

for the Nineteenth Region in writing whether or not they accept the Board's determination of this dispute and whether or not they will refrain from forcing or requiring General Ore, Inc., by means proscribed by Section 8(b)(4)(D) of the Act, to assign the work in dispute to longshoremen who are members of, or represented by, the above mentioned labor organizations, or either of them, rather than to employees of General Ore, Inc.

Adhesive Products Corporation and District 65, Retail, Wholesale & Department Store Union, AFL-CIO¹ and Adco Employees Association² and Steel, Metals, Alloys and Hardware, Fabricators and Warehousemen, Local 810, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America,³ Parties to the Contract. Case No. 2-CA-4188. August 20, 1959

SUPPLEMENTAL DECISION AND ORDER

On February 4, 1957, the Board issued its Decision and Order in this case,⁴ finding that the Respondent had violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing to bargain with District 65; had violated Section 8(a)(1) and (2) by interfering with the formation of Adco and contributing financial and other support to it; had violated Sections 8(a)(1), (2), and (3) by its conduct toward Teamsters Local 810; and had violated Section 8(a)(1) by stating, in the presence of its employees, that it would not bargain with District 65, their majority representative, and by promising its employees benefits if they would bargain through Adco. The Board accordingly ordered the Respondent to cease and desist from the unfair labor practices found, and to take certain affirmative action, including the refunding of dues checked off for Adco and Teamsters Local 810.

On July 3, 1958, the United States Court of Appeals for the Second Circuit entered its decision⁵ denying the Board's petition for enforcement pending further consideration of the case by the Board, as directed.

In its opinion, the court held that there was "substantial evidence on the record considered as a whole" to support the charges and the

¹ Herein referred to as District 65.

² Herein referred to as Adco.

³ Herein referred to as Teamsters Local 810. The Board having been notified by AFL-CIO that it deems the Teamsters' certificate of affiliation revoked by convention action, the identification of this Union is hereby amended.

⁴ 117 NLRB 265.

⁵ 258 F. 2d 403.

order, except for the direction to pay back the dues checked off for Adco, but the case turns on certain issues of veracity between Maury T. Medwick, Adhesive's president, and the union organizer for District 65, Morris Doswell and Phillip Vicinanza." In this connection, the court held, further, that in view of the decision of the Supreme Court in *Jencks v. United States*, 353 U.S. 657, the Trial Examiner had erroneously refused to compel Doswell to produce his pretrial statement, which he had in his pocket while testifying to matters contained therein, so that Respondent's counsel could use it for purposes of cross-examination. Remanding the case for production of Doswell's pretrial statement for purposes of cross-examination of Doswell, to test his memory and credibility, and for further examination of Vicinanza if the Respondent wished to obtain his pretrial statement through the proper procedure, the court ordered a reconsideration of the issues by the Board, in the light of further testimony by Doswell and Vicinanza, and any other witnesses the Board or the Trial Examiner might wish to hear. The court denied enforcement of that portion of the Board's order requiring the Respondent to reimburse its employees for dues checked off for Adco.

On September 10, 1958, the Board issued an order in which it reopened the record, remanded the case to the Regional Director for further hearing consistent with the remand of the court, and directed the Trial Examiner, upon conclusion of the supplementary hearing, to prepare and serve upon the parties a Supplemental Intermediate Report containing findings of fact upon the evidence received, conclusions of law, and recommendations.

Pursuant to notice, a supplementary hearing was held on January 12, 1959, before Trial Examiner Thomas S. Wilson, who was the Trial Examiner at the original hearing. The pretrial statements of both Doswell and Vicinanza were presented, and both appeared as witnesses and were examined and cross-examined.

On March 13, 1959, the Trial Examiner issued his Supplemental Intermediate Report, copy of which is attached hereto, in which he credited Doswell and discredited Medwick and Vicinanza. The Trial Examiner recommended that all findings in the Intermediate Report and the Decision and Order based on Doswell's testimony be affirmed and retained, but that findings based upon Vicinanza's denied or uncorroborated testimony be eliminated, and that the Decision and Order be reaffirmed.

