

C. The Board has been administratively advised that the Regional Director for the Twelfth Region is investigating the jurisdictional aspects of the charge in Case No. 12-CA-1371.

On the basis of the above, the Board is of the opinion that:

1. The Employer is engaged in the electrical contracting business.

2. The Board's standard for exercising jurisdiction over a nonretail enterprise is a minimum of \$50,000 outflow or inflow, direct or indirect. *Siemons Mailing Service*, 122 NLRB 81, 85; *Eau Clair Building and Construction Trades Council and Robert Bauer*, 122 NLRB 1341, 1343.

Accordingly, the parties are advised, pursuant to Section 102.103 of the Board's Rules and Regulations, that:

1. Although the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, the Board would not assert jurisdiction over the Employer herein on the facts submitted because they fail to show direct or indirect outflow or inflow of at least \$50,000 in any given year.¹ On the facts before it the Board is unable to conclude that the Employer has any outflow, whether direct or indirect. Mere allegations that the Employer has performed and is presently performing services for persons engaged in commerce, while perhaps offering a basis for legal or statutory jurisdiction, are inadequate to establish outflow. Hence, the only basis for asserting jurisdiction is an inflow of \$47,490.30, which falls short of the Board's minimum standard of \$50,000. Even if the value of the used truck purchased in 1959 is added to this figure, the total inflow would amount to but \$48,890.30.

2. The Board expresses no opinion as to whether it would take jurisdiction over or render a decision on the merits of the controversy which is the subject of the State court action.

¹ We interpret the Employer's data to mean that 10 percent of its purchases are purely local in nature, and that the figure \$5,276.70 does not represent a discount on the Employer's total purchases.

Rapid Bindery, Inc., and Frontier Bindery Corporation and Local Union No. 685, Printing Specialties and Paper Products Union, International Printing Pressmen and Assistants' Union of North America, AFL-CIO. Case No. 3-CA-1253. April 15, 1960

DECISION AND ORDER

On September 18, 1959, Trial Examiner C. W. Whittemore issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in unfair labor practices in violation of Section 8(a) (1), (3), and (5) of the Act and recommending that they cease and desist therefrom and take certain

affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondents filed exceptions to the Intermediate Report and a supporting brief.

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

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief,¹ and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondents, Rapid Bindery, Inc., Dunkirk, New York, and Frontier Bindery Corporation, Tonawanda, New York, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Local Union No. 685, Printing Specialties and Paper Products Union, International Printing Pressmen and Assistants' Union of North America, AFL-CIO, or in any other labor organization of their employees, by discharging, laying off, refusing to reinstate, or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of employment.

(b) Threatening employees with economic reprisals or making them promises of benefit to discourage membership in or activity on behalf of any labor organization.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in any 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 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.

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

¹ Respondents' request for oral argument is hereby denied as, in our opinion, the record, exceptions, and brief adequately present the positions of the parties.

(a) Offer the employees listed in Appendix A, attached to the Intermediate Report, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, and make them and all employees on the December 3, 1958, payroll whole in the manner set forth in the section of the Intermediate Report entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment record, timecards, personnel records and reports, and all other records necessary for the determination of the amount of backpay due and the right of reinstatement under this Order.

(c) Upon request, bargain collectively with Local Union No. 685, Printing Specialties and Paper Products Union, International Printing Pressmen and Assistants' Union of North America, AFL-CIO, as the exclusive bargaining representative of the Respondents' employees at the Tonawanda, New York, plant (formerly its Dunkirk plant), excluding office clerical employees, guards, professional employees, and supervisors as defined in the Act.

(d) Post at their Tonawanda, New York, plant, copies of the notice attached to the Intermediate Report marked "Appendix B."² Copies of said notice, to be furnished by the Regional Director for the Third Region, shall, after being duly signed by Respondents, be posted by them immediately upon receipt thereof, and be maintained for a period of 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by any other material.

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

²This notice shall be amended by substituting for the words "The Recommendations of a Trial Examiner" the words "A Decision and Order." 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."

