

**Passmore Supply Company and Highway Truck Drivers and Helpers, Local 107, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent.** *Case No. 4-CA-1954. July 14, 1960*

DECISION AND ORDER

On January 11, 1960, Trial Examiner Louis Plost issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, Respondent filed exceptions to the Intermediate Report and a supporting brief. On March 30, 1960, the Board issued an order directing that the record be reopened and that a further hearing be held for the purpose of receiving additional evidence on the question of the Board's statutory jurisdiction.

On May 19, 1960, Trial Examiner Plost issued his Report on Order Remanding Proceeding, a copy of which is also attached hereto, in which he made additional findings of fact and reaffirmed his original conclusions of law with respect to the question of jurisdiction. Thereafter, the Respondent filed exceptions to this report.

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

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the Report on Order Remanding Proceeding, the exceptions and brief, and the entire record in the case, and hereby adopts the findings,<sup>1</sup> conclusions, and recommendations of the Trial Examiner, to the extent consistent with our decision herein.

We agree with the Trial Examiner, for the reasons set forth hereinafter, that the Respondent violated Section 8(a)(1) and (3) of the Act.

As set forth in the Intermediate Report, following the inception of the Union's attempts to organize Respondent's employees, Respondent's supervisor Edler interrogated union adherent Brown concerning union activity and his participation therein, stating to Brown that he had information that Brown was a union adherent and that the

<sup>1</sup> We note and correct inadvertent errors in the Intermediate Report, where the Trial Examiner incorrectly referred to Tuesday, June 2, as a Wednesday; to Friday, the regular payday, as the end of the pay period, and to 1 week's vacation as 2 weeks' vacation.

Respondent didn't "go for that." Brown thereupon asked Edler if that meant he was fired. Without delay, Edler saw Pusey, Respondent's president, and instructed Brown to see him. Pusey charged Brown with being dissatisfied with his work and told him he thought it was time he made a change. Although Brown denied he was dissatisfied with his work, Pusey insisted that he was dissatisfied and that he should make a change. Pusey concluded his conversation with Brown by saying: "You have a week's vacation coming, take that and that will be it." Brown later received his pay through the day of his conversation with Pusey, including 1 week's vacation pay.

On these facts, we find, contrary to the contention of the Respondent, that Brown did not quit, but rather was discharged. We further find that Brown was not discharged because of any dissatisfaction with his work which was unrelated to his union activity; we note in this connection that although Respondent was aware for some time of Brown's alleged dissatisfaction, it took no steps to terminate his employment until after the advent of union activity and Brown's participation therein. We find, rather, particularly in view of the timing of the Respondent's discharge of Brown in relation to the advent of the Union's organizational efforts, and in relation to Respondent's interrogation of Brown concerning such activity, and Respondent's patent attempt to equate union activity with job dissatisfaction, that the Respondent terminated Brown because of his union activity. By such conduct, therefore, the Respondent has discriminated against Brown in violation of Section 8(a)(3) and (1) of the Act. As the Respondent's interrogation of Brown concerning his participation in union activity was directly related to the discrimination against him, such interrogation clearly violated Section 8(a)(1) of the Act, and we so find.<sup>2</sup>

### 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 the Respondent, Passmore Supply Company, Avondale, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

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

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<sup>2</sup> Because a discriminatory discharge goes to the very heart of the Act and the record reflects a purpose by unlawful means likely to be executed in the future to thwart freedom of choice by employees as to representation by any labor organization, we adopt the recommended order of the Trial Examiner that the Respondent cease from in any manner interfering with the rights of employees under Section 7 of the Act. *NLRB v. Twinstle Manufacturing Co.*, 120 F. 2d 532, 536 (C.A. 4).

(b) Discouraging membership of its employees in Highway Truck Drivers and Helpers, Local 107, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent, or any other labor organization, by discriminating in regard to their hire of tenure of employment or any term or condition of employment.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, including the above-named labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor 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:

(a) Offer to Oscar D. Brown reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges previously enjoyed and make him 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 records, timecards, personnel records and reports, and all other records necessary or appropriate to analyze the amount of backpay and other benefits due and the rights of employment under the terms of this Order.