Thereafter, the Respondent filed exceptions to the Supplemental Intermediate Report and a supporting brief.

The Board has reviewed the rulings of the Trial Examiner made at the reopened hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has reconsidered the entire record in this case, including the Supplemental

Intermediate Report, the exceptions, and the brief, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

1. In its exceptions, the Respondent contends that the credibility findings of the Trial Examiner as to Doswell and Medwick, set forth in the Supplemental Intermediate Report, are erroneous and should be overruled. However, we find that a clear preponderance of all the relevant evidence does not demonstrate that the Trial Examiner's credibility findings are incorrect, and we therefore adopt them.⁶

2. Based on our review of the entire record and the credibility findings, which we have adopted, we find, in agreement with the recommendations of the Trial Examiner, and with our original Decision and Order and for the reasons set forth therein; that the Respondent violated Section 8(a)(1), (2), (3), and (5) of the Act.⁷

REMEDY

Having reaffirmed our findings that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act, in substantial conformity with the order previously issued herein. However, we shall omit that portion of our previous order requiring the Respondent to reimburse the employees for the dues checked off for Adco, in view of the court's denial of enforcement thereof.

ORDER

Upon the basis of the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board orders that the Respondent, Adhesive Products Corporation, New York, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interfering with, assisting, or contributing financial or other support to Adco Employees Association, or to Steel, Metals, Alloys and Hardware, Fabricators and Warehousemen, Local 810, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America.

(b) Recognizing the above-named labor organizations as the representatives of any of its employees for the purpose of dealing with the

⁶ *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enfd. 188 F. 2d 362 (C.A. 3). Our adoption of the Trial Examiner's credibility findings is not to be construed as approving the Trial Examiner's characterization of one of the witnesses by his race. Nor do we adopt the remarks of the Trial Examiner, in the Supplemental Intermediate Report, regarding the credibility of union organizers in general.

⁷ In view of the credibility finding of the Trial Examiner, which we have adopted, discrediting Phillip Vicinanza, we do not, in reaffirming our finding that the Respondent violated Section 8(a)(5) and (1), rely on the unsupported and controverted testimony of Vicinanza that Medwick told the employees at his meeting with them that they could have any union they wanted except District 65, which was a Communist union.

Respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment until after it has complied with the provisions of this Order requiring it to bargain with District 65, Retail, Wholesale & Department Store Union, AFL-CIO, and unless and until said labor organizations shall have demonstrated their exclusive majority representative status pursuant to a Board-conducted election among the Respondent's employees.

(c) Giving any force or effect to any agreement, supplement, or renewal thereof which the Respondent may claim to have with either Adco Employees Association or Steel, Metals, Alloys and Hardware, Fabricators and Warehousemen, Local 810, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and particularly those agreements executed by the Respondent with the aforementioned labor organizations, respectively, on February 3, 1955, and February 9 or August 15, 1955.

(d) Refusing to bargain collectively with District 65, Retail, Wholesale & Department Store Union, AFL-CIO, as the exclusive bargaining representatives of its production and maintenance employees including truckdrivers, employed at its Bronx, New York, plant but excluding office clerical employees, guards, professional employees, and supervisors as defined in Section 2(11) of the Act.

(e) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist District 65, Retail, Wholesale & Department Store 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 and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Withdraw and withhold recognition from Adco Employees Association and Steel, Metals, Alloys and Hardware, Fabricators and Warehousemen, Local 810, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, as representatives of any of the Respondent's employees in its Bronx, New York, plant for the purpose of contracting or negotiating or otherwise dealing with the Respondent with respect to wages, rates of pay, or any other term or condition of employment both until it has complied with the provisions of this Order requiring it to bargain with District 65, Retail, Wholesale & Department Store Union, AFL-CIO, and thereafter, unless and until said labor organizations shall have demon-

strated their exclusive majority representative status pursuant to a Board-conducted election.