INTERMEDIATE REPORT

STATEMENT OF THE CASE

Charges having been filed in the above-entitled case, a complaint and notice of hearing thereon having been issued and served by the General Counsel of the National Labor Relations Board, and an answer having been filed by the Respondents, a hearing involving allegations of unfair labor practices in violation of Section 8(a)(1), (3), and (5) of the National Labor Relations Act, as amended, was held in Dunkirk, New York, on July 13, 14, 15, and 16, 1959, before the duly designated Trial Examiner.

At the hearing all parties were represented, were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the issues, to argue orally upon the record, and to file briefs and proposed findings of fact. Briefs have been received from General Counsel and counsel for the Respondents.

Disposition of the Respondents' motion to dismiss, made at the conclusion of the hearing and upon which ruling was then reserved, is made by the following findings, conclusions, and recommendations.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENTS

Rapid Bindery, Inc., is a New York corporation which, until the last of February 1959, was engaged in the operation of a bindery plant at Dunkirk, New York. Frontier Bindery Corporation was incorporated in May 1959; prior to that month and since December 1958 it had been operating as a partnership. At first as a partnership and since then as a corporation it has operated a bindery at Tonawanda, New York.

At the hearing counsel for the Respondents conceded, and it is found, that both the Respondents Rapid and Frontier were and/or are engaged in commerce within the meaning of the Act, each having shipped or now shipping goods valued at more than \$50,000 out of the State of New York annually.

Both Respondents are owned and controlled by one family, the Koessler family, in operating functions consisting principally of J. Walter Koessler and his brother, Kenneth. While it appears that during the course of the hearing the corporation of Rapid was in the process of dissolution, the officers still were and had been: J. Walter Koessler, president; Kenneth Koessler, vice president; and W. J. Hammond, secretary-treasurer. All stock of Rapid is owned by the two Koessler brothers. When Frontier was formed as a partnership, the Company consisted of the two Koessler brothers and Hammond, acting as trustee for 16 members of the Koessler family. Officers of the Frontier Corporation are: J. Walter Koessler, president; Kenneth Koessler, vice president; and Hammond, treasurer. The two Koessler brothers own 50 percent of Frontier's stock, while Hammond serves as trustee for the other 50 percent for the same 16 members of the Koessler family. Joseph F. Klausman was and is the general superintendent for these Koessler properties, and Richard Roll was superintendent of the Rapid Bindery plant until Frontier began operations, when he became superintendent of that plant. All machinery previously operated by Rapid has been moved to the Frontier plant.

On the basis of the foregoing undisputed facts, the Trial Examiner concludes and finds, as alleged in the complaint, that the Respondent Rapid and its successor and *alter ego*, Respondent Frontier, constitute a single employer within the meaning of Section 2(2) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Local Union No. 685, Printing Specialties and Paper Products Union, International Printing Pressmen and Assistants' Union of North America, AFL-CIO, is a labor organization within the meaning of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The issues*

The major question presented by the pleadings is whether or not the Respondents abandoned Rapid's operations at Dunkirk and moved them to a new location, in Tonawanda, there operating as Frontier, to discourage membership in the Charging Union and in order to evade their legal obligations under the Act to bargain collectively with this labor organization which had, shortly before the initial move, been certified by the Board as the exclusive bargaining agent for a unit of employees at Rapid. Stemming from this major issue are questions: (1) As to whether or not the Respondents refused to bargain in good faith with the Union when making this move; and (2) as to whether or not they illegally discriminated against a majority of employees on Rapid's payroll by discharging them from that payroll and failing to reinstate them on Frontier's payroll.

At the hearing, for the first time, the Respondents interjected an issue of claimed fraud on the part of a Board agent—claiming, in effect, that because of such alleged fraud, the consent election and resultant certification of the Union is invalid.

B. *The claim of fraud*

At the hearing the counsel for the Respondents for the first time raised a point of alleged fraud, claiming in effect that officials of the Respondent Rapid were

improperly advised by a Board agent at the time the consent-election agreement was entered into. It would normally follow, of course, that were there serious merit to this claim, the election and certification would be invalid.

