trial Examiner is convinced, and finds, that by the interrogation of its employees, including the polling, Respondent violated Section 8 (a) (1) of the Act

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

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

#### V THE REMEDY

Having found that Respondent has engaged in unfair labor practices, violative of Section 8 (a) (1) of the Act, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact, and upon the record as a whole, the Trial Examiner makes the following

#### CONCLUSIONS OF LAW

1 California Compress Company, Inc, Fresno, California, is engaged, and during all times material was engaged, in commerce within the meaning of Section 2 (6) and (7) of the Act

2 International Longshoremen's and Warehousemen's Union is a labor organization within the meaning of Section 2 (5) of the Act

3 By polling or interrogating its employees as to whether they desired to be represented by the Union, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act

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

[Recommendations omitted from publication ]

<sup>10</sup> Polling of employees regarding their union affiliations or sympathies, is akin to interrogation

**Morrison-Knudsen, Inc., Henry J. Kaiser, Macco Corporation,  
and B. Perini & Sons, d/b/a Kings River Constructors and  
M. E. Tuttle. Case No. 20-CA-1238 October 17, 1958**

#### DECISION AND ORDER

On May 12, 1958, Trial Examiner William E. Spencer 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.

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

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 exceptions and brief, and the entire record in the case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations.

### ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Morrison-Knudsen, Inc., Henry J. Kaiser, Macco Corporation, and B. Perini & Sons, d/b/a Kings River Constructors, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Encouraging membership in and activities on behalf of International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 431, or any other labor organization, by refusing employment to applicants unless they obtain clearance by such labor organization, or by otherwise discriminating in regard to hire or tenure of employment or any term or condition of employment.

(b) In any other manner,<sup>1</sup> interfering with or restraining or coercing employees, or applicants for employment, in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

<sup>1</sup> Because the discriminatory refusal on the part of the Respondent to hire the Charging Party absent union clearance goes to the very heart of the Act and because we believe that the Respondent's repeating the commission of the violation involved herein in the future may be anticipated by reason of its conduct herein, we order that the Respondent cease and desist from in any manner infringing upon the rights of employees as guaranteed by the Act. *N. L. R. B. v. Entwistle Mfg. Co.*, 120 F. 2d 532, 536 (C. A. 4).

(a) Offer to M. E. Tuttle immediate employment in a position substantially equivalent to that in which he would have been employed on or about February 28, 1957, except for his failure to obtain clearance through the above-named labor organization, with such seniority and other rights and privileges as would have accrued to his benefit had he been employed on or about that date, and make him whole for any loss of earnings suffered as a result of the discrimination against him in accordance with the terms and subject to the conditions described in the section of the Intermediate Report entitled "The Remedy."

(b) Post at its office in Fresno, California, and on the site of its Black Rock project, if work there is still in progress, copies of the notice attached hereto marked "Appendix."<sup>2</sup> Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by an authorized representative of the Respondent, be posted by the Respondent 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 Respondent 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 amounts of back pay due and the rights of employment of M. E. Tuttle under the terms of this Order.

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

<sup>2</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."

## APPENDIX

### NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees and applicants for employment that:

**WE WILL NOT** encourage membership in and activities on behalf of International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 431, or any other labor

organization, by refusing employment to applicants unless they obtain clearance by such labor organization, or by otherwise discriminating in regard to hire or tenure of employment or any term or condition of employment.

WE WILL NOT in any other manner interfere with or restrain or coerce employees, or applicants for employment, in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection and to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as authorized in Section 8 (a) (3) of the Act.

WE WILL offer to M. E. Tuttle immediate employment in a position substantially equivalent to that in which he would have been employed on or about February 28, 1957, except for his failure to obtain clearance through the above-named organization, with such seniority and other rights and privileges as would have accrued to his benefit had he been employed on or about that date, and make him whole for any loss of earnings suffered as a result of the discrimination against him.

MORRISON-KNUDSEN, INC., HENRY J.  
KAISER, MACCO CORPORATION, AND B.  
PERINI & SONS, D/B/A KINGS RIVER  
CONSTRUCTORS,

*Employer.*

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

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

#### INTERMEDIATE REPORT AND RECOMMENDED ORDER

##### STATEMENT OF THE CASE

On the duly issued complaint of the General Counsel of the National Labor Relations Board, alleging in substance that the Respondent herein, in violation of Section 8 (a) (1) and (3) of the Act, declined to employ one M. E. Tuttle, the Charging Party herein, because he was unable to obtain clearance from International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 431 (hereinafter called Teamsters, Local 431, or the Union), a hearing was held before the duly designated Trial Examiner at Fresno, California, February 24, 25, 1958. In its duly filed answer the Respondent denied the commission of the alleged unfair labor practices. All parties were represented at the hearing, participated therein, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence on the issues. The Respondent availed itself of the privilege accorded all parties to file a brief.

