they will be taken to have indicated their desire to be a part of the multiemployer unit, and the Union may bargain for them as part of its existing unit.

(2) If a majority of the professional employees vote against inclusion in a unit with nonprofessional employees or vote against representation by the Union, and if a majority of the employees in voting group (a) select the Union, the employees in the latter group will be taken to have indicated their desire to be a part of the multiemployer unit, and the Union may bargain for the employees in voting group (a) as part of its existing unit.

(3) If a majority of the professional employees do not vote for inclusion in the unit with nonprofessional employees, but vote to be represented by the Union, the Regional Director conducting the elections is instructed to issue a certification of representatives to the Union as the representative of all pharmacists at the Employer's Hayward, California, retail drugstore, excluding all other employees and supervisors as defined in the Act, a unit which the Board, in such circumstances, finds to be appropriate for the purposes of collective bargaining.

(4) In all other circumstances, the employees at the Employer's Hayward drugstore, professional and nonprofessional, shall remain unrepresented.

[Text of Direction of Elections omitted from publication.]

MEMBER FANNING took no part in the consideration of the above Decision and Direction of Elections.

City Products Corporation *and* Local 491, 491-A, 491-B, International Union of Operating Engineers, AFL-CIO. *Case No. 12-CA-558. April 13, 1960*

DECISION AND ORDER

On May 26, 1959, Trial Examiner Lloyd Buchanan 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. The Trial Examiner further found that the Respondent had not engaged in certain other alleged unfair labor practices, and recommended that the complaint be dismissed in that respect. Thereafter, the General Counsel filed exceptions and a supporting brief.

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 briefs, and the entire record in the case, and hereby adopts the Trial Examiner's findings,[1] conclusions, and recommendations.

ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, City Products Corporation, Punta Gorda, Florida, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Local 491, 491–A, 491–B, International Union of Operating Engineers, AFL–CIO, by promising its employees benefits to discourage their affiliation with or support of said Union.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed in Section 7 of the Act.

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

(a) Post at its plant in Punta Gorda, Florida, copies of the notice attached hereto marked "Appendix."[2] Copies of said notice, to be furnished by the Regional Director for the Twelfth 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 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.

(b) Notify the Regional Director for the Twelfth 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 violations of Section 8(a)(3) of the Act with respect to the change of shift and discharge of Cecil Daughtrey; and violations of Section 8(a)(1) of the Act, except as found in the Intermediate Report, attached hereto.

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[1] The Trial Examiner in discussing the credibility of Price stated "that Gibbs requested a change in shift" The record, however, shows only that Price testified that Gibbs stated he would as soon be on the afternoon shift. In these circumstances, we find that the record does not substantiate a finding that Gibbs requested a change in shifts, and we accordingly correct the Trial Examiner's factual findings in this respect. Such correction does not affect his credibility findings as to Price.

[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."

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 Local 491, 491–A, 491–B, International Union of Operating Engineers, AFL–CIO, by promising our employees benefits to discourage their affiliation with or support of said Union.

WE WILL NOT in any like or related 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 Local 491, 491–A, 491–B, International Union of Operating Engineers, 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 air 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 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.

All of our employees are free to become, remain, or to refrain from becoming or remaining, members in good standing of Local 491, 491–A, 491–B, International Union of Operating Engineers, 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 Act.

CITY 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.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

The complaint herein, as amended, alleges that the Company has violated Section 8(a)(3) of the National Labor Relations Act, as amended, 61 Stat. 136, by transferring Cecil Daughtrey from the day shift to the less desirable night shift on or about August 22, 1958, and discharging him on September 28 and thereafter refusing and failing to reinstate him, all because of his union membership or other concerted activities; and Section 8(a)(1) of the Act by said alleged acts and by, *inter alia*, threats to shut down several plants before it would deal with the Union, and of reprisal if an employee "went union"; by promises of a wage increase to induce opposition to the Union; by a statement that an employee would have received an increase had he not voted for the Union; and by withdrawal of income from a soft-drink machine because of support for the Union. Admitting that the Company

had discharged and refused to reinstate Daughtrey, the answer alleges that he was discharged for cause and denies that the Company committed any unfair labor practices as alleged.

A hearing was held before me at Fort Myers, Florida, on February 9, 1959. Counsel were heard in oral argument at the close of the hearing. Pursuant to leave granted to all parties, briefs have been filed by the General Counsel and the Company.

