

consistent with Board policy set out in *F. W. Woolworth Company*, 90 NLRB 289, and *Crossett Lumber Company*, 8 NLRB 440. It will also be recommended that the Respondent, upon request, make available to the Board and its agents all payroll and other records pertinent to the analysis of the amounts of backpay due and the right of reinstatement.

Since the violations of the Act which the Respondent committed are related to other unfair labor practices proscribed by the Act, and the danger of their commission in the future is reasonably to be anticipated from its past conduct, the preventive purposes of the Act may be thwarted unless the recommendations are coextensive with the threat. To effectuate the policies of the Act, therefore, it will be recommended that the Respondent cease and desist from infringing in any manner upon the rights guaranteed employees by the Act.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1. International Ladies' Garment Workers' Union, AFL-CIO, 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 Lewis Werner in June 1958, and the employees named herein in Appendix A on and after December 15, 1958, thereby discouraging membership in the above-named 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. All production, maintenance, and shipping and receiving employees employed by the Respondent at its Clifton plant, excluding office clerical employees, salesmen, guards, watchmen, professional employees, foremen, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 8(b) of the Act.

4. On June 3, 1958, and at all times since that date, the above-named labor organization has been and now is the exclusive bargaining representative of all employees in the above-described unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, by virtue of Section 9(a) of the Act.

5. By refusing, on June 3, 1958, and at all times thereafter, to bargain collectively with the aforesaid labor organization, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

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

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

[Recommendations omitted from publication.]

Washington Aluminum Company, Inc. and Robert A. Heinlein, Frank J. Adams, Frank Olshinsky, Warren A. Hovis, Augustine Affayroux, Sr., William George, Jr., J. Alfred R. Caron
Washington Aluminum Company, Inc. and Industrial Union of Marine & Shipbuilding Workers of America, AFL-CIO, Petitioner. *Cases Nos. 5-CA-1498 and 5-RC-2682. March 31, 1960*

DECISION, DIRECTION, AND ORDER

On September 11, 1959, Trial Examiner Louis Plost issued his Intermediate Report in the above-entitled consolidated proceedings, finding that the Respondent had engaged in and was engaging in certain unfair labor practices. NLRB No. 162.

tain unfair labor practices in violation of the Act and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report. The Trial Examiner further found, in effect, that the challenges to certain ballots in the representation proceeding should be overruled. Thereafter, the Respondent filed exceptions to the Intermediate Report and a brief in support thereof.

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 this proceeding,¹ and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following modification.

The Trial Examiner found, and we agree, that the Respondent violated Section 8(a)(1) in terminating the employment of the seven complainants who were engaged in protected concerted activity under the Act. We rely, *inter alia*, upon the following: The credited testimony of employee Hovis that "We all got together and thought it would be a good idea to go home; maybe we could get some heat brought into the plant that way"; the credited testimony of employees Heinlein, Caron, and George as to previous complaints made to the Respondent's foremen over the cold working conditions, and to the effect that the men left on the morning of January 5 in protest of the coldness at the plant; and the evidence that the seven complainants left the shop at approximately the same time.²

Case No. 5-RC-2682

The Challenges

The Trial Examiner found that Robert A. Heinlein, Frank Olshinsky, Augustine Affayroux, Sr., and Warren A. Hovis, whose ballots were challenged, were entitled to vote. We agree, as they were unlawfully discharged or laid off before the election and, therefore, retained their status as employees eligible to vote.

[The Board directed that the Regional Director for the Fifth Region shall, within 10 days from the date of this Direction, open and count these ballots.]

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

² See *Southern Silk Mills, Inc.*, 101 NLRB 1, enfd. 209 F. 2d 155 (C.A. 6), *Metco Plating Company*, 113 NLRB 204, enfd. 239 F. 2d 642 (C.A. 6). Cf. *Knight Morley Corp.*, 116 NLRB 140, enfd. 251 F. 2d 753 (C.A. 6), cert. denied 357 U.S. 957, involving Section 502 of the Act, which in our opinion would not be applicable in the instant case if alleged.

ORDER

Upon the entire record in this proceeding, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Washington Aluminum Company, Inc., Baltimore, Maryland, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging concerted activities of its employees by discriminatorily discharging any of its employees, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of employment.