The testimony of Kenneth Koessler on this matter in substance is as follows. On October 13, 1958, following the filing of the Union's petition, Koessler and Hammond met with Union Representative Bassett, at the Board's Regional Office, in an informal conference conducted by Field Examiner Irving. Koessler agreed with Bassett as to the eligibility list for voting, as to the date the election should be held, and that it would be an election by consent of the parties instead of a Board-ordered election. At this point, according to Koessler's own testimony, he mentioned that he thought the election should be delayed because of the possibility that the plant would be closed, all or in part. Irving said this was a matter for the parties involved to discuss, and suggested that they talk it over in his absence. They did so, and after Koessler had told Bassett that they had been considering some move for 2 years Bassett urged that they go ahead with the election. Koessler agreed, and they so reported to Irving. The consent-election agreement was thereupon signed and—so far as the record shows—the Respondents never raised the question of the validity of this mutual agreement, of the election, or of the certification until the day the hearing opened, nearly 9 months after the election.

Accepting Kenneth Koessler's account of the meeting at the Board office as substantially accurate, the Trial Examiner concludes and finds that there is no merit in the claim of fraud.¹

C. The election and certification

Pursuant to the consent-election agreement entered into on October 13, 1958, an election was conducted by the Board on October 30. The Charging Union polled a majority of the votes, and on November 6, 1958, was certified.

The complaint alleges, the consent-election agreement signed by the Respondent Rapid concedes, and it is here found that the appropriate collective-bargaining unit consists of all employees of Rapid at its Dunkirk, New York, plant, excluding office clerical employees, guards, professional employees, and supervisors as defined in the Act.

The Trial Examiner concludes and finds, on the basis of the aforesaid Board-conducted election and certification, that the Charging Union was, on November 6, 1958, and at all times since has been, the exclusive bargaining agent for all employees in the aforesaid appropriate unit.

D. Illegal Interference before the election

Superintendent Roll, then of Rapid's plant at Dunkirk, received a copy of the Union's petition shortly after it was filed on October 6. It is undisputed that soon after its receipt he called employees of each of two shifts together, in substance said that he was "flabbergasted," and asked why they had not come to him first. He urged that they join some other union, or form one of their own, and a few days later called the groups together and instructed them to take a vote as to whether or not they wanted the Charging Union to represent them.

Whether or not Roll acted under instructions from his superiors—his action was plainly illegal, it was never disavowed by higher authorities, and the Respondents are accountable therefor. Roll well knew that the question was then before the Board, and his conduct was violative of the Act in directing a poll.²

The day before the election was to be held Roll called employee Rutkowski to his desk, asked her to call the other female employees together in an upstairs office,

¹ It appears to be the claim of the Respondents' counsel that Irving committed fraud by not informing Koessler that he had the right to be represented by counsel. This claim requires no discussion. No formal hearing was held. It appears also to be the claim that Irving should have advised postponement of the hearing. This claim also is without merit. The Respondents' testimony is all to the effect that at the date of this meeting any move was speculative, and General Counsel points to *Colomal Shirt Corporation*, 114 NLRB 1214, 1216, as establishing that under such speculative conditions the Board itself would have ordered the election.

² That Roll, in querying employees and directing the poll, was motivated by more than an innocent desire for information, as he claimed, is established by the credible testimony of a number of employees. To one group he declared that if the employees joined the Charging Union, the work would be moved to another plant, like Texas. (The Koesslers operated an unorganized plant in Texas, as Kenneth Koessler conceded.)

and try to talk them "out of the Union," according to her credible testimony. At the same time he told her that Koessler wanted him to draw up "new blue prints," if the Union was voted in, for a "new bindery." Rutkowski carried out Roll's instructions.³

Two days before the election Rapid's officers held a dinner for all its employees. J. Walter Koessler made a speech in which he said he was sorry about conditions then existing at the plant. He offered to pay them wages called for in a bindery union contract, and passed such a contract around among them. While there is some dispute as to whether or not Koessler, in so many words, actually offered these wage benefits if the employees voted against the Union, under the circumstances—including the fact that such benefits were offered just before the election, and the fact that he admitted having told them that his "wishes in the matter would be the book-binders union," an organization not involved in the election—it is reasonably concluded that his remarks constituted an effective promise of economic benefits if employees voted against the Union. Furthermore, such promises must be appraised in all their context. Having told them what *his* wishes were concerning their union, he informed them, according to his own testimony, that he and his brother "could never make up our mind whether that bindery should be kept in existence or discontinued." It is likewise uncontradicted that Koessler also told the employees that "no damned Bassett" (the union representative) was "going to tell him what to do."