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

FINDINGS OF FACT (WITH REASONS THEREFOR)

I. THE COMPANY'S BUSINESS AND THE LABOR ORGANIZATION INVOLVED

It was admitted and I find that the Company, a corporation with main offices in Chicago, Illinois, owns and operates 39 plants in the State of Florida, including plants at Fort Myers, Naples, and Punta Gorda, where it is engaged in the manufacture of ice for freight cars, shrimp boats, and motor trucks; and that during 1958 all of the Company's plants in Florida furnished services valued at more than $100,000 to companies which in turn shipped more than $50,000 in goods and supplies directly outside the State. I find that the Company is engaged in commerce within the meaning of the Act.

It was admitted and I find that the Union is a labor organization within the meaning of the Act.

II. THE UNFAIR LABOR PRACTICES

A. *The alleged violation of Section 8(a)(3)*

Price, operating superintendent and daytime operator,[1] had been employed by the Company for some 14 years, the last 5 at the Punta Gorda plant. Early in 1958, Price signed a union card at the solicitation of a union representative. This was during the morning shift, 6 a.m. to 2 p.m. Price then called Gibbs, who was working another shift, and told him to come to the plant, where he, too, signed. This was then repeated with Daughtrey, who was called at home by Price, came to the plant, and signed a union card. On July 22 the Board in a representation proceeding held that Price is a supervisor within the meaning of the Act, and excluded him from the union, which covers employees at the Fort Myers, Naples, and Punta Gorda plants. Thus at the latter plant, Daughtrey and Gibbs were the only employees in the unit. The election was conducted by the Board on August 21 and was won by the Union.

Up to this time Daughtrey and Gibbs had been swinging shifts, one working the afternoon shift, from 2 until 10 p.m., for 1 week while the other worked the night shift, from 10 p.m. until 6 a.m.; the next week they would exchange shifts, thus alternating from week to week. On August 22, the day after the election, Price posted a schedule assigning Daughtrey permanently to the night shift. The latter testified that he preferred the other shift since he likes to rest at night, but he did not protest the change although he did ask Price 2 or 3 weeks later to ask Steed, the Company's district superintendent, to straighten it out so that the shifts would again be alternated. According to Price, he had received some 8 to 10 complaints that Daughtrey was not giving satisfactory service to customers, and he had spoken to Daughtrey about some of these reports. On August 22 a delivery boy told Price that Daughtrey, who had evidently just come off the night shift, had told a customer who was waiting for some 300-pound blocks of ice that he'd just have to wait awhile, he'd get to him, while he continued to talk to someone; the boy said that he had to get the ice. Price accepted this report as true in view of the earlier and similar reports, and he thereupon assigned Daughtrey permanently to the night shift, when less platform ice was sold, to "take him away from the public. . . . It was either a case of discharging him or putting him off the platform, to keep him from insulting the public." We shall return to this *infra* to consider the inferences to be drawn and the findings in this connection.

Through the years Daughtrey had, in his treatment of customers, several times given ample reason or cause for discharge. (The General Counsel stressed the evident earlier justification without action thereon as indicative of discriminatory intent in September 1958.) But he was not discharged on those prior occasions. Whether he thus had acquired a vested right to his job regardless of his behavior toward customers, and whether discharge under the same circumstances but after the advent of the Union would be *ipso facto* discriminatory we need not decide.

[1] Generally there were three employees at this plant, one for each of three 8-hour shifts.

For now occurred an incident in which he was directly involved, not with a customer, but with Price, his immediate superior.

On the night of September 20–21, the motor shaft of a crane lift broke down while Daughtrey was operating it. He called Price, and when the latter came in the morning, he found a piece from the machine on the desk. Examining the piece, he remarked that it looked as if it had been beaten with a hammer, and asked who had done that. Daughtrey replied that he did not know, and did not know who had put it on the desk. Since Daughtrey was alone on the night shift, the basis for Price's puzzlement is clear. At any rate, on the morning of the 22nd he again referred to the shaft having been beaten with a hammer. That night or the day after, when Daughtrey relieved Gibbs, the latter told him that the shaft had been repaired. Whether or not Price or Gibbs had worked the machine, we do not know; but when Daughtrey started to work, the shaft again broke. When Price came in he found the machine broken again. Daughtrey appears to have omitted a day at this point as he testified to Price's remarks to him at that time, apparently September 24. According to Price, as we shall see, he spoke to Daughtrey about it for the first time after the repair, apparently on the 23rd, and again the next day, the 24th. Whether on the latter date and earlier he directly accused Daughtrey of having beaten on the shaft with a hammer is in dispute.