(b) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of their right 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 by 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 Robert A. Heinlein, Frank J. Adams, Frank Olshinsky, Warren A. Hovis, Augustine Affayroux, Sr., William George, Jr., and J. Alfred R. Caron immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges discharging if necessary any employees hired to replace them.

(b) Make whole said employees in the manner set forth in the section of the Intermediate Report entitled "The Remedy" for any loss of pay they may have suffered by reason of Respondent's discrimination against them.

(c) 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 and determine the amount of backpay due.

(d) Post in its plant in Baltimore, Maryland, copies of the notice attached hereto marked "Appendix."³ 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 it immediately upon receipt thereof, and maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places

³In 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"

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 Fifth Region, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply therewith.

MEMBERS RODGERS and JENKINS took no part in the consideration of the above Decision, Direction, and 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 that:

WE WILL NOT discourage concerted activity by discriminatorily discharging any of our employees or in any other manner discriminating against them in regard to their hire or tenure of employment or any other term or condition of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to engage in 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 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.

WE WILL offer to Robert A. Heinlein, Frank J. Adams, Frank Olshinsky, Warren A. Hovis, Augustine Affayroux, Sr., William George, Jr., and J. Alfred R. Caron immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination, discharging if necessary any persons hired to replace them.

WASHINGTON ALUMINUM COMPANY, INC.,
Employer.

Dated----- By-----
(Representative) (Title)

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

INTERMEDIATE REPORT

STATEMENT OF THE CASE

On February 26, 1959, a charge was formally filed in the Fifth Region of the National Labor Relations Board (herein called the Board) at Baltimore, Maryland, averring that Washington Aluminum Company, Inc., Baltimore, Maryland (herein called Respondent), had discriminatorily discharged Robert A. Heinlein, Frank J. Adams, Frank Olshinsky, Warren A. Hovis, Augustine Affayroux, Sr.,¹ William George, Jr., and J. Alfred R. Caron on January 5, 1959, in violation of the National Labor Relations Act, as amended (herein called the Act).² The matter was docketed as Case No. 5-CA-1498. Thereafter the Regional Director for the Fifth Region issued a complaint dated May 15, 1959, caused a copy thereof together with a notice of hearing, setting the hearing for *July 15, 1959*, to be duly served. The complaint alleged that the Respondent, by reason of the aforementioned discharges, had engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

On May 21, 1959, the Respondent filed an answer.

The following information relating to a case docketed in the Fifth Region of the Board as Case No. 5-RC-2682 is not here reported as "findings" because it is not based on testimony adduced before the Trial Examiner but reported as taken from the formal documents introduced at the hearing before the Trial Examiner on *August 3-4, 1959*, and is here recited as necessary for a complete understanding of all matters to be covered by this report.

On February 26, 1959 (the same date as the charge in Case No. 5-CA-1498 was filed), the Respondent and Industrial Union of Marine & Shipbuilding Workers of America, AFL-CIO³ (herein called the Union), signed a stipulation for certification upon consent election, in the matter docketed in the Fifth Region as Case No. 5-RC-2682. The formal documents do not disclose the date the petition in Case No. 5-RC-2682 was filed. The Regional Director approved the stipulation on March 9, 1959. On March 17, pursuant to the stipulation, an election was conducted; the vote as shown by the tally of ballots showed 68 votes⁴ for the Union, 70 votes against the Union, and 5 challenged ballots.

No objections were filed within the time prescribed by the Board's Rules, however, on March 30 the Union objected to the ruling made at the election by the Board's agent with respect to the validity of two ballots as marked by voters; the Regional Director treated the Union's objection as objections to the conduct of the election, affecting all matters disputed at the election. He ruled on the two ballots and on the eligibility of one of the voters challenged, and as to the four remaining challenged voters, whose ballots were impounded, he, under date of June 11, 1959, recommended to the Board that Case No. 5-RC-2682 be consolidated for hearing with Case No. 5-CA-1498 (in which he had issued a complaint on May 15, and which was set for hearing on July 15). The consolidation was asked "solely with respect to the eligibility to vote" of the four challenged individuals who are also named as discriminatorily discharged in the complaint in Case No. 5-CA-1498. The Regional Director's report on challenges as made to the Board stated "the eligibility to vote of these four voters depends, therefore, upon the resolution of the unfair labor practice case."