It is contradicted and found that on the day of the election, after the balloting, Roll told employee Gens that he was sorry to hear the Union got in, because they would have to move the machines out. As noted hereinafter, the machines and plant were moved, leaving no doubt in the minds of employees as to the real meaning and intent of Koessler's thinly veiled promises and threats.

On the day before the election Overseer Margaret Soper, a supervisor within the meaning of the Act,⁴ told the female employees on the afternoon shift that if they "got the Union in," Koessler would move, because he hated Bassett. Soper further told them that Koessler could move the machines because he had five other places he could move them to.⁵

E. *The moving of machinery and signing of a contract*

Having threatened to move the bindery if the Union won the election, management of the Respondent Rapid began preparing for such move shortly after the voting, and at the same time engaged in negotiations with the Union which culminated, on or about December 23, 1958, in the signing of a contract which it agreed to observe and follow until January 11, 1960.

As a witness, J. Walter Koessler insisted that the decision to "cease operating" in Dunkirk was made "about October 15." Other facts fail to support his claim as to the date of the "decision," and the Trial Examiner is unable to accept it as true. In the first place, either he erred in his claim as to the date of the decision, or he was less than candid with his employees in his speech just before the election. As noted above, at the dinner and according to his own testimony, he told them that for some 2 years consideration had been given to some move, but as of that date the decision had not been made. It is the testimony of Kenneth Koessler, also, that it was *not until November 3*, a few days after the election, that definite oral commitment was made to lease new premises at Tonawanda to which Rapid's machinery was thereafter moved.

Kenneth Koessler met with union representatives to begin negotiations on November 24, about 3 weeks after commitment had been made for lease of new

³ Roll admitted instructing this employee to talk to the others about the Union, but said he did not recall about the blueprints

⁴ Early in his testimony J. W. Koessler identified Soper as a "supervisor" and said she was "overseer of the bindery." When Roll left Dunkirk to superintend the Frontier plant, Soper remained in charge of the operations at Dunkirk. Roll testified that Soper had the authority to discipline employees, and other evidence, undisputed, establishes that she exercised such authority

⁵ The above findings rest upon the credible testimony of employee Rozumalski. Soper's denials are not credited. In a sworn affidavit before a Board agent dated April 1, 1959, Soper admitted that "After the election, I told the girls that the plant was going to move because they had voted for the Union" In the same affidavit she admitted that at the company dinner, just before the election, "Mr Koessler said that he would move the plant if they voted for the Pressman union."

premises. Koessler revealed nothing of this action to the Union, although it is obvious that he well knew the employees and their jobs would be substantially affected. This conclusion depends not only upon the reasonable probabilities of the situation, but upon the following facts, established by the credible and unrefuted testimony of James Matteson, a disinterested witness.

In mid-November Superintendent Roll came to Matteson, then a machine operator at the Dunkirk bindery, and asked if he had joined the Union or had "signed any papers." Matteson told him he had not. Later the same day Roll returned to him, repeated his inquiry, and received the same answer. This time Roll suggested that the employee lay off for a couple of weeks and then he could go to work at the new plant in Kenmore.⁶ Matteson said he would think it over, but it appears that he did not lay off. On December 4, when machinery—including the one he was working on—was moved from Dunkirk Matteson asked Roll if he could be transferred into one of the departments of Great Lakes Color Printing plant—another of the Koessler enterprises at the same Dunkirk premises. Roll said that he could not be transferred, adding that Koessler did not want any of the Rapid personnel to be "transferred around in the plant." Roll offered Matteson, however, a job at his same machine in Kenmore and with more wages, but cautioned him: "When you come in there, I don't want no union. I don't want you to talk nothing about a union at all, because there we do not stand getting a union, and if we do have a union in there, Mr. Koessler would move the plant to Pennsylvania. . . ."

Koessler and union representatives met again on December 3. Again Koessler said nothing about moving, although that night machines were moved from the Dunkirk plant.