According to Daughtrey, as Price started to speak about the broken shaft, he said to Price, "Walter, it never was fixed. It wasn't welded there to start with. I did not hit it with a hammer." Then he continued, "Walter, I'm getting tired of being accused of things around here that I haven't done. From this day on, you accuse me of what I've done; not what I haven't done. Because I won't stand for no more of it." In response Price allegedly asked, "Why don't you get a job somewheres else?" Daughtrey's answer was, "I've got a job. I've been on it a long time. I like it, and I like the company I'm working for, and I want to stay here." To this Price allegedly answered, "I can write in a resignation against you." Nothing more was said until the morning of September 28 when, as Daughtrey was leaving, Price told him that he was fired.

Price's version is that he said nothing to Daughtrey about it when the shaft first broke; he did speak about it after the second breakdown. "I said there was hammer marks on the shaft and I said it looked like someone had been beating it." On the 24th, Price again said to Daughtrey that it seemed as if someone had been beating on the shaft with a hammer. (As in Daughtrey's testimony, there seems to be some confusion of dates here.) Price continued: "He indicated that he thought I was accusing him of that; but I told him I wasn't accusing him or anyone; I said it looked that way to me." Daughtrey had said that the pulley had broken off and was missing; when Price suggested that it might be up on the crane part, Daughtrey replied that he had looked there and it wasn't. Price then "walked up there and it was right there in plain sight." The transcript continues:

> I said, "Cecil, I don't understand how you could have missed seeing it." It was right there in front of him.
>
> He said, "Are you accusing me of breaking it?"
>
> I said, "I'm not accusing you; I'm just discussing it with you like I would anyone else."
>
> And he drew back a pair of tongs and he said, "I'm getting God damned sick and tired of you accusing me."
>
> And I said, "You better get a job somewhere else."
>
> He said, "I'll tell you one thing; no son of a bitch is going to fire me, and if you do, there's going to be trouble." And he said, "If you do, I'm not going to leave this job."
>
> And I said, "Well, I will give you notice now that I will do it if I possibly can. I can fire you, because I can't have you talking to me about things that way."
>
> I said, "I'll let you know at the end of the week."

(Price then testified that he spoke to Gibbs about Daughtrey, and that he would have talked to Gibbs the same way. The transcript erroneously has it at this point that Gibbs said that *he* would have talked the same way, although it is correctly reported elsewhere.)

On the termination slip, dated September 27, Price stated the reason for the discharge as follows:

> Discharged for refusal to cooperate satisfactory (sic) and making threats as to what he would do to anyone who would try to fire him, and using profane language to me.

The week ended on September 28, the date of Daughtrey's discharge. Cross-examined concerning the reasons for the discharge, Price again said that it was

because Daughtrey had cursed and threatened him and emphasized that no one could fire him. Price's testimony in this connection was consistent with his account of what had occurred and with the reason for discharge as given in the termination slip.

The General Counsel sponsored a three-page interoffice memorandum dated October 4, 1958, and prepared by Price. In that memorandum Price states that Daughtrey's "discharge was the culmination of a long line of reasons why he should have been discharged even before now." In like vein, in response to the General Counsel's suggestion that he "elucidate his Answer to that extent," counsel for the Company agreed that it would be all right "to enlarge (the) Answer by this memorandum." It is nevertheless clear from the memorandum and from Price's testimony that the memorandum was a history and did not purport to give only the reasons for the discharge. It indicates that Daughtrey had been an unsatisfactory employee for a long time, and was "finally" discharged when he "blew up." The memorandum was evidently prepared after service of the charge herein; if Price, loquacious as he is, thought it necessary to review prior incidents, he clearly limited the reasons for the discharge

In fact, the incidents of several years before were brought out by the General Counsel. But this was a case of setting up a straw man and knocking him down by indicating that the Company had overlooked or condoned the earlier incidents. Here the Company did not cite those incidents as a reason for the discharge even though the General Counsel understandably suggested and tried to get Price to cite them. They lacked the elements of backtalk cited by Price in the incident of September 24. (Parenthetically, if as the General Counsel also attempted to show, Daughtrey's earlier conduct was justified, there would *pro tanto* be no basis for the defense of condonation.)