On June 30, the Board ordered a hearing before a Trial Examiner "to resolve the issues raised on the eligibility to vote of Robert A. Heinlein, Frank Olshinsky, Augustine Affayroux, Sr., and Warren A. Hovis, and that such hearing be consolidated with . . . Case No. 5-CA-1498."

Pursuant to notice, a hearing was held on *August 3 and 4, 1959*, before Louis Plost, the duly designated Trial Examiner, at Baltimore, Maryland.

The General Counsel, the Respondent, and the Charging Parties (in Case No. 5-CA-1498) were all represented by counsel and the Union involved in Case No. 5-RC-2682 by its regional director.

All the parties participated and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence pertinent to the

¹ This Charging Party was inadvertently designated "Affeyroux" in the formal documents. The correction is hereby made.

² The employees named as having been illegally discharged were Robert A. Heinlein, Frank J. Adams, Frank Olshinsky, Warren A. Hovis, Augustine Affayroux, Sr., William George, Jr., and J. Alfred R. Caron.

³ The Union was inadvertently designated "International." The error is hereby corrected.

⁴ The Regional Director ruled 1 of the challenged ballots valid, therefore the count stood 69 for and 70 against.

issues. Oral argument was presented by the General Counsel and the Respondent. A brief was received from the Respondent on August 27, and from the General Counsel on August 31, 1959.

At the opening of the hearing the formal documents were introduced by the General Counsel. They consisted *inter alia* of the complaint as issued in Case No. 5-CA-1498 and the answer filed thereto, the Board's order for hearing Case No. 5-RC-2680, and the order consolidating hearings.

No evidence was adduced except that required to sustain the allegations of the complaint in Case No. 5-CA-1498.⁵

At the close of the hearing the General Counsel moved to conform all the documents to the proof with respect to spellings, dates, and like matters and to correct the errors as to the Union and Affayroux. The motion was granted. The parties argued orally. A date was set for the submission of briefs, findings of fact, and/or conclusions of law.

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

FINDINGS OF FACT

Case No. 5-CA-1498

I. THE BUSINESS OF THE RESPONDENT

The complaint alleged, and the answer admitted, that Respondent is and has been at all times material herein a corporation duly organized and existing by virtue of the laws of the State of Delaware, having its principal office and place of business at Baltimore, Maryland, where it is engaged in the fabrication of aluminum products.

Respondent, in the course and conduct of its business operations, as described above, during the preceding 12-month period, a representative period, shipped goods and materials of a value in excess of \$50,000 from its Baltimore, Maryland, plant direct to customers located outside the State of Maryland.

Respondent is and has been at all times material herein engaged in commerce within the meaning of Section 2(6) of the Act.

II. LABOR ORGANIZATION INVOLVED

No labor organization is alleged to be, nor was any proved to be, involved in Case No. 5-CA-1498.

The formal documents in Case No. 5-RC-2682 show the petitioning union to be Industrial Union of Marine & Shipbuilding Workers of America, AFL-CIO.⁶

III. THE UNFAIR LABOR PRACTICES

The Discriminatory Discharges

J. Alfred R. Caron testified that on January 5, 1959, he was a "leader" in the machine shop, and had no authority to hire or fire employees, grant "time off," or give permission to leave the plant. Caron further testified that on Monday, January 5, 1959, he arrived for work at 7:10 a.m., and the plant was very cold at the time; that he (as was his custom) went to the office of Foreman David N. Jarvis adjoining the machine shop; that he and Jarvis discussed "how cold it was and miserable"; that during the conversation two of the employees walked by the office window (which gave out into the plant) "huddled" and Jarvis observing them remarked, "If those

⁵ On August 18, 1959, the General Counsel moved to correct the transcript in certain particulars. No objections have been filed. The motion is granted and the transcript corrected as follows:

1. Page 15, line 2—insert the word "not" after the word "was" so that it reads "was not a supervisor"

2. Page 40, line 21—change the figure "80" to "8".

3. Page 60, lines 22 and 23—"We didn't stand in one spot work. We had to move around."—corrected to read "We stood in one spot and worked. We didn't move around."