At the next negotiating meeting, on December 10, employee members of the union committee sharply criticized Koessler for not informing them of the move. Koessler, according to his own testimony, gave them this surprising answer:

If I had brought this discussion up during a contract negotiation, I think it might have been construed as duress.

The union representatives then asked what was to be done about the remaining machinery, and Koessler replied that he did not know, that they were "appraising" the matter and making a cost analysis.

As noted, a contract was signed on December 23, 1958.

F. Restraint and coercion after the election

After the election, and in addition to incidents described above, management and supervisors continued to discourage union membership and adherence by voicing coercive remarks. In summary, the following occurred:

1. In November employee Marian LeBaron was on sick leave. She called Roll and asked when she could return to her job. Roll replied that he would like to have her back then, but "with the girls wanting the Union he didn't know how long the plant was going to be there."⁷ She was not recalled until a few days later.

2. After an extended absence from work, employee Marie Roessler returned to the plant on November 11. Soper, previously identified as a supervisor within the meaning of the Act, asked her how she had voted at the election. Soper then told her she had been informed by Kenneth Koessler that unless the girls changed their minds about the Union, the plant would be moved.⁸

3. On December 4 or 5, shortly after machinery had been moved out of the plant, employee Helen Sarek asked Soper "what happened," and Soper replied:

It is what you girls wanted. You wanted the Union, and Mr. Koessler had said at the dinner that he would move the machines out if you joined the Union, so you have nobody to blame but yourselves.

⁶ Throughout the record the Tonawanda plant is referred to as in Kenmore.

⁷ Roll's qualified denial is not credited. He denied making the statement but admitted, "I can't recall the conversation." The above quotation is from LeBaron's credible testimony.

⁸ In her affidavit, previously referred to, Soper admitted that she called Koessler, on some unspecified date after the election, and "asked if he would change his mind about moving if the girls would reconsider. He said that the girls had made up their mind and that was it."

4. In February 1959, shortly before the plant was closed entirely, as described below, employee Mroczka went to Soper for her check. Soper told her:

You girls asked for it. You wanted a Union. You could have had all the work you wanted, but you wanted to be smart, you wanted to get the Union. Now suffer.

5. Just before being laid off in February, employee Ellen Dorman was told by Soper that "we could not work at Buffalo, because we had joined the Union."

G. Closing of the Dunkirk plant

As noted above, part of the Dunkirk plant was moved to Tonawanda early in December 1958. Without consulting with the Union, Superintendent Roll transferred three employees from Rapid's payroll to that of Frontier: Florence Jacobowski, Vera Turanski, and James Matteson. All of these three had been "against the Union."⁹ These employees were also given travel allowance to and from Dunkirk.

During the hearing counsel stipulated that after the removal of machinery early in December, the hours of employment for the employees remaining at Dunkirk were reduced.

In the latter part of February the Respondent Rapid notified all employees and the Union that the plant at Dunkirk would be closed entirely as of March 1. Superintendent Roll admitted that none of the employees then working at Dunkirk were offered employment at Tonawanda. Records show that there were, however, jobs available for them. The machinery and the nature of the work remained the same.

The testimony of Turnowski is uncontradicted and it is found that on the last day of work at the Dunkirk plant, she suggested to Soper, at that time in full local charge of the plant's operations, that she and three other girl employees were willing to drive to the new plant. Soper told her that "the Koesslers would take care of anybody that wasn't for the Union."

The employees listed in Appendix A, attached hereto, were on the payroll at the time the plant closed. It is here concluded and found that all such employees were, in effect, discharged by the Respondents on or about March 1, 1959, and were simultaneously denied reinstatement at the Tonawanda plant.

H. Conclusions as to closing of the plant

In brief, the Respondents adduced a great deal of testimony to the effect that: (1) The initial move of machinery early in December was motivated by economic reasons; and (2) the final move was made because one of its customers, a Canadian newspaper, insisted that its work be done by members of a union other than the Charging Union.