On the issue of company motivation, Daughtrey's union activity does not appear to have gone beyond his signing a union card after Price and Gibbs had signed. True, aside from actual activity, the Company's impression or belief concerning such activity is relevant But there is no evidence that, except for Price, any supervisor believed that Daughtrey engaged in union activity, or took action against him therefor. Price alone had advocated that the men join the Union; whether his superiors knew of this we do not know: they took no action against him. If Daughtrey told Price that he was going to vote for the Union, as Price remarked to Gibbs, there is no evidence of any contrary attitude or indication thereof by the latter. (We shall see *infra* that shortly before the election Price unlawfully tried to persuade Gibbs to oppose the Union.) Conceivably, now excluded from the unit, Price sought to get rid of the Union and provoked Daughtrey by speaking several times of the broken shaft and wondering how it had happened. Price's repeated references might have been provocative, and intentionally and discriminatorily so. But having observed and heard him, I can readily understand his talking about it again and again merely because he was Price.

Summarizing the testimony on this point, Price said, according to Daughtrey, that he could not understand how Daughtrey broke the shaft with a hammer. This testimony does not ring true, and I do not credit it. According to Price, he did ask for an explanation but, whatever Daughtrey's reaction, he neither accused the latter nor insinuated that he had done it. When Daughtrey used profanity in speaking to him, Price suggested that he quit; Daughtrey thereupon threatened trouble if he were fired, and used a vile epithet; Price then indicated that he would take it up with his superiors; he did this, was authorized to fire Daughtrey, and he did at the end of the week on September 28.

There was no discriminatory provocation here, and if Daughtrey lost patience, his reaction is chargeable to himself; on the basis of observation of both men, I have little doubt of this. Daughtrey's "low boiling point" (referred to by the General Counsel in describing Price's belief) was evident.

I credit Price's testimony (and the corroborative testimony by witness Alderson [2] concerning Daughtrey's admission to him) with respect to Daughtrey's use of profanity. Extremely talkative, Price plainly was attempting to "prove the case"; I believe that he unwarrantedly sought to embellish his testimony by relying on previous testimony of an altercation with a customer during which Daughtrey allegedly defended himself by striking the other with icetongs. Price now claimed that Daughtrey threatened another "tong war" on the morning of September 24. (He testified that he wasn't exactly afraid, figuring that he would be able to dodge.)

[2] Alderson replied in the affirmative when asked whether his conversation with Daughtrey took place on September 27 or 28 He testified that Daughtrey told him that his "trouble" with Price had occurred the day before.

Despite this element of unrealiability and consequent doubt injected, the evidence indicates and I find that Daughtrey was discharged because he was overly assertive and defiant, and directed the epithet against Price.

Price was similarly unreliable in his testimony that Gibbs requested a change in shift and cited his wife's illness to support the request. But if Price was here adding something based on his own confusion of circumstances, his earlier explanation is nevertheless credible and clear: Daughtrey had had trouble with customers, and complaints had been received concerning him; on the night shift he would have fewer contacts with the public. We recall that Gibbs, who was given the afternoon shift when Daughtrey was put on the night shift, had also signed a union card at Price's suggestion. Here we must note also Daughtrey's admission that Gibbs was as active on behalf of the Union as he was (no activity by either being shown beyond signing of a card). Nor, in the absence of a finding of discrimination in Daughtrey's discharge and a recommendation to reinstate him, could an *effective* recommendation be made with respect to the change in shifts even if it were found that Daughtrey's treatment of customers had been condoned and that the change was discriminatory.