4. Page 77, line 26—add the words "and get a doctor's certificate" so line 26 reads "And did you later go to the doctor and get a doctor's certificate?"

5. Page 90, line 7—change word "relled" to "relayed."

6. Page 139, line 20—change the name "Caron" to "Tarrant" so that the name is "Ray Tarrant."

⁶ See footnote 3.

fellows had any guts at all they would go home"; that following this remark he (Caron) returned to the machine shop, noted that six of the eight men who worked there as machinists, namely the Charging Parties other than himself, were standing together "shaking a little, cold"; that he came up to them and:

I told them, I said, "Dave told me that if we had any guts at all, we would go home." And I said, "I am going home." I said, "What are you fellows going to do?"

Then they started talking among themselves saying, "Well, let's go."

And I started out first. And they were following behind me.

Caron further testified that as he was leaving he passed Jarvis to whom he said, "Dave it is too cold, I am going home."

Caron admitted he did not have permission to leave and was familiar with the standing company rule which required that permission of a foreman was required in order to leave the plant.

About 9:30 a.m. Caron received a telephone call at his home from Jarvis who told him that on orders of Fred N. Rushton, the Respondent's president, the seven men who had left the plant that morning were discharged. Later in the day Caron came to the plant and removed his toolbox.

Foreman Jarvis corroborated Caron's testimony with respect to Caron's conversation with him.

The six employees who followed Caron from the plant and who together with Caron are the Charging Parties herein⁷ corroborated Caron. All testified that the plant was extremely cold, that they had no permission to leave, and that they knew it was forbidden by plant rules to leave the plant without a foreman's permission. All testified that they left the plant after Caron talked to them and after they had discussed the matter among themselves.

On direct examination as a hostile witness by the Respondent, employee Warren A. Hovis testified:

Q. (By Mr. Bair) Now, why did you leave the plant on Monday morning with these other men?

A. Well, they said it was extremely cold. And we had all got together and thought it would be a good idea to go home; maybe we could get some heat brought into the plant that way.

There can be no doubt whatever on the record herein that on January 5 the Respondent's plant was somewhat colder than usual.

William George, Jr., testified that when he arrived for work on January 5, he found that ice had formed on the drain pipe of the spotwelder he operated in the machine shop.

Wilhelm Tafelmair, the one machinist who did not leave the plant with the other seven, testified that he worked in the machine shop, after the others left, wearing his overcoat, which he had put on at the suggestion of Foreman Jarvis and wore it at work until about 10:30 a.m.

Foreman Jarvis testified that when he arrived January 5, the plant was "extremely cold" and that the main furnace heating the plant was not operating; that at about 7:15 a.m. the plant's maintenance man arrived and got the furnace into operation but that "it was after lunch time" before the men then working in the machine shop could take off the excess clothing "bundling them up."

Vincent Battaglia, the Respondent's night watchman, testified that the heat in the plant was customarily shut off during the night and that he turned it on at 5 a.m.; that at 1 a.m., Sunday night, the "big furnace" would not operate nor could he get it into operation at 5 a.m. when he again tried; that he reported this in the morning to the maintenance man when he arrived who then "started working on the furnace."

Roy V. Rose, the Respondent's maintenance man, testified that on January 5, at 7:15 a.m., he was informed that the furnace was not operating but that he had it repaired and operating within "15 or 20 minutes." Rose testified further that it would require 2½ to 3½ hours for the furnace to warm an area within a 50-foot radius of it after it began operating.

Apparently unusually cold weather was expected for Monday. Fred N. Rushton, the Respondent's president, testified he visited the plant at 10 p.m. Sunday, January 4, because:

I had to talk to the watchman to make sure we get the heat on and see that things are as good as we can get them and normal. Certainly you want to have

⁷ Of these, Heinlein and George were called by the General Counsel Adams, Olshinsky, Affayroux, and Hovis were called as hostile witnesses by the Respondent

a warm shop. Plus the fact that we have pipes in there that may break if we are not careful.