Without attempting to appraise the merit of the economic reasons advanced, since it is of no concern of the Trial Examiner or of the Board whether the Koesslers used good or bad business judgment, the Trial Examiner assumes that because of increased business, and the lack of adequate operating space at the Dunkirk premises, some readjustment was necessary. The great preponderance of credible evidence, however, establishes that whatever the conditions may have been, the Respondents did not make their decision to move any part of the Dunkirk bindery until *after* the Union had won the election. Indeed Koessler himself testified that at the dinner *before* the election he only told the employees that sometime a decision would be required. Credible testimony, much of it undisputed, shows that management repeatedly warned employees before the election that the plant would be moved if the Union won, and told them *after* the election that the move was being made because they did vote for the Union. It follows, and is concluded and found, that the move in December was made not solely for economic reasons, but in an atmosphere redolent hostility toward the Union, and for the purpose of discouraging membership in it.¹⁰

And as to the final move, the Respondents' own defense evidence is sufficient proof of its illegal motive. The fact that its Canadian customer wanted its work done by members of other than the Pressmen's Union is no warrant for the

⁹ The finding is based upon the testimony of Matteson and the affidavit of Supervisor Soper.

¹⁰ See *Bermuda Knitwear Corporation*, 120 NLRB 332; *Industrial Fabricating Inc., et al.*, 119 NLRB 162, 169.

Respondents to violate a Federal Act. As the Ninth Circuit Court of Appeals said in an early Board case,¹¹

The act prohibits unfair labor practices in all cases. It permits no immunity because the employer may think that the exigencies of the moment require infraction of the statute. In fact, nothing in the statute permits or justifies its violation by the employer.

The Trial Examiner therefore concludes and finds that the move of the machinery in December 1958, and the resultant loss of employment hours by the employees, and the closing of the plant on or about March 1, 1959, and resultant discharge of all employees were discriminatory and for the purpose of discouraging membership in the Union, and violative of Section 8(a)(3) and (1) of the Act.

I. Conclusions as to the refusal to bargain

The preponderance of credible evidence supports the allegations of the complaint to the effect that the Respondents have refused and are refusing to bargain collectively with the Union as the exclusive bargaining representative for all employees in an appropriate unit, as described in section III, C, above. This conclusion rests upon the following factors:

1. The Respondents, as found in section I, above, constitute a single employer within the meaning of the Act.

2. While engaging in surface negotiations, on December 3, 1958, the Respondents in bad faith failed to inform or consult with the Union regarding the move of machinery and resultant loss of employment hours at Dunkirk, although on that date they were in the process of moving such machinery.¹²

3. At least three employees were transferred from Dunkirk to the new plant, and at least one of them, Matteson, was granted a wage increase, without consultation with the Union, the bargaining agent for all employees. No offer was made through the employees' exclusive bargaining agent to transfer other Dunkirk employees to the same enterprise at another location, although nonunion employees were granted travel allowances.

4. The Respondents closed their Dunkirk operations and effectively discharged all employees without consulting with the Union or giving it an opportunity to bargain with respect to the contemplated change as it affected employment.¹³

J. Conclusions as to interference, restraint, and coercion

The evidence plainly and overwhelmingly establishes that the Respondents interfered with, restrained, and coerced employees in the exercise of rights guaranteed by Section 7 of the Act. This conclusion is based upon:

1. The illegal discriminatory reduction in hours in December 1958, and the discharges on or about March 1, 1959.

2. The refusal to bargain collectively in good faith with the Union.

3. The many threats of economic reprisal and promises of benefit uttered by the Koesslers, Roll, and Soper, described at length in sections III, D, and F, above.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondents set forth in section III, above, occurring in connection with the operations of the Respondents 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 Respondents have engaged in unfair labor practices the Trial Examiner will recommend that they cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

It will be recommended that the Respondents offer all employees discharged at their Dunkirk, New York, plant on or about March 1, 1959, immediate and full

¹¹ *N.L.R.B. v. Star Publishing Co.*, 97 F 2d 465 (C.A. 9).

¹² See *Eva-Ray Dress Manufacturing Company, Inc.*, 88 NLRB 362; *Pepsi-Cola Bottling Company of Montgomery*, 72 NLRB 601.