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

Morrison-Knudsen, Inc. (a Delaware corporation), Henry J. Kaiser (a Nevada corporation), Macco Corporation (a Nevada corporation), and B. Perini & Sons (a Massachusetts corporation), are, and were at all times material herein jointly engaged in a venture under the name and title of Kings River Constructors, for the construction of a powerhouse, pursuant to a contract with the Pacific Gas and Electric Company of California, on the Kings River in the State of California. Total cost of said construction will be in excess of \$1,500,000. During the calendar year ending December 31, 1956, the Respondent made total purchases of products and supplies received directly from outside the State, in excess of \$500,000. Each of the aforementioned corporations engaged in the joint venture known as Kings River Constructors, received during the calendar year ending December 31, 1956, total gross receipts from construction projects outside California in excess of \$50,000; each is part of a multi-State enterprise; and the total receipts from projects outside California by each such multi-State enterprise during the aforesaid calendar year were in excess of \$250,000.

On these stipulated facts jurisdiction is admitted and found.

## II. THE LABOR ORGANIZATION INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 431, is a labor organization within the meaning of Section 2 (5) of the Act.

## III. THE UNFAIR LABOR PRACTICES

M. E. Tuttle worked for several years as a warehouse clerk in Oregon and California on construction projects in which Morrison-Knudsen was engaged in a joint venture with other companies or as a sponsoring partner. On or about November 1956, he quit his employment on a project near Sonoma, California, in order to have some dental work done at Stockton, California, where he established residence. On his last job he had had his membership in Teamsters transferred to Local 439, Stockton.

After Christmas, 1956, he began seeking employment and on or about February 22, 1957, visited a friend, Jack Sharp, at the latter's home in Friant, close to Fresno, California. Sharp, with whom he had worked on construction projects, was at that time employed as a warehouse clerk by Kings River Constructors (of whom Morrison-Knudsen was the sponsoring partner) on what was known as the Black Rock project, some 60 miles from Fresno. Sharp informed Tuttle that he was about to be transferred to the Wishon Dam project, on which he had worked previous to being assigned to Black Rock, and suggested that Tuttle might replace him at Black Rock.

On the following day Sharp accompanied Tuttle to Fresno where they saw Bertram Lucian Perkins, project manager at Wishon, who had arranged for Sharp's transfer. Sharp recommended Tuttle to replace him at Black Rock and Perkins, who had known Tuttle on prior construction jobs, advised the latter to get his union card cleared by Teamsters Local 431 in Fresno. According to Tuttle's credited testimony, Perkins warned him that he might have some trouble with Al Fudge, secretary of Local 431, inasmuch as the latter might not want to accept the transfer of Tuttle's card from the Stockton local.<sup>1</sup>

Tuttle testified that Perkins told him to present himself at Black Rock on the following Monday. Sharp testified that when he recommended Tuttle to replace him at Black Rock, Perkins "seemed to think that was all right." Perkins denied that he instructed Tuttle to report on the job and testified that he had no authority with respect to hiring personnel at Black Rock. Contrary to Tuttle's testimony, the project manager at Black Rock was not Perkins but Jack DeLay. Tuttle assumed

<sup>1</sup> Sharp testified that Perkins asked Tuttle how he was "set up" with the Teamsters, and when Tuttle replied that he was still a member, advised him to get his card in with the Fresno local and to "make himself right with the union in Fresno." Perkins denied that he told Tuttle he would have to clear with the Teamsters, but admitted that he "probably told him to see the union. . . . That would be the normal procedure."

that Perkins had authority at Black Rock because he had arranged for Sharp's transfer, but Perkins' actual authority in recruiting personnel was limited to the Wishon Dam job.<sup>2</sup>

Following his interview with Perkins, at the latter's suggestion, Tuttle went to the Fresno office of Kings River Constructors and put his application on file with James Thomas Wolcott, the labor coordinator for both the Black Rock and Wishon projects. Tuttle testified that Perkins accompanied him to Wolcott's office, and Wolcott being occupied at the time, had Wolcott's secretary register Tuttle's application for the warehouse job at Black Rock.<sup>3</sup> The fact that Tuttle placed his application on file at Wolcott's office after talking with Perkins is a circumstance corroborative of Perkins' denial of an actual job offer. I think what actually happened was that when Sharp recommended Tuttle to Perkins, the latter assumed that Tuttle would fill the vacancy, or, in Sharp's words, "seemed to think that was all right," and this, together with his recommendation that Tuttle clear with the local union, gave rise to Tuttle's assumption that Perkins was actually assigning him to the job.

