We find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act All regular employees and regular part-time employees at the Indianapolis, Indiana, hotel, including front office, coffeeshop, dining room, and relief cashiers, food checkers, PBX operators, and mail clerks, but excluding office clerical employees, confidential employees, guards, professional employees, the chief telephone operator, and supervisors as defined in the Act

[Text of Direction of Election omitted from publication]

W. W. Chambers Co., Inc. ***and*** **Office Employees International Union, Local 2, AFL-CIO.** *Case No 5-CA-1497 December 8, 1959*

DECISION AND ORDER

On August 21, 1959, Trial Examiner A Bruce Hunt issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto Thereafter the Respondent filed exceptions to the Intermediate Report

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 of the Trial Examiner made 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 the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner [1]

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, W. W Chambers Co , Inc , Washington, D C , its officers, agents, successors, and assigns, shall

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[1] We agree with the Trial Examiner that the relationship of Company President Chambers to Echols and Tolson is of little significance as the latter are members of the Respondent's board of directors, hold top managerial positions, and exercise supervisory powers Echols and Tolson are agents of the Respondent within the definition of Section 2(13) of the Act, regardless whether Chambers treats them like rank-and-file employees

1. Cease and desist from:

(a) Discouraging membership in Office Employees International Union, Local 2, AFL–CIO, or in any other labor organization of its employees, by discharging any of its employees because of their concerted or union activities, or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of employment.

(b) Interrogating its employees concerning union affiliation or activities in a manner constituting interference, restraint, or coercion in violation of Section 8(a)(1) of the Act.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Office Employees International Union, Local 2, AFL–CIO, or any other labor organization, 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, or 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 union as a condition of employment, as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

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

(a) Offer to Bernard Crase and Duane G. Morrison immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to any seniority or other rights or privileges previously enjoyed, and make them whole for any loss of pay they may have suffered as a result of the discrimination against them, in the manner set forth in the section of the Intermediate Report entitled "The Remedy."

(b) Post at each of its business establishments copies of the notice attached hereto marked "Appendix."[2] Copies of said notice, to be furnished by the Regional Director for the Fifth Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to its 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.

[2] 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."

(c) Notify the Regional Director for the Fifth Region in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

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 discourage membership in Office Employees International Union, Local 2, AFL–CIO, or in any other labor organization of our employees, by discharging any of our employees because of their concerted or union activities, or in any manner discriminate in regard to their hire or tenure of employment or any term or condition of employment.

WE WILL NOT interrogate our employees concerning union affiliation or activities in a manner constituting interference, restraint, or coercion in violation of Section 8(a)(1) of the Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Office Employees International Union, Local 2, AFL–CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

WE WILL offer Bernard Crase and Duane Morrison immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to any seniority or other rights or privileges previously enjoyed.

WE WILL make whole Bernard Crase and Duane Morrison for any loss of pay they may have suffered as a result of our discrimination against them.

All our employees are free to become or remain, or to refrain from becoming or remaining, members in good standing of Office Employees International Union, Local 2, AFL–CIO, or any other labor organization, except to the extent that this right may be affected by

an agreement in conformity with Section 8(a)(3) of the National Labor Relations Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

W. W. CHAMBERS CO., INC.,
Employer.

Dated_____ By_____
President

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

This proceeding, based upon the complaint of the General Counsel and the answer of the Respondent, W. W. Chambers Co., Inc., involves alleged violations of Section 8(a)(1) and (3) of the National Labor Relations Act, 61 Stat. 136. A hearing was conducted by the duly designated Trial Examiner at Washington, D.C., on June 8, 1959, at which all parties were represented. Following the hearing, the Respondent filed a document entitled "Motion" which is basically a brief in support of a motion to dismiss the complaint. The motion is denied for reasons appearing below.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, a District of Columbia corporation, is engaged in the operation of funeral homes. During a representative 12-month period, the Respondent rendered services for which it received in excess of $50,000. I find that the Respondent is engaged in commerce within the meaning of the Act.[1]

II. THE UNION

Office Employees International Union, Local 2, AFL–CIO, is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The issues*

Our issues are whether the Respondent violated Section 8(a)(1) of the Act in questioning employees and whether it violated Section 8(a)(3) when it discharged employees named Bernard Crase and Duane Morrison.