¹³ *Shamrock Davry, Inc., et al.*, 124 NLRB 494.

reinstatement to their former or substantially equivalent positions at their Dunkirk plant, if they reopen it, or at their Tonawanda, New York, plant, without prejudice to their seniority or other rights and privileges, dismissing, if necessary to provide employment for those offered and accepting employment, all employees at the Tonawanda plant. It will also be recommended that the Respondents pay the employees the expenses entailed in moving their families and household effects, in the event the Respondents do not reopen their Dunkirk plant.¹⁴ It will further be recommended that the Respondents make whole these employees for any loss of pay they may have suffered by reason of the Respondents' discrimination against them in the following manner: (a) to all employees on the payroll as of December 3, 1958, a sum of money equal to that which they suffered as loss thereafter by reason of the discriminatory move of machinery, and (b) to all employees listed in Appendix A, attached hereto, a sum of money equal to the amount each would normally have earned as wages from March 1, 1959, to the date of offer of reinstatement less his or her net earnings during such period, and in conformance with Board policy as set out in *F. W. Woolworth Company*, 90 NLRB 289, and *Crossett Lumber Company*, 8 NLRB 440. It will also be recommended that the Respondents, 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.

It will be recommended that the Respondents, upon request, bargain collectively with Local Union No. 685, Printing Specialties and Paper Products Union, International Printing Pressmen and Assistants' Union of North America, AFL-CIO, as the exclusive bargaining representative of employees in the appropriate unit described herein.

Since the violations of the Act which the Respondents have 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 their 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 Respondents 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. Local Union No. 685, Printing Specialties and Paper Products Union, International Printing Pressmen and Assistants' Union of North America, 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 the employees named in Appendix A, and in the hours of employment of employees on the payroll as of December 3, 1958, thereby discouraging membership in the above-named labor organization, the Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

3. All employees of the Respondents at its Tonawanda, New York, plant (formerly its Dunkirk plant), excluding office clerical employees, guards, professional employees, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. On November 6, 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 December 3, 1958, and at all times thereafter, to bargain collectively with the aforesaid labor organization, the Respondents have engaged in and are 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 Respondents have engaged in and are 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.]

¹⁴ *Mount Hope Finishing Company, et al.*, 106 NLRB 480, 499.

APPENDIX A

Apthorpe, Victoria
 Barone, Henry Jo
 Boner, Helen
 Bradley, Mary
 Dorman, Ellen
 Dorman, Laura
 Farnham, Dorothy
 Fluker, Sharon
 Goodrich, Doris
 Gostomski, Helen
 Holtz, Winifred
 Kubasik, Betty
 Kulpa, Marie
 Kye, Frank J.
 Hollowell, Dolores
 Lawrence, Betty

LeBaron, Marian
 Lemiszko, Sophie
 Lukasik, Mathilda
 McKay, Eileen
 Mrocza, Winifred
 Przybyla, Martha
 Rossotto, Elizabeth
 Rozumalski, Irene
 Rutkowski, Virginia
 Sarek, Helen
 Stanley, Alberta
 Stephens, Carol
 Sobilo, Violet June
 Tabasco, Genevieve
 Turnowski, Martha

APPENDIX B

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT discourage membership in Local Union No. 685, Printing Specialties and Paper Products Union, International Printing Pressmen and Assistants' Union of North America, AFL-CIO, or in any other labor organization of our employees, by discharging, laying off, refusing to reinstate, reducing work hours, or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of employment.

WE WILL NOT threaten employees with reprisals or make them promises of benefit to discourage membership in or activity on behalf of the above-named or any other labor organization.

WE WILL NOT in any manner interfere with, restrain, or coerce employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in any 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 organization as a condition of employment as authorized in Section 8(a)(3) of the Act.

WE WILL offer the employees listed on the attached Appendix A immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, and make them and all employees on our Dunkirk payroll on December 3, 1958, whole for any loss of earnings they may have suffered by reason of the discrimination against them.

WE WILL, upon request, bargain collectively with the above-named labor organization as the exclusive representative of our employees in the appropriate unit described below:

All employees at our Tonawanda, New York, plant, excluding office clerical employees, guards, professional employees, and supervisors as defined in the Act.

RAPID BINDERY, INC.,
Employer.

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

FRONTIER BINDERY 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.