(b) Upon request, bargain collectively with District 65, Retail, Wholesale & Department Store Union, AFL-CIO, as the exclusive representative of the employees in the appropriate unit herein found.

(c) Reimburse each of Respondent's employees in a sum of money equal to that which Respondent has checked off from said employee's salary as dues to Steel, Metals, Alloys and Hardware, Fabricators and Warehousemen, Local 810, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America.

(d) Post in its Bronx plant in New York, copies of the notice attached hereto marked "Appendix."⁸ Copies of said notice, to be furnished by the Regional Director for the Second Region, shall, after being signed by Respondent's representative, be posted by the Respondent in the Bronx plant immediately upon receipt thereof and maintained by it for 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.

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

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges that the Respondent violated the Act other than as found herein.

⁸In 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, we hereby notify our employees that:

WE WILL NOT interfere with, assist, or contribute financial or other support to Adco Employees Association or to Steel, Metals, Alloys and Hardware, Fabricators and Warehousemen, Local 810, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America.

WE WILL NOT recognize the above-named labor organizations as the representatives of any of our employees for the purpose of contracting, negotiating, or otherwise dealing with them with respect to grievances, labor disputes, wages, rates of pay, hours

of employment, or other conditions of employment until after we have bargained with District 65, Retail, Wholesale & Department Store Union, AFL-CIO, and will not thereafter recognize said organizations as such representatives unless and until they shall have demonstrated their exclusive majority representative status pursuant in a Board-conducted election.

WE WILL NOT give any force or effect to any agreement we may now have with Adco Employees Association or Steel, Metals, Alloys and Hardware, Fabricators and Warehousemen, Local 810, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America.

WE WILL bargain collectively, upon request, with District 65, Retail, Wholesale & Department Store Union, AFL-CIO, as the exclusive representative of all the employees in the appropriate bargaining unit at our Bronx plant with respect to rates of pay, wages, hours of employment, and other conditions of employment, and if an agreement is reached, embody it in a signed agreement. The appropriate bargaining unit is:

All production and maintenance employees including truckdrivers employed at our Bronx, New York, New York, plant, exclusive of office clerical employees, guards, professional employees, and supervisors as defined in Section 2(11) of the Act.

WE WILL reimburse each of our employees in a sum of money equal to that which we have checked off said employee's wages as dues and paid over to Steel, Metals, Alloys and Hardware, Fabricators and Warehousemen, Local 810, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist District 65, Retail, Wholesale & Department Store Union, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activity 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 a condition of employment, as authorized in Section 8(a)(3) of the National Labor Relations 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 that this right may be affected by an agreement conform-

ing to the applicable provisions of Section 8(a)(3) of the National Labor Relations Act. We will not discriminate in regard to hire or tenure of employment, or any term or condition of employment, against any employee because of membership in or activities on behalf of any such labor organization.

ADHESIVE PRODUCTS 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.

SUPPLEMENTAL INTERMEDIATE REPORT

On February 4, 1957, the National Labor Relations Board issued its Decision and Order in the above-entitled case affirming in large measure the findings, conclusions of law, and recommendations made by this Trial Examiner in his Intermediate Report in this matter dated April 17, 1956.¹

Under date of July 3, 1958, the United States Court of Appeals for the Second Circuit speaking through Judge Medina ruled: "The [Board's] petition for enforcement is denied pending further consideration of the case as directed in this opinion."² The direction referred to therein was: "[W]e have concluded that there must be a reconsideration of the issues by the Board, in the light of further testimony by Doswell and Vicinanza, and any other witnesses the Board or the Trial Examiner may wish to hear." This conclusion of the court was based upon its statement that: "We think it was clearly prejudicial error for the trial examiner to refuse to compel Doswell [the union organizer] to take out the statement he said he had in his pocket when interrogated on the subject, and to permit counsel to see it at once and use its contents for the purpose of impeaching Doswell." In addition the court suggested that, while the Trial Examiner was technically correct in refusing to order the production of the affidavit of the General Counsel's witness, Vicinanza, to the Respondent, the Board no doubt would permit such production at the rehearing required by the court decision.