On the following day, a Sunday, Tuttle, thinking that he had been promised the Black Rock job, moved the trailer in which he was living to Friant, and on Monday went to the Fresno office of Local 431 where he saw Fudge, the local's secretary. He handed Fudge his union card and told him that Perkins had instructed him to report for work at Black Rock that day. Fudge did not want to accept the transfer of Tuttle's card from the Stockton local, told Tuttle that he already had more warehousemen than he could do anything with, and refused to clear him for the Black Rock job. Despite his failure to get union clearance, Tuttle then went to the Black Rock project and arrived there sometime in the afternoon of February 25.

On the Black Rock job, Sharp introduced him to John E. Atkins, warehouse manager at Black Rock. Atkins informed Tuttle that there must be some mistake because Wolcott had someone else coming on the job. He advised Tuttle to see Wolcott.

Atkins testified that prior to February 25 he had been advised by Sharp of the latter's transfer to Wishon, and that Sharp had recommended Tuttle to replace him at Black Rock. Atkins admitted that he thereupon requested Tuttle by name as a replacement for Sharp and testified that he made the request through Weatherman, office manager and Atkins' immediate superior—his usual procedure in obtaining warehouse personnel. Atkins also told Sharp to have Tuttle "contact" him. He did not know Tuttle personally but knew of him because of work on prior projects. According to Atkins, there was some delay in Tuttle's reporting for the Black Rock job and in the interim the vacancy had been filled by the hiring of one Myers. This testimony, as will be seen, is not consistent with that given by Wolcott.

After his interview with Atkins, Tuttle saw Wolcott. According to him he saw Wolcott at the project immediately after talking with Atkins. According to Wolcott, he first met Tuttle when the latter came to his Fresno office on Tuesday, February 26. He testified that he had been informed by his secretary that Tuttle had been in the office the previous day, and Tuttle admitted that it might have been Monday, February 25, when he filed his application at Wolcott's office. Be that as it may, when they met Tuttle informed Wolcott that Perkins had assigned him to the Black Rock job and Wolcott replied that Perkins had no authority over personnel at Black Rock. According to Tuttle, Wolcott informed him that he had already called a man for the warehouse job at Black Rock. This would accord with what he had been told by Atkins. According to Wolcott, he informed Tuttle that there was no vacancy at Black Rock and that he would be contacted if later there was a job opening. During this interview, Tuttle volunteered to Wolcott that he was having difficulty in getting cleared through Local 431.

According to Wolcott, it was after his interview with Tuttle that he was asked by DeLay, Black Rock project manager, to "get him a good warehouseman," whereupon he got in touch with Fudge and Fudge said that he had a good one, to which

<sup>2</sup> It is clear from Sharp's testimony that there was a considerable exchange of employees between the Black Rock and Wishon Dam projects, some 20 miles apart, and while technically each project had its own manager in charge of personnel there doubtless was very close cooperation between the two, and Wolcott regarded both Perkins and DeLay as his superiors.

<sup>3</sup> Perkins did not recall having accompanied Tuttle to Wolcott's office but admitted that he may have done so, and Tuttle was firm in his testimony on the point.

Wolcott replied, "Fine. Send him up." Myers was thereupon hired through the Union to fill the vacancy caused by Sharp's transfer. The records indicate that Myers was hired on February 28 and that he went to work as a warehouse clerk at Black Rock during the first week in March. Obviously, therefore, Atkins' testimony that Myers had already been hired when Tuttle first approached him about the job, was erroneous, and why, on February 25, he should have advised both Sharp and Tuttle that the job was filled, invites speculation. Respondent's witnesses provided no explanation.

Tuttle, apparently having learned of the identity of the person hired to fill the vacancy shortly to be caused by Sharp's transfer, went to Fudge's home one evening to protest his clearance of a man whom Tuttle "understood had never belonged to the Union," while denying clearance to Tuttle. Fudge became angry at Tuttle's invasion of his privacy, and told Tuttle that he should leave his, Fudge's, "blankety blank" business alone and not to come to his house again.