Foreman Jarvis testified that at "say 8:30" a.m. President Rushton arrived at the plant; that he reported to Rushton that the seven machinists had left in a body due to the cold; that Rushton ordered the discharge of the seven men who had left the plant. Jarvis, however, testified that a meeting of supervision was first held in Plant Manager Raymond Tarrant's office where he was told by Rushton to make the discharges for the reason:

That they had left the premises unauthorized. And this curtailed our operation. And this they were discharged for.

Jarvis further testified that at "around nine o'clock" Affayroux returned to the plant, told him he had only gone for coffee, and asked to be returned to work but that he told Affayroux he had already been discharged on President Rushton's orders; that following this conversation he telephoned to those of the seven men who had telephones and sent telegrams to the others informing them they were discharged.

The discharges according to Foreman Jarvis were all made before any replacements were hired to replace the seven men.⁸

Arthur Wampler, the Respondent's general foreman, testified that he took part in the discussion to discharge the seven employees; that the decision was made "between 9 and 9:30 by myself, Mr. Jarvis and Mr. Rushton" and that the men were discharged "for violating plant rules, leaving the plant without permission, and to maintain discipline." However, Wampler admitted that his three assigned reasons were really but one, namely, "leaving the plant without permission."

President Fred N. Rushton testified that he arrived at the plant January 5, at 8:20 a.m. and was told by Jarvis that the machinists had "walked off"; that he then told Jarvis, "Dave, if they have all gone, we are going to terminate them," that he met with Jarvis and Tarrant, decided what action to take, and that he issued instructions to discharge the men before he left at 9 a.m. Rushton testified:

Q. (By Mr. Bair.) What were your own reasons for making the decision to terminate these men?

* * * * *

The WITNESS: The real reason is because they didn't inform the foreman of the action they were taking.

The Trial Examiner is persuaded on all the evidence considered as a whole and from his observation of the witnesses that Rushton's testimony that "the real reason is because they didn't inform the foreman of the action they were taking" is merely the statement of an afterthought.

It is clear that the seven men who walked out as a group in protest of their working conditions were engaged in concerted activity protected by the Act,⁹ the fact that they were discharged before they had an opportunity to formally elect a committee to deal with the Respondent with respect to the adjustment of their grievance (as argued by the Respondent) is of no moment.

The men were in reality discharged very soon after 8:20 a.m., Monday, January 5, 1959, by the man who had full authority to do so. Rushton, the official who is referred to, testified:

And I came back in the shop. And when I came back in B shop again I noticed all the people were out of the shop.

So Dave Jarvis was there. And I said, "Dave, where is everybody?"

He said, "They have all walked off."

I said, "We can't have that, Dave."

"Well," he said, "they have all gone."

I said, "Dave, if they have all gone, we are going to terminate them."

The complaint alleges and the Trial Examiner agrees that the evidence fully proves that:

On or about January 5, 1959, Robert A. Heinlein, Frank J. Adams, Frank Olshinsky, Warren A. Hovis, Augustine Affayroux, William George, Jr., and J. Alfred R. Caron, Respondent's employees, did engage in a strike or con-

⁸ Telegrams dated January 5, 1959, were sent to Olshinsky, Adams, George, and Hovis. Telephoned discharges were to Heinlein, Adams, and Caron. Affayroux was personally notified.

⁹ The General Counsel might well have raised a very interesting point of law had the complaint been drawn under Section 502.

certed refusal in the course of their employment to perform any services for Respondent in protest of certain working conditions, to wit, the failure of Respondent to supply adequate heat in their place of employment.

On the entire record considered as a whole, the Trial Examiner finds therefore that the seven men (the Charging Parties herein) on January 5, 1959, by their concerted activity as found herein, became and were economic strikers. The Trial Examiner further finds that by reason of their being discharged *before they were replaced*, they continued to so remain and were therefore unlawfully discharged employees, and as such are entitled to all the rights and privileges of economic strikers.