What may on the one hand be cited as Daughtrey's forthrightness and union advocacy in going to Fort Myers 2 days after District Superintendent Steed and District Manager Kinney visited the plant and spoke to Gibbs (Daughtrey had told Price that he was busy but would go there when Price called him), may on the other hand be regarded, as noted by counsel for the Company, to make amends for his absence even though he had relied on Price's promise to call him. If it be urged that, regardless of Daughtrey's purpose in going to Fort Myers, he there did inform the Company of his staunch support of the Union, as the General Counsel pointed out, we must also realize that his manner there was quite in keeping with and suggested the more extreme reaction which he later evidenced to Price. Once at Fort Myers, his manner in asserting his independence in union matters was hardly of the kind to win friends and influence people. An employee need not be secretive about his union sympathies. But Steed had not questioned Daughtrey; in fact the latter testified that Steed said that he had been advised not to talk about the Union so close to the election. A different note was now injected as, according to Daughtrey, when he asked what Kinney and Steed had wanted when they visited Punta Gorda 2 days before, the latter replied that they had wanted to know how the men were going to vote. Regardless of this, Daughtrey was not now asked how he was going to vote. But he nevertheless was going to and did "show them." His statement to Steed that "it was nobody's damned business how (he) was going to vote, that it was a secret election" was a boastful display and a flexing of the glossal muscles quite in keeping with those with which Price later charged him and to which Alderson testified

Daughtrey is free to exercise his rights under the Act. But such freedom and those rights do not warrant a chip-on-the-shoulder attitude to the point of threat or insubordination The General Counsel's preparation approach, and proof were well conceived. But it is not his to determine the character of his witness, either on the stand or earlier as portrayed.

Union membership does not immunize against discharge. Whatever the union activities of the other employees in this 11-man, 3-plant unit, which voted 8 to 2 for the Union in the election, Daughtrey's did not make him a conspicuous target. Recognizing the Company's opposition to the Union, *infra,* there is no sufficient basis for holding that discharge for defying and calling a supervisor an ugly name, this by an employee whose union activities were minimal, was discriminatory.[3] Put an-

[3] Cf *Murray Ohio Manufacturing Co*, 122 NLRB 1306 Daughtrey also testified concerning his failure in February or March 1957 to clean and paint a machine at Price's direction, and explained why he had been unable to do it, but Price then told him that Steed had directed him to fire Daughtrey, to which the latter replied that they had "been friends a long time, and if he wanted anyone to fire (him), he better let Mr Steed do it" Referring to the incident in his report of October 4, 1958, Price noted that he had told Daughtrey that if he did not help with the painting he would have to let him go, to which Daughtrey replied that no one was going to fire him and that there would be trouble if anyone did: but that Daughtrey did then help with the painting Price's recital indicates a measure of defiance by Daughtrey on that earlier occasion and injects the question of condonation There was no difference in this respect on September 24, shortly before the discharge, when Daughtrey's attitude led Price to say only that if Daughtrey felt that way about it he would have to get another job To this point on both occasions Price warned but there was no discharge A difference arises with the addition of the epithet on September 24, an important factor as it affects relations between employee and supervisor. The General Counsel's attempt to minimize this came to naught as Price testified without contradiction that he did not himself use such language at the plant at any time.

other way, the evidence provides no adequate basis for holding that, from being the Union's original protagonist at the Punta Gorda plant, Price became discriminatorily antiunion; and that he selected Daughtrey as fit object for this unproved antagonism. It has not been shown that Daughtrey's discharge or the earlier shift change violated the Act.

B. *The alleged independent violation of Section 8(a)(1)*

The testimony on which the findings of interference are herein based stands without contradiction. Approximately a month before the election, Price asked Daughtrey whether he would consider a 10-cent raise to get out of the Union, adding, "I think we can get you a ten-cent raise on it." This was an unlawful promise conditioned on opposition to the Union. Price similarly violated the Act when, a week or two before the election, he told Gibbs that the latter would be enjoying a raise if he hadn't taken up with the Union. (The statement in the transcript, ". . . if I took the raise I'd be enjoying it and wouldn't be fouled up with the Union" is not clear and does not correctly set forth the witness' statement. The record is hereby corrected to reflect the statement as here noted.) Considering its date, this violation, like the one found immediately above, appears to hold a promise for further action and to be covered by paragraph 9(b) of the complaint, not 9(e), although this is not altogether clear from the form of Price's statement.[4] It appears that the latter subsection was expected to be supported by Daughtrey; but, asked whether he recalled any conversation concerning the Union after the election other than with respect to the discharge, he replied in the negative.

Of a different order is Kinney's statement to Gibbs at some unspecified date that the men at another plant were going to take a 5-cent raise and were going to vote against the Union. It is not clear that, as alleged, Kinney was here promising a similar increase for Punta Gorda employees if the Union did not "come in."

Approximately a week before the election Steed told Gibbs that he had just signed his largest customer contract and that the Company was planning to increase wages. Made at that time, the statement of intent constituted interference within the meaning of the Act.