Despite his failure to obtain union clearance, Tuttle continued his efforts to obtain work at Black Rock. He repeatedly saw Wolcott but received no encouragement for future employment.

On about March 6 or 7 he again saw Atkins at the project. Atkins testified that on this, as on the former occasion when he saw Tuttle, he advised the latter that the vacancy caused by Sharp's transfer had been filled and that there was no job opening. According to Tuttle, on this occasion Atkins also told him that he had asked for Tuttle by name to fill the Sharp vacancy and had been advised that Tuttle was not eligible for the job because the Union refused to clear him. Tuttle further testified that Atkins told him he had called Fudge with respect to clearing Tuttle and Fudge had replied that Tuttle was not available for any job at Black Rock. Atkins, according to Tuttle, advised him to "get right" with the Union. Atkins denied that he called Fudge with respect to employing Tuttle or that he advised Tuttle to clear with the Union. He admitted that Tuttle told him of his difficulties with Fudge. Leon Maples, a warehouse clerk at Black Rock, testified that he overheard Tuttle tell Atkins of his belief that Fudge was responsible for his failure to get the Black Rock job, and heard Atkins reply that he had put in a "requisition" for Tuttle by name before Myers was hired, and that Wolcott said that Tuttle was not available. I am satisfied that whether or not he told Tuttle that he had personally called Fudge and that Fudge had refused to clear Tuttle for the job, he conveyed the information to Tuttle that Tuttle had failed to get the Black Rock job because of Fudge's refusal to clear him and advised Tuttle to "get right" with the Union. Tuttle's testimony on these points was convincing. Atkins was not a reliable witness, but on the contrary was evasive, and, I am reasonably certain, withheld facts within his knowledge on Tuttle's rejection as a replacement for Sharp.

After some 2 weeks' employment at Black Rock, Myers, hired to fill the Sharp vacancy, quit or was discharged, and a new employee, Ryan, was hired to take his place. Atkins had worked with Ryan previously and although he testified, in effect, that his role in the hiring of warehouse employees was restricted to recommendations channeled through his superior, Weatherman, he admitted, with respect to Ryan, that he personally called the Los Angeles office where Ryan was then employed to learn whether Ryan would be available to work at Black Rock. On being advised of Ryan's availability, he informed Weatherman that he would like to have Ryan as a warehouse clerk "because he had worked for me off and on for the last ten years." Ryan was immediately hired.

Both Ryan and Myers were cleared through Local 431.

Early in April, Wolcott, on being informed that Maples was resigning, called Tuttle by telephone and told him of the vacancy and informed Tuttle that he had him "in mind" to fill it, and that he would be contacted later with respect to it. Wolcott testified that he refused Tuttle's application for the vacancy caused by Sharp's transfer because of Tuttle's age—70 years—and because of his attitude and background, but later made the tentative offer upon being advised that Atkins wanted him. He denied that at the time he hired Myers he had been advised that Atkins wanted Tuttle for the job. Wolcott admitted that before making Tuttle a tentative offer, he discussed the matter with Fudge and that Fudge told him, in effect, that the decision was up to him. The vacancy caused by Maples' resignation was not filled, however, because of the discontinuance of the night shifts and Tuttle was never actually employed by Kings River Constructors.

#### Summarization and Conclusions

Tuttle applied for a job as warehouse clerk at Black Rock on being advised by his friend, Sharp, that the latter was being transferred to Wishon. Sharp recommended Tuttle as a replacement to Atkins, warehouse manager at Black Rock and Atkins,

who was acquainted with Tuttle's work, asked for Tuttle by name as a replacement for Sharp. Absent an explanation of why he was not informed in the matter, contrary to Wolcott's testimony, I am convinced that Wolcott had knowledge of Atkins' recommendation. Atkins' status as a supervisor with authority effectively to recommend in matters of hiring and discharging, was stipulated. He testified that his recommendations on hiring were effective only about half the time but the only specific mention of being overruled was with respect to the hiring over his objections of the son of his immediate supervisor, Weatherman. Admittedly, Maples was hired on his recommendation, and in the hiring of Ryan he took the initiative, himself ascertaining that Ryan was available and thereafter obtaining his employment through Weatherman. In the case of Tuttle, however, his recommendation was ignored or, at least, not followed, and Myers was hired instead, not on the strength of anybody's recommendation but through clearance with Fudge. Contrary to Atkins' testimony, and on Wolcott's testimony, Myers had not been hired at the time Tuttle presented himself at the Black Rock project, nor later when Tuttle applied to Wolcott. Why was Myers requisitioned for the job through the Union, when Tuttle had Atkins' recommendation and was available? I think there can be but one answer. Tuttle could not get union clearance and had aroused Fudge's antagonism. Wolcott's explanation that he was not impressed with Tuttle because of the latter's age and manner of putting himself forward rings false in view of Wolcott's testimony that he later—after he had talked to Fudge and gained at least Fudge's acquiescence—called Tuttle and told him he had him in mind for hiring at Black Rock. True, according to the testimony, Atkins had again asked for Tuttle, but he had requested Tuttle in the first instance and his request had been ignored. Tuttle was no younger in April than he was in February and I doubt if his disposition had undergone any major change in the interim. He had worked previously on Morrison-Knudsen construction jobs and his work must be deemed to have been satisfactory inasmuch as Atkins, who knew of his work, requested him and no evidence was presented to show that he was not competent or that the Respondent had any reason to believe that he was not competent.