On September 10, 1958, acting pursuant to said remand, the Board issued an order stating in pertinent part:

It is hereby ordered that the record in this proceeding be, and it hereby is, reopened and that a further hearing be held before a trial examiner consistent with the remand of the court; and

* * * * *

It is further ordered that, upon conclusion of such supplemental hearing, the trial examiner shall prepare and serve upon the parties a supplemental intermediate report containing findings of fact upon the evidence received pursuant to the provisions of the order, conclusions of law, and recommendations; and that following the service of such supplemental intermediate report upon the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.

Pursuant to this order a supplemental hearing was held in New York City, New York, on January 12, 1959, before the duly designated Trial Examiner. At this hearing Respondent Adhesive, District 65, and the General Counsel were represented by counsel. The General Counsel produced the witnesses Phillip Vicinanza and Morris A. Doswell, the witnesses referred to in the court's Opinion, together with their statements or affidavits which were given to the Respondent.³ The Respondent then proceeded to cross-examine said witnesses at length. At the con-

¹ 117 NLRB 265.

² 258 F. 2d 403.

³ It was stipulated that copies of said affidavits had been furnished to an associate of the Respondent's attorney on October 2, 1958.

clusion of such cross-examination, the Respondent offered Irving Mintz, its secretary-treasurer, as a "rebuttal witness." At the conclusion of said hearing the parties waived oral argument and were advised of their right to file briefs and conclusions and recommendations. On February 27 a brief was received from the Respondent Adhesive.

Upon the entire record in this case and from his observation of the witnesses, the Trial Examiner makes the following:

Supplemental Findings

1. Credibility

The court's Opinion indicates that it considers this to be a case based on credibility. The following theme recurs throughout the court's Opinion:

. . . but the case turns on certain issues of veracity between Maury T. Medwick, Adhesive's president, and the union organizer for District 65, Morris Doswell and Phillip Vicinanza, a type of professional union organizer

and

Accordingly, in the last analysis, the case against Adhesive rested on the testimony of Doswell, as support by Vicinanza, and the credibility of these two witnesses was a vital issue at the hearing.

With all due deference to the court, this Trial Examiner at the time of writing the Intermediate Report herein considered it unnecessary to make any credibility findings regarding the three witnesses mentioned in the court's decision because every finding made in said Intermediate Report was based either upon undenied testimony, upon admissions made by the Respondent corroborating Doswell's testimony,⁴ or upon testimony given by the eight Adco officers and members called as witnesses by the General Counsel, although they were so obviously unfriendly as to fully justify the court's own description of them as:

In addition it is apparent from the transcript of the hearing that they [these eight witnesses] attempted, whenever possible, to support their employer's position, and, in so doing, often had to contradict sworn statements given to an NLRB investigator.

The only finding made by this Trial Examiner based upon Vicinanza's testimony was in regard to a conversation he allegedly had with Medwick which the Trial Examiner accepted because he considered the testimony undenied.⁵

In view of this restriction to findings made on undenied, corroborated testimony or admissions, this Trial Examiner could not consider that the credibility of Doswell, of Vicinanza, or of Medwick were an issue herein.

However, it is true that in its Decision and Order the Board did make a few unimportant, subsidiary findings which were based upon the testimony of Doswell and Vicinanza and, in addition, appeared to consider that this Trial Examiner had accepted the testimony of Vicinanza over the denial of Medwick.