(c) Post at its plant at Avondale, Pennsylvania, copies of the notice attached hereto marked "Appendix."<sup>3</sup> Copies of such notice, to be furnished by the Regional Director for the Fourth Region, shall, after being duly signed by an authorized representative of the Respondent, be posted immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that such notices are not altered, defaced, or covered by any other material.

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

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<sup>3</sup> 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 Labor Management Relations Act, we hereby notify our employees that:

WE WILL NOT discourage membership in Highway Truck Drivers and Helpers, Local 107, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent, or any other labor organization, by discriminating in regard to the hire or tenure of employment or any term or condition of employment of our employees.

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

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the right of self-organization, to form labor organizations, to join or assist Highway Truck Drivers and Helpers, Local 107, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent, or any other labor organization, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

WE WILL offer Oscar D. Brown immediate and full reinstatement to his former or substantially equivalent position as truck-driver without prejudice to his seniority and other rights and privileges previously enjoyed and make him whole for any loss of pay suffered as a result of our discrimination against him.

All our employees are free to become, remain, or refrain from becoming or remaining members of any labor organization, 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.

PASSMORE SUPPLY COMPANY,  
*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

It having been charged on June 10, 1959, by Highway Truck Drivers and Helpers, Local 107, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent, herein called the Union, that Passmore Supply Company, herein called the Respondent, has been engaging in and is engaging in unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board by the Regional Director for the Fourth Region, issued a complaint and notice of hearing pursuant to Section 10(b) of the Act, and Section 102.15 of the Board's Rules and Regulations, Series 7, as amended, dated August 6, 1959, alleging that the Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.<sup>1</sup>

Copies of the complaint and a notice of hearing were duly served on the Respondent.

The complaint, with respect to the unfair labor practices, alleged that:

On or about June 2, 1959, the Respondent, through its president and general manager, George C. Pusey, and through its supervisor and agent, George H. Edler, did interfere with, restrain and coerce employees, by interrogating Oscar D. Brown concerning his union activities, sympathies, and affiliations.

On or about June 2, 1959, the Respondent discharged its employee, Oscar D. Brown, and has at all times since June 2, 1959, failed and refused to reinstate him . . . for the reason that he joined or assisted the Union or engaged in other concerted activities for the purposes of collective bargaining or other mutual aid or protection of employees.

The answer, filed by the Respondent August 13, 1959, denied that it had engaged in any of the alleged unfair labor practices.

Pursuant to notice a hearing was held before Louis Plost, the duly designated Trial Examiner, at Philadelphia, Pennsylvania, on October 19, 1959. The parties were all represented by counsel, herein referred to in the names of their principals. The parties participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing upon the issues, to argue orally, and to file briefs and/or proposed findings of fact and conclusions of law with the Trial Examiner. No oral arguments were presented. Briefs have been received from the Respondent and from the General Counsel.

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

## FINDINGS OF FACT

## I. THE BUSINESS OF THE RESPONDENT

The parties stipulated:

The Respondent is a corporation, duly organized and existing by virtue of the laws of the State of Delaware and maintains its principal place of business at Avondale, Pennsylvania, where it is engaged in the retail sale of ice, coal, feed, fertilizers, lumber, and building materials. During the calendar year 1958, Respondent's gross volume of business exceeded the sum of \$500,000.

Respondent has been at all times herein mentioned, and is now an Employer engaged in commerce within the meaning of Section 2, Subsections (6) and (7) of the Act.

## II THE ORGANIZATION INVOLVED

Highway Truck Drivers and Helpers, Local 107, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent, is a labor organization within the meaning of Section 2(5) of the Act.

## III. THE UNFAIR LABOR PRACTICES

## The Discriminatory Discharge of Oscar D. Brown

Oscar D. Brown was employed as a truckdriver by the Respondent on April 9, 1958. He was employed to operate the Respondent's largest truck, the truck being

<sup>1</sup>The complaint was signed by Bernard Samoff, Acting Regional Director.

thereafter designated as "Brown's" on the Respondent's bulletin board and except for two occasions Brown was the only employee to operate this truck during the period of his employment.