Fudge did not testify and Wolcott denied that he talked to Fudge with respect to Tuttle before hiring Myers. Wolcott, however, knew that Tuttle was in trouble with the Union because Tuttle told him about his difficulty with Fudge. When Maples attempted to ascertain from Fudge why Tuttle was not cleared for employment at Black Rock, Fudge replied sarcastically that he could not have such a young man telling him, Fudge, how to run his business. And while Wolcott denied that clearance with the Union was required for employment with the Respondent, clearly this was the practice. Perkins advised Tuttle to clear with Fudge because this was the "usual procedure," and Perkins was in a position to know. Atkins in a sworn pretrial statement expressed his view that applicants for employment were required to clear with the Union. While he sought to modify this statement by testifying that this was merely his "impression," and that it had no basis other than conversations with various nonmanagerial employees, I think he was in a position to know and did know from experience that this was a customary requirement. Both men hired as warehouse clerks after Tuttle applied for the job, had union clearance and, as previously stated, one of them, Myers, was directly requisitioned through the Union.

One of Wolcott's functions as labor coordinator was to establish and maintain friendly relations with the local unions. Preliminary to starting the Black Rock project, he met with local union representatives to discuss with them manpower requirements on the project and contemplated conditions of employment. There was of course nothing reprehensible about this. Construction projects such as this could not function efficiently, and probably not at all, without the cooperation of the unions, inasmuch as it normally would be necessary to recruit some and perhaps most of the manpower requirements through the local unions, and work stoppages could be ruinous. This is the historical situation in the construction industry where closed-shop conditions have long prevailed. Law that runs contrary to custom is not readily accepted. But however understandable the Respondent's desire to obtain and maintain the cooperation of the local unions, and however much its present action fits into the historical pattern, its denial of a job to Tuttle because the latter incurred Fudge's displeasure and was therefore unable to obtain union clearance, was discriminatory and violative of Section 8 (a) (1) and (3) of the Act. It is so found.

#### 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

It having been found that the Respondent refused M. E. Tuttle employment because he was unable to obtain union clearance, thereby discriminating against him, it will be recommended that Respondent offer him employment in a position substantially equivalent to that in which he would have been employed except for his failure to obtain union clearance, with such seniority and other rights and privileges as would have accrued had he not been discriminatorily denied employment, and make him whole for any loss of pay suffered because of the discrimination against him, by payment to him of a sum of money equal to what he normally would have been paid in Respondent's employ from the date when he was first discriminatorily denied employment, to the date of Respondent's offer of employment, less his net earnings during said period and any money he may already have been paid because of Respondent's discrimination against him.<sup>4</sup> Loss of pay shall be computed upon a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289.

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. International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 431, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By refusing employment to M. E. Tuttle because of his failure to obtain clearance from the aforementioned labor organization, thereby encouraging 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.

3. By the said discriminatory refusal of employment to M. E. Tuttle, the Respondent interfered with, restrained, and coerced its employees, and potential employees, in the exercise of rights guaranteed in Section 7 of the Act, and thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

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

[Recommendations omitted from publication.]

<sup>4</sup> There was evidence to the effect that a settlement on a charge filed by Tuttle against Local 431, involving the payment of a sum of money to Tuttle by Local 431, had been effectuated prior to the hearing in this proceeding.

**Local 450, International Union of Operating Engineers, AFL-CIO and C. A. Turner Construction Company and Hinote Electric Company. Case No. 39-CD-23. October 17, 1958**

#### DECISION AND ORDER

On July 3, 1958, Trial Examiner David London 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 and a supporting brief.