Concluding Findings on Case No. 5-CA-1498

On all the evidence considered as a whole, and from his observation of the witnesses, the Trial Examiner finds that by the discharge of Robert A. Heinlein, Frank J. Adams, Frank Olshinsky, Warren A. Hovis, Augustine Affayroux, Sr., William George Jr., and J. Alfred R. Caron, as herein found, the Respondent did discriminate and is discriminating in regard to the hire and tenure and terms and conditions of employment of the employees named above, thereby discouraging concerted activity and did thereby engage in and is engaging in unfair labor practices within the meaning of the Act. The Trial Examiner further finds that by such conduct the Respondent did interfere with, restrain, and coerce and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act and thereby did engage in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

Case No. 5-RC-2682

The Board on June 30, 1959, having issued an order directing hearing in Case No. 5-RC-2682 upon the issues raised on the eligibility to vote of Robert A. Heinlein, Frank Olshinsky, Augustine Affayroux, Sr., and Warren Hovis, and directing that such hearing be consolidated with the hearing in the complaint issued in Case No. 5-CA-1498 solely with respect to such eligibility, and the Trial Examiner having found on all the evidence adduced at the consolidated hearing in Case No. 5-CA-1498 and Case No. 5-RC-2682 consolidated, that the aforesaid Heinlein, Olshinsky, Affayroux, Sr., and Hovis were, among others, employees of the Respondent on January 5, 1959, and have continued to be employees of the Respondent in the status of economic strikers, the Trial Examiner further finds that said striking employees enjoyed the full rights of employees of the Respondent, including the right to vote within an appropriate unit for the determination of a representative for collective bargaining on March 17, 1959.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent has discriminated in regard to the hire and tenure of employment of the hereinabove named employees it will be recommended that the Respondent offer them immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and that each be made whole for any loss of pay he may have suffered by reason of the discrimination, by payment to him of a sum of money equal to that which he would normally have earned as wages from the date of the discrimination to the date of the Respondent's offer of reinstatement, less his net earnings during such period.¹⁰ The backpay shall be computed in the manner established by the Board.¹¹ The Respondent shall make available to the Board its payroll and other records to facilitate the checking of amounts due.

¹⁰ *Crossett Lumber Company*, 8 NLRB 440

¹¹ *F. W. Woolworth Company*, 90 NLRB 289.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1. The Respondent, Washington Aluminum Company, Inc., Baltimore, Maryland, is engaged in commerce within the meaning of the Act.

2. By discriminating in the hire and tenure of employment of Robert A. Heinlein, Frank J. Adams, Frank Olshinsky, Warren A. Hovis, Augustine Affayroux, Sr., William George, Jr., and J. Alfred R. Caron, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of the Act, and by such discrimination is thereby interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

3. 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.]

The Magnavox Company and International Association of Machinists, AFL-CIO, Petitioner. *Case No. 13-RC-6658. March 31, 1960*

DECISION AND ORDER CLARIFYING CERTIFICATION

Pursuant to a stipulation for certification upon consent election, and the election held pursuant thereto,¹ the Petitioner was certified on August 4, 1959, as the collective-bargaining representative at the Employer's Urbana, Illinois, plant, in a unit of production and maintenance employees, excluding office clerical employees, model shop employees, guards, professional employees, and supervisors. Thereafter, on October 22, 1959, Petitioner filed a motion requesting the Board to clarify the unit by specifically including therein employees classified as shipping and receiving employees, printers, and storekeepers. The Employer by letter dated October 30, 1959, objected to the inclusion of these employees in the unit on the grounds that they devote "from 50 to 100% of their time in clerical functions and services to office and engineering groups which are not a part of the production and maintenance unit." On December 16, 1959, the Board remanded the proceeding to the Regional Director for the purpose of conducting a hearing on the issues raised in the Petitioner's motion for clarification.

On January 8, 1960, in accordance with the above order, a hearing was held before Frances P. Dom, hearing officer. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.

Pursuant to the provision of Section 3(b) of the Act, the Board has delegated its powers herein to a three-member panel [Chairman Leedom and Members Bean and Fanning].

¹The results of the election were 90 votes for the Petitioner, 2 votes for the Intervenor, 20 votes for neither, and 8 ballots challenged. There were approximately 128 eligible voters in the unit.