Consequently, in view of the statements made in the court's Opinion, the Trial Examiner will now for the first time set forth his opinion as to the credibility of the three witnesses specifically referred to by the court as modified by the resumption of the cross-examination of Doswell and Vicinanza by the Respondent after receipt of the statements or affidavits of said witnesses.

a. Phillip Vicinanza

The rather lengthy cross-examination of this witness produced nothing new or different from the original cross-examination except for the fact that Vicinanza

⁴ See the following footnotes of said Intermediate Report which read:

¹⁷ As the evidence is in dispute on the matter, the Trial Examiner is not including in this enumeration the meeting between Doswell and Medwick in Medwick's office on January 19.

¹⁸ The Trial Examiner is not including in this enumeration the claim that Mintz verified the majority status of District 65 from the signed cards in the presence of both Medwick and Doswell on January 19 for the reason that that testimony is also disputed. The Trial Examiner has already expressed himself on this conflict of testimony.

⁵ See footnote 10 of the Intermediate Report.

could not recall whether he had given the General Counsel one or more affidavits prior to the original hearing.⁶ Vicinanza was as vague and uncertain as he had been at the original hearing.

The court described Vicinanza as "a type of professional union organizer," a phrase frequently employed by the Respondent's counsel. However, the testimony remains undenied, as it did prior to the supplemental hearing, that Vicinanza was never employed, paid, or even approached by District 65 to help it in organizing the Respondent's employees and that whatever Vicinanza did to encourage the organization of the Respondent's employees into an outside labor organization was done solely in his capacity as one such employee and without suggestion, encouragement, employment, or pay by District 65.

Obviously from the history of his prior connection with three different unions other than District 65 prior to his employment by Respondent Adhesive, Vicinanza can only be described as "a type of professional union organizer." This, of course, was well known from Vicinanza's original testimony.

This Trial Examiner knows of no rule of law or reason which makes testimony given by an individual correctly described as "a type of professional union organizer" *per se* unworthy of credit. This Trial Examiner would be less than candid if he did not admit that his own personal experience with a number of organizers as witnesses in the early days of the Wagner Act caused him at that time to view such testimony with considerable distrust. More recent experience, though, has proved that union organizers as a group are today no better and, certainly, no worse than any other individual witness.

As to Vicinanza, the subsequent cross-examination served only to confirm the original opinion of this witness held by this Trial Examiner. As a witness on both occasions Vicinanza was so vague, uncertain, and so evasive that the Trial Examiner could only credit his testimony when undenied or corroborated.

The Trial Examiner will, therefore, recommend that the Board eliminate any and all findings made by it upon testimony given by Vicinanza which was either denied or uncorroborated.

b. *Morris A. Doswell*

As was the case with Vicinanza, the supplemental cross-examination of Morris A. Doswell added nothing new to his original cross-examination by the Respondent. The only possible new material added was Doswell's candid admission at the supplemental hearing that at the original hearing he had in fact been reaching into his vest pocket for a copy of his affidavit and not for the "diary" or "wallet" as he had then testified. As a matter of fact this candid admission by Doswell at the supplemental cross-examination served only to confirm what the Trial Examiner actually knew at the original hearing when he saw Doswell's fingers holding a folded piece of paper in his vest pocket which the Trial Examiner was certain could be neither a "diary" nor a "wallet." Therefore, the Trial Examiner knew even before writing his Intermediate Report that Doswell had not been telling the truth about that event at the original hearing.

Doswell, as was also true in the case of Vicinanza, can be truthfully described as "a type of professional union organizer." However, unlike Vicinanza, Doswell is one of those more recent organizer witnesses who has succeeded in eradicating this Trial Examiner's early distrust of organizers as a group as witnesses as mentioned heretofore. Doswell personally is a fine-looking, clean-cut appearing, self-respecting Negro who looks one straight in the eye on and off the witness stand and who answers questions carefully, thoughtfully, and, in the considered opinion of this Trial Examiner, truthfully and honestly without evasion or quibbling.