B. *Chronology of events*

During January 1959 Crase contacted an AFL–CIO office and initiated a movement to organize the employees. On February 13 he and Morrison went to the home of a union representative and obtained a number of union cards. During the next few days the two employees solicited other employees to sign the cards and thereby to designate the Union as their collective-bargaining representative. On February 17 nine employees, including Crase and Morrison, attended an evening meeting at the Union's offices. An undisclosed number of signed cards were delivered to Emmett C. Etheredge, the Union's business representative.

During the late afternoon of the following day, February 18, Etheredge talked by telephone with W. W. Chambers, the Respondent's president. Etheredge identified himself and requested recognition of the Union. Chambers asked for the names of employees who had signed union cards, but Etheredge declined to reveal them. Etheredge proposed that the cards and a copy of the Respondent's payroll be examined by a disinterested person who would determine whether the Union had

[1] In its answer the Respondent conceded that it is engaged in commerce, but in its brief it asserted the contrary.

majority status. Chambers rejected the card check and Etheredge said that the Union would file a petition with the Board. Soon after the telephone conversation with Etheredge, Chambers had separate conversations with Garyton E. Echols and Robert E. Tolson, the Respondent's general manager and assistant general manager, respectively. Chambers asked whether they had heard anything about union activity among the employees and both Echols and Tolson answered in the negative.

Echols and Tolson testified as witnesses for the General Counsel, to whom they had given affidavits sometime after the events described herein. Tolson works at night. He testified that: During the night of February 18 he talked with five or six employees about the union activity; in some instances he initiated the conversations; he "was asking them if any of those boys had attended any union meeting"; and he "was trying to find out in a way as to what men and how many men were going to be affiliated with the union meeting that had taken place." Late that evening Chambers telephoned Tolson and asked what Tolson had learned. Tolson replied that he had learned of a few employees who had attended the meeting of February 17.[2] Tolson testified further, without contradiction by Chambers, that a day or so later Chambers told him that on February 19 or 20 Chambers had spoken with an employee named Howard who had acknowledged having attended the meeting. I credit Tolson's testimony and find accordingly.

On the next day, February 19, after Echols had arrived for work about 8 a.m., he talked with approximately 12 employees who work under his direction. He testified that he asked whether they were interested in joining the Union and if they had signed union cards, that "Some said they attended a meeting and didn't sign," and that he "didn't find one man that attended the meeting and did sign." He testified further that most of the 12 employees said that they were not interested in the Union. Neither Crase nor Morrison, who were discharged that morning by Chambers, as described below, was questioned by Echols or Tolson. During that afternoon, according to Echols, Chambers came to him and asked that he inquire of employees whether they were interested in the Union, but he "had already done the job" and already was prepared to talk with Chambers "about who was and who was not [interested in the Union]." I credit Echol's testimony and find accordingly.[3]

C. *Interference, restraint, and coercion*

According to the Respondent, there was no invalid interrogation of employees. The Respondent points to testimony by Echols and Tolson that they questioned employees for their "personal information," not at the direction of Chambers, and the Respondent argues that, although "there was some discussion regarding the subject" of union membership and activities, this discussion was an exercise of free speech and reflected "merely . . . curiosity, interest and knowledge of the subject under discussion." Moreover, says the Respondent, although Echols is its vice president and although both Echols and Tolson are on the Respondent's board of directors in addition to holding managerial positions, those men are mere employees of Chambers himself who "is in charge and run[s] the company" and who can discharge them at will. The relationship of Chambers to Echols and Tolson is of little significance. No citation of authority is necessary for the well-settled and elementary doctrines that inquiries of the sort in which Echols and Tolson engaged are proscribed by Section 8(a)(1) and that their acts are binding upon the Respondent.

D. *The discharges of Crase and Morrison*

On February 19, about 9:30 a.m., Chambers called Crase to his office. After a brief conversation, Chambers discharged Crase. A few minutes after Crase left the office, Echols told Morrison to go to Chambers' office. After another brief conversation, Morrison was discharged. There was no witness to either conversation and the testimony of the two employees and Chambers is highly conflicting. It will be recited.

Crase's testimony is that: Chambers asked him to tell of the union activities; he answered that he could tell Chambers only that he had been in communication with

[2] Tolson testified at first that he could not recall the telephone conversation. After examining his affidavit, he testified that Chambers has a practice of telephoning him each evening and that Chambers inquired what he had learned of the identities of employees who had attended the meeting. Chambers was the Respondent's only witness and he did not contradict Tolson.