Brown testified that: He contacted the Union sometime in May 1959; thereafter he attended a meeting at the Union's hall in Wilmington, Delaware, on May 27, 1959, which had been called by the Union (Charging Party) for the purpose of organizing the Respondent's drivers; prior to the meeting he informed his fellow employees of it and urged their attendance. Some of his fellow employees did attend the meeting.

George C. Pusey, the Respondent's president, testified that he has managed the Respondent's business for 20 years and in response to a question regarding the number of drivers the Respondent normally employed answered, "I think as high as 7 or 8."

Brown further testified that on June 2, 1959 (the day fell on Tuesday, the Union's meeting had taken place the preceding Wednesday), he received an order "just before noon" to prepare a delivery for Centerville, Delaware, but that after his truck was loaded he was told by Howard Edler (stipulated to be a supervisor) not to make the delivery but to turn the truck over to another employee, which he did, continuing on other work than driving the rest of the day; no reason was given Brown for the action; at 5 p.m., after Brown had "checked out," he was called by Edler to "come over to the steps":

He sat down on the steps, and I stood at the bottom.

And he says, "What's this I hear about the union?" And I says, "What do you mean?"

And he says, "I have information that you're the head of trying to get the union in here." And I told him I didn't know as I was the head of it.

And he says, "You know we don't go for that around here." And I said, "Does that mean that I'm fired?"

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And when I asked him if it meant that I was fired he said, "I didn't say that." Or in that order, he said, "I can't say that."

And he told he to wait a minute. He went over to Mr. Pusey's office.

Edler was not called by the Respondent. Brown's above-cited undenied testimony is fully credited by the Trial Examiner.

According to Brown:

And he came out and told me to go in Mr. Pusey's [George C. Pusey, the Respondent's president] office. And I went in and Mr. Pusey says, "I hear you're dissatisfied around here. I think it's time for you to make a change."

And I asked him what he meant. He says, "Well, you've been complaining about your trips, and your work," and he says, "I just think it's time for you to make a change."

Brown further testified he answered Pusey that he was not dissatisfied with his work but was with the salary:

And Mr. Pusey says, "Well, you've been doing quite a bit of complaining." He says, "It seems that you're dissatisfied. I think you should make a change."

And I asked him what this was that Howard talked to me about the union. And he says, "I don't know. But," he says, "you're still dissatisfied. It's time you make a change."

So I said to him—we had two weeks' agreement when he hired me, that I would have a two-weeks' notice. He says, "Well, take tomorrow off, see if you can get another job, and come back."

Pusey closed the conversation, which lasted "approximately five minutes" with the statement: "You have a week's vacation coming, take that and that will be it."

When Brown received his pay it was ended with Wednesday, June 2; the day of the above-related conversation. The regular pay period ended on Friday. Brown was paid for the 2-week vacation period.

President Pusey's account of the conversation between Brown and himself on June 2 is somewhat different from Brown's version. According to Pusey, at 5 p.m. Edler "just opened the door" of Pusey's office and stated that Brown wished to talk to him (Pusey); Brown then entered and:

He said, "What is this about me being the ringleader of a group to join the union?" I said, "I know nothing about it." I said, "I thought that if you were interested in joining the union—or if the union had talked to you, you would come to talk to me about it." And he didn't answer that remark.

The Respondent argues that the record contains no "direct evidence" that Pusey had knowledge of the Union's activities among the Respondent's employees. However, Pusey's testimony that he told Brown he "knew nothing about" Brown's activities on behalf of the Union and followed this with the statement that if Brown had become interested in a union "I thought . . . you would come to me to talk about it," if not disclosing direct evidence of knowledge by Pusey, surely does more than point to such knowledge. Edler's undenied knowledge of Brown's union activity which is chargeable to the Respondent, clearly shows the Respondent's knowledge of Brown's interest in the Union's organization of the Respondent's employees.