Furthermore, although from personal experience the Trial Examiner is not a great believer in the so-called "demeanor" evaluation of a witness as a general rule, it is true that, even without having seen the folded paper Doswell had hold of during the original hearing, the Trial Examiner would have known that the testimony about the "diary" and the "wallet" was untrue because, for the only time during the entire hearing, Doswell was uncertain, flustered, and visibly upset while giving that testimony. Many witnesses can vary from the truth without any such visual indication. This was not true of Doswell. In his case his demeanor on the stand at both the original and the supplemental hearing was such as to lead this Trial Examiner to believe, except for the diary and wallet incident, that Doswell was telling the truth and nothing but the truth.

⁶ The General Counsel was able to locate only one such affidavit.

It is also true that Doswell testified that he met with Medwick on January 18 and that subsequently that same day he wrote Medwick a letter requesting recognition and bargaining. As noted in the Intermediate Report,⁷ as well as in the findings of the Board, the Trial Examiner was convinced that Doswell was mistaken as to the day of the month on which that meeting occurred. This is a type of honest mistake which the most honest of witnesses can make. Doswell was sincere in his belief that the date he had testified to was correct for he refused to change his testimony even when events were called to his attention which made it illogical that the meeting occurred on January 18. Actually the date of that meeting was of little or no significance.

Most important, however, is the fact that the testimony of Doswell conformed to, fitted in with, and was logical with, a coterie of facts admitted by all parties and firmly established in the evidence.

Unfortunately, the same cannot be said of the testimony of Maury T. Medwick who, as a witness, was forgetful, evasive, and shifty, and whose memory was strangely dependent upon the force of circumstances and the necessities of the defense. Medwick had no hesitancy in repudiating affidavits prepared by himself and his attorney.

As heretofore indicated in the Intermediate Report, the original opinion held by the Trial Examiner was that in conflicts between the testimony of Dowsell and that of Medwick, the testimony of Doswell was the more reliable. This opinion was only further confirmed by the supplemental cross-examination. It is also of passing interest that the only question relating to the contents of Doswell's affidavit asked by Respondent during the supplemental cross-examination of Doswell concerned the fact that Doswell had not mentioned Vicinanza's past connections with other unions therein. Nor did Respondents offer said affidavit in evidence as impeachment of Doswell.

The Trial Examiner is convinced that, except for the two incidents mentioned at length above, Doswell was an honest, straightforward witness whose testimony is entitled to full credence.

Accordingly, the Trial Examiner will recommend that no changes be made in any finding of fact based upon the testimony of Morris A. Doswell in this case.

2. The "rebuttal" witness: Irving Mintz

After the completion of his cross-examination of Vicinanza and Doswell, Respondent's counsel offered Respondent's secretary-treasurer, Irving Mintz, as a "rebuttal witness" allegedly because of an inference which the Trial Examiner drew from the failure of the Respondent at the original hearing to call said Mintz to testify about a meeting between Doswell, Medwick, and Mintz which Doswell mistakenly placed as occurring on January 18 but which was found to have occurred January 19 or thereafter.⁸

Upon the admission of counsel for the Respondent that the proposed testimony of said Mintz was neither newly discovered nor unavailable at the original hearing, the Trial Examiner sustained an objection to this so-called rebuttal testimony but permitted an offer of proof in question-and-answer form to be made. It is of interest to note that every question asked except one in this offer of proof was definitely limited to the date of January 18.

4. Conclusions

1. That the witness Morris A. Doswell was an honest witness whose testimony is worthy of credit.
2. That the truth of the testimony given by the witness Vicinanza which was either denied or remained uncorroborated is of highly doubtful quality.

[Recommendations omitted from publication.]

⁷ See footnote 7 of the Intermediate Report.

⁸ Although indicating his belief that this meeting had occurred as testified to by Doswell, albeit on a subsequent date, the Trial Examiner specifically did not rely upon this incident because its occurrence had been denied by Medwick. As this would have created a credibility conflict, the Trial Examiner made no use of the incident in his Intermediate Report but relied upon other events admitted by the Respondent.