[3] To some extent Echol's testimony is in conflict with his affidavit, but that document was not offered as containing admissions against interest.

a union representative and that he was personally involved; Chambers then said that (1) there were employees who were loyal to Chambers, (2) Chambers had had no trouble obtaining answers to questions, and (3) Chambers knew all about Crase's activities. Crase testified further that Chambers asked him to identify the employees who were involved in the union activity, that he refused, and that Chambers discharged him upon the ground that he was disloyal to Chambers.

Morrison's testimony is that: Chambers asked him to tell of the union activities; he replied that he could relate very little; Chambers asked him to tell of the meeting of February 17; he gave the same answer; Chambers said that (1) there were loyal employees, (2) Chambers expected loyalty, and (3) Morrison was disloyal and was being discharged for that reason.

Chambers' testimony is quite different. He testified that: One duty of Crase and Morrison was to make ambulance calls; Chambers had purchased two new ambulances very recently at a cost of $15,000 each; Chambers had tried to impress upon all employees the need that ambulance service be rendered efficiently and courteously, but that Crase, a mortician, and Morrison, an apprentice undertaker, had been uncooperative for some time in their duty to make ambulance calls, apparently regarding it as being beneath their dignity; Chambers had tolerated the uncooperative attitude when the only ambulances in use were old ones but that he could not tolerate it after the expenditure of $30,000 on the new ones, and that on February 19 he believed it necessary to talk with the two employees. With respect to the conversation with Crase, Chambers testified that after requesting Crase's cooperation, Crase replied that he was an embalmer and that he did not believe that he should be required to make ambulance calls, that Chambers tried unsuccessfully to persuade Crase to take a different attitude, and that finally Chambers had to express reluctance in having to discharge Crase because Crase would not agree to be cooperative. Turning to the conversation with Morrison, Chambers testified that: He opened it by saying that he wanted to discuss the subject of ambulance calls; Morrison answered by saying that employees should be given uniforms because a man who was dressed for a funeral should not be sent on such a call; Chambers replied by saying that he appreciated the suggestion but that he was interested in knowing whether Morrison would be cooperative and would make ambulance calls to Chambers' satisfaction; Morrison expressed a preference for directing funerals; Morrison refused to agree to become cooperative even after Chambers had said that it would be necessary to discharge Morrison unless he would agree; and the discharge resulted.

I cannot credit Chambers' testimony. Crase and Morrison impressed me as reliable witnesses while Chambers impressed me unfavorably. Moreover, certain additional facts impel the conclusion that Crase and Morrison testified truthfully. First, Chambers acknowledged that he had not received a complaint from a customer concerning the conduct of Crase or Morrison when those employees had made ambulance calls. Chambers also acknowledged that Crase, an employee for more than 9 years, was a capable employee in all respects other than in making ambulance calls, and other evidence establishes that the Respondent was not dissatisfied with the work of Crase or Morrison in any respect. Each of them had just received an increase in pay. About the time that Crase initiated the organizational activity, he asked for an increase and at a meeting of the Respondent's board of directors on February 6 or 13 it was decided to raise his weekly salary from $90 to $95. Morrison also had requested an increase in salary. He had worked for the Respondent for 1¾ years and had advanced to the position of apprentice undertaker. He began work at $60 per week and he received four increases in pay which totaled $17.50. Under the Respondent's wage policy, the first increase of $5 was automatic when Morrison acquired a license to operate ambulances and funeral limousines, the second increase in a like sum was automatic when he obtained a license as an apprentice undertaker, and the third increase in a like sum was automatic 6 months after he obtained the latter license. The final increase, following Morrison's request for higher pay, was granted by the board of directors upon the same occasion that Crase's salary was increased to $95. The increases for those two employees were made effective for the workweek ending February 19, the day of their discharges, and there is no evidence that the board of directors, of which Chambers is chairman, discussed a lack of cooperation by either employee. Second, when the discharges occurred, Chambers gave to each employee his paycheck which reflected the increased pay. Morrison testified credibly that, when Chambers discharged him, Chambers "flipped" the paycheck across a desk to him. Although the date of the discharge was a regular payday, the employees normally were not paid so early in the day nor in Chambers' private office. But Chambers testified that he "happened to have" the paychecks because it was a regular payday and that when he could not

obtain from the two employees the cooperation which he had requested, and reluctantly discharged them, he naturally gave to them their final pay. Chambers' testimony does not have the ring of truth. In the absence of evidence that Chambers normally would have had payroll checks in his private office at that hour of a payday or that his signature is placed on payroll checks, I cannot credit his testimony that he "happened to have" the checks for Crase and Morrison. It is a reasonable inference that when those two employees were called to Chambers' office, he had their checks because he was prepared to discharge them. Unless the record will support a finding that Chambers had reason to believe that Crase and Morrison were likely to reject his requests that they become cooperative, such preparation is inconsistent with Chambers' testimony that he called for the employees only to talk with them and that he did not decide to discharge them until they rejected his requests. The record will not support such finding.