President Pusey further testified that the conversation continued as follows:

I said, "Well, it's come to my attention that you have been giving your supervisor a hard time about making some of these Philadelphia trips, other trips."

And I says, "You remember the conversation you and I had when you had been here a year, you were telling me then you were tired of bucking the Philadelphia traffic. And that you asked my advice about buying a truck, going in business for yourself."

So I said, "Why don't you just quit, if you're dissatisfied?"

TRIAL EXAMINER: Anything else in that conversation?

The WITNESS: Well, then, he raised the question about whether he could come back to work the next day. And I says, "Well, it's all right with me *if you want to take tomorrow off and look for another job.*" [Emphasis supplied.]

With respect to his desire to purchase a truck, Brown testified that in the "early spring" of 1959 he was hauling fertilizer and asked Pusey if the Respondent would give him this business were he to buy a truck and hire a driver to operate it; however, Pusey advised against such a venture by Brown and it was not made.

Pusey testified that:

My understanding of the conversation was that he was considering quitting us, buying a truck of his own, and driving it.

He further testified: "I told him I didn't think I would buy it if I were him," but that: "I told him if he bought the truck and went into that business we'd give him some of our work."

Brown testified he had spoken to Edler "a couple of times" regarding salary, mentioned the "mess up in the city" regarding Philadelphia traffic to Edler, but never told the Respondent he intended to quit or that he was dissatisfied with his job.

Brown also testified that in April 1959, during a strike on the docks at Philadelphia, freight was being diverted to Baltimore and he was sent for a shipment of nails unloaded at Baltimore but he found that "the nails wasn't there" and accordingly made two telephone calls to Edler in which:

I said something about the pier men there, it was the time when they had the strike, and everything was on the pier. And I remember saying something about they're running me back and forth from one building to the other.

The manner of Brown's cross-examination indicated clearly that the Respondent sought to turn these two telephone calls into evidence of dissatisfaction with his job by Brown, although Brown's testimony was not disputed.

The Respondent makes much in his argument of the fact that at no time did Pusey actually discharge Brown. For that matter at no time did Brown state that he quit. Upon all the evidence it is the considered opinion of the Trial Examiner that despite an evident attempt to slant his testimony in the Respondent's favor President Pusey merely succeeded in substantially corroborating Brown's account of the June 2 meeting between Pusey and Brown.

On the entire record and from his observation of the two men on the witness stand, the Trial Examiner credits Brown, and finds his account of the June 2 meeting to be accurate.

President Pusey further testified that "the following Thursday" Brown called at his office. According to Pusey:

Q. (By Mr. Bonney.) Tell us what he said when he came to see you.

A. He came in and he said that he wanted to know whether he had been fired, or whether he quit. I says, "Brownie, it's my understanding you quit. Why?" He said, "Well, I want to apply for unemployment compensation," or insurance, whatever it is.

And I said, "Well, I'm sorry, it's my understanding you quit." He turned around and walked out.

### Concluding Findings

The Trial Examiner is convinced and finds that on all the circumstances of the case it is clear that the Respondent discharged Oscar D. Brown on June 2, 1959.

The Trial Examiner further finds that Foreman Edler's inquiry and remarks to Brown on June 2 as hereinabove found constitute unlawful interrogation and threat.

### Final Conclusion

Upon the entire record and from his observation of the witnesses the Trial Examiner finds that by discharging Oscar D. Brown as herein found, the Respondent did discourage and is discouraging membership in a labor organization by discriminating in regard to hire and tenure of employment and terms and conditions of employment, and by said acts and conduct did engage in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act, and by said acts and conduct 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 did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

#### 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 Oscar D. Brown because of his membership in and activities on behalf of the Union, it will therefore be recommended that the Respondent offer him immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and that he be made whole for any loss of pay he may have suffered by reason of the discrimination against him, 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.<sup>2</sup> The backpay shall be computed in the manner established by the Board,<sup>3</sup> and the Respondent shall make available to the Board its payroll and other records to facilitate the checking of amounts due.