It is further alleged as interference that Price withdrew benefits in connection with the proceeds from a soft-drink machine at the plant. In or about June 1958, without consulting the Company, Price made a personal investment to install a Pepsi-Cola machine in the plant. While his superiors must be presumed to have known of the presence of the machine, it does not appear that this was a company venture or that the Company made any decision with respect to the profits. Price testified that he split the profits with Daughtrey and Gibbs in return for their taking care of the machine, bottles, and cases on their shifts.

On August 22, when Daughtrey was permanently assigned to the night shift, Price told him that he would no longer share in the profits. Steed had told Price that there were too many loose bottles in the ice room, they were in the way, and bottles should be limited to those in the vending machine. Price thereupon decided to cut Daughtrey out because he would no longer have to take care of bottles, there being few drinks sold on the night shift. Gibbs testified that after the election Price told him that Steed had said that Price should take all of the profits: if the men were to get anything, let the Union give it to them. But this testimony does not prove that, however unlawful Steed's remark, Price (or the Company) was unlawfully motivated in the act which is here charged since, although Steed's alleged remark presumably referred to both Daughtrey and Gibbs, the latter continued for several months thereafter to share in the profits. (As distinguished from the act of withdrawing the profits from the men, the alleged statement by Steed and Price's repetition thereof are not alleged as violations.) Daughtrey testified that he had a share in the investment, but did not know what it was. Price testified that Daughtrey had not invested at all but that, to avoid an argument, he gave Daughtrey $12.

Payne, who replaced Daughtrey on the job, testified that shortly before the end of December Price told him that he was going to keep the key to the drink machine: he did not want to be in business with Gibbs any longer since the latter had stated in an affidavit that Price aggravated Daughtrey into doing the things for which he had been discharged. Since, as has been found, Price did not goad Daughtrey into the acts or statements which prompted the discharge, Price is not to be censured or penalized for saying that he would not continue "in business" with Gibbs on the drink machine. We distinguish between refusal, because of a false claim, to con-

[4] An apparently conditional violative promise by Price of a raise for Gibbs a few days after the election was not alleged as violative; neither were other statements testified to at the hearing.

tinue in such a venture, and action taken merely because of recourse to Board processes. Price did not testify concerning the taking of the key, which terminated the profit-sharing with Gibbs. He did say that he had been holding the money since the end of 1958 and, with the idea of treating him as he had Daughtrey, was going to give him a share of the money on hand at the end of the year. In apparent corroboration of some of this, it appears that, to avoid cluttering up the interference with work, a sign has been posted at Steed's direction that drinks are available at the machine only.

Aside from the question of company responsibility here, the explanation for the changes made is reasonable. Apparently not considered sufficient to warrant an allegation of discrimination, the testimony in this connection does not prove unlawful interference. Nor is there proof of the allegations in subsections 9(a) or (c).

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Company, set forth in section II, above, occurring in connection with the 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.

IV. THE REMEDY

Having found that the Company has engaged in and is engaging in certain unfair labor practices affecting commerce, I shall recommend that it cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act.

It has been found that the Company, by promises of wage increase if employees would not support the Union, made shortly before a Board-conducted election, interfered with, restrained, and coerced its employees in violation of Section 8(a)(1) of the Act. I shall therefore recommend that the Company cease and desist therefrom and from any like or related conduct.

For the reasons stated in the subsection entitled "The alleged violation of Section 8(a)(3)," I shall recommend that the complaint be dismissed insofar as it alleges the discriminatory transfer, discharge, and refusal to reinstate Daughtrey.

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. Local 491, 491–A, 491–B, International Union of Operating Engineers, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.
2. By promises to its employees of benefit in connection with union activities, thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
3. The aforesaid labor practices are unfair labor practices affecting commerce, within the meaning of Section 2(6) and (7) of the Act.
4. The Company has not engaged in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

[Recommendations omitted from publication.]

Jamestown Machine and Manufacturing Company *and* International Association of Machinists, District No. 83, AFL–CIO *and* The Employees' Shop Committee of the Jamestown Machine and Manufacturing Company, Party to the Contract.

Case No. 6–CA–1557. April 13, 1960

DECISION AND ORDER

On November 5, 1959, Trial Examiner Leo F. Lightner issued his Intermediate Report in the above-entitled proceeding, finding that the