In oral argument Chambers asserted that he had been unaware of the union activities of Crase and Morrison when he discharged them. In this connection, it will be recalled in Chambers' behalf that neither Crase nor Morrison was questioned by Echols or Tolson. In addition, both Echols and Tolson testified that at the time of the discharges they had not learned of the two employees' interest in the Union. Nevertheless, it is clear from Tolson's testimony that Chambers said to Tolson that Chambers questioned at least one employee, Howard. While the record does not disclose the details of Chambers' conversation with Howard, nor does it establish that the conversation preceded the discharges, the reliable testimony of Crase and Morrison establishes that Chambers acknowledged that an employee or employees, whom Chambers regarded as loyal, had told Chambers of Crase's and Morrison's union activity. I conclude that the Respondent, in discharging Crase and Morrison, violated Section 8(a)(3) and (1).

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, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act. I shall recommend that the Respondent offer Crase and Morrison immediate and full reinstatement to their former or substantially equivalent positions (*The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch,* 65 NLRB 827), without prejudice to their seniority or other rights or privileges, and that the Respondent make each of them whole for any loss of pay he may have suffered as a result of the discrimination against him, by payment to him of a sum of money equal to that which he normally would have earned from the date of the discrimination, February 19, 1959, to the date of the reinstatement, less his net earnings (*Crossett Lumber Co.,* 8 NLRB 440, 497–498) during said period, the payment to be computed upon a quarterly basis in the manner established in *N.L.R.B.* v. *Seven-Up Bottling Company of Miami, Inc.,* 344 U.S. 344. I shall recommend also that the Respondent preserve and, upon request, make available to the Board or its agents, 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 to reinstatement under the terms of these recommendations.

In order to make effective the interdependent guarantees of Section 7 of the Act, I shall recommend further that the Respondent cease and desist from in any manner infringing upon the rights guaranteed in said section. *N.L.R.B.* v. *Express Publishing Company,* 312 U.S. 426; *N.L.R.B.* v. *Entwistle Mfg. Co.,* 120 F. 2d 532 (C.A. 4).

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

CONCLUSIONS OF LAW

1. The Union is a labor organization within the meaning of Section 2(5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Bernard Crase and Duane Morrison, thereby discouraging membership in a labor organization, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

International Harvester Company *and* International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW, AFL–CIO,[1] Petitioner

International Harvester Company *and* Local 701, International Brotherhood of Electrical Workers, AFL–CIO,[2] Petitioner.

Cases Nos. 13–RC–6588 and 13–RC–6604. December 8, 1959

DECISION AND DIRECTION OF ELECTIONS

Upon separate petitions duly filed under Section 9(c) of the National Labor Relations Act, a consolidated hearing was held before Robert G. Mayberry, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with these cases to a three-member panel [Chairman Leedom and Members Jenkins and Fanning].

Upon the entire record in these cases, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organizations involved claim to represent certain employees of the Employer.[3]

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.[4]

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[1] Herein called UAW.

[2] Herein called IBEW.

[3] Pattern Makers League of North America, Chicago Association (herein called Pattern Makers) and Chicago Journeymen Plumbers Union, Local 130 (herein called Local 130) both intervened on the basis of a showing of interest.

[4] The UAW moved to dismiss the petition of the IBEW on the ground that the UAW and the IBEW have signed an AFL–CIO no-raid agreement forbidding petitions in cases such as this. In support of its motion, the UAW cites the decision of the United States Court of Appeals in *United Textile Workers of America, AFL–CIO v. Textile Workers Union of America (Personal Products Corp.)*, 258 F. 2d 743 (C.A. 7), 1958. The motion is denied in accordance with the Board policy of processing representation proceedings without regard to whether they were filed in violation of interunion no-raid pacts. *North American Aviation, Inc.*, 115 NLRB 1090. With reference to the *Textile Workers* case, the Board has recently reaffirmed its decision not to acquiesce in the opinion of the court of appeals, with due respect for the opinion of that court. *Cadmium & Nickel Plating Division of Great Lakes Industries, Inc.*, 124 NLRB 353.