The preventive purposes of the Act will be thwarted unless the recommendations are coextensive with the threat contained in violations of the Act herein found. It will therefore be recommended that the Respondent cease and desist from infringing in any manner upon the employees' rights guaranteed in Section 7 of 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. Passmore Supply Company, Avondale, Pennsylvania, is engaged in commerce within the meaning of the Act.

2. Highway Truck Drivers and Helpers, Local 107, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent, is a labor organization within the meaning of the Act.

3. By discriminating in regard to the hire and tenure of employment of Oscar D. Brown, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

4. By such discrimination the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

5. 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 ]

<sup>2</sup> *Crossett Lumber Company*, 8 NLRB 440

<sup>3</sup> *F. W. Woolworth Company*, 90 NLRB 289

REPORT ON ORDER REMANDING PROCEEDING TO REGIONAL DIRECTOR FOR STIPULATION OF FACTS OR FOR FURTHER HEARING

The Board's Order opens:

On January 11, 1960, Trial Examiner Louis Post issued an Intermediate Report in the above-entitled proceeding in which he concluded that the Respondent is engaged in commerce within the meaning of the Act. The Respondent filed an exception thereto. The Board having duly considered the matter.

IT IS HEREBY ORDERED that the record in this proceeding be, and it hereby is, reopened and that a further hearing be held before Trial Examiner Louis Post for the purpose of receiving additional evidence on the question of the Board's statutory jurisdiction;<sup>1</sup>

Pursuant to notice a hearing on the Board's Order was held before Trial Examiner Louis Post at Philadelphia, Pennsylvania, on April 20, 1960. The parties were all represented by counsel, herein referred to in the names of their principals. The parties participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing upon the issues, to argue orally, and to file briefs and/or proposed findings of fact and conclusions of law with the Trial Examiner. Oral argument was presented by the General Counsel. The parties all waived the right to file briefs.

George C. Pusey the Respondent's president and general manager, testified that: During fiscal year 1959, the Respondent's total sales were \$1,563,093.90; it shipped goods from its plant at Avondale, Pennsylvania, to points located outside the Commonwealth of Pennsylvania having a dollar value of approximately \$70,000; and it brought goods from outside Pennsylvania for use in Pennsylvania, having a dollar value in excess of \$50,000.

In his oral statement the General Counsel pointed out that the transcript of the original hearing<sup>2</sup> contained 10 references to shipments made by the Respondent from Pennsylvania to points outside the State, or vice versa, citing page references in the original transcript.

Upon the entire record in the case the Trial Examiner finds that:

The Respondent is a corporation, duly organized and existing by virtue of the laws of the State of Delaware, and maintains its principal place of business at Avondale, Pennsylvania, where it is engaged in the retail sale of ice, coal, feed, fertilizers, lumber, and building materials. During the calendar year 1959 the Respondent's gross volume of business was \$1,563,093.90 of which approximately \$70,000 in value was shipped to points outside Pennsylvania, and in excess of \$50,000 in value came to it from outside Pennsylvania. Respondent has been at all times herein mentioned, and is now, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

<sup>1</sup> The above-quoted language can leave the impression that the Respondent filed objections to the "commerce" findings made by the Trial Examiner in his original report. The Trial Examiner respectfully points out that such an impression would be erroneous. As found in the original report the Respondent stipulated the "commerce" facts and further that it was engaged in commerce within the meaning of the Act. In its exceptions to the Trial Examiner's original report the Respondent did not raise any jurisdictional question. The question of jurisdiction is raised by the Board under its ruling in *James D. Jackson, d/b/a Jackson's Party Service*, 126 NLRB 875.

<sup>2</sup> This transcript consisted of 85 pages.

Nutley Sun Printing Co., Inc., Frank Orechio and Wall Street Printing and Stationery Corp. and Newark Typographical Union Local No. 103. *Case No. AO-10. July 14, 1960*

ADVISORY OPINION

This is a petition filed by Newark Typographical Union Local No. 103, herein called the Petitioner, pursuant to Section 102.98 of the Board's Rules and Regulations, praying for an advisory opinion as 128 NLRB No. 13.